

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

EDUARDO RAFAEL LOPEZ-ESCARREGA, aka Edwardo
E. Escarrega, aka Eduardo Gonsales,

Defendant-Appellant.

No. 25-1937

Appeal from the United States District Court
for the Western District of Michigan at Grand Rapids.
No. 1:24-cr-00134-1—Hala Y. Jarbou, District Judge.

Decided and Filed: September 28, 2026

Before: BATCHELDER, WHITE, and THAPAR, Circuit Judges.

COUNSEL

ON BRIEF: Barry J. McWhirter, THE MCWHIRTER LAW FIRM, PLLC, Cordova, Tennessee, for Appellant. Donald Daniels, UNITED STATES ATTORNEY’S OFFICE, Grand Rapids, Michigan, for Appellee.

OPINION

THAPAR, Circuit Judge. Eduardo Rafael Lopez-Escarrega illegally entered the United States not once, not twice, but three times. During his first period in this country illegally, Lopez-Escarrega was convicted of driving while intoxicated and dealing cocaine for a Mexican drug cartel. And during his second time, he was convicted of driving while intoxicated and

being an aggravated felon found in the country after having been removed. *See* 8 U.S.C. § 1326(a), (b)(2). Yet none of those convictions deterred him from breaking our laws. So after law enforcement caught Lopez-Escarrega here unlawfully a third time, the government charged him again with being found in the country illegally after having been removed. A jury convicted him of that offense.

Lopez-Escarrega now appeals his conviction, asserting that the district court erred by prohibiting him from raising a duress defense. He wanted to argue that he had no choice but to illegally reenter the United States because the same cartel that he used to sell drugs for was now allegedly trying to kill him. But Lopez-Escarrega can't raise a duress defense because he faced no immediate threat of harm, he recklessly placed himself in a dangerous situation by joining that drug cartel, he had reasonable alternatives to violating our laws, and he never surrendered to law enforcement or informed them of the threat he supposedly faced. Lopez-Escarrega also contends that the government violated the Speedy Trial Act and that the district court imposed a substantively unreasonable sentence. Those arguments are meritless too, so we affirm.

I.

Eduardo Rafael Lopez-Escarrega is a Mexican citizen. He's never received legal permission to enter the United States. But that hasn't stopped him from illegally crossing our border multiple times.

Lopez-Escarrega first entered the country illegally over 30 years ago. Since then, he's racked up multiple charges for possessing controlled substances, resisting law enforcement, public intoxication, disorderly conduct, battery, and driving without a license.

One time, police pulled over Lopez-Escarrega after observing him swerving on the road. He admitted to drinking alcohol, and his blood alcohol level was more than twice the legal limit. So Lopez-Escarrega was convicted in state court of driving while intoxicated.

The following year, Lopez-Escarrega sold drugs to an undercover police officer several times, which resulted in a conviction for dealing cocaine. After Lopez-Escarrega was paroled from prison, federal immigration authorities deported him to Mexico in 2007. At the time,

Lopez-Escarrega received a warning that he was barred from returning to the United States for life and would face criminal penalties if he ever reentered the country.

Lopez-Escarrega ignored that warning. Sometime after his removal, he returned to the United States and continued to break the law. Officers again caught him driving while intoxicated. This time, officers received a report of an injured person and observed Lopez-Escarrega asleep at the wheel as his car rolled backwards down the street. They smelled alcohol, noticed a large beer can in the cupholder, and saw a bag of marijuana on the passenger seat. So Lopez-Escarrega was convicted of driving while intoxicated and possessing marijuana.

When federal officials learned that Lopez-Escarrega was in custody, they charged him with being found in the country with a prior aggravated felony conviction after having been previously deported. *See* 8 U.S.C. § 1326(a), (b)(2).¹ Lopez-Escarrega was convicted of that charge and sentenced to 40 months' imprisonment. After Lopez-Escarrega completed most of his prison sentence, immigration authorities removed him from the United States in 2016 and again warned him that he could never return.

But those additional warnings and convictions still didn't stop Lopez-Escarrega. He returned to the United States yet again by crossing the southern border sometime between 2016 and 2019. Lopez-Escarrega remained undetected in the United States for at least five years. Then, in 2024, police officers in Michigan pulled him over for running a stop sign. The officers ultimately let him go. But they issued him a ticket for driving without a license and informed federal immigration officials about this encounter.

A grand jury in the Western District of Michigan then charged Lopez-Escarrega with being found in the United States illegally after having been removed. *See* 8 U.S.C. § 1326(a), (b)(2). In advance of trial, Lopez-Escarrega requested a jury instruction on the affirmative defense of duress, so the government filed a motion in limine to require that he make the necessary showing before raising that defense. The district court concluded that Lopez-

¹Section 1326, titled "Reentry of removed aliens," makes it illegal to enter, to attempt to enter, or to be "found in" the United States after having been previously removed, except in certain circumstances not relevant here. 8 U.S.C. § 1326(a). Being found in the country and reentry "are, in many ways, different sides of the same coin." *United States v. Solis-Roblero*, No. 25-5532, 2026 WL 2594501, at *3 n.2 (6th Cir. Sept. 2, 2026).

Escarrega hadn't presented sufficient evidence that he'd acted under duress and thus precluded him from raising that defense. Lopez-Escarrega then moved to dismiss the indictment, arguing that the government had failed to bring him to trial within the Speedy Trial Act's time limits. The district court denied that motion, finding that the government had complied with the Act.

Ultimately, a jury convicted Lopez-Escarrega of being found in the United States illegally after having been removed, in violation of 8 U.S.C. § 1326(a). At sentencing, the district court calculated a Guidelines range of 41 to 51 months' imprisonment. The court then imposed a within-Guidelines sentence of 48 months' imprisonment. Lopez-Escarrega timely appealed.

II.

Lopez-Escarrega raises three challenges on appeal. First, he contends that the district court should've allowed him to present a duress defense. Second, he reprises his argument that the government failed to comply with the Speedy Trial Act. And third, he claims that his within-Guidelines sentence is substantively unreasonable. We address each challenge in turn.

A.

Start with Lopez-Escarrega's proposed duress defense. Lopez-Escarrega admits that he sold drugs for the Sinaloa drug cartel. But he claims that "[t]he cartel was displeased with him . . . because he stopped engaging in drug dealing and they believe he owes them a drug debt." R. 95, Pg. ID 526. Lopez-Escarrega further alleges that the cartel killed his brothers and was trying to kill him too. As a result, he contends that he had no choice but to illegally reenter the United States to escape the cartel.

The district court concluded that Lopez-Escarrega had failed to present legally sufficient evidence that he acted under duress and thus prohibited him from raising that defense. We review the district court's determination de novo. *United States v. Johnson*, 416 F.3d 464, 468 (6th Cir. 2005). And we agree with the district court. Lopez-Escarrega's proposed duress defense fails at nearly every step.

To argue duress, a defendant must present some evidence that all of the following five elements are present. *Id.* First, he must have faced an “unlawful and present, imminent, and impending threat” that gave him a “well-grounded” fear of “death or serious bodily injury.” *Id.* (quotation omitted). Second, the defendant must not have “recklessly or negligently placed himself in a situation” where it was likely that he might need to engage in criminal conduct. *Id.* (quotation omitted). Third, there must have been “no reasonable, legal alternative to violating the law.” *Id.* (quotation omitted). Fourth, there must be a “direct causal relationship” between the defendant’s criminal activity and avoiding the threatened harm. *Id.* (quotation omitted). And finally, the defendant must not have continued the illegal conduct “any longer than absolutely necessary.” *Id.* (quotation omitted). While the defendant’s initial burden in establishing these elements isn’t heavy, we’ve warned that a duress defense is “rare” and “should be construed very narrowly.” *United States v. Kemp*, 546 F.3d 759, 765 (6th Cir. 2008) (quotation omitted). What’s more, a defendant’s failure to present legally sufficient evidence on even one element is enough for the district court to preclude the defense. *United States v. Bailey*, 444 U.S. 394, 416 (1980). Here, Lopez-Escarrega failed to present legally sufficient evidence on nearly every element.

To begin, Lopez-Escarrega carried on his illegal conduct for far longer than necessary. Being found in the country after illegal reentry is a continuing crime. *Solis-Roblero*, 2026 WL 2594501, at *3. In other words, the offense occurs not just when the defendant initially crosses over the border but continues for as long as he remains in the United States unlawfully. *Id.* Thus, to raise a duress defense, a defendant accused of being found in the United States illegally needs to “proffer evidence of a bona fide effort to surrender or return to custody as soon as the claimed duress or necessity had lost its coercive force.” *Bailey*, 444 U.S. at 415; *see United States v. Portillo-Vega*, 478 F.3d 1194, 1201 (10th Cir. 2007). In such cases, the claimed duress ends as soon as the defendant crosses into the United States. So the defendant needs to immediately surrender to law enforcement. Yet Lopez-Escarrega never did so. Instead, he remained undetected in the country for at least five years. And even when police pulled him over for running a stop sign, he still didn’t inform the officers that he was here illegally or fleeing the Sinaloa cartel. Lopez-Escarrega nevertheless contends that he didn’t need to contact law enforcement because they would’ve simply removed him to Mexico. But that “subjective

belief” doesn’t eliminate his need to make a bona fide effort to surrender as soon as he entered the country. *United States v. Arias-Quijada*, 926 F.3d 1257, 1260 (10th Cir. 2019). That means Lopez-Escarrega’s unlawful presence in the United States persisted far longer than necessary.

Regardless, Lopez-Escarrega didn’t establish that he faced an imminent and impending threat. He emphasizes that the cartel had already murdered his brothers and was threatening to kill him too. But to raise a duress defense, a defendant must face a substantial danger at the time he commits the offense—a fear of future harm doesn’t suffice. *United States v. Mora-Carrillo*, 80 F.4th 712, 715–16 (5th Cir. 2023); *see also United States v. Howe*, 289 F. App’x 74, 78 (6th Cir. 2008). For this reason, our sister circuits have routinely rejected duress defenses in illegal-reentry cases when defendants sought to rely on threats from gangs or cartels that “were directed at some future, unspecified time.” *United States v. Bustillos-Perea*, No. 25-2077, 2026 WL 1506670, at *3 (10th Cir. May 29, 2026). So too here.

Lopez-Escarrega hasn’t identified any specific, imminent threat he faced at the moment he crossed the southern border. In other words, there was no “figurative gun to his head compelling his illegal entry.” *United States v. Vasquez-Landaver*, 527 F.3d 798, 803 (9th Cir. 2008). Instead, he relies on his anticipation of future threats of harm, which can’t carry the day. True, Lopez-Escarrega claimed that members of the cartel had already attempted to murder him and had stabbed him.² But Lopez-Escarrega escaped from those individuals, which means he no longer faced an immediate threat. *See Mora-Carrillo*, 80 F.4th at 716 (finding no imminent threat when four days passed between a defendant’s escape from abduction and illegal entry); *United States v. Florentino-Rosario*, 19 F.4th 530, 537 (1st Cir. 2021) (same when nearly a year passed between an attack on the defendant and his illegal entry). Lopez-Escarrega’s failure to present evidence of an immediate threat dooms his proposed duress defense.

Additionally, Lopez-Escarrega recklessly placed himself in this dangerous situation by joining a brutal drug-trafficking organization. As Lopez-Escarrega recognizes, drug cartels

²Lopez-Escarrega claims that cartel members stabbed him sometime after he was removed to Mexico in 2016, and he offered to show those stab wounds at trial. But the presentence report (PSR) indicates that his only stab wounds “stemm[ed] from a 2013 incident when he was stabbed by an extended family member.” R. 71, Pg. ID 422. Lopez-Escarrega never objected to the accuracy of that statement. So the stab wounds don’t support his claim.

“have engaged in a campaign of violence and terror,” oftentimes using “assassination” and “brute force” to promote their objectives. Exec. Order No. 14157, 90 Fed. Reg. 8439 (Jan. 29, 2025). A common target of this violence: former members suspected of betraying the cartels.³ Despite these dangers, Lopez-Escarrega still joined the Sinaloa cartel. And he fully embraced that cartel’s mission by selling drugs in the United States and even tattooing the group’s name on his body twice. In short, Lopez-Escarrega willingly placed himself in a situation where he could be at risk of serious bodily injury or death if he ever betrayed the cartel, such as by leaving the group or owing it money. *See Howe*, 289 F. App’x at 78 (concluding that a defendant who “voluntarily joined” a gang was “ineligible to assert a defense of duress” based on gang violence). So he can’t now use that risk as an excuse for breaking the law.

Plus, Lopez-Escarrega hasn’t established that he lacked reasonable, legal alternatives to illegally reentering the United States. For example, Lopez-Escarrega could’ve contacted law-enforcement authorities in Mexico. *See Kemp*, 546 F.3d at 766. He claims that wouldn’t have been feasible because “the Mexican government has an intolerable relationship with these cartels.” R. 95, Pg. ID 535. But such a conclusory assertion doesn’t suffice. Lopez-Escarrega must show that he “actually tried” contacting the police, “had no time to try it,” or had “a history of futile attempts” to seek help from Mexican law enforcement. *United States v. Harper*, 802 F.2d 115, 118 (5th Cir. 1986) (quotation omitted). He hasn’t made any of those showings.

Likewise, Lopez-Escarrega could’ve tried relocating within Mexico. *See Florentino-Rosario*, 19 F.4th at 537–38. In response, he argues that “there is no safe alternative in Mexico.” R. 39, Pg. ID 213. Yet the Sinaloa cartel operates in only certain parts of the country. *See* June S. Beittel, Cong. Rsch. Serv., R41576, *Mexico: Organized Crime and Drug Trafficking Organizations* 10–11 (2022). Lopez-Escarrega hasn’t explained why he couldn’t travel to other parts of Mexico where the Sinaloa cartel isn’t present. *See id.* Instead, he falls back on “mere suspicion or speculation” that he couldn’t relocate within Mexico. *Kemp*, 546 F.3d at 765 (quotation omitted). But speculation isn’t enough to establish duress.

³*See The Rise of the Mexican Drug Cartels and U.S. National Security: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 111th Cong. 25 (2009) (statement of Lanny A. Breuer, Assistant Att’y Gen., Crim. Div., U.S. Dep’t of Just.).

Lopez-Escarrega also could've tried to go to a country other than the United States. *See Florentino-Rosario*, 19 F.4th at 537–38; *United States v. Polanco-Gomez*, 841 F.2d 235, 238 (8th Cir. 1988); *United States v. Bonilla-Siciliano*, 643 F.3d 589, 591 (8th Cir. 2011). And while it may have been easier or cheaper for Lopez-Escarrega to simply cross the border into the United States on foot, “convenience is not sufficient to make out a duress defense.” *Florentino-Rosario*, 19 F.4th at 538. Lopez-Escarrega responds that he didn't have the resources to travel to another country and couldn't walk all the way to Mexico's southern border because of his stab wounds. But Lopez-Escarrega was arrested in Michigan, roughly 1,500 miles away from the U.S.–Mexican border. So his ability to traverse such a great distance after entering the United States belies his claim that he couldn't have traveled to another country instead.⁴

In sum, Lopez-Escarrega failed to establish nearly every element of duress. Indeed, as this case shows, a duress defense will rarely be appropriate in an illegal-reentry case. That's because the defendant often has the reasonable alternative of relocating within his home country or traveling to a country other than the United States. Recognizing this, the district court properly precluded Lopez-Escarrega from asserting a duress defense.

B.

Next, Lopez-Escarrega argues that the district court erred in denying his motion to dismiss under the Speedy Trial Act. We review the district court's legal determinations de novo and its factual findings for clear error. *United States v. Sutton*, 862 F.3d 547, 554 (6th Cir. 2017). Applying those standards here, we find no errors in the district court's speedy-trial analysis.

Under the Speedy Trial Act, a defendant who pleads not guilty generally must be tried within 70 days of when the indictment was filed or the defendant had his initial appearance, whichever occurred later. 18 U.S.C. § 3161(c)(1). Lopez-Escarrega recounts that he was arrested and had an initial appearance in the Northern District of Indiana, was transferred to the Western District of Michigan, and then waited 57 days before his initial appearance there.

⁴It's also worth noting that according to the PSR, Lopez-Escarrega was stabbed in 2013. If that's right, it's unclear how those stab wounds impeded Lopez-Escarrega's ability to travel after he was removed to Mexico several years later.

Including those 57 days, Lopez-Escarrega argues that 91 days elapsed before his trial, thus violating the Speedy Trial Act.

But that’s not how speedy-trial calculations work. The text of the statute is clear: The clock starts ticking “from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of *the court in which such charge is pending*, whichever date last occurs.” *Id.* (emphasis added). In other words, the timer begins when the defendant has an initial appearance in the specific district where the charge is pending, even if he had a prior initial appearance in another district. We’ve previously suggested as much in dicta. See *Sutton*, 862 F.3d at 558 n.5. And every one of our sister circuits to consider this question has reached this same conclusion.⁵ As a result, the 57 days between Lopez-Escarrega’s transfer to the Western District of Michigan and his initial appearance in that district don’t count for speedy-trial purposes. Excluding that time means only 34 days elapsed between his initial appearance in the Western District of Michigan and his trial, which is well within the Speedy Trial Act’s 70-day limit. So the district court didn’t err in denying Lopez-Escarrega’s motion to dismiss.

In response, Lopez-Escarrega points to an unpublished district-court order from outside this circuit and urges us to recognize an exception when the defendant “was either ignored or forgotten about.” Appellant’s Br. at 21–22 (quoting *United States v. Thompson*, No. 6:06-cr-228 (GKS), 2007 WL 1222573, at *2 (M.D. Fla. Apr. 24, 2007)). For starters, this exception runs headfirst into the plain text of the Speedy Trial Act, which dictates that the clock begins when the defendant has an initial appearance in the particular district where the charge is pending, regardless of whether he was previously ignored. What’s more, the Speedy Trial Act painstakingly outlines countless exceptions to its timing calculations. See 18 U.S.C. § 3161(h). Yet the Act never once mentions an exception for when the defendant was “ignored or forgotten about.” So the Act’s “meticulous—not to say mind-numbingly detailed—enumeration of

⁵*United States v. Munoz-Amado*, 182 F.3d 57, 60 (1st Cir. 1999); *United States v. Lynch*, 726 F.3d 346, 353 (2d Cir. 2013); *United States v. Feurtado*, 191 F.3d 420, 427 n.6 (4th Cir. 1999); *United States v. Atkins*, 698 F.2d 711, 714 (5th Cir. 1983) (per curiam); *United States v. Montoya*, 827 F.2d 143, 152 (7th Cir. 1987); *United States v. Grimes*, 702 F.3d 460, 466–67 (8th Cir. 2012); *United States v. Wilson*, 720 F.2d 608, 609 (9th Cir. 1983); *United States v. Palomba*, 31 F.3d 1456, 1462 (9th Cir. 1994); *United States v. Olivo*, 69 F.3d 1057, 1060–61 (10th Cir. 1995); *United States v. O’Bryant*, 775 F.2d 1528, 1530–31 (11th Cir. 1985).

exemptions and exceptions to those exemptions confirms that courts are not authorized to create additional exceptions.” *Law v. Siegel*, 571 U.S. 415, 424 (2014). In short, we can’t engage in the type of judicial policymaking that Lopez-Escarrega requests of us.

But that’s not to say defendants lack a remedy in cases where the government transfers them between districts and then unreasonably delays their initial appearance in the district with the pending charge. Such defendants could file a habeas petition challenging their detention. See *Ex parte Watkins*, 28 U.S. 193, 202 (1830) (explaining that one of the writ’s historic functions is to prevent “delays in bringing prisoners to trial”). Or they could bring a motion alleging a violation of the Sixth Amendment’s Speedy Trial Clause. See U.S. Const. amend. VI. After all, the clock for a constitutional speedy-trial claim isn’t tied to a defendant’s initial appearance in the charging district. It begins when he’s either arrested or indicted. *United States v. Marion*, 404 U.S. 307, 320–21 (1971). Of course, those claims are viable only when there’s an *unreasonable* delay between a defendant’s arrest or indictment and his trial, so they aren’t likely to be successful in the mine-run of cases. See *Barker v. Wingo*, 407 U.S. 514, 530–33 (1972) (listing the factors that a court must balance in reviewing a constitutional speedy-trial claim). Regardless, Lopez-Escarrega didn’t bring a constitutional claim here, so we simply note that route remains available to future defendants in cases involving unreasonable delays.

C.

Finally, Lopez-Escarrega argues that his within-Guidelines sentence is substantively unreasonable. He contends that the district court didn’t place sufficient weight on his childhood trauma as a mitigating factor.

We review the substantive reasonableness of a sentence for abuse of discretion. *Gall v. United States*, 552 U.S. 38, 51 (2007). A sentence is substantively unreasonable if the district court placed too much weight on some of the factors set forth in 18 U.S.C. § 3553(a) and too little weight on others. *United States v. Rayyan*, 885 F.3d 436, 442 (6th Cir. 2018). However, this balancing is “a matter of reasoned discretion, not math,” so our review is “highly deferential.” *Id.* Indeed, when a district court imposes a within-Guidelines sentence,

we presume that sentence is substantively reasonable. *United States v. Vonner*, 516 F.3d 382, 389–90 (6th Cir. 2008) (en banc). Lopez-Escarrega can’t rebut that presumption here.

That’s because the district court carefully balanced the § 3553(a) factors. It recognized that Lopez-Escarrega didn’t have “a good childhood.” R. 97, Pg. ID 585. And it acknowledged that he had an unstable family, experienced “poor financial conditions where [his] basic needs weren’t met,” and “saw a lot of violence.” *Id.* at 584–85. Nevertheless, the district court determined that the mitigating effects of Lopez-Escarrega’s difficult upbringing were far outweighed by the aggravating circumstances surrounding his offense. Specifically, Lopez-Escarrega had previously been convicted of being found in the United States illegally after having been removed and spent a considerable amount of time in prison. Yet upon his release, he committed the same offense again. So the district court concluded that Lopez-Escarrega’s prior sentence hadn’t deterred him. *See* 18 U.S.C. § 3553(a)(2)(B). Plus, his repeated illegal entry showed that he had no respect for the laws of this country. *See id.* § 3553(a)(2)(A).

The district court also emphasized Lopez-Escarrega’s extensive criminal history in the United States, which demonstrated a need to protect the public. *See id.* § 3553(a)(1), (a)(2)(C). He had driven while intoxicated multiple times, which “put . . . the public at risk,” and he dealt cocaine, which “contribut[ed] to . . . the drug epidemic in that community.” R. 97, Pg. ID 588. In short, the district court concluded that a 48-month, within-Guidelines sentence was appropriate for someone who repeatedly violated the law.

On appeal, Lopez-Escarrega contends that the district court “minimize[d]” his “profound childhood trauma.” Appellant’s Br. at 23. But this argument “ultimately boils down to an assertion that the district court should have balanced the § 3553(a) factors differently,” which is “beyond the scope of our appellate review.” *United States v. Roper*, 161 F.4th 430, 438 (6th Cir. 2025) (quotation omitted). And that means the district court didn’t abuse its discretion in imposing a within-Guidelines sentence here.

* * *

We affirm.