

United States Court of Appeals For the First Circuit

No. 25-1178

UNITED STATES OF AMERICA,

Appellee,

v.

JAYSON PASTRANA-ROMÁN,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. María Antongiorgi-Jordán, U.S. District Judge]

Before

Rikelman, Kayatta, Aframe,
Circuit Judges.

Robert Fitzgerald, Assistant Federal Public Defender, with whom Franco L. Pérez-Redondo, Assistant Federal Public Defender, and Rachel Brill, Federal Public Defender, were on brief, for Appellant.

Ricardo A. Imbert-Fernández, Assistant United States Attorney, with whom Juan Carlos Reyes-Ramos, Assistant United States Attorney, and W. Stephen Muldrow, United States Attorney, were on brief, for Appellee.

September 30, 2026

("Pastrana") appeals his sentence of 33 months' imprisonment for his role in a COVID-19 loan fraud conspiracy scheme. His appeal raises two questions concerning the application of the United States Sentencing Guidelines. First, did the district court err in finding that Pastrana played a managerial role in the conspiracy, such as to justify a three-level upward adjustment in calculating his Guidelines range under U.S.S.G. § 3B1.1(b)? As we will explain, the district court did not so err. Second, did the district court clearly err in declining to grant Pastrana a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1? As we will explain, the district court did err in not granting Pastrana credit for acceptance of responsibility, and we cannot find that error harmless.

I.

To help small business owners stay afloat during the COVID-19 pandemic, the United States Small Business Administration implemented various relief programs, including the Economy Injury Disaster Loan program (EIDL) and the Paycheck Protection Program (PPP). In Puerto Rico, Manfred A. Pentzke-Lemus ("Pentzke") developed a scheme to enrich himself and his co-conspirators through the submission of fraudulent loan applications to the federal government under these programs. Pentzke and his co-conspirators submitted small-business loan applications containing

fraudulent supporting documents, including falsified payroll expenses and tax records; meanwhile, one of the co-conspirators, an employee at a bank, facilitated the approval of these fraudulent applications. Once individuals received their illegally-obtained loans, they paid a kickback to Pentzke and other co-conspirators in the scheme. To make the scheme appear legitimate, the conspirators concealed the kickbacks as payroll and business expenditures.

Jayson Pastrana owned a food kiosk outside of his home. As Pastrana's business began to struggle financially during the COVID-19 pandemic, Pentzke contacted him via a WhatsApp group chat. Pentzke floated the opportunity for economic relief through the federal small-business loans and offered to assist the individuals in the group chat with filling out the requisite application forms. In exchange for his assistance, Pentzke would require potential loan applicants to pay him a percentage of the loans that they received from the federal government.

Following Pentzke's instructions, Pastrana sent Pentzke various documents pertaining to his food kiosk and income. Pentzke passed these forms along to other co-conspirators, who altered Pastrana's documents and added false information about Pastrana's small business. Upon receiving the altered EIDL loan application via email, Pastrana electronically signed his name in approval,

despite knowing that he could not understand the forms.¹ That \$150,000 EIDL loan application was eventually rejected.

Following the rejection of the EIDL loan, Pentzke reached out to Pastrana and offered to help him apply for a PPP loan. Pastrana agreed. Following Pentzke's suggestions, Pastrana allowed other co-conspirators to open a bank account in his name. Pastrana then allowed Pentzke to apply for a \$20,758 PPP loan on his behalf, which was approved, and he paid Pentzke a kickback of \$6000 for his assistance. Pastrana later successfully obtained a second \$29,062 PPP loan, for which he again paid Pentzke a kickback. Pastrana concealed the payments to Pentzke as "payroll or professional services," all the while "knowing that his current payroll" did not match the amounts reflected in the payments. And while he used some of the loan proceeds for his small-business expenditures, Pastrana also used some of the proceeds for his personal expenses.

Eventually, Pentzke asked Pastrana if he knew other individuals with small businesses who could benefit from the COVID-19 loan relief program. Pastrana shared information about the opportunity with his brother and two friends, who also owned small businesses and agreed to apply for the loans as well. From there, Pastrana relayed Pentzke's WhatsApp instructions to his

¹ The altered forms and documents were written in English, and Pastrana cannot read English.

brother and friends, detailing how to apply for the loans. Pastrana's brother used Pastrana's email on both of his submitted loan applications; in the first application, he even used Pastrana's phone number. When Pastrana's brother and friends received the proceeds of their fraudulent loan applications, Pastrana then collected their kickback checks and brought them to another conspirator in the scheme. There is no evidence that Pastrana kept any of these kickback proceeds for himself.

On August 17, 2023, a grand jury returned an indictment against Pastrana on ten counts, including one count of conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349, one count of conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h), and eight counts of wire fraud, in violation of 18 U.S.C. § 1343.² Following his arraignment, Pastrana's counsel indicated he would likely proceed to trial; accordingly, the court set a trial date of October 15, 2024. However, on September 13, 2024, defense counsel informed the government that Pastrana would no longer proceed to trial and that he would be pleading guilty.

² Two of these counts pertained to the loans that Pastrana obtained for himself and under his name. Six of these counts pertained to the loans obtained by Pastrana's brother and friends, which he aided and abetted.

Pastrana's brother, Luis E. Pastrana-Román, obtained two loans for \$20,343 and \$28,480. Eugene Irizarry obtained two loans for \$20,827 and \$29,158. Raymond Bosque del Toro obtained two loans for \$20,833 and \$29,166.

Shortly thereafter, Pastrana pleaded guilty to all ten counts in the indictment. He did not adopt the factual basis offered by the government at his change of plea hearing³ and instead pleaded guilty to the elements of each count.

At his sentencing in February 2025, Pastrana and the government disagreed about two applications of the sentencing Guidelines: whether he should be assigned a three-level increase in his Guidelines offense level under U.S.S.G § 3B1.1(b) for acting as a "manager" or "supervisor" in the criminal scheme; and whether he should receive a two- to three-level reduction in his offense level for accepting responsibility under § 3E1.1.

The court ultimately concluded that Pastrana's role in recruiting his brother and friends into the offense qualified him for an upward adjustment of three levels for his role as a "manager" in the scheme. And the court declined to grant him a reduction for acceptance of responsibility under the Guidelines, finding that he had not "timely" accepted responsibility and had not accepted his role as a "recruiter" who had collected kickbacks from his recruits. Calculating a Guidelines range of 51 to 63 months and considering what the court deemed to be Pastrana's

³ As part of this factual basis, the government asserted that the kickback payments from Pastrana's recruits were "distributed among [Pastrana] and his coconspirators," a fact that the district court would later determine at sentencing was unsupported by the evidence in the case.

partial acceptance of responsibility as well as other mitigating factors, the court varied downward and granted him a sentence of 33 months on all ten counts, to run concurrently with one another.⁴ Subsequently, the government asked whether the court's sentence would have been the same had the court granted Pastrana a reduction for acceptance under the Guidelines, rather than merely incorporating his level of acceptance as part of the court's ultimate variance under the 18 U.S.C. § 3553(a) factors. The court responded that the sentence would have been the same, with no further elaboration. And when Pastrana's defense counsel subsequently objected to the court's findings regarding relevant conduct, the court reaffirmed its position that Pastrana had not accepted "any responsibility as to the relevant conduct," and thus his plea was "only a partial plea" for which he would be "denied points for acceptance of responsibility."

II.

We begin with Pastrana's challenge to the district court's determination that he acted as a manager in the scheme under U.S.S.G. § 3B1.1(b).

⁴ As part of its variance, the court referenced Pastrana's history of mental health struggles, his successful completion of the Federal Public Defender's reentry program, and the fact that his income "is indispensable to [his] family's financial stability," particularly following the devastation to his residence by Hurricane Maria. The court also noted that it found "no evidence [that Pastrana] received any kickbacks."

A.

"This circuit has evidenced some inconsistency in the manner in which it reviews role adjustments under section 3B1.1, sometimes applying clear error [review] and other times using a mix of de novo review for legal issues and clear error for factual ones." United States v. Johnson, 177 F.4th 67, 78 (1st Cir. 2026) (citing to United States v. Goncalves, 123 F.4th 580, 586 n.8 (1st Cir. 2024)). As Pastrana's arguments concerning his role fail under both standards, we do not resolve the inconsistency here.

B.

The Guidelines instruct a district court to increase a defendant's offense level by four levels if he acted as an "organizer or leader of a criminal activity that involved five or more participants"; three levels if he acted as a "manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants"; or two levels if he acted as "an organizer, leader, manager, or supervisor in any criminal activity" that did not qualify under the other criteria. U.S.S.G. § 3B1.1 (a)-(c).

The application notes to the Guidelines provide that "[t]o qualify for an adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants." U.S.S.G. § 3B1.1 cmt. n.2. "The enhancement is proper only where the defendant exercised some

degree of authority or control over another criminal actor." United States v. García-Sierra, 994 F.3d 17, 37 (1st Cir. 2021). In its assessment of whether a defendant exercised authority or control, a court "should consider" factors such as: "the exercise of decision-making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, [and] the degree of participation in planning or organizing the offense." U.S.S.G. § 3B1.1 cmt. n.4.⁵ However, the commentary makes clear that "[the] adjustment does not apply to a defendant who merely suggests committing the offense." Id.

C.

The court's decision as to the upward adjustment under U.S.S.G. § 3B1.1(b) was based on its finding that Pastrana "exercised authority over his co-defendants to recruit them into the scheme, particularly his brother, who not only he recruited but to which he had to inform all developments regarding his fraudulent loan application as they were received in . . . Pastrana's e-mail." Pastrana had no criminal history points at the time of his offense. After finding that he had acted as a

⁵ We recognize that the commentary provides these factors to help distinguish "a leadership and organizational role from one of mere management or supervision." U.S.S.G. § 3B1.1 cmt. n.4. But our cases have also used these factors to differentiate between a manager or supervisor and a participant. See, e.g., United States v. Savarese, 686 F2d 1, 19-20 (1st Cir. 2012).

manager in the conspiracy, the court calculated his adjusted offense level as starting at 24 -- putting his Guidelines range at 51 to 63 months. Without the three-point adjustment for his role in the offense, Pastrana's adjusted offense level would have been 21, with a Guidelines range of 37 to 46 months. The "manager or supervisor" classification also barred Pastrana from receiving a two-level reduction under § 4C1.1 for being a zero-point offender, which would have put him in a Guidelines range of 30 to 37 months.

Pastrana contends that although he served as a "conduit" of information regarding the loan process to his brother and friends -- who then joined the conspiracy -- he did not exert any supervisory authority over them. Objectively, Pastrana did not have much decision-making authority in the conspiracy. His co-conspirators modified his submitted documents, opened a bank account for him, and gave him instructions for writing the kickback checks. However, Pastrana reached out to recruit his brother and friends to join the conspiracy and permitted his brother to use his email and phone number on his loan applications. He also "conveyed . . . information" to his recruits from Pentzke. And although Pastrana received no kickback or payment for these recruitment efforts, his name was also listed as a point of contact for his three recruits on a ledger maintained by the organizers of the scheme.

This circuit's case law does not help Pastrana. We have previously held that recruitment of criminal actors alone satisfies the "managerial" role requirement in U.S.S.G. § 3B1.1. See United States v. Prange, 771 F.3d 17, 34 (1st Cir. 2014) ("[S]imply 'recruiting' a co-defendant, 'by itself, constitutes a managerial function under § 3B1.1.'" (citation modified) (quoting United States v. Savarese, 686 F.3d 1, 20 (1st Cir. 2012))); see also United States v. Fontana, 50 F.3d 86, 87 (1st Cir. 1995) ("Neither 'supervisor' nor 'manager' is defined under § 3B1.1, but it is sufficient that a defendant recruited, instructed or supervised at least one other person."). True, Pastrana may not have otherwise had much decision-making authority, but in qualifying for this enhancement, we have previously held that "[t]he authority possessed by the defendant may be fairly minimal." García-Sierra, 994 F.3d at 37; see also Savarese, 686 F.3d at 20 ("[W]e have even held that, in some circumstances, the government need only show by a preponderance of the evidence 'that the defendant exercised authority or control over another participant on one occasion.'" (quoting United States v. García-Morales, 382 F.3d 12, 20 (1st Cir. 2004))); United States v. Negrón-Rossy, 628 F. App'x 779, 780 (1st Cir. 2015).⁶

⁶ Pastrana's collection of the kickback checks from his recruits does not by itself establish that he served any managerial function or role. See United States v. Flores-De-Jesús, 569 F.3d 8, 35 (1st Cir. 2009) (finding that, among other things,

Pastrana attempts to distinguish his case from our case law by arguing that he lacked "the express authority to bring recruits into the scheme and [did not] receive a portion of the kickback payments." True, recruitment requires "the demonstration of [some] individual authority necessary to bring a new member into the fold." Savarese, 686 F.3d at 20. But when Pentzke asked Pastrana whether he knew anyone interested in applying for the loans, it was Pastrana who made the unilateral decision to reach out to his brother and friends and provide them with information about the loan opportunities. These three recruits would not have known when or how to submit their loan applications absent some direction. And on the record here, it was Pastrana -- not Pentzke or another co-conspirator -- who passed along Pentzke's directions. We have previously rejected the argument that "merely transmitting orders" precludes a finding of managerial function. Id. Indeed, "[s]upervision . . . 'often consists of transmitting directives from above,'" as "'[l]ow-level supervisors are themselves closely supervised and thus have little discretion.'" Id. (quoting United States v. Figueroa, 682 F.3d 694, 697 (7th Cir. 2012)).

"collecting the proceeds to deliver to the point's owners or leaders is insufficient to establish the requisite control over another criminal actor that our case law requires").

In light of the foregoing, the district court did not err in finding that Pastrana was a "manager or supervisor" of the scheme under U.S.S.G. § 3B1.1(b).

III.

We now turn to Pastrana's challenge to the court's determination that he had not accepted responsibility under U.S.S.G. § 3E1.1(a).

A.

This court reviews a district court's "factbound determination that a defendant has not accepted responsibility" for clear error, United States v. McCarthy, 32 F.4th 59, 62-63 (1st Cir. 2022) (citation modified), and its "answers to abstract legal questions, including its interpretation of the federal sentencing Guidelines, de novo." United States v. Jordan, 549 F.3d 57, 60 (1st Cir. 2008). As "[t]he sentencing judge is in a unique position to evaluate a defendant's acceptance of responsibility," this court affords his or her determination "great deference on review." U.S.S.G. § 3E1.1 cmt. n.5.

B.

Under the sentencing Guidelines, a defendant who "clearly demonstrates acceptance of responsibility for his

offense" should receive a reduction of two levels. Id.
§ 3E1.1(a).⁷

The commentary to § 3E1.1 provides that in assessing whether a defendant qualifies for acceptance under subsection (a), a court may consider whether the defendant has "truthfully admitt[ed] the conduct comprising the offense(s) of conviction, and truthfully admitt[ed] or not falsely den[ied] any additional relevant conduct for which the defendant is accountable." U.S.S.G. § 3E1.1 cmt. n.1(A) (emphasis added). The commentary further states that "a defendant is not required to volunteer, or affirmatively admit, relevant conduct beyond the offense of conviction," and that a defendant who challenges relevant conduct may do so without being "inconsistent with acceptance of responsibility" so long as he does not "falsely den[y] or frivolously contest[]" that conduct. Id. "[T]he fact that a defendant's challenge is unsuccessful does not necessarily establish that it was either a false denial or frivolous." Id.

⁷ Where a defendant has an offense level of 16 or greater prior to the application of § 3E1.1(a) (as Pastrana did), the government may file a motion for an additional one-level reduction "stating that the defendant has . . . timely notif[ied] authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial" U.S.S.G. § 3E1.1(b). But because the district court found that Pastrana had not accepted responsibility under U.S.S.G. § 3E1.1(a), it never reached the issue of Pastrana's claim for the third acceptance point under U.S.S.G. § 3E1.1(b).

As pertinent to this case, a court may also consider "the timeliness of the defendant's conduct in manifesting the acceptance of responsibility." U.S.S.G. § 3E1.1 cmt. n.1(H). Where a defendant has pleaded guilty prior to trial and has "truthfully admitt[ed] or not falsely den[ied] any additional relevant conduct for which he is accountable," such actions "will constitute significant evidence of acceptance of responsibility." U.S.S.G. § 3E1.1 cmt. n.3. A court may still determine that credit for acceptance is not appropriate where a defendant's actions "outweigh[]" and are "inconsistent" with his acceptance. Id.

C.

The district court declined to grant Pastrana any credit for acceptance of responsibility under § 3E1.1(a), finding his acceptance was not "timely" and that Pastrana did not admit -- during his change of plea or pre-sentence interview -- to his role in recruiting his brother and friends and transferring their kickbacks to other co-conspirators.⁸

In his challenge to the court's findings, Pastrana makes two arguments. First, he contends that the district court erred in deeming his acceptance not "timely" without any further

⁸ As described above, the court calculated Pastrana's Guidelines range to be 51 to 63 months. If Pastrana had received a two-level reduction for acceptance of responsibility, his range would have been 41 to 51 months; with three levels for acceptance, it would have been 37 to 46 months.

explanation, where Pastrana had notified the government of his intent to plead guilty one month prior to trial. Second, he asserts that because he "did not falsely deny" or "raise frivolous objections" to any relevant conduct -- and indeed had admitted the same conduct upon which the court relied -- he should have been granted credit for acceptance.⁹

1.

We begin with the timeliness inquiry. The parties do not dispute that Pastrana informed the government of his intent to plead guilty over one month prior to trial. And Pastrana presents cases from our circuit wherein the district court afforded a defendant the two-level reduction for acceptance of responsibility despite pleading guilty only a few days before trial. See United States v. Jaca-Nazario, 521 F.3d 50, 59-60 (1st Cir. 2008) (holding a district court's decision to impose only a two-level, rather than three-level, reduction for acceptance was not clearly erroneous); United States v. Fuentes-Echevarría, 856 F.3d 22, 24-25 (1st Cir. 2017) (same). The government does not dispute the precedential import of these cases or advance any arguments to the

⁹ Pastrana also contends that the court erroneously relied on his attorney's statements declining to admit the factual basis presented by the government at his change of plea hearing; he argues that the change of plea hearing is not the only time in the proceedings wherein a defendant can accept the relevant conduct pertaining to his offense. We subsume these assertions into his second argument.

contrary. Nor can we glean from the district court's reasoning why Pastrana's notification to government counsel regarding his intent to plead guilty one month prior to trial would be considered untimely. Cf. United States v. Colón-Cordero, 91 F.4th 41, 51 (1st Cir. 2024) ("[S]entencing courts must say enough to show an appellate court they considered the parties' arguments and had a reasoned basis for exercising their own legal decisionmaking authority." (citation modified)).

Of course, the court's assessment of the timeliness of Pastrana's acceptance would not amount to reversible error if the court found that Pastrana had otherwise not accepted responsibility. With that, we turn to the court's "relevant conduct" inquiry.

2.

During his presentence interview, Pastrana "accepted responsibility for his actions," though he stated he was "not aware [that] what he was doing was illegal until his arrest." Following this interview, the probation department recommended that Pastrana should receive a two-level reduction for his acceptance under § 3E1.1(a) and an additional one-level reduction under § 3E1.1(b). The government objected to this characterization, contending that Pastrana did not accept responsibility because he "[apparently] suggest[ed] he did not have the requisite knowledge and intent to commit the wire fraud" and "[said] nothing about his role in

recruiting others or laundering the kickbacks of the scheme."¹⁰ In response, Pastrana stated that he had "accepted his knowledge by accepting that he overlooked . . . facts that he should not have disregarded" and "admitted conduct about acts he performed"; moreover, he maintained that he had a "right to litigate the role enhancement" and that his objections to the enhancement "cannot be taken as negating his acceptance of responsibility." Ultimately, in the amended (final) presentence report, the probation office agreed with the government and determined that Pastrana "did not admit when asked to his role as a recruiter of any of the other co-defendants, nor that he collected kickbacks from co-defendants." Accordingly, the final report gave Pastrana no credit for acceptance.

In his formal objections to the finalized report, Pastrana admitted that "[h]e collected the money for the kickback[s] from the co-defendants and delivered them to one of [Pentzke's] agents" and that he "is not denying" such conduct. Later, at his sentencing, Pastrana's counsel further acknowledged that Pastrana had transmitted Pentzke's instructions to his brother and friends and that his brother used his email on his loan applications. In refusing to grant him any credit for

¹⁰ The government further asserted that it would not move for the third acceptance point under U.S.S.G. § 3E1.1(b) because it "underwent significant preparations for trial" prior to Pastrana's notification of his intent to plead guilty.

acceptance, however, the district court focused on what Pastrana did not say at his change of plea hearing or during his presentence interview. Namely, the court emphasized that 1) during his change of plea, Pastrana only admitted to the elements of the offense rather than the government's factual basis, and then, 2) during his presentence interview, Pastrana "accepted responsibility only to fraudulently obtaining the loans but did not accept that he acted as a recruiter, [nor] that he served as an intermediary in the collection of kickbacks." Based on these factors, the court determined that Pastrana "did not admit to relevant conduct and thus did not comply with the requirements of 3E1.1."

The court was twice wrong. First, Pastrana was "not required to volunteer, or affirmatively admit, relevant conduct beyond the offense[s] of conviction." U.S.S.G. § 3E1.1 cmt. n.1(A). Rather, he was obligated not to "falsely den[y], or frivolously contest[], relevant conduct that the court determine[d] to be true." Id.; see United States v. Gonzales, 12 F.3d 298, 300 (1st Cir. 1993) ("[A] defendant is not required affirmatively to admit conduct beyond the offenses of conviction in order to obtain credit for acceptance of responsibility"). And while "a court may properly consider whether a defendant who mendaciously denies relevant conduct has acted in a manner inconsistent with accepting

responsibility," no one claims Pastrana was "mendacious[]" or frivolous in his positions taken. Gonzales, 12 F.3d at 300.

Second, Pastrana did in any event admit the relevant facts underpinning his role in the conspiracy. In his PSR objections, Pastrana recognized his role in "aid[ing] and abett[ing]" his brother and friends in their fraudulent applications. In those objections, he also expressly admitted to having collected kickbacks from his brother and friends to transfer them to other individuals. And at his sentencing hearing, Pastrana further admitted to having transmitted Pentzke's instructions to his brother and friends and to having provided his email for his brother to use on his applications. Though he was not required to do so to be deserving of the reduction under § 3E1.1(a), Pastrana ultimately volunteered the same set of facts that the court relied on in declining to grant him credit for acceptance. That Pastrana characterized these actions as lacking the requisite control over another to qualify him as a manager under the Guidelines does not disqualify him from credit for acceptance under the Guidelines. These objections were non-frivolous legal arguments rather than "spurious" or "mendacious" denials of any relevant conduct. See United States v. Coleman, 884 F.3d 67, 73 (1st Cir. 2018); Gonzales, 12 F.3d at 300.

We need consider one further point. The government argues on appeal that the facts the court considered to be relevant

conduct were actually facts comprising Pastrana's aiding and abetting offenses, and therefore, under the Guideline commentary in § 3E1.1 cmt. n.1(A), Pastrana had to admit these facts in order to obtain the reduction for acceptance of responsibility.¹¹ This was not an argument that the government developed in the district court, nor was it an argument that the court adopted itself. Indeed, the district court looked at those facts solely as facts pertaining to "relevant conduct," as it reasoned that "being a recruiter and being the contact point to collect kickbacks are not elements of the offense that the defendant ple[aded] guilty to." In any event, as we have stated above, Pastrana admitted that he introduced his brother and friends to the loan opportunity; that he transmitted Pentzke's instructions to them; that he collected kickback checks; and that he permitted his brother to use his email on his loan applications.¹²

So, for the foregoing reasons, we conclude that the district court clearly erred in denying Pastrana a two-level

¹¹ In a footnote, the government additionally contends that "recruiting others, giving instructions, supplying contact information, and collecting kickback payments are all overt acts [Pastrana] undertook in furtherance of the conspiracies" and thus are "not additional relevant conduct beyond the offenses of convictions." This argument fails for the same reasons delineated above.

¹² The government does not contend that Pastrana's admission of the facts was itself untimely. Rather, it questions only the extent of the admissions.

reduction for acceptance of responsibility under § 3E1.1(a).¹³ That leaves only the question of whether the error in refusing a two-level reduction for acceptance of responsibility was harmless. In pronouncing its sentence, the court indicated that it would grant Pastrana a variance for his partial acceptance,¹⁴ and, considering further mitigation, sentenced him to 33 months in custody (well below his Guidelines range). After the court had pronounced its sentence, the government asked whether the sentence would have remained the same had the court granted Pastrana credit for acceptance of responsibility. So prompted, the court replied briefly that the sentence would have been the same.

Under our precedent in United States v. Maldonado-Negroni, where a "district court's unelaborated response [does not] show that the sentence imposed was detached from the erroneous Guidelines range," we cannot consider its error harmless. 141 F.4th 333, 345 (1st Cir. 2025). There, the court erroneously applied the defendant's Guidelines based on a Grade A rather than a Grade B violation before granting the defendant a "variant" sentence. Id. at 339. And, as here, when the government asked

¹³ Whether this re-opens the issue of Pastrana's request for an additional one-level reduction under § 3E1.1(b) we leave to the district court to decide in the first instance.

¹⁴ Specifically, the court stated that "[a]lthough untimely, [and despite] the fact that defendant did not accept responsibility for the relevant conduct, he did accept responsibility for the elements of the offense that he ple[aded] guilty to."

the court whether its sentence would have been the same had it applied the Guidelines for a Grade B violation, the court responded affirmatively, without explanation. Id.

The Guidelines are "the sentencing court's 'starting point and initial benchmark.'" Id. at 341 (citation modified) (quoting Molina-Martinez v. United States, 578 U.S. 189, 198 (2016)). So, where "the sentencing judge errs in identifying the applicable Guidelines range" -- as the court did in denying Pastrana credit for acceptance of responsibility -- "[t]he record . . . must make the innocuous nature of the error unmistakable.'" Id. (quoting United States v. Romero-Galindez, 782 F.3d 63, 70 (1st Cir. 2015)). Here, the court's brief reply, bereft of apparent preparation or explanation, precludes us from finding the error unmistakably innocuous. True, the court granted a variance related to Pastrana's "partial" acceptance. But the word "partial" itself implies that a full acceptance might have -- in the court's discretion -- warranted more of a reduction than what Pastrana ultimately received.

Indeed, following the court's pronouncement of the sentence and its brief colloquy with the government affirming that it would have granted the same sentence, defense counsel objected to the court's findings regarding Pastrana's acceptance of responsibility. In response, the court once again affirmed that its sentence was directly tied to Pastrana's partial acceptance

under the Guidelines: "[T]hat's the problem with his plea. It's not a plea based on the totality. And the law is clear that if it's only a partial plea and the defendant does not accept the relevant conduct, he can be denied points for acceptance of responsibility." We therefore find, as in Maldonado-Negroni, that the court's "brief" reply to the government's inquiry, "given only upon prompting and without elaboration . . . does not provide adequate assurance that the district court intended to untether its sentence from the Guidelines." Id. at 344 (internal quotations marks omitted).

"In most cases a defendant who has shown that the district court mistakenly deemed applicable an incorrect, higher Guidelines range has demonstrated a reasonable probability of a different outcome." United States v. Taylor, 848 F.3d 476, 497-98 (1st Cir. 2017) (quoting Molina-Martinez, 578 U.S. at 200). Such is the case here. Had the court properly focused on the relevant inquiry under § 3E1.1(a) and granted Pastrana full credit for acceptance, the court's "starting point" would have been 41-51 months rather than 51-63 months, without yet applying any variance for Pastrana's sentencing mitigation. And the government fails to "identify 'a clear statement by the sentencing court that would be sufficient to diminish the potential of the Guideline Sentencing Range to influence the sentence actually imposed.'" Maldonado-

Negroni, 141 F.4th at 342 (citation modified) (quoting United States v. Hudson, 823 F.3d 11, 19 (1st Cir. 2016)).

The court's error was not harmless.

IV.

We vacate the sentence and remand for resentencing forthwith.¹⁵ Nothing in this opinion dictates what that sentence should be.

Pastrana's motion for release pending appeal is denied as moot, without prejudicing his ability to file a motion in the district court for release pending resentencing. See 18 U.S.C. § 3143.

¹⁵ According to the Bureau of Prisons' website, Pastrana is scheduled to be released on January 18, 2027. (<https://www.bop.gov/inmateloc/> Last visited September 30, 2036.)