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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

MICHAEL BASALYGA (25-5972); REINA CHIRINOS DE URENA (25-5976),
Defendants-Appellants.

Nos. 25-5972/5976

Appeal from the United States District Court for the Eastern District of Kentucky at London.
No. 6:23-cr-00059—Robert E. Wier, District Judge.

Decided and Filed: October 19, 2026

Before: GRIFFIN, READLER, and RITZ, Circuit Judges.

COUNSEL

ON BRIEF: Gennaro Cariglio, Jr., Miami, Florida, for Appellant Michael Basalyga. Dennis J. Clark, Detroit, Michigan, for Appellant Reina Chirinos de Urena. Charles P. Wisdom, Jr., UNITED STATES ATTORNEY'S OFFICE, Lexington, Kentucky, Gregory Rosenberg, UNITED STATES ATTORNEY'S OFFICE, London, Kentucky, for Appellee.

OPINION

READLER, Circuit Judge. Michael Basalyga and Reina Chirinos de Urena helped carry out a drug operation that sold millions of fake generic Xanax pills on the dark web. The two pleaded guilty to conspiracy and substantive counterfeiting of drugs. Basalyga received an 80-month prison sentence, whereas Chirinos de Urena received a 45-month prison term.

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In this consolidated appeal, Basalyga and Chirinos de Urena challenge a host of sentencing issues, some shared and some distinct. Common themes resolve much of this appeal, including waiver in the district court. Other arguments are resolved by our opinion in *United States v. Wala*, 166 F.4th 583 (6th Cir. 2026), which approved the sentence of Basalyga's and Chirinos de Urena's co-conspirator, Omar Wala. Seeing no basis to disturb either defendant's sentence, we affirm.

I.

Omar Wala directed a conspiracy to produce and sell counterfeit drugs, whose members included Michael Basalyga and Reina Chirinos de Urena. The crux of the scheme was to doctor up pills that looked like and replicated the effects of alprazolam—the generic name for the anti-anxiety drug Xanax. The co-conspirators would then sell the counterfeit pills on the dark web and through other illicit channels. Over several years, the conspiracy resulted in millions of counterfeit pills being sold throughout the country. Eventually, federal investigators caught wind of the scheme, leading to charges against several participants, including Wala, Basalyga, and Chirinos de Urena. The three all pleaded guilty to charges of conspiracy and substantive counterfeiting of drugs.

Wala was sentenced first. The district court imposed a total of 90 months' imprisonment. We affirmed. *See Wala*, 166 F.4th at 588. In so doing, we rejected Wala's arguments with respect to his specific offense characteristics under § 2B1.1 of the United States Sentencing Guidelines, specifically, that the district court erred in assessing the "loss" Wala's conduct invited as well as the "risk[s]" posed to human life by Wala's conduct. *Id.* at 590–602, 604–06.

Basalyga's and Chirinos de Urena's sentencings took place in October 2025. Facing an initial Guidelines range of 210 to 262 months, one informed by an 180-month statutory maximum, Basalyga received a sentence of 80 months in prison. Basalyga and the government separately agreed to a forfeiture judgment in the amount of $6,975,000. Chirinos de Urena received a sentence of 45 months in prison, below the Guidelines recommendation of 57 to 71 months. Their timely appeals followed.

II.

We begin with Basalyga's appeal. He first challenges the procedural reasonableness of his sentence on the grounds that the district court improperly calculated the Guidelines range in applying two different sentencing enhancements. Basalyga also argues that the district court erred in issuing the forfeiture money judgment. For both issues, we consider any legal questions de novo, while reviewing any factual findings for clear error. *See United States v. Battaglia*, 624 F.3d 348, 351 (6th Cir. 2010) (Guidelines calculation); *United States v. Smith*, 749 F.3d 465, 488 (6th Cir. 2014) (forfeiture). We otherwise review preserved questions of procedural reasonableness for an abuse of discretion. *See United States v. Simpson*, 138 F.4th 438, 445 (6th Cir. 2025).

A. Before addressing the substance of Basalyga's challenges to his Guidelines calculation, we must first determine which version of the Guidelines controls. A district court generally must apply the Guidelines in effect on the date the defendant is sentenced. *See Wala* 166 F.4th at 590 n.4 (citing U.S. Sent'g Guidelines Manual § 1B1.11(a) (U.S. Sent'g Comm'n 2024)). Basalyga was sentenced in October 2025, when the 2024 Guidelines were still in effect. *See* U.S. Sent'g Guidelines Manual (U.S. Sent'g Comm'n 2025) (noting an effective date for the 2025 Guidelines of November 1, 2025); *see also id.* app. C, amend. 827 (amending § 2B1.1 with an effective date of November 1, 2024).

But there is a significant wrinkle here. Basalyga's plea agreement recommended that the 2021 version of the Guidelines should determine his Guidelines range. And during his sentencing proceedings, Basalyga tied his arguments to a pre-2024 version of the Guidelines. That distinction was particularly relevant with respect to the district court's loss calculation under § 2B1.1. That provision, which governs offenses involving fraud and deceit, starts a defendant's base offense level at six and then "metes out enhancements" based on the amount of "loss" at issue. *United States v. Skouteris*, 51 F.4th 658, 671 (6th Cir. 2022); *United States v. Riccardi*, 989 F.3d 476, 481 (6th Cir. 2021). Prior to November 1, 2024, the Guidelines text contained no definition of the term "loss" for purposes of § 2B1.1, leading to debates here and elsewhere over whether the Guideline commentary's view that loss was the "greater of actual loss or intended loss" should govern. *See* U.S. Sent'g Guidelines Manual § 2B1.1 cmt. n.3(A)

(U.S. Sent'g Comm'n 2023). *Compare United States v. Banks*, 55 F.4th 246, 258 (3d Cir. 2022) (holding that "the ordinary meaning of the word 'loss' is the loss the victim actually suffered"), *with United States v. You*, 74 F.4th 378, 397–98 (6th Cir. 2023) (holding the term "loss" was ambiguous and can include intended loss). That debate was resolved on November 1, 2024, when Amendment 827 bumped the commentary's views up to the Guidelines themselves. *See* U.S. Sent'g Guidelines Manual app. C, amend. 827 (U.S. Sent'g Comm'n 2024). That said, Basalyga's arguments to the district court—including his assertion that "loss" in § 2B1.1 is limited to "actual loss"—were premised on a pre-November 2024 version of the Guidelines. The government, for its part, debated Basalyga on his terms by operating from the pre-2024 Guidelines, as well.

So too for the district court, which also worked from the pre-2024 Guidelines, including, for instance, when considering objections to the loss calculations. Indeed, the court continued to do so even after the 2024 Guidelines became effective in November of that year. (Specifically, the district court applied the 2023 Guidelines, which were substantively indistinguishable from the 2021 Guidelines referenced in Basalyga's plea agreement. *See, e.g.*, U.S. Sent'g Guidelines Manual app. C, amend. 824 (U.S. Sent'g Comm'n 2023) (changing § 3C1.1 in immaterial ways for Basalyga's case); *id.* amend. 815 (same with respect to § 2B1.1)). It did so seemingly out of "constitutional" concerns, seeking to avoid using any "substantive" change in the Guidelines that took effect following the dates of defendants' crimes (2017–2022). R. 260, PageID 3142. To that end, the 2024 Guidelines were at least potentially substantively different than those that preceded them, for example, with respect to the relevant loss definition. *See, e.g.*, U.S. Sent'g Guidelines Manual app. C, amend. 827 (U.S. Sent'g Comm'n 2024) (expanding the definition of loss). Such ex post facto concerns would, in turn, favor the district court's approach. *See id.* § 1B1.11(b)(1)–(2); *see also Peugh v. United States*, 569 U.S. 530, 532-33 (2013). That said, we note that the district court took a different approach during its earlier sentencing of co-defendant Wala. *See Wala*, 166 F.4th at 590 n.4 (observing that the "district court properly relied on the 2024 Guidelines"). But as to Basalyga, when no party voiced concerns over the district court's approach, the court relied on the pre-2024 Guidelines.

Despite that understanding, Basalyga now suggests that the district court should have applied the 2024 version of the Guidelines. But by agreeing that the pre-2024 Guidelines governed his sentence and then arguing accordingly, Basalyga waived any argument with respect to the 2024 Guidelines. *See United States v. Milton*, 27 F.3d 203, 210 (6th Cir. 1994) ("[B]ecause Milton asked the district court to use the 1988 version of the Guidelines and did not object to using the 1988 version below, by his actions, he forfeited any right he might have had to being sentenced under the newer Guidelines."); *see also United States v. Nagi*, 947 F.2d 211, 213–14 (6th Cir. 1991) (recognizing that defendants waived claim that district court should have used a different version of the Guidelines than the one agreed to in their plea agreement); *United States v. Wilson*, 184 F.3d 798, 801 (8th Cir. 1999) (holding defendant waived any objection to applying a version of the Guidelines that was contrary to the one he stipulated to in his plea agreement and acquiesced to at sentencing). Basalyga's conduct, it bears emphasizing, went beyond a mere failure to argue for a different version of the Guidelines. Rather, he affirmatively pressed for the pre-2024 version of the Guidelines, a request the district court honored. On this record, Basalyga waived his ability to now argue otherwise. *See United States v. Jackson*, 995 F.3d 476, 483-84 (6th Cir. 2025). We thus focus on the pre-2024 Guidelines and any arguments premised on those provisions. (Because there is no substantive difference between the 2021 and 2023 Guidelines, all references that follow unless otherwise noted are to the 2023 Guidelines relied on by the district court).

1. Basalyga begins by challenging the district court's loss calculation under § 2B1.1. Working from a version of the Guidelines that did not define loss, *see You*, 74 F.4th at 397, the district court looked to the Guidelines commentary—specifically, Application Note 3(F)(v) of the 2023 Guidelines. (The provision is now found at Application Note 3(E)(v). *See* U.S. Sent'g Guidelines Manual § 2B1.1 cmt. n.3(E)(v) (U.S. Sent'g Comm'n 2025)). The note covers cases where "goods were falsely represented as approved by a government regulatory agency" or involving "goods for which regulatory approval by a government agency was required but not obtained" or "obtained by fraud." *See* U.S. Sent'g Guidelines Manual § 2B1.1 cmt. n.3(F)(v) (U.S. Sent'g Comm'n 2023). As we explained in *Wala*, both descriptions aptly reflect the scheme at issue here—the sale of millions of pills under the false guise that those drugs had

obtained FDA approval prior to sale. 166 F.4th at 594–96. We thus turn to Application Note 3(F)(v) for calculating loss.

For covered cases, "loss shall include the amount paid for the . . . goods transferred, rendered, or misrepresented, with no credit provided for the value of those items." *See* U.S. Sent'g Guidelines Manual § 2B1.1 cmt. n.3(F)(v) (U.S. Sent'g Comm'n 2023). Relying on that metric, the district court used a conservative price of $2 per pill and then multiplied the price by the number of pills for which Basalyga was responsible (16.1 million pills), to conclude that the defrauded street purchasers lost roughly $32.2 million. As the loss amount exceeded $25 million, the district court was required to raise Basalyga's base offense level by 22 points. *See* U.S. Sent'g Guidelines Manual § 2B1.1(b)(1)(L) (U.S. Sent'g Comm'n 2023).

Basalyga faults the district court's approach, believing the court should have instead applied the plain meaning of the term "loss" in § 2B1.1(b). And, Basalyga adds, the term loss implicitly requires deducting the value of the goods received by the victims. But, as Basalyga acknowledges, our precedent forecloses his argument. *You* held that because the term "loss" in the pre-2024 Guidelines is ambiguous, we may defer to the Sentencing Commission's interpretation of "loss" in the Guidelines commentary. 74 F.4th at 397–98. That understanding of the pre-2024 Guidelines' use of "loss" continues to control, even after the landmark ruling in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024). *Loper Bright* ended *Chevron* deference, which required courts to defer to an agency's reasonable interpretation of ambiguous statutory text. *Id*. at 2273. *You*, on the other hand, relied on *Kisor* or *Auer* deference, which concerns an agency's reasonable interpretation of its own ambiguous regulations, making *Loper Bright* distinguishable. *See United States v. Prather*, 138 F.4th 963, 975 (6th Cir. 2025). We are thus bound by *You*'s instructions. *See United States v. Xu*, 114 F.4th 829, 845 (6th Cir. 2024).

Nor, even if we could ignore our precedent, would Basalyga's approach carry the day. It bears noting that even those who disagreed with *You* understood loss to be a broad term encompassing any number of harms the victim of the crime suffered, so long as the harm actually happened. *See United States v. Kennert,* No. 22-1998, 2023 WL 4977456, at *4–6 (6th Cir. Aug. 3, 2023) (Murphy, J., concurring) (accepting that loss can cover various harms but rejecting that loss "can refer to nonexistent ones too"); *see also United States v. Boler*, 115 F.4th

316, 329–30 (4th Cir. 2024) (Quattlebaum, J., dissenting) (observing that "loss" must involve "an event or state of being that has *actually* happened"); *United States v. Kirilyuk*, No. 24-3429, 2025 WL 3034694, at *4 (9th Cir. Oct. 30, 2025) (Bumatay, J., dissenting) ("A reasonable interpretation of 'loss' must describe something that actually happened."). And here, as in *Wala*, the loss calculations were focused on the actual harm the "consuming buyer" suffered. 166 F.4th at 598. Namely, buyers did not get "what they paid for"; they "thought" they were purchasing generic Xanax and instead received an "unapproved benzo[] and a filler, pressed by amateurs in a storage unit." *Id.* (citation omitted). With that in mind, we understand the loss to be the "fraud against the buyer," as measured by what the buyer actually paid for the pills. *Id*.

That a deceived buyer nonetheless may have received an actual pill, albeit a fake one, does not change our conclusion. As the district court found, end consumers would have purchased the products only if they believed them to be the real thing. So on the record here, "loss" does not require discounting for a benefit no victim wanted. *See United States v. Marcus*, 82 F.3d 606, 610 (4th Cir. 1996) (concluding that "actual loss" occurred in a counterfeit drug case as consumers were not provided "with the benefit of their bargain" and would not have accepted the alternative had they known). And the falsified transaction, even if it provided some end benefit to the consumer by way of a fake pill, still involved an initial "diminution that truly occur[red]": The consumer immediately lost what he paid for when he bought the fake pills. *Kirilyuk*, 2025 WL 3034694, at *3. Recall that the operative term at issue is "loss," which broadly identifies (at the very least) actual harms the buyers suffered. The district court's understanding of "loss," therefore, fell within the "wide" "goalposts" established by the Guidelines' text. *Rutherford v. United States*, 146 S. Ct. 1320, 1334 (2026).

Basalyga's approach, by comparison, seeks to add a modifier to that term (e.g., "net" loss or "total" loss), one that artificially limits loss as a means of "gaug[ing] the severity of a particular offense." *See United States v. Shumway*, 112 F.3d 1413, 1425 (10th Cir. 1997) ("For purposes of determining an appropriate offense level under the Guidelines, loss is not simply intended to be a measure of net monetary damage." (citation modified)); *United States v. Smith*, 79 F.4th 790, 794–95, 798 (6th Cir. 2023) (equating "harm" suffered by the victim to "loss"). But we do not rewrite governing text. And given Basalyga's textual shortfalls, we think it

unlikely that a pending case at the Supreme Court, *Beaird v. United States*, No. 25-5343, 2026 WL 1052007 (U.S. Apr. 20, 2026), which may reconsider what sort of deference is owed to the Guidelines *commentary*, will be of much help to him. *See, e.g.*, *United States v. Pasternak*, No. 23-6316-CR, 2024 WL 4763986, at *4 (2d Cir. Nov. 13, 2024) (summary order) (rejecting the argument that "§ 2B1.1(b)(1)'s text unambiguously limits the enhancement to actual net loss"). After all, if Basalyga cannot prevail on the text, even the broadest result in *Beaird* would not win him the day. *See* Brief for Petitioner at 11-12, *Beaird v. United States*, No. 25-5343 (U.S. June 30, 2026) (arguing that no deference should be given to the commentary and the "best reading of the text" should prevail before arguing in the alternative that *Kisor* should control). So there is no need to stay or otherwise delay our resolution of his appeal.

2. Basalyga next takes aim at the obstruction-of-justice enhancement he received under § 3C1.1. That provision allows for a two-level increase in Basalyga's offense level if he "willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction." U.S. Sent'g Guidelines Manual § 3C1.1 (U.S. Sent'g Comm'n 2023). The district court imposed the enhancement largely based on text messages between Basalyga and Wala that suggested Basalyga began clearing his electronic devices upon hearing the news of Chirinos de Urena's arrest.

Basalyga maintains this was error. As he sees it, there was "no proof he ever wiped" electronic communications to impede an investigation. *See* Basalyga Appellant Br. at 18. We see no error in the district court's conclusion to the contrary. Consider the text messages between Wala and Basalyga, which followed on the heels of Chirinos de Urena's arrest and a federal officer confiscating her phone with incriminating evidence of the underlying counterfeit pill scheme. In those messages, Wala relayed the news of the arrest to Basalyga, to which he immediately asked, "Do I need to clean," with the implication being that he "clean" his electronic devices. R. 224-1, PageID 2415. The next day, texts continued between the two men in which Basalyga openly pondered whether the information on Chirinos de Urena's phone would be enough for a warrant, suggesting he was well aware that an investigation into the scheme was underway or would soon be afoot. *See United States v. Golobic*, 170 F.4th 515, 521

(6th Cir. 2026) ("Conduct may obstruct justice 'with respect to' an investigation before a formal investigation begins."). Later, Basalyga advised Wala that he was "better safe th[a]n sorry" and to "clear it and stop." R. 224-2, PageID 2887. That same day in another text to Wala, Basalyga messaged that he had "wiped" "my usb" that held information related to the payment scheme used in the counterfeit pill operation. R. 224-2, PageID 2888. A subsequent investigation suggested that communications relevant to the scheme dating back to 2017 had been removed from Basalyga's phones and other electronic devices. Against all this, Basalyga, with little elaboration, simply denies that he wiped his own digital devices. We are thus not left with a "definite and firm conviction" that the district court erred by finding Basalyga had willfully deleted electronic records to impede an investigation into the counterfeit pill scheme. *See United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948) (defining the clear error standard).

Nor do we agree with Basalyga's characterization of the evidence as ambiguous and open to interpretation. On this point, it bears noting that conclusive evidence is not the metric; the government simply needed to establish that § 3C1.1 was satisfied by a preponderance of the evidence, evidence that can consist of indirect and circumstantial proof. *See United States v. Hang*, 75 F.3d 1275, 1285 (8th Cir. 1996). And the government's evidence here—incriminating text messages following an arrest of a co-conspirator, coupled with circumstantial proof of missing electronic communications—was rebutted with a bare denial from Basalyga. Again, none of this put the underlying factual question of whether Basalyga deleted his electronic communications into serious dispute. *See Simpson*, 138 F.4th at 447. At best, Basalyga has set forth "two permissible views of the evidence," meaning the district court's choice "between them cannot be clearly erroneous." *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985).

Basalyga's remaining arguments fare no better. In his opening brief, he asserted that there was no proof that any lost evidence materially affected the investigation. But the enhancement applies to attempts, not just successful efforts to impede an investigation. *See United States v. Green*, 167 F.4th 832, 865 (6th Cir. 2026); *United States v. Thomas*, 933 F.3d 605, 610 (6th Cir. 2019). Nor, as already explained, did the evidence simply show trivial conduct. But for the fortuity of evidence being available from other sources, Basalyga's efforts very well could have resulted in a different outcome to the investigation. *See United States v.*

Histed, 93 F.4th 948, 960 (6th Cir. 2024) (understanding obstruction must be material, in that it would "tend to influence the investigation's outcome"); *see also United States v. Baker*, 894 F.2d 1083, 1084 (9th Cir. 1990) (rejecting the argument that the availability of withheld information from other sources meant the obstructive conduct was immaterial, as § 3C1.1 covers conduct that has the "potential for obstructing justice").

In his reply brief, Basalyga makes a distinct argument—that the government did not satisfy the requirement in the Guidelines commentary that Basalyga's conduct was "likely to thwart" the investigation, the metric under the commentary for gauging allegedly obstructive acts vis-à-vis investigations that have yet to commence. *See* Basalyga Reply Br. at 5–6 (citing U.S. Sent'g Guidelines Manual § 3C1.1 cmt. n.1 (U.S. Sent'g Comm'n 2024)); *id.* at 9 (acknowledging that "materiality and likelihood [to thwart] are different" arguments). This response is not only tardy, *see United States v. Campbell*, 279 F.3d 392, 401 (6th Cir. 2002), but it also fails to reckon with a principle Basalyga knows well: that the commentary can only interpret and not substitute for the text of the Guidelines, *see United States v. Hymes*, 19 F.4th 928, 936 (6th Cir. 2021). And nothing in § 3C1.1's text requires that a defendant's efforts "likely" "thwart" (that is, stop) an investigation. Instead, § 3C1.1 reaches any efforts (successful or not) that could materially hinder an investigation or make it more difficult to undertake. *See Green*, 167 F.4th at 865; *Thomas*, 933 F.3d at 610; *Histed*, 93 F.4th at 960. In any event, the district court found that Basalyga's conduct was an effort "likely to thwart the investigation" by attempting to "eliminate the existence of proof" and "give [him] protection." R. 260, PageID 3167 (citation modified). That suffices for § 3C1.1 to apply.

B. Basalyga's final argument concerns the nearly $7 million forfeiture judgment levied against him. Relying on *United States v. Fishman*, 157 F.4th 143 (2d Cir. 2025), Basalyga maintains that § 304 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. § 334, was an insufficient basis for authorizing the district court's forfeiture order. We cannot reach the merits of the issue, however. Because Basalyga intentionally relinquished or abandoned his right to challenge the forfeiture judgment, we lack the discretion to review any error. *See United States v. Olano*, 507 U.S. 725, 732–33 (1993).

Consider how Basalyga approached the issue of forfeiture in district court. In his plea agreement, Basalyga "consent[ed] to the forfeiture to the United States . . . of all . . . property identified in the forfeiture allegation of the Information," R. 23, PageID 54, which required Basalyga to forfeit to the United States "any property" derived from his crimes, R. 12, PageID 20. He likewise agreed that the property was lawfully subject to forfeiture, and "consent[ed] to the entry of any orders necessary for the forfeiture and agree[d] to take any steps necessary to assist the government" in effectuating the forfeiture. R. 23, PageID 55. The plea agreement also contained language wherein Basalyga "voluntarily and knowingly waive[d]" any procedural or substantive challenges to forfeiture—including "all constitutional, legal, or equitable defenses." *Id.* at 55–56.

True, in May 2024, Basalyga tried to shift gears by seeking to challenge the forfeiture judgment by making similar arguments to those he raises here. But that effort was short lived. Roughly a week later, he withdrew his challenge and reached an agreement with the government as to the amount of the forfeiture money judgment. In that agreement, Basalyga reiterated his concessions in his plea agreement as to the forfeiture judgment, consented to a forfeiture amount of $6,975,000, and agreed to "not object in any way to the validity of the forfeiture." R. 86, PageID 422. Later, at Basalyga's sentencing, the government asked the district court to finalize the previously agreed upon preliminary forfeiture judgment. When asked by the court if there was any objection to the agreement to the stipulated judgment, Basalyga noted no concerns. Having affirmatively consented to the forfeiture judgment in almost every possible way, Basalyga cannot now argue against it. *See United States v. Droganes*, 728 F.3d 580, 588 (6th Cir. 2013) (recognizing that a defendant, having agreed to the forfeiture judgment, cannot on appeal "simply renounce . . . the agreement because he dislikes the consequences"); *cf. Skouteris*, 51 F.4th at 674 (recognizing that a criminal defendant waives his right to challenge a money judgment by "expressly withdrawing an objection or agreeing to the calculated" amount (citation modified)); *Swift & Co. v. United States*, 276 U.S. 311, 324 (1928) (establishing the general rule that a party who consents to the entry of judgment waives his right to appeal from it).

Nor can we accept Basalyga's characterization of the appellate waiver clause within his plea agreement as limited to challenging his "guilty plea and conviction," but not his sentence,

including any part of the forfeiture judgment that was a part of his sentence. We see at least two problems with his assertion. One, while the appeal waiver clause is at best silent as to whether Basalyga's plea agreement waives his right to appeal the forfeiture judgment, other more specific provisions within the plea agreement expressly waived Basalyga's ability to challenge all aspects of the forfeiture judgment in any judicial proceeding. We cannot read those specific provisions out of the plea agreement, notwithstanding the general language of the appeal waiver. *See United States v. Bryant*, 663 F. App'x 420, 422 (6th Cir. 2016) ("In interpreting plea agreements, as in interpreting any other contract or a statute, the specific governs the general."). Doing otherwise would render meaningless the provisions in the plea agreement concerning forfeiture. *See United States v. DeWitt*, 366 F.3d 667, 670 (8th Cir. 2004). Two, a criminal defendant can waive an argument on appeal outside of an express appeal waiver. *See Droganes*, 728 F.3d at 586–87 (distinguishing between an "express appellate-waiver in a plea agreement" and waiver of a "specific argument"). That is the case, for instance, when the defendant expressly consents to or withdraws an objection to a ruling he later contests on appeal. *See id.* at 588; *see also Skouteris*, 51 F.4th at 674; *United States v. Seuell*, 135 F.4th 480, 482–83 (6th Cir. 2025). And that is just what occurred here (and more than once). All things considered, Basalyga's plea agreement allows him to appeal his sentence generally, but not aspects of that sentence for which he knowingly and voluntarily waived his right to challenge, including his forfeiture judgment.

Even then, Basalyga suggests we can excuse any waiver. That is no easy ask. A defendant's waiver can be excused only when the result would be a "miscarriage of justice," meaning an "egregious" and "obvious" error that would "bring the judicial system into disrepute" by "undermin[ing] public confidence in the judiciary." *Hunter v. United States*, 146 S. Ct. 1702, 1713 (2026). So why does Basalyga think his case is the "extreme" one where we can discard his waiver? *Id.* at 1714. Because, he says, the forfeiture order went beyond what the law authorizes. For support, he turns again to the Second Circuit's decision in *Fishman*, 157 F.4th at 169, the only appellate ruling to expressly consider the issue. But an argument of illegality based on a single nonbinding case cannot fairly be described as "obvious." *Hunter*, 146 S. Ct. at 1713; *see United States v. Hunter* (*Hunter II)*, 183 F.4th 416, 419–20 (5th Cir. 2026) (rejecting that an obvious error can be established by out-of-circuit case law). All said, Basalyga is bound by his waiver as to the forfeiture judgment.

III.

A. We move to Chirinos de Urena's appeal, beginning with her arguments that overlap entirely with Basalyga's. One is whether the 2024 Guidelines should have governed her sentencing. Like Basalyga, Chirinos de Urena recommended in her plea agreement that the 2021 Guidelines determine her sentencing range. She similarly premised her arguments before the district court on a pre-2024 version of Guidelines. And the district court, as it did with Basalyga's sentencing the same day, used the pre-2024 version of the Guidelines, with Chirinos De Urena making no objection. Given all of this, Chirinos de Urena (like Basalyga) waived any objection to not applying the 2024 Guidelines. *See supra* at 3–5. And Chirinos de Urena's remaining argument as to the loss calculation—that the district court should not have relied on *You* and the commentary to § 2B1.1—simply echoes Basalyga's. So our analysis of the issue remains the same. *See supra* at 5–8.

B. That leaves arguments unique to Chirinos de Urena, beginning with her challenge to her two-level enhancement under § 2B1.1(b)(16)(A). That enhancement applies when the underlying offense "involved . . . the conscious or reckless risk of death or serious bodily injury." U.S. Sent'g Guidelines Manual § 2B1.1(b)(16)(A) (U.S. Sent'g Comm'n 2023). We previously considered the applicability of this enhancement in Wala's appeal. There, we declined to take sides in a "circuit split regarding whether the defendant must have a subjective awareness of the risk." *Wala*, 166 F.4th at 604. Instead, we assumed the more defendant-friendly test governed, one requiring the government to show first that the offense involved a risk of death or serious bodily injury, and second that the defendant was in fact aware of and consciously disregarded those risks. *Id.* As to the first element, we agreed with the district court's conclusions that the counterfeit pill scheme implicated risks of death or serious bodily injury. That made sense, as the scheme involved millions of "crudely" manufactured pills being funneled into an "unregulated" and unsupervised market. *Id.* at 605 (citation modified). And those drugs, we noted, had "a high potential for abuse" and "posed significant adverse health risks to the end user." *Id.* (citation modified). And as to the mens rea element, we concluded that Wala was aware of the risks, primarily pointing to text messages between Wala and Basalyga. *Id.* at 605–06.

Chirinos de Urena contests the district court's factual findings with respect to the state of mind element. She emphasizes that she was neither a part of nor privy to the text messages between Wala and Basalyga that established Wala's mens rea in the prior appeal. But even assuming the actual awareness standard applied in *Wala* governs, the district court did not clearly err in finding that Chirinos de Urena was aware of the risks of the scheme. *See Battaglia*, 624 F.3d at 351. Although she lacked any relevant training, the district court found she "knowingly" facilitated the sale of millions of pills on the dark web. R. 36, PageID 99. Her involvement in the conspiracy, moreover, was far from fleeting—she served an important role in the scheme for roughly three years. In that time, Chirinos de Urena had her hands all over the production process. She mixed various chemicals in a storage unit to mimic generic Xanax, pressed the substance into pill form, and bagged up buckets containing tens of thousands of pills for shipment. In addition, there was strong circumstantial evidence that she knew of the dangers presented, such as the district court's unchallenged finding that defendants "knew [the pill product] required [the use of] personally protective measures." R. 96, PageID 473. Based on the nature, length, and scope of the scheme, including the "inherency of the danger presented," the district court sensibly concluded that the risks were known to Chirinos de Urena. *Id*. And because circumstantial evidence alone, including the defendant's conduct, sufficiently satisfied the state of mind element of § 2B1.1(b)(16)(A), the government was not required to offer direct evidence akin to the texts between Wala and Basalyga. *See Milton*, 27 F.3d at 208; *see also United States v. McCord, Inc.*, 143 F.3d 1095, 1098 (8th Cir. 1998) (concluding that while actual awareness was the governing standard, that can be satisfied in cases involving "fraudulent schemes [with] such obvious risks of serious bodily injury that the criminal recklessness of their perpetrators will be self-evident"). In short, we are not left with the definite and firm conviction that the district court erred in finding that Chirinos de Urena was aware of the risks her offense posed.

C. Finally, Chirinos de Urena, a lawful permanent resident, argues that the district court "essentially refused" to assess her immigration status in deriving her sentence. Chirinos de Urena Appellant Br. at 23. She argued for a variance because her immigration status meant that her conviction risked her deportation and also made her ineligible for Bureau of Prisons (BOP) programming while incarcerated. Although the district court ultimately afforded Chirinos de

Urena a below-Guidelines sentence, it did not do so based on Chirinos de Urena's green card status.

But this is not a case where the district court simply ignored a defendant's argument for a variance. *See United States v. Lay*, 583 F.3d 436, 446 (6th Cir. 2009) (distinguishing between the district court not accepting versus ignoring an argument). Instead, the court thoughtfully engaged with Chirinos de Urena's position, yet was ultimately unpersuaded. The court noted that any consequences that stemmed from her immigration status were collateral to her conviction and a product of the "choices" she "made . . . with knowledge of that status." R. 265, PageID 3391. Any other result—like varying down due to those collateral consequences—would, in the district court's view, either create a disparity between Chirinos de Urena's criminal sentence and those imposed upon her U.S. citizen co-conspirators, or functionally eliminate the collateral consequences to engaging in a felony as a green card holder. As we have said before, the district court has wide discretion in determining whether a defendant's "immigration status sufficiently mitigated [her] crime." *See United States v. Petrus*, 588 F.3d 347, 356 (6th Cir. 2009); *see also United States v. Zheng*, 27 F.4th 1239, 1244 (6th Cir. 2022) (rejecting the "absolutist" view that a downward variance is always available for deportable aliens because of the collateral consequences of their conviction).

Chirinos de Urena responds that the district court misunderstood that it lacked the authority to vary downward. That is not a fair reading of the record. The district court, in discussing the effect that Chirinos de Urena's immigration status would have on the availability of BOP programming opportunities, referenced those restrictions as created by "executive branch" function and not something the court "would vary over." R. 265, PageID 3393. Only an unduly narrow reading of the record would suggest that the court thought it was powerless to vary. But we do not give such readings to a cold sentencing transcript. *See United States v. Vonner*, 516 F.3d 382, 392 (6th Cir. 2008) (en banc) ("[D]istrict courts have considerable discretion in this area and thus deserve the benefit of the doubt when we review their sentences and the reasons given for them."). Fairly read, the record instead suggests that the court simply thought of missed programming opportunities as a product of BOP regulations and therefore another collateral consequence to committing a felony as a permanent resident, raising an issue

well within the court's discretion of whether those consequences provide a basis for a variance. *See Zheng*, 27 F.4th at 1244. Regardless, "one stray comment" as part of a thoughtful discussion during "sentencing cannot establish reversible error." *See Hymes*, 19 F.4th at 934. In the end, the district court considered Chirinos de Urena's arguments and had a reasoned basis for rejecting them, making the process for sentencing reasonable. *See Rita v. United States*, 551 U.S. 338, 356 (2007).

IV.

We deny Basalyga's motion to stay this proceeding, and we affirm the judgments of the district court.