

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

UNITED STATES OF AMERICA,

-vs-

(4) CARLOS ALFREDO BECERRA
CASTRO

(5) LINA GISSETH BARRERA
SARMIENTO,

(7) ANGEL JULIO ARROYO
CALDERON

(8) PEDRO EMILIO GALLARDO
HINCAPIE

Defendants.

SA-22-CR-00139-XR

ORDER

On this date, the Court considered Carlos Alfredo Becerra Castro, Lina Gisseth Barrera Sarmiento, Angel Julio Arroyo Calderon, and Pedro Emilio Gallardo Hincapie's (together, "Moving Defendants") Motions for Reconsideration (ECF Nos. 175, 178, 180, 184), the Government's Response (ECF No. 183), and Moving Defendant Becerra Castro's Motion in Limine (EC No. 182) and the Government's Response (ECF No. 188). After careful consideration, and the hearing on July 28, 2025, the Court **DENIES** the motions.

BACKGROUND

I. Facts

The Court assumes familiarity with the issues, and repeats the background as necessary. This case involves nine defendants, four of whom have moved to dismiss the indictment. All are

charged in a two-count indictment for conspiracy to import more than five kilograms of cocaine in violation of 21 U.S.C. §§ 959(a), 960 and 963, and conspiracy to possess with intent to distribute more than five kilograms of cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846. *See* ECF No. 3.

Moving Defendants are citizens of the Republic of Columbia and argue that any drug conspiracy they may have been involved in took place wholly within the Republic of Columbia, and that they had no knowledge that the drugs were destined for the United States. Moving Defendants previously moved to dismiss the indictment, arguing that the United States lacks extraterritorial jurisdiction over their actions, and there is no sufficient nexus to the United States in this case.¹ They argued that the only evidence linking their activities to the United States was one statement made by an undercover Columbian law enforcement officer, who unilateral asserted that the drugs were headed to the United States and that the United States improperly manufactured jurisdiction by this statement.

On April 29, 2025, the Court issued an order denying three of the four Moving Defendants' motions to dismiss the indictment ("Prior Order"). *See* ECF. 174. There, the Court, *inter alia*, concluded that a Rule 12 motion is not a proper vehicle to challenge the sufficiency of the evidence and that the extraterritoriality arguments were "in essence challenging the sufficiency of the evidence produced by the Government to date." *Id.* at 3–4. The Government relied on multiple undercover videos and represented that they contained references to the relevant drugs traveling

¹ Moving Defendant Hincapie did not previously move to dismiss the indictment alongside the other three. Instead, he joins these motions to reconsider, which the Court considers alongside the rest. *See* ECF No. 178.

to San Antonio, Texas. The Moving Defendants said otherwise, but neither side produced any certified transcripts for the Court to rely on. *See id.* at 2 n. 2.²

Moving Defendants seek reconsideration of the Prior Order, contending that recent transcripts of conversations between them and the confidential informant have now been translated and support their argument that jurisdiction was manufactured in this case. *See, e.g.,* ECF No. 175 at 1 (noting that “[s]ince the Court’s ruling, the video evidence of the involved controlled buy transactions . . . have been translated and transcribed . . .”). The Moving Defendants also reraise the same arguments previously made and clarify they do not contest the sufficiency of the evidence or make a subject-matter jurisdiction argument, but that “the government has not shown that extraterritorial jurisdiction is proper.” ECF No. 184 at 3; *see United States v. Vasquez*, 899 F.3d 363, 371 (5th Cir. 2018) (“Extraterritoriality ‘is a question on the merits rather than a question of a tribunal’s power to hear the case.’” (citation omitted)).³

² The only transcript previously before the Court was translated by the Assistant United States Attorney himself, which the Court did not rely on.

³ The Government argues that Moving Defendants may not go into the facts of this case when moving to dismiss under Rule 12(b)(3) for failure to state an offense. ECF No. 183, 172. As there are no contested facts considering the certified transcripts and videos that Moving Defendants rely on and the extraterritoriality issue is legal, the Court does not limit itself to the indictment here. *See United States v. Flores*, 404 F.3d 320, 323–326 (5th Cir. 2005) (rejecting the argument that a district court “may not look beyond the face of the indictment and rule on the merits of the charges pretrial,” but noting “the propriety of granting a motion to dismiss an indictment under [Rule] 12 by pretrial motion is by-and-large contingent upon whether the infirmity in the prosecution is essentially one of law or involves determinations of fact”).

ANALYSIS

I. New Evidence

Moving Defendants have now put forth certified transcripts.⁴ The Government has submitted its uncertified transcripts as well. The Court has reviewed them and summarizes the relevant statements from the certified transcripts below.

In a transcript of a February 7, 2019 conversation between two undercover agents and defendants Álvaro Luis Deluque Pallares and Luis Guillermo Peralta Pacheco,⁵ it appears drugs and prices are discussed, with discussions of unspecified shipments “goin’ to Mexico . . . [and] to Arizona,” and at least one shipment destined for the “Dominican Republic and Puerto Rico.” *See* Castro Ex. 1, at 5, 7. While one of the undercover agents referenced Mexico and Arizona, defendant Pallares mentioned the Dominican Republic and Puerto Rico.

The next day, one of the undercover agents and Moving Defendant Castro, along with defendants Ángel Caicedo Atehortúa, and Juan Camilo Valderrama,⁶ met and continued to discuss drugs. *See* Castro Ex. 2. This time, Moving Defendant Castro appeared to question whether they can be shipped to Mexico, and defendant Valderrama referenced that the drugs will go from Mexico “to the U.S.” *Id.* at 3.

⁴ At the hearing, the parties offered exhibits, including the transcript, into the record. The Court granted the parties’ motions to admit these exhibits, *see* Text Orders, August 1, 2025, and refers to them as entered. *See*, e.g., Castro Ex. 1.

⁵ Defendants Pallares and Pacheco are co-conspirators in this case, but Pallares has not moved to dismiss the indictment and it appears that Pacheco has not been extradited.

⁶ Defendants Atehortúa and Valderrama are also co-conspirators in this case but have not moved to dismiss the indictment.

On May 1, 2019, a controlled-buy occurred, at which both undercover agents, Moving Defendants Castro and Sarmiento (Castro's wife), and defendants Pallares, Atehortúa, and Valderrama were present. *See* Sarmiento Ex. 4. At this meeting, the parties discuss previous shipments having “made it through fine there in San Antonio [Texas],” and a “goal” of “[taking things up—stuff one can handle alone.” *Id.* at 22. While the undercover agent makes these references, Moving Defendants Castro and Sarmiento, as well as defendant Atehortúa appear to voice approval, or, at a minimum, do not disapprove. *Id.* at 22–23.

The next day, another controlled-buy occurred, at which the same individuals were present. There, the undercover agent again discussed the price of drugs “[a]rriving in San Antonio” (around \$12,000) and noted that expenses varied “from port to port.” Sarmiento Ex. 5, at 3. None of the Moving Defendants (or any defendants) appear to disapprove. Instead, the individuals in the room discuss packing the drugs and are seen inspecting the drugs and counting the cash for the transaction. *See* Sarmiento Ex. 2 (Video).

Finally, on May 3, the same individuals as present at the May 1 and May 2 conversations met and discussed drugs that are likely going to Texas. *See* Sarmiento Ex. 6 at 13–15. They discussed moving the drugs to San Antonio, including how long it would take, the cost of doing so, and expected profit. *Id.* at 17. The undercover agent did not first raise these mentions of Texas and San Antonio.

II. Motions to Reconsider

Moving Defendants bring an as-applied challenge to the charging statutes application. Whether a statute reaches extraterritorial acts “requires [a court] to consider the presumption against extraterritorial application of United States law, whether extraterritorial application is

consistent with international law, and the demands of constitutional due process.” *United States v. Rojas*, 812 F.3d 382, 391 (5th Cir. 2016).

As stated in the Court’s Prior Order, the Fifth Circuit has held that Section 959 may be applied to extraterritorial acts. *See id.* at 393 (cocaine activity taking place in Columbia with the expectation that a Mexican cartel would buy the drugs and ultimately import them into the United States); *see also Vasquez*, 899 F.3d at 376 (Section 841(a)(1) applies extraterritorially “so long as it is clear that the intended distribution would occur within the territorial United States” (quoting *United States v. Baker*, 609 F.2d 134, 139 (5th Cir. 1980))). Further, “courts have ‘inferred the extraterritorial reach of conspiracy statutes on the basis of a finding that the underlying substantive statute reach extraterritorial offenses.’” *United States v. Lawrence*, 727 F.3d 386, 395 (5th Cir. 2013) (quoting *Chua Han Mow v. United States*, 730 F.2d 1308, 1311 (9th Cir. 1984)).

Here, a review of the transcripts provided reveals that multiple co-defendants, including two Moving Defendants, participated in conversations which discuss the drugs sold being shipped to the United States, including costs and profits. This does not require the Court to vacate its Prior Order, as the charging statutes apply to this conduct.

Moving Defendants’ international law arguments fall short, as the Fifth Circuit has approved of arguments that Congress intended for these drug laws to be applied extraterritorially and extraterritorial application may be consistent with international law. *See Rojas*, 812 F.3d at 392 (discussing the protective and territorial principles that support applying Section 859(a) extraterritorially); *Baker*, 609 F.2d at 139. These include “minimizing the impact of the international drug trade on safety in the United States” and where the “intended effect [of the conduct is] in the United States.” *Rojas*, 812 F.3d at 392–93. As explained above, the relevant discussions in the transcript demonstrate the conduct falls squarely within these concerns.

To the extent Moving Defendants rely on the multi-factored “unreasonable” standard from the Restatement (Third) of Foreign of Relations Law § 403(2) to demonstrate inconsistency with international law, *see* ECF No. 175 at 3–5, the Court declines to adopt it. *See United States v. Martinez*, 599 F. Supp. 2d 784, 801 (W.D. Tex. 2009) (declining to adopt the “unreasonable” standard outlined in the Restatement as “there is no Fifth Circuit precedent making these factors a mandatory part of the threshold inquiry[.]”). Even if it applied, extraterritorial application would not be unreasonable for the same reasons. *See* Restatement (Third) of Foreign Relations Law § 403(2) (factors include “the extent to which the activity . . . has substantial, direct, and foreseeable effect upon or in the territory” and “the character of the activity to be regulated [and] the importance of regulation to the regulating state”).

Moving Defendants’ due process arguments also lack merit. “In the context of non-U.S. citizens, ‘due process requires the government to demonstrate that there exists ‘a sufficient nexus between the conduct condemned and the United States’ such that application of the statute would not be arbitrary or fundamentally unfair to the defendant.” *Rojas*, 812 F.3d at 393. This nexus is demonstrated here because the Moving Defendants were charged with acting with the intent or knowledge that drugs would be unlawfully imported into the United States. Likewise, “drug trafficking is condemned universally by law-abiding nations,” *id.* at 393 (quoting *United States v. Suerte*, 291 F.3d 366, 371 (5th Cir. 2002), and Moving Defendants had fair warning their conduct “was criminal and would subject them to prosecution somewhere,” *Rojas*, 812 F.3d at 381 (quoting *Al Kassar*, 660 F.3d at 119).

Moving Defendants next argue that the transcripts show the Government has improperly manufactured jurisdiction. *See Al Kassar*, 660 F.3d at 119 (explaining that the concept “is properly understood not as an independent defense, but as a collection of three distinct defense theories: (1)

outrageous government conduct in violation of due process; (2) entrapment; and (3) a failure by the prosecution to prove an essential element of the crime”). Assuming the Fifth Circuit would apply the doctrine of “manufactured jurisdiction” in the context of extraterritoriality, Moving Defendants have not shown it applies here. Instead, the evidence in this case that is likely to be presented to the jury is that the Moving Defendants were aware of and voluntarily involved to some degree in conduct that involved drugs being shipped from Columbia to the Caribbean and Mexico, with some of those amounts ultimately slated for delivery in the United States, including San Antonio, Texas.

Further, any argument that the conspiracy charges should be dismissed because the Moving Defendants could not conspire with a law enforcement officer (who allegedly manufactured the intent nexus) fails, as this ignores that co-conspirators were aware of and involved in the conspiracy. The Moving Defendants are charged with conspiring with *each other* to import and distribute more than 5 kilograms of cocaine. Moreover, as demonstrated by the transcripts, the undercover agent did not alone “manufacture” the intent nexus.

Finally, Moving Defendant Hincapie argues he is differently situated than the rest of the Moving Defendants because he was not caught on the transcripts discussing the drugs travelling to the United States and so the statutes cannot be applied extraterritorially *to him*. But Hincapie, who raised this argument for the first time at the hearing, does not explain why this is determinative. Hincapie was a purported supplier of the drugs and was indicted as a co-conspirator. “An individual ‘need not know all the details of the unlawful enterprise . . . so long as he knowingly participates in some fashion in the larger objectives of the conspiracy.’” *United States v. Escajeda*, 8 F.4th 423, 427 (5th Cir. 2021) (quoting *United States v. Booker*, 334 F.3d 406, 411 (5th Cir. 2003)). Whether Hincapie (or any of the Moving Defendants for that matter) were indeed

conspirators is a fact question for the jury. *See Escajeda*, 8 F.4th at 427 (“A drug distribution conspiracy agreement—and the conspiracy itself—may be tacit and inferred from circumstantial evidence, presence, and association.” (internal quotation marks and citations omitted)).

At this stage, the charging statutes apply extraterritorially, and so the Court **DENIES** the motions for reconsideration.

III. Motion in Limine Regarding Co-Conspirator Exception

As to Moving Defendant Castro’s motion in limine, he seeks a separate hearing to determine the admissibility of any “co-conspirator’s exception” to the hearsay rule. *See* FED. R. EVID. 801(d)(2)(E). The government responds that a separate hearing is not mandatory under *United States v. James*, 590 F.2d 575 (5th Cir. 1979) (en banc) and that the court retains the discretion to decide whether to conduct such a hearing; and that the court is authorized to, and should, carry its ruling on the existence of a conspiracy, the identities of the members of the conspiracy, and the admissibility of co-conspirator statements against certain defendants, subject to the government’s later connection in its case-in-chief.

The Court agrees and Castro’s motion is **DENIED**. *See United States v. Fleifel*, No. 3:12-CR-318-D 3, 2014 WL 6633049, at *4 (N.D. Tex. Nov. 24, 2014).

CONCLUSION

For the foregoing reasons, Moving Defendants’ Motions for Reconsideration (ECF Nos. 175, 178, 180 and 184) are **DENIED** and Moving Defendant Becerra Castro’s Motion in Limine (ECF No. 182) is **DENIED**.

IT IS SO ORDERED.

SIGNED this 5th day of August, 2025.

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a horizontal stroke.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE