UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 5th day of November, two thousand twenty-six.

PRESENT: Amalya L. Kearse,
Denny Chin,
Steven J. Menashi,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. No. 24-3083

JOSE RAFAEL PARRA SANTOS, AKA Jose Parra, AKA Jose Ramon Parra, AKA Edward Parra, AKA Edwin Perra, AKA Jose R. Parra, AKA Jose R. Parra Polanco, AKA Nino Parra, AKA Jose R. Polonco, AKA Jose R. Nina, AKA Jose Paira, AKA Jose Pabon, AKA Jose Barra, AKA Joe Barra,

Defendant-Appellant.

For Defendant-Appellant: MICHELLE ANDERSON BARTH, Law Office of Michelle Anderson Barth, Burlington, Vermont.

For Appellee: KINGDAR PRUSSIEN (Michael D. Maimin, *on the brief*), Assistant United States Attorneys, *for* Jay Clayton, United States Attorney for the Southern District of New York, New York, New York.

Appeal from a judgment of the United States District Court for the Southern District of New York (Karas, J.).

Upon due consideration, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that the judgment of the district court is **AFFIRMED IN PART** and **VACATED IN PART** and the case is **REMANDED**.

Defendant-Appellant Jose Rafael Parra Santos appeals from a judgment and sentence entered following his guilty plea to illegal reentry after deportation under 8 U.S.C. § 1326(a) and (b)(2). The district court sentenced Parra Santos principally to 70 months of imprisonment followed by three years of supervised release. Parra Santos now challenges that sentence on appeal. We assume the parties' familiarity with the facts, the procedural history, and the issues on appeal.

I

Jose Rafael Parra Santos illegally reentered the United States after being lawfully deported in 2010 following a conviction for drug distribution under state law. In September 2022, he was arrested by the Port Jervis City Police Department in connection with a conspiracy to distribute cocaine. He received a state sentence of four to twelve years of imprisonment in April 2023. After he was arrested—but before he was convicted and sentenced—he was identified by federal immigration

authorities. He subsequently pleaded guilty to one count of aggravated illegal reentry in violation of § 1326(a) and (b)(2) and was sentenced in November 2024.

The district court imposed a sentence of 70 months of imprisonment, the bottom of the advisory guidelines range, which it ordered to run consecutively to Parra Santos's state sentence. The district court also imposed a three-year term of supervised release accompanied by mandatory, standard, and special conditions.

In this appeal, Parra Santos challenges his federal sentence on four grounds. First, he argues that the district court erroneously applied U.S.S.G. § 5G1.3(a) rather than § 5G1.3(d). Second, he argues that a consecutive 70-month term of imprisonment was substantively unreasonable. Third, he argues that the pronouncement by the district court of the twelve standard conditions of his supervised release did not comport with *United States v. Maiorana*, 153 F.4th 306 (2d Cir. 2025). Fourth, he argues that the district court improperly imposed a third-party risk condition that did not appear in the presentence report, was not orally pronounced at sentencing, and is otherwise impermissible. We reject the first three arguments but agree with the fourth. Accordingly, we vacate the judgment insofar as it imposed the third-party risk condition of supervised release and remand to the district court with instructions either to strike the condition or to properly impose a permissible risk condition. We affirm the judgment in all other respects.

II

We review *de novo* the legal determination by the district court of which subsection of § 5G1.3 to apply. *See United States v. Brennan*, 395 F.3d 59, 66 (2d Cir. 2005). If the district court applied the incorrect provision but "the record indicates clearly that the district court would have imposed the same sentence in any event, the error may be deemed harmless, avoiding the need to vacate the sentence and to remand the case for resentencing." *United States v. Kent*, 821 F.3d 362, 367-68 (2d Cir. 2016) (quoting *United States v. Mandell*, 752 F.3d 544, 553 (2d Cir. 2014)).

Parra Santos and the government dispute whether the district court resolved which subsection of § 5G1.3 applied. Parra Santos argues that the district court applied § 5G1.3(a). According to that provision:

> If the instant offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status) or after sentencing for, but before commencing service of, such term of imprisonment, the sentence for the instant offense *shall be imposed to run consecutively* to the undischarged term of imprisonment.

U.S.S.G. § 5G1.3(a) (emphasis added). Parra Santos contends that § 5G1.3(a) was inapplicable because he committed the federal illegal reentry offense before he was sentenced or began serving his state prison sentence. In his view, the district court should have instead followed the policy statement in § 5G1.3(d), under which the district court has discretion to impose a concurrent, partially concurrent, or consecutive sentence in all other cases involving an undischarged term of imprisonment. Parra Santos claims that if the district court had properly considered § 5G1.3(d), it might have imposed a partially concurrent sentence to account for "the time likely to be served before release" on his state sentence. *Id*. § 5G1.3, comment. (n.4(A)(iii)).

We need not decide whether the district court concluded that § 5G1.3(a) applied—or whether it erred by doing so—because any possible error would be harmless. The district court stated that the guidelines did "not dictate a consecutive sentence" and that it would instead exercise "its discretion" in deciding how the federal sentence would relate to the state sentence. App'x 64. In exercising that discretion, the district court considered the 18 U.S.C. § 3553(a) factors. *See id.* at 75-81. The district court understood the type, length, and operation of Parra Santos's state sentence. *See id.* at 48, 68, 70, 75-76. And the district court considered the amount of credit Parra Santos would receive for his state sentence. *See id.* at 63. The record therefore reflects consideration of the relevant factors. The district court was not required "to make specific findings

with respect to any or all of the factors listed in the [c]ommentary or § 3553(a)." *United States v. Velasquez*, 136 F.3d 921, 924 (2d Cir. 1998).

Even assuming that the district court applied § 5G1.3(a), we are not persuaded that the district court would have imposed a different sentence had it considered the policy statement instead. The district court recognized that it had the discretion to adjust both the length of the sentence and the degree to which that sentence would be served consecutively to the state sentence. *See* App'x 81. The district court specifically rejected a concurrent sentence because "running it concurrent completely undermines the impact of a separate violation," "neuters the impact of this crime," and "undermines deterrence." *Id*. The district court therefore exercised the same discretion the policy statement authorizes, so the record "indicates clearly that the district court would have imposed the same sentence in any event." *Kent*, 821 F.3d at 367.

III

We review the substantive reasonableness of a sentence under "a particularly deferential form of abuse-of-discretion review." *United States v. Davis*, 82 F.4th 190, 195 (2d Cir. 2023) (quoting *United States v. Broxmeyer*, 699 F.3d 265, 278 (2d Cir. 2012)). Under that standard, a sentence "is substantively unreasonable if it is 'manifestly unjust' or 'shocks the conscience.'" *United States v. Richardson*, 958 F.3d 151, 153-54 (2d Cir. 2020) (alteration omitted) (quoting *United States v. Rigas*, 583 F.3d 108, 122-24 (2d Cir. 2009)).

The district court imposed a sentence at the bottom of the guidelines range, to run consecutively, after considering the § 3553(a) factors. The district court acknowledged mitigating considerations, explaining that it "might have even gone higher than the low end of the range" in "the absence of some of these mitigating factors." App'x 83. The district court declined to vary downward, however, because this was a "very serious illegal reentry case" given "the severity of the criminal conduct," Parra Santos's criminal history, and the age at which he

committed his crimes. *Id.* at 78-79. The district court explained that "general and specific deterrence" required a sentence that would "make sure that people are dissuaded from coming back, but especially people who are going to come back and commit major crimes." *Id.* In light of those considerations, we cannot say that the sentence is manifestly unjust or shocks the conscience.

Parra Santos suggests that his sentence was unreasonable because the nationwide average sentence of similarly situated defendants is 48 months and the district court was obligated to consider "the need to avoid unwarranted sentence disparities." 18 U.S.C. § 3553(a)(6). In fact, the district court specifically considered "the need to avoid unwarranted disparity" and recognized "the average being 48 months." App'x 80. But the district court concluded that Parra Santos's "pattern of conduct" justified a longer sentence. *Id*. It did not abuse its discretion in reaching that conclusion.

IV

When "a defendant has notice that a condition of supervised release will be imposed and fails to object," we will apply "traditional plain-error review." *United States v. Lewis*, 125 F.4th 69, 75 (2d Cir. 2025). At sentencing, the district court announced that "[t]he standard conditions of supervision 1 to 12 are imposed. Those will be explained later." App'x 82. The conditions were listed in the presentence report but were never separately explained. Parra Santos did not object to the pronouncement of those conditions at the sentencing hearing.

Parra Santos now argues that the pronouncement was deficient for two reasons. First, he maintains that the district court failed to confirm with Parra Santos directly that he had read and discussed the presentence report with his attorney, and that violated Federal Rule of Criminal Procedure 32(i)(1)(A). Second, he argues that the district court failed to "expressly adopt or specifically incorporate by reference" the conditions in the presentence report, and that

violated our decision in *Maiorana*. 153 F.4th at 314. Because this case was pending on direct appeal when *Maiorana* was decided, *Maiorana* applies. *See id.* at 314 n.11.

We reject both contentions. First, the district court verified with Parra Santos's counsel that he "had enough time to go over the presentence report with your client." App'x 61-62. Rule 32(i)(1)(A) provides that the district court "must verify that the defendant and the defendant's attorney have read and discussed the presentence report." It does not require the district court to address the defendant directly. We have previously said that a district court was "entitled" to rely on the assurance of defense counsel "to conclude that Rule 32(i)(1)(A) had been satisfied." *United States v. Algahaim*, 842 F.3d 796, 800 (2d Cir. 2016). Even assuming that "the district court could have confirmed in more explicit terms that [Parra Santos] and his counsel had read and discussed the PSR," the lack of such further inquiry would not qualify as plain error. *United States v. Thomas*, No. 22-1922, 2025 WL 2202953, at *2 (2d Cir. Aug. 4, 2025).

Second, we have explained that "notice and opportunity to object are the hallmarks of the pronouncement requirement." *United States v. Matos*, 187 F.4th 36, 47 (2d Cir. 2026) (quoting *United States v. Martinez*, 15 F.4th 1179, 1181 (5th Cir. 2021)). The pronouncement of the standard conditions by the district court provided Parra Santos adequate notice and an opportunity to object. The district court referenced a numbered list of conditions that corresponded to the numbered list of conditions in the presentence report, and the district court confirmed that Parra Santos and his counsel had reviewed the presentence report. As a result, Parra Santos and his "defense counsel certainly knew that the standard conditions being imposed were the ones listed in the [presentence report]." *Id.* at 48 (quoting *Martinez*, 15 F.4th at 1181).

We said in *Maiorana* that "[t]here is an easy way to ensure that a defendant has notice of and an opportunity to object to all proposed conditions: Include them in the PSR." 153 F.4th at 314 n.12. Because of Rule 32(i)(1)(A), "[i]f all proposed

discretionary conditions are listed in the PSR, that would assure a sentencing court (and a reviewing court) that a defendant has received notice of all such conditions and had a meaningful opportunity to object." *Id.* We cannot say that the district court plainly erred by following that recommendation.

V

The parties agree that the district court included in its written judgment a third-party risk condition that did not appear in the presentence report, was not orally announced at sentencing, and was identical to a condition we have previously disapproved. *See United States v. Boles*, 914 F.3d 95, 111-12 (2d Cir. 2019) (concluding that "the 'risk' condition is vague and affords too much discretion to the probation officer" and deciding to "vacate the risk condition"). We vacate the judgment insofar as it imposed the third-party risk condition and remand with instructions either to strike the condition or to properly impose a permissible risk condition.

If the district court "intends to impose" a permissible risk condition, "it must convene a hearing in the presence of the defendant" to do so. *Maiorana*, 153 F.4th at 315; *see also Boles*, 914 F.3d at 112 (explaining that a risk condition is permissible if the district court "determine[s], rather than leaving to the discretion of the probation officer, whether such notification is required") (quoting *United States v. Peterson*, 248 F.3d 79, 86 (2d Cir. 2001)). Alternatively, it may "simply strike [the condition] from the judgment … without need to conduct a new sentencing proceeding." *Maiorana*, 153 F.4th at 315.

* * *

We have considered Parra Santos's remaining arguments, which we conclude are without merit. For the foregoing reasons, we vacate the judgment of the district court insofar as it imposed the third-party risk condition and remand with instructions to strike the condition or to properly impose a permissible risk condition. We affirm the judgment in all other respects.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court