

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

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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 29<sup>th</sup> day of September, two thousand twenty-six.

PRESENT:

RICHARD C. WESLEY,  
RICHARD J. SULLIVAN,  
BETH ROBINSON,  
*Circuit Judges.*

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UNITED STATES OF AMERICA,

*Appellee,*

v.

No. 25-252

ELVIS GUERRERO, a.k.a E., JEMYNI TRUE,  
a.k.a. JEMY, TRENTON MICHAEL JUDKINS,

*Defendants,*

HENRY FELIZ ARIAS,

*Defendant-Appellant.*

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**For Appellee:**

RYAN W. ALLISON (Jun Xiang, Nathan Rehn, *on the brief*), Assistant United States Attorneys, *for* Matthew Podolsky, Acting United States Attorney for the Southern District of New York, New York, NY.

**For Defendant-Appellant  
Henry Feliz Arias:**

JEREMIAH DONOVAN, Old Saybrook, CT.

Appeal from a judgment of the United States District Court for the Southern District of New York (P. Kevin Castel, *Judge*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the district court's January 29, 2025 judgment is **AFFIRMED**.

Henry Feliz Arias appeals from his conviction following a guilty plea to firearms trafficking conspiracy, in violation of 18 U.S.C. § 371; unlicensed firearms dealing, in violation of 18 U.S.C. §§ 922(a)(1)(A), 924(a)(1)(D), and 2; and unlicensed transportation of firearms, in violation of 18 U.S.C. §§ 922(a)(5), 924(a)(1)(D), and 2, for which he received a sentence of 115 months'

imprisonment and three years' supervised release. On appeal, Arias argues that the district procedurally and substantively erred in imposing his sentence. In particular, he contends that the district court (i) failed to make the required finding of intent to support its application of the obstruction-of-justice enhancement under United States Sentencing Guidelines ("U.S.S.G." or "the Guidelines") § 3C1.1; (ii) erred in declining to apply the acceptance-of-responsibility adjustment under U.S.S.G. § 3E1.1; and (iii) selected a sentence that was substantively unreasonable. We assume the parties' familiarity with the underlying facts, issues on appeal, and procedural history, to which we only refer as necessary to explain our decision.

**I. The District Court Properly Applied the Obstruction-of-Justice Enhancement.**

The Guidelines authorize a two-level increase in a defendant's offense level if "(1) the defendant 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, and (2) the obstructive conduct related to . . . the defendant's offense of conviction." U.S.S.G. § 3C1.1. The Guidelines commentary provides that while "the conduct to which this enhancement applies is not subject to precise definition," *id.*, cmt. n.3, it may include "threatening, intimidating, or otherwise unlawfully influencing a co-

defendant, witness, or juror, directly or indirectly, or attempting to do so,” *id.*, cmt. n.4(A). Whatever the nature of the conduct, however, “an enhancement under [section] 3C1.1 is appropriate only if the district court makes a finding that the defendant had the specific intent to obstruct justice, *i.e.*, that the defendant consciously acted with the purpose of obstructing justice.” *United States v. Woodard*, 239 F.3d 159, 162 (2d Cir. 2001) (internal quotation marks omitted). A sentencing court may reach that conclusion based on a “preponderance of the evidence.” *United States v. Ryan*, 806 F.3d 691, 694 (2d Cir. 2015) (internal quotation marks omitted).

Arias argues that the district court failed to make the required finding at sentencing that he acted with the “specific intent to obstruct justice,” Arias Br. at 14–15, and that in any event, the facts could not support such a finding, *see id.* at 5. We disagree.

“Obstruction of justice enhancements are subject to a mixed standard of review.” *United States v. Ayers*, 416 F.3d 131, 133 (2d Cir. 2005). We review the sentencing court’s factual findings for clear error, *United States v. McKay*, 183 F.3d 89, 92 (2d Cir. 1999), and we review *de novo* the court’s “ruling that the established facts constitute obstruction . . . under the Guidelines,” *United States v. Gershman*,

31 F.4th 80, 102 (2d. Cir. 2022) (internal quotation marks omitted). But in exercising *de novo* review, we give “due deference to the district court’s application of the [G]uidelines to the facts.” *Id.* (internal quotation marks omitted).

Here, the district court thoroughly considered the evidence, and its findings reflect a determination that Arias did in fact “threaten[], intimidat[e], or otherwise unlawfully influenc[e] a co-defendant, witness, or juror,” U.S.S.G. § 3C1.1, cmt. n.4(A), with the “specific intent to obstruct justice,” *Woodard*, 239 F.3d at 162 (internal quotation marks omitted). Specifically, the district court pointed to the transcript of an intercepted phone call between Arias and an employee at the freight forwarder that Arias used to illegally ship firearms from the United States to the Dominican Republic. Suspecting that the employee had cooperated with law enforcement, Arias accused the employee of “[selling] [him] out,” warned her that she should “bury [herself] alive because” he was “going to come after [her] with all [his] people,” and threatened to kill any children in the employee’s household. Sp. App’x at 10. While Arias now argues that these statements derived from “anger” rather than an intent to obstruct justice, *Arias Br.* at 23, there can be no doubt that the district court concluded otherwise, making an express finding that Arias’s threat to “come after” the employee evinced a clear intent to

intimidate” her as a “potential witness,” Sp. App’x at 7–10; *see also id.* at 34 (“[Arias] was undoubtedly angry when he said that, but there was a purpose behind it [–] to intimidate the individual so they would cease any cooperation.”).

Nor did the district court wrongly conclude that these facts constituted an intentional “obstruction of justice” under the Guidelines. *Woodard*, 239 F.3d at 160. In fact, Arias’s conduct – threatening a potential witness whom he believed had cooperated in an investigation against him – represents a *textbook* example of obstruction of justice. *See United States v. Archer*, 671 F.3d 149, 166 (2d Cir. 2011) (observing that “[a]n intent to deter cooperation with the government” constitutes an obstruction of justice). As such, it falls well within the range of conduct that warrants the enhancement. *See id.*; *see also United States v. Agudelo*, 414 F.3d 345, 351 (2d Cir. 2005) (noting that enhancement “applies where the targeted co-defendant or witness is still only a *potential* co-defendant or witness.” (emphasis added) (internal quotation marks omitted)).

## **II. The District Court Did Not Err in Declining to Apply the Acceptance-of-Responsibility Adjustment.**

Arias next contends that (i) the district court erred in stating that it was “required” to decline to apply the adjustment pursuant to U.S.S.G. § 3E1.1(a), which permits a reduction in a defendant’s offense level where he has

affirmatively shouldered responsibility for his conduct; and (ii) Arias's "extraordinary" acceptance of responsibility warranted the adjustment. Arias Br. at 25–28. We are not persuaded.

To obtain an adjustment under section 3E1.1(a), a defendant bears the burden of "clearly demonstrat[ing]" his acceptance of responsibility. *Id.* But where, as here, the sentencing judge has imposed an enhancement for obstruction of justice under section 3C1.1, that "ordinarily indicates that the defendant has *not* accepted responsibility for his criminal conduct." U.S.S.G. § 3E1.1, app. n.4 (emphasis added). Accordingly, only in "extraordinary cases" will adjustments under both provisions apply. *United States v. Castellanos*, 355 F.3d 56, 60 (2d Cir. 2003) (internal quotation marks omitted).

We ordinarily review a district court's decision to grant or deny acceptance credit for clear error. *See United States v. Sewell*, 252 F.3d 647, 652 (2d Cir. 2001). But because Arias failed to challenge the district court's decision below, we review only for plain error. To meet the plain error standard, a defendant must show that: "(1) there is an error; (2) the error is clear or obvious, rather than subject to reasonable dispute; (3) the error affected the [defendant's] substantial rights[;] . . . and (4) the error seriously affects the fairness, integrity, or public reputation of

judicial proceedings.” *United States v. Marcus*, 560 U.S. 258, 262 (2010) (alterations accepted and internal quotation marks omitted).

Here, Arias failed to establish that the district court erred – much less plainly erred – in declining to apply the downward adjustment for acceptance of responsibility. *First*, in context, it is clear that the district court declined to apply the adjustment not because it was “required” to do so but because it concluded that doing so was inappropriate given *both* the application of the obstruction-of-justice enhancement *and* the fact that Arias had not made any argument as to what made his case “extraordinary.” *Castellanos*, 355 F.3d at 60 (“[Defendant] has not alleged any such extraordinary cases.”). Indeed, when the district court explained its sentencing calculation to Arias and his counsel, neither raised any extraordinary circumstances that would warrant the acceptance-of-responsibility adjustment. *See* Sp. App’x at 11–12.

*Second*, even if the district court had erred in its understanding of the Guidelines, Arias has *still* failed to establish that his case is extraordinary; consequently, on plain error review, he cannot demonstrate that the district court’s alleged mistake affected his “substantial rights” or impugned the “fairness, integrity, or public reputation of judicial proceedings,” because the district court

would have declined to apply the downward adjustment *regardless*. *Marcus*, 560 U.S. at 262 (internal quotation marks omitted). Even now, the only arguments raised by Arias to support the contention that his case was “extraordinary” are, at bottom, challenges to the application of the *obstruction-of-justice* enhancement. Arias Br. at 28. But we (and the district court) have already concluded that those arguments are meritless. And any other reason weighing in favor of the downward adjustment for acceptance of responsibility – such as Arias’s guilty plea or later apology – neither “entitle[s]” him to the reduction “as a matter of right,” nor clearly “outweigh[s]” his conduct “inconsistent with . . . acceptance of responsibility.” *United States v. Hirsch*, 239 F.3d 221, 226 (2d Cir. 2001) (internal quotation marks omitted). We thus see no basis to conclude that the district court’s decision, or its reasoning in reaching that decision, constituted “clear or obvious” error. *Marcus*, 560 U.S. at 262 (internal quotation marks omitted).

### **III. Arias’s Sentence is Substantively Reasonable.**

Finally, Arias challenges the substantive reasonableness of his 115 months’ prison sentence – twenty months lower than the bottom of his Guidelines range. See Arias Br. at 30. While admitting that it may “be difficult to find that a below-Guidelines sentence is unreasonable,” Arias contends that the district court failed to take adequate account of (i) his assorted mitigating characteristics, including his

“horrific childhood” and “admirable work history,” and (ii) the sentencing disparities that exist among similarly situated defendants in the Southern District of New York. *Id.* at 29–32. These arguments are without merit.

We review the substantive reasonableness of a district court’s sentence under a deferential “abuse-of-discretion” standard, setting aside a district court’s determination “only in exceptional cases where the trial court’s decision cannot be located within the range of permissible decisions.” *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (*en banc*) (internal quotation marks omitted). A defendant arguing substantive unreasonableness “bears a heavy burden because [appellate] review of a sentence for substantive reasonableness is particularly deferential.” *United States v. Broxmeyer*, 699 F.3d 265, 289 (2d Cir. 2012). Accordingly, an appellate court will only overturn a sentence that is “shockingly high, shockingly low, or otherwise unsupportable as a matter of law.” *United States v. Rigas*, 583 F.3d 108, 123 (2d Cir. 2009).

The district court did not abuse its discretion in imposing a term of 115 months’ imprisonment. For starters, the record reflects that the district court expressly considered the mitigating factors presented in counsel’s sentencing submission and the Probation Office’s presentence investigation report (“PSR”).

See Sp. App'x at 3 (identifying materials received by the court, including mitigation report and attached letters); *id.* at 34 (“I have considered all the materials. . . . I’ve considered each of the factors under [s]ection 3553(a).”). The court nevertheless concluded that these factors were outweighed by numerous aggravating factors that counseled against applying a lower sentence, and which distinguished Arias’s crime from those of other defendants in the Southern District of New York. These included the fact that (i) Arias trafficked as many as seven firearms and “additional ammunition magazines” across international lines; (ii) his “criminal history” was checkered, as he had previously been convicted of a state drug offense and of entering the United States illegally; and (iii) he had threatened to kill a witness. *Id.* at 32–35. Although Arias may ultimately disagree with the district court’s weighing of these factors, we have long recognized that defendants – and appellate courts – may not “second guess the weight (or lack thereof) that the [sentencing] judge accorded to a given factor or to a specific argument made pursuant to that factor.” *United States v. Pope*, 554 F.3d 240, 247 (2d Cir. 2009) (internal quotation marks omitted).

Having carefully considered the record below, we are convinced that the district court acted well within its discretion when it concluded that these factors

outweighed any mitigating ones. *See Broxmeyer*, 699 F.3d at 289. And given the seriousness of Arias’s conduct, its surrounding circumstances, and Arias’s criminal history, we conclude that his below-Guidelines sentence was neither “shockingly high” nor “otherwise unsupportable as a matter of law.” *Rigas*, 583 F.3d at 122–23.

\* \* \*

We have considered Arias’s remaining arguments and find them to be without merit. Accordingly, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk of Court