

In the
United States Court of Appeals
For the Seventh Circuit

No. 22-1793

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MARIO OLIVAS BAILON,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 20 CR 601 — **Mary M. Rowland**, *Judge*.

ARGUED JANUARY 6, 2023 — DECIDED FEBRUARY 23, 2023

Before EASTERBROOK, ST. EVE, and KIRSCH, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Mario Olivas Bailon accompanied a friend on a road trip from Aurora, Illinois to Chicago for a drug transaction. At the meetup point, agents from the Drug Enforcement Agency (“DEA”) arrested the individuals involved in the drug deal, including Olivas Bailon, and searched the vehicle, finding a .38-caliber pistol on the floor of the car. Olivas Bailon was charged with being an alien unlawfully in the United States in possession of a firearm in

violation of 18 U.S.C. § 922(g)(5). He filed a motion to suppress the incriminating statements he made to DEA agents, which the district court granted in part and denied in part. The parties consented to a bench trial, and the district court found Olivas Bailon guilty. He now appeals the district court's partial denial of his motion to suppress.

I. Background

In 2020, Mario Olivas Bailon was an unauthorized immigrant residing in Aurora. On August 6, he accompanied a friend named Ricardo Aguila on a road trip from Aurora to Chicago, where Aguila had arranged to purchase seventeen kilograms of cocaine. Unbeknownst to them, the individual with whom Aguila arranged to meet was a confidential source for the DEA.

After arriving at the agreed-upon location, Aguila showed the confidential source cash for the drugs. DEA agents then arrested Aguila and Olivas Bailon and searched Aguila's car, recovering a .38-caliber pistol from the floor in front of the rear passenger seat. The agents placed Olivas Bailon inside a DEA van, and DEA Special Agent Gildein began questioning Olivas Bailon about his involvement in the drug transaction and about the gun. Although the conversation was constrained by Olivas Bailon's limited English skills, Olivas Bailon explained Aguila, who was his friend, had asked him to join him on a drive to Chicago. Olivas Bailon further admitted he owned the handgun found inside Aguila's car. Gildein did not share the contents of this conversation with any other DEA agent.

The agents transported Olivas Bailon to the Chicago DEA office and placed him in an interrogation room. Three DEA

officials—Boone, Glomb, and Vazquez—then questioned him. Although a Spanish interpreter was not in the room, Vazquez spoke Spanish and translated for Olivas Bailon. At the beginning of the interview, Olivas Bailon informed the agents that he had a limited understanding of English but that he could speak and read Spanish. The agents asked Olivas Bailon to read an “Advice of Rights” form written in Spanish, which stated:

You have the right to remain silent. Anything you say may be used against you. Before continuing or answering any question, you have the right to consult an attorney. You have the right to have an attorney present during an interrogation. If you can’t pay for an attorney, and if you want one, one will appear before you answer any questions.

After Olivas Bailon read the form aloud, Vazquez asked him, “Do you understand?” In response, Olivas Bailon initialed next to each of his rights. He also signed the form on the bottom of the page under the section titled “Waiver of Rights,” although he did not read that portion of the document aloud. That section stated that Olivas Bailon had read the rights laid out above, that he understood those rights, and that he was prepared to answer questions without having an attorney present. Vazquez and Glomb signed their names on the form as witnesses.

During the interview, Olivas Bailon admitted to being in the country without authorization. He also told the officers that he had seven children and that his wife and kids were at his home. He consented to the officers searching his home for drugs and other contraband, and he consented to a search of his phone. The agents asked questions about Aguila’s drug

transaction and the gun recovered from the floor of the car, but Olivas Bailon repeatedly denied knowing anything. At one point, the agents asked him if he “want[ed] to go back to Mexico or ... tell [them] the truth.” They stated that they were going to “call[] CBP and ICE” and that he was “going back to Mexico, leaving behind [his] seven kids.”

The agents then told Olivas Bailon that they would test the gun for fingerprints. After that, he admitted that he had touched the gun and knew it was in the car. He explained that, earlier that week, he had gone to a firing range with another friend. That friend had left the gun in Olivas Bailon’s van, and Olivas Bailon decided to bring the gun when Aguila told him that they were going to pick up some money. The agents found a photo of a gun on Olivas Bailon’s cell phone and questioned him about it. He stated that the gun was a .38 caliber and that he had placed the gun on the floor of Aguila’s car earlier that day.

Olivas Bailon was charged with being an alien unlawfully in the United States in possession of a firearm in violation of 18 U.S.C. § 922(g)(5). He moved to suppress the statements he made in the DEA van and the DEA office, arguing that the statements were made in violation of his *Miranda* rights. The district court granted the motion in part and denied the motion in part, excluding the statements made in the van but not those made in the DEA office. The court found that his conduct during the interrogation suggested that his *Miranda* waiver was voluntary and that this finding was not undermined by the agents’ references to his children or his lack of formal education. It further found that he knowingly and intelligently waived his rights because, prior to doing so, he read a written *Miranda* form in his native language and his

conduct suggested that he understood the rights summarized in the document.

Olivas Bailon subsequently requested a bench trial, and the government agreed. The district court found him guilty and sentenced him to twenty-one months of imprisonment, time served, and three years of supervised release. Olivas Bailon appealed. He has since been released from the custody of the Bureau of Prisons and removed to Mexico.¹

II. Analysis

“We review a district court’s denial of a motion to suppress under a dual standard, assessing conclusions of law *de novo* and evaluating factual findings for clear error with special deference granted to the court’s credibility determinations.” *United States v. Outland*, 993 F.3d 1017, 1021 (7th Cir. 2021) (citation omitted). Olivas Bailon argues that the district court violated his *Miranda* rights when it admitted the

¹ Olivas Bailon’s removal does not affect his standing to appeal his conviction. To meet the Article III standing requirements, “[a] convicted person who already has served his sentence must point to ‘some concrete and continuing injury,’ i.e., ‘some “collateral consequence” of the conviction.’” *United States v. Meza-Rodriguez*, 798 F.3d 664, 667 (7th Cir. 2015) (quoting *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). Olivas Bailon meets this requirement because his § 922(g)(5) conviction makes him permanently inadmissible to the United States. *See id.*; *see also* 8 U.S.C. § 1182(a)(9)(A)(ii)(II) (stating that noncitizens convicted of an aggravated felony are permanently barred from reentering the United States); 8 U.S.C. § 1101(a)(43)(E)(ii) (categorizing § 922(g)(5) as an aggravated felony). Separately, his appeal is not moot because he remains on supervised release. *See United States v. Garcia-Garcia*, 633 F.3d 608, 612 (7th Cir. 2011).

statements he made to agents during his interrogation at the Chicago DEA office.²

“[B]efore law enforcement officers can interrogate a suspect in custody, they must inform the suspect of his *Miranda* rights.” *United States v. Thurman*, 889 F.3d 356, 364 (7th Cir. 2018); *see also Miranda v. Arizona*, 384 U.S. 436, 475 (1966). The government must prove, by a preponderance of the evidence, that the defendant made a voluntary, knowing, and intelligent waiver. *United States v. Quiroz*, 874 F.3d 562, 567 (7th Cir. 2017). Accordingly, a defendant’s waiver of his *Miranda* rights is valid if it is (1) “‘the product of a free and deliberate choice rather than intimidation, coercion, or deception’ and is [(2)] made knowingly and intelligently, ‘with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.’” *Outland*, 993 F.3d at 1021 (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)). Evaluating the totality of the circumstances, “we look at factors such as the defendant’s background and conduct, the duration and conditions of the interview and detention, the physical and mental condition of the defendant, the attitude of the law enforcement officials, and whether law enforcement

² Challenges to the admission of a defendant’s post-arrest statements typically present two “distinct and separate inquir[ies]”: (1) whether he knowingly, intelligently, and voluntarily waived his *Miranda* rights and (2) whether his statements were made voluntarily. *Outland*, 993 F.3d at 1021. In his motion to suppress, Olivas Bailon argued that he did not validly waive his *Miranda* rights. The district court ruled on the *Miranda* issue alone. Although Olivas Bailon seems to conflate the voluntariness of the statements and *Miranda* waiver analyses, his appeal focuses on the latter—namely, whether he knowingly, intelligently, and voluntarily waived his *Miranda* rights.

officers used coercive techniques, either psychological or physical.” *United States v. Shabaz*, 579 F.3d 815, 820 (7th Cir. 2009).

A. Knowing and Intelligent Waiver

The totality of the circumstances establishes that Olivas Bailon knowingly and intelligently waived his rights. He signed a *Miranda* waiver written in Spanish, his native language, which accurately and clearly outlined his rights under the law. The agents gave him the opportunity to read the form before they began questioning him, and he fluently read each of his rights aloud before initialing next to each line. *See Berghuis v. Thompson*, 560 U.S. 370, 385–86 (2010) (finding that the *Miranda* waiver was valid, in part, because the defendant “was given time to read the warnings”). The agents communicated with Olivas Bailon in Spanish, with one agent translating for the others. Olivas Bailon also signed the bottom portion of the document, titled “Waiver of Rights,” which stated that he had read and understood his rights and was prepared to answer questions without an attorney. Notably, the agents did not use any force or threats to coerce him to sign the waiver. *Id.* at 386 (finding that the defendant “d[id] not claim that police threatened or injured him” nor “that he was in any way fearful”). And he does not contend that he was intoxicated or otherwise impaired when he read and signed the form. *See United States v. Mercado*, 53 F.4th 1071, 1086 (7th Cir. 2022).

The record supports the district court’s determination that Olivas Bailon’s limited education and limited ability to speak and understand English did not affect his ability to understand his *Miranda* rights. The *Miranda* waiver was printed in Spanish, and one of the DEA agents spoke Spanish and

interpreted for the agents who did not. *See Carrion v. Butler*, 835 F.3d 764, 776 (7th Cir. 2016) (rejecting the defendant's argument that his statements were involuntary because an agent acted as a translator). Additionally, Olivas Bailon communicated intelligently in Spanish about the circumstances of his arrest. *See Quiroz*, 874 F.3d at 568 (finding that the defendant appeared to be "an intelligent individual" who "use[s] words and sentences that are entirely consistent with the intelligence a person would need to understand ... his *Miranda* rights").

Olivas Bailon's contention that his *Miranda* waiver was not valid because he did not know why he was arrested or the criminal charge for which he was being held fails. "The Constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege." *Colorado v. Spring*, 479 U.S. 564, 574 (1987). Accordingly, the government was not obligated to inform Olivas Bailon of the subject matter of the interrogation, and this lack of knowledge did not make his waiver invalid. *Id.* at 573 (upholding a *Miranda* waiver where the defendant was unaware of the crime about which he would be questioned).

Olivas Bailon further argues that his questioning in the van prior to receiving *Miranda* warnings undermined the validity of his waiver. He does not fully develop this argument or cite any authority supporting it. Nevertheless, we interpret Olivas Bailon as invoking the Supreme Court's decision in *Missouri v. Seibert*, 542 U.S. 600, 604 (2004), where the officers did not read the defendant *Miranda* warnings until after she had confessed. In *Seibert*, the divided Court set out two tests for determining whether a defendant's post-warning

confessions are tainted by his pre-warning questioning. *Id.* at 615, 621. The plurality stated that the critical question in such cases is “whether [the] *Miranda* warnings ... could be effective enough to accomplish their object.” *Id.* at 615. In contrast, Justice Kennedy set out an intent-based test, which asks whether the officers acted “deliberate[ly]” in employing the two-step interrogation method. *Id.* at 622.

Under either test, Olivas Bailon’s argument fails. There is no evidence in the record to support a finding that the agents deliberately withheld *Miranda* warnings to obtain a confession. Nor does the record support that his *Miranda* warnings were not “effective enough to accomplish their object.” The interrogations were separated in time, took place in two different locations, and involved different agents. Moreover, the questioning in the DEA van was brief, the language barrier between the agent and Olivas Bailon hindered meaningful communication, and the contents of the conversation were not disclosed to the agents who engaged in the interrogation at the DEA office. This questioning therefore did not impact the effectiveness of his *Miranda* warnings.

B. Voluntariness of the Waiver

The district court similarly did not err in determining that Olivas Bailon voluntarily waived his *Miranda* rights. As the district court noted, Olivas Bailon’s conduct during the interrogation established that he validly waived his rights. After signing the *Miranda* waiver written in his native language, he immediately began answering the agents’ questions. *See United States v. Lee*, 618 F.3d 667, 676 (7th Cir. 2010) (“Willingness to answer questions, even in the absence of a signed waiver, can be viewed as impliedly waiving one’s rights.”); *United States v. Smith*, 218 F.3d 777, 781 (7th Cir. 2000) (noting

that the defendant, after being read her rights, “immediately began talking to the agents ... and continued to do so for an hour”). He consented to the agents searching his phone and home and expressed willingness to cooperate in exchange for assistance with his case. *See, e.g., Quiroz*, 874 F.3d at 568 (holding that the defendant voluntarily waived his *Miranda* rights, in part, because he consented to a protective sweep of his property before the interview); *Thurman*, 889 F.3d at 364 (holding that the defendant impliedly waived his *Miranda* rights because he “chose to speak with the officers in the hope of obtaining leniency”). Additionally, Olivas Bailon showed independent thinking during the interview, occasionally denying the agents’ accusations and correcting their misunderstandings. *See Smith*, 218 F.3d at 782 (noting the defendant’s “independent thinking and exercise of free will”); *Quiroz*, 874 F.3d at 568 (finding that the defendant was “not a timid person in asserting his rights” (cleaned up)).

The circumstances of the interrogation further support the district court’s finding. Although there were three DEA agents inside the room, the atmosphere of the interrogation was “low key and informal.” *Thurman*, 889 F.3d at 365. The officers were polite and respectful, no weapons were drawn, and Olivas Bailon even laughed at times. The interview was conducted during the middle of the afternoon and lasted about an hour. *See Berghuis*, 560 U.S. at 386–87 (finding a valid *Miranda* waiver where a three-hour “interrogation was conducted in a standard-sized room in the middle of the afternoon”).

The record does not support Olivas Bailon’s arguments that the agents made certain threats during the interrogation that rendered his waiver involuntary. He claims that the

government made threats to his wife and children. Although the government is permitted to discuss a defendant's family, it is not permitted to lie about or threaten his family to coerce a waiver. See *Janusiak v. Cooper*, 937 F.3d 880, 891–92 (7th Cir. 2019); *Lentz v. Kennedy*, 967 F.3d 675, 691 (7th Cir. 2020). The district court's holding that the agents' statements regarding Olivas Bailon's family did not overbear his will was not clearly erroneous. Contrary to Olivas Bailon's representations, the agents never made any threats or promises regarding his family to induce a confession. In fact, the agents brought up his children and wife only a couple of times during the hour-long conversation. And when the agents did mention his family, they stated only true facts regarding the potential consequences of a conviction, for example, that he would be unable to see them if he were deported and unable to reenter the United States.

Olivas Bailon's additional argument that the agents' "threats to deport him" rendered his waiver involuntary similarly fails. To be sure, the agents stated on three occasions that they would call "Immigration" or that he would "go back to Mexico" if he did not tell the truth, but these statements made up a small portion of the conversation. Olivas Bailon continually denied owning the gun or knowing anything about the gun, even after the agents told him that he was "going back to Mexico." It was not until the agents informed Olivas Bailon that they would test the gun for fingerprints that he admitted touching the gun and bringing it on the road trip with Aguila.

Considering the totality of the circumstances, the district court did not clearly err in finding that Olivas Bailon's

conduct and statements during the interview establish that he voluntarily waived his *Miranda* rights.

III. Conclusion

The district court properly denied Olivas Bailon's motion to suppress his statements because he knowingly, intelligently, and voluntarily executed a valid waiver of his *Miranda* rights. For these reasons, the district court's ruling is

AFFIRMED.