PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1742

UNITED STATES OF AMERICA

v.

LUIS FIGUEROA,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 2:14-cr-00672-001)
District Judge: Honorable Julien X. Neals

Argued: December 2, 2025

Before: CHAGARES, Chief Judge, FREEMAN and
MASCOTT, Circuit Judges.

(Filed: August 25, 2026)

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OPINION OF THE COURT

CHAGARES, Chief Judge.

Following three successive indictments, the negotiation of a plea agreement, the entry and withdrawal of a guilty plea, and nearly eight years of pretrial delay, a jury in the District of

New Jersey convicted defendant Luis Figueroa of kidnapping, aggravated sexual abuse, use of and brandishing a firearm during a crime of violence, possession of a firearm by a felon, assault of a federal employee, and arson. Figueroa now appeals his judgment of conviction and sentence, arguing that the withdrawal of his guilty plea nullified the statute of limitations waiver in his plea agreement such that his brandishing and possession charges are untimely. For the reasons set forth below, we disagree.

We also address Figueroa's additional claims of error, including that the District Court incorrectly excluded "force" from the elements of kidnapping by "kidnap" under 18 U.S.C. § 1201(a), that the nearly eight years of pretrial delay violated his constitutional right to a speedy trial, and that the District Court improperly directed the jury that the alleged assault victim held federal employment for the purposes of 18 U.S.C. § 111(a)(1). We are not persuaded, however, that any error occurred or affected the outcome of Figueroa's trial.

For these reasons, we will affirm the District Court's judgment.

I.

Figueroa went on a revenge spree on June 6, 2014. Armed with a shotgun, a copy of the most recent protection order obtained against him by his ex-girlfriend ("Victim 1"), and a handwritten manifesto detailing his desire to make those who had wronged him "pay," he drove from his home in Bronx, New York, to Victim 1's apartment in Hazleton, Pennsylvania. Appendix ("App.") 1804. Victim 1 lived there with her two sisters, her niece, and the seven-year-old son she shared with Figueroa.

Once Figueroa arrived at Victim 1's apartment, he waited for her to open the door before attacking her — fracturing her eye socket with the butt of his shotgun, punching her repeatedly until she passed out multiple times, calling her profane names, and threatening to kill her and her loved ones. He then grabbed her arm and dragged her down the street before shoving her into the backseat of his car and placing the shotgun next to him. As he recklessly sped away, Figueroa again threatened to kill Victim 1 and forced her to perform oral sex on him.

Figueroa eventually drove across the state border into New Jersey and pulled into a rest stop area at the Kittatinny Point Visitor's Center (part of the Delaware Water Gap National Recreation Area). After parking the car, Figueroa forcibly raped Victim 1 in the backseat. Victim 1 managed to escape Figueroa once it was over by suggesting to him that he needed to dispose of the shotgun. She then fled in the car while he hid the gun in the nearby woods.

When Figueroa returned and realized that both Victim 1 and the car were gone, he set upon a nearby National Park Service ("NPS") maintenance worker ("Victim 2") who was blowing leaves in the Visitor's Center parking lot. Figueroa punched Victim 2 in the ribs, slammed his skull into a doorhandle, threatened to kill him, and forced him to give Figueroa the keys to his car. Figueroa then drove to a used car dealership owned by his former business partners who had recently served him an eviction notice for a car lot which he had sublet. There, Figueroa set fire to their office and departed.

He was later spotted by law enforcement as he crossed the George Washington Bridge and initiated a car chase that ended with his apprehension in New York.

A grand jury in the District of New Jersey consequently returned a six-count indictment ("First Indictment") on November 19, 2014, which charged Figueroa with: (1) kidnapping in violation of 18 U.S.C. § 1201(a)(1); (2) use of and brandishing a firearm during a crime of violence (kidnapping) in violation of 18 U.S.C. § 924(c)(1)(A)(ii); (3) possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1); (4) aggravated sexual abuse in violation of 18 U.S.C. §§ 2241(a)(1) and (a)(2); (5) assault of a federal employee in violation of 18 U.S.C. §§ 111(a)(1) and (b); and (6) malicious damage and destruction of property by fire in violation of 18 U.S.C. § 844(i).

The case was repeatedly continued for nearly four years while the parties engaged in plea negotiations and the District Court addressed Figueroa's competency, his attempted invocations of an insanity defense, his requests to change counsel, and his numerous pro se motions.[1] In April 2018, the parties entered into a plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) wherein Figueroa agreed to plead guilty to kidnapping, felon in possession, assault of a federal employee, and arson in exchange for the dismissal of the brandishing and aggravated sexual abuse charges. The parties further agreed to a binding sentence of 312 months of

[1] Although Figueroa was always represented by counsel, he occasionally attempted to file pro se motions or raise arguments of his own.

imprisonment and five years of supervised release. The District Court accepted the plea.

Figueroa moved pro se in July 2018 to withdraw his plea, claiming that he was innocent of kidnapping and assault of a federal employee, had been coerced into signing the plea agreement, and was misled by his attorney into believing that the Presentence Investigation Report would not reference the sexual assaults. His attorney consequently withdrew, and Figueroa continued to file similar motions, both pro se and through his new attorney, for the next sixteen months. Figueroa also filed multiple pro se motions to dismiss the indictment for speedy trial violations during this same time period, which the District Court struck. The Government eventually agreed that Figueroa should be permitted to withdraw his plea, and the District Court agreed. The court scheduled trial for June 2020.

The trial date was continued several times over two years pursuant to a series of standing orders suspending all trials on account of the COVID-19 pandemic and the parties' joint requests. During this time, the Government obtained a superseding indictment in September 2020 ("Second Indictment"), which charged Figueroa with: (1) kidnapping in violation of 18 U.S.C. § 1201(a)(1); (2) aggravated sexual abuse (vaginal rape) in violation of 18 U.S.C. §§ 2241(a)(1) and (a)(2); (3) aggravated sexual abuse (oral rape) in violation of 18 U.S.C. §§ 2241(a)(1) and (a)(2); (4) use of and brandishing a firearm during a crime of violence (aggravated sexual abuse – vaginal rape) in violation of 18 U.S.C. § 924(c)(1)(A)(ii); (5) use of and brandishing a firearm during a crime of violence (aggravated sexual abuse – oral rape) in violation of 18 U.S.C. § 924(c)(1)(A)(ii); (6) possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1); (7) assault of a federal employee in violation of 18 U.S.C. §§ 111(a)(1) and (b); and (8) malicious damage and destruction of property by fire in violation of 18 U.S.C. § 844(i). Figueroa's attorney responded by filing an omnibus motion, arguing, inter alia, that the aggravated sexual abuse (oral rape), brandishing, and felon in possession charges were time-barred and should be dismissed. The District Court declined to do so, finding that the statute of limitations had been tolled by a waiver provision in Figueroa's plea agreement. Figueroa also filed several additional pro se motions to dismiss for speedy trial violations during this time, which the District Court dismissed as improperly filed in light of his represented status.

Figueroa subsequently obtained a new attorney, who filed another omnibus motion, arguing, among other things, that: (1) the sexual abuse counts were multiplicitous; (2) the brandishing counts were multiplicitous; and (3) the District Court should hold a Speedy Trial Act hearing. The District Court dismissed the aggravated sexual abuse (oral rape) count and the brandishing a firearm during a crime of violence (aggravated sexual abuse – oral rape) count at the Government's request and thus found the multiplicity argument to be moot. The District Court further denied Figueroa's request for a Speedy Trial Act hearing, explaining that no underlying speedy trial motion had been filed.

The Government consequently obtained an amended superseding indictment in line with those decisions ("Third Indictment") in April 2022, charging Figueroa with: (1) kidnapping in violation of 18 U.S.C. § 1201(a)(1); (2) aggravated sexual abuse in violation of 18 U.S.C. §§ 2241(a)(1) and (a)(2); (3) use of and brandishing a firearm during a crime of violence (aggravated sexual abuse) in violation of 18 U.S.C. § 924(c)(1)(A)(ii); (4) possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1); (5) assault of a federal employee in violation of 18 U.S.C. §§ 111(a)(1) and (b); and (6) malicious damage and destruction of property by fire in violation of 18 U.S.C. § 844(i).

Jury selection began on April 25, 2022. Immediately thereafter, Figueroa pled guilty without a plea agreement to felon in possession and arson. Trial then proceeded as to the remaining counts. After the close of the Government's case, Figueroa moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29, arguing, among other things, that he should be acquitted of assault of a federal employee because Victim 2's position as a maintenance worker did not constitute federal employment within the meaning of 18 U.S.C. § 111(a)(1). The District Court reserved judgment on the motion.

The District Court then held a charge conference. Although the parties discussed the jury instructions for assault of a federal employee at length, they ultimately agreed that the District Court should instruct the jury that "[Victim 2] was a federal employee of the National Park Service" pending the court's decision on the Rule 29 motion. App. 1854. Figueroa also raised several pro se objections to the jury instructions, including to the omission of a "forcible" element from the definition of "kidnap" under 18 U.S.C. § 1201(a). App. 1866. Although the District Court did not initially note this pro se objection for the record, it later addressed it sua sponte, explaining that it did not believe that the Government was required to prove that the kidnapping was forcible. The

District Court then instructed the jury. The jury ultimately returned a guilty verdict on each of the remaining counts.

Following the verdict, the District Court denied the Rule 29 motion, explaining that Victim 2's position as an NPS maintenance worker legally constituted federal employment within the meaning of 18 U.S.C. § 111(a)(1). The District Court sentenced Figueroa to 516 months of imprisonment, followed by five years of supervised release. Figueroa timely appealed.[2]

II.[3]

Figueroa raises four arguments on appeal: (1) that his brandishing and felon in possession charges were untimely under the statute of limitations; (2) that the jury instructions improperly excluded a "forcible" element from the definition of kidnapping by "kidnap" under 18 U.S.C. § 1201(a); (3) that the almost eight-year delay between his arrest and trial violated his Sixth Amendment right to a speedy trial; and (4) that the District Court improperly directed the jury that Victim 2 was a federal employee for the purposes of 18 U.S.C. § 111(a)(1). We consider each argument in turn.

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[2] The District Court entered an amended judgment on June 12, 2024, which does not affect any of the issues on appeal.

[3] The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

A.

Figueroa first challenges his convictions for brandishing a firearm during a crime of violence and possession of a firearm by a felon as untimely under the statute of limitations. Because Figueroa previously moved to dismiss these charges on statute of limitations grounds, we review de novo. United States v. Schneider, 801 F.3d 186, 195 (3d Cir. 2015). In general, "a statute-of-limitations defense becomes part of a case only if the defendant puts the defense in issue." Musacchio v. United States, 577 U.S. 237, 248 (2016). If he does, "the Government then bears the burden of establishing compliance with the statute of limitations by presenting evidence that the crime was committed within the limitations period or by establishing an exception to the limitations period." Id. (emphasis omitted).

There is no dispute here that the operative brandishing and possession charges were first brought in the Second Indictment in September 2020 — more than a year outside of the applicable statute of limitations.[4] The Government, however, contends that these charges were nevertheless timely because Figueroa's attack on his possession charge is barred by his unconditional guilty plea to the same and his 2018 plea agreement contained a waiver, which tolled the limitations period.[5] We agree on both grounds.

[4] The general statute of limitations for non-capital federal criminal offenses is five years and would have expired on June 6, 2019. See 18 U.S.C. § 3282(a).

[5] The Government argues in the alternative that the charges are timely because the Second Indictment did not substantially

1.

As an initial matter, we are persuaded that Figueroa's unconditional guilty plea to his felon in possession charge during trial now bars his statute of limitations attack on that conviction. This Court has not yet had occasion to consider this issue explicitly, but has recognized that "[i]t is well established that a criminal defendant's unconditional, knowing and voluntary plea of guilty waives all non-jurisdictional issues." Washington v. Sobina, 475 F.3d 162, 165 (3d Cir. 2007). It is likewise equally well established that the federal statute of limitations "provides a nonjurisdictional defense, not a jurisdictional limit." Musacchio, 577 U.S. at 248. We therefore hold that an unconditional guilty plea waives appellate review of an otherwise preserved statute of limitations challenge.[6] As a result, we decline to consider the

amend the versions of those charges brought in the First Indictment, which was timely filed in 2014. Because we conclude that Figueroa has waived his challenge to his felon in possession charge and his brandishing charge was timely due to the statute of limitations waiver in his plea agreement, we need not and do not address that argument.

[6] This conclusion is consistent with the decision of nearly every other Court of Appeals to have addressed this issue. See, e.g., United States v. Sanfilippo, 91 F.4th 1380, 1383 (11th Cir. 2024); United States v. Baca-Arias, 590 F. App'x 221, 222 (4th Cir. 2015) (per curiam); United States v. Hsu, 669 F.3d 112, 117–18 (2d Cir. 2012); United States v. Mendez-Santana, 645 F.3d 822, 829 (6th Cir. 2011); United States v. Hawkinson, 210 F. App'x 527, 529 (7th Cir. 2006); United States v. Soriano-Hernandez, 310 F.3d 1099, 1103–04 (8th Cir. 2002); United States v. Littlefield, 105 F.3d 527, 528 (9th Cir. 1997);

merits of Figueroa's statute of limitations attack on his felon in possession conviction.

2.

The Government next contends that Figueroa's remaining statute of limitations challenge to his brandishing conviction must fail because the statute of limitations was tolled by a waiver in his 2018 plea agreement. That waiver states:

> in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, LUIS FIGUEROA agrees that any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by LUIS FIGUEROA may be commenced against him, notwithstanding the expiration of the limitations period after LUIS FIGUEROA signs the

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Acevedo-Ramos v. United States, 961 F.2d 305, 307–09 (1st Cir. 1992). But see United States v. Cooper, 956 F.2d 960, 961–62 (10th Cir. 1992) (holding, pre-Musacchio, that the statute of limitations is a jurisdictional bar to prosecution which can only be waived by express agreement); United States v. Broome, 628 F.2d 403, 404–05 (5th Cir. 1980) (per curiam) (holding, pre-Musacchio, that while a nolo contendere plea waives all non-jurisdictional challenges, it permits a defendant to argue that "the statute of limitations bars prosecution").

agreement.

App. 70. Figueroa now argues, however, that the waiver is no longer binding because this Court set forth a general rule in United States v. Ciavarella, 716 F.3d 705 (3d Cir. 2013) that statute of limitations waivers contained in plea agreements are unenforceable where, as here, the underlying plea is later withdrawn. This supposedly "accords with the general principle that plea agreements are void if a party withdraws." Figueroa Br. 34. Because his entire plea agreement, including his statute of limitations waiver, is thus purportedly "null[]" pursuant to Ciavarella, Figueroa claims that we must vacate his brandishing conviction as time-barred. Figueroa Br. 33.

We do not read our opinion in Ciavarella to establish so broad a rule. In that case, the defendant's statute of limitations waiver set forth in the plea agreement applied only if he "successfully vacates or sets aside any conviction or sentence of incarceration imposed pursuant to this plea agreement." Ciavarella, 716 F.3d at 733 (emphasis added). We relied heavily on that language in finding the waiver inapplicable, explaining that while it "clearly contemplates a conviction that was achieved *due to* that plea agreement . . . Ciavarella's conviction . . . was achieved not as a result of the plea agreement, as Ciavarella withdrew his plea and proceeded to trial, but as a result of the jury's verdict." Id. at 734. We further noted that because Ciavarella's Rule 11(c)(1)(C) plea agreement contained a provision which allowed the parties to withdraw from the agreement if the District Court rejected the stipulated sentence, "even if we found the agreement regarding the statute-of-limitations waiver to include this type of situation, the waiver was nullified by the [District] Court's rejection of, and the parties' withdrawal from, the agreement."

Id. Thus, far from establishing a general principle that all plea agreements and statute of limitations waivers are "automatically invalidate[d]" once a defendant withdraws his guilty plea, Figueroa Br. 36, we simply concluded that based on the language of his particular plea agreement and the parties' deliberate withdrawal from the same, "Ciavarella did not waive his statute-of-limitations defense," Ciavarella, 716 F.3d at 734.[7]

In any event, this case is readily distinguishable from Ciavarella. Figueroa's statute of limitations waiver is broadly worded unlike the waiver in Ciavarella, applying "in the event that a guilty plea in this matter is not entered for any reason," including a withdrawal of the plea. App. 70 (emphasis added).

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[7] A rule automatically invalidating statute of limitations waivers set forth in plea agreements upon the defendant's withdrawal of his underlying plea would also make little sense in light of our previous acknowledgment that:

> the government may foreclose [the possibility that defendants will strategically delay withdrawing their pleas to run out the statute of limitations on dismissed charges] by including in future plea agreements a clause that requires the defendant to waive the statute of limitations defense as to dismissed counts if the defendant, after the period of limitations has expired on the original charges, withdraws or challenges the guilty plea.

United States v. Gilchrist, 215 F.3d 333, 339 (3d Cir. 2000).

And while Figueroa urges otherwise, the District Court did not invalidate the plea agreement and statute of limitations waiver by permitting him to withdraw his plea. Although Figueroa's Rule 11(c)(1)(C) plea agreement, like Ciavarella's, contained a provision that permitted the parties to withdraw from the plea agreement if "the Court at any time reject[s] the plea . . . or act[s] contrary to its terms," the District Court here accepted Figueroa's plea. App. 70. To the extent that Figueroa's withdrawal of his plea can be considered "contrary" to the terms of the plea agreement, it was unilaterally initiated by him — not the District Court. App. 70. The District Court's permission did not transform Figueroa's conduct into its own. And even if it did, there is no indication that either party ever exercised its consequent right to withdraw from the plea agreement.

Because we have no reason to conclude that the statute of limitations waiver did not survive the withdrawal of Figueroa's guilty plea, we hold that it remains enforceable. We therefore will not disturb Figueroa's brandishing conviction on this ground.[8]

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[8] Figueroa further argues that even if his statute of limitations waiver remains valid, we should decline to enforce it because he did not knowingly and voluntarily enter into the plea agreement, and it would be unfair to selectively enforce its terms only against him. But the record shows that Figueroa knew exactly what the plea agreement involved and willingly chose to enter into it. And tolling the statute of limitations during the pendency of the plea agreement (as the parties agreed) does not prejudice Figueroa — it simply puts both parties back into the position they were in prior to signing the agreement and prevents Figueroa from benefitting from his

B.

Figueroa next challenges his kidnapping conviction pursuant to 18 U.S.C. § 1201(a)(1), claiming that the District Court erred by omitting a "forcible" element from the jury instructions on that count.[9] Title 18 of the United States Code, section 1201(a) provides, in relevant part, that "[w]hoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person . . . shall be punished by imprisonment for any term of years or for life." Each of these methods is a specific factual means of violating the statute. See United States v. Gillis, 938 F.3d 1181, 1203–05 (11th Cir. 2019). The Government charged Figueroa with committing kidnapping by three of these means: (1) kidnap; (2) abduction; and (3) carrying away. The jury instructions mirrored this and further defined "'kidnap'" as "to unlawfully hold, keep, detain, and confine a person against her will." App. 1904.

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decision to renege. See United States v. Erwin, 765 F.3d 219, 230–31 (3d Cir. 2014).

[9] The parties dispute the standard of review that applies to this issue. Although Figueroa acknowledges that his attorney did not raise this issue during the charge conference, he nevertheless argues that our review should be plenary because he raised the issue pro se and the District Court later addressed it sua sponte. The Government, however, urges us to apply plain error review because Figueroa's counsel agreed to the instruction. We will assume without deciding that Figueroa is correct and thus exercise plenary review. See United States v. Smukler, 991 F.3d 472, 482 (3d Cir. 2021).

Figueroa suggests that this was error because the specific means of "kidnap," as opposed to abducting or carrying away, refers to the common-law offense of kidnapping — that is, "the crime of forcibly abducting a person." Kidnapping, Black's Law Dictionary (12th ed. 2024) (emphasis added). Because the jury instructions' definition of "kidnap" was thus missing the crucial element of force, according to Figueroa, his § 1201(a)(1) conviction must be vacated.

We will assume without deciding that Figueroa is correct and that kidnapping by "kidnap" under § 1201(a) requires the use of force. Even so, the District Court's failure to include such an element in its jury instructions was harmless error that does not merit vacating Figueroa's § 1201(a)(1) conviction. See Neder v. United States, 527 U.S. 1, 15 (1999) ("[T]he omission of an element is an error that is subject to harmless-error analysis."). The Government introduced evidence through multiple witnesses that upon showing up to Victim 1's apartment on June 6, 2014, Figueroa brutally attacked her, shattering her eye socket with the butt of his shotgun and "punching [her] nonstop" until she passed out multiple times. App. 1084. He then "grabbed [Victim 1] by the arm" while still holding the shotgun in his other hand, dragged her to his car as she struggled to break free, told her to "'[g]et in, bitch,'" and pushed her into the backseat before speeding away. App. 1087, 1097. Given this overwhelming and uncontroverted evidence of force, we easily conclude "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." Neder, 527 U.S. at 15 (quoting Chapman v. California, 386 U.S. 18, 24 (1967)). Any District Court error in not including force in the definition of kidnapping by "kidnap" pursuant to 18 U.S.C. § 1201(a) was therefore harmless.

C.

Figueroa further attacks his conviction on all counts, contending that the nearly eight-year delay between his arrest and trial was "extraordinarily long" and violated his constitutional right to a speedy trial.[10] Figueroa Br. 26. Because Figueroa's attorneys failed to raise this issue before the District Court,[11] we review only for plain error.[12] United

[10] Notwithstanding his broad challenge to "all counts," Figueroa Br. 53, Figueroa's unconditional guilty plea to the arson and felon in possession counts waived any constitutional speedy trial claim he might have with respect to those convictions, see Washington, 475 F.3d at 166 ("[T]he right to a speedy trial is non-jurisdictional, and is therefore waived by an unconditional and voluntary guilty plea.").

[11] Although Figueroa attempted to raise this issue several times pro se, the District Court declined to rule on it because Figueroa was represented by counsel.

[12] Under ordinary circumstances, a defendant who fails to raise a constitutional speedy trial argument prior to trial is barred from receiving appellate review unless he can demonstrate "good cause" for us to consider it. See Fed. R. Crim. P. 12(b)(3)(A)(iii), (c)(3); see also United States v. Sok, 115 F.4th 251, 259 (3d Cir. 2024) ("Rule 12's good-cause standard of review trumps Rule 52(b)'s plain-error standard for issues that must be raised before trial under Rule 12."). The Government, however, forfeited entitlement to the application of the "good cause" standard here by failing to raise it in its opening brief,

States v. Shaw, 891 F.3d 441, 454 (3d Cir. 2018). Under that standard, the defendant bears the burden of proving: (1) an error; (2) which is plain; and (3) which affects his or her substantial rights. Greer v. United States, 593 U.S. 503, 507–08 (2021). If all three elements are met, we may grant relief so long as "the error had a serious effect on the fairness, integrity or public reputation of judicial proceedings." Id. at 508 (quotation marks omitted).

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. In considering the merits of a defendant's constitutional speedy trial challenge, we apply the factors set forth by the Supreme Court in Barker v. Wingo, 407 U.S. 514 (1972). These include: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his speedy trial right; and (4) the prejudice to the defendant. Id. at 530. No single factor is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." Id. at 533. Rather, we must "engage in a difficult and sensitive balancing process" and consider the factors "together with such other circumstances as may be relevant." Id. If we conclude that "a defendant's right to a speedy trial has been violated, the indictment must be dismissed." United States v. Battis, 589 F.3d 673, 678 (3d Cir. 2009).

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instead raising it for the first time in response to a letter submitted by Figueroa pursuant to Federal Rule of Appellate Procedure 28(j). See Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist., 877 F.3d 136, 145–47 (3d Cir. 2017). We will therefore apply plain error review.

The first Barker factor — the length of the delay — "is to some extent a triggering mechanism." 407 U.S. at 530. Unless the defendant demonstrates that "there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." Id. While this is ordinarily a fact-intensive inquiry, id. at 530–31, here, the Government concedes that the almost eight-year delay between Figueroa's arrest and trial is sufficiently extensive.

We agree and pause to note that we are deeply troubled by the extent of the delay. See United States v. Velazquez, 749 F.3d 161, 174 (3d Cir. 2014) (noting that a delay of as little as fourteen months is ordinarily sufficient to trigger a Barker analysis). Although we note the intervening circumstances of the pandemic years and Figueroa's contributions to the delay of the trial date, a nearly eight-year lag is especially notable and "extraordinary," particularly where, as here, the defendant was incarcerated pending trial. See Doggett v. United States, 505 U.S. 647, 652, 654 (1992). Because this delay thus "clearly suffices to trigger the speedy trial enquiry," id. at 652, the burden consequently shifts to the Government to justify the delay, Velazquez, 749 F.3d at 174.

The second Barker factor is "[t]he flag all litigants seek to capture . . . the reason for delay." United States v. Loud Hawk, 474 U.S. 302, 315 (1986). The Supreme Court has instructed that in considering this factor, "different weights should be assigned to different reasons." Barker, 407 U.S. at 531. For instance, while a "deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government[,] [a] more neutral reason such as negligence or overcrowded courts should be weighted less heavily," and "a valid reason, such as a missing witness, should serve to justify appropriate delay." Id. Any "'delay caused by the defense weighs against the defendant,' including 'delay caused by the defendant's counsel.'" Battis, 589 F.3d at 679–80 (quoting Vermont v. Brillon, 556 U.S. 81, 90–91 (2009)).

The delay in this case appears predominantly attributable to Figueroa or to "valid reason[s]" such as the COVID-19 pandemic which "justify appropriate delay." See Barker, 407 U.S. at 531. In the nearly four years between Figueroa's arrest in 2014 and his initial guilty plea in 2018, the District Court granted twenty continuances — each of which was jointly requested to permit defense counsel time to prepare properly for the case, enable Figueroa to be evaluated by a psychiatrist to establish competency and the availability of an insanity defense,[13] or allow the parties to engage in plea negotiations.[14] And while the District Court further continued trial for nearly 2 ½ years after Figueroa withdrew his guilty plea in 2019, each of those continuances was likewise jointly requested to permit Figueroa's attorneys additional time to

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[13] These evaluations found strong evidence of malingering and Figueroa was deemed competent to stand trial.

[14] Figueroa urges us to look beyond the stated reasons for the continuances, suggesting that this delay was in fact caused by the Government and District Court's need to prepare for another trial during that period. But while he is correct that the District Judge presided over a four-month trial in 2016, Figueroa has provided no evidence to indicate that the continuances — which were jointly requested by his attorney — were entered for that reason, rather than their stated purposes, and we will not engage in such speculation.

prepare for a complex and lengthy trial,[15] consider an insanity defense, or file additional pre-trial motions, or was issued sua sponte while regular courtroom operations were intermittently paused between March 2020 and January 2022 on account of the COVID-19 pandemic. Thus, while some of these delays may well have encompassed "issues like scheduling, the government's delay in responding to motions, [or] the government's efforts to correct errors by superseding indictments," Figueroa Br. 58, the majority of this time is attributable to continuances which were requested, at least jointly, by Figueroa for reasons that overwhelmingly favored him. Those periods consequently weigh against Figueroa. See Brillon, 556 U.S. at 92–93.

As for the COVID-19 continuances, such delays appear to be "valid" and "justif[iable]" in light of the extenuating circumstances caused by a global pandemic and the consequent suspension of all jury trials within the District of New Jersey. See Barker, 407 U.S. at 531. We will treat pandemic-related delays as favoring neither side.[16]

Figueroa can therefore rely, at best, only upon the

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[15] Figueroa changed counsel several times, necessitating time for new counsel to get up to speed each time.

[16] This approach accords with that of several of our sister Courts of Appeals. See, e.g., United States v. Huertas, 148 F.4th 1, 28 n.24 (1st Cir. 2025); United States v. Gordon, 93 F.4th 294, 307 (5th Cir. 2024); United States v. Allen, 86 F.4th 295, 305 (6th Cir. 2023); United States v. Pair, 84 F.4th 577, 589 (4th Cir. 2023); United States v. Snyder, 71 F.4th 555, 578 (7th Cir. 2023), rev'd on other grounds, 603 U.S. 1 (2024); United States v. Keith, 61 F.4th 839, 853 (10th Cir. 2023).

sixteen months between when he first sought to withdraw his plea in late July 2018, and when the District Court finally permitted him to do so in December 2019. Although Figueroa was adjudged guilty during this time, the only continuance entered was jointly requested to permit the Government to hire a doctor to examine Figueroa in response to his claim that his guilty plea was the result of mental illness. That continuance was not entered until November 2019 — more than a year after Figueroa filed his initial pro se withdrawal motion — and the Government has provided no explanation for why this period should not be considered to weigh against it. Nevertheless, absent any suggestion of deliberate gamesmanship, this delay counts, at most, as "negligence" under the Barker standards, and we will accord it relatively little weight. 407 U.S. at 531. And because the bulk of the delay is still primarily attributable to Figueroa, we will weigh this factor in the Government's favor.

The third Barker factor considers "the defendant's responsibility to assert his right." 407 U.S. at 531. In analyzing this factor, the Supreme Court has explained that a "defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right" as "[t]he more serious the deprivation, the more likely the defendant is to complain." Id. at 531–32. A "failure to assert the right," including through proper channels, will therefore "make it difficult for a defendant to prove that he was denied a speedy trial." Id. at 532; accord Hakeem v. Breyer, 990 F.2d 750, 765–66 (3d Cir. 1993) (explaining that for a represented defendant to "tip the *Barker* scales significantly in his favor on the factor of assertion of the right," he should point to a "formal motion . . . made to the trial court," "notice given to the prosecution," or "some evidence of direct instruction to counsel to assert the right at a time when formal assertion would have some chance of success").

Figueroa's attorneys never formally filed a speedy trial motion.[17] But Figueroa did so pro se on several occasions. These pro se motions might ordinarily "indicate that [Figueroa] was concerned that his trial happen promptly, and provide some evidence that his right to a speedy trial was being violated." Battis, 589 F.3d at 681. But their weight is reduced by the fact that Figueroa never expressed a desire to be tried promptly. Rather, he only sought dismissal of the indictment and inundated "the District Court's docket with repetitive and unsuccessful motions" while agreeing to repeated continuances of his trial date. Loud Hawk, 474 U.S. at 315; see also Hakeem, 990 F.2d at 764 ("Repeated assertions of the right do not . . . balance this factor in favor of a [defendant] when other actions indicate that he is unwilling or unready to go to trial."). Because the record thus "strongly indicates . . . that the defendant did not want a speedy trial" but instead "hoped to take advantage of the delay in which he had acquiesced, and thereby obtain a dismissal of the charges," we accord this factor little weight. Barker, 407 U.S. at 535–36.

The final and most important Barker factor is prejudice to the defendant in "light of the interests . . . which the speedy trial right was designed to protect." Id. at 532; United States v. Shulick, 18 F.4th 91, 102 (3d Cir. 2021). The Supreme Court has identified three such interests: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and

[17] Figueroa's attorneys requested a Speedy Trial Act hearing and briefing schedule, but no formal motion was ever filed on those grounds.

concern of the accused; and (iii) to limit the possibility that the defense will be impaired." Barker, 407 U.S. at 532. Of these, "the most serious is the last, because the inability of a defendant to adequately prepare his case skews the fairness of the entire system." Id. In some circumstances, however, a defendant may be able to establish that an "excessive delay" is presumptively prejudicial, even without "affirmative proof of particularized prejudice." Doggett, 505 U.S. at 655. But even "[t]his presumption of prejudice can be mitigated by a showing that the defendant acquiesced in the delay, or can be rebutted if the Government 'affirmatively proves that the delay left the defendant's ability to defend himself unimpaired.'" Battis, 589 F.3d at 682 (quoting Doggett, 505 U.S. at 652 n.1, 658) (citation modified).

Under the Barker factors and other Supreme Court precedent, there can be little doubt here that the almost eight-year period of delay was so extensive as to be presumptively prejudicial and caused Figueroa to experience oppressive pretrial incarceration as well as anxiety and concern. See Doggett, 505 U.S. at 657–58 (holding an 8 ½ year delay to be presumptively prejudicial). But this prejudice — both presumptive and particularized —is significantly mitigated by the fact that Figueroa acquiesced to the vast majority of the delay and perhaps even rebutted[18] by the absence of any

[18] We have previously recognized that "the government faces a high, and potentially insurmountable, hurdle in seeking to disprove general prejudice where the period of delay is extraordinarily long." Velazquez, 749 F.3d at 185.

identifiable impairment to Figueroa's defense.[19] And "such presumptive prejudice cannot alone carry a Sixth Amendment claim without regard to the other *Barker* criteria." Doggett, 505 U.S. at 656. To the extent that this factor thus weighs weakly in Figueroa's favor, it still "simply cannot outweigh the other *Barker* factors, which do not support a conclusion that [Figueroa] suffered prejudice from denial of a speedy trial." United States v. Dent, 149 F.3d 180, 185 (3d Cir. 1998).

We realize the gravity of our decision today. But notwithstanding the extensive delay, we are persuaded that in line with the Barker analysis above, no constitutional speedy trial violation occurred here. While the protracted delay was certainly sufficient to trigger a Barker inquiry, Figueroa bore primary responsibility for the majority of that delay and failed to assert his right in a way that indicated he truly desired a speedy trial rather than to simply engender a dismissal of his charges. The Barker factors consequently do not, on balance, "justify the severe remedy of dismissing the indictment" in this case. Loud Hawk, 474 U.S. at 317. And as there is no error, let alone plain error, we will not vacate Figueroa's convictions on this basis.

D.

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[19] Although Figueroa complained about the loss of his father as a potential witness, he never specified how his father would have aided in his defense, and it is unclear how he would have done so. See United States v. Dent, 149 F.3d 180, 185 (3d Cir. 1998) (concluding that the intervening death of the defendant's parents was not prejudicial where their testimony would not have aided in his defense).

Figueroa finally challenges his conviction for assaulting a federal employee in violation of 18 U.S.C. § 111(a)(1), claiming that the District Court improperly invaded the jury's fact-finding role in violation of the Due Process Clause and Sixth Amendment by directing it that Victim 2 held federal employment at the time of the assault. Because Figueroa failed to raise this objection before the District Court, we review for plain error. United States v. Dobson, 419 F.3d 231, 236 (3d Cir. 2005).

Section 111(a)(1) provides that it is a crime to "forcibly assault[], resist[], oppose[], impede[], intimidate[], or interfere[] with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties." Section 1114, in turn, defines the relevant class of potential victims as "any officer or employee of the United States or of any agency in any branch of the United States Government." 18 U.S.C. § 1114(a). To establish a violation of § 111(a)(1), the Government must therefore prove that the alleged victim was a federal officer or employee. According to Figueroa, this consists of two components: (1) a legal question as to whether the relevant position (e.g., NPS maintenance workers) qualifies as federal employment under § 1114; and (2) a factual question as to whether the alleged victim (e.g., Victim 2) held that position. The District Court's instruction, however, informed the jury that: "You are instructed that [Victim 2] was a federal employee of the National Park Service." App. 1912. Because this purportedly went beyond answering the legal question of whether an NPS maintenance worker is a federal employee and also directed a verdict on the key factual question of whether Victim 2 held that position, Figueroa argues that his conviction must be vacated. See Sullivan v. Louisiana, 508 U.S. 275, 277 (1993)

("The [Sixth Amendment] right includes, of course, as its most important element, the right to have the jury, rather than the judge, reach the requisite finding of 'guilty.'"); In re Winship, 397 U.S. 358, 364 (1970) ("[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.").

But even assuming that this was error and that such error was plain, Figueroa falters at the third prong of the plain error analysis — that is, he cannot show that it affected his substantial rights.[20] In most cases, to affect substantial rights "means that the error must have been prejudicial: It must have affected the outcome of the district court proceedings." United States v. Olano, 507 U.S. 725, 734 (1993). And while we have previously explained that the "omission of an essential element of an offense *ordinarily* constitutes plain error, we have declined to adopt a *per se* rule to that effect." United States v. Xavier, 2 F.3d 1281, 1287 (3d Cir. 1993) (citation and quotation marks omitted). Rather, "[i]n the case of an

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[20] The Government suggests that Figueroa invited and thus waived the alleged error by requesting that instruction. But review of the record does not support that characterization. While Figueroa may have assented to the Government's proposed instruction, he did not suggest it himself or proactively ask for the jury to be instructed that Victim 2 was a federal employee. Because Figueroa "acquiesced to an instruction" rather than "specifically requested" it, he "forfeited (rather than waived) the argument and we may correct the error if it was 'plain error . . . affecting substantial rights.'" United States v. Ferriero, 866 F.3d 107, 117 n.10 (3d Cir. 2017) (quoting Fed. R. Crim. P. 52(b)).

erroneous jury instruction, 'the relevant inquiry . . . is whether, in light of the evidence presented at trial, the failure to instruct had a prejudicial impact on the jury's deliberations, so that it produced a miscarriage of justice.'" United States v. Haywood, 363 F.3d 200, 207 (3d Cir. 2004) (quoting Xavier, 2 F.3d at 1287); accord United States v. Marcus, 560 U.S. 258, 262 (2010) (explaining "'prejudicial' . . . means that there must be a reasonable probability that the error affected the outcome of the trial").

No such prejudice exists here. While the District Court may have directed the jury that Victim 2 was a federal employee, it also instructed the jury that it needed to find that "[Victim 2] was forcibly assaulted while engaged in the performance of his official duties" and that it had to be "established beyond a reasonable doubt that the person assaulted was in fact a federal employee acting in the course of his or her duty." App. 1911–12 (emphases added). Implicit in those instructions is the requirement that the jury find that Victim 2 had official duties to perform — that is, it could not come to that conclusion unless it also found that Victim 2 was an NPS employee. Cf. Government of the Virgin Islands v. Rosa, 399 F.3d 283, 296–97 (3d Cir. 2005) (finding no plain error where the missing element was "implicit in the jury's finding" on another element).

Moreover, the Government adduced overwhelming evidence of Victim 2's federal employment status at trial. Victim 2 and an NPS ranger both testified that at the time of Figueroa's attack, Victim 2 was employed by the maintenance division of the NPS — a federal agency — and stationed at a national recreation area. Several eyewitnesses further provided circumstantial testimony identifying Victim 2 as a "park ranger" or a "parks system employee" and noting that he wore an NPS uniform and carried a "parks system" radio. App. 1389, 1398, 1537, 1539. In light of this evidence, there is no reasonable probability that the District Court's purportedly erroneous instruction affected the outcome of the verdict, nor that it resulted in a miscarriage of justice. See Marcus, 560 U.S. at 262; Haywood, 363 F.3d at 207. This is thus not that "rare case in which an improper instruction will justify reversal of a criminal conviction when no objection has been made in the trial court," Rosa, 399 F.3d at 294 (quotation marks omitted), and we will not disturb Figueroa's § 111(a)(1) conviction on this basis.

IV.

For the foregoing reasons, we will affirm the judgment of the District Court.