United States Court of Appeals
For the First Circuit

No. 25-1101

UNITED STATES,

Appellee,

v.

FAITH N. NEWTON,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. George A. O'Toole, Jr., U.S. District Judge]

Before

Gelpí, Lynch, and Dunlap,
Circuit Judges.

Dana Goldblatt and Law Office of Dana Goldblatt on brief for appellant.

Mark T. Quinlivan, Assistant United States Attorney, and Leah B. Foley, United States Attorney, on brief for appellee.

October 29, 2026

DUNLAP, Circuit Judge. A jury convicted Defendant-Appellant Faith Newton on one count of conspiracy to commit health care fraud, one count of health care fraud, and three counts of money laundering. The convictions stem from a multi-million-dollar home health care fraud scheme. Newton's company, Arbor Homecare Services LLC ("Arbor"), fraudulently billed MassHealth, Massachusetts' Medicaid program, for over $99 million. She was sentenced to 144 months' imprisonment. On appeal, Newton argues that her convictions should be reversed because the district court violated her constitutional rights by allowing her to proceed pro se at trial and because the court should have suppressed evidence obtained from a search of her cell phone at Logan Airport by Customs and Border Protection ("CBP") agents on her return from Kenya. Newton also challenges her sentence on appeal, arguing that the court erred by not accounting for the value of services rendered when calculating the amount of loss and by including an enhancement for sophisticated means. None of Newton's arguments persuade us. We affirm.

I.

On January 28, 2021, a grand jury indicted Newton and a co-conspirator in the District of Massachusetts. The indictment charged Newton with twelve counts involving health care fraud, a kickback scheme, and money laundering. Before trial, the government voluntarily dismissed six charges. On June 26, 2023,

Newton proceeded to trial on the others. An issue arose during jury deliberations, however, and the court declared a mistrial.

Newton's retrial commenced a year later, on July 8, 2024. At the conclusion of the trial, the jury convicted her of one count of conspiring to commit health care fraud in violation of 18 U.S.C. § 1349, one count of health care fraud in violation of 18 U.S.C. § 1347, and three counts of money laundering in violation of 18 U.S.C. § 1957. The court sentenced Newton to a total term of 144 months' imprisonment to be followed by three years of supervised release and ordered a $250,000 fine and restitution of $99,734,517.50.

A. Newton's Attorneys

By our count, Newton has been represented or assisted by thirteen different attorneys since she was charged in January 2021. Initially, Newton retained Attorneys Sayeg (#1) and Bailey (#2). In January 2022, they notified the court that the relationship had deteriorated. They filed an ex parte motion to withdraw, which the magistrate judge denied. A few months later, in March 2022, they renewed their motion to withdraw. The magistrate judge conducted a hearing on the motion, during which Newton expressed a desire to represent herself. The next month, Attorneys Sayeg and Bailey renewed their motions once more, citing further breakdowns in their ability to represent Newton.

On May 2, 2022, the magistrate judge held another hearing on the motions to withdraw. At the hearing, Newton reiterated her desire to "exercise [her] constitutional right and proceed pro se." The magistrate judge initiated a colloquy under Faretta v. California, 422 U.S. 806 (1975), to warn Newton of the risks of that choice. The magistrate judge advised her how hard it would be to represent herself, how high the stakes were if she went to trial, and how much of a disadvantage she would be placing herself in. Despite these warnings, Newton was insistent: "I've made up my mind. I don't need a lawyer. I want to represent myself." The magistrate judge asked Newton whether she felt clear-minded, was hearing voices, or had any psychological issues. Newton affirmatively denied having any such psychological issues. The magistrate judge concluded that Newton had waived her right to counsel knowingly, intelligently, and voluntarily and accordingly permitted her to proceed pro se, appointing Attorney Kerner (#3) as standby counsel.

In August 2022, at Newton's request, the magistrate judge appointed Attorney McKinnon (#4) as standby counsel instead of Attorney Kerner. Then in October, Newton retained Attorney Vien (#5) along with his team, Attorneys Koslof (#6), Pascucci (#7), and Kete (#8). Attorney Vien and his team represented Newton through her July 2023 trial, which ended in a mistrial.

In September 2023, Attorney Kete withdrew. The district court appointed Attorney Vien under the Criminal Justice Act of 1964 ("CJA"). A week before the retrial was scheduled to begin, Attorneys Vien, Pascucci, and Koslof moved to withdraw as counsel, citing "an irreparable breakdown in the attorney-client relationship." The district court asked Newton how she wished to proceed. She chose to request new appointed counsel, even though this would delay the retrial.

In January 2024, the court appointed Attorney Miner (#9) and Attorney Lindberg (#10) as CJA counsel for Newton. But a month later, Attorney Miner too moved to withdraw because of irreconcilable differences. The court held the motion as pending until new counsel entered an appearance and set the retrial date for July 8, 2024. In May 2024, Attorney Miner renewed her motion to withdraw. Newton filed a pro se motion to disqualify Attorneys Miner and Lindberg. Newton also sought to proceed pro se "only until such time as untainted assets are released by the civil court to hire Counsel of Choice."[1] The district court denied Newton's

[1] In 2021, the government brought an action for civil forfeiture of five real properties and forty financial accounts and investments held in the name of Newton and her family members, business entities, and trusts. The government asserted that these were the proceeds of, or deeply involved in, the charged offenses. On January 29, 2021, Judge O'Toole found probable cause to believe the properties were subject to civil forfeiture and froze the assets. Restraining Order, Dkt. No. 10, United States v. 5 Real Props., No. 1:21-cv-10156-GAO (D. Mass. Jan. 29, 2021).

motion, expressing doubt that the funds would be released and reiterating that the July trial date was firm.[2] The court further explained that "the Court will not allow her to be pro se until the Court is satisfied that Defendant is prepared to represent herself through trial."

At a June 5, 2024, hearing, the district court explained to Newton that she had three options: (1) represent herself, with Attorney Miner or Attorney Vien as standby counsel, (2) go to trial represented by Attorney Miner or Attorney Vien, or (3) hire a new lawyer who would be ready in time for trial. Newton chose the first option: "I want to represent myself." She noted her preference for Attorney Vien as standby counsel.

At this point, the district court issued new Faretta warnings, concluding with the following statement:

> Representing yourself is fraught with peril, right? You're not a lawyer. You don't know the rules of evidence. You don't have any

[2] On March 15, 2024, in the civil forfeiture proceeding, Newton sought an evidentiary hearing to release the restrained funds purportedly so that she could hire counsel of her choice. United States v. 5 Real Props., No. 1:21-cv-10156-GAO, 2024 WL 2127058 at *1 (D. Mass. May 13, 2024). She submitted a bare-bones and insufficient affidavit. Id. Judge O'Toole noted that Newton had not accounted for, among other assets, nearly one million dollars in unrestrained funds which she and her family controlled. Id. at *2. Judge O'Toole also found that Newton likely had access to unfrozen funds in almost a dozen domestic bank accounts and had recently received large checks in the name of multiple corporate entities she controlled. Id. at *1. As a result, on May 13, 2024, Judge O'Toole denied Newton's motions for a rehearing and for release of funds, noting that Newton was scheduled to stand trial before Judge Burroughs on July 8, 2024. Id. at *1 n.2, *2.

> experience picking a jury or doing an opening statement or cross-examining or doing any of those things. So if you want to represent yourself, that is your right, and I will have standby counsel here to help you with the procedural aspects of it. But it is very risky and generally not a good idea. But in fact, I'm going to say not only is it not a good idea, it's a terrible idea.
> . . . .
> It's a terrible idea for darn sure.

Newton and the court discussed the chain of events leading up to her seeking self-representation. Newton seemed to blame the court for letting Attorneys Vien and Bailey withdraw. But the court explained that the decisions were all Newton's, and reiterated the inadvisability of representing herself:

> I don't know why you would want to do it yourself when you have such excellent counsel sitting right beside you who is clearly preparing for trial as evidenced by the motions that have been filed. So I don't understand why you would want to do that, and it seems like an extremely poor choice.

Newton responded, "It's my choice." The court cautioned her, stating, "You cannot go -- if you're convicted at this trial, you cannot go to the Court of Appeals and complain that it was because you represented yourself because you're choosing to represent yourself." Newton suggested that, if her restrained funds were released, there was an attorney she wished to hire. But she did not reveal the attorney's name, so the court could not explore appointing the attorney under the CJA. The unnamed attorney never made an appearance on her behalf.

The day after the second Faretta colloquy, the court noted in an electronic order that Attorney Vien was unable to serve. The court granted Attorney Miner's motion to withdraw and appointed her as standby counsel instead. A few days later, Newton included Attorney Miner on her witness list, forcing the district court to appoint Attorney Iovieno (#11) as standby counsel in her place.

On July 8, 2024, the morning of the retrial, Newton objected to proceeding without representation. The district court overruled her objection because she had chosen to represent herself. Attorney Iovieno assisted Newton as standby counsel for the duration of trial. After trial, Attorney FitzGerald (#12) represented Newton. He withdrew before sentencing and was appointed as standby counsel. On appeal, Attorney Goldblatt (#13) represents Newton.

B. Motion to Suppress

The night before Newton's retrial commenced, she submitted several pro se motions to the court. Among these was "Defendant's Motion to Exclude Cell Phone Extraction Data and Customs Border Protection and Border Crossing Records." Relevant to this motion, Newton had been stopped by CBP agents and searched at Boston Logan International Airport when she returned from a trip to Kenya on July 30, 2017. They seized her cell phone and conducted a forensic search of the phone's contents. The search

yielded incriminating text messages related to the Arbor scheme. In her motion, Newton argued that the cell phone data was illegally obtained because (1) the government did not have a warrant for the search, and (2) the search was requested by the prosecuting Assistant United States Attorney ("AUSA").

On the third day of the retrial, the district court took up the motion. The government argued that warrantless non-routine searches are permitted at the border if agents have a reasonable suspicion that the search will yield evidence of a crime enforced by CBP. CBP agents -- who have jurisdiction to investigate international cash money laundering -- suspected that Newton was transporting ill-gotten cash overseas and that she was using her phone to facilitate the scheme, based on interviews that law enforcement agents had conducted. These interviews revealed that various former Arbor employees believed or had heard rumors that large amounts of money were going to Kenya. Agents also found a receipt indicating that Newton had deposited $1.7 million into a Kenyan bank. The government filed a written opposition outlining its case, and Newton filed a written response. In her response, she reiterated her contentions that the search lacked a warrant and was requested by an AUSA. She also seemed to contest the applicability of the reasonable suspicion standard, but did not argue that the government lacked reasonable suspicion.

After considering the parties' submissions, the district court orally denied Newton's motion to suppress: "[A]lthough it's a close call, I think the government is correct that there was reasonable suspicion that there was money laundering activity going on . . . and that this search and the seizure . . . were both permissible." Newton objected to this ruling on limited grounds, and the district court stated that the objection was preserved. The government subsequently introduced into evidence several text messages obtained from Newton's cell phone.

C. Sentencing

The jury convicted Newton on five counts, including health care fraud, conspiracy to commit healthcare fraud, and money laundering. Based on the Sentencing Guidelines, the Probation Office calculated her Total Offense Level to be 43 in her Presentence Report ("PSR"). This total included a 24-level enhancement because the amount of loss was between $65 million and $150 million, and a two-level enhancement because the offense involved sophisticated means. The PSR explained that the calculation of the amount of loss was based on the approximately $99,734,000 that MassHealth paid Arbor for fraudulent services. The sophisticated-means enhancement was included based on evidence that Newton hid over $10 million in Kenyan financial accounts over a six-year period.

Newton submitted numerous objections to the PSR. Two are relevant to Newton's sentencing arguments on appeal. In Objection #31, Newton complained that "there was no source of information cited to support the amount of loss identified in paragraph 57, and as cited in paragraph 46, it could not effectively be reviewed for accuracy, and should not be considered." In Objection #32, she complained that the loss amount was based on "allegations not proven at trial, and . . . did not contain any actual evidence, or sufficient information about the source of the numbers cited in said exhibit, and therefore must not be considered."

The district court held Newton's sentencing hearing on January 22, 2025. The court stated that it had "received and carefully reviewed" the PSR and determined that there were no sustainable objections. The court concluded that Newton's objections to the PSR "did not appear to question the application of the Sentencing Guidelines." After adopting the guideline range from the PSR and considering the 18 U.S.C. § 3553(a) factors, the district court sentenced Newton to a total term of 144 months' imprisonment to be followed by three years of supervised release. The court also ordered a $250,000 fine and restitution in the amount of $99,734,517.50.

II.

Newton contends that her convictions and her sentence must be overturned. As for her convictions, she argues that the district court violated her rights to counsel and due process by permitting her to represent herself. She also argues that the court erred by admitting evidence obtained from her cell phone. As for her sentence, Newton contends that the court miscalculated the amount of loss when determining her offense level and that the court improperly applied the sophisticated-means enhancement to her offense level. None of her arguments are availing.

A. Right to Counsel

Newton argues that her convictions should be overturned because the district court violated her constitutional rights by allowing her to represent herself at trial. She advances four reasons: (1) the Faretta warnings she received about the dangers of self-representation were inadequate to make her waiver knowing; (2) her waiver was not unequivocal; (3) she was wrongfully forced to choose between representation by her prior attorneys and representing herself; and (4) she was not competent to represent herself.[3]

[3] In her reply brief, Newton adds a new (and so waived) argument that she received ineffective assistance of counsel because her counsel did not comprehend her psychological difficulties. See Aldea-Tirado v. PricewaterhouseCoopers, LLP, 101 F.4th 99, 105 n.3 (1st Cir. 2024).

The Sixth Amendment guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." U.S. Const. amend. VI. By implication, the Constitution also guarantees the right of criminal defendants to represent themselves. Faretta, 422 U.S. at 820. The government may not "hale a person into its criminal courts and there force a lawyer upon him." Id. at 807. "When an accused manages his own defense," however, "he relinquishes, as a purely factual matter, many of the traditional benefits associated with the right to counsel." Id. at 835. Accordingly, as the Supreme Court held in Faretta v. California, every court must ensure that the waiver of the right to assistance of counsel is knowing, intelligent, and voluntary. Id.; see also United States v. Belin, 868 F.3d 43, 53 (1st Cir. 2017). A defendant "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" Faretta, 422 U.S. at 835 (quoting Adams v. United States ex rel. McCann, 317 U.S. 269, 279 (1942)); see also Belin, 868 F.3d at 53.

On appeal, our review of the record is "effectively de novo." Belin, 868 F.3d at 54. "We will uphold a waiver of the right to counsel as long as the record supports a reasoned conclusion that the defendant was fully apprised of his right to counsel and of the disadvantages he would encounter should he elect

to proceed pro se." Id. (citation and internal quotation marks omitted). Further, the defendant's waiver must be stated in "unequivocal language." United States v. Woodard, 291 F.3d 95, 109 (1st Cir. 2002) (citing Faretta, 422 U.S. at 835).

With these standards in mind, we take Newton's arguments in turn and reject each of them. We recognize that choosing self-representation may in many -- if not most -- cases be unwise. See Faretta, 422 U.S. at 852 (Blackmun, J., dissenting) (quoting an old proverb about self-representation). But the Constitution guarantees criminal defendants the right to choose. Newton made her choice knowingly, voluntarily, and unequivocally. She cycled through attorneys regularly, of her own choice; and she ultimately chose to go without an attorney at all when the district court properly insisted that her retrial proceed without further delay. We decline to overturn her convictions based on that choice.

1. Knowing, intelligent, and voluntary waiver

We consider first Newton's argument that the district court's warnings were inadequate and that she did not knowingly, intelligently, and voluntarily waive her right to counsel. Newton does not claim that the wording of the district court's Faretta warning was per se insufficient. Rather, she claims that her particular mental difficulties prevented her from understanding the warning, so that she did not "know what she was doing." Cf. Faretta, 422 U.S. at 835 (citation modified) (citing Adams, 317

U.S. at 279) (determining that the defendant was "literate, competent, and understanding"). We consider the entire record to assess whether Newton's waiver was made knowingly.

As our recitation of the facts has already established, Newton received two sets of Faretta warnings; one set administered by the magistrate judge before her first trial, and another set administered by the district court before her retrial. Both are relevant to understanding what Newton knew.

At the first colloquy, in 2022, the magistrate judge warned Newton about the severe disadvantage she would be at if she proceeded without counsel. The magistrate judge highlighted Newton's inexperience with the law, the complexity of procedural rules, the benefits of counsel, and the high sentences her conviction on these charges could carry. As the magistrate judge stated, "I think it's unwise for you to try to represent yourself because you're not trained in the law, and these rules are very, very technical. And I strongly urge you not to represent yourself." The magistrate judge warned her that she would be "shooting [herself] in the foot" by representing herself. When the magistrate judge asked her if she still wanted to waive her right in light of the serious downsides, Newton responded with an unequivocal, "Yes." As she said, "It's my choice to represent myself."

At the 2024 colloquy before Newton's retrial, the district court similarly recounted the reasons why self-representation was inadvisable. Given the motions to withdraw pending before the court, the court gave Newton three options: represent herself with standby counsel, go to trial with her current attorney, or hire a new lawyer who would be ready in time for trial. When Newton said, "I want to represent myself," the district court explained the dangers of doing so, including Newton's inexperience with the rules of evidence, jury selection, witness examination, and opening statements. The court's caution was grave: "[I]t is very risky and generally not a good idea. But in fact, I'm going to say not only is it not a good idea, it's a terrible idea." Again, Newton stated bluntly: "It's my choice."

Newton received an adequate Faretta warning to fully apprise her of the risks under the circumstances. The warnings Newton received were extensive and strongly worded in plain English. She was informed of the dangers of self-representation and even informed that it would be a terrible choice. See United States v. Jones, 778 F.3d 375, 389 (1st Cir. 2015) (holding that a Faretta warning was sufficient where the court "warned the defendant of the general dangers of self-representation" and "went so far as to tell the defendant that it was 'a terrible idea' for him to represent himself"). In addition to receiving two sets of Faretta warnings, moreover, Newton had the benefit of observing an

entire criminal trial between the two warnings. "Absent unusual circumstances, a defendant who has previously sat through criminal trials of his own has to know that trying a case involves examining witnesses, making objections, and observing rules of procedure and evidence . . . ." United States v. LaBare, 191 F.3d 60, 68 (1st Cir. 1999). The perils she faced were made clear.

In her sealed and unsealed briefs, however, Newton points to several places in the record that she argues should call into question her ability to comprehend these warnings. She highlights her former attorneys' characterization of her accusations against them, letters she wrote to a judge about her case, and several "non-responsive answers to the court's questions." She asserts that she suffers from language difficulties and "distorted perceptions of reality" that impaired her ability to understand the disadvantages. The record, however, does not sustain a colorable claim that Newton lacked understanding of her choices. Newton appears to have been a sophisticated actor, able to manage complex financial arrangements. We find it notable that neither the government nor any of the myriad attorneys assisting Newton requested a psychological examination. The district court had numerous opportunities to closely observe Newton's behavior and competence over a period of time and concluded Newton was capable of making a voluntary choice. See United States v. Agramonte-Quezada, 30 F.4th 1, 22–24 (1st Cir.

2022) (holding that, in the competency context, a district court does not abuse its discretion by not ordering a competency hearing where, inter alia, neither defense counsel nor the government sought such a hearing and the presiding judge had been able to observe the defendant). We are satisfied that Newton voluntarily waived her right to counsel with knowledge of the disadvantages her choice entailed.

2. Unequivocal waiver

We turn next to Newton's argument that her waiver was equivocal, contrary to this court's requirement. See Woodard, 291 F.3d at 109. There is no real question that her statements -- "I want to represent myself" and "[i]t's my choice" -- were unequivocal. See United States v. Kar, 851 F.3d 59, 67 (1st Cir. 2017) (concluding that similar statements by defendant confirming choice to represent himself "could not have been stated more unequivocally"). Newton now argues, however, that these statements were ambiguous taken in context. Below, she repeatedly expressed hope that some of her seized funds would be released so she could hire an attorney. For example, Newton told the court in a motion that she desired to "proceed Pro Se only until such time as untainted assets are released by the civil court to hire Counsel of Choice." During the June 5, 2024, hearing, Newton stated, "I'm waiting for my motion to hire an attorney," and, "I have a lawyer of my choice waiting to get paid." These statements

created "tension" with her request for self-representation, Newton claims, thus making the request equivocal. A desire to represent oneself in the present, however, is not incompatible with a desire to obtain an attorney in the future. See United States v. Proctor, 166 F.3d 396, 405–06 (1st Cir. 1999) (noting that a defendant may "retract a waiver of his Sixth Amendment right to counsel"). Both the magistrate judge and the district court advised Newton that, if she no longer desired to proceed pro se, she could hire an attorney of her choice.[4] In fact, after electing to proceed pro se the first time, Newton did hire counsel. And, even if going pro se was not her first choice, her final decision to do so was clear. See United States v. Gonzalez-Arias, 946 F.3d 17, 38 (1st Cir. 2019) (concluding that even where a defendant "disliked his options" and had "asked several times . . . for another lawyer," his "express agreement to go pro se, combined with his unflinching follow-through, made his final choice unambiguous"). We thus

[4] The magistrate judge informed Newton as follows: "[I]f you change your mind in the future, I want you to know that you can hire a lawyer if you want to and you have your funds. Or if you don't have funds, as I have just said, down the road you can ask for a court-appointed lawyer." The district court judge told Newton at the June 2024 hearing, "You are either here with standby counsel, . . . or you will be here [with] the lawyer of your choice, but we're going forward on July 8." It is noteworthy that Judge O'Toole found, in the related civil forfeiture action, that Newton likely had access to funds distributed throughout a complex network of bank accounts and corporate entities. 5 Real Props., 2024 WL 2127058 at *1-2.

conclude that Newton's unequivocal waiver was not undermined by her other statements.

3. Compelled choice

Relatedly, we reject Newton's argument that the district court erred by forcing a choice between unwanted counsel and self-representation on the eve of trial. "District courts, in some circumstances, may force criminal defendants to choose between effective representation by unwanted counsel and proceeding pro se." Kar, 851 F.3d at 65; see also Proctor, 166 F.3d at 402. This is one such case.

As an initial matter, Newton has not established that the assistance she had been provided was constitutionally insufficient. Newton points primarily to the asserted breakdown in communication between herself and Attorney Miner as of the time the court presented her with the choice between representing herself with standby counsel, proceeding with Attorney Miner, or hiring counsel of her choice. But we are not persuaded that the breakdown was of constitutional magnitude -- Attorney Miner remained willing to represent Newton and the record before us suggests that counsel had performed admirably. The court reasonably concluded that Newton's desire for an earlier trial date was the crux of her conflict with Attorney Miner and resolved that conflict by helping Attorney Miner clear her schedule for an

earlier date.[5] The problem here was that Newton was an extraordinarily difficult and manipulative client, not that she had constitutionally ineffective counsel. See Morris v. Slappy, 461 U.S. 1, 14 (1983) ("[W]e reject the claim that the Sixth Amendment guarantees a 'meaningful relationship' between an accused and his counsel.").

Further, by the time the court presented her with the choice, Newton had cycled through attorneys with regularity, and the matter was on the verge of trial. "A court need not tolerate unwarranted delays, and may at some point require the defendant to go to trial even if he is not entirely satisfied with his attorney." Gonzalez-Arias, 946 F.3d at 35 (quoting Maynard v. Meachum, 545 F.2d 273, 278 (1st Cir. 1976)); see also Woodard, 291 F.3d at 106-07 (noting that a court may consider the possibility of undue delay and the effect on orderly court procedure in forcing a choice between self-representation and proceeding to trial with an unwanted attorney). In light of Newton's extraordinary conduct

[5] The record shows that the conflict between Newton and her counsel was not "so great that it resulted in a total lack of communication." United States v. Gottesfeld, 18 F.4th 1, 13 (1st Cir. 2008) (quoting United States v. Reyes, 352 F.3d 511, 515 (1st Cir. 2003)); see also United States v. Allen, 789 F.2d 90, 93 (1st Cir. 1986) (concluding that "good cause did not exist for assignment of new counsel" where "[a]ll that exist[ed] on the record [wa]s [the defendant's] own loss of confidence in his attorney").

with her attorneys, we conclude that the district court did not err.

4. Competency

Newton's argument that the court violated her rights to due process and assistance of counsel by allowing her to represent herself because she was not competent to do so fares no better. She interprets Indiana v. Edwards, 554 U.S. 164 (2008), as establishing two tiers of competency: one tier for competency to stand trial, and another, higher tier for competency to represent oneself. Newton's reliance on this case is misplaced.[6] As the Supreme Court explained in Godinez v. Moran, 509 U.S. 389 (1993), "the competence that is required of a defendant seeking to waive his right to counsel is the competence to waive the right, not the competence to represent himself," id. at 399. On the record before us, and for the same reasons that we conclude her waiver was voluntary, informed, and knowing, we conclude -- as did the district court in this proceeding -- that Newton was able to "competently and intelligently" choose to represent herself. Id.

[6] Edwards does not establish a second, higher tier of competency for self-representation. As an overwhelming majority of our sister circuits have observed, Edwards merely permits states to condition self-representation on a higher showing of competency. Indiana v. Edwards, 554 U.S. 164, 178 (2008) ("[T]he Constitution permits States to insist upon representation by counsel for those competent enough to stand trial . . . but who still suffer from severe mental illness."); see also United States v. Garrett, 42 F.4th 114, 119 (2nd Cir. 2022) (collecting cases from seven circuits).

at 400 (quoting Faretta, 422 U.S. at 835); see also Agramonte-Quezada, 30 F.4th at 22–24.

B. Suppression of Evidence

Turning to her Fourth Amendment arguments, Newton asserts on appeal that the cell phone evidence obtained by CBP should have been suppressed because the government did not have a reasonable suspicion that it would contain evidence of criminal activity. We have held that the Fourth Amendment requires that any non-routine search at our nation's borders be supported by a reasonable suspicion that the search will uncover "evidence of activity in violation of the laws enforced or administered by CBP or ICE." Alasaad v. Mayorkas, 988 F.3d 8, 18–21 (1st Cir. 2021). Newton now contends that the specific and articulable facts known to the government at the time of the search were not legally sufficient to create a reasonable suspicion justifying the search and seizure. The government responds that this argument fails at the threshold because it was not raised before trial as required by Rule 12(c).

To preserve an argument for appeal, a party must "squarely" raise it before the district court. United States v. Lindsey, 3 F.4th 32, 41 (1st Cir. 2021). Under Federal Rule of Criminal Procedure 12(c), a motion to suppress evidence that is not asserted before trial can only be considered upon a showing of "good cause." Fed. R. Crim. P. 12(c)(3); see Lindsey, 3 F.4th at

41 ("Unpreserved legal arguments as to motions to suppress are unreviewable except upon a showing of good cause."); see also United States v. Torres, 162 F.3d 6, 11 (1st Cir. 1998).

In her one-page pretrial motion, Newton raised two grounds for suppressing the cell phone data: (1) CBP did not have a warrant, and (2) an AUSA requested the search. Newton did not, by herself or through counsel, suggest that the CBP agents lacked reasonable suspicion. Failing to even reference an argument is not raising it squarely. We cannot overlook the failure simply because Newton proceeded pro se. See Ahmed v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997) ("[P]ro se status does not insulate a party from complying with procedural and substantive law."). Nor can the discussion of reasonable suspicion by the government and the district court excuse Newton's omission. "[W]e enforce Rule 12(f)[7] waivers even though the district court ultimately did address the waived issue on the merits, unless the appellant can show 'cause' for failing to raise it in a pretrial motion." United States v. Bashorun, 225 F.3d 9, 14 (1st Cir. 2000) (emphasis omitted); accord United States v. Galindo-Serrano, 925 F.3d 40, 47-48 (1st Cir. 2019); United States v. Walker-Couvertier, 860 F.3d 1, 9 (1st Cir. 2017). Although the district court's

[7] The language of Rule 12(f) has been moved to Rule 12(c)(3), but the standard remains the same. United States v. Arias, 848 F.3d 504, 513 n.3 (1st Cir. 2017).

discussion of reasonable suspicion may assist in creating a record for review, see Walker-Couvertier, 860 F.3d at 9, the discussion is ultimately irrelevant here; we conclude that the Rule 12(c) waiver still applies because the motion to suppress did not mention reasonable suspicion,[8] id.

Accordingly, Newton's current suppression argument is unreviewable. Newton waived the argument she now asserts, has not attempted to show "good cause" under Rule 12 to justify appellate review, and is not entitled to plain error review. See Lindsey, 3 F.4th at 41-42. We therefore leave the district court's ruling undisturbed.

C. Offense Level Calculation

Newton also contests her sentence, maintaining that the district court committed procedural error in calculating her offense level under the guidelines. She claims that the amount of loss would have been lower had the district court properly accounted for the value of the services Arbor provided. She further claims that the sophisticated-means enhancement does not apply because -- since she was born in Kenya -- depositing money in a Kenyan bank is not an "offshore" transaction.

[8] Newton complains that the district court said her suppression objection was preserved. But the district court's statement, which can only address preservation of objections she actually articulated, does not give Newton a license to raise new arguments on appeal. See Fed. R. Crim. P. 12(c)(3).

This court applies a "multifaceted abuse-of-discretion" standard to claims of guideline errors. United States v. Guía-Sendeme, 134 F.4th 611, 616 (1st Cir. 2025) (quoting United States v. Mendoza-Maisonet, 962 F.3d 1, 20 (1st Cir. 2020)). "[W]e review the sentencing court's interpretation and application of the Sentencing Guidelines de novo, its factfinding for clear error, and its exercise of judgment for abuse of discretion." Id. Unpreserved challenges to sentencing, however, we review only for plain error. United States v. Leach, 89 F.4th 189, 195 (1st Cir. 2023). We uphold the district court's application of the guidelines here.

1. Amount of Loss

For crimes involving fraud, the guidelines require an offense-level enhancement for the amount of loss. U.S.S.G. § 2B1.1(b). "Loss" here means "actual loss" -- "the reasonably foreseeable pecuniary harm that resulted from the offense." U.S.S.G. § 2B1.1(b)(1) n.(A), (b)(1) n.(C)(i). The evidence showed that Newton was responsible for $99,734,000 in losses, an amount more than $65 million and less than $150 million. The district court therefore applied a 24-level enhancement under U.S.S.G. § 2B1.1(b)(1)(M). Newton now argues that the district court should have reduced the amount of loss by "the fair market value of . . . the services rendered" to the victim before detection. U.S.S.G. § 2B1.1 cmt. n.3(D)(i). She claims that

Arbor provided services worth, "at a minimum," $38,012,000. Factoring in that discount, the offense level would be two points lower.

Newton did not raise this challenge below, so it is not preserved. In her objection to the PSR below, she complained that because "there was no source of information cited to support the amount of loss identified . . . , it could not effectively be reviewed for accuracy, and should not be considered." That complaint is materially different from Newton's argument on appeal that the court should have accounted for the value of services Arbor provided. New challenges to sentencing raised on appeal are not preserved. See United States v. Hassan-Saleh-Mohamad, 930 F.3d 1, 6 (1st Cir. 2019) ("To preserve a claim of error for appellate review, an objection must be sufficiently specific to call the district court's attention to the asserted error." (quoting United States v. Soto-Soto, 855 F.3d 445, 448 n.1 (1st Cir. 2017))).

We review unpreserved claims only for plain error. See Leach, 89 F.4th at 195. To prevail, the party claiming plain error must make a four-part showing: "(1) that an error occurred (2) which was clear or obvious and which not only (3) affected the defendant's substantial rights, but also (4) seriously impaired the fairness, integrity, or public reputation of judicial proceedings." Id. at 201 (quoting United States v. Duarte, 246

F.3d 56, 60 (1st Cir. 2001)). We need not, however, delve into the plain error analysis in this case. Because Newton's principal brief "'fails to even mention plain error, let alone argue for its application here,' the argument is waived and will not be considered." Schuster v. Wynn Ma, LLC, 118 F.4th 30, 39 n.10 (1st Cir. 2024) (quoting United States v. Benjamin-Hernandez, 49 F.4th 580, 585 (1st Cir. 2022)).[9]

2. Sophisticated-Means Enhancement

The guidelines require a two-level enhancement for crimes of fraud that "involved sophisticated means." U.S.S.G. § 2B1.1(b)(10)(C). The commentary accompanying the guidelines, which the parties agree should guide the analysis, explains that sophisticated means are "especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense." U.S.S.G. § 2B1.1 cmt. n.9(B). One example of sophisticated means is "hiding assets or transactions, or both, through the use of . . . offshore financial accounts." Id.

[9] Even if we did review for plain error, we perceive none. Newton does not point to any record support for the assertion that, even if Arbor's patients did not qualify for the services billed to MassHealth, they nevertheless qualified for lesser services actually provided. Nor is it clear that such lesser services would have been covered. Thus, there is no patent error in the court's determination.

The government argues that Newton's objection to the sophisticated-means enhancement is reviewable only for plain error because it was not raised below. We agree. The PSR submitted to the court included the relevant information, and Newton did not object to it at the sentencing hearing.[10] Accordingly, we agree with the government that this argument is waived and reviewable only for plain error -- a standard which, once again, Newton does not discuss. She has therefore waived her arguments, leading us to reject them. See Schuster, 118 F.4th at 39 n.10.[11]

III.

For these reasons, we **affirm** Newton's convictions and sentence.

[10] Newton argues that the initial version of the PSR did not include the proper factual basis for the sophisticated-means enhancement. But this is ultimately irrelevant, given that the final PSR included the correct factual basis.

[11] Even if she had not waived her argument, the district court's application of the sophisticated-means enhancement is far from "clear or obvious" error. See United States v. Leach, 89 F.4th 189, 201 (1st Cir. 2023). Evidence showed that Newton hid assets in Kenyan financial accounts beyond the reach of American authorities. Over a six-year period, she sent a substantial amount to Kenya -- over $10 million. She used those funds to acquire local property and businesses. Additionally, Newton was careful to cover her tracks to avoid detection, creating false patient files, training records, and billing documents. Newton's scheme also involved coordinating multiple corporate entities and overseeing hundreds of employees. The district court did not clearly err by finding that Newton met the criteria for the sophisticated-means enhancement.