

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 8 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERT ALLEN POOLEY,

Defendant - Appellant.

No. 24-6144

D.C. No.

2:21-cr-00111-WBS-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Submitted August 11, 2026**
San Francisco, California

Before: LEE, MENDOZA, JR., and DE ALBA, Circuit Judges.

After misrepresenting that he had the proper credentials to oversee training courses to qualify customers as tandem skydiving instructors, Robert Allen Pooley was convicted of identity theft and wire fraud in violation of 18 U.S.C. §§ 1028A,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

1343. The district court sentenced Pooley for two counts of wire fraud and imposed a prison sentence of 24 months. Pooley now asks this court to vacate his sentence. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

1. Sentencing enhancement. We review all sentencing decisions for abuse of discretion and only vacate sentences that are “illogical, implausible, or without support in inferences that may be drawn from the facts in the record.” *United States v. Bradford*, 148 F.4th 699, 709 (9th Cir. 2025); *see also United States v. Taylor*, 153 F.4th 934, 940 (9th Cir. 2025). We review the district court’s interpretation of the United States Sentencing Guidelines de novo and its relevant factual findings for clear error. *United States v. Thomsen*, 830 F.3d 1049, 1070 (9th Cir. 2016).

Section 2 of the Guidelines instructs the district court to apply a sentencing enhancement “[i]f the offense involved [] the conscious or reckless risk of death or serious bodily injury[.]” U.S.S.G. § 2B1.1(b)(16)(A). The enhancement applies if the offense conduct created some risk of serious harm, “even if the ultimate probability of occurrence is found to be relatively low.” *United States v. W. Coast Aluminum Heat Treating Co.*, 265 F.3d 986, 993 (9th Cir. 2001). And the Guidelines broadly construe qualifying offense conduct as “*all acts and omissions . . . willfully caused by the defendant*” that occurred during the commission of, preparation for, or attempt to evade responsibility for the offense. U.S.S.G. § 1B1.3(1) (emphasis added).

The record and common sense reflect that skydiving carries inherent risk of death or injury. Federal rules and regulations seek to mitigate this serious risk by strictly limiting who may conduct tandem jumps and requiring parachutists to complete tandem instructor courses, which include skills such as recovery maneuvers, maintaining stability in the air, and verifying the safety of equipment. *See* 14 C.F.R. § 105.45(a). By facilitating tandem instructor courses and issuing certifications despite having no credentials to do so, Pooley enabled people deemed unfit as instructors by federal regulations to strap themselves to customers and jump from an airplane.¹ Thus, the district court properly determined that the offense conduct increased risk of serious harm and warranted the sentencing enhancement.

2. Jury instruction. When a defendant induces or causes an error below, he is wholly barred from presenting the argument on appeal. *United States v. Magdaleno*, 43 F.4th 1215, 1219–20 (9th Cir. 2022). Thus, Pooley’s challenge to the language of the jury instruction on fraud by omission—which he drafted and presented to the district court before trial—fails. *See id.* at 1120 (describing a defendant’s challenge to an allegedly “flawed” jury instruction he proposed as “paradigmatic” invited error).

3. Evidentiary ruling. We review evidentiary rulings for abuse of discretion.

¹ Tragically, one person trained by Pooley as a tandem instructor, along with a customer, died in a skydiving accident when the parachute failed to open. This fact was excluded at trial.

United States v. Rohrer, 708 F.2d 429, 432 (9th Cir. 1983). Under this standard, the district court did not err by declining to admit into evidence a general preamble to the United States Parachute Association membership manual, which states that skydivers bear responsibility for their safety. In preliminary hearings and during trial, Pooley repeatedly sought to exclude evidence related to “safety” at trial, contending it was irrelevant to the fraud and would prejudice the jury. Thus, the district court did not abuse its discretion when it concluded that admission would confuse the issues and may introduce further prejudice.

AFFIRMED.