

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2017

MELVIN VASQUEZ,

v.

UNITED STATES OF AMERICA,  
Respondent.

On Petition for Writ of Certiorari to the United States  
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

On Petition for Writ of Certiorari to the United States  
Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO PROCEED  
IN FORMA PAUPERIS

Petitioner, MELVIN VASQUEZ, pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(6), asks leave to file the accompanying Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed in forma pauperis. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit.

Date: September 18, 2018.

Respectfully submitted,  
/s/Yolanda Jarmon  
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NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM 2017

MELVIN VASQUEZ

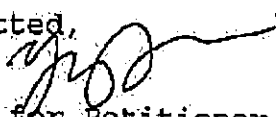
Petitioner,

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Respectfully submitted,  
/s/Yolanda Jarmon   
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QUESTIONS PRESENTED

I Whether the Fifth Circuits cursory, review rather than the proper de novo review resulted in a misapplication of the provision of U.S.S.G. § 3B1.2 denying Melvin Vasquez a four-level mitigating role adjustment.

PARTIES TO THE PROCEEDINGS

All parties to the proceedings are named in the caption of the case before the Court.

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PRAYER

The petitioner, Melvin Vasquez, (Hereinafter "Vasquez") respectfully prays that a writ of certiorari be granted to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit issued on June 20, 2018.

OPINIONS BELOW

On June 20, 2018, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion and affirmed Vasquez's conviction. United States v. Melvin Vasquez, 728 Fed. Appx.323, 2018 LEXIS 16910 (5th Cir. June 20, 2018) (unpublished). A copy of the Fifth Circuit's opinion affirming the conviction is attached as Appendix A to this petition. No petition for rehearing was filed.

A copy of the judgment and sentence of the district court is attached as Appendix B. United States v. Melvin Vasquez Cr. No. 7:17:CR:00436-2 (S.D. Tex. August 17, 2017). The district court did not issue a written opinion in this case.



### JURISDICTION

On June 20, 2018, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming the judgment of conviction and sentence in this case.

This petition is filed within ninety days after entry of the judgment. See. Sup. Ct. R. 13.1. Jurisdiction of the Court is invoked under Section 1254(1), Title 28, United States Code.

### FEDERAL STATUTES INVOLVED

#### §3B1.2. Mitigating Role

Based on the defendant's role in the offense, decrease the offense level as follows:

- (a) If the defendant was a minimal participant in any criminal activity, decrease by 4 levels.
- (b) If the defendant was a minor participant in any criminal activity, decrease by 2 levels.

### STATEMENT OF THE CASE

#### A. Course of Proceedings

Melvin Noel Vasquez, along with two co-defendants, Johnathan Ricardo Alvarez, and Oscar Diaz were charged in a two count indictment with Count One, with conspiracy to possess with intent to distribute 500 grams or more, that is, approximately 5 kilograms of methamphetamine in violation of 21 U.S.C. 846, 21 U.S.C. §§841(a)(1) and (b)(1)(A). Count Two charged Vasquez, Alvarez,

and Diaz with possession with intent to distribute 500 grams or more, that is, approximately 5 kilograms of methamphetamine in violation of 21 U.S.C. §§841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2.

Vasquez entered a plea agreement with the government wherein he agreed to plead guilty to Count Two of the indictment. In exchange, the government agreed to recommend a two-level decrease in sentencing points if her were to demonstrate acceptance of responsibility. The government also agreed to dismiss Count One of the Indictment at the time of sentencing.

On May 31, 2017, Vasquez, Alvarez, and Diaz entered a pleas of guilty to Count Two possession with intent to distribute 500 grams or more, that is, approximately 5 kilograms of methamphetamine in violation of 21 U.S.C. §§841(a)(1), (b)(1)(C) and 18 U.S.C. § 2.

**B. Statement of the Facts**

The government proffered the following as the factual basis of the guilty pleas:

On December 17, 2016, an undercover Agent received a call from Alvarez, identified at the time as Johnathan. Alvarez agreed to sell the undercover Agent 5 kilograms of methamphetamine and 1 kilogram of brown tar heroin for \$60,00. During this time, the undercover Agent communicated via phone and text message. The agreement was to provide the methamphetamine first and then the heroin.

On December 9, 2016, Johnathan Alvarez called from a 956 number for the courier in Houston, Texas. The undercover Agent then called the courier at an 832 prefix number, as provided by Mr. Alvarez. The undercover Agent then met with codefendants, Melvin Vasquez, Oscar Diaz, at a Home Depot parking lot in

Houston, Texas, and obtained methamphetamine.

After the meeting, Vasquez and Diaz were arrested and 5 kilograms of methamphetamine was seized by law enforcement. Johnathan Alvarez brokered the transaction and Oscar Diaz and Melvin Noel Vasquez delivered the narcotics to the undercover Agent. As such, each Defendant knowingly and intentionally violated the law of their own free will and volition.

When Vasquez was asked whether he agreed with the government's rendition of the factual basis for his plea, Mr. Vasquez stated that he did in fact agree with it. Vasquez assured the court that, when he went to the meeting, he knew that he was delivering drugs. He also confirmed that he knew that he was delivering an amount that was not just for personal use, but that was an amount for distribution.

#### C. The Sentencing

A Presentence Investigation Report (PSI) was prepared using the 2016 edition of the sentencing guidelines. The United States Sentencing Commission Guideline for Count Two, a violation of 21 U.S.C. § 841(a)(1), 841(b)(1)(A) and 18 U.S.C. § 2 is found in U.S.S.G. § 2D1.1. The Base Offense Level in this case was set at a level of 36. Pursuant to U.S.S.G. § 2D1.1(c)(2), at least 15 kilograms but less than 45 kilograms of methamphetamine, establishes the offense level at 36. This guideline instructs that the base offense level is determined by the type and quantity of illicit controlled substance attributable to the relevant conduct findings for this defendant,

pursuant to U.S.S.G. § 1B1.3(a)(1)(B).

Vasquez was held accountable for to 17.06 kilograms net weight of methamphetamine, to include 4.89 kilograms net weight of crystal methamphetamine and 10.17 kilograms net weight of methamphetamine oil seized on December 9, 2016, and 2 kilograms gross weight of crystal methamphetamine previously delivered to unidentified co-conspirators. The entire amount of drugs seized in this case was submitted for laboratory analysis; however, only samples of the crystal and liquid methamphetamine were tested to confirm the substance as methamphetamine. Therefore, the purity level was unknown. Regarding the 2 kilograms gross weight of crystal methamphetamine previously delivered to unidentified co-conspirators that was not seized a 5% reduction (0.1 kilograms) for wrapping results in a net weight of 1.9 kilograms. Therefore, Vasquez was held accountable for a total of 16.96 kilograms net weight of methamphetamine.

A two-level increase was added pursuant to U.S.S.G. § 2D1.1(b)(5). Under U.S.S.G. § 2D1.1(b)(5), if the offense involved the importation or manufacture of methamphetamine, the base offense level should be increased by two levels. According to the government, Vasquez reported that Diaz obtained the methamphetamine from "Señor," an unidentified co-conspirator in Mexico. Furthermore, according to the government, Alvarez stated he had to report to the unidentified coconspirators in Mexico regarding the lost drug load.

An additional two-level increase was added pursuant to U.S.S.G. § 2D1.1(b) (12). Under U.S.S.G. § 2D1.1(b) (12) , if the defendant maintained a premises for the purpose of distributing methamphetamine, the offense level should be increased by two levels. According to the government, Diaz rented an apartment wherein he processed methamphetamine oil into crystalized form for distribution. Vasquez resided at the apartment for two weeks to assist Diaz in the methamphetamine distribution. The apartment only had two mattresses, a stereo and television on the floor, a small table in the kitchen, a small shrine, a propane tank, a burner, metal trays and other paraphernalia to crystalize liquid methamphetamine. There were only few articles of clothing and toiletries. According to the government, it appeared that Oscar Diaz maintained the apartment for the primary purpose of storing and distributing methamphetamine.

Vasquez had no criminal history points assessed against him, and a score of zero results in a Criminal History Score of level 1.

Before the application of any objections by Vasquez, with a Total Offense Level of 38 and a Criminal History Category of I, the guideline range of imprisonment resulted in 235-293 months of imprisonment.

Vasquez lodged written objections to the PSI. First, Vasquez objected to the presentence investigation report, in that, it failed to acknowledge that the he had a minimal role in the offense. Vasquez argued that that he was recruited by co-defendant

Oscar Diaz, to assist in the distribution of crystal methamphetamine. Mr. Vasquez lived with Mr. Diaz at his apartment for a period of two weeks and had completed two deliveries for Diaz prior to the date of his arrest. He was paid \$100 for each previous delivery for a total of \$200 for delivering methamphetamine. Furthermore, Vasquez argued that his role was limited to that of a courier utilized by Oscar Diaz. As such, the defendant should be considered minimal participant and should be granted a 4-level reduction.

The government, on the other hand, argued against a four-level mitigating role adjustment contending that Vasquez had completed two prior deliveries prior to his arrest in this case and therefore was an average participant. Vasquez's objection for a four-level reduction was denied.

Next Vasquez, argued that his base offense level was incorrectly calculated a level 36. He argued that he should only be held to the 4.89 kilograms seized by law enforcement upon his arrest, as opposed to the 6.89 kilograms net weight which included 2 kilograms gross weight of crystal methamphetamine he had admitted to during his initial interview with Agents. Vasquez maintained that, although he voluntarily admitted to participating in two drug deliveries prior to his arrest for the underlying offense; there was no evidence of the exact weight of those drug amounts. Vasquez argued that he was not qualified to render an opinion on what drugs were delivered on the two previous occasions, what their

purity levels were, or their exact weight, etc.(sic). Vasquez's objection and request to be held accountable for the 4.89 kilograms seized by law enforcement was denied.

Vasquez objected that the PSR wrongfully concluded the underlying offense involved importation of the drugs in question. Vasquez argued that the government apparently reached this conclusion only through unsubstantiated assumptions, not corroborated by any credible evidence. More specifically, he argued that the government assumed that codefendant Diaz acquired contraband from a source who was located in Mexico. Vasquez noted that Many foreign citizens own property in the United States that was manufactured here in the United States, and not in any foreign jurisdiction. He explained that having a Mexican owner does not demonstrate importation. He argued further that the underlying crime involved possession and distribution, not importation or manufacturing and that he was involved in moving meth from Diaz's apartment to a buyer, not importing. Therefore, no adjustment was warranted. The objection was overruled.

Vasquez objected to the PSR in that it wrongfully stated that he was responsible for maintaining the premises. Vasquez argued that Diaz rented and maintained an apartment for his drug business and allowed Vasquez to stay there for two weeks. Therefore, there was no evidence that Vasquez maintained the premises or did any more than sleep on a couch there. Accordingly, no adjustment was warranted. The objection was

granted.

Vasquez objected to the PSR in that it wrongfully concluded his conduct involved the emission of toxins. He argued that his conduct was merely as a companion to Diaz on drug deliveries for which he received \$100 and permission to sleep in Diaz's apartment. No evidence supports a conclusion his conduct involved emissions of any kind, and so no adjustment was warranted. The final PSR did not include this adjustment, therefor the objection was moot by the time of sentencing.

Vasquez objected to the PSR stating that prior to sentencing he would have fully debriefed and qualified for the safety valve and the corresponding sentencing reduction. Vasquez objected to the PSR's conclusion that he was not entitled to credit for time served prior to sentencing. He was arrested on December 9, 2016 on charges including a state offense for the conduct giving rise to this prosecution. The State offense was dismissed upon the institution of this prosecution. Vasquez argued that he had remained continuously incarcerated since said arrest and should be credited with the time he has served.

Based on the objections above, Vasquez argued for a total offense level of 30 with a Criminal History Category I calculated as follows:

Base Level 30  
Role in Offense -4  
Safety Valve -2  
Subtotal 24  
Acceptance of Responsibility -3



TOTAL 21  
Sentencing Range  
37-46 months

At sentencing, the government agreed that Vasquez qualified for the Safety Valve, and therefore his sentencing points were reduced two levels. The government also moved for the additional one level decrease in points for acceptance of responsibility pursuant to U.S.S.G. 3E 1.1(a) and b.

Finally, the Total Offense Level resulted in a 33 with a Criminal History Category of I. The guideline range then resulted in 135-168 months. Vasquez was sentenced to 145 months of imprisonment. U.S.S.G. Sentencing Guidelines, Chapter 5 Part A. The trial court stated that the Bureau of prisons would give Vasquez credit for time served. (The court imposed a \$100.00 special assessment. No supervised release was imposed. No fine was imposed.

Vasquez filed a timely notice of appeal on August 25, 2017.

D. Proceedings on Appeal.

On Appeal, Vasquez argued that the district court erred in denying him a mitigating role adjustment.

Because the proper role of the district court in sentencing defendants is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

BASIS OF FEDERAL JURISDICTION IN THE  
UNITED STATES DISTRICT COURT

This case was brought as a federal criminal prosecution under 21 U.S.C. 846, 21 U.S.C. §§841(a)(1), conspiracy to possess with intent to distribute 500 grams or more, that is, approximately 5 kilograms of methamphetamine in violation of 21 U.S.C. 846, 21 U.S.C. §§841(a)(1) and (b)(1)(A) and 21 U.S.C. §§841(a)(1), (b)(1)(C) and 18 U.S.C. § 2 possession with intent to distribute 500 grams or more, that is, approximately 5 kilograms of methamphetamine. The district court therefore had jurisdiction pursuant to 18 U.S.C. § 3231.

### REASONS FOR GRANTING THE WRIT

This Court should grant certiorari because the Fifth Circuit ignored Guideline § 3B1.2 which provides for a four-level downward adjustment "for a defendant who plays a minimal part in committing the offense that makes him substantially less culpable than the average participant." U.S.S. G. § 3B1.2., comment.(n.3(a) U.S.S. G. § 3B1.2(a) , & comment.(n.4) and these guidelines are of exceptional importance to the administration of justice in federal criminal cases.

#### A. The Fifth Circuit Ignored all evidence that Vasquez was a minimal participant.

In the instant case, the Fifth Circuit has rendered a cursory review of the facts in this case in affirming the conviction. In rendering its decision, the Fifth Circuit misapplied or failed to U.S.S. G. § 3B1.2. Section U.S.S. G. § 3B1.2 provide the following:

##### §3B1.2. Mitigating Role

Based on the defendant's role in the offense, decrease the offense level as follows:

(a) If the defendant was a minimal participant in any criminal activity,  
decrease by 4 levels.

(b) If the defendant was a minor participant in any criminal activity,  
decrease by 2 levels.

In cases falling between (a) and (b), decrease by 3 levels.

In deciding Mr. Vasquez's case, the fifth Circuit ignored its own precedent and in its opinion wrote:

"Vasquez conceded to being a courier for the operation, participating in at least three drug deliveries over a one-month period, arranging for the delivery of the methamphetamine in this case, and receiving \$100 for each completed delivery. The district court's conclusion that Vasquez was not a minimal participant is plausible in light of the record as a whole. That court's denial of a mitigating role adjustment was not clearly erroneous." United States v. Melvin Vasquez, 728 Fed. Appx.323-324, 2018 LEXIS 16810 (5th Cir. June 20, 2018) (unpublished).

In this case the record shows that Vasquez objected to the presentence investigation report, in that, it failed to acknowledge that the he had a minimal role in the offense warranting a four-level reduction in sentencing points. Vasquez argued that that he was recruited by co-defendant Oscar Diaz, to assist in the distribution of crystal methamphetamine. Furthermore, Vasquez argued that his role was limited to that of a courier utilized by Oscar Diaz. The record demonstrates that Vasquez was a day laborer who was recruited by codefendant Oscar Diaz to assist Diaz in distributing crystal meth. Defendant was paid \$100 per delivery and allowed (for two weeks) to stay at Diaz's apartment. As described in PSR Paragraph 7, Defendant was a courier, used by Diaz to

receive telephonic instructions, and accompanied Diaz on the delivery. Mr. Vasquez lived with Mr. Diaz at his apartment for a period of two weeks and was paid \$200 for delivering two methamphetamine loads. Vasquez was an expendable pawn who should be considered a minimal participant with a 4-level reduction. As such, the defendant should be considered minimal participant and should be granted a 4-level reduction.

The government maintained that Vasquez had completed two prior deliveries. Vasquez, however, argued that there was no evidence to substantiate any prior deliveries and therefore he should only be held to the 4.89 kilograms seized by law enforcement, as opposed to the 6.88 kilograms. Vasquez's objection for a four-level reduction was denied.

Guideline § 3B1.2 provides for a downward adjustment "for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant." U.S.S. G. § 3B1.2., comment.(n.3(a)). A four-level reduction applies to "minimal participants, and is intended to cover defendants who are plainly among the least culpable of those involved in the conduct of a group." Id. U.S.S. G. § 3B1.2(a) ..., & comment.(n.4).

In similar cases, mere physical workers, like lifters and transporters, have been recognized as being, as a general matter,

less culpable than other participants in a drug offense. Guideline

In United States v. Gayton, 74 F.3d, 545 (5<sup>th</sup> Cir. 1996 (finding clear error for the court to conclude that Gayton was a minor participant given the district court's finding that Gayton len[t] his property to be used for the storing of drugs' and 'acted as a chauffeur' to carry people to where drugs were stored'' was supported by the record) However, the Fifth Circuit misapplied the law in deciding Mr. Vasquez's case.

Other circuits including the Fifth Circuit and the Ninth Circuit have held that mere physical workers, like lifters and transporters, have been recognized as being, as a general matter, less culpable than other participants in a drug offense. See, Eg., United States v. Valdez-Gonzalez, 957 F.2d 643, 649-50 (9th Cir. 1992) ('mules' less culpable participants in drug conspiracies), limited on other grounds, United States v. Webster, 996 F.2d 209, 211 (9th Cir. 1993); 28 CFR. § 2.20 Chapter 13, Subchapter B(14) (2000) (under parole commission guidelines, 'peripheral role' in drug offense refers to simple courier, chauffeur, deckhand, or drug-loader); See, Eg., United States v. Valdez-Gonzalez, 957 F.2d 643, 649-50 (9<sup>th</sup> Cir. 1992) ('mules' less culpable participants in drug conspiracies), limited on other grounds, United States v. Webster, 996 F.2d 209, 211 (9<sup>th</sup> Cir. 1993); 28 CFR. § 2.20 Chapter

13, Subchapter B(14) (2000) (under parole commission guidelines, "peripheral role" in drug offense refers to simple courier, chauffer, deckhand, or drug-loader).

The facts of this case, as described in the presentence report and in the factual basis for the guilty plea, establish that Vasquez played a minimum role in the offense and that a four-level mitigating adjustment should have been awarded in this case because he is plainly among the least culpable of Johnathan Alvarez, and Oscar Diaz, co-defendants in this case. The underlying offense occurred on December 9, 2016 the undisputed facts demonstrate that Vasquez met Diaz, less than a month prior to the incident in question, in November of 2016, at a bar in the vicinity of Beechnut and Corporate Drive in Houston, Texas and developed a friendship with him. Less than a month after meeting him, Diaz offered Vasquez an opportunity to move in with him and in exchange for a place to live, Vasquez would assist Diaz with his drug trafficking activities. Vasquez moved in with Diaz, slept in the living room and had unrestricted access to the entire apartment.

The evidence showed that Vasquez had no prior convictions for drug related offenses prior to the instant conviction. Prior to meeting Diaz, Vasquez was merely a day laborer. The evidence shows that the drugs seized from Diaz's apartment and the 2007 Honda

Civic sedan on December 9, 2016 were already at Diaz's apartment when Vasquez moved in with him. The uncontroverted evidence also shows that, at the time of his arrest, Vasquez had only assisted Diaz on two prior drug deliveries consisting of one kilogram of crystal methamphetamine on each occasion and delivered to unidentified co-conspirators. Vasquez was only paid \$100 for each delivery. Accordingly, Vasquez should have been deemed a minimal participant.

This Court should grant certiorari because without the mitigating adjustment, the Total Offense Level resulted in a level 33. With the mitigating adjustment, the Total Offense Level would be reduced to a level 29. The guideline range would have been 87-108 months of imprisonment, rather than the 135-168 months assessed in this case. Given that the district court imposed sentence in the middle of the range it used, 145 months of imprisonment, the Government cannot show that the district court would have imposed the same sentence. Because the court's error was not harmless, remand is required. See Williams v. United States, 503 U.S. 193, 203 (1992) (when sentencing error occurs, remand required unless government can show same sentence would have been imposed); see also United States v. Kimbrough, 536 F.3d 463 (5<sup>th</sup> Cir. 2008 (correctly calculated guideline range necessary to



sentence a defendant).


The Fifth has rendered a cursory review of the facts in this case in affirming conviction. In rendering its decision, the Fifth Circuit misapplied or failed to U.S.S. G. § 3B1.2. Furthermore, because the proper role of the district court in sentencing defendants is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

CONCLUSION

For the foregoing reasons, petitioner, Melvin Vasquez respectfully prays that this Court grant certiorari, to review the judgment of the Fifth Circuit in this case.

Date: September 18, 2018.

Respectfully submitted,  
/s/Yolanda Jarmon  
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CERTIFICATE OF SERVICE

YOLANDA E. JARMON, is not a member of the Bar of this Court but was appointed under the Criminal Justice Act 18 U.S.C. § 3006 A(b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit, certifies that, pursuant to Rule 29.5, On September 18, 2018, she served the preceding Petition for Writ of Certiorari and the accompanying Motion for Leave to Proceed in Forma Pauperis on counsel for the Respondent by enclosing a copy of these documents in an envelope, first-class postage prepaid, Certified Mail No. 7011 0110 0000 9045 5729, return receipt requested, and depositing the envelope in the United States Postal Service located at 4206 Little York Rd. Houston, TX 77016-9998 and further certifies that all parties required to be served have been served and copies addressed to:

The Honorable Noel J. Francisco  
Solicitor General of the United States  
Room 5614, Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530-0001

All parties have also been served electronic copies of the preceding Petition

for Writ of Certiorari and the accompanying Motion for Leave to Proceed in  
Forma Pauperis in accordance with Supreme Court Rule 29.3.

  
s/ Yolanda Jarmon  
YOLANDA E. JARMON

# APPENDIX

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

\_\_\_\_\_  
No. 17-40893  
Summary Calendar  
\_\_\_\_\_

United States Court of Appeals  
Fifth Circuit

**FILED**

June 20, 2018

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MELVIN NOEL VASQUEZ,

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:17-CR-436-2  
\_\_\_\_\_

Before WIENER, DENNIS, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Defendant-Appellant Melvin Noel Vasquez appeals his sentence arising out of his conviction for possession with intent to distribute 500 grams or more of methamphetamine. He claims that the district court erred by not granting him a four-level reduction under U.S.S.G. § 3B1.2 for being a minimal participant.

\_\_\_\_\_  
\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

*Appendix A*

## No. 17-40893

Whether a defendant was a minor or minimal participant in criminal activity is a factual finding that this court reviews for clear error. *See United States v. Sanchez-Villarreal*, 857 F.3d 714, 721 (5th Cir. 2017). A factual finding is not clearly erroneous if it is plausible in view of the record as a whole. *Id.*

Vasquez conceded to being a courier for the operation, participating in at least three drug deliveries over a one-month period, arranging for the delivery of the methamphetamine in this case, and receiving \$100 for each completed delivery. The district court's conclusion that Vasquez was not a minimal participant is plausible in light of the record as a whole. *See id.* That court's denial of a mitigating role adjustment was not clearly erroneous. *See id.*

AFFIRMED.

**UNITED STATES DISTRICT COURT**  
**Southern District of Texas**  
Holding Session in McAllen

United States District Court  
Southern District of Texas

**ENTERED**

September 15, 2017

David J. Bradley, Clerk

**UNITED STATES OF AMERICA**  
**v.**  
**MELVIN NOEL VASQUEZ**

**JUDGMENT IN A CRIMINAL CASE**

CASE NUMBER: 7:17CR00436-002

USM NUMBER: 24870-479

☐ See Additional Alleges.

Carlos Miguel Yznaguirre

Defendant's Attorney

**THE DEFENDANT:**

☒ pleaded guilty to count(s) 2 on May 31, 2017.

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 841(a)(1), 841(b)(1)(A) and 18 U.S.C. § 2	Possession with intent to distribute 500 grams or more, that is, approximately 5 kilograms of methamphetamine.	12/09/2016	2

☐ See Additional Counts of Conviction:

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☒ Count(s) 1, as to this defendant. ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 17, 2017

Date of Imposition of Judgment

M. Alvarez  
Signature of Judge

MICAELA ALYAREZ  
**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

September 15, 2017

Date

APPENDIX B

vB 1 3533063



DEFENDANT: MELVIN NOEL VASQUEZ  
CASE NUMBER: 7:17CR00436-002

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### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 145 months.

- ☐ See Additional Imprisonment Terms.
- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on \_\_\_\_\_.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_

DEPUTY UNITED STATES MARSHAL

DEFENDANT: MELVIN NOEL VASQUEZ  
CASE NUMBER: 7:17CR00436-002

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00		

☐ See Additional Terms for Criminal Monetary Penalties.

☐ The determination of restitution is deferred until \_\_\_\_\_, An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal payees must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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☐ See Additional Restitution Payees.

TOTALS	\$0.00	\$0.00	
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MELVIN NOEL VASQUEZ  
CASE NUMBER: 7:17CR00436-002

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### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$100.00 due immediately, balance due:  
☐ not later than \_\_\_\_\_, or  
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ installments of \_\_\_\_\_ over a period of \_\_\_\_\_, to commence \_\_\_\_\_ days after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ installments of \_\_\_\_\_ over a period of \_\_\_\_\_, to commence \_\_\_\_\_ days after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

Payable to: Clerk, U.S. District Court  
 Attn: Finance  
 P.O. Box 5059  
 McAllen, TX 78502

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number

Defendant and Co-Defendant Names  
 (including defendant number)

Total Amount

Joint and Several  
 Amount

Corresponding Payee,  
 If appropriate

- ☐ See Additional Defendants and Co-Defendants Held Joint and Several.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
- ☐ See Additional Forfeited Property.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.