Nos. 19-6113 and 19-6431

IN THE SUPREME COURT OF THE UNITED STATES

JOSE ARMANDO BAZAN, PETITIONER

v.

UNITED STATES OF AMERICA

JOSE ARMANDO BAZAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether, in sentencing petitioner for two drug-trafficking offenses, the district court plainly erred by declining to award petitioner a mitigating-role reduction under Section 3B1.2 of the advisory Sentencing Guidelines.

2. Whether the below-guidelines sentence imposed by the district court for one of petitioner's drug-trafficking offenses was substantively unreasonable.

ADDITIONAL RELATED PROCEEDINGS

United States Court of Appeals (5th Cir.):

United States v. Bazan, No. 18-40724 (July 25, 2019)

United States v. Bazan, No. 18-40726 (May 2, 2019)

United States District Court (S.D. Tex.):

United States v. Bazan, No. 15-cr-936 (Oct. 1, 2018)

United States v. Bazan, No. 17-cr-691 (Sept. 5, 2018)

United States v. Bazan, No. 16-cr-1376 (Sept. 4, 2018)

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OPINIONS BELOW

The opinion of the court of appeals in No. 19-6113 (19-6113 Pet. App. A1-A2) is not published in the Federal Reporter but is reprinted at 772 Fed. Appx. 214. The opinion of the court of

appeals in No. 19-6431 (19-6431 Pet. App. A1-A2) is not published in the Federal Reporter but is reprinted at 773 Fed. Appx. 811.

JURISDICTION

In No. 19-6113, the judgment of the court of appeals was entered on June 28, 2019, and the petition for a writ of certiorari was filed on September 26, 2019. In No. 19-6431, the judgment of the court of appeals was entered on July 25, 2019, and the petition for a writ of certiorari was filed on October 23, 2019. In both cases, the jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Texas, petitioner was convicted of possession with intent to distribute five kilograms or more of cocaine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(A) and 18 U.S.C. 2. 19-6431 Pet. App. B1.[1] Following a second guilty plea in the United States District Court for the Southern District of Texas, petitioner was convicted of conspiring to possess with the intent to distribute 500 grams or more of cocaine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B) and 21 U.S.C. 846. 19-6113 Pet. App. B1. At a single sentencing hearing, petitioner was sentenced

[1] All statutory references are to the version of the United States Code in force at the time of petitioner's criminal conduct. All references to the United States Sentencing Guidelines are to the version of the Guidelines in force at the time of sentencing. Any subsequent amendments to the statutes or Guidelines are immaterial to the issues in these cases.

to 119 months of imprisonment, to be followed by three years of supervised release, for the first offense, 19-6431 Pet. App. B2-B3, and to 24 months of imprisonment, to be followed by three years of supervised release, for the second offense, 19-6113 Pet. App. B2-B3. The court of appeals separately affirmed each sentence. 19-6113 Pet. App. A1-A2; 19-6431 Pet. App. A1-A2.

1. In July 2015, a Texas Department of Public Safety (DPS) agent received information about a suspicious tractor-trailer scheduled to arrive at a produce terminal in McAllen, Texas. 15-cr-936 Presentence Investigation Report (15-cr-936 PSR) ¶ 9. The agent watched the terminal and saw petitioner arrive driving the tractor-trailer. Id. ¶ 10. About an hour later, petitioner drove away in the tractor-trailer with a man later identified as his brother (Jorge Bazan). Ibid. The vehicle stopped at a gas station, where Jorge Bazan exited, and then continued traveling north with the DPS agent following. Id. ¶¶ 10-11.

As the tractor-trailer approached a U.S. Customs and Border Protection (CBP) checkpoint, the DPS agent requested that CBP conduct an inspection. 15-cr-936 PSR ¶ 11. CBP agreed, and during the inspection a narcotics-detecting dog alerted to the presence of drugs. Ibid. CBP agents then x-rayed the vehicle and noticed anomalies in the front of the trailer. Id. ¶ 14. Petitioner admitted that cocaine was hidden in a false compartment of the trailer, which he said he had built and loaded. Ibid. A consensual search revealed 46.9 kilograms of cocaine. Id. ¶ 15.

Petitioner later told agents that he had been working with a man he knew as El Pando, who had coordinated with an unidentified individual in Mexico to transport the cocaine into the United States for delivery to a recipient in Houston. 15-cr-936 PSR ¶ 16. Petitioner also admitted that he had recruited his brother to help transport the cocaine and that he planned to pay his brother a portion of the proceeds that he was to receive. Id. ¶¶ 17-19.

A grand jury in the United States District Court for the Southern District of Texas charged petitioner with possession with the intent to distribute five kilograms or more of cocaine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B) and 18 U.S.C. 2. 15-cr-936 Indictment 1-2. Petitioner pleaded guilty and was released on bond. 19-6431 Pet. App. B1; see 15-cr-936 PSR ¶ 5.[2]

2. While petitioner was out on bond in 2016, his father (Arturo Bazan) and another man were hired by drug traffickers to transport 40 kilograms (or "bundles") of cocaine. 16-cr-1376 Presentence Investigation Report (16-cr-1376 PSR) ¶¶ 24, 42. They instead arranged to steal the cocaine by diluting 10 bundles of it into 40 bundles, staging a car accident in which those 40 diluted bundles were destroyed, and keeping the remaining 30 undiluted bundles to divide between them. Id. ¶¶ 24, 25. Petitioner's father informed him that he had obtained 15 kilograms of cocaine,

[2] Petitioner subsequently failed to appear at sentencing, which led to the revocation of his bond and an additional charge for failure to appear. 15-cr-936 PSR ¶ 6; see 18 U.S.C. 3146(a)(1) and (b)(1)(A)(i). The failure-to-appear offense is not at issue here.

and asked petitioner to put him in contact with someone who could sell it for him. Id. ¶ 42. Petitioner provided his father with the telephone number of a friend, and "an arrangement to sell three kilograms of cocaine was made." Ibid. The cocaine was ultimately not sold because it was of poor quality. Ibid.

A grand jury in the United States District Court for the Southern District of Texas charged petitioner with conspiring to possess with the intent to distribute 500 grams or more of cocaine, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B) and 21 U.S.C. 846. 16-cr-1376 Indictment 1-2. Petitioner pleaded guilty. 19-6113 Pet. App. B1.

3. The district court conducted a single sentencing proceeding for both of the drug-trafficking offenses discussed above.

With respect to the first drug-trafficking offense (committed in 2015), the Probation Office determined that petitioner's base offense level under the advisory Sentencing Guidelines was 32; that petitioner should receive a two-level increase for obstruction of justice and a two-level reduction for satisfactorily debriefing the government under the safety-valve provision, 18 U.S.C. 3553(f); and that petitioner's resulting offense level, combined with his criminal history, yielded an advisory sentence range of 121 to 151 months of imprisonment. 15-cr-936 PSR ¶¶ 31-36, 74. Petitioner did not file objections to the Probation Office's report. The district court imposed a below-

guidelines sentence of 119 months of imprisonment, to be followed by three years of supervised release. 19-6431 Pet. App. B2-B3.[3]

With respect to the second drug-trafficking offense (committed in 2016), the Probation Office determined that petitioner's base offense level was 26; that he should receive a two-level reduction for acceptance of responsibility; and that his resulting offense level, combined with his criminal history, yielded an advisory sentence range of 57 to 71 months of imprisonment, which became 60 to 71 months in light of the five-year statutory minimum. 16-cr-1376 PSR ¶¶ 56, 63, 88-89; see 21 U.S.C. 841(b)(1)(B). Petitioner did not file objections to the Probation Office's report.

At sentencing for the second offense, the government filed and the district court granted a motion for a downward departure from the statutory minimum and the advisory guidelines range to reflect petitioner's substantial assistance to law enforcement. 16-cr-1376 Sent. Tr. (Sent. Tr.) 19; see 18 U.S.C. 3553(e); Sentencing Guidelines § 5K1.1. The court sentenced petitioner to 24 months of imprisonment, to be followed by three years of supervised release, and provided that all but one month of that time would be served concurrently with the 119-month sentence that

[3] Because petitioner complied with the safety-valve provision, the district court was not bound by the statutory minimum sentence of 120 months that would otherwise have applied. 15-cr-936 PSR ¶ 70; see 21 U.S.C. 841(b)(1)(B).

the court had imposed for the first drug-trafficking offense. Sent. Tr. 19, 22-24.[4] Petitioner did not object to the sentences.

4. In separate appeals, the court of appeals affirmed both of petitioner's sentences in unpublished per curiam decisions. 19-6113 Pet. App. A1-A2; 19-6431 Pet. App. A1-A2.

In both cases, the court of appeals rejected a contention that the district court had erred by failing to grant him an offense-level reduction under Section 3B1.2 of the advisory Sentencing Guidelines, which allows a reduction for offenders with a minor or minimal role in the offense. 19-6113 Pet. App. A1; 19-6431 Pet. App. A1. In both cases, the court of appeals explained that petitioner had failed to argue for a mitigating-role reduction in the district court, and that his claim would therefore be reviewed for plain-error. 19-6113 Pet. App. A1; 19-6431 Pet. App. A2. And in both cases, the court of appeals further stated that whether petitioner was a minor or minimal participant in the offense was a "factual" issue, and that "a question of fact capable of resolution at sentencing * * * 'can never constitute plain error.'" 19-6113 Pet. App. A2 (quoting United States v. Fierro, 38 F.3d 761, 774 (5th Cir. 1994), cert. denied, 514 U.S. 1030, and 514 U.S. 1051 (1995)); see 19-6431 Pet. App. A2 (quoting United States v. Lopez, 923 F.3d 47, 50 (5th Cir.) (per curiam), cert. denied, 500 U.S. 924 (1991)).

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[4] The district court also imposed a one-month consecutive sentence for petitioner's failure to appear, bringing his total sentence of imprisonment to 121 months. See Sent. Tr. 22-23.

Petitioner's appeal of his sentence for the first drug-trafficking offense (committed in 2015) also included a challenge to the substantive reasonableness of his below-guidelines sentence. 19-6431 Pet. App. A2. The court of appeals stated that petitioner's substantive-reasonableness claim should be reviewed for plain error because he did not make a substantive-reasonableness objection in the district court. See ibid. But the court determined that, "even without the added hurdle of the plain-error standard," petitioner's "substantive reasonableness argument would still lose" because his arguments were "insufficient to overcome the presumption of reasonableness afforded his below-guidelines sentence." Ibid. Specifically, the court rejected petitioner's suggestion that he should have received a lower sentence based on his substantial assistance to the government. Ibid. The court explained that petitioner had not provided substantial assistance with respect to the 2015 drug-trafficking offense, but instead had provided such assistance with respect to the 2016 offense, and that petitioner's sentence for the 2016 offense included a reduction to reflect that cooperation. Ibid. The court accordingly explained that "[t]he district court did not abuse its discretion in rebuffing [petitioner's] attempt at a double-dip." Ibid.

ARGUMENT

Petitioner contends (19-6113 Pet. 8-16; 19-6431 Pet. 7-18) that the court of appeals erred in its application of plain-error

review to his unpreserved claims that the district court should have awarded him a mitigating-role reduction under Sentencing Guidelines § 3B1.2 for each of this drug-trafficking offenses. The judgment of the court of appeals in both cases is correct, however, and its unpublished per curiam decisions do not warrant further review. Because petitioner is not entitled to plain-error relief under any possible approach to such review, the objections he raises have no bearing on the ultimate outcome of the cases. This Court has denied petitions for writs of certiorari in other cases presenting similar claims, see Ables v. United States, 139 S. Ct. 1259 (2019) (No. 18-6092); Wright v. United States, 138 S. Ct. 115 (2017) (No. 16-9348); Carlton v. United States, 135 S. Ct. 2399 (2015) (No. 14-8740); Goodley v. United States, 571 U.S. 1133 (2014) (No. 13-6415); Laver v. United States, 571 U.S. 1074 (2013) (No. 13-5996), and it should follow the same course here.[5]

Petitioner's factbound assertion (19-6431 Pet. 17-18) of substantive unreasonableness with respect to his below-guidelines sentence for the 2015 offense is likewise meritless and does not warrant further review. The court of appeals correctly rejected petitioner's assertion that he was entitled to credit for substantial assistance that he rendered, and was rewarded for, in his other drug-trafficking case.

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[5] A similar issue is presented by the pending petition for a writ of certiorari in Davis v. United States, No. 19-5421 (filed July 29, 2019).

1. Petitioner does not dispute the court of appeals' threshold determination in each case that, because he did not seek a mitigating-role reduction under Sentencing Guidelines § 3B1.2 at sentencing, the district court's decision not to grant such a reduction was reviewable only for plain error. 19-6113 Pet. App. A1; 19-6431 Pet. App. A2; see Fed. R. Crim. P. 52(b). Under plain-error review, "an appellate court may, in its discretion, correct an error not raised at trial only where the appellant demonstrates that (1) there is an 'error'; (2) the error is 'clear or obvious, rather than subject to reasonable dispute'; (3) the error 'affected the appellant's substantial rights, which in the ordinary case means' it 'affected the outcome of the district court proceedings'; and (4) 'the error seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.'" United States v. Marcus, 560 U.S. 258, 262 (2010) (quoting Puckett v. United States, 556 U.S. 129, 135 (2009)) (brackets in original). "Meeting all four prongs is difficult, 'as it should be.'" Puckett, 556 U.S. at 135 (citation omitted).

Petitioner challenges (19-6113 Pet. 10-13; 19-6431 Pet. 10-13) the rationale on which the court of appeals denied him plain-error relief -- that "a question of fact capable of resolution at sentencing * * * 'can never constitute plain error.'" 19-6113 Pet. App. A2 (quoting United States v. Fierro, 38 F.3d 761, 774 (5th Cir. 1994), cert. denied, 514 U.S. 1030, and 514 U.S. 1051 (1995)); see 19-6431 Pet. App. A2 (quoting United States v. Lopez,

923 F.3d 47, 50 (5th Cir.) (per curiam), cert. denied, 500 U.S. 924 (1991)). He asserts (19-6113 Pet. 10-13; 19-6431 Pet. 10-13) that the court should have performed a case-specific analysis of whether the district court plainly erred in not sua sponte granting the mitigating-role reductions he now seeks. No need exists to address that assertion, however, because petitioner would not be entitled to relief in either case under any understanding of plain error.

Sentencing Guidelines § 3B1.2 allows a sentencing court to decrease a defendant's offense level by four levels "[i]f the defendant was a minimal participant in any criminal activity," by two levels "[i]f the defendant was a minor participant in any criminal activity," and by three levels if the defendant's level or participation fell between minimal and minor. Ibid. The commentary to Section 3B1.2 describes a "minimal participant" as one who is "plainly among the least culpable of those involved in the conduct of a group," and a "[m]inor participant" as one who is less culpable than most other participants "but whose role could not be described as minimal." Id. § 3B1.2 comment. (nn.4, 5).

The commentary to Section 3B1.2 also includes a "non-exhaustive list of factors" for courts to consider when deciding whether to award a mitigating-role adjustment: (1) the degree to which the defendant understood the scope and structure of the criminal activity; (2) the degree to which the defendant participated in planning or organizing the criminal activity; (3)

the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority; (4) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts; and (5) the degree to which the defendant stood to benefit from the criminal activity. Sentencing Guidelines § 3B1.2 comment. (n.3(C)).

Petitioner contends (19-6113 Pet. 12-16; 19-6431 Pet. 12-17) that those factors establish that a mitigating-role adjustment was appropriate in in both cases. That contention lacks merit; to the contrary, an application of the factors in each case demonstrates his ineligibility.

a. With respect to his 2015 drug-trafficking offense, the facts show that petitioner "understood the scope and structure of the criminal activity." Sentencing Guidelines § 3B1.2 comment. (n.3(C)(i)). Petitioner admitted that he worked with El Pando, who coordinated with an individual in Mexico to transport multi-kilogram shipments of cocaine into the United States. 15-cr-936 PSR ¶ 16. And the large quantity of cocaine that petitioner loaded onto his tractor-trailer -- almost 47 kilograms -- demonstrated his knowledge of the sizable nature of the criminal activity. Id. ¶ 15. Relatedly, the facts show that petitioner played a significant role in "planning or organizing the criminal activity." Sentencing Guidelines § 3B1.2 comment. (n.3(C)(ii)).

Petitioner admitted to personally building a false compartment in the tractor-trailer and loading almost 47 kilograms of cocaine for transport. 15-cr-936 PSR ¶¶ 14-17.

Petitioner also "exercised decision-making authority or influenced the exercise of decision-making authority." Sentencing Guidelines § 3B1.2 comment. (n.3(C)(iii)). Petitioner determined how to conceal the cocaine for transport and recruited his brother to assist him. 15-cr-936 PSR ¶¶ 14-17. Finally, petitioner had significant "participation in the commission of the criminal activity," and exercised "discretion" in "performing those acts." Sentencing Guidelines § 3B1.2 comment. (n.3(C)(iv)). As noted, he created the false compartment to conceal the cocaine, loaded the cocaine into the vehicle, and drove it to the designated location. 15-cr-936 PSR ¶¶ 14-17.

Taken together, the factors set forth in the commentary to mitigating-role guideline show that petitioner was not "substantially less culpable than the average participant in the criminal activity," Sentencing Guidelines § 3B1.2 comment. (n.3(A)), let alone plainly so. Petitioner asserts (16-6431 Pet. 15-16) that "[t]here is no evidence he had a proprietary interest in the criminal activity." Even if that is true, the absence of a proprietary interest "is but one factor to be considered by the sentencing court," United States v. Torres-Hernandez, 843 F.3d 203, 209 (5th Cir. 2016), and the other factors show that

petitioner was not substantially less culpable than the average participant in the criminal activity.

Petitioner similarly contends (16-6431 Pet. 15) that he "delegated nothing," but that assertion -- even if true in light of his recruitment of his brother -- does not support his eligibility for a minor-role reduction. Although a lack of delegating authority might help to show that petitioner was not a leader, it does not follow that the lack of such authority would show that petitioner played only a minor role. Petitioner also maintains (ibid.) that he merely performed a "single task," but he in fact performed several significant tasks. He customized his truck to conceal the cocaine, loaded the cocaine onto the truck, and drove the cocaine toward its intended destination. 15-cr-936 PSR ¶¶ 14-17. Even if that conduct could be understood as only a "single task," petitioner offers no legal authority for the proposition that the performance of one task, regardless of its importance or centrality to the crime, renders a party a minor participant.

In sum, the district court did not commit any error, much less a "clear or obvious" error, Puckett, 556 U.S. at 135, in declining to grant petitioner a mitigating-role adjustment for his 2015 drug-trafficking offense.

b. The same is true with respect to petitioner's 2016 offense. In pleading guilty, petitioner admitted that he understood that he was joining a drug-trafficking conspiracy when

he agreed to help father "sell a portion of the bundles" of cocaine by connecting him to a potential buyer. 16-cr-1376 Rearraignment Tr. 20. He therefore knew that his father initially possessed the cocaine and that his friend would try to distribute that cocaine -- key elements of "the scope and structure of the criminal activity." Sentencing Guidelines § 3B1.2 comment. (n.3(C)(i)). Petitioner also played a significant role in "planning or organizing the criminal activity." Id. § 3B1.2 comment. (n.3(C)(ii)). Indeed, petitioner did not dispute the Probation Office's statement that he served as the "narcotics broker in this drug trafficking venture." 16-cr-1376 PSR ¶ 47.

Petitioner also "exercised decision-making authority or influenced the exercise of decision-making authority." Sentencing Guidelines § 3B1.2 comment. (n.3(C)(iii)). Specifically, he was responsible for identifying the person who would distribute the cocaine, 16-cr-1376 PSR ¶ 42, which was a critical decision in the crime, affecting (among other things) its viability and profitability. Petitioner likewise had significant "participation in the commission of the criminal activity," and exercised "discretion" in "performing those acts." Sentencing Guidelines § 3B1.2 comment. (n.3(C)(iv)). As noted, he served as the broker for the drug transaction, and he had complete discretion in choosing the retailer who would purchase and distribute 15 kilograms of cocaine. 16-cr-1376 PSR ¶ 42.

Taken together, the factors set forth in the commentary to Section 3B1.2 show that petitioner was not "substantially less culpable than the average participant in the criminal activity" with respect to his 2016 offense, Sentencing Guidelines § 3B1.2 comment. (n.3(A)), let alone plainly so. As with his 2015 offense, petitioner asserts (19-6113 Pet. 16) that "[t]here is no evidence he had a proprietary interest in the criminal activity." But as noted above, see pp. 13-14, supra, the absence of a proprietary interest "is but one factor to be considered by the sentencing court," Torres-Hernandez, 843 F.3d at 209, and the other factors show that petitioner was not substantially less culpable than the average participant in the criminal activity.

Petitioner also contends (19-6113 Pet. 15) that he was less culpable in the offense because the "cocaine transaction was done exclusively between the father and the friend," and he "took no part in the transaction." But petitioner did take part in the transaction; he brokered it. Petitioner provides no support for the proposition that the broker of a drug deal is necessarily less culpable than the parties that the broker brings together. Petitioner also observes (ibid.) that the cocaine was never actually sold. That is irrelevant to the mitigating-role question. Each of the parties here conspired to distribute drugs that were not ultimately distributed; that failure provides no basis to distinguish petitioner's role from that of others.

In sum, the district court therefore did not commit any error, much less a "clear or obvious" error, Puckett, 556 U.S. at 135, in declining to grant petitioner a mitigating-role adjustment with respect to his 2016 drug-trafficking offense.

c. No sound basis exists for this Court's review of petitioner's challenges to the absence of a mitigating-role reduction. Petitioner does not contend that any other court of appeals would have awarded plain-error relief under the circumstances here. Indeed, other circuits have emphasized that unpreserved assertions of factual error will rarely warrant or result in appellate relief under any approach. See, e.g., United States v. Ahrendt, 560 F.3d 69, 76-77 (1st Cir.) ("With respect to factual determinations, an error cannot be clear or obvious unless the desired factual finding is the only one rationally supported by the record below.") (brackets, citation, and internal quotation marks omitted), cert. denied, 557 U.S. 913 (2009); United States v. Saro, 24 F.3d 283, 291 (D.C. Cir. 1994) ("[S]ince the obviousness of an error is assessed from the sentencing court's perspective, factual errors in pre-sentencing reports may well tend to survive plain-error review more readily than legal errors."), cert. denied, 519 U.S. 956 (1996).

In addition, the question presented is the subject of an intra-circuit conflict more properly addressed by the court of appeals itself. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of

Appeals to reconcile its internal difficulties."). Although the Fifth Circuit stated in Fierro v. United States, supra, and Lopez v. United States, supra, that questions of fact capable of resolution at sentencing can never constitute plain error, the court has applied that rule inconsistently in practice. See United States v. Claiborne, 676 F.3d 434, 441 (5th Cir. 2012) (per curiam) (Prado, J., concurring) (observing that "the rule from Lopez" has not "been consistently adhered to by our court"); see also United States v. Pattan, 931 F.2d 1035, 1042-1043 (5th Cir. 1991) (following the approach to plain-error advocated by petitioner), cert. denied, 504 U.S. 958 (1992). This Court need not and should not intervene to resolve an issue that the court of appeals itself could still reevaluate in an appropriate case (e.g., if it ultimately encounters one in which the issue might affect the outcome).

2. Finally, petitioner briefly contends (19-6431 Pet. 17-18) that the district court committed a separate error by imposing a substantively unreasonable sentence for his 2015 drug-trafficking offense. The court of appeals correctly rejected that factbound claim. Specifically, the court correctly rejected petitioner's contention (see ibid.) that the district court did not adequately consider his cooperation with law enforcement. As the court of appeals observed, petitioner "did not provide substantial assistance" with respect to his 2015 offense, but instead "in the later cocaine-conspiracy case" (his 2016 offense)

and was rewarded for it in his sentencing for that offense. 19-6431 Pet. App. A2. The court correctly concluded that "the district court did not abuse its discretion in rebuffing [petitioner's] attempt at a double-dip." Ibid.[6]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 2020

[6] Consistent with circuit precedent, the court of appeals stated that plain-error review applied to petitioner's substantive-reasonableness claim because he failed to raise a substantive-reasonableness objection in the district court. 19-6431 Pet. App. A2. This Court is currently considering whether that aspect of Fifth Circuit precedent is correct. See Holguin-Hernandez v. United States, No. 18-7739 (argued Dec. 10, 2019). The outcome in Holguin-Hernandez will have no effect on the proper disposition of this case, however, because the court of appeals alternatively made clear that petitioner's substantive-unreasonableness claim would fail "even without the added hurdle of the plain-error standard." 19-6431 Pet. App. A2. Petitioner accordingly does not suggest that this petition should be held for Holguin-Hernandez.