

NO:

IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 2021

MARIA GONZALEZ MALDONADO

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent,

On Petition for Writ of Certiorari from the

United States Court of Appeals

for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

MICHAEL H. SAUL
Counsel of Record for Petitioner
Georgia Bar Number 627025
P.O. Box 4504
301 Washington Ave.
Marietta, Georgia, 30061
404-281-1542
saulattorney@gmail.com

MICHAEL T. ROSS
Co-Counsel for Petitioner
Georgia Bar Number 763334
301 Washington Ave
Marietta, GA 30060
770-722-3661
mtrosslaw@gmail.com

QUESTIONS PRESENTED FOR REVIEW

The questions presented are:

1. Did Maria Gonzalez Maldonado conspire to possess and/or actually and knowingly possess between 5kg-15kg kilograms of methamphetamine pursuant to U.S.S.G. §2D1.1 and did the government prove this at the sentencing hearing?
2. Was Maria Gonzalez Maldonado a minor participant as described in U.S.S.G. §3B1.2(b)?

INTERESTED PARTIES

There are no parties to the proceeding other than nose named in the caption of the case.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW	2
INTERESTED PARTIES	3
TABLE OF CONTENTS.....	4
TABLE OF AUTHORITIES	5
OPINIONS BELOW	7
STATEMENT OF JURISDICTION	8
STATUTORY AND GUIDELINE PROVISIONS INVOLVED	9
INTRODUCTION.....	10
STATEMENT OF THE CASE.....	10
REASONS FOR GRANTING THE WRIT	12
CONCLUSION	16
CERTIFICATE OF SERVICE.....	17
CERTIFICATE OF SERVICE.....	18

INDEX OF APPENDICES

Appendix A Decision of Eleventh Circuit Court of Appeals

Appendix B Decision of United States District Court for the Northern
District of Georgia

TABLE OF AUTHORITIES

Cases

<i>Almedina</i> , 686 F.3d at 1316 (11 th Cir. 2012)	12
<i>United States v. Barsoum</i> , 763 F.3d 1321, 1333 (11th Cir. 2014)	11
<i>United States v. Davis</i> , 902 F.2d 860 (11 th Cir. 1990)	12
<i>United States v. Simpson</i> , 228 F.3d 1294, 1301 (11 th Cir. 2000)	12

Statutes

§2D1.1	2, 8
§3B1.2	2, 8, 13, 14, 15
28 U.S.C. § 1254(1)	7

IN THE
SUPREME COURT OF THE UNITED STATES

TERM, 2021

MARIA GONZALEZ MALDONADO

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent,

On Petition for Writ of Certiorari from the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Maria Maldonado respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The Eleventh Circuit's unpublished opinion affirming Mrs. Maldonado's direct appeal is located at *United States v. Maria Isabel Gonzalez Maldonado*, No. 20-13163, (11th Cir. May 17, 2021), and is included in the Appendix at Appendix A.

The District Court's judgement and commitment is located at *United States v. Maria Isabel Gonzalez Maldonado*, No. 2:19-cr-00024-SCJ-JCF-6, (N.D.G.A. 2020), and is included in the Appendix at Appendix B.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The decision of the court of appeals affirming the district court's sentence of Mrs. Maldonado was entered on May 17, 2021. This petition is timely filed pursuant to Supreme Court Rule 13.1.

STATUTORY AND SENTENCING GUIDELINE

PROVISIONS INVOLVED

United States Sentencing Guideline §2D1.1 states, in pertinent part:

§2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy

<u>Controlled Substance(s) and Quantity</u>	<u>Base Offense Level</u>
At least 5 KG but less than 15 KG of Methamphetamine	Level 34
At least 1.5 KG but less than 5 KG of Methamphetamine	Level 32

United States Sentencing Guideline 3B1.2, Mitigating Role, states, in pertinent part:

§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.

U.S.S.G. §3B1.2

INTRODUCTION

This petition presents two questions that require the Court's resolution: (1) whether the District Court abused its discretion in calculating the drug weights solely based off the case agent's interpretation of phone calls and text messages, and (2) whether the District Court abused its discretion in not applying a 2-level decrease for Mrs. Maldonado being a minor participant.

It is imperative the Court rule on whether a District Court can calculate drug weights based solely on the case agent's interpretation of code words on a wiretap in a case where no drugs were seized from the Defendant, no drugs were viewed in the Defendant's possession, and where no drugs were purchased from the Defendant.

STATEMENT OF THE CASE

1. For approximately one (1) year, between 2018 and 2019, United States government agents surveilled Maldonado's co-conspirator, Carlos Santana Medrano (Santana). The investigation led to the government conducting a Title III wiretap Santana's phone. Upon wiretapping Santana's phone, agents learned that one of Santana's sources of supply for methamphetamine was Maria Maldonado. The conversations between Santana and Maldonado occurred in Spanish. The Government used an interpreter to translate the calls and text messages. Maldonado and Santana spoke on the phone and by text message, often using coded language to discuss drug transactions. Agents also installed a vehicle tracker on Santana's car. After listening to the line sheets, the agents

determined Mrs. Maldonado was the middleperson for methamphetamine transactions between Santana and an unknown male. The wiretapped conversations between Santana and Maldonado were the foundation for Maldonado's arrest. On March 10, 2020, Defendant Maldonado entered a guilty plea to Counts 1 and 12 of the indictment.

2. At sentencing, the Court started at a base offense level 34 on the United States Sentencing Table. The Court found that the government sustained their burden of proof with respect to the amount of drugs Maldonado distributed or conspired to distribute. The Court also rejected Mrs. Maldonado's argument that she deserved a 2-level minor role reduction.
3. On direct appeal, the United States Court of Appeals for the Eleventh Circuit rejected Mrs. Maldonado's argument that the drug weights were improperly calculated. The 11th Circuit also rejected Mrs. Maldonado's argument that she deserved a 2-level minor role reduction.
4. Mrs. Maldonado timely filed this petition for certiorari.

REASONS FOR GRANTING THE WRIT

1. Whether the District Court can find drug weights based on a case agent's interpretation of code words on a wiretap, without more?
 - a. A decision on this question will guide the District Courts across the United States on the burden of proof regarding drug weight calculation. If the District Court is correct, an investigating agent may speculate in his/her interpretation of wiretaps, and without more, establish a specific offense level. This has a drastic effect on the District Court's calculation of a defendant's sentence. This Court must rule on whether corroborating evidence is necessary in proving drug weights at sentencing.
 - b. Maldonado did not possess between 5kg and 15kg of methamphetamine, nor did she conspire to do so. The facts of the case and what was proved at sentencing is that the drug weights attributable to Maldonado were between 1.5kg to 5kg, which is a base offense level 32 on the United States Sentencing Table. The government's evidence is based on speculation and guesswork of the agent that testified, and the court had no basis to rely on speculative evidence. For example, in one transaction, Maldonado asks Santana, "If I give you one, when can you have the paper?" Santana replies, "I can get two bucks together today." The agent testified at the sentencing hearing that this meant one kilogram of methamphetamine

in exchange for \$2,000. However, there is nothing to support this conclusion other than the agent's speculation and opinion. This could have easily been one ounce of methamphetamine for \$200.

- c. "The calculation may be based on "fair, accurate, and conservative estimates," but not on mere speculation." *United States v. Barsoum*, 763 F.3d 1321, 1333 (11th Cir. 2014), *Almedina*, 686 F.3d at 1316 (11th Cir. 2012). Vague and uncertain statements of a co-conspirator cannot support a drug quantity calculation. *United States v. Simpson*, 228 F.3d 1294 (11th Cir. 2000).
- d. The Court needs to set out parameters of when agent testimony is speculation and needs additional corroboration.

2. Whether Maldonado was entitled to a 2-level decrease as a minor participant.

- a. This Court must clarify what constitutes a minor participant. There is a five-part test in the USSG commentary that the District Court is to apply. The test was applied in Maldonado's case, but the factors are broad and impart too much flexibility from Judge to Judge and District to District.
- b. Maria Maldonado was a minor participant and deserved a 2-level reduction. The district court erred in denying Maldonado this 2-level reduction and the Eleventh Circuit erred in affirming this decision. The appellate court reviews factual findings of the district court

regarding role reductions under the clearly erroneous standard. *United States v. Davis*, 902 F.2d 860 (11th Cir. 1990).

- c. U.S.S.G. §3B1.2(b) states “If the defendant was a minor participant in any criminal activity, decrease by two (2) levels.” In determining whether a defendant was a minor participant, the court should consider five (5) factors as suggested by the Sentencing Commission (however, this list is non-exhaustive):
 - i) the degree to which the defendant understood the scope and structure of the criminal activity;
 - ii) the degree to which the defendant participated in planning or organizing the criminal activity;
 - iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;
 - iv) 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;
 - v) the degree to which the defendant stood to benefit from the criminal activity.

- d. The court should clarify the parameters of each factor. There is too much flexibility in these factors from circuit to circuit. The United States Supreme Court must weigh in on how these factors are applied and whether the factors weigh in favor of Maldonado receiving a minor role reduction.

- e. The court clearly erred when it did not give Maldonado a 2-level reduction as required by U.S.S.G. §3B1.2(b). Maldonado should have received a 2-level reduction for her minor role.

CONCLUSION

The Supreme Court of the United States should GRANT the Petition for Writ of Certiorari.

Respectfully submitted August 13, 2021,

/s/Michael H. Saul
MICHAEL H. SAUL
Attorney for Petitioner
Georgia Bar Number 627025
P.O. Box 4504
301 Washington Ave.
Marietta, Georgia, 30061
404-281-1542
saulattorney@gmail.com

/s/Michael T. Ross
Michael Ross
Co-Counsel for Petitioner
Georgia Bar Number: 763334
301 Washington Ave
Marietta, Georgia 30060
770-722-3661
mtrosslaw@gmail.com

CERTIFICATE OF SERVICE

This is to certify that I have this day served Merrick Garland, Attorney General listed below a copy of the attached Petition by depositing a copy of same in the U.S. Mail in a properly addressed envelope, with adequate postage affixed thereon to wit:

Elizabeth Prelogar
Acting Solicitor General of the United States,
Department of Justice,
950 Pennsylvania Ave., N.W., Room 5614,
Washington, D. C. 20530-0001

August 13, 2021

/s/Michael H. Saul
Michael H. Saul
Counsel for Petitioner
Georgia Bar No. 627025

P.O. Box 4504
301 Washington Ave.
Marietta, Georgia, 30061
404-281-1542
saulattorney@yahoo.com or saulattorney@gmail.com

CERTIFICATE OF SERVICE

This is to certify that I have this day served Kurt Erskine, Acting United States Attorney for the Northern District of Georgia, listed below a copy of the attached Motion by depositing a copy of same in the U.S. Mail in a properly addressed envelope, with adequate postage affixed thereon to wit:

Kurt Erskine, Acting United States Attorney
Calvin A. Leipold, III, Assistant United States Attorney
J. Elizabeth McBath, Assistant United States Attorney
600 U.S. Courthouse
75 Ted Turner Drive, SW
Atlanta, GA 30303
404-581-6000

August 13, 2021

/s/Michael H. Saul
Michael H. Saul
Counsel for Petitioner
Georgia Bar No. 627025
P.O. Box 4504
301 Washington Ave.
Marietta, Georgia, 30061
404-281-1542
saulattorney@yahoo.com or saulattorney@gmail.com

/s/Michael T. Ross
Michael Ross
Co-Counsel for Petitioner
Georgia Bar No. 763334
301 Washington Ave
Marietta, GA 30060
770-722-3661
mtrosslaw@gmail.com