

CASE NO. _____
SUPREME COURT OF THE UNITED STATES

SERGIO BUCIO

PETITIONER

V.

UNITED STATES OF AMERICA

RESPONDENT

**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF
THE UNITED STATES**

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QUESTIONS PRESENTED FOR REVIEW

- I. Whether the district court erred in calculating the amount of laundered funds attributable to Mr. Bucio.
- II. Whether the district court erred by failing to apply a two-level mitigating role adjustment pursuant to USSG § 3B1.2(b).

LIST OF ALL PARTIES TO THE PROCEEDINGS

Petitioner/Appellant/Defendant – Sergio Bucio

Respondent/Appellee/Plaintiff – United States of America

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Sergio Bucio, by court-appointed counsel, respectfully requests that a Writ of Certiorari issue to review the unpublished opinion of the United States Court of Appeals for the Sixth Circuit in the case of *United States v. Sergio Bucio*, No. 20-5973, filed on May 21, 2021 and attached to this Petition as Appendix B.

OPINIONS BELOW

Mr. Bucio’s appeal to the Sixth Circuit was taken from the Judgment entered following his convictions for promotional and concealment money laundering. *See* Appendix A. On May 21, 2021, the Sixth Circuit issued an unpublished opinion affirming Mr. Bucio’s sentence. *See* Appendix B. This petition for a writ of certiorari now follows.

JURISDICTION

The Sixth Circuit issued an unpublished opinion affirming Mr. Bucio’s sentence on May 21, 2021. *See* Appendix B. Mr. Bucio invokes this Court’s jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

STATEMENT OF THE CASE

On December 16, 2019, Sergio Bucio entered a guilty plea to Counts 5 and 6 of the Second Superseding Indictment without a plea agreement. [R. 497: Minute Entry for Rearraignment, Page ID # 3189-90]. Prior indictments in the case did not name Mr. Bucio as a defendant. *See* [R. 1: Indictment, Page ID # 218-23]; [R. 39: Superseding Indictment, Page ID # 398-404]. Seven of Mr. Bucio’s eight co-defendants either pleaded guilty or were otherwise convicted by July 2018, more than a year before Mr. Bucio was taken into custody. *See, e.g.*, [R. 326: Ortiz Jury Verdict, Page ID # 1491]. The government moved to dismiss all charges against Mr. Bucio’s only other co-defendant, Irma Yolanda Fregoso-Gutierrez. *See* [R. 294: Motion to Dismiss, Page ID # 1309-10].

Following his guilty plea, the United States Probation Office prepared Mr. Bucio's Pre-Sentence Investigation Report (PSR). *See* [R. 529: Sealed PSR].¹ The PSR explained that the money laundering at issue related to proceeds of drug sales managed by co-defendants Ciro Macias Martinez (Macias) and Brizeida Janet Sosa. *Id.* at Page 4, Paragraph 7. “[Macias] and Brizeida collected proceeds of drug sales, and then stored, counted, and packaged the money at their residence in Scott County, Kentucky.” *Id.* In addition to structuring deposits at financial institutions to transfer funds electronically, Mr. Macias “provided the money to couriers, who would transport [it] out of Kentucky and provide it to members of a larger drug trafficking organization (DTO)[.]” *Id.* By mid-2016, “the DTO was already receiving multiple shipments of various controlled substances on a monthly basis or semi-monthly basis.” *Id.* at Page 5, Paragraph 8.

Mr. Bucio traveled to Kentucky near the end of August 2016, staying with Mr. Macias and Ms. Sosa at their residence for approximately two weeks. *Id.* During his short time in Kentucky, Mr. Bucio “participated in one of the trips to launder drug proceeds by structuring deposits at banks.” *Id.* at Paragraph 9. Mr. Bucio traveled with others on that occasion “to approximately five or six Wells Fargo and Bank of America bank branches in and around Nashville, Tennessee” where his co-defendants “made deposits totaling approximately \$50,000[.]” *Id.*

¹ Mr. Bucio's PSR is filed in the district court record under seal, thus Page ID numbers are unavailable. All citations to the PSR refer to the page and paragraph numbers included in the document itself.

In addition, Mr. Bucio was directed by Mr. Macias to “pick up bulk cash proceeds” totaling \$195,920 on September 1, 2016 and deliver the money “to an individual...believed to be a courier for the” DTO. *Id.* at Paragraph 11. Mr. Bucio departed Kentucky shortly after this cash transfer and had no further involvement in Mr. Macias’s criminal schemes. Mr. Macias and others subsequently engaged in other drug trafficking and money laundering activities for more than six months until law enforcement made arrests in April 2017.

USPO initially calculated Mr. Bucio’s base offense level as 22 including a 14-level increase under USSG § 2B1.1(b)(1)(H) based on its determination that “the value of the laundered funds attributable to Mr. Bucio” was “more than \$550,000 but less than \$1,500,000.” *Id.* at Page 29, Addendum. Both parties objected.

The government argued that a 16-level increase should apply under USSG § 2B1.1(b)(1)(I) because it believed Mr. Bucio should be held accountable for “at least \$1,500,000 but less than \$3,500,000 in laundered funds.” *Id.* This calculation would raise Mr. Bucio’s base offense level to 24. *Id.* In arriving at this figure, the government insisted Mr. Bucio’s relevant conduct should include all monies laundered through financial institutions and cash transfers up to and including April 13, 2017. *Id.*

In contrast, Mr. Bucio argued that a ten-level increase should apply under USSG § 2B1.1(b)(1)(F) based on “laundered funds of approximately \$245,920[.]” *Id.* at Pages 32-33. This calculation represented the “total funds laundered during his lone structuring trip to Nashville and the cash delivery made to an undercover agent on September 1, 2016.” *Id.* Because he withdrew from the conspiracy when he left Kentucky in early September 2016 and had no further involvement in the offenses, Mr. Bucio argued that the lower calculation was appropriate, producing a base offense level of 16. *Id.*

USPO sustained the government’s objection and increased Mr. Bucio’s base offense level to 24 in the final version of his PSR. *Id.* at Page 14, Paragraph 48; *id.* at Page 29, Addendum. Mr. Bucio reiterated his objection to the base offense level calculation in his sentencing memorandum. *See* [R. 519: Sentencing Memorandum, Page ID # 3283-88]. Mr. Bucio also argued that he was “entitled to consideration for a two-level mitigating role reduction under USSG § 3B1.2(b)” if the district court overruled his objection to the base offense level calculation. *Id.* at Page ID # 3282. *See also id.* at Page ID # 3288-91. The government opposed the request for a minor role reduction, instead arguing for the first time that Mr. Bucio should be assessed an “aggravating role adjustment pursuant to [USSG] § 3B1.1.” [R. 520: Government Sentencing Memorandum, Page ID # 3300-05].

The district court conducted Mr. Bucio’s sentencing hearing on August 7, 2020. *See* [R. 536: Transcript, Sentencing, Page ID # 3424-3531]. The government called Drug Enforcement Administration (DEA) Special Agent Troey Stout to provide testimony relevant to Mr. Bucio’s objection and the disagreement about potential role adjustments. *Id.* at Page ID # 3427. Agent Stout was the lead agent in the investigation. *Id.* at Page ID # 3428, Lines 3-5. Stout said the DEA began probing Mr. Macias’s drug trafficking and distribution of “large quantities of cash” in August 2016. *Id.* at Lines 13-17. The DEA used undercover agents to conduct a “series of money drops” and confirmed that Mr. Macias was trafficking in narcotics and transporting drug proceeds out of state through various means. *Id.* at Page ID # 3428-29.

Agent Stout said the investigation “stretched for the better portion of over three years” and involved the distribution of “large quantities” of “heroin, fentanyl, cocaine, and methamphetamine[.]” *Id.* at Page ID # 3429, Lines 6-13. These drug sales led to an accumulation of “mass quantities of bulk cash.” *Id.* at Line 18. Mr. Macias made cash deliveries monitored by the DEA. *Id.* at Lines 22-25. On September 1, 2016, Mr. Bucio made a money drop on behalf of Mr. Macias. *Id.* at Page ID # 3430, Lines 1-4. “[I]t was only that one occasion that” law enforcement “interacted with” Mr. Bucio. *Id.* at Page ID # 3430, Lines 4-5.

Mr. Bucio made small talk with the undercover agent, noting that he recently had arrived from California and that this area “was quiet.” *Id.* at Lines 11-13. Following the transfer, agents followed Mr. Bucio back to the residence occupied by Mr. Macias and Ms. Sosa. *Id.* at Page ID # 3431-32. Agent Stout estimated that the total bulk cash transferred by Mr. Macias’s DTO to the DEA undercover during the entire conspiracy period was “close to a million” dollars. *Id.* at Page ID # 3432, Lines 21-23. Stout said “another approximately 1.2 million” dollars was “actually seized later on in the investigation as it continued.” *Id.* at Page ID # 3433, Lines 15-18.

Regarding structured deposits, Agent Stout testified that Ms. Sosa was responsible for recruiting a “group of females” to “deliver bulk cash to bank locations in Tennessee and in North Carolina.” *Id.* at Page ID # 3437, Lines 9-14. Stout said Mr. Macias and Ms. Sosa were “given specific instructions from Mexico” about how to conduct these transactions. *Id.* at Lines 20-23. Stout indicated the group of females “under the direction of” Ms. Sosa “would drive” from “bank to bank...and...go in and do deposits less than \$10,000 into various accounts.” *Id.* at 3438, Lines 8-13. Mr. Bucio accompanied these co-defendants on “one” such “trip[.]” *Id.* at Page ID # 3441, Lines 10-11.

Agent Stout recalled that Mr. Bucio was in Kentucky “for a very short period of time, approximately two weeks...just enough time” to participate in one

cash delivery and one structuring trip. *Id.* at Lines 11-14; *id.* at Page ID # 3442, Lines 6-7. All of the other defendants who spoke to law enforcement confirmed Mr. Bucio was only in the area for “a short period of time.” *Id.* at Page ID # 3441, Lines 15-16. Once he left Kentucky, law enforcement “never heard, never saw from him again whatsoever.” *Id.* at Page ID # 3442, Lines 21-22. Nor did agents intercept any subsequent communications involving Mr. Bucio despite utilizing Title III wiretaps to monitor various phones associated with the DTO. *Id.* at Line 23.

On cross-examination, Agent Stout again confirmed that Mr. Bucio was “only in Kentucky for a couple of weeks.” *Id.* at Page ID # 3447, Lines 8-10; *id.* at Lines 15-17 (Stout: “It was approximately a two-week time period. We had him on camera during that time period, and it was no more than two weeks. He was here for two weeks and gone.”). In contrast, the cash transfers and structured deposits occurred over the course of several months before and after Mr. Bucio’s departure. *Id.* at Page ID # 3447-48.

Agent Stout verified that Mr. Macias made at least one bulk cash transfer to a DEA undercover agent before Mr. Bucio’s arrival in Kentucky. *Id.* at Page ID # 3448, Lines 22-25. Stout said Mr. Bucio left shortly after his involvement in the bulk cash transfer on September 1, 2016. *Id.* at Page ID # 3449, Lines 9-11. Stout

confirmed Mr. Macias had directed Mr. Bucio to deliver the cash on his behalf. *Id.* at Page ID # 3451, Lines 5-11.

Regarding Mr. Bucio's potential return from California, Agent Stout said the investigation was resource-intensive, that it involved multiple wiretaps and undercover agents, and that law enforcement uncovered no evidence suggesting Mr. Bucio ever came back to Kentucky after September 2016 or that he participated in any other money laundering activities after that date. *Id.* at Page ID # 3452-53. Likewise, officers discovered nothing to suggest Mr. Bucio communicated with Mr. Macias after his departure or that he received any kind of benefit for his short-lived participation in the money laundering schemes. *Id.* at Page ID # 3453-54. Stout agreed Mr. Macias personally asked Mr. Bucio to travel from California to assist him. *Id.* at Page ID # 3455, Lines 1-3.

Agent Stout said an individual in Mexico known as Jalisco provided Mr. Macias with instructions and all necessary information for co-defendants to make structured deposits. *Id.* at Page ID # 3460, Lines 1-11. There was no indication this information ever went to Mr. Bucio, much less that he passed it along to Mr. Macias and Ms. Sosa. *Id.* at Page ID # 3460, Lines 14-19. Stout also confirmed the investigation revealed no information suggesting Mr. Bucio instructed anyone about how to conduct structured deposits, just that he "participated" in one trip to Tennessee when others made such deposits. *Id.* at Page ID # 3461, Lines 2-14.

Stout similarly recalled an interview with Ms. Sosa where she said Mr. Bucio did not direct anyone to do anything in connection with the structured deposits. *Id.* at Page ID # 3462, Lines 8-12.

Following cross-examination, the district court asked for clarification about several issues including Mr. Bucio's role in the operation. In particular, Agent Stout confirmed that Mr. Macias said it was his decision to allow Mr. Bucio to stay at his residence because Mr. Macias was "the main communication with Mexico[.]" *Id.* at Page ID # 3466-67. Stout said it was his belief Mr. Macias personally "request[ed] that [Mr. Bucio] come and stay" with him in Kentucky. *Id.* at Page ID # 3467, Lines 4-9. On re-cross, Agent Stout confirmed that Ms. Sosa and others had made prior trips to conduct structured deposits before Mr. Bucio's arrival in Kentucky. *Id.* at Page ID # 3469, Lines 9-15.

Following testimony, the government argued Mr. Bucio should be held accountable for all money laundered during the conspiracy period because he was present at the beginning, thus it was reasonably foreseeable that those activities would continue after his departure. *Id.* at Page ID # 3473-78. Mr. Bucio argued relevant conduct is not simply about foreseeability, but also about the scope of the defendant's agreement to participate in criminal activity. *Id.* at Page ID # 3488, Lines 17-20. Here, Mr. Bucio's short-lived involvement, his participation in only one cash drop and one structuring trip, and the lack of evidence about him

potentially returning to Kentucky in the future undermined the proposition that the scope of Mr. Bucio’s agreement included money laundering activities occurring months after he withdrew to California. *Id.* at Page ID # 3488-89. *See also id.* at Page ID # 3491-92 (discussing evidence of Mr. Bucio’s withdrawal as confirmation of limited scope of his agreement to participate in money laundering).

Following argument, the district court attributed to Mr. Bucio nearly the full amount of money laundered in both conspiracies—\$1,668,000 in bulk cash transfers and \$800,000 in structured deposits. *Id.* at Page ID # 3497-98. The court found these amounts to be “foreseeable to” and “within the scope of” Mr. Bucio’s agreement. *Id.* at Page ID # 3498, Lines 1-3. The court concluded there was sufficient evidence to establish that Mr. Bucio had “specific knowledge of the overall scope of...the drugs that were being sold and the money that was being generated.” *Id.* at Page ID # 3500, Lines 4-7. The court found that “it was within the scope of [Mr. Bucio’s] agreement to involve himself and to make sure that money was being properly transferred both to couriers as well as placed in bank accounts” and that the “amounts...were reasonably foreseeable to him.” *Id.* at Page ID # 3501, Lines 3-8. At the same time, the court found that there was “insufficient evidence to conclude that an upward role adjustment should be applied” because there was “too much conflicting evidence on that point[.]” *Id.* at Lines 14-17. But the court also held that a minor role reduction was inappropriate.

Id. at Page ID # 3504-06. As a result, the court determined Mr. Bucio's base offense level to be 24. After other enhancements and reductions, Mr. Bucio's total offense level became 29. Based on a criminal history category of II, Mr. Bucio's applicable Guidelines range was 97-121 months. *Id.* at Page ID # 3506-07.

Following allocution, the district court imposed a within-Guidelines sentence of 109 months of incarceration and a \$3,000 fine. *Id.* at Page ID # 3525.

REASONS FOR GRANTING THE WRIT

I. The district court erred in calculating the amount of laundered funds attributable to Mr. Bucio.

The record in this case establishes that Mr. Bucio participated in two months-long conspiracies for only a few short weeks. Mr. Bucio traveled to Kentucky at Mr. Macias's request. *See* [R 536: Transcript, Sentencing, Page ID # 3467, Lines 4-9]. Mr. Macias directed him to make one bulk cash transfer in the same manner as other transfers occurring before Mr. Bucio's arrival. Mr. Macias also had Mr. Bucio accompany Ms. Sosa and other females on a single trip to make structured deposits at banks in Tennessee. Instructions for where these deposits would occur, how they would be made, the amounts that should be involved, and all other pertinent details were given to Mr. Macias by Jalisco, a cartel-affiliated individual in Mexico. *Id.* at Page ID # 3460. Mr. Bucio had no part in directing anyone to do anything.

Mr. Bucio then left Kentucky for California, changed his cell phone number, and deliberately withdrew from the conspiracies by affirmatively terminating contact with everyone involved in Kentucky. Mr. Bucio was not charged in connection with this case until a Second Superseding Indictment was returned. Why? Because his involvement was minimal. He was an afterthought because he was a minor participant instructed by Mr. Macias to perform certain low-level tasks during his brief involvement in Mr. Macias's criminal schemes.

Despite these circumstances, the Sixth Circuit erroneously attributes all of the organizational planning for Mr. Macias's money laundering scheme to Mr. Bucio. For example, the Sixth Circuit claims "Sosa and her co-conspirators" laundered drug proceeds in ways that were "directly modeled on the methods" Mr. Bucio "taught them." *See Appendix B, Page 6.* This conclusion was directly contradicted by Agent Stout's testimony at sentencing when he confirmed that all instructions and necessary information about how to make structured deposits came from Jalisco to Mr. Macias. Stout specifically noted that the investigation revealed nothing suggesting Mr. Bucio instructed anyone about how to conduct structured deposits. [R. 536: Transcript, Sentencing, Page ID # 3460].

The Sixth Circuit also incorrectly states Mr. Bucio traveled to Kentucky "to help Macias" set up the money laundering scheme by "provid[ing] instructions on how to structure bank deposits[.]" Appendix B, Page 6. Agent Stout's testimony

at sentencing confirms this was not the case. Stout said there was no indication such information ever went to Mr. Bucio. [R. 536: Transcript, Sentencing, Page ID # 3460]. Mr. Macias directed others, including Mr. Bucio, based on the instructions he received from Jalisco, not the other way around.

The Sixth Circuit similarly mischaracterizes Mr. Bucio's role by insisting he was as a "consultant hired to solve the operation's revenue-extraction logistics." Appendix B, Page 6. The Court suggests Mr. Bucio "set the entire money laundering operation in motion" and "[a]ll of the laundering activity that occurred after his departure was just a continuation of the system he created." *Id.* But Agent Stout confirmed the money laundering operation was already ongoing before Mr. Bucio even arrived in Kentucky. *See* [R. 536: Transcript, Sentencing, Page ID # 3469, Lines 9-15]. Bulk cash transfers and deposit structuring began before Mr. Bucios' short-lived involvement and continued after his withdrawal. *Id.*

Why have these misconceptions persisted? The record does not simply fail to support these conclusions—It contradicts them. There was no evidence presented that Mr. Bucio instructed anyone to do anything. Rather, Mr. Bucio participated in a single bulk cash transfer at Mr. Macias's direction and a single trip with others to structure deposits at Mr. Macias's direction. Jalisco provided Mr. Macias all instructions and information about how to conduct these schemes.

Mr. Bucio had no part in it. Instead, Mr. Bucio was another low-level participant instructed by Mr. Macias to perform certain tasks just like the women recruited by Ms. Sosa to make structured deposits.

Given these circumstances, Mr. Bucio respectfully asks this Court to grant his petition to review the Sixth Circuit’s erroneous findings regarding the amount of laundered funds attributed to him at sentencing. It is well-established that “the scope of a defendant’s jointly undertaken activity ‘is not necessarily the same as the scope of the entire conspiracy, and hence relevant conduct is not necessarily the same for every participant.’” *United States v. McReynolds*, 964 F.3d 555, 563 (6th Cir.2020) (citing USSG § 1B1.3, comment. n.3(B)). In determining a particular defendant’s base offense level, “[a]cts of others that were not within the scope of the defendant’s agreement, even if those acts were known or reasonably foreseeable to the defendant, are not relevant conduct under subsection (a)(1)(B).”

Id.

This principle distinguishes a defendant’s relevant conduct under the Sentencing Guidelines from broader “vicarious liability for the acts of...coconspirators.” *Id.* (citing *Pinkerton v. United States*, 328 U.S. 640 (1946)). See also *United States v. Campbell*, 279 F.3d 392, 400-01 (6th Cir.2002); *United States v. Harris*, 636 Fed.Appx. 922, 926 (6th Cir.2016) (sentencing courts must “differentiate between co-conspirators varying degrees of culpability”); Mark

Noferi, *Towards Attenuation: A “New” Due Process Limit on Pinkerton Conspiracy Liability*, 33 Am. J. Crim. 91, 113-16 (2006). The rule also provides “protection against the possibility that a less culpable” member of a conspiracy “will be caught up in the sweep” of broader relevant conduct liability “due to the acts of coconspirators.” *Id.* (citing *United States v. Pruitt*, 156 F.3d 638, 645 (6th Cir.1998)). *See also Campbell*, 279 F.3d at 400 (avoiding conspiracy-based sentences that are “potentially overbroad in scope” is “one of the specific purposes of § 1B1.3(a)(1)(B)”).

Both the district court and the Sixth Circuit violated these principles in Mr. Bucio’s case. It was clearly erroneous to attribute to Mr. Bucio the aggregate amount of all known cash transfers by Mr. Macias’s DTO—“approximately 1.6 million dollars”—in calculating his base offense level. [R. 529: Sealed PSR, Page 5, Paragraph 11]. The record contains no evidence to support such a finding. More significant, the district court’s findings as to the scope of Mr. Bucio’s agreement to engage in both types of money laundering—bulk cash transfers and structured deposits—were unsupported by the record.

While the government argued that Mr. Bucio was a “manager or supervisor[,]” thus his involvement in the offenses must have been significant, the district court explicitly rejected this argument, noting there was “too much conflicting evidence on that point[.]” [R. 536: Transcript, Sentencing, Page ID #

3501, Lines 14-17]. The district court’s conclusion was appropriate given Agent Stout’s testimony at sentencing. Stout said Mr. Macias received all information and directives regarding structured deposits from an individual in Mexico; Mr. Bucio played no part in those discussions. *Id.* at Page ID # 3460, Lines 1-19. Agent Stout also testified law enforcement uncovered no information suggesting Mr. Bucio instructed anyone about how to conduct structured deposits, just that he “participated” in one trip to Tennessee with others who made such deposits. *Id.* at Page ID # 3461, Lines 2-14. *See also id.* at Page ID # 3462, Lines 8-12 (Ms. Sosa told Agent Stout that Mr. Bucio did not direct anyone to do anything in connection with structured deposits).

Beyond this evidence of his limited role in both types of money laundering, the record confirms Mr. Bucio was only present in Kentucky for two weeks during a conspiracy lasting approximately nine months. *Id.* at Page ID # 3447, Lines 8-10 (Stout: “He was here for two weeks and gone.”). *See also* [R. 475: Second Superseding Indictment, Page ID # 3120-21] (charged conspiracies occurred between “August 2016” and “April 13, 2017”). The Sixth Circuit claims Mr. Bucio presented no evidence he withdrew from the conspiracy “beyond the fact that he left Kentucky and went back to California.” Appendix B, Page 7. In fact, however, Mr. Bucio changed his cell phone number to affirmatively sever all contact with co-conspirators in Kentucky. [R. 536: Transcript, Sentencing, Page

ID # 3478]. Despite conducting an extensive investigation involving multiple undercover agents, wiretaps, and other surveillance, the record contains nothing to suggest Mr. Bucio had any contact with Mr. Macias or others involved in the offenses after his departure for California in September 2016, nor anything to suggest he continued to participate in their laundering activities. *See id.* at Page ID # 3452-54.

As a result, even if later cash transfers or structured deposits by Mr. Macias and others had been “reasonably foreseeable” to Mr. Bucio, they cannot be considered “relevant conduct” as to him because they were “not within the scope” of his agreement to participate in Mr. Macias’s money laundering. USSG § 1B1.3, comment. (n.3(B)). Mr. Bucio’s conduct confirms the scope of his agreement. He participated in one bulk cash transfer and one trip to make structured deposits involving a total of \$245,920. *See* [R. 529: Sealed PSR, Pages 32-33, Addendum]. Given full consideration of the record, this was the appropriate relevant conduct calculation the district court should have relied upon to determine Mr. Bucio’s base offense level under USSG § 2B1.1(b)(1).

Rulings to the contrary by the district court and the Sixth Circuit were erroneous. This Court should grant Mr. Bucio’s petition to address this issue.

II. The district court erred by failing to apply a two-level mitigating role adjustment pursuant to USSG § 3B1.2(b).

The same rationale applies in considering the district court's failure to grant Mr. Bucio a mitigating role adjustment. Given the excessive loss amount attributed to him, his limited involvement in the offenses, and the lack of evidence that he received any payment or financial benefit, Mr. Bucio was entitled to such a reduction.

To reiterate, the record contains no evidence Mr. Bucio participated in planning the structured deposits made by his co-defendants. Instead, Agent Stout testified that Mr. Macias received all information and instructions regarding structured deposits from another individual in Mexico. *Id.* at Page ID # 3460, Lines 1-8. Mr. Bucio simply accompanied co-defendants Laura Ortiz and Smirna Ortiz on a single trip to conduct structured deposits as directed by Mr. Macias. *See* [R. 529: Sealed PSR, Page 5, Paragraph 9].

Agent Stout similarly indicated he had no evidence "at all" that Mr. Bucio was somehow involved in passing this information along to Mr. Macias. [R. 536: Transcript, Sentencing, Page ID # 3460, Line 16]. In fact, there was nothing to establish that Mr. Bucio was the appropriate "contact" for any issues relating to either money laundering offense. *Id.* at Page ID # 3505, Lines 6-11. The district court's suggestion to the contrary and the Sixth Circuit's reliance on that conclusion to determine that Mr. Bucio exercised "decision-making authority" in

the schemes is unsupported by the record. *Id.* See also *United States v. Catching*, 796 Fed.Appx. 535, 539 (6th Cir.2019) (citing *Goodman v. Simonds*, 61 U.S. (20 How.) 343, 360 (1857)).

Nor was there evidence that Mr. Bucio played a similar role to Mr. Macias. On the contrary, Mr. Bucio’s involvement was entirely at Mr. Macias’s direction. As Agent Stout testified, it was his understanding that Mr. Macias requested that Mr. Bucio stay in his home in Kentucky. *Id.* at Page ID # 3466, Lines 21-23. Mr. Macias then instructed Mr. Bucio to conduct the bulk cash transfer on September 1, 2016. *Id.* at Page ID # 3451, Lines 9-11. Likewise, Mr. Bucio’s only involvement in a single structuring trip was to assist co-defendants in carrying out instructions provided by Mr. Macias. Mr. Bucio could not have occupied the same role as Mr. Macias because his participation in both money laundering offenses occurred at Mr. Macias’s specific direction.

The “salient issue” in determining whether a mitigating role adjustment applies is “the role the defendant played in relation to the activity for which the court held him accountable.” *United States v. Jackson*, 2015 WL 9487897 at *2 (6th Cir.2015) (citing *United States v. Roper*, 135 F.3d 430, 434 (6th Cir.1998)). Given the underlying facts, his limited role and short-lived involvement in the offenses, and the determination that he should be held accountable for nearly every

dollar laundered in both conspiracies, it is clear that Mr. Bucio was entitled to a minor role reduction pursuant to USSG § 3B1.2(b).

The district court's findings to the contrary were erroneous. The Sixth Circuit's denial of Mr. Bucio's appeal was equally unsound. This Court should grant Mr. Bucio's petition to address this issue.

CONCLUSION

For the foregoing reasons, Mr. Bucio respectfully asks this Court to grant his petition for the issuance of a writ of certiorari for the purpose of vacating his sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jarrod J. Beck, counsel for Petitioner Sergio Bucio, do hereby certify that the original and ten copies of this Petition for Writ of Certiorari were mailed to the Office of the Clerk, Supreme Court of the United States, Washington, DC 20543. I also certify that a true copy of the Petition was served by mail with first-class postage prepaid upon Assistant United States Attorney Gary Todd Bradbury, 260 West Vine Street, Suite 300, Lexington, Kentucky 40507-1612.

This 16th day of August, 2021.

JARROD J. BECK

COUNSEL FOR SERGIO BUCIO