

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,
Respondent,

-v-

SERGIO AMAYA-MARTINEZ
Petitioner.

On petition for writ of certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Whether the 5th Circuit Court has qualified the minor and minimal role adjustment commentary under U.S.S.G. §3B1.2 such that the sentences in consideration of those adjustments lack certainty and fairness, in direct contravention of 28 U.S.C.S. §991(b).

PARTIES TO THE PROCEEDINGS BELOW

This petition stems from a direct appeal to the 5th Circuit Court of Appeals from a criminal prosecution in the Northern District of Texas. Sergio Amaya-Martinez was the defendant/appellant. The United States of America was the plaintiff/prosecutor in the district court, and the plaintiff/appellee in the 5th Circuit.

RULE 29.6 STATEMENT

Petitioner is not a corporate entity.

PROCEEDINGS

A. Information

On October 17, 2019, Amaya-Martinez was named in a criminal complaint written and sworn to by FBI Special Agent Gary J. Koenig. *See* Appx. 2-A. On December 10, 2019, by a three-count Information, Amaya-Martinez was charged only with Count 2: Conspiracy to Possess with Intent to Distribute a Controlled Substance. *See* Appx. 3-A. On January 7, 2020, Amaya-Martinez waived prosecution by Indictment and consented to a proceeding by Information. *See* Appx. 4-A.

B. Plea Agreement

Amaya-Martinez pled guilty to Count 2 of the Information. *See* Appx. 5-A. The plea agreement for Count 2 set out a minimum statutory range of punishment of not more than twenty (20) years; a fine not to exceed \$1,000,000, or twice any pecuniary gain to the defendant or loss to the victim(s); and a term of supervised release of at least three (3) years and up to life. *Id.*

An appellate waiver was not part of Amaya-Martinez's plea agreement. Rather, Amaya-Martinez and Trial Counsel signed a Notice of Right to Appeal. *See* Appx. 6-A.

C. Sentence and Appeal

On May 29, 2020, Amaya-Martinez was sentenced to 168 months in prison. *See* Appx. 7-A. The Court did not order a fine but ordered Amaya-Martinez to pay an assessment of \$100. *Id.* Further, the Court ordered that upon release from prison, Amaya-Martinez would be placed on supervised release for three years. *Id.*

Also, as a condition of release, Amaya-Martinez must surrender to an immigration official for deportation in accordance with the Immigration Nationality Act. *Id.* Should Amaya-Martinez not be deported, he must comply with the standard conditions contained by the Sentencing Commission as well as those set out by Judge McBryde in his May 8, 2020 order concerning conditions of release. *Id.*

On April 16, 2021, the Fifth Circuit Court of Appeals issued its memorandum opinion affirming the District Court's decision. *See* Appx. 1-A.

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Petitioner, Sergio Amaya-Martinez, an inmate currently incarcerated at Big Spring Correctional Institution in Big Spring, Texas by and through Jacob Blizzard, his appointed attorney, respectfully requests this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The opinion by the 5th Circuit affirming Petitioner's conviction is reported as *United States v. Amaya-Martinez*, Cause No. 20-10550, 844 Fed. Appx. 733 (5th Cir. April 16, 2021). That opinion is attached. *See* Appendix ("Appx.") 1-A.

JURISDICTION

The 5th Circuit Court of Appeals rendered its decision April 16, 2021. Pursuant to the Supreme Court's March 19, 2020 emergency order, extending the time to file a petition for writ of certiorari to 150 days for those judgments entered prior to July 19, 2021, this petition was timely filed. The Supreme Court has certiorari jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C.S. §991(b) states:

- (b) The purpose of the United States Sentencing Commission are to—
 - (1) Establish sentencing policies and practices for the Federal criminal justice system that—
 - (A) Assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

- (B) Provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and
 - (C) Reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and
- (2) Develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

28 U.S.C.S. §991(b).

STATEMENT OF THE CASE

II. Material Facts

On August 14, 2019, Amaya was contacted by co-conspirator Bernardo Martinez to purchase methamphetamine for a confidential source (“CS”). *See* Appx. 8-A. Amaya, acting as a middleman, supplied the CS with the phone number of Dominguez, another of Amaya’s co-conspirators. *Id.* Although the CS cancelled the August 14 transaction, he purchased the methamphetamine directly from Dominguez a couple of days later, on August 16, 2019. Amaya was not present at that exchange. *Id.*

A month later, on September 10, 2019, the CS coordinated the purchase of methamphetamine from Amaya, but Amaya became suspicious of the CS, told the CS that his supplier was stuck in traffic, and ultimately cancelled the transaction. *Id.*

On September 19, 2019, the CS contacted Amaya again. *Id.* The two met, and provided the CS with methamphetamine priced at \$6,000. *Id.* During that meeting, Amaya lamented the fact he was not making money off the transaction, to which the CS replied that he would give Amaya an additional \$500 for the same transaction. *Id.* On September 24, 2019, the CS paid Amaya the additional \$500 and requested to purchase 5 more kilograms, but not for \$6,500. Amaya had to contact his supplier to determine whether his source would allow him to sell for less than \$6,500. *Id.* Amaya then told the CS he could get the 5 kilograms for \$5,500. *Id.*

On October 6, Amaya texted the CS to tell him he had the methamphetamine discussed in their late September meeting. *Id.*

III. United States Appellate Court Jurisdiction

The 5th Circuit Court of Appeals possessed jurisdiction pursuant to 28 U.S.C. §1291 and 18 U.S.C. §3771(d)(3).

ARGUMENTS & AUTHORITIES **ON AMAYA-MARTINEZ'S QUESTION FOR REVIEW**

I. Whether the 5th Circuit Court has qualified the minor and minimal role adjustment commentary under U.S.S.G. §3B1.2 such that the sentences in consideration of those adjustments lack certainty and fairness, in direct contravention of 28 U.S.C.S. §991(b).

A. Interpreting the Federal Sentencing Guidelines and Commentary

A court's interpretation of the Sentencing Guidelines is subject to the ordinary rules of statutory construction. Where the language of a guideline is unambiguous, a reviewing court's inquiry begins and ends with the plain meaning of that language. *United States v. Crittenden*, 372 F.3d 706, 708 (5th Cir. 2004); *see also United States*

v. Carbajal, 290 F.3d 277, 283 (5th Cir. 2002) (citation omitted); *United States v. Solis-Campozano*, 312 F.3d 164, 166 (5th Cir. 2002); *United States v. Boudreau*, 250 F.3d 279, 285 (5th Cir. 2001)).

This Court explained in *Stinson* that a guideline’s commentary provides concrete guidance as to how even unambiguous guidelines are to be applied in practice. *Stinson v. United States*, 508 U.S. 36, 44 (1993). Additionally, commentary is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of that guideline. *Stinson* at 38. Even so, courts are not “at sea” about the meaning of a guideline’s term if it is not defined through commentary; rather, a Court will presume that an undefined word comes with its ordinary meaning, found in an ordinary dictionary, versus an unusual one. *United States v. Riccardi*, 989 F.3d 476, 488 (6th Cir. 2021) (citations omitted).

B. Brief history of U.S.S.G. §3B1.2

Since its November 1, 1987 inception, the mitigating role section of the Guidelines, §3B1.2, has been amended seven times, with the most recent Amendment 794 becoming effective in November 2015. *See* Appx. 11-A. That amendment resolved a split in the circuit courts in favor of defining the “average participant” as a participant in the same criminal scheme versus others participating in similar crimes. *United States v. Torres-Hernandez*, 843 F.3d 203, 208-09 (5th Cir. 2016).

Also in that amendment, and pertinent to the issue at hand, the Commission included a non-exhaustive list of factors to guide the Courts in their analysis and

decision as to whether to grant a minor role adjustment. *United States v. Diaz*, 884 F.3d 911, 915 (9th Cir. 2018); *see* Appx. 11-A.

C. The 5th Circuit initially qualified the guideline terms included in U.S.S.G. §3B1.2 without guidance from commentary, but the Commission’s additional and amended commentary since has negated the need for the 5th Court’s qualifications.

Despite the most recent clarifying commentary of §3B1.2, Courts have continued to rely on *United States v. Thomas* to require a defendant’s conspiratorial role to be far more removed from the conspiracy than the guidelines require. *See United States v. Thomas*, 932 F.2d 1085 (5th Cir. 1991).

In *United States v. Thomas*, the 5th Circuit Court, in its interpretation of §3B1.2 and its corresponding comment 3, announced that “[i]t is improper for a court to award a minor participation adjustment simply because a defendant does less than the other participants. Rather, the defendant must do *enough less* so that he at best was *peripheral to the advancement of the illicit activity*.” (emphasis added) *United States v. Thomas* at 1092.

Notably, that language appeared nowhere in the Guideline or commentary. Granted, in 1991, §3B1.2 was far less detailed than it is now, and the Court had little commentary to rely on for guidance. *See* Appx. 10-A. Even so, the plain language and meaning of §3B1.2 in 1987 did not lend itself to such severe interpretation.

The 1987 Guideline commentary, in total, read:

1. Subsection (a) applies to a defendant who plays a minimal role in concerted activity. It is intended to cover defendants who are plainly among the least culpable of those involved in the conduct of a group. Under this provision, the defendant’s lack of knowledge or

understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant.

2. It is intended that the downward adjustment for a minimal participant will be used infrequently. I would be appropriate, for example, for someone who played no other role in a very large drug smuggling operation than to offload part of a single marihuana shipment, or in a case where an individual was recruited as a courier for a single smuggling transaction involving a small amount of drugs.
3. For purposes of §3B1.2(b), a minor participant means any participant who is less culpable than most other participants, but whose role could not be described as minimal.

Background: This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant. The determination whether to apply subsection (a) or subsection (b), or an intermediate adjustment, involves a determination that is heavily dependent upon the facts of the particular case.

U.S.S.G. §3B1.2 Commentary (1987). As mentioned, section 3B1.2 has undergone multiple amendments since 1987, with the most recent being Amendment 794 in 2015. Despite the clarifying past amendments, and despite the most recently added list of factors, parties and Courts are still following the 1991 *Thomas* interpretation to deny role deductions.

In the present case, the Government twice cited to *Thomas* to argue against Amaya's assertion that he was entitled to a role reduction. In the first instance, the Government spoke of the 5th Court:

This Court has repeatedly explained that 'it is improper for a court to award a §3B1.2 adjustment simply because a defendant does less than the other participants' See Appx. 9-A.

In the second instance, the Government argued that Amaya failed to carry his burden of showing clear error:

Amaya has not shown that he did “enough less” that he was “at best peripheral to the advancement of the illicit activity. *See* Appx. 9-A.

Such a showing is not required, or even mentioned, under the Guidelines. Arguably, such a showing was not required under the 1987 Guidelines, but with little explanatory commentary from the Commission, the 5th Court interpreted the Guideline as it did in *Thomas*. Clearly, though, the most recent §3B1.2 amendment provides commentary that creates a stark contrast to the 5th Court’s rarely met burden of showing that one did “enough less” so to be “at best peripheral to the advancement of the illicit activity.”

The 2018 Guideline, commentary (C)(i-v) reads:

In determining whether to apply the [minimal], [minor], or an intermediate adjustment, the court should consider the following non-exhaustive factors:

- (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.

For example, a defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for an adjustment under this guideline.

The fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative. Such a defendant may receive an adjustment under this guideline if he or she is substantially less culpable than the average participant in the criminal activity.

U.S.S.G. §3B1.2, comment 3(C)(i-v). The latest Guidelines provide a broader spectrum upon which a defendant's role may land and still earn a mitigating role reduction.

Therefore, the 5th Circuit and federal district courts must rely on Amendment 794's comment 3(C)(i-v) to determine whether a defendant is "less culpable than most other participants in the criminal activity" or "substantially less culpable than the average participant." Otherwise, defendants will continually be denied a mitigating role adjustment based on the 5th Circuit's decades' old and contradicted requirement of a defendant's being peripheral to the crime. *See Oti v. United States*, No. 3:13-cr-0481-B-4, 2021 U.S. Dist. LEXIS 163802 (N.D.T.X. August 11, 2021) (where the district court quoted *Thomas* to support its conclusion that the defendant was not "peripheral to the advancement of the illicit activity" but was critical to the criminal activity, and therefore denied her a mitigating role adjustment); *see also Lincks v. United States*, No. 3:17-cr-00017-B, 2021 U.S. Dist. LEXIS 163800 (N.D.T.X. June 8, 2021) (where the court cited to *Thomas* and reasoned that the defendant failed to show that his involvement in the drug conspiracy was merely peripheral in nature).

Courts today should no longer be permitted to rely on the language announced in *Thomas* to deny a defendant's minimal or minor role assertion. To continue to allow the *Thomas* case to stand is to deprive defendants of the certainty and fairness provided by the Guidelines, as required by statute.

CONCLUSION

For the foregoing reasons, Petitioner requests this Court grant certiorari review of his question and find that the 5th Circuit's language in *Thomas* violates 28 U.S.C. 991(b) and should therefore be overruled in favor of adherence to the most recent §3B1.2 commentary.

Respectfully submitted,

By: /s/ Jacob Blizzard

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Court-Appointed Attorney for
Petitioner, Sergio Amaya-Martinez

CERTIFICATE OF MAILING

I certify that the Petition for Certiorari Review was filed with the Court by mailing the petition via United States Mail - first class mail, postage pre-paid and depositing the same into a United States mail receptacle on September 13, 2021.

/s/ *Jacob Blizzard*

Jacob Blizzard

CERTIFICATE OF SERVICE

I hereby certify that, on or before September 13, 2021, a true and correct copy of this petition was mailed by first-class U.S. mail to:

Solicitor General of the United States
Department of Justice
950 Pennsylvania Ave., N.W.; Room 5616
Washington, DC 20530-0001

Sergio Amaya-Martinez, # 59505-177
c/o Big Spring Correctional Institution
2001 Rickabaugh Drive
Big Spring, TX 79720

/s/ *Jacob Blizzard*

Jacob Blizzard

APPENDIX

1-A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 16, 2021

Lyle W. Cayce
Clerk

No. 20-10550
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

SERGIO AMAYA-MARTINEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-362-15

Before HIGGINBOTHAM, JONES, and COSTA, *Circuit Judges*.

PER CURIAM:*

Sergio Amaya-Martinez pleaded guilty to conspiracy to possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 846 and 841(a)(1), (b)(1)(C). The district court sentenced Amaya-Martinez to 168 months of imprisonment and three years of supervised release. Amaya-

* Pursuant to 5TH CIRCUIT RULE 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 CIRCUIT RULE 47.5.4.

No. 20-10550

Martinez appeals, arguing that the district court erred in denying his request for a mitigating role adjustment under U.S.S.G. § 3B1.2.

This court reviews preserved challenges to the district court's interpretation and application of the Sentencing Guidelines de novo and its factual findings for clear error. *See United States v. Rodriguez*, 630 F.3d 377, 380 (5th Cir. 2011). Whether Amaya-Martinez was a minimal or minor participant under § 3B1.2 is a factual determination that this court reviews for clear error. *United States v. Torres-Hernandez*, 843 F.3d 203, 207 (5th Cir. 2016).

According to Amaya-Martinez, he “was clearly a less than average participant” and “substantially less culpable” than his co-conspirators Bernardo Martinez and Carlos Dominguez. *See United States v. Castro*, 843 F.3d 608, 613 (5th Cir. 2016). He claims that he “did not plan or organize the [criminal] activity”; he had no decision-making authority and merely “followed orders”; he was not the supply source or “even the middleman”; and was “on the lower rung of the participant ladder” below his co-conspirators Martinez and Dominguez.

Amaya-Martinez provides no record citations for these claims, but as the presentence report explains, the members of the conspiracy “maintained a fluid hierarchy that evolved over time.” Additionally, the record shows that Amaya-Martinez actively participated in three large drug transactions.

Amaya-Martinez relies on a single case, *United States v. Sotelo*, 97 F.3d 782, 799 (5th Cir. 1996), for the proposition that he was entitled to at least a two-point, minor role adjustment. He makes several comparisons between his conspiracy-related activities and those of the defendant in *Sotelo*, who received a two-point reduction for a minor role. *See id.* This argument is unavailing as “the defendant’s culpability is determined only by reference to his or her co-participants in the case at hand.” *United States v. Bello-Sanchez*,

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872 F.3d 260, 264 (5th Cir. 2017) (internal quotation marks and citation omitted).

Even if this court could consider a defendant's conduct in an unrelated case, *Sotelo* is of little benefit to Amaya-Martinez. In *Sotelo*, 97 F.3d at 799, the propriety of the minor role reduction was not at issue on appeal, and this court did not comment on its appropriateness. Rather, the *Sotelo* court rejected the defendant's claim that he should have received a four-point reduction for being a minimal (rather than a minor) participant. *Id.*

Because Amaya-Hernandez has failed to carry his burden of showing that he was entitled to a mitigating role adjustment, the judgment of the district court is AFFIRMED. See *Torres-Hernandez*, 843 F.3d at 207.

FILED

2-A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

OCT 17 2019

CLERK U.S. DISTRICT COURT

By: _____
Deputy

UNITED STATES OF AMERICA

v.

No. 4:19-MJ-784

JUAN RODRIGUEZ	(01)
DAVID JIMENEZ	(02)
ALEX MERCADO	(03)
JOHN BURGESS	(04)
LUIS MARTINEZ	(05)
RAUL VILLEGAS	(06)
PATRICK HALL	(07)
BERNARDO MARTINEZ	(08)
ARNOLD MARTINEZ	(09)
JACOB GUTIERREZ	(10)
LAURENTINO AGUILLON-HERNANDEZ JR.	(11)
LAURENTINO AGUILLON-HERNANDEZ SR.	(12)
PAUL GARZA	(13)
ALFREDO TREJO	(14)
MIGUEL SOSA	(15)
DIANE FIGUEROA-LOPEZ	(16)
THOMAS MARTINEZ	(17)
DANIEL MURILLO	(18)
CARLOS MORA	(19)
PEDRO REBULLOZA	
a/k/a/ "Pedro Quezada"	(20)
MARK ASTORGA	(21)
CARLOS DOMINGUEZ	(22)
SERGIO AMAYA-MARTINEZ	(23)
FELIPE CHAVEZ	(24)
JUAN PABLO QUEZADA	(25)

CRIMINAL COMPLAINT

Conspiracy to Possess with Intent to Distribute a Controlled Substance

(Violation of 21 U.S.C. § 846)

Beginning in or before January 2018, and continuing until in or around September 24, 2019, in the Fort Worth Division of the Northern District of Texas, and elsewhere, defendants **Juan Rodriguez, David Jimenez, Alex Mercado, John Burgess, Luis Martinez, Raul Villegas, Patrick Hall, Bernardo Martinez, Arnold Martinez, Jacob Gutierrez, Laurentino Aguillon-Hernandez Jr., Laurentino Aguillon-Hernandez Sr., Paul Garza, Alfredo Trejo, Miguel Sosa, Diane Figueroa-Lopez, Thomas Martinez, Daniel Murillo, Carlos Mora, Pedro Rebulloza**, also known as Pedro Quezada, **Mark Astorga, Carlos Dominguez, Sergio Amaya-Martinez, Felipe Chavez, and Juan Pablo Quezada**; along with others known and unknown, did knowingly and intentionally combine, conspire, confederate, and agree to engage in conduct in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B), namely to possess with intent to distribute: 50 grams or more of a mixture and substance containing a detectable amount of Methamphetamine; and 100 grams or more of a mixture or substance containing a detectable amount of heroin; and 500 grams or more of a mixture or substance containing a detectable amount of cocaine, its salts, optical and geometric isomers, and salts of isomers; a Schedule II controlled substance.

In violation of 21 U.S.C. § 846 (21 U.S.C. §§ 841(a)(1) and (b)(1)(B)).

Conspiracy to Commit Money Laundering

(Violation of 18 U.S.C. § 1956(h))

Beginning in or before January 2018 and continuing until in and around September 24, 2019, in the Fort Worth Division of the Northern District of Texas, and elsewhere, defendants **Carlos Dominguez**, along with others known and unknown, did knowingly and intentionally conspire and agree with others known and unknown, to commit certain offenses against the United States in violation of 18 U.S.C. § 1956, to wit:

1. To knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, which involved the proceeds of a specified unlawful activity, that is drug trafficking, in violation of 21 U.S.C. § 846, and 21 U.S.C. §§ 841(a)(1), with the intent to promote the carrying on of specified unlawful activity, that is drug trafficking, in violation of 21 U.S.C. § 846 (21 U.S.C. §§ 841(a)(1)),

and that while conducting and attempting to conduct such financial transaction knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity in violation of 18 U.S.C. § 1956(a)(1)(A)(i); and

2. To knowingly conduct and attempt to conduct financial transactions affecting interstate and foreign commerce, which transactions involved the proceeds of a specified unlawful activity, that is, drug trafficking, in violation of 21 U.S.C. § 846 (21 U.S.C. §§ 841(a)(1)), knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, ownership, control and source of the proceeds of the specified unlawful activity, and that while conducting and attempting to conduct such financial transactions, knew that the property involved in the financial transactions, represented the proceeds of some form of unlawful activity in violation of 18 U.S.C. § 1956(a)(1)(B)(i); and

3. To knowingly transport, transmit, transfer, and attempt to transport, transmit and transfer monetary instruments and funds involving the proceeds of specified unlawful activity, that is drug trafficking, as described in this Indictment, in violation of 21 U.S.C. § 846 (21 U.S.C. §§ 841 (a)(1)), from a place inside the United States to or through a place outside the United States knowing that the monetary instruments and funds involved in the transportation, transmission, or transfer represented the proceeds of some form of unlawful activity and knowing that such transportation, transmission, and transfer was designed in whole or in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of the specified unlawful activity, in violation of 18 U.S.C. § 1956(a)(2)(B)(i). In violation of 18 U.S.C. § 1956(h).

I, the undersigned Complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

I. INTRODUCTION

1. I have been a Special Agent of the Federal Bureau of Investigation (FBI) for nine years and am currently assigned to the Dallas Field Division's Fort Worth Resident Agency on a Criminal Enterprise Squad working with a Violent Crime/Gang Task Force (hereinafter referred to as the Task Force). The Task Force is comprised of agents, investigators and police officers from the FBI, the Arlington, Texas Police Department (APD), Texas Department of Public Safety (DPS), and the Fort Worth, Texas Police Department (FWPD). Prior to my employment with the FBI, I was employed for approximately four years with the Tulsa Police Department, Tulsa, Oklahoma. I also worked for three years with the Webb City Police Department, Webb City, Missouri, and for three months with the Deer Park Police Department, Deer Park, Texas.

As a Special Agent, I am charged with the duties of investigating violations of the criminal laws of the United States, including investigating violations of 21 U.S.C. § 841(a)(1) & (b)(1)(B): Distribution and Possession With Intent to Distribute Methamphetamine, Heroin, and Cocaine.

2. I have participated as a law enforcement officer in investigations of unlawful narcotics distribution and have conducted Title III wiretap investigations, physical and electronic surveillances, undercover transactions, the execution of search and arrest warrants, debriefings of informants, and review of taped conversations and drug records.

Through my training, education and experience, I have become familiar with the manner in which illegal drugs are transported, stored and distributed, and the methods of payments for such drugs. I am also familiar with some of the methods by which narcotics traffickers communicate and code words commonly used by narcotics traffickers. I have participated as a law enforcement officer in investigations of money laundering. Through my training, education and experience, I have become familiar with the manners in which individuals promote or conduct specified unlawful activities and conceal or disguise the nature, source, ownership, and control of proceeds of specified unlawful activities.

3. Mexican criminal enterprises (“MCE”) involved in narcotics trafficking accumulate large amounts of U.S. Currency. Due to changes in Mexico’s banking laws in 2010, a very limited amount of U.S. Currency can be deposited into Mexican financial institutions. Therefore, MCEs must find ways to deposit cash into their banks.

4. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents, law enforcement officers, and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for a criminal complaint and does not set forth all of my knowledge about this matter. All calls referenced in the complaint are summaries of the intercepted call and are not intended to be a verbatim translation of the call.

5. This affidavit is submitted in support of a criminal complaint against **Juan Rodriguez, David Jimenez, Alex Mercado, John Burgess, Luis Martinez, Raul Villegas, Patrick Hall, Bernardo Martinez, Arnold Martinez, Jacob Gutierrez,**

Laurentino Aguillon-Hernandez Jr., Laurentino Aguillon-Hernandez Sr., Paul Garza, Alfredo Trejo, Miguel Sosa, Diane Figueroa-Lopez, Thomas Martinez, Daniel Murillo, Carlos Mora, Pedro Rebulloza, also known as Pedro Quezada, Mark Astorga, Carlos Dominguez, Sergio Amaya-Martinez, Felipe Chavez, and Juan Pablo Quezada; for a violation of 21 U.S.C. § 846, Conspiracy to Possess with Intent to Distribute and Distribute a Schedule II Controlled Substance, namely methamphetamine, cocaine, and heroin.

6. This affidavit is submitted in support of a criminal complaint against **CARLOS DOMINGUEZ** for violating 18 U.S.C. § 1956(h), Conspiracy to Commit Money Laundering.

II. SUMMARY OF PROBABLE CAUSE THAT A VIOLATION OF 21 U.S.C. § 846 HAS OCCURRED

7. Since approximately January 2018, the government has been investigating allegations that **Juan Rodriguez, David Jimenez, Alex Mercado, John Burgess, Luis Martinez, Raul Villegas, Patrick Hall, Bernardo Martinez, Arnold Martinez, Jacob Gutierrez, Laurentino Aguillon-Hernandez Jr., Laurentino Aguillon-Hernandez Sr., Paul Garza, Alfredo Trejo, Miguel Sosa, Diane Figueroa-Lopez, Thomas Martinez, Daniel Murillo, Carlos Mora, Pedro Rebulloza, also known as Pedro Quezada, Mark Astorga, Carlos Dominguez, Sergio Amaya-Martinez, Felipe Chavez, and Juan Pablo Quezada;** and others have conspired together to possess methamphetamine, cocaine, and heroin, with the intent to distribute it in the Dallas/Fort Worth area.

8. As part of the conspiracy, **Juan Rodriguez, David Jimenez, Alex Mercado, John Burgess, Luis Martinez, Raul Villegas, Patrick Hall, Bernardo Martinez, Arnold Martinez, Jacob Gutierrez, Laurentino Aguillon-Hernandez Jr., Laurentino Aguillon-Hernandez Sr., Paul Garza, Alfredo Trejo, Miguel Sosa, Diane Figueroa-Lopez, Thomas Martinez, Daniel Murillo, Carlos Mora, Pedro Rebulloza**, also known as Pedro Quezada, **Mark Astorga, Carlos Dominguez, Sergio Amaya-Martinez, Felipe Chavez, and Juan Pablo Quezada**; and others agreed to possess methamphetamine, cocaine, and heroin with the intent to distribute it, and knowingly and willfully participated in that agreement.

9. As part of the conspiracy, the common purpose between and among **Juan Rodriguez, David Jimenez, Alex Mercado, John Burgess, Luis Martinez, Raul Villegas, Patrick Hall, Bernardo Martinez, Arnold Martinez, Jacob Gutierrez, Laurentino Aguillon-Hernandez Jr., Laurentino Aguillon-Hernandez Sr., Paul Garza, Alfredo Trejo, Miguel Sosa, Diane Figueroa-Lopez, Thomas Martinez, Daniel Murillo, Carlos Mora, Pedro Rebulloza**, also known as Pedro Quezada, **Mark Astorga, Carlos Dominguez, Sergio Amaya-Martinez, Felipe Chavez, and Juan Pablo Quezada**; and others was to possess and distribute methamphetamine, cocaine, and heroin in the Dallas/Fort Worth area and elsewhere.

10. As part of the conspiracy, not every person named or identified in the conspiracy knew every other person identified as being in the conspiracy. It was their joining together for the common purpose of possessing and distributing methamphetamine, cocaine, and heroin, the nature of the scheme to possess and distribute methamphetamine,

cocaine, and heroin, and the overlapping among its members in possessing and distributing methamphetamine, cocaine, and heroin that established their membership in this particular conspiracy. And not every member of the conspiracy knew the details of each aspect of the conspiracy. Nevertheless, each member of the conspiracy knew or was aware of the conspiracy's general purpose and scope, which was to possess and distribute methamphetamine, cocaine, and heroin in the Dallas/Fort Worth area, between and among **Juan Rodriguez, David Jimenez, Alex Mercado, John Burgess, Luis Martinez, Raul Villegas, Patrick Hall, Bernardo Martinez, Arnold Martinez, Jacob Gutierrez, Laurentino Aguillon-Hernandez Jr., Laurentino Aguillon-Hernandez Sr., Paul Garza, Alfredo Trejo, Miguel Sosa, Diane Figueroa-Lopez, Thomas Martinez, Daniel Murillo, Carlos Mora, Pedro Rebulloza, also known as Pedro Quezada, Mark Astorga, Carlos Dominguez, Sergio Amaya-Martinez, Felipe Chavez, and Juan Pablo Quezada; and others.** As part of the conspiracy, its members had a fluid hierarchy that evolved over time.

For example, as some members were arrested or otherwise temporarily unavailable, other members took over the receipt and delivery of methamphetamine, cocaine, and heroin.

11. As part of the conspiracy, its members routinely received and delivered multiple grams to kilogram quantities of methamphetamine, cocaine, and heroin that they then distributed to others in the Dallas/Fort Worth area.

12. As part of the conspiracy, some of the money derived from the sale and distribution of methamphetamine, cocaine, and heroin would be used to purchase additional quantities of methamphetamine, cocaine, and heroin.

III. SUMMARY OF PROBABLE CAUSE A VIOLATION OF 18 U.S.C. § 1956(h) HAS OCCURRED

13. Since approximately January 2018, the government has been investigating allegations that **CARLOS DOMINGUEZ** and others have conspired together to conduct financial transactions with proceeds of a specified unlawful activity knowing the transactions were designed to conceal or disguise the source, origin, nature, ownership, or control of the proceeds, in Fort Worth, Texas and Mesquite, Texas .

14. As part of the conspiracy, not every person named or identified in the conspiracy may have known every other person identified as being in the conspiracy. It was their joining together for the common purpose of possessing proceeds of specified unlawful activity with the intent to send the funds to Mexico by conducting wire transfers in their names and nominee names through money service businesses (MSBs). As well, not every member of the conspiracy knew the details of each aspect of the conspiracy.

15. Nevertheless, each member of the conspiracy knew or was aware of the conspiracy's general purpose and scope, which was conduct financial transactions with proceeds of a specified unlawful activity knowing the transactions were designed to conceal or disguise the source, origin, nature, ownership, or control of the proceeds in the Fort Worth/ Mesquite, Texas area, between and among **CARLOS DOMINGUEZ** and others.

16. As part of the conspiracy, **CARLOS DOMINGUEZ** received \$5,200 cash from the sale of one kilogram of methamphetamine between himself and a FBI Confidential Human Source (CHS), and then deposited a portion of those proceeds into a bank

account listed in his name at Wells Fargo. In addition, he sent a wire transfer from Western Union using an alias of CARLOS DOMINGUEZ CARRILLO to a beneficiary in Mexico.

17. As part of the conspiracy, **CARLOS DOMINGUEZ** and others knowingly and willfully agreed to conduct financial transactions with proceeds of a specified unlawful activity knowing the transactions were designed to conceal or disguise the source, origin, nature, ownership, or control of the proceeds.

IV. FACTS ESTABLISHING PROBABLE CAUSE THAT A VIOLATION OF 21 U.S.C. § 846 AND VIOLATION OF 18 U.S.C. § 1956(h) HAS OCCURRED

18. The FBI and the ATF investigators are currently investigating several members of the Sinaloa Drug Trafficking Organization (SDTO) and their associates. The investigation involves a SDTO based in Fort Worth, Texas, involved in the trafficking and distribution of methamphetamine (Ice), heroin, and cocaine in the Fort Worth, Texas area and beyond.

19. From June 10, 2018, to June 22, 2018, a Confidential Human Source (CHS) conducted consensually recorded conversations with David Jimenez, who was using telephone number XXX-XXX-3630, and Juan Rodriguez, who was using XXX-XXX-7683. During the conversations, the CHS setup a controlled buy of approximately four (4) ounces of methamphetamine (Ice) and a gun through Jimenez from Rodriguez. Jimenez and Rodriguez agreed to sell the methamphetamine for \$1,200.00 and gun for \$500.00 to the CHS. The transaction was scheduled to occur on June 22, 2018, at Rodriguez's residence, XXXX Mecca Street, Fort Worth, Texas.

20. On June 22, 2018, the CHS contacted Jimenez and was told to pick-up Jimenez at Buster's Stop and Shop. CHS picked up Jimenez and drove to Rodriguez's residence. Once at the residence, Rodriguez retrieved two four-ounce bags of methamphetamine. Rodriguez thought the CHS was getting one bag and Jimenez was getting the other bag. Rodriguez told the CHS to pick which bag the CHS wanted to purchase. CHS picked a bag and paid Rodriguez. Jimenez did not take the other bag of methamphetamine. Rodriguez then showed CHS a sawed-off shotgun that was for sale but the CHS did not purchase it because the shotgun was jammed and not working properly. Rodriguez told CHS he had several AK-47 rifles for sale but they were priced at \$1,000.00 per rifle. The CHS did not purchase a gun but agreed to at a later date. The methamphetamine later field tested positive for the presence of methamphetamine.

21. Prior to and on June 28, 2018, CHS contacted Rodriguez and setup a controlled buy of an AK-47 style rifle from Rodriguez. On June 28, 2018, CHS went to XXXX Mecca Street, Fort Worth, Texas, and contacted Rodriguez. Rodriguez, who knew CHS had been in prison and was a felon, sold CHS an Zastava, model M92PV, 7.62 caliber pistol, bearing serial number M92PV027493, loaded with 19 rounds of 7.62 caliber ammunition in the magazine of the firearm. During the conversation, CHS asked Rodriguez if Rodriguez could get CHS more ammunition for the firearm since CHS could not buy any. Rodriguez told CHS he could get CHS as many rounds as CHS wanted. CHS paid Rodriguez \$1,000.00 for the firearm.

22. Prior to and on July 26, 2018, CHS setup a nine-ounce purchase of methamphetamine from Juan Rodriguez. CHS was told by Rodriguez to go to XXXX Lancaster Avenue to meet Rodriguez. When CHS arrived at XXXX East Lancaster Avenue, Fort Worth, Texas, he contacted Rodriguez and purchased approximately 266 grams of methamphetamine from Rodriguez. During the transaction, CHS talked to Alex Mercado who worked for Rodriguez. Mercado told CHS Rodriguez had moved his operation to XXXX East Lancaster Avenue because there was too much "heat" at the XXXX Mecca Street location. Mercado was present for the transaction between CHS and Rodriguez and assisted Rodriguez with transferring methamphetamine from one plastic bag to another plastic bag for the CHS. The methamphetamine later field tested positive for the presence of methamphetamine.

23. Prior to and on August 13, 2018, CHS contacted Rodriguez to setup a controlled buy of a fully automatic rifle from Rodriguez. On August 13, 2018, CHS went to XXXX Mecca Street, Fort Worth, Texas, and contacted Rodriguez. Rodriguez, who knew CHS had been in prison and was a felon, sold CHS a Sig Sauer, model P556, 5.56 caliber short barrel rifle, bearing serial number TP002389. Also included in the purchase was a forty round magazine containing thirty-nine rounds of ammunition and a double drum magazine containing fifty-eight rounds of ammunition. CHS paid Rodriguez \$1,500.00 for the rifle. The rifle was not fully automatic as Rodriguez had stated. The barrel of the rifle was approximately 11.5 inches long.

24. On September 5, 2018, CHS went to Jimenez's residence to discuss purchasing one-half kilogram to one kilogram of methamphetamine (Ice) from Raul Villegas.

While the CHS was at the residence, Jimenez called Villegas. Villegas told Jimenez to give his number to CHS and for the CHS to call Villegas.

25. On September 5, 2018, CHS called Villegas who told CHS to call him on September 6, 2018, to get a price for a methamphetamine purchase.

26. On September 7, 2018, a warrant was issued to monitor the location of Villegas's phone. During the time period of monitoring the location of Villegas's phone, the CHS communicated multiple times with Villegas. During those conversations with the CHS, Villegas advised he was waiting for a load of methamphetamine to be delivered and he would then contact the CHS to setup the purchase of a kilogram of methamphetamine.

On a later date, the CHS spoke to Villegas and advised he had a kilogram of methamphetamine to sell to CHS.

27. On October 22, 2018, CHS had arranged the controlled purchase of one kilogram of methamphetamine from Villegas. When the CHS arrived at Villegas's residence, CHS was greeted by an unknown Hispanic male who told CHS they were waiting for the methamphetamine to arrive and Villegas would call CHS when the methamphetamine was delivered. Later that day, CHS spoke to Villegas who told CHS they had sold the five kilograms of methamphetamine that they had and were waiting on another shipment.

28. On October 25, 2018, CHS was provided a phone number by Alex Mercado to call the following day to purchase methamphetamine. CHS arranged a three-ounce methamphetamine controlled buy from Mercado and his SOS.

29. On October 26, 2018, CHS contacted the telephone number provided by Mercado the day before and spoke to John Burgess. Burgess instructed the CHS to come to Burgess's residence, XXXX Jackson Street, Fort Worth, Texas, once the methamphetamine arrived at his house. Through toll-analysis, investigators observed Burgess in contact with two main numbers in an effort to get the methamphetamine delivered to his house: XXX-XXX-0955 and XXX-XXX-2395. At approximately 6:20 p.m., CHS received a call from Burgess stating the supplier had arrived at his residence. CHS drove to Burgess's residence, XXXX Jackson Street, and purchased approximately three ounces of methamphetamine from Burgess. Investigators observed a dark colored Cadillac arrive and depart from Burgess's residence around the time of the deal. This vehicle was registered to and driven by Luis Martinez.

Investigators believe the telephone number XXX-XXX-2395 was being used by Luis Martinez to communicate with Burgess about the methamphetamine delivery. When investigators retrieved the methamphetamine from CHS, the methamphetamine was wrapped in a latex style glove. Burgess told CHS that the source of supply had wrapped the methamphetamine in the latex glove, in order not to touch it, because the source of supply was on probation. At the time of the deal, Luis Martinez was on federal probation. The methamphetamine later field tested positive for the presence of methamphetamine.

30. On November 7, 2018, CHS conducted a controlled buy of approximately one kilogram of methamphetamine from Villegas and his source of supply, Miguel Andrade. Prior to the controlled buy, CHS was in contact with Villegas arranging the controlled purchase of methamphetamine.

Villegas instructed CHS to go to XXXX Tanneyhill, Fort Worth, Texas to purchase the methamphetamine. When CHS arrived at the meet location, Andrade sold the methamphetamine directly to the CHS. When investigators weighed the kilogram of methamphetamine purchased from Andrade and Villegas, it was 14 grams short of a full kilogram. CHS called Villegas back and was instructed to return to Tanneyhill to make it right. The methamphetamine later field tested positive for the presence of methamphetamine.

31. On November 7, 2018, CHS returned to XXXX Tanneyhill to pick up the 14 grams of methamphetamine that was shorted from the buy earlier in the day. When CHS arrived Andrade told Patrick Hall to serve CHS. Hall went to a cabinet, retrieved approximately a half kilo of methamphetamine, and weighed out 14 grams. Hall then handed the 14 grams of methamphetamine to CHS.

Once completed, CHS called Villegas to confirm the CHS picked it up. Villegas told CHS he had already spoken to his brother and was aware that CHS had picked up the product. The methamphetamine later field tested positive for the presence of methamphetamine.

32. On November 20, 2018, CHS conducted a controlled buy of approximately five (5) ounces of methamphetamine from Bernardo Martinez. CHS went to B. Martinez's residence, XXXX Rodeo Street, Fort Worth, Texas, and picked up B. Martinez. CHS drove B. Martinez to Juan Rodriguez's residence at XXXX Mecca Street, Fort Worth, Texas. B. Martinez went into the residence and returned with the methamphetamine. B. Martinez told the CHS that B. Martinez received the methamphetamine from J. Rodriguez.

CHS then drove B. Martinez home. Later in the evening, CHS called J. Rodriguez who told CHS that he was good with CHS and that J. Rodriguez had several automatic firearms for sale if CHS was interested in purchasing a gun.

33. Prior to and on February 6, 2019, a CHS negotiated the purchase of three (3) kilograms of methamphetamine from Arnold Martinez. A. Martinez sent the CHS to XXX South Peak Street, Dallas, Texas, to purchase the methamphetamine from Jacob Gutierrez. When CHS arrived at XXX South Peak Street, Dallas, Texas the CHS contacted Gutierrez. During their conversation, they both realized there had been a misunderstanding about the purchase of methamphetamine. Gutierrez was trying to sell the CHS three (3) kilograms of black tar heroin, not methamphetamine. At the direction of investigators, CHS tried to negotiate the purchase of a quarter kilogram of black tar heroin from Gutierrez. CHS entered an office area at XXX S. Peak with Gutierrez. In front of the CHS, Gutierrez asked Laurentino Aguillon-Hernandez Sr. if they could break a full kilogram of black tar heroin into smaller quantities. Aguillon-Hernandez Sr. told Gutierrez no. Gutierrez followed Aguillon-Hernandez Sr. into the shop area to continue the conversation. Gutierrez returned a short time later and agreed to sell CHS the quarter kilogram of black tar heroin for \$7,500.00. After the agreement was made on the purchase of the heroin, Laurentino Aguillon-Hernandez Jr. brought the heroin to XXX S. Peak to sell to the CHS. An unknown male entered the office area and broke the kilogram of heroin into smaller quantities. CHS provided Gutierrez with the cash for the heroin.

Gutierrez and Aguillon-Hernandez Jr. counted the cash for accuracy and CHS was provided with the quarter kilogram of heroin. The quarter kilogram later test positive for the presence of heroin.

34. Prior to and on February 14, 2019, the CHS contacted Bernardo Martinez to setup a controlled purchase of a kilogram of methamphetamine. B. Martinez told CHS he could get the kilogram of methamphetamine and that the product would not come from Juan Rodriguez. On February 14, 2019, CHS met with B. Martinez and conducted a controlled purchase of approximately one kilogram of methamphetamine. After the CHS picked up B. Martinez, B. Martinez contacted Paul Garza to purchase the kilogram of methamphetamine for the CHS. Paul Garza had CHS and B. Martinez meet him at a location in north Fort Worth to purchase the methamphetamine; there Garza met up with Alfredo Trejo who took Garza, CHS, and B. Martinez to a local hotel to purchase the methamphetamine. At the hotel, Trejo and Garza met with Diane Figueroa-Lopez and Miguel Sosa, who provided the kilogram of methamphetamine to Trejo.

Trejo entered CHS's vehicle and sold the kilogram of methamphetamine to the CHS. After Trejo exited the CHS's vehicle and reentered Garza's vehicle, B. Martinez exited CHS's vehicle and went to the driver's side of Garza's vehicle. Garza provided B. Martinez with money for the sale of the kilogram of methamphetamine to the CHS. B. Martinez reentered CHS's vehicle and they departed the area. The methamphetamine later field tested positive for the presence of methamphetamine.

35. On February 28, 2019, CHS set up a controlled buy of one kilogram of methamphetamine from Bernardo Martinez. CHS picked up B. Martinez from his residence and drove B. Martinez to XXXX Evans Avenue, Fort Worth, Texas, where they met with Thomas Martinez. Prior to the CHS and B. Martinez arriving at the Evans Avenue address, Bernardo was communicating T. Martinez about the upcoming controlled purchase. Once CHS and B. Martinez made contact with T. Martinez, T. Martinez called another source of supply to get the kilogram of methamphetamine. While waiting for the source of supply to call back, T. Martinez showed CHS and B. Martinez approximately one ounce of methamphetamine that he had for sale. B. Martinez said he had three total ounces but he had sold the other two and what he was showing CHS was all he had left. T. Martinez talked to the source of supply who told T. Martinez he was out of town. The CHS, B. Martinez, and T. Martinez agreed to complete the transaction another day.

36. On March 5, 2019, CHS set up a controlled buy of one kilogram of methamphetamine from Bernardo Martinez. CHS picked up B. Martinez from his residence. B. Martinez got in the CHS's vehicle. B. Martinez told CHS that he had talked to Thomas Martinez and T. Martinez was unable to go with B. Martinez to get the methamphetamine, but T. Martinez told B. Martinez his cousin would take B. Martinez and CHS to get the methamphetamine. CHS and B. Martinez went to 4233 Evans Avenue, Fort Worth, Texas, where they met with Daniel Murillo. Once CHS and B. Martinez made contact with Murillo, Murillo got into the CHS's vehicle and told CHS where to drive. On the way to the source of supply's (SOS) location, Murillo used his phone to contact the SOS.

The SOS told Murillo he was on his way to his house. CHS, B. Martinez, and Murillo arrived at XXXX NW 28th Street, Fort Worth, Texas. Shortly after they arrived, a black Chevrolet Tahoe driven by Juan Pablo Quezada arrived. CHS, B. Martinez, Murillo, and Quezada all went into the residence where Quezada sold CHS a kilogram of methamphetamine. During the transaction, Carlos Mora was present with Quezada. Mora was acting as security for Quezada during the transaction. Quezada also showed CHS a plastic container containing loose pieces of methamphetamine. Quezada told CHS that Mora had sat on the methamphetamine and crushed it so they put it in the plastic container. The methamphetamine provided to CHS by Quezada later field tested positive for the presence of methamphetamine.

37. On March 21, 2019, CHS setup a controlled buy of one kilogram of methamphetamine from Bernardo Martinez. B. Martinez was unable to go at the scheduled time so he arranged for the CHS to go to Daniel Murillo's residence to purchase the methamphetamine. CHS went to XXXX Evans Avenue, Fort Worth and purchased the kilo of methamphetamine from Murillo. Prior to the CHS arriving at Murillo's, a black Cadillac Escalade arrived at the location driven by Pedro Rebulloza. Rebulloza delivered the kilogram of methamphetamine to Murillo for the CHS to purchase. Murillo met with the CHS and sold the CHS the kilogram of methamphetamine. After the transaction, Murillo met with Rebulloza and gave money to Rebulloza. After the transaction with Murillo, the CHS met with B. Martinez to pay B. Martinez \$1,500.00 for setting up the controlled buy with Murillo and Rebulloza. The methamphetamine later field test positive for the presence of methamphetamine.

38. On March 29, 2019, at the direction of investigators, CHS arranged a controlled buy of one kilogram of methamphetamine from Arnold Martinez, Gutierrez, Mark Astorga, an unknown Hispanic male courier, and an unknown Source of Supply (SOS) out of Mexico. CHS contacted A. Martinez who told CHS he was unable to go to the deal but CHS could go to Dallas and meet Gutierrez. CHS went to 2818 S. Denley Drive, Dallas, Texas and contacted Gutierrez and Astorga. After contact was made with Gutierrez and Astorga, they all went to 2815 South Denley Drive, Dallas, Texas. This location was Gutierrez and Astorga's residence. While waiting for the methamphetamine to arrive, Astorga and Gutierrez called Astorga's SOS of methamphetamine, who is believed to be in Mexico. The conversation was put on speaker phone so the CHS could hear what was being said. The SOS was coordinating the delivery of the kilogram of methamphetamine by communicating with both Astorga and another unknown subject who was believed to be in the Dallas area. After several phone calls, an unknown Hispanic male (hereafter referred to as UNSUB) arrived at XXXX S. Denley Drive, Dallas, Texas.

Astorga made contact with the UNSUB and retrieved the kilogram of methamphetamine. Astorga took the kilogram of methamphetamine to the CHS and completed the transaction with CHS. The kilogram of methamphetamine that was purchased from Astorga and Gutierrez field tested positive for the presence of methamphetamine.

39. On April 17, 2019, CHS setup a controlled buy of one kilogram of methamphetamine from Felipe Chavez. Prior to the deal, Chavez instructed CHS to go to XXXX Rodeo Street, Fort Worth, Texas to pick up the methamphetamine. CHS went to XXXX Rodeo and contacted Chavez and Bernardo Martinez.

Shortly after CHS arrived, a gray Pontiac sedan arrived, driven by Paul Garza. Chavez retrieved the money for the methamphetamine from CHS and took it to Garza. Garza counted the money and then handed the methamphetamine to Chavez. Chavez took the methamphetamine to the CHS and gave it to the CHS. Before the CHS left, B. Martinez told CHS both he and Chavez were making money off the sale of methamphetamine to CHS. CHS departed the location. The methamphetamine later field tested positive for the presence of methamphetamine.

40. On May 20, 2019, CHS setup a controlled buy of one kilogram of methamphetamine from Arnold Martinez and Jacob Gutierrez. CHS had phone communication with both A. Martinez and Gutierrez during the setup of the transaction. CHS was instructed to go to XXXX South Denley Drive, Dallas, Texas to meet Gutierrez. Upon CHS's arrival on Denley, CHS received a call from Gutierrez stating he would be at the address shortly. A few minutes later, Gutierrez arrived in his brown Chevrolet Tahoe. Gutierrez instructed CHS to get in the back of Gutierrez's Tahoe.

When CHS entered the Tahoe, CHS was greeted by Aguillon-Hernandez Jr., who was sitting in the passenger seat of the vehicle. Aguillon-Hernandez Jr. showed CHS the methamphetamine and handed it to the CHS. CHS handed the money for the methamphetamine to Gutierrez. Gutierrez divided the money in half and gave half to Aguillon-Hernandez Jr. Both Aguillon-Hernandez Jr. and Gutierrez counted their stack of money. CHS then exited the vehicle with the approximately one kilogram of methamphetamine. The kilogram later field tested positive for the presence of methamphetamine.

41. On June 25, 2019, Cooperating Defendant-1 (CD-1) was arrested by a Dallas Drug Enforcement Administration (DEA) task force for possession of approximately 12.8 kilograms of heroin and approximately 6.7 kilograms of methamphetamine. During a debrief of CD-1 on August 16, 2019, CD-1 said on the day CD-1 was arrested by DEA, CD-1 went to XXX South Peak Street, Dallas, Texas, to pick up the heroin and methamphetamine. When CD-1 arrived at the location, he went to the front of the building; there he contacted a 45 to 55 year-old Hispanic male with gray hair who CD-1 later identified as Laurentino Aguillon-Hernandez Sr. CD-1 was told by Aguillon-Hernandez Sr. to go around to the back of the shop. CD-1 drove around to the north end of the shop to get to the back of the shop; there CD-1 was given a box by Aguillon-Hernandez Sr. CD-1 said at the time he did not know how much heroin was in the box. Later, CD-1 looked in the box observed several kilograms of heroin and several kilograms of methamphetamine. DEA took possession of all the heroin and methamphetamine and sent it to their laboratory for further testing.

42. On June 26, 2019, CHS setup a controlled buy of one kilogram of methamphetamine from Arnold Martinez and Jacob Gutierrez. CHS picked up A. Martinez and they went to 302 Terrace Drive, Dallas, Texas. Gutierrez, Laurentino Aguillon-Hernandez Jr., and Jesus Aguillon-Hernandez (now deceased) were observed getting into a silver Chrysler 300 at XXX Peak Street, Dallas, Texas prior to the deal. Gutierrez, Aguillon-Hernandez Jr. and Aguillon-Hernandez were followed to XXX Starr, Apt 202, Dallas, Texas. From there, they went to XXX Terrace Drive, Dallas, Texas. Gutierrez exited a dark gray Dodge Dart driven by an unknown female.

Gutierrez retrieved a bag from the back seat of the Dodge Dart and took it to the CHS.

Gutierrez entered the CHS's vehicle and sold CHS the kilogram of methamphetamine that Gutierrez had retrieved from the Dodge Dart. CHS paid Gutierrez for the methamphetamine and Gutierrez gave A. Martinez some money for the transaction.

While conducting the deal, Aguillon-Hernandez Jr. and Aguillon-Hernandez drove around the Terrace Drive residence acting as protection for Gutierrez. Gutierrez told CHS the people in the Chrysler 300 were his people watching him because he had been robbed the week before. CHS and A. Martinez departed the location. Gutierrez entered the Chrysler 300 and it was observed going back to the Peak address. Gutierrez, Aguillon-Hernandez Jr., and Aguillon-Hernandez were observed exiting the Chrysler 300 at XXX South Peak Street, Dallas, Texas. The methamphetamine later field tested positive for the presence of methamphetamine.

43. Prior to and on August 14, 2019, at the direction of investigators, CHS setup a controlled buy of one kilogram of methamphetamine from Bernardo Martinez. The deal was scheduled to occur at XXXX Rodeo Street, Fort Worth, Texas.

When CHS arrived at the location, CHS contacted B. Martinez and Sergio Amaya-Martinez. B. Martinez had contacted Amaya to purchase the methamphetamine. Amaya told CHS the methamphetamine would be there shortly. Amaya contacted his source of supply, Carlos Dominguez, several more times, to get an update on when the methamphetamine would be delivered. During the negotiations, Amaya provided CHS with his phone number and Dominguez's phone number.

CHS left but continued to stay in contact with both Amaya and Dominguez reference the purchase of the methamphetamine. Dominguez told CHS the methamphetamine was on its way from Houston and would arrive in the Dallas/Fort Worth area shortly. Amaya confirmed the same information to the CHS. CHS told Dominguez the CHS could purchase the methamphetamine from Dominguez in a couple days and cancelled the controlled buy for August 14, 2019.

44. On August 16, 2019, CHS rescheduled the controlled buy of one kilogram of methamphetamine from Dominguez that was originally scheduled on August 14, 2019. CHS went to Mesquite, Texas and met with Dominguez. Dominguez sold CHS approximately one kilogram of methamphetamine for \$5,200.00. The kilogram of methamphetamine later field tested positive for the presence of methamphetamine.

45. On August 16, 2019, after the one-kilogram methamphetamine transaction with CHS, investigators continued to observe Dominguez. At approximately 2:57PM, Dominguez departed from the parking lot of 18855 Lyndon B. Johnson Freeway, Mesquite. Investigators followed Dominguez to a Wells Fargo Bank located at 1300 North Town East Boulevard, Mesquite, TX and watched him proceeded to use the drive thru of the bank. Wells Fargo Bank records indicated that on August 16, 2019, Dominguez deposited \$1,100.00 of cash in Wells Fargo account XXXXXX7097 at 3:17PM. Wells Fargo records show that Dominguez is the sole owner of Wells Fargo account XXXXXX7097. Investigators witnessed Dominguez leave the bank at approximately 3:18PM.

As investigators continued to observe Dominguez, he arrived and went into the Check Cashing/Western Union store at 2149 North Town East Boulevard, Mesquite, Texas at approximately 3:28PM. Western Union records indicated that on August 16, 2019 at 4:39est (3:39pm cst), Dominguez purchased a wire transfer of \$1,485.00 for a beneficiary in Apatzingan, Mexico. Western Union records revealed that Dominguez sent over \$6,000 to Mexico in 2019. Research on the Southwest Border Transaction Record Analysis Center (TRAC) revealed that in addition to the \$6,000 of wire transfers sent through Western Union, Dominguez wired over \$36,000 from May 6, 2019 to September 8, 2019 to various beneficiaries in Apatzingan, Mexico.

Dominguez used three variations of his name and on multiple occasions, structured the wire transfers. Texas Driver's License number XXXXXXXXX was issued to Dominguez of XXXX Deen Road, Fort Worth, Texas. Dominguez has used variations of his name including CARLOS DOMINGUEZ CARRILLO & CARLOS Q DOMINGUEZ CARILLO.

46. Based on my training and experience, I know it is common for Mexico-based drug trafficking organizations to be ran and controlled by the Mexico-based sources of supply/bosses. These Mexico-based superiors direct the U.S.-based conspirators in their distribution of narcotics, the movement of the illegal proceeds to Mexico (in bulk shipment concealed in vehicles or through electronic money remitters), and determine the conspirators' pay/wages. I believe part of Dominguez's responsibility is to launder the DTO's proceeds, as directed by Mexico.

The Affiant believes probable cause exists that Dominguez wired or caused the wiring of more than \$42,000 of illegal drug proceeds to Apatzingan, Mexico, from 2018 to present with \$36,000 of that being wired from May 2019 to September 2019. In executing the wire transfers, Dominguez either used his phone number, date of birth, or variation of his name. On most occasions, Dominguez used his current address as XXXX Deen Rd, Fort Worth, TX for the wires. In furtherance of the conspiracy, Dominguez transmitted wires to Apatzingan, Mexico. He used wire remitter services (wire remitters) such as Western Union, Continental Exchange Solutions, DolEx, Money Gram, Servicio Uniteller, Inc. among others, to electronically transfer funds from one location to another, and anywhere in the world another wire remitter is located. Wire remitters are often located inside convenience stores.

47. Prior to and on September 10, 2019, CHS setup a controlled buy of one kilogram of methamphetamine from Sergio Amaya-Martinez. CHS met Amaya at La Gran Plaza in Fort Worth, Texas to conduct the controlled buy. Amaya told CHS he was waiting for his unknown source of supply (SOS) to get home from work. Amaya said as soon as the SOS arrived at his house, the CHS and Amaya would go pick-up the methamphetamine. While waiting on the SOS, Amaya said he needed to go home for a few minutes. On his way home, Amaya thought people were following him. A short time later, Amaya called the CHS to cancel the deal because Amaya thought he was under surveillance.

48. On and about September 17, 2019, CHS arranged a controlled buy of one kilogram of methamphetamine and the purchase of a gun from Juan Rodriguez. J. Rodriguez instructed the CHS to go to XXXX Lancaster Avenue, Fort Worth, Texas, to

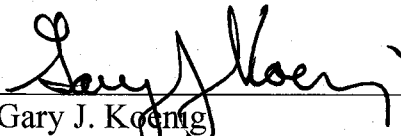
complete the transaction. When CHS arrived at XXXX Lancaster, the CHS contacted J. Rodriguez. J. Rodriguez provided CHS with approximately one kilogram of methamphetamine for \$5,000.00. J. Rodriguez showed CHS a pistol that J. Rodriguez offered to sell to CHS. J. Rodriguez told CHS he had some additional firearms for sale, to include a fully automatic pistol, but they were at his mom's house at XXXX Mecca Street, Fort Worth, Texas. J. Rodriguez told CHS he would call CHS to meet J. Rodriguez at his mom's house in about an hour to sell CHS firearms, because he needed to sell two pounds of marijuana first. CHS departed the location with the one kilogram of methamphetamine. CHS later talked to J. Rodriguez on the phone. J. Rodriguez said it would be awhile before he could meet because he was still waiting on his marijuana customers. CHS cancelled the deal for the firearms. The approximately one kilogram of methamphetamine later field tested positive for the presence of methamphetamine.

49. On and about September 19, 2019, CHS arranged a controlled buy of one kilogram of methamphetamine from Sergio Amaya-Martinez. Amaya told CHS to go to XXXX Freshfield Road, Fort Worth, Texas, to purchase the methamphetamine. When CHS arrived at the location, CHS contacted Amaya. There were several other unknown males walking around the property. Amaya sold CHS approximately one kilogram of methamphetamine for \$6,000.00. Amaya was upset because the \$6,000.00 was what it cost him to purchase the methamphetamine and he was not going to make anything on the sale to CHS. At the direction of investigators, CHS told Amaya the CHS would give Amaya \$500.00 in couple of days, for his role in the purchase of the methamphetamine that day.

During the transaction, an unknown Hispanic male wearing a Boston Red Sox hat walked toward a building on the property. Amaya inferred that the unknown male was the SOS for the kilogram of methamphetamine. CHS departed with the methamphetamine. The methamphetamine later field tested positive for the presence of methamphetamine.

50. Based on the foregoing, the Complainant believes that probable cause exists that **Juan Rodriguez, David Jimenez, Alex Mercado, John Burgess, Luis Martinez, Raul Villegas, Patrick Hall, Bernardo Martinez, Arnold Martinez, Jacob Gutierrez, Laurentino Aguillon-Hernandez Jr., Laurentino Aguillon-Hernandez Sr., Paul Garza, Alfredo Trejo, Miguel Sosa, Diane Figueroa-Lopez, Thomas Martinez, Daniel Murillo, Carlos Mora, Pedro Rebulloza, also known as Pedro Quezada, Mark Astorga, Carlos Dominguez, Sergio Amaya-Martinez, Felipe Chavez, and Juan Pablo Quezada;** along with others both known and unknown, did knowingly and intentionally combine, conspire, confederate, and agree to engage in conduct in violation of 21 U.S.C. §§ 841(a)(1) & (b)(1)(B), namely to possess with intent to distribute 50 grams or more of a mixture and substance containing a detectable amount of Methamphetamine; and 100 grams or more of a mixture or substance containing a detectable amount of heroin; and 500 grams or more of a mixture or substance containing a detectable amount of cocaine, its salts, optical and geometric isomers, and salts of isomers in violation of 21 U.S.C. § 846.

51. Based on the foregoing, Affiant believes probable cause exists that **CARLOS DOMINGUEZ** along with others known and unknown, did knowingly and intentionally combine, conspire, confederate, and agree to engage in conduct in violation of 18 U.S.C. § 1956(h), namely to conspire with someone else to conduct financial transactions with proceeds of a specified unlawful activity knowing the transactions were designed to conceal or disguise the source, origin, nature, ownership, or control of the proceeds.



Gary J. Koenig
Special Agent
Federal Bureau of Investigation

SWORN AND SUBSCRIBED before me, at 9:25^{am} pm, this 17th day of October, 2019, in Fort Worth, Texas.



JEFFREY L. CURETON
United States Magistrate Judge

ORIGINAL

CLERK OF DISTRICT COURT
NORTHERN DIST. OF TX
FORT WORTH DIVISION
FILED

3-A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

AS9 DEC 10 PM 1:27

DEPUTY CLERK _____

UNITED STATES OF AMERICA

v.

Case No.

JUAN RODRIGUEZ (01)
DAVID JIMENEZ (02)
JOHN BURGESS (03)
LUIS MARTINEZ (04)
RAUL VILLEGAS (05)
PATRICK HALL (06)
ARNOLD MARTINEZ (07)
JACOB GUTIERREZ (08)
LAURENTINO AGUILLON-HERNANDEZ JR. (09)
LAURENTINO AGUILLON-HERNANDEZ SR. (10)
DANIEL MURILLO (11)
PEDRO REBULLOZA
a/k/a/ "Pedro Quezada" (12)
MARK ASTORGA (13)
CARLOS DOMINGUEZ (14)
SERGIO AMAYA-MARTINEZ (15)
FELIPE CHAVEZ (16)
CARLOS MORA (17)

4-19CR-0362A

INFORMATION

The United States Attorney Charges:

Count One

Conspiracy to Possess with Intent to Distribute a Controlled Substance
(Violation of 21 U.S.C. § 846)

Beginning in or before March 2019, and continuing until in and around September
2019, in the Fort Worth Division of the Northern District of Texas, and elsewhere,
defendants **Juan Rodriguez, Laurentino Aguilon-Hernandez Jr.,**

Laurentino Aguillon-Hernandez Sr., and Mark Astorga, along with others known and unknown, did knowingly and intentionally combine, conspire, confederate, and agree to engage in conduct in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B), namely to possess with intent to distribute 50 grams or more of a mixture and substance containing a detectable amount of Methamphetamine, a Schedule II controlled substance.

In violation of 21 U.S.C. § 846 (21 U.S.C. §§ 841(a)(1) and (b)(1)(B)).

Count Two

Conspiracy to Possess with Intent to Distribute a Controlled Substance
(Violation of 21 U.S.C. § 846)

Beginning in or before March 2019, and continuing until in and around September 2019, in the Fort Worth Division of the Northern District of Texas, and elsewhere, defendants **David Jimenez, John Burgess, Luis Martinez, Raul Villegas, Patrick Hall, Arnold Martinez, Jacob Gutierrez, Daniel Murillo, Sergio Amaya-Martinez, Felipe Chavez, Carlos Mora, and Pedro Rebulloza**, also known as Pedro Quezada, along with others known and unknown, did knowingly and intentionally combine, conspire, confederate, and agree to engage in conduct in violation of 21 U.S.C §§ 841(a)(1) and (b)(1)(C), namely to possess with intent to distribute a mixture and substance containing a detectable amount of Methamphetamine, a Schedule II controlled substance.

In violation of 21 U.S.C. § 846 (21 U.S.C. §§ 841(a)(1) and (b)(1)(C)).

Count Three

Conspiracy to Commit Money Laundering
(Violation of 18 U.S.C. § 1956(h))

In and around August 2019, in the Fort Worth Division of the Northern District of Texas, and elsewhere, defendant **Carlos Dominguez**, along with others known and unknown, did knowingly and intentionally conspire and agree with others known and unknown, to commit certain offenses against the United States in violation of 18 U.S.C. § 1956, to wit:

1. To knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, which involved the proceeds of a specified unlawful activity, that is drug trafficking, in violation of 21 U.S.C. § 846 (21 U.S.C. § §841(a)(1)), with the intent to promote the carrying on of specified unlawful activity, that is drug trafficking, in violation of 21 U.S.C. § 846 (21 U.S.C. § §841(a)(1)), and that while conducting and attempting to conduct such financial transaction knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity in violation of 18 U.S.C. § 1956(a)(1)(A)(i); and

2. To knowingly conduct and attempt to conduct financial transactions affecting interstate and foreign commerce, which transactions involved the proceeds of a specified unlawful activity, that is, drug trafficking, in violation of 21 U.S.C. § 846 (21 U.S.C. § §841(a)(1)), knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, ownership, control and source of the proceeds of the specified unlawful activity and that while conducting and attempting to conduct

such financial transactions, knew that the property involved in the financial transactions, represented the proceeds of some form of unlawful activity in violation of 18 U.S.C. § 1956(a)(1)(B)(i).

In violation of 18 U.S.C. § 1956(h).

Forfeiture Notice

21 U.S.C. § 853 and 21 U.S.C. § 881(a)

Pursuant to 21 U.S.C. § 853(a), upon conviction of Count One or Count Two offenses, the defendants, **Juan Rodriguez, Laurentino Aguillon-Hernandez Jr., Laurentino Aguillon-Hernandez Sr., Mark Astorga, David Jimenez, John Burgess, Luis Martinez, Raul Villegas, Patrick Hall, Arnold Martinez, Jacob Gutierrez, Daniel Murillo, Sergio Amaya-Martinez, Felipe Chavez, Carlos Mora, and Pedro Rebulloza**, also known as Pedro Quezada, shall forfeit to the United States any property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as a result of Count One or Count Two offenses, and any of the defendant's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of Count One or Count Two offenses, including but not limited to the following:

1. Approximately \$23,913.00 in U.S. currency seized on or about October 23, 2019; [sought from **Juan Rodriguez** concerning Count One]
2. One American Tactical Imports - ATI shotgun, Model: unknown, Cal: ZZ, SN: 0517230101005361, including any ammunition, magazines, and/or accessories recovered with the firearm; [sought from **Juan Rodriguez** concerning Count One]
3. One CZ (Ceska Zbrojovka) pistol, Model: CZ75 B, CAL: 9, SN: C697635, including any ammunition, magazines, and/or accessories recovered with the firearm; [sought from **Juan Rodriguez** concerning Count One]
4. One Anderson Manufacturing rifle, Model: AM-15, CAL: Multi., SN: 17080960, including any ammunition, magazines, and/or accessories recovered with the firearm; [sought from **Juan Rodriguez** concerning Count One]
5. One Romarm/Cugir pistol, Model: Mini Draco, Cal: 762, SN: PE-1175-2018R0, including any ammunition, magazines, and/or accessories recovered with the firearm; [sought from **Juan Rodriguez** concerning Count One]

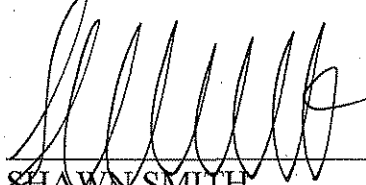
6. \$100.00 in U.S. Currency seized from seized on or about October 23, 2019;
[sought from **Laurentino Aguilon-Hernandez Sr.** concerning Count One]
7. Approximately \$13,980.00 in U.S. Currency seized on or about October 23, 2019;
[sought from **Daniel Murillo** concerning Count Two]
8. One Zastava pistol, Model: PAP M85 PV, Cal: 223, SN: M85PV007488,
including any ammunition, magazines, and/or accessories recovered with the
firearm; [sought from **Daniel Murillo** concerning Count Two]
9. One Ruger pistol, Model: SR9C, Cal: 9, SN: 333-44414, including any
ammunition, magazines, and/or accessories recovered with the firearm;
[sought from **Daniel Murillo** concerning Count Two]
10. One Maverick Arms shotgun, Model: 88, Cal: 12, SN: MV11458C, including any
ammunition, magazines, and/or accessories recovered with the firearm;
[sought from **Daniel Murillo** concerning Count Two].

Pursuant to 21 U.S.C. § 853(p), if any of the property described above, as a result
of any act or omission of the defendant:

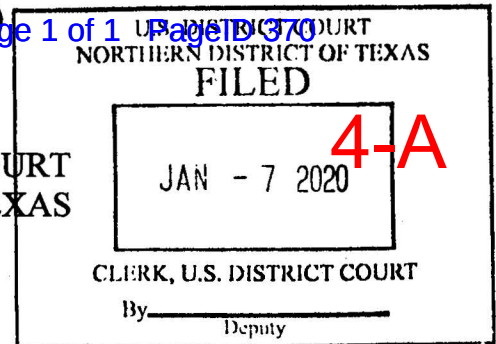
- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without
difficulty,

the United States intends to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

ERIN NEALY COX
UNITED STATES ATTORNEY

A handwritten signature in black ink, appearing to read 'SHAWN SMITH', is written over a horizontal line.

SHAWN SMITH
Assistant United States Attorney
Texas State Bar No. 24033206
801 Cherry Street, Suite 1700
Fort Worth, Texas 76102
Telephone: 817.252.5200
Facsimile: 817.252.5455



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

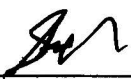
Criminal No. 4:19-CR-362-A

SERGIO AMAYA-MARTINEZ (15)

WAIVER OF INDICTMENT

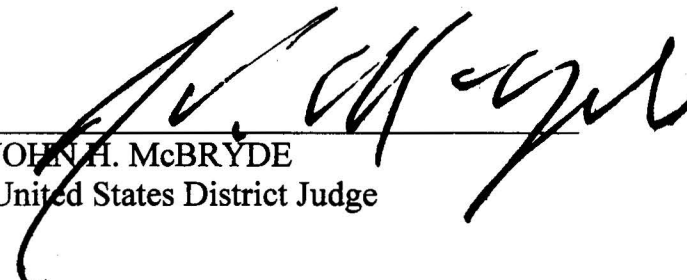
I, Sergio Amaya-Martinez, the above named defendant, who is accused in the Information with the felony offense of Conspiracy to Possess with Intent to Distribute, in violation of 21 U.S.C. § 846, being advised of the nature of the charges, the proposed Information, and of my rights, hereby waive prosecution by Indictment and consent that the proceeding may be by Information rather than by Indictment.

Signed this 7 day of January, 2020.


SERGIO AMAYA-MARTINEZ
Defendant


STEVEN BUSH
Attorney for Defendant

Affirmed in open Court this 7 day of January, 2020.


JOHN H. McBRYDE
United States District Judge

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED JAN - 7 2020 5-A CLERK, U.S. DISTRICT COURT By _____ Deputy
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UNITED STATES OF AMERICA

v.

SERGIO AMAYA-MARTINEZ ¹⁵₍₁₉₎

NO. 4:19-CR-362-A

PLEA AGREEMENT ~~WITH WAIVER OF APPEAL~~

Sergio Amaya-Martinez ("Defendant"), J Steven Bush, Defendant's attorney, and the United States of America ("Government"), agree as follows:

1. Rights of Defendant: Defendant understands that he has the right
 - a. to plead not guilty;
 - b. to have a trial by jury;
 - c. to have his guilt proven beyond a reasonable doubt;
 - d. to confront and cross-examine witnesses and to call witnesses in his defense; and
 - e. against compelled self-incrimination.

2. Waiver of Rights and Plea of Guilty: Defendant waives these rights and pleads guilty to the offense alleged in Count Two of the Information, charging a violation of 21 U.S.C. § 846, that is, conspiracy to possess of a controlled substance with intent to distribute. Defendant understands the nature and elements of the crimes to which he is pleading guilty, and agrees that the factual resume he has signed is true and will be submitted as evidence.

3. Sentence: The penalties the Court can impose include:

- a. imprisonment for a period of not more than twenty (20) years;
- b. a fine not to exceed \$¹~~8~~,000,000;
- c. a mandatory term of supervised release of not less than three (3) years, which may be mandatory under the law and will follow any term of imprisonment. If the defendant violates any condition of the term of supervised release, the Court may revoke such release term and require that the defendant serve an additional period of confinement;
- d. a mandatory special assessment of \$100;
- e. restitution to victims or to the community, which may be mandatory under the law, and which Defendant agrees may include restitution arising from all relevant conduct, not limited to that arising from the offense of conviction alone; and
- f. costs of incarceration and supervision.

4. Court's Sentencing Discretion and Role of the Guidelines: Defendant understands that the sentence in this case will be imposed by the Court after consideration of the United States Sentencing Guidelines. The guidelines are not binding on the Court, but are advisory only. Defendant has reviewed the guidelines with his attorney, but understands no one can predict with certainty the outcome of the Court's consideration of the guidelines in this case. Defendant will not be allowed to withdraw his plea if his sentence is higher than expected. Defendant fully understands that the actual sentence imposed (so long as it is within the statutory maximum) is solely in the Court's discretion.

~~5. Mandatory special assessment: Defendant agrees to pay to the U.S. District Clerk the amount of \$100.00, in satisfaction of the mandatory special assessment in this case.~~

5. Defendant's agreement: Defendant shall give complete and truthful information and/or testimony concerning his participation in the offense of conviction. Upon demand, Defendant shall submit a personal financial statement under oath and submit to interviews by the government and the U.S. Probation Office regarding his capacity to satisfy any fines or restitution.

6. Government's Agreement: The government will not bring any additional charges against Defendant based upon the conduct underlying and related to the Defendant's plea of guilty. This agreement is limited to the United States Attorney's Office for the Northern District of Texas and does not bind any other federal, state, or local prosecuting authorities, nor does it prohibit any civil or administrative proceeding against Defendant or any property.

7. Violation of Agreement: Defendant understands that if he violates any provision of this agreement, or if his guilty plea is vacated or withdrawn, the Government will be free from any obligations of the agreement and free to prosecute Defendant for all offenses of which it has knowledge. In such event, Defendant waives any objections based upon delay in prosecution. If the plea is vacated or withdrawn for any reason other than a finding that it was involuntary, Defendant waives objection to the use against him of any information or statements he has provided to Government and any resulting leads.

B. Voluntary Plea: This plea of guilty is freely and voluntarily made and is not the result of force or threats, or of promises apart from those set forth in this plea agreement. There have been no guarantees or promises from anyone as to what sentence the Court will impose.

~~10. Waiver of right to appeal or otherwise challenge sentence: Defendant waives his rights, conferred by 28 U.S.C. § 1201 and 18 U.S.C. § 3742, to appeal from his conviction and sentence. He further waives his right to contest his conviction and sentence in any collateral proceeding, including proceedings under 28 U.S.C. § 2241 and 28 U.S.C. § 2255. Defendant, however, reserves the rights (a) to bring a direct appeal of (i) a sentence exceeding the statutory maximum punishment, or (ii) an arithmetic error at sentencing, (b) to challenge the voluntariness of his plea of guilty or this waiver, and (c) to bring a claim of ineffective assistance of counsel.~~

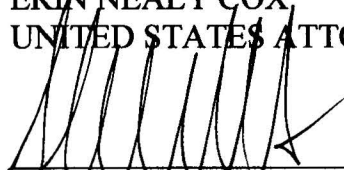
9. Representation of Counsel: Defendant has thoroughly reviewed all legal and factual aspects of this case with his lawyer and is fully satisfied with that lawyer's legal representation. Defendant has received from his lawyer explanations satisfactory to him concerning each paragraph of this plea agreement, each of his rights affected by this agreement, and the alternatives available to him other than entering into this agreement. Because he concedes that he is guilty, and after conferring with his lawyer, Defendant has concluded that it is in his best interest to enter into this plea agreement, and all of its terms, rather than to proceed to trial in this case.

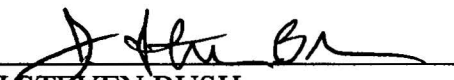
~~10.12.~~ Entirety of Agreement: This document is a complete statement of the parties' agreement and may not be modified unless the modification is in writing and signed by all parties.

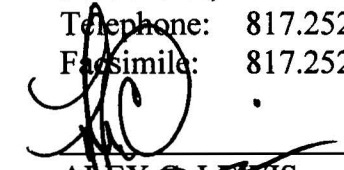
AGREED TO AND SIGNED this 2 day of December, 2019.


SERGIO AMAYA-MARTINEZ
Defendant

ERIN NEALY COX
UNITED STATES ATTORNEY


SHAWN SMITH
Assistant United States Attorney
Texas State Bar No. 24033206
801 Cherry Street, Suite 1700
Fort Worth, Texas 76102
Telephone: 817.252.5200
Facsimile: 817.252.5455


J STEVEN BUSH
Attorney for Defendant

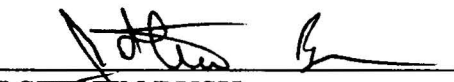

ALEX Q. LEWIS
Deputy Criminal Chief

I have read (or had read to me) this Plea Agreement and have carefully reviewed every part of it with my attorney. I fully understand it and voluntarily agree to it.


SERGIO AMAYA-MARTINEZ

12-02-19
Date

I am the defendant's counsel. I have carefully reviewed every part of this Plea Agreement with the defendant. To my knowledge and belief, my client's decision to enter into this Plea Agreement is an informed and voluntary one.


J STEVEN BUSH
Attorney for Defendant

12-2-19
Date

6-A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FT. WORTH DIVISION

UNITED STATES OF AMERICA	§	
	§	
V.	§	
	§	NO. 4:19-CR-362-0 (15)
SERGIO AMAYA-MARTINEZ	§	
_____	§	

DEFENDANT'S NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, SERGIO AMAYA-MARTINEZ, Defendant in the above-styled and numbered cause, by and through his attorney of record, J. Steven Bush, and files this notice of appeal from his sentence to the Court of Appeals for the Fifth Circuit.

Signed this 3rd day of June, 2020.

Respectfully submitted,

J. Steven Bush
Attorney at Law
503 Coker Valley Dr.
Kennedale, TX 76060
Tel. 817-878-2770

By: /s/ J. Steven Bush
J. Steven Bush
State Bar No. 03496200
Stiiofanbush@gmail.com

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2020 I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorney’s of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ J. Steven Bush

J. Steven Bush

7-A

United States District CourtNorthern District of Texas
Fort Worth Division

UNITED STATES OF AMERICA

§

v.

§

Case Number: 4:19-CR-362-O(15)

SERGIO AMAYA-MARTINEZ

§

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Shawn Smith. The defendant, SERGIO AMAYA-MARTINEZ, was represented by J. Steven Bush.

The defendant pleaded guilty on January 7, 2020 to count two of the three count Information filed on December 10, 2019. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

Title & Section / Nature of Offense

21 U.S.C. § 846 (21 U.S.C. § 841(a)(1) and (b)(1)(C)) Conspiracy to Possess
with Intent to Distribute a Controlled Substance

Date Offense Concluded

September 2019

Count

2

As pronounced and imposed on May 29, 2020, the defendant is sentenced as provided in this judgment.

The court ORDERS that the defendant immediately pay to the United States, through the Clerk of this Court, a special assessment of \$100.00.

The court further ORDERS that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence address, or mailing address, as set forth below, until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court, through the clerk of this court, and the Attorney General, through the United States Attorney for this district, of any material change in the defendant's economic circumstances.

IMPRISONMENT

The court further ORDERS that the defendant be, and is hereby, committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 168 months

The court recommends to the Bureau of Prisons that defendant serve his period of imprisonment at a facility within the Northern District of Texas.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

The court further ORDERS that, upon release from imprisonment, the defendant shall be on supervised release for a term of three (3) years.

Pursuant to 18 U.S.C. §3583(d), as a condition of supervised release, upon the completion of the sentence of imprisonment the defendant shall be surrendered by the Federal Bureau of Prisons to a duly-authorized immigration official for deportation in accordance with the established procedures provided by the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. As a further condition of supervised release, if ordered deported the defendant shall remain outside the United States.

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall comply with the following conditions of supervised release:

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not possess illegal controlled substances.
3. The defendant shall not possess a firearm, destructive device, or other dangerous weapons.
4. The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.
5. The defendant shall report in person to the U.S. Probation Office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry.
6. The defendant shall not illegally re-enter the United States, if deported, removed, or allowed voluntary departure.
7. The defendant must refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
8. The defendant shall also comply with the Standard Conditions of Supervision as hereinafter set forth.

Standard Conditions of Supervision

1. The defendant shall report in person to the probation office in the district to which the defendant is released within seventy-two (72) hours of release from the custody of the Bureau of Prisons.
2. The defendant shall not possess a firearm, destructive device, or other dangerous weapon.

3. The defendant shall provide to the U.S. Probation Officer any requested financial information.
4. The defendant shall not leave the judicial district where the defendant is being supervised without the permission of the Court or U.S. Probation Officer.
5. The defendant shall report to the U.S. Probation Officer as directed by the court or U.S. Probation Officer and shall submit a truthful and complete written report within the first five (5) days of each month.
6. The defendant shall answer truthfully all inquiries by the U.S. Probation Officer and follow the instructions of the U.S. Probation Officer.
7. The defendant shall support his dependents and meet other family responsibilities.
8. The defendant shall work regularly at a lawful occupation unless excused by the U.S. Probation Officer for schooling, training, or other acceptable reasons.
9. The defendant shall notify the probation officer at least ten (10) days prior to any change in residence or employment.
10. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
11. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
12. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the U.S. Probation Officer.
13. The defendant shall permit a probation officer to visit him at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the U.S. Probation Officer.
14. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
15. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
16. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

The court hereby directs the probation officer to provide defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, as contemplated and required by 18 U.S.C. § 3583(f).

FINE

The court did not order a fine because the defendant does not have the financial resource or future earning capacity to pay a fine.

STATEMENT OF REASONS

The “Statement of Reasons” and personal information about the defendant are set forth on the attachment to this judgment.

Signed this the 29th day of May, 2020.

A handwritten signature in black ink, appearing to read "Reed O'Connor", is written over a horizontal line.

REED O'CONNOR

UNITED STATES DISTRICT JUDGE

Amaya-Martinez's Conduct

21. On August 14, 2019, at the direction of agents, a CS coordinated the purchase of 1 kilogram of methamphetamine from B. Martinez, to occur at a residence on Rodeo Street in Fort Worth. B. Martinez, acting as a broker, contacted **Amaya-Martinez**, to purchase the methamphetamine for the CS. The CS traveled to the residence and met B. Martinez and **Amaya-Martinez**, and **Amaya-Martinez** contacted his SOS, Dominguez, to get an update on when the methamphetamine would be delivered. **Amaya-Martinez** provided the CS with Dominguez's phone number, and Dominguez informed the CS directly that the methamphetamine was being delivered from Houston and would arrive shortly. In response, the CS cancelled the transaction and informed Dominguez he would purchase the methamphetamine in a couple of days.
22. On August 16, 2019, the CS traveled to Mesquite, Texas, and purchased the methamphetamine directly from Dominguez for \$5,200. Following the transaction, agents observed Dominguez travel to a Check Cashing/Western Union store where he purchased a wire transfer in the amount of \$1,485, to wire drug proceeds to a beneficiary in Apatzingán, Mexico. The methamphetamine from this transaction was submitted to the DEA laboratory for analysis, which revealed *988.1 grams of d-methamphetamine hydrochloride* with a purity of 96 percent.
23. On September 10, 2019, the CS coordinated the purchase of *1 kilogram of methamphetamine* from **Amaya-Martinez**. The CS met **Amaya-Martinez** at La Gran Plaza in Fort Worth to conduct the transaction; however, **Amaya-Martinez** informed the CS that his SOS was delayed by traffic. While waiting, **Amaya-Martinez** stated he needed to return home for a few minutes. A short time later, **Amaya-Martinez** contacted the CS and cancelled the transaction because **Amaya-Martinez** believed he was under surveillance.
24. On September 11, 2019, **Amaya-Martinez** contacted B. Martinez and inquired if the CS was "a cop." B. Martinez responded in the negative, as he had conducted prior transactions with the CS. On September 12, 2019, **Amaya-Martinez** contacted the CS and stated he was scared, and no longer desired to conduct the transaction.
25. On September 13, 2019, the CS contacted **Amaya-Martinez** and advised that if **Amaya-Martinez** wanted to earn more money on the sale of a kilogram of methamphetamine, then **Amaya-Martinez** would need to add his price to the cost of the kilogram when pricing it to customers. The CS informed **Amaya-Martinez** that if he helped him, the CS would help **Amaya-Martinez** with getting more funds.
26. On September 19, 2019, the CS coordinated the purchase of 1 kilogram of methamphetamine from **Amaya-Martinez**. **Amaya-Martinez** instructed the CS to travel to a residence on Freshfield Road in Fort Worth. The CS arrived at the location, met with **Amaya-Martinez**, who provided the methamphetamine to the CS in exchange for \$6,000. The CS requested to meet **Amaya-Martinez's** SOS; however, **Amaya-Martinez** declined to make the introduction. **Amaya-Martinez** expressed his frustration because \$6,000 was what it cost to be supplied methamphetamine, and he was not making any profit from the

methamphetamine sale to the CS. At the direction of agents, the CS informed **Amaya-Martinez** he would give **Amaya-Martinez** an additional \$500 in a couple of days, for his role in the purchase of methamphetamine. The methamphetamine from this transaction was submitted to the DEA laboratory for analysis, which revealed *981.7 grams of d-methamphetamine hydrochloride* with a purity of 94 percent.

27. On September 24, 2019, the CS traveled to the residence on Freshfield Road to meet with **Amaya-Martinez**. Upon arrival, the CS provided \$500 to **Amaya-Martinez** as previously agreed to on September 19, 2019. The CS informed **Amaya-Martinez** that he was paying too much for a kilogram of methamphetamine, and that he could obtain a kilogram of methamphetamine at a cheaper rate from B. Martinez. The CS requested to purchase 5 to 10 kilograms of methamphetamine (conservatively estimated at *5 kilograms of methamphetamine*); however, he informed **Amaya-Martinez** he was not willing to pay \$6,500 per kilogram. In response, **Amaya-Martinez** stated he would contact his SOS and inquire about a lower rate. Later that day, **Amaya-Martinez** contacted the CS and stated he could obtain the methamphetamine for \$5,500 per kilogram.
28. On September 30, 2019, the CS exchanged text messages and phone calls with **Amaya-Martinez**, wherein **Amaya-Martinez** informed the CS that he "works with a lot of big weight people," and he "was moving on to another prospect." **Amaya-Martinez** inquired if the CS had agreed to \$5,500 cost per kilogram of methamphetamine, previously discussed, and the CS responded in the affirmative.
29. On October 6, 2019, the CS exchanged text messages with **Amaya-Martinez**, wherein **Amaya-Martinez** informed the CS he had methamphetamine ready to distribute ("I have stuff now.")
30. On October 23, 2019, **Amaya-Martinez** was arrested at his residence, 3508 Bryan Avenue in Fort Worth, without incident, pursuant to a federal warrant. During a post-arrest interview, **Amaya-Martinez** informed agents he did not sell, use, or possess any drugs, nor did he know anyone who sold, used, or possessed drugs.

Guideline Considerations

31. **Amaya-Martinez** was involved in a jointly undertaken criminal activity to possess with intent to distribute methamphetamine with others. Pursuant to commentary note (C) of USSG §2D1.1(c), Notes to Drug Quantity Table, d-methamphetamine hydrochloride with a purity of at least 80 percent is considered "Ice." In addition to completed transactions resulting in the seizure of "Ice," **Amaya-Martinez** is also accountable for attempted or agreed-upon methamphetamine transactions. It is noted that a conservative estimate of methamphetamine, rather than "Ice," was used in these instances for purposes of guideline calculations, as no drug seizures occurred. Further, it is noted that the inclusion or exclusion of the attempted or agreed-upon methamphetamine transactions has no impact on guideline calculations.

A variety of factors are relevant to the “mitigating role” determination, including: “(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”; and “(v) the degree to which the defendant stood to benefit from the criminal activity.” *Id.* “[H]ow [the] factors are weighed remains within the sentencing court’s discretion.” *United States v. Torres-Hernandez*, 843 F.3d 203, 210 (5th Cir. 2016).

Importantly, this Court has held that Section 3B1.2 does not “‘provide an affirmative right to a § 3B1.2 reduction to every actor *but* the criminal mastermind.’” *United States v. Castro*, 843 F.3d 608, 612 (5th Cir. 2016) (emphasis in original) (quoting *United States v. Gomez-Valle*, 828 F.3d 324, 331 (5th Cir. 2016)). “This Court has repeatedly explained that ‘it is improper for a court to award a § 3B1.2 adjustment simply because a defendant does less than the other participants.’” *Castro*, 843 F.3d at 613 (quoting *United States v. Thomas*, 932 F.2d 1085, 1092 (5th Cir. 1991)). Rather, “‘the defendant must

despite the defendant's argument that he "merely helped others in delivering methamphetamine" and "did not negotiate or arrange the delivery"); *Castro*, 843 F.3d at 612 (affirming the denial of a mitigating-role reduction to a drug courier).

In other words, Amaya has not carried his burden of showing error, let alone clear error. The fact that he was not "the criminal mastermind" does not entitle him to a mitigating-role reduction. *See Castro*, 843 F.3d at 612. Even if the record supported his claims of being a low-level player who was "d[id] less than [Dominguez and Martinez]," *id.* at 613 (internal quotation marks and citation omitted), this is insufficient to establish error. Amaya has not shown that he did "enough less" that he was "at best peripheral to the advancement of the illicit activity." *See id.* (internal quotation marks and citation omitted); *see also Fernandez-Guzman*, 732 F. App'x at 304. For this reason, his argument must fail.

Notably, Amaya does not cite any Fifth Circuit authority that supports his claim of error. He relies on a single case, *United States v. Sotelo*, 97 F.3d 782, 799 (5th Cir. 1996), for the proposition that he was entitled to at least a two-point minor-role reduction. (Brief at 20–22.) Amaya makes numerous comparisons between his own activities and those of Quintana, the defendant in *Sotelo*, who received a two-point minor-role reduction. (Brief at 22–23.) As

of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others. There can, of course, be more than one person who qualifies as a leader or organizer of a criminal association or conspiracy. This adjustment does not apply to a defendant who merely suggests committing the offense.

Background: This section provides a range of adjustments to increase the offense level based upon the size of a criminal organization (i.e., the number of participants in the offense) and the degree to which the defendant was responsible for committing the offense. This adjustment is included primarily because of concerns about relative responsibility. However, it is also likely that persons who exercise a supervisory or managerial role in the commission of an offense tend to profit more from it and present a greater danger to the public and/or are more likely to recidivate. The Commission's intent is that this adjustment should increase with both the size of the organization and the degree of the defendant's responsibility.

In relatively small criminal enterprises that are not otherwise to be considered as extensive in scope or in planning or preparation, the distinction between organization and leadership, and that of management or supervision, is of less significance than in larger enterprises that tend to have clearly delineated divisions of responsibility. This is reflected in the inclusiveness of §3B1.1(c).

Historical Note: Effective November 1, 1987. Amended effective November 1, 1991 (see Appendix C, amendment 414).

§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.

Commentary

Application Notes:

1. Subsection (a) applies to a defendant who plays a minimal role in concerted activity. It is intended to cover defendants who are plainly among the least culpable of those involved in the conduct of a group. Under this provision, the defendant's lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant.
2. It is intended that the downward adjustment for a minimal participant will be used infrequently. It would be appropriate, for example, for someone who played no other role in a very large drug smuggling operation than to offload part of a single marijuana shipment, or in a case where an individual was recruited as a courier for a single smuggling transaction involving a small amount of drugs.

3. *For purposes of §3B1.2(b), a minor participant means any participant who is less culpable than most other participants, but whose role could not be described as minimal.*

Background: *This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant. The determination whether to apply subsection (a) or subsection (b), or an intermediate adjustment, involves a determination that is heavily dependent upon the facts of the particular case.*

Historical Note: Effective November 1, 1987.

§3B1.3. Abuse of Position of Trust or Use of Special Skill

If the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense, increase by 2 levels. This adjustment may not be employed if an abuse of trust or skill is included in the base offense level or specific offense characteristic. If this adjustment is based upon an abuse of a position of trust, it may be employed in addition to an adjustment under §3B1.1 (Aggravating Role); if this adjustment is based solely on the use of a special skill, it may not be employed in addition to an adjustment under §3B1.1 (Aggravating Role).

Commentary

Application Notes:

1. *The position of trust must have contributed in some substantial way to facilitating the crime and not merely have provided an opportunity that could as easily have been afforded to other persons. This adjustment, for example, would not apply to an embezzlement by an ordinary bank teller.*
2. *"Special skill" refers to a skill not possessed by members of the general public and usually requiring substantial education, training or licensing. Examples would include pilots, lawyers, doctors, accountants, chemists, and demolition experts.*

Background: *This adjustment applies to persons who abuse their positions of trust or their special skills to facilitate significantly the commission or concealment of a crime. Such persons generally are viewed as more culpable.*

Historical Note: Effective November 1, 1987. Amended effective November 1, 1990 (see Appendix C, amendment 346).

§3B1.4. In any other case, no adjustment is made for role in the offense.

Commentary

Many offenses are committed by a single individual or by individuals of roughly equal culpability so that none of them will receive an adjustment under this Part. In addition, some participants in a criminal organization may receive increases under §3B1.1 (Aggravating Role) while

4. In distinguishing a leadership and organizational role from one of mere management or supervision, titles such as “kingpin” or “boss” are not controlling. Factors the court should consider include the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others. There can, of course, be more than one person who qualifies as a leader or organizer of a criminal association or conspiracy. This adjustment does not apply to a defendant who merely suggests committing the offense.

Background: This section provides a range of adjustments to increase the offense level based upon the size of a criminal organization (*i.e.*, the number of participants in the offense) and the degree to which the defendant was responsible for committing the offense. This adjustment is included primarily because of concerns about relative responsibility. However, it is also likely that persons who exercise a supervisory or managerial role in the commission of an offense tend to profit more from it and present a greater danger to the public and/or are more likely to recidivate. The Commission’s intent is that this adjustment should increase with both the size of the organization and the degree of the defendant’s responsibility.

In relatively small criminal enterprises that are not otherwise to be considered as extensive in scope or in planning or preparation, the distinction between organization and leadership, and that of management or supervision, is of less significance than in larger enterprises that tend to have clearly delineated divisions of responsibility. This is reflected in the inclusiveness of §3B1.1(c).

<i>Historical Note</i>	Effective November 1, 1987. Amended effective November 1, 1991 (amendment 414); November 1, 1993 (amendment 500).
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§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.

Commentary

Application Notes:

1. **Definition.**—For purposes of this guideline, “*participant*” has the meaning given that term in Application Note 1 of §3B1.1 (Aggravating Role).
2. **Requirement of Multiple Participants.**—This guideline is not applicable unless more than one participant was involved in the offense. *See* the Introductory Commentary to this Part (Role

in the Offense). Accordingly, an adjustment under this guideline may not apply to a defendant who is the only defendant convicted of an offense unless that offense involved other participants in addition to the defendant and the defendant otherwise qualifies for such an adjustment.

3. **Applicability of Adjustment.—**

- (A) **Substantially Less Culpable than Average Participant.**—This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant in the criminal activity.

A defendant who is accountable under §1B1.3 (Relevant Conduct) only for the conduct in which the defendant personally was involved and who performs a limited function in the criminal activity may receive an adjustment under this guideline. For example, a defendant who is convicted of a drug trafficking offense, whose participation in that offense was limited to transporting or storing drugs and who is accountable under §1B1.3 only for the quantity of drugs the defendant personally transported or stored may receive an adjustment under this guideline.

Likewise, a defendant who is accountable under §1B1.3 for a loss amount under §2B1.1 (Theft, Property Destruction, and Fraud) that greatly exceeds the defendant's personal gain from a fraud offense or who had limited knowledge of the scope of the scheme may receive an adjustment under this guideline. For example, a defendant in a health care fraud scheme, whose participation in the scheme was limited to serving as a nominee owner and who received little personal gain relative to the loss amount, may receive an adjustment under this guideline.

- (B) **Conviction of Significantly Less Serious Offense.**—If a defendant has received a lower offense level by virtue of being convicted of an offense significantly less serious than warranted by his actual criminal conduct, a reduction for a mitigating role under this section ordinarily is not warranted because such defendant is not substantially less culpable than a defendant whose only conduct involved the less serious offense. For example, if a defendant whose actual conduct involved a minimal role in the distribution of 25 grams of cocaine (an offense having a Chapter Two offense level of level 12 under §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy)) is convicted of simple possession of cocaine (an offense having a Chapter Two offense level of level 6 under §2D2.1 (Unlawful Possession; Attempt or Conspiracy)), no reduction for a mitigating role is warranted because the defendant is not substantially less culpable than a defendant whose only conduct involved the simple possession of cocaine.
- (C) **Fact-Based Determination.**—The determination whether to apply subsection (a) or subsection (b), or an intermediate adjustment, is based on the totality of the circumstances and involves a determination that is heavily dependent upon the facts of the particular case.

In determining whether to apply subsection (a) or (b), or an intermediate adjustment, the court should consider the following non-exhaustive list of factors:

- (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;

§3B1.3

- (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.

For example, a defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for an adjustment under this guideline.

The fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative. Such a defendant may receive an adjustment under this guideline if he or she is substantially less culpable than the average participant in the criminal activity.

- 4. **Minimal Participant.**—Subsection (a) applies to a defendant described in Application Note 3(A) who plays a minimal role in the criminal activity. It is intended to cover defendants who are plainly among the least culpable of those involved in the conduct of a group. Under this provision, the defendant's lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others is indicative of a role as minimal participant.
- 5. **Minor Participant.**—Subsection (b) applies to a defendant described in Application Note 3(A) who is less culpable than most other participants in the criminal activity, but whose role could not be described as minimal.
- 6. **Application of Role Adjustment in Certain Drug Cases.**—In a case in which the court applied §2D1.1 and the defendant's base offense level under that guideline was reduced by operation of the maximum base offense level in §2D1.1(a)(5), the court also shall apply the appropriate adjustment under this guideline.

*Historical
Note*

Effective November 1, 1987. Amended effective November 1, 1992 (amendment 456); November 1, 2001 (amendment 635); November 1, 2002 (amendment 640); November 1, 2009 (amendment 737); November 1, 2011 (amendments 749 and 755); November 1, 2014 (amendment 782); November 1, 2015 (amendment 794).

§3B1.3. Abuse of Position of Trust or Use of Special Skill

If the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense, increase by **2** levels. This adjustment may not be employed if an abuse of trust or skill is included in the base offense level or specific offense characteristic. If this adjustment is based upon an abuse of a position of trust, it may be employed in addition to an adjustment under §3B1.1 (Aggravating Role); if this adjustment is based solely on the use of a special skill, it may not be employed in addition to an adjustment under §3B1.1 (Aggravating Role).