

**IN THE SUPREME COURT
OF THE UNITED STATES
October Term 2021**

CASE NO: _____

Eleventh Circuit United States Court of Appeals
Case No. 20-10986

(SDFL No. 1:16-cr-20575-RNS-5)

YINA MARIA CASTANEDA BENAVIDES,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI to the
UNITED STATES COURT OF APPEALS for the ELEVENTH CIRCUIT
With Incorporated Appendix

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Questions Presented

This petition arises from the affirmance of a judgment of conviction and sentence to a term of 22 ½ years' incarceration following a jury trial for conspiracy to import cocaine into the United States. Two issues were raised on appeal. Two questions are presented in this petition.

Question One: Did the Eleventh Circuit reversibly err in affirming a conviction for which the Government failed to prove the essential element that of knowledge, or even “reason to know” that cocaine leaving Colombia on go-fast boats toward Central America, ultimately would be imported into the United States? “Proof” of this essential element was nothing more than hearsay and speculation from cooperating codefendants who had motivation to lie and were rewarded for their testimony. Absent proof of this essential element, beyond a reasonable doubt, did the Eleventh Circuit reversibly err?

Question Two: Was the 270-month sentence unreasonable and unreasonably disparate even though Petitioner went to trial whereas the codefendants pleaded guilty; she did not accept responsibility; and the sentence was below the advisory guidelines range? Was the sentence unreasonable, cruel, and unusual, due to the extent of disparity with much lower sentences imposed on far more culpable codefendants?

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REASONS FOR GRANTING THE WRIT

Reason One

The Government failed to prove the essential element that of knowledge, or even “reason to know” that cocaine leaving Colombia on go-fast boats toward Central America, ultimately would be imported into the United States? Evidence of this essential element was nothing more than hearsay and speculation from cooperating codefendants who had motivation to lie and were rewarded for their testimony. Absent proof of this essential element, beyond a reasonable doubt, did the Eleventh Circuit reversibly err in affirming the conviction. 17

Reason Two

The 270-month sentence was unreasonable and was unreasonably disparate even though (1) Ms. Castaneda went to trial whereas the codefendants pleaded guilty; (2) she did not accept responsibility; and (3) her sentence was below the advisory guidelines range. The sentence was unreasonable, cruel, and unusual, due to the significant disparity with much lower sentences imposed on far more culpable codefendants. 26

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PETITION FOR WRIT OF CERTIORARI

Petitioner Yina Maria Castaneda Benavides, respectfully petitions this Honorable Court for a Writ to the United States Court of Appeals, Eleventh Circuit, addressed to the unjust and erroneous decision of March 4, 2021 affirming Ms. Castaneda's conviction lacking due process based on insufficient evidence of the essential element of knowledge or "reason to know;" and the unreasonably disparate sentence of 270 months.

PARTIES TO THE PROCEEDINGS

Petitioner Yina Maria Castaneda Benavides was one of eleven individuals extradited from Colombia, charged in a multi-defendant prosecution in the Southern District of Florida for conspiracy to import cocaine into the United States. She was the only defendant to have a jury trial.

Petitioner was the defendant in the Southern District of Florida, and the appellant before the Eleventh Circuit Court of Appeals. The United States was the plaintiff, prosecution, and appellee, and is the respondent hereto.

OPINION BELOW

This petition arises from a twelve-page, nonpublished decision of the Eleventh Circuit entered on May 21, 2021, in Appeal No. 20-10986, affirming Castaneda's judgment of conviction and her excessive and unreasonable sentence to 270 months in prison. An appeal was timely filed from the final judgment of conviction and sentence of March 4, 2020, the Southern District of Florida, Case No.16-20575-RNS-5.

Copies of the appellate opinion, the judgment of the district court, and the Eleventh Circuit's order denying the timely-filed petition for rehearing are in the Appendix at the end of this Petition.

STATEMENT OF JURISDICTION

Final judgment was entered in the Southern District of Florida on March 4, 2020. The district court had jurisdiction pursuant to 18 U.S.C. §3231. A notice of appeal was timely filed under FRAP 4(b). The Eleventh Circuit had jurisdiction over the appeal under 28 U.S.C. §1291, and authority to review Castaneda's challenge to her sentence under 18 U.S.C. §3742(a).

The appellate decision was entered on May 21, 2021. Ms. Castaneda timely filed a petition for rehearing that was denied by order of July 28, 2021.

This petition is timely filed pursuant to Supreme Court Rule 13.1. Subject matter jurisdiction is conferred under Supreme Court Rule 10(a).

CONSTITUTIONAL PROVISIONS

The United States Constitution

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ... nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law...

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have assistance of counsel for his defense.

Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

Course of Proceedings, Disposition in the Courts Below, Relevant Facts

Petitioner Castaneda was adjudicated guilty of “conspiracy to distribute cocaine knowing that it would be unlawfully imported into the United States.” She was sentenced to prison for 270 months, and has been incarcerated since 2016. She is in the custody of the United States Bureau of Prisons at FCI Aliceville, Alabama. Her presumptive release date is in December 2035. She is in her 40’s and has two children. She was taken from her home country Colombia and brought to the United States for prosecution. She had never been here before. She knows no one here. She does not speak English. She has not seen her children or her family since 2016.

In 2016 a single-count indictment charging conspiracy to import cocaine into the United States, was returned in the Southern District of Florida. Eleven defendant were charged with conspiracy to import cocaine from April 2015 from Colombia, Ecuador, Costa Rica, Guatemala, or Mexico, knowing or believing that the cocaine would be unlawfully imported into the United States in violation of 21 U.S.C. § 959(a)(2), in violation of 21 U.S.C. U.S.C. §963.

The eleven defendants were: Perlaza-Orobio, Bravo-Espinosa, Bonilla-Moran, Belelcazar-Estacio, Yina Castaneda, Quinones-Jurado, Sevillano-Quinones, Hurtado-Martinez, Alberto and Ariel Angulo-Lasso, and Liliana Castaneda.

Yina Castaneda was in custody in Colombia from October 2016 until her extradition to Miami in December 2017. At the initial appearance she was represented by an assistant Federal Public Defender. A notice of attorney appearance was entered by retained counsel. Following a *Garcia* hearing, the court found that counsel had a conflict. He withdrew. In June 2018 the court appointed CJA counsel who withdrew in October. A second CJA attorney was appointed, filed pretrial motions, and withdrew. A third CJA attorney was appointed.

A five-day trial was held in October 2019. At the close of the prosecution case and at the close of all evidence, the defense moved for a FRCrP 29 judgment of acquittal arguing that the government failed to prove that Castaneda had knowledge that the cocaine was going to the United States.

The jury found Castaneda guilty of conspiracy. The court sentenced her to 270 months' imprisonment, 5 years supervised release, and a \$100 assessment. An appeal was timely filed. Appellate counsel was appointed.

Codefendants' Sentences

Ms. Castaneda is the only defendant to have a jury trial. She received the longest sentence of any by far, including those who were more deeply involved, more culpable, and profited far more than she.

The lead defendant, the organizer-leader, of the operation, Edison Perlaza-Orobio, was sentenced in May 2021, to 180 months in prison. That is 15 years, which is 7 ½ FEWER YEARS than Castaneda's sentence. Although “a disparity” was justified, the *extent of this disparity was not justified*, was not reasonable, and rises to the level of cruel and unusual punishment for Castaneda, taken from her country and her children.

Bravo-Espinosa was sentenced to 170 months; Bonilla-Moran a term of 170 months; Belalcazar-Estacio was sentenced to 105 months; Quinones-Jurado 120 months, reduced to 67 months; Sevillano-Quinones 120 months, reduced to 60 months; Alex Angulo-Lasso 60 months; Ariel Angulo-Lasso 135 months, reduced to 80 months; Liliana Castaneda 42 months. Hurtado-Martinez was “RULE 20 OUT TO DISTRICT OF COLUMBIA.”

Relevant Facts

The indictment alleged that from April 2015 to July 2016, the defendants knowingly and willfully conspired to distribute five kilograms or

more of cocaine, knowing and having reasonable cause to believe the cocaine would be unlawfully imported into the United States.

A communications analyst from the Colombian Police testified that she works with the DEA to stop drugs sent from Colombia to the United States. She studied intercepted telephone calls pursuant to a Colombian judicial order. She listened to thousands of hours of calls and monitored Blackberry messages from a criminal organization in Tumaco, Colombia. The investigation involved 500 phones and 300 Blackberries. They used code words. Buoys with GPS were attached to the drugs so they would float. They shipped cocaine to Central America on fast-boats from Tumaco to Costa Rica, Guatemala, and Honduras. From Central America, she said, the cocaine was shipped to the United States.

The organization had investors, coordinators, logistics, transportation experts, and crewmen. Some had Central American contacts. Their goal was to send drugs from Colombia to Central America. Tapes of recorded calls were played with translations for the jurors. She explained that every Colombian citizen has a “Cedula” a unique identification number, like a Social Security number. In a recorded call on April 15, 2015, played at trial, Castaneda identified herself to Avianca Airlines to book a flight from Cali to Tumaco.

A US Coast Guard Boarding Officer testified that in April 2015, the Cutter Bertholf off the coast of Costa Rica for drug interdiction at sea, spotted a small boat in the distance and sent a helicopter. People on the small boat jettisoned packages into the water. The helicopter dropped smoke floats in the area. The Coast Guard recovered 21 bales from the water, wrapped in black, green, or yellow, connected by rope with a small GPS float.

They took the bales and went to the target boat. It was flying the Colombian flag. The engines of the small boat had been “disabled” by the helicopter gunner. The three crewmen were compliant. The Coast Guard received permission to board the 30-foot boat 200 miles off the shore of Costa Rica. They saw twenty-four 20-gallon fuel containers. The men and the packages were brought to the Coast Guard cutter. The drugs were secured.

A DEA field intelligence manager in Miami testified as a drug-trafficking expert. He said that Central America is a popular departure area for shipping Colombian cocaine to the United States, one of the largest cocaine-consumer markets in the world. The US price is high, but “...Europe has a very large cocaine consumption issue *** Brazil is ... the second largest cocaine consumer in the world;” and cocaine is shipped to Asia, Australia, and Russia, where it is even more expensive than in the United States.

Traffickers using Central America as a transshipment point are paid in US dollars because the drugs typically are "...ultimately destined for the United States." When asked if he could say with certainty where the cocaine in this case was going, the DEA witness could not (emphasis added):

A: Well, I don't know the specifics of [this] case and where cocaine was seized in her case, so I can't speak specifically. But if you were talking about Central America, which I'm assuming [but] with certainty to her case, no.

But generally and typically, no we are not seeing it go from Central America outside anywhere but northward towards the United States.

Q: But we are talking about her case.

A: **Okay. I don't know her case.**

On redirect the government tried to elicit that Central America is not the most efficient or economical route to Europe or other places.

Belalcazar-Estacio testified at trial using his real name, Corado-Cortez. He lied about his name and nationality. He was Ecuadorian, not Colombian. He dutifully kept stating that the United States was the destination for the cocaine. His job was to send it to Central America on fast boats. The government elicited that that friends in Honduras, Guatemala, or Mexico told him that the cocaine was going to the United States. He was paid in US dollars. He said he made two to three million dollars transporting co-

Caine, but was cagey when asked where the money was, where it went, except he purchased a Kia vehicle.

He said he knew Castaneda since 2012. She came to his town to get fuel. He also knew Quinones, Bravo-Espinosa, and Ariel Angulo-Lasso. He and Castaneda exported loads of cocaine together from Colombia in 2014-2015. She wanted to send cocaine from Colombia to Central America using Belalcazar-Estacio's routes because his loads were not seized. In 2014 they sent a boat loaded with cocaine belonging to several people to cut cost and increase profit. It arrived in Honduras. They were paid in dollars, changed in Mexico to Colombian pesos. There were five or six shipments of 350 to 650 kilograms of cocaine.

Belalcazar-Estacio took that name in 2014 when he got a false Cedula that allowed him to travel avoiding attention of law enforcement. He was familiar with the Colombian guerilla group FARC. He tried to join because he knew the Colombian government will not extradite FARC members. He and Castaneda exchanged texts with code-words. He lied about his name and his nationality. His Colombian ID was fake, he is Ecuadorian. He bribed someone for the fake Cedula and bribed someone else to get his name on the FARC list. He paid an attorney to falsify documents submitted to the court. It

cost him \$350,000 US dollars to obstruct justice to join FARC to attempt to avoid extradition to the United States. The millions he earned from drug-trafficking were spent on "...family and things for me." The only thing he recalled purchasing was the Kia. It is noted of record that he was grinning when testifying about the Kia.

They exported cocaine from Colombia to Central America with boats, crewmen, food, electronic and GPS equipment, planning refueling stations along the way, and finding investors for cocaine. There could be two or three people putting in one or two hundred kilograms of cocaine at a time. Shipments went from Colombia to Central America. Once in Central America his job exporting cocaine from Colombia was complete. Payment was expected. Belalcazar-Estacio was paid in US dollars. So far as he knew the cocaine was destined for the United States. He cooperated because he did not want to spend his life in prison. He hoped the government would ask to reduce his sentence.

The second codefendant Sevillano-Quinones testified after being sentenced to 120 months (later reduced to 105 months). Sevillano said that 10 to 12 times, Bravo-Espinosa sent crewmen from Ecuador. He then would fuel the fast boats and load cocaine on a boat with three crewmen, for Costa

Rica, Guatemala, and Mexico. He knew the cocaine was going to the United States because his boss Bonilla told him. They wanted to make money. Sevillano received a monthly salary of about \$1,000 US. When a shipment successfully arrived in Central America he received \$3,500. Only three or four of twelve trips were successful.

Sevillano met Castaneda when she and her husband were in the gasoline business. In 2015 he learned from his boss that she was in the cocaine business. She asked Bonilla to pay her for 10 kilograms of cocaine that she sent on a boat trip that was successful. Bonilla said that he could not pay her until he settled-up with the FARC guerillas (they charged “tax” for every boat that launched). Bonilla gave Sevillano 110 million pesos to pay Castaneda, which Sevillano said, was more than he earned in his entire drug-trafficking career. He said it was not a secret that the cocaine was going to Central America, nor was it a secret that the cocaine ultimately was headed for the United States. “Most of us knew that...”

Sevillano was arrested in Colombia like the others and was extradited to Miami leaving two young children, ages 3 and 9, and their mother. He admitted lying about being a member of FARC. He said he was a gasoline smuggler before he became a cocaine smuggler.

The third codefendant to testify was Ariel Angulo Lasso, a 33 year old Colombian who pleaded guilty. Angulo said that he knew Castaneda as a business friend. They trafficked in cocaine. He would store the cocaine in Tumaco. It then would go to Central America on fast boats that refueled at sea; final destination, the United States. He sent 16 to 18 loads each with 400 to 750 kilograms of cocaine. He knew that the cocaine was destined for the United States when it left Central America; he "...heard people that would come to my house that the final destination would be the United States" meaning people came to deliver the cocaine. It was not a secret that the cocaine was going to the United States, because it was more expensive there. He was involved from 2014 to 2016. He stored cocaine owned by others in mangroves near his house. His total earnings were \$10,000.

His house was near the water in an area where the Navy could not go, he had cell phone reception, and his house was on water with access to the Pacific Ocean. It was a strategically-good spot to launch cocaine boats. He needed money.

Ariel Angulo stored cocaine for Belalcazar, for Quinones, and for "Chinche." He said that Castaneda sent her fishermen-workers with cocaine to his house. He would "...[get] the boat ready for it to be transported to Cen-

tral America with final destination the United States.” When a boat was ready, she would come to verify “...the amount of cocaine ...going up towards Central America.” Once the load got to Guatemala, Castaneda paid Angulo \$1,500. He stored her cocaine several times.

The first load got to Guatemala, but for other loads seized by the Navy he was not paid. Castaneda said the loads were lost. Angulo knew that the FARC charged a fee for departing boats. He tried to get on the FARC member list to avoid extradition.

The fourth and final cooperating codefendant was Qinones-Jurado who paid \$50,000 to try to become a FARC member to avoid extradition to the United States. He failed. The destination for the cocaine was the United States, “... because it’s obvious. That’s where the drugs cost the most.” They were in business to make money. His wife and two small children live in Tumaco, Colombia. He did not see them for three years. He missed them and wanted to go home.

Edison Perlaza-Orobio, leader of the Colombian Perlaza-Orobio Drug Trafficking Organization, one of the largest investors in cocaine shipped from Colombia to the United States, financially benefitted the most.

Various defendants sent multiple loads of cocaine on ships from Colombia to Central America where they delivered or helped to deliver cocaine to other organizations for importation into the United States. Bonilla, Belalcazar, Bravo and others organized and coordinated shipments. Belalcazar organized most aspects of the smuggling ventures through contacts in Nicaragua, Honduras, and El Salvador. Bonilla had contacts with people in Honduras and Guatemala, who helped organize shipments. He was a leader within the organization. Bravo was a principal coordinator and the link between groups within the organization, responsible for acquiring go-fast boats equipped with navigation equipment, motors, and gas for drug smuggling ventures. Bravo recruited crewmen and determined the routes.

In April 2015, Bravo organized a shipment of 497 kilograms of cocaine from Colombia to Central America allegedly for importation into the United States. The Coast Guard seized the boat and the cocaine in international waters off Costa Rica. On July 28, 2016, the indictment was returned in the Southern District of Florida. Arrest warrants were issued. In October 2016, Hurtado was arrested in Miami; and Bravo, Bonilla, Belalcazar, Yina Castaneda, Quinones, Sevillano, both Angulo-Lasso's, Liliana Castaneda and finally Perlaza were arrested in Colombia.

On February 9, 2017, Hurtado's case was transferred to the District of Columbia. The other ten were extradited from Colombia to the United States in 2017 and 2018.

Perlaza was responsible for at least 30,000 kilograms of cocaine. Bonilla was alleged to be responsible for conspiring to distribute 1,304 kilograms of cocaine. Yina Castaneda and her sister were each alleged to be responsible for at least 629 kilograms of cocaine. Others were responsible for quantities varying from 620 to 2,000 kilograms. Castaneda was alleged to be a coordinator of and investor in drug shipments on speed boats from Colombia; purchasing boats and communications equipment; and recruiting crewmen.

REASONS FOR GRANTING THE WRIT

REASON ONE

The Writ should be granted because the Eleventh Circuit reversibly erred in affirming the conviction where the Government failed to prove the essential element that of knowledge, or even “reason to know” that cocaine leaving Colombia on go-fast boats to Central America, ultimately would be imported into the United States. Evidence of this essential element was nothing more than hearsay and speculation from cooperating codefendants who had motivation to lie and were rewarded for their testimony. Absent proof of this essential element, beyond a reasonable doubt, the Eleventh Circuit reversibly erred in affirming the conviction.

The Eleventh Circuit reversibly erred depriving Petitioner of her Fifth and Sixth Amendment rights because the government failed to prove beyond and to the exclusion of reasonable doubt the essential element that she had knowledge or reason to know that cocaine leaving Colombia on go-fast boats, to Central America, ultimately would be imported into the United States. The evidence as to this essential element of the charged offense was nothing more than speculation and hearsay from cooperating witness who had motivation to lie, and were well-rewarded for cooperating with significant sentence reductions.

Witnesses testified that they and others knew that the cocaine was destined for the United States, but not one witness spoke to Castaneda’s spe-

cific, personal, actual knowledge. It was all surmising and speculating. The prosecution recorded and intercepted *thousands of telephone calls and texts, and not one to, from, or concerning Castaneda mentioned “the United States.”* Due to the complete absence of proof beyond a reasonable doubt, as to this essential element of the offense, this conviction cannot stand. The Eleventh Circuit reversibly erred in affirming the conviction. It should be vacated, and the cause remanded to the Eleventh Circuit with instructions that it remand to the district court with instructions to discharge Petitioner forthwith.

At sentencing the district court stated that *the issue of whether or not Ms. Castaneda knew the drugs were destined for the United States was a debatable issue* (See ROA, Docket No. 527, page 13).

Four cooperators testified they and others knew the cocaine was destined for the United States. None said for sure that Castaneda knew or had reasonable cause to believe that the goal was importation into the United States: No one said what she knew or thought, only inference, surmising, and speculation: I knew, and others knew, so she must have known.

Of literally *thousands of intercepted and recorded calls and text messages, not one that was to, from, or concerning Castaneda, even men-*

tioned of “the United States” as the ultimate destination, or of sending cocaine to the United States. The cocaine in this case was sent to Central America, and that is what she knew.

This is a complete lack of evidence as to the essential element of knowledge that the cocaine would be imported into the United States, in contravention to this Court’s decision in *Rehaif v. United States*, 139 S.Ct. 2191 (2019), requiring proof of the knowledge element of an offense (in that case firearm possession by an excluded individual). Castaneda disputed whether the government sufficiently proved that she had reasonable cause to believe that the ultimate destination of the cocaine was the United States. but certainly it was not proved by the government beyond a reasonable doubt.

All indicia, suggestions, implications, or inferences of Castaneda’s knowledge or reason to believe that the goal of the alleged conspiracy was importation into the United States, suffer from fatal flaws, and do not meet the government’s burden of proof of that essential element of the offense.

The four cooperating witnesses who testified that Castanda participated in obtaining and loading boats with cocaine, supplies, equipment, and crewmen, all were indicted, convicted defendants who cooperated in hopes of gaining favor with the government and with the court. All four were

rewarded for their cooperation with reduced sentences. Even those who obviously were deeply involved, more culpable, and made significantly more money than Castaneda, received much lower sentences than she did. Their motivation to please the government and say what the prosecution wanted to hear was great. Their reliability was questionable, at best. They claimed that because they knew and “everyone knew” that the alleged cocaine was being shipped to Central America with the ultimate goal of importing it into the United States, then Castaneda also had to have known.

The government always argues that drugs on any given vessel in international waters, were destined for the United States in spite of the fact that there is huge demand for, and use of illegal substances throughout the world, including in Europe, Asia, Australia, and other wealthy destinations.

The police inspector from Colombia could not attribute to Castaneda any statement from any alleged recorded call or text that contained an indication that the cocaine charged here was destined for the United States; only that it was being shipped from southern Colombia northward to Central America. Once cocaine arrived in Central America, the job was done, finished. There was no proof via mention, discussion, or agreement that the cocaine was headed to the United States after it arrived in Central America.

These inferences do not rise to the level of proof to support the conviction.

Payments made in US dollars did not mean that anyone would have to know that the cocaine was destined for the United States. US currency is for all intents and purposes, *the international currency* used for commerce in many parts of the world for everyday transactions, as well as the international currency for the illegal drug trade.

Ecuador's official currency is the US dollar. Ecuador is just south of Colombia. Castaneda's hometown in Tumaco is in the very southern-most area of Colombia. The dollar may be used in commerce in border regions. Dollars do not necessarily have a connection with a transaction with or in the United States.

Dr. Bagley, defense expert on international illegal drug trade testified that countries other than the United States have appetites for cocaine. Although cocaine is a lucrative commodity in the United States, it is also transported to, used, and probably abused in many other places. The US dollar is the international reserve currency. Most commerce around the world is conducted in US dollars, giving the United States considerable leverage in commerce. Most cocaine and most illegal drug transactions are conducted in dollars. In the Western Hemisphere, Ecuador and Panama both use the dollar

dollar as their currency. Most drug business in South America and Europe is conducted in dollars.

Consider the testimony of the Miami DEA intelligence manager who testified as a drug-trafficking expert. He said that Central America is a popular departure area for Colombian cocaine to be shipped to the United States; the United States is one of the largest cocaine consumer markets in the world; and that the price in the United States is higher than other markets. But he also said that Europe has a very large cocaine consumption issue; Brazil is the second largest cocaine consumer in the world; and cocaine also goes to Asia, Australia, and Russia and *in some places it costs more than in the United States*. He did not know the specifics of the present case or where cocaine may have been seized, so he could not answer specifically as to this case. Generally, he said, from Central America, cocaine goes toward the United States, but **“I don’t know [this] case.”**

Ms. Castaneda is alleged to have said that “the gringos” were out there, meaning US Coast Guard, Navy, or DEA vessels patrolling international waters off the Colombian coast. Did this show that she knew the drugs were headed for the United States. Actually US vessels have been patrolling international waters for decades, searching for ships transporting drugs. Our

ships interdict vessels outside US territorial waters, stopping them, interrogating crewmen, searching, and arresting people on the high seas. Some vessels have flags displaying nationality; some are without nationality. The crewmembers often are foreign nationals with no connection whatsoever to the US and yet they are arrested, brought to the United States, and prosecuted. justified because there was a “nexus.” The ship possibly was headed for the United States because it was sailing in a particular direction, or a had map board indicating that it might be sailing toward the US, or GPS or electronic equipment showing a possibility of navigation toward the US. Our interdiction of ships on international waters, even in other countries’ territorial waters, may be presumptuous and arrogant, but we persist.

So hearsay testimony from cooperating witnesses that Ms. Castaneda is alleged to have mentioned concerns about “gringos,” meaning US military or law enforcement ships “out there,” even if correct, does not show that she had reason to believe the cocaine was destined for the United States. Our presence on the high seas, far beyond our territorial waters is a reality. Armed United States interdiction vessels navigate off the Colombian coast with great frequency. A statement that the gringos are out there just indicates that that boats could be interdicted, but not that their cargo is headed for the US. The

government always argues that the vessel is coming to the United States, regardless of its actual destination.

This often results in sentencing defendants to incarceration (merely warehousing human beings) for years, sometimes decades, at the expense of the good taxpayers of the United States of America. Unfortunately, after decades, this “war on drugs” has been proven to be futile and a failure. With a focus on the transport of drugs we neglect the fact of demand, use, and abuse of drugs throughout the world. This egocentric posture relieves other nations of the responsibility to protect their own borders.

Unfortunately, it has not been effective in curbing the demand for illegal drugs in the United States, nor the creativity and persistence of those who create illegal substances and transport them around the world to many countries where there is a thriving market for illegal drugs.

Due to the absence of proof beyond a reasonable doubt as to this essential element of the offense, Castaneda’s conviction never should have been affirmed. The conviction should be vacated, and the cause remanded with instructions that she be discharged forthwith.

In the opinion, the subject of this petition, pp at 4-5, the Eleventh Circuit acknowledged and agreed that that there was **no direct evidence that**

Castaneda knew or had reasonable cause to believe that the cocaine was for importation into the United States. The evidence at best was circumstantial. Although circumstantial evidence may be sufficient to support a conviction, the testimony of co-conspirators was given with hopes of rewards of lower sentences. Their dreams came true!

The court's instructions to the jury included the following:

To have reasonable cause to believe the cocaine would later be unlawfully imported into the United States means to know facts that would lead a reasonable person to conclude that the cocaine would later be unlawfully imported into the United States.

This the government failed to prove.

On this record, no reasonable jury could have found the defendant guilty beyond a reasonable doubt, of conspiracy to import cocaine into the United States, *Compare, United States v. Camargo-Vergara*, 26 F.3d 1075, 1079 (11th Cir. 1994). The writ should issue, the judgment be vacated and the cause remanded.

REASON TWO

The 270-month sentence was unreasonable and was unreasonably disparate even though (1) Ms. Castaneda went to trial whereas the codefendants pleaded guilty; (2) she did not accept responsibility; and (3) her sentence was below the advisory guidelines range. The sentence was unreasonable, cruel, and unusual, due to the significant disparity with much lower sentences imposed on far more culpable codefendants.

The Eleventh Circuit approved a violation of the Eighth Amendment prohibition against cruel and unusual punishment when it affirmed the sentence imposed on Petitioner. Its judgment should be vacated and the cause remanded with instructions.

Sentencing has evolved in this country from punishment with a rehabilitative element, to purely punitive, cruel, and overly-long terms of warehousing inmates with little to offer for education, classes, counseling, vocational training, or self-improvement programs. We warehouse human beings for much too long, which is more harmful than helpful for anyone who may be released with hopes of living and surviving successfully in society with family, friends, a home, a job, and the ability to survive outside a contained, restricted environment.

Castaneda was an impoverished 40-year old woman from a coastal town in Colombia, separated from her family, facing a draconian guideline

sentence having been convicted of conspiring to distribute cocaine knowing that it would be imported into the United States in violation of 21 U.S.C. 963.

Sentencing disparities are appropriate based upon a number of factors, but the **extent of the disparity** cannot be allowed to go unchecked as it has for Peittioner thus far. Even when a disparate sentence is warranted, it still must be a reasonable sentence for every defendant in every case. This sentence of 22 ½ years violates every notion of reasonableness, fairness, due process, and common sense, where the leaders and organizers ultimately received significantly lower sentences. The extent of the disparity here is unusual, unwarranted, and cruel.

Castaneda may have been involved in exporting cocaine from Colombia to Central America on fast boats from the Pacific coast of Colombia, to Central America. Sometimes she invested in cocaine by paying for a share of it to be exported from Colombia. Other times she arranged logistics by assembling crew, obtaining a boat, and coordinating with others to oversee routes, refueling locations, and tracking the boat. There may have been evidence that she was involved in sending cocaine to Central American traffickers, but not that she was involved in smuggling cocaine into the US.

She was unaware that the ultimate destination of the cocaine was the US. Those details were handled by wealthy, powerful, men, in higher echelons than she. Those men were sentenced to 170 or 180 months, significantly below her advisory guidelines range. The court should have recognized her degree of culpability as a factor to deviate further from the absurdly-high guidelines range, not to impose 22 ½ years.

She had no idea that she was violating US laws. It did not matter to her where the cocaine went. Her job was complete once it reached Central America. She received no further compensation if the cocaine was smuggled into the US. She knew US law enforcement agencies investigated and apprehended drug traffickers, but she never expected to be arrested in Colombia, extradited to the United States, and separated from her family for decades.

A sentence of twenty-two years is unimaginable, unreasonable, and inhumane for anyone, especially for the mother of two children. It is unusual and it is cruel. Particularly when compared to the sentences meted out to those higher in culpability (170 & 180 months).

There is a need to avoid unwarranted sentencing disparities among defendants with similar records who are found guilty of similar conduct. 18

U.S.C. 3553(a)(6). She is the only defendant who exercised the Sixth Amendment right to a jury trial. The others pleaded guilty. Some cooperated and testified. Castaneda associated with Bravo and Belalcazar but not at their level of leadership, earnings, or drug quantity. Number One defendant Perlaza was responsible for 30,000 kilograms of cocaine. His sentence was 180 months, a full 90 months less than Petitioner's sentence.

The sentence of 270 months is seven and a half years greater than Perlaza's. That is unreasonable, unusual, and cruel even though she did not enter a guilty plea, went to trial, and did not accept responsibility. The quantity of cocaine for which she was held liable for purposes of sentencing was a fraction of the quantities for which Perlaza, Bravo, Bonilla, and Belalcazar were responsible.

Castaneda maintained her innocence before trial, throughout trial, at her sentencing, and she does until this very day. Simple math shows that that her sentence of 270 months (22 ½ years) is 7½ years greater than Perlaza's, and more than twice Belalcazar's sentence. These disparities are nothing less than shocking, unconscionable, extreme, unreasonable, unwarranted, and unjustified.

Generally, a court will find a sentence substantively unreasonable and vacate when it is left with the definite, firm belief that the district court committed a clear error of judgment in weighing the 3553(a) factors and imposing a sentence *outside the range of reasonable sentences dictated by the facts of the case*. *United States v. Irey*, 612 F.3d 1160, 1190 (11th Cir. 2010) (*en banc*). It is difficult to imagine a sentence that more closely fits *Irey's* criteria than the 22½ year sentence imposed here.

Although **A** disparate sentence may have been justified or “warranted” in this case, **THE** disparate sentence far exceeds the range of reasonable sentencing. She was not violent. She did not possess firearms. She lacked criminal history. Even with her failure to plead guilty, having a jury trial, and failing to accept responsibility, the *extent of the sentencing disparity is unacceptable and unwarranted*. Accordingly, this sentence should be vacated, and the cause remanded for resentencing before a different judge. This Court should correct this correctable injustice and grant appropriate relief. This result is even more imperative with the Covid 19 pandemic. Federal prison facilities have been described as virtual “petri dishes,” where the virus spreads indiscriminately to inmates and institution staff members alike.

Petitioner may have breast cancer but has been denied diagnostic testing by the BOP. She received a mammogram or breast ultrasound in Miami in September 2019 that showed suspicious spots. In over two years she was not provided a breast biopsy at FDC Miami or FCI Aliceville. Accordingly she may be at exceedingly high risk for a dismal outcome whether or not she becomes infected with the deadly Covid-19 virus.

Even with those grounds that support disparity clearly she paid the “trial tax” - “trial penalty.” She paid dearly for exercising her right to a jury trial. She was not one of the most culpable, but that was not employed in her favor.

At sentencing the government claimed that it was “not authorized to recommend [for Ms. Csastaneda] any [sentence] lower than the low end of the guidelines of 324 months.” The court recognized that the issue of whether she knew the drugs were destined for the United States was debatable:

our Honor, I ask you, please for mercy. I ask you to allow me to see my children again, and to be with them. I do not know what I did or why God has allowed me to be here, but I accept his will, and I do ask for your mercy.

The court responded that she failed to accept responsibility or express remorse but the extent of disparity in sentencing could become an issue:

... if you look at the sentences of her codefendants, even giving them credit for their cooperation, a lot of them have either a more significant

role or are involved in a lot more loads than she was and a greater amount of cocaine, so whatever sentence I give her is going to be significantly higher than theirs. **The question is what is that higher sentence that would then be an unwarranted sentencing disparity.**

270 months is the unwarranted sentencing disparity that the court hoped to avoid. This sentence was unreasonable for a mid-level participant in a non-violent drug case; significantly greater than the sentences imposed on the leaders, organizers. The most culpable participants profited handsomely.

Surely the notion of avoiding “unwarranted disparity” is not limited to “disparity - or no disparity.” When there is a difference between defendants’ criminal histories, or one defendant goes to trial and others plead guilty and cooperate, no reasonable person would interpret the rule to “avoid unwarranted disparity” as being limited to there being or not being a sentencing disparity. *The extent of the disparity must be examined for reasonableness and fairness.*

The discretion to impose an appropriate disparate sentence does not give *carte blanche* to impose an unreasonable sentence. Every sentencing case from this Court holds that it is most important that the sentence *be reasonable*. Common sense dictates that permitting disparities does not give the district court the imprimatur to impose a *wildly unreasonable, uncon-*

scionable, unwarranted, cruel and unusual disparate sentence.

On this record, in this case, for this defendant, it was a gross miscarriage of justice for the district court to impose the sentence and for the Eleventh Circuit to affirm. The district court and the Eleventh Circuit both made clear errors of judgment by imposing and affirming a sentence so far outside and above what was reasonable, dictated by the facts of the case. *See United States v. Gonzalez*, 550 F.3d 1319, 1324 (11th Cir. 2008).

This excessively punitive sentence was imposed because the court was offended by Petitioner's continuing to maintain her innocence and failure to accept responsibility. She was punished in violation of her constitutional rights to due process. She is not a valid comparator for §3553(a)(6) purposes for reasons set forth above. But again, it is the sheer magnitude of the disparity that is the subject here. *Compare, United States v. Martin*, 455 F.3d 1227, 1341 (11th Cir. 2006). Nothing justifies the magnitude of the disparity.

There is no doubt that in recent decades the vast majority of defendants in federal criminal cases plead guilty rather than go to trial. There are many reasons including the vast power vested in the prosecution to orchestrate a sentence from the outset of a case by electing how to charge the defendant in the first instance. There is a perception (actually reality), that a sentence

imposed following a jury trial will be greater than a sentence following a guilty plea. Defendants have been known to plead guilty even when they are innocent, fearing that a guilty verdict after a trial would yield a longer sentence. This is real, not imaginary. Castaneda is a victim of the “trial tax.”

The Court’s attention is directed to a dissenting opinion by Judge Rosemary Barkett in *United States v. Docampo*, 573 F.3d 1091, 1111-1112 (11th Cir. 2009), that is applicable here. “[A] recommended guidelines range is presumed to be reasonable,” but sometimes it is **not reasonable**, when it far exceeds a necessary sentence, and is more punitive and draconian than it needs to be.

The below-guidelines sentence of 270 months imposed here is a hugely-unnecessary, overly-punitive sentence even if the offense did involve a large quantity of cocaine, and the defendant did not plead guilty, or cooperate or accept responsibility. Petitioner appreciates that she was not “similarly situated” to her coconspirators for those reasons. But there can be no doubt that her sentence is far greater than necessary to comply with the goals of sentencing or the 3553(a) factors.

As with the dissent in *Docampo*, *supra*, Petitioner’s sentence of 270 months was extreme, as is the disparity with codefendants’ sentences.

The conclusion is obvious. Co-conspirators received radically lower sentences for much deeper involvement, and larger monetary profits, all of which undermines any argument that a sentence of 22½ was not “greater than necessary.”

Disparities play a role in the assessment of the “totality of the circumstances” but it is difficult to ignore that Petitioner was punished for exercising her right to a jury trial. *See, e.g. Blackmon v. Wainwright*, 608 F.2d 183, 194 (5th Cir. 1979) (defendant cannot be punished by a more severe sentence because he unsuccessfully exercised his constitutional right to stand trial rather than plead guilty).

The presumption of reasonableness of the advisory guidelines range may be overcome. Sentencing disparities are appropriate for certain reasons. But the extent of the disparity is limited by the requirement that a sentence be reasonable.

The Eleventh Circuit adopted the government’s argument that Petitioner received a significant downward departure or variance from the guidelines range. The bottom of the range was 325 months and the sentence was 270 months. And yet that is still excessive and cruel when compared to the sentences for the cooperating defendants.

For all of these reasons the Writ should issue, the judgment of the Eleventh Circuit sentence should be vacated and the cause remanded with instructions to remand to the district court for a new sentencing before another judge.

Castaneda was held at the Federal Detention Center in downtown Miami for three years. In Miami there are institutional staff who are fluent in Spanish and fellow inmates who speak Spanish. This year she was transferred to the Federal Correctional Institution in Aliceville, Alabama. There are few if any Spanish-speaking staff or inmates there. She is having a very difficult time and is ineligible for many programs and classes available to inmates because of the language barrier.

Not only is there a risk of contracting Covid-19 in Aliceville, Ms. Castaneda has health issues that place her at greater risk of severe illness should she contract the virus. She has health issues that are being ignored. She was assigned a top bunk at Aliceville. She requested a change to a lower bunk bed for health reasons, not disclosed here due to privacy concerns. Request denied.

The radiologist in Miami ordered that a breast biopsy was necessary. That was two years and two months ago. It has not yet been done. Petitioner

was sentenced to prison, not to death, but the BOP refuses to give her a biopsy.

Sadly, FCI Aliceville has a reputation for failure to provide necessary medical testing, care, and attention to inmates. US District Judge Catherine Eagles, Middle District of North Carolina, ruled in 2019 in the case of Aliceville inmate Angela Beck, that she found a gross lack of medical care, abysmal medical care, and neglect of Angela Beck. Ms. Beck, also a woman in her early 40's, had breast cancer that was ignored at Aliceville. As a result, it metastasized to her lymph nodes and other organs. Judge Eagles ordered Ms. Beck released to try to prevent her from dying from the abject neglect of the medical system at Aliceville. *United States v. Beck*, 426 Fed.Supp.3d (M.D. N.C. June 2019).

The conditions of incarceration are horrible. Petitioner can barely communicate with anyone because she speaks Spanish, and very limited English. She restricted from classes, programs, and jobs at FCI due to her difficulty English. Covid-19 is prevalent in BOP institutions among inmates and staff. She is terrified about the possibility of breast cancer and cannot get a biopsy. She has another physical problem that makes it extremely painful to lift herself into a top bunk, but her request for a lower bunk was refused. And she is serving a sentence that is more than seven and a half years greater than the lead defendant.

Albeit below her advisory range, this is not a reasonable sentence for this individual in this case. The extent of the departure is too great and unjustified. The incarceration/ warehousing of human beings in this country, in particular Petitioner here, is just wrong. It is uncivilized, unreasonable, and should be vacated with resentencing before a different judge and instructions that 270 months is much too long on this record and in these circumstances.

CONCLUSION

Based upon the foregoing reasons, Petitioner Yina Castaneda respectfully prays that this Court will grant the Writ and will vacate the judgment of the Eleventh Circuit and remand for further proceedings with instructions because the evidence of record was insufficient to support a conviction of conspiracy with knowledge, or reasonable cause to know that the purpose of the conspiracy was importation of cocaine into the the United States. Alternatively Petitioner prays that that the Writ will be granted and the judgment of the Eleventh Circuit will be vacated and remanded with instructions that the sentence be vacated as being unreasonable, cruel, unusu-

al, and far exceeding any reasonable sentencing disparity that may be justified on this record; and that a new sentencing hearing be conducted before a different district judge.

Very respectfully submitted,

Sheryl J. Lowenthal

Sheryl J. Lowenthal, Atty at Law
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Email; sjlowenthal@appeals.net

Dated: October 13, 2021

North Florida Office: 221 East Government Street Pensacola FL 32502
Tel: 850-912-6710

APPENDIX TO THE PETITION

JUDGMENT AND SENTENCE

Southern District of Florida
US v. Perlaza, No. 16-cr-20575-RNS-5
Entered on March 4, 2020

OPINION AFFIRMING CONVICTION AND SENTENCE

Eleventh Circuit United States Court of Appeals
US v. Yina Maria Castaneda Benavides, No. 20-10986
Entered on May 21, 2021

ORDER DENYING TIMELY-FILED PETITION FOR REHEARING

Entered on July 28, 2021

UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: **16-20575-CR-SCOLA-5**

YINA MARIA CASTANEDA BENAVIDEZ

USM Number: **15198-104**

Counsel for Defendant: Erick Cruz
Counsel or The United States: Joseph M. Schuster
and Robert J. Emery
Court Reporter: Tammy Nestor

The defendant was found guilty of count 1 of the indictment.

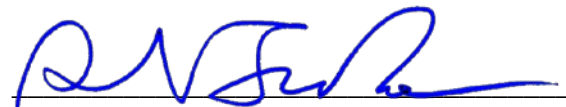
The defendant is adjudicated guilty of these offenses:

<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
21 U.S.C. § 963	Conspiracy to distribute five kilograms or more of cocaine knowing that it was to be unlawfully imported into the United States.	07/28/2016	1

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

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

Date of Imposition of Sentence: 02/27/2020



ROBERT N. SCOLA, Jr.
United States District Judge

Date: 03/04/2020

DEFENDANT: **YINA MARIA CASTANEDA BENAVIDEZ**
CASE NUMBER: **16-20575-CR-SCOLA-5**

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **270 months**. The defendant shall receive credit time served for time in custody awaiting extradition from **October 4, 2016** through **December 15, 2017**.

The court makes the following recommendations to the Bureau of Prisons: none.

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

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: YINA MARIA CASTANEDA BENAVIDEZ
CASE NUMBER: 16-20575-CR-SCOLA-5

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **five years**.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. 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 probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. 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; and
13. 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.

DEFENDANT: YINA MARIA CASTANEDA BENAVIDEZ
CASE NUMBER: 16-20575-CR-SCOLA-5

SPECIAL CONDITIONS OF SUPERVISION

Surrendering to Immigration for Removal After Imprisonment - At the completion of the defendant's term of imprisonment, the defendant shall be surrendered to the custody of the U.S. Immigration and Customs Enforcement for removal proceedings consistent with the Immigration and Nationality Act. If removed, the defendant shall not reenter the United States without the prior written permission of the Undersecretary for Border and Transportation Security. The term of supervised release shall be non-reporting while the defendant is residing outside the United States. If the defendant reenters the United States within the term of supervised release, the defendant is to report to the nearest U.S. Probation Office within 72 hours of the defendant's arrival.

Unpaid Restitution, Fines, or Special Assessments - If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

DEFENDANT: **YINA MARIA CASTANEDA BENAVIDEZ**
CASE NUMBER: **16-20575-CR-SCOLA-5**

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00

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

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>
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* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: YINA MARIA CASTANEDA BENAVIDEZ
CASE NUMBER: 16-20575-CR-SCOLA-5

SCHEDULE OF PAYMENTS

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

A. Lump sum payment of \$100.00 due immediately.

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

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

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

<u>CASE NUMBER</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL AMOUNT</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES</u> <u>(INCLUDING DEFENDANT NUMBER)</u>		

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

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10986
Non-Argument Calendar

D.C. Docket No. 1:16-cr-20575-RNS-5

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

YINA MARIA CASTANEDA BENAVIDEZ,
a.k.a La Reina,
a.k.a. Ingeniera,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(May 21, 2021)

Before LAGOA, BRASHER, and BLACK, Circuit Judges.

PER CURIAM:

Yina Castaneda Benavidez (Castaneda) appeals her conviction and 270-month, below-guidelines sentence for conspiring to distribute five or more kilograms of cocaine knowing or having reasonable cause to believe it would be unlawfully imported into the United States, in violation of 21 U.S.C. §§ 959(a) and 963. Castaneda, who was convicted after a jury trial, argues: (1) the district court erred in denying her motion for judgment of acquittal, filed under Federal Rule of Criminal Procedure 29; and (2) her sentence was substantively unreasonable. After review, we affirm Castaneda's conviction and sentence.

I. DISCUSSION

A. Denial of Motion for Judgment of Acquittal

Castaneda first argues it was error for the district court to deny her Rule 29 motion for judgment of acquittal, which she renewed at the close of all the evidence. She contends the government failed to prove she knew or had reasonable cause to believe the cocaine at issue—which departed from Tumaco, Colombia and traveled via go-fast boat to Central America—was destined for unlawful importation into the United States.

We review the denial of a motion for judgment of acquittal on sufficiency of the evidence grounds de novo, viewing the evidence in the light most favorable to the government and drawing all reasonable inferences and credibility choices in the government's favor. *United States v. Browne*, 505 F.3d 1229, 1253 (11th Cir.

2007). We will affirm the verdict if a reasonable jury could conclude the evidence establishes the defendant's guilt beyond a reasonable doubt. *Id.* "This inquiry does not require that the evidence be inconsistent with every reasonable hypothesis except guilt." *Id.* (quotation marks omitted). Instead, "the jury is free to choose between or among the reasonable conclusions to be drawn from the evidence presented at trial," and "our sufficiency review requires only that a guilty verdict be reasonable, not inevitable" based on that evidence. *Id.* (quotation marks omitted).

The test for the sufficiency of the evidence is the same whether the evidence is direct or circumstantial, and we make no distinction between the weight given to direct or circumstantial evidence. *United States v. Mieres-Borges*, 919 F.2d 652, 657 (11th Cir. 1990). However, "[w]hen the government relies on circumstantial evidence, reasonable inferences, not mere speculation, must support the conviction." *United States v. Mendez*, 528 F.3d 811, 814 (11th Cir. 2008).

The district court did not err in denying Castaneda's motion for judgment of acquittal. At trial, the government was required to prove Castaneda conspired to distribute cocaine "knowing, or having reasonable cause to believe" it would be "unlawfully imported into the United States or into waters within a distance of 12

miles of the coast of the United States.” 21 U.S.C. §§ 959(a), 963.¹ Although the government did not present direct evidence of Castaneda’s knowledge, it presented sufficient circumstantial evidence from which a reasonable jury could conclude Castaneda knew or had reasonable cause to believe the cocaine would be unlawfully imported into the United States. *See United States v. Bollinger*, 796 F.2d 1394, 1405 (11th Cir. 1986) (knowledge cocaine was to be imported in violation of 21 U.S.C. § 952 could be proven through circumstantial evidence), *modified on other grounds on denial of reh’g*, 837 F.2d 436 (11th Cir. 1988).

First, the testimony of Castaneda’s codefendants suggests she knew or had reasonable cause to believe the cocaine would be unlawfully imported into the United States. The indictment charged Castaneda and ten codefendants with the same conspiracy. Four of those codefendants, who pleaded guilty to the conspiracy, testified that they: (1) worked with Castaneda to smuggle loads of cocaine weighing hundreds of kilograms each from Colombia to Central America, and (2) knew the cocaine would be imported into the United States.

¹ Section 959(a) makes it unlawful to manufacture or distribute a controlled substance “intending, knowing, or having reasonable cause to believe [it] will be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States.” 21 U.S.C. § 959(a). Though Castaneda’s July 28, 2016, indictment refers to 21 U.S.C. § 959(a)(2), which prohibited any person from manufacturing or distributing a controlled subsection “knowing” it would be unlawfully imported into the United States, that subsection was eliminated when the statute was amended on May 16, 2016, before the conspiracy ended. *See* Transnational Drug Trafficking Act of 2015; Pub. L. 114-154, § 2, 130 Stat. 387 (2016). The jury was instructed to apply the revised statutory language if it found Castaneda’s participation in the conspiracy continued after the amendment.

Julio Belalcazar Estacio (Belalcazar) testified the drug trafficking organization he and Castaneda were involved in aimed to send cocaine from Colombia to Central America, “with the final destination being [the] United States.” He further stated his contacts in Central America told him the cocaine was going to be sent to the United States and it was no secret the cocaine was going there. Jefferson Sevillano Quinones testified he knew the cocaine would ultimately be sold in the United States because one of his bosses in the drug trafficking organization—Eider Bonilla Moran (Bonilla)—had told him so, and most people in the organization knew the cocaine’s final destination was the United States. Ariel Angulo Lasso similarly testified the cocaine’s final destination was the United States, and it was no secret the cocaine was going to the United States, where it was “more expensive.” Ceneiber Quinones Jurado likewise testified he knew the cocaine was going to the United States “because it’s obvious” and because that was “where the drugs cost the most.” He also testified everyone in the drug trafficking organization knew the cocaine was going to the United States.

That Castaneda’s codefendants all knew the cocaine was bound for the United States suggests that Castaneda herself would have also known this information. Significantly, the latter three codefendants testified Castaneda ranked higher in the drug trafficking organization than they did, further indicating she

would have known at least as much as they did about where the cocaine was headed.

Second, Castaneda's intercepted communications referenced U.S. law enforcement agencies and U.S. currency. Specifically, Castaneda expressed concern about the United States Drug Enforcement Administration and told Belalcazar when the "gringos," meaning the United States Coast Guard, were patrolling the waters in which the cocaine was being transported. Castaneda also discussed the price of cocaine in U.S. dollars and did not mention any currency other than the U.S. dollar or the Colombian peso. Though these communications do not directly state the cocaine was destined for the United States, they further suggest Castaneda knew or had reasonable cause to believe it was going there.

Third, the government presented other testimony indicating the cocaine was bound for the United States. The government's international drug trafficking expert testified the quantity of cocaine involved in the shipments indicated it was "highly likely" the cocaine would be sent to a large and profitable consumer market, which existed in the United States but not Central America, and that the cocaine could sell for far more money in the United States than in Central America or Mexico. The government's expert further testified that Central America was a critical transshipment zone where cocaine from Colombia was prepared for further shipment on to the United States, and that transporting the cocaine to Central

America enabled Colombian drug traffickers to avoid cartel violence in Mexico. A Colombian National Police Officer who investigated Castaneda and the drug trafficking organization similarly testified that cocaine is typically smuggled from Tumaco to Central America and then to the United States, and that it was unlikely the cocaine was being sent elsewhere. This testimony regarding the likely market for and typical route of the cocaine to the United States via Central America further suggests Castaneda had reason to know the cocaine would be unlawfully imported into the United States.

Castaneda argues the government offered only speculation about her knowledge of where the cocaine was headed. She also contends the fact she may have been paid in U.S. dollars is not evidence the cocaine was going to the United States and points out her expert testified there are large consumer markets for cocaine outside the United States, such as in Europe. She also asserts cooperating witnesses are not credible because they hope to receive favorable treatment from the government. These arguments are unavailing, however, as we draw all reasonable inferences and credibility choices in the government's favor, and the jury was "free to choose between or among the reasonable conclusions to be drawn from the evidence presented at trial." *See Browne*, 505 F.3d at 1253 (quotation marks omitted). Taken together, the codefendants' testimony, intercepted communications, and other testimony concerning the market for and route of the

cocaine provide substantial evidence from which a reasonable jury could conclude Castaneda knew or had reasonable cause to believe the cocaine would be unlawfully imported into the United States.

B. Substantive Reasonableness

Castaneda next contends her sentence was substantively unreasonable under the 18 U.S.C. § 3553(a) factors. She argues that she was significantly less culpable than others involved in the large-scale distribution of cocaine, notes her poor and abusive upbringing in Colombia and separation from her children in Colombia, and contends a ten-year sentence would have been sufficient to provide just punishment and fulfill other sentencing goals. Castaneda also argues there was unwarranted disparity between her sentence and those of her codefendants.²

We consider the substantive reasonableness of a sentence under the abuse of discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). On substantive reasonableness review, we may vacate the sentence only if we “are left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the § 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case.” *United States v. Irely*, 612 F.3d 1160, 1190 (11th Cir. 2010) (en banc) (quotation marks

² To the extent Castaneda challenges the conditions of her confinement for the first time in her reply brief, we deem any such argument to be waived. See *United States v. Levy*, 379 F.3d 1241, 1244 (11th Cir. 2004).

omitted). The party who challenges the sentence bears the burden to show that the sentence is unreasonable, considering the record and the § 3553(a) factors. *United States v. Tome*, 611 F.3d 1371, 1378 (11th Cir. 2010).

Section 3553(a) requires the district court to “impose a sentence sufficient, but not greater than necessary,” to reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, deter criminal conduct, protect the public, and provide the defendant with necessary training, care, or treatment. 18 U.S.C. § 3553(a)(2)(A)-(D). The court must also consider the nature and circumstances of the offense and history and characteristics of the defendant, the types of sentences available, the applicable guidelines range, any pertinent policy statement issued by the Sentencing Commission, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to victims. *Id.* § 3553(a)(1), (3)-(7). The weight given to any § 3553(a) factor is a matter committed to the discretion of the district court. *United States v. Williams*, 526 F.3d 1312, 1322 (11th Cir. 2008).

Based on a total offense level of 41 and criminal history category of I, Castaneda’s advisory guidelines range was 324 to 405 months’ imprisonment. The district court varied downward from the low end of the guidelines range by 54 months, resulting in a below-guidelines sentence of 270 months’ imprisonment.

The statutory range for Castaneda's offense was 120 months to life imprisonment. *See* 21 U.S.C. § 960(b)(1)(B)(ii).

Castaneda's sentence is substantively reasonable. At sentencing, after hearing the parties' arguments, the district court emphasized that this was a serious case involving hundreds of kilograms of cocaine, with over 600 kilograms attributed to Castaneda. The court also stated Castaneda had played a significant role in the offense, which was supported by evidence at trial that she brought others into the drug trafficking organization, managed and supervised others within the organization, and arranged logistics for shipping the cocaine. The court also indicated it was important to deter others from committing similar offenses. These considerations are consistent with § 3553(a) factors including the nature and circumstances of the offense and the need for the sentence imposed to reflect the seriousness of the offense and afford adequate deterrence. 18 U.S.C. § 3553(a)(1), (2)(A)-(B). It was in the court's discretion to assign greater weight to these factors than to Castaneda's upbringing or distance from her family. *See Williams*, 526 F.3d at 1322.

Castaneda's sentence did not result in unwarranted sentencing disparity. Nine of Castaneda's ten codefendants pleaded guilty before the district court; one was transferred to another judicial district. Only Castaneda proceeded to trial. Castaneda argues Edison Perlaza Orobio (Orobio), the leader of the drug

trafficking organization, had a lower advisory guidelines range even though 30,000 kilograms of cocaine were attributed to him in the presentence investigation report. She also contends several other defendants—Belalcazar, Bonilla, and Jefferson Bravo Espinosa (Bravo)—received lower sentences than she did despite being held accountable for larger quantities of cocaine.

Castaneda's arguments are without merit. Orobio had yet to be sentenced at the time of Castaneda's sentencing. Belalcazar, Bonilla, and Bravo all pleaded guilty, cooperated with the government, and accepted responsibility. As such, none of those individuals could serve as proper points of comparison for whether there was any unwarranted sentencing disparity. *See United States v. Cavallo*, 790 F.3d 1202, 1237 (11th Cir. 2015) (stating that under § 3553(a)(6), "a defendant who cooperates with the Government and pleads guilty is not similarly situated to his co-defendant who proceeds to trial," and "there is no unwarranted disparity even when a cooperating defendant receives a substantially shorter sentence than a defendant who goes to trial" (quotation marks omitted)). In any event, the district court considered the sentences of Castaneda's codefendants in deciding to vary downward by 54 months.

As a final matter, that Castaneda's sentence fell below the advisory guidelines range and well below the statutory maximum of life imprisonment are further indications of its reasonableness. *See United States v. Nagel*, 835 F.3d

1371, 1377 (11th Cir. 2016) (concluding sentence’s position at the low end of the advisory guidelines range and significantly below the statutory maximum of life supported its reasonableness).

II. CONCLUSION

For the reasons above, we affirm Castaneda’s conviction and sentence.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

May 21, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-10986-GG
Case Style: USA v. Yina Castaneda Benavidez
District Court Docket No: 1:16-cr-20575-RNS-5

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing, are available at www.ca11.uscourts.gov. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Joseph Caruso, GG

at (404) 335-6177.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna H. Clark
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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July 28, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-10986-GG
Case Style: USA v. Yina Castaneda Benavidez
District Court Docket No: 1:16-cr-20575-RNS-5

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Joseph Caruso, GG/lt
Phone #: (404) 335-6177

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10986-GG

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

YINA MARIA CASTANEDA BENAVIDEZ,
a.k.a La Reina,
a.k.a. Ingeniera,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Florida

BEFORE: LAGOA, BRASHER, and BLACK, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by the Appellant is DENIED.

ORD-41