

No. _____

**In The
SUPREME COURT OF THE UNITED STATES**

October Term, 2021

MARC BLANE BACCUS,

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent

*On Petition for a Writ of Certiori to the United States
Court of Appeals for the Fifth Circuit*

PETITION FOR A WRIT OF CERTIORI

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QUESTIONS PRESENTED

1. Whether Appellant's Sentence should have been enhanced for methamphetamine Importation from Mexico under §2D1.1(B)(5)
2. Whether Appellant's Guideline Range should have been enhanced due to Drug Purity

PARTIES TO THE PROCEEDING

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges may evaluate possible disqualifications or recusal.

1. Marc Blane Baccus, Petitioner and Defendant-Appellant in Court below.
2. United States of America, Respondent and Appellee in Court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Marc Blane Baccus respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Fifth Circuit was handed down on August 12, 2021 and is attached. (App. A). The judgment and sentence of the Honorable Judge Mark Pittman, District Judge for the Northern District of Texas, dated July 17, 2020 is attached. (App. B).

JURISDICTION

The panel opinion and judgment of the United States Court of Appeals for the Fifth Circuit ("Court of Appeals") was entered on August 12, 2021. in an unpublished opinion and therefore this Petition is timely filed. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 18 U.S.C. § 875(c)

(c) Whoever transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both.

2. U.S.S.G. § 2D1.1(b)(5) provides the following

(5) If (A) the offense involved the importation of amphetamine or methamphetamine or the manufacture of amphetamine or methamphetamine from listed chemicals that the defendant knew were imported unlawfully, and (B) the defendant is not subject to an adjustment under §3B1.2 (Mitigating Role), increase by 2 levels.

3. U.S.S.G. § 2D1.1(c), cmt. n. B provides as follows

(B) The terms “*PCP (actual)*”, “*Amphetamine (actual)*”, and “*Methamphetamine (actual)*” refer to the weight of the controlled substance, itself, contained in the mixture or substance. For example, a mixture weighing 10 grams containing PCP at 50% purity contains 5 grams of PCP (actual). In the case of a mixture or substance containing PCP, amphetamine, or methamphetamine, use the offense level determined by the entire weight of the mixture or substance, or the offense level determined by the weight of the PCP (actual), amphetamine (actual), or methamphetamine (actual), whichever is greater.

The terms “*Hydrocodone (actual)*” and “*Oxycodone (actual)*” refer to the weight of the controlled substance, itself, contained in the pill, capsule, or mixture.

4. U.S.S.G. § 2D1.1(c), cmt. n. C provides as follows

(C) “*Ice*,” for the purposes of this guideline, means a mixture or substance containing d-methamphetamine hydrochloride of at least 80% purity.

5. U.S.S.G. § 2D1.1, cmt. n. 27(C) provides

27. Departure Considerations.—

(C) Upward Departure Based on Unusually High Purity.—Trafficking in controlled substances, compounds, or mixtures of unusually high purity may warrant an upward departure, except in the case of PCP, amphetamine, methamphetamine, hydrocodone, or oxycodone for which the guideline itself provides for the consideration of purity (see the footnote to the Drug Quantity Table). The purity of the controlled substance, particularly in the case of heroin, may be relevant in the sentencing process because it is probative of the defendant's role or position in the chain of distribution. Since controlled substances are often diluted and combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs. As large quantities are normally associated with high purities, this factor is particularly relevant where smaller quantities are involved.

6. U.S.S.G. § 2D1.1(c)(1)

<ul style="list-style-type: none">• 90 KG or more of Heroin;• 450 KG or more of Cocaine;• 25.2 KG or more of Cocaine Base;• 90 KG or more of PCP, or 9 KG or more of PCP (actual);• 45 KG or more of Methamphetamine, or 4.5 KG or more of Methamphetamine (actual), or 4.5 KG or more of 'Ice';• 45 KG or more of Amphetamine, or 4.5 KG or more of Amphetamine (actual);• 900 G or more of LSD;• 36 KG or more of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);• 9 KG or more of a Fentanyl Analogue;• 90,000 KG or more of Marihuana;• 18,000 KG or more of Hashish;	Level 38
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- 1,800 KG or more of Hashish Oil;
- 90,000,000 units or more of Ketamine;
- 90,000,000 units or more of Schedule I or II Depressants;
- 5,625,000 units or more of Flunitrazepam;
- 90,000 KG or more of **Converted Drug Weight**.

7. U.S.S.G. § 2D1.1(c)(3)

- At least 10 KG but less than 30 KG of Heroin;
- At least 50 KG but less than 150 KG of Cocaine;
- At least 2.8 KG but less than 8.4 KG of Cocaine Base;
- At least 10 KG but less than 30 KG of PCP, or at least 1 KG but less than 3 KG of PCP (actual);
- At least 5 KG but less than 15 KG of Methamphetamine, or at least 500 G but less than 1.5 KG of Methamphetamine (actual), or at least 500 G but less than 1.5 KG of 'Ice';
- At least 5 KG but less than 15 KG of Amphetamine, or at least 500 G but less than 1.5 KG of Amphetamine (actual);
- At least 100 G but less than 300 G of LSD;
- At least 4 KG but less than 12 KG of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
- At least 1 KG but less than 3 KG of a Fentanyl Analogue;
- At least 10,000 KG but less than 30,000 KG of Marihuana;
- At least 2,000 KG but less than 6,000 KG of Hashish;
- At least 200 KG but less than 600 KG of Hashish Oil;
- At least 10,000,000 but less than 30,000,000 units of Ketamine;
- At least 10,000,000 but less than 30,000,000 units of Schedule I or II Depressants;
- At least 625,000 but less than 1,875,000 units of Flunitrazepam;
- At least 10,000 KG but less than 30,000 KG of **Converted Drug Weight**.

Level
34

8. U.S.S.G. § 2D1.1(c)(10)

- At least 60 G but less than 80 G of Heroin;
- At least 300 G but less than 400 G of Cocaine;
- At least 16.8 G but less than 22.4 G of Cocaine Base;
- At least 60 G but less than 80 G of PCP, or
at least 6 G but less than 8 G of PCP (actual);
- At least 30 G but less than 40 G of Methamphetamine, or
at least 3 G but less than 4 G of Methamphetamine (actual), or
at least 3 G but less than 4 G of 'Ice';
- At least 30 G but less than 40 G of Amphetamine, or
at least 3 G but less than 4 G of Amphetamine (actual);
- At least 600 MG but less than 800 MG of LSD;
- At least 24 G but less than 32 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide);
- At least 6 G but less than 8 G of a Fentanyl Analogue;
- At least 60 KG but less than 80 KG of Marihuana;
- At least 12 KG but less than 16 KG of Hashish;
- At least 1.2 KG but less than 1.6 KG of Hashish Oil;
- At least 60,000 but less than 80,000 units of Ketamine;
- At least 60,000 but less than 80,000 units of Schedule I or II Depressants;
- 60,000 units or more of Schedule III substances (except Ketamine);
- At least 3,750 but less than 5,000 units of Flunitrazepam;
- At least 60 KG but less than 80 KG of **Converted Drug Weight**.

9. U.S.S.G. § 2D1.1(c)(12)

<ul style="list-style-type: none"> • At least 20 G but less than 40 G of Heroin; • At least 100 G but less than 200 G of Cocaine; • At least 5.6 G but less than 11.2 G of Cocaine Base; • At least 20 G but less than 40 G of PCP, or at least 2 G but less than 4 G of PCP (actual); • At least 10 G but less than 20 G of Methamphetamine, or 	Level 16
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<p>at least 1 G but less than 2 G of Methamphetamine (actual), or at least 1 G but less than 2 G of 'Ice';</p> <ul style="list-style-type: none"> • At least 10 G but less than 20 G of Amphetamine, or at least 1 G but less than 2 G of Amphetamine (actual); • At least 200 MG but less than 400 MG of LSD; • At least 8 G but less than 16 G of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide); • At least 2 G but less than 4 G of a Fentanyl Analogue; • At least 20 KG but less than 40 KG of Marihuana; • At least 5 KG but less than 8 KG of Hashish; • At least 500 G but less than 800 G of Hashish Oil; • At least 20,000 but less than 40,000 units of Ketamine; • At least 20,000 but less than 40,000 units of Schedule I or II Depressants; • At least 20,000 but less than 40,000 units of Schedule III substances (except Ketamine); • At least 1,250 but less than 2,500 units of Flunitrazepam; • At least 20 KG but less than 40 KG of Converted Drug Weight. 	
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10. U.S.S.G. § 2D1.1(c)(13)

<ul style="list-style-type: none"> • At least 10 G but less than 20 G of Heroin; • At least 50 G but less than 100 G of Cocaine; • At least 2.8 G but less than 5.6 G of Cocaine Base; • At least 10 G but less than 20 G of PCP, or at least 1 G but less than 2 G of PCP (actual); • At least 5 G but less than 10 G of Methamphetamine, or at least 500 MG but less than 1 G of Methamphetamine (actual), or at least 500 MG but less than 1 G of 'Ice'; • At least 5 G but less than 10 G of Amphetamine, or at least 500 MG but less than 1 G of Amphetamine (actual); • At least 100 MG but less than 200 MG of LSD; • At least 4 G but less than 8 G of Fentanyl (N-phenyl-N-[1-(2- 	Level 14
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phenylethyl)-4-piperidinyl] Propanamide);

- At least 1 G but less than 2 G of a Fentanyl Analogue;
- At least 10 KG but less than 20 KG of Marihuana;
- At least 2 KG but less than 5 KG of Hashish;
- At least 200 G but less than 500 G of Hashish Oil;
- At least 10,000 but less than 20,000 units of Ketamine;
- At least 10,000 but less than 20,000 units of Schedule I or II Depressants;
- At least 10,000 but less than 20,000 units of Schedule III substances (except Ketamine);
- At least 625 but less than 1,250 units of Flunitrazepam;
- At least 10 KG but less than 20 KG of **Converted Drug Weight.**

11. U.S.S.G. § 3B1.2

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.

12. U.S.S.G. §3B1.2, cmt. n. 3(A)

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.

13. U.S.S.G. Appendix C, Amend. 555 (November, 1997)

AMENDMENT 555

Amendment: Section 2D1.1(b) is amended by redesignating subdivision (4) as subdivision (6) and inserting after subdivision (3) the following additional subdivisions:

"(4) If (A) the offense involved the importation of methamphetamine or the manufacture of methamphetamine from listed chemicals that the defendant knew were imported unlawfully, and (B) the defendant is not subject to an adjustment under §3B1.2 (Mitigating Role), increase by 2 levels.

(5) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance, or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels."

Section 2D1.1(c) is amended in subdivision (1) by deleting "30 KG" before "or more of Methamphetamine" and inserting in lieu thereof "15 KG".

Section 2D1.1(c) is amended in subdivision (2) by deleting "10 KG but less than 30 KG" before "of Methamphetamine" and inserting in lieu thereof "5 KG but less than 15 KG".

Section 2D1.1(c) is amended in subdivision (3) by deleting "3 KG but less than 10 KG" before "of Methamphetamine" and inserting in lieu thereof "1.5 G but less than 5 KG".

Section 2D1.1(c) is amended in subdivision (4) by deleting "1 KG but less than 3 KG" before "of Methamphetamine" and inserting in lieu thereof "500 G but less than 1.5 KG".

Section 2D1.1(c) is amended in subdivision (5) by deleting "700 G but less than 1 KG" before "of Methamphetamine" and inserting in lieu thereof "350 G but less than 500 G".

Section 2D1.1(c) is amended in subdivision (6) by deleting "400 G but less than 700 G" before "of Methamphetamine" and inserting in lieu thereof "200 G but less than 350 G".

Section 2D1.1(c) is amended in subdivision (7) by deleting "100 G but less than 400 G" before "of Methamphetamine" and inserting in lieu thereof "50 G but less than 200 G".

Section 2D1.1(c) is amended in subdivision (8) by deleting "80 G but less than 100 G" before "of Methamphetamine" and inserting in lieu thereof "40 G but less than 50 G".

Section 2D1.1(c) is amended in subdivision (9) by deleting "60 G but less than 80 G" before "of Methamphetamine" and inserting in lieu thereof "30 G but less than 40 G".

Section 2D1.1(c) is amended in subdivision (10) by deleting "40 G but less than 60 G" before "of Methamphetamine" and inserting in lieu thereof "20 G but less than 30 G".

Section 2D1.1(c) is amended in subdivision (11) by deleting "20 G but less than 40 G" before "of Methamphetamine" and inserting in lieu thereof "10 G but less than 20 G".

Section 2D1.1(c) is amended in subdivision (12) by deleting "10 G but less than 20 G" before "of Methamphetamine" and inserting in lieu thereof "5 G but less than 10 G".

Section 2D1.1(c) is amended in subdivision (13) by deleting "5 G but less than 10 G" before "of Methamphetamine" and inserting in lieu thereof "2.5 G but less than 5 G".

Section 2D1.1(c) is amended in subdivision (14) by deleting "5 G" before "of Methamphetamine" and inserting in lieu thereof "2.5 G".

The Commentary to §2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the subdivision captioned "Cocaine and Other Schedule I and II Stimulants" in the entry beginning "1 gm of Methamphetamine =" by deleting "1 kg" before "of marihuana" and inserting in lieu thereof "2 kg".

The Commentary to §2D1.1 captioned "Application Notes" is amended by inserting after Note 18 the following additional notes:

"19. If the offense involved importation of methamphetamine, and an adjustment from subsection (b)(2) applies, do not apply subsection (b)(4).

20. Under subsection (b)(5), the enhancement applies if the conduct for which the defendant is accountable under §1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. § 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 5124, 9603(b). In some cases, the enhancement under this subsection may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under §5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under §5B1.3 (Conditions of Probation) and §5D1.3 (Conditions of Supervised Release).".

The Commentary to §2D1.1 captioned "Background" is amended in the second paragraph by inserting as the last sentence "Where necessary, this scheme has been modified in response to specific congressional directives to the Commission.".

Reason for Amendment: This multi-part amendment responds to the Comprehensive Methamphetamine Control Act of 1996, Pub. L. 104-237, 110 Stat. 3099, including the directives to the Commission in sections 301 and 303 of that Act. First, as directed by section 301 of the Act, the amendment increases penalties for methamphetamine trafficking offenses. This penalty increase is accomplished by reducing by one-half the quantity of a mixture or substance containing methamphetamine corresponding to each offense level in the Drug Quantity Table. This part of the amendment makes no change, however, in the quantities of methamphetamine (actual) (i.e., "pure" methamphetamine) and "Ice" methamphetamine that correspond to the various offense levels. The Commission has arrived at these particular changes after careful analysis of recent sentencing data, including its own intensive study of methamphetamine offenses, information

provided by the Strategic Intelligence Section of the Drug Enforcement Administration concerning recent methamphetamine trafficking levels, dosage unit size, price, and drug quantity, and a variety of other information.

Second, in response to the directive in section 303 of the Act, this amendment provides an enhancement of two levels, with an invited upward departure in more extreme cases, for environmental violations occurring in association with an illicit manufacturing or other drug trafficking offense.

Third, in response to evidence of a recent, substantial increase in the importation of methamphetamine and precursor chemicals used to manufacture methamphetamine, the amendment provides an enhancement of two levels directed at such activity. An exception to this enhancement is provided for defendants who have a mitigating role in the offense under §3B1.2 (Mitigating Role).

Effective Date: The effective date of this amendment is November 1, 1997.

STATEMENT OF THE CASE

A. Facts and Proceedings in the Trial Court

On December 11, 2019, Appellant was charged by information with conspiracy to possess with intent to distribute. On January 21, 2020 he agreed to waive indictment and proceed on the information. [Record in the Court of Appeals, at 37] On January 21, 2019, Appellant plead guilty before the district court to count two as set forth in the information. [Record in the Court of Appeals, at 254]. On July 17, 2020, Mr. Baccus was sentenced by the district court a term of incarceration for 235 months, with three years of supervised release. [Record in the Court of Appeals, at 278-279].

At that sentencing hearing, the district court adopted the offense computations set forth in the PSR and Addenda. [Record in the Court of Appeals, at 273]. Those computations resulted in a base offense level of 37, with a criminal history category of II, leading to an advisory guideline range of 235-293 months incarceration. [Record in the Court of Appeals, at 274]. Since the statutory cap was 20 years, the district court noted that the effective punishment range was from 235-240 months. [Record in the Court of Appeals, at 274].

In calculating Mr. Baccus's sentence, the district court overruled his request for a mitigating role reduction as provided by § 3B1.2(b) of the guidelines, and added two levels because the offense involved methamphetamine which was

imported from Mexico, to which Mr. Baccus objected. [Record in the Court of Appeals, at 269-270]. *See* U.S.S.G. §2D1.1(b)(5). Additionally, the district court overruled his objection to the four level offense level increase on the grounds that the methamphetamine attributable to Mr. Baccus was alleged to have had a purity of 97.8 percent. [Record in the Court of Appeals, at 268, 273].

On August 12, 2021 the United States Court of Appeals for the Fifth Circuit affirmed the decision of the District Court in an unpublished decision.

B. Appellate Proceedings

On Appeal, Petitioner argued that although the district court's calculations did follow circuit precedent, the Fifth Circuit was alone among the circuits in applying the importation sentencing enhancement regardless of whether the defendant had knowledge of that importation. While acknowledging this precedent, Appellant urged the Court to adopt the scienter requirement to this enhancement, or in the alternative he wished to preserve this error for further review by the Supreme Court. The Fifth Circuit held that the issue as foreclosed by prior 5th Circuit precedent in *United States v. Serfass*, 684 F.3d 548, 552 (5th Cir. 2012) and ruled against Appellant on this issue. [Appendix A, at 3]

Petitioner also objected to the additional 4 levels added to his base-offense level based on the purity of the drugs at issue. In Petitioner's case the actual weight of methamphetamine mixture attributed to him weighed a total of 5,036 grams. (Record in the Court of Appeals, at 291) Based on their 98.7% purities this amounted to 4,925.2

grams of actual methamphetamine. The guidelines based on a methamphetamine mixture would have resulted in a 34 base-offense level, because 5,036 grams of methamphetamine mixture is “at least 5KG but less than 15 KG.” U.S.S.G. § 2D1.1(c)(3). However the guidelines based on actual methamphetamine resulted in a 38 base-offense level, because 4,925.2 grams of actual methamphetamine is “4.5 KG or more of methamphetamine (actual).” U.S.S.G. § 2D1.1(c)(1).

The antiquated theory underpinning higher punishments for higher purity methamphetamine was that since controlled substances were often diluted and combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs. *Id.*; see *United States v. Ibarra-Sandoval*, 265 F.Supp.3d 1249, 1255 (D. N.M. 2017) (recognizing the language in § 2D1.1, cmt. n.27(C) as setting forth the “underlying theory” behind increasing sentences based on drug purity).

Courts have criticized linking drug quantity with the offender’s role and have also debunked the Guidelines’ assumed connection between drug purity and a particular Defendant’s elevated standing in that criminal organization. In *Ibarra-Sandoval*, for example, Judge Brack wrote that the assumed purity-role connection is “divorced from reality.” *Ibarra-Sandoval*, 265 F.Supp.3d at 1255. He explained that Mexican cartels’ increased control over methamphetamine distribution had dramatically increased the

national average purity of methamphetamine. *Id.* The opinion cited Drug Enforcement Agency (DEA) statistics showing that the mean national purity grew from as low as 38.7% in 2007, to as high as 94% by 2013. *Id.* (citing Drug Enforcement Agency, 2013 National Level STRIDE Price and Purity Data, at 4 (2015)).

Given that the Guidelines treat actual methamphetamine and ice more harshly than methamphetamine mixture, the national average of more than 90% purity “mean[t] that the sentencing Guidelines would treat the average individual convicted of a crime involving methamphetamine as a kingpin or leader, even though that simply is not true.” *Id.* at 1255-56. The high purity of methamphetamine in a specific case does not reliably indicate the offender’s role in the drug trade, given that methamphetamine throughout the U.S. market has become highly pure.

The Appellate Court rejected this argument stating that (1) it is for the Sentencing Commission, not the Courts, to correct a guideline that is empirically unsound, and (2) although Courts have discretion to vary from the Guidelines because of a policy disagreement, they are not required to do so. [Appendix A, at 3]

REASONS FOR GRANTING THIS PETITION

1. The Petition should be granted because there is a split between the Circuits with the 5th Circuit standing alone in not imposing a scienter requirement for enhancement for methamphetamine Importation from Mexico under §2D1.1(B)(5).

Because Appellant objected on the grounds of lack of scienter to the two-level increase for methamphetamine importation and to the four-level increase in base offense level due to the alleged finding that the drug transported by Appellant was over 80% pure, this Court will review the district court's interpretation or application of the United States Sentencing Guidelines *de novo*, and its factual findings for clear error. *United States v. Claiborne*, 676 F.3d 434, 437 (5th Cir. 2012). The trial court's finding will constitute clear error where such finding either rests upon an incorrect rule of law or is inconsistent with the facts upon which it purports to rest. *United States v. Judon*, 581 F.2d 553, 554-55 (5th Cir. 1978). To reject a finding of fact as clearly erroneous, this Court must, upon review of the entire record, be "left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525 (1948).

Although the district court's calculations did follow circuit precedent, this brief will argue the district court committed a procedural error by calculating the two-level enhancement under § 2D1.1(b)(5) and the Fifth Circuit erred in affirming this ruling. The Fifth Circuit in *United States v. Serfass*, 684 F.3d 548, 552 (5th Cir. 2012) held that the

§ 2D1.1(b)(5) sentencing enhancement applies if the offense involved the importation of amphetamine or methamphetamine” regardless of whether the defendant had knowledge of that importation.” The Ninth Circuit noted the Fifth Circuit’s solitary stance on the issue and declined to adopt the Fifth Circuit’s conclusion, calling the issue of a scienter requirement “an open issue.” *United States v. Job*, 871 F.3d 852, 871 (9th Cir. 2017). This is precisely why a Supreme Court opinion on this issue is important.

The history and language of the 2D1.1(b)(5)(A) and (B) enhancement clearly suggests a *mens rea* element is included and that knowledge of importation is required. Section 2D1.1(b)(5)(A) and (B) does not apply the 2-level increase for an offense that involved the importation of methamphetamine if the defendant is subject to an adjustment under Section 3B1.2 for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant. U.S.S.G. §3B1.2, cmt. n. 3(A). If the § 2D1.1(b)(5) enhancement is truly a “strict liability” provision, then it should apply whether or not a defendant was less involved in the offense than others. This exemption from the application of the enhancement for those less culpable clearly suggests that the enhancement has a *mens rea* element because those less involved are less likely to have actual knowledge of where the methamphetamine came from and are not “involved” in importation. The enhancement should not be applied to Mr. Baccus without proof of knowledge of importation.

The U.S. Sentencing Commission has expressly stated that the importation enhancement was “directed” at importation activity. *See* U.S.S.G. Appendix C, Amend. 555 (November, 1997). To enhance Mr. Baccus’ sentence by two levels in no way serves the purpose of a provision “directed” at importation activity where he had no knowledge of importation. The exemption for those less involved in a criminal organization suggests that there is a *mens rea* element. Moreover, where the sentencing enhancement provision is ambiguous, as §2D1.1(b)(5) is, the doctrine of lenity should be applied. It is settled that the rule of lenity applies not only to the substantive scope of criminal prohibitions, but also to questions about the severity of sentencing. *Bifulco v. United States*, 447 U.S. 381, 387, 100 S.Ct. 2247 (1980); *see generally* Phillip M. Spector, *The Sentencing Rule of Lenity*, 33 U. TOL. L. REV. 511, 513 (Spring 2002) (nearly half of all recent cases in which the Supreme Court has invoked the rule of lenity have been sentencing cases); *accord Leocal v. Ashcroft*, 543 U.S. 1, 11 n. 8, 125 S.Ct. 377, 384 n. 8 (2004) (the rule of lenity applies where a statute has both criminal and noncriminal applications); *United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 518 n. 10, 112 S.Ct. 2102 (1992) (same).

The Supreme Court’s holding in *Elonis v. United States*, 575 U.S. 723, 135 S.Ct. 2001 (2015), is supportive of the argument of § 2D1.1(b)(5) as requiring that the defendant had to know the methamphetamine was imported. That case involved Anthony Elonis, who posted rap lyrics on his Facebook page that contained graphically violent

language and imagery concerning his estranged wife, co-workers, elementary-school students, and state and local law enforcement. *See id.* at 2004–07. Concluding that a reasonable person would foresee that Elonis’ posts would be interpreted as a threat, a jury convicted Elonis of violating 18 U.S.C. § 875(c), which makes it a federal crime to transmit in interstate commerce “any communication containing any threat ... to injure the person of another.” *Id.* at 2007. The United States Court of Appeals for the Third Circuit affirmed Elonis’ conviction. *See id.* The Supreme Court reversed.

Chief Justice John G. Roberts began his analysis by noting that the dictionary definitions of threat do not set forth an intent requirement. *See id.* at 2008 (“These definitions ... speak to what the statement conveys[,] not to the mental state of the author”). The Chief Justice explained, however, that the “‘mere omission from a criminal enactment of any mention of criminal intent’ should not be read ‘as dispensing with’” such a requirement. *Id.* at 2009 (quoting *Morissette v. United States*, 342 U.S. 246, 250, 72 S.Ct. 240 (1952)). Chief Justice Roberts stated that this rule of construction reflects the basic principle that “wrongdoing must be conscious to be criminal” and that a defendant must be “blameworthy in mind” before he can be found guilty. *Id.* at 2009 (internal quotation marks omitted). Chief Justice Roberts said that the trial judge erred in using a reasonable person standard, because that standard did not require proof that Elonis was aware of his wrongdoing. *See id.* at 2009–12. Not specifying the intent that § 875(c) requires, the Chief Justice said only that “negligence is not sufficient.” *Id.* at 2013. The

same argument may apply to the facts here. Neither the PSR nor the Addendum suggest that Mr. Baccus had any knowledge of the methamphetamine's origin. As Chief Justice Roberts stated, "wrongdoing must be conscious to be criminal" and that a defendant must be "blameworthy in mind" before he may be punished for his actions. *See id.* at 2009.

Because the district court improperly enhanced Mr. Baccus's sentence by two levels under § 2D1.1(b)(5) which calculated an improper guideline range, the court committed a procedural error. *See United States v. Delgado-Martinez*, 564 F.3d 75, 752 (5th Cir. 2009) (citing *Gall*, 552 U.S. 38, 128 S.Ct. at 597). Under the appropriate *de novo* review, this Court is respectfully requested to find that the district court committed clear error and be "left with the definite and firm conviction that a mistake has been committed." *United States Gypsum Co.*, 333 U.S. at 395, 68 S.Ct. 525.

2. The Trial Court enhancing Appellant's guideline range due to drug purity presents a serious danger to the sound administration of justice.

The Guidelines refer to three categories of methamphetamine for purposes of determining the quantity of the drug: methamphetamine "mixture," "actual" methamphetamine," and "Ice." *See U.S.S.G. § 2D1.1(c)*, cmts. n. B, C. Actual methamphetamine refers to "the weight of the controlled substance, itself, contained in the" methamphetamine mixture. U.S.S.G. § 2D1.1(c), cmt. n. B. For instance, a methamphetamine mixture weighing 10 grams with 50% purity contains five grams of actual methamphetamine. *See id.* "Ice" refers to a mixture "containing d-

methamphetamine hydrochloride of at least 80% purity.” U.S.S.G. § 2D1.1(c), cmt. n. C.

Each base-offense level in § 2D1.1(c) corresponds to a range of weights of methamphetamine mixture, actual methamphetamine, and ice.

Importantly, the Guidelines treat one gram of actual methamphetamine or “ice” as ten grams of methamphetamine mixture. *See* U.S.S.G. § 2D1.1(c). For example, the base-offense level is 14 for offenses involving, on the one hand, at least five grams but less than 10 grams of methamphetamine mixture, or on the other, at least 500 milligrams but less than one gram of actual methamphetamine or ice. *See* U.S.S.G. § 2D1.1(c)(13). Courts must apply the base-offense level as determined by the weight of the methamphetamine mixture or actual methamphetamine within the mixture, whichever results in the highest base-offense level. *See* U.S.S.G. § 2D1.1(c) cmt. n. B. If the mixture is more than 80% pure and thus qualifies as ice, the weight of the entire mixture is treated as if it were 100% pure, and thus all actual methamphetamine.

To illustrate the 10-to-1 ratio between methamphetamine mixture and actual methamphetamine or ice, consider Defendants A and B. Each of them was convicted of distributing a packet containing four grams of methamphetamine mixture. While Defendant A’s packet had 75% purity (meaning three grams of actual methamphetamine), Defendant B’s had 40% purity (meaning 1.6 grams of actual methamphetamine). Because of the higher purity, Defendant A would have a base-offense level of 20, *see* U.S.S.G. § 2D1.1(c)(10) (applying where actual methamphetamine is at least three grams but less

than four), but Defendant B would have a base-offense level of 16, *see* U.S.S.G. § 2D1.1(c)(12) (applying where the actual methamphetamine is at least one gram but less than two), even though the mixtures weighed the same. *See* U.S.S.G. § 2D1.1(c).

The outdated theory underpinning higher punishments for higher purity methamphetamine is that purity reflects the offender's role in the drug-distribution chain. U.S.S.G. § 2D1.1, cmt. n. 27(C). Specifically, the Guidelines explain: Since controlled substances are often diluted and combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs. *Id.*; *see United States v. Ibarra-Sandoval*, 265 F.Supp.3d 1249, 1255 (D. N.M. 2017) (recognizing the language in § 2D1.1, cmt. n.27(C) as setting forth the “underlying theory” behind increasing sentences based on drug purity).

U.S.S.G. § 2D1.1, cmt. n. 27(C) explains that, while drugs such as methamphetamine and PCP have a consideration of purity built into their applicable guidelines, other drugs that do not, such as heroin, may warrant an upward departure if they are of unusually high purity. As noted by some District Judges, “There is no explanation, however, even in this comment, for why PCP, amphetamine, methamphetamine, hydrocodone, and oxycodone should be distinguished from other drugs, such as heroin, by addressing purity in the applicable Guideline itself, rather than in

an upward departure.” *United States v. Nawanna*, 321 F.Supp.3d 943, 951 n.6 (N.D. Iowa 2018).

Just as courts have criticized the link between drug quantity and the offender’s role, they have also debunked the Guidelines’ assumed connection between drug purity and a particular Defendant’s elevated standing in that criminal organization. In *Ibarra-Sandoval*, for example, Judge Brack wrote that the assumed purity-role connection is “divorced from reality.” *Ibarra-Sandoval*, 265 F.Supp.3d at 1255. He explained that Mexican cartels’ increased control over methamphetamine distribution had dramatically increased the national average purity of methamphetamine. *Id.* The opinion cited Drug Enforcement Agency (DEA) statistics showing that the mean national purity grew from as low as 38.7% in 2007, to as high as 94% by 2013. *Id.* (citing Drug Enforcement Agency, 2013 National Level STRIDE Price and Purity Data, at 4 (2015)). Given that the Guidelines treat actual methamphetamine and ice more harshly than methamphetamine mixture, the national average of more than 90% purity “mean[t] that the sentencing Guidelines would treat the average individual convicted of a crime involving methamphetamine as a kingpin or leader, even though that simply is not true.” *Id.* at 1255-56.

In other words, the high purity of methamphetamine in a specific case does not reliably indicate the offender’s role in the drug trade, given that methamphetamine throughout the U.S. market has become highly pure. For example, Defendant Ibarra-Sandoval was caught with 98.1% pure methamphetamine. *Id.* at 1256. However, he was a

“low-level courier who didn’t even know the contents of the bag he carried except that they contained drugs.” *Id.* The high drug purity did not reflect his role in the offense or culpability at all. Applying the purity enhancement engages in “false uniformity by allowing a single consideration, drug purity, to mask Mr. Ibarra-Sandoval’s true role in the crime.” *Id.* Based on this policy disagreement, the court varied downward by applying the guideline range for methamphetamine mixtures, instead of actual methamphetamine or ice. *See id.*

While the most recent drug-purity statistics cited in *Ibarra-Sandoval* were from 2013, a May 2018 opinion by Judge Bennett shows that methamphetamine purity in the U.S. remains high, and thus that Judge Brack’s policy critique remains applicable: “[B]ecause today’s methamphetamine is substantially pure, purity is not a proxy for relative culpability.” *See Nawanna*, 321 F.Supp.3d at 951. There, Judge Bennett cited a 2017 DEA report stating that, from 2011 to 2016, “the average purity of one gram of methamphetamine has ranged from a low of 85.5 percent in early 2011 to almost 95 percent in early 2014, and most recently, for the third quarter of 2016, averaged 93.5 percent pure.” *Id.* (citing Drug Enforcement Agency, 2017 National Drug Threat Assessment, at 70 (2017)). Based on these statistics showing continued high purity, and other data illustrating the harshness of sentences for methamphetamine offenses, Judge Bennett⁶ agreed with Judge Brack that “the Commission’s assumption regarding the connection between methamphetamine purity and criminal role is divorced from reality.”

Id. at 954 (quoting Judge Bennett noted, for instance, that the “average and median length of imprisonment for methamphetamine offenders during fiscal year 2017 were 91 months and 72 months, respectively, higher than for any other drug, and a 30% higher average and a 26.32% higher median than for heroin (70 months and 57 months, respectively).”

Nawanna, 321 F.Supp.3d at 953 (citing United States Sentencing Commission, 2017 Datafile, USSCFY17, Figure J); *Ibarra-Sandoval*, 265 F.Supp.3d at 1255); *see also* *United States v. Hartle*, 2017 WL 2608221, at *1 (D. Idaho, June 15, 2017) (Winmill, C.J.) (“Due to increases in the average purity of methamphetamine sold today, purity is no longer an accurate indicator of a defendant’s culpability or role in a drug enterprise....”).

As Judge Bennett aptly summarized, because high-purity methamphetamine is currently available “at all levels of the distribution chain, virtually all defendants today face enhanced punishment for a factor present in virtually all methamphetamine cases, not enhanced punishment based on individualized determinations.” *Nawanna*, 321 F.Supp.3d at 954. In 2018, district courts across the country followed in *Nawanna*’s footsteps. *See* *United States v. Harry*, 313 F.Supp.3d 969, 974 (N.D. Iowa 2018) (Strand, C.J.) (incorporating *Nawanna* by reference and rejecting the actual and ice methamphetamine guidelines because “drug purity is not an accurate proxy for culpability” and the “10-to-1 ratio established in the Guidelines is not based on empirical evidence”); *United States v. Saldana*, U.S. Dist. LEXIS 110790, at *7-8 (W.D. Mich. July 3, 2018)(citing *Nawanna* in finding that the methamphetamine guidelines lack empirical support and are “based on the

flawed premise that equates drug purity with a greater role in the offense"); *United States v. Ferguson*, 2018 WL 3682509, at *1 (D. Minn. Aug. 2, 2018) (Tunheim, C.J.)(agreeing with *Nawanna* and *Ibarra-Sandoval* and supporting downward variance with the finding that "methamphetamine purity is no longer a proxy for, and thus not probative of, the defendant's role or position in the chain of distribution"). Admittedly, methamphetamine that is at least 80% pure and therefore qualifies as ice can receive an even greater sentence increase based on purity, because the Guidelines treat ice "as if it were 100 percent pure methamphetamine." *Nawanna*, 321 F.Supp.3d at 945 n.2. But even for methamphetamine mixtures that do not qualify as ice, the guidelines for actual methamphetamine still result in higher sentences based on purity.

In Defendant Baccus' case the actual weight of methamphetamine mixture attributed to him weighed a total of 5,036 grams. (Record in the Court of Appeals, at 291) Based on their 98.7% purities this amounted to 4,925.2 grams of actual methamphetamine. The guidelines based on a methamphetamine mixture would have resulted in a 34 base-offense level, because 5,036 grams of methamphetamine mixture is "at least 5KG but less than 15 KG." U.S.S.G. § 2D1.1(c)(3). However the guidelines based on actual methamphetamine resulted in a 38 base-offense level, because 4,925.2 grams of actual methamphetamine is "4.5 KG or more of methamphetamine (actual)." U.S.S.G. § 2D1.1(c)(1).

The policy criticisms outlined in the above-cited opinions apply to cases like Mr. Baccus, which do not involve ice, because the guidelines' 10-to-1 ratio led him to receive a higher base-offense level (4 points) due to the purity of the methamphetamine involved. In sum, the district court should have joined other district courts in rejecting the methamphetamine guidelines' 10-to-1 ratio because it is "based on a flawed assumption that methamphetamine purity is a proxy for role in the offense." *Nawanna*, 321 F. Supp. 3d at 955. Under the appropriate *de novo* review, this Court is respectfully requested to find that the district court committed clear error and be "left with the definite and firm conviction that a mistake has been committed." *United States Gypsum Co.*, 333 U.S. at 395, 68 S.Ct. 525.

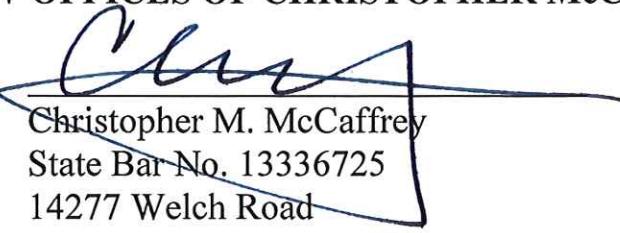
CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 9th day of November, 2021.

LAW OFFICES OF CHRISTOPHER McCAFFREY

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ATTORNEY FOR PETITIONER

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 12, 2021

No. 20-10748
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MARC BLANE BACCUS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-364-17

Before BARKSDALE, ENGELHARDT, and OLDHAM, *Circuit Judges.*

PER CURIAM:*

Marc Blane Baccus pleaded guilty to one count of conspiracy to possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(C). The district court sentenced him to, *inter alia*, a within-Sentencing Guidelines term of 235-months'

* 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. 20-10748

imprisonment. Baccus contends the court erred by: refusing to reduce his offense level under Guideline § 3B1.2 (mitigating role); applying a two-level sentencing enhancement pursuant to Guideline § 2D1.1(b)(5) (importation of methamphetamine); and refusing to vary downward from the Guidelines range because his offense level was based on the empirically flawed assumption that methamphetamine purity shows an enhanced role in an offense.

Although post-*Booker*, the Guidelines are advisory only, the district court must avoid significant procedural error, such as improperly calculating the Guidelines sentencing range. *Gall v. United States*, 552 U.S. 38, 46, 51 (2007). If no such procedural error exists, a properly preserved objection to an ultimate sentence is reviewed for substantive reasonableness under an abuse-of-discretion standard. *Id.* at 51; *United States v. Delgado-Martinez*, 564 F.3d 750, 751–53 (5th Cir. 2009). In that respect, for issues preserved in district court, its application of the Guidelines is reviewed *de novo*; its factual findings, only for clear error. *E.g., United States v. Cisneros-Gutierrez*, 517 F.3d 751, 764 (5th Cir. 2008).

A court’s application of a mitigating-role reduction under Guideline § 3B1.2 is a factual finding, reviewed, as discussed above, only for clear error. *United States v. Gomez-Valle*, 828 F.3d 324, 327 (5th Cir. 2016) (citation omitted). In that regard, defendant has the burden of showing, “by a preponderance of the evidence: (1) the culpability of the average participant in the criminal activity; and (2) . . . [defendant] was substantially less culpable than that participant”. *United States v. Castro*, 843 F.3d 608, 613 (5th Cir. 2016) (footnote omitted). Baccus has not shown the requisite clear error. He was entrusted as a courier with a large quantity of methamphetamine and, further, acted as a distributor. *See, e.g., United States v. Kearby*, 943 F.3d 969, 978 (5th Cir. 2019) (affirming denial of role adjustment and explaining purchase and sale of a drug is “part and parcel of a drug conspiracy”); *United*

No. 20-10748

States v. Torres-Hernandez, 843 F.3d 203, 204, 209–10 (5th Cir. 2016) (affirming denial of role adjustment where defendant physically transported marihuana within the United States as part of a distribution chain and was paid for his participation).

Regarding the court's overruling Baccus' objection to an enhancement under Guideline § 2D1.1(b)(5), he claims there was no showing he was aware the methamphetamine was imported. He concedes this issue is foreclosed. *See United States v. Foulks*, 747 F.3d 914, 915 (5th Cir. 2014) (citing *United States v. Serfass*, 684 F.3d 548, 549–54 (5th Cir. 2012)). He presents the issue only to preserve it for possible further review.

Finally, Baccus maintains the court procedurally erred in refusing to vary downward from the Guidelines sentencing range because his enhanced base offense level, predicated on the imported methamphetamine's purity, is empirically unsound. Regardless of whether the Guidelines are empirically based, it is for the Sentencing Commission to alter or amend them. *United States v. Miller*, 665 F.3d 114, 121 (5th Cir. 2011) ("[W]e will not reject a Guidelines provision as 'unreasonable' or 'irrational' simply because it is not based on empirical data and even if it leads to some disparities in sentencing."). Courts have discretion to vary from the Guidelines because of a policy disagreement, but they are not required to do so. *See United States v. Malone*, 828 F.3d 331, 338–39 (5th Cir. 2016). The court understood it could vary from the Guidelines, but declined.

AFFIRMED.

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 12, 2021

No. 20-10748
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

MARC BLANE BACCUS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-364-17

Before BARKSDALE, ENGELHARDT, and OLDHAM, *Circuit Judges.*

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.



Certified as a true copy and issued
as the mandate on Sep 03, 2021

Attest:

Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 03, 2021

Ms. Karen S. Mitchell
Northern District of Texas, Fort Worth
United States District Court
501 W. 10th Street
Room 310
Fort Worth, TX 76102

No. 20-10748 USA v. Baccus
USDC No. 4:19-CR-364-17

Dear Ms. Mitchell,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Renee S. McDonough

By: Renee S. McDonough, Deputy Clerk
504-310-7673

cc:

Mr. Christopher Michael McCaffrey
Mr. Ryan Patrick Niedermair
Ms. Leigha Amy Simonton

APPENDIX B

FILED**United States District Court**Northern District of Texas
Fort Worth Division**July 17, 2020**KAREN MITCHELL
CLERK, U.S. DISTRICT COURT

UNITED STATES OF AMERICA

§

v.

§

Case Number: 4:19-CR-364-P(17)

MARC BLANE BACCUS

§

JUDGMENT IN A CRIMINAL CASE

The government was represented by Assistant United States Attorney Shawn Smith. The defendant, MARC BLANE BACCUS, was represented by Loren Green.

The defendant pleaded guilty on January 21, 2020 to count two of the three count Information filed on December 11, 2019. Accordingly, the court ORDERS that the defendant be, and is hereby, adjudged guilty of such count involving the following offense:

<u>Title & Section / Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count</u>
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	September 2019	2

As pronounced and imposed on July 17, 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 235 months.

The court recommends to the Bureau of Prisons that defendant be allowed to participate in the Institution Residential Drug Abuse Treatment Program.

The court recommends to the Bureau of Prisons that defendant be permitted to participate in any vocational programs, if eligible.

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

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 and that while on 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 weapon.
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 within 72 hours of release from the custody of the Federal Bureau of Prisons.
6. 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.
7. The defendant shall participate in a program approved by the probation officer for treatment of narcotic or drug or alcohol dependency that will include testing for the detection of substance use, abstaining from the use of alcohol and all other intoxicants during and after completion of treatment, contributing to the costs of services rendered (copayment) at the rate of at least \$25 per month.
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 17th day of July, 2020.



MARK T. PITTMAN
UNITED STATES DISTRICT JUDGE

RETURN

I have executed the imprisonment part of this Judgment as follows:

Defendant delivered on _____, 2020 to _____
at _____, with a certified copy of this Judgment.

United States Marshal for the
Northern District of Texas

By _____
Deputy United States Marshal