

No. _____

In the
Supreme Court of the United States

Antonio Lorensito Garrido,

Petitioner,

v.

United States of America,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. Should this Court resolve a division among the circuit courts regarding whether the two-level enhancement pursuant to U.S.S.G. §2D1.1(b)(5) for the importation of methamphetamine requires some level of intent or knowledge?

PARTIES TO THE PROCEEDING

Petitioner is Antonio Lorensito Garrido, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Antonio Lorensito Garrido seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is located within the Federal Appendix at *United States v. Antonio Lorensito Garrido*, 851 Fed. Appx. 486 (5th Cir. June 25, 2021) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on June 25, 2021. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND RULES PROVISIONS

This petition involves the 2-level guideline enhancement for importation of methamphetamine, U.S.S.G. §2D1.1(b)(5) which 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.

LIST OF PROCEEDINGS BELOW

1. *United States v. Antonio Lorensito Garrido* 4:19-CR-00309-Y-3, United States District Court for the Northern District of Texas. Judgment and sentence entered on July 1, 2020. (Appendix B).
2. *United States v. Antonio Lorensito Garrido*, 851 Fed. Appx. 486 (5th Cir. June 25, 2021) No. 20-10683, Court of Appeals for the Fifth Circuit. Judgment affirmed on June 25, 2021. (Appendix A)

STATEMENT OF THE CASE

District Court proceedings

On October 17, 2019, Antonio Lorensito Garrido (A. Lorensito Garrido) was named in a one count indictment, charging A. Lorensito Garrido, along with his brother, Jose Lorensito Garrido (J. Lorensito Garrido) and Gamaliel Sanchez Lopez (Sanchez Lopez), with conspiracy to possess with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine. (ROA.18). On March 4, 2020, A. Lorensito Garrido, along with J. Lorensito Garrido, pleaded guilty to the single count indictment without a plea agreement. *See* (ROA. 124,186,192,232). In support of his guilty plea, A. Lorensito Garrido entered in to the following written stipulation of facts in the factual resume:

Beginning on a date unknown and continuing until on or about September 10, 2019, ANTONIO LORENSITO GARRIDO, and others, received more than 500 grams of a mixture or substance containing a detectable amount of methamphetamine from at least one Mexican based source. ANTONIO LORENSITO GARRIDO and others assisted in the transportation and attempted delivery of the methamphetamine from Magnolia, TX to Fort Worth, TX.

ANTONIO LORENSITO GARRIDO stipulates to the facts above and that he conspired to possess with intent to distribute at least 500 grams of methamphetamine.

(ROA.126).

The facts in the record, including as set forth in the PSR and as set forth in the Drug Enforcement Agency (DEA) reports attached to government pleadings, show that the DEA was investigating a Mexico-based source of supply of large quantities of methamphetamine. *See* (ROA.108-112,275-277). The DEA introduced a

confidential source (CS) to the Mexico-based source of supply. The CS had detailed conversations about the recrystallizing process with the source of supply and agreed to convert methamphetamine. *See id.* at 108, 275. The source of supply agreed to supply 66 kilograms of methamphetamine and also told the CS that another individual would be calling to arrange the transfer of the 66 kilograms. *See id.* A few minutes after this conversation, codefendant Sanchez Lopez called the CS and told him when and where the methamphetamine would be delivered. *See id.* at 109,275. Later, the three codefendants showed up at the agreed upon location in a black Dodge truck and were arrested, and 67 kilograms of methamphetamine were found in several packages in the truck. *See id.* at 109-110, 276.

In the PSR, the probation officer applied a 38 base offense level, pursuant to U.S.S.G. §2D1.1. (ROA.278). The probation officer added a two-level enhancement, pursuant to U.S.S.G. §2D1.2(b)(5), for the methamphetamine being imported from Mexico, noting that Lorensito Garrido did not qualify for a mitigating role reduction under U.S.S.G. §3B1.2. *Id.* The PSR also added a two-level enhancement, pursuant to U.S.S.G. §2D1.2(b)(12) for maintaining a premises for the purpose of storing methamphetamine. *Id.* The PSR provided for a two-level reduction under the safety valve provisions, U.S.S.G. §2D1.1(b)(18), resulting in an adjusted offense level of 40. *See* (ROA.278-279). After allowing for a three-level reduction for acceptance of responsibility, the total offense level was 37. (ROA.279). A. Lorensito Garrido had no criminal history points, resulting in a criminal history category I. (ROA.279). At an

offense level 37 and a criminal history category I, A. Lorensito Garrido's advisory imprisonment range was 210-262 months. (ROA.283).

A. Lorensito Garrido objected to the PSR and the two-level enhancement for importation on the grounds that the facts did not support a finding that he had knowledge the methamphetamine came from Mexico and also on the grounds that the facts showed A. Lorensito Garrido qualified for a mitigating role adjustment and, therefore, the two level enhancement for importation did not apply. *See* (ROA.288-291). He also objected to the two level enhancement for maintaining a place for the purpose of storing methamphetamine. *See* (ROA.291-294).

In an addendum to the PSR, the probation officer rejected both of A. Lorensito Garrido's objections. The probation officer relied upon *United States v. Serfass*, 684 F.3d 548 (5th Cir. 2012) to reject the argument that A. Lorensito Garrido had no knowledge that the methamphetamine came from Mexico. (ROA.312). The probation officer also rejected the argument for a mitigating role reduction stating, "[T]he defendant is not substantially less culpable than the average participant" (ROA.312-313).

At the sentencing hearing the district court sustained the objection to maintaining a place but rejected the request for a mitigating role reduction and rejected the objection to the enhancement for importation of methamphetamine.¹

¹ These issues were argued at the co-defendant's sentencing hearing which was held on the same day and immediately prior to Lorensito Garrido's sentencing. It was clear from the sentencing hearings that the district court and the parties were relying on the court's rulings in the co-defendant's hearing, and Lorensito Garrido

After granting the objection to the maintaining a premise objection, the district court found that the total offense level was 35, the criminal history category was I, and the advisory imprisonment range was 168-210. (ROA.262). The district court imposed a sentence of 144 months, which was a downward variance from the advisory imprisonment range. (ROA.261,263).

On Appeal

Lorensito Garrido argued on appeal that he should have received a reduction for mitigating role in the offense and, therefore, the two-level enhancement for importation of methamphetamine should not have applied. He also argued, regardless of the mitigating role issue, that the importation increase should not have applied because there was no evidence that he had knowledge the methamphetamine was imported, recognizing that this argument was foreclose in the Fifth Circuit but conflicted with the position of the Ninth Circuit. The Court of Appeals for the Fifth Circuit affirmed the judgment and sentence, rejecting Lorensito Garrido's mitigating role argument and recognizing that importation argument was foreclosed. *See United States v. Lorensito Garrido*, 851 Fed. Appx. at 488, Appendix A. This Court should grant review to resolve that circuit split on the importation issue.

supplemented the record with this earlier hearing. *See* (ROA.262-264,265-266; ROA.20-10740.185-193,200-201).

REASONS FOR GRANTING THIS PETITION

- I. This Court should grant review to resolve a division among the circuit courts regarding whether the two-level enhancement pursuant to U.S.S.G. §2D1.1(b)(5) for the importation of methamphetamine requires some level of intent or knowledge .**

Section 2D1.2(b)(5) provides for the following two-level enhancement:

(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.

U.S.S.G. §2D1.1(b)(5).

A. Lorensito Garrido argued in the trial court that the importation enhancement should have not applied because he had no knowledge that the methamphetamine was imported from Mexico. *See* (ROA.262-263,265-266,288-294). The Fifth Circuit has specifically rejected this argument. *See United States v. Serfass*, 684 F.3d 548, 552 (5th Cir. 2012). In *Serfass*, the Fifth Circuit held that the phrase “that the defendant knew were imported unlawfully” only applied to listed chemicals. *See id.* at 551.

However, there is a disagreement between this Court and the Ninth Circuit on this issue. *See United States v. Job*, 871 F.3d 852, 870(9th Cir. 2017) (requiring proof the defendant was personally involved in the importation). Other circuits have declined to resolve the issue when the facts support that the factual finding that the defendant had knowledge that the methamphetamine was imported. *See United*

States v. Rivera-Mendoza, 682 F.3d 739, 734 (8th Cir. 2012); *United States v. Holguin*, 258 Fed. Appx. 177, 179 (10th Cir. 2007).

In the present case, there was no evidence supporting the conclusion that either of the Garrido brothers knew the methamphetamine was imported from Mexico. There simply is no reasonable question at all that the Garrido brothers did not participate in the planning or organizing of this criminal activity. The co-defendant Sanchez Lopez had contact with the Mexican source of supply and called the CS and told him when and where the methamphetamine would be delivered. *See* (ROA.109,275). Sanchez Lopez had the hand written notes with 24 numbers that corresponded to the weight of each package of methamphetamine found in the truck. *See* (ROA.110,276). Sanchez Lopez admitted that the source of supply had him move the methamphetamine and that Sanchez had picked up the methamphetamine the previous evening from an unknown individual driving a white truck. *See id.* Sanchez had the phone number for the source of supply, and several text messages coordinating the transaction were found on his telephone. *See id.* The facts in the record show that the Garrido brothers' involvement was limited to leasing the residence where the tires were removed, removing the tires on a truck and removing the methamphetamine from those tires, and riding with Sanchez to the drug transaction. *See id.* at 110,276. In a debrief with the government, which the government believe to be true, Lorensito Garrido told the agents he did not know he was going to be involved in distributing methamphetamine until he and his brother helped remove the methamphetamine from the tires of the truck. *See* (ROA.289-291).

Sanchez-Lopez had all of the contact with the source of supply and made all the arrangements for the transaction. *See id.*

The district court assumed that the brothers did not know they were involved in a drug deal until they removed the tires from the truck and took the tires inside the residence and removed the packages of methamphetamine. *See* (ROA.200-201). The bottom line is that there simply is no evidence that the Garrido brothers knew that the methamphetamine was imported from Mexico. Moreover, the only evidence that the methamphetamine was even imported was hearsay statements from an unidentified source who, from the record, the Garrido brothers did not even know.

This is a valid vehicle for the Court to grant review on this issue. The argument was presented to the district court and the court of appeals and has been preserved for plenary review. Petitioner recognizes that this issue might well be an issue normally left for the Sentencing Commission to resolve. However, since 2019, the commission has lacked a quorum. Until this month, the latest version of the Sentencing Guidelines Manual was from 2018. In fact, when it finally did release a November 2021 version of the manual, the Commission felt compelled to explain “[t]he Commission has received feedback indicating that hard copies of the 2018 Guideline Manual are significantly worn and that there is a limited supply of new copies available.” 2021 Guidelines Manuel Annotated, “A Message From the Acting Chair”, found at <https://www.ussc.gov/guidelines/2021-guidelines-manual-annotated>. The new version contains no guidance on the application of the importation

enhancement or any other guideline provision. It merely provides statutory updates to Appendix B. *See id.*

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 and resolve the division between the circuit courts on this issue.

Respectfully submitted this 22nd day of November, 2021.

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