

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

APPENDIX

/s/ Christopher A. Curtis

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- Appendix A Judgment and Opinion of Fifth Circuit, *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. (unpublished).
- Appendix B Judgment and Sentence of the United States District Court for the Northern District of Texas, *United States v. Antonio Lorensito Garrido* 4:19-CR-00309-Y-3. Judgment and sentence entered on July 1, 2020.

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 25, 2021

Lyle W. Cayce
Clerk

No. 20-10683
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANTONIO LORENSITO GARRIDO,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:19-CR-309-3

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

PER CURIAM:*

Antonio Lorensito Garrido pleaded guilty to conspiring to possess with intent to distribute 500 grams or more of a mixture or substance containing methamphetamine, in violation of 21 U.S.C. §§ 846 and 841(a)(1), (b)(1)(A). The district court varied downward from the advisory

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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guidelines range and sentenced him to 144 months in prison with five years of supervised release. On appeal, he challenges the denial of a mitigating-role adjustment under U.S.S.G. § 3B1.2 and the imposition of an enhancement under U.S.S.G. § 2D1.1(b)(5). We find no error and affirm.

Under § 3B1.2, a downward adjustment is available to a defendant “who plays a part in committing the offense that makes him substantially less culpable than the average participant in the criminal activity.” § 3B1.2, cmt. n.3(A). It is the defendant’s burden to prove by a preponderance of the evidence that such an adjustment is warranted. *United States v. Torres-Hernandez*, 843 F.3d 203, 207 (5th Cir. 2016). To carry this burden, a defendant must show “(1) the culpability of the average participant in the criminal activity; and (2) that [he] was substantially less culpable than that participant.” *United States v. Castro*, 843 F.3d 608, 613 (5th Cir. 2016) (footnote omitted). Whether a defendant is entitled to a § 3B1.2 adjustment is a factual determination reviewed for clear error, and “[a] factual finding is not clearly erroneous if it is plausible in light of the record read as a whole.” *United States v. Gomez-Valle*, 828 F.3d 324, 327 (5th Cir. 2016) (internal quotation marks and citation omitted).

The commentary to § 3B1.2 provides a “non-exhaustive list of factors” for courts to consider in assessing culpability for purposes of this Guideline. *See* § 3B1.2, cmt. n.3(C)(i)–(v). As Lorensito Garrido notes, some of the factors tend to favor an adjustment here—for instance, there is no evidence that he planned or organized the criminal activity, or that he was involved in decision making. These “are only factors,” however, *Torres-Hernandez*, 843 F.3d at 209, and “how those factors are weighed remains within the sentencing court’s discretion,” *id.* at 210. The focus of § 3B1.2 is the defendant’s relative culpability, the determination of which is “heavily dependent” on the facts of his case. § 3B1.2, cmt. n.3(C); *see United States v. Escobar*, 866 F.3d 333, 335 (5th Cir. 2017). It is not apparent on this record

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that Lorensito Garrido is substantially less culpable than the average participant in the offense, and the contrary determination of the district court is plausible in light of the record as a whole. Therefore, the determination was not clearly erroneous. *See United States v. Bello-Sanchez*, 872 F.3d 260, 264–65 (5th Cir. 2017); *Gomez-Valle*, 828 F.3d at 327.

Regarding the § 2D1.1(b)(5) enhancement, Lorensito Garrido argues it was unwarranted because he was entitled to a mitigating-role adjustment under § 3B1.2. This argument fails for the reasons given above. Lorensito Garrido also contends that the district court should not have imposed the enhancement because he was unaware the methamphetamine in question was imported. As he acknowledges, however, that argument is foreclosed by binding precedent. *See United States v. Foulks*, 747 F.3d 914, 915 (5th Cir. 2014); *United States v. Serfass*, 684 F.3d 548, 550–53 (5th Cir. 2012); *see also Jacobs v. Nat’l Drug Intel. Ctr.*, 548 F.3d 375, 378 (5th Cir. 2008).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
Fort Worth Division

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 4:19-CR-309-Y(3)

Matthew Weybrecht, assistant U.S. attorney

ANTONIO LORENSITO-GARRIDO

Jaidee Serrano, attorney for the defendant

On March 4, 2020, the defendant, Antonio Lorensito-Garrido, entered a plea of guilty to count one of the one-count indictment. Accordingly, the defendant is adjudged guilty of such count, which involves the following offense:


<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE CONCLUDED</u>	<u>COUNT</u>
21 U.S.C. § 846 (21 U.S.C. §§ 841(a)(1) and (b)(1)(A))	Conspiracy to Possess with Intent to Distribute a Controlled Substance	September 10, 2019	1

The defendant is sentenced as provided in pages two through three of this judgment. The sentence is imposed under Title 18, United States Code § 3553(a), taking the guidelines issued by the United States Sentencing Commission under Title 28, United States Code § 994(a)(1), as advisory only.

The defendant shall pay immediately a special assessment of \$100.00 for count one of the one-count indictment.

The defendant shall notify the United States attorney for this district within thirty 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.

Sentence imposed June 30, 2020.


TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

Signed July 1, 2020.

Judgment in a Criminal Case

Defendant: Antonio Lorensito-Garrido

Case Number: 4:19-CR-309-Y(3)

Judgment -- Page 2 of 3

IMPRISONMENT

The defendant, Antonio Lorensito-Garrido, is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of 144 months on count one of the one-count indictment.

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

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of 5 years on count one of the one-count indictment.

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

In the event the defendant is not deported immediately upon release from imprisonment, or should the defendant ever be within the United States during any portion of the term of supervised release, the defendant shall also comply with the standard conditions recommended by the U.S. Sentencing Commission at §5D1.3(c) of the United States Sentencing Commission Guidelines Manual, and shall:

- (1) not commit another federal, state, or local crime;
- (2) not unlawfully possess illegal controlled substances;
- (3) shall not possess a firearm, destructive device, or other dangerous weapon;
- (4) cooperate in the collection of DNA as directed by the probation officer as directed by the probation officer, as authorized by the Justice for All Act of 2004;
- (5) report in person to the probation office in the district to which the defendant is released from the custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry;
- (6) not illegally re-enter the United States, if deported, removed, or allowed voluntary departure; and
- (7) refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court

FINE/RESTITUTION

The Court does not order a fine or costs of incarceration because the defendant does not have the financial resources or future earning capacity to pay a fine or costs of incarceration.

Restitution is not ordered because there is no victim other than society at large.

RETURN

I have executed this judgment as follows:

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

United States marshal

BY _____
deputy marshal