

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2021

KARINA LIZETT JUAREZ,

v.

UNITED STATES OF AMERICA,
Respondent.

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

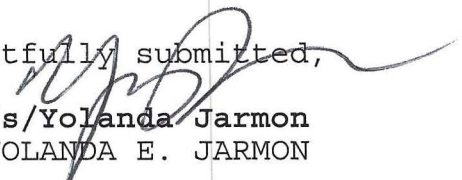
MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Petitioner, **KARINA LIZETT JUAREZ**, pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(6), asks leave to file the accompanying Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed in forma pauperis. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit.

Date:

December 28, 2021.

Respectfully submitted,


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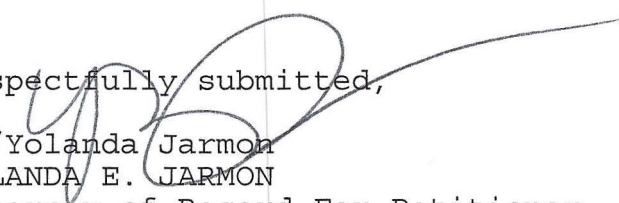
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QUESTIONS PRESENTED

I. Whether the Fifth Circuit's cursory review of the facts related to a warranted mitigating adjustment under U.S.S.G. § 3B1.2 violated federal law in light of the fact that **Karina Lizett Juarez** acted merely as a mule or courier as defined by the sentencing guidelines.

Because the proper application of the sentencing guidelines is of exceptional importance to the administration of justice in federal criminal cases, this Court should decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

PARTIES TO THE PROCEEDINGS

All parties to the proceedings are named in the caption of the case before the Court.

TABLE OF CONTENTS

	<u>Page</u>
Questions Presented	i
Parties to the Proceedings.....	ii
Table of Contents	iii
Table of Citations	iv
Prayer	1
Opinions Below	1
Jurisdiction	1
Federal Statute Involved	2
Statement of the Case	2
A. Course of Proceedings	2
B. The Sentence	5
Basis of Federal Jurisdiction In The United States District Court	9
Reasons for Granting the Writ	10
<p>This Court should grant certiorari to determine whether the Fifth Circuit violated federal law when it conducted a cursory review of the facts related to a warranted mitigating role adjustment under U.S.S.G. § 3B1.2 because Karina Lizett Juarez's role in a drug related offense was minor; and because the proper application of the sentencing guidelines is of exceptional importance to the administration of justice in federal criminal cases, this Court should decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.</p>	
Conclusion	22

Appendix and Attachments

Appendix A: Opinion of the Court of Appeals in United States v. Juarez 20-40877, 2021 U.S. App. LEXIS 29427 (5th Cir. Sept. 29, 2021)(affirmed) (unpublished).

Appendix B: Original Judgment and Sentence of the District Court,

United States v. Juarez, Cr. No. 7:18:CR:01886-0011 (S.D. Tex. December 2, 2020).

TABLE OF CITATIONS

Page

CASES

<u>Gall v. United State,</u> 522 U.S.38 2007)	19,21
<u>United States v. Castro,</u> 888443 F.3d 608 (5th Cir. 2016)	10
<u>United States v. Diaz,</u> 843 F.3d 911 (9th Cir. 2018)	10
<u>United States v. Gayton,</u> 74 F.3d 545 (5th Cir. 1996)	18
<u>United States v. Gomez-Valle,</u> 828 F.3d 324 (5th Cir. 2016)	10
<u>United States v. Juarez Nos. 20-40877, 2021 U.S. App. LEXIS 29427</u> <u>(5th Cir. Sept. 29, 2021) (affirmed) (unpublished)</u>	iii,1,4,7
<u>United States v. Juarez, Cr. No. 7:18:CR:01886-0011 (S.D. Tex.</u> <u>December 2, 2020.....</u>	iv,1
<u>United States v. Kimbrough,</u> 555 U.S.85 (2007)	21
<u>United States v. Torres-Hernandez,</u> 843 F.3d 203 (5th Cir. 2016)	11
<u>United States v. Tzep-Mejia,</u> 461 F.3d 522 (5th Cir. 2006)	19
<u>United States v. Valdez-Gonzalez,</u> 957 F.2d 643 (9th Cir. 1992)	12
<u>United States v. Webster,</u> 996 F.2d 209 (9th Cir. 1993)	12
<u>Williams v. United States,</u> 503 U.S. 193 (1992)	20-21

Statutes

18 U.S.C. § 2.....	3-4, 9
21 U.S.C. § 841 (a) (1)	3
21 U.S.C. § 841 (b) (1) (A)	3
21 U.S.C. § 846	3
21 U.S.C. § 952 (a)	2-3, 9
21 U.S.C. § 960 (a) (1)	2-3, 9
21 U.S.C. § 960 (b) (1)	2, 3, 9
21 U.S.C. § 963	2-3, 9
28 U.S.C. § 1254	1
28 CFR § 220, Chapter 13, Subchapter (B) (14)	12-13

Rules

Federal Rule of Criminal Procedure 11(c) (1) (A)	3
Federal Rule of Criminal Procedure 11(c) (1) (B)	3
Sup. Ct. R. 13.....	1
Sup. Ct. R. 13.1.....	1
Sup. Ct. R. 13.3.....	1

Other

U.S.S.G. § 2D1.1 (a) (5)	5
U.S.S.G. § 2D1.1 (b) (5) (A)	5, 19-20
U.S.S.G. § 2D1.1 (b) (5) (B)	5, 19-20

U.S.S.G. § 2D1.1 (c) (1)	5
U.S.S.G. § 3B1.2	5, 7, 10
U.S.S.G. § 3B1.2 (a)	6, 11, -12, 20
U.S.S.G. § 3B1.2 (b)	6, 18, 20
U.S.S.G. § 3B1.2 Application Note 3 (C)	11-12, 18
U.S.S.G. § 3B1.2 Comment Note 4	12, 17
U.S.S.G. § 3B1.4	5
U.S.S.G. § 3E1.1 (a)	3, 5
U.S.S.G. § 3E1.1 (b)	6

PRAYER

Petitioner, **KARINA LIZETT JUAREZ**, respectfully prays that a writ of certiorari be granted to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit issued on September 29, 2021.

OPINIONS BELOW

The original judgment reflecting Ms. Juarez's conviction and sentence can be found at United States v. Juarez, Cr. No. 7:18:CR:01886-001 (S.D. Tex. December 2, 2020). (Exhibit B). However, on September 29, 2021, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming Juarez's conviction and sentence. United States v. Juarez, No. 20-40877, 2021 U.S. App. LEXIS 29427 (5th Cir. Sept. 29, 2021) (affirmed) (unpublished). (Exhibit A).

No petition for rehearing was filed.

JURISDICTION

On September 20, 2021, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming the judgment of conviction and sentence in this case. This petition is filed within ninety days after entry of the judgment. See. Sup. Ct. R. 13.1 and 13.3. Jurisdiction of the Court is invoked under Section 1254(1), Title 28, United States Code.

FEDERAL STATUTES INVOLVED

U.S.S.G. § 3B1.2: Mitigating Role Adjustment

Based upon 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.

U.S.S.G. 3B1.2(2018).

STATEMENT OF THE CASE

A. Course of Proceedings

On November 20, 2018, Karina Lizett Juarez Petitioner (Hereinafter ``Juarez'') was charged in a Four-Count Indictment for alleged drug related crimes committed on or about October 28, 2018 (ROA.19-21). In Count One, Juarez was charged with conspiracy to import a controlled substance. The drug involved was 500 or more of a mixture of a controlled substance containing a detectible amount of methamphetamine, a Schedule II controlled substance in violation of 21 U.S.C. §§ 963, 952(a), 960(a)(1), 960 (b)(1). (ROA.19). In Count Two, Juarez was charged with knowingly and intentionally importing a controlled substance, namely 500 kilograms or more or

approximately 4 kilograms or more a detectible amount of methamphetamine, a Schedule II controlled substance in violation of 21 U.S.C. § § 963, 952(a), 960(a)(1), 960 (b)(1) and 18 U.S.C. § 2. (ROA.19). In Count Three, Juarez was charged with knowingly and intentionally conspiring to possess with intent to distribute a controlled substance, namely 500 kilograms or more of a mixture of a substance detectible amount of methamphetamine, a Schedule II controlled substance in violation of 21 U.S.C. §§ 846, 841(a)(1), 841(b)(1)(A). (ROA.20). In Count Four, Juarez was charged with knowingly and intentionally conspiring to possess with intent to distribute a Schedule II controlled substance, namely 500 kilograms or more of a mixture of a detectible amount of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 18 U.S. C. § 2. (ROA.20-21).

The Plea

On February 1, 2019, pursuant to a plea agreement under Federal Rule of Criminal Procedure 11(C)(1)(A) and (B), Juarez pled guilty to Count Two of the Indictment, knowingly and intentionally importing a controlled substance, namely 500 kilograms or more or approximately 4 kilograms or more a detectible amount of methamphetamine, a Schedule II controlled substance in violation of 21 U.S.C. §§ 963, 952(a), 960(a)(1), 960(b)(1) and 18 U.S.C. § 2.

(ROA.19,226). In exchange for the plea, the Government agreed to: (a) recommend a 2-level decrease for acceptance of responsibility in accordance with U.S.S.G. 3E1.1(a) if she were to demonstrate acceptance of responsibility; and (b) dismiss the remaining counts at the time of sentencing. (ROA.226-227).

The Government read the factual basis of the plea agreement in open court. It stated the following:

On or about October 28th, 2018, Defendant did knowingly and intentionally import 500 grams or more, namely 4 kilograms of methamphetamine, a Schedule 2 controlled substance, into the United States from Mexico. On the day in question, the Defendant, Ms. Juarez, attempted to enter the U.S. at the Hidalgo, Texas Port of Entry in a vehicle. The Defendant was the driver. A search of the vehicle and the car seats in the vehicle revealed bundles of methamphetamine with an approximate weight of 4 kilograms of methamphetamine. The Defendant imported the controlled substance by driving the vehicle in the United States from Mexico while knowing it concealed a controlled substance.

(ROA.183). Juarez confirmed that the factual basis was true.

(ROA.183). The court made the following findings regarding Juarez:

(1) that she was competent and capable of entering an informed plea; (2) that she understood, the nature of the charges against her; (3) that she understood the consequences her guilty plea; (4) that she understood the maximum punishment she faced; (5) that she entered her guilty plea knowingly and voluntarily; and that (6) the guilty plea was supported by facts that contained all of the

elements of the offense. The court then accepted her plea and adjudged her guilty of the offense. (ROA.188).

B. The Sentence

The 2018 Guidelines were used in this case. (ROA.244). The Final PSI (PSI) set the Base Offense Level at a level 38 pursuant to 18 U.S.S.G. 2D1.1(a)(5) and (c)(1). (ROA.244). According to the PSI, A two-level increase was added pursuant to U.S.S.G. § 2D1.1(a)(5)(A) and (B), because the offense involved the importation of amphetamine or methamphetamine or the manufacture of amphetamine or methamphetamine, 8.45 kilograms of "ICE," from listed chemicals that Juarez knew were imported unlawfully and Juarez was not assessed an adjustment under U.S.S.G. § 3B1.2 (Mitigating Role). (ROA.245).

An additional two-level increase was added pursuant to U.S.S.G. § 3B1.4 because Juarez used or attempted to use a person less than eighteen years of age to commit the offense or assist in avoiding detection of, or apprehension for, the offense, increase by two levels. Juarez utilized her two minor sons, ages four and five years-old, to give the appearance of a family going on a shopping trip to aid in avoiding detection by authorities. The children were sitting on booster seats which contained "ICE." (ROA.245). Furthermore, Juarez was afforded a two-level deduction in points for acceptance of responsibility pursuant to U.S.S.G. 3E.1.1 (a). Thus, the Total Offense Level resulted in a level 40. (ROA.245). Juarez

had no prior criminal history and therefore was placed in a Criminal History Category of I. (ROA.246). At sentencing, and in written objections, Juarez argued for the court to deem her a minimal participant of the conspiracy under U.S.S.G. § 3B1.2(a) and therefore decrease the offense level by 4 levels, or in the alternative to deem her a minor participant of the criminal activity and approve a 2-level decrease under U.S.S.G. § 3B1.2(b). (ROA.231-232). The objection was denied, and the court found her to be an average participant. (ROA.220).

Juarez also argued for a third point deduction for acceptance of responsibility pursuant to U.S.S.G. 3E. 1.1(b). (ROA.232). She argued for a Total Offense Level of 34-39 points. Furthermore, she argued that she qualified for the safety valve and that a departure was warranted. (ROA.233). At sentencing, the sentencing court found that Juarez qualified for the safety valve and two points were deducted from her sentencing points. (ROA.219, 223). The Government then moved for the third point deduction for acceptance of responsibility and it was granted. (ROA.219-220, 223). With a Criminal History Category of I and a Total Offense Level of 37, the sentencing guideline range resulted in 210-262 months. (ROA.223). Ultimately, the court sentenced Juarez to a 210-month term of imprisonment followed by five years of supervised release. The fine

was waived, but a special assessment of \$100 dollars was imposed. (ROA.87-91,223) .¹

As she did in the district court, on appeal Juarez challenged the district court's failure to grant a mitigating role reduction under Guideline U.S.S.G. § 3B1.2. United States v. Juarez, No. 20-40877, 2021 U.S. App. LEXIS 29427 (5th Cir. Sep. 29, 2021). She argued that the district court clearly erred in denying her a mitigating role adjustment under U.S.S.G. § 3B1.2. Id. at *1. Juarez contended that she was merely a drug courier or mule, and not an average participant. Id. at *1-2. The Fifth Circuit affirmed the conviction and sentence holding that the district court's finding that Juarez was an average participant was plausible in light of the record as a whole. Id. at *2. In rendering its decision the Fifth Circuit stated the following: (1) that Juarez had been entrusted with a large quantity of pure methamphetamine, totaling 8.45 kilograms; (2) that Juarez was held responsible for the methamphetamine that she transported and that was seized by agents and that (3) because her sentence was based on her own conduct, Section 3B1.2 did not require a mitigating role adjustment even if her conduct was minor or minimal compared to the larger drug conspiracy. Id.

This Court should grant certiorari to determine whether the Fifth Circuit violated federal law when it refused to vacate the

¹ Restitution did not apply in this case.

sentence; and because the proper application of the sentencing guidelines is of exceptional importance to the administration of justice in federal criminal cases, this Court should decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

BASIS OF FEDERAL JURISDICTION IN THE
UNITED STATES DISTRICT COURT

This case was brought as a federal criminal prosecution involving the importation of drugs in violation of in violation of 21 U.S.C. §§ 21 U.S.C. §§ 963, 952(a), 960(a) (1), 960(b) (1) and 18 U.S.C. § 2. The district court therefore had jurisdiction pursuant to 18 U.S.C. § 3231.

REASONS FOR GRANTING THE WRIT

This Court should grant certiorari to determine whether the Fifth Circuit violated federal law when it conducted a cursory review of the facts related to a warranted mitigating role adjustment under U.S.S.G. § 3B1.2 because **Karina Lizette Juarez's** role in a drug related offense was minor; and because the proper application of the sentencing guidelines is of exceptional importance to the administration of justice in federal criminal cases, this Court should decide this question and, upon review, should reverse the judgment of the Fifth Circuit.

ISSUE: Whether the Fifth Circuit's cursory review of the facts related to a warranted mitigating adjustment under U.S.S.G. § 3B1.2 violated federal law in light of the fact that Juarez acted merely as a mule or courier as defined by the sentencing guidelines.

A. Standard of Review

A review of factual findings includes the district court's deciding whether defendant was a minor or minimal participant in order to apply a mitigating-role reduction under Guideline § 3B1.2. United States v. Gomez-Valle, 828 F.3d 324, 327 (5th Cir. 2016). "A factual finding is not clearly erroneous if it is plausible in light of the record read as a whole." Id. (internal quotation marks and citation omitted). A Defendant's burden of showing entitlement to a mitigating-role reduction must include two things: "(1) the culpability of the average participant in the criminal activity; and (2) that [defendant] was substantially less culpable than that participant". United States v. Castro, 843 F.3d 608, 613 (5th Cir. 2016) (footnote omitted).

B. Juarez Was A Minimal Participant Substantially Less Culpable Than Other Participants Warranting A Four-Level Minor Role

Adjustment Pursuant to U.S.S.G § 3B1.2 (a).

Juarez objected to the presentence investigation report, in that it failed to acknowledge that she had a minimal role in the offense warranting a mitigating role adjustment. "A party seeking an adjustment in the base level of an offense bears the burden of proving by a preponderance of the evidence that the adjustment is warranted." United States v. Torres-Hernandez, 843 F.3d 203, 207 (5th Cir. 2016).

Pursuant to U.S.S.G. § 3B1.2: (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.

Application Note 3 (C) provides, when determining whether to apply subsection (a) or subsection (b), or an intermediate adjustment, the court should consider the following non-exhaustive live factors:

- (1) the degree to which the defendant understood the scope and structure of the criminal activity;
- (ii) the degree to which the defendant participated in planning or organizing the criminal activity;
- (iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision making authority;
- (iv) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts;
- (v) the degree to which the defendant stood to benefit from the criminal activity.

Application Note 3 (C) further provides, for example, a defendant who does not have a proprietary interest in the criminal activity and who is being paid to perform certain tasks should be considered for an adjustment under this guideline. The fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative. Such a defendant may receive an adjustment under this guideline if he or she is substantially less culpable than the average participant in the criminal activity.

In the instant case, Juarez contends that he should have received a four-level reduction afforded a minimal participant pursuant to § 3B1.2.(a) and comment. (n.4) because her only conduct in the instant offense was essentially that of a transporter of narcotics. Juarez was not the owner of the drugs, but merely a driver of the load.

In similar cases, mere physical workers, like lifters and transporters, have been recognized as being, as a general matter, less culpable than other participants in a drug offense. See, Eg., United States v. Valdez-Gonzalez, 957 F.2d 643, 649-50 (9th Cir. 1992) ("mules" less culpable participants in drug conspiracies), limited on other grounds, United States v. Webster, 996 F.2d 209, 211 (9th Cir. 1993); 28 CFR. § 2.20 Chapter 13, Subchapter B(14) (2000) (under parole commission guidelines, "peripheral role" in

drug offense refers to simple courier, chauffer, deckhand, or drug-loader).

The facts of this case, as described in the presentence report and in the factual basis for the guilty plea, establish that Juarez acted as a minimal participant in the offense and that a four-level mitigating adjustment should have been awarded in this case. Juarez is plainly among the least culpable of Linda Nicole Moreno, Aaron Ortiz, Rafael Martinez, and Jose Grimaldo, the other four people implicated in this case. Only three of the four, Moreno, Ortiz, and Martinez were arrested and charged in connection with this case. Jose Grimaldo, the boyfriend of Karina Juarez was not arrested or indicted because he is a Mexican citizen and did not cross over into the United States. (ROA.183, 230).

The evidence showed that Juarez worked under the direction or instructions of her boyfriend, Jose Grimaldo and also the person she delivered to, Linda Moreno. Thus, Moreno and Grimaldo were the leaders or/and organizers of the conspiracy. (ROA.231-232). Jose Grimaldo was the recipient of the money sent back to Mexico by Linda Moreno through Ms. Juarez. (ROA.232).

According to the PSR, the 2006 Chrysler minivan driven by Juarez was observed at Linda Moreno's address in Edinberg, Texas on October 25, 2018. Juarez admitted that she went to the residence

because her boyfriend, Jose Grimaldo, told her to retrieve money from Ms. Moreno and bring the money to Mexico. Ms. Juarez stated she was told by her boyfriend, Jose Grimaldo, to leave the car seats at Ms. Moreno's residence and return with the money. Juarez stated on October 25, 2018, she knew the car seats had something in them and she was to be paid \$800 for transporting them. (ROA.242).

The PSI also stated that during interviews with Homeland Security Investigations (HSI) Special Agent (SA) N. Stott and Drug Enforcement Agency (DEA) (SA) M. Dolengowski, it was discovered the DEA had seized four packages of crystal methamphetamine 'ICE' from the residence of Linda Moreno on October 25, 2018. The four packages were delivered inside two car seats which were transported from Mexico into the United States by Karina Juarez. The four packages had a gross weight of 4.73 kilograms. (ROA.241-243).

Three days later on October 28, 2018, HSI received a request for investigative assistance from Customs and Border Protection (CBP) at the Hidalgo, Texas, Port of Entry (POE) after a "Be on the Lookout" (BOLO) had been placed on a 2006 Chrysler minivan (load vehicle) after it was observed at Moreno's home on October 25, 2018. Juarez was driving the load vehicle when she attempted entry at the Hidalgo POE. She was accompanied by her two juvenile sons, ages four and five years-old, who were seated on toddler

booster seats on the rear passenger bench seat. A Treasury Enforcement Communications Systems (TECS) query of the vehicle resulted in a positive hit and alerted to search underneath or inside the toddler seats. (ROA.241).

After receiving a negative declaration from Juarez, she was referred to the secondary inspection area, where a narcotic detection canine alerted to the odor of narcotics emanating from the vehicle. A scan of the vehicle revealed anomalies within the toddler seats. CBPOs inspected the toddler seats and discovered trap doors on both seat beneath the seating fabric. CBPOs recovered a total of four packages of crystal methamphetamine, two within each seat, vacuum wrapped with cellophane and black electrical tape, with a gross weight of 4.46 kilograms. (ROA.241).

Laboratory analysis of the four packages identified the substance as d-Methamphetamine Hydrochloride with a net weight of 3.96 kilograms and a purity level of 97 percent, also known as 'ICE.' The load vehicle was registered to Adriana Gonzalez of Edinburg, Texas. Juarez was taken into custody and her children were released to family members. (ROA.241-242). When discussing this point at sentencing, the following exchange occurred:

Defense: We're asking the Court to consider a role for her and we're just asking for mercy at this point, Your Honor.

Court: So, again, I frequently give role adjustments to first-time couriers, but given the extensive crossing history and multiple trips being made by Ms. Juarez, I consider her an average participant. She wasn't a one-time drug mule. She was quite involved with this organization smuggling drugs on many occasions, but I did look at that because I know it's a huge difference in the sentence that that makes but Ms. Juarez -

Defense: May I just interject, Your Honor, with just the possibility that those may have been dry loads just to get her comfortable with the situation? There was practice involved, as bad as it is, even including her children. I mean, these were just runs. My point is that there's very little evidence to suggest that there was the same level of drugs on each of these loads.

Court: Well, she was on two different occasions. They had one 4.7- kilogram load and then a 3.96-kilogram load. Again, 41 crossings, it appears that her main purpose for going to Mexico and coming back was bringing drugs but I'll wait to hear from Ms. Profit and see what the Government has to say on that as well.

With respect to a mitigating role adjustment, the addendum to the PSI states:

The U.S. Probation Office notes the defendant's objection and contends without the defendant's affirmative steps taken in retrieving the methamphetamine (ICE) load from Mexico and importing the narcotics into the United States, there would be no smuggling operation. Given the amount and purity of the methamphetamine entrusted to the defendant, and the current climate in the United States regarding the increase in narcotics overdoses from powerful drugs imported from Mexico and other countries, as well as those manufactured and distributed in the United States, a mitigating role adjustment was not assessed. The U.S. Probation Office yields this issue to the Honorable Court for consideration at sentencing.

(ROA.254).

Here, the PSR only shows that drug deliveries occurred on two

occasions, October 25th and 28th of 2018. (ROA.230). As also mentioned in the factual basis of the plea agreement and in the PSI, Juarez's only role was to serve as a courier. (ROA.183, 230, 243). There is no evidence that Juarez transported any drugs during either of the 41 crossings in and out of Mexico that the sentencing court referenced in the exchange outlined above. Notably, Ms. Juarez argued, - and the Government did not dispute the fact, that Juarez was constantly going to Mexico because her mother and siblings lived in Reynosa, Tamps. Mexico. In addition, Ms. Juarez was enrolled in Betti's Beauty School in Reynosa, Tamps. Mexico. (ROA.230). Thus, there is evidence that her crossing into Mexico on multiple occasions involved legitimate reasons. Nevertheless, the Government insisted that Juarez be denied a role adjustment. (ROA.222). In light of the totality of the circumstances and facts of this case, Juarez should have received a four-level reduction afforded to minimal participants pursuant to U.S.S.G 3B1.2 (a) comment. (n.4), or in the alternative, a three-level reduction reserved for cases falling between U.S.S.G 3B1.2 (a) and (b).²

C. In the Alternative, Juarez Should Have Received A Two-Level Reduction in Points Pursuant To U.S.S.G. § 3B1.2 (b).

Without conceding any argument above, Juarez alternatively

² Juarez does not concede on her point that she should be assessed a four-level mitigating adjustment.

argues that, at a minimum, she should have received a two-level deduction as a minor participant pursuant to U.S.S.G. § 3B1.2 (b). For example, in United States v. Gayton, 74 F.3d, 545 (5th Cir. 1996), this Court affirmed the district court's decision that Appellant-Defendant, Alfredo Gayton was a minor participant in a conspiracy to possess cocaine with intent to distribute it. This Court opined that it was not clear error for the court to conclude that Gayton len[t] his property to be used for the storing of drugs' and ''acted as a chauffeur' to carry people to where drugs were stored'' was supported by the record. Id. at 561-562.

In Juarez's case the PSR shows that she was a courier of drugs on only two occasions, October 25th, 2018, and October 28, 2018. As discussed earlier, Application Note 3(C) further provides, as an example, that ''[A] defendant who does not have a proprietary interest in the criminal activity and who is simply being paid to perform certain tasks should be considered'' for a mitigating role adjustment. The PSR shows that Juarez does not have a proprietary interest in the criminal activity in this case. On October 25, 2018, Juarez was paid \$800 by Moreno. This is the only payment mentioned in the PSI. (ROA.242). Therefore, pursuant to Application Note 3 (C), Juarez should have been afforded a mitigating role

adjustment. See United States v. Diaz, 884 F.3d 911, 918 (9th Cir. 2018) (remanding sentence of drug courier because the district court "ignored" the fact that the defendant's "compensation was relatively modest and fixed" and the absence of "evidence that [he] had a proprietary interest in the outcome of the operation or otherwise stood to benefit more than minimally.".)

D. The District Court's Error Prejudiced Juarez And Remand Is Required.

In Gall v. United States, 552 U.S. 38,51 (2007), the Supreme Court stated that improperly calculating the Guidelines range is a "significant procedural error." If a district makes such an error, this Court 'vacate[s] the resulting sentence without reaching the sentence's ultimate reasonableness." United States v. Tzep-Mejia, 461 F.3d 522 (5th Cir. 2006) (citation omitted). Enhancements under U.S.S.G. § 2D1.1(b)(5)(A) and (B), Paragraph 26 of the PSI states the following:

Pursuant to U.S.S.G. §§ 2D1.1(b)(5)(A) and (B), if 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 the defendant is not subject to an adjustment under U.S.S.G. § 3B1.2 (Mitigating Role), increase by two levels. The defendant's offense of conviction involved the importation of 8.45 kilograms of "Ice" into the United States of America from the United Mexican States. Therefore, a two-level increase is warranted.

(ROA.245). As outlined above, Juarez should have received a

mitigating role adjustment. Had she received a mitigating role adjustment, the two- level enhancement pursuant to U.S.S.G. §§ 2D1.1(b)(5)(A) and (B), would not have been assessed.³ Juarez's sentence must be vacated and remanded for re-sentencing.

Possible Guideline Ranges

Without the mitigating adjustment, the Total Offense Level resulted in a level 37. With a mitigating adjustment, the Total Offense Level would have been reduced to a level ranging from 31 to 33.⁴ The guideline ranges for imprisonment would have resulted in 108-135 months, 121-151 months, or 135-168 months respectively, rather than the 210-262 months assessed in this case. (ROA.223).

Given that the district court imposed a sentence at the low end of the range, 210 months of imprisonment, the Government cannot show that the district court would have imposed the same sentence without the sentencing error. Because the court's error was not harmless, remand is required. See Williams v. United States, 503 U.S. 193, 203 (1992) (when sentencing error occurs, remand required

3 Pursuant to U.S.S.G. § 2D1.1(b)(5)(A) and (B), if 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 the defendant is not subject to an adjustment under U.S.S.G. § 3B1.2 (Mitigating Role), increase by two levels.

4 A level 37 minus 2 assessed under 2D1.1(b)(5)(A) and B result in a level 35. An Additional 4- point deduction for a minimal participant role would have resulted in a level 31. Alternatively an additional 3 point reduction (for a defendant falling between 3B1.2 (a) and (b)) would have resulted in a level 32. Alternatively, an additional 2 level reduction for a minor participant would have resulted in a level 33.

unless government can show same sentence would have been imposed); see also United States v. Kimbrough, 536 F.3d 463 (5th Cir. 2008) (correctly calculated guideline range necessary to sentence a defendant).

Based upon the foregoing law and analysis, Fifth Circuit erred in affirming the sentence. This Court has opined that although post-Booker, the Sentencing 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, 48-51 (2007).

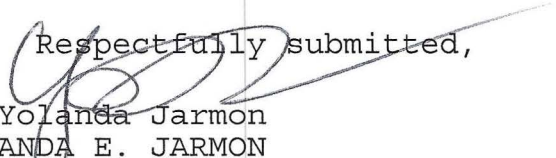
Because the proper application of the sentencing guidelines is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

CONCLUSION

For the foregoing reasons, petitioner **KARINA LIZETT JUAREZ** respectfully prays that this Court grant certiorari, to review the judgment of the Fifth Circuit in this case.

Date: December 28, 2021.

Respectfully submitted,


/s/Yolanda Jarmon
YOLANDA E. JARMON
Attorney of Record for Petitioner
2429 Bissonnet # E416
Houston, Texas 77005
Telephone: (713) 635-8338
Fax: (713) 635-8498

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2021

KARINA LIZETT JUAREZ,

v.

UNITED STATES OF AMERICA,
Respondent.

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

CERTIFICATE OF SERVICE

YOLANDA E. JARMON, is not a member of the Bar of this Court but was appointed under the Criminal Justice Act 18 U.S.C. § 3006 A(b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit, certifies that, pursuant to Rule 29.5, **On December 28, 2021**, she served the preceding Petition for Writ of Certiorari and the accompanying Motion for Leave to Proceed in Forma Pauperis on counsel for the Respondent by enclosing a copy of these documents in an envelope, first-class postage prepaid, **Certified Mail No. 7017 3040 0000 0373 7987**, return receipt requested, and depositing the envelope in the United States Postal Service located at 4206 Little York Rd. Houston, TX 77016-9998 and further certifies that all parties required to be served have been served and copies addressed to:

The Honorable Elizabeth Prelogar
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

/s/ Yolanda Jarmon

YOLANDA E. JARMON

Appendix

United States v. Juarez

United States Court of Appeals for the Fifth Circuit

September 29, 2021, Filed

No. 20-40877 Summary Calendar

Reporter

2021 U.S. App. LEXIS 29427 *; 2021 WL 4465853

UNITED STATES OF AMERICA, Plaintiff—Appellee,
versus KARINA LIZETT JUAREZ, Defendant—
Appellant.

Opinion

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [*1] Appeal from the United States District Court for the Southern District of Texas. USDC No. 7:18-CR-1886-1.

Disposition: AFFIRMED.

Core Terms

methamphetamine, mitigating, district court, large quantity, clear error, transported, sentence

Counsel: For United States of America, Plaintiff - Appellee: Paula Camille Offenhauser, Assistant U.S. Attorney, Carmen Castillo Mitchell, Assistant U.S. Attorney, U.S. Attorney's Office, Houston, TX.

For Karina Lizett Juarez, Defendant - Appellant: Yolanda Evette Jarmon, Esq., Law Office of Yolanda Jarmon, Houston, TX.

Judges: Before DAVIS, JONES, and ELROD, Circuit Judges.

PER CURIAM:*

Karina Lizett Juarez appeals the sentence imposed following her guilty plea conviction for importing 500 grams or more of methamphetamine. She argues that the district court clearly erred in denying her a mitigating role adjustment under *U.S.S.G. § 3B1.2*.

Whether a defendant was a minor or minimal participant under *§ 3B1.2* is a factual determination that we review for clear error. *United States v. Gomez-Valle*, 828 F.3d 324, 327 (5th Cir. 2016). There is no clear error if a factual finding is plausible in light of the record as a whole. *Id.*

Juarez transported a large quantity of methamphetamine from Mexico into the United States on at least two occasions, and border patrol records indicated that she had crossed into the United States from Mexico approximately 41 times in a four-month period. Juarez [*2] was not entitled to a mitigating role

* 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*.

Exhibit A

adjustment merely because she was a drug courier or mule. See *United States v. Castro*, 843 F.3d 608, 612 (5th Cir. 2016); *United States v. Silva-De Hoyos*, 702 F.3d 843, 847 (5th Cir. 2012). She was entrusted with a large quantity of pure methamphetamine, totaling 8.45 kilograms. See *United States v. Anchundia-Espinoza*, 897 F.3d 629, 634-35 (5th Cir. 2018). Moreover, Juarez was held responsible for the methamphetamine that she transported and that was seized by agents. Because her sentence was based on her own conduct, § 3B1.2 does not require a mitigating role adjustment even if her conduct was minor or minimal compared to the larger drug conspiracy. See *United States v. Stanford*, 823 F.3d 814, 852 (5th Cir. 2016). The district court's finding that she was an average participant was plausible in view of the record as a whole and, therefore, the district court did not clearly err in denying Juarez a mitigating role adjustment under § 3B1.2. See *Gomez-Valle*, 828 F.3d at 327.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
Holding Session in McAllen

ENTERED

December 02, 2020

David J. Bradley, Clerk

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

KARINA LIZETT JUAREZ

CASE NUMBER: 7:18CR01886-001

USM NUMBER: 68936-479

Sergio J Sanchez

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 2 of a two-count Indictment on February 1, 2019.

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

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. § 952(a), 960(a)(1), 960(b)(1) and 18 U.S.C. § 2	Importing 500 grams or more, that is, approximately 8.45 kilograms of methamphetamine.	10/28/2018	2

☐ See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) 1, 3 and 4 dismissed on the motion of the United States.

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.

December 1, 2020

Date of Imposition of Judgment

Randy Crane

Signature of Judge

RANDY CRANE

UNITED STATES DISTRICT JUDGE

Name and Title of Judge

December 2, 2020

Date

Exhibit B

DEFENDANT: **KARINA LIZETT JUAREZ**
CASE NUMBER: **7:18CR01886-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 210 months.

- ☐ See Additional Imprisonment Terms.
- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ on _____
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on _____
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

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 UNITED STATES MARSHAL

DEFENDANT: **KARINA LIZETT JUAREZ**
CASE NUMBER: **7:18CR01886-001**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 5 years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You 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.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

STANDARD CONDITIONS OF SUPERVISION

- ☐ See Special Conditions of Supervision.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.
14. If restitution is ordered, the defendant must make restitution as ordered by the Judge and in accordance with the applicable provisions of 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663A and/or 3664. The defendant must also pay the assessment imposed in accordance with 18 U.S.C. § 3013.
15. The defendant must notify the U.S. Probation Office of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

DEFENDANT: **KARINA LIZETT JUAREZ**
 CASE NUMBER: **7:18CR01886-001**

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment¹</u>	<u>JVTA Assessment²</u>
TOTALS	\$100.00	\$	\$	\$	\$

- ☐ See Additional Terms for Criminal Monetary Penalties.
- ☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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 Loss³</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
	\$	\$	

- ☐ See Additional Restitution Payees.

TOTALS	\$	\$
---------------	----	----

- ☐ Restitution amount ordered pursuant to plea agreement \$_____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:
- ☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

¹ Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

² Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

³ 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.

DEFENDANT: **KARINA LIZETT JUAREZ**
CASE NUMBER: **7:18CR01886-001**

Judgment — Page 5 of 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, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ installments of \$ _____ over a period of _____, to commence _____ after the date of this judgment; or
- D ☐ Payment in equal _____ installments of \$ _____ over a period of _____, to commence _____ after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

Payable to: Clerk, U.S. District Court
Attn: Finance
P.O. Box 5059
McAllen, TX 78502

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of 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.

☐ Joint and Several

Case Number

Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

- ☐ See Additional Defendants and Co-Defendants Held Joint and Several.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.