

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2022

CARLOS ALEJANDRO ZUNIGA-GARCIA

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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, **CARLOS ALEJANDRO ZUNIGA-GARCIA**, 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:

October 10, 2022.

Respectfully submitted,

[Signature]
/s/ Yolanda Jarmon
YOLANDA E. JARMON

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2022

CARLOS ALEJANDRO ZUNIGA-GARCIA

Petitioner,

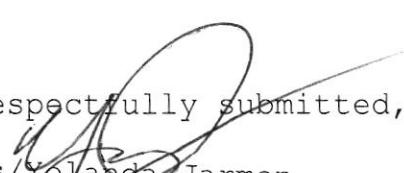
v.

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Respectfully submitted,


/s/ Yolanda Jarmon
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QUESTIONS PRESENTED

I. Whether the Fifth Circuit violated federal law when it conducted a cursory review of the facts related to a four-level increase in sentencing points pursuant to U.S.S.G. § 3B1.1(a) because the Government did not show by a preponderance of the evidence that **Carlos Alejandro Zuniga-Garcia** acted in the role of a leader or organizer; 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.

PARTIES TO THE PROCEEDINGS

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

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PRAYER

The petitioner, **CARLOS ALEJANDRO ZUNIGA-GARCIA** 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 **July 13, 2022**.

OPINIONS BELOW

The original judgment reflecting Mr. Zuniga-Garcia's original conviction and sentence can be found at Original Judgment and Sentence of the District Court, United States v. Zuniga-Garcia, Cr. No. 7:20:CR:75-21 (S.D. Tex. Sept. 23, 2021) (Appendix B). However, on July 13 29, 2022, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming Zuniga-Garcia's conviction and sentence. United States v. Zuniga-Garcia 21-40710, 2022 U.S. App. LEXIS 19385, a*1 (5th Cir. July 13, 2022) (affirmed) (unpublished) . (Exhibit A).

No petition for rehearing was filed.

JURISDICTION

On July 13, 2022, 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. § 3B1.1: Aggravating Role

Based on the defendant's role in the offense, increase the offense level as follows:

- (a) If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by 4 levels.**
- (b) If the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive, increase by 3 levels.**
- (c) If the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in (a) or (b), increase by 2 levels.**

STATEMENT OF THE CASE

A. Course of Proceedings

On May 20, 2020, a two-count Second Superseding Indictment was filed in the Southern District of Texas, McAllen Division, charging Carlos Alejandro Zuniga-Garcia in Count One with conspiracy to possess with intent to distribute 100 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2phenylethyl)-4-piperidinyl]propanamide (Fentanyl) 06 monoacetylmorphine , Morphine and Codeine, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 846, 841(a) (1) and 841(b) (1) (A). The conspiracy is alleged to have occurred on or about December 4, 2019, to on or about December 10, 2019. Codefendants in this case are Juan Tapanes-Chavez, Cesar Augusto Cervantes-Marroquin and Juan Javiera Reyna. (ROA.50).

In Count Two, Carlos Alejandro Zuniga-Garcia was charged with possession of 100 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2phenylethyl)-4-piperidinyl] propanomide (Fentanyl) 06- monoacetylmorphine , Morphine and Codeine, a Schedule II controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A). and 18 U.S.C. § 2. The conduct is alleged to have occurred on or about December 4, 2019, to on or about December 10, 2019. Codefendants in this charge are the same as alleged in Count One. (ROA.51).

B. The Plea

On January 21, 2021, pursuant to a plea agreement, Zuniga-Garcia entered a plea of guilty to the conspiracy count alleged in Count One of the Second Superseding Indictment as outlined above. (ROA.128,149-150). In exchange, the Government agreed to (1) recommend a two-level decrease in sentencing points pursuant to U.S.S.G. 3E1.1(a) if Zuniga-Garcia clearly demonstrated acceptance of responsibility and (2) to dismiss the remaining Counts of the first and second superseding indictments before sentencing. (ROA.131-132,269).

The government proffered the following as the stipulated factual basis of Garces' plea:

"If this case were to proceed to trial, the Government would be prepared to prove as to Count One, the drug conspiracy, that from on or about December 4th of 2019, to on or about December 10th of 2019, the Defendant Carlos Alejandro Zuniga-Garcia did knowingly and intentionally conspire and agree with other persons, known and unknown to the grand jury, to possess with intent to distribute approximately 860 grams of fentanyl, a Schedule II controlled substance." (ROA.133).

"DEA agents were investigating the drug trafficking activities of Mr. Zuniga, as well as Mr. Cesar Augustus Cervantes-Maroquin (phonetic) while they were incarcerated in the Hidalgo -- in the East Hidalgo Detention Facility in La Villa, Texas. Agents received information from a cooperating Defendant that Mr. Zuniga-Garcia, together with others, was coordinating the sale of narcotics while in the detention center. DEA agents effectuated an undercover operation in Pharr, Texas. Mr. Zuniga -- both Mr. Zuniga-Garcia and Mr. Cervantes-Maroquin (phonetic), using the telephone system of the detention center, coordinated with people from outside the detention center the delivery of the narcotics. This resulted in 860 grams of fentanyl being delivered to the cooperating defendant." (ROA.133).

"The Defendant, Mr. Zuniga coordinated with unknown individuals not in the detention center to pick up and deliver the

narcotics. (ROA.133). He entered into the conspiracy with intent to further the unlawful purpose of the agreement. (ROA.133-134).

C. The Sentence

2018 Guidelines Manual was used in this case. (ROA.185). As to Count One, the conspiracy charge, the base offense level was set at a level 30 pursuant to 21 §§ U.S.C. 846, 841(a)(1), 841 (b)(1)(A); U.S.S.G. §§ 1B1.3(a)(1)(A), 2D1.1(a)(5), and (c)(5). Relevant to this appeal, pursuant to U.S.S.G. § 3B1.1(a)(1), the offense level was increased by 4 levels because Zuniga was deemed to be an organizer or of criminal activity that involved five or more participants or was otherwise extensive. Therefor the Adjusted Offense Level resulted in a 34. (ROA.186).

As to his role in the offense, Zuniga-Garcia argued that the four (4) level enhancement should be removed and that a Mitigating Role Adjustment for his role in the offense pursuant to U.S.S.G § 3B1.2 be applied. Specifically, Zuniga-Garcia sought a two (2) level reduction based on his participation in the criminal act acting as merely mule, rather than any organizer or leader. (ROA.141-145, 202-203). The objection was denied. (ROA.145-146).

As to Count One of the Second Superseding Indictment, Zuniga-Garcia was sentenced to a term of 135 months of imprisonment followed by a mandatory five-year term of supervised release. (ROA.146). A special assessment of \$100 dollars was imposed All

remaining Counts were dismissed as set forth in the plea agreement.

No fine was imposed. (ROA.146-147). All remaining Counts were dismissed as set forth in the plea agreement. (ROA.147).

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

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 four-level increase in sentencing points pursuant to U.S.S.G. § 3B1.1(a) because the Government did not show by a preponderance of the evidence **that Carlos Alejandro Zuniga-Garcia ("Zuniga-Garcia")** acted in the role of a leader or organizer; 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 ONE RESTATED: Whether the Fifth Circuit's cursory review of the facts related to an unwarranted four-level increase in sentencing points pursuant to violated federal law in light of the fact that Zuniga-Garcia did not act in the role of an organizer or leader.

A. Standard of Review

The district court's application of the guidelines is reviewed de novo. United States v. Salazar, 70 F. 3d 351 (5th Cir. 1995). The district court's determination that a defendant was a leader or organizer under subsection 3B1.1(a) is a factual finding that the court reviews for clear error. United States v. Ronning, 47 F.3d 710 (5th Cir. 1995) (citing United States v. Valencia, 44 F.3d 269, 271-272 (5th Cir. 1995). A factual finding is not clearly erroneous if it is plausible in light of the record as a whole. Id. (citing Valencia at 272); see also United States v. Nguyen, 854 F.3d 276, 281 (5th Cir. 2017); and United States v. Delgado, 984 F.3d 435 (5th Cir. 2021) (explaining that sentencing facts need only be established by a preponderance of the evidence).

B. The District Court Clearly Erred When It Assessed A Four-level Increase In Sentencing Points Finding That Zuniga-Garcia Acted As An Organizer Or Leader Of A Criminal Organization Involving Five Or More Participants Or Otherwise Extensive Pursuant to U.S.S.G § 3B1.1 (a) .

The district court clearly erred in assessing a four-level increase in sentencing points because Zuniga-Garcia did not exercise control over any participant. In his written objections and during sentencing Zuniga-Garcia maintained that although he was in fact involved in the underlying offenses, he was in no wise an organizer or leader.

To qualify for the four-level Section 3B1.1 (a) enhancement, a person must have been the organizer or leader of at least one other participant. United States v. Ronning, 47 F.3d 710 at 712 (citations omitted). Section §3B1.1 (a) of the 2018 sentencing guidelines authorize a four-level increase in sentencing points if the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive. Section Sec. 3B1.1(a) has two requirements: (1) the defendant must have been a leader or organizer in the criminal activity, and (2) the scheme must have either included five or more participants or been otherwise extensive. U.S.S.G. Sec. 3B1.1(a). U.S. v. Ronning, 47 F.3d 710, 711 (5th Cir. 1995).

A defendant "must have been the organizer or leader of at least one other participant" to qualify as a leader/organizer. Management

responsibility does not make a leader or organizer. A leader is defined as one who leads as a commander. Organizer is defined as a person who travels for the purpose of establishing new organizations. A commander commands people, and organizations are composed of people. Unlike a manager, a leader's or organizer's actions must directly affect other people. Consequently, a leader or organizer must control or influence other people. Id. at 712 (citations omitted).

The commentary defines "participant" as a person who is criminally responsible for the commission of the offense, but need not have been convicted. Id. (citing Sec 3B1.1(a), Comment n.1). Thus, for Section 3B1.1(a) to apply in this case the record must support a finding that Zuniga-Garcia organized or led a person criminally responsible for the crimes in this case. Zuniga-Garcia contends that the evidence in this case does not support such a finding.

Furthermore, in assessing a defendant's role as a leader/organizer, the Sentencing Guidelines direct a court to consider other factors such as : (1) the defendant's exercise of decision making authority, (2) the nature of the defendant's participation in the commission of the offense, (3) the defendant's claimed right to a larger share of the fruits of the offense, (4) the defendant's degree of participation in the planning or

organizing of the offense, (5) the nature and scope of the illegal activity, and (6) the degree of control and authority exercised by the defendant over others. U.S.S.G. § 3B1.1, Comment n.4; see also United States v. Warren, 986 F.3d 557 (5th Cir. 2021) (emphasizing the district court considered the correct factors pursuant to Section 3B1.1 (a) Comment (n.4) when determining that the four-level enhancement did not apply).

C. Zuniga Garcia Did Not Possess The Requisite Degree Of Control And Authority Over Others As Required Under U.S.S.G. 3B1.1(a) Comment (n.4) .

Section 3B1.1 was intended to be applied only if a defendant was an organizer or leader of at least one other person who was criminally culpable in, though not necessarily convicted for, the endeavor. United States v. Gross, 26 F.3d 552, 554-55 (5th Cir.1994); United States. v. Valencia, 44 F.3d 269 (5th Cir. 1995).

As stated beforehand, Zuniga-Garcia contends that the evidence in this case does not support a finding that he exercised the requisite degree of control and authority over others contemplated by the guidelines and emphasized in U.S. v. Ronning, 47 F.3d a710 (5th Cir. 1995). In the instant case, the record, as in Ronning, does not show by a preponderance of the evidence that Zuniga Garcia exercised the level of degree and control required by Section 3B1.1 (a) to justify a four-level enhancement. See U.S.S.G. 3B1.1 (a) Comment (n. 4) .

The PSI states the following:

Pursuant to U.S.S.G. § 3B1.1(a) if the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by 4 levels. In this case, the offense involved Jaime Hernandez, Carlos Zuniga, Roberto Ferrer, Carlos Zuniga's brother-in-law, Cesar Cervantes, Juan Reyna, and Juan Tapanes. Carlos Zuniga, while in custody at the East Hidalgo Detention Center, coordinated the sale of the Fentanyl for Jaime Hernandez. Carlos Zuniga recruited his brother-in-law and Cesar Cervantes. In turn, Cesar Cervantes recruited Juan Reyna who recruited Juan Tapanes, who delivered the Fentanyl to the undercover agent. As such, the defendant was the organizer of the criminal activity that involved five or more participants warranting a 4-level increase.

(ROA.186)

Based upon, the allegations in the PSI, Zuniga-Garcia was deemed an organizer or leader because he recruited his brother-in-law and Cesar Cervantes to participated in locating and delivering the narcotics. However, even if Zuniga-Garcia recruited his brother-in-law and Cervantes, this in and of itself is not enough to justify a four-level enhancement under Section 3B1.1(a). The PSI, does not alleged, nor does it show by a preponderance of the evidence, that Carlos Zuniga maintained control over the individuals locating the drugs, or delivering the drugs. (ROA.186).

In this case, there is no evidence that Zuniga-Garcia controlled the buying and selling of the narcotics or any participant involved in this. Furthermore, Zuniga-Garcia noted that he did not purchase,

manufacture and/or deliver the narcotics that were involve in this matter. The Government did not refute this claim. Hence, thus four-level increase was unwarranted.

D. Zuniga-Garcia Did Not Exercise Any Decision-Making Authority.

In his sentencing objections, Zuniga-Garcia also argued that he did not exercise any decision-making authority. The Government did not refute this claim. The record shows that the Government failed to demonstrate that Zuniga-Garcia had decision-making authority over anyone involved in the crimes in this case.

Based upon the information in the PSI, clearly Zuniga-Garcia's role was limited to locating a buyer and an individual who would deliver the narcotics. The evidence does not show that Zuniga-Garcia exercised decision - making authority in the sell or delivery of the narcotics, or any participant in the criminal enterprise.

E. Zuniga-Garcia Did Not Gain Any Benefit From Any Criminal Activity.

Pursuant to Section 3B1.1(a) Comment (n.4), one factor to consider when determining whether a defendant is an organizer or leader is whether the defendant claimed right to a larger share of the fruits of the offense.

The PSI does not allege, nor does it demonstrate that Zuniga-Garcia received any money or anything else of value by participating in the criminal conduct. (ROA.184, 203). According to the PSI, Zuniga-Garcia did not gain any benefit from this criminal activity.

(ROA.184). Rather, the PSI states that Roberto Ferrer's wife was to give money to Zuniga-Garcia's wife but she never did. (ROA.184). In this case, there is no evidence that controlled the buying and selling of the narcotics or any participant involved in this.

F. When Considering The Nature And Scope Of The Illegal Activity And the Degree of Zuniga-Garcia's Participation in the Commission Of The Criminal Conduct, The Evidence Does Not, By A Preponderance Of The Evidence, Support The Four-Lever Enhancement Pursuant to 3B1.1(a).

Pursuant to Section 3B1.1(a) Comment (n.4), one factor to consider when determining whether a defendant is an organizer or leader is the nature of the defendant's participation in the commission of the offense. In the instant case, there is no proof by a preponderance of the evidence that Zuniga-Garcia was the head of any scheme. Zuniga-Garcia did not buy the narcotics in this case. Zuniga-Garcia did not train anyone on how to prepare and package the narcotics. Zuniga-Garcia did not train anyone on how to manage a drug dealing enterprise.

In this case, there is no evidence that Zuniga-Garcia controlled the buying and selling of the narcotics or any participant involved in this. Hence, the four-level increase was unwarranted.

G. Harmful Error Occurred.

The record as a whole does not support a finding that Zuniga-Garcia was an organizer or leader of any criminal enterprise in this case. Accordingly, the sentence must be vacated and remanded to the

district court for re-sentencing. The Supreme Court was quite explicit in stating that miscalculating the Guidelines is a significant procedural error that requires reversal. United States v. Delgado-Martinez, 564 F.3d 750, 752 (5th Cir. 2009). A procedural error during sentencing is harmless if "the error did not affect the district court's selection of the sentence imposed." See Williams v. United States, 503 U.S. 193, 203(1992); see also United States v. Mejia-Huerta, 480 F.3d 713, 720 (5th Cir. 2007).

The burden of establishing that an error is harmless rests on the party seeking to uphold the sentence. Gall v. United States, 552 U.S. 38, 51 (2007); Delgado-Martinez, at 752-753 (5th Cir. 2009). If the court has committed such an error, this Court must remand unless the proponent of the sentence establishes that the error "did not affect the district court's selection of the sentence imposed." Williams, 503 U.S. at 203; United States v. Delgado-Martinez, at 753. The crux of the harmless-error inquiry is whether the district court would have imposed the same sentence, not whether the district court could have imposed the same sentence. Id.

Ultimately, the Total Offense Level resulted in a 31 with a Criminal History Score of III. (ROA.140, 146). Pursuant to Chapter 5, Part A of the sentencing guidelines, the range of imprisonment resulted in 135-168 months. (ROA.146). Without the four-level enhancement error, the Total Offense level would have resulted in a

level 26 with a Criminal History Score of III. The Government cannot show that the district court would have imposed the same sentence without the error.

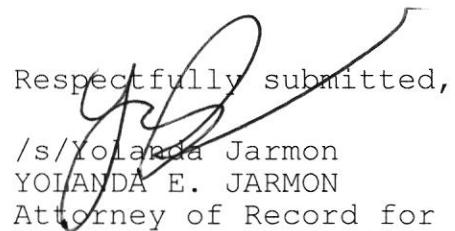
Because the proper application of the sentencing guidelines is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

CONCLUSION

For the foregoing reasons, petitioner **CARLOZ ALEJANDRO ZUNIGA-GARCIA** respectfully prays that this Court grant certiorari, to review the judgment of the Fifth Circuit in this case.

Date: October 10, 2022.

Respectfully submitted,


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APPENDIX

United States Court of Appeals
for the Fifth Circuit

No. 21-40710
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 13, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CARLOS ALEJANDRO ZUNIGA-GARCIA,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:20-CR-75-2

Before SMITH, DENNIS, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:*

Carlos Alejandro Zuniga-Garcia pleaded guilty to conspiracy to possess with intent to distribute 100 grams or more of a mixture or substance containing Fentanyl. The district court sentenced him to 135 months of imprisonment. On appeal, Zuniga-Garcia contends that the district court

* 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

No. 21-40710

erred in applying a four-level upward adjustment under U.S.S.G. § 3B1.1(a) for his role as an organizer or leader in the criminal scheme and in declining to apply a two-level minor participant downward adjustment under U.S.S.G. § 3B1.2(b).

We review the district court's application of these guidelines provisions for clear error. *See United States v. Castro*, 843 F.3d 608, 612 (5th Cir. 2016); *United States v. Cabrera*, 288 F.3d 163, 173 (5th Cir. 2002). Factual findings are not clearly erroneous if they are plausible in light of the record as a whole. *United States v. Zuniga*, 720 F.3d 587, 590 (5th Cir. 2013).

Section 3B1.1(a) provides for a four-level increase “[i]f the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.” Section 3B1.2(b) authorizes a two-level downward adjustment for a defendant who was a “minor participant.” A minor participant is one who is “less culpable than most other participants in the criminal activity, but whose role could not be described as minimal.” § 3B1.2, comment. (n.5).

The unrebutted evidence supports inferences that Zuniga-Garcia played a significant role in planning and organizing the attempted drug transaction, recruiting accomplices, and directing at least one other co-conspirator through a prison phone line that he paid another inmate to use. The district court's findings that he was an organizer or leader of the criminal conspiracy and not a minor participant were plausible in light of the record as a whole. *See Castro*, 843 F.3d at 612; *Zuniga*, 720 F.3d at 590; *Cabrera*, 288 F.3d at 173.

AFFIRMED.

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

ENTERED

September 23, 2021
Nathan Ochsner, Clerk

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

CARLOS ALEJANDRO ZUNIGA-GARCIA

CASE NUMBER: 7:20CR00075-S2-002

USM NUMBER: 27216-279

Rudy Santiago Moreno
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 on January 21, 2021.

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:

Title & Section	Nature of Offense	Offense Ended	Count
21 U.S.C. § 846, 841(a)(1), and 841(b)(1)(A)	Conspiracy to possess with intent to distribute 826 grams of fentanyl.	12/10/2019	1

See Additional Counts of Conviction.

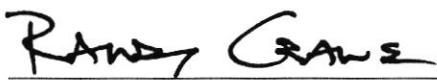
The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

Count(s) 1 of the First Superseding Indictment and Count 2 of the Second Superseding Indictment are 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.

September 21, 2021
Date of Imposition of Judgment



Signature of Judge

RANDY CRANE
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

September 23, 2021
Date

Exhibit B

21-40710.79

DEFENDANT: **CARLOS ALEJANDRO ZUNIGA-GARCIA**
CASE NUMBER: **7:20CR00075-S2-002**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 135 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: **CARLOS ALEJANDRO ZUNIGA-GARCIA**
CASE NUMBER: **7:20CR00075-S2-002**

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: **CARLOS ALEJANDRO ZUNIGA-GARCIA**
CASE NUMBER: **7:20CR00075-S2-002**

SPECIAL CONDITIONS OF SUPERVISION

You must immediately report, continue to report, or surrender to U.S. Immigration and Customs Enforcement and follow all their instructions and reporting requirements until any deportation proceedings are completed. If you are ordered deported from the United States, supervision to become inactive and you must remain outside the United States unless legally authorized to reenter. If you reenter the United States, you must report to the nearest probation office within 72 hours after you return.

DEFENDANT: **CARLOS ALEJANDRO ZUNIGA-GARCIA**
CASE NUMBER: **7:20CR00075-S2-002**

Judgment — Page 5 of 6

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>
TOTALS	\$	\$	

- See Additional Restitution Payees.
- 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: **CARLOS ALEJANDRO ZUNIGA-GARCIA**
CASE NUMBER: **7:20CR00075-S2-002**

SCHEDEULE 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 <u>(including defendant number)</u>	<u>Total Amount</u>	<u>Joint and Several Amount</u>	<u>Corresponding Payee, if appropriate</u>
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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.