

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

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REYES ESPINOZA—PETITIONER

VS.

UNITED STATES OF AMERICA —RESPONDENT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI  
TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT  
(one volume)

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**FILED****NOT FOR PUBLICATION**

JUL 10 2024

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

No. 22-50273

Plaintiff-Appellee,

D.C. No. 3:21-cr-01559-H-1

v.

MEMORANDUM\*

REYES ESPINOZA,

Defendant-Appellant.

Appeal from the United States District Court  
for the Southern District of California  
Marilyn L. Huff, District Judge, Presiding

Submitted July 8, 2024\*\*  
Pasadena, California

Before: IKUTA and NGUYEN, Circuit Judges, and LIBURDI,\*\*\* District Judge.

Reyes Espinoza appeals the 168-month sentence the district court imposed  
after Espinoza pleaded guilty to conspiracy to distribute methamphetamine in

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. *See Fed. R. App. P. 34(a)(2).*

\*\*\* The Honorable Michael T. Liburdi, United States District Judge for  
the District of Arizona, sitting by designation.

violation of 21 U.S.C. §§ 841(a)(1), 846, and participation in a money laundering conspiracy in violation of 21 U.S.C. § 1956(a)(1)(A)(i), (a)(1)(B)(i). We have jurisdiction pursuant to 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291, and we affirm.

Espinoza claims that the district court erred in imposing a four-level role enhancement under the United States Sentencing Guidelines (U.S.S.G.) § 3B1.1(a) because, while he exercised control over four participants, Espinoza did not exercise control over “five or more participants.”<sup>1</sup>

There is ample evidence in the record that Espinoza “was an organizer or leader of a criminal activity that involved five or more participants.” *See* U.S.S.G. § 3B1.1 & cmt. n.4. First, Espinoza need not have exercised control over *all* the participants. *See United States v. Smith*, 924 F.2d 889, 896 (9th Cir. 1991). Instead, the record need only support a conclusion that the “criminal activity. . . involved five or more participants.” *See* U.S.S.G. § 3B1.1(a) & cmt. n.2 (emphasis added). Espinoza does not contest his supervisory role over four other persons. And because a “participant” includes anyone “who is criminally responsible for the

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<sup>1</sup> The district court noted that Espinoza “supervised and managed at least five other co-conspirators” and then listed six individuals who would be included. Espinoza challenges the inclusion of two of the listed individuals (John Mott and Sheriff), because they were not mentioned in the Presentence Report. The government does not defend the district court’s inclusion of these individuals. Thus, we will not consider those individuals in our review.

commission of the offense, but need not have been convicted,” Espinoza himself qualifies as a participant in the conspiracy.<sup>2</sup> *See United States v. Egge*, 223 F.3d 1128, 1134 (9th Cir. 2000) (citing cases holding that “the defendant may be included among the participants in the criminal activity for purposes of section 3B1.1(a)”).

Second, Espinoza supplied methamphetamine to two other principal distributors, David Villegas and Charles Miller. The record supports a conclusion that both codefendants were participants “involved in the criminal activity” with Espinoza. *See United States v. Doe*, 778 F.3d 814, 824 (9th Cir. 2015) (noting that “the organizer enhancement properly applies to a defendant who *organizes* others in the commission of the criminal activity even though he does not retain a supervisory role over the other participants” (emphasis added) (internal quotation marks and citation omitted)). Thus, the record supports a conclusion that Espinoza was involved in a conspiracy with five or more participants. Accordingly, the

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<sup>2</sup> Espinoza also argues that this court’s case law is contrary to the language in the Guidelines. We lack the authority to reverse circuit precedent absent an en banc decision. *See Miller v. Gammie*, 335 F.3d 889, 899 (9th Cir. 2003) (en banc) (“[A] three-judge panel may not overrule a prior decision of the court.”).

district court did not clearly error in applying the four-level enhancement under § 3B1.1(a).<sup>3</sup>

**AFFIRMED.**

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<sup>3</sup> Because we affirm the district court's imposition of the four-level enhancement on this ground, we do not address the government's arguments that Espinoza's large-scale drug trafficking operation was "otherwise extensive," *see* U.S.S.G. § 3B1.1(a), or that, even if the district court improperly calculated the Guidelines range, any error was harmless.

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

SEP 9 2024

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
v.  
REYES ESPINOZA,  
Defendant-Appellant.

No. 22-50273

D.C. No. 3:21-cr-01559-H-1  
Southern District of California,  
San Diego

**ORDER**

Before: IKUTA and NGUYEN, Circuit Judges, and LIBURDI,\* District Judge.

The panel has unanimously voted to deny appellant's petition for panel rehearing. Judge Ikuta and Judge Nguyen voted to deny the petition for rehearing en banc and Judge Liburdi so recommended. The petition for rehearing en banc was circulated to the judges of the court, and no judge requested a vote for en banc consideration.

The petition for panel rehearing and petition for rehearing en banc are DENIED.

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\* The Honorable Michael T. Liburdi, United States District Judge for the District of Arizona, sitting by designation.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	CA # 22-50273
	)	
Plaintiff/Appellee	)	
	)	DC # 3:21-cr-1559-H-1
v.	)	
	)	
REYES ESPINOZA,	)	
	)	
Defendant/Appellant.	)	
	)	

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**PETITION FOR PANEL REHEARING AND REHEARING EN BANC**

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

HONORABLE MARILYN L. HUFF  
United States District Judge

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## **I. INTRODUCTION AND REQUIRED STATEMENT**

Appellant Reyes Espinoza (“Espinoza”) pled guilty to drug trafficking and money laundering. He was sentenced to 168 months in prison. On July 10, 2024, the panel filed a memorandum decision rejecting Espinoza’s sole sentencing argument, presented here, and affirming the judgment. On July 12, 2024, this Court granted Espinoza’s motion to extend the due date for filing a petition for rehearing and/or en banc review to August 23, 2024.

This petition concerns USSG § 3B1.1(a), which provides: “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.” Espinoza received a four-level increase to his offense level under this provision. He should not have.

The question presented is whether the bare minimum of five participants can be satisfied by counting the defendant automatically. This Court and other circuits seem to say yes. Espinoza maintains that because the essence of the upward adjustment is how far the defendant extended his criminal influence beyond himself, he does not count.

En banc review should be granted to answer this important question of sentencing law correctly. The issue has come up before and obviously will again.

This is an appropriate case in which to grant review. The district court initially found that appellant was an organizer and leader and that there were six people under him. However, as appellant pointed out on appeal, two of those people were only mentioned by the government at sentencing but were never listed in the Presentence Report. The government did not defend their inclusion, and the panel has correctly factored them out of the equation. Mem. at 2, n. 1.<sup>1</sup> Review should be granted.

Panel rehearing is appropriate for two reasons. First, the panel elected to count two distributors, Villegas and Miller. Mem. at 3. However, as even the government conceded, AB 10, the district court made no finding that they counted. Second, the adverse cases on this issue speak permissively, stating that the defendant “may” be counted towards the five. As noted, Espinoza disagrees, but assuming that is the law, because the district court did not count him, the upward adjustment cannot stand.

## **II. STATEMENT OF THE CASE**

On May 25, 2021, the government filed a ten-count indictment against Espinoza and fifty-nine codefendants. ER-99. Espinoza was charged in counts one and two. Count one charged Espinoza and all other defendants with conspiring to distribute fifty grams and more of actual

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<sup>1</sup> Mem.=Memorandum Decision; ER=Excerpts of Record in one volume. PSR=Presentence Report and Addendum under seal; AB=Answering Brief.

methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 846. Count two charged Espinoza and five other defendants with conspiring to launder the proceeds of an unlawful activity in violation of 18 U.S.C. §§ 1956(a)(1)(A)(i), 1956(a)(1)(B)(i), and 1956(h). ER-100-102.

Count three charged a codefendant with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). ER-102. Counts four through eight and ten charged various codefendants with isolated instances of possessing large quantities of methamphetamine with intent to distribute it in violation of 21 U.S.C. § 841(a)(1). Count nine charged a codefendant with importing fifty or more grams of methamphetamine from outside the United States in violation of 21 U.S.C. §§ 952, 960. ER-102-104. The indictment also alleged that the government was entitled to forfeiture of a property in Minnesota, cash, vehicles, and firearms. ER-104-107.

On April 22, 2022, before a magistrate, Espinoza changed his not guilty plea on counts one and two to guilty. ER-96-97. He admitted the forfeiture allegations concerning the property he owned in Minnesota. ER-97. Espinoza so pled without a plea agreement. ER-75-76, 89-90. The magistrate confirmed that Espinoza retained his right to appeal. ER-90. The magistrate filed her findings and recommendations regarding Espinoza's

plea on April 22, 2022. ER-68. On May 10, 2022, the district court accepted Espinoza's guilty plea. ER-67.

On November 7, 2022, the district court sentenced Espinoza to two 168-month concurrent terms. ER-43-44. This would be followed by concurrent terms of supervised release of five years on count one and three years on count two. ER 47. The court ordered Espinoza's Minnesota property forfeited. ER-23, 48. The district court confirmed that Espinoza retained his right to appeal. ER-44-45. Judgment was entered on November 8, 2022. ER-3.

Espinoza filed his notice of appeal on November 17, 2022. ER-108. On July 10, 2024, the panel filed its memorandum decision affirming the judgment. On July 12, 2024, this Court granted Espinoza's motion to extend the due date for filing this petition to August 23, 2024.

### **III. STATEMENT OF FACTS**

According to the PSR, Espinoza and codefendants David Villegas, John Bomenka, Dennis Jones, and Darren Mosier were the principal players in an extensive methamphetamine distributing and money laundering network. PSR 5. Espinoza obtained 40 to 100 pounds of methamphetamine per week from unnamed sources. PSR 6, 15. He supplied this to Villegas. Villegas supplied this to his principal sub-distributors, Bomenka, Jones, and

Mosier, and to other distributors. Bomenka, Jones, and Mosier supplied their own sub-distributors and facilitators. PSR 6, 12-13. Espinoza and codefendant Rodriguez also supplied methamphetamine to Charles Miller. PSR 9. Rodriguez is a methamphetamine supplier. PSR 11.

Approximately thirty stops, seizures, and controlled purchases between January 9, 2020 and March 3, 2021 yielded 53 kilograms of actual methamphetamine for which defendants were being held responsible. PSR 6-9. Espinoza was the principal source of supply. He was directly linked to three seizures on July 17, 2020, July 21, 2020, and October 8, 2020. PSR 9. He was also linked to a significant money laundering transaction, the purchase of residential property at 6815 Village Oak Drive in Remer, Minnesota. PSR 9, 14-15. Multiple firearms were seized at that property on May 30, 2021, pursuant to a search warrant. PSR 15.

The PSR identified people working under Espinoza. Carlos and Mario Espinoza were drug couriers and facilitators. PSR 9-10. Gloria Sandoval ran a stash house. PSR 11. Espinoza's wife, Christian Lopez-Villegas was a facilitator who made deliveries of drugs and cash. PSR 12. Carlos and Mario Espinoza would smuggle the methamphetamine from Mexico into the United States. It would be stored at the stash house Sandoval ran. Sandoval

and Lopez-Villegas would then make drug deliveries as Espinoza directed.

PSR 15. The PSR did not mention "Sheriff" or John Mott.

#### **IV. ARGUMENT**

**A. Under USSG § 3B1.1(a), which Provides an Upward Adjustment for Leadership Role, the Defendant is not Counted Towards the Minimum of Five Criminal Participants Required for a Four-Level Increase. Alternatively, if as the Adverse Cases Hold, the District Court Had Discretion to Count or not Count Espinoza, its Failure to Count Him Requires Reversal.**

**1. Relevant Procedural History at Sentencing**

On the upward adjustment for leadership, the PSR recites:

"Based on the information outlined below and in the Offense Conduct section, this writer opines that Espinoza is worthy of an aggravating role adjustment pursuant to USSG § 3B1.1(a). In summary, the defendant was the principal source of supply for this complex and sophisticated drug distribution and money laundering network. He worked as a leader of this organization and worked jointly with his coconspirators to import and distribute multi-kilogram quantities of methamphetamine throughout San Diego County and the United States. Specifically, Reyes Espinoza supplied about 40 to 100 pounds of methamphetamine to his main distributor, David Villegas. He was linked directly to three significant methamphetamine seizures (7/17/20, 7/21/20, and 10/8/20), as well as a significant money laundering transaction. As noted on pages two and three of this report, 60 defendants, including Espinoza, were charged in this offense. Based on the above, the undersigned maintains that the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive; therefore, four-levels are added. USSG § 3B1.1(a)." PSR 18.

Espinoza objected to the recitation that he was at the top of the distribution chain. He asserted that he was just a supplier and that Villegas bought from him and ran the distribution ring. PSR 33. For the same reason, Espinoza objected to the four-level upward adjustment for leadership.

An Addendum to the PSR addressed Espinoza's objections. No changes were made. Factually, his provision of drugs to the principal distributor put him in the leadership chain of the distribution network. PSR 33. The leadership adjustment was maintained. The Addendum repeated the above-quoted initial justification for it. PSR 34.

At the sentencing hearing, Espinoza adhered to his position that his activities were focused exclusively on providing drugs to his buyer, Villegas, who ran his own extensive distribution network. This only supported a two-level upward adjustment. ER-10-11.

The government agreed that Espinoza was not responsible for all of Villegas's sub-distributors. This still left "multiple defendants here, in this conspiracy, that Mr. Espinoza led supervised, managed." ER-17. These included, Espinoza's alleged personal sub-distributors, Villegas and Charles Miller, whom Espinoza supplied with methamphetamine, the couriers, Mario and Carlos Espinoza, Gloria Sandoval, the stash house operator, an alleged courier named John Mott, who was charged in a separate case, and someone

called "Sheriff," who was supposedly Espinoza's right-hand man in Mexico, when it came to arranging shipments for the couriers. ER-17-19. As for "control over others," the government argued that there was "no question" Espinoza exercised control over all the above people. ER-19-20.

Defense counsel agreed that Espinoza exercised control over some of them but disagreed that it added up to "the magic number factually of . . . five[.]" ER-21. For instance, Villegas was not controlled by Espinoza, and there was not "much information on Sheriff." ER-21. Espinoza was just a middle man who had connections with drug suppliers in Mexico and was able to supply Villegas. ER-22.

The court imposed the upward adjustment. It agreed with the Probation Officer that Espinoza supplied "a large-scale drug trafficking organization[.]" He also supervised and managed at least five other co-conspirators, including his wife, his courier brother and cousin, stash house operator Gloria Sandoval, courier John Mott, and Sheriff, the right-hand man. ER-22. The court did not find that Espinoza supervised or managed Villegas or Miller. It did not count Espinoza among the participants.

## 2. The Merits

USSG § 3B1.1 provides:

“(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.”

Under Application Note 1, “A ‘participant’ is a person who is criminally responsible for the commission of the offense, but need not have been convicted.” Under Application note 2, “To qualify for an adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants.”

Factoring out John Mott and Sheriff, who were not mentioned in the PSR, and the distributors Villegas and Miller, about whom the district court made no findings, leaves only four people under Espinoza’s leadership. While this would support the two-level upward adjustment under USSG § 3B1.1(c), it does not support the four-level adjustment under USSG § 3B1.1(a) because Espinoza 1) does not count or 2) was not counted.

This Court and others have held that the district court “may” count a defendant towards the needed five under USSG § 3B1.1(a) or (b). See, e.g., *United States v. Egge*, 223 F.3d 1128, 1134 (9<sup>th</sup> Cir. 2000); *United States v. Atkinson*, 966 F.2d 1270, 1276 n. 7 (9<sup>th</sup> Cir. 1992); *United States v. Barbontin*, 907 F.2d 1494, 1498 (5<sup>th</sup> Cir. 1990). If the district court believed that Espinoza could be counted among the five, it declined to do so.

These cases all rely on *United States v. Preakos*, 907 F.2d 7 (1<sup>st</sup> Cir. 1990). *Preakos* held that because the convicted defendant was, under USSG § 3B1.1, Application Note 1, “criminally responsible for the commission of the offense,” he is necessarily a “participant.” Thus, the district court “was entitled to count the defendant” towards the five. *Id.* at 10.

The cited cases offer no guidance on when it might be appropriate to count the convicted defendant as a criminal participant and when it might not be. Nonetheless, they all speak permissively. Because the district court did not count Espinoza towards the five, we are left with four. This only supports a two-level adjustment. The panel erred in holding otherwise.

Alternatively, en banc review is appropriate because *Preakos* should not have been followed. The fact that the defendant can tautologically be deemed a criminal participant does not mean he should count towards the five required for the upward adjustment. That question is properly targeted

at situations where who is a criminal participant requires a meaningful factual finding. Indeed, the test for whether someone is or is not a criminal participant is incompatible with applying it to the defendant.

Criminal participants are “persons who were (i) aware of the criminal objective, and (ii) knowingly offered their assistance.” *United States v. Anthony*, 280 F.3d 694, 698 (6<sup>th</sup> Cir. 2002). However, “mere unknowing facilitators of crimes will not be considered criminally responsible participants.” *United States v. Cyphers*, 130 F.3d 1361, 1363 (9<sup>th</sup> Cir. 1997). Yes, this test can be applied to the defendant: he knew what he was doing, wanted to help himself do it, and did not dupe himself. However, it is a very awkward fit not in keeping with what is truly at issue.

Cases on who is a criminal participant involve inquiry into what people other than the defendant knew and intended with respect to the defendant’s crimes. *Egge* applied authority holding that customers and end users are not automatically criminal participants in a convicted drug defendant’s activities. *United States v. Egge, supra*, 223 F.3d at 1133-1134. It then analyzed the activities of others to uphold the finding. *Id.* at 1134-1135. In *United States v. Lewis*, 68 F.3d 987 (6<sup>th</sup> Cir. 1995), the defendant’s use of passersby at a casino to purchase gift certificates with stolen credit

card information did not make the passersby criminal participants even though some of them were suspicious. *Id.* at 988-990.

There is nothing to inquire into about the defendant's participation. Further, it is strange to ask, "How far did the defendant extend his criminal reach beyond himself" and have the question partially pre-answered; the "magic number" is five but the starting point, rather than being zero, is already one. The Guidelines should be interpreted to avoid such absurdities.

*United States v. Evans-Martinez*, 611 F.3d 635, 642 (9<sup>th</sup> Cir. 2010).

The district court did not count Espinoza towards the five. To the extent it had the discretion to count him, its decision not to should be honored. Further, that was legally the right decision. Only four other participants were properly established. The judgment should be reversed.

#### **V. CONCLUSION**

For the foregoing reasons, this petition should be granted.

Respectfully submitted,

Dated: August 14, 2024

/s/Steven S. Lubliner  
STEVEN S. LUBLINER  
Attorney for Appellant  
Reyes Espinoza

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**Form 11. Certificate of Compliance for Petitions for Rehearing/Responses**

*Instructions for this form: <http://www.ca9.uscourts.gov/forms/form11instructions.pdf>*

**9th Cir. Case Number(s)** 22-50273

I am the attorney or self-represented party.

I certify that pursuant to Circuit Rule 35-4 or 40-1, the attached petition for panel rehearing/petition for rehearing en banc/response to petition is (*select one*):

Prepared in a format, typeface, and type style that complies with Fed. R. App.

P. 32(a)(4)-(6) and contains the following number of words: 2,513

*(Petitions and responses must not exceed 4,200 words)*

**OR**

In compliance with Fed. R. App. P. 32(a)(4)-(6) and does not exceed 15 pages.

**Signature** s/Steven S. Lubliner

**Date** August 14, 2024

*(use "s/[typed name]" to sign electronically-filed documents)*

05/15/2024	<u>45</u>	Filed (ECF) Acknowledgment of hearing notice by Attorney Andrew Chiang for Appellee USA. Hearing in Pasadena on 07/08/2024 at 09:00 A.M. (Courtroom: 1). Filer sharing argument time: No. (Argument minutes: 10) Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 05/15/2024. [12885062] [22-50273] (Chiang, Andrew) [Entered: 05/15/2024 03:17 PM]
05/15/2024	<u>46</u>	Filed (ECF) Acknowledgment of hearing notice by Attorney Mr. Steven Lubliner for Appellant Reyes Espinoza. Hearing in Pasadena on 07/08/2024 at 9:00 a.m. (Courtroom: 1). Filer sharing argument time: No. (Argument minutes: 10) Special accommodations: NO. Filer admission status: I certify that I am admitted to practice before this Court. Date of service: 05/15/2024. [12885096] [22-50273] (Lubliner, Steven) [Entered: 05/15/2024 03:58 PM]
06/20/2024	<u>47</u>	Filed clerk order (Deputy Clerk: MCD): The Court is of the unanimous opinion that the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument. This case shall be submitted on the briefs and record, without oral argument, on July 8, 2024, in Pasadena, California. Fed. R. App. P. 34(a)(2). [12892589] (OC) [Entered: 06/20/2024 11:19 AM]
07/08/2024	<u>48</u>	SUBMITTED ON THE BRIEFS TO SANDRA S. IKUTA, JACQUELINE H. NGUYEN and MICHAEL T. LIBURDI. [12895547] (BG) [Entered: 07/08/2024 10:31 AM]
07/10/2024	<u>49</u>	FILED MEMORANDUM DISPOSITION (SANDRA S. IKUTA, JACQUELINE H. NGUYEN and MICHAEL T. LIBURDI) AFFIRMED. FILED AND ENTERED JUDGMENT. [12896122] (AH) [Entered: 07/10/2024 09:31 AM]
07/11/2024	<u>50</u>	Filed (ECF) Appellant Reyes Espinoza Unopposed Motion to extend time to file petition for rehearing until 08/23/2024. Date of service: 07/11/2024. [12896449] [22-50273] (Lubliner, Steven) [Entered: 07/11/2024 12:14 PM]
07/12/2024	<u>51</u>	Filed text clerk order (Deputy Clerk: MCD): Appellant's motion for an extension of time to file a petition for rehearing and petition for rehearing en banc [50], is granted. [12896662] (OC) [Entered: 07/12/2024 10:49 AM]
08/14/2024	<u>52</u>	Filed (ECF) Appellant Reyes Espinoza petition for panel rehearing and petition for rehearing en banc (from 07/10/2024 memorandum). Date of service: 08/14/2024. [12902196] [22-50273] (Lubliner, Steven) [Entered: 08/14/2024 05:29 PM]
09/09/2024	<u>53</u>	Filed order (SANDRA S. IKUTA, JACQUELINE H. NGUYEN and MICHAEL T. LIBURDI) The panel has unanimously voted to deny appellant's petition for panel rehearing. Judge Ikuta and Judge Nguyen voted to deny the petition for rehearing en banc and Judge Liburdi so recommended. The petition for rehearing en banc was circulated to the judges of the court, and no judge requested a vote for en banc consideration. The petition for panel rehearing and petition for rehearing en banc are DENIED. [12905834] (OC) [Entered: 09/09/2024 10:01 AM]
09/17/2024	<u>54</u>	MANDATE ISSUED.(SSI, JHN and MTL) [12907177] (QDL) [Entered: 09/17/2024 08:45 AM]

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NOV 08 2022

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTYUNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIAUNITED STATES OF AMERICA  
v.

Reyes Espinoza (1)

## JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 21cr1559-H

L. Marcel Stewart  
Defendant's Attorney

Registration Number: 01744-506

 -

## THE DEFENDANT:

pleaded guilty to count(s) 1 and 2 of the Indictment

was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

Title & Section	Nature of Offense	Count Number(s)
21 USC 841(a)(1), 846	CONSPIRACY TO DISTRIBUTE METHAMPHETAMINE	1
18 USC 1956(h)	CONSPIRACY TO LAUNDER MONEY	2

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) \_\_\_\_\_

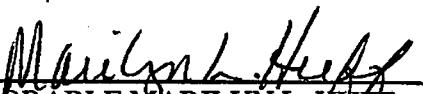
Count(s) \_\_\_\_\_ is dismissed on the motion of the United States.

Assessment: \$200.00 (\$100.00 per count).

Fine waived  Forfeiture pursuant to order filed 11/7/2022, included herein.  
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 any material change in the defendant's economic circumstances.

November 7, 2022

Date of Imposition of Sentence

  
 HONORABLE MARILYN L. HUFF  
 UNITED STATES DISTRICT JUDGE

AO 245B (CASP Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: Reyes Espinoza (1)  
CASE NUMBER: 21cr1559-H

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**IMPRISONMENT**

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

Count 1: 168 months.

Count 2: 168 months to run concurrent to Count 1.

- Sentence imposed pursuant to Title 18 USC Section 1326(b).
- The court makes the following recommendations to the Bureau of Prisons:
  1. The Court recommends that the Defendant participate in Residential Drug Abuse Program (RDAP).
  2. The Court recommends placement in Southern California, if available, to facilitate family visitations.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant must surrender to the United States Marshal for this district:
  - at \_\_\_\_\_ A.M. on \_\_\_\_\_
  - as notified by the United States Marshal.
- The defendant must surrender for service of sentence at the institution designated by the Bureau of Prisons:
  - on or before
  - 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**

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**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant will be on supervised release for a term of:

Count 1: 5 years.

Count 2: 3 years to run concurrent to Count 1.

**MANDATORY CONDITIONS**

1. The defendant must not commit another federal, state or local crime.
2. The defendant must not unlawfully possess a controlled substance.
3. The defendant must not illegally possess a controlled substance. The defendant must refrain from any unlawful use of a controlled substance. The defendant must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by the court.  
 The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (check if applicable)
4.  The defendant 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.  The defendant must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6.  The defendant 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 the defendant resides, works, is a student, or was convicted of a qualifying offense. (check if applicable)
7.  The defendant must participate in an approved program for domestic violence. (check if applicable)

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

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## AO 245B (CASP Rev. 1/19) Judgment in a Criminal Case

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### STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervised release, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's 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 the defendant's conduct and condition.

1. The defendant must report to the probation office in the federal judicial district where they are authorized to reside within 72 hours of their release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
3. The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant must answer truthfully the questions asked by their probation officer.
5. The defendant must live at a place approved by the probation officer. If the defendant plans to change where they live or anything about their living arrangements (such as the people living with the defendant), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant must allow the probation officer to visit them at any time at their home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of their supervision that he or she observes in plain view.
7. The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about their work (such as their position or their job responsibilities), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant must not communicate or interact with someone they know is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, they must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
10. The defendant 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. The defendant 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 the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant must comply with that instruction. The probation officer may contact the person and confirm that the defendant notified the person about the risk.
13. The defendant must follow the instructions of the probation officer related to the conditions of supervision.

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**SPECIAL CONDITIONS OF SUPERVISION**

1. Submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. The offender must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the offender has violated a condition of his supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
2. Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
3. Participate in a cognitive behavioral treatment program as directed by the probation officer, and if deemed necessary by the probation officer. Such program may include group sessions led by a counselor, or participation in a program administered by the probation office. May be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on ability to pay.
4. Participate in a program of drug or alcohol abuse treatment, including drug testing and counseling, as directed by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. May be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on ability to pay.

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21cr1559-H

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

4 UNITED STATES OF AMERICA, ) Case No. 21CR1559-H  
5 Plaintiff, ) San Diego, California  
6 vs. ) Monday,  
7 REYES ESPINOZA, ) November 7, 2022  
8 Defendant. ) 9:00 a.m.  
 )

10 TRANSCRIPT OF SENTENCE W/PRESENTENCE REPORT  
11 BEFORE THE HONORABLE MARILYN L. HUFF  
12 UNITED STATES DISTRICT JUDGE

## 12 | APPEARANCES:

13 For the Plaintiff: MATTHEW JAMES SUTTON, ESQ.  
14 AMY B. WANG, ESQ.  
15 Assistant United States  
16 Attorney  
880 Front Street, Suite 6293  
San Diego, California 92101  
(619) 546-8941

17 For the Defendant: L. MARCEL STEWART, ESQ.  
18 Stewart Law Group  
19 600 B Street, Suite 2050  
San Diego, California 92101  
(619) 702-4123

20 Transcript Ordered by: STEVEN S. LUBLINER, ESQ.

21 Transcriber: Tara Jauregui  
22 Echo Reporting, Inc.  
23 9711 Cactus Street, Suite B  
Lakeside, California 92040  
(858) 453-7590

25 Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1        SAN DIEGO, CALIFORNIA MONDAY, NOVEMBER 7, 2022 9:00 A.M.

2                --oo--

3                THE CLERK: Calling matter number three, 21CR1559,  
4 United States of America versus Reyes Espinoza for sentencing.

5                MR. STEWART: Good morning, your Honor. Marcel  
6 Stewart on behalf of Mr. Espinoza who is before the Court.

7                MR. SUTTON: Good morning, your Honor. Matthew  
8 Sutton and Amy Wang on behalf of the United States.

9                THE COURT: Thank you.

10               So, we had continued this matter and we now have  
11 the addendum by U.S. Probation on the objections. The U.S.  
12 Probation, as to paragraph 17,

13               "Espinoza objects that he was within  
14 the leadership of the drug distribution  
15 network and that Villegas was his main  
16 distributor."

17 The probation officers response is that,

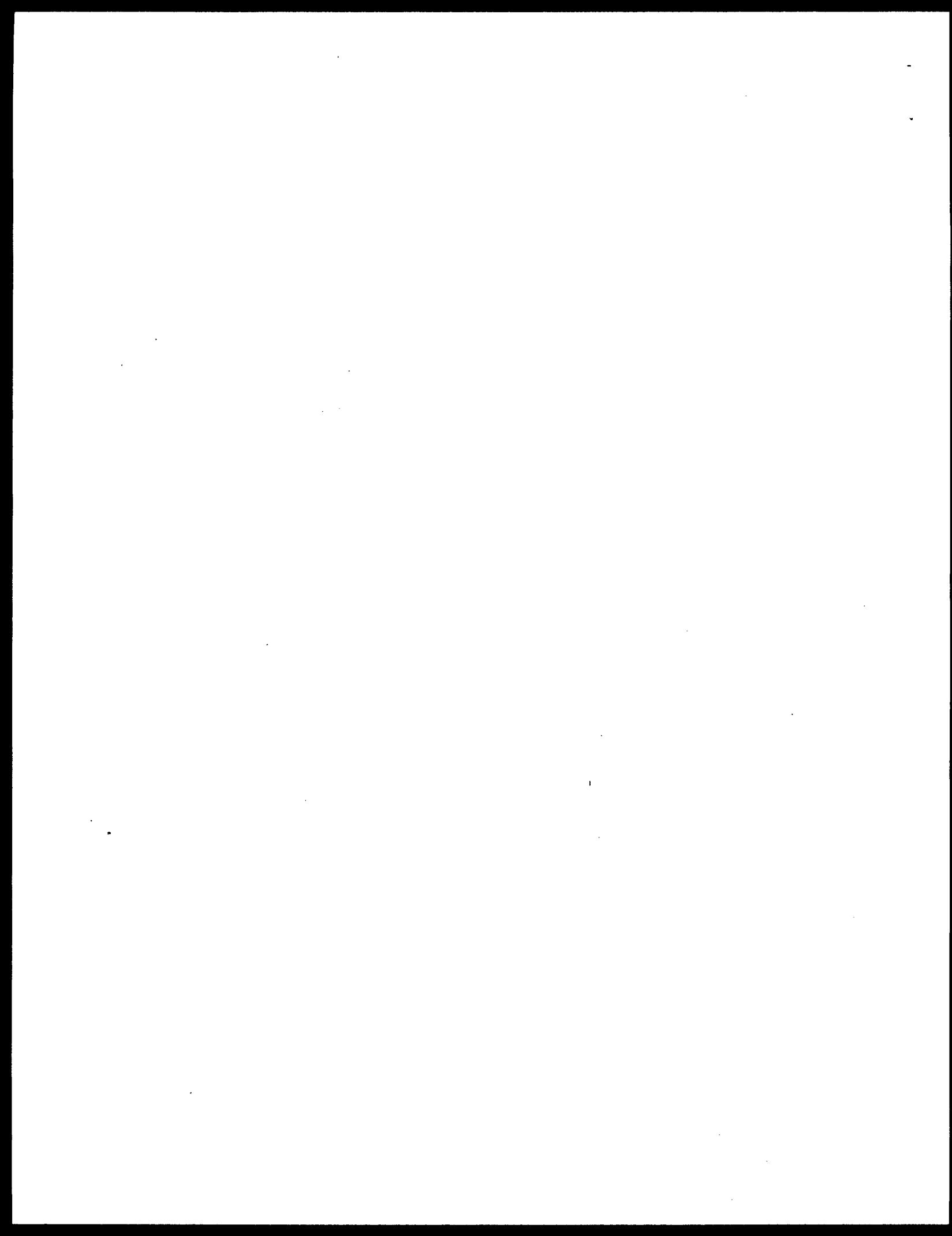
18               "The information was obtained  
19 directly from documentation provided by  
20 the U.S. Attorney's office, that he --  
21 Espinoza was identified as the principal  
22 source of supply for this complex and  
23 sophisticated drug distribution and money  
24 laundering network. Specifically he  
25 supplied 40 to 100 pounds of

methamphetamine every week to his main distributor, Villegas, who in turn supplied multi-pound quantities to his principal sub-distributors, Boneca (phonetic), Jones, Lacier (phonetic), as well as his own extensive sub-distributor list. And he was linked directly to three significant seizures, 7/17/20, 7/21/20 and 10/08/20, as well as a significant money laundering transaction."

12 And so, the U.S. Probation disputes that; the parties may  
13 argue.

14 MR. STEWART: Your Honor, briefly. I think that  
15 there's just a distinction and so we're not arguing, your  
16 Honor, that Mr. Espinoza does not deserve an aggravated role,  
17 it's just which aggravated role.

18 The distinction here that I want to bring to the  
19 Court, because I think it's important for the Court to  
20 understand in sentencing Mr. Espinoza, is that it's true, and  
21 I'm sure the Government will share, that Mr. Espinoza was the  
22 supplier, really for the drug distribution network. So, the  
23 way I understand it in talking with the Government and Mr.  
24 Espinoza, is that he did supply Villegas and Villegas ran and  
25 organized the drug distribution network.



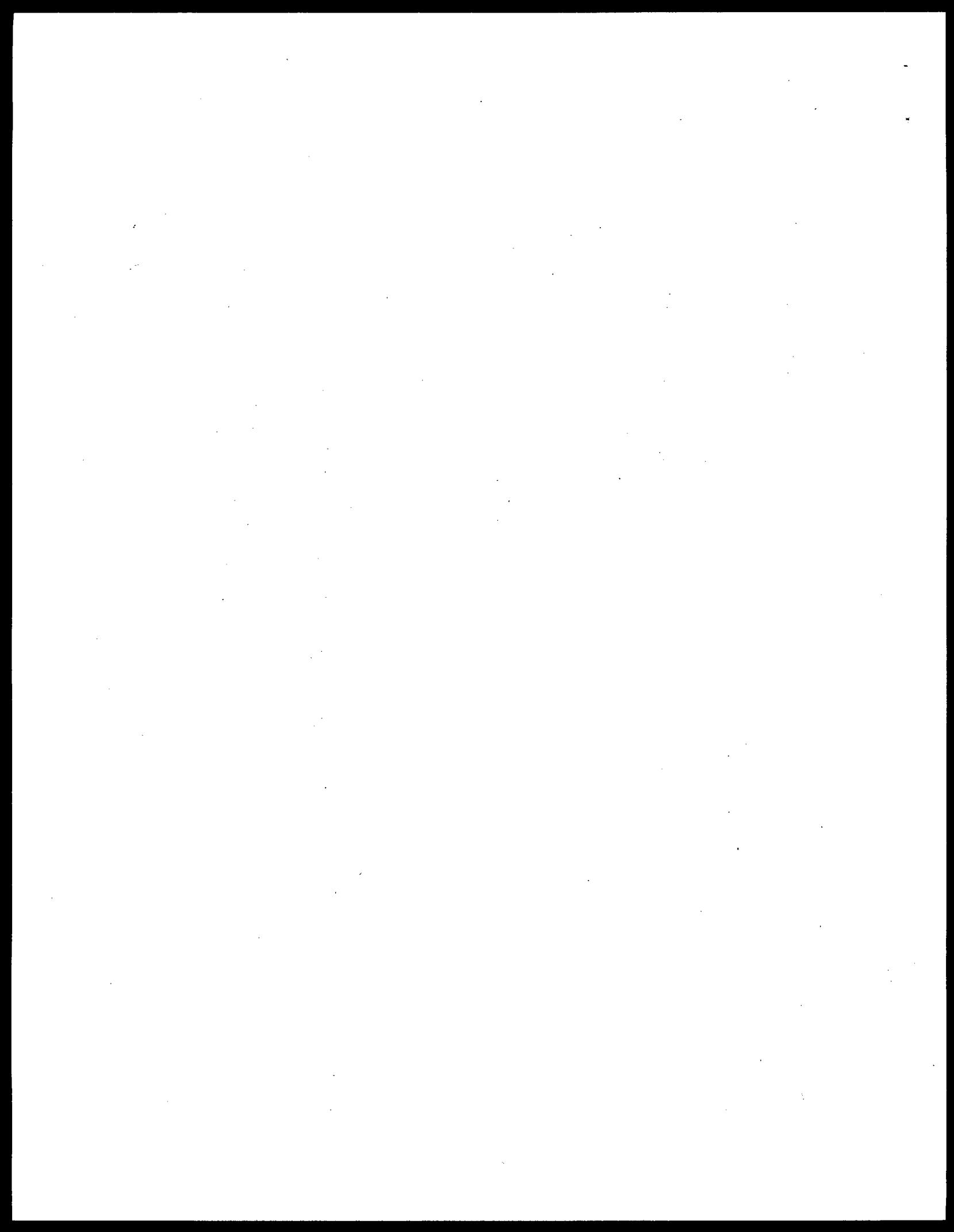
1           And so, the point that we're trying to make here is  
2 that we're acknowledging and admitting that he was really --  
3 he supplied -- but we're making the distinction that this  
4 extensive drug distribution network, with all of these  
5 defendants, maybe 60 or so that's before the Court, they  
6 weren't organized or run by Mr. Espinoza. And so, that's the  
7 distinction, I think, that we're really trying to make.

8           THE COURT: So, do the parties accept if the Court  
9 treats it as a clarification?

10           MR. SUTTON: I think that's fair, your Honor. I  
11 think though -- but to go on to Mr. Stewart's point, we're  
12 really arguing should it be a plus four for role, that's what  
13 the Government and probation argue. That's the third  
14 objection that you see. Or, as Mr. Stewart is saying, should  
15 there only be a plus two.

16           So, I think that's the principal -- it's not only  
17 there's a disagreement on the facts of the case, it's more of  
18 just, I think, each party has its own interpretation of those  
19 facts and then how does it apply to the leadership role. You  
20 know, Mr. Stewart is saying, only a plus two. Government and  
21 probation are saying a plus four, and I'm happy to explain  
22 why, your Honor.

23           THE COURT: All right. So, as to the objection to  
24 paragraph 76, it should not -- the defense argues it should  
25 follow probation's recommendation to add the two-level



1 enhancement under 2(d)1.1(b)1 for possession of a dangerous  
2 weapon because the firearms were not possessed in relation to  
3 any drugs; you may argue that.

4 MR. STEWART: Yes, your Honor. If I may just  
5 briefly, your Honor.

6 In looking at the guideline, the guideline  
7 initially talks about possessed, and then you go onto the  
8 application of the guideline and it talks about being present.  
9 Really the present to me suggests that it's present in the  
10 context, probably of the crime, right? The drug trafficking.  
11 Or, it looks like from the guideline that it may also apply if  
12 the Defendant, when arrested perhaps, possessed on its person.  
13 But it seems that this enhancement really focuses towards  
14 whether the guns were possessed in relation to the crime. And  
15 I think that that seems to make sense.

16 Here, my understanding of the facts is that the  
17 weapons were at Mr. Espinoza's residence in Minnesota. I'm  
18 not aware of any allegations that he was trafficking out of  
19 his residence in Minnesota. There doesn't seem to be any  
20 claim that Mr. Espinoza possessed these weapons at any time in  
21 relation to any drug trafficking. And so, for those reasons,  
22 we argue that this enhancement does not seem to apply.

23 THE COURT: But the commentary to 2(d)1.1 indicates  
24 that the enhance applies if the weapon was present, unless  
25 it's clearly improbable that the weapon was connected with the

1 offense. And I don't think that the facts suggest that it's  
2 clearly improbable that the weapon was connected with the  
3 overall breadth of this defense, given the scope of the -- of  
4 the drug trafficking.

5 MR. STEWART: Your Honor, and I think that's sort  
6 of what, I think, supports my argument. The argument did  
7 extensive investigation here, as the Court, I think, is  
8 eluding to, and my understanding through all of that  
9 investigation, there's no claim, I believe -- and the  
10 prosecutor will correct me if I'm wrong -- that through all of  
11 that investigation, that these weapons were involved in any  
12 way in any drug trafficking activity in this investigation.

13 And, on top of it, there were no drugs at the home  
14 and I don't think that there's any claim that there ever were  
15 any drugs at the home. So, I think given the length and depth  
16 of the investigation, and there being absolutely, in my  
17 understanding, no evidence of connection, that's what we would  
18 use, your Honor, to support a claim that is clearly  
19 improbable; and I'll defer now to the Government.

20 THE COURT: And let me hear from the -- from the  
21 Government.

22 MR. SUTTON: Yes, your Honor. I think a couple of  
23 points.

24 I think your Honor has hit precisely on the  
25 guideline commentary that we're looking at, and I think the

1 Ninth Circuit has said that we look at this enhancement  
2 broadly, and that the possession of firearms could be both  
3 actual and constructive, that the drugs and firearms do not  
4 need to be found in proximity to each other, and I've cited  
5 some cases in our responses where the Ninth Circuit has held  
6 that they possessed weapons for protections sake, and that  
7 would be enough to trigger this enhancement. So, let me kind  
8 of walk you through how we analyze it.

9                   There's no dispute here that it's Mr. Espinoza's  
10 residence. He was living there, he was directing the  
11 operations --

12                  THE COURT: In Minnesota?

13                  MR. SUTTON: In Minnesota.. So, from Minnesota he  
14 is directing folks here in San Diego to bring drugs in, to  
15 have stash houses operate it, to have drugs distributed to  
16 Villegas and the other folks. And we're not just talking  
17 about a -- one hunting rifle. That was one of the examples.  
18 We're talking about nine firearms, semi-automatic weapons,  
19 long guns. So -- and this residence itself was purchased with  
20 drug-trafficking proceeds. Mr. Espinoza has agreed to forfeit  
21 that residence. The Court has signed the preliminary order of  
22 forfeiture.

23                  So, I think it's a little bit different than what  
24 Mr. Stewart says, that it's his residence, no dispute that  
25 they're his weapons. We're not just talking about a single

1 hunting rifle, which you know, maybe there's an argument it's  
2 not connected to the drug trafficking (indiscernible). Our  
3 argument would be, Mr. Espinoza was running his organization  
4 from this residence in Minnesota, he possessed nine firearms  
5 as part of that to protect himself and others, and that this  
6 is a residence that was purchased with drug proceeds and was  
7 kind of the command center -- may be one way to put it.

8                   So, we think that that application note the Court  
9 stated is right, that it's not clearly improbable that the  
10 weapons were part of Espinoza's protection of his drug dealing  
11 and money laundering conduct, which he ran from this  
12 residence.

13                   So, that's the chain of logic and I think the Ninth  
14 Circuit has read this broadly in this context. That's why we  
15 agree with probation. We think that two-level enhancement is  
16 appropriate.

17                   MR. STEWART: And we would, your Honor,  
18 respectfully dispute factually this contention that Mr.  
19 Espinoza ran the operation from his home in Minnesota. So  
20 that's something that we dispute.

21                   THE COURT: The Court believes that the --  
22 probation's addition of the plus two is appropriate under the  
23 guidelines. The Court is required to accurately consider the  
24 advisory guidelines. You could -- are then free to argue it  
25 as a departure or a variance, as well, but it isn't the case

1 that the drugs were right next -- I mean, because it's way in  
2 Minnesota, and the operation is here. At the same time, it  
3 makes sense that he possesses firearms for his own protection  
4 and he's involved in high level drug trafficking. So, the  
5 Court will deny/overrule the objection as to the weapon.

6           Then the meat of the matter gets to the issue of  
7 role. Government and probation want plus four, and you  
8 suggest plus two. There's also a possibility of plus three;  
9 so you may argue that.

10           MR. STEWART: Thank you, your Honor.

11           Your Honor, I failed to mention to the Court that  
12 Mr. Espinoza's mother is here, his two children and uncles and  
13 aunties, your Honor, for support.

14           THE COURT: Thank you.

15           MR. STEWART: You know, your Honor, and I don't  
16 want to belabor this particular point. The Court gave me an  
17 opportunity to explain this kind of a distinction, as I see  
18 it, and I think the distinction I think is important for the  
19 larger sentencing argument that I'm going to make. Unless the  
20 Court really has questions beyond what I've explained on this  
21 particular role enhancement, I'll submit on this.

22           THE COURT: Let me ask -- then let's hear from the  
23 Government. Who else in this large scale conspiracy gets a  
24 plus four?

25           MR. SUTTON: Yes, your Honor.

1           THE COURT: He's the source of supply, right?

2           MR. SUTTON: He --

3           THE COURT: And it's 40 to 100 pounds of meth every  
4 week?

5           MR. SUTTON: Every week. So, yes, your Honor. And  
6 I would start with the test of the guideline, and I think this  
7 kind of explains it.

8           For plus four, we have to show the Defendant was an  
9 organizer or leader of a criminal activity that involved five  
10 or more participants or was otherwise extensive. So, I think  
11 I would agree with Mr. Stewart in one area. He is correct  
12 that Mr. Espinoza is not responsible for Mr. Villegas' sub-  
13 distributors. So a large portion of the 60 defendants, I'm  
14 going to agree with Mr. Stewart. Let's remove them from the  
15 equation. But even doing that, there are still multiple  
16 defendants here, in this conspiracy, that Mr. Espinoza led,  
17 supervised, managed. So let me kind of go through them.  
18 They're kind of three different buckets.

19           The first bucket would be his sub-distributors.  
20 So, Mr. Villegas, defendant number two, and defendant number  
21 seven, Charles Miller. So that's two defendants. Mr.  
22 Espinoza supplied them with those large quantities of  
23 methamphetamine. So that's two defendants right there. Then  
24 there at least are four defendants, three charged in this  
25 case, that Mr. Espinoza used as couriers to bring across

1 methamphetamine, or to run his stash house here. So, the  
2 Court has already sentenced Mario Espinoza, the Court  
3 remembers he was sentenced last week. He was one of the  
4 couriers, Mr. Espinoza's cousin. Defendant Gloria Sandoval,  
5 who ran that stash house, again, at Mr. Espinoza's direction.  
6 Defendant Carlos Espinoza, who is this Defendant's brother.  
7 He is currently a fugitive, but he was another defendant that  
8 brought methamphetamine across the border and made deliveries  
9 to other customers. And then, Defendant John Mott (phonetic),  
10 who was charged in another case in front of Judge Burns, who  
11 was also a courier for Mr. Espinoza. So we have four  
12 defendants -- four individuals -- in that area where Mr.  
13 Espinoza directed them to cross the border, directed them to  
14 make deliveries to Mr. Villegas and others, and then run the  
15 stash house.

16           Then you have two other defendants -- or two other  
17 individuals -- I think we can point to. Christian Lopez-  
18 Villegas, this defendant's wife, it's defendant number 40 in  
19 this case. The Court has already sentenced her. Mr. Espinoza  
20 directed her to make drug deliveries and do other activities  
21 on his behalf when he was not present in San Diego.

22           And then we also identified, during the wiretap,  
23 there was an individual names "Sheriff" (phonetic), who worked  
24 in Mexico and was kind of the Defendant's right-hand man, who  
25 helped organized all of the methamphetamine loads, packed them

1 up for the couriers to take across the border.

2                   So, I think even if Mr. Stewart is correct, and  
3 we're not going to dispute that point, he's not responsible  
4 for Villegas' sub-distributors, we've just identified multiple  
5 individuals for the Court where this Defendant is directly  
6 supervising, managing, organizing the activity. That's why we  
7 and probation agree that the plus four is appropriate.  
8 There's not dispute, I think that the criminal activity was  
9 extensive, right, the Court has heard that. Forty or 100  
10 pounds every week, you know, a vast amount throughout the  
11 COVID pandemic.

12                  And then, that this Defendant was an organizer and  
13 a leader, I think we have demonstrated, just from the  
14 recitation I just gave. And I think that's supported by the  
15 Ninth Circuit case law that we referenced in our response that  
16 the Court has read, that the principal thing that the Ninth  
17 Circuit has looked for is control over others. Did Mr.  
18 Espinoza exercise control? And I would submit, your Honor,  
19 that the facts show that, right? The couriers, no question  
20 about that. The sub-distributors, his two principal  
21 distributors, no question about that. His wife, his right-  
22 hand man in Mexico, the stash house operators.

23                  We also look at the commentary in the application  
24 note. And these are the factors the Court can look at. The  
25 exercise of decision making authority. The nature of the

1 participation in the commission of the offense. Recruitment  
2 of accomplices. The right to a larger share of the fruits of  
3 the crime. The degree of participation in planning or  
4 organizing the offense. The nature and scope of the illegal  
5 activity and the degree of control and authority exercised  
6 over others.

7           I think, as the Court has read in the presentence  
8 report, and in our filings, there's no doubt -- and I don't  
9 think there's a lot of factual dispute -- that Mr. Espinoza  
10 could check off each one of those criteria that the commentary  
11 to the application note suggests.

12           So, your Honor, we agree with probation. We think  
13 the plus four is appropriate, and we would submit on that,  
14 unless the Court has any additional questions.

15           THE COURT: Response.

16           MR. STEWART: Yes, your Honor. Your Honor,  
17 principally, and I do think that this -- however the Court  
18 rules on this particular issue, I think that this kind of  
19 factual kind of (indiscernible) has been important to  
20 understand that, while there's a claim that the Government has  
21 made, and we're not going to dispute on some level that Mr.  
22 Espinoza had a few individuals working under him, so to speak,  
23 I think it's also become clear that Mr. Villegas and his crew,  
24 so to speak, of all of these defendants, were not run by Mr.  
25 Espinoza. So, I think that that point, I think, is at least

1 clear, and I think that's useful for the Court to understand.

2           With regard to some of the individuals -- whether  
3 there's -- I think Mr. Sutton has laid out maybe -- from what  
4 I would suggest -- about seven or so, I think that Mr.  
5 Villegas was not controlled or run by Mr. Espinoza. We don't  
6 -- I don't have much information on Sheriff. In terms of the  
7 brother, I know that he was allegedly involved. I can't say  
8 that Mr. Espinoza was in charge of him, so to speak.

9           So, I think that I'm not going to dispute that  
10 there were a few people -- I'm not going to dispute that there  
11 were at least a few people that Mr. Espinoza would have been  
12 in charge of. Whether they hit the magic number factually of  
13 the five, I think that that's questionable and that's why I  
14 raised the issue.

15           I think it's clear that the two would apply. I  
16 think it's unclear for us that the four applies. But even  
17 more importantly, I'm glad that I think the Court understands  
18 exactly who kind of ran who in this conspiracy case.

19           THE COURT: How was he able to get the meth?

20           MR. STEWART: And so, I think that's a point that I  
21 think I made in my sentencing memorandum, that I see Mr.  
22 Espinoza -- and this is now going to creep into really my --  
23 kind of my argument towards sentencing and his involvement --  
24 I see Mr. --

25           THE COURT: As a broker -- as a broker?

1                   MR. STEWART: Yeah. I see him more as a broker,  
2 from the standpoint that he had access to those individuals,  
3 the DTO that had the methamphetamine, and he essentially was,  
4 from my standpoint, I think the middle man that was able to  
5 then get it into the U.S. and supply to Mr. Villegas. But by  
6 no means, my understanding is that Mr. Espinoza, the DTO, or  
7 the drug trafficking organization or the cartel down there.  
8 And, I can get into that just briefly in my substantive  
9 argument, but I'll defer if the prosecution has something they  
10 want to talk about on this issue.

11                  THE COURT: All right. So, as to role, I think the  
12 application of the guideline applies. So the Court agrees  
13 with probation's response, because he was involved in a large  
14 scale drug trafficking organization, as the source of supply.  
15 You can argue that it's a source of supply, but it's also akin  
16 to a broker, but he also supervised and managed at least five  
17 other co-conspirators, including his wife, Christian Lopez-  
18 Villegas, his brother Carlos Espinoza, his cousin Mario  
19 Espinoza, John Mott, a courier charged in a different case,  
20 20CR553. His in law, Gloria Sandoval, the stash house  
21 operator and Sheriff, who is a fugitive right now in Mexico.

22                  He also entered a Bank of America in San Ysidro and  
23 purchased a cashier's check in the amount of \$101,358 made  
24 payable to Leer Title Services with a substantial amount of  
25 money in U.S. currency, that's as to the money laundering.

1 And that that was used to purchase the property in Remer,  
2 Minnesota. And the buyers of the property were Espinoza and  
3 Christian Lopez-Villegas. The sellers were numerous members  
4 of the Egan (phonetic) family of Minnesota and the sales price  
5 of the property was \$178,000. So there was the \$101,000  
6 cashier's check -- I'm rounding -- and a deposit of \$28,000 in  
7 a private-party note in the amount of \$50,000. And the Court  
8 had signed the agreed upon preliminary order of forfeiture.

9                   So, I think since I'm required to accurately  
10 calculate the advisory guidelines, I think that the plus four  
11 does apply. So the Court overrules your objection, but now  
12 you can get to the meat of your argument, as to the guidelines  
13 really are quite high here. And then I've sentenced a number  
14 of individuals. He's on the supply side, they're on the  
15 distribution side, but we've sentenced a number of individuals  
16 and the 210 months I think is way too high from the  
17 Government; so you may continue.

18                   MR. STEWART: Thank you, your Honor.

19                   Your Honor, the main, I think, point that I want to  
20 make with this Court is that in no way are we arguing that  
21 this is not a serious crime. There is no way to come before  
22 the Court even to suggest that. And I think Mr. Espinoza  
23 acknowledges that, and that's why Mr. Espinoza has pled  
24 guilty, accepted responsibility and has not fought in any way.

25                   I would also indicate, your Honor, that even --

1 this I think I would like the Court to hear -- is that, even  
2 though Mr. Espinoza, we knew, was not safety-valve eligible,  
3 we submitted to one anyway, because we wanted to make sure  
4 that the prosecution had the opportunity, just because we  
5 wanted to make sure that it was clear that Mr. Espinoza was  
6 taking responsibility and not try to shorten or hide or avoid  
7 even that discussion. And so, I wanted -- and we did that  
8 knowing that he was not safety-valve eligible. And so we  
9 didn't expect to be getting that from the Government. So I  
10 wanted to make that clear, your Honor.

11           Your Honor, I think that the Court obviously will  
12 consider the Defendant's background, Mr. Espinoza. And in my  
13 sentencing memorandum, I just kind of summed up what his prior  
14 criminal history was. He had a misdemeanor for possession or  
15 sale of more than 28 and half grams of marijuana, for which he  
16 served 22 days. He had a misdemeanor -- it looks like -- it  
17 may have been -- I may have mis-wrote here -- perhaps a public  
18 disruption, I believe is probably what it is. In the three  
19 years of probation he had taken a vehicle without an owner's  
20 consent. He received 180 days. He did have a possession for  
21 sale of meth, where he received 75 -- no -- 75 days and then  
22 he had the money laundering where he received 120 days.

23           So, what we have is, your Honor, we do have a  
24 person that has some criminal history, your Honor, kind of a  
25 mixture of misdemeanors and then one or two felonies. The

1 most he has ever received was 180 days in custody. So,  
2 obviously we're going to be well well well beyond that. But I  
3 did at least want to somewhat characterize Mr. Espinoza's  
4 criminal history, and that I would suggest that while he has  
5 some, and I have to acknowledge that, that's before the Court,  
6 that he does not have a history of a hardened criminal or --  
7 for the Court to consider.

8           I would next suggest, your Honor, that Mr. -- I  
9 think, Espinoza -- while he certainly is, I think, the source  
10 of supply, and that's clear, there's no dispute there, I think  
11 it's important to understand that we acknowledge that the  
12 distribution conspiracy couldn't work without him or some  
13 other person being a source of supply, but we also want to  
14 point out, your Honor, that in terms of putting the time, the  
15 effort to develop the 60 plus, or so, members of the  
16 conspiracy that would distribute and run, that's not something  
17 that Mr. Espinoza owns. That's something that Mr. Villegas,  
18 defendant number two, owns.

19           And so, I just kind of want to, at least as best as  
20 I can, both acknowledge the role that he played, but also kind  
21 of differentiate so the Court can kind of do its relative  
22 analysis in determining sentencing.

23           I believe --

24           THE COURT: Can we --

25           MR. STEWART: Yes.

1                   THE COURT: So, on the criminal history, it's  
2 interesting. He just has five criminal history points, but as  
3 far as the time that he got the first one, was he was bringing  
4 meth through the Otay Mesa, California Port of Entry on a  
5 motorcycle, a K9 alerted and then there was meth there. It  
6 was a state court case and he got merely a two-years custody,  
7 one-year suspended, and then it was reinstated, and he was  
8 arrested on a violation and got 75 days in jail. So he really  
9 got very little time on that.

10                  And then the next one was out of Arizona, money  
11 laundering. We don't have information about that one, but all  
12 he got was a sentence suspended, three-year supervised  
13 probation and 120 days jail. And then the others are too old  
14 and they don't score.

15                  So, looking at the picture, I think the Criminal  
16 History IV is more likely overstated and I would reduce it  
17 down to a III.

18                  MR. STEWART: Thank you, your Honor, for that  
19 analysis.

20                  Your Honor, I would also indicate that there have  
21 been some collateral consequences that Mr. Espinoza will have  
22 to forever live with. The most significant of which is that  
23 his wife has now been deported, and is soon to be his ex wife,  
24 has now been deported. So, in terms of his family and his  
25 children, he has to live with the fact that he played a

1 guiding role in, unfortunately, destroying his family. And I  
2 think that that's a very significant consequence that he'll  
3 have to forever deal with, your Honor.

4                   Your Honor, we're requesting -- we're acknowledging  
5 that the Court -- one must give a significant sentence of at  
6 least 10 years, based on the mandatory minimum, but the  
7 question becomes, your Honor, how much time I think is enough.  
8 I think, as I understand, 235 -- I think that's around 17 and  
9 a half years or so that the Government is recommending --

10                  THE COURT: 210.

11                  MR. STEWART: 210. And we're recommending, your  
12 Honor, as close as possible to the 10 years, and for a couple  
13 of reasons.

14                  The Court has already discussed Mr. Espinoza's  
15 criminal history, and then the question is, can anyone really  
16 argue that 10 years is not a significant sentence? I mean,  
17 that's a huge decade of a person's life. A huge sentence,  
18 your Honor. And so, we would argue that, in terms of  
19 deterrent, if there's going to be deterrents by custodial  
20 time, 10 years should do the trick. Certainly with regard to  
21 a specific deterrent for Mr. Espinoza. I don't think that  
22 we'll be seeing him -- be seeing him again, as well. And so,  
23 we do think that that message, that that's no slap on the  
24 wrist. That's a very significant time and we think that  
25 that's adequate, your Honor, to satisfy the goal of a 3553(a).

1           Your Honor, lastly, I just kind of want to note in  
2 terms of Mr. Espinoza's background, and probation lays it out,  
3 in terms of his work history, and I think it's important for  
4 the Court to include in the Court's analysis, that Mr.  
5 Espinoza, he has work history. And, in some respects, he has  
6 work history that is very humble, in terms of the many years  
7 he worked out in the field, as noted by probation. And then  
8 he also got into, I believe, it was mechanic and welding and  
9 the like, and that took him through, I think about two years  
10 prior to his arrest -- I think to about 2021 -- I think May  
11 2021, according to U.S. Probation. And so, I say that that's  
12 useful, your Honor, just to kind of consider Mr. Espinoza's  
13 history. Whether or not this has been his way of life for 10  
14 years, five years, 20 years, and I would argue, your Honor, it  
15 has not been.

16           Your Honor --

17           THE COURT: He's also an addict.

18           MR. STEWART: Yes, your Honor. He's also a drug  
19 addict, and I think, as you know, that that tends to get a  
20 person involved in the drug sphere. And with Mr. Espinoza,  
21 there's no argument that apparently he became good at it for a  
22 period of time, and that's why he's here before the Court.

23           And so I think that the Court has enough  
24 information, in terms of picture, to kind of adequately weigh  
25 or consider Mr. Espinoza -- to weigh and consider Mr. Espinoza

1 in conjunction with Mr. Villegas. I know that the Court has  
2 not yet sentenced him, I believe that's coming up, I believe  
3 after this, I think.

4           But we would submit with that. I know the Court  
5 has a busy schedule and we'll turn it over to the prosecution.

6           THE COURT: Thank you.

7           MR. SUTTON: Thank you, your Honor.

8           Your Honor, I'm not going to dispute some of the  
9 mitigating facts that Mr. Stewart said, and there's no  
10 question here that the 10-year recommended by Mr. Stewart is a  
11 significant sentence, but we're looking at some additional  
12 aggravating factors, and I think it should cause the Court to  
13 sentence above that 120 months. And I'll just go through  
14 those briefly.

15           First is that the firearms possession that the  
16 Court heard about, the nine firearms. The second, and maybe  
17 the most troubling, is the amount of recompense that Mr.  
18 Espinoza obtained from this offense. Bringing in 40 to 100  
19 pounds every week during COVID, he achieved a substantial  
20 financial windfall from this. The Court has heard just a  
21 small fraction of that.

22           THE COURT: So he has the house with cash.

23           MR. SUTTON: Yes.

24           THE COURT: But he's not living a lavish lifestyle.

25           MR. SUTTON: So that's the part here in the United

1 States, your Honor. There's the part in Mexico that we cannot  
2 touch, the assets down there, the properties, the livestock,  
3 the lifestyle. And that actually, from what we can tell  
4 during the wiretap, that Mr. Espinoza and his family were  
5 actually living quite lavishly. So that actually has been  
6 reflected. You know, the Court only sees a small portion of  
7 that -- you know, that -- basically \$200,000 for the all cash  
8 purchase of the house in Minnesota. What I would suggest to  
9 the Court is that's just kind of the tip of the iceberg. That  
10 was the property we were able to seize here in the United  
11 States, but that's a good reflection of the amount of cash  
12 that Mr. Espinoza was generating every single week.

13 As the Court remembers, during the COVID pandemic,  
14 starting in March of 2020, there was gravely restricted travel  
15 at the U.S./Mexico border. That caused the price of  
16 methamphetamine to skyrocket, as the Court remembers. So it  
17 became very difficult for folks to bring drugs into the  
18 country. That was not true for Mr. Espinoza. He found a way,  
19 his method of recruiting these couriers and smuggling in that  
20 methamphetamine, means that he dominated for that period of  
21 time the methamphetamine distribution market here in San  
22 Diego, because he and his couriers were able to bring in large  
23 quantities, even though the border was heavily restricted to  
24 travel. That generated a sizable amount of money. We were  
25 only able to capture some of that, the residence here in the

1 United States that the Court is forfeiting, but the vast  
2 majority of that cash was then picked up by those couriers  
3 after they dropped off the methamphetamine, turned around,  
4 bring the cash back to Mexico.

5 Now, it is fair that some of that cash would go to  
6 Mr. Espinoza's employers, the people that he got the  
7 methamphetamine from, but he was making a sizable amount of  
8 money from each transaction, and the Court heard -- I mean  
9 we're talking 40 to 100 pounds every single weeks for multiple  
10 months on end.

11 THE COURT: This is on the wiretap?

12 MR. SUTTON: This is on the wiretap.

13 THE COURT: And how much was he making?

14 MR. SUTTON: So, we estimate, you know, several  
15 thousand dollars per pound, that he was making in profit. Not  
16 to cover the overhead, not to pay his employees. Putting that  
17 aside, we estimated, based off of the amounts, that for each  
18 pound of methamphetamine, it was between two to \$3,000 in just  
19 profit for Mr. Espinoza.

20 THE COURT: But he doesn't have Bitcoin or --

21 MR. SUTTON: It appears that, based upon our  
22 investigation, most of that is in Mexico. So, properties that  
23 were purchased in Mexico, other assets all in Mexico that we  
24 don't have the ability to grab. We were able to grab, as the  
25 Court saw, this property in Minnesota, but the vast majority

1 of the assets went to Mexico where Mr. Espinoza was based in  
2 Mexico, but would travel to San Diego and travel to Minnesota.  
3 So he was kind of bouncing between these three areas.

4 THE COURT: What's the Minnesota connection?

5 MR. SUTTON: So, that actually is a question that  
6 we had, and I'll let Mr. Stewart speak to that. There was a  
7 component of this drug distribution network that involved  
8 sending methamphetamine, to Minnesota to other distributors out  
9 there, but I think Mr. Stewart is probably better equipped to  
10 explain why he purchased this property. It's in pretty rural  
11 northern Minnesota, if the Court knows Minnesota at all. I  
12 mean, we're not talking about Minneapolis, St. Paul. It's a  
13 pretty rural town, what we've described and it's been told to  
14 us, is about two to three hours north of that. So, what we've  
15 kind of envisioned, it's kind of like refuge kind of place.

16 One of the things that came out during the wiretap,  
17 when some of these seizures occurred, Mr. Espinoza was pretty  
18 sophisticated. He, I think, he had an understanding that law  
19 enforcement was looking into his activities. He, for a period  
20 of time, cut ties with Mr. Villegas because he was worried  
21 that Mr. Villegas was under scrutiny by law enforcement. He  
22 was correct, and as part of that, I think that's why he  
23 purchased the residence in Minnesota and was residing there,  
24 to kind of distance himself, physically, from the conduct.  
25 Ultimately though, the lure of the money was too much, and Mr.

1 Espinoza got back in business with Mr. Villegas, because as  
2 the Court has heard, Mr. Villegas could move those 40 to 100  
3 pounds of methamphetamine.

4           So, he had something that, I think, the two things  
5 that we would point as the aggravating factors, he had an  
6 incredibly reliable distributor here, who could distribute the  
7 large quantities of methamphetamine. And then second of all,  
8 he had the ability, Mr. Espinoza himself, had constructed a  
9 network that could bring across the large amounts of  
10 methamphetamine. So, those two things, very lucrative, right?  
11 Very rare and unusual to have both of those parts of the  
12 chain.

13           So, I think those are some of the things that we  
14 look at it as aggravating factors, and I think Mr. Espinoza  
15 kind of explains the financial motivation himself. You know,  
16 when he was interviewed by the probation department, you know,  
17 he said -- you know, primarily -- I'm going to paraphrase --  
18 primarily his motivation was financial, right? He was working  
19 to get money and he was. He was getting good money from this  
20 conduct. You know, he's a healthy, able bodied 36 year-old  
21 man who had a family, who had -- I think some of these other  
22 advantages, some of the things that Mr. Stewart talked about,  
23 and yet he decided to kind of throw that all away, right? And  
24 not just become a low-level courier that the Court sees day in  
25 and day out, and not even like a street-level distributor that

1 the Court has heard in some of these other cases this morning,  
2 but to really kind of go up the ranks in a drug trafficking  
3 organization. Because the next step for Mr. Espinoza, if he  
4 had not been arrested, is he is going to move up in greater  
5 power and greater responsibility inside one of those Mexican  
6 drug trafficking organizations. Why? Because he showed how  
7 valuable he was to the organization. He was able to move  
8 their product, he was able to sell it, and he was able to do  
9 so quickly and efficiently week after week, month after month,  
10 during this investigation.

11           So, we're not going to quarrel with the mitigating  
12 facts that the Court has heard from Mr. Stewart. I think  
13 those are appropriate, but we would suggest that those factors  
14 -- take Mr. Espinoza -- obviously, as the Court has heard,  
15 much more on the culpable side of the conspiracy. And the  
16 amount of methamphetamine has devastating impacts on our  
17 community. You know, the Court hears that everyday. And  
18 while he's a drug addict, and he knows that, and it's had an  
19 impact on his life, but the vast -- the vast amount of  
20 methamphetamine he is responsible for, devastated how many  
21 lives here in San Diego County and across the United States?  
22 That's why we're recommending a sentence above the mandatory  
23 minimum. No one here is suggesting that that is not a  
24 significant sentence, it is. It is. But we believe, for  
25 these factors, the Court could and should go above that to

1 send the message to other people that despite the lure of the  
2 dollars, despite the lure of how lucrative this type of  
3 activity can be, there's a significant cost if you are caught.

4           And Mr. Stewart has explained, there are some other  
5 costs he's suffered. We don't deny those at all, those are  
6 true, but there should be a cost, in terms of incarceration  
7 that is greater than the mandatory minimum. Exactly how much,  
8 we'll defer to the Court. The Court is very experienced and  
9 has heard many cases. We would just submit, Mr. Espinoza is  
10 on the higher end of culpability and responsibility and he  
11 justly and rightly faces a more significant penalty than the  
12 mandatory minimum.

13           So, based on that, your Honor, we would submit,  
14 unless the Court has any additional questions. And I would  
15 just, also, ask the Court to include the forfeiture order -- I  
16 think it was document number 1603 -- that's for the residence  
17 in Remer. The Court had signed a preliminary order of  
18 forfeiture. We would just ask the Court include that in a JNC  
19 in this case.

20           MR. STEWART: Your Honor, may I respond briefly to  
21 a couple of things, your Honor?

22           THE COURT: You may.

23           MR. STEWART: Your Honor, I think it's important  
24 for the Court to distinguish between facts and the  
25 prosecutor's kind of argument in speculation and conjecture.

1           I think the Court kind of noted that while Mr.  
2 Espinoza was making some money, and there's evidence of that,  
3 this idea I think that he has, you know, properties -- I'm not  
4 even sure what the prosecutor is arguing, in terms of if they  
5 believe he has a property, if they believe he has 10 -- I have  
6 no idea, but what they're doing is they're making a very  
7 significant argument what they think may be the case, but  
8 certainly has not been demonstrated to be the case. It would  
9 not make much sense for Mr. Espinoza to have children and a  
10 wife in the United States, but yet if he has all of this money  
11 to just simply be in Mexico while his children and his wife in  
12 the United States aren't enjoying any of it. I don't think  
13 that that makes a lot of sense.

14           Now, it doesn't mean that he didn't have anything  
15 in Mexico, but in terms of this argument that he has this  
16 lavish lifestyle in Mexico, but not one where his family is in  
17 the U.S., I think that that's questionable. And I would just  
18 say that it's more argument than really kind of factual based.

19           I would also indicate, when the Government argues  
20 to make it seem as though Mr. Espinoza was, during COVID, the  
21 only importer of methamphetamine, you know, I don't know where  
22 that comes from. I mean, maybe he's got a survey of the drug  
23 dealers getting through -- so, I would just encourage the  
24 Court, that while the prosecutor made a passionate argument, I  
25 think, but I think the Court's in a position to distinguish

1 between fact and argument.

2                   And I would just lastly indicate that, that my  
3 understanding really of the reason for purchasing the property  
4 in Minnesota is that Mr. Espinoza wanted out of this life, and  
5 that's what he was trying to do. And that was the goal. He  
6 did, as the prosecutor indicated, during this month -- these  
7 months that he was engaged in this activity, there were a few  
8 months that he decided to stop engaging in this activity, but  
9 unfortunately he got back in and -- before the Court -- but I  
10 think that that is part of his process. He was trying to get  
11 out and that was ultimately the goal for him to get out.

12                  And I think kind of -- so I would say that in  
13 contrast to the prosecutor's claim that he was going to be a  
14 high level person in a drug cartel someday. That's, again, I  
15 think kind of an argument, but at least that's not supported  
16 by the fact that Mr. Espinoza buys this property in some far  
17 away place to make it his residence. He was trying to get far  
18 away from this type of life. Obviously, he didn't get there.  
19 He got right here, and he has a price to pay.

20                  Thank you, your Honor.

21                  THE COURT: Thank you.

22                  I do agree with the defense, because during COVID  
23 we had a number of methamphetamine cases, in crossing the  
24 border in bus, and in all of those the Court -- none of them  
25 said, oh, my source of supply is Mr. Espinoza. And so, to say

1 that he's the -- that he had a lock on importation of  
2 methamphetamine, I don't think that's fact based, unless the  
3 Government has more information, undisclosed to the Court and  
4 the defense and probation.

5                   MR. SUTTON: I think maybe a little more narrowly  
6 tailored than that, your Honor. A lot through this network,  
7 right? A lot for -- supplying Mr. Villegas, who the Court  
8 knows, is a substantial distributor here in our community.

9                   So, certainly not -- and if the Court took that as  
10 a lock on all of the methamphetamine being imported, that's  
11 not the argument. We don't believe that. That's not the  
12 case. But, the facts, you know, as the Court can see, San  
13 Diego, as the Court knows, is a major transshipment point.  
14 Drugs come across to San Diego, but mainly up to Los Angeles  
15 for distribution out to the United States. That's not the  
16 area we're talking about. We're talking about a substantial  
17 portion of methamphetamine that was distributed here in San  
18 Diego by Mr. Villegas and others, as the Court heard.

19                   So, because he's the supplier to those individuals,  
20 and they supplied large quantities -- certainly not the only  
21 ones, there's no dispute about that, there are other  
22 methamphetamine distributors in the county -- but because this  
23 network was so prolific, 40 to 100 pounds a week -- here in  
24 San Diego County, for methamphetamine to stay here, that  
25 actually I would argue to the Court, is a substantial amount

1 (indiscernible) -- we would never argue that, but maybe does  
2 that answer the Court's question? So a little more narrowly  
3 tailored than I think Mr. Stewart had said. That was never  
4 our point or intention to say, all of the methamphetamine.  
5 Because the Court knows, rightfully so, that market, much  
6 larger.

7 THE COURT: Thank you. Anything else and then I'll  
8 ask Mr. Espinoza, would you like to say anything to the Court  
9 before the Court imposes sentence on you?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: You may.

12 THE DEFENDANT: I want to apologize to my  
13 (indiscernible) for committing these crimes and thank you for  
14 letting me speak. I want to apologize to my mom and I want to  
15 apologize to you. That's it.

16 THE COURT: Thank you.

17 The Court begins with the consideration of the  
18 Advisory Guidelines and then each of the 3553(a) factors, in  
19 order to fashion a fair and just sentence under the law that  
20 is sufficient, but not greater than necessary, to achieve the  
21 purposes of sentencing.

22 We have two counts here, Count 1 and then Count 2.  
23 Money laundering in Count 1 was the methamphetamine, and it  
24 was a large-scale investigation, and the Defendant was -- did  
25 play an aggravating role, in the Court estimation.

1           So we start out with a base offense level of 38,  
2 and then Count -- that's for Count 1, conspiracy to distribute  
3 more than 4.5 plus kilos of meth actual. And then Count 2,  
4 conspiracy to launder monetary instruments under sentencing  
5 guideline 2(d)1.1(c)1 and 2(s)1.1(a)1. Then plus two for  
6 possession of a firearm, under 2(d)1.1(b)1, because I think  
7 I'm required to include it, but then I'll factor it in as a  
8 departure, because it's in Minnesota really, not close to San  
9 Diego, where the activity was primarily occurring. However, I  
10 do think the Government makes a legitimate argument that it's  
11 not just one hunting rifle, or two, but it's a lot of weapons  
12 and it can be for his own protection too, because he's a high  
13 level source of supply.

14           Then, we do plus two for importation of  
15 methamphetamine. And then, he doesn't qualify for the safety  
16 valve, but on this, the importation of -- and it's clear it  
17 was imported, he was the source of supply under 2(d)1.1(b)5 --  
18 at the same time, while he doesn't qualify for safety valve,  
19 he at least made efforts to meet with the Government to say  
20 what his role was.

21           MR. STEWART: Exactly what his role in this was.  
22 Yes, your Honor.

23           THE COURT: Then maintaining a premises for  
24 distribution, under 2(d)1.1(b)12, that's another plus two.  
25 And then plus two conviction under Title 18 United States Code

1 Section 1956 for money laundering, under 2(s)1.1(b)2(b). And  
2 then plus four for aggravating role leaves an adjusted offense  
3 level of 50. It's combining multiple counts. Then minus  
4 three for acceptance of responsibility under 3(e)1.1(b), the  
5 Court grants the Government's motion for the third level under  
6 3(e)1.1(b) to a level 47.

7 And then, the criminal history, as we discussed, I  
8 think it's overstated, so the Court would reduce a level four  
9 down to a level three. And the Advisory Guidelines are off  
10 the chart at a level three.

11 So, I think in this instance, given the fact he's  
12 on the supply side, the others were on the distribution side,  
13 and Mr. Villegas, who has yet to be sentenced is the primary  
14 focus on the distribution side. But the distributors also --  
15 we've had a number of sentences that the Court has done, and  
16 I've taken a careful look at the type of sentences the Court  
17 has done for many of these defendants. So, the things that  
18 the Court would note, probably either as a significant  
19 departure or a variance, the Court is required to accurately  
20 consider the Advisory Guidelines, but then also take into  
21 consideration the 3553(a) factors.

22 And some of the information I consider the  
23 mitigating information, the aggravating information, the  
24 Government is correct on the aggravating information, although  
25 I disagree that he was the -- that he's the main -- the only

1 person is the source of supply for methamphetamine  
2 trafficking, even during COVID time. But, he was targeted on  
3 a wiretap, it was a large-scale investigation. The Government  
4 has a lot of information about him, but some of the -- on the  
5 mitigating information, he was a father and has family  
6 responsibilities and the family was living with him, as I  
7 understand it, up in Minnesota, a remote place, not living a  
8 lavish lifestyle. However, the house was purchased, and will  
9 be forfeited, with drug proceeds. The weapons, the Court will  
10 then consider as part of a variance.

11           Whether he was the only source of supply, the  
12 kingpin, I don't think he's El Chapo Guzman. I think he --  
13 they had their own network and he's -- he's got an aggravating  
14 role in the overall network, but he also has a long-term  
15 substance abuse problem, and often we see that that's a  
16 motivator for continuing in the drug business.

17           There will be collateral consequences to his  
18 family, so the wife who was involved has been deported, and  
19 won't be allowed to come back here. And, he has children. He  
20 did accept responsibility, he elected not to litigate the  
21 case. And, it's also during COVID time where admittedly,  
22 being in custody during COVID time has been pretty tough on  
23 people.

24           He also did the equivalent of a safety valve,  
25 without getting the benefit because he's disqualified from the

1 safety valve. And the court notes also, the lack of  
2 significant prior criminal time. One would expect, if he's  
3 this heavy duty person, that there would be a little more  
4 involvement in the criminal history. He's really done very  
5 little time before.

6           So, all of that factors in what is ultimately a  
7 fair and just sentence. The Government suggests 210, that's  
8 well based in the guideline analysis. The defense suggests  
9 simply 120 months per count. I think that's too little, given  
10 his involvement. And so -- and there are two counts, it was  
11 also money laundering and being the source of supply for the  
12 methamphetamine. And it was 40 to 100 pounds per week, and  
13 methamphetamine, unlike -- it's different from marijuana. It  
14 has really long term effects, as he probably knows, as well.  
15 Long term effects and people have a very difficult time, once  
16 they're addicted, getting out of that.

17           So, the Court concludes that, for his sentence, 168  
18 months. It's more than the 120, and that's per count,  
19 concurrent. And that's -- in order to get there, to see the  
20 significance, because I like to usually say, at least as a  
21 departure, that would be the equivalent of a level 33, which  
22 would be a significant departure from a level 47.

23           So, I think this is one of those cases where,  
24 because we add on so many pluses, the money laundering, the  
25 importation, the premises -- it wasn't technically his

1 premises, but he was clearly facilitating that -- the money  
2 laundering, the role, I think 168 months per count. There are  
3 consequences to this behavior and I think that that's a fair  
4 and just sentence under the law that's sufficient, but not  
5 greater than necessary to achieve the purposes of sentencing.

6 Is there a placement recommendation?

7 MR. STEWART: Yes, your Honor. We are requesting  
8 placement -- recommendation for placement as close as possible  
9 to the Southern District of California.

10 THE COURT: Okay. Southern California, if  
11 possible. And there are so many defendants, they have to take  
12 a careful look at this.

13 And then, also I would recommend the RDAP program.  
14 I don't know whether he will qualify or not. If he doesn't  
15 qualify, I would urge you to take advantage of any programming  
16 while in custody so that it's productive time, and hopefully  
17 then you avoid these problems in the future.

18 The Court will not impose a fine, as he's  
19 affirmatively demonstrated an inability to pay a fine, but I  
20 will impose a \$100 penalty assessment per count, for a total  
21 of \$200.

22 You have 14 days from today's date to file an  
23 appeal, as to any issue that you've preserved for appellate  
24 review.

25 Based on the Court's sentence, has appeal been

1 waived?

2 MR. SUTTON: No, your Honor. Mr. Espinoza is a  
3 pled without a plea agreement, so the Court's appeal advice, I  
4 think, is well taken. He retains the right to appeal the  
5 sentence.

6 THE COURT: So you do retain the right to appeal,  
7 and if you're going to appeal you need to do so within 14  
8 days.

9 We have the conditions as -- oh, I didn't do the  
10 conditions of supervised release. All right. So then, the  
11 Court orders you to abide by the standard conditions of  
12 supervised release. This includes the condition that you not  
13 violate any federal, state or local law and that you abide by  
14 special conditions of supervised release.

15 One, you're to participate in a cognitive  
16 behavioral treatment program, as directed by the probation  
17 officer and is deemed necessary by the probation officer.  
18 Two, you're to report all vehicles owned or operated, or in  
19 which you have an interest, to the probation officer. Three  
20 -- do you think the RRC after this length is warranted, or  
21 not?

22 MR. STEWART: Your Honor, I'd request that the  
23 Court not impose that.

24 THE COURT: I'm not going to impose it at this  
25 time, because of such a lengthy sentence and there may be

1 halfway house placement as a tail anyway. So I won't do it.

2 If he doesn't have a place to live, then he can discuss it  
3 with probation when he gets out and then we can add it.

4           Then next, you're to submit your personal property,  
5 house, residence, vehicles, papers, computers, other  
6 electronic communications or data storage devices or office,  
7 to a search conducted by a United States Probation Officer,  
8 based upon a reasonable suspicion of contraband or evidence of  
9 a violation of a condition of supervised release.

10           Does he object to drug testing and counseling?

11           MR. STEWART: No, your Honor.

12           THE COURT: Is that correct?

13           MR. STEWART: I'm sorry?

14           THE COURT: Do you object if the Court adds a drug  
15 testing and counseling condition?

16           THE DEFENDANT: Can you repeat that, please?

17           THE INTERPRETER: Your Honor, the interpreter will  
18 be happy to interpret into Spanish as the Court repeats the  
19 statement.

20           THE COURT: Okay. Do you object to the Court  
21 adding drug testing and counseling condition of supervised  
22 release?

23           THE DEFENDANT: No problem. No problem.

24           THE COURT: Okay. So then we'll add drug testing  
25 and counseling. I think it would be helpful, because the root

1 of the problem stems from substance abuse and if he can,  
2 during the time in custody, address those issues and then  
3 when he gets out, remain -- keep his sobriety, that would be  
4 beneficial.

5 MR. STEWART: And, your Honor, would the Court  
6 entertain, if for a period of time Mr. Espinoza complies  
7 completely with probation and doesn't violate, us coming back  
8 for early termination, there are no restrictions on that in  
9 terms of a plea agreement, it would just be up to the Court?

10 THE COURT: All right. So, for the term of  
11 supervised release, the Court will do four years; is that  
12 required?

13 MR. SUTTON: I believe five years is required on  
14 Count 1, your Honor.

15 THE COURT: Okay.

16 MR. SUTTON: And only three years on Count 2.

17 THE COURT: All right.

18 MR. SUTTON: And I would suggest the Court run  
19 Count 2 concurrent.

20 THE COURT: Five years supervised release on Count  
21 1 and three years supervised release on Count 2. If he is  
22 compliant after three years, he can move for early  
23 termination.

24 MR. STEWART: Thank you, your Honor.

25 THE COURT: So, to sum up, we have the conditions,

1 could Counsel come forward?

2 MR. SUTTON: And just one final point, if the Court  
3 can include that forfeiture and that JNC, preliminary order  
4 document 1603 that the Court previously signed?

5 THE COURT: Yes, the Court will -- will you send  
6 that over to us today?

7 MR. SUTTON: Yes, your Honor.

8 THE COURT: Do you acknowledge receipt of the  
9 Standard and Special Conditions of Supervised Release?

10 THE DEFENDANT: Excuse me?

11 THE COURT: Do you acknowledge that you've  
12 received the Standard and Special Conditions --

13 THE DEFENDANT: Yes.

14 THE COURT: And plus, once you get out of custody,  
15 you're to report to U.S. Probation within 72 hours.

16 THE DEFENDANT: Yes, no problem, your Honor.

17 And, you have 14 days from today's date to file an  
18 appeal.

19 THE DEFENDANT: Okay, your Honor. Thank you.

20 THE COURT: Thank you.

21 Anything further?

22 MR. STEWART: No, your Honor. Thank you very much.

23 MR. SUTTON: No, thank you, your Honor.

24 THE COURT: Thank you.

25 (Proceedings concluded.)

1 I certify that the foregoing is a correct  
2 transcript from the electronic sound recording of the  
3 proceedings in the above-entitled matter.

4

5 /s/Tara Jauregui 2/6/2023  
Transcriber Date

6

7 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

8

9 /s/L.L. Francisco  
L.L. Francisco, President  
Echo Reporting, Inc.

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*Echo Reporting, Inc.*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA, } Case No. 21CR1559-H  
Plaintiff, }  
v. }  
Reyes Espinoza, }  
Defendant. } ORDER ACCEPTING PLEA

No objections having been filed, IT IS ORDERED that the Findings and Recommendation of the Magistrate Judge are adopted and this Court accepts Defendant's PLEA OF GUILTY to Count 1 and 2 of the Indictment.

DATED: 05/10/22

Marilyn L. Huff  
HONORABLE MARILYN L. HUFF  
UNITED STATES DISTRICT JUDGE

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**FILED**  
May 25 2021  
1:16 pm  
CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY s/emilybl DEPUTY

**SEALED**

**ORDERED UNSEALED on 06/29/2021 s/ anthonyh**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

November 2019 Grand Jury

'21 CR1559 H

UNITED STATES OF AMERICA,

Case No. \_\_\_\_\_

Plaintiff,

v.

REYES ESPINOZA (1),  
DAVID VILLEGAS (2),  
JOHN BOMENKA (3),  
DENNIS JONES (4),  
DARREN MOSIER (5),  
FRANK TUCKER (6),  
CHARLES MILLER (7),  
CARLOS ESPINOZA (8),  
MARIO ESPINOZA (9),  
JARON HILLYER (10),  
KRISTINA BROWN (11),  
DANNY MILLER (12),  
SHAWN MORRILL (13),  
HILLEAL GRANT (14),  
LEWIS RICH (15),  
CAMERON GRAFF (16),  
TERRY HAITH (17),  
TANSY STEINHAUER (18),  
JESSICA POMEROY (19),  
SHADOW SEGURA (20),  
JASMINE LUCAS (21),  
PHILLIP ABBAS (22),  
PETER FULLER (23),  
EDUARDO OSUNA (24),  
FRANK CARRILLO (25),  
STEPHEN MYRICK (26),  
GLORIA SANDOVAL (27),  
ASHLEY HILTON (28),  
JOSEPH OCCHIOGROSSO (29),  
GARY BEASLEY (30),  
ARNULFO RODRIGUEZ (31),  
ALEXANDRO LARIOS-FLORES (32),  
JOSE VARGAS (33),  
MICHAEL NAGLE (34),

I N D I C T M E N T

Title 21, U.S.C.,  
Secs. 841(a)(1) and 846 -  
Conspiracy to Distribute  
Methamphetamine; Title 18,  
U.S.C., Secs. 1956(h),  
1956(a)(1)(A)(i) and  
(a)(1)(B)(i) - Conspiracy to  
Launder Money; Title 18, U.S.C.,  
Sec. 922(g)(1) - Felon in  
Possession of a Firearm;  
Title 21, U.S.C.,  
Sec. 841(a)(1) - Possession of  
Methamphetamine with Intent to  
Distribute; Title 18, U.S.C.,  
Sec. 2 - Aiding and Abetting;  
Title 21, U.S.C., Secs. 952  
and 960 - Importation of  
Methamphetamine; Title 21,  
U.S.C., Sec. 853, Title 18,  
U.S.C., Sec. 924(d)(1),  
Title 28, U.S.C., Sec. 2461(c),  
and Title 18, U.S.C.,  
Sec. 982(a)(1) - Criminal  
Forfeiture

1 RAYMOND STERLING (35),  
2 TERRY TYLER (36),  
3 VICTOR YAMASAKI (37),  
4 CHRIS PASCHKE (38),  
5 CHARLES GERARDI (39),  
6 CHRISTIAN LOPEZ-VILLEGAS (40),  
7 DAVID SANTA MARIA (41),  
8 MELVIN JOHNSON (42),  
9 DANIEL BABUATA (43),  
10 GARRETT STEELE (44),  
11 VIEN TRINH (45),  
12 TROY PRATER (46),  
13 SHARON LANDHAN (47),  
14 GABRIEL ASKAY (48),  
15 PATRICK LANE (49),  
16 KEVIN TOBIN (50),  
17 JAMES ELLERBE (51),  
18 HOPE STONEKING (52),  
19 TASHA ALMANZA (53),  
20 JASON FERGUSON (54),  
21 KELLE FERGUSON (55),  
22 ROGER DESROCHE (56),  
23 STEVEN BRANDT (57),  
24 ESTEBAN RUBEN GASTELUM-SANCHEZ (58),  
25 TARA SCROGGINS (59),  
26 DEBBIE HILL (60),  
27  
28

Defendants.

16 The grand jury charges:

17 Count 1

18 Beginning on a date unknown to the grand jury and continuing up to  
19 and including the date of this Indictment, within the Southern District  
20 of California and elsewhere, defendants REYES ESPINOZA, DAVID VILLEGAS,  
21 JOHN BOMENKA, DENNIS JONES, DARREN MOSIER, FRANK TUCKER, CHARLES MILLER,  
22 CARLOS ESPINOZA, MARIO ESPINOZA, JARON HILLYER, KRISTINA BROWN, DANNY  
23 MILLER, SHAWN MORRILL, HILLEAL GRANT, LEWIS RICH, CAMERON GRAFF, TERRY  
24 HAITH, TANSY STEINHAUER, JESSICA POMEROY, JASMINE LUCAS, PHILLIP ABBAS,  
25 EDUARDO OSUNA, FRANK CARRILLO, GLORIA SANDOVAL, ASHLEY HILTON, JOSEPH  
26 OCCHIOGROSSO, GARY BEASLEY, ARNULFO RODRIGUEZ, MICHAEL NAGLE, TERRY  
27 TYLER, VICTOR YAMASAKI, CHRIS PASCHKE, CHRISTIAN LOPEZ-VILLEGAS, DAVID  
28 SANTA MARIA, MELVIN JOHNSON, DANIEL BABUATA, GARRETT STEELE, VIEN TRINH,

1 TROY PRATER, SHARON LANDHAN, GABRIEL ASKAY, PATRICK LANE, KEVIN TOBIN,  
2 JAMES ELLERBE, HOPE STONEKING, TASHA ALMANZA, JASON FERGUSON, KELLE  
3 FERGUSON, ROGER DESROCHE, STEVEN BRANDT, ESTEBAN RUBEN GASTELUM-SANCHEZ,  
4 TARA SCROGGINS, and DEBBIE HILL, did knowingly and intentionally  
5 conspire together and with each other and with other persons known and  
6 unknown to the grand jury, to distribute 50 grams and more of  
7 methamphetamine (actual), a Schedule II Controlled Substance; in  
8 violation of Title 21, United States Code, Sections 841(a)(1) and 846.

9 Count 2

10 Beginning on a date unknown to the grand jury and continuing to the  
11 date of this Indictment, within the Southern District of California and  
12 elsewhere, defendants REYES ESPINOZA, DAVID VILLEGAS, JOHN BOMENKA,  
13 DENNIS JONES, DARREN MOSIER, and CHRISTIAN LOPEZ-VILLEGAS, did knowingly  
14 and intentionally conspire together and with each other and with other  
15 persons known and unknown to the grand jury, to conduct and attempt to  
16 conduct financial transactions affecting interstate commerce, which  
17 transactions involved the proceeds of specified unlawful activity, that  
18 is, the felonious distribution of controlled substances punishable under  
19 Title 21, United States Code, Chapter 13,

20 a. with the intent to promote the carrying on of such specified  
21 unlawful activity in violation of Title 18, United States  
22 Code, Section 1956(a)(1)(A)(i); and

23 b. knowing that the transaction was designed in whole and in part  
24 to conceal and disguise the nature, location, source,  
25 ownership, and control of the proceeds of said specified  
26 unlawful activity, and while conducting and attempting to  
27 conduct such financial transactions knew the property involved  
28 in the financial transaction represented the proceeds of some

1                   form of unlawful activity, in violation of Title 18, United  
2                   States Code, Section 1956(a)(1)(B)(i).

3 All in violation of Title 18, United States Code, Section 1956(h).

4                   Count 3

5                   On or about August 14, 2020, within the Southern District of  
6 California, defendant JOHN BOMENKA, knowing his status as a convicted  
7 felon, that is, a person who had previously been convicted in a court  
8 of a crime punishable by imprisonment for a term exceeding one year, did  
9 knowingly possess a firearm that traveled in and affected interstate  
10 commerce, to wit: 12 gauge Mossberg shotgun; in violation of Title 18,  
11 United States Code, Section 922(g)(1).

12                   Count 4

13                   On or about September 16, 2020, within the Southern District of  
14 California, defendants DAVID VILLEGAS, DANNY MILLER, and SHADOW SEGURA,  
15 did knowingly and intentionally possess with intent to distribute,  
16 approximately 4,297 grams of methamphetamine (actual), a Schedule II  
17 Controlled Substance; in violation of Title 21, United States Code,  
18 Section 841(a)(1), and Title 18, United States Code, Section 2.

19                   Count 5

20                   On or about September 24, 2020, within the Southern District of  
21 California, defendants DARREN MOSIER, PHILLIP ABBAS, and PETER FULLER,  
22 did knowingly and intentionally possess with intent to distribute,  
23 approximately 2,150 grams of methamphetamine (actual), a Schedule II  
24 Controlled Substance; in violation of Title 21, United States Code,  
25 Section 841(a)(1), and Title 18, United States Code, Section 2.

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Count 6

2 On or about October 1, 2020, within the Southern District of  
3 California, defendants DAVID VILLEGAS, FRANK CARRILLO, and STEPHEN  
4 MYRICK, did knowingly and intentionally possess with intent to  
5 distribute, approximately 2,054 grams of methamphetamine (actual), a  
6 Schedule II Controlled Substance; in violation of Title 21, United States  
7 Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

Count 7

9 On or about November 16, 2020, within the Southern District of  
10 California, defendants CHARLES MILLER, ARNULFO RODRIGUEZ, ALEXANDRO  
11 LARIOS-FLORES, and JOSE VARGAS, did knowingly and intentionally possess  
12 with intent to distribute, approximately 448 grams of methamphetamine  
13 (actual), a Schedule II Controlled Substance; in violation of Title 21,  
14 United States Code, Section 841(a)(1), and Title 18, United States Code,  
15 Section 2.

Count 8

17 On or about November 19, 2020, within the Southern District of  
18 California, defendants DARREN MOSIER, MICHAEL NAGLE, and RAYMOND  
19 STERLING, did knowingly and intentionally possess with intent to  
20 distribute, approximately 323 grams of methamphetamine (actual), a  
21 Schedule II Controlled Substance; in violation of Title 21, United States  
22 Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

Count 9

24 On or about December 3, 2020, within the Southern District of  
25 California, defendant VICTOR YAMASAKI, did knowingly and intentionally  
26 import 50 grams and more of methamphetamine (actual), to wit:  
27 approximately 1,707 grams of methamphetamine (actual), a Schedule II  
28 Controlled Substance; into the United States from a place outside

1 thereof; in violation of Title 21, United States Code, Sections 952  
2 and 960.

3 Count 10

4 On or about March 3, 2021, within the Southern District of  
5 California, defendants DAVID VILLEGAS, CHRIS PASCHKE, and CHARLES  
6 GERARDI, did knowingly and intentionally possess with intent to  
7 distribute, approximately 4,080 grams of methamphetamine (actual), a  
8 Schedule II Controlled Substance; in violation of Title 21, United States  
9 Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

10 FORFEITURE ALLEGATION

11 1. The allegations contained in Counts 1 through 10 are realleged  
12 and by their reference fully incorporated herein for the purpose of  
13 alleging forfeiture to the United States of America pursuant to the  
14 provisions of Title 21, United States Code, Section 853, Title 18, United  
15 States Code, Section 924(d)(1), Title 28, United States Code,  
16 Section 2461(c), and Title 18, United States Code, Section 982(a)(1).

17 2. Upon conviction of the felony offenses alleged in Counts 1  
18 and 4 through 10 of this Indictment, said violations being punishable  
19 by imprisonment for more than one year and pursuant to Title 21, United  
20 States Code, Sections 853(a)(1) and 853(a)(2), defendants REYES  
21 ESPINOZA, DAVID VILLEGAS, JOHN BOMENKA, DENNIS JONES, DARREN MOSIER,  
22 FRANK TUCKER, CHARLES MILLER, CARLOS ESPINOZA, MARIO ESPINOZA, JARON  
23 HILLYER, KRISTINA BROWN, DANNY MILLER, SHAWN MORRILL, HILLEAL GRANT,  
24 LEWIS RICH, CAMERON GRAFF, TERRY HAITH, TANSY STEINHAUER, JESSICA  
25 POMEROY, SHADOW SEGURA, JASMINE LUCAS, PHILLIP ABBAS, PETER FULLER,  
26 EDUARDO OSUNA, FRANK CARRILLO, STEPHEN MYRICK, GLORIA SANDOVAL, ASHLEY  
27 HILTON, JOSEPH OCCHIOGROSSO, GARY BEASLEY, ARNULFO RODRIGUEZ, ALEXANDRO  
28 LARIOS-FLORES, JOSE VARGAS, MICHAEL NAGLE, RAYMOND STERLING, TERRY

1 TYLER, VICTOR YAMASAKI, CHRIS PASCHKE, CHARLES GERARDI, CHRISTIAN LOPEZ-  
2 VILLEGAS, DAVID SANTA MARIA, MELVIN JOHNSON, DANIEL BABUATA, GARRETT  
3 STEELE, VIEN TRINH, TROY PRATER, SHARON LANDHAN, GABRIEL ASKAY, PATRICK  
4 LANE, KEVIN TOBIN, JAMES ELLERBE, HOPE STONEKING, TASHA ALMANZA, JASON  
5 FERGUSON, KELLE FERGUSON, ROGER DESROCHE, STEVEN BRANDT, ESTEBAN RUBEN  
6 GASTELUM-SANCHEZ, TARA SCROGGINS, and DEBBIE HILL, shall, upon  
7 conviction, forfeit to the United States all their rights, title and  
8 interest in any and all property constituting, or derived from, any  
9 proceeds the defendants obtained, directly or indirectly, as the result  
10 of the offenses, and any and all property used or intended to be used  
11 in any manner or part to commit and to facilitate the commission of the  
12 violations alleged in Counts 1 and 4 through 10 of this Indictment  
13 including but not limited to:

14 a. The real property located at 6815 Village Oaks Road NE,  
15 Remer MN 56672, more particularly described as: Lots One (1), Two (2),  
16 Three (3), Four (4), Five (5), Six (6) and Seven (7), Block One (1) and  
17 Lot One (1), Block Two (2), Village North Cass County, Minnesota. APN:  
18 39-400-0110; and

19 b. \$ 11,610.00 U.S. Currency; and

20 c. Suzuki GSX1300RAL9 Motorcycle with VIN#  
21 JS1GX72B4K7101547; and

22 d. 2015 Thor Motorcoach Outlaw motorhome with VIN#  
23 1F66F5DY8E0A12901.

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1       3. Upon conviction of the offense alleged in Count 2 of this  
2 Indictment, and pursuant to Title 18, United States Code,  
3 Section 982(a)(1), defendants REYES ESPINOZA, DAVID VILLEGAS, JOHN  
4 BOMENKA, DENNIS JONES, DARREN MOSIER, and CHRISTIAN LOPEZ-VILLEGAS,  
5 shall forfeit to the United States, all property, real and personal,  
6 involved in such offense, and all property traceable to such property.

7       4. Upon conviction of the offense alleged in Count 3 of this  
8 Indictment, defendant JOHN BOMENKA, shall forfeit to the United States,  
9 pursuant to Title 18, United States Code, Section 924(d), and Title 28,  
10 United States Code, Section 2461(c), all firearms and ammunition  
11 involved in the commission of the offense, including but not limited to,  
12 12 gauge Mossberg shotgun and three shotgun shells.

13       5. If any of the above-described forfeitable property, as a  
14 result of any act or omission of the defendants:

- 15           a. cannot be located upon the exercise of due diligence;
- 16           b. has been transferred or sold to, or deposited with, a  
17 third party;
- 18           c. has been placed beyond the jurisdiction of the Court;
- 19           d. has been substantially diminished in value; or
- 20           e. has been commingled with other property which cannot be  
21 subdivided without difficulty;

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1 it is the intent of the United States, pursuant to Title 21, United  
2 States Code, Section 853(p) and Title 18, United States Code,  
3 Section 982(b), to seek forfeiture of any other property of the  
4 defendants up to the value of the property listed above as being subject  
5 to forfeiture.

6 All pursuant to Title 21, United States Code, Section 853, Title 18,  
7 United States Code, Section 924(d)(1), Title 28, United States Code,  
8 Section 2461(c), and Title 18, United States Code, Section 982(a)(1).

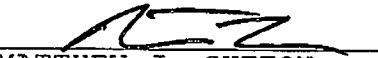
9 DATED: May 25, 2021.

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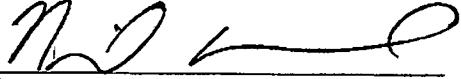
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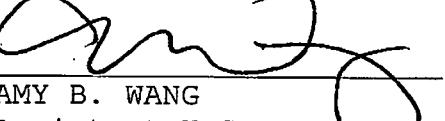
13 RANDY S. GROSSMAN  
14 Acting United States Attorney

15 By: 

16 MATTHEW J. SUTTON  
17 Assistant U.S. Attorney

18 By: 

19 NICOLE BREDARIOL  
20 Special Asst. U.S. Attorney

21 By: 

22 AMY B. WANG  
23 Assistant U.S. Attorney

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25

26

27

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff-Appellee,  
v.  
REYES ESPINOZA,  
Defendant-Appellant.

Southern District No.  
3: 21-cr-01559-H-1

Ninth Circuit No.  
22-50273 USCA

**ORDER APPOINTING COUNSEL**

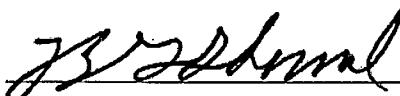
On December 6, 2022, the United States Court of Appeals for the Ninth Circuit granted the motion of Appellant's appointed counsel to withdraw as counsel of record and ordered the appointing authority for the Southern District of California to appoint counsel for Defendant-Appellant. (USCA Docket Entry No. 3.) Therefore, the Court **ORDERS**:

1. Steven Lubliner is appointed to represent Reyes Espinoza in this case.
2. The Clerk of Court for the Southern District of California must provide a copy of this order, the docket sheet, and the order issued by the Ninth Circuit to Steven Lubliner, P.O. Box 750639, Petaluma, California 94975. Counsel's telephone number is (707) 789-0516.
3. The Clerk of Court for the Southern District of California must serve a copy of this order on the Ninth Circuit.

4. Appointed counsel must comply with the Ninth Circuit's procedures for electronic transmittal of Criminal Justice Act Form 20 vouchers via email.

**IT IS SO ORDERED.**

Dated: December 8, 2022

  
\_\_\_\_\_  
Hon. Bernard G. Skomal  
United States Magistrate Judge