

No. _____

**In The
Supreme Court of the United States**

HANSEL JANEL RIJO-GUERRERO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition For A Writ Of Certiorari To The United
States Court of Appeals for the First Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The First Circuit affirmed the judgment entered in the case of Mr. Rijo-Guerrero, who received a sentence of 188 months for conspiracy to import cocaine, importation of cocaine, conspiracy to possess with intent to distribute cocaine, and possession with intent to distribute cocaine. This petition presents the following issues:

1. Did the district court err when it imposed a two-level sentencing enhancement pursuant to USSG § 2D1.1(b)(3)(C) where the Government failed to prove by a preponderance of the evidence that Mr. Rijo-Guerrero acted as a pilot, co-pilot, captain, navigator, flight officer or any other operation officer aboard any craft or vessel carrying a controlled substance?

2. Did the district court adequately explain its rejection of Mr. Rijo-Guerrero's nonfrivolous argument for a downward variance based on the need to avoid an unwarranted sentencing disparity between him and his co-defendants?

3. Did the district court err when it denied Mr. Rijo-Guerrero's request for downward variance where he received a sentence of 188 months of imprisonment, 101 months more than the captain of the ship transporting the contraband?

PARTIES TO THE PROCEEDING

Petitioner, Hansel Janel Rijo-Guerrero, was the appellant in the United States Court of Appeals for the First Circuit. Respondent, the United States, was the appellee.

TABLE OF CONTENTS

QUESTIONS PRESENTED	ii
PARTIES TO THE PROCEEDING.....	iii
TABLE OF CONTENTS	iv
INDEX OF APPENDICES.....	v
TABLE OF AUTHORITIES.....	vi
PETITION FOR WRIT OF CERTIORARI.....	1
DECISIONS BELOW.....	1
BASIS FOR JURISDICTION	1
PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	2
REASON FOR GRANTING THE WRIT.....	6
I. This Court should grant the writ and review this case to establish the proper standard of proof required for the Government to establish a sentencing enhancement and to remind sentencing courts that the Government must prove sentencing enhancements with reliable evidence, not just uncorroborated hearsay statements	6
CONCLUSION	9

INDEX OF APPENDICES

APPENDIX

Appendix A: Opinion of the U.S. Court of Appeals for the First Circuit (December 81, 2024)	App. 1
Appendix B: Judgment in a Criminal Case (February 8, 2023)	App. 6
Appendix C: Doc. 174 – Sentencing Hearing Transcript (February 8, 2023)	App.14

TABLE OF AUTHORITIES

CASES

<i>United States v. Booker</i> , 543 U.S. 220, 319 n.6 (2005)	6
<i>United States v. Brady</i> , 895 F.2d 538, 542 (9th Cir. 1990)	6
<i>United States v. Colón-Maldonado</i> , 953 F.3d 1 (1st Cir. 2020)	7
<i>United States v. Flete-Garcia</i> , 925 F.3d 17 (1st Cir. 2019)	7
<i>United States v. Jimenez-Martinez</i> , 83 F.3d 488 (1st Cir. 1996)	8
<i>United States v. Lucas</i> , 101 F.4th 1158 (9th Cir. 2024)	9
<i>United States v. McGowan</i> , 668 F.3d 601 (9th Cir. 2012)	7
<i>United States v. Morgan</i> , 384 F.3d 1 (1st Cir. 2004)	6, 9
<i>United States v. Navarro-Santisteban</i> , 83 F.4th 44 (1st Cir. 2023)	7, 8
<i>United States v. Ortega Lopez</i> , 684 F. Supp. 1506 (C.D. Cal. 1988)	6
<i>United States v. Rondón-García</i> , 886 F.3d 14 (1st Cir. 2018)	7
<i>United States v. Tavano</i> , 12 F.3d 301 (1st Cir. 1993)	7

STATUTES AND RULES

18 U.S.C. § 2	1, 2
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28 U.S.C. § 1254(1)	1
18 U.S.C. § 3553(a)(6).....	2
21 U.S.C. § 952(a)	1
21 U.S.C. § 960(a)	1
21 U.S.C. § 960(b)(1)(B)(ii)	1
21 U.S.C. § 963	1

SENTENCING GUIDELINES

USSG § 2D1.1(b)(3)(C)	<i>passim</i>
USSG § 6A1.3(a)	7

PETITION FOR WRIT OF CERTIORARI

Petitioner, Hansel Janel Rijo-Guerrero, respectfully petitions this Court for a writ of certiorari to review the opinion of the First Circuit Court of Appeals.

DECISIONS BELOW

Mr. Rijo-Guerrero pleaded guilty to:

1. Conspiracy to import cocaine, in violation of 21 U.S.C. §§ 952(a), 960(a)(1) and (b)(1)(B)(ii), and 963;
2. Importation of cocaine, in violation of 21 U.S.C. §§ 952(a), 960(a)(1) and (b)(1)(B)(ii) and 18 U.S.C. § 2;
3. Conspiracy to possess with intent to distribute a controlled substance, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(ii) and 846;
4. Possession with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(ii) and 18 U.S.C. § 2.

(A. 6-7).

On February 8, 2023, the district court imposed a sentence of 188 months for each count, to be served concurrently, and entered judgment that same day. (A. 8, 31). Mr. Rijo-Guerrero appealed, and the First Circuit issued a written summary affirmance on December 18, 2024. (A. 1-4).

BASIS FOR JURISDICTION

On December 18, 2024, the First Circuit issued a written summary affirmance of the district court's judgment. (A. 14). This timely petition follows. Jurisdiction lies in this Honorable Court. *See* 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

1. USSG § 2D1.1(b)(3)(C):

If the defendant unlawfully imported or exported a controlled substance under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import or export the controlled substance, (B) a submersible vessel or semi-submersible vessel as described in 18 U.S.C. § 2285 was used, or (C) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by 2 levels. If the resulting offense level is less than level 26, increase to level 26.

2. 18 U.S.C. § 3553(a)(6) (2025):

(a) The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

...

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and.

...

STATEMENT OF THE CASE

At the sentencing hearing, the district court explained the factual basis for Mr. Rijo-Guerrero's crimes as follows:

Mr. Rijo is a 28-year-old citizen of the Dominican Republic, who has a 6th grade education. He was unemployed prior to his arrest for his offenses and has no history of using controlled substances.

Mr. Rijo assisted in the navigation of the vessel by using a Global Positioning System, GPS. The co-defendant told the agents that he overheard Mr. Rijo tell Defendant Cordero, 'Estamos a veinte'; 'We are 20 away.'

Disregarding comments by law enforcement, Mr. Rijo jumped in the water, returned to the vessel, and then reached into his pocket, and threw away what was eventually determined to be a GPS device. Remember that Mr. Rijo said that they were 20 miles away, from which you can infer that the item that he had in his pocket was a GPS device.

The officers correctly thought that Mr. Rijo was reaching for a weapon, so they shot him to stop the apparent threat to them.

(A. 30-31). The solid object Mr. Rijo-Guerrero threw from the vessel fell to the ocean floor and was never recovered. (A. 22). During the ensuing search of the yola, law enforcement recovered 58 kilograms of cocaine. (A. 29). Mr. Rijo-Guerrero pleaded guilty to the four counts described above. There was no plea agreement.

At the sentencing hearing, the defense requested a sentence of 120 months of imprisonment. (A. 16). Mr. Rijo-Guerrero maintained that a sentence of this length was necessary to ensure “parity with the other co-defendants,” who received sentences of 120 months and 87 months. (A. 16). The judge pointed out that co-defendant Mr. Cordero received safety-valve relief. (A. 17). In response, Mr. Rijo-Guerrero observed that safety-valve relief should not have been available to Mr. Cordero because Mr. Cordero was the captain of the ship. (A. 17).

The defense also disputed the applicability of the two-level enhancement under USSG § 2D1.1(b)(3)(C). According to Mr. Rijo-Guerrero, there was “no evidence” that the object he threw overboard was a “GPS.” (A. 17). He also disputed the veracity of the statements of his co-defendants, which he claimed were “given under duress” because they had just witnessed Mr. Rijo-Guerrero being shot. (A. 18).

The Government asked for a sentence of 188 months based in part on application of the obstruction of justice enhancement for throwing what it claimed was a GPS device overboard. (A. 19-20). Though the Government played a video of the events leading up to Mr. Rijo-Guerrero being shot, the video does not reveal Mr. Rijo-Guerrero possessing or using a GPS device and the Government introduced no other evidence to establish Mr. Rijo-Guerrero's possession of a GPS device. (A. 19-23). The Government did not dispute that the video did not reveal the precise nature of the object that was thrown overboard: "What you then see is an object clearly splashing to the right side, an object that at most is a GPS device, at worst [it] is the gun that the officers feared." (A. 26).

The district court found that the enhancement under USSG § 2D1.1(b)(3)(C) applied and adopted the Government's recommended sentence of 188 months of imprisonment. (A. 29-31). The district court never explained why it denied Mr. Rijo-Guerrero's argument that he should receive a downward variance to 120 months of imprisonment based on the disparity between his sentence and the sentences received by his co-defendants. (A. 14-31).

Mr. Rijo-Guerrero appealed to the First Circuit. He argued in his brief that the district court committed three reversible errors. First, the district court erred when it imposed a two-level enhancement pursuant to USSG §2D1.1(b)(3)(C) because it lacked a sufficient evidentiary basis for concluding that Mr. Rijo-Guerrero acted as a pilot, co-pilot, captain, navigator, flight officer or any other operation officer aboard any craft or vessel carrying a controlled substance. Second,

Mr. Rijo-Guerrero argued the district court erred when it failed to adequately explain its rejection of Mr. Rijo-Guerrero's nonfrivolous argument for a downward variance based on the need to avoid an unwarranted sentencing disparity between him and his co-defendants. Third, he argued the First Circuit should reverse because the district court denied Mr. Rijo-Guerrero's request for downward variance and imposed a sentence of 188 months of imprisonment, 101 months more than the captain of the ship transporting the contraband.

The First Circuit affirmed. First, it found that, "putting all the evidence together," the circuit court judge "properly applied" the two-level pilot-navigator enhancement and "provided a plausible rationale . . . explaining how he inferred from all the evidence that Defendant-Appellant operated the GPS aboard the yola." (A. 2, 4).

The First Circuit also determined that "the judge adequately explained his reasons for rejecting Defendant-Appellant's argument for a downward variance to bring his sentence to 120 months 'based on parity with the other co-defendants.'" (A. 3). Specifically, the First Circuit explained that the district court judge "pointed out that Defendant-Appellant was unlike his co-defendant who had met the safety-valve requirements which allowed him to be sentenced below the mandatory minimum." (A. 3). Moreover, because "the judge adopted a sentence within the guidelines sentencing range," the First Circuit concluded that "there was no need for more detailed explanation." (A. 3).

Finally, the First Circuit found that “the district court committed no error in imposing disparate sentences among Defendant-Appellant and his co-defendants.” (A. 3). Because “there were material differences between Defendant-Appellant and his co-defendants that warranted different sentences,” the First Circuit reasoned Mr. Rijo-Guerrero’s claim of disparity was meritless. (A. 3).

REASON FOR GRANTING THE WRIT

I. **This Court should grant the writ and review this case to establish the proper standard of proof required for the Government to establish a sentencing enhancement and to remind sentencing courts that the Government must prove sentencing enhancements with reliable evidence, not just uncorroborated hearsay statements.**

“A defendant’s liberty interest affected by criminal sentencing is substantial.” *United States v. Brady*, 895 F.2d 538, 542 (9th Cir. 1990) (quoting *United States v. Ortega Lopez*, 684 F. Supp. 1506, 1513–14 (C.D. Cal. 1988)). Most courts, including the First Circuit, have held that factual findings made at sentencing must be supported by a preponderance of the evidence. *See, e.g., United States v. Morgan*, 384 F.3d 1, 5 (1st Cir. 2004). But in *United States v. Booker*, Justice Thomas noted that the “Fifth Amendment requires proof beyond a reasonable doubt, not by a preponderance of the evidence, of any fact that increases the sentence beyond what could have been lawfully imposed based on the basis of facts found by the jury or admitted by the defendant.” 543 U.S. 220, 319 n.6 (2005) (Thomas, J., dissenting). This Court should use this case to announce the proper standard of proof required by the Government to establish a fact necessary to prove a sentencing enhancement.

In addition, this case should be reviewed to give guidance to sentencing courts asked to enhance sentences based on hearsay statements alone. In making sentencing findings, “due process demands that a sentencing court consider all the available evidence, including conflicting evidence to assure itself that a piece of proof is sufficiently reliable.” *United States v. Flete-Garcia*, 925 F.3d 17, 36 (1st Cir. 2019) (quoting *United States v. Tavano*, 12 F.3d 301, 305 (1st Cir. 1993)) (internal punctuation omitted). “Reflexive reliance on hearsay accusations can hollow out those rights.” *United States v. Colón-Maldonado*, 953 F.3d 1, 9-10 (1st Cir. 2020). “So when a court extends a defendant’s sentence based on hearsay, there must be other signs (other ‘indicia of trustworthiness’) to permit a reasoned conclusion that the statements are still reliable.” *Id.* (citing *United States v. Rondón-García*, 886 F.3d 14, 21 (1st Cir. 2018) and *United States v. McGowan*, 668 F.3d 601, 606-07 (9th Cir. 2012)); *see also* USSG § 6A1.3(a) (information relied on to enhance a defendant’s sentence must have “sufficient indicia of reliability to support its probable accuracy”). In short, “unreliable hearsay cannot be considered at sentencing.” *United States v. Navarro-Santisteban*, 83 F.4th 44, 56 (1st Cir. 2023).

Here, the district court rested its ruling primarily on the hearsay statement of a co-defendant, who told law enforcement Mr. Rijo-Guerrero was “working the Global Positioning System (GPS).” (A. 30). This statement, however, lacks reliability not just because it is hearsay, but also because it was made while the co-defendant was under duress and because the co-defendant had an interest in

shifting suspicion of being the leader of the vessel from himself to Mr. Rijo-Guerrero. (A. 17-18, 34). And because no other evidence corroborates this statement, it is insufficient to establish the two-level pilot-navigator enhancement in USSG § 2D1.1(b)(3)(C). *See, e.g., United States v. Jimenez-Martinez*, 83 F.3d 488, 494 (1st Cir. 1996) (holding that co-defendant's affidavit alleging defendant took part in a three-kilo drug deal could not support sentence increase without more evidence because defendant proffered that affiant did not understand defendant's language, the affiant never testified in court or grand jury, and no other evidence corroborated his story); *UnNavarro-Santisteban*, 83 F.4th at 58 (vacating sentence where hearsay played an "outsized role" in the district court's factual findings and thus, appellate court could not "extricate its influence from the court's broader sentencing rationale.").

The second piece of evidence the district court considered was the video recording of the first moments of the interdiction, which shows an object causing a splash and sinking into the ocean. The district court found that this object was "eventually determined to be a GPS device." (A. 26). That finding was incorrect. The Government did not dispute that the video did not reveal the precise nature of the object that was thrown overboard. (A. 26). Moreover, no GPS device was ever recovered. And at the time Mr. Rijo-Guerrero took the item out of his pocket, law enforcement believed it was a gun, not a GPS device, which is why they shot Mr. Rijo-Guerrero. The only evidence suggesting it was a GPS device was the unreliable hearsay statement of a co-defendant. That statement standing alone should not be

a sufficient basis to increase Mr. Rijo-Guerrero's sentence. *See, e.g., United States v. Lucas*, 101 F.4th 1158, 1160 (9th Cir. 2024) (reversing where the district court applied a heightened base level offense based on defendant's possession of a weapon that was never recovered or physically examined by the government).

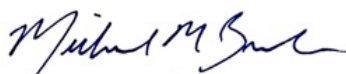
All that is left, then, is another hearsay statement attributed to Mr. Rijo-Guerrero—"Estamos a veinte"—translated to mean "We are 20 away." This statement also cannot serve as sufficient evidence to establish that Mr. Rijo-Guerrero served as a pilot, co-pilot, captain, navigator, flight officer or any other operation officer aboard any craft or vessel carrying a controlled substance for purposes of USSG § 2D1.1(b)(3)(C).

There was simply no evidence presented to the district court beyond hearsay and speculation that Mr. Rijo-Guerrero had or was ever using a GPS device. Accordingly, application of the two-level pilot-navigator enhancement was reversible error because it was based on factual findings unsupported by even a preponderance of the evidence. *See Morgan*, 384 F.3d at 5.

CONCLUSION

For the foregoing reasons, this Court should grant Mr. Rijo-Guerrero's petition and reverse the First Circuit's opinion.

Respectfully submitted on this 18th day of March, 2025.



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