

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

GLORIA NAVARRETE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

KRISTI A. HUGHES
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101
Telephone: (619) 234-8467
Counsel for Ms. Navarrete

QUESTION PRESENTED

Whether a participant in a criminal organization who relays a decision-maker's message to others has control or authority over others, such that a Guidelines aggravated-role adjustment is proper.

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	<i>prefix</i>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
PRAYER FOR RELIEF	1
JURISDICTION	1
OPINIONS BELOW	1
STATEMENT OF THE CASE	1
REASONS FOR GRANTING THE WRIT	3
I. Other circuits hold that simply relaying a message does not demonstrate sufficient control to qualify as having an aggravating role under U.S.S.G. § 3B1.1	3
II. This Court should resolve the dispute in this case, which presents an ideal vehicle for resolution	5
CONCLUSION	6
APPENDIX A	
APPENDIX B	
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

	<i>Page</i>
Cases	
<i>United States v. Avila</i> , 95 F.3d 887 (9th Cir. 1996)	5
<i>United States v. Branham</i> 460 F. App'x 538 (6th Cir. 2012)	4
<i>United States v. Diaz-Rosado</i> , 615 F. App'x 569 (11th Cir. 2015)	4
<i>United States v. Feeke</i> s, 929 F.2d 334 (7th Cir. 1991)	4
<i>United States v. Garibay</i> , 621 F. App'x 843 (7th Cir. 2015)	4
<i>United States v. Leonard</i> , 37 F.3d 32 (2d Cir. 1994)	4
<i>United States v. Martinez</i> , 584 F.3d 1022 (11th Cir.2009)	4
Statutes	
18 U.S.C. § 1946	1
21 U.S.C. § 841	1
21 U.S.C. § 846	1
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1291	1
Advisory Guidelines	
U.S.S.G. § 3B1.1	2, 3

PRAYER FOR RELIEF

Petitioner, Gloria Navarrete, respectfully prays for a writ of certiorari to issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

JURISDICTION

Petitioner was convicted of conspiracy to distribute cocaine, in violation of 21 U.S.C. §§ 841 & 846, and conspiracy to commit money laundering, in violation of 18 U.S.C. § 1946, in the United States District Court for the Southern District of California. The United States Court of Appeals for the Ninth Circuit reviewed her conviction under 28 U.S.C. § 1291, and denied a petition for rehearing on December 6, 2017. The Court has jurisdiction to review the judgment under 28 U.S.C. § 1254(1).

OPINIONS BELOW

The Ninth Circuit's unpublished memorandum opinion, filed on September 14, 2017, is reproduced in the appendix. *See* App. A. In it, the Ninth Circuit affirmed Petitioner's sentence, finding, in part, that the district court did not err in imposing an upward Guidelines adjustment for Ms. Navarrete's role in the offense. On December 6, 2017, the Ninth Circuit denied Petitioner's request for rehearing. *See* App. B.

STATEMENT OF THE CASE

Petitioner's mother ran a drug-smuggling organization that shipped cocaine from San Diego, California to the East Coast by hiding the cocaine in passenger cars shipped by commercial carriers. The proceeds were then shipped back west by hiding cash in the passenger cars, again shipped by commercial carrier. Petitioner's mother managed to distribute over 50 kilograms of cocaine this way, and make over three to four million dollars in proceeds.

She did this by recruiting her three adult children, including Petitioner, to assist her. She assigned them various roles, and they all worked at her behest. For her part, Petitioner helped coordinate the shipments of drugs and money, though, according to the government, she was “kept in the dark” about the specifics of the operation. She relayed messages from her mother to other participants, and deposited the drug proceeds into a bank account.

Petitioner also used drug proceeds to buy a house as a rental property, though later it was used as a stash house. She did not live at the stash house, and did not manage it; that task fell to another participant. One time, law enforcement seized a cash shipment and Petitioner’s mother feared the stash house would soon be searched. Petitioner then relayed a message from her mother to the stash house’s manager, asking her to clean the kitchen of any drug evidence.

Though Petitioner did not lead or organize any other participants, as that role fell to her mother, the district court nevertheless found that Petitioner merited a Guidelines adjustment for having an aggravated role in the offense. *See* U.S.S.G. § 3B1.1(c). This was because she relayed her mother’s message to clean the kitchen at the stash house, and the fact that she had used drug proceeds to purchase the house. Though the order to clean the stash house came from her mother, the district court found that relaying the message to another participant made Petitioner a leader or organizer because she was closer to the top of the organization’s hierarchy than the bottom. It therefore applied the Guidelines’ aggravated-role adjustment.

Petitioner appealed, challenging this Guidelines determination. The Ninth Circuit held that the upward adjustment was proper. “The district court found that Navarrete was ‘a lot closer to the top [of the drug-trafficking organization] than she was . . . to the bottom.’ The record supports the district court’s findings.” *See* App. A.

Petitioner requested rehearing, arguing that where she ranked in the hierarchy of the organization was not sufficient to warrant the Guidelines' role adjustment. Rather, what was required was control over others, and she had none. Relaying a message from her mother to another participant did not demonstrate any control over anyone else. In fact, it demonstrated the opposite, as Petitioner lacked any decision-making authority and only conveyed her mother's decisions to others. However, the Ninth Circuit declined to rehear Petitioner's case.

REASONS FOR GRANTING THE WRIT

This petition provides the Court an opportunity to correct the Ninth Circuit's error, which is in tension with decisions from other circuits. While other circuits require a defendant to exert control over other participants in a criminal scheme, and accordingly hold that relaying a message does not demonstrate control, the Ninth Circuit, in Petitioner's case, holds the opposite view. This Court should grant review to determine how much control is required for someone in a criminal scheme to be found to have an "aggravated role" under U.S.S.G. § 3B1.1(c), and ensure uniformity in the interpretation of the role Guideline.

I. Other circuits hold that simply relaying a message does not demonstrate sufficient control to qualify as having an aggravating role under U.S.S.G. § 3B1.1.

The aggravating role Guideline, found at section 3B1.1, states that a defendant's Guideline range should be increased by two levels if "the defendant was an organizer, leader, manager, or supervisor...." U.S.S.G. § 3B1.1(c).

Most circuits interpret this to mean that a defendant must exercise control over others in the organization—and that simply relaying a message from another is not sufficient to demonstrate the required control. For instance, the Eleventh Circuit requires

“evidence that the defendant exerted some control, influence or decision-making authority over another participant in the criminal activity.” *United States v. Martinez*, 584 F.3d 1022, 1026 (11th Cir.2009). Given this, passing messages between crewmembers on a drug smuggling boat does not show any control or leadership over others and is therefore insufficient to warrant a two-level Guidelines adjustment. *United States v. Diaz-Rosado*, 615 F. App’x 569, 575-79 (11th Cir. 2015). Similarly, in the Second Circuit, simply relaying a message from another cannot support the aggravated-role adjustment. *United States v. Leonard*, 37 F.3d 32, 37 (2d Cir. 1994). And the Seventh Circuit has implicitly recognized that relaying messages does not demonstrate control over others, holding that a defendant who *uses* others to relay a message should be given an *aggravated-role* adjustment. *United States v. Feeke*s, 929 F.2d 334, 338 (7th Cir. 1991); *accord United States v. Branham*, 460 F. App’x 538, 545 (6th Cir. 2012). In other words, these circuits recognize that the person giving the message is the one in control—not the messenger.

In fact, someone who has no control over other participants and instead relays messages given by others is generally entitled to a *minor-role* downward adjustment in other circuits. For example, the Sixth Circuit upheld a two-level downward adjustment for a woman who relayed drug-related messages to her husband and otherwise acted at his direction. *Branham*, 460 F. App’x at 548-49; *see also United States v. Garibay*, 621 F. App’x 843, 846 (7th Cir. 2015) (suggesting that minor-role adjustment would be appropriate if relaying messages was defendant’s only involvement, but holding that because defendant did more than this by arranging deliveries at his bar, he was not entitled to minor-role).

And in the Ninth Circuit usually some evidence—beyond acting as a go-between and relaying messages between participants—is required to demonstrate “control or organizational authority over

others.” *United States v. Avila*, 95 F.3d 887, 890-91 (9th Cir. 1996). In *Avila*, the Ninth Circuit found there was “no evidence” of the control necessary to support an upward role adjustment, even though the defendant was “the sole contact between buyer and seller” in a drug transaction. *Id.* at 890. He did not independently negotiate the price of the drugs, and instead “merely relayed the price of the cocaine, as set by his supplier, to the buyer.” *Id.* at 891. In other words, simply conveying a decision made by someone else in the organization is not sufficient to demonstrate control and warrant an aggravating-role adjustment under the Guidelines.

Notwithstanding this interpretation, the Ninth Circuit in Petitioner’s case upheld the role adjustment even though the district court’s basis for applying it was that Petitioner relayed a message from her mother to the stash house’s supervisor. That is inconsistent not only with its own precedent, *see Avila*, 95 F.3d at 891, but with the rule in other circuits that far from showing control, relaying decisions made by others actually demonstrates a *mitigated role* in the offense. This rule makes sense, as one who conveys decisions others have made necessarily is not exercising any authority or control, but is acting at the behest of others. That is insufficient to show an aggravated role in the offense.

II. This Court should resolve the dispute in this case, which presents an ideal vehicle for resolution.

Though a question of Guidelines interpretation, this Court should nevertheless resolve the dispute created by the Ninth Circuit’s decision in Petitioner’s case, as it is an important one. Simply relaying a messages would, in other circuits, warrant a two-level minor-role downward adjustment, whereas in Petitioner’s case, it was used to increase her Guideline range by two points under the aggravating-role Guideline. This is a large swing in Guideline ranges, and therefore sentences, and

this Court should address the inconsistency to provide guidance to the lower courts and eliminate sentencing disparities.

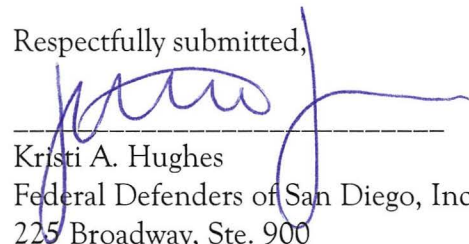
Moreover, this case presents an ideal opportunity for the Court to resolve the dispute of the level of control required to demonstrate an aggravated role, and whether relaying a decision-maker's message demonstrates this control. The question presented comes to the Court unencumbered by any procedural problems. The issue was pressed in district court, where Petitioner objected to the district court's Guideline calculation and the district court explained its reasoning on the record. The issue was also squarely pressed and passed upon by the court of appeals. The Ninth Circuit squarely addressed the question, and, though Petitioner asked the court to rehear the case because it had misapplied the law by holding that relaying a message was sufficient, it declined to do so. In addition, Petitioner continues to serve her sentence, so there are no mootness concerns. Accordingly, Petitioner respectfully requests that the Court grant her petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

February 28, 2018

Respectfully submitted,



Kristi A. Hughes
Federal Defenders of San Diego, Inc.
225 Broadway, Ste. 900
San Diego, CA 92120-5008
Telephone: 619-234-8467
Counsel for Ms. Navarrete

APPENDIX A

FILED

SEP 14 2017

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GLORIA HILDA NAVARRETE, AKA
Gloria Navarrete,

Defendant-Appellant.

No. 16-50187

D.C. No.

3:15-cr-00596-BEN-3

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Argued and Submitted August 10, 2017
Pasadena, California

Before: REINHARDT, KOZINSKI, and CHRISTEN, Circuit Judges.

“We review the district court’s interpretation of the [U.S. Sentencing] Guidelines de novo, the district court’s application of the Guidelines to the facts of the case for abuse of discretion, and the district court’s factual findings for clear

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

error.” *United States v. Treadwell*, 593 F.3d 990, 999 (9th Cir. 2010). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The district court increased Navarrete’s sentence under U.S.S.G. § 2D1.1(b)(12) for maintaining a stash house. *See* U.S.S.G. § 2D1.1(b)(12), cmt. n.17 (2015). Under the circumstances of this case, the district court did not err by imposing a sentence enhancement under § 2D1.1(b)(12).

2. U.S.S.G. § 3B1.1(c) provides for an upward adjustment based on the defendant’s role in the offense. The district court found that Navarrete was “a lot closer to the top [of the drug-trafficking organization] than she was . . . to the bottom.” The record supports the district court’s findings. The district court did not err when it increased Navarrete’s sentence by two levels for her role in the offense. *See United States v. Maldonado*, 215 F.3d 1046, 1050–51 (9th Cir. 2000); *United States v. Varela*, 993 F.2d 686, 691–92 (9th Cir. 1993).

AFFIRMED.

APPENDIX B

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DEC 06 2017

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GLORIA HILDA NAVARRETE, AKA
Gloria Navarrete,

Defendant-Appellant.

No. 16-50187

D.C. No.

3:15-cr-00596-BEN-3

Southern District of California,
San Diego

ORDER

Before: REINHARDT, KOZINSKI, and CHRISTEN, Circuit Judges.

The panel has unanimously voted to deny Defendant-Appellant Gloria Navarrete's petition for panel rehearing and petition for rehearing en banc.

The full court has been advised of Defendant-Appellant's petition for rehearing en banc, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35.

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