No. 19-

IN THE
Supreme Court of the United States

JOSE ARMANDO BAZAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Petitioner, JOSE ARMANDO BAZAN, was charged with and pleaded guilty to conspiring to possess with intent to distribute 500 grams or more of cocaine. The District Court imposed a sentence of 24 months.

On direct appeal, Mr. Bazan argued he should have received a minor or mitigating role downward adjustment under the Guidelines. Mr. Bazan agreed review was for plain error. The Government responded that this claim was not reviewable on appeal because the issue of minor/mitigating role is a fact question. The United States Court of Appeals for the Fifth Circuit agreed, stating that "[b]ecause this issue was a question of fact capable of resolution at sentencing, the issue can never constitute plain error."

The ruling of the Fifth Circuit directly affirmed the Government's position that there was to be "no review" of this claim as the Government had advocated. With respect to any factual findings by the District Court, those facts must not change when the issues change, contrary to the Government's advocacy to the contrary. Finally, the action by the Fifth Circuit reflects that the Appellate Court did not apply the plain error standard of review, as required by this Court. Critically, Mr. Bazan's request was for resentencing withy the adjustment. Hence, the Fifth Circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court. A compelling reason is thus presented in support of discretionary review. Mr. Bazan therefore respectfully requests that this Honorable Court grant this Petition and allow this case to proceed to resentencing with a reduction for minor/minimal party status.

PARTIES TO THE PROCEEDING

The parties to the proceeding are listed in the caption:

Jose Armando Bazan:	Petitioner (Defendant-Appellant in the lower Courts)
United States of America:	Respondent (Plaintiff-Appellee in the lower Courts)

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PETITION FOR WRIT OF CERTIORARI

Petitioner, JOSE ARMANDO BAZAN, requests this Court grant this petition and issue a Writ of Certiorari to review the decision of the Fifth Circuit. Mr. Bazan respectfully submits the District Court committed reversible error by failing to grant a Guideline reduction to the sentencing Guideline range under U.S.S.G. § 3B1.2. The Guidelines provide a 2-to-4-level reduction if the accused was a minor or minimal party. Based on the Government's arguments, the Fifth Circuit did not apply the law to the facts of the case and instead merely stated Mr. Bazan could not seek review. (Appendix A, page 2). More specifically, the Appellate Court directly accepted the Government's arguments for no review of this claim. However, the Fifth Circuit did not apply the correct standard of review for plain error review. Accordingly, the sentence imposed must be vacated and this matter reversed and remanded for resentencing with a reduction for minimal participation or minor party status.

REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

From the Federal Courts:

The Order of the United States Court of Appeals for the Fifth Circuit, *United States v. Jose Armando Bazan,* No. 18-40725 (5th Cir. June 28, 2019), appears at Appendix A to this petition and is unreported.

The Judgment in a Criminal Case of the United States District Court for the Southern District of Texas, McAllen Division, appears at Appendix B to this petition and is unreported.

From the State Courts:

None.

GROUNDS FOR JURISDICTION

This Petition arises from a direct appeal which granted final and full judgment against Mr. Bazan. This action is on a criminal prosecution initiated by the Government. Mr. Bazan pleaded guilty to a conspiracy to posses with intent to distribute 500 grams or more of cocaine. The District Court did not impose a minor/minimal party reduction pursuant to U.S.S.G. § 3B1.2. The denial of this reduction is at issue in this appeal. A copy of the Judgment appears at Appendix B. Mr. Bazan argued to the Fifth Circuit that the District Court committed reversible error in failing to implement the reduction. The Fifth Circuit rejected this argument in an opinion dated June 28, 2019, and affirmed the decision of the District Court. A copy of the decision appears at Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

CONSTITUTIONAL PROVISIONS

U.S. CONST. Amend. V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. Amend. VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause

of the accusation: to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in this favor; and to have Assistance of Counsel for his defense.

STATEMENT OF THE CASE

Background:

Mr. Bazan was indicted on April 25, 2017, and charged with one count of conspiring to possess with intent to distribute 500 grams or more of cocaine and a second count of possession with intent to distribute cocaine. ROA.10-11. On May 10, 2018, Mr. Bazan pleaded guilty to the conspiracy count. ROA.90-112.

There was no plea agreement in this case. ROA.105. However, at the time of the plea it was noted on the record that there was a possibility that Mr. Bazan would cooperate with the Government and testify against his co-conspirators. ROA.106. Indeed, Mr. Bazan did just that and testified on behalf of the Government. ROA.117.

The Guilty Plea Hearing:

Mr. Bazan entered a plea of guilty. ROA.110. During his guilty plea allocation, the following exchange took place on the record:

> **Ms. Rees [for the United States]:** On or about August 27th, 2016, to on or about September 3rd, 2016, the Defendant did knowingly and intentionally conspire and agree with others to possess with intent to distribute more than 500 grams of cocaine, a Schedule II controlled substance.
>
> On August 27, 2016, law enforcement responded to a vehicle abandoned in an orchard in San Juan, Texas, that had–that investigation led to the arrest and detention of Hugo De Hoyos and Arturo Bazan, who admitted to a scheme to steal bundles of cocaine by creating cloned or diluted bundles of cocaine that they had left in the orchard.

Mr. De Hoyos and Mr. Bazan each received a cut of the original amount of bundles; Mr. Bazan receiving 15. Arturo Bazan admitted he had contacted his son, Jose Bazan, after the staged seizure of the cloned bundles and asked for assistance in trying to sell the stolen cocaine bundles in his possession.

Jose Bazan admitted to law enforcement that he assisted his father, Arturo Bazan, by contacting an individual and trying to see if they would be able to sell a portion of the bundles.

The Defendant joined in the drug trafficking conspiracy willingly with the intent to further its unlawful purpose. To further the drug trafficking conspiracy, Jose Bazan agreed to contact on behalf of Arturo Bazan with the understanding that three bundles of cocaine that weighed more than 500 grams would be transferred to this third party for transport and eventual sale.

THE COURT: Mr. Bazan, do you agree with what the Government stated?

THE DEFENDANT: Yes, Your Honor.

THE COURT: So, at some point in time, and for the record, Arturo Bazan is your father, correct?

THE DEFENDANT: Correct.

THE COURT: Okay, so at some point in time on or after August the 27th and then before or up to at least September the 3rd, Arturo Bazan contacted you to help him sell these 15 bundles of what you understood to be cocaine; is that right?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you, in turn, contacted somebody else and, at least made some sort of arrangement whereby three bundles were going to be transferred over to that person. Is that correct?

THE DEFENDANT: Three, yes, ma'am.

THE COURT: Three bundles, okay. And you understood, again, that these were bundles, to your understanding that they contained cocaine, correct?

THE DEFENDANT: That's correct.

ROA.108-10 (emphasis in original).

The Presentence Investigation Report:

A United States Probation Officer prepared and filed a Presentence Investigation Report ("PSR" or "the report"). ROA.143-70. The PSR included: (1) a factual basis for the offense and relevant conduct of the offense; (2) the recognition of potential sentencing Guideline provisions for Mr. Bazan; and (3) a conclusion by the Probation Officer as to which United States Sentencing Commission Guidelines ("U.S.S.G." or "the Guidelines") were applicable in the case. ROA.143-70. Specific portions of the PSR facts are also discussed when the Probation Officer believed the Guidelines are relevant.

PSR: Calculations:

The Probation Officer began the PSR calculations with a base offense level of 26 under U.S.S.G. § 2D1.1(c)(7). ROA.159. To this end, a portion of this analysis provides:

> [T]he defendant who engaged in a jointly undertaken criminal activity, can be held responsible for the cocaine that he attempted to assist his father (Arturo Bazan) in selling. In this case, the defendant made contact with his friend (an unidentified co-conspirator) and brokered an arrangement between him/her to sell 3 kilograms of cocaine for his father (Arturo Bazan). Although said arrangement was abandoned because of the poor quality of the cocaine, which was subsequently disposed of, the defendant is still responsible for having coordinated the agreement between his friend and father.

ROA.159 (underlined emphasis added). Regardless of this role reduction observation, the Probation Officer made no role adjustments. *See* ROA.159.

The Officer next deducted 2-levels for Mr. Bazan's acceptance of responsibility. ROA.159. This left Mr. Bazan with a Total Offense Level of 24. ROA.160. With respect to Criminal History, the Probation Officer scored 2-history points to Mr. Bazan. ROA.160. This gave Mr. Bazan a Criminal History category of II. ROA.160.

PSR: Specific Factual Conclusions:

More specifically, the PSR included two conclusions which justify the conclusion that Mr. Bazan's role in this conspiracy was truly limited. ROA.155, 157. These two conclusions provide:

> 42. **Jose Bazan** who was called to testify during the second jury trial as to Salvador Hernandez and Richard Castillo, revealed that is father, Arturo Bazan, had informed him of the 15 kilograms/bundles of cocaine he (Arturo Bazan) had obtained. Arturo Bazan had asked his son, **Jose Bazan**, to place him in contact with someone who would sell some cocaine for him. **Jose Bazan** thereafter provided his father, Arturo Bazan, with the telephone number for his friend, whom he did not identify, and an arrangement to sell three kilograms of cocaine was made. The three kilograms/bundles of cocaine were turned over to **Jose Bazan's** unidentified friend (an unindicted co-conspirator), and he/she then attempted to sell the same in Victoria, Texas. However, it was subsequently discovered that the cocaine would not sell because it was of poor quality. Said cocaine, which was unseized, was subsequently disposed.
>
> * * * * * *
>
> 47. **Jose Bazan** was a narcotics broker in this drug trafficking venture; he made arrangements with his father, Arturo Bazan, to locate an individual who would sell three kilograms of cocaine. **Jose Bazan** thereafter provided

> Arturo Bazan with the telephone number for his friend, whom he did not identify by name, and the arrangement to sell the three kilograms was made between his father and his friend. **Jose Bazan's** unidentified friend subsequently attempted to sell the kilograms of cocaine in Victoria, Texas, but was unsuccessful due to the poor quality of the same. Because **Jose Bazan** participated in the brokering of three kilograms of cocaine with his father (Arturo Bazan) and his unidentified friend, he will be held accountable for said amount.

ROA.155, 157 (emphasis in original).

Sentencing:

Mr. Bazan proceeded to sentencing on July 23, 2018. ROA.113. The Government filed a motion to remove the 60 month minimum sentence, *i.e.*, pursuant to the safety valve, ROA.117, which was granted by the Court. ROA.126. The Court sentenced Mr. Bazan to serve a 24 month prison term for this offense, to run concurrently with sentences imposed in a separate drug case and failure to appear. ROA.80-86.

Mr. Bazan's attorney did not file any objections to the PSR. Despite his client's obvious minor/minimal role in the conspiracy, he did not move for any adjustments to the Guidelines at the sentencing hearing. After sentencing, he did not object to any portion of the sentence imposed.

Appeal to the Fifth Circuit Court of Appeals

Mr. Bazan timely filed a notice of appeal with the Fifth Circuit Court of Appeals. The Fifth Circuit affirmed the District Court in a written opinion. Mr. Bazan files this Petition for Writ of Certiorari challenging that decision.

ARGUMENT AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

I.
Overview

This Court has developed a straightforward formula to prevent constitutionally infirm and inconsistent sentencing outcomes. To this end, the Guideline range must first be determined. *Kimbrough v. United States,* 552 U.S. 85, 108-10 (2007); *Gall v. United States,* 552 U.S. 38, 51 (2007); *Rita v. United States,* 551 U.S. 338, 364 (2007). The various rules for determining the Guideline range to be applied by the District Court, and how this Court reviews those findings and conclusions, has been discussed by the Fifth Circuit on numerous occasions. *See e.g., United States v. Acosta,* 619 F. App'x 403, 404 (5th Cir. 2015); *United States v. Alaniz,* 726 F.3d 586, 618-19 (5th Cir. 2013); *United States v. Longstreet,* 603 F.3d 273, 275-76 (5th Cir. 2010). This process is important because, although the Fifth Circuit presumes sentences within the Guideline range are reasonable, the reasonableness of the sentence is the next consideration for sentencing. *Gall,* 552 U.S. at 51; *Rita,* 551 U.S. at 364.

Thus, after consulting and considering the Guidelines, the sentencing Judge must impose a "reasonable" sentence. *Gall,* 552 U.S. at 51. Whether a sentence is reasonable depends not only on the advisory sentencing range, but also on the numerous other factors listed under 18 U.S.C. § 3553(a), including, for example, "the need for the sentence imposed . . . to provide just punishment for the offense," *id.* at § 3553(a)(2)(A), "to afford adequate deterrence to criminal conduct," *id.* at §

3553(a)(2)(B), and "to protect the public from further crimes of the defendant." *id.* at § 3553(a)(2); *see also Booker v. United States*, 542 U.S. 220, 261 (2005) (explaining that § 3553(a) "factors in turn will guide appellate courts, as they have in the past, in determining whether a sentence is unreasonable"). It should be noted at this juncture that, in light of so much emphasis on the continued viability of the Guidelines, Sentencing Judges are nonetheless required by the Sixth Amendment to refrain from treating the Guidelines as mandatory whether out of "ignorance, negligence . . . defiance" or for any other reason. *United States v. Rodriguez*, 406 F.3d 1261, 1273 (11th Cir. 2005).

In any event, the first step to determining the Guideline range is to determine an offense level. U.S.S.G. § 1B1.2(a). Basically, pursuant to the Guidelines Manual, determining the applicable Guideline begins with an initial score for the offense of conviction. This is calculated by adding points assigned to the offense of conviction, as well as any "relevant conduct" to the specifics of the offense. This number is then changed by any applicable adjustments under the Guidelines. These adjustments can include harm to a victim, the defendant's role in the offense, and whether the defendant has cooperated or accepted responsibility. U.S.S.G. § 1B1.1(b)-(c).

Mr. Bazan did not object on the basis of a lack of minor/minimal reduction. Thus, he did not preserve for review any argument that he was entitled to a 2 to 4-level reduction in his sentence on that basis. Therefore, review of this issue was for plain error. *United States v. Olano*, 507 U.S. 725, 732-33 (1993); *see also United States v. Martinez-Rodriguez*, 821 F.3d 659, 662 (5th Cir. 2016). This Court has explained that

plain error requires a showing of error which is "clear or equivalently obvious," which "affects [a defendant's] substantial rights and which "seriously affects the fairness, integrity, or public perception of judicial procedures." *Olano,* 507 U.S. at 732-34 (internal quotations omitted); *see also Rosales-Mireles v. United States,* 138 S. Ct. 1897, 1910 (2018) (discussing plain error standard of review).

II.

The Crucial Legal Error of the Fifth Circuit

The Fifth Circuit rejected Mr. Bazan's argument that the District Court's failure to grant Mr. Bazan a mitigating role reduction was reversible error. (Exhibit A, page 2). The Court determined that, "[b]ecause this issue was a question of fact capable of resolution at sentencing, the issue 'can never constitute plain error.'" *Id.* (quoting *United States v. Fierro,* 38 F.3d 761, 774 (5th Cir. 1994)). However, Mr. Bazan asserts this rule is a Fifth Circuit-created-rule which is based on a misinterpretation of this Court's law. Respectfully, a review of the legal history of the *Fierro* case establishes that the Supreme Court of the United States has not endorsed such a strict rule on plain error analysis.

In *Fierro,* 387 F.3d at 774, the Fifth Circuit cited its own decision, to wit: *United States v. Guerrero,* 5 F.3d 868, 871 (5th Cir. 1993), *cert. denied* 510 U.S. 1134 (1994), for the proposition that the appellant was not entitled to relief "because questions of fact capable of resolution at sentencing can never constitute plain error." The *Guerrero* case indeed repeats that rule and quotes *United States v. Lopez,* 923 F.2d 47, 50 (5th Cir.) (per curiam), *cert. denied,* 500 U.S. 924 (1991). However, an examination of *Lopez*

demonstrates this is a Fifth Circuit-created-rule on plain error review and moreover shows that this Court has never established such a strict standard of review.

In *Lopez*, the Fifth Circuit addressed plain error and the corresponding standard of review. *Id.* at 50. The Court noted "[r]eview for plain error is uniquely addressed to the appellate court's discretion." *Id.* (emphasis added). Nonetheless, the Fifth Circuit cited Fifth Circuit caselaw and declared: "Questions of fact capable of resolution by the district court upon proper objection at sentencing can never constitute plain error." *Id.* (citing *United States v. Mourning*, 914 F.2d 699, 703 (5th Cir. 1990)).

The remaining discussion from *Lopez* goes on to establish that this Court has never endorsed such a strict rule for refusal of review. The Fifth Circuit stated:

> For a fact issue to be properly asserted, it must be one arising outside of the district court's power to resolve. Errors of constitutional dimension will be noticed more freely under the plain error doctrine than less serious errors. *Alexander v. United States*, 390 F.2d 101, 103 n.3 (5th Cir. 1968). Closer scrutiny may also be appropriate when the failure to preserve the precise grounds for error is mitigated by an objection on related grounds. *United States v. Brown*, 555 F.2d 407, 420 (5th Cir. 1977), *cert. denied*, 435 U.S. 904 (1978).

Id.

The Fifth Circuit continued and counsel respectfully submits that in doing so implicitly provided authority which supports review of the claim in this case:

> Instead, Lopez made no objection even arguably related to the issue he now seeks to raise. Were we to reach Lopez's argument and find possible error, it would require remand to the district court, for we are without appellate authority to correct his sentence. *United States v. Stephenson*, 887 F.2d 57, 62 (5th Cir. 1989). The plain error doctrine is designed to avoid just such a circuitous waste of judicial resources.

> Lopez has characterized his attack as one of constitutional magnitude. However, the error asserted, involving as it does the technical application of a single guideline, is far from an obviously constitutional one. To the extent it could have substantial merit, it is an attack that in no way implicates the fairness, integrity or public reputation of the sentencing proceedings against him. Lopez does not contest the fact that he had ample opportunity to raise this matter below and express dissatisfaction with any facet of the computation of his criminal history category. *See United States v. Brunson,* 915 F.2d 942, 944 (5th Cir. 1990); *United States v. Garcia-Pillado,* 898 F.2d 36, 39 (5th Cir. 1990). He was at that time aware of all information the district court considered relevant to his sentence. He was also fully apprised of how the district court intended to apply the relevant guidelines to that information. Indeed, Lopez makes no attempt to excuse his failure "to call this matter to the district court's attention while that court still had the case under its jurisdiction or to then express dissatisfaction with the sentence. *Garcia-Pillado,* 898 F.2d at 39.
>
> Furthermore, if we remanded, the district court could impose the same sentence. Lopez's sentence was below the statutory maximum and within the applicable guideline range.

Id. at 50-51. Based on these observations, the Fifth Circuit refused to reach the merits of the claim. *Id.* at 51.

III.
Application of *Lopez* to this Case

Respectfully, the above discussion establishes this Court has never recognized the strict line the Fifth Circuit applied in this case for dismissing claims of plain error. Petitioner therefore requests that this Petition be granted and the Fifth Circuit ordered to apply the rules of this Court for ruling on plain error claims.

More specifically, the plain error standard of review should be enforced as this Court has ordered it be applied. As noted in *Puckett v. United States,* 556 U.S. 129, 135 (2009), to establish plain error, Mr. Bazan was required to show that: (1) there is error,

(2) the error was clear and obvious not subject to reasonable dispute, and (3) the error affected Mr. Bazan's substantial rights. Further, presuming these first three prongs are met, this Court will exercise its discretion to remedy the error only if the error "seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*

This standard of review establishes there was plain error as argued to the Fifth Circuit. According to the United States Sentencing Commission Guidelines Manual, a "minimal" participant finding "is intended to cover defendants who are plainly *among the least culpable* of those involved in the conduct of a group." U.S.S.G. § 3B1.2, n.4 (emphasis added). A "minor" participant finding applies to a defendant who is "less culpable than most other participants, but whose role cannot be described as minimal." *Id.* at § 3B1.2, n.5. While the Guidelines do indicate that a "minimal" participant finding will be used "infrequently," they suggest no such limitation on findings of a minor participant role. *Id.* at § 3B1.2, n.4 & n.5. Accordingly, if the facts support an adjustment in this case, the next step would be for the Court to determine whether a 2, 3 or 4-level reduction should be granted.

The determination of whether to apply the minimal or minor participant label "involves a determination that is heavily dependent on the facts of the particular case." *Id.* at § 3B1.2 n.5. Specifically, "[d]etermining participant status is a complex fact question, which requires a court to consider the broad context of the defendant's offense." *United States v. Brown*, 54 F.3d 234, 241 (5th Cir. 1995) (citing *United States*

v Melton, 930 F.2d 1096, 1099 (5th Cir. 1991)); *see also United States v. Mejia-Orosco*, 868 F.2d 807 (5th Cir.), *clarified on reh'g* 867 F.2d 216 (5th Cir.), *cert. denied,* 492 U.S. 924 (1989)). Bearing these authorities in mind, it is appropriate to examine the limited role Mr. Bazan played in this particular criminal offense and the low level of culpability under which he acted during the conspiracy to which he pleaded guilty.

2.

A 2 to 4-Level Reduction is Supported by the Facts of This Case

As set forth below, a finding supportive of the reduction is the only possible conclusion based on the undisputed findings in the PSR. The minimal role adjustment is intended to be applied when a defendant is plainly among the least culpable of those involved in the conduct of the group. U.S.S.G. § 3B1.2, n. 4. The defendant's lack of knowledge or understanding of the scope and structure of the conspiracy and of the activities of others is indicative of a role as a minimal participant. *Id.* at n. 5. A minor participant is one who is less culpable than most other participants but whose role cannot be described as minimal. *Id.*

This is what happened in this case as established by the PSR. For example, Mr. Bazan was not a "supervisor," as was the defendant in *United States v. Broussard,* 882 F.3d 104, 111 (5th Cir. 2018). Likewise, he was not an "equal participant," as was the defendant in *United States v. Anchundia-Espinoza,* 897 F.3d 629, 634-35 (5th Cir. 2018). Accordingly, he is entitled to a sentencing reduction based on his role in the offense.

Additionally, in determining whether to apply a mitigating adjustment, the Court should consider the following non-exhaustive list of factors:

* the degree to which the defendant understood the scope and structure of the criminal activity;

* the degree to which the defendant participated in planning or organizing the criminal activity;

* the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;

* the degree to which the defendant stood to benefit from the criminal activity.

U.S.S.G. Manual, Supp. to App. C, amend. 794 at 116, 80 Fed. Reg. 25,782-01, 25,792-93, 2015 WL 1968941 (May 5, 2015). These factors establish the mitigating adjustment is appropriate in this case because Mr. Bazan did not know the scope and structure of the offense, did not plan or organize the offense, did not make any decisions for the group, and he stood to benefit only minimally if at all from the conspiracy.

The undisputed record in this case shows that Mr. Bazan was pulled into the conspiracy by his father, who was in possession of 15 kilograms of cocaine. ROA.155, 157. The father asked Mr. Bazan to put him in contact with someone who could sell the cocaine for him (the father). ROA.155. All Mr. Bazan did at that point was give his father a telephone number. ROA.155. That friend was not even able to sell the cocaine. ROA.155, 157. This cocaine transaction was done exclusively between the father and the friend. ROA.157. In other words, Mr. Bazan took no part in the transaction. Hence, Mr. Bazan only provided a phone number and did not assist in the

transaction in any fashion. Such involvement is substantially less than the very type of activity which has been found to be minor or minimal. *See United States v. Williams,* 894 F.2d 208, 214 (6th Cir. 1990) ("The record indicates that Blanton delivered messages, drove Davis to various meetings, and allowed his phone to be used for setting up drug deals, which is consistent with minor role.").

Additional observations further establish this to be true. For example, a defendant who does not have a propriety interest in the criminal activity and who is simply being paid to perform certain tasks should be considered for an adjustment under Guideline § 3B1.2, n.3. Moreover, the fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative. Such a defendant can receive an adjustment under this Guideline if he or she is substantially less culpable than the average participant in the criminal activity. *Id.*

Here, the evidence clearly shows that Mr. Bazan was entitled to a mitigating role reduction. He simply provided a telephone number to his father. There is no evidence he had a propriety interest in the criminal activity. There is no evidence that he was paid or otherwise compensated for providing the telephone number. There is no evidence that providing the contact information can be considered essential or indispensable to the criminal activity because the friend was unable to sell the cocaine. Even presuming evidence that Mr. Bazan was paid to provide the phone number, and that this conduct was essential or indispensable to the criminal activity, he would nonetheless be entitled to the reduction under relevant authorities. Accordingly, the minor or minimal deduction is applicable and supported by the undisputed facts.

CONCLUSION

For the reasons set forth above, Mr. Bazan respectfully submits, on the important issue of federal sentencing concerns, compelling reasons are presented in support of discretionary review by this Honorable Court.

WHEREFORE, PREMISES CONSIDERED, Petitioner, JOSE ARMANDO BAZAN, respectfully requests that this Honorable Court grant this Petition and issue a Writ of Certiorari and review the decision of the United States Court of Appeals for the Fifth Circuit which affirmed the sentence imposed by the District Court. Mr. Bazan also respectfully requests any further relief to which he may be entitled under the law and in equity.

Respectfully Submitted,

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