No. _____

IN THE SUPREME COURT OF THE UNITED STATES

_____

EDGAR LLAUSAS-SILVA, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent.*

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

THOMAS P. SLEISENGER, ESQ.
P.O. Box 69844
West Hollywood, California 90048
(310) 300-1314
Attorney for Petitioner
EDGAR LLAUSAS-SILVA
Under Appointment by the Criminal
Justice Act

QUESTION PRESENTED

1. Whether the district court improperly relied upon the subjective belief of the prosecutor without support in the record that petitioner lied when he proffered in support of safety valve relief.

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE**

FEDERAL STATUTES

TABLE OF AUTHORITIES (Cont'd)

SENTENCING GUIDELINES **PAGE**

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

_____

EDGAR LLAUSAS-SILVA, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent.*

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

Petitioner Edgar Llausas-Silva respectfully prays that a writ of certiorari issue to review the United States Court of Appeals for the Ninth Circuit's decision affirming his conviction and sentence.

OPINION BELOW

On January 21, 2025, the United States Court of Appeals for the Ninth Circuit filed a unpublished memorandum decision in United States v. Edgar Llausas-Silva, No. 23-3549, affirming the sentence. A copy of the opinion is attached hereto as Appendix "A". On February 26, 2025, the circuit court denied

the timely filed petition for rehearing, a copy of which is attached hereto as Appendix "B".

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. The District Court had jurisdiction pursuant to 18 U.S.C. § 3231. The Ninth Circuit Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE CASE

On March 20, 2023, petitioner plead guilty to one count of conspiracy to distribute methamphetamine, in violation of 21 U.S.C. § 846, and one count of possession with intent to distribute methamphetamine and aiding and abetting, in violation of 21 U.S.C. § 841 and 18 U.S.C. § 2. The plea was open and without the benefit of a plea agreement. (ER-224-234).[1]

On November 6, 2023, the district court sentenced petitioner to a term of 120 months. (ER-39, 387). On November 15, 2023, petitioner filed a timely notice of appeal. (ER-9).

On January 21, 2025, in an unpublished memorandum decision, the United States Court of Appeals for the Ninth Circuit affirmed petitioner's sentence. (App.

[1] "ER" refers to Petitioner's excerpts of record filed in the Ninth Circuit. "SER" refers to the sealed excerpts of record. "Mem" refers to the circuit court's memorandum decision. "App" refers to the two appendices to this petition.

"A"). On February 26, 2025, the circuit court denied a petition for rehearing and suggestion for rehearing en banc. (App. "B").

STATEMENT OF FACTS

Having plead guilty to drug offenses, petitioner sought safety valve relief as part of an effort to obtain a sentence below the applicable ten-year statutory minimum. The district court denied the request after the AUSA opined that petitioner had lied in his proffer by saying that he never had physical possession of the drugs that were seized in the case. The Ninth Circuit affirmed the lower court's decision on direct appeal.

In the circuit court's memorandum decision, the panel provided a short synopsis of facts in support of their decision. The Court correctly observed that, as part of his safety valve proffer, petitioner repeatedly stated that he was the money courier and that the codefendant, a seasoned drug trafficker and convicted felon, had possession and control of the methamphetamine prior to their arrests. Ignoring the lower court's observation that petitioner's account might be true, the panel did not disturb the sentencing court's ultimate finding that petitioner's proffer was a fabrication. (Mem. at 3).

The AUSA's belief that petitioner was not telling the truth guided the decision of the district court. The judge overlooked the record before it when it

embraced the prosecutor's unsubstantiated claims. All the while, the court did consider that petitioner's proffer was still "plausible." (ER-41, 44).

Plausibility was supported by the underlying evidence in the case, which included a series of encoded text messages in Spanish. Petitioner received one such message from an unindicted coconspirator (UCC) in Mexico stating that a customer was seeking to obtain a large quantity of methamphetamine. Petitioner would be responsible for collecting the proceeds from the sale to the customer. In the text message, petitioner was also instructed to contact the codefendant whom he had never met. Additional text messages between the codefendant and the customer, who turned out to be a confidential source (CS) working for law enforcement, set forth the specific arrangements for the delivery of the drugs to the CS. In these messages, the codefendant told the CS that he was the one in control of the "waters" (methamphetamine) to be delivered. (ER-14, 149-152, 164-168, 180-181, 193-204, 215-218, 235-246).

On the day of the takedown, petitioner and his fifteen-year old son picked up the codefendant who had parked his own car a short distance away from the meet location. Entering the backseat of petitioner's car, the codefendant placed a satchel containing the methamphetamine and a 9mm handgun on the floorboard at his feet. After a short meeting occurred with the CS in a nearby parking lot, an

arrest signal was given and the petitioner and the codefendant were taken into custody. Id.

In his plea agreement, the codefendant admitted that he possessed the methamphetamine prior to the attempted delivery when the arrests occurred. He also admitted that he was the one who discussed arrangements for the delivery with the CS. It was therefore clear that the codefendant, who was armed, was the drug courier, and not petitioner. There was no conflicting evidence to suggest otherwise. (ER-14, 149-152, 164-168, 180-181, 193-204, 215-218, 235-246).

Once in custody, petitioner sought safety valve relief, repeating essentially the same proffer on a number of occasions. See 18 U.S.C. § 3553(f) and U.S.S.G. § 5C1.2. He described his role in the offense to federal law enforcement, to the U.S. Probation officer (USPO) who wrote the PSR, and in written pleadings and responses to questions from the district court during allocution. His contacts with the codefendant, his role as the money courier, and the meaning of the encoded text messages from the UCC were also further described. (ER-14, 110-125, 128-129, 143-156, 164-168, 180-181, 193-204, 215-218, 235-246; SER-15).

In objecting to application of the safety valve to the sentence, the government failed to produce or cite to anything that might support its position. This might have included telephone records, wiretaps, physical surveillance, or

other drug seizures involving the petitioner. Unlike the AUSA, the USPO who interviewed petitioner found him to be credible, and without reservation recommended application of the safety valve to the sentence. (ER-29-47, 75-90, 110-125, 128-129, 149-152, 164-168, 179; SER-14).

REASONS FOR GRANTING THE PETITION

1. The District Court Improperly Relied Upon Unsupported Speculation Rather than Record Evidence in Denying Application of the Safety Valve to Petitioner's Sentence

The government's belief that the defendant lied during his repeated safety valve proffer came without any objective evidence of falsity. While conceding plausibility, the district rejected the proffer simply because it felt that defendant had lied. That claim, resting on the authority of the AUSA, *ipse dixit*, and standing alone assumed expertise on the part of the prosecutor in interpreting encoded text messages which had been translated from Spanish to English. This was a gratuitous and improper basis upon which to find petitioner's proffer to be untruthful, especially when perceptions vary greatly from one prosecutor to the next. To reject an otherwise plausible account condones a degree of arbitrariness that turns the safety valve into a discretionary award under the Guidelines, similar to acceptance of responsibility. United States v. Miranda-Santiago, 96 F.3d 517, 529 (1st Cir. 1996); United States v. Marquez, 280 F.3d 19, 24 (1st Cir. 2002)

(AUSA's "lack of confidence" in the safety valve proffer is insufficient to deny relief); see also United States v. Treacy, 639 F.3d 32, 48 (2nd Cir. 2011) (unlike "extrapolations from the evidence established by a preponderance of the evidence," unsubstantiated claims are not evidence); United States v. Mezas de Jesus, 217 F.3d 638, 643 (9th Cir. 2000), overruled on other grounds, United States v. Lucas, 101 F.4th 1158, 1163 (9th Cir. 2024) (to meet the preponderance of the evidence standard, the court must be convinced that "the fact in question exists.").

In the First Circuit case of Miranda-Santiago, codefendant Pacheco-Rijos plead guilty to conspiracy to commit narcotics trafficking. Under the terms of her plea agreement, Pacheco-Rios faced a statutory minimum sentence of 60 months. After making her safety valve proffer, the government argued against it, asserting that she had failed to truthfully disclose her entire role in the offense. In support of their claim, the government relied upon the final presentence report, despite the fact that the USPO who authored it found Pacheco-Rios to be credible. Similar to petitioner's case, Pacheco-Rios' defense counsel submitted a written statement describing how his client allowed her home, shared with three codefendants, to be used as a place to store the narcotics. She described her role in the offense as a passive one, allowing the drugs to be concealed in her home. She claimed to have nothing to do with actual distribution of the drugs or the use of firearms that were

also kept there. The USPO accepted her proffer, recommending safety valve treatment and a minor role adjustment. Miranda-Santiago, 96 F.3d at 526 n.20, 529.

The district court nonetheless found that Pacheco-Rijos was untruthful, failing to cooperate to a degree that would allow safety valve treatment under Guideline Section 5C1.2(5). The court also relied upon a stipulation in the plea agreement that she be sentenced to 60 months. Similar to petitioner's case, however, Pacheco-Rios' proffer was never "explicitly contradicted" by the government. As a result, the First Circuit remanded, finding a failure to rebut a plausible explanation with information that Pacheco-Rios knew and failed to provide, such as the names of suppliers and customers. Miranda-Santiago, 96 F.3d at 529.

Citing to material differences between the safety valve and the substantial assistance provision under U.S.S.G. § 5K1.1, which permits a court to exercise discretion upon motion of the government, the First Circuit made clear that, "The government cannot assure success simply by saying, 'We don't believe the defendant,' and doing nothing more." In the absence of "either specific factual findings or easily recognizable support in the record," there was no reason to deny safety valve eligibility which, in turn, became non-discretionary. In vacating the

sentence, the circuit panel instructed the sentencing court to supplement its findings and, in the event none were forthcoming, to apply the safety valve and other adjustments which had been raised by the defense. Miranda-Santiago, 96 F.3d at 529-530.

As in Miranda-Santiago, the district court's decision in this case was clearly erroneous because it lacked "specific factual findings or easily recognizable support in the record." Miranda-Santiago, 96 F.3d at 529. Like Pacheco-Rijos, petitioner should now be afforded the opportunity to seek a sentence below the statutory minimum.

2. Inter-Circuit Splits Support Grant of the Petition

The memorandum opinion in this case conflicts with a published opinion in the First Circuit which supports the application of the safety valve where the defense proffer is considered plausible, if not credible, and there is no record evidence to refute it. United States v. Miranda-Santiago, 96 F.3d 517, 529 (1st Cir. 1996).

The First Circuit's position has been followed other circuits. United States v. Tate, 630 F.3d 194, 203 (D.C. Cir. 2011) (discussing Miranda-Santiago at length and citing case with approval); United States v. Moon, 513 F.3d 527, 539 (6th Cir. 2008) (district court's opinion must identify the "basis for rejecting" defendant's

statements); United States v. Miller, 179 F.3d 961, 967-68 (5th Cir. 1999) (district court cannot conclude that defendant failed to provide a truthful and complete proffer based solely upon its own speculation).

CONCLUSION

For the foregoing reasons petitioner respectfully submits that the petition for writ of certiorari should be granted.

Dated: April 16, 2025

Respectfully Submitted,

/s/ Thomas P. Sleisenger
Thomas P. Sleisenger
Attorney for Petitioner

APPENDIX “A”

NOT FOR PUBLICATION

FILED

JAN 21 2025

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. EDGAR LLAUSAS-SILVA, Defendant - Appellant.	No. 23-3549 D.C. No. 2:22-cr-00135-SVW-2 MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted January 15, 2025**
Pasadena, California

Before: RAWLINSON and M. SMITH, Circuit Judges, and RAKOFF, District Judge.***

Defendant-Appellant Edgar Llausas-Silva was convicted of one count of conspiracy to distribute methamphetamine in violation of 21 U.S.C. § 846 and one

* 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 Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.

count of possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1). Llausas-Silva challenges his sentence on several different grounds.[1] We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Because the parties are familiar with the facts and background of this case, we provide only the information necessary to give context to our ruling. After being arrested for his role in a drug transaction involving a large quantity of methamphetamine, Llausas-Silva eventually pleaded guilty to conspiracy to distribute methamphetamine and to possessing methamphetamine with the intent to distribute. Llausas-Silva sought relief from the minimum mandatory sentence pursuant to the statutory safety valve, *see* 18 U.S.C. § 3553(f)—a request that the Government opposed on the grounds that Llausas-Silva had not been entirely truthful in his proffer. The district court ultimately agreed with the Government, concluding that Llausas-Silva was not eligible for safety-valve relief. It sentenced Llausas-Silva to 120 months of imprisonment, the minimum mandatory sentence. It also sentenced Llausas-Silva to five years of supervised release and required him to comply with the standard discretionary conditions outlined in the district court's Second Amended General Order 20-04.

Llausas-Silva raises four challenges to his sentence, none of which succeed.

[1] Llausas-Silva's opening brief included an additional issue—that the judgment should be amended to correct a clerical error—but that issue has since been resolved.

First, Llausas-Silva argues that the district court erred in concluding that he was ineligible for safety-valve relief pursuant to 18 U.S.C. § 3553(f) because he had not been completely truthful. But we review the district court's factual determination that a defendant has not been truthful only for clear error, and we "'must accept the district court's factual findings unless we are "left with a definite and firm conviction that a mistake has been made."'" *United States v. Salazar*, 61 F.4th 723, 726 (9th Cir. 2023) (quoting *United States v. Lizarraga-Carrizales*, 757 F.3d 995, 997 (9th Cir. 2014)). Moreover, the district court may rely on reasonable inferences and its experience in determining whether a defendant has been entirely truthful. *See United States v. Orm Hieng*, 679 F.3d 1131, 1144–45 (9th Cir. 2012). In the communications constituting his proffer, Llausas-Silva took the position that he was only a money courier and did not personally bring the methamphetamine to the drug transaction. The district court did not clearly err in determining that, in light of the message about the drug transaction received by Llausas-Silva and the particular circumstances of the transaction, Llausas-Silva's representations were not entirely truthful. Nor did the district court abuse its discretion in declining to hold an evidentiary hearing. *See United States v. Houston*, 217 F.3d 1204, 1206–07 (9th Cir. 2000).

Second, Llausas-Silva argues that the district court improperly relied on provisions of the U.S. Sentencing Guidelines that calculated his advisory

sentencing range based on the purity of the methamphetamine seized. But although the district court *could* have agreed with Llausas-Silva that the purity-based Guideline provisions are outdated and varied downward based on a policy disagreement, it did not abuse its discretion in declining to do so. *See United States v. Kabir*, 51 F.4th 820, 828–29 (9th Cir. 2022), *cert denied*, 143 S. Ct. 838 (2023); *see also United States v. Blackshire*, 98 F.4th 1146, 1155 (9th Cir. 2024) ("[W]e review a district court's . . . application of the Guidelines to the facts for abuse of discretion[] . . . ."). Moreover, even if the district court had erred in declining to vary downward in calculating the Guidelines range—which it did not—such an error would be of no moment because Llausas-Silva was given the statutory minimum sentence. *See United States v. Miller*, 151 F.3d 957, 962 (9th Cir. 1998).

Third, Llausas-Silva argues that the district court violated his right to be present for the imposition of discretionary supervised-release provisions, relying on *United States v. Montoya*, 82 F.4th 640, 647 (9th Cir. 2023) (en banc). But there was no *Montoya* error here. Llausas-Silva had advance notice of the discretionary conditions that he would be subject to based on the U.S. Probation Office's sentencing recommendation letters and the district court's Second Amended General Order 20-04. *See id.* at 652 (noting that a "courtwide . . . standing order[] that list[s] conditions" could suffice to put a defendant on notice

of what conditions would be imposed). Additionally, out of an abundance of caution, the district court ensured that Llausas-Silva was aware of the discretionary conditions that he would be subject to by having a translator read Second Amended General Order 20-04. This was sufficient to give Llausas-Silva "a meaningful opportunity to challenge those conditions." *Id.*[2]

Fourth, Llausas-Silva challenges the district court's application of a two-level Guidelines enhancement pursuant to U.S.S.G. § 2D1.1(b)(1) on the grounds that his coconspirator, Alfredo Vidana-Zavala, possessed a firearm during the methamphetamine transaction. We reject his challenge. "[A] defendant convicted of conspiracy may be sentenced not only on the basis of his own conduct, but also on the basis of the 'conduct of others in furtherance of the execution of the jointly-undertaken criminal activity that was reasonably foreseeable by the defendant.'" *United States v. Garcia*, 909 F.2d 1346, 1349 (9th Cir. 1990) (quoting U.S.S.G.

[2] Llausas-Silva also raises poorly developed arguments that some of the specific discretionary conditions are unconstitutional. He first argues that the conditions improperly delegate judicial authority to the probation officer. We are unpersuaded. "Where the district court determines '*whether* a defendant must abide by a condition, and *how* . . . a defendant will be subjected to the condition, it is permissible to delegate to the probation officer the details of where and when the condition will be satisfied.'" *United States v. Nishida*, 53 F.4th 1144, 1150 (9th Cir. 2022) (omission in original) (quoting *United States v. Wells*, 29 F.4th 580, 592 (9th Cir. 2022)). The conditions imposed here—including Condition 14, the only condition pointed to by Llausas-Silva—fall within this rule. Additionally, Llausas-Silva suggests in passing that the discretionary conditions are overbroad, but this argument is not sufficiently developed for us to pass on it.

§ 1B1.3, comment n.1). The district court did not clearly err in concluding that Vidana-Zavala's carrying of the firearm was reasonably foreseeable. Where, as here, a defendant is a party to a large drug transaction, it is reasonably foreseeable that a codefendant may be carrying a firearm. *See id.* at 1349–50; *see also United States v. Willis*, 899 F.2d 873, 875 (9th Cir. 1990) ("[T]rafficking in narcotics is very often related to the carrying and use of firearms." (quoting *United States v. Ramos*, 861 F.2d 228, 231 n.3 (9th Cir. 1988))). Moreover, as was the case with Llausas-Silva's methamphetamine-purity argument, the precise Guidelines sentence is ultimately immaterial because Llausas-Silva was given the minimum mandatory sentence.

AFFIRMED.

APPENDIX “B”

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

FEB 26 2025

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDGAR LLAUSAS-SILVA,

Defendant - Appellant.

No. 23-3549

D.C. No.
2:22-cr-00135-SVW-2
Central District of California,
Los Angeles

ORDER

Before: RAWLINSON and M. SMITH, Circuit Judges, and RAKOFF, District Judge.*

The panel has voted unanimously to deny the petition for panel rehearing. Judge Rawlinson and Judge M. Smith vote to deny the petition for rehearing en banc, and Judge Rakoff so recommends. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. Fed. R. App. 40. The petition for panel rehearing and rehearing en banc (Dkt. 45) is DENIED.

* The Honorable Jed S. Rakoff, United States District Judge for the Southern District of New York, sitting by designation.