

No. _____

In the Supreme Court of the United States

DAWN MARIE GUEVARA aka Dawn Marie Owen,

PETITIONER,

v.

UNITED STATES OF AMERICA

RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Confrontation Clause of the Sixth Amendment provides that “in all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.” This Clause guarantees a defendant the right to confront those “who ‘bear testimony’ against her.” *Crawford v. Washington*, 41 U.S. 36, 51 (2004). A witness's testimony is thus inadmissible unless the witness appears at trial or, if the witness is unavailable, the defendant had a prior opportunity for cross-examination. *Id.*, at 54. Confrontation Clause violations are reviewed for harmless error.

The following question is presented:

1. Whether a reviewing court can properly conclude a confrontation clause violation is harmless when it fails to consider the impact of the erroneously admitted evidence on the jury's verdict?

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I. PETITION FOR WRIT OF CERTIORARI

Dawn Marie Guevara, an inmate currently incarcerated at the Aliceville Federal Correctional Facility in Aliceville, Alabama, by and through her attorney of record, Nancy G. Schwartz, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the 9th Circuit which affirmed her conviction in a memorandum decision.

II. OPINION BELOW

The memorandum decision entered by the Ninth Circuit Court of Appeals in Case No. 24-5722 is unreported, but is available at: *United States v. Guevara*, 2025 U.S. App. LEXIS 29136 and is included in the Appendix at App. A.

III. JURISDICTION

The district court in Montana had jurisdiction over this federal criminal case pursuant to 18 U.S.C. § 3231. The Ninth Circuit Court of Appeals had jurisdiction over Petitioner's appeal pursuant to 18 U.S.C. § 3231 and entered judgment on November 6, 2025. This Court has jurisdiction under 28 U.S.C. 1254(1).

IV. CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. amend. VI provides:

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 the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

V. STATEMENT OF THE CASE

In July of 2018, law enforcement began an investigation into the distribution of methamphetamine in the Billings, Montana area. In exchange for a reduction to pending felony charges, a confidential informant told law enforcement that he was receiving methamphetamine from a source that lived in California or Mexico. He named the source as the Petitioner, Dawn Marie Guevara. The confidential informant said he would contact Ms. Guevara via Facebook to order methamphetamine and then would pick it up from a “middle person” in Billings.

Agent Martian of the Montana Department of Criminal Investigation was assigned the case. Agent Martian had the confidential informant review Ms. Guevara’s Facebook page, and the confidential informant identified Ashley Chesmore as the middle person. Chesmore was on State of Montana supervision for Assault on a Minor and was registered as a violent offender.

Agent Martian arranged for the confidential informant to conduct two controlled buys from Chesmore. Then, acting in an undercover capacity, Agent Martian arranged to make five more buys from the source directly.

Agent Martian did not ever meet the Mexican source, but instead communicated with this person over text messages, Facebook messaging, iCloud messaging and in telephone calls, one of which was recorded. After arranging to make a purchase, Agent Martian was directed by the source to pick up methamphetamine from Chesmore and pay her an agreed upon amount for the drugs.

Agents conducted surveillance on Chesmore. Before one of the controlled buys arranged by Agent Martian, Chesmore received delivery of a package at her residence. Agents then contacted a postal inspector assigned to the Billings office to collect more information.

Through access to a postal database, the postal inspector obtained a package history showing deliveries to Chesmore's residence. According to the historical postal records, it appeared that many packages mailed to this residence originated from the San Ysidro, California post office. San Ysidro was a town located right across the border to Mexico. Based upon this information, agents collected border crossing data for Ms. Guevara for the relevant time frame, showing when she had crossed the border from Mexico into the United States.

The postal inspector then contacted the San Ysidro post office to see if he could obtain surveillance videos of "suspect parcels" being mailed, to include the sender of the parcels. The parcels were identified as "suspect parcels" based upon the tracking number of the parcels and other information contained in the postal service database. The postal inspector obtained a total of four surveillance videos, all of which were played at trial. Two of the videos he obtained on his own, but the other two videos he obtained by contacting and speaking with another postal service employee who did not testify at trial. In the two videos obtained by the testifying postal inspector, one showed a woman mailing a package, but from the date of the video, the package was not later linked to a controlled buy. The other video showed a man mailing a package, not a woman.

On December 10, 2018, agents intercepted a package that was scheduled to be delivered to Chesmore's residence. Chesmore was contacted and gave agents consent to search this package. Inside this package was approximately 443 grams of pure methamphetamine. During an interview, Chesmore named her aunt, Dawn Guevara, as her source of methamphetamine.

On January 10, 2019, Ms. Guevara and Chesmore were each indicted on one count of Conspiracy to Possess with Intent to Distribute 50 grams or more of actual methamphetamine in violation of 21 U.S.C. § 846. Chesmore was also charged with Possession with Intent to Distribute Methamphetamine. Chesmore was arrested on December 11, 2018. Ms. Guevara, who resided in Mexico, was not arrested until approximately five years later, or on April 21, 2023.

Chesmore entered a guilty plea to both counts. She was sentenced to incarceration for a period of 48 months, followed by a 5-year term of supervised release. The sentence that Chesmore received was *significantly* below the mandatory minimum sentence of 10 years as charged in the Indictment. After Chesmore testified against Ms. Guevara at trial, the district court also issued an order terminating Chesmore from approximately two and one-half years remaining on her term of supervised release.

Before trial, Ms. Guevara filed a brief with the district court, identifying numerous evidentiary issues expected to be raised at trial. Of relevance here was Ms. Guevara's objection to the introduction of testimony about the surveillance videos obtained by the non-testifying postal service employee. Importantly, the

videos were not certified as a copy of an official record, the videos did not display the tracking number of the packages being mailed, the videos did not show delivery information about the packages, the videos did not include the name of the sender or senders of the packages, and the videos did not include the weight of the packages. Ms. Guevara argued that admission of testimony about these videos, which included implicit statements from the non-testifying postal employee who had retrieved them, violated her right to confrontation under the 6th Amendment. The district court overruled Ms. Guevara's objection, and the videos, including testimony about the two videos obtained by the non-testifying postal employee, were admitted against her at trial.

In closing, the government argued there was no "genuine dispute about the identity of the drug dealer in this case." The government said that it had proven Ms. Guevara mailed methamphetamine to Billings, because in part, "[y]ou saw her do it on video . . ." referencing the two videos obtained by the non-testifying postal inspector.

Ms. Guevara was convicted and the district court sentenced Ms. Guevara to 180 months of imprisonment, to be followed by three years of supervised release. Ms. Guevara timely appealed her conviction to the Ninth Circuit Court of Appeals. The Ninth Circuit affirmed Ms. Guevara's conviction by memorandum decision filed on November 6, 2025.

VI. REASONS FOR GRANTING THE PETITION

The application of the harmless error doctrine to Confrontation Clause violations leads to inconsistent results and severely dilutes a defendant's right to jury trial as guaranteed by the Sixth Amendment. When the reviewing court substitutes its own evaluation of the evidence for that of a jury, it fails to protect a defendant's procedural right to confront all witnesses against her. It also creates a perverse incentive for the government to rely on hearsay and relieves it of its burden to call all witnesses who provide evidence against a defendant at trial. This case presents a suitable vehicle for this Court to standardize the appropriate test to apply when evaluating whether a confrontation clause violation is harmless.

To safeguard the Sixth Amendment Jury Trial right, this Court should conclude that harmless error review *must* assess the impact of the error on the verdict actually rendered. The government should also be required to meet its burden to establish the constitutional error is harmless, beyond a reasonable doubt. At stake is the constitutional entitlement emphasized in *Sullivan v. Louisiana*, 508 U.S.275 (1993) that a criminal defendant has a Sixth Amendment right to have a jury be the ultimate arbiter of guilt beyond a reasonable doubt. Appellate judges should not impose their own view that a defendant is guilty, "regardless of how overwhelming the evidence may point in that direction." *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 572-73 (1977). Having a panel of appellate judges conclude that there was enough evidence for a conviction is not a valid substitute

for the right to a jury trial. An error at a jury trial cannot be harmless if it may have affected the jury's verdict. *Chapman v. California*, 386 U.S. 18, 22 (1967).

The dilution of the harmless error standard sends a clear message to law enforcement and prosecutors that there is no consequence for its sloppy presentation of evidence at trial or for securing a conviction through unconstitutional methods. Law enforcement remains free to testify to testimonial hearsay statements made by other officers who do not appear at trial. Prosecutors remain unrestrained and are actually rewarded for presenting nothing more than a bare bones case, confident that the appellate court will find any constitutional errors it makes as "harmless."

Here, the Ninth Circuit Court of Appeals made no attempt to analyze the impact of the evidence admitted in violation of Ms. Guevara's right to confrontation. Instead, it lumped this error in with the numerous other evidentiary errors committed in the case, diluting the constitutional protection required to be afforded to Ms. Guevara. In a case where the sole issue before the jury was the identity of the Mexican source of supply, allowing an officer to implicitly testify that another officer had identified the defendant as the mailer of "suspect packages" was a violation of Ms. Guevara's constitutional right to confront all witnesses against her. In view of the prosecutor's closing argument that the jury knew Ms. Guevara had mailed the packages because they could see her doing so necessarily impacted the jury's verdict, as the identity of the person who mailed the packages was the only issue in dispute at trial.

Ms. Guevara had the constitutional right to confront the non-testifying postal employee. Her inability to do so violated the Confrontation Clause. The Ninth Circuit's summary conclusion that this error was harmless is incorrect.

This Court should grant this writ to give meaning to the Confrontation Clause and to provide guidance to reviewing courts that constitutional confrontation clause errors must actually be evaluated to determine what impact the erroneously admitted evidence had on the jury, and not decided by a summary conclusion that the other evidence was "overwhelming."

VII. CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted this 27th day of January, 2026,

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APPENDIX

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Appendix A: Memorandum of the U.S. Court of Appeals for the
Ninth Circuit, November 6, 20251a

APPENDIX A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 6 2025

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAWN MARIE GUEVARA, AKA Dawn
Marie Owen,

Defendant - Appellant.

No. 24-5722

D.C. No.

1:19-cr-00001-SPW-2

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Susan P. Watters, District Judge, Presiding

Argued and Submitted October 22, 2025
Portland, Oregon

Before: W. FLETCHER, CHRISTEN, and HURWITZ, Circuit Judges.

Dawn Marie Guevara appeals her conviction for one count of Conspiracy to Possess With Intent to Distribute Methamphetamine in violation of 21 U.S.C. § 846. Guevara challenges the admission at trial of certain evidence. Because the parties are familiar with the facts, we do not recite them here. We have jurisdiction

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

pursuant to 28 U.S.C. § 1291, and we affirm.

Guevara’s challenges involve alleged evidentiary errors (the admission of oral testimony of agents summarizing historical postal records and border crossing data) and an alleged Confrontation Clause violation arising from a postal inspector’s testimony about his conversation with a technical surveillance specialist who helped him obtain two postal surveillance videos. “[W]e review de novo the district court’s interpretation of the Federal Rules of Evidence, but once we determine that the evidence does fall within the given rule, we review the district court’s decision to admit it for abuse of discretion.” *United States v. Lopez*, 762 F.3d 852, 859 (9th Cir. 2014). “We review alleged violations of the Confrontation Clause de novo.” *United States v. Brooks*, 772 F.3d 1161, 1167 (9th Cir. 2014). “[W]e apply the harmless error standard for nonconstitutional error” and “must reverse unless there is a ‘fair assurance’ of harmlessness, or, stated otherwise, unless it is more probable than not that the error did not materially affect the verdict.” *United States v. Morales*, 108 F.3d 1031, 1040 (9th Cir. 1997) (citation omitted). “This standard requires that the Government show a ‘fair assurance’ that the verdict was not substantially swayed by error.” *United States v. Seschillie*, 310 F.3d 1208, 1214 (9th Cir. 2002). “When the district court admits evidence in violation of the Confrontation Clause, we must reverse the conviction unless the government can show that the error was harmless beyond a reasonable

doubt.” *United States v. Morales*, 720 F.3d 1194, 1199 (9th Cir. 2013).

Any error in admitting the challenged testimony was harmless because there was overwhelming evidence of Guevara’s guilt. The government’s extensive evidence included the testimony of three witnesses describing seven controlled buys, text messages between Guevara and an undercover agent, text messages between Guevara and a cooperating witness, and a recorded phone call between Guevara and an undercover agent. The alleged errors pertain to the admission of border crossing data, postal records, and videos that were not necessary to secure Guevara’s conviction.

AFFIRMED.