

No.

IN THE
Supreme Court of the United States

MARCO ANTONIO NARANJO-AGUILAR,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is remand for resentencing required when it is unclear whether the district court applied the correct legal standard in making a factual finding essential to its sentencing determination, which is the rule in all circuits but the Tenth Circuit, or—when confronted with an ambiguity in the district court’s ruling—may the appeals court simply assume that the district court intended the meaning that would have been legally correct, as the Tenth Circuit held in this case?

2. When a party articulates the correct legal standard in objecting to the presentence report’s recommendation on a Sentencing Guidelines issue and the district court overrules the objection using ambiguous language that raises doubts about whether the district court applied the correct legal standard, must the party take exception to the district court’s ruling in order to preserve the Guidelines objection for harmless-error review on appeal?

RULE 14.1(b) STATEMENT

- (i) All parties to the proceeding are listed in the caption.
- (ii) The petitioner is not a corporation.
- (iii) The following are directly related proceedings:

United States v Naranjo-Aguilar, Tenth Cir. No. 24-7050

United States v Naranjo-Aguilar, 6:22-cr-00020-RAW (E.D. Okla.)

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Petitioner Marco Antonio Naranjo-Aguilar respectfully requests a writ of certiorari to the United States Court of Appeals for the Tenth Circuit in this case.

OPINION BELOW

The Court of Appeals' opinion (Appendix (App.) A001-019) is published. *See United States v. Naranjo-Aguilar*, 154 F.4th 1251 (10th Cir. 2025).

JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was entered on September 16, 2025. App. A001. The Court of Appeals denied Petitioner's petition for rehearing en banc on October 27, 2025. App. B001. Justice Gorsuch extended the time for filing the petition for a writ of certiorari to February 24, 2026. No.25A826. The Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT RULE

Federal Rule of Criminal Procedure 51 provides:

(a) Exceptions Unnecessary. Exceptions to rulings or orders of the court are unnecessary.

(b) Preserving a Claim of Error. A party may preserve a claim of error by informing the court--when the court ruling or order is made or sought--of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection. If a party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that party. A ruling or order that admits or excludes evidence is governed by Federal Rule of Evidence 103.

INTRODUCTION

When courts of appeal in the Tenth Circuit are unsure whether a district court's ruling on a Guidelines application is infected with legal error, they simply assume the district court intended a meaning that is legally correct if there is any way the district court's language can be so interpreted, as the court of appeals did in its precedential opinion in this case. No other circuit takes this approach. The prevailing rule is to remand for resentencing when it is unclear whether a district court's ruling on a Guidelines application rests on a sound legal foundation.

Moreover, when a district court overrules a party's objection to a Guidelines application and the party claims on appeal that the district court's ruling could be infected with legal error, courts of appeal in the Tenth Circuit review for plain error, unless the party took exception to the district court's ruling. This approach violates Federal Rule of Criminal Procedure 51(a) and is out of step with the approach of other circuits.

This Court should grant the writ to ensure the accuracy and fairness of sentencing decisions and the uniform application of Rule 51 in sentencing appeals. The stakes are also high for Petitioner. He is serving a 235-month sentence for drug trafficking, when the nationwide average for defendants in the same criminal history category sentenced under the same Guideline with the same total offense level is 152 months. If Petitioner's case is remanded for resentencing, he very likely will receive a significantly lower sentence.

STATEMENT OF THE CASE

*Factual Background*¹

Petitioner was arrested on January 20, 2022, following an encounter with law enforcement on Interstate 40 in Sequoyah County, Oklahoma. According to a state trooper, Petitioner was traveling in a Ford Expedition at 66 miles per hour in a construction zone, six miles per hour over the posted speed limit. After the trooper activated his emergency lights, the Expedition continued traveling eastbound at an increased speed, so the trooper activated his siren and requested assistance from dispatch. Law enforcement deployed stop sticks, which struck two of the Expedition's tires. The vehicle continued traveling for about four miles until troopers performed a Tactical Vehicle Intervention, which spun the vehicle off the highway.

Petitioner then exited the vehicle and submitted to custody without further incident. Troopers smelled the odor of marijuana and found a small amount of that substance in the console. Troopers located two suitcases in the rear cargo area: a blue one containing Petitioner's clothing and a grey/black one containing 50 bundles of zip-lock-style, vacuum-sealed baggies filled with a white crystalline substance that field-tested positive for methamphetamine. The liner of grey/black suitcase also contained a rubber-banded bundle of \$3,085.

¹ See 2-ROA-36-38. (The Record on Appeal (ROA) is Doc. 22 in Tenth Cir. No. 24-7050, in three volumes. The citation begins with the volume of the Excerpts of Record and concludes with the page number(s).)

The suspected methamphetamine was later tested by a Drug Enforcement Agency (DEA) laboratory, whose report described the substance as methamphetamine hydrochloride with a net weight of approximately 22.3 kg (about 50 pounds) and a purity of approximately 95%, which correlates to approximately 21.1 kg of pure methamphetamine. Further investigation revealed that the Expedition driven by Petitioner at the time of his arrest had been rented by another person named Jesus Corral in Fayetteville, Arkansas, on January 8, 2022.

District Court Litigation

Petitioner was later indicted on one count of possession with intent to distribute methamphetamine. He pleaded guilty to the indictment without a plea agreement.

The draft presentence report (PSR) did not recommend a minor-role reduction. To receive this reduction under the Guideline then in effect, Petitioner had to show that he was “substantially less culpable” than the average participant under the totality of circumstances, taking into account the factors outlined in the Guidelines commentary: the degree to which he understood the scope and structure of the criminal activity; the degree to which he planned or organized the activity; the degree to which he exercised decision-making authority; the nature and extent of his participation in the criminal activity, including the discretion and responsibility he had in performing those acts; and the degree to which he stood to benefit from the criminal activity. *See* U.S.S.G. § 3B1.2, cmt. n.3(C) (2023).

The probation officer explained to defense counsel that “there is no conspiracy to point to other participants’ roles, the defendant is the only indicted person, and the defendant is only being held accountable for the drugs he possessed with intent to distribute. Without the knowledge of other participants, U.S.S.G. 3B1.2 doesn’t apply.”² Petitioner objected. He explained, through counsel, that there are multiple participants in any drug trafficking offense—including organization leaders, manufacturers, buyers, and couriers—and that he played a mitigating role as a courier.³ He also explained that the other participants need not be indicted in order for § 3B1.2 to apply and that couriers are eligible for an adjustment even if they are held accountable only for the drug quantity they transported.⁴

The probation officer declined to revise the PSR:

Probation Officer’s Response to Objection No. 2: The probation officer’s position remains that the defendant does not qualify for a minor role reduction pursuant to USSG §3B1.2. Assumptions of an individual’s role, without a factual basis or evidentiary statements or claims, are not grounds for the application of a role reduction. The known facts of the offense are that the defendant was the sole occupant/driver of a vehicle transporting a large quantity of drugs and attempted to elude apprehension from law enforcement. Upon arrest and during the pendency of the case, the defendant made no claims of other participants’ involvement and made no claims of coercion or duress in committing the offense. Application Note 3(C) in USSG §3B1.2 provides five prongs in determining the applicability of a mitigating role. As the sole occupant of the vehicle and absent any knowledge or evidence to the contrary, the defendant was acting alone in the offense. There is no evidence to rely upon to support any of the five prongs in Application Note 3(C), which would speak to the applicability of a minor role adjustment.⁵

² 2-ROA-52.

³ 2-ROA-53.

⁴ 2-ROA-53-54.

⁵ 2-ROA-61.

After this response, Petitioner submitted a proffer to the probation officer explaining what he knew about the roles of other participants and asked that it be considered in assessing minor role.⁶ In his proffer, Petitioner explained that he was asked by an individual, who identified himself only by the nickname El Siete, to transport drugs from Arizona to another location. Petitioner said he was asked to drive the Ford Expedition—which had been rented under someone else’s name—to a restaurant, leave the keys in the vehicle, and wait inside. While he waited, an unknown person placed the drug-laden luggage in the Expedition. Petitioner was then instructed to get on I-40 and drive; he would be told along the way where to deliver the drugs. He was to be paid a modest sum for transporting the drugs, and, although he knew that he was transporting a controlled substance, he did not know the type or quantity. He explained that he did not have any discretion or decision-making authority and did not participate in any planning or organization of the criminal activity. He did not even know the ultimate destination for the drugs or who would be receiving them. The probation officer, however, did not further revise the PSR after receiving this proffer.

The final presentence report found that Petitioner, who was in criminal history category II, had a total offense level of 37, resulting in an advisory Guidelines’ range of 235-293 months of imprisonment.⁷ The report also informed the district court that, according to available Judiciary Sentencing Information (JSIN)

⁶ Supp. ROA-2-4 (Doc. 27 in Tenth Cir. No. 24-7050).

⁷ 2-ROA-45

during the previous five years, there were 139 defendants in criminal history category II with a total offense level of 37 who did not receive a substantial-assistance departure and whose primary Guideline was § 2D1.1 with actual methamphetamine as the primary drug type.⁸ For those 139 similar defendants, the average length of the prison time imposed was 152 months and the median length of prison time was 151 months.⁹

In a sentencing memorandum and at the sentencing hearing, defense counsel, incorporating the information included in Petitioner's proffer, further explained why the minor-role adjustment applied and how what happened was consistent with the known practices of Mexican drug-trafficking organizations (DTOs), which pay modest sums to low-level couriers with no planning or decision-making role to transport drugs from one location to another. Defense counsel, who regularly practices in the District of Arizona, attested that she was very familiar with the practices of Mexican DTOs because her office carried a heavy caseload of drug-trafficking cases involving those DTOs.¹⁰ The district court overruled Petitioner's objection, stating:

Counsel for the Defendant objects to the Defendant not being afforded a mitigating role reduction under Guideline Section 3B1.2. Counsel argues that in any drug trafficking offense, there stands to reason there are multiple players involved, including leaders and manufacturers. By acting as a mere courier, the Defendant was purportedly operating on the orders of others and is less culpable even though he is the only individual charged in the Indictment. Thus, according to counsel, he should be afforded a reduction as a minor

⁸ 2-ROA-45.

⁹ 2-ROA-45.

¹⁰ 2-ROA-65-70; 3-ROA-72-78; Supp. ROA-4.

participant, pursuant to Guideline Section 3B1.2, because he is substantially less culpable than the average participant.

The known facts of the offense are that the Defendant was the sole occupant and driver of a vehicle involved in a traffic infraction, and a high-speed chase as he attempted to elude policed (sic), which endangered other motorists. After the Defendant was detained, law enforcement conducted a search of the vehicle and found a large quantity of drugs, 50 pounds. At no point in time during his arrest did the Defendant make any claims of other participants or of coercion or duress in committing the offense. Further, the Defendant submitted a mitigation letter to the Government on February 27, 2024, in which he admitted to knowingly transporting the drugs and financially profiting from the activity.

Application Note 2 of Guideline Section 3B1.2 states this guideline is not applicable unless more than one participant was involved in the offense. Further Application Note 3(C) outlines the prongs in determining the applicability of a mitigating role. Absent any knowledge or evidence to the contrary, the Defendant was acting alone when transporting a large quantity of drugs in the Eastern District of Oklahoma. He was aware he was transporting drugs, and attempted to elude law enforcement in an effort to prevent them from stopping his criminal activity. Defendant's objection on that basis is therefore overruled.¹¹

The district court imposed a prison term of 235 months.¹²

Tenth Circuit Litigation

On appeal., Petitioner argued that the district court committed two legal errors in overruling Petitioner's objection to the PSR's denial of a minor-role reduction under § 3B1.2: (1) failing to consider Petitioner's factual proffer in evaluating whether he qualified, and (2) failing to compare Petitioner's conduct to that of participants who acted outside the Eastern District of Oklahoma.

¹¹ 3-ROA 79-80.

¹² 3-ROA 90.

In its opinion, the court of appeals acknowledged that the district court may well have committed legal errors in overruling Petitioner’s objection to the PSR’s denial of a minor-role reduction, as reflected in the district court’s oral ruling. First, the court of appeals acknowledged that—given that the district court said “absent any knowledge or evidence to the contrary, defendant was acting alone . . .”—the district might have committed the legal error of neglecting to consider Petitioner’s factual proffer or “might simply have distinguished between a proffer and other forms of evidence.” App. A005-006. But the court of appeals held that, “When we’re confronted with ambiguities, we ordinarily presume that the district court intended the meaning that would have been legally correct.” *Id.* Therefore, it assumed that the district court had in fact considered the proffer. *Id.*

The court of appeals likewise acknowledged that—given the district court’s statement that Petitioner was acting alone when transporting a large quantity of drugs in the Eastern District of Oklahoma—the district court “might have erred by disregarding more culpable participants just because they had committed their crimes elsewhere.” App. A007. The court of appeals also said the statement could be viewed as technically correct, because Petitioner was the only participant in the conspiracy who acted within the Eastern District of Oklahoma. *Id.* (Other known participants—including the person who asked petitioner to transport the drugs and the person who rented the vehicle used to transport the drugs undisputedly acted outside the Eastern District of Oklahoma). But, again, the court of appeals resolved the “ambiguities in [the district court’s] judicial statements by presuming that the

district court intended the meaning that would have been legally correct,” without remanding for resentencing to ensure that the district court applied the correct legal standard. *Id.*

In addition, the court of appeals reviewed these claims for plain error on the ground that Petitioner appealed based on the district court’s explanation, not what was said in the PSR. App. A003. That, however, is not accurate. Petitioner objected to the PSR’s failure to consider the culpability of out-of-district coconspirators and explicitly asked the court to consider Petitioner’s factual proffer, which was submitted after the probation officer drafted the PSR’s response to Petitioner’s objection. The district court merely parroted the PSR in overruling Petitioner’s objection.

REASONS FOR GRANTING THE WRIT

- I. **This Court should direct the Tenth Circuit to apply the prevailing rule that remand is required if it is unclear whether legal error infected the district court’s factual Guidelines determination, rather than simply presuming that the court intended a meaning that would have been legally correct.**

The practice in every circuit except the Tenth is to remand for resentencing if it is unclear whether legal error infected a district court’s factual Guidelines determination. *See United States v. Thuy Tien Luong*, 125 F.4th 147, 158 (4th Cir. 2025) (remanding where it was unclear whether the district court used the correct standard in finding that the victim was unusually vulnerable); *United States v. Brown*, 934 F.3d 1278, 1305-07 (11th Cir. 2019) (remanding where it was unclear whether the district court used the correct legal standard to determine whether the

defendant had the requisite intent to warrant use of a higher base offense level commensurate with aggravated assault); *United States v. Juarez*, 812 F.3d 432, 434-37 (5th Cir. 2016) (district court's ambiguity as to whether it imposed sentence incorrectly believing it to be within Guidelines or as a departure or variance required vacation of sentence and remand for resentencing); *United States v. Henderson*, 649 F.3d 955, 964 (9th Cir. 2011) (remanding when it was unclear whether the district court had committed the legal error of failing to recognize its authority to depart for the child pornography Guidelines on policy grounds); *United States v. Fumo*, 655 F.3d 288, 317-19 (3d Cir. 2011), as amended (Sept. 15, 2011) (remanding for resentencing because district court failed to clearly articulate whether it granted a variance or a Guidelines departure); *United States v. Preacely*, 628 F.3d 72, 79-82 (2d Cir. 2010) (holding that ambiguity as to whether district court comprehended its authority to depart from Career Offender Guideline warranted remand); *In re Sealed Case*, 552 F.3d 841, 845, 847-48 (D.C. Cir. 2009) (remanding for resentencing because it was unclear whether the district court found facts sufficient to apply the base offense level commensurate with participation in the underlying controlled substance offense); *United States v. Bartlett*, 567 F.3d 901, 910 (7th Cir. 2009) (remanding for resentencing because it was unclear whether the district judge understood that the top of the defendant's Guidelines range was 188 months, rather than 208 months); *United States v. Roberson*, 517 F.3d 990, 995 (8th Cir. 2008) (remanding when it was unclear whether the district court had committed the legal error of failing to recognize its authority to depart from the

crack Guidelines on policy grounds); *United States v. Wallace*, 461 F.3d 15, 40, 44-45 (1st Cir. 2006) (remanding for resentencing because the criminal conduct used by the district court to justify an upward departure was unclear); *United States v. Battles*, No. 16-1017, 664 F. App'x 491, 496 (6th Cir. 2016) (unpublished) (remanding for reconsideration because district court's calculation of amended statutory minimum was incorrect and it was unclear if that error impacted its decision to deny motion for sentence reduction).

As the Seventh Circuit reasoned, when a district court's ruling is ambiguous and may reflect a legal error, “[g]iven the risk of confusion, the better part of wisdom is to ask the district judge to take another look, to ensure that the sentence rests on a deliberate choice rather than a mistake.” *Bartlett*, 567 at 910. The Fifth Circuit likewise explained that “because criminal sentences must reveal with fair certainty the intent of the court to exclude any serious misapprehensions by those who must execute them, unclear or ambiguous sentences must be vacated and remanded for clarification in the interest of judicial economy and fairness to all concerned parties.” *Juarez*, 812 F.3d at 437 (citation omitted) (cleaned up).

The Tenth Circuit is an outlier. As it did in Petitioner's case, it assumes a district court applied the correct legal standard in the face of an ambiguous ruling that admittedly could just as easily reflect legal error. Here, as outlined above, the court of appeals assumed that the district court considered Petitioner's factual proffer and the relative culpability of coconspirators who acted outside the Eastern District of Oklahoma—both of which the court of appeals recognized the district

court was legally obligated to consider—in determining whether to grant a minor-role reduction in calculating the Guidelines range. The court of appeals made this assumption even though it acknowledged that the district’s court ruling could be interpreted as reflecting its failure to fulfill its legal obligation to consider both Petitioner’s proffer and the relative culpability of coconspirators who acted outside of the district.

The Tenth Circuit’s approach is contrary to basic notions of fairness and justice because it undermines confidence in judicial decision-making and the propriety of imposed sentences. This Court should grant the writ and direct the Tenth Circuit to adopt the approach taken in all other circuits,

II. The Court should direct the Tenth Circuit to adopt the prevailing practice, which is consistent with Federal Rule of Criminal Procedure 51(a), that a party’s objection to the PSR’s recommendation on a Guidelines issue is sufficient to preserve that claim of error for appeal when the district court adopts the PSR’s recommendation but it is unclear whether the court applied the correct legal standard.

Federal Rule of Criminal Procedure 51(a) makes clear that a party need not take exception to a district court’s definitive ruling on an objection. (Rule 51 refers to and is consistent with Federal Rule of Evidence 103(b), which provides, “Once the court definitively rules on the record . . . a party need not renew an objection or offer of proof to preserve a claim of error for appeal.)

Here, however, the Tenth Circuit Court of Appeals reviewed for plain error Petitioner’s claim that the district court committed legal errors in overruling his objection to PSR’s denial of a minor-role reduction despite Petitioner’s objection,

which correctly articulated the legal standards he argued on appeal that the district court should have considered: (1) his factual proffer, and (2) the relative culpability of coconspirators who acted outside of the Eastern District of Oklahoma. The court of appeals said that the claims were forfeited because Petitioner did not object to the ambiguities in the district court's oral ruling overruling his objection to the PSR's recommendation.

The Tenth Circuit's approach is again out of step with the prevailing approach. Other circuits treat a Guidelines argument as preserved for appeal as long as the party objected to the Guidelines application prior to the district court's ruling. *See United States v. Thuy Tien Luong*, 125 F.4th 147, 157-58 (4th Cir. 2025) (treating challenge to district court's procedural error as preserved where it was unclear whether the district court used the correct standard in finding that the victim was unusually vulnerable, even though the defendant did not take exception to the court's ruling on the issue); *United States v. Brown*, 934 F.3d 1278, 1305-07 (11th Cir. 2019) (treating government's objection as preserved where it was unclear whether the district court used the correct legal standard to determine whether the defendant had the requisite intent to warrant use of a higher base offense level commensurate with aggravated assault, even though government did not take exception to the court's ruling);¹³ *United States v. Juarez*, 812 F.3d 432, 436, 438 (5th Cir. 2016) (treating error as preserved where the defendant informed the

¹³ *See also* Brief of United States, *United States v. Brown*, 2018 WL 4822106, at *17-18, 11th Cir. No. 18-11021 (filed 09/24/2018).

district court prior to sentencing that the Guidelines range was seven years but the court's sentencing explanation reflected the district court's possible confusion that the Guidelines range was seven years to life); *United States v. Henderson*, 649 F.3d 955, 964 (9th Cir. 2011) (treating objection as preserved when defendant argued that the district had discretion to vary from the child pornography Guideline on policy grounds and it was unclear whether the district court had committed the legal error of failing to recognize its discretion to do so, even though defendant did not take exception to district court's ambiguous remarks); *United States v. Preacely*, 628 F.3d 72, 77, 79-82 (2d Cir. 2010) (treating objection as preserved when district court's ruling was unclear as to whether it comprehended its authority to depart from Career Offender Guideline); *United States v. Bartlett*, 567 F.3d 901, 910 (7th Cir. 2009) (declining government's request to review for plain error because defendant did not "object" to a 208-month sentence on the grounds that it exceeded the Guidelines range, when the defendant advocated for a sentence within the correct Guidelines range; noting that it "put 'object' in scare quotes" because of the absurdity of the government's request); *United States v. Roberson*, 517 F.3d 990, 995 (8th Cir. 2008) (treating argument as preserved when defendant advocated for a lighter sentence based on the 100:1 disparity between crack and powder cocaine and it was unclear from the district court remarks whether it had committed the legal error of failing to recognize its authority to depart from the crack Guidelines on policy grounds).

As Judge Easterbrook explained in *Bartlett*:

[R]emonstration with the judge is not an objection as usually understood. Both the Rules of Evidence and the Rules of Criminal Procedure require a litigant to make known the position it advocates and to present evidence and argument for that position. These steps are essential to facilitate intelligent decision in the district court. Counsel present positions, and judges then decide. But the rules do not require a litigant to complain about a judicial choice after it has been made. Such a complaint is properly called, not an objection, but an exception.

Id. Research did not reveal any circuit apart from the Tenth that reviews for plain error when a party objected to a Guidelines application and it is unclear whether the district court committed the legal error that was the basis of the objection. The relevant rules make clear that parties are *not* required to take exception to district court rulings. The Tenth Circuit's practice contravenes these rules, and this Court should intervene to put an end to these violations.

Some circuits *do* review for plain error if a party claims on appeal that the district court's sentencing explanation is inadequate to justify the sentence imposed in light of 18 U.S.C. § 3553(a)'s sentencing factors. *See United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 & n.3 (9th Cir. 2010), *cert. denied*, 562 U.S. 1017 (2010); *United States v. Mondragon-Santiago*, 564 F.3d 357, 361 & n.2 (5th Cir. 2009); *United States v. Flores-Mejia*, 759 F.3d 253, 258 (3d Cir. 2014) (en banc); *United States v. Mangual-Garcia*, 505 F.3d 1, 15 (1st Cir. 2007), *cert. denied*, 553 U.S. 1019 (2008); *United States v. Villafuerte*, 502 F.3d 204, 208 (2d Cir. 2007).

Other circuits do not, in accordance with Rule 51(a). *See United States v. Lynn*, 592 F.3d 572, 578 (4th Cir. 2010); *United States v. Dale*, 498 F.3d 604, 610-12 (7th Cir. 2007); *United States v. Swehla*, 442 F.3d 1143, 1145 (8th Cir. 2006). But,

in that situation, the inadequacy of the explanation is at least the essence of the error claimed on appeal. In contrast, when the claim involves a Guidelines application to which a party objected, the basis for the objection—both in the district court and on appeal—is that the PSR’s determination of that Guidelines application, as adopted by the district court, is legally unsound. The Tenth Circuit’s plain-error approach makes absolutely no sense in this context and is fundamentally unfair.

III. This case is an excellent vehicle for considering the questions presented.

The Tenth Circuit appears to stand alone among the circuits in assuming legal correctness in the face of significant ambiguity in a district court’s sentencing ruling. And, in its published opinion in this case, the court of appeals readily admits that, given the language the district court used, it is very possible that the district court committed legal errors. This case provides a clear illustration of the question presented.

Because the court of appeals published its opinion, unless this Court grants the writ and vacates, criminal defendants in the Tenth Circuit will have no recourse on appeal if there is strong reason to believe that a district court’s ruling on a Guidelines application was infected with legal error but there is some conceivable way to interpret the ruling as legally correct, while criminal defendants in other circuits will win resentencing in similar circumstances to ensure that the imposed sentence accords with the law. It is fundamentally unfair for Tenth Circuit defendants to be disadvantaged in this way. Nor should their claims be reviewed for

plain error, with the burden shifted to them to demonstrate prejudice, when other circuits treat such claims as preserved as long as the party objected to the Guidelines application on the grounds presented in the appeal.

The court of appeals averred that, even if the district court legally erred, Petitioner could not meet his burden to show a reasonable probability of getting a minor-role reduction absent the error, because he would not be able to demonstrate by a preponderance of evidence that he was substantially less culpable than the average participant in the drug-trafficking conspiracy. App. A008-013. But, as explained above, his claims should have been considered preserved, in which case the government would have borne the burden of demonstrating that the errors were harmless.

In any event, Petitioner's proffer was more than sufficient to support his request for a minor-role reduction. As discussed in a recent report, the Sentencing Commission recognizes that Mexican DTOs (often called "cartels") are responsible for the methamphetamine currently circulating in the United States. U.S. Sent'g Comm'n, *Methamphetamine Trafficking Offenses in the Federal Criminal Justice System* at 11 (June 13, 2024) ("Sent'g Comm'n, 2024 Meth Report").¹⁴ Mexican DTOs also now control most of the wholesale and domestic retail distribution in the United States. *Id.*

¹⁴ https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2024/202406_Methamphetamine.pdf (last visited 02/23/2026).

In its recent report, the Sentencing Commission characterized a courier as a participant in a methamphetamine drug-trafficking conspiracy who “transports or carries drugs . . . with the assistance of a vehicle” and who “does not own the drugs.” *Id.* at 37. The Commission noted that, in Fiscal Year 2022, 75.9% of methamphetamine couriers received a mitigating-role adjustment at sentencing, even though they were, on average, held accountable for twice as much methamphetamine as high-level suppliers. *Id.* at 48. Indeed, couriers, on average, received lower sentences than defendants who performed any other function in methamphetamine drug-trafficking schemes (high-level suppliers, wholesalers, street level dealers, brokers, and DTO employees). *Id.* That is because, given the nature of a courier’s role—transporting drugs he does not own from one location to another for a modest fee—it is self-evident that couriers are substantially less culpable than the average participant in a large-scale drug-trafficking conspiracy such as the one at issue in this case.

The findings in the Sentencing Commission’s recent report are wholly consistent with defense counsel’s explanation of Petitioner’s limited offense role, which was based on her extensive experience handling drug-trafficking cases in the District of Arizona, a border district. The government did not contest the reliability of that explanation in either the district court proceedings or in its appellate brief. Petitioner’s factual proffer, which is consistent with the accepted understanding of the structure and operation of Mexican DTOs, is more than sufficient to support the

requested mitigating-role adjustment under the Guideline in effect at the time of Petitioner’s May 2024 sentencing.

The reality is that most low-level participants deserving of a minor-role reduction are unable to present affirmative evidence about the relative culpability of other participants in the conspiracy because they are not provided with such information by higher-level participants, which is consistent with the 2024 Guidelines’ advisement that lack of planning or understanding of the scope and structure of the criminal activity reflects minor or minimal participation. U.S.S.G. § 3B1.2, cmt. n. 3(C). But, ironically, courts in some districts, including in Oklahoma, nevertheless have denied the downward adjustment to drug couriers based on defendants’ inability to offer affirmative evidence that they could not be expected to possess if they were in fact substantially less culpable than other participants. Some courts have resisted awarding minor-role adjustments to couriers such as Petitioner even after the 2015 amendment clarifying that that the defendant’s performance of “an essential or indispensable role in the criminal activity,” such as serving as a drug courier, did not preclude the adjustment. *See* U.S.S.G. Supp. to App. C., Amend. 794. pp. 108-09 (Nov. 1, 2015).

Because of the persistence of this practice, the Sentencing Commission recently promulgated an amendment—effective November 1, 2025—that makes clear that defendants whose “primary function in the offense was plainly among the lowest level of drug trafficking functions, such as serving as a courier”—are generally entitled to a four-level minimal-role reduction, even if they cannot

affirmatively show that they are substantially less culpable than the average participant in the conspiracy. U.S.S.G. § 2D1.1(e)(2)(B)(i) (2025). The Commission decided this amendment was necessary because the 2015 amendment “did not result in a sustained increase in application of the mitigating role” in drug-trafficking cases, as the Commission had intended. U.S. Sent’g Comm’n., *2025 Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary* at 8.¹⁵ In particular, the Commission was concerned that some courts relied on the “substantially less culpable than average” benchmark to deny the reduction to drug-trafficking defendants and impose inappropriately high sentences. *Id.* at 9. As the Sentencing Commission made clear, drug-trafficking conspiracies are distinct from other criminal conspiracies.

The court of appeals’ prejudice analysis rested on the assumption that status as a courier does not entitle defendant to a minor-role reduction. App. A009. But the recent amendment makes clear that one who acts as a drug courier is typically entitled to a reduction, in keeping with how many courts were applying the Guideline prior to the amendment. The court of appeals did not dispute that Petitioner was merely a courier. App. A002, A009, A017.

If Petitioner’s sentence is vacated and remanded, the 2025 amendment will apply at his resentencing. *United States v. Easterling*, 157 F.3d 1220, 1225 (10th Cir. 1998); *United States v. Torres*, 99 F.3d 360, 362 (10th Cir. 1996). Under the

¹⁵ https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202505_Amendments.pdf (last visited 02/23/2026).

amendment, Petitioner's base offense level would be decreased from 38 to 30 because, as a courier, he would be entitled to a four-level mitigating-role reduction. § 2D1.1(a)(5)(iii) (2025). Then it would be decreased by another 4 levels to 26 under §§ 3B1.2(a) and 2D1.1(e)(2)(B)(i) to account for the mitigating-role reduction. After deducting 3 levels for acceptance of responsibility and adding two levels for flight from law enforcement, his final offense level would be 25. At Criminal History Category II, his Guidelines' range would be 63-78 months, which would increase to 120 months due to the mandatory minimum sentence. (Even if he only received a two-level minor-role reduction, his base offense level would be 32 and his Guidelines' range would be 97-121 months.)

Thus, it is reasonably probable that the district court would impose a substantially lower sentence on remand, given the much lower advisory benchmark that would apply. Indeed, the Sentencing Commission has made clear that the appropriate sentence for a couriers like Petitioner is typically no more than the mandatory minimum, 120 months. Petitioner's 235-month sentence is almost double that.

The questions presented in this petition are therefore important and consequential both for promoting uniformity in the application of legal standards in sentencing appeals and for achieving a just sentence in Petitioner's case.

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that the Court grant a writ of certiorari.

Respectfully submitted,

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Appendix A

FILED
United States Court of Appeals
Tenth Circuit

PUBLISH

UNITED STATES COURT OF APPEALS September 16, 2025

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 24-7050

MARCO ANTONIO NARANJO-
AGUILAR,

Defendant - Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA
(D.C. NO. 6:22-CR-00020-RAW-1)

M. Edith Cunningham, Assistant Federal Public Defender (Jon M. Sands, Federal Public Defender, with her on the briefs), Office of the Federal Public Defender, District of Arizona, Tucson, Arizona, for Defendant-Appellant.

Luke Rizzo Cascio, Assistant United States Attorney (Christopher J. Wilson, United States Attorney, with him on the brief), Office of the United States Attorney, Eastern District of Oklahoma, Muskogee, Oklahoma, for Plaintiff-Appellee.

Before **HARTZ**, **MATHESON**, and **BACHARACH**, Circuit Judges.

BACHARACH, Circuit Judge.

This appeal involves a criminal sentence. In deciding on the sentence, the district court can reduce the guideline range when the defendant is a minor participant. U.S.S.G. § 3B1.2(b). But a defendant's participation can be considered *minor* only if most other participants bear greater culpability. U.S.S.G. § 3B1.2 cmt. n.5. The main question in the appeal is whether the district court plainly erred by failing to consider more culpable participants. We answer *no*.

1. The defendant is convicted and sentenced after transporting methamphetamine.

The defendant, Mr. Marco Naranjo-Aguilar, drove a car containing almost 50 pounds of methamphetamine. For this act, he was convicted of possessing methamphetamine with intent to distribute. 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A).

To determine the appropriate sentence, the district court considered the sentencing guidelines. *See* 18 U.S.C. § 3553(a)(4). These guidelines allow the court to adjust the offense level downward when the defendant played a minor role. U.S.S.G. § 3B1.2(b).

Mr. Naranjo-Aguilar requested this downward adjustment, alleging a minor role as a courier in a drug deal. In support, he submitted a proffer identifying three other participants. The court acknowledged the proffer, but declined to give the downward adjustment. Without the adjustment, the

guideline range was 235–293 months. Applying this range, the district court imposed a sentence of 235 months.

Mr. Naranjo-Aguilar argues that (1) he should have obtained the downward adjustment as a minor participant and (2) the sentence was procedurally and substantively unreasonable.

2. The district court didn't plainly err by denying a downward adjustment.

Mr. Naranjo-Aguilar argues that (1) the district court committed legal errors in denying the downward adjustment and (2) the alleged errors were prejudicial. We reject both arguments.

a. These arguments are reviewable under the plain-error standard.

Mr. Naranjo-Aguilar didn't preserve these arguments in district court.

Granted, he did object to a recommendation in the presentence report for the district court to deny a downward adjustment. But he's appealing based on the district court's explanation, not what was said in the presentence report, and he didn't object to the district court's explanation for the sentence. So Mr. Naranjo-Aguilar didn't preserve the legal arguments that he's making on appeal. *See United States v. Yurek*, 925 F.3d 423, 444–45 (10th Cir. 2019) (concluding that the defendant didn't preserve her challenge to the denial of a mitigating-role adjustment because she was “alleging an error in the district court's explanation” rather than the “content of the presentence report”).

Given the failure to preserve the appellate arguments, we apply the plain-error standard. *Id.* at 445. Under this standard, we consider

- whether the district court erred,
- whether an error was clear or obvious,
- whether an error affected the defendant’s substantial rights, and
- whether an error seriously affected the fairness, integrity, or reputation of the judicial proceedings.

Id.

We conclude that (1) the district court didn’t err and (2) the alleged errors wouldn’t have affected the defendant’s substantial rights.

b. The district court didn’t legally err.

In challenging the denial of a downward adjustment, Mr. Naranjo-Aguilar argues that the district court legally erred by disregarding his proffer and limiting the inquiry to participants who had acted inside the judicial district.

The district court acknowledged the proffer, but said: “Absent any knowledge or evidence to the contrary, the Defendant was acting alone when transporting a large quantity of drugs in the Eastern District of Oklahoma.” R. vol. 3, at 80. Mr. Naranjo-Aguilar interprets this sentence as proof that the district court overlooked his proffer and disregarded participants in other judicial districts.

The district court didn't need to explain why it declined Mr. Naranjo-Aguilar's request for a downward adjustment. *United States v. Nkome*, 987 F.3d 1262, 1273 (10th Cir. 2021). But the court did provide an explanation. So we must consider whether the explanation entailed a legal error. *Id.*

Mr. Naranjo-Aguilar argues that the district court overlooked evidence consisting of a statement in the proffer that others had participated. But what did the district court mean when it said that there wasn't *evidence* of others' actions? We've said that "[a] proffer is not evidence, *ipso facto*." *United States v. Reed*, 114 F.3d 1067, 1070 (10th Cir. 1997) (*italics in original*).¹ Given our characterization of proffers, the district court might have meant only that Mr. Naranjo-Aguilar hadn't presented any testimony or exhibits identifying other participants.

Mr. Naranjo-Aguilar argues, however, that the district court overlooked the proffer. This argument appears questionable, for the court had referred to the proffer earlier in the explanation. Given this reference, the court was apparently aware of the proffer when stating that there wasn't any evidence of other participants.

At most, Mr. Naranjo-Aguilar's characterization of the wording suggests an ambiguity. The court might have forgotten that Mr. Naranjo-

¹ Mr. Naranjo-Aguilar states that his "proffer or testimony is *evidence*." Appellant's Reply Br. at 2 (*italics in original*). But he doesn't provide any authority for treating his proffer as evidence. And he didn't submit any testimony. In fact, his proffer was not signed or verified.

Aguilar had supplied a proffer, or the court might simply have distinguished between a proffer and other forms of evidence. When we're confronted with ambiguities, we ordinarily presume that the district court intended the meaning that would have been legally correct. *United States v. Simpson*, 845 F.3d 1039, 1051 (10th Cir. 2017); *see also United States v. Nacchio*, 555 F.3d 1234, 1242 (10th Cir. 2009) (en banc) (“When a district court’s language is ambiguous . . . it is improper for the court of appeals to presume that the lower court reached an incorrect legal conclusion.” (ellipsis in original) (quoting *Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 386 (2008))). We thus presume from the explanation that the court considered the defendant’s proffer.

Mr. Naranjo-Aguilar also focuses on the statement that he was acting alone in the Eastern District of Oklahoma. For Mr. Naranjo-Aguilar, this statement shows disregard of participants in other districts. But again, the district court’s statement is subject to two different interpretations.

The first interpretation treats Mr. Naranjo-Aguilar’s conduct in the Eastern District of Oklahoma as the act of driving a car stuffed with methamphetamine. Mr. Naranjo-Aguilar embraces a different interpretation, arguing that the district court overlooked any actions outside the Eastern District of Oklahoma. For this interpretation, Mr. Naranjo-Aguilar relies on his proffer, which referred to the individuals

who had rented the car, requested transportation of the drugs, and loaded them into the car.

Under the first interpretation, the court could reasonably view the statement as correct: Mr. Naranjo-Aguilar was the only person who conducted activities in the Eastern District of Oklahoma. He points out that someone else rented the car in Arkansas. But that rental took place outside the Eastern District of Oklahoma; so the district court's statement could plausibly be correct under the first interpretation.

Under the second interpretation, the court might have erred by disregarding more culpable participants just because they had committed their crimes elsewhere. But again, we resolve ambiguities in judicial statements by presuming that the district court intended the meaning that would have been legally correct. *See* p. 6, above. We thus interpret the district court's statement as a simple acknowledgment that Mr. Naranjo-Aguilar was the only participant conducting activities in the Eastern District of Oklahoma.²

² The result might be different when it's "apparent" from the explanation that the district court relied on an incorrect legal standard. When a legal error is apparent, we must remand when we're uncertain whether the error resulted in an incorrect factual finding. *United States v. Herriman*, 739 F.3d 1250, 1262 (10th Cir. 2014). Here, however, the existence of a legal error isn't apparent in light of the ambiguity of the district court's explanation.

c. The alleged legal errors wouldn't have been prejudicial.

Assuming the existence of legal errors, Mr. Naranjo-Aguilar argues that they would have created prejudice by preventing a downward adjustment.³ As noted above, we conclude that the district court didn't commit a legal error. *See* Part 2(b), above. But even if Mr. Naranjo-Aguilar had shown a legal error, he would need to show prejudice because he didn't alert the district court to the alleged errors. *United States v. Yurek*, 925 F.3d 423, 446 (10th Cir. 2019). To satisfy this burden, he would need to show a reasonable probability of a downward adjustment absent the legal error. *Id.*

Mr. Naranjo-Aguilar bases his argument for prejudice on his proffer, which identifies three individuals:

1. El Siete, who requested the transportation of drugs from Arizona,
2. an unidentified person who placed luggage (containing drugs) in the car, and
3. an unidentified person who rented the car.⁴

³ The government interpreted Mr. Naranjo-Aguilar's opening brief to include a separate argument that the district court had committed clear error in its findings. But Mr. Naranjo-Aguilar clarifies in his reply brief that the cited discussion involves the issue of prejudice, not a distinct argument that the district court committed clear error.

⁴ The presentence report identifies this person as Jesus Corral, stating that he rented the car in Arkansas.

Supp. R. vol. 1, at 6. But Mr. Naranjo-Aguilar didn't present any evidence about the participation of these individuals or their greater culpability.

In deciding whether to give a downward adjustment, the district court would have had to compare the relative culpability of Mr. Naranjo-Aguilar and other participants in this crime. *United States v. Berryhill*, 140 F.4th 1287, 1303 (10th Cir. 2025). From this comparison, the court could have assigned a minor role to Mr. Naranjo-Aguilar only if his culpability had been substantially less than that of the average participant. U.S.S.G. § 3B1.2 cmt. n.3(A). In comparing the culpability of Mr. Naranjo-Aguilar and other participants, the district court would have needed to make a factual determination, with Mr. Naranjo-Aguilar bearing the burden to show his lesser culpability by a preponderance of the evidence. *United States v. Nkome*, 987 F.3d 1262, 1268–69 (10th Cir. 2021).

Mr. Naranjo-Aguilar appears to make two assumptions: (1) his role as a courier would render him substantially less culpable than other participants, and (2) other individuals would have occupied a greater role by planning the drug deal and making the arrangements. Both assumptions are misguided.

First, status as a courier doesn't automatically entitle a defendant to a downward adjustment. *United States v. Eckhart*, 569 F.3d 1263, 1276 (10th Cir. 2009); *United States v. Rangel-Arreola*, 991 F.2d 1519, 1524 (10th Cir. 1993).

Second, it's not enough for a defendant to show that he was the least culpable participant: He must show that he was substantially less culpable than the average participant. U.S.S.G. § 3B1.2 cmt. n.3(A).

A criminal transaction may entail multiple roles. Here, for example, Mr. Naranjo-Aguilar identifies three other individuals: the person who requested transportation of the drugs (El Siete), the person who rented the vehicle (identified in the presentence report as Jesus Corral), and the unidentified person who loaded the drugs.

To compare the culpability of Mr. Naranjo-Aguilar and these individuals, the district court needed to consider multiple factors, including these five:

1. the degree to which the defendant understood the structure and scope of the criminal activity,
2. the degree to which the defendant engaged in the plans or organization,
3. the degree to which the defendant influenced the decisionmaking,
4. the nature and extent of the defendant's participation in the crime, and
5. the degree of benefit to the defendant.

U.S.S.G. § 3B1.2 cmt. n.3(C).

Given the paucity of information, the district court would have had difficulty comparing the culpability of the three other individuals to the culpability of Mr. Naranjo-Aguilar. The proffer indicates that Mr. Naranjo-

Aguilar obtained relatively little money from the drug delivery and didn't understand the scope of the crime, engage in the planning, or influence it. Of course, the district court didn't need to credit that proffer. *See United States v. Eckhart*, 569 F.3d 1263, 1276–77 (10th Cir. 2009). But even if the district court had credited the proffer, it didn't say anything about

- possible payments to El Siete, Mr. Corral, or the unidentified person who loaded the drugs or
- their understanding of the crime, their planning or participation in the crime, or their influence on decisionmaking.

The proffer says only that (1) one of the men asked Mr. Naranjo-Aguilar to transport the drugs, (2) the second man rented the car, and (3) the third man loaded the drugs. No evidence exists about any further contributions to the crime or what they received in return.

Mr. Naranjo-Aguilar points out that someone obtained the large quantity of methamphetamine (almost 50 pounds) and planned the sale. Whoever bore those roles would presumably have had substantially greater culpability than Mr. Naranjo-Aguilar. But the district court could reasonably infer that the crime would also have involved other participants, like Mr. Naranjo-Aguilar, who had little involvement in the planning or organization.

When a crime involves multiple tiers of involvement, we compare the roles played by the defendant and the average participant. An example took place in *United States v. Nkome*, 987 F.3d 1262 (10th Cir. 2021). That case

involved a scheme where a foreign entity would purport to sell goods through a website. *Id.* at 1264. Americans would be recruited to pose as the sellers. *Id.* When someone bought an item, the money would go to the American seller, who would take a small cut and forward the rest of the money to the organizers. *Id.*

One of the American sellers, called a “money mule,” sought a downward adjustment for a mitigating role. *Id.* at 1264–66. The district court denied the downward adjustment, and we upheld the ruling. *Id.* at 1266, 1268, 1284.

We acknowledged that

- the American seller had substantially less culpability than the individuals serving as “leader organizer[s],” who had formed the operation, recruited participants, and directed and controlled the flow of money, and
- the district court could plausibly view the “money mules” as less culpable than the individuals occupying other roles, like the online scammers, identity forgers, and mid-level organizers.

Id. at 1278, 1281. But we concluded that this was not the only plausible interpretation: The district court could reasonably equate the culpability of the “money mules” (like the American seller) and the other participants even though some of them had used sophisticated skills in building a website and falsifying documents. *Id.* at 1281.

Here too, the district court could reasonably view Mr. Naranjo-Aguilar’s culpability as roughly equivalent to the culpability of El Siete,

Mr. Corral, and the person who had loaded the drugs. The court lacked any information about payments to them or their possible roles in the planning.

Certainly one or more individuals had to play a greater role by obtaining the methamphetamine and planning the purchase and resale, just as the “leader organizers” in *Nkome* had played a greater role than the American seller. But the district court there could reasonably infer that the American seller had roughly the same level of culpability as some other participants. *Id.* The district court could take the same approach here, treating the culpability of Mr. Naranjo-Aguilar as roughly equivalent to that of El Siete, Mr. Corral, and the person who had loaded the drugs. Given the reasonableness of this approach, Mr. Naranjo-Aguilar hasn’t shown prejudice from the alleged legal errors.

3. The sentence was procedurally and substantively reasonable.

Without the downward adjustment for a minor role, the court imposed a sentence matching the floor of the guideline range. Mr. Naranjo-Aguilar argues that this sentence was procedurally and substantively unreasonable.

a. The sentence was procedurally reasonable.

For his challenge involving procedural reasonableness, Mr. Naranjo-Aguilar argues that the district court gave a deficient explanation for the sentence. But he didn’t object to this explanation at the sentencing; and absent an objection, we apply the plain-error standard. *United States v. Wireman*, 849 F.3d 956, 961–62 (10th Cir. 2017). Under this standard, we

reverse only if (1) the district court erred and (2) the error was clear or obvious. *See* Part 2(a), above. Here, however, there was no error at all.

Mr. Naranjo-Aguilar argues that the district court failed to consider one of the statutory factors: avoidance of unwarranted sentencing disparities. 18 U.S.C. § 3553(a)(6). For this argument, he points out that the district court didn't specifically refer to this factor. But the district didn't need to refer to this factor because the sentence fell within the guideline range. *United States v. Lente*, 647 F.3d 1021, 1034–35 (10th Cir. 2011).

Though this factor wasn't explicitly discussed, the district court referred to the sentencing guidelines, using them as a benchmark for an appropriate sentence. By using the guideline range, the court inherently considered unwarranted sentencing disparities. *United States v. Gantt*, 679 F.3d 1240, 1248–49 (10th Cir. 2012). So the district court didn't err by failing to consider the possibility of these disparities.

b. The sentence was substantively reasonable.

Mr. Naranjo-Aguilar also argues that the sentence was substantively unreasonable. In addressing this argument, we consider whether the sentence fell within the district court's discretion. *United States v. Barnes*, 890 F.3d 910, 915 (10th Cir. 2018). The court didn't abuse its discretion by imposing a 235-month sentence.

A sentence is presumptively reasonable when it falls within the guideline range. *United States v. Kristl*, 437 F.3d 1050, 1054 (10th Cir. 2006). And here the sentence not only fell within the guideline range, but fell at the bottom of that range.

To rebut the presumption of reasonableness, Mr. Naranjo-Aguilar argues that

- the guidelines lack an empirical basis for the reliance on drug weight and purity and
- the district court neglected to consider unwarranted sentencing disparities.

We reject these arguments.

Criticism of the guidelines. Mr. Naranjo-Aguilar criticizes the guidelines for using drug weight and purity as proxies for culpability. As he points out, various scholars and judges have criticized the guidelines for relying on the weight of drugs and the relative purity of methamphetamine. *See, e.g., United States v. Nawanna*, 321 F. Supp. 3d 943, 952 (N.D. Iowa 2018) (stating that treatment of methamphetamine offenses in the guidelines “can lead to perverse sentencing outcomes”); Erica Zunkel & Alison Siegler, *The Federal Judiciary’s Role in Drug Law Reform in an Era of Congressional Dysfunction*, 18 Ohio St. J. Crim. L. 283, 320 (2020) (arguing that a focus on purity in methamphetamine “is not based on empirical evidence, careful study, or national experience”); Steven L. Chanenson, *Booker on Crack: Sentencing’s Latest Gordian Knot*, 15

Cornell J.L. & Pub. Pol’y 551, 559 (2006) (stating that the guidelines have been harshly criticized for focusing primarily on the weight of drugs as a proxy for culpability and as a justification to lengthen sentences); Jon O. Newman, *Five Guideline Improvements*, 5 Fed. Sent’g Rep. 190, 190 (1993) (arguing that the drug-weight system should be replaced with a system that correlates drug sentences to the defendant’s role in the drug-distribution system). Based on these criticisms, a district court is entitled to deviate from the guidelines. *Spears v. United States*, 555 U.S. 261, 264–66 (2009).

But the authority to deviate doesn’t mean that it’s an error to follow the guidelines. *See United States v. McCullough*, 457 F.3d 1150, 1171–72 (10th Cir. 2006) (concluding that a sentence isn’t rendered substantively unreasonable because the district court refused to deviate from a guideline range despite disagreement with the way that the guidelines have differentiated between crack and powder cocaine); *accord United States v. Mosley*, 53 F.4th 947, 965 (6th Cir. 2022) (concluding that adherence to the guidelines, despite their reliance on the purity of methamphetamine, doesn’t render a sentence substantively unreasonable). After all, Congress itself has tied the seriousness of drug offenses to the type of drug and its weight. *See United States v. Williamson*, 953 F.3d 264, 268 (4th Cir. 2020) (“Congress has made plain that the seriousness of a drug offense should be tied to the type and quantity of drug involved.”). And disagreement with

purity as a benchmark for culpability doesn't render the guidelines irrational in how they differentiate among methamphetamine offenses. *See United States v. Turner*, 93 F.3d 276, 287 (7th Cir. 1996) (concluding that the guidelines' reliance on methamphetamine purity has a "rational basis because the pure product is more concentrated and can be cut into larger quantities"); *United States v. Molina*, 469 F.3d 408, 413–14 (5th Cir. 2006) (concluding that the guidelines' drug-table for methamphetamine has a rational basis despite the heavy impact of purity on the guideline range).

Consideration of unwarranted sentencing disparities. Mr. Naranjo-Aguilar also argues that the district court neglected to consider unwarranted sentencing disparities. As noted above, the court did address the potential for sentencing disparities by calculating and using the applicable guideline range. *See* Part 3(a), above. So the district court didn't need to say explicitly that it had considered unwarranted sentencing disparities. *United States v. Nunez-Carranza*, 83 F.4th 1213, 1222 (10th Cir. 2023).

Defense counsel insists that she's unaware of any Arizona case in the last five years where a drug courier was sentenced to more than ten years. But counsel's experience, reflected in her brief, doesn't constitute evidence. *Am. Stores Co. v. Comm'r of Internal Rev.*, 170 F.3d 1267, 1271 (10th Cir. 1999). Nor would that experience be relevant because the guidelines assess unwarranted disparities nationwide rather than in a

particular region. *United States v. Verdin-Garcia*, 516 F.3d 884, 899 (10th Cir. 2008).

To address nationwide disparities, Mr. Naranjo-Aguilar relies on the national average for sentences involving the same offense level and criminal-history category. But the national average doesn't ordinarily shed light on substantive reasonableness. *See United States v. Valdez*, 128 F.4th 1314, 1319 (10th Cir. 2025) (concluding that the national average sentence for offenders in the same offense level and criminal-history category did not shed light on substantive reasonableness because of uncertainty regarding similarities and differences between the defendant and other offenders).

Granted, a national average might be pertinent based on certain factors, including a large upward variance to reach the statutory maximum, the reliance on incorrect facts, and the applicability of a criminal-history category that could encompass a wide range of past criminal conduct. *United States v. Guevara-Lopez*, No. 24-2045, slip op. at 24–25 n.9, 25–26 n.10, 2025 WL 2203620 (10th Cir. Aug. 4, 2025) (to be published). But these circumstances don't apply because

- Mr. Naranjo-Aguilar's criminal-history category was the same as the *Valdez* defendant's (II), *United States v. Valdez*, 128 F.4th 1314, 1316 (10th Cir. 2025),
- Mr. Naranjo-Aguilar's sentence fell below the statutory maximum (life imprisonment), *see* 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A)(viii),

- the district court didn't impose a variance, *see* p. 15, above, and
- there's no suggestion that the court relied on incorrect facts.

The district court undoubtedly had discretion to vary downward based on the national average or criticisms of the guidelines' reliance on drug weights and purity. *See* pp. 15–16, above. But the district court also had discretion to sentence Mr. Naranjo-Aguilar to the bottom of the guideline range. *See* p. 16, above. Because this sentence fell within the district court's discretion, we don't regard the 235-month term as substantively unreasonable.

4. Conclusion

We conclude that the district court didn't err in imposing the sentence.

In reaching this conclusion, we uphold the district court's denial of a downward adjustment for a minor role. When the district court ruled, it acknowledged Mr. Naranjo-Aguilar's proffer and didn't say that it was disregarding participants in other districts.

Nor was the sentence procedurally or substantively unreasonable. The court considered the guideline range as a benchmark for similarly situated defendants and chose a sentence at the floor of that range.

We thus affirm the sentence.

Appendix B

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

October 27, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARCO ANTONIO NARANJO-
AGUILAR,

Defendant - Appellant.

No. 24-7050
(D.C. No. 6:22-CR-00020-RAW-1)
(E.D. Okla.)

ORDER

Before **HARTZ**, **MATHESON**, and **BACHARACH**, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk