

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No. 23-186(1) (ECT/JFD)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	<b>GOVERNMENT’S REPLY TO</b>
	)	<b>DEFENDANT’S SENTENCING</b>
v.	)	<b>MEMORANDUM</b>
	)	
CHARLY CRUZ-JIMENEZ,	)	
	)	
Defendant.	)	

The United States of America, by and through its attorneys, Lisa D. Kirkpatrick, Acting United States Attorney for the District of Minnesota, and Nathan H. Nelson and Bradley M. Endicott, Assistant United States Attorneys, hereby respectfully submits its reply to the defendant’s position and memorandum on sentencing (ECF No. 340).

**INTRODUCTION**

This reply addresses the defendant’s objection to the presentence report’s (PSR) application of a 4-level enhancement for the defendant being a leader or organizer of criminal activity involving five or more participants pursuant to U.S.S.G. § 3B1.1(a) and its failure to apply a 2-level reduction for mitigating role pursuant to U.S.S.G. § 3B1.2. (ECF No. 340 at 15-20.)

**REQUEST FOR EVIDENTIARY SENTENCING HEARING**

Together with this memorandum, the government is filing a motion for an evidentiary sentencing hearing pursuant to Local Rule 83.10(f). The government will provide the Court, the defendant, and the probation officer with a witness list and exhibit list seven days before the hearing pursuant to LR 83.10(f)(2).

## **DEFENDANT’S OBJECTIONS - ROLE IN THE OFFENSE**

The defendant objects to the application of the 4-level enhancement for aggravating role under U.S.S.G. § 3B1.1. He also objects to the PSR’s failure to apply a 2-level reduction for mitigating role pursuant to U.S.S.G. §3B1.2. For the reasons stated below, the Court should overrule the objections.

### **A. Legal Standard**

#### **1. Aggravating Role**

United States Sentencing Guidelines Section 3B1.1 provides for a 4-level enhancement if defendant “was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.”<sup>1</sup> U.S.S.G. 3B1.1(a). In contrast, a 3-level enhancement applies if the defendant “was a manager or supervisor (but not an organizer or leader).” *Id.* § 3B1.1(b). The government bears the burden of proving application of the aggravating role enhancement by a preponderance of the evidence. *United States v. Irlmeier*, 750 F.3d 759, 763 (8th Cir. 2014).

Although the enhancement requires that the *criminal activity* involve five or more participants, a defendant does *not* need to have organized, led, managed, or supervised five or more participants. Rather, the defendant need only have been the organizer, leader, manager, or supervisor with respect to at least *one* single participant. U.S.S.G. § 3B1.1 cmt. 2; *United States v. Morin*, 437 F.3d 777, 781 (8th Cir. 2006). Indeed, the enhancement

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<sup>1</sup> Because there is no dispute in this case that the criminal activity involved five or more participants, this memorandum will focus on the defendant’s role in the offense.

“may apply even if the management activity was limited to a single transaction.” *Irlmeier*, 750 F.3d at 764.

Courts interpret the terms “‘organizer’ and ‘leader’ broadly and ‘manager’ and ‘supervisor’ quite liberally.” *Id.* (citing *United States v. Lopez*, 431 F.3d 313, 317-18 (8th Cir. 2005)). The Eighth Circuit has “never construed the terms ... so narrowly as to restrict application of the enhancement solely to the organizer who first instigated the criminal activity.” *Id.* (quoting *United States v. Noe*, 411 F.3d 878, 889 (8th Cir. 2005). The Guidelines commentary provides that, “[i]n distinguishing a leadership and organizational role from one of mere management or supervision, titles such as ‘kingpin’ or ‘boss’ are not controlling.” U.S.S.G. 3B1.1, cmt. 4. Moreover, the commentary contemplates that “[t]here can, of course, be more than one person who qualifies as a leader or organizer of a criminal association or conspiracy.” *Id.*

Because section 3B1.1 employs a broad definition of what constitutes an organizer or leader, “a defendant need not directly control others in the organization to have functioned as an organizer.” *United States v. Brockman*, 183 F.3d 891, 899 (8th Cir. 1999) (cleaned up). In evaluating the application of the enhancement, the sentencing court considers such non-exclusive factors as: “the exercise of decision-making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.” U.S.S.G. § 3B1.1, cmt. 4.

## 2. Mitigating Role

Under U.S.S.G. § 3B1.2, in contrast, a defendant may be entitled to a 2-level reduction in his offense level if he was a “minor participant” in the criminal activity, or a 4-level reduction if he was a “minimal participant.” U.S.S.G. § 3B1.2(a)-(b). These reductions apply when the defendant “plays a part in committing the offense that makes him *substantially less culpable than the average participant* in the criminal activity.” *Id.* cmt. 3(A). A “minimal participant” is someone “who plays a minimal role in the criminal activity” and is “intended to cover defendants who are plainly among the least culpable of those involved in the conduct of a group” because of his lack of knowledge of the scope and structure of the enterprise and activities of others. *Id.* cmt. 4. A “minor participant” is someone “who is less culpable than most other participants in the criminal activity, but whose role could not be described as minimal.” *Id.* cmt. 5. Whether a defendant is a minor or minimal participant is “heavily dependent upon the facts of the particular case” and the court should consider such factors as:

- (i) the degree to which the defendant understood the scope and structure of the criminal activity;
- (ii) the degree to which the defendant participated in planning or organizing the criminal activity;
- (iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;
- (iv) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts;
- (v) the degree to which the defendant stood to benefit from the criminal activity.

*Id.* cmt. 3(C). Unlike the aggravating role enhancement, it is the *defendant's* burden to prove the applicability of the mitigating role reduction. *United States v. Beridon*, 43 F.4th 882, 885 (8th Cir. 2022).

**B. The Defendant Was an Organizer or Leader of the Criminal Activity**

The Court should overrule the defendant's objection, both to the application of the aggravating role enhancement and the PSR's omission of a mitigating role enhancement.

The present offense took place over a period of almost two years, from at least October 2021 until August 2023. *See* PSR ¶¶ 10, 49. An investigation into the conspiracy revealed numerous deliveries of methamphetamine were made to customers in Minnesota by *at least* 14 different “runners” or couriers. PSR ¶¶ 11-13, 15-16, 20-22, 24, 27, 33-34, 42-44, 47. Each individual runner appeared in the investigation for only a relatively short period of time—receiving, storing, and delivering drugs for at most a month or two. The one constant throughout the entire two-year conspiracy, however, was the defendant—who took orders from customers and directed the runners to make deliveries while remaining safely outside the jurisdiction of the United States in Matamoros, Mexico. *See United States v. Mendoza*, 341 F.3d 687, 693-94 (8th Cir. 2003) (affirming application of enhancement for leader/organizer in part because the defendant “was present for the full length of time charged in the conspiracy.”); *see also United States v. Grady*, 972 F.2d 889, 889 (8th Cir. 1992) (considering that the defendant was “the person most responsible for the crime”).

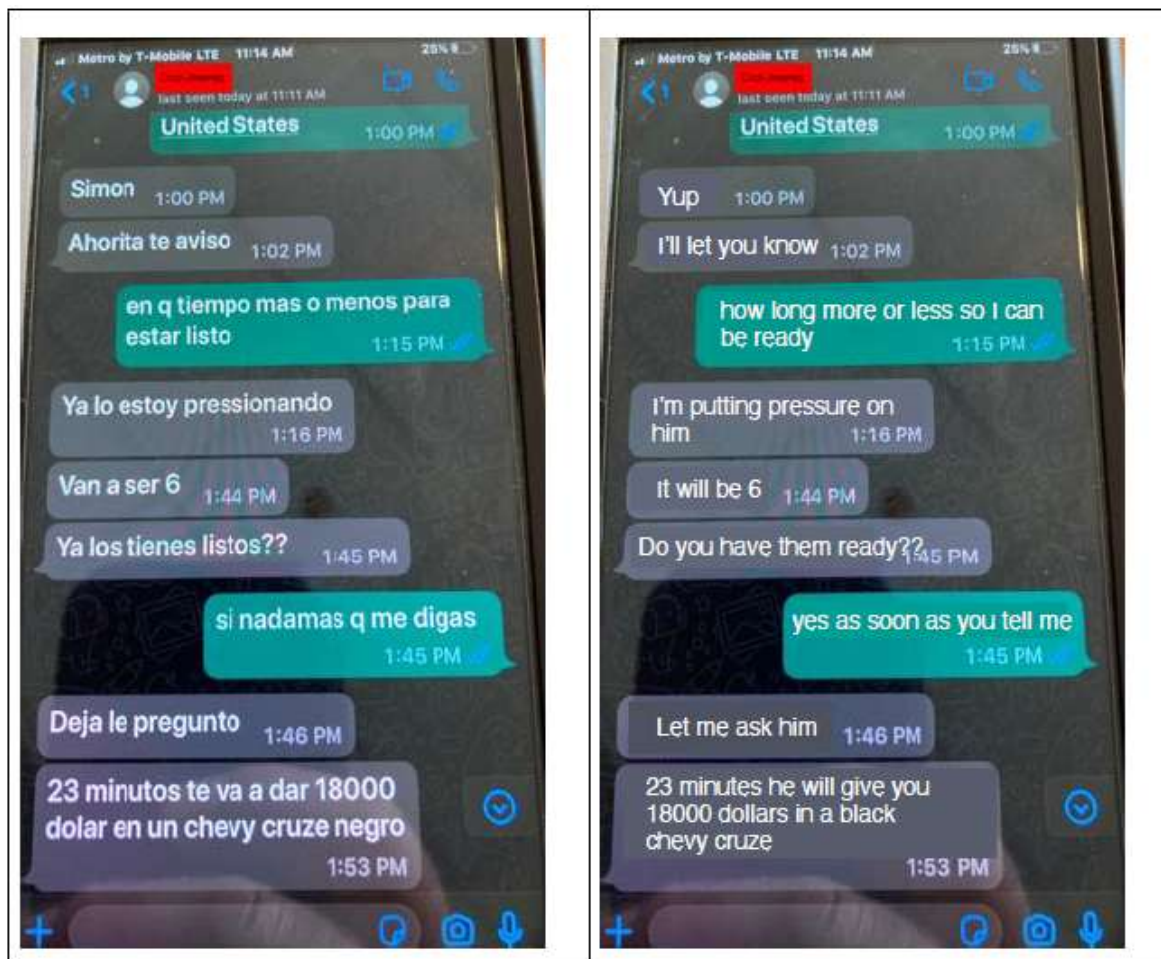
In his conversations with the undercover officer (UC), the defendant admitted his involvement in a highly organized criminal enterprise and spoke of himself ways that communicated a leadership role in the offense. He told the UC he was a member of the Gulf Cartel (*Cartel del Golfo* or CDG), a notorious transnational criminal organization involved in drug trafficking and other crimes. PSR ¶ 46. He also told the UC he was a “king” of the Sureños (a national prison gang associated with organized crime in Mexico) and had “muscle” watching over the drug transactions. PSR ¶ 24. Although the defendant now claims these statements were “simple puffery” unsupported by independent evidence, *see* ECF No. 340 at 19, that self-serving claim is unpersuasive. These statements were made during the offense, when the defendant had little motive to lie, and are against his penal interest. As such they have inherent indicia of reliability. Furthermore, they are supported by other independent evidence in the record. For example, the defendant has previously admitted to being a member of the member of the Sureños and has indicia of such tattooed on his chest. PSR ¶¶ 11, 93. His membership in the Gulf Cartel is also corroborated by pictures the defendant sent the UC, depicting the defendant armed while standing guard over a bound enemy combatant in a war against a rival cartel. PSR ¶ 46. In short, the defendant’s own admissions suggest a leadership role.

Most importantly, however, the conspiracy itself was structured in such a way that it required someone to act as an organizer for it to operate effectively—and the defendant filled that role. As discussed in detail the governments original sentencing memorandum, *see* ECF No. 342 at 10-12, the conspiracy operated through compartmentalization—specifically, by separating the person brokering and negotiating the drug sales (the

defendant) from the couriers possessing and delivering the drugs (the “runners”). Unlike a more traditional drug trafficking model, customers of the defendant’s organization did not contact or interface with “dealers” directly to request, negotiate, and coordinate the purchase of drugs. Rather, the organization placed a wall between the customer and the person with the drugs, and was structured so that the only contact between the two people was at the final hand-to-hand transaction.

Of course, the customer and person holding the drugs still needed *some* way to successfully connect with one another, *i.e.*, to agree on a purchase price and amount, to meet at a particular place and time, and to identify one another to complete the sale. Enter the defendant. The very crux of the defendant’s role in the offense was to *organize*. He received orders to purchase drugs from customers; he located and identified couriers close to the customer who could meet the demand; he brokered a price between the parties; he gave instructions as to how payment should be made (*e.g.*, whether the runner should be given all the money, whether a portion should be deposited into a bank account or sent by wire transfer or CashApp); he organized a meeting time and place; he collected and communicated information (such as vehicle information or personal description) allowing the parties to identify one another; and he assisted in troubleshooting when the parties had difficulty connecting. In essence, the defendant did nearly everything to organize and coordinate the drug transaction other than engage in the hand-to-hand sale itself.

The Eighth Circuit has held that the 4-level enhancement “applies to a defendant who employs or otherwise arranges for intermediaries to sell his drugs.” *United States v. Williams*, 605 F.3d 556, 571 (8th Cir. 2010) (quoting *United States v. Sherman*, 262 F.3d 784, 793 (8th Cir. 2001)). That is precisely what the defendant did here. His role as the organizer of the drug transactions included him directing the activity of the couriers, such as in this excerpt from runner Cesar Aguirre-Bravo’s phone that the government intends to introduce at the defendant’s sentencing:<sup>2</sup>

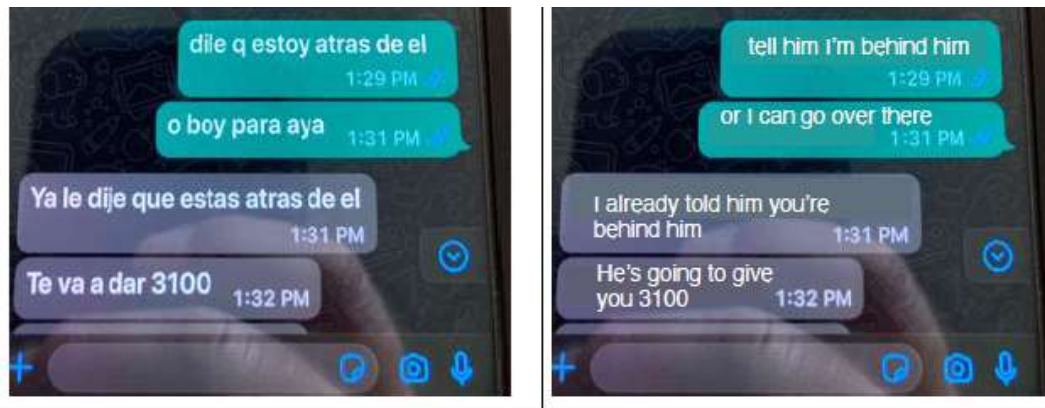


<sup>2</sup> The original Spanish-language image from Aguirre-Bravo’s phone is on the left, and an English translation by certified interpreter Adriana Trevino is on the right. The defendant’s words are in gray, Aguirre-Bravo’s are in green.

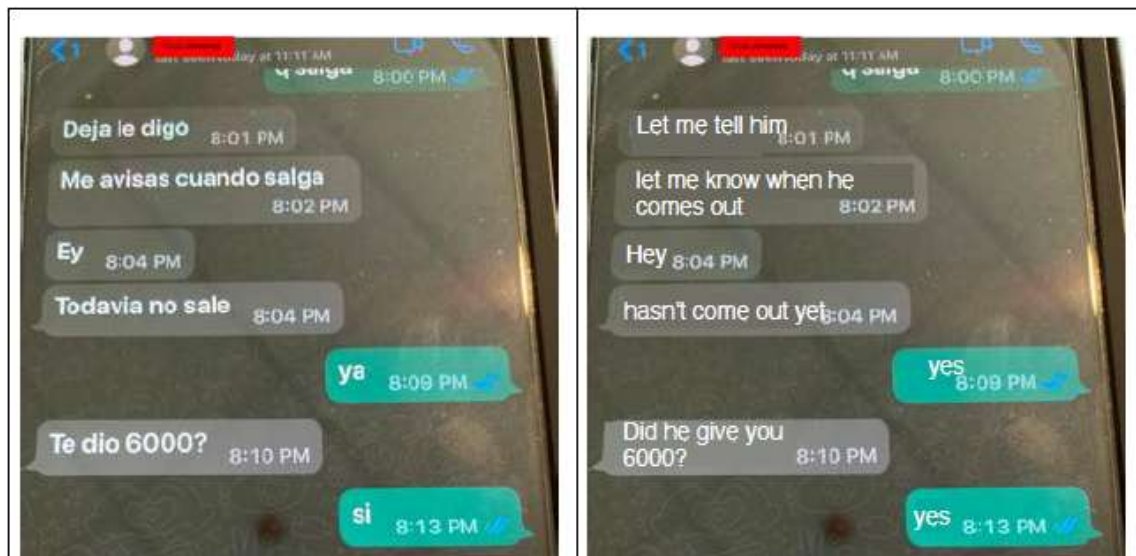


(Gov't Ex. 1 at 13). This excerpt shows the runner standing ready to deliver six pounds of methamphetamine "as soon as [the defendant] tell[s] me," and the defendant directing the runner to meet a customer in a black Chevy Cruze and deliver the drugs for \$18,000. After the deal was completed, the defendant then directed Aguirre-Bravo to deposit the money from the drug sale into a particular bank account. (Ex. 1 at 17.)

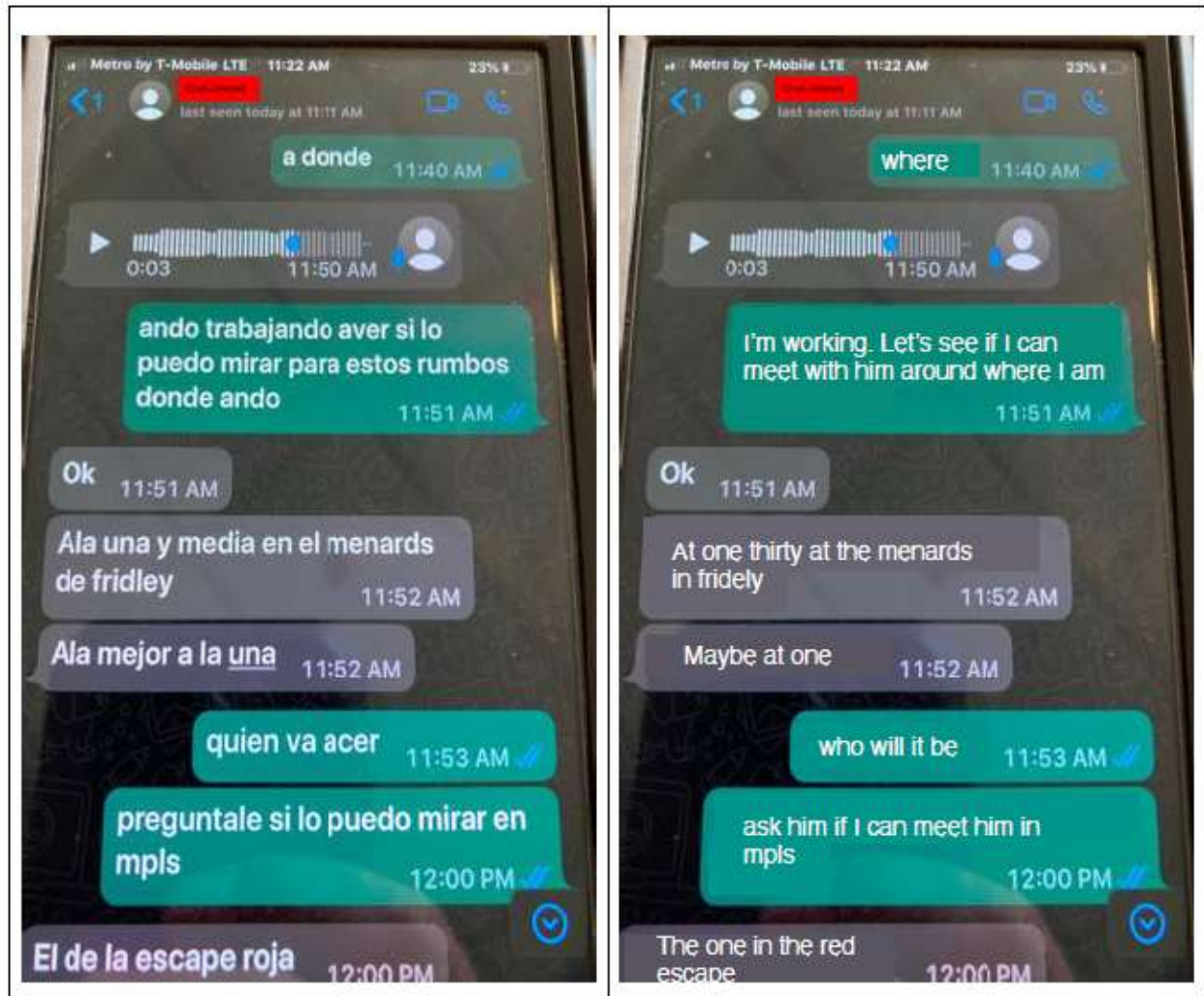
Aguirre-Bravo's phone contained numerous other examples of the defendant directing him to complete drug sales, including to the UC:



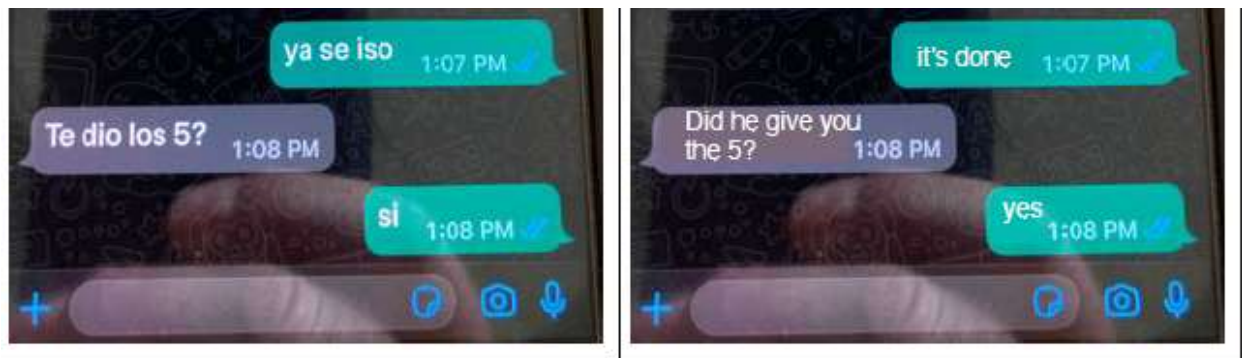
(Ex. 1 at 24).



(Ex. 1 at 38.)



(Ex. 1 at 60.)



(Ex. 1 at 62.)

Courts have repeatedly found this type of activity—directing runners to complete drug sales on the defendant’s behalf—qualifies a defendant for the 4-level enhancement for being a leader or organizer. *See United States v. Lopez*, 328 F. App’x 352, 355 (8th Cir. 2009) (enhancement appropriate where the defendant “orchestrated communications between several participants to complete drug transactions,” and directed others on what to do with the money); *United States v. Bahena*, 223 F.3d 797, 804-05 (8th Cir. 2000) (enhancement appropriate where the defendant “directed both his sister and his wife to distribute and deliver drugs to customers.”); *United States v. Garcia*, 512 F.3d 1004, 1005-06 (8th Cir. 2008) (enhancement appropriate where the defendant “received drug orders from customers, and he directed others to package and deliver drugs.”); *United States v. Knight*, 96 F.3d 307, 310 (8th Cir. 1996) (enhancement appropriate where the defendant “negotiated drug transactions, set the price, and had others deliver drugs to the agent.”); *United States v. Lopez*, 497 F. App’x 687, 690 (8th Cir. 2013) (enhancement appropriate where the defendant worked “as a contact person, taking orders from customers over the phone and dispatching runners to deliver the drugs and collect the customer’s money.”); *United States v. Rodriguez*, 112 F.3d 374, 377 (8th Cir. 1997) (enhancement appropriate where runners would deliver the drugs at the defendant’s direction to the customers); *see also United States v. Willis*, 433 F.3d 634, 636 (8th Cir. 2006) (it is enough to apply the enhancement that the defendant “assumed organizing or leadership functions such as recruiting others, determining the price or location of sales, and so forth.”).

The defendant’s role is a leader or organizer is also demonstrated by the fact that he was involved in recruiting people to join the conspiracy. For example, the evidence at

sentencing will show that the defendant recruited runner Juan Ceron-Sanchez into the conspiracy to “help him ... out with some stuff,” which Ceron-Sanchez knew to be a reference to drugs. After Ceron-Sanchez agreed, someone dropped off a duffle bag with methamphetamine at his residence, which the defendant then directed Ceron-Sanchez when and how to distribute. Similarly, another of the defendant’s runners, Jorge Garcia-Guzman, was someone the defendant knew from Stillwater prison, suggesting the defendant recruited him to make deliveries as well. PSR ¶ 27 n.1. Finally, the evidence also shows that the defendant tried to recruit the UC to assist in the conspiracy, such as when he tried to recruit the UC to sell cocaine on his behalf or receive shipments of drugs via the mail. PSR ¶¶ 12, 25. As courts have observed, a defendant’s involvement in recruiting accomplices is also sufficient to support an enhancement for leadership role. *See, e.g., Garcia*, 512 F.3d at 1005-06; *Willis*, 433 F.3d at 636 (“it is enough if the defendant assumed organizing or leadership functions such as recruiting others”).

### **C. The Defendant’s Arguments are Unavailing**

The defendant makes several arguments in support of his objections, none of which are persuasive.

The defendant argues that he did not have a “proprietary interest” in the drug sales, apparently claiming that he had a mitigating role because he wasn’t the owner of the drugs that were sold. This argument fails for two reasons. First, the focus of the enhancement is not on ownership, but rather on the defendant’s *role in the offense*. It looks to what the defendant did to advance the offense and whether he managed, supervised, organized, or led others. Ownership or proprietary interest is a particularly poor proxy for aggravating

role when dealing with sophisticated organizations like the Gulf Cartel, of which the defendant was a member. Even if the defendant did not have an ownership interest in the drugs he sold, it is clear he had access to vast amounts of methamphetamine by virtue of his membership in that group.

Second, the defendant's argument is based on a false premise. While the defendant may not have been the owner of *all* the drugs he brokered, the record is replete with evidence that the defendant *did* have a proprietary interest in large amounts of drugs trafficked during the conspiracy. For example, the PSR contains numerous references to the defendant advertising to the UC that *he* had drugs available for sale, including large amounts of methamphetamine and cocaine. *See* PSR ¶¶ 12, 19, 22, 26, 41. The defendant's proprietary interest in these drugs was demonstrated by the fact that the defendant had authority to set (and even reduce) the price of the drugs. For example, in the messages with runner Aguirre-Bravo, it is clear that it is the defendant (and not the runner) that is setting the price for the drugs to be sold. *See* Ex. 1 at 9 ("I'm giving them to the guy for 2800"), 13 ("he will give you 18000"); 24 ("he's going to give you 3100"); 38 (confirming that the customer gave the runner "6000"); 62 (confirming the customer gave the runner "the 5."). Similarly, in his discussions with the UC, the defendant reduced the price of cocaine from \$30,000 per kilogram, down to \$29,000 per kilogram, and eventually all the way down to \$27,000 per kilogram. *See* PSR ¶ 12. The defendant's proprietary interest in the drugs is also demonstrated by the fact that he offered the UC discounts on the price of methamphetamine in exchange for certain early payments, suggesting his control over the ultimate price. *See* PSR ¶¶ 16, 20, 22. Finally, the defendant's proprietary interest is also



demonstrated by the fact that he cut off communication with a runner who had drugs seized by police, accusing the runner of having “stolen” the drugs—an accusation that only makes sense coming from someone with a propriety stake in the product. PSR ¶ 14.

In support of his objections, the defendant variously describes his role in the offense as a mere “order taker” who “middled many drug transactions.” ECF No. 340 at 17, 19. This is inaccurate. A middleman is typically someone who purchases drugs from one source for the purpose of immediately reselling those same drugs to another person. Here, the defendant’s conduct went far beyond buying from one person and selling to another. It also went far beyond merely passing along an order and washing his hands of the rest of the transaction. Rather, as discussed above, the defendant organized, coordinated, and facilitated virtually every detail of the drug transactions—amount, price, how payment would be made/split, time of sale, place, and how the parties could identify one another. In doing so, the defendant showed that he was not merely middling drugs, but rather orchestrating and choreographing transactions for the organization. *See, e.g., Lopez*, 497 F. App’x at 691 (rejecting argument that the defendant “was simply a contact person for the conspiracy.”); *United States v. Ortiz-Martinez*, 1 F.3d 662, 677 (8th Cir. 1993) (noting that the defendant “served as the common link among all the conspirators”).

Courts have rejected similar attempts by defendants to avoid an enhancement for aggravating role by defendants labeling themselves as a mere “order taker” or “dispatcher.” *United States v. Cotto*, 979 F.2d 921, 922 (2d Cir. 1992) (rejecting the defendant’s argument the enhancement was inapplicable because she “was only a telephone dispatcher, relaying to members of the drug distribution ring the instructions regarding time, place,

and quantity determined by the leaders of the organization.”); *United States v. English*, 804 F. App’x 144, 146-47 (3d Cir. 2020) (rejecting defendant’s argument that the enhancement was inapplicable because he “merely dispatched one coconspirator to sell” drugs); *United States v. Rubio-Sepulveda*, 781 F. App’x 769, 771 (10th Cir. 2019) (upholding application of the enhancement where the defendant worked as a dispatcher “coordinating runners and street-level dealers, who met the runners to obtain narcotic inventory.”).

Finally, the defendant argues that his own self-professed poverty is inconsistent with him being a leader of a drug organization. ECF No. 340 at 19-20. This argument is unpersuasive. The defendant’s claims of poverty are based on self-serving statements made to a mitigation specialist for the purpose of advocating for a lower sentence. His claims of poverty are not meaningfully corroborated, except by his wife who, like the defendant, has an interest in mitigating the offense. In any case, nothing in the Guideline requires the defendant to have gotten rich from the offense to be a leader or organizer. The Guideline does reference a “claimed right to a larger share of the fruits of the crime” as a factor in assessing a defendant’s leadership role, and the defendant claims he only received \$200-\$300 per transaction. Even accepting the defendant’s claims about the amount of money he received as true, however, the government believes this factor weighs in favor of a leadership role. While a few hundred dollars per pound sold may seem like a small amount, it should be considered in the context in which it was received. The defendant received a few hundred dollars per pound (from a \$2,500 to \$3,500 sale) for coordinating drug sales via telephone from Mexico without having to lift a finger and at *virtually no personal risk to himself*. See ECF No. 342 at 11-13 (noting the tremendous structural

protections afforded to brokers by remaining outside the territorial jurisdiction of the United States); *United States v. Mims*, 122 F.4th 1021, 1034-35 (8th Cir. 2024) (noting that the defendant’s “ability ... to avoid risk” from the drug trafficking “indicated [he] held a higher-level position in the organization.”).<sup>3</sup>

In sum, because the evidence shows that the defendant was a broker of drug transactions, who necessarily had extensive knowledge of the conspiracy, and was involved in planning, orchestrating, and coordinating drug transactions, he acted as leader and organizer. By the same token, his claim to played a mitigating role in the offense is utterly without merit.

### **CONCLUSION**

For all the foregoing reasons, the United States respectfully recommends that the Court overruled the defendant’s objections.

Respectfully submitted,

Dated: January 28, 2025

LISA D. KIRKPATRICK  
Acting United States Attorney

/s/ Nathan H. Nelson

BY: NATHAN H. NELSON  
Assistant U.S. Attorney  
Attorney ID No. 388713

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<sup>3</sup> Of course, the defendant did end up being indicted and prosecuted in this case. The government’s success in identifying and prosecuting the defendant, however, is due in large part to the defendant’s own carelessness in providing identifying information over the phone and, ultimately, returning to the United States. Had the defendant not voluntarily (and illegally) crossed the border into the United States, it is unlikely the government would have been able to meet the necessary prerequisites for extraditing him.