

United States Court of Appeals For the First Circuit

No. 26-1187

UNITED STATES,

Appellee,

v.

YEIRON VIZCAINO VIZCAINO, a/k/a Boli,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Denise J. Casper, U.S. District Judge]

Before

Gelpí, Rikelman, and Aframe,
Circuit Judges.

Christine DeMaso, Assistant Federal Public Defender, for
appellant.

Karen L. Eisenstadt, Assistant United States Attorney, with
whom Leah B. Foley, United States Attorney, was on brief, for
appellee.

October 15, 2026

AFRAME, Circuit Judge.

Yeiron Vizcaino Vizcaino

("Vizcaino") pleaded guilty to conspiracy to possess with intent to distribute and to distribute forty grams or more of fentanyl, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(B)(vi). The district court calculated the applicable Guidelines Sentencing Range ("GSR") to be forty-six to fifty-seven months but imposed a downwardly variant sentence of thirty-six months. In imposing this sentence, the court denied Vizcaino's request for a two-level minor-role reduction under U.S.S.G. § 3B1.2(b). Vizcaino appeals that decision, arguing that the court misconstrued U.S.S.G. § 2D1.1(e)(2)(B)(ii), a newly added provision to the United States Sentencing Guidelines which expands the availability of minor-role adjustments under § 3B1.2 in cases such as this. We agree that the court interpreted this new provision too narrowly. Therefore, we vacate and remand for resentencing.

I.

The following facts are uncontested. Vizcaino worked as a street-level drug distributor for a fentanyl and cocaine distribution organization based in and around Boston, Massachusetts. The leader of the organization was Yulial Cuello-Reynoso. The organization's modus operandi involved Cuello-Reynoso and others taking orders by telephone from customers and relaying them to street-level distributors like Vizcaino, who were provided cars packed with a day's supply of

drugs. The distributors then traveled around the area in the cars to deliver drugs in user-level quantities to customers and to collect payments.

Vizcaino was one of thirteen street-level distributors charged in the conspiracy, all of whom had approximately the same level of culpability. These thirteen distributors were less culpable than the eleven other co-conspirators charged in the indictment. Vizcaino distributed for the organization for approximately two months, from October 2023 until his arrest on December 8, 2023.

Law-enforcement officers intercepted telephone calls on October 15, October 16, November 14, and November 17, 2023, in which Cuello-Reynoso provided delivery instructions to Vizcaino. The government estimated from these interceptions that Vizcaino had distributed over 257 grams of fentanyl, 33 grams of powder cocaine, and 94 grams of crack cocaine in total on these four dates. Then, on December 8, 2023, officers with the Dedham Police Department stopped Vizcaino's car after they saw him engage in apparent drug-distribution activity. Vizcaino initially did not comply with the order to stop and, when he eventually did stop, police saw him put something in his mouth and gulp water. Vizcaino also refused to comply with a subsequent order to roll down his car window. Believing that Vizcaino was swallowing drugs, the police broke the window and removed him from the car. Thereafter,

the police seized 53.2 grams of fentanyl and 22 grams of cocaine that had been hidden within the car. Ultimately, based on the four intercepted telephone conversations and the drugs seized from the car, the government alleged that Vizcaino was responsible for 310.2 grams of fentanyl, 94 grams of crack cocaine, and 55 grams of powder cocaine.

II.

On October 15, 2025, Vizcaino pleaded guilty to the charged conspiracy without a plea agreement. In both its draft and revised presentence reports ("PSR"), the U.S. Probation Office calculated Vizcaino's total offense level to be twenty-one and his GSR to be thirty-seven to forty-six months. In conducting its total-offense-level assessment, probation recommended that Vizcaino receive a two-level adjustment under § 3B1.2(b) for being a "minor participant in [the] criminal activity." Probation explained its recommendation as follows: "In this case, [Vizcaino] was working at Cuello[-]Reynoso's instruction and direction and did not have any of his own volition in orders, location, etc."

Both Vizcaino and the government objected to probation's § 3B1.2(b) recommendation. Vizcaino argued that he should receive a four-level adjustment under § 3B1.2(a) for being "a minimal participant in [the] criminal activity," rather than the mere two-level adjustment for being "a minor participant." The government argued that Vizcaino was neither a minimal nor a minor

participant in the charged offense and that he should receive no adjustment under § 3B1.2. Probation disagreed with both parties and, in the final PSR, reiterated its recommendation for a two-level minor-participant adjustment under § 3B1.2(b). Vizcaino subsequently withdrew his objection and, in his sentencing memorandum, expressed support for probation's recommendation.

At the sentencing hearing, the district court began by recognizing the parties' disagreement over the application of § 3B1.2(b). The court noted that it had received and reviewed the parties' sentencing memoranda, in which each side had developed arguments. The court also noted that it had previously denied § 3B1.2(b) adjustments to three of Vizcaino's co-defendants who shared approximately the same level of culpability. But the court stated that it would nevertheless entertain further argument.

Reiterating the position taken in its sentencing memorandum, the government began by arguing that § 3B1.2 should not directly apply because Vizcaino had failed to demonstrate by a preponderance of the evidence that he was "substantially less culpable than the average participant in the criminal activity in which [he] was involved." United States v. Arias-Mercedes, 901 F.3d 1, 5-6 (1st Cir. 2018) (citation modified) (citing U.S.S.G. § 3B1.2, cmt. n.3(A)). Vizcaino did not develop a responsive argument in his sentencing memorandum, and his counsel stated the following after the government repeated its argument

that § 3B1.2(b) did not directly apply: "Without sort of just repeating what I already sort of laid out in my sentencing memo, I don't disagree necessarily with anything the government is saying."¹

The hearing's focus then shifted to whether Vizcaino should receive a two-level minor-role adjustment pursuant to § 2D1.1(e)(2)(B)(ii). This provision is part of a recently adopted amendment that became effective on November 1, 2025, which we have not previously considered. It is intended to "encourage broader use of § 3B1.2" and to "expand[] the circumstances in which an adjustment under § 3B1.2 is warranted" in drug offense cases. U.S.S.G. Manual app. C, amend. 833, at 297 (U.S. Sent'g Comm'n 2025) ("Guidelines Manual"). The Sentencing Commission explained that, while it had previously amended the commentary to § 3B1.2 in 2015 "to increase . . . usage" of the provision, "data shows that the prior amendment did not result in a sustained increase in application of the mitigating role adjustment in [such] cases." Id.

Section 2D1.1(e)(2)(B)(ii), which governs two-level, minor-role adjustments under § 3B1.2(b), states:

¹ On appeal, Vizcaino argues that the district court erred in concluding that § 3B1.2(b) does not directly warrant a mitigating-role reduction. The government responds that Vizcaino has both waived and forfeited this argument. We do not resolve this disagreement because we vacate and remand for resentencing on other grounds.

[A]n adjustment under § 3B1.2(b) is generally warranted if the defendant's primary function in the offense was performing [a] low-level trafficking function, such as distributing controlled substances in user-level quantities for little or no monetary compensation or with a primary motivation other than profit (e.g., the defendant was otherwise unlikely to commit such an offense and was motivated by an intimate or familiar relationship, or by threats or fear to commit the offense).

For purposes of subsection (e)(2)(B), the provisions of § 3B1.2 apply in determining whether a mitigating role adjustment is warranted, except that the adjustment shall apply regardless of whether the offense involved other participants in addition to the defendant, and regardless of whether the defendant was substantially less culpable than the average participant in the criminal activity. The extent of the adjustment shall be based on the totality of the circumstances and involves a determination that is heavily dependent upon the facts of the particular case.

U.S.S.G, § 2D1.1(e)(2)(B)(ii); see also Guidelines Manual app. C, vol. IV, amend. 833, at 297 ("To ensure courts focus on a defendant's predominant trafficking-related activities, the [U.S. Sentencing Commission] selected 'primary function' to guide courts in determining whether an adjustment is appropriate.").

Vizcaino's counsel argued that this provision makes a § 3B1.2 mitigating-role adjustment available in drug trafficking cases like this one, where a defendant is one of a relatively large number of similarly culpable low-level distributors. Prior to the adoption of § 2D1.1(e)(2), such distributors often did not receive

an adjustment because they could not show that they were "substantially less culpable than the average participant" in the offense, § 3B1.2, cmt. n.3(A), as they were not "plainly among the least culpable of those involved," id. cmt. n.4 (for those seeking a minimal-participant adjustment), or "less culpable than most other participants," id. cmt. n.5 (for those seeking a minor-participant adjustment). See also, e.g., United States v. Guía-Sendeme, 134 F.4th 611, 617 (1st Cir. 2025); United States v. Walker, 89 F.4th 173, 185-86 (1st Cir. 2023). Now, Vizcaino's counsel argued, § 2D1.1(e)(2)(B)(ii) places the focus on the defendant's primary function independent of whether the defendant is substantially less culpable than the average participant. Vizcaino's counsel asserted that Vizcaino was such an individual because "[h]e was delivering to other people essentially user-level quantities."

The district court responded that, in its view, § 2D1.1(e)(2)(B)(ii) was inapplicable to Vizcaino, given that he possessed more than a user-level quantity of drugs in the car he was driving when he was arrested. Focusing on the provision's illustrative examples, the court stated its understanding that § 2D1.1(e)(2)(B)(ii) applies only to those who are "distributing controlled substances in user-level quantities . . . which is, I think, different than what is here." Vizcaino's counsel responded that, while the car Vizcaino was driving had been loaded with a

quantity of drugs that exceeded user-level amounts, Vizcaino was delivering those drugs to individual customers in user-level increments. But the court disputed that this was enough to bring § 2D1.1(e)(2)(B)(ii) into play: "I think a reasonable reading of 'user level' is user-level, not quantities going to multiple users."

Vizcaino's counsel responded by reiterating that the availability of a minor-role adjustment should turn on Vizcaino's primary function, not on matters unmentioned in § 2D1.1(e)(2)(B)(ii), like the aggregate quantity of drugs that a defendant possessed over time while serving as a street-level distributor making multiple user-level deliveries. But the district court did not engage further with counsel's argument for application of § 2D1.1(e)(2)(B)(ii). Instead, after announcing that a § 3B1.2 role adjustment was not directly warranted "under the totality of the circumstances . . . largely because Mr. Vizcaino, I don't think, was substantially less culpable than the average participant," the court added a second reason why it did not think that Vizcaino was entitled to an adjustment under § 2D1.1(e)(2)(B)(ii):

I think it's a reasonable reading of [§ 2D1.1(e)(2)(B)(ii)] . . . that the adjustment that is anticipated there is anticipated for folks that perhaps sort of fall or were pushed into this role. And I don't find based on the record before me . . . that is Mr. Vizcaino's role here. I

think the government used the term "business model." I think that's more akin to what the evidence here reveals as to [Vizcaino]'s role and the codefendants, the 12 others, three of whom I've already sentenced fall into. So I will not apply the two-level downward adjustment.

After the district court rejected probation's recommendation for a two-level minor-role adjustment, the court accepted its remaining proposed Guidelines calculations. As a result, the court determined that Vizcaino's total offense level was twenty-three and his GSR was forty-six to fifty-seven months. The court then imposed a downwardly variant sentence of thirty-six months' imprisonment. This appeal followed.

III.

The parties disagree about the proper standard of review. Vizcaino argues, *inter alia*, that the district court committed two legal errors in construing § 2D1.1(e)(2)(B)(ii). First, the court erred in reading the provision's statement that "an adjustment . . . is generally warranted if the defendant's primary function in the offense was performing [a] low-level trafficking function, such as distributing controlled substances in user-level quantities" to exclude defendants who possessed more than user-level quantities despite only delivering user-level increments to individual users. Second, the court erred in concluding that, while the adjustment may be available to individuals who fall or were pushed into the role of street-level

distributor, it is not available to those who are hired and paid to fill the role as part of a drug trafficking organization's business model. Vizcaino contends that, because he challenges the court's interpretation of the meaning and scope of § 2D1.1(e)(2)(B)(ii), our review is de novo. See, e.g., United States v. Daniels, 79 F.4th 57, 89 (1st Cir. 2023) (observing that we review de novo a district court's interpretation of the "legal meaning and scope" of a guideline).

The government counters that these arguments mischaracterize the district court's conclusions. In the government's view, the court reached a fundamentally fact-bound determination, under the totality of the circumstances, that Vizcaino was more culpable than the persons described in § 2D1.1(e)(2)(B)(ii)'s illustrative examples. Therefore, the government asserts that our review should be deferential. See Buford v. United States, 532 U.S. 59, 64-66 (2001) (affirming deferential review of a sentencing court's application of a guideline to facts where the determination is "fact-bound," even if the underlying facts are undisputed).

Vizcaino has the better argument. As we read the record, the district court's principal reason for denying Vizcaino an adjustment pursuant to § 2D1.1(e)(2)(B)(ii) was based not on a totality-of-the-circumstances analysis, but rather on its interpretation of the provision's illustrative examples involving

someone "distributing controlled substances in user-level quantities." As we have explained, the court first stated its view that Vizcaino was doing something "different" than "distributing controlled substances in user-level quantities." Then, when Vizcaino's counsel resisted that conclusion, the court explained its view that the phrase "distributing controlled substances in user-level quantities" does not encompass those who possess more than user-level quantities while delivering small amounts to multiple users. Because this is an interpretation of the scope of the guideline, our review is de novo. See Daniells, 79 F.4th at 89.

We do not think this is a proper interpretation. While a defendant's possession of more than a user-level quantity of drugs might well factor into a sentencing court's decision whether to grant a minor-role adjustment pursuant to § 2D1.1(e)(2)(B)(ii), it does not by itself place the defendant outside the universe of those "distributing controlled substances in user-level quantities." The guideline's language focuses on distribution in user-level quantities, not on possession amounts. But the court seems to have read into the provision a disqualifier for someone who possesses more than a user-level quantity of drugs while making user-level deliveries. Such a disqualifier does not appear in the guideline.

We reach a similar conclusion regarding the district court's second reason for denying Vizcaino an adjustment under § 3B1.2 pursuant to § 2D1.1(e)(2)(B)(ii): that he was hired and paid as part of the drug trafficking organization's business model and neither fell nor was pushed into his role. Again, this fact might well inform a court's decision whether to apply an adjustment. But on its own, it does not automatically disqualify a defendant from receiving the adjustment. The court's explanation for its ruling suggests that it thought otherwise.

In sum, we conclude that the district court incorrectly read these categorical disqualifiers into § 2D1.1(e)(2)(B)(ii). Instead, the central question is the "primary function" of the defendant in the conspiracy "based on the totality of the circumstances." § 2D1.1(e)(2)(B)(ii).

Our conclusion that Vizcaino should be resentenced is reinforced by several additional factors. First, the district court focused exclusively on whether Vizcaino's conduct and role in the offense fall within § 2D1.1(e)(2)(B)(ii)'s illustrative examples. But the Sentencing Commission has indicated that the illustrative examples do not prescribe elements that defendants must satisfy to benefit from the provision. See Guidelines Manual app. C, vol. IV, amend. 833 at 297 ("Due to the wide variety of functions performed by individuals in drug trafficking offenses, the examples listed in § 2D1.1(e)(2)(B) are illustrative

rather than a definitive list.").² Second, the court never acknowledged that the availability of an adjustment pursuant to § 2D1.1(e) (2) (B) (ii) turns on an analysis of the defendant's primary function in the drug trafficking conspiracy, that the purpose of § 2D1.1(e) (2) (B) is to "expand[] the circumstances in which an adjustment under U.S.S.G. § 3B1.2 is warranted" on behalf of those "performing a low-level trafficking function," or that Vizcaino was among those performing the lowest-level trafficking function in the charged conspiracy. Id.³ These factors all may bear on whether a § 2D1.1(e) (2) (B) adjustment is warranted.

² The government argues that Vizcaino invited the court's exclusive focus on the illustrative examples by failing to develop an argument that he was entitled to a reduction for a reason other than that he was "distributing controlled substances in user-level quantities for little or no monetary compensation." § 2D1.1(e) (2) (B) (ii). We disagree. In his opening brief, Vizcaino goes beyond attempting to fit his case within the illustrative examples by emphasizing that he worked for the drug trafficking organization for only a limited period; that he performed the lowest-level trafficking function described in the indictment; and that he did not go to the stash houses, package the drugs, or use his own car. Vizcaino also made these points in his sentencing memorandum. He therefore has broadened the issue beyond whether the facts of his case fit entirely within § 2D1.1(e) (2) (B) (ii)'s illustrative examples.

³ We have recognized that "there may be instances when none of the participants [in a conspiracy] qualifies" for a minor-role adjustment. Walker, 89 F.4th at 186 (citing United States v. De la Cruz-Gutiérrez, 881 F.3d 221, 226 (1st Cir. 2018) (denying adjustment where participants were "equal partners in the criminal activity")). But it is not apparent on the present record why this case would present such an instance.

IV.

We recognize that the district court varied downward in selecting Vizcaino's sentence and that the sentence imposed was one month less than the bottom of the resulting GSR if the court had applied a two-level minor-role adjustment. But the court did not say that it would impose the same sentence even if Vizcaino had received that adjustment. See Guía-Sendeme, 134 F.4th at 624-25 (explaining when an error in calculating the GSR can be harmless). Moreover, the government does not argue that any error was harmless. Under the circumstances, we cannot say that Vizcaino's sentence was unaffected by the error. See Walker, 89 F.4th at 189. Resentencing is therefore required. Of course, we do not suggest what sentence the court should impose on remand.

Vacated and remanded.