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## Navigating the Federal Sentencing Guidelines: Considerations of Equitable Impact After *United States v. Trinidad*

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**NAVIGATING THE FEDERAL SENTENCING GUIDELINES:  
CONSIDERATIONS OF EQUITABLE IMPACT AFTER  
*UNITED STATES V. TRINIDAD***

JONATHAN S. PETREE\*

I. INTRODUCTION

**I**N *UNITED STATES V. TRINIDAD*, the First Circuit held that an illiterate, uneducated, and technologically-impaired individual acted as a “navigator” by virtue of keeping a boat on course from Colombia to Puerto Rico, thus subjecting him to a two-level sentencing enhancement in criminal proceedings for trafficking narcotics.<sup>1</sup> In so doing, the majority furthered precedent that broadly applies the Federal Sentencing Guideline’s sentencing enhancement for controlled substance commerce involving a defendant who acts as “a pilot, copilot, captain, [or] navigator,” irrespective of any special skill actually possessed by a defendant.<sup>2</sup> In response, Circuit Judge Torruella’s dissent in *Trinidad* illustrates the seemingly arbitrary impact that the majority’s broad statutory interpretation yields and posits significant arguments from equity against such broad application of the sentencing enhancements.<sup>3</sup> Although precedent supports the majority’s broad reading of § 2D1.1(b)(3)(C), the plain inequity and lack of persuasive reasoning in the majority opinion results in the arbitrary furthering of overly punitive distribution of “justice.”<sup>4</sup>

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<sup>1</sup> *United States v. Trinidad*, 839 F.3d 112, 115 (1st Cir. 2016).

<sup>2</sup> U.S. SENTENCING GUIDELINES MANUAL § 2D1.1(b)(3)(C) (U.S. SENTENCING COMM’N 2016); *Trinidad*, 839 F.3d at 115; *see* *United States v. Cruz-Mendez*, 811 F.3d 1172, 1175–76 (9th Cir. 2016).

<sup>3</sup> *Trinidad*, 839 F.3d at 119–20 (Torruella, J., dissenting).

<sup>4</sup> *Id.* at 115–16.

## II. FACTUAL BACKGROUND

In this case, the defendant, “Persis Trinidad[,] was convicted of violating the Maritime Drug Law Enforcement Act” but appealed the issue of whether a sentencing enhancement applied to him for acting as “a pilot, copilot, captain, navigator, flight officer, or any other operation officer” while aboard “a vessel carrying controlled substances.”<sup>5</sup> Trinidad was an illiterate forty-six-year-old citizen of the Dominican Republic who held the equivalent of a sixth-grade education, spoke only Spanish, and “eked out a living . . . earning about \$150 a month” as a fisherman.<sup>6</sup> In the course of his work, Trinidad was approached by an individual offering \$20,000—more money than he could hope to make in eleven years—to go “to Columbia and bring[ ] back narcotics by [boat] to Santo Domingo, Dominican Republic.”<sup>7</sup>

Trinidad accepted the individual’s offer and was thereafter flown to Columbia with all expenses and logistics handled by others within the operation.<sup>8</sup> On September 24, 2014, Trinidad and Coa-Peña (the codefendant in the case) embarked on the voyage home. Coa-Peña handled the GPS because of Trinidad’s “apparent inability” to use the technology, but “both took turns steering the vessel.”<sup>9</sup> Somewhere eighty miles outside of the Dominican Republic, the boat’s engine stalled, leaving the defendants stranded until the United States Coast Guard arrived.<sup>10</sup> Neither Trinidad nor Coa-Peña asserted ownership of the boat. However, “one of them orally claimed Colombian nationality for the vessel.”<sup>11</sup> After “the Colombian government responded that it could neither confirm nor deny” the vessel’s registration in Colombia, the Coast Guard boarded the vessel and found 144.9 kilograms of cocaine on the boat.<sup>12</sup> The defendants were then brought into Puerto Rico, and Trinidad pled guilty to possession with the intent to distribute.<sup>13</sup>

At the district court, Trinidad admitted to taking turns driving the boat with Coa-Peña.<sup>14</sup> The district court applied the

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<sup>5</sup> *Id.* at 113.

<sup>6</sup> *Id.* at 117.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 118.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 118–19.

<sup>13</sup> *Id.* at 119.

<sup>14</sup> *Id.* at 114.

§ 2D1.1(b)(3)(C) enhancement “because it found that Trinidad navigated the vessel under the circumstances.”<sup>15</sup> After being sentenced to imprisonment for 108 months, Trinidad appealed to the First Circuit regarding the two-level enhancement for acting as a “navigator” within the meaning of § 2D1.1(b)(3)(C).<sup>16</sup>

### III. LEGAL BACKGROUND

Section 2D1.1 of the Federal Sentencing Guidelines relates to the unlawful manufacturing, importing, exporting, or trafficking of drugs.<sup>17</sup> More specifically, the Guidelines provide:

If the defendant unlawfully imported or exported a controlled substance under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import or export the controlled substance, (B) a submersible vessel or semi-submersible vessel as described in 18 U.S.C. § 2285 was used, or (C) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by 2 levels.<sup>18</sup>

Other circuits have uniformly adopted a broad reading of the Guideline’s classifications for enhancement, rejecting the necessity of “formal training” or “special skills” to be considered a pilot, copilot, or navigator.<sup>19</sup> The issue raised by *Trinidad* implicates the applicability of the statutory designation navigator, for the defendant specifically contended “he did not use the GPS” and thus “cannot be said to have been navigating.”<sup>20</sup> Further, Trinidad urged the First Circuit to depart from its sister circuits’ precedent, arguing that a person can qualify as a navigator only if that person possesses a special skill like knowing “how to program or adjust a GPS.”<sup>21</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See U.S.S.G. § 2D1.1.

<sup>18</sup> U.S.S.G. § 2D1.1(b)(3).

<sup>19</sup> See *United States v. Cruz-Mendez*, 811 F.3d 1172, 1175 (9th Cir. 2016) (holding that the plain language of § 2D1.1(b)(3) is “strongly indicative of a broad scope . . .”); *United States v. Bautista-Montelongo*, 618 F.3d 464, 465–67 (5th Cir. 2010) (holding that the captain/pilot enhancement requires no professional or higher-degree of skill); *United States v. Cartwright*, 413 F.3d 1295, 1298–99 (11th Cir. 2005) (holding that the defendant qualified for the enhancement as a navigator simply because he drove the boat and used a compass).

<sup>20</sup> *Trinidad*, 839 F.3d at 115.

<sup>21</sup> *Id.*

## A. MAJORITY REASONING

The majority held that Trinidad acted as a navigator during the trip from Colombia to the Dominican Republic based on the district court's conclusion that "Trinidad must have relied on the GPS to keep the boat on course."<sup>22</sup> The court reasoned that it would be impossible to get on a boat, be told "that way," and successfully reach your destination—after all, "it's a big ocean up there."<sup>23</sup> Furthermore, the majority rejected Trinidad's contention that he must possess some special skill in order to be deemed a navigator, stating "[n]othing in the text or commentary of the enhancement supports such a restricted definition of the term 'navigator.'"<sup>24</sup>

To support the broader, more inclusive reading of terms within the Guidelines, the First Circuit relied on a sister court's decision in *United States v. Cruz-Mendez* for the proposition that no special skill is needed to warrant such classification.<sup>25</sup> There, the Ninth Circuit held that the "plain language of § 2D1.1(b)(3)(C) . . . is strongly indicative of a broad scope, not dependent on a finding of any particular formal training or type of boat."<sup>26</sup> Therefore, a fisherman hired to operate a marijuana-laden boat in open water was justifiably subjected to the Guideline's two-step enhancement.<sup>27</sup> Arguing further for Trinidad's classification as a navigator, the majority cited various dictionaries defining "navigate" to mean sailing, directing, or managing a ship on its course.<sup>28</sup> Because Trinidad steered the boat, and because the court had inferred that Trinidad must have relied on the GPS to keep the boat on course, the majority concluded that he acted as a navigator and was thus subject to the two-level sentencing enhancement.<sup>29</sup>

## B. DISSENT'S REASONING

In the dissent, Circuit Judge Torruella elucidated the absurd impact and intuitive objections that one might have to the ma-

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *United States v. Cruz-Mendez*, 811 F.3d 1172, 1175–76 (9th Cir. 2016).

<sup>27</sup> *Id.* at 1176.

<sup>28</sup> See *Trinidad*, 839 F.3d at 115 (citing THE OXFORD ENGLISH DICTIONARY 259 (2d ed. 1989); THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1282 (2d ed. 1987); WEBSTER'S THIRD NEW INT'L DICTIONARY 1509 (1981)).

<sup>29</sup> *Id.* at 114.

majority's reading of the term navigator.<sup>30</sup> Torruella argued that navigator is an inherently narrow term containing "its own particular subset of skills."<sup>31</sup> In furtherance of that argument, the dissent cited the Sea Talk Nautical Dictionary to define navigate as "[t]o safely operate a vessel employing the elements of position, course and speed" and "[t]o determine position, course, and speed using instruments."<sup>32</sup> The nautical dictionary's more pointed definition "embraces the notion that in nautical terms 'to navigate' actually requires extra abilities to determine 'position, course, and speed using instruments.'"<sup>33</sup> Applying that definition to the facts of the principal case, the dissent concluded that Trinidad failed to meet the definitional criterion to navigate because "[h]e specifically did not understand how to use the GPS."<sup>34</sup> While Trinidad did not deny taking turns steering the boat, it was "undisputed" that he was incapable of using the GPS and left management of that instrument to Coa-Peña.<sup>35</sup> Thus, the dissent argued that classifying Trinidad as a navigator—and thereby subjecting him to the Guideline's sentencing enhancement—was an "obviously unjust result."<sup>36</sup>

Through *reductio ad absurdum*, the dissent proceeds to illustrate the inequitable impact that flowed from the majority's broader understanding of the term navigator.<sup>37</sup> Assuming the broader definition in which no special skill is required, "suburban or rural drug dealers should receive an enhanced sentence simply because they drive a car . . . rather than walk or take public transportation as their more urban counterparts might."<sup>38</sup> Underlying that reasoning is the irrational notion that merely driving warrants enhanced culpability.<sup>39</sup> The dissent concluded by relaying the inequitable result in Trinidad's present situation: Trinidad was a coastal small-boat fisherman, whose only presently applicable skill was being able to "help manage

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<sup>30</sup> *Id.* at 119–20 (Torruella, J., dissenting).

<sup>31</sup> *Id.* at 119 (Torruella, J., dissenting).

<sup>32</sup> *Id.* (Torruella, J., dissenting) (alteration in original); *Navigate*, SEA TALK NAUTICAL DICTIONARY, [http://www.seatalk.info/cgi-bin/nautical-marine-sailing-dictionary/db.cgi?db=db&view\\_records=1&cuid=default&Term=navigate&submit=Look+it+up%21](http://www.seatalk.info/cgi-bin/nautical-marine-sailing-dictionary/db.cgi?db=db&view_records=1&cuid=default&Term=navigate&submit=Look+it+up%21) [https://perma.cc/H9JM-345M].

<sup>33</sup> *Trinidad*, 839 F.3d at 119–20 (Torruella, J., dissenting).

<sup>34</sup> *Id.* at 120 (Torruella, J., dissenting).

<sup>35</sup> *Id.* (Torruella, J., dissenting).

<sup>36</sup> *Id.* at 119 (Torruella, J., dissenting).

<sup>37</sup> *Id.* at 120 (Torruella, J., dissenting).

<sup>38</sup> *Id.* (Torruella, J., dissenting).

<sup>39</sup> *Id.* (Torruella, J., dissenting).

the boat” on the voyage from Colombia to the Dominican Republic.<sup>40</sup> Trinidad’s behavior did not warrant extra culpability or a sentence enhancement as compared to the action of “the common ‘mules’ that sit in commercial airlines, transporting contraband in and on their bodies, for which they are not penalized additionally . . . .”<sup>41</sup> Thus, the dissent concluded that Trinidad lacked the requisite skills to be considered a navigator and suffered an inequitable result at the hand of the majority’s overly broad reading of § 2D1.1(b)(3).<sup>42</sup>

#### IV. THE MAJORITY’S BROAD STATUTORY INTERPRETATION IS UNWARRANTED AND INEQUITABLE

Absent legislative intent suggesting that criminal culpability for merely operating a boat or plane—but not a car—in commerce is warranted, the majority seems to have no non-arbitrary reason outside of sister court precedent to support the plain inequity and apparent obfuscation of § 2D1.1(b)(3)(C)’s statutory language.<sup>43</sup> Although *stare decisis* “promotes the evenhanded, predictable, and consistent development of legal principles”<sup>44</sup> and thus provides some persuasive effect for the majority’s decision, the First Circuit was not bound to follow the reasoning of the other circuits.<sup>45</sup> Absent that imperative, little reason stands to support the majority’s determination that Trinidad acted as a navigator.

The majority inferred that Trinidad must have used the GPS device based on the assumption that it would be “impossible” to cross the ocean from Colombia to the Dominican Republic without the use of such an instrument.<sup>46</sup> This assumption is plainly erroneous considering that global positioning devices are relatively new<sup>47</sup> and that, since antiquity, mankind has conquered the open ocean. Thus, the assumption of impossibility underly-

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<sup>40</sup> *Id.* (Torruella, J., dissenting).

<sup>41</sup> *Id.* (Torruella, J., dissenting).

<sup>42</sup> *See id.* at 119–20 (Torruella, J., dissenting).

<sup>43</sup> *See generally id.* at 112–17 (majority opinion).

<sup>44</sup> Timothy Owen, *Stare Decisis*, WEX (Mar. 2017), [https://www.law.cornell.edu/wex/stare\\_decisis](https://www.law.cornell.edu/wex/stare_decisis) [<https://perma.cc/AG4E-2KZE>] (citing *Kimble v. Marvel Entertainment*, 135 S. Ct. 2401, 2409 (2015)).

<sup>45</sup> *Id.*

<sup>46</sup> *Trinidad*, 839 F.3d at 115.

<sup>47</sup> Thuy Mai, *Global Positioning History*, NASA, [https://www.nasa.gov/directorates/heo/scan/communications/policy/GPS\\_History.html](https://www.nasa.gov/directorates/heo/scan/communications/policy/GPS_History.html) [<https://perma.cc/89QG-2ARZ>].

ing the majority's inference is plainly wrong in light of a common sense consideration of empirical and historical evidence. Furthermore, Trinidad specifically contended that he did not use the GPS, and it is "undisputed that Coa-Peña managed those instruments throughout the trip."<sup>48</sup> The majority therefore erred in applying the two-level sentencing enhancement to Trinidad as a navigator based on fallacious inferential reasoning.<sup>49</sup>

The First Circuit's understanding of the statutory term navigator is also subject to critique. The majority held that "nothing in the text or commentary of the enhancement supports [Trinidad's] restricted definition of the term 'navigator.'"<sup>50</sup> "[I]n interpreting a statute a court . . . must presume that a legislature says in a statute what it means and means in a statute what it says there."<sup>51</sup> Arguably, a plain reading of § 2D1.1(b)(3)'s language implies that some special skill is required; if no special skill were necessary then one might question why the drafters used *sui generis* titles indicative of learned skills (such as pilot, copilot, captain or navigator) rather than broad, general language preventing the steering, directing, or manipulation of a vessel, for example.<sup>52</sup> Because a plain reading of the Guidelines ought to be preferred,<sup>53</sup> and because such a plain reading ostensibly implies a requirement of some special skill, the majority's overly broad statutory interpretation ought to be rejected.

Finally, no case in the Federal Circuit exists in which the court has refused to classify a defendant as a "pilot, copilot, captain, navigator, flight officer, or any other operation officer"—an observation telling of the overinclusive and overpunitive impact that such a broad interpretation of § 2D1.1(b)(3)(C) yields. The majority's interpretation of the Guideline's language substantially impacts drug trafficking cases related to boating and aviation law. For instance, while the designation "pilot" brings to mind an individual with the capacity and requisite skills necessary to safely operate a plane, the majority's obfuscation of the word's plain meaning mandates that anyone with the unmitigated audacity to merely steer the vessel be classified a pilot.<sup>54</sup> Contrast that notion with the crimes committed by one Arevalo-

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<sup>48</sup> *Trinidad*, 839 F.3d at 115, 120.

<sup>49</sup> *See id.* at 112–17 (majority opinion).

<sup>50</sup> *Id.* at 115.

<sup>51</sup> *Conn. Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992).

<sup>52</sup> *See* U.S.S.G. § 2D1.1(b)(3)(C).

<sup>53</sup> *Germain*, 503 U.S. at 253–54.

<sup>54</sup> *See Trinidad*, 839 F.3d at 115.

Kessler—a Mexican air force captain who used his expertise to pilot aircraft to and from Venezuela, Panama, and Mexico for the Sinaloa Cartel.<sup>55</sup> Arevalo-Kessler’s “education and his ability to fly the planes” provide a specific example of where § 2D1.1(b)(3)(C)’s sentencing enhancement ought to be applied—a normative evaluation lacking similar foundation in Trinidad’s instant case.<sup>56</sup>

## V. CONCLUSION

The majority found that Trinidad’s actions merited an enhanced criminal sentence pursuant to § 2D1.1(b)(3)(C).<sup>57</sup> While precedent from neighboring circuits persuaded the court to broadly apply the sentencing enhancement, mere appeal to tradition fails to warrant the inequitable and overly punitive decision reached by the majority. Furthermore, a plain reading of the statutory language of § 2D1.1(b)(3)(C) suggests not the overly broad interpretation adopted by the majority but an application of the sentencing enhancement reasonably limited by the statute’s inherently narrow terminology.<sup>58</sup> Because of the inequitable impact faced by Trinidad and the overly punitive impact such broad statutory interpretation has on commerce, the majority should have abandoned the views of the other circuits and declined to enhance Trinidad’s sentence.

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<sup>55</sup> Robert Beckhusen, *The Sinaloa Cartel Has More Planes Than Mexico’s Biggest Airline*, MOTHERBOARD (May 9, 2016, 9:15AM), [https://motherboard.vice.com/en\\_us/article/vv7bwb/the-sinaloa-cartel-has-more-planes-than-mexicos-biggest-airline](https://motherboard.vice.com/en_us/article/vv7bwb/the-sinaloa-cartel-has-more-planes-than-mexicos-biggest-airline) [<https://perma.cc/GY4D-F35V>].

<sup>56</sup> *Id.*; see U.S.S.G. § 2D1.1(b)(3)(C); *Trinidad*, 839 F.3d at 114–15.

<sup>57</sup> *Trinidad*, 839 F.3d at 115.

<sup>58</sup> See U.S.S.G. § 2D1.1(b)(3)(C).