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Lyle W. Cayce, Clerk
United States Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

Re: *United States v. Vaught*, No. 10-10110

Mr. Cayce:

Pursuant to Rule 28(j), the government cites additional authority on the “slight evidence” test referenced in the last paragraph of the government’s brief. (Br. at 21) (“Once the government presents evidence of a conspiracy, it only needs to produce slight evidence to connect an individual to the conspiracy”) (quoting *United States v. Virgen-Moreno*, 265 F.3d 276, 285 (5th Cir. 2001)). Government counsel has since learned that an *en banc* panel of this Court rejected the “slight evidence” test in 1979:

The “slight evidence” rule as used and applied on appeal in conspiracy cases since 1969 should not have been allowed to worm its way into the jurisprudence of the Fifth Circuit. It is accordingly banished as to all appeals hereafter to be decided by this Court.

United States v. Malatesta, 590 F.2d 1379, 1382 (5th Cir. 1979); *see also United States v. Turner*, 319 F.3d 716, 723 n.8 (5th Cir. 2003) (“This Court overruled the ‘slight evidence’ rule in *Malatesta*, nevertheless, this test persistently reappears.”) (internal marks omitted). The government regrets citing a proposition of law that is not valid and has circulated an office-wide e-mail to ensure that subsequent briefs will not rely on recent panel opinions espousing the “slight evidence” test.

Here, the government’s case does not turn on “slight evidence.” As noted in the government’s brief, prosecutors introduced *overwhelming* evidence of Vaught’s guilt. (Br. at 6-10, 21-22.) This evidence included: (1) Vaught’s post-arrest statement admitting his role in the conspiracy, (2) live testimony from agents, officers, and co-conspirators who testified about the drug-trafficking organization and Vaught’s role therein, and (3) audio recordings of Vaught’s post-arrest telephone calls imploring his mother and girlfriends to retrieve and sell methamphetamine and marijuana hidden in his car and home. (*Id.*) In short, the government prevails with or without the “slight evidence” test.

Respectfully submitted,

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