

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GIEZI MAGNO ZAMORA — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

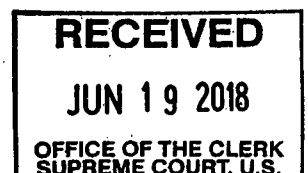
PETITION FOR WRIT OF CERTIORARI

GIEZI MAGNO ZAMORA
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FOLKSTON, GA 31537
(City, State, Zip Code)

(Phone Number)



QUESTION PRESENTED

In *United States v. Booker*, 543 U.S. 220 (2005), *United States v. Rita*, 551 U.S. 338 (2007) and *United States v. Gall*, 552 U.S. 38 (2007), this Court has ruled consistently that an active prision sentence must be reasonable under the "Due Process Clause". Did the Eleventh Circuit Court of Appeals erroneously denied a motion where petitioner showed a new evidence to give an inmediate release for petitioner due the violation of the Due Process rights clause?

PETITION FOR WRIT OF CERTIORARI

Petitioner Giezi Magno Zamora respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Court of appeals decision is unpublished and is attached hereto as Appendix A.

JURISDICTION

The Court of appeals entered its judgement on May 22, 2018. Petitioner invokes this Court's jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part that the "no state shall deprive any person of life, liberty, or property without due process of law". U.S. Const. amend XIV.

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LIST OF PARTIES

The parties in this case are the United States of America (respondent) and Giezi Magno Zamora (petitioner). No party is a corporation.

STATEMENT OF THE CASE

I. Factual Background

On September 11, 2014, crew members of a United States maritime patrol aircraft observed three vessels approximately 140 nautical miles southwest of the Guatemalan - El Salvador, in international waters. The vessels, two of which were later identified as the Yenya Arg and La Galosa, were observed by the Coast Guard crew transferring people and packages of cocaine from one to the other. The third vessel sank. The vessel identified as Yenya Arg was subsequently stopped by the Coast Guard Cutter "Alert". After boarding, the Coast Guard identified Hector Castillo as Captain, and Jhonny Arcentales Mero, Carlos Franco and the Appellant as the crew members. Later, Franco and Mero were determined to be directly involved in the handling and transportation of the cocaine.

As the Yenya Arg was being boarded by members of the Coast Guard Alert's boarding team. Ultimately, approximately 440 kilograms of cocaine was recovered on La Galosa. The seven defendants, including the Appellant, were flown into the U.S. and arrived in the Middle District of Florida where they were charged with the above-stated offenses.

This writ arises from the Appellant's sentencing on July 02, 2015. Based upon relevant conduct, the Appellant was held responsible for 1,240 kilos of cocaine.

The sentence recommended by the Probation Office was a term of imprisonment ranging from 135-168 months and a term of supervised release of five years.

Finally, Appellant was sentenced on July 08, 2015 with a term

of imprisonment of one hundred twenty (120) months and five years of supervised release. Appellant timely filed a Notice of Appeal. It was denied.

Appellant filed a §2255 Motion and was denied. After of this motion, appellant file a motion to leave a second or successive §2255 motion, and it was dismissed as untimely. Then filed a motion to obtain a Certificate of Appealability and was denied too.

Appellant presented in both motions new evidence about his case. An evidence not to show his innocence but some facts to show the neglect of his defense counsel to raise the violation of the due process during the proceedings.

REASONS FOR GRANTING THIS PETITION

I. This Court should vacate and remand the sentence of 120 months to the Court for reconsideration in light of the new evidence found in the violation of the Due Process of Law in a foreign country.

The Due Process Clause prohibits the exercise of extraterritorial jurisdiction over a defendant when it would be arbitrary or fundamental unfair. United States resigned his jurisdiction when Appellant was left in Panama with the Panamanian Law Enforcement Authorities, where they booked, interrogated and took pictures of him and his 6 co-defenders, showing the respective sovereignty over all of them.

The power of Congress to define and punish conduct under the offences clause was limited by customary international law. The related U.S. Supreme Court precedent and the text, history and structure of the U.S. Constitution confirmed that the power to "define" was limited by the law of nations, and the phrase "offences against the law of nations" was understood today to mean violations of customary international law. Also, the Court determined that drug trafficking was not a violation of customary international law today. Because drug trafficking was not a violation of customary international law, the court held that Congress exceeded its power under the offences clause, when it proscribed defendant's conduct in the international waters of a foreign country or in a territory of a foreign country.

United States violated Art. 13 of the International Covenant on Civil and Political Rights. December 16, 1966, 999 U.N.T.S.

171, which provides that "[a]n alien lawfully in the territory of a State Party to the present covenant may be expelled therefor only in pursuance of a decision reached in accordance with the law..." Def. Mem. at 10. When United States Guard Coast, left Petitioner and his co-defenders at Panama, they resigned his jurisdiction on Panama law enforcements authorities, and the Panama law enforcements authorities, and the Panama Government had to extradited to United States according with the covenant, first, they had to study the extradition when United States presents the verbal note asking for the extradition to his country and second if not, Panama has to expelled to his origin country, in this case, to Guatemala, not to the United States, according with the law.

Just as in *United States v. Darby*, 744 F.2d 1508 (11th Cir. 1984) and *United States v. Noriega*, 117 F.3d 1206 (11th Cir. 1997), the Government in those cases, which the Magistrate Court relies upon as well, field criminal charges in order to forcibly extradite **Darby and Noriega** from their countries and transfer them to the United States for prosecution. In other words, a legal proceeding requesting the defendant's presence in the United States in **Darby, Noriega and Alvarez-Machain and Kerr** cases had been initiated. The initiation of the criminal proceedings justified the authorities the right to extradite those defendants bringing them to the United States fro criminal prosecution by any means.

Mr. Magno was apprehended on September 11, 2014 and placed at Panama at November 19, 2014 and his indictment was done on

November 13, 2014.

The Government never showed or demonstrate that any portion of the treaty between the United States and Panama regarding the extradition of foreign national prohibit the procurement of violate the due process of law of the prisoners. In this way the counsel was ineffective when he failed to advise the Court that Mr. Magno was illegally transfered to the United States. When an obvious violation existson the record and the attorney fails to address that violation, a clear due process of law and **Strickland v. Washington**, 466 U.S. 688 (1984) violation occurs. Petitioner shows prejudice with the violation of the due process of law and the ineffective assistance of his counsel.

There was never any request to Panama to extradite Mr. Magno, nor wasthere any request to Guatemala, to permit the extradition of a Guatemalan National.

The doctrine of specialty prohibits the prosecution of offenses other than those contemplated by the extradition treaty and the extradition request. This principle, long recognize in international law, provides that the requesting state maynot, without the permission of the extraditing state, "try or punish the fugitive for any crimes committed before the extradition except crimes for which he was extradited." **Shapiro v. Ferrandina**, 478 F.2d 894, 905 (2nd Cir. 1973) (citation omitted). Specialty was first recognized by the Supreme Court in **United Statesv. Rauscher**, 119 U.S. 407 (1886), which established the "rule of domestic law that the courts of this country will not try a defendant extradited form another country on the basis of a treaty obligation for a crime not listed in the treaty." See

United States v. Campbell, 300 F.3d 202, 208-09 (2d Cir. 2002); Ferrandina, 478 F.2d at 905. One an extradition request has been granted, "[t]he doctrine [of specialty] limits the personal jurisdiction of the domestic court." United States v. Levy, 947 F.2d 1032, 1034 (2d Cir. 1991); United States v. Yousef, 327 F.3d 56, 115 (2d Cir. 2003); see also United States v. Isaac Marquez, 594 F.3d 855, 857-59 (11th Cir. 2010).

Panama has a procedure to extradite individuals that are charged with drugs trafficking and an extradition request form the United States. United States Embassy in Panama City conveyed to Panama Republic via diplomatic note that:

Although not listed in the bilateral extradition treaty between the United States and Panama Republic, the narcotics offenses with which the fugitive is charged are among the offenses covered by Article 3(1) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna on December 20, 1988..

Both the Panama Republic and the United States of America are parties to the 1988 UN Drug Convention. In accordance with the Article 6 of that Convention, each of the offenses listed in Article 3(1) shall be deemed to be included as an extraditable offense in any extradition treaty existing between the parties.

The record of this case there was no extradition request ever made so Mr. Magno could not challenge the charged offense.

All the articles of the Treaty between the United States and Panama Republic regarding extradition required that the United States request the defendant via formal channels of the Consulate. The right moment when the authorities of Panama, booked, interrogate and take pictures of a prisoner given by the

United States Coast Guard, they exercised their sovereignty over the prisoner. In this way, the prisoner is under control of the Panamanian authorities not under United States authorities.

Specifically, the Convention of Extradition between the United States of America and the Panama Republic, provides:

In every case of a request made by either of the two contracting parties for the arrest, detention or extradition of fugitive criminals, the legal officer or fiscal ministry of the country where the proceedings of extradition are had, shall assist the officer of the government demanding the extradition before the respective judges and magistrates, by every legal means within their or its power...

Also provided in relevant part:

The stipulations of his convention shall be applicable to all territory wherever situated, belonging to either of the contracting parties or in the occupancy and under control of either of them, during such occupancy or control. Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties. In the event of the absence of such agents from the country or its seat of government, or where extradition is sought from territory included in the preceding paragraph, other than the United States or the Dominican Republic, requisition may be made by superior consular officers.

All the articles of the Treaty between the United States and Panamanian Republic regarding extradition required that the United States request the Defendant via formal channels of the Consulate. Merely placing Mr. Magno on an airplane and

transporting him to the United States where an arrest warrant is prepared after the fact, violates Mr. Magno's constitutional due process right.

II. This Case is an ideal vehicle for resolving the question presented.

The case of the Appellant includes important factors of a violation of his due process right. The Government's actions cant go under the law and the justice's principles. How a court should weight these factors and the process that should be used to arrive at a constitutional reasonable sentence can be detrminated by the facts of this specific case. The due process right's violation is the most important factor to consider that Mr. Magno proceedings need to be remanded and vacated.

CONCLUSION

The Petition for writ of certiorari should be granted.

Respectfully submitted, this June 12, 2018.



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