No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOEL CHAVIRA-NUÑEZ,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

Joel Chavira-Nunez
Joel Chavira Nunez
Reg No. 36964-013
Adams County Facility
P. O. Box 1600
Washington, MS 39190

QUESTION(S) PRESENTED

I. Reasonable Jurist would find it debatable Whether the District Court Erred When it Ignored Undisputed Facts Establishing that The Prosecution Violated their Obligation Under *Brady v. Marylamd*, Before they filed a Motion to Rescue the Conflicted Defense Counsel.

II. Resonable Jurist would debattable whether the District Court erred by Ignoring the prosecution's ongoing *Brady* obligation before Chavira-Nuñez was given a plea offer, got his attorney rescused or trial.

III. Whether the District Court erred in denied the Motion for Modification or Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c)(2).

IV. Whether the District Court Committed Substantive error when failed to impose a sentence that was sufficient but not greater than necessary to comply with the statutory directive set forth in 18 U.S.C. § 3553(a).

CERTIFICATE OF INETRESTED PERSONS
United States v. Chavira-Nuñez

The undersigned Pro-Se of record certified that the following listed persons and entities as described in the fourth sentence of Rule 28.1 have an interested in the outcome of this case.

Joel Chavira-Nuñez is the Petitioner; he was the defendant-appellant bellow.

The United States of America is the Respondent; it was the plaintiff-appellee

The following persons may have or has interest on the same are:

1.- Edward a. Pluss, Office of the Federal Public Defender;

2.- Harvey Abe Steinberg, Ariel Zusya Benjamin, Daniel Jon Deters, Springer & Stienberg;

3.- John S. Tatum;

4.- Kurt M. Zaner;

5.- Dennis W. Hartley;

6.- Malissa Rae Fowler;

7.- Michele R. R. Korver; and

8.- James C. Murphy.

9.- The honorable John L. Kane

PETITION FOR A WRIT OF CERTIORARI

Petitioner Joel Chavira-Nuñez respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit..

OPINION BELOW

The unpublished opinion of the United States Court of Appeals for the Tenth Circuit is captioned as United States v. Joel Nuñez-Chavira, No.16-1488 and is provided in the Apendix to the Petition. [APPX, A]. The district court entered judgment 2th day of December, 2016, which the judgment is attached as an Appendix. [APPX.B]

JURISDICTIONAL STATEMENT

The petition is filled within 90 days of an opinion affirming the judgment, which was entered on May 31, 2017. *See* Sup. Ct. R. 13.1. The Court's jurisdiction to grant *certiorari* is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, RULES, AND STATUTES INVOLVED

18 U.S.C. § 3582(c)(2) provides in part:

(a) Factors to be considered in imposing a term of imprisonment. The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) [18 USCS ⊏ 3553(a)] to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) Effect of finality of judgment. Notwithstanding the fact that a sentence to imprisonment can subsequently be--

(1) modified pursuant to the provisions of subsection (c);
(2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742 [18 USCS § 3742]; or
(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742 [18 USCS ⊏ 3742]; a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.
(c) Modification of an imposed term of imprisonment. The court may not modify a term of imprisonment once it has been imposed except that--
(1) in any case--

(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) [18 USCS ⊏ 3553(a)] to the extent that they are applicable, if it finds that-
(i) extraordinary and compelling reasons warrant such a reduction; or
(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c) [18 USCS ⊏ 3559(c)], for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142 (g) [18 USCS ⊏ 3142]; and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and
(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) [18 USCS ⊏ 3553(a)] to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

(d) Inclusion of an order to limit criminal association of organized crime and drug offenders. The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 [18 USCS § 1951 e t seq.] (racketeering) or 96 [18 USCS ⊏⊏ 1961 e. t., seq.] (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 e. t., seq.), or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

The Fifth Amendment to the United States Constitution provides:

No person shall held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Gran Jury, except in case arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witness in his favor, and to have the Assistance of Counsel for his defense.

SATETMENT OF THE CASE

A. District Court Proceedings

COMES NOW, defendant, Joel Chavira-Nuñez (hereinafter "Mr. Chavira-Nuñez") by Pr-Se[1] and hereby submit the following in supplement to the defendant's Pro Se Motion filed on November 15, 2016, and does hereby move to the Court for a reduction of sentence pursuant 18. U.S.C. § 3582(c) and US.S.G. § 1B1.10[2]

B. Circuit Court Proceedings

Petitioner appealed the order of the district judge john L Cane on 12th day of December, 2016 and the issue of the order was issued on 2th day of December, 2016 The circuit court have affirmed the district court decision.

STANDARD OF REVIEW

Once it is established that an amendment to the Sentencing Guidelines Applies, the Eleventh Circuit reviews a District Court's decision not to reduce a sentence pursuant to 18 U.S.C. § 3582(c)(2) *"de novo." United States v. Graham* 704 F.3d 1275, (10 Cir. 2013). This Court reviews a district court's interpretation of a statute or the Guidelines de novo. *United States v. Smartt,* 129 F.3d 539 (10th Cir.1997)

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1 Haines v. Kerner, 404 U.S. 519 (1972), "Pro SE litigants pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if court can reasonably read pleadings to state valid claim o whic litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, po syntax, and sentence construction, or litigants unfamiliarity with the pleading requirements.

2 Said "Pro Se 18 U.S.C. §3582(c) Motion" should be construed as whether "Motion" that would provide Defendant with relief. See Means v. Alabama, 209 F. 3d 1241, 1242 (11th Cir.2000) (quoting United States v. Jordan, 915 F. 2d 622, 624-25 (11th Cir. 1990)), "[i]t is true that federal courts must look beyond the labels of motions filed by pro se inmates to interpret them under whatever statute would provide relief."

SUMMARY OF THE ARGUMENT

The District Court did not specifically state that it considered the factors in § 3553(a), it was merely lip service because it wholly failed to adhere to their principles, and in essence violate the statute. When a district court is required b y statute to take specified factors into account in making a discretionary decision, the district court mus be reversed if it 'ignored or slighted a factor that Congress has deemed pertinent. Even if Appellant's initial term of imprisonment was fair for him when he was sentenced, it is now unfair in the aftermath of Amendment 782 in 2014.

Thus, re-sentencing Appellant based on the newly reduced range would *not* be a windfall. The United States Congress and Supreme Court have Empathized that Unwarranted disparities between offenders—and the Concern that such disparities would result in imposing sentences greater than necessary to achieve the objectives of sentencing –was an important factor for district courts to consider.

However, by refusing to reduce the sentence of imprisonment in Appellant in this case, the District Curt helped to create the very unwarranted disparities which the Supreme Court sought to avoid, and made his sentence substantively unreasonable. Furthermore, taking the § 3553(a) factors as a whole, the Court of Appeals can only conclude that Appellant's sentence in this case is procedurally erroneous and substantively unreasonable and that the District Court was wrong in imposing it.

Undoubtedly, a district court has great discretion in balancing the § 3553(a) factors. Still, it must afford some weight to the factors in a manner that is a least loosely commensurate with their importance to the case, and in a way that would achieve the

purposed of sentencing stated in § 3553(a). However, if a district court instead commits a clear error of judgment in weighting the sentencing factors and arrives at a sentence beyond the range of reasonable sentences, as have the District Court in this case, the Count of Appeals is duty bound to vacate and remand for re-sentencing; and that is what Appellant requires of this Court.

ARGUMENT AND CITATION OF AUTHORITIES

1. The District Court was wrong in denying Appellant's Motion for Reduction of Sentence Under 18 U.S.C. § 3582(c)(2), And the Motion for Reconsideration of the Order and Judgment

A. Appellant is Qualified for a Reduction of Sentence Under 18 U.S.C. § 3582(c)(2), Pursuant to Amendment 782.

Title18 U.S.C. § 3582(c)(2) permits a District Court to reduce the sentence of an Appellant's "who has been sentenced to a term of Imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." *Id.* U.S.S.G. § 1B1.10(A)(1); The District Court may reduce a defendant's sentence based only upon a subsequently enacted amendment to the U.S.S.G., but only if the U.S.S.C, made the amendment retroactively applicable by listing it in Appendix C. Amendment 782 has actually lowered Appellant's guidelines range in this case and it is listed in Appendix C. (See § 1B1.10(c) (2014). Therefore, Appellant is eligible for relief and the District Court had jurisdiction to grant that relief under § 3582(c)(2).

But even where the applicable amendment is retroactive, and application of it actually produces a lower guideline range than the District Court originally applied, the

District Court still retains discretion to determine whether a sentence reduction is warranted. The guidelines provide the following:

> In determining whether, and to what extend, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (c) has been effect at the time the defendant was sentenced.

U.S.S.G. § 1.b1.10(B)(1); see *Dillon v. United States,* 560 U.S. 817, 177 L. Ed. 2d 271, 130 S. Ct. 2683, 2691-92 (U.S. 2010).

Appellant is qualified for a sentence reduction based on Amendment 782 because his original TOL has been lowered by two levels and his sentence of imprisonment has been lowered by 2 points. The District Court erred by stating in essence, it had imposed a fair sentence in during the original sentencing and thus, declined the opportunity to exercise discretion to reduce it now in 2016.

However, even if the original term of imprisonment was "a fair sentence' for Appellant, it is now unfair in the aftermath of Amendment 782 in 2014. Thus, re-sentencing Appellant to the top-range of the newly reduced range would not be windfall.

Hence, although the District Court dis not state that it considered the factors in § 3553(a). That was an error, because it wholly failed to adhere to their principles, and in essence violated the statute. See Gall v. United States 552 U.S. 38, 68, 128 S. Ct. 586, 607, L.Ed2d 445 (2007)(Alito, J., dissenting) ('when a trial court is required by statute to

take specified factors into account in making a discretionary decision, the trial court must be reversed if it ignored or slighted a factor that Congress has deemed pertinent.") (quoting United States v. Taylor, 487 U.S. 326, 336, 337, 108 S. Ct. 2413, 101 L. Ed. 2d 297 (1988)).

B. The District Court Violated the Provision of 18 U.S.C. § 3553(a) in Failing to Reduce Appellant's Sentence.

In imposing sentence, a district court may not presume that the range produced by application of the Sentencing Guidelines is reasonable, see Rita v. United States, 551 U.S. 338, 351, 127 S. Ct. 2456, 2465, 168 L. Ed. 2d 203 (2007), and must consider the factors set out in 18 U.S.C. § 3553(a). These are:

> the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed—(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training...; (3) the kinds of sentences available (4) the kinds of sentence and the sentencing range established...; (5) any pertinent policy statement.. issued by the Sentencing Guidelines Commission...; (6) the need to avoid unwarranted sentencing disparities among defendant with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a); Hayes, 762 F.3d at 1306; *Irey*, 612 F.3d 1138-39, 1184 & n. 13;

see Dougherty, 754 F.3d at 1358-59, 1362.

1. The Nature and Circumstance of the Offense and the History and Characteristics of the Defendant

In this case-- and particularly for the Appellant, a non-violent drug offender-- the newly reduced sentence of imprisonment is sufficient, but not greater than necessary, to comply with the purpose set forth in § 3553(a)(2); particularly, in considering "the nature and circumstance of the offense and the history and characteristic of the defendant." § 3553(a)(1); see United States v. Hahn, 551 F3d 977, 983 (10 Cir.2008). As shown, "The nature and circumstance of the offense" in this case was is not a aggravating for Appellant not to receive a reduction. The district court did not address this factor.

2. The Need for the Sentence Imposed:

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.

The District Court did not mention this sub-factor. "to promote respect for the law." However, if 120 months at the original sentencing promoted respect for the law then 97 months at the 782 re-sentencing should be adequate "to promote respect for the law," a first-time offender with no violence.

(B) to afford adequate deterrence to criminal conduct

The District Court did not mention this sub-factor. However, similar to the

argument in sub-factor (A) above, if a 120 months sentence is enough "to afford adequate deterrence to criminal conduct: for Appellant in the original sentence, it is more than enough for Appellant, a first-time offender, who has demonstrated no propensity for future criminal conduct to be sentenced to 97 months.

(C) to protect the public form further crimes of the defendant

The District Court did not mention this sub-factor. But, as the case of sub-factors (A) and (B), if 120 months sentence was enough "to protect the public form further crimes: for Appellant in the original sentence, then 97 months based on Amendment 782-788 is more then enough for Appellant, a first-time offender,then it is certainly more than enough for Appellant, the first-time offender demonstrating no such tendency.

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner

The District Court did not mention this sub-factor. However, the argument for sub-factors(A),(B) and(C) also resonate here. It is well established that Appellant had worked in several meaningful jobs prior to his arrest; he continued to work and study in the prison system, earned and exemplar prison record; and has rehabilitated himself to practice his skills in society honestly.

3. The Kind of Sentence Available.

The District Court did not mention this sub-factor. However, while there was an obvious range of sentence available between 121 and 150 months, and the Court denied

the Motion. That was in error. The Court could have equitably re-sentenced Appellant to the 97 months based on the a fair sentence that was imposed in 2014. Taken at its words, if a sentence of 120 months was fair in 2014, it is even fairer today, in light of the Amendment 782. Appellant's new "fair sentence" should be 210 months imprisonment, based on Amendment 782.

4. The Kinds of Sentence and the Sentencing Range Established

The District Court did not mention this sub-factor either. However, in light of the foregoing, this sub-factor would bode well for Appellant because, as shown above, there were several reasonable kinds of sentence available in the newly established sentencing range that would no have violated § 3553(a).

5. Any Pertinent Policy Statement

"The reduction in drug guidelines that becomes effective tomorrow represents a significant step toward the goal the Commission has prioritized of reducing federal prison cost and overcrowding without endangering public safety. Commissioners worked together to develop an approach that advances the cause of *fairness, justice, fiscal responsibility and public safety...*" (U.S.S.C. New Advisory October 31, 2014) (emphasis added). This policy statement in regard to this factor, overwhelmingly supports the granting of the two-point reduction for Appellant to advance "the causes of fairness, justice, fiscal responsibility and public safety," with emphasis on fairness.

Furthermore, "[t]he courts may consider post-sentencing conduct of the Appellant that occurred after imposition of the term of imprisonment." U.S.S.G. § 1b1.10(a),

Comment Appl'n Note 1(B)(iii) (Nov. 1, 2014), to determine whether or not to grant a reduction of sentence. As previously shown, Appellant has exemplar prison record and has made several achievements. Thus, all the pertinent policy statements of the United States Sentencing Commission are in favor of granting Appellant's Amendment 782 motion.

Finally Eric Holder, the Attorney General declared that America has an "unnecessary large prison population. Too many Americans go to too many prison for far too long, and for no truly good law enforcement reason".[3] This presaged an even bolder step: attacking the unfair sentencing regime. That is putting it mildly. According to the Department of Justice, the land of the Free has 5% of the words population, but 25% of its prisoners. In all, about 2.2 million Americans fester behind bars; one in every 107 adults. Minor crimes are punished severely, serious ones ferociously. That cost is staggering: $80 billion a year or $ 35,000 per inmate, not to mention "humans and moral cost that are impossible to calculate," as Mr. Holder put it. America's prison are often harsher than those in other rich countries.[4]

America's so-called penchant for mass-incarceration has for decades been taken for granted as set-in-stone policy. But has been at a terrible cost. America Courts and politicians have assumed that mass incarceration works, wooing voters with ever-

3 See August 12, 2013, Attorney General Eric Holder Delivers Remarks at the meeting of the American Bar Association's House of Delegates www. Justice. gov/PriontOut3.jsp, accessed August 13, 2013.

4 European countries now let prisoners cast ballots; Prisoners in Philippines are among the few allowed to surf the web, albeit closely supervised. In November 2012, Tanzania's government worried by the high sexual abuse in prison said it was introducing conjugal visits. In 2011, Brazil and Costa Rica formally extended rights to all gay prisoners, Israel did the same in July. Opportunities for prisoners to work, restrain and help local people are blossoming in place like China that is active in teaching wrongdoers new skills. Scandinavians favor rehabilitation. They see prison as a last resort and loss of freedom arduous without extra hardship. Life of Norway's 3600 prisoners is quotidian – with bungalows, televisions and mini-markets – to prepare them for release. America, meanwhile, emphasizes retribution. Incarceration and "warehousing: is common.

tougher sentencing laws. The dramatic fall in crime since 1990s has persuaded many that they were right. Locking up the worst criminals while they are young, fit and dangerous clearly makes America safer. But, that policy has also laid bare the discrimination embedded in the justice system. Minorities are disproportionally affected by an inflexible system that refuses courts the right to tailor punishment to the circumstances to the crime. Mr Holder wants to circumvent the system. Mr. Holder's timing is propitious, the Court must follow suit.

6. The need to Avoid Unwarranted Sentence Disparities Among Defendants With Similar Records who Have Been Found Guilty of Similar Conduct

In the case *sub judice*, this is the most important factor which the District Court failed to mention or adhere to. As shown above, based on the Court's analysis in 2014, there is no doubt that Appellant's sentence of 97 months if far "greater than necessary" to comply with the preceding sentencing goal. The court erred n basing its justification of the sentence solely on abstract principles purporting to satisfy three of § 3553(a)'s seven factors; which, as discussed above the court's justification already fails to meet the preceding § 3553(a) factors. As to this factor, Appellant's sentence is substantively unreasonable, where he is less culpable that his co- conspirators. Particularly, on an "individualization: basis Appellant is more qualified for an Amendment 782's reduction than his co-conspirators, recidivists, who did not have a honest work history prior to their imprisonment nor have rehabilitated himself during any of his imprisonments.

Moreover, as to the specific "similarly situated" factor, even if there is no uniformity requirement, a sentencing court would not have *carte blanche* to impose

radically disproportionate sentences. The fact that Court sentenced Appellant to lower sentence (97 months) in 2014 undermines the argument that Appellant's sentence of 210 months was not required in order to be "sufficient" but was not "greater than necessary." Thus, the disparities in the new sentence must still play some role in the assessment of the "totality of the circumstance." "Indeed, it is hard to escape the view that [Appellant], is essence, is being punished for exercising his right to a jury trial." *United States v. Docampo*, 573 F.3d 1091 (11th Cir.2009); see *Blackmon v. Wainwright*, 608 F.2d 183 (5th Cir. 1979) ("[A] defendant cannot be punished by a more severe sentence because he unsuccessfully exercise his constitutional right to stand trial rather than plead guilty.")(quotation omitted). Also inescapable is the notion of judicial bias in this case, although this is a whole new issue.

However, the district court's decision in this case created unwarranted sentence disparities based on identical circumstance the only difference is that in 2014 the Court found that Appellant deserved a sentence of 97 months and now after that sentence was said to be draconian pursuant to Amendment 782, the Court imposes a harsher sentence under Amendment 782.

B. Appellant's sentence of 120 months is procedurally erroneously and substantively unreasonable, in light of amendments 782

The District Court committed procedural error when it ignored Appellant's Reply to the Government to response to Appellant's § 3553(a) (2) Motion. The court continued to err by not not mentioning its analysis of the § 3553 sub-factor either, apparently, by ignoring § 3553(a) factors. As shown, the court has admitted error in these actions.

The Court did not address Appellant's objections in the Reply; thus, the court's denial could not be as a result of the Appellant's opposition to prosecution's position, but as a result of the court's foregone erroneous conclusion. The Government merely came to the court's rescue, after the court tossed the prosecutor a lifeline.

Further, in *Kimbrough v. United States*, 552 U.S. 85, 91, 109, 128 S. Ct. 558, 169 L. Ed. 2d 481 (2007), the Court also emphasized that unwarranted disparities -– and the concern that such disparities would result in imposing sentences "greater than necessary" to achieve the objectives of sentencing --- was an important factor for district courts to consider. By denying Appellant's motion, the District Court helped to create the very unwarranted disparities which the Supreme Court sought to avoid, and made his sentence substantively unreasonable. Furthermore, taking the § 3553(a) factors as a whole as well as the District Court's finding, the Court of Appeals can only concluded that Appellant sentence is substantively unreasonable and that the District Court abused its consideration discretion in imposing it.

Undoubtedly, a district court has great discretion in balancing the § 3553(a) factors. Still, it must afford "some weight to the factors in a manner that is at least loosely commensurate with their importance to the case, and in a way that 'achieve[s] the purposes of sentencing stated in § 3553(a)." *United States v. McQueen*, 727 F.3d 1144, 1160-1161 (11th Cir.2013); > United States v. Martin, 455 F.3d 1227, 1237 (11th Cir.2006)). If a district court instead commits a clear error of judgment in weighting the sentencing factors and arrives at a sentence beyond the range of reasonable sentences, the Court of Appeals is duty bound to vacate and remand for re-sentencing. > United *States v. McBride*, 511 F.3d 1293, 1297-98 (11th *Cir.2007)(per curiam).*

Thus, as instructed by *McBride*, because the district court committed a clear error of judgment in weighting the sentencing factors and arrived at a sentence beyond the range of reasonable sentences, this Court is therefore duty bound to vacate and remand Appellant's imprisonment for re-sentencing.

Conclusion

Petitioner respectfully prays that this Honorable Court grant certiorari, and reverse the judgment below, and/or vacate the judgment and remand for reconsideration in light of any relevant forthcoming.

Respectfully submitted this 5th day of March, 2018.

Joel Chavira Nunez

Joel Chavira Nunez
Reg No. 36964-013
Adams County Facility
P. O. Box 1600
Washington, MS 39190