TRULINCS 53678018 - MOLINA, MIGUEL ANTHONY - Unit: COL-B-D

FROM: 53678018
TO: Dejesus, Malinda
SUBJECT: 1
DATE: 07/19/2018 09:30:16 PM

WRIT OF CERTIORARI

NO.

IN THE SUPREME COURT OF THE UNITED STATES

MIGUEL A. MOLINA
Petitioner,

V.

UNITED STATES OF AMERICA
Respondent.

On petition for a writ of certiorari to
the united states court of appeals
for the eleventh circuit

PETITION FOR WRIT of CERTIORARI

(S) _____
Miguel A. Molina (PRO-SE)
Reg No- 53678-018
CORRECTIONAL INSTITUTION COMPLEX
COLEMAN-LOW
P. O. BOX 1031
COLEMAN, FLA 33521

TRULINCS 53678018 - MOLINA, MIGUEL ANTHONY - Unit: COL-B-D

FROM: 53678018
TO: Dejesus, Malinda
SUBJECT: (2) WRIT OF CERTIORARI
DATE: 07/21/2018 09:49:37 AM

writ

QUESTIONS PRESENTED

ISSUE (1)

Did the Honorable Judge James S. Moody Jr. violate Mr. Molina's Sixth Amendment right to a jury trial in conjunction with the due process clause...by stating the jury found Mr. Molina guilty of 922(g)(1) and 924(e) as to Count (1), and 841(a)(1) and 841(b)(1)(C) as to Count (2) See V-56, Pg 3. And the jury verdict form only states 922(g)(1) as to Count (1) and 841(a)(1) as to Count (2) ?

ISSUE (2)

Did the Government err by enhancing Mr. Molina's sentence, by applying 924(e) and 841(b)(1)(C). And his prior conviction case No.: 99-8690, does not meet the definition set forth in 924(e) nor 841(b)(1)(C), That for a prior conviction to qualify as a serious drug offense has to carry a maximum sentence of ten years or more prescribed by law as set forth in Smith v. United States, 775 F.3d 1262 (11th Cir. 2014) ?

ISSUE (3)

Did trial counsel err by not attempting to bar the seating of a bias juror, by stating that law informants office's should be the only ones to carry guns. And was appellant counsel ineffective for failing to argue this issue on direct appeal ?

ISSUE (4)

Does a defendant have to prove government inducement before proving government official... Even when the government intentionally changed "CI" to "CV" as in this case, WITH THE INTENT to hinder petitioner from proving GOVERNMENT OFFICIAL? See V-70 pg 45 at 3 thru 9. (Requesting judicial Notice Of An Judicative Fact Rule 201(a)).

TRULINCS 53678018 - MOLINA, MIGUEL ANTHONY - Unit: COL-B-D

FROM: 53678018
TO: Dejesus, Malinda
SUBJECT: PARTIES TO THE PROCEEDING
DATE: 07/22/2018 08:50:47 PM

PRO-SE PARTIES TO THE PROCEEDING

Parties to the proceeding include MIguel Molina (Appellant/Petitioner), A. Lee Bentley, III, Esquire (United States Attorney), and David Lee, Esquire (Solicitor General of the United States of America).

TRULINCS 53678018 - MOLINA, MIGUEL ANTHONY - Unit: COL-B-D

FROM: 53678018
TO: Dejesus, Malinda
SUBJECT: TABLE OF CONTENTS
DATE: 07/22/2018 08:52:38 PM

PRO-SE TABLE OF CONTENTS:

TRULINCS 53678018 - MOLINA, MIGUEL ANTHONY - Unit: COL-B-D

FROM: 53678018
TO: Dejesus, Malinda
SUBJECT: TABLE OF AUTHORITIES.....
DATE: 07/22/2018 08:49:55 PM

PRO-SE

TABLE OF AUTHORITIES:

CASES

STATUTES

FROM: 53678018
TO: Dejesus, Malinda
SUBJECT: (3) WRIT OF CERTIORARI
DATE: 07/21/2018 11:48:26 AM

MOLINA

PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion of the Eleventh Circuit, App., infra was not selected for publication.

JURISDICTION

The judgments of the Court of Appeals, which had jurisdiction under title 28 U.S.C. 1291 was entered on August 17, 2016 and May 3, 2018. This Court's jurisdiction is invoked under title 28 U.S.C. 1254(1).

REQUESTING RULE 201 JUDICIAL NOTICE OF ADJUDICATIVE FACTS, 201(A), 201(c)(2), 201(d)(2), 201(b)(2), 201(e).

STATEMENT

As a preliminary matter, citations to the record will be made by the letter "V" followed by the appropriate District Court docket number, followed by the appropriate page number.

(i) COURSE OF PROCEEDINGS

On September 8, 2010, a Federal Grand Jury, in the Middle District of Florida, Tampa Division, returned a two (2) count indictment naming Mr. Molina as the defendant. (V-1, pg 4).

Count one charged the defendant with violation 18 U.S.C. 922(g)(1).

Count two charged the defendant with violation 21 U.S.C. 841(a)(1). See (V-1, pg 4).

Thereafter, on February 7, 2011, Mr. Molina proceeded to trial on both counts of the indictment filed on September 8, 2010. See (V-1, Pg 4). Mr. Molina was ultimately found guilty of both counts of the indictment filed on September 8, 2018 (see V-40).

Thereafter, a sentencing hearing was then held on May 12, 2011. However, the Honorable Judge James S. Moody sentenced Mr. Molina to an indictment filed on September 21, 2010 which charged the defendant with the violations of 18 U.S.C. 922(g)(1) and 924(e)(1) as to count (1) ... And...21 U.S.C. 841(a)(1) and 841(b)(1)(C) as to count (2). That indictment also claimed forfeiture provisions under title 18 United States Code section 924(d)(1), title 28 United States Code section 2461(c), and title 21 United States Code section 853. See V-1 at 2, 3.

Mr. Molina was sentenced to two hundred ten (210) months imprisonment, followed by sixty (60) months supervised release as to Count 1... and thirty-six (36) months supervised release as to Count two (2), with said sentences to run concurrently. (V-49).

Thereafter, Mr. Molina filed a motion to vacate under 28 United States Code Section 2255. (V-66, 67). As evidentiary

hearing was then held on Mr. Molina's motion, and the District Court ultimately granted an out of time appeal (V-71, 73). Mr. Molina's original judgment and sentence were then vacated and reinstated on March 28, 2013 (V-49, 73).

Thereafter, on April 5, 2013, Mr. Molina filed his notice of appeal. (V-74).

Thereafter, on July 9, 2013, Mr. Molina's Appellate Counsel filed his initial brief.

Thereafter, on December 20, 2013, the United States Court of Appeals for the Eleventh Circuit affirmed Mr. Molina's conviction.

Thereafter, Mr. Molina's appellant counsel filed his petition for a Writ of Certiorari on March 17, 2014.

Thereafter, date April 23, 2014, Mr. Molina's petition for a Writ of Certiorari was denied.

Thereafter, on April 17, 2015, Mr. Molina filed a Motion to Vacate under 28 United States Code Section 2255.

Thereafter, on April 21, 2015, the District Court dismissed as successive Grounds 1 and 5. Grounds 2 and 6 of the . petition (CV Docs. 1,2) are dismissed as well.

Thereafter, on August 17, 2016, the Court of Appeals for the Eleventh Circuit denied petition for Certificate for Appealability.

Thereafter, on October 14, 2015, Mr. Molina filed a Motion to Vacate under 28 United States Code Section 2255 was denied. See (V-88).

Thereafter, Mr. Molina on October 26, 2015 filed a timely Notice of Appeal with the District Court, for the Tampa Division.

Thereafter, on June 1, 2016, Mr. Molina filed an application for Issuance of Certificate of Appealability with the United States Court of Appeals for the Eleventh Circuit. As to Case No: 16-12054-C. The Court of Appeals for the Eleventh Circuit, also notified Mr. Molina that pursuant to Eleventh Circuit Rule 42-1(b) you are hereby notified that upon expiration of fourteen (14) days from this date, "this appeal will be dismissed by the Clerk without further notice unless you pay to the District Court Clerk the docketing and filing fees with notice to the Court of Appeals for the Eleventh Circuit.

Thereafter, on August 31, 2016, a family member of Mr. Molina went to the District Court and paid the docketing and filing fees.

Thereafter, Mr. Molina on August 31, 2016, filed a petition for a Panel Rehearing with the Eleventh Circuit and gave notice that the docketing and filing fees have been paid.

Thereafter, on September 27, 2016, the Eleventh Circuit notified Mr. Molina that the "Eleventh Circuit 31-1 requires that Appellant's brief be served and filed on or before November 7, 2016." As to Case No.: 16-12054-CC.

Thereafter, on January 06, 2017, the United States Attorney filed a motion for summary reversal. As to Case No.: 16-12054-CC.

Thereafter, on April 27, 2018, the Eleventh Circuit granted the motion for summary reversal.

Thereafter, on April 28, 2017, the District Court order the Government to show cause within sixty (60) days from the date of this order why the relief sought in Grounds 1, 2, 5, and 6 of the Motion to Vacate 1, should not be granted. (CV Doc. 18).

Thereafter, on January 22, 2018, the District Court denied the petition pursuant to 28 U.S.C. 2255.

Thereafter, on February 01, 2018, petitioner filed a Notice of Appeal.

Thereafter, on March 01, 2018 petitioner filed an application for Issuance of Certificate of Appealability with the United States Court of Appeals for the Eleventh Circuit, as to Case No.: 18-10402-J.

Thereafter, on May 03, 2018, the Court of Appeals for the Eleventh Circuit denied Mr. Molina's Certificate of Appealability (COA).

(ii) STATEMENT SUMMARY OF THE ARGUMENT

ISSUE (1)

Mr. Molina is arguing that the Honorable Judge James S. Moody Jr. violated Mr. Molina's Sixth Amendment Right to a jury trial in conjunction with the Due Process Clause. When he stated on February 8, 2011 at Mr. Molina's sentencing hearing. That the Jury found him guilty of 922(g)(1) and "924(e)(1)" and 841(a)(1) and "841(b)(1)(c)"... and that statements can not be supported by the verdict... The verdict states that Mr. Molina was found guilty of only 922(g)(1) as to Count (1) and 841(a)(1) as to Count (2). See (V-40).

ISSUE (2)

Mr. Molina, is arguing that the federal law, Armed Career Criminal Act, 18 U.S.C. Subsection 924(e)(A)(ii)... states: "A serious Drug Offense" is an offense under state law, punishable by at least "Ten-Years" of imprisonment, involving Manufacturing, Distributing, or Possessing with intent to Manufacture or Distribute, a Controlled Substance.

Based on Federal Law, stated above, Mr. Molina continue's to argue that one of his prior convictions does not meet the requirements/definition set forth in 18 U.S.C. 924(e)(2)(a)(ii), because his prior conviction case no: 99-8690 only carries a "Five Year" maximum penalty by law... For that reason, Mr. Molina's prior conviction can not be treated as "A Serious Drug Offense". See Appendix, APPENDED "G"

ISSUE (3)

Mr. Molina, continues to argue that a male juror made a biased statement on vior-dire. The male juror stated:

"I believe that law informant officer's should be the only ones to carry guns."

Mr. Molina, then advised trial counsel that he (Mr. Molina), wanted that juror removed. Trial Counsel then stated that he can not remove that juror, because the juror was on the prosecution seat.

The law states that at the very least, trail counsel should have attempted to bar the seating of the bias juror and appellant counsel was ineffective for failing to argue this issue on direct appeal.

ISSUE (4)

Mr. Molina is arguing that trial counsel Irvin was ineffective, and his representation fell below the objective standard of reasonableness. When counsel Irvin failed to get an independent translator or interpreter to insure the "accuracy" of the English translation Government Exhibit 11-A, that was produced from a Spanish audio tape Government Exhibit 11. Due to

the fact that Counsel Irvin does not speak Spanish. See (V-91. at 6).

ISSUE (5)

Mr. Molina is arguing that trial counsel Irvin was ineffective for failure to investigate, interview and subpoena Miguel Sanchez, Carlos Vargas and Neil Ramos. And had Counsel Irvin investigated, interviewed and filed a subpoena for these witnesses, AUSA Muench would have not been able to change "CI" to "CV" (V-70. at 45-3-9) to prove to the jury through SA Montalvo's testimony that Carlos Vargas is not a "Government Official" (see V-68. At 104, 23-25), which hindered petitioner's first element of an entrapment defense, that a government official... Induced the crime.

ARGUMENT AND CITATION OF AUTHORITY... AND REQUESTING JUDICIAL NOTICE OF ADJUDICATIVE FACTS... RULE 201

ISSUE (1)

"The Eleventh Circuit came to a "CONCLUSION" "that Mr. Molina is not entitle to a "COA" with respect to claim three". (Reason for Conclusion) "This court has already considered and rejected the argument that a sentencing court violates a defendant's fifth and sixth amendment right "BY FINDING" that he has prior convictions and using these convictions to enhance his sentences" "See United States V. Smith, 775 f. 3d 1262, 1266 (11th Cir, 2014),Cert. Denied, 135 s. ct. 2827 (2015)". See Appendix, Appended B, Pg B4.

The eleventh Circuit "ERRED" by concluding that Mr. Molina is not entitle to a "COA" with respect to claim three... due to the "FACT"... the Eleventh Circuit has "INTENTIONALLY MISINTERPRETED" Mr. Molina's argument.

Mr. Molina is not arguing the usage of his prior conviction in claim three. Mr. Molina is arguing the "FACT" that Honorable Judge James S. Moody Jr. violated his Sixth Amendment Right to a jury trial in conjunction with the Due Process Clause. When he stated at Mr. Molina's sentencing, the jury found you guilty of "924(e)" and "841(b)(1)(C)". See (V-56. PG 3 AT 13 THRU 19).

STATEMENT STATED AS FOLLOWS: (SEE R-56)

Mr. Molina on February 8, 2011, the jury found you guilty of counts (1) and (2) of the indictment...Count (1) charges you with possession of a firearm by a convicted felon in violation of Title (1) 18, United States Code, Section 922 (g)(1) and "924(e)". Count (2) charges you with Distribution of Heroin, in violation of Title 21, United States Code, Section 841(a)(1) and "(b)(1)(C)".

This violation occurred, when the Honorable Judge James S. Moody Jr., amended the Jury Verdict Form, when he stated "the Jury found Mr. Molina guilty of "924(e)" and 841(b)(1)(C). (R-40).

TRULINCS 53678018 - MOLINA, MIGUEL ANTHONY - Unit: COL-B-D

FROM: 53678018
TO: Dejesus, Malinda
SUBJECT: (4) WRIT OF CERTIORARI
DATE: 07/21/2018 11:50:17 AM

... VERDICT (SEE R-40)

1. Count one of the Indictment

"As to the offence of possession with a firearm by a convicted felon, in violation of Tile 18 U.S.C "922(g)(2)"

2. Count 2 of the Indictment

"As to the offense with intent to distribute Heroin, in violation Title 21 U.S.C "841(a)(1)".

As stated above the jury found Me. Molina guilty of Count One (1) 922(g)(1) and Count Two (2) 841(a)(1). The sentencing range supported by the jury verdict Form as to Count One (1) 922(g)(1) was Zero to Ten-Years, but when the Judge, rather than the jury found Mr. Molina guilty of "924(e)" as to Count (1) and 841 (b)(1)(C) as to Count (2) that "VIOLATED" Mr. Molina's Sixth Amendment right to a Jury Trial in Conjunction with Due Process Clause. Because the 924(e) raised the Count One(1) (922)(g) (1) to a mandatory minimum sentence of 15 years to Life in Prisonment and 841(b)(1)(c) raised Count Two (2) (841)(a)(1) to a term of imprisonment of 20 years.

The new decision of Alleyne v United States (No: 119335, S Ct June 17, 2013). " which held that "ANY FACT" that increases any sentence to a potential sentence to a mandatory minimum sentence is an "ELEMENT" of the crime, not a "SENTENCE FACTOR" and must be submitted to a jury for finding beyond reasonable doubt. "ID. AS in the case the elements of the offense. See (R-20) "THE SIXTH AMENDMENT" does not permit a defendant to expose [d]... to a penalty exceeding the maximum he would receive is punished according to `the facts reflected in the "JURY VERDICT" alone. "Quoting Apprendi, supra, at 483; alteration in original)".

Citing 570 U.S _____ 2013

In Apprendi v. New Jersey 530 U.S. 466, concluded that any fact that increase the prescribed range to which a criminal defendant are exposed are elements of the crime, id., at 490, and thus, the Sixth Amendment provides defendants with the right to have a "Jury" find those "Facts" beyond a reasonable doubt, ID, at 484. Apprendi principle applies with equal force to facts increasing the mandatory minimum, for a fact triggering a mandatory minimum alters the prescribed range of sentences to which a criminal defendant is exposed. ID., at 490. Because the legally prescribed range is the penalty affixed to the crime, it follows that a fact increasing either end of the range produces a new penalty and constitutes an ingredient of the offence. It is impossible to associate the floor of a sentencing range from the penalty affixed to the crime. The fact that Criminal Statutes have long specified both floor and ceiling of sentence range is evidence that both define the legally prescribed penalty. It is also impossible to dispute that the facts increasing the legally prescribed floor aggravated the punishment, heightening the loss of liberty associated with the crime. (See ID., at 478-479).

In Mr. Molina's case the facts of "924(e) and 841(b)(1)(c) aggravated the legally prescribed range of allowable sentences, it constitutes an element of a separate, aggravated offense that must be found by the jury, regardless of what sentence the defendant might have received had a different range been applicable. The is no basis in principle or logic to distinguish facts that raise. The maximum from those that increase the minimum.

Mr. Molina, would like to inform this honorable court ... Two weeks before Mr. Molina proceeds to trial, the

government filed document 20, on January 26, 2011. that document is called "Notice of Essential Elements" (see V-20). This document is very important for "Two" reasons (1) this is the process that the government took to show "supporting elements" for requesting maximum punishment, and (2) that reason is "Law" .... Law states as follows:

"If a fact was by "law essential" to a penalty it was an element of the offense. There was a well established practice of including in the indictment and "submitting to the jury", every fact that was a basis for "imposing" or increasing punishment." This understanding was reflected in contemporaneous court decisions and treaties," pp ____ - ____ 186 L.Ed.2d at 324-329".

This "Notice of Essential Elements" Proves that Mr. Molina's 924(e) and 841(b)(1)(C) are elements of the offense, Because the essential point is the aggravating fact that produced a higher range ..... Which in turn, conclusively indicates that the fact is an "Element" of a distinct, and aggravated the crime. It must, therefore, be "submitted to the Jury and found beyond a reasonable doubt. See (V-20). Also see (Appendix, APPENED "F").

The "Law" is very clear ... if a fact was by law essential to the penalty, like it is in this case, and that's a fact, because, the government filed document 20, "Notice of Essential Element," V-20, therefore, these elements must be submitted to the Jury and found beyond a reasonable doubt.

SHOWING WHY ALMENDAREZ-TORRES "DOES NOT" APPLY IN MR. MOLINA'S CASE

The Government fails to realize that Mr. Molina's case is different from "Almendarez-Torres". In Alemendarez-Torres the "supreme court" held that a prior conviction to be treated as a "sentencing factors", rather than as an "element" of the offense, and need not be proven to a jury.

In Mr. Molina's case when the sentencing court state, the "Jury" found Mr. Molina guilty of 922(g)(1), "924(e)" "841(a)(1)", and "841(b)(1)(C)" ... The sentencing court did not treat Mr. Molina's prior convictions as "sentencing facts" this Honorable Court treated them as "Elements" of the offense, as set forth in Alleyne. See (V-20). And therefore, has to be submitted to the Jury as set forth in Alleyne. Stating:

> "any fact that by law increases the penalty for a crime is an "Element" that must be 'submitted to the jury and found beyond a reasonable doubt". Id.

The Honorable Judge James S. Moody Jr., did not find Mr. Molina guilty of "924(e)" and "841(b)(1)(C)" by the "preponderance of evidence" as set forth in Amendarez-Torres ... which is a "sentencing factor" and not an "Element" as in this case. Even if he stated that he find Mr. Molina guilty of "924(e)" and "841(b)(1)(C)" the "preponderance of evidences" that statement will still violate Mr. Molina's Sixth Amendment Right in conjunction with the Due Process Clause. Because, law states:

> "If a fact was by law essential to the penalty, it was an "Element" of the offense and had to be submitted to the jury, every fact that was a "Basis" for imposing or increasing punishment. pp. ___-___, 186 L.Ed.2d at 324-329".

ISSUE (2)

MR. MOLINA CONTENDS THAT APPELLATE COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO ARGUE THAT ONE OF MR. MOLINA'S CONVICTION WAS NOT A SERIOUS DRUG OFFENSE:

REQUESTING THIS COURT TO TAKE JUDICIAL NOTICE OF ADJUDICATIVE FACTS RULE 201:

As to the conclusion the Eleventh Circuit set forth, that "the document attached to the government's response to his 2255 motion demonstrates that he was convicted of possession of a controlled substance with intent to distribute, in violation of Fla. stat. 893.13(1)(A)". See Appendix, "APPENDED" "B" pg B4. That conclusion is not support by petitioner "PLEA FORM" ...A "SHEPPARD" Document. See Appendix, APPENDED "G" pg G1.

However, the attachment that the government attached to their response, is petitioner's "APPENDED" "H" to this petition... "APPENDED" H, pg H1, states under primary offense... Felony Decree "3" FS# 893 Description poss cont. SUB ... sell/del. The Eleventh Circuit is failing to realize that petitioner was convicted of a 3rd (third) degree felony. A third degree felony in Florida only carries a (5) five year maximum prescribed by law. See UNITED STATES V. JERMON SHANNON, JR., 613 F.3d 1187: 2011 U.S. App. Lexis 1580 ("Florida ... Has three-tiered scheme for punishing drug-related offenses. Under Florida law those three tiers are the following: (1) Possession of any [631 F.3d 1191] amount of controlled substance ... third degree felony Fla. stat. 893.13 (6)(a); (2) Possession with intent to distribute a controlled substance ... second degree felony. Fla. stat. 893.13 (1)(A); and (3) trafficking in cocaine by possession of 28 grams or more of the drug First degree felony. Fla. stat. 893.135(1)(b).

Petitioner further states that his plea form APPENDED "G" states a 5 year maximum ... which is consistent with Fla. stat. 893.13(6)(a).

Therefore, their conclusion is wrong. See United States v. Smith (11th Cir 2014). Under criminal law and procedure states: that the predicate offense has to include 18 U.S.C. 924(E)(2)(A)(ii)

Mr. Molina , Fifth and Sixth Amendment Rights have been violated when the government used one of Mr. Molina's prior convictions to enhance his sentence under 924(e) and 841(b)(1)(C). The prior conviction that Mr. Molina was convicted of possession w/intent to distribute MDMA, Case No 99-8690, the maximum penalty Mr. Molina could have receive by law was a "5-years maximum prison sentence" (see Appendix, APPENDED "G"). Mr. Molina's "plea form" Mr. Molina plead to a "Third Degree Felony", and a "Third Degree Felony carries a maximum term on imprisonment of "five years" (see Appendix, Appended "H". Mr. Molina's criminal punishment code score sheet, where it states primary offense (VOP) felony degree 3rd F.S. #893, description, poss .cont. "SUB". sell/del.

As stated above, a third degree Florida felony only carries a 5-years maximum term of imprisonment.... This is why this prior conviction, Case No: 99-8690) CANNOT be used to enhance Mr. Molina's sentence under 924(e)(1) and 841(b)(1)(C) Now, law states, for a prior offense to qualify as A Serious Drug Offense, is an offense under state law punishable by at

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FROM: 53678018
TO: Dejesus, Malinda
SUBJECT: (5) WRIT OF CERTIORARI
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least "TEN YEARS of imprisonment, involving manufacturing, distributing, or possession with intent to manufacture, or distribute, a controlled substance 924 (e) and 841 (b) (1) (c).

As you can see/read for a prior offense to qualify as a serious drug offense under 924 (e) the prior offense has to carry a 10 year maximum sentence punishable by law.

In Mr. Molina's case, the prior offense that the Government is using to enhance his sentence under 924(e) only carries a 5 year maximum sentence prescribe by law. Clearly showing this honorable court, that Mr. Molina prior Florida conviction does not meet the requirement's/definition set-forth in 924 (e)(2)(a)(ii).

Mr. Molina Appended "I" consist of 2 pages, page I(1) only proves this is a government response with Case No: 1:11-CV-4-RWS. Page I(2) of Appended "I" is page 13 of the Government's response (this further proves Mr. Molina's case) Appended "I"-(2) states as follows:

DELIVERY OF CONTROLLED SUBSTANCE CONVICTION

"Davis also contends that his two convictions for delivery of a controlled substance should not be classified as a "serious drug offense". He is correct. Those two convictions were for his sale of Marijuana, which is a third degree felony in Florida. F.S.A. 893.03(1)(c) and 893.13(1)(A)(2). A third degree felony carries a maximum term of imprisonment of five years F.S.A. 775.082(d). Only controlled substance offenses with maximum punishment of at least TEN YEARS may be classified as serious drug offenses. 18 U.S.C. 924(e)(2)(A)(ii). So Davis is correct that his two prior Florida controlled substance felonies may not be used to enhance his sentence as Armed Career Criminal."

For the reason stated above... Mr. Molina's appellate counsel was ineffective during Mr. Molina's direct appeal process. The law is so clear... to qualify as a "serious drug offense" the prior offense has to carry at least 10 years or more prescribed by law... in Mr. Molina's case the prior offense only carries a 5-year maximum sentence prescribed by law. Therefore, Mr. Molina's prior offense "CANNOT" be used to enhance his sentence as set forth in United States v. Smith 775 f . 3d 1262, 1266 (11th Cir 2014), cert. denied, 135 S. CT. 2827 (2015)

UNDER CRIMINAL LAW & PROCEDURE IN SMITH STATES AS FOLLOWS:

"A serious drug offense" is an offense under state law, punishable by at "TEN YEARS" of imprisonment, involving manufacturing, distributing, of possession with intent to manufacture or distribute, a controlled substance. Armed Career criminal act, 18 U.S.C. 924(e)(2)(a)(ii). And a "controlled substance offense" is any offense under state, punishable by more than one-year imprisonment. That prohibits the manufacture, import, export, distribution, or dispense. U.S. sentencing guidelines manual 4b1.2(b) (2013). No element of mens rea with respect to the illicit nature of the controlled substance is expressed or implied by either definition. the court look to the plain language of the definitions to determine their elements, and they presume that "CONGRESS" and the sentencing "COMMISSION" said what they meant and meant what they said. The "definitions" require only that the "PREDICATE OFFENSE" "INVOLVES" 924(e)(2)(a)(ii) and "prohibits" 4b1.2(b), certain activities related to controlled substances."

The Eleventh Circuit is missing the "FACT" since there is no element of mens-rea with respect to the illicit

nature of `the controlled substance is expressed or implied by either definition. The District Court and/ or the Eleventh Circuit Court of `Appeals has to look to the plain language of the definition to determine their "ELEMENTS"... Congress, and the sentencing commission "has already made a determination that the definition requires "ONLY" that the predicate offense has to involve ` 924(e)(2)(A)(ii) and prohibit 4b1.2, and certain activities related to controlled substance"

Mr. Molina has already stated that the "PREDICATE OFFENSE" the government is using to enhance his sentence does not meet the requirement set forth in United States v. Smith, 775 F .3d 1262, 1266 (11th Cir. 2014), cert. denied, 135 S. Ct. 2827 (2015).

"That the definition requires only that the predicate offense has to involve 924(E)(2)(A)(ii)."

In Mr. Molina's case, the predicate offense, case no. 99-8690, could "NEVER" involve 924 (E)(2)(A)(ii) due to the "FACT" the definition set forth in 18 U.S.C. 924(E)(2)(A)(ii) states:

"A 'serious drug offense' is an offense under state law, punishable by at least "TEN YEARS" imprisonment involving manufacturing, distributing, or possession with intent to manufacture or distribute, a controlled substance"

In Mr. Molina's case the predicate offense, case no: 996-8690, only carries a maximum sentence of five years prescribed by law. See appendix, APPENDED "G" Mr. Molina's plea form.

Therefore, it could never involve the definition set forth in 18 U.S.C. 924(E)(2)(A)(ii).

Hence, for the Eleventh Circuit to come to a conclusion that Mr. Molina's [A]rgument was raised for the first time in his reply brief is "ABSURD", see (appendix, APPENDED B, pg B5). Due to the fact, the District Court and the Eleventh Circuit Court of Appeals is well "AWARE" that United States v. Smith 775 F.3D 1262, 1266 (11th Cir. 2014) is "PRECEDENT" case in the Eleventh Circuit, and under law and procedure set forth in Smith states that the predicate offense has to "INVOLVE" 924 (E)(2)(A)(ii), and in Mr. Molina's case the predicate offense "CANNOT" involve 18 U.S.C. 924(E)(2)(A)(ii).

Therefore, the Eleventh Circuit conclusion is "WRONG". See appendix, APPENDED "B", pg B5

SHOWING THAT DESCAMPS APPLIES TO MR. MOLINA'S CASE UNDER THE CATEGORICAL APPROACH:

In Descamps, there are two approaches for determining whether an offense is generic: The "Categorical Approach" and the "Modified Categorical Approach". Under the categorical approach the "compare the elements of the statute forming the basis of the defendant's conviction with the elements of the generic crime".

"REQUESTING CATEGORICAL APPROACH"

Mr. Molina, is asking, this Honorable Court to review his Florida prior convictions for Trafficking in Cocaine, statute 893.135 (1) (b), case no: 95-07056, and his conviction for Possession of Cocaine with intent to sell, statute 893.13(1) (A), case no: 00-CF-013826. Considering, the Supreme Court's ruling in Descamps v. U.S., 133 S.Ct. 2276 (2013), also the ELEVENTH CIRCUIT RECENT Ruling in MAYS V U.S., 817 F.3d AT 728, 734.

FROM: 53678018
TO: Dejesus, Malinda
SUBJECT: (6) WRIT OF CERTIORARI
DATE: 07/21/2018 11:54:04 AM

BECAUSE BOTH STATUTES HAVE THE NON-QUALIFYING predicate of "purchase."

Mr. Molina therefore request's that this Honorable Court review his 1995 conviction, statute 893.135(1)(b) and his 2000 conviction statute 893.13(1)(A), because they have the non-qualifying predicate of "purchase"... Fla. statute .893.13(1)(A)

"Reads": except as authorized by this chapter and chapter 499, it is unlawful for any person to sell or "Purchase" a substance.

Statute 893.135(1)(b) "Reads" "any person who knowingly, PURCHASES, manufactures, delivers, or brings into his states, or who knowingly in actual or constructive possession of 28 grams or more of cocaine... commits a felony of the fist degree, which felony shall be known as trafficking in cocaine." Fla.Stat. 893.135(1)(b) (Emphasis Added).

Descamps disallows a court to look past the statute once there is non-qualifying offense found in the statute.

See Howard v. United States, 742 F.3d, 1341 (11th Cir. 2014)

Based upon the fact made available in Mays. United States, 817 F.3d 728, 734 (11th Cir. 2016), and the fact that the Supreme Court clarified what was already existing precedent. Therefore, Mr. Molina is asking this Honorable Court to review whether his 1995 conviction under Fla.Stat. 893.13(1)(A), would qualify as a predicate considering the Eleventh Circuit announcing the Descamps to be retroactive in Mays (2016). Mr. Molina would not qualify as a Armed Career Criminal or Career Offender considering the Eleventh Circuit's new finding of retroactivity of Descamps.

ISSUE 4

Petitioner is requesting this honorable court to take judicial notice of an adjudicative facts underlying this Issue 4 of this petition.

Petitioner alleged in his 2255 motion that Counsel Irvin was ineffective for failing to get his own translation of the audio of the transaction because Counsel Irvin did not speak Spanish. Instead, Counsel Irvin relied on Agent Montalvo's translation to properly prepare for trial. Since ATF's Agent Montalvo's translation could have been biased or misinterpreted, Counsel needed to have a Spanish translator (expert) to assist him to ensure that all the details were accurately explained and understood.

Petitioner also stated: because ATF's Agent Montalvo was not an independent witness his translation very well could have been slanted towards the Government's point of view. ID at (V-2, pg-11,12).

The Government's response in opposition with.."Interestingly, Molina, who claims in his motion to speak Spanish and English, does not actually claim the undercover agent's translation was inaccurate, he merely argues it "could have been." ID. As Molina stated, the agents "translation very well could have been slanted towards the Government's point of view." (emphasis added) ID.

Molina does not even claim the translated transcript was inaccurate. He simply speculates it "could have been" thereafter, the Government stated: "unless the translated transcript was actually inaccurate, trial counsel cannot have been deficient in failing to obtain an independent translator. ID, at (V-21, pg-12,13).

Petition replied with: counsel Irvin's performance was constitutionally deficient in failing to obtain a translator to ensure that the English translation of the Spanish audio tape was "IN FACT" accurate. AUSA Muench nor special agent Montalvo are certified as Spanish/translator, at least the record does not reflect that they are. The "fact" is that their English translation was not accompanied by a certified certificated of translation. See, government exhibit 11A. Also See, (V-31. PG-12).

Petitioner further contends, the record reflect that on two different occasions during special agent Montalvo's cross examination by counsel Irvin... special agent Montalvo directed counsel Irvin to the Spanish audio tape, government exhibit 11.

THE FIRST OCCASION STATE'S AS FOLLOWS:

"If you listen to the tape when I went in, Carlos Vargas was in the dining room with another unknown individual, and the informant was coming in with me introducing me to Pito. See, (V-68, pg 84 at 7 thru 9).

THE SECOND OCCASION STATE'S AS FOLLOWS:

"In the tape, you could hear Carlos Vargas in the background, when I am being introduce to Mr.Pito by the confidential informant; and as a matter of fact, he is the one that used the word "MONO", if I'm not mistaken". See, (V 68 pg 86 at 22 thru 25).

Petitioner further contends, as stated above special agent Montalvo directed not once but twice to the Spanish audio tape. Now, this is very important, due to the fact that counsel Irvin "LACK" of Spanish language ability "DID IN FACT" impede his ability to communicate because there was "NO" translator/interpreter there to assist him...when special agent Montalvo directed him to the Spanish audio tape.

In ANGEL v. UNITED STATES 2013 U.S. APP. LEXIS 14027 STATE'S AS FOLLOWS:

"That counsel's "LACK" of Spanish language ability did not impede his ability to communicate because there was a translator".

In petitioner's case is to the contrary, counsel's lack of Spanish language ability did "IN FACT" impede his ability to communicate because there was "NO" translator there to assist him, when agent Montalvo not once but twice directed Counsel Irvin to the Spanish audio tape. Due to the fact, that counsel's lack of Spanish language ability did impede his ability to communicate, therefore counsel Irvin performance was deficient. See (V-34. Pg-13).

Petitioner further stated, when agent Montalvo made the above statement. Counsel Irvin's performance was deficient. Because, he can not prove to the jury, that Carlos Vargas did not "IN FACT" used the word "MONO". Because his lack of Spanish language ability did "IN FACT" impede his ability to communicate because there was "NO" interpreter/translator there to assist him. SEE. (CV DOC. 34, PG 13).

Petitioner further stated, AUSA Mr. Muench, all he has to do now is prove to the jury that Carlos Vargas had "IN FACT" used the word "MONO". Mono is monkey in English... and he does this on redirect examination, through (1) Special Agent Montalvo's testimony and (2) Through AUSA Muench, and Special Agent Montalvo's English translation. (Quoting AUSA Muench) "BUT WHAT [WE] DID IS [WE] PREPARED A TRANSCRIPT". See (V-68. PG 21 AT 20).

ON REDIRECT EXAMINATION SPECIAL AGENT MONTALVO ANSWERED THE FOLLOWING QUESTIONS...BY AUSA MUENCH

"Question by Muench"
"You were asked whether Carlos Vargas was there?"
"Answer by Agent Montalvo"
"Yes".
"Question by Muench".
"Early on?"
"Answer by Agent Montalvo".
"Yes sir."
"Questions by Muench"

"Now, see the CV who says the, "The Monkey".
"Answer by Agent Montalvo"
"Yes"
"Question by Muench"
"Who is CV"?
"Answer by Agent Montalvo."
"Carlos Vargas"
"Question by Muench."
"So, at the time you were introduced to the defendant, Carlos Vargas was right there"?
"Answer by Agent Montalvo"
"Yes, Sir."
"Question by Muench"
"And, in fact, on the first---this is page 2.. on the first page on your chart, you list Carlos Vergas, as being present"?
"Answer by Agent Montalvo."
"Yes, Sir."
"Question by Muench"
"So, does this refresh your recollection as to whether Carlos Vargas was there from the time you walked in"?
"Answer by Agent Montalvo"
"Yes, Sir. He was there."
"Question by Muench."
"And, in fact, then moving on to the very next page. page 2, is Carlos Vargas still talking where it says "CV". Buddy what happened?" "Is that Carlos Vargas?"
"Answer by Agent Montalvo".
"Yes, Sir."
"Question by Muench."
"Now, just so it's absolutely clear, was Carlos Vargas work for the government?
"Answer by Agent Montalvo."
"No, Sir." See(V-68, PGS 102,103,104, AT 16 THRU 25).

In this case, due to the fact that counsel Irvin's "LACK" of Spanish language ability... the Government (meaning here) AUSA Muench was able to "SLANT" the English translation Government exhibit 11A TOWARD the Government point of view/favor... by causing "DEFECTS" in the English translation by intentionally changing "CI" TO "CV" see (V- 70 PG 45, AT 3 THRU 9). Which clearly make the English translation "INACCURATE" ... by the English translation being "INACCURATE" the Government was able to prove to the jury that "CV" is CARLOS VARGAS. Id. That "CV" had "IN FACT" said "THE MONKEY" Id. See V DOC. 68, pg 51 at 8. That "CV" was still talking when he said "BUDDY WHAT HAPPEN". Id. See (V 68, PG .51 AT 25).

"In petitioner (Molina) case, the English translation (Government Exhibit 11A) of the Spanish audio tape (Government Exhibit 11) "IS IN FACT INACCURATE," (quoting AUSA Muench). "I meant to hit "CI", but I hit "CV. That's not a typo." ID at CV Doc. 31, pg 17).

Petitioner further stated: when AUSA Muench intentionally changed "CI" to "CV"(quoting (AUSA Muench) "THAT'S NOT A TYPO", ID. That cased "SPECIFIC PREJUDICE" due to the fact, petitioner cannot prove to the jury the first element of an entrapment defense... "That a government official induce the crime." And the "CI" is a government official for the agency ATF, bearing "CI" number 767030-0214. See, (Defense Exhibit #1). As a matter of "FACT", (quoting AUSA Munch)

"Not to take--- there's a chance i may re-call briefly Agent Monsanto's to testify that this CI was only paid $300 in this transaction. We're going to talk about that". See V-68. Pg 205 at 21 thru 24.

Therefore, an error has occurred... in allowing AUSA muench and Special Agent Montalvo's English translation transcript (quoting AUSA Muench) ("but what "WE" did is "WE" prepared a transcript for the other eleven of you") to go to the JURY ROOM. See, UNITED [A 306 FED. APPX. 487] STATES V. WILLIFORD, 764 F.2D 1493, 1503 (11TH CIR. 1985).

In the order, set forth by James S. Moody Jr. on Jan 22, 2018, the Government "FINALLY" agreed with petitioner... that (1) counsel Irvin does "NOT" speak Spanish. See (V-37. Pg 6). (2) That the English translation in INACCURATE. See, (V-37. Pg-7).

As the government stated: "petitioner's trial counsel "DID NOT" speak Spanish." see (V-37, pg 6). Therefore, "trial counsel Irvin's "LACK" of Spanish language ability did in fact "IMPEDE" his ability to communicate because there was "NO" translator there to assist him, when Special Agent Montalvo not once, but twice, directed counsel Irvin to the Spanish audio tape." See, (V-68. pg 84 at 7 through 9. Then see V-68. pg 86, at 22 through 25. Then see, (V-34. pg 12).

See Angel v. United States 2013 U.S. App. Lexis 14027

"That counsel's "LACK" of Spanish language ability did not impede his ability to communicate because there "WAS" a translator."

"In petitioner's case is to the contrary ... counsel's "LACK" of Spanish language ability "DID IN FACT" impeded his ability to communicate because there was "NO" translator there to assist him when Special Agent Montalvo directed him to the Spanish audio tape." (Requesting Rule 201 (A) Judicial notice of an adjudicative fact). See (V-35.pg12).

Thereafter the government states: "Petitioner then argues that "[The ATF agents] English translation of the audio tape "IS" inaccurate." (CV Doc.34-1.pg.12)

Petitioner further states, that's not what the petitioner argued. Petitioner argued the following:

"Petitioner further contends, AZUSA Muench and Agent Montalvo's English translation of the Spanish audio tape "IS" inaccurate. Furthermore, they slanted the translation towards the government's point of view/favor. Which further proves Counsels deficient and prejudice on the government behalf." See, (V-34.pg.12, 13).

Due to the fact, (requesting Rule 201A)(Quoting AUSA Muench) "What [we] did is [we] prepared a transcript". See, (R-68. pg.21 at 20).

Petitioner also stated: "Due to the "FACT" that the translation was not accompanied by a certificate of translation." See, (V-34. pg.12)

Thereafter, the court concluded, that "petitioner failed to establish that trial counsel was deficient for not having the audio tape translated because the "ONLY" inaccuracy to which petitioner points is not a dispute over the translation." See (V-37. pg.7).

TRULINCS 53678018 - MOLINA, MIGUEL ANTHONY - Unit: COL-B-D

FROM: 53678018
TO: Dejesus, Malinda
SUBJECT: (7) WRIT OF CERTIORARI
DATE: 07/22/2018 06:33:43 PM

pro-se

REQUESTING RULE 201 (A) JUDICIAL NOTICE OF AN JUDICATIVE FACT:

Petitioner further states, the government argued "that petitioner would need to show that the translation was inaccurate in a material way to meet his burden". See, (CV DOC 21,pg.13)

Petitioner further states, just like the district court stated in their ruling... "because the "ONLY INACCURACY" to which petitioner points is not a dispute over the translation". (V-37, pg.7).

Petitioner further contends, the district court's ruling is "wrong" because the dispute is over the translation... due to the fact, AUSA MUENCH intentionally changed "CI" to "CV" making the English translation "Inaccurate"... just like petitioner stated in his reply to government response:

"In petitioner (Molina) case the English translation (Government exhibit 11A) of the Spanish audio tape (Government exhibit 11) is "In fact" "Inaccurate". (Quoting AUSA MUENCH) "I meant to hit "CI" but I hit "CV". "That's not a typo". See V-70.pg 45 at 8.9.

When "AUSA MUENCH" intentionally changed "CI" to "CV" (Quoting AUSA MUENCH) "That's not a typo". Id. that caused specific prejudice due to the fact, petitioner "cannot" prove to the jury the first element of an entrapment defense... that a government official ...In-induced the crime, and the "CI" is a "Government official" for the agency "ATF" bearing "CI" number 767030-0214. Id. See (V-34,pg.17).

Since, an error has occurred, in allowing AUSA MUENCH and Special Agent Montalvo's English translation (quoting AUSA MUENCH) ("but what "we" did is "we" prepared a transcript for the other eleven of you") Id. to go into the jury room. Due to the fact, the English translation is inaccurate (quoting the government) because "the only inaccuracy" to which petitioner points"...Therefore, an error has occurred, in allowing the English translation to go into the jury room due to the fact, law states: "absent a showing that the transcripts were inaccurate or that specific prejudice occurred there is no error in allowing transcripts to go in the jury room. See United [A 306 Fed. Appy.487] States V. Williford, 764 F. 2d 1493, 1503 (11th cir 1985).

Petitioner further contends, that specific prejudice has occurred...due to the fact, AUSA MUENCH "intentionally" changed "CI" to "CV" which caused defects in the English translation to hindered petitioner's first element of an entrapment defense... that a government official... induced the crime. Which in-turn caused a due process violation.

See, Aden v. Holder, 589.F.3d 1040, 1047 (9th Cir 2009) ("To establish a due process violation, a petitioner must show that defects in translation prejudiced t he outcome of the hearing").

In this case, when AUSA Meunch intentionally caused defects in the English translation by intentionally changing "CI" to "CV" and this transcript was allowed in the jury room, and those defects hindered petitioner from proving the first element of entrapment defense "GOVERNMENT OFFICIAL" ... induced the crime. Therefore caused the outcome of the

hearing.

The government argued, "petitioner would have been unable to establish that he was induced to commit a crime. So the court concludes that petitioner was not prejudiced even if trial counsel was deficient for failing to obtain a translator". See (V-37, pg.8).

Petitioner further states, the government is failing to realize that AUSA Muench hindered petitioner from proving "GOVERNMENT OFFICIAL" by changing "CI" to "CV" had petitioner proven induced to commit the crime. The government would have been arguing ... that "CV" (meaning here Carlos Vargas) is "NOT A GOVERNMENT OFFICIAL." See (CV-68, pg.104 at 23 through 25). Due to the fact, AUSA Muench "INTENTIONALLY" changed "CI" to "CV" to hinder petitioner from proving "GOVERNMENT OFFICIAL" (quoting AUSA Muench) "I meant to hit ["CI"] but I hit ["CV"]. That's not a typo." See (V-70, pg 45 at 8,9).

As petitioner stated, in this case the "CI" is a government official for the agency "ATF", bearing CI number 767030.0214 as a matter of "FACT" (request rule 201(A) ... Judicial notice of an adjudicative fact).

"This"CI" was only paid $300 in this transaction". See V-68, pg.205 at 21 through 24.

Based upon the cumulative effect of petitioner's attorney's unprofessional errors, there is a reasonable probability that had counsel so provided petitioner the effective assistance demanded by the Sixth Amendment of the United States Constitution, and at the very least, as to the appellate counsel, submit a supplement brief as to the issue one (1) ... and as to issue (2) argue that "ONE" of petitioner's "PRIOR" convictions does not meet the requirement/definition set for in 18 U.S.C. 924(E)(2)(A)(ii). And as to t trial counsel issue four (4), at the very least get an independent translator to ensure that the English translation was "ACCURATE". (Government Exhibit 11A). As petitioner demanded of them, and further subjected the government's entire case through meaningful adversarial testing, there is a reasonable probability that petitioner would have obtained an acquittal, reversal or a remand for a new trial. Strickland v. Washington 466 U.S. 668 6687-88, 694, 104 S. Ct. 2052, 2064-65, 2068, 80 L. Ed 2d 678 (1984).

TRULINCS 53678018 - MOLINA, MIGUEL ANTHONY - Unit: COL-B-D

FROM: 53678018
TO: Dejesus, Malinda
SUBJECT: CONCLUSION
DATE: 07/24/2018 03:01:39 PM

PRO-SE CONCLUSION

For the reasons stated above, petitioner Miguel Molina requests that this Court "GRANT" his petition for Writ Of Certiorari.

PETITE v. UNITED STATES, 361 U.S. 529, 4 L.ed 2d 190 (Feb 23, 1960)

"The Department of Justice ("DOJ") has firmly established policy, know as the "PETITE" policy, under which United States Attorney's are 'FORBIDDEN' to prosecute any person for allegedly criminal behavior if the alleged criminality was an ingredient of a previous State prosecution against that person.

An exception is made on "IF" the Federal Prosecution is specifically "AUTHORIZED" in advance by the Department itself, upon a finding that the prosecution will 'serve compelling interest of Federal Law Enforcement' ".

Hereby and for the stated herein, Petitioner Miguel Molina, respectfully asks this court pursuant to the Sixth, and Fifth Amendment of the United States Constitution to grant his writ of certiorari.

EXECUTED THIS 25TH DAY OF JULY, 2018.

Respectfully Submitted,

(S/ _____

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