No. _____

IN
THE UNITED STATES SUPREME COURT

UNITED STATES OF AMERICA,
Respondent,

v.

Ivan Rodrigo Campillo-Restrepo,
Petitioner.

ON PETITION
FOR ISSUANCE OF
A WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT COURT OF APPEALS

Circuit Appeal No. 91-6140-FF
District Court Case No. 90-CR-10023-JLK (S.D.Fla.)

Ivan Rodrigo Campillo-Restrepo,
Reg. No. 54824-079
FCC COLEMAN-MEDIUM
Unit A-1
P.O. Box 1032
Coleman, FL. 33521-1032

QUESTION PRESENTED

WHETHER RECALL OF THE MANDATE SHOULD ISSUE TO REMEDY A PENAL TERM IMPOSED BEYOND THE STATUTORY MAXIMUM WHEN ABROGATED CIRCUIT PRECEDENT CONTROLS BASED ON A SUBSEQUENT SUPREME COURT RULING?

JURISDICTION

Upon disposing of both the petition to recall the direct appeal mandate and reconsideration of the same, pursuant to Title 28 U.S.C. §1254, by way of the mailbox rule afforded to incarcerated litigants, jurisdiction is conferred for consideration to issue the instant petition to issue a Writ of Certiorari to the Eleventh Circuit Court of Appeals before the High Court.

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CERTIFICATE OF INTERESTED PERSONS

U.S. v. Restrepo-Campillo

COMES NOW, the Petitioner, Ivan Rodrigo Restrepo Campillo (Campillo_), **propia persona in sui juris**, in compliance with Supreme Court requisite submits, the following are interested parties to the outcome of the proceedings:

Clark, Christopher	Assistant U.S. Attorney (AUSA)
King, Lawrence James	U.S. District Judge (S.D.Fla.)

IN
THE UNITED STATES SUPREME COURT

UNITED STATES OF AMERICA, Respondent,	:	
v.	:	No. _____
Ivan Rodrigo Campillo Restrepo, Petitioner.	:	ON PETITION FOR THE ISSUANCE OF A WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEALS

_____X

STATEMENT OF THE CASE

The case before the High Court presents a question concerning the pitfalls in not being constitutionally **notified**, for Due Process of Law purposes, with aggravting statutory facts, whose applied information triggered the imposition of a penalty **beyond** the applicable statutory maximum under law.

This concerning inquiry, initially takes shape, aside for its inherent constitutional substance, **within** the Eleventh Circuit Court of Appeals through its holding in U.S. v. Alvarez, 735 F.2d 461 (1984). However, two years **after** Alvarez, **supra**, this Court's reasoning in McMillan v. Pennsylvania, 477 U.S. 79 (1986) **compels** the Eleventh Circuit to reconsider its Alvarez precedent.

As McMillan's interpretation by the Circuit Court super-imposed itself on circuit precedent, the common practice became that of, in relevant part, Title 21 U.S.C. §841(a) convictions, for penalty

purposes, being satisfied for sufficiency of the evidence, as long as the **controlled substance** element in §841(a)'s language is met with, thus **abrogating** the Alvarez, **ante**, precedent.

At this point-in-time in circuit history, the **type** or **quantity** of controlled substance, for an §841(a) conviction, beyond a reasonable doubt, was found to be irrelevant for constitutional purposes. §841(a)'s **complimentary** penalty authority (i.e. 21 U.S.C. §841(b)) was thought to be best **determined** at the sentencing phase of a criminal proceeding, clearly at odds with the initial Alvarez reasoning.

In this case in particular, which is adjudicated during the McMillan, **ante**, era, the Petitioner, Ivan Rodrigo Campillo Restrepo (Campillo), is charged with conspiring to violate §841 offenses and its **analogous** Title 21 U.S.C. §952(a) violations. Whereby, based on the Circuit's interpretation of McMillan and the **subsequent** intra-circuit split holding in U.S. v. Williams, 876 F.2d 1521 (11th Cir. 1989); As Campillo is found guilty of **solely** violating 21 U.S.C. §§841(a) and 952(a), in pertinent part; Based on the statutory aggravated facts, a prison term of LIFE is imposed well **above** the applicable statutory maximum of twenty years under decisional law.

Even though indiscrepancies arose within the circuit as to whether either Alvarez or Williams controlled, due to constitutional concerns; By which, ultimately, the Lower Court, in interpreting McMillan, fared better to **give weight** to Williams, inequivocally upholding the ruling practice of statutory **penalty**

ranges to be determined by the sentencing courts when imparting a term-of-imprisonment. It was only up until this High Court's reasoning in Jones v. U.S., 562 U.S. 227 (1999), **dicta**, post McMillan, that a statutory penalty range's applicability is relevantly **clarified.**

On clarifying the properties of a statutory penalty range's applicability for Due Process of Law purposes, this Court, post Jones, **supra**, in Apprendi v. New Jersey, 530 U.S. 466 (2000) found refuge in Jones's **dicta** clarifying reasoning by holding, other than a prior conviction, any fact which increases the statutory maximum penalty **must** be proved beyond a reasonable doubt.

As a consequence thereof, collateral review retroactivity inquiry came to play for relief purposes, but the the Lower Court in McCoy v. U.S., 266 F.3d 1245 (11th Cir. 2001) held, the above mentioned Apprendi ruling to not apply retroactively on collateral review. A **key** reasoning in the Circuit refusing to permit retroactivity for finality purposes, rests on the notion of sentencees having had the **building blocks** to develop an Apprendi claim prior to its ruling.

The **paradoxal** aspect of the mentioned McCoy reasoning falters when McCoy **fails** to consider the **settled issue** of the Alvarez/ Williams intra-circuit split disposition in U.S. v. Perez, 960 F.2d 1569 (11th Cir. 1992). By not considering the pertinent Perez, **supra**, ruling, the McCoy Court has incorrectly **presumed** no Apprendi argument to have been brought before the Lower Court.

In light of the aforementioned, Campillo submitted a motion to recall the direct appeal mandate, under **good cause** to file. On the Lower Court denying the recall petition, subsequently, Campillo emphasized the presented circuit **oversight** by moving the Circuit Court to reconsider its decision. Lamentably, though being made aware of the incongruency of the McCoy holding with that of Alvarez's existence, the Lower Court thought it most prudent to **uphold** a penalty **above** the applicable statutory maximum under law; Clearly on its face, allowing for an unconstitutional usurpation to stand and permit a sentencee to languish in penal servitude for life, without any persuasive opinion to, at least, insinuate the the Sentencee could have **foreseen** the Alvarez holding being resurrected through this Court's Apprendi reasoning.

Whereby, Campillo, as a measure of last resort, asks this Honorable Court to summon its supervisory powers to **remedy** the sentence imposed by issuing the instant petition for a writ.

OPINION BELOW

As Campillo's sentence is imposed on December 22, 1992, see U.S. v. Campillo Restrepo, case no. 90-CR-10023-JLK (S.D.Fla.), the sentence imposed is affirmed by the Eleventh Circuit Court of Appeals on February 6, 1996, see U.S. v. Campillo Restrepo, 78 F.3d 599.

On December 20, 2017 Campillo, pursuant to 11th Cir. R. 41-1 (b), (c) and 28 U.S.C. §2106, on having moved to recall the above mentioned appellate jedgment, under **good cause** to do so, is denied a recall to the mandate.

On February 26, 2018 in moving to reconsider the foregoing denial the Circuit Court, also denied reconsideration thereof (Reconsideration Denial Order affixed hereto as Appendix A).

REASONS FOR GRANTING THE WRIT

Because this Court, should it grant the petitioned writ, reviews the denial of a recall of the mandate and its reconsideration for abuse of discretion, see Calderon v. Thompson, 523 U.S. 538, 550 (1998); And considering Due Process of Law has become a "hot" topic before this Court **status quo**. Campillo, under the unforeseen, grave contingency of decisional law, ultimately, giving **weight** to an **abrogated** Eleventh Circuit Court holding, moved to recall the issued mandate, see U.S. v. Campillo Restrepo, app. case no. 91-6140-FF.

The reason(s) for moving so found/finds its core origin when this Court, pursuant to its decision in Apprendi v. New Jersey, 530 U.S. 466 (2000), held, other than a prior conviction, any fact which increases a penalty beyond its statutory maximum must be found beyond a reasonable doubt, Id.; Particularly since the Lower Court, in following through with Apprendi, **supra**, in U.S. v. Sanchez, 269 F.3d 1250 (11th Cir. 2001)(en banc), held, when no statutory penalty range is constitutionally **notified** in a 21 U.S.C. §841(a) **cocaine** conviction, for Due Process of Law purposes, §841(b)(1)(C), also known as the "catch-all" provision applies, Id. 1270.

Nonetheless, because Campillo's direct review proceedings

finalized on February 6, 1996 the Petitioner is foreclosed from summoning the Sanchez, **ante**, relevant holding, see U.S. v. Campillo Restrepo, 78 F.3d 599. Likewise, for habeas corpus collateral review purposes, the Lower Court in McCoy v. U.S., 266 F.3d 1245 (11th Cir. 2001), held, Apprendi to not apply retroactively on collateral review, Id.. Yet the fact remains Campillo, unquestionably, has been sentenced for Title 21 U.S.C. §§841(a) and 952(a) "catch-all" convictions **beyond** §841(b)(1)(C)'s statutory ceiling, see U.S. v Campillo Restrepo, case no. 90-CR-10023-JLK (S.D.Fla.) [Docket Entry (DE) 1 (Indictment; Convicting Counts 1-4]. Without any other measure of a **timely** sought procedural judicial vehicle for **remedy** purposes, Campillo, as a last resort, petitioned for the judiciary's power to recall a court's mandate under **good cause** to do so, see 11th Cir. R. 41-1(b), (c).

On bringing to the Lower Court's attention the suggested to be **misinformed** reality of the Circuit's McCoy, **supra**, holding, in pertinent part, that sentencees, pre-Apprendi, had the "building blocks" to develop an Apprendi claim, see 266 F.3d at 1258-59. The **truth** is sentencees had more than the "building blocks", they had, at their disposition, **precedent** which **settled** the Apprendi claim inquiry.

In U.S. v. Alvarez, 735 F.2d 461 (11th Cir. 1984), the Lower Court, undisputably, had held, 21 U.S.C. §841(b)'s controlled substance penalty ranges, based on the factual drug type and quantity, to be **elements** of the conviction, Id. 467-68, see also

21 U.S.C. §841(b); But because this Court's holding in McMillan v. Pennsylvania, 477 U.S. 79 (1986) held, **facts** found to **determine** a term-of-imprisonment are **sentencing factors** to be determined by a court under the preponderance-of-the-evidence standard, Id. 84; The Lower Court **interpreted** McMillan, **supra**, to also include §841(b)'s language which is used for penalty range adjudication, see U.S. v. Williams, 876 F.2d 1521 (11th Cir. 1989); U.S. v. Cross, 916 F.2d 622, 623 (11th Cir. 1990), U.S. v. Perez, 960 F.2d 1569, 1574 (11th Cir. 1992), and U.S. v. Coy, 19 F.3d 629, 637 (11th Cir. 1994)(Circuit distinguishing Alvarez, **ante**, from Williams, **supra**, and giving **preference** to Williams due to the McMillan's, **supra**, holding). The foregoing **broad** interpretation of McMillan by the Lower Court is **clarified**, by this Court, **dicta**, in Jones v. U.S., 562 U.S. 227 (1999) by clearly acknowledging, facts which **increase** a penalty beyond the statutory maximum must be proved beyond a reasonable doubt, Id. at 243 n.6, thus the same are not found under the preponderance-of-the-evidence standard. However, **prior** to the Jones, **supra. dicta**, this Court reasoned the above mentioned judiciary fact finding concept was "merely suggested", Ibid., but see, U.S. v. Steele, 147 F.3d 1316 (11th Cir. 1998) (en banc)(Circuit precedent may be **abrogated** by a Supreme Court holding which is **clearly on point** with settled circuit decional law interpretation, Id. 1317-18).

When Apprendi comes "up to bat", this Court **promotes** the **dicta** in Jones to rule of law, and as a result resurrects the circuit's **abrogated** Alvarez, **ante**, holding, compare,

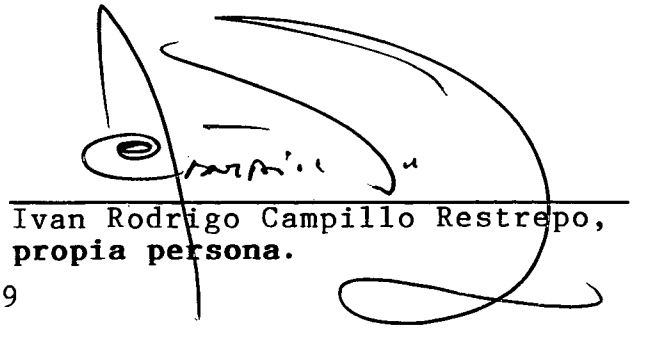
Alvarez 735 F.2d at 467-68, with, Apprendi, 530 U.S. 450 n.10. Based on the foregoing; Why then does the Lower Court misguide in McCoy, **ante**, with a reasoning which insinuates no precedent, pre-Apprendi, being **developed** and **settled**, through the propagated "building blocks" which are ever present?, see 266 F.3d at 1258-59.

To the contrary, because this Court, has held, when the High Court overturns a "longstanding and widespread widespread practice to which ...]it] has not spoken, but which a near-unanimous body of lower court authority has expressly approved" "the failure of a [sentencee] to have pressed such a claim before ... a court is sufficiently excusable to satisfy a cause requirement", Reed v. Ross, 468 U.S. 1, 17 (1984), see also Williamson v. Moore, 221 F.3d 1177, 1180 (11th Cir. 2000), McCoy, 266 F.3d at 1256 (Eleventh Circuit reasoning, all other sister circuit courts were also **practicing** the Williams, **ante**, erroneous interpretation). In a more **unique circumstance**, this Lower Court, in **contrast** to the cited pre-Apprendi "building block" attempts in other sister courts had already settled the Apprendi inquiry through Alvarez, see McCoy, at 1258-59. But because McMillan's sentencing factor interpretation was broadend and more attractive to the Circuit than Alvarez's holding, which is premised on constitutional "building blocks", Campillo's sentence remains **infirm** under law.

Surely, the baseless burden put on a sentencee by the Lower Court in developing an Apprendi claim, for remedy purposes, can

be cured with the verifiable truth to the development of circuit decisional law. As a recall petition is merited when confronted with "grave, unforseen contingencies", Calderon v. Thompson, 523 U.S. 538, 550 (1998); The understanding of the Eleventh Circuit having erroneously **broadend** the McMillan holding to also cover statutory penalty language of an §841(a) conviction, is at odds with the jurisprudence maxim established in Alvarez, 735 F.2d at 467-68, that, "if a fact was by law essential to the penalty, it was an element of the offense", Alleyne v. U.S., -- U.S. --, 186 L. ed.2d 314, 320 (2013), compare with, Alvarez, **supra**. Thus, in turn, **correctly** bestowing the burden of error on the Lower Court's broadend interpretation, rather than the sentencee's failure to object to the unlawful sentence.

By which the feat that, suggestively, remains outstanding is whether, under the previously presented unique circumstance, justice remains unconvinced in remedying a penal term which the statutory facts, as presented and found, under substantial constitutional principle, do not allow for a sentence equivalent to a **four-fold** twenty year statutory maximum penalty; But because the Lower Court's interest in finality of a conviction, seemingly, outbids the fact that, human-beings are, currently, languishing in penal servitude **beyond** what basic Due Process constitutional principle permits, as is, Campillo asks the writ to issue.



Ivan Rodrigo Campillo Restrepo,
propia persona.

OATH

I DO HEREBY ATTEST THAT, as an incarcerated litigant, a true and correct petition for the issuance of a Writ of Certiorari to the Eleventh Circuit Court of Appeals, before the U.S. Supreme Court, has been submitted to the best of my knowledge and abilities; And that, likewise, because I do not comprehend the english language and its jurisprudence terminology, I have been assisted in the drafting of the above mentioned petition.

Date: 5/25/2018

Ivan Rodrigo Campillo Restrepo,
#54824-079

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT, a true and correct petition for the issuance of a writ of certiorari has been delivered, pursuant to the inmate mailbox rule, via U.S. Mail, on this 25 day of May, 2018 to the following addresses:

U.S. Supreme Court
1 First St., N.E.
Washington, D.C. 20543

U.S. Solicitor General
Department of Justice
950 Pennsylvania Ave., N.W.
Rm. 5614
Washington, D.C. 20530-0001

Respectfully submitted,

Ivan R. Campillo Restrepo,
Reg. No. 54824-079
FCC COLEMAN-MEDIUM
Unit A-1; P.O. Box 1032
Coleman, FL. 33521-1032