No._____

IN THE

SUPREME COURT OF THE UNITED STATES

ANTONIO MERCEDES-RIJO —PETITIONER

(Your Name)

VS.

UNITED STATES OF AMERICA —RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULE ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Antonio Mercedes-Rijo #28541-069

(Your Name)

B-Unit Federal Correctional Institution
Post Office Box 1000

(Address)

Sandstone, Minnesota 55072

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

I. Whether the Petitioner's Mitigating Role Should of Been Adjusted In Accordance With The United States Sentencing Guidelines § 3B1.2

II. Whether Congress Lacks The Power Under the Define and Punish Clause To Proscribe Drug Trafficking on The High Seas Without Requiring Some Nexus Between The Proscribed Conduct and The United States.

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States district Court appeals at Appendix **A** to the petition and is

[ ] report at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

The opinion of the United States court of appeals at Appendix **B** to the petition and is

[ ] report at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix ___ to the petition and is

[ ] report at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the _____court appears at Appendix ___ to the petition and is

[ ] report at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was June 26, 2018.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 2, 2018, and a copy of the order denying rehearing appears at Appendix C.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was_____.
A copy of that decision appears at Appendix ___.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix ___.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

21 U.S.C. § 841(a)(1), (b)

(a) **Unlawful acts.** Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally --
(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(b) **Penalties.** Except as otherwise provided in section 409, 418, 419, or 420 [21 U.S.C.S. § 849, 859, 860, or 861], any person who violates subsection (a) of this section shall be sentenced as follows:

21 U.S.C. § 846
Attempt and conspiracy. Any person who attempts or conspires to commit any offense defined in this title shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempte or conspiracy.

8 U.S.C. § 1324(a)(A)(i) Bringing in and harboring certain aliens
(a) **Criminal penalties.**
(1)(A) Any person who--
(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

46 U.S.C. § 70503(a)(1)
(a) **Prohibitions.** While on board o covered vessel, an individual may not knowingly or intentionally--
(1) manufacture or distribute, or possess with intent to manufacture or distribute, a controlled substance;

46 U.S.C. § 70503(c)(1)(2)
(c) **Nonapplication.**
(c)(1)(2) In general. Subject to paragraph (2), subsection (a) does not apply to--
(2) Entered in manifest. Paragraph (1) applies only if the controlled substance is part of the cargo entered in the vessel's manifest and is intended to be imported lawfully into the country of destination for scientific, medical. or other lawful purposes.

46 U.S.C. § 70504(b)(1) Jurisdiction and venue
(b) **Venue.** A person violating section 70503 or 70508 [46 U.S.C. § 70503 or 70508]--
(1) shall be tired in the district in which such offense was committed; or...

46 U.S.C. § 70506(a) & (b)
(a) **Violations.** A person violating paragraph (1) of section 70503(a) of this title [46 U.S.C.S. § 70503(a)] shall be punished as provided in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 960). However, if the offense is a second or subsequent offense as provided in section 1012(b) of that Act (21 U.S.C. § 962(b), the person shall be punished as provided in section 1012 of that Act (21 U.S.C. § 962).

(b) **Attempts and conspiracies.** A person attempting or conspiring to violate section 70503 of this title [46 U.S.C.S. § 70503] is subject to the same penalties as provided for violating section 70503 [46 U.S.C.S. § 70503].

2D1.1(a)(5)(c)(2) **Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy.**

(a)Based Offense Level (Apply the greatest):
(5) the offense level specified in the Drug Quantity Table set fort in subsection (c), except that if (A) the defendant receives an adjustment under § 3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level 32, decrease by 2 levels; (ii) level 34 or level 36, decrease by 3 levels; or (iii) level 38, decrease by 4 levels. If the resulting offense level is greater than level 32 and the defendant receives the 4 level ("minimal participant") reduction in § 3B1.2(a), decrease to level 32.

2D1.1(b)(3) Specific Offense Characteristics.
(b)Specific Offense Characteristics
(b) IF the defendant unlawfully imported or exported a controlled substance under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carries was used to import or export the controlled substance.

3B1.2(b) If the defendant was a minor participant in any criminal activity, decrease by 2 levels.

3B1.2 Mitigating Role.
Based on the defendant's role in the offense, decrease the offense level as follows:
(iv) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts.

4A1.1(b) **Criminal History Category.**

The total points from subsections (a) through (e) determine the criminal history category in the Sentencing Table in Chapter Five, Part A.

(b) Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).

(d) Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

STATEMENT OF THE CASE

On March 18, 2015, a maritime patrol aircraft detected a 20-25 ft go-fast vessel riding low in the water approximately 90 nautical miles South of Guayama, Puerto Rico. The vessel had just departed from the scene of a rendezvous with a fishing vessel and was on a northerly course towards Puerto Rico.

The aircraft's crew had observed suspicious packages on deck, which fit the typical profile of bails of narcotics. Thus, the United States Coast Guard ("USCG") proceeded to intercept the suspect vessel. approximately 70 miles South of Puerto Rico. On board the vessel were three Dominican nationals: (a) the Petitioner Mr. Mercedes-Rijo, (b) Mr. David Heureax-Herrera, and (c) Mr. Narciso Ceverino-Contreras.

USCG found fourteen (14) bails of cocaine on board, which weighed 504.3 Kilograms, and detained the vessel's crew.

Subsequently, the Petitioner was interviewed by USCG personnel and admitted being the captain of that vessel. He stated that he did not know who the vessel's owner was, but that he and his two shipmates had left the port of Boca Chica, Dominican Republic, together and met the vessel he was supposed to navigate on the high seas.

He added that he had been offered $25,000.00 to navigate the vessel and its contraband to a beach in Cabo Rojo, Puerto Rico.

On March 23, 2015, the Petitioner and his cohorts were charged by way of a Criminal Complaint with knowingly and intentionally conspiring to possess with the intent to distribute controlled substances, to with, five (5) kilograms or more of a substance containing detectable amounts of cocaine, in violation of Title 21 U.S.C. § 841(a)(1), (b) and 846. Two days later, on March 25, 2015, a federal Grand Jury returned a Four Count indictment against them.

The indictment charged the three men identically. Count one charged the Petitioner with possessing with the intent to distribute five (5) kilograms or more of a substance containing cocaine, in violation of Title 21 U.S.C. § 841(a)(1). Count two charged him with conspiring with his co-defendants to possess with the intent to distribute five (5) kilograms or more of a substance containing cocaine, in violation of Title 21 U.S.C. § 846. Count three charged him with aiding and abetting his co-defendants in possessing with the intent to distribute, five (5) kilograms of a substance containing cocaine, while on the high seas and on board a vessel subject to the jurisdiction of the United States, in violation of Title 46 U.S.C. §§ 70503(a)(1) and 70506(a).

Lastly, Count four charged him with conspiring with his co-defendants to commit the aforementioned crime, in violation of Title 46 U.S.C. §§ 70503(a)(1), 70504(b)(1), 70506(a) & (b).

On March 22, 2015, the Petitioner entered a strait plea of guilty to all four counts of the indictment. On June 23, 2015, his two co-defendants also pled guilty, but only to Count four, pursuant to plea agreements. On July 1, 2015, the United States Probation Office filed a Pre-Sentence Investigation Report ("PSR"). The PSR grouped Counts one through four together for guideline calculation purposes, pursuant to the provisions of U.S.S.G. § 3D1.2, and contained the following Offense Level Computation.

> (1) Base Offense Level ("BOL") of 36 pursuant to U.S.S.G. § [2D1.1 (a)(5)(c)(2)] since Lab Reports reflected that the net weight of the cocaine seized was 429.9 kg;
>
> (2) A 2-Level enhancement, pursuant to U.S.S.G. § 2D1.1(b)(3), because the Petitioner acted as a vessel's captain;
>
> (3) A 3-Level reduction for clearly and timely accepting responsibility for his misconduct, pursuant to U.S.S.G. § 3E1.1(a) & (b); and,
>
> (4) A Total Offense Level ("TOL") of 35.

Regarding the Petitioner's criminal history, the PSR indicated that he had been previously convicted and sentence to 6 months of imprisonment, followed by a 3 years of supervised release, for bringing in aliens to the United States and harboring them, in violation of Title 8 U.S.C. § 1324(a)(A)(i). That conduct had taken place in the year of 2012. Further, when he committed the instant offenses, he was still serving that term of supervised release.

Those circumstances caused the PSR to awarded 2 points of the prior criminal conviction, pursuant to U.S.S.G. § 4A1.1(b), and 2 pints for having engaged in new criminal conduct while under a criminal justice sentence, pursuant to U.S.S.G. § 4A1.1(d). Those 4 points yielded a Criminal History Category of III. Based on a TOL of 35 and a CHC of III, the PSR determined that the Petitioner guideline of imprisonment ranged was between 210 to 262 months.

On August 13, 2015, the Petitioner filed a Sentencing Memorandum in which he urged the district court to grant a downward adjustment of his base offense level for what he deemed was his mitigating role in the offenses.
On August 19, 2015, the United States filed a Response to the Sentencing Memorandum, supported by evidence. That filing agreed with the PSR's 2 level enhancement based on the Petitioner's having been the captain of the vessel and objected to the Petitioner's request in relation to his mitigating role.

On September 10, 2015, Petitioner's sentencing hearing was held, during his hearing his counsel raised two objections to the PSR, which were related to (i) the PSR's 2 level enhancement based on the Petitioner having been the captain of the vessel, pursuant to U.S.S.G. § 2D1.1(b)(3), and (ii) his request for a ruling that he had a mitigating role in the offenses, pursuant to U.S.S.G. §§ 3B1.2 and 2D1.1(a)(5), and he requested a ten year (120-months) term of imprisonment.

REASONS FOR GRANTING THE PETITION

This petition should be granted in order to prevent a miscarriage of justice in this case.

ARGUMENT

I. Whether the Petitioner's Mitigating Role Should of Been Adjusted In Accordance With The United States Sentencing Guidelines § 3B1.2

The U.S.S.G. mitigating role adjustment section provides that a base offense level should be decreased by four levels if a defendant is a "minimal participant" in a criminal activity, or it should be decreased by two levels if a defendant is a "minor participant." Id. § 3B1.2(b).
The notes to the U.S.S.G. indicate that a minimal participant adjustment is intended to "cover defendants who are plainly among the lease culpable of those involved in the conduct of a group." Id. § 3B1.2 cmt. n.4.

A "defendant's lack of knowledge or understanding of the scope and structure of the enterprise and of the activities of others in indicative of a role as a minimum participant." Id.
A minor participant is defined as someone "who is less culpable than most other participants... but whose role could not be described as minimal." Id. § 3B1.2 cmt. n.5.

To qualify as a minor participant, "a defendant must show that he is both less culpable than most of his cohorts in the particular criminal endeavor and less culpable than the mine-run of those who have committed similar crimes."
United States v. Melendez-Rivera, 782 F.3d 26, 28 (1st Cir. 2015).

Further, a downward adjustment for a minimal participant is not supposed to be frequently impose. See Cornejo v. United States, No. 93-1830, 1994 U.S. App. LEXIS 7833, 1994 WL 140412, at *1 (1st Cir. Apr. 19, 1994)(Explaining that a minimal participant adjustment would be appropriate "for someone who played no other role in a very large drug smuggling operation than to offload part of a single marihuana shipment"); United States v. Cabrera, 567 F. Supp.2d 271, 278 (D. Mass. 2008)(likening a minimal role participant to that of a delivery man in a drug conspiracy).

Under the guidelines, the quantity of drugs is extraordinarily significant. It is, in effect, a proxy for culpability, and in many cases, an inadequate one at that. See United States v. Lacy, 99 F. Supp.2d 108, 116 (D. Mass. 2000).
However, in some situations, it provides an unsatisfying and empty stand-in for the concerns underlying the current sentencing regime. Drug quantity measures only what the police happened to have seen at the time of their surveillance -- at snapshot, though not necessarily an accurate one, of what is going on in the defendant's life. See Garrison, 2008 U.S. Dist. LEXIS 40543, 2008 WL 2121784, at *3-4; Ennis, 468 F. Supp.2d at 230; United States v. Maisonet, 493 F. Supp.2d 255, 258 (D.P.R. 2007).
And while drug quantity is overvalued under the Guidelines, the Petitioner's minor role in the criminal activity is undervalued. In the case of Garrison, 2008 U.S. Dist. LEXIS 40543, 2008 WL 2121784, the court in that case stated the following:

> In many drug conspiracies, especially those involving gangs, there is a strict hierarchy -- the source, the packager, the wholesale distributor, the retail distributer. See e.g. Steven D. Levitt & Sudhir Alladi Venkatesh, An Economic Analysis of a Drug-Selling Gang's Finances, 115 Q.J. Econ. 755 (2000)(Describing allocation of organizational reponsibilities, risk and financial reward, and noting that street-level dealers face greater risk for diminished gain.) Garrison, 2008 U.S. Dist. LEXIS 40543, 2008 WL 2121784, at *4. Where the defendant falls in this type of hierarchy is an important factor in this Court's assessment of the defendant's ultimate culpability.

The Federal Sentencing Guidelines, focus largely on the quantity of drugs the defendant had, minimizing the significance of other relevant -- and important -- questions, like the Petitioner's real role in the offense.

The result would be a classic case of false uniformity. False uniformity occurs when the court treat equally individuals who are not remotely equal because the court permit a single consideration, like drug quantity, to mask other important factors. United States v. Cabrera, 567 F. Supp.2d 271.

In the case of Diaz-Rios, the court applied a totality of the circumstances approach to assess whether the defendant's conduct was less culpable than the average wrongdoer in the conspiracy and ultimately vacated the defendant's sentence because the district court's judge's ruling was ambiguous.

See Diaz-Rios, 706 F.3d at 798-99. The Seventh Circuit thus applied the same totality of the circumstances approach applied in the First Circuit. See Quinones-Medina, 553 F.3d at 22 ("Determining the nature of a defendant's role is a fact -specified enterprise"); United States v. Perez, 210 F. App'x 20, 22 (1st Cir. 2006). In the case of Leiskunas, the court held that even where a defendant repeats acts vital to the success of the conspiracy, he may still be eligible for a § 3B1.2 reduction. See Leiskunas, 656 F.3d 732, 739 (7th Cir. 2011).

The First Circuit case law supports this proposition as it considers the totality of the circumstances when deciding how to characterize the defendant's role in the crime. See Quinones-Medina, 553 F.3d at 22. In another case, States v. Miranda-Santiago, 96 F.3d 517 (1st Cir. 1996) the court vacated the defendant's sentence and the district court's denial of a § 3B1.2(b) adjustment because the district court "simply adopted the PSR, in toto."

In this present case at bar, it can be clearly stated that the Plaintiff meets the criteria set forth in the U.S.S.G. mitigating role section. The Plaintiff (Mr. Mercedes-Rijo) was not a member of any gang, organization, or enterprise of any drug trafficking group, in which a strict hierarchy existed. Mr. Mercedes-Rijo was nothing more than a mule that was only transporting a drug shipment from point A to point B, a mule, which it is Mr. Mercedes-Rijo real role in this offense.

The Petitioner asserts that the drug quantity in this case was the focus point used by the government for not giving Mr. Mercedes-Rijo the mitigating role adjustment. As stated previously above, the U.S.S.G. mitigating role adjustment section provides that a base offense level should be decreased by four levels if a defendant is a "minimal participant" in a criminal activity, or it should be decreased by two levels if a defendant is a "minor participant." U.S.S.G. § 3B1.2(a)-(b).

Therefore, based on this argument presented herein, the Petitioner asserts that he is entitled to receive a mitigating role adjustment since he was a "minor participant" in this present case, and he should receive a decrease by two levels pursuant to the U.S.S.G. § 3B1.2.
This is something that the lower court failed to see and is the reason why Petitioner is seeking a review by this Court.

II. Whether Congress Lacks The Power Under the Define And Punish Clause To Proscribe Drug Trafficking On The High Seas Without Requiring Some Nexus Between The Proscribed Conduct And The United States.

The Define and Punish Clause comprises three separate grants of power over three separate classes of crimes: piracies, felonies on the high seas, and offenses universally congizable under international law.

See United States v. Cardales-Luna, 632 F.3d 731, 741, 745 (1st Cir. 2011); United States v. Shi, 525 F.3d 709, 721 (9th Cir. 2008)(citing United States v. Smith, 18 U.S. (5Wheat) 153, 158-59, 5 L.Ed. 57 (1820)). Only the first and third of thesegrants, the Plaintiff says, imbue Congress with authority to exercise "universal jurisdiction"-that is, extraterritorial jurisdiction over criminal conduct with no connection to the United States.

The "Felonies committed on the high seas", power is narrower, limited to crimes with a United States nexus. The Petitioner in this case asserts this, because drug trafficking is neither piracy, defined strictly as "robbery upon the sea," Smith, 18 U.S. at 162, nor a crime that customary international law recognizes as universally cognizable, it can be punished extraterritorially only as a "Felony" and, therefore, only if the government is required to prove a nexus to the United States.
The MDLEA's application to a foreign national aboard a foreign registered vessel was an "ultra vires extension of [Congress's] Article I legislative powers to foreign territory, as applied to persons and/or activities that have no nexus with the United Sates." Cardales-Luna, 632 F.3d at 739. Also see Id. at 739, 741-50 (citing Eugene Kontorovich, Beyond the Article I Horizon: Congress's Enumerated Powers and Universal Jurisdiction Over Drug Crimes, 93 Minn. L. Rev. 1119 (2009).

United States v. Carvajal, 924 F. Supp.2d 219, 253, 260 (D.D.C. 2013). The Carvajal court recognized Professor Kontorovich's analysis, and its adoption by Judge Torruella.

To that end, in step with Judge Torruella and Professor Kontorovich, Mr. Mercedes-Rijo would like to point to the cases of United States v. Palmer, 16 U.S. (3Wheat) 610, 4 L.Ed. 471 (1818), and Smith for the proposition that the Define and Punish Clause does not permit Congress to exercise universal jurisdiction over non-piracy felonies. See i.g. Cardales-Luna, 632 F.3d at 744-45 ("Furlong prohibits Congress from attaching the jurisdictional consequences of [universal jurisdiction] to run of the mill 'felonies.") Kontorovich, supra, at 190 (quoting Furlong 18 U.S. at 197)(interpreting Furlong to hold that Congress may not constitutionally punish mere felonies, as opposed to piracies, "committed by a foreigner upon a foreigner in a foreign ship.")

The case of Palmer addressed whether the United States had jurisdiction under the Act of 1790, which prohibited robbery, murder, and certain other offenses on the high seas, "to try, and punish, foreign citizens who had, on the high seas, boarded and robbed a foreign owned vessel manned by a Spanish crew." Suerte, 291 F.3d at 373; Palmer, 16 U.S. at 626.

The court, referring to the Define and Punish Clause, stated that Congress was doubtless empowered "to enact laws punishing pirates, although they may be foreigners, and may have committed no particular offese against the United States." Palmer, 16 U.S. at 630.

However, without requiring a nexus between the conduct and the United States, it is clear that Congress exceeded its authority under the the Piracies and Felonies Cluase in enacting the Maritime Drug Law Enforcement Act ("MDLEA").

Mr. Mercedes-Rijo asserts that the Smith case supports Mr. Mercedes-Rijo's claim that Congress's Article I authority over "Piracies" does not extend to drug trafficking offenses. In this case, Mr. Mercedes-Rijo was charged with violation of Title 46 U.S.C. §§§ 70503(a)(1), 70504(b)(1), and 70506(a) & (b). Section 70503(a)(1) states in part that:

> (a) **Prohibitions.** "While on board a covered vessel, and individual may not knowingly or intentionally -- (1) manufacture or distribute, or possess with intent to manufacture or distribute, a controlled substance;..."

Section 70503(c)(1)(2) states in part that:

> (c) **Nonapplication.** (1) In general. Subject to paragraph (2), subsection (a) does not apply to -- (2) Entered in manifest. Paragraph (1) applies only if the controlled substance is part of the cargo entered in the vessel's manifest and is intended to be imported lawfully into the country of destination for scientific, medical, or other lawful purposes."

As stated herein the section listed above (section 70503(c)(1)(2)), the section that was used by the government to charge Mr. Mercedes-Rijo, which section was 70503(a)(1), this section is only applicable if the controlled substance is part of the cargo entered in the vessel's manifest and is intended to be imported lawfully into the country of destination for scientific, medical, or other lawful purposes.

It is clear that in Mr. Mercedes-Rijo's case the requirement listed in the section 70503(c)(1)(2) does not exist. The text listed in this section supports Mr. Mercedes-Rijo argument, which indicates that Mr. Mercedes-Rijo should of never been charged with violating § 70503(a)(1) due to what it is stated in § 70503(c)(1)(2).

Section 70503(d) (Burden of Proof), indicates that the "United States Government" is not required to negative a defense provided by subsection 9c) in a complaint, information, indictment, or other pleading or in a trial or other proceeding. The burden of going forward with the evidence supporting the defense is on the person claiming its benefit.

It is clear based on the case law presented herein, that the charge under Title 46 U.S.C. § 70503(a)(1) is not applicable against Mr. Mercedes-Rijo, and as such this charge should be dismissed.

In Mr. Mercedes-Rijo's case there are a number of discrepancies, for example. Mr. Mercedes-Rijo was arrested on March 24, 2015, according the the court's record (See Docket Entry No. 3, Appendix D). However, according to the court record and some other documents the arrest date is wrong.

1). Mr. Mercedes-Rijo was arrested on March 10, 2015 at around 8:45 p.m. with the other co-defendants in his case. He was arrested by the Caribbean Strike Force (CCSF) once the vessel that he was navigating,(a blue & white 21 ft. vessel with Yamaha outboard 90 horse motor). A vessel with P.R. initials on it.

Was intercepted by the CCSF and the occupants of the vessel arrested by the same CCSF, the details of how the arrest happened are listed in the DEA-6 Report at page No. 1 (See Appendix E).

2). Mr. Mercedes-Rijo was arrested on the date mentioned herein, and spent over 72 hours in custody before any charges were filed against him.

3). The court record attached herein (Appendix D) shows that a complaint was filed against him on March 23, 2015 as well as an arrest warrant issued against him on the same date. The same record also shows that Mr. Mercedes-Rijo was arrested on March 24, 2015.

4). The DEA-6 Report shows that the CCSF intercepted the vessel on March 18, 2015, when in fact the incident happened on March 10, 2015, not on March 18, 2015.

5). During this period the CCSF Escanaba No.108 out of Florida base, two days after Mr. Mercedes-Rijo's arrest. This same CCSF vessel arrested 5 individuals, 2 dominican, 2 venesuelans, and 1 columbian, which individuals were arrested 50 miles east of P.R., the CCSF fired some shots against the vessel of these individuals. The vessel over turned once fired against it, the individuals were arrested without any narcotics.

The next day after these individuals were arrested, the CCSF found a bale floating which bale was compared with the bales of drugs found in Mr. Mercedes-Rijo's vessel, which bale did not match.

6). The CCSF No. 108 transferred Mr. Mercedes-Rijo and the other individuals to the USCGC Tohoma No. 109, along with all the confiscated drugs. Then the five individuals were transferred to USCG No. 107 along with 8 bales of drugs, 7 bales from Mr. Mercedes -Rijo's confiscated drugs, and the one that they found floating, then this vessel took off to Miami.

During the sentencing phase of Mr. Mercedes-Rijo's case, the Judge Fuste stated that he was going to make an example of Mr. Mercedes-Rijo to send a message to the other Dominican people. In addition to this, Mr. Mercedes-Rijo's attorney stated to him during a phone conversation while he was in prison, that the drug found was flour not drugs. This is something that Mr. Mercedes -Rijo already argued in the lower court, but nothing came out of it. This conversation that took place was recorded in the prison phone conversation log, which if needed it can be subpoenaed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

antoniamercedeRijo
Antonio Mercedes-Rijo

Dated this 25 day of September, 2018