

No. \_\_\_\_\_

In The

**SUPREME COURT OF THE UNITED STATES**

ALEX RAMOS,  
*Petitioners,*

vs.

UNITED STATES OF AMERICA,  
*Respondent,*

\_\_\_\_\_  
On Petition for Certiorari to the United States Court  
of Appeals for the Ninth Circuit

\_\_\_\_\_  
**PETITION FOR A WRIT OF CERTIORARI**

\_\_\_\_\_  
In Propria Persona

**QUESTIONS PRESENTED FOR REVIEW**

- 1) Did the lower Court err, and concomitantly violate the United States Constitution, Amendments V and VI, where it determined that Petitioner's prior convictions for violating 18 U.S.C. § 924 c were in furtherance of a drug trafficking offense, where the Judgment and Commitment listed the offenses for carry or use of a Firearm During a Crime of Violence, where the sentence transcripts are silent as to the nature of the conviction, where the Seventh Circuit granted Petitioner to proceed by way of Second or Successive 28 U.S.C. § 2255 under this exact claim, and where Petitioner had, on direct appeal, questioned the validity of such sentence enhancement for committing a 'crime of violence'?

**List of Parties**

*\*All Parties Listed in Caption*

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## **OPINIONS BELOW**

Case from Federal Courts

Court of Appeals is Appendix A, unpublished.

District Court is Appendix B, and reported at **United States V. Alex Ramos, 2017 U.S. Dist. Lexis 154715 (NDILL2017)**

## **JURISDICTION**

Federal, the date on which is June 22, 2018 and no petition for rehearing filed.

## **CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE**

### **Fifth Amendment To The United States Constitution**

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

### **Sixth Amendment To The United States Constitution**

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

### **Title 18 United States Code Section 924 (c)(1)(C)**

In the case of a second or subsequent conviction under this subsection, the person shall –

- (i) be sentenced to a term of imprisonment of not less than 25 years; and
- (ii) if the firearm involved is a machinegun or a destructive device, or is equipped with

**Title 18 United States Code Section 924 (c)(3)(B)**

For purposes of this subsection the term “crime of violence” means an offense that is a felony and –

(B) that by its nature, involves a substantial risk that physical force may be used in the course of committing the offense.

## STATEMENT OF THE CASE

Petitioner was convicted, following trial to a jury and Judge, of Racketeering, 18 U.S.C. § 1961 and § 1962 (Count 1 and 2), Extortion, 18 U.S.C. § 1951 (Counts 18, 30), Distribution of Cocaine as an aider and abettor, 18 U.S.C. § 2, 21 U.S.C. § 841 (a)(1) and 21 U.S.C. § 846 (Counts 19, 31, 36), Possession of Cocaine, 21 U.S.C. 841 (a)(1) (count 38), and two-(2) counts of Carry or Use of a Firearm in a crime of violence, 18 U.S.C. § 924 (c)(1)(C) (Counts 20, 32)

Petitioner had proceeded to trial, along with multiple codefendants, upon a 39-count indictment, charging former members of the Chicago Police Department with corruption. Petitioner was sentenced a term of 592 months imprisonment, with two (2) consecutive terms for Carrying or Use of a Firearm During a Crime of Violence, 18 U.S.C. § 924 c, as recorded on the Judgment and commitment order.

At sentencing, the District Court, in imposing sentence, simply adverted to the indictment and entered a written record of sentence, whereby Petitioner received a term of 40 years imprisonment upon the 924 c multiple counts.

Petitioner took a direct appeal of the conviction and sentence, together with his codefendants, wherein all defendants argued the viability of sentences under 924 for carry or use of a firearm in a violent crime, arguing that the predicate convictions-Hobbs Act crimes involving Robbery and Extortion, were not "violent". The Seventh Circuit the argument, as foreclosed by Circuit Precedent, and found other issues unavailing. **United States V. Moore, et al., 363 F. 3d 631 (7th Cir. 2004)**, rehearing denied, **United States V. Moore, et al., 2004 U.S. App. Lexis 19843 (7th Cir 2004)**. A petition to this Court was denied. **Ramos V. United States 543 U.S. 1094 (2005)**



Petitioner's sentence was later reduced, by effect of United States Sentencing Guideline Amendment 782, to 545 months, which served to lower Petitioner's controlled substance guideline range.

Petitioner thereafter filed for relief under 28 U.S.C. § 2225, which was denied, and an Application for Certificate of Appealability was not granted. **United States V. Ramos, 2006 U.S. Dist Lexis 67420 (ND ILL 2006)**

Thereafter, Petitioner sought permission from the Seventh Circuit Court of Appeals to file a Second or Successive 28 U.S.C. § 2255, in light of this Court's decision in **Johnson V. United States, 135 S. Ct. 2551 (2015)**. In that application, Petitioner argued that his convictions and sentences under 18 U.S.C. § 924 c were no longer valid, as the convictions and sentence were for carry or use of a firearm during a crime of violence, and therefore the predicate convictions for "in relation to" purposes were no longer valid under 18 U.S.C. § 924 (c)(3)(B). **United States V. Vivas-Ceja, 808 F. 3d 719 (7th Cir. 2015)**

On June 6, 2015, the Seventh Circuit granted Petitioner's application, and ordered his proposed 28 U.S.C. § 2255 filed with the District Court.

In the underlying 2255, Petitioner argued that, as his Judgment and Commitment clearly spelled out his multiple convictions and sentences for violating 18 U.S.C. § C were for "Carry or Use of a Firearm During a Crime of Violence", and as the transcripts from sentencing were devoid of any statement or identification to the contrary, Petitioner's multiple 924 C sentences had to be vacated. Especially as crimes involving interference with or obstructing interstate

commerce, 18 U.S.C. § 1951 are not per se "force clause" violent offenses. **Ramos, id @2017 U.S. Dist. Lexis 154715, N. 3.**

After briefing, the District Court overruled the 2255 argument, and determined, by extra-record information, that the Judgment and Commitment, juxtaposed with the silent record from sentencing, was not enough to overcome the Government's argument that the 924 c convictions were in relation to a drug crime, not a crime of violence. *Ibid.*

The District Court denied the 2255, and Petitioner made a Timely Application for a Certificate of Appealability, which in turn was denied on June 22, 2018. This timely petition follows.

### **REASONS FOR GRANTING THE WRIT**

It is respectfully submitted that this Court should grant Certiorari on the very important question whether a District Court may deny a 28 U.S.C. § 2255 Motion, where the Court of Appeals grants leave to file a second and successive 28 U.S.C. § 2255, based on a challenge to a conviction and sentence for violating 18 U.S.C. § 924 c, for carrying and using a firearm during a crime of violence; based upon a Judgment and Conviction which indicated the imposition of multiple consecutive terms for Carry or Use of a Firearm During a Crime of Violence; where on direct appeal from said conviction, Petitioner and his codefendants challenged the designation of crimes as 'violent' for purposes of 18 U.S.C. § 924 c; and where the oral pronouncement of sentence does not conflict therewith.

Moreover, this Court should extend the holding in **Mathis V. United States, 136 S. Ct. 2243 (2016)**. In *Mathis*, the Court made a specific determination as to how to determine what qualified as an ACCA offense. Implicit in the *Mathis* decision is the finding that, at a certain point, the delving into extra-record documents and facts is foreclosed where there exists no facial match to a certain Federal Statute.

Herein, Petitioner shows the Court that, based upon the Judgment and Conviction in his case, juxtaposed with the Court of Appeals grant of permission to file a second 28 U.S.C. § 2255, and the fact that there is no evident ambiguity in those records, the District Court's investigation of other, extra-record information to counter Petitioner's sentence argument conflicted with this Court's instructions in Mathis.

Petitioner was convicted after trial to a jury and Judge, of multiple charges, some of which were drug related, and some of which were considered "violent" in nature". **United States V. Moore, 363 F. 3d 631 (7th Cir. 2004)**

Petitioner was specifically found guilty of all charged offenses which applied to him, out of a 39 count multi-codefendant trial. *Id.*

At sentencing, the Court imposed different concurrent sentences as to all counts, except for consecutive terms of imprisonment for multiple counts of the Carry or Use of a Firearm in relation to a Crime of Violence. 18 U.S.C. § 924 c. Those consecutive terms were clearly recorded on the Judgment and Commitment, as violence-and not drug related.

The Jury instructions provided for a conviction under 18 U.S.C. § c, if the jury found that Petitioner has carried a firearm during or in relation to a drug trafficking offense of crime of violence. **United State V. Ramos, 2017 U.S. Dist. Lexis 154715 (ND ILL 2017)** Upon pronouncement of sentence, the Court imposed the sentencing package upon Petitioner, "consistent with the jury verdicts." *Ibid.* In other words, the Court did not differentiate between the 'drug trafficking' scienter or "crime of violence" scienter at oral pronouncement. Instead, the Court imposed the consecutive 924 c terms, for carry or use of a firearm during a crime of violence, and recorded, signed, and executed judgment and sentence upon petitioner for same.

This Court rendered its decision in **Johnson V. United States 135 S. Ct. 2551 (2015)**, effectively striking the "otherwise" clause in 18 U.S.C. § 924 (e)(2)(B)(ii). Thereafter, the Seventh Circuit Court of Appeals extended the ruling to like statutes, with in para materia language. **United States V. Vivas-Ceja, 808 F. 3d 719 (7th Cir. 2015)**

convictions were in relation to crimes of violence, i.e. Extortion and Racketeering. And this sentence was properly memorialized in the J&C.

Some 20 years later, the District Court determined there was a 'discrepancy', despite the lack of any conflict or controversy, and looked to extra-record and extrinsic matters to find the matter was a clerical error. **Ramos, supra, 2017 U.S. Dist Lexis @ 154715, N 3.**

This action by the District Court, and affirmance by the Seventh Circuit, conflict with the decision in Mathis. There is and was no reason for the District Court to look beyond what was already before it. The J&C and the Sentencing Record evidence no conflict, and the Court's delving further after this threshold issue was decided, violated Petitioner's Due Process Rights.

### CONCLUSION

Petitioner Alex Ramos submits that this Court should grant Certiorari on the questioned presented, because the lower Court's rulings conflict with this Court's jurisprudence and holdings.

Respectfully Submitted,



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# Exhibit A