

NO. \_\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM 2018**

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VICTOR M. MANGUAL-ROSADO, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIRST CIRCUIT**

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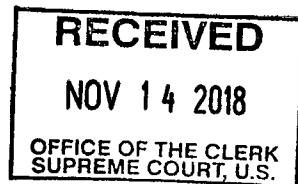
**PETITION FOR WRIT OF CERTIORARI**

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Wednesday, November 7, 2018

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## **QUESTIONS PRESENTED FOR REVIEW**

- I. WHETHER THE DISTRICT COURT ERRED PROCEDURALLY AND SUBSTANTIVELY BY IMPOSING AN EXCESSIVE SENTENCE IN TERMS OF THE DEFENDANT-APPELLANT'S ROLE BEHAVIOR IN THE COMMISSION OF THE CRIME CHARGED.**
  
- II. THE EXISTENCE OF A CIRCUIT SPLIT REGARDING THE REQUIREMENT BY A DISTRICT COURT, AFTER IMPOSING A SENTENCE, TO GIVE THE PARTIES AN OPPORTUNITY TO OBJECT TO THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

## **PARTIES TO THE PROCEEDINGS**

The parties to the proceedings below are contained in the caption of the case.

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**PETITION FOR WRIT OF CERTIORARI**

Petitioner, VICTOR M. MANGUAL-ROSADO, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

**OPINION BELOW**

A copy of the judgment and published opinion of the United States Court of Appeals for the First Circuit in this case is included in appendix A and B, respectively.

**JURISDICTION**

The United States Court of Appeals for the First Circuit entered its judgment on October 26, 2018. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254(1), which grants the United States Supreme Court jurisdiction to review by writ of certiorari all final judgments of the courts of appeals.

**STATUTORY PROVISIONS INVOLVED**

The Petitioner, Victor Manuel Mangual-Rosado, was the subject of a Three Count Indictment rendered by a District of Puerto Rico Grand Jury on November 2, 2016. The defendant was charged in Count Three, that is, a violation of Title 18 U.S.C. §§ 922(g)(3) and 924(a)(2).

**STATEMENT**

Count Three, the count of conviction charges that, on or about October 27, 2016, in the United States, in the District of Puerto Rico, the defendant, then being an unlawful user of a controlled substance as defined in 21 U.S.C. §802, did knowingly and unlawfully possess in and affecting interstate or foreign commerce, a firearm and ammunition, as those terms are defined in Title 18, United States Code,§ 921(a)(3) and (17)(A) respectively, that is: a Bushmaster Rifle (model Carbon Caliber 5.56, Serial Number D04556). All in violation of 18 U.S.C. §§ 922(g)(3) and 924(a)(2).

On January 10, 2017, the defendant pled guilty to Count Three of the Indictment, Pursuant to the terms of the Plea and Forfeiture Agreement accorded under the provisions of Rule 11(c)(1)(B) of Federal Rules of Criminal Procedures.

The defendant is being held accountable for possession of a firearm being a prohibited person (drug user) at the time he committed the instant offense establishing a base offense level of fourteen (14), pursuant to USSG, Section 2K2.1(a)(6).

Pursuant to a written plea agreement, the government will recommend a 2 level reduction for acceptance of responsibility. USSG §3E1.1. Pursuant to the plea agreement, the Defendant-Appellant could request a sentence of imprisonment at the bottom of the applicable Guidelines range.

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

This case involves the Federal Sentencing Guidelines and the 18 U.S.C. § 3553(a) sentencing factors. The District Court reversibly erred by failing to elicit objections to the sentence after it was announced. In a published eight (8) page opinion the Court of Appeals for the First Circuit affirmed the district Court judgment and rejected the issues raised on appeal that the judgment of the sentencing court was unreasonable because the district court did not adequately explain the upward variance and the sentencing factors were not adequately

considered. The Court of Appeals also rejected the argument that the sentencing court failed to elicit objections to the sentence.

The Court of Appeals for the First Circuit stated in the opinion the following: “Mangual's final procedural challenge is that the District Court reversibly erred by failing to elicit objections to the sentence after it was announced. Mangual relies for this argument on an Eleventh Circuit case that requires a district court, after imposing a sentence, to give the parties an opportunity to object to the court's findings of fact and conclusions of law. *United States v. Jones*, 899 F.2d 1097, 1102 (11th Cir. 1990). However, we have not imposed the requirement set forth in *Jones*. See *United States v. Cortés-Medina*, 819 F.3d 566, 574 n.10 (1st Cir. 2016) (Lipez, J., dissenting) (stating that the First Circuit does not, but should, have such a rule); see also *United States v. Gallant*, 306 F.3d 1181, 1189 (1st Cir. 2002) (noting that the Federal Rules of Criminal Procedure are silent regarding post-sentencing objections).”

The court of appeals has decided an important question of federal law that conflicts with a relevant decision of the Eleventh Circuit, as stated above, thus creating a circuit split on the issue. Finally, this Court should grant certiorari in the interests of justice.

## CONCLUSION

For all of the foregoing reasons the petitioner, Victor M. Mangual-Rosado, respectfully requests that this Court grant the petition for writ of certiorari, and accept this case for review. In the alternative, Mr. Mangual-Rosado requests that his petition be granted, his sentence vacated and his case remanded.

Respectfully submitted, in San Juan, Puerto Rico, on Wednesday, November 7, 2018.



s/Luis A. Guzman Dupont

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