

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2018

CASE NO: 18-7204

JULIO ROLON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITIONER'S RESPONSE TO THE
MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION TO HIS PETITION FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

Whether in its supervisory jurisdiction over the Courts of the United States, and based upon this Court's clear precedent and the facts of record, this Court should grant this petition, where Petitioner in his early 40's was ***sentenced to mandatory life in prison for a reverse sting Hobbs Act robbery case that had no actual drugs***, and there are multiple conflicts with this Court's rulings because:

First, whether this is the perfect case to entertain the continuing validity *vel non*, of *Almendarez Torres v. United States*, 523 U.S. 244 (1998), in light of the reasoning of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Alleyne United States*, 133 S.Ct. 2151 (2013), *Johnson II v. United States, supra*, and *Sessions v. Dimaya, supra*?

Second, whether Rolon presented meritorious issues under *Johnson II*, and meritorious allegations of ineffective assistance of counsel in his original 2255 motion; further the district court ***summarily denied*** all of the meritorious claims raised, failing to address even one of them, all of which violates Rolon's Constitutional guarantees of fairness and due process as mandated by *Buck v. Davis*?

Third, whether the Eleventh Circuit affirmed the summary denial of the 2255 motion on all issues raised, including a request for relief under Fed.R.Civ.P.60(b), in direct conflict in direct conflict with *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018), wherein this Court held that the residual clause of 18 U.S.C. 16(b) was unconstitutionally vague; *Johnson II* (*Johnson v. United States*, 135 S.Ct. 1551 (2015)), renders the residual clause of 924(c) void for vagueness, all in direct conflict with *Buck v. Davis*?

Fourth whether conspiracy to commit a Hobbs Act robbery, attempt to commit Hobbs Act robbery, and conspiracy to possess a firearm, do not qualify as crimes of violence, in light of *Johnson II*, *Sessions v. Dimaya*, and *Mathis v. United States*, 136 S.Ct. 2243, 2251 (2016)?

TABLE OF CONTENTS AND CITATIONS

QUESTIONS PRESENTED	i
RESPONSE TO THE UNITED STATES' MEMORANDUM IN OPPOSITION	3
CONCLUSION	7

Table of Citations

<i>Alleyne v. United States</i> , 133 S.Ct. 2151 (2013)	3, 6, 7
<i>Almendarez-Torres v. United States</i> , 523 U.S. 244 (1998)	2, 3, 5, 7
<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000)	2, 3, 6, 7
<i>Buck v. Davis</i> , 137 S.Ct. 759 (2017)	6
<i>Johnson v. United States</i> , 135 S.Ct. 2252 (2015)	2, 3, 6, 7
<i>Mathis v. United States</i> , 136 S.Ct. 2245 (2016)	2
<i>Sessions v. Dimaya</i> , 138 S.Ct. 1204 (2018)	2, 3, 6, 7
<i>United States v. Maurice Lamont Davis</i> , No. 18-431 Oral Argument Set for April 17, 2019	2, 3, 6, 7
<i>United States v. Joseph Decore Simms</i> (4 th Cir. January 24, 2019) (<i>en banc</i>)	7

Table of Citations, Continued

The United States Code

Title 18, Section 922(g)(1)	3
Title 18, Section 924(c)	3
Title 18, Section 924(c)(1)(a)	3, 4
Title 18, Section 924(c)(3)(B)	2
Title 18, Section 924(o)	7
Title 18, Section 1951(a)	3
Title 18, Section 3553(c)	3, 8
Title 18, Section 3559(c)	5
Title 21, Section 846	3
Title 21, Section 851	4, 5, 8

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RESPONSE TO THE UNITED STATES'
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To place this case in context in this new world of desperately needed sentencing reform, the draconian sentence to life in prison and the Eleventh Circuit Court of Appeals' affirmances and denials of relief, and this Court's prior denials of relief were and still remain unjust and wrong on many levels and for many reasons. Sentencing this artistically-talented man to life in prison is inappropriate, illegal, un-American, and downright tragic.

The offenses of conviction in the underlying case were nonexistent fantasy crimes dreamed up in the creative imagination of a federal agent. The agent's fantasy scheme was perpetrated upon a vulnerable target with a history of mental health issues. Said agent's job was, or should have been, to protect the public from danger presented by real crimes, which unfortuna-

tely, are abundant in South Florida. The agent's job was not to create more, new, imaginary crimes.

From its response, it appears that the United States is trying to evade the major issue raised in Julio Rolon's Petition by concentrating its argument on this Court's grant of Petition for Writ of Certiorari in *United States v. Maurice Lamont Davis*, No. 18-431. Oral argument is scheduled in *Davis* for April 17, 2019. That case presents the question whether the definition of a "crime of violence" is 18 U.S.C. §924(c)(3)(B) is constitutionally vague.

In this Petition, Julio Rolon is challenging whether his convictions for conspiracy to commit Hobbs Act robbery, attempt to commit Hobbs Act robbery, and conspiracy to possess a firearm, qualify as crimes of violence in light of this Court's decisions in *Johnson v. United States (Samuel James Johnson)* 135 S.Ct. 2552 (2015) (*Johnson II*), *Sessions v. Dimaya*, 138 S.Ct. 1204 (2018), and *Mathis v. United States*, 136 S.Ct. 2243 (2016).

The questions in the present Petition are almost identical to the issue raised in *Maurice Lamont Davis*, but for our first question. Apparently the Government does not oppose the proposition that *Almendarez-Torrez v.*

United States, 523 U.S. 244 (1998), should be overruled in light of the subsequent reasoning of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), *Alleyne v. United States*, 133 S.Ct. 2151 (2013), *Johnson II, supra*, and *Sessions v. Dimaya, supra*. Additionally, vacating Rolon’s Section 924(c) conviction would affect Petitioner’s overall sentence for which the Petition for Writ of Certiorari should be granted.

First, Petitioner was convicted of conspiracy to possess five or more kilograms of cocaine with intent to distribute in violation of 21 U.S.C. §846; attempted possession of five kilograms or more of cocaine with intent to distribute in violation of 21 U.S.C. §846; conspiracy to commit Hobbs Act robbery in violation of 18 U.S.C. §1951(a); conspiracy to possess a firearm in furtherance of a crime of violence and a drug trafficking crime in violation of 18 U.S.C. §§924(c)(1)(A) and 3553(c) ; and finally with possession of a firearm by a felon in violation of 18 U.S.C. §922(g)(1).

Following a jury trial the district court sentenced both Julio Rolon and the codefendant, to *life imprisonment*, consisting of concurrent life sentences on the two drug trafficking counts due to the “three strikes law,” and the § 922(g)(1) count; concurrent sentences of 240 months imprison-

ment on the conspiracy and attempted Hobbs Act robbery and the firearm conspiracy counts, and a consecutive life sentence due to the “three strikes law,” Section 851 on the §924(c) count.

All of these charges arose from a ***reverse sting operation*** in the Southern District of Florida. The Court should take judicial notice that there were no drugs, there was no stash house, and the imaginary crimes and every minute detail and aspect of them all were created in the imagination of an undercover agent. Nonetheless, Julio Rolon was sentenced to prison for a ***mandatory life sentence*** under §§ 851 and 3559(c).

Additionally, it must be noted that the district court also determined that Rolon was an Armed Career Offender, however no prior convictions were alleged in the indictment, nor was a specific quantity of drugs other than “five or more kilograms of cocaine,” specified. There was one codefendant. Rolon was found, and also the codefendant was found, responsible for a ***large quantity of drugs not alleged in the indictment*** nor admitted by the Rolon; and yet during Rolon’s first and second direct appeals the Government continued to advocate for and supported an enhanced maximum sentence for prior convictions.

Twice, United States District Judge Alan S. Gold found that Rolon had three qualifying convictions and imposed the most drastic, draconian sentence possible; and twice, the sentence was affirmed because the Eleventh Circuit was bound by *Almendarez-Torres*, *supra*. See, *United States v. Rolon*, (11th Cir. 2013, March 4, 2013), No. 12-13283D; and *United States v. Rolon*, (11th Cir. 2011, October 28, 2011), No. 11-1039 & 11-19496D. It is notable that neither decision was published even though both appeals presented issues from two codefendants arising from the imposition of consecutive mandatory life terms for both of them.

In the second direct appeal in 2013, Rolon asked for a ruling to be stayed pending a decision in *Alleyne*. Nonetheless, before the *Alleyne* decision was issued, an affirmance was entered in *Rolon 2013*. The issues were preserved.

If not for the prior convictions that were used to enhance his sentencing, Julio Rolon would not have been subjected to multiple life sentences. Instead, he would have had a sentence within a guidelines range. For these reasons, Petitioner respectfully prays that this Honorable Court will grant Certiorari to consider whether to finally overrule *Almendarez-Tor-*

res in light of its numerous more recent, precedential decisions including but not limited to *Apprendi*, *Alleyne*, *Johnson II*, and *Dimaya*.

Second, Petitioner responds to the Government’s argument that Rolon does not dispute that his predicate drug offenses qualify as “drug trafficking crimes” under §Section 924(c)(2). It is logical that if conspiracy is just an agreement, and if attempt is just “preparation,” then Julio Rolon did not commit any substantive crimes(s). Taking this reasoning to a logical conclusion, common sense tells us that under the element-based categorical approach it does not qualify. In order to convict a defendant of this offense, the Government must prove only that the defendant agreed with another to commit actions that, if realized, would violate drug trafficking laws. Such an agreement does not invariably require the actual drug trafficking crime to be committed, nor does it invariably require the actual, attempted, or threatened use of physical force.

Third, the *Maurice Lamont Davis* case, *supra*, was never mentioned by Petitioner in his Petition for Writ of Certiorari. Rather the Petition relied on *Buck v. Davis*, 137 S.Ct. 759 (2017) as a result of the failure of both the Southern District of Florida and the United States Court of Appeals for the Eleventh Circuit to address the Rule 60(b) issue on the merits.

Fourth, and finally, should *Davis* be decided favorably to the defense, it will affect Rolon's overall sentences because his convictions for conspiracy to commit Hobbs Act robbery and attempted Hobbs Act robbery would be vacated, and perhaps the conviction for conspiracy to possess a firearm in violation of § 924(o) also would also be vacated. This would result in a significantly lower range under the United States Sentencing Guidelines.

For these reasons, this Court should overrule *Almendarez-Torres* based upon the more recent decisions in *Apprendi*, *Alleyne*, *Johnson II*, and *Dimaya*.

See also, United States .v Joseph Decore Simms, (4th Cir. January 24, 2019) (*en banc*) (holding Section 924(c)(3)(B) unconstitutional).

Conclusion

Based upon the foregoing arguments and authorities, together with those in our Petition, and based upon the facts of record, Petitioner Julio Rolon respectfully prays that this Honorable Court will grant the Petition for Writ of Certiorari and at long last, will overrule *Almendarez-Torres*. Once *Almendarez-Torres* is overturned, then the Court should find that the inhumane, enhanced mandatory sentences imposed on Julio Rolon under

§§ 851 and 3553(c) should be vacated, and that the cause should be remanded with instructions to resentence Julio Rolon consistent with this Court's cases, cited above, prohibiting cruel enhanced sentences, mandatory sentences, and consecutive life sentences on the record presented in the present case.

Very respectfully submitted,

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