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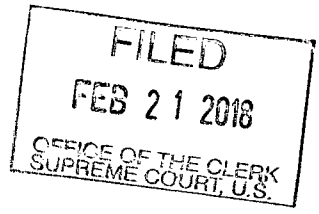

IN THE
SUPREME COURT OF THE UNITED STATES

MARIO GONZALEZ,
Petitioner,
- vs -
UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Mario Gonzalez
Reg. #61423-018
FCI Beaumont Low
P.O. Box 26020
Beaumont, TX 77720-6020

QUESTIONS PRESENTED FOR REVIEW

In the case, as in hundreds of cases over the years since the enactment of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which mandates exclusion and/or suppression of evidence obtained or derived from a wire intercept, where information expressly required by the statute was omitted from:

(i) the affidavit requesting a wire intercept order;

(ii) the Order authorizing the wire intercept; and other such requirements as required under 18 U.S.C. §§ 2511, 2512 through 2518 et seq., as well as requiring the disclosure of the application and order ten (10) days prior to the use in any proceeding.

Additionally, in the majority of drug cases disposed of by plea agreement, the concept of relevant conduct, in many cases, becomes the sentencing component that increases a defendant's exposure to, and sentence to imprisonment by a significant increase in offense level or increases that exceed statutory maximums, which under the current sentencing practice abrogates the Fifth And Sixth Amendment rights of Notice and Due Process, because of the Government's practice of depriving criminal defendants of their liberty interest based on Judge-found facts under a preponderance of the evidence standard that disregards proof of mens rea required by statute.

QUESTION I

WHETHER THE STATUTORY LANGUAGE OF 18 U.S.C. § 2510 et seq., MANDATES A BURDEN OF PROOF ON THE GOVERNMENT IN CASES INVOLVING WIRE INTERCEPTS, WHICH REQUIRES THE INTRODUCTION

OF EVIDENCE TO SUBSTANTIATE COMPLIANCE WITH THE PROVISIONS OF THE EXCLUSIONARY MANDATE OF 18 U.S.C. § 2510 et seq., SPECIFICALLY 18 U.S.C. § 2518(9), PRIOR TO THE INTRODUCTION OR DISCLOSURE OF EVIDENCE OBTAINED OR DERIVED FROM ANY SUCH WIRE INTERCEPTS?

QUESTION II

WITHOUT COMPLIANCE AND EVIDENCE TO SUBSTANTIATE THE GOVERNMENT'S COMPLIANCE WITH 18 U.S.C. § 2518(9), IS THE INTRODUCTION OR DISCLOSURE OF EVIDENCE FROM WIRE INTERCEPTS OR DERIVED FROM WIRE INTERCEPTS REVERSIBLE ERROR THAT IS PLAIN AND OBVIOUS, AFFECTS SUBSTANTIAL RIGHTS, AND IMPUGNS THE FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS?

QUESTION III

IS A CONVICTION AND SENTENCE UNDER 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(A), A VIOLATION OF FIFTH AMENDMENT NOTICE RIGHTS AND SIXTH AMENDMENT DUE PROCESS RIGHTS BECAUSE THE GUILTY PLEA, CONVICTION AND SENTENCE ARE BASED ON AN ADMISSION OF TRAFFICKING IN ONLY ONE DRUG TYPE AND QUANTITY, LIMITING EXPOSURE TO TIME IN PRISON UNDER § 841(b), WHEN ADDITIONAL DRUG QUANTITIES AND TYPES ARE FOUND BY A DISTRICT COURT JUDGE BY A PREPONDERANCE OF EVIDENCE STANDARD?

QUESTION IV

IN LIGHT OF THE FLORES-FIGUEROA v UNITED STATES, 556 U.S. 646 (2009), AND ABRABSKI v UNITED STATES, 573 U.S.___, 134 S.Ct. 189 L.Ed.2d 262, 2014 LEXIS 4170 (2014) DECISIONS, DOES THE "KNOWINGLY OR INTENTIONALLY" MENS REA CONTAINED IN 21 U.S.C. § 841(a) APPLY TO THE OFFENSE ELEMENTS OF DRUG TYPE AND DRUG QUANTITY FOUND IN 21 U.S.C. § 841(b), THEREBY REQUIRING A FINDING UNDER THE BEYOND A REASONABLE DOUBT STANDARD?

CERTIFICATE OF INTERESTED PERSONS

Mario Gonzalez (Petitioner), pro se, hereby states and certifies to the best of his belief and knowledge, that the following listed persons have an interest in the outcome of this case:

Petitioner: **Mario Gonzalez**

1. **District Court Criminal Proceedings:**

United States Attorney's Office:
Western District of Texas
AUSA Daniel D. Guess
816 Congress Ave., Ste. 1000
Austin, TX 78701

Counsel for Mario Gonzalez:
Gerardo S. Montalvo
100 Congress Ave., Ste. 2000
Austin, TX 78701

2. **Direct Appeal:**

United States Attorney's Office:
NONE

Counsel for Mario Gonzalez:
Margaret Schmucker
2301 S. Lakeline Blvd., Ste 800-53
Cedar Park, Texas 78613
(Anders Brief)

3. **28 U.S.C. § 2255:**

United States Attorney's Office:
AUSA Daniel Guess
816 Congress Ave., Ste 1000
Austin, TX 78701

Counsel for Mario Gonzalez:
Pro se

4. **28 U.S.C. § 2255 Application for Certificate of Appealability:**

Counsel for Mario Gonzalez:
Pro se

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OPINIONS BELOW

The "Judgment in a Criminal Case," imposed by the United States District Court, Western District of Texas, Austin Division, on Petitioner is set forth in Appendix (Appx.) 1.

The United States Court of Appeals for the Fifth Circuit decision AFFIRMING Petitioner District Court Judgment is set forth in Appx 2. (Dated June 21, 2016).

Subsequent to Petitioner filing his First 28 U.S.C. § 2255 Motion (hereinafter "2255 Motion"), the District Court issue it "Amended Judgment In A Criminal Case" (Appx. 3), which deleted the word, "methamphetamine" from the "Nature of the Offense" description. There was no change in Petitioner's sentence nor a hearing, just a simple "clerical error," which wholly ignored the Petitioner claims in the 28 U.S.C. § 2255 Motion.

Petitioner did not file a Petition for Writ of Certiorari.

On January 6, 2017, the United States District Court, Western District of Texas, Austin Division, DENIED Petitioner's 28 U.S.C. § 2255 Motion (Appx. 4).

On November 30, 2017, the Fifth Circuit DENIED Petitioner's requested Certificate of Appealability (COA) issues (Appx. 5).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the Costitution provides:

> No person shall be held to answer for a capital, or 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 deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just conpensation.

Sixth Amendment to the Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the States 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 witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

18 U.S.C. § 2515. Prohibition of use as evidence of intercepted wire or oral communications provides:

> Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter [18 USCS §§ 2510 et seq.].

18 U.S.C. § 2516(1). Authorization for interceptor wire, oral, or electronic communications provides in part:

> The Attorney General, Deputy Attorney General, Associate Attorney General, or any Assistant Attorney General, or any Acting Assistanct Attorney General, or any Deputy Assistant Attorney General or acting Deputy Assistanct Attorney General in the Criminal Division or National Security Division specially designated by the Attorney General, amy authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter [19 USCS § 2518]an order authorizing or approving the interception of wire or oral communications by the Federal Bereau of Investigation, or a Federal agency have responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of --

18 U.S.C. § 2517(4) Authorization for disclosure and use of intercepted wire, oral, or electronic communications, provides in part:

> (4) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this chapter [18 USCS §§ 2510 et seq.] shall lose its privileged character.

18 U.S.C. § 2518(1) Procedure for interception of wire, oral, or electronic communications, provides in part:

> (1) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication under this chapter [18 USCS §§ 2510 et seq.] shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:
>
> (a) the identity of the investigation or law enforcemnet officer making the application, and the officer authorizing the application.

18 U.S.C. § 2518 Procedure for interception of wire, oral, or electronic communications, provides in part:

(4) Each order authorizing or approving the interception of any wire, oral, or electronic communication under this chapter [18 USCS §§ 2510 et seq.] shall specify --

(a) the identity of the person, if known, whose communications are intercepted;

(b) the nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;

(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application;...

18 U.S.C. § 2518(8) Procedure for interception of wire, oral, and electronic communications, provides in part:

(8)(a) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this chapter [18 USCS §§ 2510 et seq.] shall, if possible, be recorded on tape or wire or other comparable device. ...

(b) Applications made and order granted under thia chapter [18 USCS §§ 2510 et seq.] shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. Such applications and order shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years. ...

(d) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 2517(7)(b) [18 USCS § 2518(7)(b)] which is denied or the termination of the period of an order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercept communications as the judge may

determine in his discretion that is in the interest of justice, an inventory which shall include notice of --

(1) the fact of the entru of the order or the application;

(2) the date of the entru and the period of authorized, approved or disapproved interception, or denial of the application; and

(3) the fact that during the period wire, oral, or electronic communications were or were not intercepted.

18 U.S.C. § 2518(9)(10) Procedure for interception of wire, oral, or electronic communications, provides in part:

(9) The contents of any wire, oral, or electronic communication intercepted pursuant to this chapter [18 USCS §§ 2510 et seq.] or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the jdge if he finds that ir was not possible to furnish the party with the above information ten days before trial, hearing, or proceeding and that the part will not be prejudiced by the delay in receiving such information.

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or political subdivision thereof, may move to suppress the content of any wire or oral communication intercepted pursuant to this chapter [18 USCS §§ 2510 et seq.], or evidence derived therefrom, on the grounds that --

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial,

hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents if the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as haveing been obtained in violation of this chapter [18 USCS §§ 2510 et seq.]. ...

21 U.S.C. § 841. Prohibited acts, provides in part:

(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 USCS §§ 849, 859, 860, or 869], any person whoviloates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving --

(i) 1 kilogram of more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of --

(I) cocoa leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers; ...

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life,...

21 U.S.C. § 846 provides:

> Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt of conspiracy.

28 U.S.C. § 1254(1) provides:

> Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods:
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. § 2106 provides:

> The supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order or require such further proceedings to be had as may be just under the circumstances.

Mario Gonzalez (hereinafter "Petitioner") request that a Writ of Certiorari be GRANTED to review the judgment of the United States Court of Appelas for the Fifth Circuit.

STATEMENT OF THE CASE:

Relevant Procedural History

1. Petitioner filed his First 28 U.S.C. § 2255 Motion (Civil Action No. A-16-CV-1164-SS) on October 25, 2016, and on October 28, 2016, the United States District Court Judge Ordered the Government to respond.

2. The Original 28 U.S.C. § 2255 Motion was timely filed and

raised the following grounds for relief:

GROUND ONE: Petitioner's Fifth and Sixth Amendment's Due Process right were violated by the District Court's calculation of Petitioner's United States Sentencing Guideline (USSG), in that, such calculation is incorrect regarding the Petitioner's offense of conviction. that is, the District Court adopted the Presentence Investigation Report's (PSR) use of methamphetamine and cocaine to find a marijuana equivalency to determine the base offense level which yielded a higer base offense than what is applicable to the Petitioner's offense of convition, that is, the offense to which Petitioner pled guilty, to wit; Petitioner pled guilty to a conspiracy "to possess with intent to distribute a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled subsantce." (See Change of Plea [Rule 11] Transcript @ page 16, lines 9-25 & page 17, lines 1-9)(Appx. 6).

GROUND TWO: Petitioner's Sixth Amendment right to effective assistance of counsel at a critical stage of the proceeding, that is, but for Attorney Gerardo S. Montalvo's (Atty. Montalvo) failure to present the Court with evidence of Petitioner's limited role in the conspiracy, it is probable that the District Court would have sentenced Petitioner to a lesser term of imprisonment .

GROUND THREE: Petitioner's counsel on appeal to the United States Court of Appeals for the Fifth Circuit was ineffective in the folloiwing respects:

(i) filing an Anders Brief;

(ii) failing to recognize and raise as an issue on direct appeal the incorrect sentencing methodology employed by the USPO and the District Court, that is, including 10 kilograms of methamphetamine in determining Petitioner's Base Offense Level;

(iii) failing to raise as an issue that Petitioner was sentenced under an incorrect USSG;

(iv) failing to brief the issue of breach of plea agreement, in as much as the Government did not raise the issue on sentencing and remained silent regarding the breach of the promise to hold Petitioner's conviction to that of cocaine and to hold Petitioner responsible for 25 kilograms of cocaine only, that is, excluding methamphetamine; further at the Rule 11 (Change of Plea) Hearing, the Court accepted this limitation as is reflected in the transcript at pages 16 & 17 (Appx. 5).

Fifth Circuit precedent holds that a defendant is entitled to the reasonable expectations under the plea agreement, and that for the result to be otherwise, the contract breach is a basis for reversal and remand for further consideration.

GROUND FOUR: Petitioner's counsel, Atty. Montalvo, failed to challenge the Goverment's use of GPS tracking devices - without obtaining a warrant - on Petitioner's vehicle, based on information and belief that ther was no authorization from the District Court that included Petitioner's vehicle. Petitioner's Sixth Amendmet and Fourth Amendment right were abridged as a result of Atty. Montalvo's deficient representation. (See Grady v North Carolina, 135 S.Ct. 1368, 191 L.Ed.2d 459 (2015))(This ground in the "Supporting Facts" section of the Petitioner's 28

U.S.C. § 2255 Motion was expanded to include a challenge as to the facial insufficiency of the Affidavit/Application for a wire intercept order and the Order authorizing a wire intercept).

DISTRICT COURT ORDER - SUBJECT OF APPLICATION FOR CERTIFICATE OF APPEALABILITY

3. On January 6, 2017, the District Court issued its Order:

> (i) construing Petitioner's § 2255 Motion" as "as raising two main grounds for relief: (1)the court erroneously calculated his sentence, and (2) his trial and appellant counsel were ineffective." (See Appx. 3 - District Court's Order Denying § 2255 Motion)

Problematic with the District Court's construction is that Petitioner ground one raises the issue not as a simple arithmetic error in calculation of the Petitioner's base offense level (BOL), but rather ground one predicated on a Fifth and Sixth Amendment due process deprivation resulting from the District Court's adoption of the USPO's BOL, that includes 10 kilograms of methamphetamine that was specfically excluded by the Government as a material inducement to induce Petitioner to agree to plead guilty, on which Petitioner relied; and obviously evidences Atty.Montalvo's ineffective assistance of counsel in plea negotiations, that is, failing to include language in the Plea Agreement to clearly exclude Petitioner's potential relevant conduct to the alleged methamphetamine. Petitioner's decision to plead guilty could not have been knowing and/or voluntary because of Atty. Montalvo's ineffective assistance. Because of the District Court's use of the USPO' BOL of 34, the Government's material inducement became a breach of Plea Agreement at best

or alternatively a fraudulent inducement.

4. With regard to the claims of ineffective assistance of counsel, such claims are pursuant to Petitioner Sixth Amendment right to reasonably effective assisantce. Atty. Montalvo's failure to object to the USPO's BOL calculation failed to preserve the error and wrongfully exposed Petitioner to a higher United States Sentencing Guideline (USSG) range, as well as, it goes against to what Petitioner reasonably expected under the terms of the Plea Agreement. (See United States v Valencia, 985 F.2d 758, 761 (5th Cir. 1993)) Significant additional instances of Atty. Montalvo's ineffective assistance are pleaded in detail in the Petitioner's § 2255 Motion and the Brief in Support of Certificate of Appealability (COA) filed with the Application for COA, in the United States Court of Appeals for the Fifth Circuit.

5. At a minimum, due process concerns demand the production of the Title III "Wire and Electronic Communication Intercept" Affidavit/Application and the District Court Order authorizing the wire intercept to provide an opportunity for Petitioner to prove by a preponderance of evidence that the Affidavit/Application and Order authorizing wire intercepts were facially insufficient under 18 U.S.C. §§ 2516(1), 2518(3), and 2518(4)(d).

The District Court issued an order prior to Petitioner pleading guilty, ordering the "limited disclosure" of Title III electronic surveillance materials to the defendant's and attorneys in Petitioner's case (See Appx. 7). Problematic with

the procedure employed by the District Court is that Petitioner's Attorney in the District Court proceeding did not investigate the Title III wire intercepts used in Petitioner's case, nor is there any indication that Atty. Montalvo would have understood the requirements of 18 U.S.C. §§ 2516 - 2518(1)-(10)(See Appx. 8 - Letter from Atty. Montalvo). Further, obviously Atty. Montalvo did not understand that under a Suprme Court substantive decision, a GPS tracking search is considered a Fourth Amendment search and is unlawful if done without a warrant. Further, it is clear from Petitioner;s counsel on direct appeal that she did not investigate or consider an appeal issue challenging the apparently warrantless GPS search, and the violations of 18 U.S.C. § 2510 et seq (See Appx. 9). Further, Petitioner sought the assistance of the District Court to obtain the electronic surveillance materials and orders, but the District Court did not respond.

Atty. Montalvo's ineffective assistance in failing to investigate the sufficiency of the Affidavit/Application and Order, and to file a Motion to Suppress the wire intercept evidence against (which was primary in the Petitioner's Factual Resume in the Plea Agreement - Appx. 10) Petitioner, as well as, any evidence derived therefrom, is ineffective assistance that prejudiced Petitioner. (See 18 U.S.C. § 2518(10)(a)(i)(ii)(iii), mandatory suppression); See also, United States v Scurry, 821 F.3d 1 (DC Cir. 2016); United States v Giordano, 416 U.S. 505, 525 n.14, 92 S.Ct. 1820, 40 L.Ed.2d 341 (1974); and United States v North, 735 F.3d 212, 2013, U.S.App. LEXIS (5th Cir. 1013)

(concurrence).

6. Such investigation prior to advising the Petitioner to plead guilty is required under the objective standard of conduct in respect to representing defendants in a criminal case (See Marroquin v United States, 480 Fed.Appx. 294, 2012 U.S.App. LEXIS 13011 (5th Cir. 2012) which holds:

> "Indeed , this Circuit has observed that providing counsel to assist a defendant in deciding whether ro plead guilty is '[o]ne of the most precisous applications of the Sixth Amendment'." citing United States v Rivas-Lopez, 678 F.3d 353 (5th Cir. 2012).
> "...Given the paramount importance of effective representation during the plea bargaining process, it is difficult to see how a violation of that right can be erased by trial court's general and talismanic plea colloquy statements after the bargaining process is complete, and immediately prior to the court's acceptance of the guilty plea. If as the Supreme Court held in Frye, the holding of a fair trial cannot "innoculate [counsel's] errors in the pretrial process" from collateral attack under Strickland, see Frye, 132 S.Ct. at 1407, neither can a trial judge's plea colloquy that assures only the minimal voluntariness of a plea serve as a proxy for effective assistance during the plea bargaining process, a process which necessari;y precedes the defendant's decision whether or not to accept a plea. **Indeed, as the Court reiterated in Frye, it has "rejected the argument ...that a knowing and voluntary plea supersedes errors by defense counsel. Id. at 1406."** (emphasis added)

Fifth Circuit jurisprudence regarding the Government's breach of plea agreement invalidates the waiver provisions of a defendant's plea agreement. See United States v Roberts, 624 F.3d 241, 2010 U.S.App. 21453 (5th Cir. 2010), and United States v Keresztury, 293 F.3d 750, 757 (5th Cir. 2002).

REASONS FOR GRANTING THE WRIT

QUESTION I

> WHETHER THE STATUTORY LANGUAGE OF 18 U.S.C. § 2510 et seq., MANDATES A BURDEN OF PROOF ON THE GOVERNMENT, IN CASES INVOLVING WIRE INTERCEPTS, WHICH REQUIRES THE INTRODUCTION OF EVIDENCE TO SUBSTANTIATE COMPLIANCE WITH THE PROVISIONS OF THE EXCLUSIONARY MANDATE OF 18 U.S.C. § 2510 et seq., SPECIFICALLY 18 U.S.C. § 2518(9) PRIOR TO THE INTRODUCTION OR DISCLOSURE OF EVIDENCE OBTAINED OR DERIVED FORM ANY SUCH WIRE INTERCEPT?

7. In light of this Court's long standing rule with regard to statutory interpretation, that is:

> "We interpret criminal statutes like other statutes, in a manner consistent with ordinary English usage.

See Flores-Figueroa v United States, 556 U.S. 646, 650-652, 129 S.Ct. 1886, 173 L.Ed.2d 853 (2009); Jones v United States, 529 U.S. 848, 855, 120 S.Ct. 1904, 146 L.Ed.2d 902 (2000); Bailey v United States, 516 U.S. 137, 144-145, 116 S.Ct. 501, 133 L.Ed.2d 472 (1995).

It becomes a question of paramount importance as to what this Court's interpretation requires of the Government regarding the language of 18 U.S.C. § 2510 et seq. That is, does this plain language and English usage, of 18 U.S.C. §§ 2518(4), 2518(9), and 2518(10) require that Government to demonstrate, before offering into evidence, the content of wire intercept or evidence obtained from wire intercepts the following:

> "Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 2510 et seq., includes its own mandate. 18 U.S.C. § 2515 provides: Whenever any wire or oral communication has been intercepted, no part of the contents of such and nc

> evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of Title III. 18 U.S.C.S. § 2515. a person seeking to enforce § 2515 must have Title III "standing," which Title III defines as any aggrieved person in any trial, hearing, or proceeding, 18 U.S.C.S. § 2518(10)(a), who was a target of the wiretap or a person party to a wiretap intercept, § 2510(11). A person with standing may move to suppress wiretap evidence and its fruits on any of three grounds:
>
> (i) the communication was unlawfully intercepted;
>
> (ii) the wiretap order is insufficient on its face; or
>
> (iii) the interception was not made in conformity with the wiretap order. 18 USCS § 2518(10)(a)(i)-(iii)."

(See United States v Scurry, 821 F.3d 1, 2016 U.S.App. LEXIS 6401 (DC Cir. 2016). (See also Dahada v United States, No. 17-43 pending; challenging a violation of 18 U.S.C. § 2510 et seq.)

The Government's failure to comply with 2510 before it's offer into evidence the contents of wire intercepts in Petitioner's case is a violation of Petitioner's Fifth And Sixth Amendment due process rights, as well as, a violation of the statutory mandate under 18 U.S.C. § 2518(9), to establish by proof of facts the entirety of the Government's burden of proof of the elements of the charged offenses.

The Government, in its opposition to the Petitioner's 28 U.S.C. § 2255 Motion argues that the Petitioner's ground to challenge the use of Title III electronic communications

intercepts was nothing more than conclusions and that the burden of establishing a violation of 18 U.S.C. § 2510 et seq. was on the Petitioner. The District Court agreed with the Government in its Order Denying Petitioner's 28 U.S.C. § 2255 Motion (Appx. 3 hereto) stating:

> "Yet Gonzalez provides no facts even suggesting that the wire intercepts and GPS tracking were unauthorized or problematic. Without evidence suggesting there was a basis to challenge the GPS tracking, the Court cannot conclude trial counsel's actions fell below an objective standard of reasonableness." (Appx. 3, page 6)

Problematic with the District Court's reasoning is that Atty. Montalvo did not investigate the Affidavit/Application for wire intercepts, nor the Order granting authorization for wire intercepts to determine if the requirements of 18 U.S.C. §§ 2516(1), 2518(1), 2518(4)(d), 2518(9) and 2518(10)(a)(i)-(iii) had been complied with before giving advise to Petitioner as to whether or not to plead guilty.

To require the Petitioner to prove that the wire intercept Affidavit/Application and the Order authorizing the wire intercept to be facially sufficient under that statute without providing the Petitioner a copy of the discovery, shifts the burden of proof from the Government regarding the use of the content or evidence derived therefrom to the Petitioner. Petitioner has no way to satisfy the District Court's demand for evidence without the District Court ordering the evidence be release to the Petitioner.

QUESTION II

> WITHOUT COMPLIANCE AND EVIDENCE TO SUBSTANTIATE THE GOVERNMENT'S COMPLIANCE WITH 18 U.S.C. §

2518(9) IS THE INTRODUCTION OF EVIDENCE FROM WIRE INTERCEPTS OR DERIVED FROM WIRE INTERCEPTS REVERSIBLE ERROR THAT IS PLAIN AND OBVIOUS, AFFECTS SUBSTANTIAL RIGHTS, AND IMPUGNS THE FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS?

8. Plain error is an error that affects substantial rights, and may be considered even though it was not brought to the court's attention either in the District Court or the Court of Appeals. In Petitioner's case the two (2) plainly reversible error complained of are:

(i) the District Court's admission of wire intercept contents, or evidence derived from intercepted telephone conversations with Petitioner, and/or regarding Petitioner; (See Appellant's Brief on direct appeal, pages 16-19, referencing Trial Transcript);

(ii) the Trial Court's refusal to provide Petitioner copies of the Affidavit/Application for wire intercept authority, and of the Order authorizing the wire intercept, in compliance with the statutory mandates contained in 18 U.S.C. § 2518(1), 18 U.S.C. § 2518(4)(d) and 18 U.S.C. § 2518(9).

The Government nor the District Court, nor the lawyers in Petitioner case have provided Petitioner copies of the wire intercept Affidavit/Application, nor the Order(s) authorizing the wire intercept, in violation of 18 U.S.C. § 2518(9). Upon information and belief, the Petitioner avers that the Affidavit/Application and Order authorizing wire intercept of telephone conversations, to which Petitioner was a party, or which regarded Petitioner, do not comply with the mandate of 18 U.S.C. § 2516(10 and 18 U.S.C. § 2518(4)(d) regarding the identity of