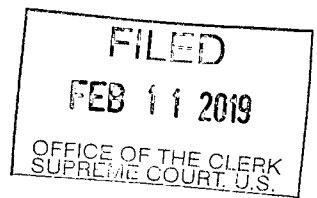


No. 18-7986



IN THE
SUPREME COURT OF THE UNITED STATES

Maurin Chacon — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Maurin Chacon Reg#02418-104

(Your Name)

FCC Coleman Medium; P.O. Box 1032

(Address)

Coleman, FL 33521-1032

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1) Rosales-Mireles v. United States, 585 U.S. ____ (2018). Clarified the Plain Error Standard in United States v. Olan, 507 U.S. 725, 736 (1993). Does a ammendment violation of 794 warrant a plain error review under Rosales-Mireles, Id.

LIST OF PARTIES

- ☒ 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 court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.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

☐ reported 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☐ is unpublished.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

☐ reported 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☐ is unpublished.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 Nov. 27 2018.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a 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 a 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

Fifth Amendment

Eleventh Amendment

21 U.S.C. §851

28 U.S.C. §1254(1)

28 U.S.C. 1257(a)

STATEMENT OF THE CASE

Petitioner was indicted on June 13, 2014 [D.E. 39], Along with 20 co-defendants. Petitioner's indictment had 35 counts (in which was divided respectively amongst his co-defendants). Petitioner exercised his right to go to trial because the prosecution threatened Petitioner with a maximum sentence if he did not testify. Petitioner was willing to take a plea and accept responsibility for his actions, because the prosecution threatened him, it put Petitioner in an awkward position and instead he exercised his right to a trial, [D.E. 808] (Along with 4 of his co-defendants.) On March 3, 2015, the court as to Petitioner granted a Rule 29(A) motion for acquittal as to counts 6 and 7 of the indictment. [D.E. 877-116-135] On March 9, 2015, the jury returned its verdict, which convicted Petitioner on 10 of 16 counts which were counts 1, 8, 9, 12, 13, 19, 20, 22, 23, 30 and not guilty on counts 5, 18, 21, and 28. [D.E. 905]. On April 13, 2015, Petitioner filed for a new trial [D.E. 976], because at trial Petitioner's co-defendants testified that they were "Never instructed by Petitioner to sell drugs, nor have they paid any proceeds back to him [D.E. 827-4-6, 11, 65, 76].¹ Petitioner then filed for Judgement of Acquittal based on the Not Guilty Verdict on his co-defendants testimony [D.E. 980], on April

¹Also at trial Petitioner's co-defendants testified that Petitioner did not have anything to do with any robberies [D.E. 827-52-54], whereas Petitioner was acquitted based on the testimony about activities in the overall conspiracy.

30, 2015, the government filed responses to said motions. [D.E. 1045, 1046]. On June 30, 2015. The motions were denied [Denied 1198; 1524]. However when Petitioner lost trial and was proceeding to get sentenced he was given an enhanced sentence based on acquitted conduct, whereas the record does not reflect that any of his co-defendants ever stated he was a leader, much less organizer. Then to make matters worse he was given an 21 U.S.C. §851 enhancement based on priors that did and do not qualify, because he refused to testify. Petitioner was subsequently sentenced to 420 months. Which consisted of 360 months as to counts 1, 8, 12, 13, 19, 20, 22, and 30 and also given 120 months on count 23, with all terms to run concurrently. A consecutive term of 60 months as to count 9 of the superseding indictment and supervised release term of 10 years for count 1, 5 years as to counts 9 and 23 and 6 years as to counts 8, 12, 13, 19, 20, 22 and 30 all terms to be served concurrently and a 1000.00 dollar fine.

REASONS FOR GRANTING THE PETITION

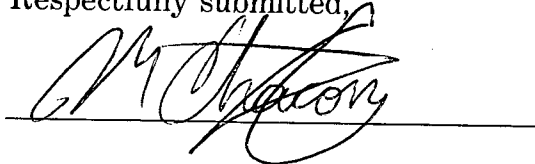
Comes now the Petitioner Maurin Chacon, Petitioner, who files this motion Pro Se and prays this Court construes this liberally per Haines v. Kerner, 404 U.S. 519 (1972). Petitioner brings this petition based on the following grounds, that the district court abused its discretion under the plain error standard of review, when the courts allowed acquitted conduct to be considered for sentencing purposes. This Great Courts ruling in Rosales- Mireles v. U.S., 585 U.S. ____ (2018). This Court stated that the "shock the conscience" standard typically is employed when determining whether governmental action violates Due Process rights under the Fifth and Eleventh Amendments, see County of Sacramento v. Lewis, 523 U.S. 833, 847, N.8, 118 S.Ct. 1708, 140 L.Ed 2d 1043 (1998); "[I]n a due process challenge to executive action, the threshold question is whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience." Whereas Petitioner is on direct appeal Amendment 794 of the U.S.S.G. is applicable and is retroactive, based on U.S. v. Quintavo-Leyva, 823 F.3d 519. In which it was said that the amendment applied retroactively on direct appeals because it resolved a circuit split, and was intended as a clarifying amendment. Remand was required, because the court could not determine from the record whether or not the district court considered all of the factors in U.S.S.G. §3B1.2 following the amendment. This violation occurs in defendant cases similarly situated and creates "Serious disparities in the sentences." See Mistretta v. U.S., 488 U.S. 361, 109 S.Ct. 647, 102 L.Ed 2d 714. Petitioner and thousands of similarly situated, sought a mitigating role adjustment, however

still receive mitigating roll adjustments, based on circuit ruling and this Courts precedent, this is a prime example of how this Court can use its authority to remand this case back to the district court in light of Rosales- Mireles, Id., because the error that occurred at the appeals court level clearly effected petitioners substantial rights and "seriously affected the fairness, integrity, and public reputation of the judicial process." it was clearly stated at trial and sentencing that Petitioner was not "The leader or organizer", that he was enhanced for. This Court not only has the authority to clarify congresses intent of the leader organizer role, in 2015, when the relevent conduct criteria was enacted by the Sentencing Commission, thousands of defendants that were in court waiting to be sentenced were sentenced with out the then Sentencing Commissions^s considerations of what constituted a leader/organizer enhancement. Here the defendants^f Fifth Amendment Due Process rights were violated under Rosales-Mireles, Id., and Petitioner requests a remand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "M. Chacon", is written over a horizontal line.

Date: February , 2019