

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

\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_

OMAR ALARCON FUENTES — PETITIONER  
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

OMAR ALARCON FUENTES  
(Your Name) REG. 44536-208

P.O. BOX 7001/A2A  
(Address)

TAFT, CALIFORNIA 93268  
(City, State, Zip Code)

N/A  
(Phone Number)

## QUESTION(S) PRESENTED

1. WHETHER PETITIONER'S CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WAS VIOLATED BY HIS TRIAL ATTORNEY'S FAILURE TO MOVE THE DISTRICT COURT TO DISMISS THE INDICTMENT BY THE GOVERNMENT'S PRESENTMENT OF FALSE TESTIMONY TO THE GRAND JURY THROUGH AN UNCORROBORATED EXTRAJUDICIAL ADMISSION?
2. WHETHER PETITIONER'S CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WAS VIOLATED BY HIS TRIAL ATTORNEY FAILURE TO CALL FOR MISTRIAL AS TESTIMONY OF AGENT HAUSE WAS TOTALLY FALSE WHERE THE AFFIDAVIT AS TESTIFIED PROVED ITS FALSEHOOD BASED SOLELY ON AN UNCORROBORATED EXTRAJUDICIAL ADMISSION?

## 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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## OTHER

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☒ is unpublished.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☒ is unpublished.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☐ is unpublished.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

☒ [A] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 6, 2018.

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

☒ [X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 25, 2018, and a copy of the order denying rehearing appears at Appendix C.

☐ [ ] 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

### ARTICLE [V]

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 any person be subject for the same offense to be twice put in jeopardy of life or limb; 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.

### ARTICLE [VI]

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 witness against him; to have compulsory process for obtaining witness in his favor, and to have the assistance of Counsel for his defence.



## STATEMENT OF THE CASE

A jury convicted Petitioner of knowingly distributing over 50 grams of methamphetamine in violation of 21 U.S.C. §§ 841 (a)(1), (b)(1)(A)(viii). (viii). Petitioner was sentenced to ten years minimum mandatory and he appealed his conviction. While the direct appeal was pending, Petitioner filed a pro se motion under 28 U.S.C. § 2255. [CFR No. 236]. The Ninth Circuit issued a memorandum disposition affirming Petitioner's conviction. [See ECF No. 248]. The Ninth Circuit declined to consider Petitioner's ineffective assistance of counsel argument on direct review, *id.* at 4, explaining that neither extraordinary exception to the general rule applied, leaving the issue for collateral review.

The district court then issued an Order denying Petitioner's pending motion under 28 U.S.C. § 2255. [ECF No. 251] Petitioner appealed to the and the Ninth Circuit ruled that it was improper for the district court to consider the § 2255 motion while the direct appeal was pending. [ECF No. 258]. The Ninth Circuit vacated the district court's decision and remanded with instructions to dismiss the § 2255 motion without prejudice. *Id.* The district court did so. [ECF No. 264], Petitioner filed a motion for briefing schedule and to appoint counsel, [ECF No. 265]. On May 13, 2018 the district court denied the § 2255 and also declined issued a Certificate of Appealability. [ECF No. 270].

## REASONS FOR GRANTING THE PETITION

This Court ruled years ago that "an accused may not be convicted on his own uncorroborated confession." **Smith v. United States**, 348 U.S. 147, 152 (1954). That has been immutable doctrine ever since. The Government must introduce independent evidence which would tend to establish the trustworthiness of the confession. *Id.* at 156. The purpose of this rule is to avoid errors in conviction based on untrue confessions and to promote sound law enforcement by requiring police investigations to extend their efforts beyond the words of the accused. **Wong Sun v. United States**, 371 U.S. 471, 489 (1963); **Smith**, 348 U.S. at 153; **United States v. Lopez-Alvarez**, 970 F.2d 583, 585 (9th Cir. 1992).

The corroboration rule "prevents errors in convictions based upon untrue confession alone." **Lopez-Alvarez**, 970 F.2d at 594. Though a statement may not be involuntary within the meaning of the exclusionary rule, its reliability may still be suspect if it is extracted from a person under the pressure of police investigation because his words may reflect the strain and confusion of the situation, rather than a clear reflection of the past. **Smith**, 348 U.S. at 153. The government may provide corroboration by introducing substantial evidence apart from the defendant's admissions. *Id.* at 157.

Petitioner asserts that the government has not offered independent evidence to the uncorroborated evidence affidavit of Deputy House in which it was never submitted during trial of petitioner's alleged admissions, and has only introduced statement and testimony of an investigator regarding petitioner's statements and Agent Savage's testimony to the Grand Jury to obtain its indictment.

In this view, the petitioner has satisfied his burden for a Certificate of Appealability ("COA")) with regard to the issues of "Whether counsel rendered ineffective assistance of counsel for not moving to dismiss the indictment for a perjurious testimony before the Grand Jury; and failing to object to Deputy Hause's testimony about petitioner's admissions in which were never provided by petitioner during any circumstances.

Insofar as the petitioner makes a colorable claim that he received ineffective of counsel on pre-trial and during trial that clearly prejudiced his defense. A competent defense attorney would submitted a proper objection in the posture of this particular case since the only evidence to return the indictment and to convict petitioner at trial was the alledged petitioner's own admission that he provided to Deputy Hause as testified to the Grand Jury and at trial. [See Mem. Order at 9] **Counsel effectively showed to the jury that [D]eputy Hause did not record petitioner's admission in his report and further testified in court that he never questioned Petitioner about the July 18, [2013], incident.** (emphasis added).. In combination of what a government's witness testified in front of the Grand Jury, had counsel objected this would created something of a perform storm because the evidence of petitioner's involving in the offense is lacking.

At first glance, the government has not offered independent evidence to corroborate his admissions, and has only introduced statements and testimony of its agents to establish petitioner's guilt. In fact, the government did not offer independent evidence that he knowingly engaged in the conduct charged in the indictment, and that the government's case consisted only of petitioner's uncorroborated statements.

Finally, there was no other evidence in the record from which

the Grand Jury and the petty jury could have figured out that petitioner was involved in a distribution of methamphetamine to Bevans on July 18, 2013, and that the defense knew and plainly as the prosecutor that Deputy Hause had lied concerning petitioner's admissions to secure the indictment and to present false testimony during trial. In fact, at no time during the interview, that involved only petitioner and Detective Hause, that transpired on July 25, 2013, petitioner did not provide any incriminating statements as disclosed by the record.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Omar Alarcon Fuentes  
Reg. 44536-208

Date: October 18, 2018