

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

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

OCTOBER TERM 2019

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JOSE FRANCISCO RODRIGUEZ-REYES, *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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Monday, June 17, 2019

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## **QUESTIONS PRESENTED FOR REVIEW**

- I. WHETHER THE DISTRICT COURT'S SENTENCING METHODOLOGY WAS PROCEDURALLY AND SUBSTANTIVELY SOUND AND THAT THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY IMPOSING THE SENTENCE IT DID.
- II. WHETHER THE COURT OF APPEALS FAILED TO FOLLOW DECISIONS MADE BY THIS UNITED STATES SUPREME COURT REGARDING CRIMINAL SENTENCING.
- III. WHETHER THE DISTRICT COURT ERRED PROCEDURALLY AND SUBSTANTIVELY BY IMPOSING AN EXCESSIVE SENTENCE TAKING INTO CONSIDERATION PETITIONER'S ARRESTS THAT DID NOT RESULT IN CONVICTIONS.

## **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, JOSE FRANCISCO RODRIGUEZ-REYES, 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 June 5, 2019. 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**

José Francisco Rodríguez-Reyes (Petitioner) pleaded guilty to a charge of being a felon in possession of a firearm, in violation of **18 U.S.C. § 922(g)(1)**. This case involves the Federal Sentencing Guidelines and the **18 U.S.C. § 3553(a)** sentencing factors.

## **STATEMENT**

The district court erred by taking into account several dismissed or acquitted charges because the facts underlying those charges were not proven by a preponderance of the evidence. The principle of fairness is central to the administration of justice. The basis of a plea agreed by the parties in a criminal trial is central to the sentencing process. The government and the Petitioner, like a sentencing court, can consider federal sentencing policy, the Guidelines, and other factors when reaching a plea agreement. The parties' consideration of the those factors may yield more consistent, predictable, and personally satisfying results.

In this case the parties agreed upon using U.S.S.G. § 2K2.1(a)(6) because it was the appropriate guideline given the specific facts of Petitioner's case. The parties agreed to a total adjusted offense level of 12. The PSR calculated a total offense level of 12. Finally, the District Court calculated a total offense level of 12, what was agreed by the parties in the plea agreement, but sentenced the Petitioner to thirty-six (36) months of imprisonment, fifteen (15) months higher than the higher end of the guideline that the agreement submitted by the parties stipulated.

The term of imprisonment renders the Petitioner's sentence unreasonable because the prison term is a harsh punishment for the violations and the facts of the case. The term of imprisonment is procedurally and substantively unreasonable. The district court's record findings do not support the need for the imprisonment term imposed, and does not reflect proper consideration of the 18 U.S.C. § 3553(a) sentencing factors and the facts of the case.

The sentencing court did not give the adequate consideration to the facts of the case and the Petitioner's characteristics, and, instead, focused primarily on the criminal history of the defendant-appellant and took into consideration dismissed and acquitted criminal conduct to impose a much higher sentence than the one agreed by the parties.

## REASONS FOR GRANTING THE WRIT

In a published twenty-six (26) page opinion the Court of Appeals for the First Circuit affirmed the district Court's 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, and specifically took into account Petitioner's prior arrests that did not result in convictions.

The use of acquitted conduct at sentencing are significantly limited after *Apprendi v. New Jersey*, 530 U.S. 466 (2000), because the acquitted and uncharged conduct can now only be used to determine a sentence within the guidelines range corresponding to the facts reflected in the case. The sentencing court in this case indicated that the Petitioner's criminal history was underrepresented.

The District Court erred procedurally by not explaining the sentence imposed with reference to the factors in 18 U.S.C. § 3583(e), and instead reciting the dismissed criminal history of the Petitioner. The district court had failed to adequately explain its imposition of a sentence of thirty-six (36) months imprisonment.

The government cites a recent case from the Court of Appeals for the First Circuit: *United States v. Marrero-Pérez*, 914 F.3d 20 (1st Cir. 2019), relying on it in part and distinguishing it as to the outcome. *Marrero-Pérez* stated that "error

occurs when a district judge relies on an arrest report, without some greater indicia of reliability that the conduct underlying the arrest took place," 914 F.3d at 24.

The Court of Appeals erroneously distinguished this case from their holding in *United States v. Marrero-Pérez*, stating that the district court applied a variance and not an upward departure.

The court of appeals has decided an important question of federal law that conflicts with relevant decisions of this Court, as stated above. Finally, this Court should grant certiorari in the interests of justice.

### CONCLUSION

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

Respectfully submitted, in San Juan, Puerto Rico, on Monday, June 17,  
2019.



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