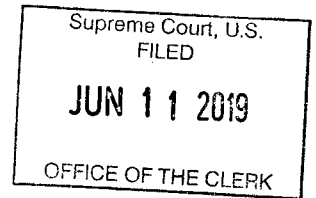


18-9834 ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES



Carlos Alberto Ochoa-Orozco, — 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 Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Carlos Alberto Ochoa-Orozco
(Your Name)

P.O. Box 800 Herlong F.C.I.
(Address)

Herlong, California 96113
(City, State, Zip Code)

(Prisoner)
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the district court violated Appellant's right to due process, and his Sixth Amendment right to a fair trial, where the district court 'lacked' venue pursuant to Rule 18, Fed. R. Crim. P.

2. Whether pursuant to the Sixth Amendment, it is a violation of Appellant's right to a fair trial, where the Assistant U.S. Attorney threatens the defendant, by assuring him that [i]f he takes the witness stand in his own defense, he'll make sure that he receives a life sentence.

3. Whether Appellant must be resentenced where the District Court, sentenced him in accordance with the charges contained in the indictment, but Appellant plead to a different charge, contained in the Plea Agreement.

4. Where there is an obvious Apprendi/Blakely error, must Appellant be resentenced.

5. Whether Appellant must be resentenced where counsel was so ineffective at [both] the trial-level, and Appellate level, that his representation amounted to (no representation.)

6. Whether Appellant must be retried where the cumulative effect of "numerous" Constitutional errors; Procedural errors; Due Process

QUESTION(S) PRESENTED

errors rendered the proceedings inherently unfair.

7. Where the rulings of the District Court, and the Appellate Courts' are in conflict with this court (the Supreme Court) in relation to their holdings to this particular case ?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

Marcia A. Crone, U.S. District Judge, 300 Willo Street, Suite 239, Beaumont Texas 77701

Kimberly C. Priest Johnson, U.S. Magistrate Judge, 7940 Preston Road, Suite 110, Plano, Texas 75024

Christine A. Nowak, U.S. Magistrate Judge, 200 North Travis Street, Sherman, Texas 75090

Ernest Gonzales, AUSA, (Also Government Appellate Counsel) 101-East Park Boulevard, Suite 500, Plano Texas 75074

Gaylon P. Riddels, Appellant's Trial Counsel, 201 South Travis Street, Sherman Texas 75090

John A. Kuchera, Appellant's Appellate Counsel, 210 N. 6th Street, Waco, Texas 76701

/s/ Carlos Alberto Ochoa-Orozco

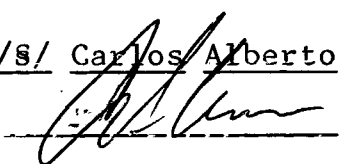

Appellant, pro se

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4, 6
REASONS FOR GRANTING THE WRIT	7, 24
CONCLUSION.....	25

INDEX TO APPENDICES

APPENDIX A Opinion Of The Appellate Court.

APPENDIX B Letter From Appellate Court, (No Action on Request
For Re hearing, or Re hearing En Banc.)

APPENDIX C Affidavit, And Sworn Statement.

APPENDIX D Copies of letters, "Requesting Discovery" from the
Court Clerk, Eastern District Of TX, and Legal Counsel Mr. Riddels.

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
United States v. Anderson, 328 U.S. 699, 90 L.Ed. 1529 (1946)	23
Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 (2000)	8,9,10, 20
Blakely v Washington, 542 U.S. 296, 303-304 (2004)	10
United States v. Cabrales, 524 U.S. 1, 6-7, 141 2 L.Ed 2d 1998)	23
Evitts v. Lucey, 469 U.S. 387,396 (1985)	12
Williams v. Florida, 399 U.S. 78, 93-97, 90 S.Ct. 1893 (1970)	21
STATUTES AND RULES	
18 U.S.C.S. § 161(b)	14
21 U.S.C.S. § 841(b)(1)(A), (b)(1)(B) & (b)(1)(C)	10,19
21 U.S.C.S. § 841(c)	8, 9
21 U.S.C.S. § 841(b)(1)	100, 200
28 U.S.C.S. § 114 & §§ 1393,1441	21..
28 U.S.C.S. § 1867(a)	21
Federal Rules Of Criminal Procedure, Rule 18	221
§ 1460, Fer. R. Crim. P.	24
OTHER	
United States Constitution, Article III § 2, cl 3	14,155
United States Constitution, Amend, VI	24

TABLE OF AUTHORITIES CITED
CONTINUED

CASES	PAGE NUMBER
Glover v. U.S. , 531 U.S. 198, 201, 204 (2001)	14
United States v. Johnson, 89 L.Ed 236, 323 U.S. 273 ()	221
Penson v. Ohio, 488 U.S. 75, 85 (1988)	12
United States v. Carroll, (1993), CA Fla. 6 F.3d 735	17
United States v. Dickie, 775 F.2d 607,609 (5th Cir. 1985)	22
United States v. Fernandez, 480 F.2d 466 (3rd Cir. 1976)	221
United States v. Garza, 593 F.3d 385,389-91 (5th Cir. 2010)	23
United States v. Gomez-Alvarez, 781 F.3d 787,791 (5th cir. 2015)	11
United States v. Griggs, (1995) CA 8 MO.,71 F.3d 276	17
United States v. Haines, 803 F,3d 713,738-39 (5th Cir.2001)	11
United States v. Herrea-Rojas 243 F.3d 1139 (9th Cir.2001).....	9
U.S. v. Hitt, 249 F.3d 1010,1026 (D.C. Cir. 2001)	8
United States v. O'Leary, (1994) CA 5.La) 35 F.3d 153.....	18
United States v. Parr, 17 FRD 512 (D.Tex. 1955).....	22
United States v. Pomranz 43 F.3d 156 (1995)-542 U.S. 915m 142 L.Ed 2d 156 (1998)....	23
United States v. Sanchez-Villarreal, 857 F.3d 714,721 n.6, (5th cir. 2017)	11

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBERS

United States v. Spencer, (1993 CA 2 Vt.) 4 F.3d 115	17
Zicarelli v. Gray, 543 F.2d 466 (3rd Cir. 1976)	21
Gentry v. Sevier, 597 F.3d 838,851-52 (7th Cir. 2010)	14
Marshall v. Cathel, 428 F.3d 452,465-71 (3rd Cir. 2005)	20

United States Sentencing Guidelines

U.S.S.G. § 2D1.1	11,17,18,19
U.S.S.G. § 2D1.1 & 2d1.11	12,17,18,19
U.S.S.G. § 2D1.1(c)	16,17
U.S.S.G. § 3553(a)	20

United States Code

21 USCS § 841(c)	8,9
21 USCS § 841(b)(1)(a),(b)(1)(b),& (b)(1)(c)	10,19
21 USCS § 841(b)(1)	10,20

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBERS
18 U.S.C.S. 3161(b)	14
21 U.S.C.S. § 841 (c)	8, 9
21 U.S.C.S. § 841 (b)(1)(A), (b)(1)(B) & (b)(1)(C)	110, 119
21 U.S.C.S. § 841 (b)(1)	10, 200
28 U.S.C.S. § 114 & §§ 1393, 1441	21
28 U.S.C.S. § 1867(a)	21
<hr/>	
Federal Rules Of Criminal Procedure	
Fed. R. Crim. P. Rule § 1460	24
Fed. R. Crim. P. Rule 18,	221
<hr/>	
Constitutional	
United States Constitution, Art. III § 2, cl 3,	14, 15
United States Constitution Amend. VI,	20
<hr/>	
AM Jurisprudence	
32 A AM 2d § 1209,	24
<hr/>	
Other	
Strickland v. Washington, 466 U.S. 668, 687-88 (1984)	7, 15, 21

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 _____ 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 March 13, 2019.

☒ No petition for rehearing was timely filed in my case. Petitioner filed a Petition for Rehearing, pro se, after Counsel never communicated with Petitioner.

☐ 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

21 U.S.C. § 841(a)(1)

21 U.S. C. § 846

United States Constitution Amendment Five

United States Constitutional Amendment Sixth

Federal Rules Of Criminal Procedure Rule 18

Federal Rules Of Criminal Procedure 3161(b)

Article III, Clause 2, U.S. Constitution

United States Sentencing Guidelines § 2D1.1, and 2D1.11

21 U.S.C.S. 841 (b)(1)(B), and (b)(1)(C)

28 U.S.C. §§ 1393, 1441

American Jurisprudence, 32 A AM Jur. 2d § 1209 § 1460

STATEMENT OF THE CASE

Petitioner was charged by (an) indictment with the felony offense of "Attempted Conspiracy to Possess with the Intent to Manufacture and Distribute Methamphetamine." in violation of 21 U.S.C. §§ 846 and 841(a)(1). On September 08, 2017, Petitioner entered a 'Not Guilty Plea' to the charged offense and proceeded to trial before a jury. On the following Monday, September 11, 2017, after being informed by the trial attorney, (that if he persisted with the trial, that the U.S. Attorney was going to add an additional (2) "two offense level-points" and thereby assure that he would receive a "life sentence" upon his conviction, because he was not going to walk on the case.") Subsequently, Petitioner did decide to plead guilty, and did ostensibly out of fear plead guilty to the charged offense. Which for all intended purposes he understood to be the charge of " A Violation of 21 U.S.C. § 846 "Attempted Conspiracy" to Possess with the Intent to Manufacture and Distribute Methamphetamine." " However, after being told that "if he took the stand in and testified in his own defense, assuredly he would be convicted and sentenced to a life sentence."

On June 1, 2018, the district court sentenced Petitioner to 365 months (30, thirty years in prison, and five years of supervised release, and no fine. The Court also assessed \$ 6, 044.28 in restitution. On June 5, 2018 Petitioner did file a timely 'notice of appeal' to the Appellate Court. Trial counsel was allowed to with-

STATEMENT OF THE CASE

Bar and attorney John A. Kuchera, was duly appointed to handle the appeal.

During the time of the appeal, Appellant was in transit and was subsequently transferred to several different locations, as a result Appellant never had an opportunity to "speak" directly with Appellate Counsel, concerning issues which I felt were relevant to the appeal, as well, where Appellant did receive a letter from counsel when he was in transit, being held over in the (SHU) in Mendota, FCI. California, Appellate counsel did inform Appellant of his appointment. Appellant did immediately write back to Appellate counsel asking him to wait/hold off for a short period, before filing the brief to the Supreme Court, in order to afford Appellant the opportunity to 'consult and talk' with him about the appeal. On the very next day, Appellant did receive a copy of the brief. (which proved that counsel had already finished the brief). Where Appellant did arrive at the present institution, and did again attempt to establish contact with counsel. WhereIn addition, Appellant has not been able to communicate with counsel where counsel fails to respond to written communications. Wherefore, Appellant is forced to file this Writ pro se.

REASONS FOR GRANTING THE PETITION

A.

Appellant prefaces the following by asserting that (1) the government has deprived and denied Appellant enforcement of right(s) guaranteed by the Fourteenth Amendment, Sixth Amendment, and the Fifth Amendment, Due Process, and therefore, this court's protection must be invoked. (2) The United States Court Of Appeals has allowed and entered a decision that conflicts with "decision(s)" of other District and Appellate Courts' on the exact same important matters as those in Appellant's cause. (3) Appellant asserts that the Appellate, and District Court(s) have so-far departed from the accepted and usual course of judicial procedure, and has ostensibly sanctioned such a departure that it calls for the exercise of this court's supervisory-power.

REASONS FOR GRANTING THE PETITION

In addition to the above Appellant asserts that he was denied the effective assistance of counsel at both the District Court level, and the Appellate level. A list of counsel(s) failures and omissions will show that Counsel(s) representation was wholly ineffective, and below the standards set forth in Strickland v. Washington.

ISSUES OVERLOOKED BY TRIAL AND APPELLATE COUNSEL, AND OTHER LEGAL ERRORS

- 1). Appellant asserts that there was a Jencks Act violation, which counsel failed to raise before the District Court, or in the Appellate court on appeal. Appellant asserts that he never was allowed to view the statements of witnesses against him.
- 2). Venue: Violation of Venue, Counsel's failure to Object. Where Appellant was arrested in the Northern District of Texas, and where (all) of Appellant's conduct allegedly occurred in the Northern District, of Texas, Appellant was tried outside of the district in the Eastern District of Texas. Defense counsel, nor appellate counsel bothered to address this obvious constitutional violation.
- 3). Appellant asserts that there exist an Apprendi and Blakely violation where the district Court did sentence Appellant above the statutory maximum of 20 years, where there was a determination of drug quantity, especially, where there was not a determination as to the amount attributable to each defendant in the conspiracy.

- 4). Appellant asserts that the 'Indictment' as handed down by the Grand Jury was defective where it was insufficient to prevent a claim of "double Jeopardy" in the event of a mistrial, See U.S. v.-Hitt, 249 F.3d 1010, 1026 (DC Cir. 2001).
- 5). Appellant further asserts that there was a violation of Appellant's right to a "Speedy Trial" both pursuant to the Sixth Amendment under § 3161(b) Speedy trial provisions, and Federal Rules Of Criminal Procedure, Rule 18, And Article III, cl 2, where the district court lacked venue.
- 6). Appellant further states that he has suffered numerous Due-Process Violations. (a) Counsel did fail to object to the many inconsistent statements made by the Government and DEA agents, the Government's misconduct by altering the record with his ink-pen, twisting Appellant's statements to fit the government's purpose. (b) Appellant states that counsel was ineffective where he was aware that Appellant's plea was not counseled or voluntary. Further counsel acted as a surrogate prosecutor, when he delivered a message from the Assistant U.S. Attorney, that [i]f Appellant took the witness stand in his own defense, that the Government was going to seek a (2) two point enhancement, thereby, assuring appellant a life sentence.
7. Appellant counsel omitted obvious issues without any strategic purposes, simply performing a rote function, apparently never reading the "Record" of the case.
- 8). The district did fail to correct any factual inaccuracies in the presentence report, thereby causing appellant to be sentenced-

on a basis of inaccurate information, Where in U.S. v. Herrera-Rojas, 243 F.3d 1139 (9th Cir. 2001) the court held: "If the district court fails to make the required findings or determinations during the sentencing hearing, the sentence must be vacated and the defendant resentenced.

Wherefore, for all of the above reasons, Appellant asserts that this Petition should be granted.

REASONS FOR GRANTING THE PETITION

B.

LOWER COURT'S ERRONEOUS RULINGS AND CONTRARY CONSTITUTIONAL HOLDINGS

This Court should grant certiorari to address the many "constitutional" violations manifest in the lower court(s) decision(s) and discretionary jurisdiction, which are/were erroneous, and contrary to established law.

C.

APPRENDI AND BLAKELY ERRORS

Where the statutory maximum sentence allowed by 21 U.S.C. § 841(c), for Methamphetamine offenses "without" a specified drug quantity is 20 years, here Appellant was sentenced to 360 months (30 years), without a specified drug amount being attributed to him. Thus his sentence is in excess of the applicable statutory maximum, wherefore, an Apprendi violation exist. Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000), there the Supreme Court held that: "Any fact, other than the fact of a previous conviction, which will increase a sentence beyond the prescribed statutory maximum must be submitted to the jury and proved beyond a reasonable doubt. 120 S. Ct. at 2362-63."

REASON FOR GRANTING THE PETITION

"Applying Appendi to drug convictions under 21 U.S.C. § 841, we held that "drug quantity must often be treated as an element of the offense under § 841" and thus must be submitted to a jury to be proved beyond a reasonable doubt." See Blakely's holding: "Any fact other than a prior conviction---exceeding the maximum authorized by the facts established by a 'plea' of guilty, or a jury verdict, or admitted by the defendant, See Blakely v. Washington, 542 U.S. 296, 303-304 (2004)."

The penalty scheme of 21 U.S.C. § 841(b)(1) contemplates three potential sentencing ranges for manufacturing methamphetamine according to the drug quantity involved. 21 U.S.C.S. 841 (b)(1)-(A) prescribes a statutory maximum of life in prison if the offense involves 50 grams or more of methamphetamine, 21 U.S.C.S. § 841 (b)(1)(B) imposes a statutory maximum of 40 years for offenses involving five grams or more of Methamphetamine, 21 U.S.C.S. § 841 (b)(1)(c) limits the maximum sentence to 20 years if no specific drug quantity is determined. Appendi mandates that it is for the jury to weigh the facts and make the initial determination of a drug quantity range, and in doing so the jury is not bound by any single inflexible rule.

Here in Appellant's Cause (see Dkt # 160, (Sentencing Hearing, June 1, 2018, The government was never able to determine which individuals or which defendant/and/or co-defendant(s) were

responsible for those amounts (See page ID 666, pages 13-14, ln's 23-25, and page ID 667, ln's 1 and 2) ROA.651-652-672-75.

Appellant preserved error, See United States v. Haines, 803 F.3d 713, 738-39 (5th Cir.2013). (Appellants Complaint on appeal regarding the assesment of a mandatory minimum sentence based on conspiracy wide drug quantity rather than the quantity attributable to each individual, was adequately preserved by objecting to "any and all enhancements [in the PSR] to his sentence based on facts other than those decided by the jury or admitted by the defendant; United States v. Sanchez-Villarreal, 857 F.3d-714, 721 n. 6 (5th cir. 2017)(see Sent. Trans. pages 667-676-22-of331) Holding that defendant preserved error, given that his argument to district court as to why he should be given mitigating-role adjustment were same as argument made on appeal); United States v. Gomez-Alvarez, 781 F.3d 787, 791 (5th Cir. 2015).

Regarding the plea colloquay in appellant's case, despite (six) attempts on the part of the district Court and the Government to extract an admission from Appellant, appellant only stated that "My role was to safeguard the liquid." ROA 583-84.

However, despite the above, Appellant was given a (Guideline-Sentence) by the District Court Judge, and therefore, his sentence was imposed in violation of the Sixth Amendment, as well as the United States Sentencing Guidelines, (U.S.S.G.'s). § 2D1.1 dictates an entirley different (Sentencing scheme) than what the District Judge employed when sentencing Appellant.

Where the "Indictment, Judgment & Comittment, and Criminal Docket sheet",all list Appellant's charge as "Conspiracy to Possess With The Intent To Manufacture and Distribute Methamphetamine." The District Judge did impose sentence pursuant to a statutory sentencing scheme which placed Appellant's "Offense Level at 38, pursuant to U.S.S.G.'s § 2D1.1. However, this was error where Appellant should have been sentenced pursuant to § 2D1.11, U.S.S.G.'s Manual,November 1, 2014.

D.

INEFFECTIVE ASSISTANCE OF COUNSEL INDIGENT DEFENDANT'S
AND NON ENGLISH SPEAKING DEFENDANT'S

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense." The Sixth amendment right to counsel applies to all federal and state criminal prosecutions. In Penson v. Ohio, 488 U.S. 75,85 (1988), (court erred in denying indigent defendant representation during appeal as of right after counsel withdrew because defendant lacked representation during decision making process); See Evitts v. Lucey, 469 U.S. 387-396 (1985).

Appellant asserts that there exist in the Eastern and Northern district of Texas a corrupt and bias judicial system which has devolved into a socio-political extremist judicial complex with systemic prejudicial overtones (due) to the fact that this area

is a [known drug corridor], and anyone unfortunate enough to become associated with a drug conspiracy, whether their involvement is accidental, happenstance, minor or due to innocent gullability, they are automatically prosecuted to the full extent of the law, and given the most harshest of sentences. However where there are unique circumstances which skew the prosecution of methamphetamine cases (particularly) in this geographical area. Most often than not persons trafficking and manufacturing methamphetamine, are doing so at the behest of the Mexican Cartel's (this is an undisputed fact). However, the (victims/defendant's) are very often poor, uneducated, easily exploited, rural migrant illegals seeking the American dream. However, whom is to blame, the Border Patrol, the Immigration Officials' at the Border ? the DEA ?, the Mexican government, the American Government, whoms task is the protection of our borders from "all" foreign threats and agents ?

Regardless, the issue is not whom to blame, but how our criminal justice system responds to the threat and its impact on our Justice system. However, where justice is dispensed based on race, economic considerations, or biased plea deals, or tit-for-tat, negotiations between the District Attorney's office, and defense attorneys', or where judges have become so jaded and cynical due to surfeit and apathy, that the fact of judicial integrity is mired in a systemic farce that only resembles law under our American judicial system.

E.

COUNSEL'S FAILURE TO ADVOCATE FOR APPELLANT
AND TO REPRESENT APPELLANT PURSUANT TO THE HOLDINGS
IN STRICKLAND v. WASHINGTON

Appellant asserts that from the outset, counsel did fail to represent him in a meaningful way as is required by Strickland v. Washington, 466 U.S. 668, 687-88 (1984) See also Glover v. U.S., 531 U.S. 198, 201, 204 (2001)(counsel's failure to investigate and present substantial mitigating evidence...was prejudicial; counsel's failure to due any presentence investigation was prejudicial because no potential mitigating evidence...) Gentry v. Sevier, 597 F.3d 838, 851-52 (7th Cir. 2010).(Counsel's failure to investigate any aspect of the case was ineffective (pre-trial) assistance.

Viewing the "official docket sheet" it is soberingly clear that counsel failed to file assingle "pre-trial" motion. Where Appellant was preparing for trial. Equally sobering, is the fact that it is pellucidly clear that there is a violation of 18 U.S.C. § 3161(b)'s "Speedy Trial Provision," which Appellate counsel has completely ignored also. Additionally, where it is abundantly clear that there is a venue/jurisdiction issue, where appellant was arrested in the Northern District of Texas, yet, he was tried in the Eastern District Of Texas, in violation of Article III, of the U.S. Constitution, which states that: "trial of all crimes... shall be held in the state where the said crimes shall have been commit-

ted U.S. Const. Art. III § 2 cl 3. Here Counsel completely ignored this important issue, which if pursued could have greatly changed the outcome of the entire trial. appellant asserts that he has never set foot in the Eastern District, and that there is nothing to tie him to the Eastern District of Texas.

Counsel's lackluster representation is further evidenced by the sentencing transcripts, here it becomes au apparent that the entire proceeding(s) are simply a "dog and pony show" and that Appellant is being "railroaded" away for 30 years, for basically being a gullible, and financially--needy-dupe.

Where during the sentencing, a perusal of the (Sentencing Hearing- Transcript(s)) reveals a startling discrepancy concerning drug- amounts: On(Page 5 of 31, Page ID # 659,ln. 10-13, it clearly states: "My client objects to the quantities derived in this case, that he is not responsible for a base offense level of 38. My client an I believe that the government is basically assessing his base offense level too high, and he should not be responsible for 32.66 cubic grams, of Methamphetamine (actual)." In the government's response to the above, the amount changes---from 32.66 cubic grams--to " it was over 30 kilos, kilograms, of methamphetamine." The Government's expert, later changed this amount to 38. 52 kilograms of Methamphetamine (actual), in the same breath. (Seepage 11 of 31, Page ID # 665)(Sentencing Transcripts)--Again the government expert changes the amount and form of the drug--- to Methamphetamine crystal, which is distinctly different from a

mixture of substance(s). Without any objection from Appellant's counsel.

Where in the original Police Report. Mr Kusko, the government's expert/chemist, on the day of Appellant's arrest, at the location in Crandall, Texas, Mr. kusko stated that there was approximately 20 Kilograms of Methamphetamine. Yet, contained in the (PSR), Pre-sentence Report at ¶ 13, it again indicates a total of 32.66 Kilograms of Methamphetamine. However, again at sentencing the amount morphed to 38.52 Kilograms, without a single objection from defense counsel, or a single question concerning the changing amounts/discrepancies in the amounts, which basically doubled from the day of the arrest---to the day of sentencing.

As well, counsel did fail to contest any of the discrepancies contained in the (PSR), or the statements attributed to Appellant by the DEA Agents'

AMPHETAMINE, METHAMPHETAMINE OR PHENYLACETONE

Where the distinction between "Methamphetamine" and "Pure Methamphetamine" refers to relative purity of any Methamphetamine, compound and not to particular form of Methamphetamine, and thus, court erred when it refused to consider for sentencing purposes percentage of "pure Methamphetamine" under § 2D1.1(c). that would be present in any given amount of DL-Methamphetamine, which court found could have been produced by the conspiracy, on ground that pure Methamphetamine, refers only to D-methamphetamine, United-

States v. Garroll, (1993, CA 11 Fla) 6 F.3d 735,

Appellant asserts that this is the exact same error that the District Court engaged in when computing his "Offense Category" thus , violating Appellant's Fifth Amendment Right to Due Process, as well, sentencing Appellant under an uncorrect Guideline.

In calculating defendant's base offense level court erroneously used Methamphetamine category of 2D1.1, which refers to mixture of methamphetamine and (various impurities), rather than methamphetamine (actual), category, which refers to pure methamphetamine, where chemist testimony indicated that they were refering to only pure methamphetamine. United States v. Spencer, (1993 CA 2 Vt 4.- F.3d 115).

In sentencing defendant for conspiracy to manufacture of methamphetamine, court properly used Drug Quantity Table in 2D1.1 rather than chemical quantity Table in § 2D1.11, as directed by § 2D1.-11(c)(1), because defendant's offense involved unlawful manufacture of methamphetamine, and § 2D1.1 gives a higher base offense level, United States v. Griggs, (1995, CA 8 MO. 71 F.3d 276, reh, en banc, den (1996, CA 8).

Wherefore, it is clear from the above, that when the court has to determine an amount of Methamphetamine in a case which alleges manufacturing, it is required that the court explicitly set the quantity of methamphetamine relevant to assessment under § 2D1.1,

and 2D1.11, where § 2D1.1 and § 2D1,11, call for different sentencing ranges.

F.

WHETHER APPELLANT WAS CONVICTED OF CONSPIRACY TO POSSESS WITH THE INTENT TO DISTRIBUTE METHAMPHETAMINE & MANUFACTURE OF METHAMPHETAMINE, OR NOT "MANUFACTURING OF METHAMPHETAMINE" ^

In the government's 'Brief for the United States,' the government characterizes the discrepancy between the written judgment, and the record, e.g., Plea Agreement, as a "clerical error." In the written judgment it describes the offense of conviction as "Conspiracy to Possess With The Intent to Manufacture and Distribute Methamphetamine" While Appellant actually pleaded guilty only, to "agreeing to watch over a substance that he "thought" might be illegal." Not as the government asserts that he plead guilty to "Conspiracy to Possess with the intent to distribute methamphetamine."

Here this was an attempt at misdirection, and obfuscation of the truth by the government, and an attempt to justify the harsh and draconian sentence imposed on Appellant when the government was fully aware that Appellant was nothing more than a flunky and pawn, being used by others. It is plainly obvious that Appellant was sentenced pursuant to § 2D1.1 "manufacturing" guideline, pursuant to §§ 2D1.11(c)(1) which cross-references § 2D1.1, as the correct guideline when offense involves manufacturing of 'controlled substances and encompasses conspiracy to manufacture methamphetamine, United States v. O'Leary, (1994, CA 5 La) 35 F.3d 153.

Looking to the (Sentencing Transcripts)(Dkt. # 160, page 25 of 31, page ID 679, ln. 11, it clearly sets forth in the colloquay that-

Appellant is being sentenced/punished for the manufacture of methamphetamine, as is evidenced by the Assistant U.S. Attorney's statements, at the sentencing hearing.

Mr. Gonzales:

" Your Honor, we would argue that the defendant deserves a punishment at the top of the Guidelines. As the Court can see here, he still fails to accept responsibility for his actions. He's still denying his involvement in the transaction that led to the seizure of the 38 kilos."

As an example of that, his objection at No. 7, he insist that the pots on the stove did not contain methamphetamine and oil, and says that the pots contained oil and diesel, a total denial that he was involved in the conversion of methamphetamine, and tries to convince this court that that was not methamphetamine. The chemist just testified... ."

Where the penalty scheme of 21 U.S.C.S. § 841(b)(1) contemplates three potential sentencing ranges for manufacturing methamphetamine, according to the drug quantity involved. 21 U.S.C.S. § 841(b)(1)(A), = 50 grams or more [life]; 21 U.S.C.S. § 841(b)(1)(B), imposes a statutory maximum of 40 years for 5 grams or more, § 21 U.S.C.S. 841 (b)(1)(C) limits the maximum sentence to 20 years if no specific drug quantity is determined.

21 U.S.C.S. § 846 makes it a crime to attempt to manufacture methamphetamine. The penalty for attempt is determined according to to the scheme in 21 U.S.C.S. 841(b)(1), and the United States Sentencing guidelines Manual. Here, the District judge sentenced Appellant to 365 months (30) years. Yet, counsel simply acquiesced, failing to argue or even to ~~recognise~~ that the statutory maximum pursuant to Apprendi was/is 20 years. Where the court did impose Appellant's sentence pursuant to the "Sentencing Reform Act of 1984; U.S.C. § 3553(a); and after having consulted the Advisory Sentencing Guideline(s).

Appellant states that counsel failed to advocate and to represent him in an effective manner. In Strickland, 466 U.S. at 690 (court must determine whether, in light of all of the circumstances the identified act or omissions were outside the wide range of professionally competent assistance. (Counsel's failure to investigate possible defense was ineffective assistance. Marshall v. Cathel, 428 F.3d 452 465-71 (3rd Cir. 2005)).

DISTRICT COURT'S LACK OF VENUE

G.

Rule 18. Place of Prosecution and Trial. Amendment VI provides:

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 where in the crime shall have been committed, which district shall have been previously ascertained by law... .

28 U.S.C. [former] 114 [See §§ 1393, 1441] provides: All prosecutions for crimes or offenses shall be had within the division of such district where the same were committed, unless the court, or the judge thereof, upon the application of the judge thereof, or upon application of the defendant... See, United States v. Johnson, 89 - 130, 323, 323, U.S. 273, Where offense(s) with which defendant is charged are alleged in the indictment to have been committed in particular district, case must be tried in that district, unless defendant has waived his right in that respect, and court is without power to transfer case to any other district. United States v. Parr, 17 FRD 512 (D. Tex. 1955). It follows fortiori that when a district is not separated into divisions... trial at any place within the district is allowable, See United States v. Fernandez, 480 F.2d 726 (2nd Cir. 1973). See also Zicarelli v. Gray, 543 F.2d 466 3rd Cir. 1976) and cases cited therein.

Fed R. Crim. P. 18 which required the place of trial to be fixed within the district with due regard to the convenience of appellant and the witnesses.... Williams v. Florida, 399 U.S. 78, 93-97-90 S.Ct. 1893, 26 L.Ed. 2d 446 (1970). (Consideration of vicinage requirement.) See 28 U.S.C. § 1867(a) ;

[u]nless a statute or the rules permit otherwise, the government must prosecute an offense in a district where the offense was committed. The court must set the place of trial within the district with due regard for the convenience of the defendant, any victim, and the witnesses, and the prompt administration of justi-

ce. See United States v. Dickie, 775 F.2d 607,609 (5th Cir. 1985).

See United States v. Garza, 593 F.3d 385,389-91 (5th Cir.2010).

Where the district court similarly transferred the case to another district *sau sponte* without giving any reason(s). In Garza, However, the court concluded that pursuant to the Rule 18 factors, that the transfer did result in substantial delay and inconvenience.

On March 07, 2017, appellant states that he was arrested in Crandall, Texas, in connection with a conspiracy to manufacture and distribute Methamphetamine. Appellant was subsequently held on a Complaint (filed on 03/08/2017). Wherefore, it is appellant's assertion that the District Court lacked jurisdiction to remove the case from the Northern District to the Eastern District of Texas, it is Appellants assertion that he has nor did he committ a crime in the Eastern District of Texas. Where the state of Texas is divided into (11) eleven districts/Administrative Judicial Regions, As of 09/12/2017, Appellant asserts that "Crandal Texas; and Irving, Texas are both in the 1st, Judicial District Of Texas. Appellant further asserts that he was arrested in Crandall, Texas, and that he never, entered into the Eastern District of Texas which is in the 10th Judicial District.

This is in conflict with the Supreme Courts decision in United States v. Anderson, 332 U.S. 699, 90 L.ed 1529, (1946), United States v. Pomranz, 43 F.3d 156, (1995); 524 U.S. 915, 142 L.Ed 2d 156, (1998). and United States v. Cabrales, 524 U.S. 1, 67 141 L.Ed-

2d 156, 118 S.Ct. 2296 (1998).

AM Jur: 32 A Am Jur 2d Federal Courts § 1209.

§ 1460 Cure or waiver of Defects:

(a) The District court of a jurisdiction in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.(Locus Delicti).

Appellants asserts that there was never a discussion concerning the validity of the court's Venue, and that the court 'sau sponte' did transfer the cause to the Eastern District, without cause.

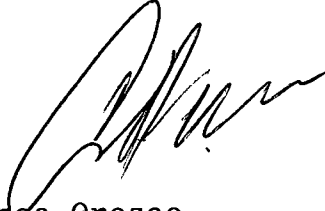
It is again Appellant's assertion that Counsel was ineffective where he failed to object to the Court's venue, or to raise the issue pre-trial, thus, effectively waiving the issue, or preserving it for Appellate review. The Law is plain and straight forward, Stating that: ["All prosecutions for crimes or offenses shall be had within the division of such district where the same were committed, unless the Court, or the judge thereof, upon the application of the defendant ..."] Wherefore, Appellant asserts a Sixth Amendment violation.

Wherefore, Appellant respectfully prays for the relief that that he seeks, based on the above information and case law. In the alternative, Appellant would ask this court to remand his case **back** to the District Court, for an evidentiary hearing, and new trial proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Carlos Alberto Ochoa-Orozco

Date: This 10, day of June 2019