

No. _____

In The
Supreme Court of the United States

—◆—

ANGEL M. AYALA VAZQUEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

—◆—

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit**

—◆—

PETITION FOR WRIT OF CERTIORARI

—◆—

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QUESTION PRESENTED

Whether the lower courts so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power when they circumvented the standard of review for issuing a certificate of appealability as interpreted by this Court in *Welch v. United States*, 136 S. Ct. 1257, 1264 (2016) and *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003).

PARTIES TO THE PROCEEDINGS

Petitioner Angel M. Ayala Vazquez was the defendant in the district court proceedings and petitioner in the court of appeal proceedings on direct appeal. He was subsequently the petitioner in his petition under 28 U.S.C. §2255. Respondent United States of America was the plaintiff in the district court proceedings, appellee in the court of appeals proceedings on direct appeal, and the respondent in the court of appeal on the 28 U.S.C. §2255 petition.

RELATED CASES

United States of America v. Torres-Estrada (Jovanni Varestin-Cruz) 17-1314; D.C. No. 11 CR 00045-FAB

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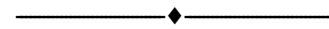
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PETITION FOR A WRIT OF CERTIORARI

Petitioner Angel M. Ayala Vazquez petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.



OPINIONS BELOW

The First Circuit's opinion is reported at *United States of America v. Angel Ayala Vazquez*, 751 F.3d 1 (1st Cir. 2014). The First Circuit's denial of Petitioner's motion for reconsideration and rehearing *en banc* is reproduced at App. 31. The opinions of the District Court for District of Puerto Rico are reproduced at App. 6 and App. 30. The opinions of the First Circuit Court of Appeals are reproduced at App. 1; App. 4; and App. 31.



JURISDICTION

The Court of Appeals entered judgment on November 22, 2019. App. 1. The court denied a timely petition for rehearing *en banc* on February 21, 2020. App. 31. This court has jurisdiction under 28 U.S.C. §1254(1).



STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the interpretation of the Fifth Amendment to the United States constitution, specifically Petitioner's rights to due process: "No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ." This case also involves the interpretation of the Sixth Amendment to the United States Constitution, specifically, Petitioner's right to a fair trial: "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 witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

INTRODUCTION AND STATEMENT OF THE CASE

On April 15, 2010, the government filed a second superseding indictment, upon which Petitioner was tried. Count One charged a conspiracy to possess with the intent to distribute several different controlled substances within the Municipality of Bayamon, Puerto Rico, and elsewhere within Puerto Rico. Count Two charged a conspiracy to import a large quantity of cocaine into the customs territory of the United States,

namely Puerto Rico. Counts Three, Four, Five, and Six charged possession of a controlled substance within one thousand feet of real property comprising a public housing facility with intent to distribute. Count Three was for one kilogram or more of heroin. Count Four was for fifty grams or more of crack cocaine. Count Five was for five kilograms or more of cocaine. Count Six was for one thousand kilograms of marijuana. Counts Seven, Eight, and Nine were all for conspiracy to commit the crime of money laundering.

After a jury trial, Petitioner was convicted of all nine of these charges. At trial the judge granted an acquittal of Count Eleven.

The trial court imposed a single sentence of imprisonment for Petitioner's natural life.

Petitioner timely appealed to the First Circuit Court of Appeal, which affirmed his conviction and sentence. *United States v. Ayala-Vazquez*, 751 F.3d 1 (1st Cir. 2014). Thereafter, on October 5, 2015, Petitioner filed a 28 U.S.C. §2255 petition in the United States District Court for the District of Puerto Rico. The district court denied the motion, and similarly denied Petitioner's request for a Certificate of Appealability ("COA"). App. 6; App. 30.

On November 13, 2018, Petitioner timely appealed to this Court pursuant to 28 U.S.C. §2253, Fed. R. App. P. 22(b)(1), and First Circuit Rule 22.1

On January 7, 2019, Petitioner filed a motion for a certificate of appealability. On November 22, 2019, the

Court of Appeals for the First Circuit issued a judgment denying Petitioner's petition for a certificate of appealability. App. 1.

On January 3, 2020, Petitioner filed a petition in the Court of Appeals for the First Circuit for relief and suggestion for rehearing *en banc*, which was denied on February 21, 2020. App. 31.



REASONS FOR GRANTING THE PETITION

I. The Lower Courts Circumvented the Standard of Review for Issuing a Certificate of Appealability Under *Miller-El v. Cockrell*, 537 U.S. 322 (2003), Thereby Denying Petitioner Due Process and the Right to be Heard

In his 2255 petition, Petitioner raised and developed critical facts that were absent from the trial record that was reviewed on direct appeal. Among those critical facts were the presentation of perjured testimony and violations of *Brady v. Maryland*, 373 U.S. 83 (1963). The absence of those critical facts from the record on direct appeal resulted in an appellate review that was based on misleading and prejudicial facts.

In his petition under section 2255 of Title 28 of the United States Code, Petitioner raised two constitutional issues affecting his rights to a fair trial and due process. The first issue pertains the government's failure to provide exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963). The second issue

pertains to the government knowingly presenting perjured testimony at Petitioner's trial. Petitioner requested the district court to conduct an evidentiary hearing. The district court, however, denied Petitioner an evidentiary hearing and refused to issue him a certificate of appealability.

The First Circuit Court of Appeals similarly denied Petitioner's request for a certificate of appealability. App. 6; App. 29. The First Circuit Court of Appeals also denied Petitioner's request for an *en banc* hearing of the three-judge panel's denial of Petitioner's request for the issuance of a certificate of appealability. App. 31.

Section 2253(c) of Title 28 of the United States Code provides that a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c) (1996). In order to make a "substantial showing," a petitioner seeking a COA must show that: (1) the issues are debatable among jurists of reason, (2) a court could resolve the issues in a different manner or (3) the questions are "adequate to deserve encouragement to proceed further." *Barefoot v. Estelle*, 453 U.S. 880, 893 fn. 4 (1983). In ruling on a motion for a COA, a district court must state which issues, if any, satisfy the standard set forth in §2253(c)(2) or the reasons for its denial of the motion. First Cir. Loc. R. 22.1(a).

Under the Antiterrorism and Effective Death Penalty Act of 1996, a party cannot appeal a final order in

a §2255 proceeding unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. §2253(c)(1). A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” §2253(c)(2). The “debatable among jurists of reason” inquiry has been interpreted as a very low barrier to the issuance of a certificate of appealability. The Petitioner need not show that some jurists would grant his petition for habeas corpus. *Miller-El v. Cockrell*, 537 U.S. 322, 338, 123 S. Ct. 1029, 154 L.Ed.2d 931 (2003). In fact, a claim can be considered “debatable” even if every reasonable jurist would agree that the Petitioner will not prevail. *Id.* A petitioner meets that standard when “‘reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner.’” *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed. 2d 542 (2000).” *Welch v. United States*, 136 S. Ct. 1257, 1263, 194 L.Ed.2d 387 (2016). Petitioner reached that threshold by raising two significant constitutional issues. But the courts below denied Petitioner’s due process rights and the opportunity to be heard by refusing to conduct an evidentiary hearing to resolve factual issues on his *Brady* claim and on his claim that the government knowingly presented perjured testimony at trial.

A. The Lower Courts Denied Petitioner Due Process and Access to the Courts by Denying Him the Opportunity to Hold an Evidentiary Hearing on His Claim that the Government Failed to Disclose Critical Evidence Under *Brady v. Maryland*.

In his 2255 Petition, Petitioner alleged that the government committed a serious violation of *Brady v. Maryland*, 373 U.S. 83 (1963) by failing to provide the defense with a critical DEA report, which undermined the government's theory of the case.

At trial, the government presented evidence to support its theory that Petitioner was in charge of drug distribution at the Barbosa Housing Project and that his younger brother, Luis Xadiel Cruz Vazquez, ran daily operations in Petitioner's absence.

But post-trial, Petitioner learned of a DEA-6 report that was dated January 29, 2004, some seven years before Petitioner's trial. Petitioner alleged in his 2255 petition that the government failed to provide that report to him prior to trial. That DEA-6 report, prepared by DEA agent Roberto Cruz and entitled "Debriefing and Reactivation of [Redacted]," revealed the claim by a confidential source that Petitioner controlled drug distribution points located at the Barbosa and Sierra Linda housing projects, but that a third party—not his younger brother—maintained control of the Barbosa Housing Project drug distribution point in Petitioner's absence. Yet at Petitioner's trial, the

government unwaveringly maintained that Petitioner and his younger brother ran the Barbosa and Sierra Linda drug distribution points, a theory the DEA-6 report contradicted.

The information the confidential source provided to the government, as contained in the non-disclosed DEA-6 report, was material because it directly impeached the veracity of the government's witnesses at trial, as both affirmative evidence that the government's theory was wrong and intentionally misleading, and also as impeachment evidence of government witnesses. Thus, its non-disclosure constituted a *Brady* violation. The district court missed this point entirely and concluded that the non-disclosed DEA-6 did not cause Petitioner prejudice.

The non-disclosed DEA-6 raises another issue besides impeachment of an informant; that is, Petitioner's fundamental right to a fair trial. This issue is not simply an impeachment issue, for which a prejudice analysis is often dispositive against a defendant. The issue is that the jury's verdict was partially predicated upon false testimony and evidence introduced by the government.

This *Brady* issue dovetails with another issue Petitioner raised in his 2255 Petition; that is, the government presented perjured testimony.

B. The Lower Courts Denied Petitioner the Right to Due Process and a Fair Trial Under the Fifth and Sixth Amendments by Failing to Conduct an Evidentiary Hearing on Petitioner's Claim that the Government Knowingly Presented Perjured Testimony.

In his 2255 Petition, Petitioner alleged that one of his co-defendants, Elvin Torres Estrada, filed a number of pleadings under seal.¹ Because those pleadings were filed under seal, Petitioner did not have access to them. However, at the time he filed his 2255 Petition, Petitioner was aware of the tenor of those sealed pleadings. Specifically, he was aware that those sealed pleadings presented clear prejudicial *Brady* violations, because the filings revealed that the government had exculpatory and impeachment evidence in its possession before Petitioner's trial but failed to disclose that evidence to the defense.

Petitioner also alleged in his 2255 Petition that Torres Estrada filed under seal (in Case Nos. 09-cr-0173 and 11-cr-045) documents that contained information known to the government *at or before Petitioner's trial*, which would severely call into question the credibility of the government's cooperating trial witnesses. Specifically, those documents filed under seal confirm that the government presented perjured testimony at Petitioner's trial. As a result, the government's vouching for the credibility of those cooperating witnesses

¹ Elvin Torres Estrada was a named defendant in two separate indictments, Case 09-cr-0173 and Case 11-cr-045.

before the jury was disingenuous at best; at worst it was intentionally misleading to both the jury and the court. A simple evidentiary hearing would have resolved the claims.



CONCLUSION

For the foregoing reasons, the Court should grant a writ of certiorari.

Respectfully submitted,

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