No. 19-5314

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

AURORA BARRERA — 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

AURORA BARRERA
(Your Name)

Satellite Federal Prison Camp, 5679 8th St. Camp Parks
(Address)

Dublin, CO 94968
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether a court of appeals has jurisdiction over an appeal of the denial of a § 2255 Petition pursuant to § 1291 when the District Court fails to adjudicate all claims in that § 2255 Petition?

LIST OF PARTIES

[x] 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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TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

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STATUTES AND RULES

28 U.S.C. § 1254(1)

28 U.S.C. § 1291

28 U.S.C. § 2255(a)

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

[x] 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,
[x] is unpublished.

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

[x] 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[ ] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[x] 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

Pursuant to 28 U.S.C. § 1254(1), review of a case in a United States court of appeals may be sought by petition for writ of certiorari. The statute provides that any party may seek review, and that the petition for certiorari may be sought "before or after rendition of judgment or decree."

Pursuant to 28 U.S.C. § 1291 of the Judicial Code, only "final decision" of a district court may be appealed to the court of appeals. "A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment."

28 U.S.C. § 2255 provides, in part, that "[a]n appeal may be taken to the court of appeals from the order entered on the motion as from the final judgment on application for a writ of habeas corpus." Thus, it is the "final order" of the district court that is subject to appeal. Accordingly, while an appeal in a civil case generally lies only when the final judgment of the district court has been docketed, an appeal lies in a section 2255 case as soon as the district court enters an order granting or denying the motion.

STATEMENT OF THE CASE

In the District Court, on habeas review, pursuant to 28 U.S.C. § 2255, Petitioner raised the following claims under ineffective assitance of counsel: **(1)** Counsel failed to object to Barrera wearing shackles during trial; **(2)** Counsel failed to object to the erroneous reading of the jury instruction for bank robbery; **(3)** Counsel failed to object to the admission of cell phone data at trial; **A** - Using inadmissible cell phone data records without a warrant which the Fourth Amendment demands; **B** - In this case, it is not clear if law enforcement obtained the data from Ms. Barrera's wireless carrier with a court order under the Stored Communication Act; **C** - Rather than with a probable cause warrant which would have required more proof; **D** - The use of the data was inherently prejudicial to Ms. Barrera; **(4)** Counsel failed to move for severance from co-defendant Vega; **(5)** Counsel improperly advised Barrera regarding a plea agreement; and **(6)** Counsel failed to object to prosecutorial misconduct and misadvised Barrera regarding her right to testify. **See Appendix E.**

Subsequently, in adjudicating the merits of Barrera's two ineffective assistance of counsel Fourth Amendment claims, the District Court failed to adjudicate whether Barrera's Fourth Amendment rights were violated when the government used inadmissible state wiretap evidence, in violation of Federal Statutes 18 U.S.C. § 2518 and § 2516. **See Appendix B.**

On appeal, to the Ninth Circuit, Barrera petitioned the court to remand her case back to the District Court for adjudication of her ineffective assistance of counsel claim, squarely raised in her § 2255 petition. **See Appendix C.** Instead, the Ninth Circuit issued an order denying a certificate of appealability. **See Appendix A.**

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's judgment is in direct conflict with every circuit court of appeals to consider; whether a court of appeals has jurisdiction over an appeal of the denial of a § 2255 Petition pursuant to § 1291 when the District Court fails to adjudicate all claims in that § 2255 Petition. See **Holley v. United States**, 2017 U.S. App. LEXIS 25721 (11th Cir. 2017) (when a district court does not address all claims in a 28 U.S.C. § 2255 motion to vacate, an appellate court will vacate the district court's judgment without prejudice and remand the case for consideration of all remaining claims); **Porter v. Zook**, 803 F. 3d 694, 696 (4th Cir. 2015) (Remanding case back to the district court for adjudication of unresolved claim because court of appeals does not have jurisdiction pursuant to 28 U.S.C. § 1291).

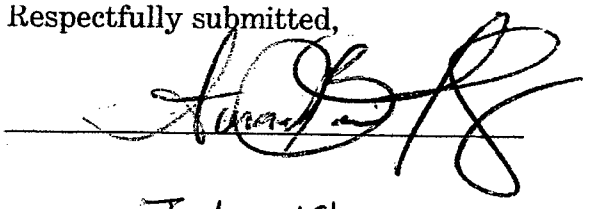
What is more, the Ninth Circuit created an inter-circuit split. See **Prellwitz v. Sisto**, 657 F. 3d 1035, 1038 (9th Cir. 2011) (dismissing habeas appeal for lack of jurisdiction where the district court failed to adjudicate all claims). The issue presented is one of national importance and this Court should use its discretionary jurisdiction to settle a recurring problem where Courts of Appeals issue an order denying a COA, instead of remanding a case back to the district court for adjudication of unresolved claims.

CONCLUSION

This Court should grant the Petition, vacate the Ninth Circuit's judgment and remand this case back with instructions.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: July 18 2019