

IN THE SUPREME COURT OF THE UNITED STATES

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DAVID MORRILLO-CRUZ,  
PETITIONER,

VS.

UNITED STATES OF AMERICA,  
RESPONDENT.

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PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES  
COURT OF APPEALS FOR THE THIRD CIRCUIT AT APPEAL NUMBER 18-1393

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PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether the sentence imposed by the Court was reasonable?

## LIST OF PARTIES

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

## TABLE OF AUTHORITIES CITED

### CASES

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IN THE SUPREME COURT OF THE UNITED STATES

DAVID MORILLO-CRUZ,  
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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Petitioner respectfully prays for a writ of certiorari to review the judgment of the Court of Appeal for the Third Circuit. The Third Circuit's Non-Precedential Opinion is attached as Appendix A.

JURISDICTION

This litigation began as a criminal prosecution against David Morillo-Cruz, Petitioner, for violations of laws of the United States. The United States District Courts have jurisdiction over such prosecutions. 18 U. S. C. § 3231. The Petitioner appeals from the Order of the Third Circuit entered on August 5, 2019. The Petitioner filed the Notice of Appeal on February 28, 2019. The Third Circuit Affirmed the Lower Court on August 5, 2019. This Court has Jurisdiction under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the Constitution of the United States.

## STATEMENT OF THE CASE

On April 24, 2013, the Government charged the Petitioner in an Indictment alleging Attempted Possession with Intent to Distribute 1 Kilogram or More of Heroin in violation of 21 U.S.C. § 841(b)(1)(A). On November 19, 2013, the Petitioner pleaded guilty. On January 31, 2018, the Court sentenced the Petitioner to 120 months to run consecutively to the Southern District of New York sentence.

### *Relevant Facts*

The Petitioner is currently 42 years old. He was 38 years old when he committed this offense. He has been in custody since his arrest on March 27, 2013, that is more than six years. The Petitioner was born in the Dominican Republic. The Petitioner is an illegal alien. As a convicted drug felon, the Government will deport the Petitioner once he completes serving his sentence.

The Petitioner was born to Ramon Morillo and Carmen Cruz. Mr. Morillo is currently 84 years old, and Ms. Cruz is deceased. Ms. Cruz died of kidney and heart problems in 2013, at the age of 79, while the Petitioner was in custody. The Petitioner has ten siblings, and most reside in the Dominican Republic except as indicated: Maximo Ramon Morillo-Nunez, Felix Francisco Cruz, Anna Maria Morillo-Nunez, Antigua Morillo Cruz,<sup>1</sup> Esteban Morillo Cruz, Marco Morillo Cruz,

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<sup>1</sup> Resides in Wyoming.

Janet Nunez,<sup>2</sup> Jorge Morillo Cruz,<sup>3</sup> Modesto Morillo Nunez,<sup>4</sup> and Norberto Morillo Nunez. While the Petitioner described his childhood as a normal middle-class family, he had to leave school during the sixth grade to help support his family. The Petitioner does not have additional formal education. He, however, has developed auto mechanics, bodywork, and construction skills. He reported buying, fixing, and selling cars in addition to work in construction.

The Petitioner first came into the United States in November 1998, and he lived in Queens, N.Y. He stayed in the United States for two years and then returned to the Dominican Republic. Later he returned to the United States and settled in Philadelphia. In Philadelphia, the Petitioner developed a relationship with Ms. Yastrenski Ulloa and had a child with her named Yaeden David Morillo, who is approximately six years old and has a learning disability. Yaeden resides with his mother, Ms. Ulloa. Also, the Petitioner has five other children: Luis David Morillo, Davidali Morillo, Daviel Morillo, Yadiel Morillo, and John David Morillo.

While in custody, the Petitioner aided a correctional officer that was assaulted by an inmate. The Petitioner with another inmate carried the correction officer to safety, and he was given a monetary award for his actions. (A. 35) Please note that many other inmates were present and ignored the situation. The Petitioner also

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<sup>2</sup> Resides in Spain.

<sup>3</sup> Resides in Queens.

<sup>4</sup> Resides in the United States in custody.

assisted the U.S. Attorney in the Southern District of New York in the prosecution of another. Further, besides cooperating in New York, the Petitioner did eventually try to cooperate since present counsel entered his appearance, but unfortunately, he was not able to provide substantial assistance.

### REASONS FOR GRANTING PETITION

It is within the discretion of a District Court to determine the proper sentence of a Defendant. This discretion, however, is not unfettered. Section 3553(a) of the United States Code, states that “[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes outlined in paragraph (2) of this subsection.” 18 U.S.C. § 3553(a)(2). Further, the Supreme Court has held that sentences must be reasonable. In *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court set the review of sentences under a reasonable standard. *Id.* at 224.5 Subsequently, the Court reaffirmed this standard of review. Specifically, in *Gall v. U.S.*, 552 U.S. 38 (2007), the Supreme Court stated:

As a result of our decision, the Guidelines are now advisory, and appellate review of sentencing decisions is limited to determining whether they are “reasonable.” Our explanation of “reasonableness” review in the *Booker* opinion made it pellucidly clear that the familiar abuse-of-discretion standard of review now applies to appellate review of sentencing decisions.

*Id.* at 46.

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5 “Here, these factors and the past two decades of appellate practice in cases involving departures from the Guidelines imply a familiar and practical standard of review: review for “unreasonable[ness].” *Booker*, 543 U.S. at 224.



The offense of Attempted Possession with Intent to Distribute 1 Kilogram or More of Heroin in violation of *21 U.S.C. § 841(b)(1)(A)* has a maximum sentence of Life Imprisonment, a \$10 million fine, and a maximum period of Life Time Supervised Released. Also, it has a 10-year mandatory minimum sentence and a 5-year mandatory minimum period of Supervised Release. Probation is not an available sentence. *21 U.S.C. § 841(b)(1)(A)* and *U.S.S.G. §5B1.1(b)(2)*. The U.S. Sentencing Guidelines resulted in the following computation: A Net Base Offense Level of 25 because the Petitioner pleaded guilty to attempt to possess with intent to distribute 2 kilos or more of Heroine. PSR ¶¶ 19 – 27.6 A Net Criminal History Category of III because the Petitioner had a total of 4 Criminal History Points. PSR ¶¶ 34 & 35. These resulted in a recommended guideline incarceration range of 120 – 121 months. The Petitioner's criminal history included a case in the Southern District of New York, where the Petitioner cooperated and received a reduction of his sentence. PSR ¶ 33. *See, USA v. David Morillo*, 13-cr-00070. The Petitioner was facing a similar sentence but was sentenced to 72 months imprisonment and five years of Supervised Released due to his cooperation. In this case, on February 14, 2018, the Court sentenced the Petitioner to 120 months to be served *consecutive* to the 72 months imposed in the Southern District of New York case. Thus, imposing

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6 The PSR is attached as Appendix C.

a total sentence of 192 months.

The Petitioner understands that the Court has the discretion to determine the appropriate sentence. This includes whether the sentence will be served concurrent or consecutive to a present sentence. Here the difference is significant. The Petitioner had already served almost five years. He had been in custody since March 27, 2013 and was sentenced on January 31, 2018. The Petitioner had been sentenced to 72 months in the Southern District of New York on November 10, 2016. The 120-month consecutive sentence increased his sentence from 72 months to 192 months or from six years to 16 years. If the Court had imposed a concurrent sentence, the sentence would have been 120 months. That is 72 months shorter. In essence, the Court almost took away most of the benefit of Petitioner's cooperation in the New York case. Please note that even if the Court had imposed a concurrent sentence, the Defendant would have still had to serve an additional 48 months.

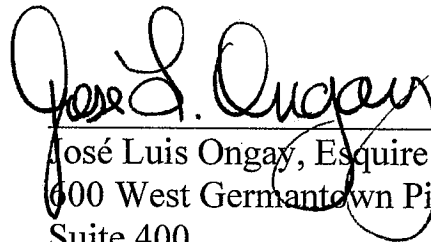
It should also be noted that this was a cooperating Petitioner. True, he did not manage to produce substantial assistance in the Eastern District of Pennsylvania case, however, he did try to cooperate. And, he did provide substantial assistance in another federal case in New York. Again, the Petitioner made efforts to cooperate in Philadelphia. Last, but not least, he helped a correction officer in the Philadelphia FDC that was being attacked by an inmate when most of the other

inmates did not aid the officer. As such, a concurrent sentence, under the above circumstances, was a reasonable sentence.

### CONCLUSION

For the foregoing reasons, Petitioner prays that a writ of certiorari be granted, and the United States Supreme Court reviews the judgment of the United States Court of Appeals for the Third Circuit.

Respectfully,

A handwritten signature in black ink, appearing to read "José L. Ongay", is written over a horizontal line.

José Luis Ongay, Esquire  
600 West Germantown Pike  
Suite 400  
Plymouth Meeting, PA 19462

Date: \_\_\_\_\_

10/31/19

PROOF OF SERVICE

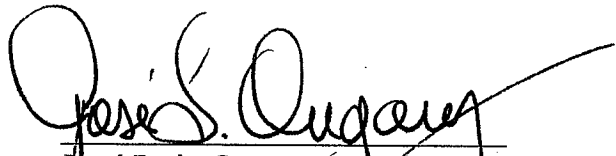
I, José Luis Ongay, Esquire, do swear or declare that on this date, October 30, 2019 as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's Counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid: The names of those served are as follows:

Emily McKillip, AUSA, at 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106.

Noel Francisco, Solicitor General, 950 Pennsylvania Avenue, N.W.,  
Washington, D.C. 20530-0001.

David Morillo-Cruz, 69067-066, Brooklyn, MDC, 80 29<sup>th</sup> Street, Brooklyn,  
N.Y. 11232.

I declare under the penalty of perjury that the foregoing is true and correct.

  
José Luis Ongay, Esquire  
600 Germantown Pike, Suite 400  
Plymouth Meeting, PA 19462  
484 681-1117

Date

10/31/19