

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

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

OCTOBER TERM 2020

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JAVIER GOMEZ-CARRASQUILLO, *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**

Petitioner, JAVIER GOMEZ-CARRASQUILLO, 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 of the United States Court of Appeals for the First Circuit in this case is included in appendix A.

## **JURISDICTION**

The United States Court of Appeals for the First Circuit entered its judgment on January 29, 2020. 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**

This case involves among other provisions, 18 U.S.C. § 922(a)(1)(A), the factors set forth at 18 U.S.C. § 3553(a), U.S.S.G. § 2K2.1(a)(4)(B), U.S.S.G. § 2K2.1(b)(5), standard of review and general principles.

## **STATEMENT**

The district court erred by taking into account general facts regarding crime in Puerto Rico and failing to make an individualized assessment based on the facts presented. 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 defendant, 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)(4)(B) and U.S.S.G. § 2K2.1(b)(5) because it was the appropriate guideline given the specific facts of Defendant-Appellant's case. The parties agreed to a total adjusted offense level of 21. The PSR calculated a total offense level of 21. Finally, the District Court calculated a total offense level of 21, what was agreed by the parties in the plea agreement, but sentenced the Appellant-Defendant to sixty (60) months of imprisonment, fourteen (14) months higher than the higher end of the guideline that the agreement submitted by the parties stipulated.

The term of imprisonment renders the Defendant-Appellant's sentence unreasonable because the prison term is a harsh punishment for the violations and the facts of the case. Here, the district court did not follow circuit precedent during Defendant-Appellant's sentencing proceedings when determining his term of confinement. Indeed, the district court did not address or consider any of the numerous non-frivolous arguments advanced by Defendant-Appellant's counsel requesting a lower sentence.

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 Defendant-Appellant's characteristics, and, instead, focused primarily on the criminal situation in Puerto

Rico and took into consideration non related criminal conduct, without any basis, to impose a much higher sentence than the one agreed by the parties. Taking into consideration the general criminal conduct in a jurisdiction as a whole is not a relevant factor at sentencing. 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 indicate the criminal situation of Puerto Rico as a sentencing factor.

#### REASONS FOR GRANTING THE WRIT

In a two (2) page judgment 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 failed to address his non-frivolous arguments in favor of a lower within range sentence requested by the Defendant-Appellant or to sufficiently explain why it imposed the sentence.

A district judge should address the party's arguments and 'explain why he has rejected those arguments.'" *United States v. Carter*, 564 F.3d 325, 328 (4th Cir. 2009) (quoting *Rita v. United States*, 551 U.S. 338, 357 (2007)).

The judgment of the Court of Appeals in this case conflicts with decisions reached by other courts of appeals, specifically the Fourth Circuit regarding reasonableness review for guidelines sentences.

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, Javier Gomez-Carrasquillo, respectfully requests that this Court grant the petition for writ of certiorari, and accept this case for review. In the alternative, Mr. Javier Gomez-Carrasquillo requests that his petition be granted, his sentence vacated and his case remanded.

Respectfully submitted, in San Juan, Puerto Rico, on Wednesday, March 11, 2020.

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