No. _____

In the
Supreme Court of the United States

OCTOBER TERM, 2019

MANUEL OLIVAS-GUEVARA,
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

AMY R. BLALOCK
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Texas Bar Card No. 02438900
Attorney for Petitioner

QUESTIONS PRESENTED FOR REVIEW

1) DID THE PANEL ERR BY DISMISSING THE APPEAL FOR TIMELINESS?

2) DID THE DISTRICT COURT ERR BY AFFIRMING THE DISTRICT COURT'S DECISION TO INCREASE MISS MOSLEY'S BASE OFFENSE BY FOUR LEVELS PURSUANT TO U.S.S.G.§ 2B3.1(b)(4)(A) WHEN THE EVIDENCE DOES NOT SUPPORT A FINDING THAT AN "ABDUCTION" OCCURRED DURING THIS ROBBERY?

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The order of the Court of Appeals for the Fifth Circuit, dated February 24, 2020, is attached to this Petition in the Appendix.

JURISDICTION

The order of the United States Court of Appeals for the Fifth Circuit dismissing the Petitioner's appeal affirmed the District Court's judgment of conviction and sentence in the Western District of Texas.

Consequently, Petitioner files the instant Application for a Writ of Certiorari under the authority of Title 28, U.S.C., § 1254(1).

BASIS OF FEDERAL JURISDICTION

IN THE COURT OF FIRST INSTANCE

Jurisdiction was proper in the United States District Court for the Western District of Texas because Petitioner was indicted for violations of Federal law by the United States Grand Jury for the Western District of Texas.

STATEMENT OF THE CASE

1. Procedural History.

On April 10, 2018, a Federal Grand Jury for the Western District of Texas – Pecos Division, returned a two-count Indictment charging the defendants with the following: Count 1 charges Eduardo Aleman-Briuva1, Luis Alberto Diaz-Rascon, David Acosta- Morales, Jaime Ibarra-Jaime, and Manuel Olivas-Guevara with Aiding and Abetting Importation of 100 Kilograms or More but Less Than 1,000 Kilograms of Marihuana, in violation of 21 U.S.C. §§ 952 and 960 and 18 U.S.C. § 2. ROA. 14-15.[1] The offense occurred on or about March 18, 2018. Count 2 charges Eduardo Aleman-Briuva, Luis Alberto Diaz-Rascon, David Acosta- Morales, Jaime Ibarra-Jaime, and Manuel Olivas-Guevara with Aiding and Abetting Possession with Intent to Distribute 100 Kilograms or More but Less Than 1,000 Kilograms of Marihuana, in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. The offense occurred on or about March 18, 2018.

On July 2, 2018, a Plea Agreement containing a Factual Basis was filed. On July 5, 2018, Manuel Olivas-Guevara pled guilty to Count 2 of the Indictment.

Mr. Olivas-Guevara was subsequently sentenced to a term of imprisonment of 188 months. This sentence is to be followed by a term of supervised release of 5 years. ROA. 247. No fine was imposed, but Mr. Olivas-Guevara was ordered to pay a $100 special assessment. ROA.248.

On March 11, 2019, more than four months after he was sentenced, Mr. Olivas-Guevara wrote a letter to the court asking about the status of his appeal (ROA.50). The court responded that a notice of appeal had not been filed (ROA.52). The court construed Appellant's letter as a motion

[1]In the references to the Record on Appeal, references are made according to the pagination assigned by the Clerk of the Court.

for leave to file an out-of-time appeal, and entered his notice of appeal on the docket on March 29, 2019 (ROA.5, 56). By order dated April 11, 2019, the court denied the motion, finding that "since the notice of appeal was filed 125 days after the Judgment and Commitment was entered, it is untimely" (ROA.56).

The appeal was docketed in the Fifth Circuit on April 1, 2019. Undersigned counsel was appointed to represent Mr. Olivas-Guevara on August 9, 2019. On February 24, 2020, a panel of the Fifth Circuit granted the Government's motion to dismiss the appeal based on timeliness.

2. Statement of Facts.

Mr. Olivas-Guevara is a fifty-nine year old man with five children, one of whom is deceased. A citizen of Mexico, he is one of nine children. Mr. Olivas-Guevara completed the 4th grade in Mexico. He does not have any other educational history. He previously worked on a ranch in Mexico where he was in charge of day-to-day operations and earned 250 pesos (approximately $13) on a daily basis. He has also worked in the agricultural and construction industries.

In the Plea Agreement, Mr. Olivas-Guevara stipulated that he is responsible for a total of 112.6 kilograms of marihuana. On March 18th, 2018, in the Western District of Texas, Mr. Olivas-Guevara aided and abetted by others, did knowingly possess 112.6 kilograms of marihuana, a controlled substance, with intent to distribute it. That is the conduct that comprised the charge to which he entered a plea of guilty. ROA. 229.

The Presentence Report established a base offense level of 24, pursuant to U.S.S.G. § 2D1.1. The PSR officer then made a finding that Mr. Olivas-Guevara met the requirements to be classified as a "career offender" within the meaning of U.S.S.G. § 4B1.1. The offense level thus became 34. Mr. Olivas-Guevara was assigned a three-level downward adjustment, pursuant to U.S.S.G.

§ 3E1.1(a) and (b) because he timely accepted responsibility. Because of his classification as a "career offender", Mr. Olivas-Guevara was assigned a criminal history category of VI. The advisory guideline range of imprisonment was 188 to 235 months.

Mr. Olivas-Guevara filed objections to the PSR, arguing that he should have received the "safety valve" and that his cooperation warranted a downward departure.

These objections were overruled. ROA.240-243. The District Court sentenced Mr. Olivas-Guevara to a 188 month term of imprisonment with a five-year term of supervised release to follow. Mr. Olivas-Guevara was also ordered to pay a special assessment of $100.00. The appeal followed. The Fifth Circuit subsequently dismissed the appeal based on the government's motion alleging that the appeal was not timely filed.

REASONS WHY CERTIORARI SHOULD BE GRANTED

The deadline for filing a notice of appeal in a criminal case is not jurisdictional; therefore, this Court may pretermit the timeliness issue. *United States v. Henriquez-Martinez*, No. 19-40567 (5th Cir. Jun. 2, 2020); *see also United States v. Martinez*, 496 F.3d 387, 389 (5th Cir. 2007).

The District Court erred by finding that Mr. Olivas-Guevara was a "career offender" under the advisory sentencing guidelines. The two predicate offenses for this finding were Texas convictions for Delivery of Cocaine. The career offender enhancement should not apply to Mr. Olivas-Guevara because the two Texas offenses of which he was convicted fall outside the definition of "controlled substance offense". Paragraph 31 of the PSR made the following finding:

> **Chapter Four Enhancement:** The defendant was convicted of the drug trafficking offense of Delivery of Cocaine under 28 Grams in case number 65629 in the 346th Judicial District Court for the County of El Paso, Texas. The defendant was also convicted of the drug trafficking offense of Delivery of Cocaine under 28 Grams in case number 68745 in the 346th Judicial District Court for the County of El Paso, Texas. The defendant was at least 18 years old at the time of the instant offense of conviction; the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense; therefore, the defendant is a career offender. The offense level for a career offender is 34 because the statutory maximum term of imprisonment is 25 years or more. USSG §4B1.1(b)(2). ROA.74.

In *United States v. Hinkle*, 832 F.3d 569 (5th Cir. 2016), *cert. denied*, 138 S.Ct. 1453 (2018), the Fifth Court held that a defendant's conviction under the Texas delivery statute included a "greater swath of conduct than the elements of [U.S.S.G. § 4B1.1]," and thus could "[n]ot serve as a predicate [controlled substance] offense under the Career Offender Guideline provision."

Mr. Olivas-Guevara, like defendant Hinkle, was charged under a statute that criminalized "delivery" of a controlled substance, and that defined delivery to include an "offer to sell." *See* Tex.

Health & Safety Code §§481.002(8), 481.112(a). Although this statute's definition of "delivery" also includes actual transfer and constructive transfer of controlled substances, these three statutory alternatives are not separate elements of separate offenses. A defendant charged with delivery would not have the right to a unanimous jury determination that he actually transferred a controlled substance, rather than merely offering it for sale. *See Rodriguez v. State*, 89 S.W.3d 699 (Tex. App.-Houston [1st Dist.] 2002, pet ref'd); *Lopez v. State*, 108 S.W.3d 293 (Tex. Crim. App. 2003).

This Court's decisions in *Descamps v. United States*, 133 S.Ct. 2276 (2013), *Mathis v. United States*, 136 S. Ct. 2243 (2016) and *Dean v. United States*, ___ U.S. ___, 137 S. Ct. 1170 (2017) and their progeny, indicate that Mr. Olivas-Guevara does not qualify as a career offender under the Guidelines because his prior convictions are not "controlled substance offenses". The District Court erred in classifying Mr. Olivas-Guevara as a career offender based on these two predicate offenses.

ARGUMENTS AND AUTHORITIES

QUESTIONS FOR REVIEW

QUESTION #1

I. DID THE PANEL ERR BY DISMISSING THE APPEAL FOR TIMELINESS?

The deadline for filing a notice of appeal in a criminal case is not jurisdictional; therefore, this Court may pretermit the timeliness issue. *United States v. Henriquez-Martinez*, No. 19-40567 (5th Cir. Jun. 2, 2020); *see also United States v. Martinez*, 496 F.3d 387, 389 (5th Cir. 2007).

The government asserted that Mr. Olivas-Guevera's appeal of the District Court's judgment and sentence is untimely. This Court has explained, however, that its past use of the term "jurisdictional" has "been less than meticulous" and it has "more than occasionally used the term `jurisdictional' to describe emphatic time prescriptions in rules of court." *Kontrick v. Ryan*, 540 U.S. 443, 454, 124 S.Ct. 906, 157 L.Ed.2d 867 (2004). The appeal period in a criminal case is not a jurisdictional provision, but, rather, a claim-processing rule. *Bowles v. Russell*, 551 U.S. 205, 209-13 (2007); *United States v. Urutyan*, 564 F.3d 679, 685 (4th Cir. 2009).

In *Kontrick v. Ryan*, this Court held that a party's failure to comply with a filing deadline in the Bankruptcy Rules did not deprive the bankruptcy court of subject-matter jurisdiction. 540 U.S. 443, 459-60, 124 S.Ct. 906, 157 L.Ed.2d 867 (2004). Reasoning that "[o]nly Congress may determine a lower federal court's subject-matter jurisdiction," the Court drew a distinction between statutory time constraints, which do limit subject-matter jurisdiction, and court-prescribed procedural rules, which do not. *Id*. at 452-53, 124 S.Ct. 906. The distinction matters because, while a "court's subject-matter jurisdiction cannot be expanded to account for the parties' litigation conduct; a

[non-jurisdictional] claim-processing rule . . . even if unalterable on a parties' application, can nonetheless be forfeited if the party asserting the rule waits too long to raise the point." *Id*. at 456, 124 S.Ct. 906.

This Court has held that "[i]t is axiomatic that court-prescribed rules of practice and procedure, as opposed to statutory time limits, do not create or withdraw federal jurisdiction," *Kontrick*, 540 U.S. at 453, 124 S.Ct. 906. This Court should hold that the non-statutory time limits in Appellate Rule 4(b) do not affect subject-matter jurisdiction and that the Fifth Circuit erred in dismissing Mr. Olivas-Guevera's appeal for lack of timeliness..

QUESTION #2

I. DID THE DISTRICT COURT ERR IN TREATING MR. OLIVAS-GUEVARA' S PRIOR TEXAS CONVICTIONS FOR DELIVERY OF COCAINE AS A "CONTROLLED SUBSTANCE OFFENSE"?

DID THE DISTRICT COURT ERR BY SENTENCING MR. OLIVAS-GUEVARA AS A CAREER OFFENDER BASED ON THESE TWO PREDICATE OFFENSES?

The District Court erred by sentencing Mr. Olivas-Guevara as a career offender based on two prior convictions from the State of Texas for delivery of cocaine.

Guideline 4B1.1 provides for an enhanced advisory range for certain offenses when the defendant has previously sustained two convictions for either a "crime of violence" or a "controlled substance offense." USSG §4B1.1. The term "controlled substance offense" is defined to mean: an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense. USSG §4B1.2(b). Merely "offering to sell" a controlled substance does not satisfy this definition. *See Price*, 516 F.3d at 288.

Paragraph 31 of the PSR made the following finding:

> **Chapter Four Enhancement:** The defendant was convicted of the drug trafficking offense of Delivery of Cocaine under 28 Grams in case number 65629 in the 346th Judicial District Court for the County of El Paso, Texas. The defendant was also convicted of the drug trafficking offense of Delivery of Cocaine under 28 Grams in case number 68745 in the 346th Judicial District Court for the County of El Paso, Texas. The defendant was at least 18 years old at the time of the instant offense of conviction; the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense; therefore, the defendant is a career offender. The

> offense level for a career offender is 34 because the statutory maximum term of imprisonment is 25 years or more. USSG §4B1.1(b)(2). ROA. 74.

Mr. Olivas-Guevara was previously convicted of violating Texas Health & Safety Code §481.112(a), which makes it a crime to "knowingly manufacture[], deliver[], or possess[] with intent to deliver a controlled substance" . Tex. Health & Safety Code §481.112(a). The term "deliver" is expressly defined in Texas Health and Safety Code §481.002 to include both actual and constructive transfers, as well as "offering to sell a controlled substance..." Tex. Health & Safety Code §481.002(8).

The Texas delivery statute is broader than the definition of a "controlled substance offense," and cannot serve as a career offender predicate under this Court's decision in *Hinkle v. United States*, 832 F.3d 569, 576-77 (5th Cir. 2016). In *Hinkle*, a case decided on direct appeal, this Court held that a conviction pursuant to § 481.112(a) of the Texas Health and Safety Code does not qualify as a "controlled substance offense" for the purpose of the career offender enhancement found at § 4B1.1 of the United States Sentencing Guidelines. Relying on *Mathis*, this Court held that a conviction for the knowing delivery of heroin under a Texas narcotics statute was not a "controlled substance offense" under the Sentencing Guidelines, and therefore, did not implicate the career offender enhancement. Because the definition of "delivery" in the Texas law set forth various means of committing the offense, some of which fell beyond the generic definition of controlled substance offense under the Guidelines, the statute of conviction was broader than the relevant Guidelines offense, and the modified categorical approach was unavailable to narrow the offense of which the defendant was convicted. *Id*.

In *United States v. Hinkle*, 832 F.3d 569 (5th Cir. 2016), *cert. denied*, 138 S.Ct. 1453 (2018), this Court held that a defendant's conviction under the Texas delivery statute included a "greater swath of conduct than the elements of [U.S.S.G. § 4B1.1]," and thus could "[n]ot serve as a predicate [controlled substance] offense under the Career Offender Guideline provision."

Mr. Olivas-Guevara, like defendant Hinkle, was charged under a statute that criminalized "delivery" of a controlled substance, and that defined delivery to include an "offer to sell." *See* Tex. Health & Safety Code §§481.002(8), 481.112(a). Although this statute's definition of "delivery" also includes actual transfer and constructive transfer of controlled substances, these three statutory alternatives are not separate elements of separate offenses. A defendant charged with delivery would not have the right to a unanimous jury determination that he actually transferred a controlled substance, rather than merely offering it for sale. *See Rodriguez v. State*, 89 S.W.3d 699 (Tex. App.-Houston [1st Dist.] 2002, pet ref'd); *Lopez v. State*, 108 S.W.3d 293 (Tex. Crim. App. 2003).

In *United States v. Tanksley*, 848 F.3d 347, 349 (5th Cir. 2017), this Court considered whether an earlier case, *United States v. Ford*, 509 F.3d 714 (5th Cir. 2007), was still good law. In *Ford*, the court held that a conviction under § 481.112(a) of the Texas Health and Safety Code qualified as a "controlled substance offense" under the United States Sentencing Guidelines. *See Tanskley*, 848 F.3d at 349. In light of the Supreme Court's decision in *Mathis*, the *Tanksley* court held that "*Ford* cannot stand." *Id*. at 352.

This Court's decisions in *Descamps v. United States*, 133 S.Ct. 2276 (2013), *Mathis v. United States*, 136 S. Ct. 2243 (2016) and *Dean v. United States*, ___ U.S. ___, 137 S. Ct. 1170 (2017) and their progeny, indicate that Mr. Olivas-Guevara does not qualify as a career offender under the Guidelines because his prior convictions are not "controlled substance offenses". The

District Court erred in classifying Mr. Olivas-Guevara as a career offender based on these two predicate offenses.

Mr. Olivas-Guevara was charged with delivery of a controlled substance under Texas law. Because his prior statute of conviction defines delivery as a single element --which may be violated by either offering to sell a controlled substance, or in another manner -- it is overbroad. Mr. Olivas-Guevara 's prior offenses included conduct falling outside the definition of a "controlled substance offense." Such overbroad offenses may not be treated as "controlled substance offenses." *See Descamps v. United States*, 570 U.S. 254 (2013). Under this Court's precedent, this sentence must be vacated.

Plain Error Analysis

As noted, trial counsel made no objection to the District Court's treatment of prior Texas convictions for delivery of cocaine as qualifying predicate offenses for the career offender classification." Unpreserved error requires a showing of: 1) error, 2) that is clear or obvious, 3) that affects substantial rights, and 4) that seriously affects the fairness, integrity, or public reputation of judicial proceedings, meriting discretionary relief. *See United States v. Olano*, 507 U.S. 725, 732 (1993). A "plain" error is one that is "clear or obvious, rather than subject to reasonable dispute." *Puckett v. United States*, 556 U.S. 129, 136 (2009). A defendant can show that a plain sentencing error affects substantial rights when there exists a "reasonable probability that but for the district court's misapplication of the guidelines, he would have received a lesser sentence." *United States v. Villegas*, 404 F.3d 355, 364 (5th Cir. 2005).

"The reasonable probability standard [on plain error] is not the same as, and should not be confused with, a requirement that a defendant prove by a preponderance of the evidence that but for

the error things would have been different." *United States v. Dominguez-Benitez*, 542 U.S. 74, 83 n. 9 (2004); *see* also *Kyles v. Whitley*, 514 U.S. 419, 434 (1995).

To satisfy the third prong of plain error, a party need only "undermine confidence" that his current sentence would have been the same; he need not prove a different result by a preponderance of the evidence. *Dominguez-Benitez*, 542 U.S. at 83, n. 9. "[W]hether a sentencing error seriously affects the fairness, integrity or public reputation of judicial proceedings is dependent upon the degree of the error and the particular facts of the case." *United States v. John*, 597 F.3d 263, 288 (5th Cir. 2010). But "when there is no indication that the district court would have selected the sentence regardless of the applicable Guidelines range, and the sentence imposed is based on an erroneously calculated Guidelines range, it is appropriate to exercise our discretion to vacate the sentence and remand the proceeding, at least when the sentence is materially or substantially above the properly calculated range." *John*, 597 F.3d at 289.

An error that "clearly affects a defendant's sentence" often implicates the fairness, integrity or public reputation of judicial proceedings. *United States v. Price*, 516 F.3d 285, 290 (5th Cir. 2008); *see United States v. Andino-Ortega*, 608 F.3d 305, 311-312 (5th Cir. 2010).

Discussion

1. There was error

The District Court relied on the defendant's prior Texas delivery convictions to impose the career offender enhancement. According to the precedent of the Supreme Court and this Court, Mr. Olivas-Guevara's prior Texas delivery convictions were not proper predicate offenses for the career offender guideline enhancement.

2. The error was plain

Error in this case follows from several well-settled propositions, and is accordingly plain. It is well-settled that a criminal history enhancement may not be imposed on the basis of a plea to a charging instrument alleging both qualifying and non-qualifying forms of an offense. *See Morales-Martinez*, 496 F.3d at 360. It is also settled by binding precedent that Texas delivery convictions do not qualify as controlled substance offenses. These binding precedents establish plain error. *See United States v. Price*, 516 F.3d 285, 288 (5th Cir. 2008) (finding error plain in light of circuit precedent).

3. The error affected substantial rights

The two prior convictions for Delivery of cocaine were essential to the application of the career offender enhancement. *See* U.S.S.G. §4B1.2(c)(2)(requiring that career offender predicates be "counted separately" under U.S.S.G. §4A1.1). That enhancement produced a dramatic increase in Mr. Olivas-Guevara's sentencing guideline range. The enhancement raised his final offense level from 22 to 31. Coupled with a criminal history category of VI, this produced a Guideline range of 151-188 months instead of 84-105 months imprisonment. ROA.74; USSG Ch. 5A.

The Fifth Circuit's "precedent is clear that absent additional evidence, a defendant has shown a reasonable probability that he would have received a lesser sentence when (1) the district court mistakenly calculates the wrong Guidelines range, (2) the incorrect range is significantly higher than the true Guidelines range, and (3) the defendant is sentenced within the incorrect range." *United States v. Mudekunye*, 646 F.3d 281, 289-290 (5 Cir. 2011); *see* also *John*, 597 F.3d at 284-385 (finding an effect on substantial rights under those circumstances); *United States v. Garza-Lopez*, 410 F.3d 268, 275 (5th Cir. 2005). Those conditions are met in this case.

4. Discretionary remand is merited.

The error merits discretionary remand for at least two reasons. First, the size of the anticipated sentence reduction is substantial, a fact that weighs heavily in favor of remand. *See Andino-Ortega*, 608 F.3d at 311-12 (5th Cir. 2010)("[B]ecause the district court's error clearly affected [Defendant]'s sentence, we also find that the error seriously affected the fairness, integrity, or public reputation of judicial proceedings."); *Price*, 516 F.3d at 290 ("Finally, the sentencing error seriously affects the fairness, integrity, or public reputation of judicial proceedings because it clearly affected the defendant's sentence."); *compare United States v. Akande*, 594 Fed.Appx. 239, 241 (5th Cir. 2014)(unpublished)(slight extension of defendant's sentence did not affect fairness, integrity, or public reputation of judicial proceedings).

Even if Mr. Olivas-Guevara were sentenced at the high end of his reduced Guideline range, his sentenced would be reduced by 46 months, nearly four years. This is a significant amount of time to spend in prison on the basis of a mistake. Second, while Mr. Olivas-Guevara's criminal history is serious, the fact remains that a lengthy sentence has been assessed to a person who is nearly sixty years old.

The career offender enhancement was imposed in plain contravention of settled law. It resulted in a substantially higher Guideline range, and a sentence more than many times the length of the true range's maximum. The District Court erred in using the two prior convictions for Texas delivery as a career offender predicate. There is no evidence that it would have imposed the same sentence irrespective of the massive Guideline increase occasioned by the career offender enhancement. The sentence should be vacated and the case remanded.

CONCLUSION

This Petition for Writ of Certiorari should be granted and the decision of the Fifth Circuit should be vacated, and the case should be remanded for proceedings consistent with this Court's opinion.

Respectfully submitted,

/s/ Amy R. Blalock
AMY R. BLALOCK
Attorney-At-Law
P.O. Box 765
Tyler, TX 75710
Texas Bar Card No. 02438900
Attorney for Petitioner

RELIEF REQUESTED

FOR THESE REASONS, the Petitioner moves this Court to grant a Writ of Certiorari in order to review the Judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

/s/ Amy R. Blalock
AMY R. BLALOCK
Attorney-At-Law
P.O. Box 765
Tyler, TX 75710
Texas Bar Card No. 02438900
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that on the 29th day of June 2020, I served one (1) copy of the foregoing Petition for Writ of Certiorari on the following individuals by mail (certified mail return receipt requested) by depositing same, enclosed in post paid, properly addressed wrapper, in a Post Office or official depository, under the care and custody of the United States Postal Service, or by other recognized means pursuant to the Rules of the Supreme Court of The United States of America, Rule 29:

Solicitor General
U.S. Department of Justice
Washington, D.C. 20530

Joseph H. Gay, Jr.
US Attorney's Office
Western District of Texas
San Antonio, Texas

MANUEL OLIVAS-GUEVARA
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TALLADEGA, AL 35160

/s/ Amy R. Blalock
AMY R. BLALOCK

No. _____

In the
Supreme Court of the United States

OCTOBER TERM, 2019

MANUEL OLIVAS-GUEVARA,

Petitioner,

V.

UNITED STATES OF AMERICA

Respondent.

APPENDIX

OPINION OF THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-50288

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

MANUEL OLIVAS-GUEVARA,

Defendant–Appellant.

A True Copy
Certified order issued Feb 24, 2020

Lyle W. Cayce

Clerk, U.S. Court of Appeals, Fifth Circuit

Appeal from the United States District Court
for the Western District of Texas

Before HIGGINBOTHAM, SOUTHWICK, and WILLETT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that Appellee's opposed motion to dismiss the appeal is GRANTED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

February 24, 2020

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 19-50288 USA v. Manuel Olivas-Guevara
USDC No. 4:18-CR-204-5

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Melissa B. Courseault, Deputy Clerk
504-310-7701

Ms. Amy R. Blalock
Mr. Joseph H. Gay Jr.