

No. \_\_\_\_\_

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IN THE

**SUPREME COURT OF THE UNITED STATES**

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ALONSO SANCHEZ OCHOA  
Petitioner

V.

UNITED STATES OF AMERICA,  
Respondent

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On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Fifth Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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Texas State Bar No: 02626800

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## **QUESTIONS PRESENTED**

1. Is it reasonable for a District Court to order a consecutive sentence despite an agreement among Probation Officer, Pre-Sentence Report Addendum, and Defense Counsel that a particular state prosecution is for relevant conduct?

## **PARTIES TO THE PROCEEDINGS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualifications or recusal.

1. United States of America
2. Alonso Sanchez Ochoa
3. Honorable Terry R. Means, United States District Judge for the Northern District of Texas
4. Honorable Jeffrey Cureton, United States Magistrate Judge for the Northern District of Texas
5. Robert J. Boudreau, Assistant United States Attorney for the Northern District of Texas
6. Erin Nealy Cox, United States Attorney for the Northern District of Texas
7. Leigha Amy Simonton, Assistant United States Attorney for the Northern District of Texas.
8. Kristina Marie Williams, Assistant United States Attorney for the Northern District of Texas.
9. William Barr, Attorney General of the United States.
10. Michael F. Murray, Principal Deputy Assistant Attorney General of the United States.



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ATTORNEY FOR OCHOA

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**SUPREME COURT OF THE UNITED STATES**

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ALONSO SANCHEZ OCHOA

V.

UNITED STATES OF AMERICA

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

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**PETITION FOR WRIT OF CERTIORARI**

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Comes now, Petitioner, ALONSO SANCHEZ OCHOA, who submits this his petition for writ of certiorari as follows. Petitioner is currently confined in the United States Bureau of Prisons pursuant to the judgment and sentence of the District Court below.

**OPINION BELOW**

This opinion of the Fifth Circuit Court of Appeals is available at *United States*

*v. Alonso Sanchez Ochoa*, (No. 19-11181, 5<sup>th</sup> Cir. Oct. 2, 2020). A copy of the opinion is attached at Appendix A-1.

### **STATEMENT OF JURISDICTION**

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. §1254, as an appeal from final judgment of the Fifth Circuit Court of Appeals. This Writ of Certiorari is timely because it is filed within 90 days of judgment from the Fifth Circuit Court of Appeals under Rule 13 of the Rules of the Supreme Court of the United States.

### **STATEMENT OF CASE**

#### **I. Nature of the Case**

Defendant Ochoa pled guilty to one-count of an Information charging Ochoa with possession of stolen mail in violation of 18 U.S.C. §1708.

#### **II. Course of Proceedings and Disposition in the Court Below**

ALONSO SANCHEZ OCHOA pled guilty and sentencing was held on October 17, 2019. The Court imposed a sentence of 27 months. Petitioner filed a timely Notice of Appeal. The Fifth Circuit affirmed by opinion dated October 2, 2020. Petitioner now brings this Writ of Certiorari.

#### **III. Statement of the Facts**

The District Court sentenced Ochoa to 27 months. In the Presentence Report

Addendum, the probation officer accepted Defense counsel's contention that a pending State of Texas prosecution was pending for relevant conduct as to the federal prosecution. The prosecution deferred to the probation officer. Defense counsel requested the court to order the federal sentence to run concurrently with the anticipated state court sentence. The Court declined.

## **REASONS FOR GRANTING CERTIORARI**

- 1. Defense counsel should be able to rely upon Presentence Report Addendum findings, when said findings are agreed to by the defense counsel and probation officer, without objection by the prosecution.**

### **I. Standard of Review**

The Circuit Court of Appeals reviews the trial court's determination to not order the federal sentence to run concurrently to an anticipated state sentence for an abuse of discretion. Gall v. United States, 128 S.Ct. 586, at 594 (2007).

### **II. Discussion**

Defendant is seeking an order that his federal sentence be run concurrently with the state prosecution in Ellis County, Texas.

Somewhere between March 18, 2019 and March 22, 2019, someone burgled a United States Postal Service (USPS) drop box in Acton, Texas. Shortly thereafter, Defendant and others possessed drafts and checks that had been stolen from the USPS drop box. Defendant and others fraudulently presented the drafts and checks for

payment. This was done in a number of jurisdictions within the State of Texas, including the city of Waxahachie in Ellis County, Texas. This federal prosecution acknowledges the fraudulent presentment as part of the basis for this federal prosecution.

Counsel for defendant filed an objection to the Presentence Report (PSR) suggesting that this federal sentence be ordered to run concurrently with the sentence of any individual State prosecutions of the very acts on which this federal prosecution was based, as they would be relevant conduct. The Government responded that it would defer to the United States Probation Officer's determination regarding pending state prosecutions, and it was "not opposed" to an order that defendant's federal sentence be ordered to run concurrently with any related state charges.

In the Addendum to the Presentence Report, the probation officer accepted Defendant's objection as to "a pending offense in Ellis County." The PSR is generally presumed to be reliable. United States v. Carbajal, 290 F.3d 277, 287 (5<sup>th</sup> Cir. 2002), citing United States v. Parker, 133 F.3d 322, 329 (5<sup>th</sup> Cir. 1998).

Presented with this, the Court declined to order this federal sentence to run concurrently with the Ellis County prosecution of a pending related offense. Defendant objected to the sentence as being greater than necessary.

U.S.S.G. §5G1.3(c) provides:

- (c) If...a state term of imprisonment is anticipated to result from another offense that is relevant conduct to the instant offense of conviction under the provisions of (a)(1), (a)(2), or (a)(3) of §1B1.3 (Relevant Conduct), the sentence for the instant offense shall be imposed to run concurrently to the anticipated term of imprisonment.

The judgment in this case was for a prison term of 27 months. The penalty range for the felony pending against Defendant in Ellis County is from six months to twenty-four months. (Tex.Pen.Code §32.21(e-1)(4) and §12.35(a)). Without an order for the sentence to run concurrently, his imprisonment for the same conduct could possibly be almost doubled.

Consequently, Defendant Alonso Sanchez Ochoa believes the Court erred in failing to order this federal sentence to run concurrently with any State terms of imprisonment to be imposed in the Ellis County, Texas state prosecution.

When a defendant is sentenced under an incorrect guidelines range...the error itself can, and most often will, be sufficient to show a reasonable probability of a difference outcome absent the error. Molina-Martinez v. United States, 136 S.Ct. 1338 (2016). Here, unless run concurrently, Defendant will likely suffer at least six months more incarceration after serving his federal sentence. Appellant has shown his substantial rights to have been harmed. The error is not harmless. Further, the

United States Supreme Court has held that a miscalculation of a guidelines sentencing range that has been determined to be plain error and to affect a defendant's substantial rights calls for a court of appeals to exercise its discretion under Crim.R.52(b) to vacate the defendant's sentence in the ordinary case. Rosales-Mireles v. United States, 138 S.Ct. 1897, 1901 (2018).

The 5<sup>th</sup> Circuit Court of Appeals should have either remanded or reformed the judgment to reflect a concurrent sentence. There are two problems with the opinion of the Court of Appeals. It ignores the fact that Defendant did complain in 18 U.S.C. §3553 terms that a consecutive sentence would be greater than necessary, unreasonable, and unjust in that it would subject him to double the punishment for relevant conduct. That opinion also ignores that there was more than just an objection by Defendant. That objection was accepted by the Government, in writing in the Presentence Report Addendum. The prosecution's own Government witness had even testified to the fact that the state prosecution was relevant conduct. The prosecution stated on the record "no objection" to a concurrent sentence.

The opinion further stated that the district court was entitled to adopt the PSR's findings. In this case, the district court did not adopt the PSR's findings because the Addendum to the PSR agreed with defendant's objections and stated that the state prosecution was relevant conduct.

## **CONCLUSION**

Petitioner, ALONSO SANCHEZ OCHOA requests this Court grant relief and grant the Petition for Certiorari.

Respectfully submitted,

  
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Attorney for Petitioner Ochoa

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## CERTIFICATE OF SERVICE

I, BRETT D. BOONE, Counsel of Record for ALONSO SANCHEZ OCHOA, being first duly sworn according to law, depose and say that the required number of the following documents:

1. Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit; and
2. Motion for Leave to Proceed in Forma Pauperis;

were filed with this Court and served on counsel for the United States on this same

date, by depositing the required number of originals and copies of the documents into the United States Mail in sealed envelopes, first class United States postage prepaid or by delivery to a third-party commercial carrier for delivery within 3 calendar days and addressed to: Supreme Court of the United States, Office of the Clerk, 1 First Street N.E., Washington, DC 20543, and United States Attorney for the Northern District of Texas, 801 Cherry Street, Suite 1700, Fort Worth, TX 76102 (Phone: 817-252-5253)(counsel for Respondent) and Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001 (Phone: 202-514-2217)(counsel for Respondent).

Date: December 10, 2020

  
BRETT D. BOONE  
Attorney for Petitioner Ochoa