No._____

IN THE SUPREME COURT OF THE UNITED STATES

═══════════════════════════

SERGIO AVALOS,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

═══════════════════════════

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

═══════════════════════════

TIMOTHY A. SCOTT
Scott Trial Lawyers, APC
1350 Columbia Street, Suite 600
San Diego, California 92101
Telephone: (619) 794-0451
Facsimile: (619) 652-9964

Attorney for Sergio Avalos

QUESTION PRESENTED FOR REVIEW

Whether being misled about the terms of the plea agreement and the government's post-hoc disclosure of impeachment information constituted "fair and just reasons" for Petitioner to withdraw his guilty plea.

--prefix--

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

IN THE SUPREME COURT OF THE UNITED STATES

═══════════════════════════

SERGIO AVALOS,

Petitioner,

- v -

UNITED STATES OF AMERICA,

Respondent.

═══════════════════════════

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

═══════════════════════════

Petitioner Sergio Avalos respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The Ninth Circuit affirmed the denial of Petitioner's motion to withdraw his guilty plea, finding that he knowingly and voluntarily entered into a plea agreement and that the circumstances did not support a finding that he had been coerced into signing the plea. See *United States v. Avalos,* 822 Fed. Appx. 601 (9th Cir. 2020) (unpublished) (attached as Appendix A).

JURISDICTION

On August 7, 2020, the Ninth Circuit affirmed petitioner's convictions via memorandum disposition. *See* Appendix A. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT PROVISION

Federal Rule of Criminal Procedure 11(d)(2)(B) states: "A defendant may withdraw a plea of guilty…after the court accepts the plea, but before it imposes sentence if…the defendant can show a fair and just reason for requesting the withdrawal."

\

STATEMENT OF THE CASE

I. A grand jury indicts Avalos for his alleged role in a drug-trafficking conspiracy.

This case began after a grand jury returned an eleven-count indictment charging Avalos and three codefendants with conspiracy to distribute and possess with intent to distribute methamphetamine, 21 U.S.C. § 846 (Count One), possession with intent to distribute methamphetamine, 21 U.S.C. §§ (a)(1), (b)(1)(A)(viii) (Counts Two, Five, and Nine), possession of a firearm in furtherance of a drug trafficking crime, 18 U.S.C. § 924(c)(1)(A) (Count Six and Ten) and felon in possession of ammunition, 18 U.S.C. § 922(g)(1) (Counts Three, Seven, and Eleven). *See* Clerk's Record ("CR") at 21, Appellant's Excerpts of Record ("ER") at 620.

The charges against Avalos and codefendant Steven Rodriguez arose from events that happened on three different dates in 2017: September 28, October 26, and November 2. *See* ER 620-637. Essentially, the government claimed that a traffic stop and two other encounters between Avalos and law-enforcement officers resulted in the seizure of guns, ammunition, methamphetamine, and other narcotics allegedly belonging to Avalos. *See* ER 578-618 (government summarizing the evidence against Avalos at the district court's request). The government also claimed that Avalos was being investigated for incidents occurring on November

27 and December 7, 2017, also allegedly involving guns and narcotics. ER 608-612.

II. Avalos rejects plea offers and asks counsel to file and litigate motions to suppress.

From the outset of the case, Avalos faced repeated pressure to enter into a guilty plea. At one of the very first hearings, the trial court warned him that he was "facing a mandatory life sentence, which means that I don't have any discretion. *I simply have to impose a mandatory life sentence if the Government is successful in proving its case*. *It doesn't seem that the underlying case is going to be that difficult to prove, as well as the 851s*. But I certainly will be—it's really not pre judging the case." ER 614-15 (emphasis provided). Avalos then repeatedly informed his defense counsel that he wanted to file and litigate motions to suppress evidence. He told his counsel that he was not interested in the government's plea offer and "insisted on proceeding with motions to suppress evidence in all three arrests." ER 661. A few days later, Avalos told counsel "to file three separate motions to suppress evidence." ER 656. At a later meeting, Avalos met with counsel and again "rejected the plea agreement and insisted on having his motions heard." ER 662. Avalos made clear to counsel that he "wanted to have the pre-trial motions litigated and proceed to trial if necessary" and that he "wanted to hold off

on making a decision on the [government's proposed] offer until after the pre-trial motions were decided by the Court." ER 657.

As requested by Avalos, defense counsel filed motions to suppress. *See* CR 70, 71, 72, 73. The district court scheduled the suppression motions to be heard four days before trial. ER 552.

III. The district court suggests that Avalos's motions to suppress will be denied and advises Avalos of "catastrophic consequences" if he proceeds to trial.

After Avalos filed his motions to suppress, the parties appeared for a hearing on motions filed by codefendant Rodriguez. ER 493. After the trial court heard argument and denied Rodriguez's motions, it turned to Avalos's motions to suppress. ER 517. The district court discussed each of Avalos's pending motions and made clear that it did not believe them to be meritorious. For example, in addressing the motion to suppress evidence obtained during the October 26 incident, the trial court noted that "[i]t seems to me that the undisputed facts are—at least based upon the opposition—that the officers of each submitted a declaration indicating that they say Mr. Rodriguez throw a handgun into the Ford Explorer. Isn't that sufficient basis for the stop and the ultimate search of the Explorer?" ER 519. Similarly, the trial court stated that motion to suppress related to the September 28 arrest lacked merit because "it's a traffic stop. There was a

traffic violation according to the officers. There was speed involved. And secondly, they observed a—what they believed to be a firearm being thrown out of the car. I don't care if it's in Beverly Hills or Compton. That certainly is going to provide the officers with a basis to pull over the car." ER 521. Finally, the district court suggested the motion to suppress pertaining to the November 2 incident would be denied because "the unlawful detention—he may have a 1983 case. But I don't understand what—there is nothing seized from him in connection with the pat down. So there is no evidence that the government is going to offer…" ER 523.

After addressing each of Avalos's motions, the district court turned to the issue of the § 851 information that the government had filed against Avalos. The trial court observed that "it certainly is an important issue because—and I think I went over this at the time I arraigned Mr. Avalos on the 851 that, if at least two of those prior convictions that are alleged in the 851, if the Government is able to prove those and Mr. Avalos is convicted of the underlying drug trafficking felony, that he's facing a life sentence in this case, correct?" ER 536. Defense counsel replied: "That's correct." *Id*. The Court continued: "Was Mr. Avalos here when we went over that?" *Id*. Defense counsel replied: "Correct, Your Honor." *Id*. The Court concluded: "*So he's aware this case can have catastrophic consequences to*

him?" Defense counsel: If he was not, he is now." *Id*. The Court: "I *hope Mr. Avalos understands that I don't have any discretion. The sentencing hearing is very quick because, based upon the statutes that are involved in this case, I don't have any choice but to impose a life sentence*." ER 537 (emphasis provided). The trial court asked Avalos if he understood. Avalos answered only: "Yes." *Id*.

IV. Avalos pleads guilty.

Immediately following this colloquy, defense counsel remained in the courtroom to meet with Avalos about the plea agreement. See ER 658. Counsel "quickly reviewed the plea agreement" with Avalos. ER 281. He told Avalos "that we were going to lose our suppression motions on Friday, so there was no need to hear them." *Id*. Avalos "was completely confused." *Id*. Counsel told Avalos that the plea agreement "would allow [him] to get up to 15 years and to get that kind of sentence [he] had to sign the plea agreement now and that [he] should do so." *Id*. Avalos was in a "state of fear and duress, not knowing what the actual law was or the terms of the plea agreement." *Id*. Counsel "said [Avalos] had no more time and had to jump on the plea agreement now." *Id*. Avalos "signed the plea agreement and resigned myself to getting up to a 15 year sentence." *Id*. He "did not read the agreement in detail but [defense counsel] said [he] could get up to 15 years, but admittedly, he did tell [Avalos] that I probably would get that specific sentence. He

said, 'So be ready for it.'" *Id*. The signed plea agreement was immediately filed with the Court. *See* CR 94.

The trial court took Avalos's plea the next day. CR 94, ER 475. Avalos "was told in court by [his] lawyer that [he] must plead guilty right now, that day." ER 281. He "could not understand why there was such a fast rush for everything in [his] case. It was always rush, rush, rush." *Id*. At the hearing, Avalos "felt like he was being bullied by everyone into pleading guilty." *Id*. He "had no time to make decisions" in the case. *Id*. When "the Court asked [him] questions [he] just answered them 'yes' or 'no' and then heard the Court ask the prosecutor to tell me what the consequences of [his] plea were." *Id*. The prosecutor "said I had a mandatory minimum 10 years imprisonment on the conspiracy charge. The prosecutor then stated that the mandatory minimum for the 924c was five years which 'must run consecutive to any other sentence of imprisonment.'" *Id*. *See also* ER 456. Avalos "did not know what the prosecutor meant when he said my sentence 'must run consecutive to any other sentence of imprisonment.'" ER 281-282. Avalos "was never told in plain English that [he] had a mandatory minimum 15 years in prison…" ER 282. Neither the district court nor the prosecutor advised Avalos that he was subject to a 15-year minimum sentence or that he would be precluded from arguing for a sentence of less than 240 months at sentencing.

Further, when the district court asked Avalos whether he had "been told by anyone what specific sentence the Court will impose in the event I accept your guilty pleas?", Avalos needed time to confer with his counsel. ER 464. Avalos had been informed by Eaglin the day before that he "would probably get '15 years' and 'be ready for it' so [he] thought this was a specific sentence so [he] did not know how to answer the Court." ER 282. He "turned to Mr. Eaglin to ask him what to say" and was told by Eaglin to "Just say 'no' and we can go on." *Id*. So he did. Following this discussion with Eaglin, the court repeated the question and Avalos answered: "No." ER 464.

Following the plea colloquy, the trial court accepted Avalos's plea and set the matter for sentencing. The Court also ordered withdrawn Avalos's motions to suppress. ER 472.

V. Avalos requests a 15-year sentence in a sentencing filing.

A few months later, in early May 2018, Avalos submitted a sentencing letter for the district court's consideration. *See* CR 265, ER 444. In the letter, Avalos wrote: "I take full responsibility for my mistakes and take full responsibility for my actions… *I feel 15 years is more than enough for my actions*…" *Id*. (emphasis provided). Defense counsel had reviewed the letter with counsel but did not advise him that his request for a 15-year sentence would be improper under the plea

agreement. ER 282-283. A week after this filing, defense counsel resubmitted the letter *but redacted Avalos's request for a 15-year sentence*. *See* ER 441. Counsel did not discuss the redaction with Avalos before filing the amended letter. ER 282-283.

VI. The government discloses for the first time significant impeachment information involving one of the arresting officers in the case.

In early June 2018, defense counsel "received an email" from government counsel "requesting a telephonic conference regarding *Henthorn* issues. ER 663. Counsel later spoke with government counsel and "he provided more details of an arresting officer's misconduct." *Id*. The officer had been directly involved in one of the incidents alleged against Avalos in the indictment. Later disclosures revealed that the officer's prior misconduct involved use of excessive force against in-custody inmates, falsifying police reports, illegally accessing police property, having sexual relations with his girlfriend on police property, and failing to turn in police reports. *See* ER 684-687.

Counsel advised Avalos of these issues sometime in June 2018 and "shared with him the contents of the written materials" in early August 2018. *See* ER 663. Avalos "had never been told about this corrupt officer's background before he plead guilty." ER 283. He "can state that surely 150% [he] would not have pleaded guilty if [he] had known about the newly discovered evidence of the investigations

concerning this main witness against [him], and that his conduct involved violence, sexual trysts, and repeated false statements in official police reports." ER 284-285.

VII. After Avalos moves to withdraw his plea, the district court rejects his concerns about the voluntariness of his plea.

In early June, Avalos advised counsel that he wished to withdraw his plea. ER 283. He told counsel that he "did not fully understand the agreement, did not understand the consequences of pleading guilty and had been shocked by the Court regarding the statements it made to [him] about life in prison, and that the judge psychologically coerced [him] into pleading guilty, and so did [defense counsel]." *Id*. Avalos told defense counsel that he believed his "case proceeded too quickly between February 12, 2018, when the court shocked [him] about going to prison for life, then [his] counsel showing up that same day with a plea agreement and telling [him] [he] would lose the Friday suppression hearing so [they] were not going to have them, that [he] felt forced to sign the agreement." ER 284. He also stated that he was "rushed to court the very next day to plead guilty so [he] had no time to think about what was going on." *Id*. Avalos further advised counsel that "along with [his] lawyers, the Court bullied [him] by using a rocket-paced trial schedule to get [him] to plead guilty and all [he] wanted in [his] case was to have suppression hearings and then go to trial." *Id*.

The trial court appointed another attorney to investigate Avalos's request to withdraw his plea, and new counsel ultimately filed a supplemental brief in support of his motion. *See* CR 331, ER 267. Avalos argued that his guilty plea had been involuntary because his attorney had misadvised him about the sentencing consequences of the plea and pressured him into signing the plea agreement after the district court indicated that his motions to suppress would be denied. ER 281. Avalos stated that he was advised that he would receive "up to 15 years" under the agreement and did not know that the plea precluded the parties from requesting a sentence of less than 20 years. *Id*. He referenced the handwritten letter in which he had requested a 15-year sentence, one that had been later redacted and resubmitted by his attorneys without his knowledge. ER 282. Avalos also argued that he was never informed about significant impeachment information pertaining to one of the government's key witnesses at trial, and affirmed that he would not have pleaded guilty if he had been advised of that evidence. ER 284.

The government opposed Avalos's motion to withdraw the plea. See CR 363, ER 84. The government argued, in essence, that Avalos had been properly advised by the district court and his attorneys about the consequences of his plea, and included declarations from Avalos's counsel in support of that claim. *See* ER 653-664. According these declarations, counsel explained to Avalos "that the plea

agreement meant that he could not argue for less than 240 months but that the Court could impose 180 months if the Court wanted to." ER 657. And according to counsel's declarations, Avalos was advised of both the minimum-mandatory sentence and the parties' agreement to recommend at least 240 months' custody. ER 661. The government relied on these declarations to argue that both the plea agreement and Avalos's attorneys had advised him of the minimum recommendation of 240 months' custody. ER 103-104.

As to the claim of newly-discovered evidence, the government conceded that before entering his guilty plea Avalos had not received the impeachment evidence pertaining to one of the arresting officers involved in his case. ER 105. This information had not been disclosed to Avalos's counsel until June 2018. *Id*. Nevertheless, the government argued that "such evidence does not warrant withdrawal of defendant's guilty plea because: (1) the government was not under an obligation to seek out all impeachment material of its trial witnesses prior to defendant's entry into a guilty plea; and (2) it is not plausible that this information would have motivated a reasonable person in defendant's position to have not entered a guilty plea because defendant faced the same exposure based on two independent arrests for which the officer witness to which the impeachment evidence at issue relates was completely uninvolved." ER 105-106.

VIII. The district court denies the motion to withdraw the plea.

Without holding any hearings, the district court denied Avalos's motion in a written order. *See* CR 390, ER 6. Despite the extensive procedural history of the case, the trial court concluded that the motivating factor for Avalos's motion to withdraw was the government's decision earlier in the case to dismiss the indictment against codefendant Stephen Rodriguez. ER 14. In reaching this conclusion, the district court acknowledged that "*although the record is silent, it is reasonable to conclude, and the Court so concludes*, that Defendant became aware of the Government's dismissal of the case against co-defendant Rodriguez and that the dismissal prompted Defendant's desire to withdraw his plea of guilty." ER 14-15 (emphasis provided). The district court reached that conclusion despite no evidence in the record supporting the finding, neither side having addressed the issue in any of its briefing, and neither one of Avalos's previous counsel having mentioned in their declaration that the dismissal of Rodriguez's case was ever discussed with Avalos.

The trial court then addressed each of Avalos's arguments in favor of withdrawing his plea. As to Avalos's declaration that he was never informed and did not know he would receive a fifteen-year minimum mandatory sentence, and that he would be precluded from arguing for less than 20 years in custody at

sentencing, the district court found that the plea agreement, the plea colloquy, and the declarations submitted by his former counsel showed that he had been properly advised about the consequences of the plea. ER 17-19.

Regarding Avalos's claim that wanted his motions to suppress litigated before pleading guilty, the district court found that he knowingly agreed to waive his right to pursue pretrial motions in the plea agreement. ER 19-20. And as to Avalos's argument that he had been rushed and pressured into pleading guilty, the trial court observed that "the Court does not find that this constitutes a fair and just reason to withdraw his guilty pleas…the Court set the hearing on Defendant's motions to suppress for February 16, 2018 and yet Defendant raised no objection to this hearing date…" ER 20.

Further, the trial court found that the impeachment information pertaining to the arresting officer "could not have plausibly motivated a reasonable person in Defendant's position to reject the Government's favorable plea agreement and decline to enter a plea of guilty had he known about the evidence prior to pleading." ER 21. The court noted that "the relevant officer was involved in only one of the three incidents charged in the Indictment…He was not involved in the remaining two incidents….nor was he involved in the additional arrests of Defendant for which the Government could have brought superseding charges." *Id*.

The trial court observed that "with respect to the charges arising out of the October 26, 2017 incident and November 6, 2017 incidents, neither of which involved the relevant officer, Defendant, if convicted, was still potentially exposed to the same potential mandatory minimum term of imprisonment, i.e., a mandatory term of life imprisonment." *Id*. Thus, the Court concluded that "given that the evidence merely consists of potential impeachment evidence regarding a single officer witness who was only involved in one of the three incidents charged in the Indictment, and given that Defendant still faced the same sentencing exposure…the Court concludes that the newly discovered evidence could not have 'plausibly motivated a reasonable person in Defendant's position not to have pled guilty had he known about the evidence prior to pleading.'" ER 22.

For all these reasons, the trial concluded that "Defendant's decision to plead guilty was knowing and voluntary, and there is no fair or just reason to withdraw his guilty pleas. The Court finds that the reasons raised in Defendant's Motion to Withdraw Guilty Plea were merely fabricated to justify Defendant's change of heart." ER 24-25.

The trial court ultimately sentenced Avalos to 248 months' custody. *See* CR 418, ER 27. He appealed, challenging the denial of his motion to withdraw the plea.

IX. The Ninth Circuit affirms the denial of the motion to withdraw the plea.

The Ninth Circuit affirmed the denial of Avalos's motion to withdraw the plea. The Court found that Avalos had been properly advised of the relevant provisions of the plea agreement, and that his plea had not been coerced. *See* Appendix A. The Court noted that "Avalos had ample time to review the agreement, including weeks within to discuss the initial plea agreement with his counsel and several days within which to review the revised version before the hearing." *Id*.

This petition follows.

REASON FOR GRANTING THE PETITION

Review is warranted because Petitioner did not knowingly and voluntarily enter into a guilty plea.

Federal Rule of Criminal Procedure 11(d)(2)(B) provides that a defendant may withdraw a plea of guilty prior to the imposition of sentence if he "can show a fair and just reason for requesting the withdrawal." *See also United States v. Ortega-Ascanio*, 376 F.3d 879, 885 (9th Cir. 2004) (describing "fair and just reason" standard). That includes pleas that are involuntary due to coercion. A guilty plea must be the voluntary expression of the defendant's own choice. *Brady v. United States*, 397 U.S. 742, 748 (1970). When a guilty plea is challenged

as being the product of coercion, this Court's "concern is not solely with the subjective state of mind of the defendant, but also with the constitutional acceptability of the external forces inducing the guilty plea." *Iaea v. Sunn*, 800 F.3d 861, 866 (9th Cir. 1986).

Moreover, "prior to sentencing withdrawal should be 'freely allowed' and granted 'as a matter of course.'" *United States v. Morgan*, 567 F.2d 479, 493 (D.C. Cir. 1977) (citations omitted). In the Ninth Circuit, "[f]air and just reasons for withdrawal include . . . newly discovered evidence, intervening circumstances, or any other reason for withdrawing the plea that did not exist when the defendant entered his plea." *United States v. Davis*, 428 F.3d 802, 805 (9th Cir. 2005).

Here, there were several "fair and just reasons" for allowing Avalos to withdraw his plea. First, the record shows that Avalos was misled about the terms of the plea. The evidence shows that defense counsel did not have an in-depth meeting with Avalos about the terms of the agreement. Counsel quickly reviewed the plea agreement with Avalos *in the courtroom* after the February 12 hearing. *See* ER 658. During that meeting, Avalos was left with the impression that the agreement contemplated a sentence "up to 15 years." ER 281. The next day, at the plea colloquy, neither the district court nor the government advised Avalos that he would receive a 15-year mandatory-minimum sentence. The government stated

only that Avalos's five-year consecutive sentence on the 924(c) charge "must run consecutive to any other sentence of imprisonment." Avalos did not know the meaning of that phrase and the issue was never clarified during the colloquy. ER 281-282. Avalos believed that "he could get or might get less than 15" years under the agreement. ER 282. Indeed, during the colloquy, Avalos needed to confer with counsel when asked by the district court whether any "specific sentence" had been proposed to him as part of the plea. *See* ER 464. According to Avalos, counsel told him to "just say no and we can go on," a statement that counsel did not address or contradict in his declaration submitted to the court. These facts show that Avalos was not properly advised about the 15-year mandatory-minimum sentence that would apply to his case.

Moreover, the record shows that Avalos was also misled about the provision in the plea agreement precluding the parties from requesting less than a 240-month sentence. Neither counsel declared that they advised Avalos about this provision on February 12 when he signed the plea agreement. *See* ER 654-664. The district court did not advise him about the provision either at the change of plea colloquy. *See* ER 446-474. And Avalos's own actions show that he did not believe any such provision was in place. In advance of sentencing, Avalos submitted a handwritten letter to the district court requesting a 15-year sentence. *See* ER 444. The letter was

submitted in May 2018, well before Avalos allegedly learned of the dismissal of the case against codefendant Rodriguez that according to the district court motivated him to seek the withdrawal of his plea. And while counsel filed Avalos's initial letter, he then amended the filing to redact the reference to the 15- year sentence without telling Avalos. *See* ER 441. Avalos affirmed in his declaration that this redaction was done unbeknownst to him, and neither counsel refuted him or addressed the issue in their own declarations. *See* ER 654-664.

Further, the record reveals that Avalos was pressured and coerced into pleading guilty by his counsel and the district court. The district court's repeated warnings about dire consequences and its fast-track calendar were a primary reason. Throughout the proceedings, the trial court repeatedly warned Avalos that it would have "no discretion" in imposing punishment and that he would receive a life sentence if he were to be convicted at trial. The trial court told Avalos that the case would have "catastrophic consequences" for him. The court gave the parties only two weeks to file pretrial motions and did not entertain the possibility of moving the trial, even appointing Avalos a second attorney when counsel advised that he might not be physically ready to proceed to trial as scheduled. Further, the district court scheduled Avalos's plea for less than 24 hours after he signed the

plea agreement, leaving him almost no time to consider the consequences of his actions.

And the evidence shows that Avalos was affected by this pressure and coercion. The record is clear that Avalos wanted to litigate his motions to suppress and proceed to trial if necessary. As counsel acknowledge in their declarations, he repeatedly made this clear throughout the case. But because the motions were scheduled to be heard only a few days before trial, and the district court had already advised that it was inclined to deny the motions, Avalos would have no time to reevaluate his options and consider a potential plea. Defense counsel contributed to this pressure by telling Avalos that he had no chance of winning his motions and that he needed to act quickly and sign the plea agreement.

Finally, the record shows that the district court did not impartially weigh the evidence pertaining to Avalos's motion. Before Avalos had even filed his motion to withdraw the plea, the district court had already decided that he had "concocted" a false "showing" of withdrawal with a "jailhouse lawyer." ER 676. The trial court stated that "I don't know what you are going to raise in terms of your arguments that you think you were somehow pressured into signing a plea agreement which apparently you and your jailhouse lawyer are going to concoct some showing of that." *Id*. The trial court also decided, before receiving any evidence or argument,

that Avalos's "new founding evidence is not going to have any effect whatsoever on your motion to withdraw the plea." ER 679. The district court stated that it was not "newfound evidence"—despite the government later conceding that it was—and found that such evidence would not be relevant because "it is not newfound evidence to me." ER 679-680. And the district court denied Avalos's motion by focusing on an issue—the dismissal against codefendant Rodriguez—that found no support in any of the evidence presented to the court. The trial court, then, did not conduct the proper Rule 11 inquiry.

Finally, the failure to properly advise Avalos about the consequences of the plea, along with the constant pressure and coercion, were not the only "fair and just" reasons that warranted withdrawal of the plea. The district court should have allowed the plea to be withdrawn based on the newly-discovered impeachment evidence involving one of the arresting officers. The impeachment evidence involved a host of misconduct by one of the arresting officers involved in the case. *See* ER 684-687. That evidence, had it been presented at trial, could have had a "ripple effect" on government's ability to prove their case-in-chief against Avalos beyond a reasonable doubt. At the very least, it was directly relevant to the government's allegations regarding the September 28 incident, one that was the subject matter of several counts in the indictment and allegedly involved a

significant amount of drugs and ammunition. Thus, contrary to the district court's findings here, with the possibility of seriously contesting some of the main charges at trial while also casting doubt on the legitimacy of the government's investigation, a reasonable person could have been at least plausibly motivated to not have pled guilty in these circumstances.

For all these reasons, the Ninth Circuit erred in affirming the denial of Avalos's motion to withdraw his plea. Certiorari should be granted accordingly.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

Dated: December 18, 2020

TIMOTHY A. SCOTT
Scott Trial Lawyers, APC
1350 Columbia Street, Suite 600
San Diego, CA 92101
(619) 794-0451