

No. 20-6911

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



DIMAS ALFARO-GRANADOS — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

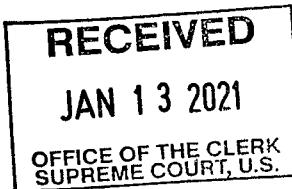
PETITION FOR WRIT OF CERTIORARI

DIMAS ALFARO-GRANADOS # 61717-019
(Your Name)

USP Beaumont P.O. Box 26030
(Address)

Beaumont, Texas 77720
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

[1]. 1st Question Presented on Request and Application for COA

Did the appellate court err in denying a certificate of appealability on whether the district court erred or alternatively abused its discretion in adopting the Magistrate Judge's finding that Mr. Alfaro-Granados' counsel was not ineffective for failing to propound a necessary and meritorious challenge – based on *Miller v. Alabama*, 567 U.S. 460 (2012) – to Mr. Alfaro-Granados' prosecution on Counts 2 & 4 for VICAR, where the RICO enterprise pre-dated Mr. Alfaro-Granados' 18th Birthday?

[2]. 2nd Question Presented on Request and Application for COA

Did the appellate court err in denying a certificate of appealability on whether the district court erred or alternatively abused its discretion in adopting the Magistrate Judge's finding that Mr. Alfaro-Granados' counsel was not ineffective for failing to raise a necessary and meritorious objection – based on *Miller v. Alabama*, 567 U.S. 460 (2012) – to the imposition of unconstitutional Life sentences on Counts 2 & 4 for VICAR, where the RICO enterprise pre-dated Mr. Alfaro-Granados' 18th Birthday?

[3]. 3rd Question Presented on Request and Application for COA

Did the appellate court err in denying a certificate of appealability on whether the district court erred or alternatively abused its discretion in adopting the Magistrate Judge's finding that Mr. Alfaro-Granados' appellate counsel was not ineffective for failing to appeal Mr. Alfaro-Granados' Life sentences as having been imposed in violation of *Miller v. Alabama*, 567 U.S. 460 (2012)?

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

United States v. Alfaro-Granados, Case No. 1:10-cr-00086-RWS-ECS-7, U.S. District Court for the Northern District of Georgia. Judgment entered October 13, 2013.

United States v. Alfaro-Granados, No. 13-14994, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered June 20, 2017.

Alfaro-Granados v. United States, Case No. 1:19-cv-1556, U.S. District Court for the Northern District of Georgia. §2255 Judgment entered March 16, 2019.

Alfaro-Granados v. United States, No. 20-11581, U.S. Court of Appeals for the Eleventh Circuit. Judgment denying COA on §2255 motion entered August 27, 2020.

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A Judgment denying COA on §2255 motion entered August 27, 2020 in Alfaro-Granados v. United States, No. 20-11581

APPENDIX B §2255 Judgment entered March 16, 2019 in Alfaro-Granados v. United States, Case No. 1:19-cv-1556, U.S. District Court for the Northern District of Georgia

APPENDIX C UNITED STATES MAGISTRATE JUDGE'S FINAL REPORT AND RECOMMENDATION in Alfaro-Granados v. United States, Case No. 1:19-cv-1556, U.S. District Court for the Northern District of Georgia

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
In re Vassell, 751 F.23d 267 (4th Cir. 2014)	5
Miller v. Alabama, 567 U.S. 460 (2012)	4, 5, 6
United States v. Under Seal, 819 F.3d 715 (4th Cir. 2016)	5

STATUTES AND RULES

18 U.S.C. §1959(a)	4
28 U.S.C. §2253	5
28 U.S.C. §2255	4,5

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 8/27/2020.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves a federal criminal defendant's constitutional rights under the Sixth Amendment, which provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense.

This case also involves the application of 28 U.S.C. § 2253(c). 28 U.S.C. § 2253(c) provides that:

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(B) the final order in a proceeding under section 2255.

. . . (2) A certificate of appealability may issue under paragraph

(1) only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

Mr. Alfaro-Granados initiated this proceeding by filing a timely collateral attack on the judgment of the district court via the provisions of 28 U.S.C. §2255 (f)(1) ("§2255"). Mr. Alfaro-Granados' §2255 sought to vacate his convictions and sentences on the bases that: 1) he was denied the effective assistance of counsel during pre-trial proceedings, at trial, and throughout the sentencing hearing, as a result of counsel's failure to propound a necessary and meritorious challenge to Mr. Alfaro-Granados' prosecution on counts 2 & 4 for VICAR, where the RICO enterprise pre-dated Mr. Alfaro-Granados' 18th birthday. With regard to this claim, Mr. Alfaro-Granados showed that his former trial level counsel was constitutionally deficient for failing to move to dismiss counts 2 & 4 and for failing to propound a necessary objection to imposition of a mandatory term of Life imprisonment on those counts, as clearly foreclosed by controlling Supreme Court precedent. See *Miller v. Alabama*. Absent counsel's deficiencies there is a reasonable probability that the district court would have dismissed counts 2 & 4 or sustained the objection and imposed a lesser sentence; and 2) he was denied the effective assistance of counsel on direct appeal where appellate counsel was deficient for failing to challenge Mr. Alfaro-Granados' convictions on counts 2 & 4 and Life sentences on the same basis. Had counsel presented this challenge on direct review there is a reasonable probability that Mr. Alfaro-Granados' convictions on counts 2 & 4 and Life sentences would have been vacated by this Court.

On May 15, 2020, the United States opposed the motion, arguing that Mr. Alfaro-Granados' former counsel was not ineffective for failing to raise a Miller based challenge to Mr. Alfaro-Granados' prosecution and sentencing or on direct appeal, because he was an adult when he committed a specific act in furtherance of the RICO enterprise.

On July 11, 2019, Mr. Alfaro-Granados filed a reply arguing that the Government's conclusion that he was not the victim of ineffective assistance of counsel was specious and based on their misguidedly narrow interpretation of Miller and its progeny.

On February 20, 2020, the Honorable Catherine M. Salinas, United States Magistrate Judge issued her Report and Recommendation ("R & R") that Mr. Alfaro-Granados's Motion to Vacate be denied and that no certificate of appealability should issue.

Mr. Alfaro-Granados timely objected to the R & R, specifically objecting to the recommendation(s) that: A) he "participated as an adult and committed the crimes as an adult, and the Court properly applied § 1959(a);” B) “[n]either Miller, Roper, nor Under Seal provide a reason to find that counsel was ineffective;” and C) he was not entitled to COA.

On March 16, 2020, the district court filed an Order, adopting the Magistrate Judge's Report over Mr. Alfaro-Granados' timely objections and denying in all respects his then pending Motion to Vacate filed pursuant to 28 U.S.C. §2255.

On April 20, 2020, Mr. Alfaro-Granados timely filed his notice of appeal. Shortly thereafter, Mr. Alfaro-Granados moved the district court for permission to appeal in forma pauperis, which the district court denied by order dated June 11, 2020.

Mr. Alfaro-Granados unsuccessfully sought COA from the United States Court of Appeals for the Eleventh Circuit on the same bases as he seeks COA from this Court. The only difference being that know the errors he sought to raise in the appellate court have been affirmed by that court.

REASONS FOR GRANTING THE PETITION

Mr. Alfaro-Granados' §2255 motion sought to vacate his convictions and sentences on the bases that: 1) his trial level counsel was constitutionally ineffective for failing to object to his prosecution – where the statute he was charged under mandated a Life sentence upon his conviction – and the imposition of a constitutionally impermissible mandatory minimum Life sentence, where the RICO enterprise pre-dated Mr. Alfaro-Granados' 18th birthday; and 2) his appellate counsel was constitutionally ineffective for failing to appeal Mr. Alfaro-Granados' Life sentences as having been imposed in violation of Miller. Strong grounds existed for counsel to challenge Mr. Alfaro-Granados' eligibility for conviction under a statute which mandates a Life sentence and the imposition of Life sentences, and for an appellate challenge to those convictions and sentences. The Supreme Court had, prior to Mr. Alfaro-Granados' trial, prohibited the imposition of a Life sentence for juvenile conduct. See *Miller v. Alabama*, 567 U.S. 460 (2012). Lower courts had interpreted this holding to foreclose the prosecution of juvenile conduct under the statute which Mr. Alfaro-Granados was tried under. See, e.g., *United States v. Under Seal*, 819 F.3d 715 (4th Cir. 2016).

Minimally competent counsel would have recognized that the constitutional protections of Miller extended to Mr. Alfaro-Granados by virtue of the reality that the RICO enterprise – membership in which was an element of VICAR – commenced prior to Mr. Alfaro-Granados' 18th birthday. Appellate courts had assumed that initiating the course of criminal conduct when one is under 18 years of age confers status as a juvenile offense under Miller. See, e.g., *In re Vassell*, 751 F.3d 267, 269, n. (4th Cir. 2014).

Those same strong grounds demonstrate a reasonable probability that the sentencing court (as to Ground One) and/or appellate court (as to Ground Two) would have granted Mr. Alfaro-Granados the relief sought, establishing prejudice from counsel's deficient performance. *Id.* Clearly, these claims of ineffective assistance of counsel in violation of Mr. Alfaro-Granados' Sixth Amendment rights are both cognizable under 28 U.S.C. §2255 and involve a substantial showing of denial of constitutional rights within the meaning of 28 U.S.C. §2253.

The District Court denied Mr. Alfaro-Granados' §2255 motion, based on two errors of law, which led to an erroneous assessment of the merits of the ineffective assistance of counsel claims Mr. Alfaro-Granados presented. First, the District Court erred in adopting, over Mr. Alfaro-Granados' specific objection, the R & R's conclusion that Mr. Alfaro-Granados did not enjoy protections under Miller, where the RICO enterprise pre-dated his 18th birthday. This was an error because, as many courts have recognized, the course of conduct, i.e., the RICO enterprise, began prior to his 18th birthday. See, e.g., *In re Vassell*, 751 F.3d 267, 269, n. (4th Cir. 2014).

Second, the district court further erred by adopting, once again over Mr. Alfaro-Granados' specific objection, the R & R's finding that the failures of Mr. Alfaro-Granados' trial and appellate counsel did rise to the level of ineffective assistance because his claim was not sufficiently supported by Miller, Roper, or *Under Seal*. As described, *supra*, the Supreme Court's holding in Miller had been interpreted to foreclose the prosecution of juvenile conduct under the statute which Mr. Alfaro-Granados was tried under, and on its face foreclosed the imposition of a mandatory Life sentence for such conduct. These realities show that counsel's failures fell below the minimal level of competence – constituting deficient performance – and were prejudicial.

Mr. Alfaro-Granados respectfully raises threshold issues which meet the requirements for issuance of a COA on the following questions:

[1]. 1st Question Presented on Request and Application for COA

Did the appellate court err in denying a certificate of appealability on whether the district court erred or alternatively abused its discretion in adopting the Magistrate Judge's finding that Mr. Alfaro-Granados' counsel was not ineffective for failing to propound a necessary and meritorious challenge – based on *Miller v. Alabama*, 567 U.S. 460 (2012) – to Mr. Alfaro-Granados' prosecution on Counts 2 & 4 for VICAR, where the RICO enterprise pre-dated Mr. Alfaro-Granados' 18th Birthday?

[2]. 2nd Question Presented on Request and Application for COA

Did the appellate court err in denying a certificate of appealability on whether the district court erred or alternatively abused its discretion in adopting the Magistrate Judge's finding that Mr. Alfaro-Granados' counsel was not ineffective for failing to raise a necessary and meritorious objection – based on *Miller v. Alabama*, 567 U.S. 460 (2012) – to the imposition of unconstitutional Life sentences on Counts 2 & 4 for VICAR, where the RICO enterprise pre-dated Mr. Alfaro-Granados' 18th Birthday?

[3]. 3rd Question Presented on Request and Application for COA

Did the appellate court err in denying a certificate of appealability on whether the district court erred or alternatively abused its discretion in adopting the Magistrate Judge's finding that Mr. Alfaro-Granados' appellate counsel was not ineffective for failing to appeal Mr. Alfaro-Granados' Life sentences as having been imposed in violation of *Miller v. Alabama*, 567 U.S. 460 (2012)?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X Dimas Alfaro Granados

Date: December 23, 2020