No. 20-8052

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Vicente Quiroz — PETITIONER
(Your Name)

FILED
APR 23 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

United State of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Vicente Quiroz #91208308
(Your Name)

FCI-La Tuna camp P.O. Box 8000
(Address)

Anthony, New Mexico/TX 88021
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

For federal Prisoners, the last chance to argue your conviction or sentence was unlawful comes within a year of the conviction becoming final in a habeas corpus petition filed according to the restrictions of 28 USC 2255. Virtually all of those are denied by the district court that convicted and sentenced the petitioners, because, FACE IT, how many people even Judges like to admit they screwed up.

Appeal of a denied 2255 motion is not automatic. Instead, Congress has decreed that would-be appellants get a certificate of appealability ("COA"), granting permission to appeal on a per-issue basis, before briefing can go forward. COAs are the Keys to the Kingdom: You cannot appeal an order dismissing your 2255 claim without one.

* Now, Petitioner for Writ of Certiorari before the Supreme Court asks what it means for due process and access to courts if Petitioner in one circuit, are 69% more likely to get a COA issued that similar movants in other? FOR EXAMPLE:

- There's a Petition filed by a Columbia Law Professor on behalf of an Alabama State Inmate contends the arbitrariness in COA ruling by Appellate Courts, particularly the 11th circuit, reflects a systemic breakdown in the COA review process. "A lot of petitioners are pro se, and they're not really getting review any more." Prof. Benard Harcort told the National law Journal, "Its almost as if the (Statory) mechanism requiring a COA has closed the gates on federal circuit review of habeas denials!"

Harcourt filed the Petition on behalf of Phillip Tomlin who has been in State prison for 42 years serving life without parole. The 11th circuit denied Tomlin a COA last year on a legal question that the Court had explicitly left open in a 2011 decision, by applying "an improper, too demanding, and unduly burdensome" COA standard, the Petition argues.

Tomlin's COA was denied by the 11th Circuit Judge Charles Wilson (Who grants a mere 2.7% of COAs he reviews, according to a Columbia University Law school study published on 2020) The Study showed significant disparities in grant rates for Capitol Prisioners (58%) and noncapital (8%) in the 11th Circuit. Of more concern the study suggest that it's a crap shoot for any COA filer. The 11th Circuit using a single Judge to review COA requests, and the grant rates among those Judges range from a low of 2.33% to a high of 25.8% more than and order of magnitude. The Study also compared the 11th Circuit to the 1st circuit, finding that the 11th Circuit's (8.1%) noncapital COA grant rate is far below the 1st Circuit's (14.3%). Petition for Writ of Certiorari, Tomlin v. Patterson Case No. 19-7127 (Dec 27, 2019). Udall, Certificates of Appealability in habeas cases in the United States Courts of Appeals for the 11th Circuit: A study (Columbia Law School, Dec 24, 2019.) National law Journal, Have Circuits Courts "close the gate to Inmates Appeals ? (Feb 5) Thomas L. Root.

→ Question Presented is: Does a denial of a certificate of Appealability violates the Petitioner "de novo" review on properly recorded objections, due process of the Fourteenth Amendment and the access to the Courts ?

Petitioner requested de novo review per-issue basis: Ineffective assistance of counsel; Vindictive Prosecution; Outrageous government conduct; Perjury in general; Speed trial Violation; Confrontation Clause; false post arrest statement; Manipulation of recordings to fit transcripts; Violations to the on or about; heresay violation; Jury Instructions; Vior dire and other.

LIST OF PARTIES

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

[X] 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:

- Steven Shobat
  Attorney at Law
- Viviana Ramirez
  Attorney at Law
- John Thomas Moran Jr.
  Attorney at Law

RELATED CASES

13 CR 968
13 CR 21
16-3510
16-3518

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INDEX TO APPENDICES

APPENDIX A

1-A = U.S. Court of Appeals, 7th Circuit, Order denying a certificate of appealability Case NO: 20-1156 filed: 12/08/20.

= U.S. Court of Appeals, 7th Circuit, Order denying rehearing "en banc" filed: 12/08/2020, Case No: 20-1156. Both at US.DC case No: 1:18-cv-03121.

= Petitione Motion at U.S. Court of Appeals submitted for filing on February 09, 2021 = title Objection Against Order Denying Rehearing "en banc"

= Petitioner Motion at U.S. District Court and U.S. Court of Appeals (7th Circuit) filed: 01/24/20: title Notice of Appeal And Request for certificate of Appealability Under section 28 U.S.C.S. § 2253 (c)(2) supportive documents as followed:

- Defendant's Response to Governments Motion Against Relief under section 28 U.S.C. § 2255: Includes (FOIA) results, partial grand jury transcripts, DEA 6 reports where agents procure the transactions, Government motion authorizing the installation of use of pen register device and a trap and trace device (the results from this motion were not provided by prosecution) "FOIA pending".

Motion by Petitioner requesting the discovery of motion just mention, e-mails from Petitioner to defense Counsel requesting Speedy trial, pre-trial motions discovery against first "Indictment" 13 CR 21. Petitioner Motion to Dismiss Indictment under Vindictive prosecution and outrageous government conduct.

= Brief and Required Short Appendix of Defendant-Appellant Vicente Quiroz Case No: 16-3510 filed: 04/17/2017.

= Reply Brief of Defendant-Appellant Vicente Quiroz Nos. 16-3510, 16-3518 (cons) filed: 07/14/2017

= Petition for Rehearing "En Banc" of Defendant Appellant Vicente Quiroz filed: 11/9/2017 Cases No. 16-3510, 16-3518.

= Petition for Writ of Certiorari for Defendant Vicente Quiroz filed: 02/26/2018

= Motion to vacate set aside under § 2255.

APPENDIX A

2-A = Petitioner Motion Requesting Status and objection against the Passage of time: Case No: 1:18-cv-03121 filed: 08/28/19. Supportive documents e-mails to defense counsel "The delay between the Indictments violates my 6th Amendment rights of speedy trial". Motion for Discovery of Reliable Evidence of law Enforcement officer's Misconduct in Unrelated Cases, filed 06/24/15. E-mail to defense Counsel dated back "2013" before 2015 trials- here defendant requested trial for 13CR21, to challenge the third count in 13CR21 Indictment as well all this documents are proof of "Ineffective assistance of Counsel". Not heresay, but hard documents showing the divided loyalty of defense counsel and leverage provided to the Prosecutor to a Vindictive Indictment.

3-A- Government's Santiago Proffer submitted through bystandard report to be recorded for appeal Case No: 16-3510 filed 04/17/2017. Proffer filed: 09/08/14 at U.S. District Court Case No. 13 CR 968. This here proffer fails Fed. R. Evid. (Rule) 801(d)(2)(E). Against this Petitioner filed to the District Court Motion to Dismiss Alleged Conspiracy AID and ABET. Also letter to defense Counsel send through e-mail P.D.F. file. This letter also supports the "Ineffective assistance of Counsel".

4-A ~~[illegible]~~ - Exhibits: grand jury transcripts of Agent David Brazao / Benjamin Vance (CI)

5-A ~~[illegible]~~ - Letter to the District Court title: "The Right to Counsel is the Right to effective assistance of Counsel", filed: 2014 When Counsel tried to Quit for the Second time.

- DEA 6 forms where Agents procure the drugs themselfs setting a side the defendant.
- Copy of Motion of Pen Register device trap and trace, (no results),
- CI and Cesar phone record all from 10/21/2012 and 10/22/2012. No recordings from defendant with this two for this transactions- But Unrelated calls were use to fit the on or about.

APPENDIX A

5-A ~~BHA~~ - DEA 6 forms addressing money paidments by "Government Agents"

- DEA-6 of recorded of drug deals that never happen with so many different people. "Petitioner trial transcripts are full of recorded calls unrelated to the actual transaction, only use to fit, to incriminate fabricating inferences.

- Letter submitted to the PSI as defendant version, this statement was suppress by the probation office and Judge Thomas M. Durkin who ignore my statement to the PSI at Sentencing.

- Copies of 5.10(A) ~~Buyer~~ Buyer/Seller Relationship send to defense counsel who ignore my request

- Letter to Althea K. Welsh, Senior Counsel, Attorney for Registration and Diciplinary Commission, 130 East Randolph Drive suite 1500 Chicago IL 60601. Inquiry against defense counsel and his "unreasonable strategy" for my defense.

6-A - Motion to Dismiss Indictment under outrageous government conduct United States v. Russell, 411 U.S. 423, 93 S. Ct. 1637, 36 L. Ed 2d 366 (1973).

6-A-1 - Motion in objection to grand jury Indictment to be release to prior jury members and other mention here with:

6-A-2 - E mail to Defense Counsel PDF filed-mail 2014. Letter for defense counsel

7-A - E mail to Defense Counsel PDF file-mail 2014 - Letter and notes.

8-A - Defendant Motion in Limine.

9-A - Motion in Response and objection to oral Ruling and government Response for which posttrial motions were deny.

10-A - Defendant consolidated General motions in Limine

11-A - Defendant motion supporting Arguments for Appellate Brief.

12-A - Motion Responding and objecting to presentence Investigation Report.

APPENDIX-B

1-B Petitioner motion objection against mandate and notice of address change; U.S Court of Appeals, 7th Circuit, motion notice of issuance of mandate against Appellate No. 20-1156 "for Exhibits" to be dispose (Petitioner use the District
* Court docket because my family could not access the Court of Appeals docket entries).

- Notification of docket entry filed: January 21, 2020 - Petitioner motion for Judicial misconduct (motion block from docket).

- Notification of Docket entry, June 1, 2020 - Petitione motion for recusal under section 28 U.S.C.S § 455(a) and § 144 (this motion was submitted months before June 1, 2020 and was ~~withheld~~ withheld for after the fact ruling).

- Petitioner "Rough Drafts" of motions that were block for print through Pacer.com. my family was unable to access the appeals records 1) motion demanding recusel under section 28, U.S.C.S § 455(a) and § 144 of District Judge Thomas M. Durkin 2) Objection against denial of motion for recusal 3) Fed. R. App. P. Rule 3(c) docketing Statement 4) Appellant Vicente Quiroz, Request to extend time to appeal under Fed. R. App. P. 4(a)(5)-(6)(A)

- Statemen of ILLINOIS Judicial Inquiry board filed: January 11, 2018 (the Judicial Inquiry board acknowledge the complaint against District Judge Thomas M. Durkin.)

- Government Status Report (here the government mentions other motions filed by the Petitioner that weren't available for print filed 3/25/20 while the appellate Court requested this Status the government filed this at the District Courts docket.

- Petitioner letter for the Honorable Judge Bucklo (this letter addresses the (wish) to returned to her Court, prosecutorial misconduct, Ineffective assistance of counsel, the (FOIA) filings and other issues that a Senior Judge would not allowed prosecutors to exercise,

APPENDIX B

2-B Petitioner Request for Service (copy front and Back), Seventh Circuit transcript Information sheet filed: 10/20/16 (defense Counsel refuse to add many of my requested documents) Request to Court Reporter Laura Renke.
- Petitioner Request for waiver of fees (Inmate requesting transcripts) filed: 12/11/17.
- Notification of Docket Entry before the Honorable Thomas M. Durkin: Defendant's motion for waiver of fees (is denied). Defendant request for transcripts court reporter (is denied) - Petitioner tried and tried to get the records, even tried to get the "audio" from my suppression hearing and the Judge always obstructed my steps to a fair appeal.
- Petitioner letter to the U.S. Court of Appeals, 7th Circuit, dated 2/2/2018 addressing the denial of Judicia inquiry.
- Petioner Motion - Request for Judicial inquiry for "sedition" - seditious conspiracy against formal Judge Thomas M. Durkin and others: To guard against repressive measures by several departments of government, by means of which "persons" in power secure themselves and their favorites from "just" scrutiny and condemnation. Also explain in this judicial inquiry request the denial of transcripts, the request to subpoena the witnesses for trial, the way the Judge, defense Counsel, prosecutors had a "pre arrangement" AGREEMENT in how my cases should fall out. Also, how prosecutors during Vior dire introduce (friends) who yet worked or once work with the prosecution office; also in this inquiry for seditious conspiracy "bench trial," the Santiago Proffer did not mention any "Cesar", but for my Fact Finder and Gate keeper, my 12 Juror pannel accepted HERESAY to himself besides the many objections prior to trial. The Appeals Clerk refuse me the right to filed this complaint, Just like Judge Durkin serve as a rubberstamp the Clerk Jump in it too.

APPENDIX B

3-B Petitione Motion filed: 09/09/16 (before sentencing) - Motion in support of Document #151 filed: 08/18/16: to the District Court, to consider an order before sentence of all records requested by defendant to the (FOIA), for the prosecutor to release agents diciplinary records. Judge Durkin deny me.

- letter "copy" of Court Reporter Laura Renke

- Petitioner Motion filed: 10/17/16 (month after senteneing) Request for Disclosure of (FOIA) information: Plea to avoid injustice to an indigent layman who is equal by the Constitution to any and all persons, to grant fundamental fairness to a claim of innocence by "factual documentation" and more.

- FOIA letter DEA Department of Justice 8701 Morrissette Drive, Springfield, VA 22152 Document #151-08/08/16. Letter was a response that Petitioner request was been consider ONE year before my sentence.

- U.S. Marshals Service (FOIA) requested (a year before my sentence) November 24, 2015: Request for the arrest report at Phoenix, AZ. The Marshals and DEA from Phoenix arrested me (see DEA6 attach, next page) - The Agents from Chicago did not arrested me. (this information was discuss with defense counsel before my hearing to suppress the statement defense counsel did not brought this issue to the attention of the Court nor he cross agent O'Reilley about it.

- Letter from (OGIS) office of Government Information service dated: December 23, 2015 (Provides mediation services) DEA Records.

- Letter from (OGIS) office of Government Information service dated: May 18, 2016: mediation for several Government Offices, one asking for $2000.

- Letter (FOIA) U.S. Department of Justice DEA (SARF) submitted December 07, 2015 - response on October 05, 2016, Partial Release.

APPENDIX B

3-B - Letter in response to (FOIA) request dated September 02, 2015
One Year before my sentence DEA (SAEF)
- Letter from Petitioner, Office of General Counsel, Investigation Division
1425 New York Ave. NW Washington, DC 20530: Petitioner requested this office
to intervine with the release of documents from DEA granted on 09-11-17
on appeal.
- Letters from U.S. Deparment of Justice (EOUSA) Executive Office for the
United States Attorneys from February 28, 2020 - through - November 23, 2020
request for access to records in connection with a pen register and trap
and trace device order.
- Letter Office of Professional Responsibility, 950 Pennsylvania Ave. NW.
- DEA6 money paidment from the government to Vicente Quiroz, one
of many during my participation with the CI and DEA Agents, merely
financial inducement violates due process.

4-B - Judgement in a civil case. In this here opinion ignores many
of the facts under de novo, Here is just rubber stamp
assessment of what the prosecutor wanted my plea agreement to
say. I am entitle to Equal Justice, to an Impartial
oversight.

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STATUTES AND RULES

OTHER

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Cases Supportive of (§2255 motion) at Reply Brief Case Nos. 16-3510, 16-3518,
Filed: July 14, 2017: Table of Authorities: .... V-A

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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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Nov. 2, 2020.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Nov. 30, 2020, and a copy of the order denying rehearing appears at Appendix ____.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including February 17, 2021 (date) on March 2, 2021 (date) in Application No. 20 A 1156.

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).

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

March 2, 2021

Vicente Quiroz
F.C.I. La Tuna Camp
POB 8000
Anthony, TX 8802

RE: Vicente Quiroz v. United States, Time Extension
USCA7 No. 20-1156

Dear Mr. Quiroz:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked February 17, 2021 and received March 2, 2021. The application is returned for the following reason(s):

It is returned in light of the order of this Court issued on March 19, 2020. That order extended an additional 60 days--the maximum that may be granted--to all petitions due on or after that date. A copy of that order is enclosed.

Sincerely,
Scott S. Harris, Clerk
By:

Michael Duggan
(202) 479-3025

Enclosures

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Under the Sixth Amendment of the constitution all persons have the right to effective assistance of counsel, to confront and cross examine witness, and the right to speedy trial.

- Under the Fifth Amendment of the constitution all person have the right against self incrimination, the right to unbiased grand Jury, a grand Jury free on its ability to serve as an Independent and Impartial Investigative body. Due process of the Fith Amendment is violated when a Defendant has to stand on an Indictment 13 CE 968 which the government Knows is based on perjured material.

- Under the Fourteenth Amendment of the Constitution all persons have the right to do process, to access the Courts and the rule of law with out misrepresentation.

STATEMENT OF THE CASE

Petitioner brought a consolidated Appeal under section 28 U.S.C to Vacate, set Aside or correct sentence after being convicted in two separate trials. Case No. 1:18-cv-03121 Document #1 Filed 05/01/18 and Response Document #6 Filed: 08/13/18 both at Appendix A. Also in Appendix 1-A Documents in support the above motion: Brief and Require short Appendix of Defendant-Appellant Vicente Quiroz, direct appeal Nos. 16-3510, 16-3518; Reply Brief of Defendant-Appellant Vicente Quiroz; Petition for Rehearing En Banc; Petition for Writ of Certiorari the following abbreviations are in the above documents.

On March 27, 2013 Petitioner was arrested by Phoenix U.S. Marshals and D.E.A agents from Phoenix. see DEA-6 report in Appendix 3-B. This documents were given to defense counsel to impeach the agent testifying at my suppression hearing (defense counsel ignore my request).

Petitioner was charge with conspiracy to possess with intent to distribute Marijuana and distribution of Marijuana. Brief page 3. Bn. Tr. at 30-32; A.52-54. This my first Indictment for less than 550 Kilos of marijuana under 0-10 guideline range. Though prosecution manipulated the grand jury to Indict with an extra count to boost the Marijuana quantaty, at pre trial hearing the government dismiss the extra count. Early in this case 13 CR 21 "defense counsels" move their loyalty to the prosecution goal-the admission of a Global Conspiracy- see transcripts from detention hearing in front the Honorable Michael T. Mason, Magistrate Judge, and Judge Bucklo Case 13 CR 21-at Motion § 2255 filed 05/01/18 in Appendix 1-A Pages 5-10 ground one "Ineffective assistance of counsel" here the government makes clear his intrusion on Petitioner Six Amendment, prosecutor wanted a "Global Conspiracy". The greed of the prosecution was bold and without scruples. Petitioner asked counsels for trial, discovery, pre-trial motions and they started to quit, the last one He just stall and gave leverage to the prosecution, even then I was Indicted in a totaly New Indictmen with the same discovery with a Higher mandatory minimum. Defense Counsel wanted an admission to the meth and I said no because I did not procure them and under Booker those transactions could have been challenge at sentencing. See transcripts pages 18-30 from Motion § 2255 filed: 05/01/18 at Appendix 1-A.

STATEMENT OF THE CASE

- In this transcripts from Pretrial hearing in front Judge Thomas M. Durkin Case No. 13 CR 21 proper objections for appeal were recorded, how the (FOIA) findings fall in place, and how perjury in general happen. Motion recorded for appeal DKt. No. 114, Defendant Vicente Quiroz's consolidated motions for speedy trial violation, pre-accusatory delay and pre-Indictment delay and due process violation, objection to vindictive prosecution motion, "the Court statement, I believe by the defense, to try the case with the higher potential penalties first". How can a defense counsel claim such a thing...?

- Other motions are reference to and proper kept for appeal "de novo", also there's the back and forth from Petitioner and Judge Durkin where I'm requesting to bring Barraza to cross examine, but Judge and defense counsel denied me, I knew that Judge was going to pull a fast one like in bench trial where he accepted hearsay to himself to introduce a co-conspirator that wasn't even mention in the Gov. Proffer. see Appendix 1-A Gov motion under Vindictive prosecution at page 37 in Defendant's Response to Gov. motion against relief under section §2255, also in this motion results of (FOIA) that demonstrate perjury of Gov. agents, DEA-6 where agents set aside the petitioner and procure the drugs themselfs, E-mails in support of "Ineffective assistance of Counsel".

- In summary of the argoment: Brief at Appendix 1-A page 11.

In order to admit evidence of Mr. Quiroz's post arrest statements to the agents, the Gov. bore a "heavy burden" of proving that Mr. Quiroz made a knowing and intelligent waiver of his Miranda rights. To meet [its] burden, the government needed to prove not only that Mr. Quiroz was read his rights and that he subsequently made a voluntary statement, but also that he understood his rights. Here, the District Court created a new rule that, "it's an implied waiver when you talk after you've been told you don't have to talk". Bn. Tr. at 101; A 78. Under the District Court Rule, the government meets its "heavy burden" of proving that a knowing and intelligent waiver occurred whenever an arrestee makes a statement after being read the warnings. -

STATEMENT OF THE CASE

Because the rule relieves the Gov. of making "the additional showing" of understanding required by Bergruis, it was a constitutional error. Berghuis, supra at 384.

By relieving the government of its burden of making a showing of understanding, the district court effectively created a presumption of understanding whenever a statement is made after the rights have been read. But that is not the law.

Rather, the Supreme Court has held that creating a presumption of understanding that shifts the burden to the defense to prove lack of understanding is unconstitution. Tague v. Louisiana, ~~444~~ U.S. 469, 469 (1980) (per curiam). And Mr. Quiroz was prejudiced by the shieft in burden because the record shows the Gov. did not prove Mr. Quiroz so much as heard - much less that he understood - his rights. As the District Court constitutional error was not harmless, this court should vacate Mr. Quiroz's conviction and remand the case for new trial.

Brief Page 12

In addition, in both trials, the District court granted admission of multiple statements from allege co-conspirators on the basis of Gov. pre trial proffer. In order to admit statements from alleged co-conspirators under the hearsay exception, the offering party needs to stablish by a preponderance of the evidence: (1) that a conspiracy existed; (2) that the declarant was a member of the same conspiracy as the defendant; and (3) that the statement was made in furtherence of the conspiracy.

Here, the Government failed to provide sufficient evidence to show by a preponderance of the evidence that a conspiracy existed. The government only offered statements from the alleged co-conspirators, in particular, Vance (CI), a confidential government informant. But communications "solely" with a government informant are not enough to show a conspiracy. U.S. v. Carson, 579 F.3d 804, 811 (7th Cir. 2009).

Moreover, the government fail to introduce evidence beyond the co-conspirator statements themeselves in support of its position. Therefore, the statements from the alleged co-conspirators were inadmissible hearsay.

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STATEMENT OF THE CASE

They also were undoubtedly not harmless, as the District Court admited that Vance was the Government's most important witness. Bn. Tr. at 961; A 189. By admitting this evidence on a "erroneous factual findings," the Distric Court abused its discretion and should be reversed.

Argument: Reply Brief at Appendix-A page 1 and 2

There is no dispute: Postarrest statements may only be used against a criminal defendant when the government proves a defendant Knowingly and Intelligently waive his Miranda rights before making them. Here the Government failed to meet its burden.

But because of an erroneous holding by the District Court ("it's an implied waiver when you talk after you've been told you dont have to talk"), Mr. Quiroz's post arrest statements, which amounted to a full confession, were unconstitutionally used against him during two different trials. Bn. Tr. at 101, A 18. The Government's brief offers no defense of the District Court's erroneous articulation of the law. Instead, the Government relies on a slew of cases that either (1) do not speak to the issue at bar or (2) do not stand for the proposition the Government claims. The Government also makes the same mistake as the District Court - shifting the burden of proving lack of understanding from the Government to the defense - by arguing that Mr. Quiroz "forfeited" any claim that he did not Knowingly and intelligently waive his rights. Perhaps recognizing the District Court's errors, the Government devotes a significant portion of its brief arguing that any error was harmless. But It IS Not harmless error when, as here, the District Court wrongly admitted what amounted to a full confession. Indeed, the unconstitutional admission of Mr. Quiroz's postarrest statements tainted the defenses trial strategy and foreclosed what may have been his best avenue of defense. Finally, contrary to the Government's brief, the defense did not waive their objection to the admission of out of court hearsay statements under the conspirator exception.

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Continue next page. page 2 Reply Brief.

STATEMENT OF THE CASE

And the Government's argument that these statements were admitted to provide "context" offers them no help. As this Court has noted, a statement can be admitted both to prove the matter asserted and provide context. Here, regardless of the context these statements may have provided, they were unquestionably admitted to prove the matter asserted, and, thus, hearsay statements improperly admitted by the District Court.

The District Court's error in admitting Mr. Quiroz's post arrest statements warrants new trials: Reply Brief Appendix I-A pages 2, 3, 4, 5, 6.

In its response brief, the Government does not even attempt to defend the District Court's statement that "it's an implied waiver when you talk after you've been told you don't have to talk". Bn. Tr. at 101, A78. instead, the Government points to three findings made by the District court that it believes were sufficient for the Government to carry its burden: (1) that Mr. Quiroz was "read his rights"; (2) that Mr. Quiroz "immediately volunteered a statement without interrogation and continued voluntarily talking with the agents"; and (3) that Mr. Quiroz "is an intellegent individual who understands English and is not reluctant to assert his rights". Gvt. Resp. Br. at 25-26.

"Petitioner Note: If a man asked for trial and he know how to read and write then by the prosecutors findings that man needs to be put down by all means necessary. The Supreme Court had said that the Ends do not justify the means."

But these findings are not sufficient to prove an arrestee understood his rights when, as here, the arrestee never acknowledge been read his rights. In nearly every case, the Government's best evidence that an arrestee understood his rights is the arrestee's admission that he understood his rights. See Gvt. Resp. Br. at 25-29. But here, Mr. Quiroz never even acknowledge been read his rights. Yet every single one of the cases cited by the Government involved a defendant who explicitly acknowledged that he understood his rights.

STATEMENT OF THE CASE

- U.S. v. Shabaz, 579 F.3d 815, 817 (7th Cir. 2009): Defendant "stated that he understood his rights".
- U.S. v. Jackson, 300 F.3d 740, 748 (7th Cir. 2002): Arresting Officers "asked [defendant] if he understood his rights, and had [defendant] initial each right and sign to acknowledge his willingness to talk".
- U.S. v. Lee, 618 F.3d 667, 671 (7th Cir. 2010): officer "asked if he understood [his] rights" and Defendant "responded that he did.
- U.S. v. Vallar, 635 F.3d 271, 284 (7th Cir. 2011): Defendant "signed an advise of rights".
- U.S. v. Banks, 78 F.3d 1190, 1196 (7th Cir. 1996): Arresting Officer "asked [defendant] if he understood [his] rights, and [defendant] indicated that he did.
- Ruvalcaba v. Chandler, 416 F.3d 555, 557 (7th Cir. 2005): Defendant "said that he ... understood his rights".
- U.S. v. Brown, 664 F.3d 1115, 1117 (7th Cir. 2011): "when asked if he understood [his] rights, [defendant] bobbed his head ... [defendant] responded 'Yeah' when asked if he understood his rights".

This distinction is crucial. When an arrestee says he understands, it makes sense for the District Court to look only to whether he was capable of understanding. But when an arrestee never even acknowledges being read his rights, the question is not only his ability to understand his rights, but also whether or not his conduct implies that he did in fact understand his rights.

In U.S. v. Brown, this Court recognized this distinction. 664 F.3d 1115, 1117-8 (7th Cir. 2011). In Brown, this Court assumed, arguendo, that the arrestee's acknowledgment of understanding was ambiguous. Id, at 1118. But instead of relying solely on the fact that the arrestee had the capacity to understand his rights (as the Government does here), the Court undertook an analysis of whether the arrestee's subsequent conduct demonstrated that he actually understood. Id. And as Mr. Quiroz's opening brief explains in great detail, none of the circumstances presented in Brown apply in this case. Br. at 17-22

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Yet at the hearing, and again in its brief, the Government relies on Brown to argue that Mr. Quiroz's attempts to "dig himself out of trouble" imply that he understood his rights. Gvt. Resp. Br. at 29 (claiming Brown stands from the proposition that "a defendant's voluntary statements aimed at getting himself out of trouble can be considered evidence of a Miranda waiver".) compare Bn. Tr. at 87, 174 (arguing "arrestee trying to dig himself out of trouble" is evidence of understanding).

But that is not the holding in Brown. Indeed, the Government's own parenthetical shows that the holdings rested on the fact that defendant "voluntarily provided information in the hope that he could make a deal". Gvt. Resp. Br. at 29 quoting Brown at 1118 (emphasis added). As discussed in Mr. Quiroz's opening brief, there is a fundamental difference between attempting to leverage one's rights for value and merely proclaiming one's innocence. Br. at 21. The Government next argues that there was "no evidence from which the district court could have determined that defendant failed to understand his rights". Gvt. Resp. Br. at 25, fn 9. see also Id. at 28 ("where there was no evidence (or claim) that defendant received, but did not understand, Miranda warnings, there is no basis to argue that the district court improperly shifted the burden of proof to defendant".) These arguments imply that there needed to be such evidence. But that, as set out in Mr. Quiroz's opening brief, is simply incorrect as a matter of law. See Br. at 14-17. And the Government does not cite a single case to support its conclusory assertions. Nor can it. The case law is clear that the burden is on the Government, not the defendant. see, eg., Miranda v. Arizona, 348 U.S. 436, 475 (1966) (holding the Government bears a "heavy burden" of proving a Knowing and intelligent waiver occurred). Indeed, based solely on the dearth of evidence presented by the Government, the Court not only could have, but should have, found that the Government failed to meet its burden of proving Mr. Quiroz understood his rights and excluded any post-arrest statement.

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Yet the Government goes still further in attempting to circumvent it's burden by arguing that Mr. Quiroz "waive, or at least forfeited" any claim that he did not understand his rights:

> In the district court, defendant never claimed that he did not understood warnings provided to him by the agents, and presented no evidence in support of such claim. Thus, not only was there no evidence from which the district court could have determined that defendant failed to understand his rights, the defendant arguably waived, or at least forfeited, any claim regarding the sufficiency of the District Court's findings with respect to the knowing and intelligent nature of his waiver.

Gvt. Resp. Br. at 25, fn 9. This is contrary to the law, as well as the facts. Indeed, the District Court's explicitly acknowledged that, "whether or not [Mr. Quiroz] knows his rights is a question for this hearing". Bn. Tr. at 94, A75. Further, the Government's own arguments at the hearing demonstrate that the hearing concerned, inter alia, the questioned of whether Mr. Quiroz understood his rights. Bn. Tr. at 85-86 ("a prosecutor wants to stand before the Court and say, 'Yes, he said, 'Yes, I fully understand!'"); Id. at 86, A73 ("And you can look to the defendant's education ... to determine whether he fully understood."); Id. ("And he, Quiroz, says, 'I did nothing', which goes to show that he did understand"); Id. ("He understood what was goin on"); Id at 87, A74 ("without expressly saying that he understood his rights and was waiving them, he did understand"). Id. at 87-88 ("It's the Government's position that we've set forth sufficient evidence to show ... [the warnings] were understood by the defendant".) (emphasis added). Accordingly, on this record, there is no basis to argue that Mr. Quiroz "waived" or "forfeited" the argument that he did not understand his rights. Put another way, the issue on appeal is not whether this issue was raised before the District Court (it was extensively argued); the issue is whether the District Court applied the proper Standard (next page)

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in its determination (it did not).

– The District Court's Error in Admitting Mr. Quiroz's Post-Arrest Statement was not Harmless.: Reply Brief Appendix 1-A pages 7-8

The District Court's error resulted in the admission of statement in which Mr. Quiroz: (1) confessed to arranging the transactions for which was subsequently convicted; and (2) admitted to being the voice on a series of incriminating phone calls. Jry. Tr. at 555, A201; Bn. Tr. at 820, A184. As Mr. Quiroz's opening brief explains, U.S. v. Wysinger is on point with respect to whether the Constitutional error in this case was harmless. 683 F.3d 784 (7th Cir. 2012). The Government attempts to distinguish Wysinger by claiming that, unlike Wysinger, it did not have to rely on Mr. Quiroz's post arrest statement or on the testimony of cooperating co-conspirators. Gvt. Resp. Br. at 35. But that conclusory assertion cannot be squared with the facts here. First the Government claims [it] "did not have to rely on the credebility of Vance because the recordings of the defendant spoke for themselfs". id. But just moments later, the Government maintains it "did not have to rely on defendant's post arrest statement to connect him to those phone calls because Vance and Agent Brazao both testified that it was defendant's voice on those recordings". Id.[2]

Both Cannot BE True. In order to prove Mr. Quiroz was on those calls the Government needed to rely on either (1) Mr. Quiroz's post arrest statement or (2) the testimony of a cooperating co-conspirator (Vance). Either way, for the same reasons expounded in Wysinger, the error in admitting the statement was not harmless. Moreover, the Government relies on the fact that "defendant did not dispute that it was his voice on [the] recordings at trial." id.

But of Course Mr. Quiroz could not deny being on the calls at trial knowing he had already admitted to it. Had the Post arrest statements been excluded, the defense could have changed tack and forced the Government to put Vance's credibility front and center.

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Put simply, Mr. Quiroz's entire defense strategy would have changed if his post-arrest statements had been excluded.[3] As a result, It is not, "beyond a reasonable doubt that the error complained of did not contribute to the verdict" as it must be in order for Court to conclude the error was harmless. Chapman v. California, 386 U.S. 18, 24 (1967)

[3] The fact that Mr. Quiroz's theory could have change also distinguishes this case from United States v. Lee, which the government relies on heavily to argue that any error in the bench trial was harmless. 618 F.3d 667 (7th Cir. 2010). In Lee, the government presented five witnessess that the Court found to be "reliable and credible". Id. at 674. And nothing in the record indicated that the defendant would have been able to present a different theory of the case had his post-arrest statements been excluded. Here, even the District Court conceded that the testimony of the Government's star witness (Vance) needed to be "considered with caution and great care" because of his biases. Bn. Tr. at 961, A189. And absent his post arrest statement, Mr. Quiroz could have defended himself by denying being on the calls – a theory that would put the credibility of Vance front and center. The District Court's statement that it would have reach the same results even without considering Mr. Quiroz's post arrest statement cannot possibly apply to theories of the case that it never heard.

– The District Court Improperly Admitted Hearsay Statements: Reply Brief Appendix -1-A pages 9, 10, 11

The Government argues that Mr. Quiroz waive his objection to the admission of out-of-court statements from Vance when he allegedly "did not object to Vance's cited testimony as hearsay in the District Court." Gvt. Resp. Br. at 42.

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This Argument Incorrectly disregards Mr. Quiroz's formal objection to the admission of Vance's Statements in his response to the Government's Santiago Proffer

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in each of his two trials. 13 CR 968, Dkt. 59; 13 CR 21, Dkt. 127. Further, the Government's assertion flatly contradicts well-established Seventh Circuit case law on this issue, See e.g., United States v. Redd, 167 Fed. Appx 565, 570 (7th Cir. 2006); United States v. Gajo, 290 F.3d 922, 927 (7th Cir. 2002).

For example, in Gajo, the government argued that the defendant had waived his objections to the admission of statements under Rule 801(d)(2)(E) when he failed to object at trial. As is the case here, both sides briefed the issue in pre-trial motions. During the admission of the statements at trial, the District Court asked the defendant if he had any objections, to which defense counsel responded "no". Id. at 927. On appeal, the Government argue that the District Court's pre-trial ruling was conditional because the out of court statements were only admissible if the Government provided evidence at trial sufficient to meet the requirements of Rule 801(d)(2)(E). As the Court explained in Willson v. Williams, "a definitive ruling in limine preserves an issue for appellate review, without the need for later objection". 182 F.3d 562, 563 (7th Cir. 1999). The Court in Gajo determined that the District Court's ruling on the admissibility of co-conspirators statements was indeed definitive. Id. at 927. In fact, this court explained that "[u]nder the Government's reasoning, all pre-trial decisions would be considered conditional," a result at odds with Rule 103. id.; Fed. R. Evid. 103. The Court expressly held that the defendant's pre-trial objections to the Government's Santiago Proffer were sufficient to preserve the issue for Appellate review. Id. The facts here are virtually identical. As mention above, there is no dispute that the Government and Mr. Quiroz briefed the admissibility of the out of court statements before both trials. 13 CR 21, Dkt. 121, A.25,
11 127; 13 CR 968, Dkts. 39, 41, 59; And the District Court made a ruling that the statements were admissible. 13 CR 968, Pretrial Conf. at 50; 13 CR 21 pretrial Conf. at 78-80.

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If anything, there is even more of a basis for finding a sufficient objection in this case: Unlike the defendant in Gajo, Mr. Quiroz did not affirmatively refuse to make an objection at trial when prompted by the judge - instead he actually renewed his prior objection by stating he had nothing to add to his prior argument. Br. Tr. at 802. It is clear then, that under Seventh Circuit preceedents Mr. Quiroz preserved his objections for review. The Government also relies on United States v. Haynie, 179 F.3d 1048, 1050-51 (7th Cir. 1999), which is distinguishable. First, during pre-trial proceedings in Haynie, the defendant conceded that, should the Government prove all of the evidence included in their Santiago Proffer at trial, the out of court statements would indeed be admissible. Id. at 1050. Here, to the contrary, Mr. Quiroz objected to the sufficiency of the evidence included in the Santiago Proffer, 13 CR 968, Dkt. 59 at ¶¶ 3-4; 13 CR 21, Dkt. 127. Second, not only did the defendant in Haynie fail to object at trial, he also failed to raised the argument in any post-judgment motion. Haynie, 179 F.3d at 1050. In Contrast, Mr. Quiroz filed a post-trial motion for Judgment of acquittal where he contested the existence of a conspiracy, as well as the sufficiency of the evidence. 13 CR 968, Dkt. 106 at ¶¶ 3, 6-9. Thus, it is clear that Mr. Quiroz's pre-trial objections the Government's Santiago proffers and his post trial motions were sufficient to preserve his objection to the admission of Vance's out-of-court statements for appellate review.

— The Out-of-court Statements made by Vance, Cesar and Barraza were Improperly Admitted for the truth of the Matter Asserted: Reply Brief at Appendix 1-A pages 11, 12, 13, 14.

The Government next argues that the out of court Statements admitted from Vance, Cesar, and Barraza were not hearsay because they were offered to provide "context" and show Mr. Quiroz's connection to the allege conspiracy. Gvt Resp. Br. at 41, 43-45.

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But, as the court explained in United States v. Amaya, "whether a statement is offered for 'context' is beside the point – the relevant question is whether the statement is offered for its truth (and the answer to the question can be yes, even if the statement provides context for some other, admissible statement)." 828 F.3d 518, 528 (7th Cir. 2016). Here, it is obvious that these out-of-court statements were offered for their truth.

First, Vance and Cesar's out-of-court conversations were introduced in the bench trial in order to inculpate Mr. Quiroz in the Methamphetamine transaction. Indeed, it is only through the recorded statements of Vance and Cesar that evidence is introduced that a methamphetamine transaction took place at all. Bn. Tr. 355-58, A166-69. Put another way, without this testimony, there is no basis for findings against Mr. Quiroz. Second, in Mr. Quiroz's jury trial, Vance and Barraza's statements were admitted for the same purpose – to connect Mr. Quiroz to the marijuana transaction at issue. This statements do not merely – and solely – give context or show that Mr. Quiroz's alleged relationship to the conspiracy was not a "coincidence". Gvt. Resp. Br. at 45. Rather, statements from Barraza and Vance confirm their presence at the scene of the alleged crime. This is the critical piece of the puzzle that connects Mr. Quiroz to the alleged criminal behavior. Jry. Tr. 195. Unlike the out-of-court statements admitted in United States v. Herrera-Medina, the hearsay statement admitted in Mr. Quiroz's trials reference the very transactions at issue, cf. 853 F.2d 564, 565 (7th Cir. 1988) ("for example, the tapes revealed him and Jesus Herrera talking at length about smuggling marijuana across the Mexican border by using furniture to conceal the bags of marijuana and spices to conceal its smell, but none of the marijuana seized in connection with
13 the transactions charged in the indictment involved the use of furniture of spices!")

The statements were not admitted to show that Mr. Quiroz has past experience in narcotics trafficking, but, rather, to prove the truth of the matter asserted:

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Cesar and Barraza met with Vance to complete the transactions for which Mr. Quiroz was indicted. Therefore, the Government's argument that these statements were admissible for a non-hearsay purpose fail.

— Unable to justify the admission of the out-of-court statements under Rule 801(d)(2)(E), the Government spends the majority of their response arguing (1) waiver; and (2) that the out-of-court statements introduced are admissible for "context". But the critical question at issue is whether the out-of-court statements were properly admitted under the co-conspirator exception to the hearsay rule. Fed. R. Evid. 801(d)(2)(E). The Government's response is a clear indication that their evidence in support of that conclusion is wholly insufficient.

First, the Government fail to allege a criminal connection between Mr. Quiroz and a non-government individual. United States v. Corson, 579 F.3d 804, 811 (7th Cir. 2009) ("A defendant is not liable for conspiring solely with an undercover government agent or a government informant." (citation omitted)). Second, the government failed to allege that Mr. Quiroz know the scope and objective of the alleged conspiracy. United States v. Mahkimetas, 991 F.2d 379, 382 (7th Cir. 1993).

Finally, the only evidence relied on by the District Court when admitting the statements were (1) the statements themeselves; and (2) Mr. Quiroz's alleged confession. As mention above, Mr. Quiroz's confession was unconstitutionally used against him, meaning the statements were improperly admitted. United States v. Lindemann, 85 F.3d 1232, 1238-39 (7th Cir. 1996) ("[T]o ensure an element of reliability in the statements, courts have required that some evidence, independent of the statements, exist to corroborate the conspiracy's existence.") Thus, implicating out-of-court statements were admitted in violation of evidence rules warranting new trials for Mr. Quiroz.

REASONS FOR GRANTING THE PETITION

To Determine whether a certificate of ~~Appeal~~ Appealability violates Petitioners Due process (per-issue).

To restore the proper application of the rule of law to the ~~as~~ wrongful interpretation of the government against the admission of ~~a~~ post arrest statement and the proper application of the Hearsay exception under Fed. R. Evid. 103.

Fed. R. Evid. 801 (d)(2)(E

The District Court deny a Certificate of appealability ignoring his obligations denovo to proper recorded objections. In both of Mr. Quiroz's trials the District court applied the wrong standard in contravention of established case law when they admitted (1) Mr. Quiroz's post arrest statements and (2) out-of-court statements from Vance, Cesar, and Barraza,

These errors were not harmless but rather, denied Mr. Quiroz his right to a fair trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Vicente Quiroz # 91208308

Date: April 26, 2021