

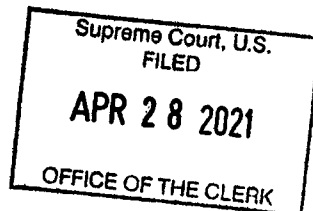
20-8471

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES


Angel Morales
 (Your Name)

— PETITIONER

United States District Court
for the District of Minnesota

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Angel Morales

(Your Name)

FCI-Gilmer P.O. Box 6000

(Address)

Glenville, WV, 26351

(City, State, Zip Code)

 (Phone Number)

QUESTION(S) PRESENTED

Due to the covid-19 pandemic, since March 2020 inmates have not had access to a type writer or the library, and there has been times where we only come out for a 10 minute shower, 3 times a week, making it impossible to study my case or communicate with my lawyer via phone call. Is it possible, inmates can get an extension to file a petition for rehearing en banc and the Supreme Court due to our lack of resources?

I also tested positive for Covid-19 recently.

I will like to know how Joseph S. Friedberg extortion case was resolved

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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☒ is unpublished.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 _____ 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 12/15/2020.

☒ 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).

STATEMENT OF THE CASE

Mr. Morales appeals the voluntariness of his guilty plea, which he entered only after the district court refused to give him time to retain new counsel, compelling him to proceed to trial with counsel in whom he had lost all faith.

1. Procedural History

On January 8, 2019, a federal grand jury returned a one-count indictment against Angel Morales and one other defendant charging them with conspiracy to distribute or possess with the intent to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. Mr. Morales retained Joseph S. Friedberg and Coley Grostyan to represent him. DCD 22, 23.

On March 5, 2019, the grand jury superseded the indictment to add two additional defendants to the conspiracy charge.

On June 24, 2019, a jury was empaneled and Mr. Morales' jury trial began. On June 28, 2019, after five days of trial, the jury retired to deliberate. On July 1, 2019, the jury returned, unable to reach a verdict. The district court declared a mistrial. DCD 165.

The district court scheduled the retrial for September 23, 2019. On September 18 and 19, 2019, Mr. Morales, acting pro se, sent three emails to the Court requesting leave to seek new counsel because “I don’t trust them or feel comfortable with them anymore.” DCD 232, 233; Addendum at 8-10 (hereinafter “A”).

On September 20, 2019, the court held a pretrial conference. At the outset, the Court conducted an ex parte colloquy with Mr. Morales and defense counsel to inquire into the basis for Mr. Morales’ dissatisfaction with counsel. After a lengthy inquiry, the court told Mr. Morales he was free to retain new counsel, but it would not continue the September 23 trial date to allow new counsel to prepare. “You have every right if you wish to replace Mr. Friedberg, but you’d have to do so with an attorney who feels like he could get prepared over the weekend.” Transcript of Pretrial Conference, DCD 311, at 27 (hereinafter “PC”).

Hours later, on September 20, 2019, Mr. Morales entered a guilty plea to count 1 of the Superseding Indictment.

On January 21, 2020, the district court sentenced Mr. Morales to 180 months in custody followed by five years of supervised release.

This appeal followed.

2. The Offense Conduct

On December 10, 2018, law enforcement stopped Brittany Hass and Dallan Castillo-Bolanos in a rental car in Texas County, Oklahoma. PSR ¶ 10. After a drug dog alerted to the presence of controlled substances in the car, the police searched the vehicle and discovered 30 sealed packages of methamphetamine, one pound each, hidden in the vehicle. ¶ 10.

Hass and Castillo-Bolanos told the DEA the methamphetamine was en route to Minnesota where it was to be delivered to Luis Barreras. ¶ 11. The DEA arranged to make a controlled delivery. They swapped the methamphetamine with a simulated substance and put the 30 bags into a suitcase with a location tracking device. ¶ 11.

On December 11, 2018, Castillo-Bolanos delivered the suitcase to Barreras in Minneapolis, Minnesota. Law enforcement conducted surveillance of the exchange. As law enforcement watched, Barreras drove with the suitcase to a nearby apartment building. They saw Mr. Morales arrive in a separate vehicle. ¶ 13. He retrieved the suitcase from Barreras and entered the building with it. *Id.* When he exited the

building a few minutes later without the suitcase, he was arrested. ¶

14. In a subsequent search, law enforcement discovered the suitcase with the fake drugs in the storage locker assigned to Mr. Morales' apartment. ¶ 16. One of the plastic packages had been torn open.

3. Trial Testimony

At trial, Mr. Morales denied he was part of a conspiracy to distribute methamphetamine with Castillo-Bolonos, Barreras or anyone else. T. 629. Rather, Mr. Morales testified that since 2017, he sold small quantities of cocaine to others in clubs, a completely separate conspiracy. T. 598-599, 603. This activity explained incriminating text messages discovered by the government.

Morales testified that on December 11, 2018, his brother called him to say Barreras, whom Mr. Morales knew by the nickname Gordo, had been robbed. T. 616. Gordo was at their mother's house, the brother said, and Morales should meet him there. *Id.* Mr. Morales drove to his mother's house and saw Gordo in a truck parked in front. Morales went to the vehicle and saw Gordo with a plastic bag between his legs. The bag was torn open, and he could see it was rock salt, not methamphetamine. T. 618-19. Gordo kept telling Mr. Morales that he

had been robbed, and the bags contained only salt. T. 622. Gordo put the ripped bag back in the suitcase and asked Mr. Morales to hold it while he tried to find the man who had delivered the fake drugs to him. T. 622-23. Morales took the suitcase and, without examining it, stashed it in the storage locker of his mother's apartment. T. 623. When he left the apartment building, he was arrested.

On July 1, 2019, the district court declared a mistrial, after the jury was unable to reach a verdict.

4. Request for a Continuance to Retain New Counsel

Following trial, relations between Mr. Morales and his counsel soured. On September 18 and 19, 2019, Mr. Morales, acting pro se, sent three emails to the district court, asking for leave to retain new counsel because "I don't trust them or feel comfortable with them anymore." A 8-9.

On September 20, 2019, the court conducted a pretrial conference, during which it made inquiry about the breakdown in the attorney-client relationship. Mr. Morales asked the court to continue trial so he could retain new counsel. He had a litany of complaints about his attorneys. First, they had failed to provide him with a copy of the trial

transcript, other than his own testimony. Transcript of Pretrial Conference (Sept. 20, 2019) at 4 (hereinafter "PC").¹ The rest, he was told, would cost him \$6000-\$7000. PC 6. Mr. Morales said he needed the transcripts "to go over my case and what happened at the last trial and compare with the motion of discovery that I have." *Id.* In addition, he complained he had not received the new discovery the government had produced, which purportedly contradicted some of Mr. Morales' testimony at the first trial. PC 6-7. "It's concerning," Mr. Morales said. PC 9.

Mr. Morales' principal complaint was that Mr. Friedberg had failed adequately to address his concerns that the plastic bag that had been ripped open and offered in evidence at trial was not the same plastic bag that had been seized by law enforcement on December 11, 2018 from Mr. Morales' mothers' storage locker. According to Mr. Morales, the government had altered the bag. PC 14. The actual bag, had it been tested, would have revealed that only Gordo's DNA was on

¹ The district court's inquiry was conducted ex parte, outside the presence of government counsel. That portion of the transcript was sealed in the district court and filed separately. DCD 311.

the bag, providing further support for Mr. Morales' trial testimony that he had never examined or handled the bags.

Mr. Friedberg had arranged for the bag to be sent to a forensic lab in Chicago for independent testing. DCD 219, 226. The expert hired by Mr. Friedberg opined that the bag depicted in the photographs of the search was almost certainly the same bag which the government had offered in evidence. PC 12.

Mr. Morales was not satisfied. He complained that Mr. Friedberg's expert had not prepared a report, and he had doubts about whether Mr. Friedberg had sent the correct photographs to complete the comparison. PC 10-11, 14. Given his concerns, Mr. Morales took steps, without counsel's assistance or knowledge, to hire his own forensic expert to complete a supplemental evaluation. PC 13.

The disagreement between client and counsel caused a rift in their relationship. Mr. Morales complained that "[e]very time I bring up this bag issue I'm getting screamed at." PC 15. Mr. Friedberg agreed that his relationship with Mr. Morales had deteriorated into an "adversarial relationship" as a result of which Mr. Morales would no longer answer his questions. PC 8. He conceded, "I have screamed, and I have said

‘Forget the goddamned bags.’ And I have been very animated about it.

And, you know, I can understand how that would be offensive to Mr.

Morales.” PC 15-16.

Given Mr. Friedberg’s vehement reaction, Mr. Morales concluded his attorney and the government “were working together.” PC 15. He explained,

I’m just really concerned about the conflict of interest. If it has something to do with him getting mad about me talking about the bag, I’ve not seen the report. I want to see it. I have not received no confirmation from [the forensic expert]. So to me all that raises more red flags. Every time I mention the bag, he screams at me. I feel that he’s trying to not expose the government, is what I feel. . . .

PC 19-20. Mr. Morales continued, “[I]f his conflict of interest has something to do with him not wanting to pressure the bag, this is why I’ve gone to other experts about it, because I’ve not seen the report, I’ve not.” PC 20.

In sum, Mr. Morales concluded, “I just can’t trust my attorneys or feel comfortable. . . .” PC 22. Later, he reiterated:

Just that in my heart I really feel I can’t trust or feel comfortable with the attorneys I have, and I would like to seek new attorneys so I can feel comfortable and go through my case and have all the paperwork available to me to work on my case.

PC 27.

Although noting Mr. Morales' sincerity when he said he was not comfortable with his attorneys, the district court refused to continue the trial to permit Mr. Morales time to retain new counsel PC 27-28. Mr. Morales' concerns, the court said, ranged from trivial to "really irrational." PC 28. Mr. Morales was free, the court noted, to fire his attorneys and retain new ones, but the court would not postpone the trial to permit time for new counsel to prepare. PC 28, 30-31. "It's too late. It's the day before trial." PC 31.

5. Guilty Plea

Five hours later, Mr. Morales was back in court, this time to plead guilty to the indictment.² This represented a major change of heart from his position only hours earlier, when he complained bitterly that his lawyers were pressuring him to take a more attractive offer than the one he ultimately accepted. During the pretrial conference, Mr. Morales complained that Mr. Friedberg pressured him to take a deal of 10 years, which he took as further evidence he was working with the government.

² The pretrial conference ended at 10:39 am. The guilty plea hearing began at 3:30 pm that same day. PC 75.

PC 15. Mr. Friedberg agreed that he told Mr. Morales he thought he could get a 10 year deal, but Morales was adamant "No, I will not take a deal." PC 18. *See also* A 10 (noting that Morales had rejected 10-year deal).

Subsequently, the government told the court that it had made a plea offer in which it would agree not to recommend a sentence in excess of 15 years, while Mr. Morales could ask the court for 10. The court would be free to impose any sentence it chose. Mr. Morales confirmed he had rejected that offer. PC 71.

Now, Mr. Morales had agreed to plead guilty under Fed. R. Crim. P. 11(c)(1)(C) to a binding recommendation of 15 years. DCD 239 at ¶ 8. Mr. Morales admitted he had been involved in a conspiracy with Gordo and others to distribute methamphetamine in excess of 500 grams. PC 102. He admitted that on December 11, 2018, he received a 30 pound shipment of fake methamphetamine, but he had expected real methamphetamine. PC 103. Mr. Morales intended to distribute the drugs after receiving it. *Id.* Finally, Mr. Morales admitted that his trial testimony to the contrary had been false. PC 104.

The plea agreement included an appeal waiver by which Mr. Morales waived “all rights conferred by 18 U.S.C. § 3742 to appeal his sentence, unless the Court sentences him to a term of imprisonment greater than 180 months’ imprisonment.” DCD 239 ¶ 12.

6. Sentencing

On January 21, 2020, the district court sentenced Mr. Morales to 180 months, in accordance with the plea agreement, followed by a five year term of supervised release.

SUMMARY OF ARGUMENT

The appeal waiver in the plea agreement pertains only to sentencing appeals under 18 U.S.C. § 3742. This is not a sentencing appeal and so the appeal waiver does not apply. In any event, the appeal waiver was entered into involuntarily as part of the plea agreement.

The district court abused its discretion in denying Mr. Morales’ motion to continue trial so he could retain new counsel. Mr. Morales’ dissatisfaction with his attorneys was justifiable. After the mistrial, his lawyers failed to provide him with new discovery, failed to provide him with the complete transcript from the first trial, and failed to obtain a

report of the forensic evaluation of the plastic bag found in Mr. Morales' constructive possession. As his attorney confirmed, their relationship had become adversarial and their communications had disintegrated into shouting matches. Mr. Morales had lost all confidence in his attorneys and had come to believe they were working together with the government.

In that context, it was unreasonable to expect that Mr. Morales could continue to be represented by counsel of record. By denying his motion to continue trial, the court left him with the untenable choice of either proceeding to trial with an attorney whom he could no longer trust or retaining new counsel who would not be prepared to try the case. Instead, Mr. Morales pleaded guilty, accepting a deal substantially worse than the one he had said was unacceptable only hours earlier. Mr. Morales' guilty plea was involuntary as a result.

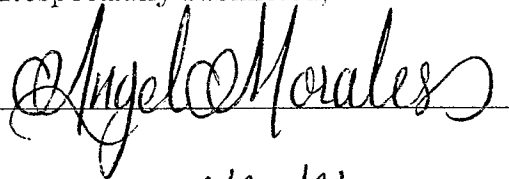
REASONS FOR GRANTING THE PETITION

- Joseph S. Friedberg was ineffective because of the conflict of interest and his ongoing case, about the Wizard of Oz shipper.
- Kevin W Merkling, TFO and Nick Melser TFO tampered with evidence.
- Nick Melser committed perjury in the month of December 2018, corrected his "mistake" then committed perjury again on the same issue he corrected 2-3 days earlier. He lied that I had communication with Mr. Castillo so he can get a warrant to my phone.
- I am not asking for a new trial or for lesser time, I just want the truth revealed and an internal investigation on Kevin W Merkling and Nick Melser.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Angel Morales", written over a horizontal line.

Date: 04/20/21