

No. 21-5812

ORIGINAL

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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

CARLOS VELAZQUEZ-FONTANEZ — PETITIONER

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ON APPEAL FROM THE U.S. FIRST CIRCUIT COURT OF APPEALS; NO.: #18-1188; #19-1010

PETITION FOR WRIT OF CERTIORARI

Carlos Velazquez Fontanez
MR. CARLOS VELAZQUEZ-FONTANEZ—PETITIONER

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QUESTION(S) PRESENTED

"WHETHER THE U.S. FIRST CIRCUIT COURT OF APPEALS ERRED IN FAILING TO FIND THAT APPELLANT CARLOS VELAZQUEZ-FONTANEZ IS "ACTUALLY INNOCENT" OF VIOLATING (CT.#5) 18 U.S.C. 924(c)(1)(A) UNDER DAVIS vs. U.S., 139 S.C.T. 2319 (2019)?," WHICH IS PREDICATED UPON AN INCHOATE OFFENSE AND IN VIOLATION OF SECTION #403 OF THE FIRST STEP ACT OF 2019?"

"WHETHER THE U.S. FIRST CIRCUIT COURT OF APPEALS LACKED JURISDICTION TO REMAND APPELLANT CARLOS VELAZQUEZ-FONTANEZ'S CASE TO THE DISTRICT COURT FOR A LIMITED REMAND (CT.#3)-WHICH RESULTED IN APPELLANT RECEIVING A MORE SEVERE/HARSHER RESENTENCING AT A PLENARY SENTENCING AS TO ALL COUNT(S)-IN VIOLATION OF THE LAW OF THE CASE DOCTRINE?"

"WHETHER THE U.S. FIRST CIRCUIT COURT OF APPEALS ERRED IN NOT FINDING THAT THE DISTRICT COURT ERRED WITH REGARD TO THE JURY INSTRUCTIONS ("CRIME OF VIOLENCE") REGARDING THE NOW DEFUNCT/ILLEGAL "CRIME OF VIOLENCE" DEFINITION APPLICABLE TO 18 U.S.C. 924(c)(1)(A) OFFENSE(S)?"

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

USA vs. RUBEN COTTO-ANDINO, a/k/a: Ruben El Negro, USCA NO.: # 18-1215

USA vs. JOSE D. RESTO-FIGUEROA, a/k/a: Tego, USCA NO.: #18-2265

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APPENDIX B - U.S. DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO-SAN JUAN DIVISION;
Sentencing Transcript: USA vs. Carlos Velazquez-Fontanez, CR.NO.: #3:
15-CR-00462-JAG (66)

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CASES

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18 U.S.C. § 1961(4)
18 U.S.C. § 1962(d)
21 U.S.C. § 841; 846; & 860
28 U.S.C. § 1291

OTHER

FED.R.APP. P. RULE 12.1-Limited Remand while appeal in abeyance, resulting in
an arbitrary and harsher sentence.

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

XXX 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,
XXX 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,
XXX 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 July 27, 2021.

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

U.S. FIFTH AMENDMENT TO THE U.S. CONSTITUTION (DUE PROCESS CLAUSE)

U.S. SIXTH AMENDMENT RIGHT TO THE U.S. CONSTITUTION

STATEMENT OF THE CASE

The essential facts of this case, are thoroughly reflected in the U.S. First Circuit Court of Appeals decision affirming the district court's judgment. In 2004, drug traffickers in San Juan , Puerto Rico, formed "La Organizacion de Narcotraficantes Unidos" ("La ONU"), a cartel designed to reduce conflicts between traffickers and to avoid police scrutiny. By 2008, "La ONU", had splintered into two rival gangs, "La ONU" and "La Rompe ONU". Thw two groups waged war over the control of San Juan's most profitable drug distribution territories. The present case was prosecuted on the basis of criminal acts of "violence" and "drug offense" resulting from said war. Specifically, the indictment charged a multitude of drug violations, to include; "RICO" violations, 18 U.S.C. § 1962(d); Conspiracy to possess and distribution of cocaine, crack, heroin , and marijuana within 1,000 feet of a publice housing facility in violation of 21 U.S.C. § 846; 841(a)(1), and 860; violation of 18 U.S.C. § 36(b)(2)(A); and with using a firearm during and in relation to a "crime of violence", in violation of 18 U.S.C. § 924(c)(1)(A); (j)(1)-(2).

During the appellate process, all three (3) co-defendant's challenged their respective conviction's: (A.) the defendant's sufficiency of the evidence arguments; (B.) Cotto-Andino's evidentiary objections; (C.) Resto-Figueroa's mistrial motion; (D.) Resto-Figueroa's instructional error claims; and (E.) Velazquez-Fontanez's and Rest-Figueroa's challenges to the district court's responses to questions asked by the jury during it's deliberations. While on appeal and awaiting briefing, the district court dismissed Resto-Figueroa's 18 U.S.C. § 924(c)(1)(A) conviction and as a direct result, Velazquez-Fontanez's case was remanded to the district court on a limited remand based upon the trial court's ruling in Resto-Figueroa's case. At that juncture, the district court conducted a re-sentencing on all counts, which resulted in an illegal sentence and arbitrary increase in other counts of conviction in essence penalizing Appellant Velazquez-Fontanez for appealing the judgment.

REASONS FOR GRANTING THE PETITION

Petitioner Carlos Velazquez-Fontanez, hereby advances that there exists numerous reasons for which his "Petition for Writ of Certiorari" should be "GRANTED":

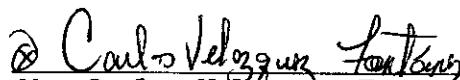
(i.) due to the fact that his current judgment was imposed in violation of due process, as enunciated in DAVIS vs. U.S., 139 S.CT. 2319 (2019), based entirely on the fact that his predicate offense(s) utilized to sustain a violation of 18 U.S.C. § 924(c)(1)(A) (Ct.# 3 & 5) can no longer qualify as a "crime of violence" predicate. Granting this petition will ensure that Petitioner's case will be consistent with other similarly situated defendant's and that he is also accorded his constitutional protections/safeguards; (ii.) to assure that other defendant's who appeal their respective judgment's and obtain relief...do not receive a penalty ("increase in sentence" while on remand) for exercising their constitutional right to appeal. Here, the record will unequivocally reflect that pursuant to App.Ct. Rule 12.1, Petitioner's first appeal as of right was held in "abeyance" while the case was remanded to the district court for a limited remand (i.e. dismissal of Ct.#3), the district court....without requisite jurisdictionconducted a full re-sentencing, which resulted in Petitioner receiving an increase in his sentence of ten (10) years on Ct.'s # 1,2, & 4 and in essence penalizing the defendant for exercising his right to appeal---a clear and obvious violation of the U.S. Constitution; and (iii.) due to the fact that the district court erred and the U.S. First Circuit Court of Appeals concurred, with regard to the jury instructions provided in this case with respect to the "crime of violence" definition applicable to 18 U.S.C. § 924(c)(1)(A) offense(s)/violation(s) in this case; and (iv.) based upon the fact that this Honorable Court is currently reviewing two (2) cases which have implications to this case: U.S. vs. TAYLOR # 20-1459 (U.S. 4/16/21) and U.S. vs. SCOTT, 990 F.3d 94 (2nd. Cir. 2021), with regard to "whether an inchoate offense"? ("attempt/aiding & abetting") qualify as "crime of violence" predicate offense(s) for purposes of 18 U.S.C. § 924(c)(1)(A)?

WHEREFORE, PETITIONER CARLOS VELAZQUEZ-FONTANEZ, HEREBY RESPECTFULLY REQUESTS THAT THIS HONORABLE COURT FIND THAT THE U.S. FIRST CIRCUIT COURT OF APPEALS ERRED IN AFFIRMING THE JUDGMENT OF THE DISTRICT COURT; THAT PETITIONER CARLOS VELAZQUEZ-FONTANEZ IS "ACTUALLY INNOCENT" OF VIOLATING 18 U.S.C. 924(c) UNDER THE PRINCIPLES OF DAVIS vs. U.S., 139 S.C.T. 2319 (2019); AND FURTHERMORE, THAT THIS COURT MAY HOLD THE CASE IN ABEYANCE PENDING THE RESOLUTION OF: TAYLOR vs. U.S., # 20-1459 (April 16, 2021) (U.S. vs. Taylor, 979 F.3d 203 (4th Cir. 2021))-A DECISION CENTRAL TO "WHETHER AN INCHOATE OFFENSE (i.e. Attempt/Aiding & Abetting) CAN BE UTILIZED AS A "CRIME OF VIOLENCE" PREDICATE OFFENSE FOR PURPOSES OF 18 U.S.C. 924(c)?"

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Mr. Carlos Velazquez-Fontanez

Date: September 22, 2021