

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2021

CASE NO. _____

Yina Maria Castaneda Benavides,
Petitioner,

vs.

The United States of America,
Respondent

_____/

MOTION TO PROCEED ON PETITION FOR WRIT OF CERTIORARI
IN FORMA PAUPERIS

Petitioner Yina Maria Castaneda Benavides, through undersigned CJA counsel, moves the Court pursuant to Rule 39 of the Rules of the United States Supreme Court, to grant her leave to proceed *In Forma Pauperis* for her Petition for Writ of Certiorari. As good grounds in support of this motion Petitioner states:

Petitioner is presently in the custody of the United States Bureau of Prisons, at FCI Aliceville, Alabama serving a sentence of 270 months that was imposed following a jury trial, guilty verdict, and conviction on the charge of conspiracy to distribute cocaine from Colombia, with intent that it be imported t into the United States.

Yina Castaneda has been in custody since 2016. She was determined to be indigent and counsel was appointed to represent her for her trial in the Southern District of Florida. Undersigned counsel was appointed to represent Ms. Castaneda in March 2020 for purposes of her direct appeal to the United States Eleventh Circuit Court of Appeals. Ms. Castaneda remains indigent. Her financial situation has not improved since she was first taken into custody in Colombia in 2016 and then was extradited to the United States for prosecution.

The Petition that is filed on behalf of Ms. Castaneda presents meritorious questions for this Court's review, including a matters that require this Court to exercise its supervisory power over a decision of the Eleventh Circuit that erroneously affirms fundamental constitutional violations that occurred in the district court.

Ms. Castaneda has alleged violations of her Fifth, Sixth, and Eighth Amendment constitutional rights. There are two questions presented in her Petition for Writ of Certiorari. The petition arises from the affirmance of a judgment of conviction and sentence to a term of 22 ½ years' incarceration following a jury trial for conspiracy to import cocaine into the United States. Two issues were raised on appeal and two questions are presented in the petition.

Question One: Did the Eleventh Circuit reversibly err in affirming a conviction for which the Government failed to prove the essential element of knowledge, or “reason to know” that cocaine leaving Colombia on go-fast boats destined for Central America, ultimately would be imported into the United States? “Proof” of this essential element was nothing more than hearsay and speculation from cooperating codefendants who had motivation to lie and were rewarded for their testimony. Absent proof of this essential element, beyond a reasonable doubt, did the Eleventh Circuit reversibly err? Is she entitled to having the Writ granted, the conviction vacated, and the cause remanded with instructions that she be discharged forthwith and returned to her home in Colombia to be with her children and her family?

Question Two: Was the 270-month sentence imposed on Ms. Cataneda unreasonable and unreasonably disparate even though Petitioner went to trial whereas her codefendants pleaded guilty; she did not accept responsibility; and the sentence was below the advisory guidelines range? Was the sentence unreasonable, cruel, and unusual, due to the extent of the sentencing disparity with much lower sentences imposed on far more culpable codefendants? A sentence of 22½ years is cruel and unusual looking at the entire record and the totality of the circumstances

where codefendants who were more powerful, more culpable, more deeply involved, involved with much larger quantities of cocaine, and who made many millions of dollars, received sentences significantly lower than 22½ years for their cooperation, and because Ms. Castaneda “paid the trial tax” for exercising her Sixth Amendment right to have a trial by jury.

Accordingly, for the foregoing reasons, Petitioner Yina Castaneda respectfully prays that this Honorable Court will grant this motion and will allow her to proceed before this Court on Petition for Writ of Certiorari *In Forma Pauperis* through her CJA-appointed counsel.

Respectfully submitted,

/s/ Sheryl J. Lowenthal

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