No._____

IN THE

UNITED STATES SUPREME COURT OF THE UNITED STATES

JUAN RIVERA-GEORGE

Petitioner

Vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

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Questions presented:

1. Whether Juan Rivera-George ("Juan") was deprived of his Sixth Amendment right to a fair trial by an impartial jury when the District Court failed to conduct an inquiry on the jurors, after receiving a jury note showing that the jurors felt afraid of Juan and his relatives, that came as a result of the jurors' repeated observations of Juan, while restrained under handcuffs and heavily escorted by US Marshalls Service agents inside the courthouse, which gave the impression to the jurors that Juan was dangerous and guilty.

2. Whether Juan was deprived of his Sixth Amendment right to a fair trial and to be tried by an impartial jury when the District Court failed to dismiss a juror who engaged in interpersonal relations with the prosecution witnesses before and during the trial.

3. Whether Juan was deprived of his Sixth Amendment right to confrontation when the District Court denied Juan's cross-examination of a key prosecution witness aimed at proving that the witness lied on a material issue regarding his in-court identification of Juan.

4. Whether Juan was deprived of his Sixth Amendment right to confrontation and to an adequate defense when the District Court denied Juan's request to present testimonial and documentary evidence to show that a key prosecution witness lied during the direct examination to gain credibility before the jury.

5. Whether Juan was deprived of his Sixth Amendment right to confrontation when the District Court allowed the prosecution to present documents, that contained prejudicial hearsay, to attempt to rehabilitate the perjured testimony of the two key prosecution witnesses who lied on the stand.

6. Whether Juan was deprived of his Eight Amendment right to be free from cruel and unusual punishment when, as a first time offender, he was sentenced to a 235-month prison sentence, as a result of an erroneous guideline calculation reached by extrapolating the drug quantity corresponding to a drug point that had no relation to Juan, in the absence of evidence regarding the quantities of sales at the drug point that Juan allegedly operated, and that resulted in direct disparity with other similarly situated co-defendants who received 108-month prison sentences.

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PETITION FOR A WRIT OF CERTIORARI
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TO THE HONORABLE COURT:

The Petitioner, Juan Rivera-George ("Juan"), represented by court appointed counsel, respectfully prays and requests that a Writ of Certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the First Circuit entered against him in this case.

OPINION BELOW

The opinion of the First Circuit Court of Appeals ("First Circuit") which was published and reported at 4 F. 4th 1 (1st Cir. 2021), was issued on June 30th, 2021.

[Appendix ("App."), p. 1. The First Circuit denied rehearing on October 19th, 2021. [App., p. 124].

PROCEEDINGS IN FEDERAL COURT

On May 2009, Juan was arrested and charged in criminal # 09-165(CCC), United States District Court for the District of Puerto Rico. Juan was charged with conspiracy to distribute different controlled substances all in violation of 21 USC 841(a)(1), (b)(1)(A)(iii), 846, 860 and one count of conspiracy to possess firearms in furtherance of a drug trafficking crime in violation of 18 USC 924(c)(1) and 924(c)(1) and 924(o).

After a very long trial, Juan was convicted and sentenced to a very long prison term. A timely notice of appeal was filed and the First Circuit entered its opinion on June 30th, 2021 denying the appeal. A timely petition for rehearing was filed and denied on October 19th, 2021.

The present timely Petition for Certiorari follows.

JURISDICTIONAL STATEMENT

The District Court's jurisdiction over this criminal case was conferred by 18 U.S.C. section 1331. The First Circuit's jurisdiction over this appeal from the district court's judgment of conviction was conferred by 18 U.S.C. 3742(a), and 28 U.S.C. 1291.

The jurisdiction of this Court is invoked under 28 USC section 1254(1). On June 30th, 2021, a panel of the First Circuit Court of Appeals ("First Circuit")

composed by Honorable Judges Thompson, Lynch and Kayatta, issued an Opinion dismissing all of Juan's arguments on appeal, and Judgment dismissing the appeal. [App., p. 1, 123] Petitioner was granted an extension of time to file and timely filed his petition for rehearing. On October 19th, 2021, the First Circuit denied the petition for rehearing en banc. [App., p. 124] This petition is filed within 90 days of the First Circuit's denial of the petition for rehearing en banc pursuant Rule 20.1 of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES

Sixth Amendment right to impartial jury and to confrontation:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Eight Amendment right to be free from cruel and unusual punishment:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

The Federal Sentencing Guidelines.

STATEMENT OF THE CASE

The First Circuit has so far departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by the District Court, as to call for an exercise of this Court's supervisory power.

Juan did not receive a fair trial, because the District Court denied him effective cross-examination and excluded evidence that would have shown to the jury that the only two witnesses to testify against him, Cooperating Witness (CW) Ferrer and CW Vega, lied to the jury in open court, which would have totally discredited both of their testimonies and resulted in his acquittal. While, on the other hand, the District Court allowed the prosecution to present unreliable double hearsay consisting of handwritten notes written on top of business records that gave undeserved credibility to CW Ferrer and CW Vega and which Juan could not challenge, thereby tipping the scales against Juan. Neither the error in denying effective cross-examination, nor the error in the exclusion of impeachment evidence, nor the error in the admission of the handwritten notes was harmless.

Additionally, the jury bias that resulted from several situations concerning the jury, the parties, its relatives, the attorneys, and the police officers that testified at trial, and the District Court's failure to poll the jurors in the face said colorable claims of prejudice, also denied Juan of his right to a fair trial by an impartial jury.

Finally, the 235-month prison sentence imposed on Juan, a first-time offender without a particularized drug quantity finding and which is substantially

larger than the 108-month prison sentences imposed on similarly situated defendants, must be vacated as procedurally and substantively unreasonable.

ARGUMENTS

1. Whether Juan was deprived of his Sixth Amendment right to a fair trial by an impartial jury when the District Court failed to conduct an inquiry on the jurors, after receiving a jury note showing that the jurors felt afraid of Juan and his relatives, which came as a result of the jurors' repeated observations of Juan restrained with handcuffs and heavily escorted by US Marshalls Service agents inside the courthouse which gave the impression to the jurors that Juan was dangerous and guilty.
2. Whether Juan was deprived of his Sixth Amendment right to a fair trial and to be tried by an impartial jury when the District Court failed to dismiss a juror who engaged in interpersonal relations with the prosecution witnesses before and during the trial.

Questions 1 and 2 will be discussed together, as they are intricately related.

The First Circuit departed from its own precedents to confirm a conviction and judgment that were not fair by any standards.

The Opinion and Judgment is at conflict with its own precedent in U.S. v. French, 904 F.3d 111, 121 (1st Cir. 2018), where it held that once a defendant makes a colorable claim of juror bias the court has a duty to investigate and, its own precedent in US v. Corbin, 590 F.2d 398 (1st Cir. 1998), where the district court inquired from each juror about a comment made by a juror and the First Circuit

stated its preference for jury inquiry when a non-frivolous claim was made and that "[i]nquiry of all the jurors may well be indicated when prejudicial matter is likely to have reached any one of them".

Additionally, in all of the recent cases decided by the First Circuit, it has held, or recognized, that the appropriate manner to inquire after a colorable claim of prejudice is to conduct a voir dire, or polling, of the jurors. See US v. Bradshaw, 281 F.3d 278 (1st Cir. 2002), US v. Pina, 844 F.2d 1 (1st Cir. 1988), and US v. Ayres, 725 F.2d 806 (1st Cir. 1984).

However, in the present case, there were several colorable claims of juror bias which the District Court failed to investigate adequately by polling the jurors. As recognized in French, supra at 119, the presence of a biased juror constitutes "structural error" that is per se prejudicial and not susceptible to harmlessness analysis.

Several colorable claims arose during trial which led to the jury becoming prejudiced against Juan and his co-defendants. After two weeks into the trial, came a jury note in which a particular juror complained about receiving intimidating looks from defense attorneys which was totally unfounded and showed prejudice against the co-defendants right from that moment. In spite of co-defendant Idalia Maldonado's ("Idalia") request for polling of the juror, the District Court did not poll said juror. This was the first colorable claim and showing of prejudice. Although Juan did not ask this particular juror to be polled, this event will become relevant to Juan, later on during the trial, when the jury sent additional notes.

On the 26th day of trial, Juan found out the fact that, for a whole year right before the trial, Juror #4 played basketball two, or three, times a week in the police officer's invitation only pick-up basketball league inside a basketball court located inside the Trujillo Alto[1] police station, with police officers who were trial witnesses. This constitutes the second colorable claim and caused prejudice. Juror #4 brought up the information after the testimony of six other police officers from the same unit had already taken place. Juror #4 even continued to play after hearing the trial testimony of police witness Pietri whom he recognized because they had played basketball together previously on several occasions. His mere presence at the police station to play basketball knowing that agent Pietri was a witness in the case and that other police officers who played in the league had already been witnesses was more than enough to demonstrate bias, or partiality.

Adding significance to the relationship between said juror and the police witnesses in charge of the investigation of the case, during trial the prosecutor informed the District Court that she was told by agent Pietri that another officer had told him that the son of Juror #4 was kidnapped. Although this was later found not to be true, it showed that Juror #4 was well known by the police officers involved in the case from the Trujillo Alto police station.

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[1] Villa Margarita ("VM"), where the "curve" drug point was alleged to be located, and Los Claveles Towers (LCT), where the drug point in which Juan allegedly worked was located, are not contiguous, but both are located in the town of Trujillo Alto.

On the 43rd day of jury trial, the jury sent a note requesting to have a different route at lunch to avoid encounters with co-defendants and their lawyers. This was the third colorable claim and showing of prejudice, as it, once again, showed that the jury was afraid of the co-defendants and their lawyers, considered them to be dangerous and did not want to be near them.

Two days later, Juan expressed his concern about the US Marshall's Security display behind all the co-defendants (those on bail and those detained). Juan pointed out that during some days there had been three officers, but that at the moment, eight officers were seating right behind the co-defendants, of which only five were under custody, in an otherwise empty courtroom, giving the impression that the codefendants were dangerous.

Then, at the close of the 108th day of trial, the jury observed Juan, and his co-defendants, restrained with handcuffs and heavily escorted by four officers of the US Marshall's Service (USMS) while they were inside the District Court building corridors that are not accessible to the public. The District Court conducted a hearing in which Juan testified that he was seen by the jury while escorted and restrained and his testimony was corroborated by other defendants and by the court's camera footage that showed juror #1 looking towards the place where Juan was located and the act of the court security officer of blocking the juror's view and the act of the USMS officers of immediately moving Juan to another place. Other co-defendants also testified that they were seen by juror #11. In spite of these evidence, the District Court's recognition that juror #1 looked in Juan's direction,

and the movements of the court officers to stop the sighting, the District Court blindly concluded, that there was no sighting and did not poll the jury. [App., p. 125] The District Court concluded against all that evidence which clearly showed the need for questioning the jury. This was the fourth colorable claim of prejudice.

The day before closing arguments, the fifth colorable claim took place when, for the second time, the jury saw Juan and the other four detained co-defendants while they were being handcuffed by the USMS officers at the end of the trial day. The District Court conducted another hearing and Juan's proffered testimony was corroborated by other defendants and by the court's camera footage that showed juror #11 and other jurors, looking towards him. This would be the second time that juror #11 was directly implicated. But, once again, the District Court blindly concluded, against all that evidence, that there was no sighting and did not poll the jury. [App., p. 138]

Finally, the prejudice arose to the surface, again, when, the next day right after the second observation, the jury sent a note requesting to be able to leave the courthouse, during the afternoons after the court adjourned, before the defendants on bond and Juan's "Family" to avoid encounters that were taking place daily. [App., p. 145] There is no other reason than juror bias against Juan and all of the co-defendants to blame for this note. The jury note is the best evidence to show the prejudice that resulted from the various situations that took place during trial, particularly the two times in which jurors observed Juan, and the rest of the co-defendants, while restrained with handcuffs and heavily escorted by USMS

personnel, like dangerous animals. After those observations, the jury did not want to be near Juan, his co-defendants, or their relatives.

The First Circuit decided that, although the District Court did not address the request that the jury be polled, it had made a sufficient "investigation" by examining the court's video of the two incidents, when the incidents arose and, therefore did not abuse its discretion. [App., p. 79] Even though the videos reflected that some jurors were looking at defendants, the First Circuit agreed with the District Court that no voir dire of jurors was needed because the incidents were of short duration. [App., p. 146] Juan argued that voir dire was needed to determine if they saw defendants escorted and restrained in handcuffs, and if that negatively affected their perceptions of the defendants.

The First Circuit's opinion cites at page 88, U.S. v. Bradshaw, 281 F.3d 278, 290 (1st Cir. 2002) for the proposition that the District Court had wide discretion to fashion an appropriate procedure to assess whether juror's have been exposed to substantively damaging information. However, an examination of Bradshaw, reveals that the proper procedure followed by the court in that case was to voir dire the jurors and to provide "a strongly-worded curative instruction". Ibid at 290. The District Court did not take those measures in Juan's case.

Bradshaw supports Juan's contention that the District Court should have conducted voir dire of the jurors to determine if any of them had observed Juan while heavily escorted by USMS staff and restrained in handcuffs and if so, at least provide a curative instruction, or declare a mistrial.

The District Court conducted two investigations that brought evidence to support the need to poll the jurors and then, in a contradictory manner, did not poll the jurors. There were too many close calls about juror bias and they were all decided against the accused. This was not a fleeting glance as the First Circuit suggested at footnote 31, but two complete observations that developed fear in the minds of the jury.

The First Circuit made a piece meal approach to the jury bias issues to avoid considering the totality of the circumstances surrounding the situation which would have been the correct way of analyzing the case at hand which would have forced the First Circuit to reach the opposite conclusion. The First Circuit did not evaluate all of the colorable claims, nor their aggregate effect, that led to the final jury note.

The District Court's failure to declare a mistrial was erroneous, or in the alternative, its failure to poll the jury in the face of colorable claims of prejudice was also erroneous.

The First Circuit's decision failed to consider that however short the observations could have been, a reasonable jury would be shocked to find that different to what they believed and had seen, Juan was handcuffed and heavily escorted after each trial day and not leaving the courtroom like any other man who is accused and considered innocent until proven guilty beyond any reasonable doubt. A reasonable jury would have inferred that Juan and his co-defendants were dangerous and guilty, and become biased after observing the way in which Juan and the other detained co-defendants were "handled" in the absence of the jury.

Upon experiencing these observations, the jurors most probably exchanged impressions and comments, before or during deliberations, which probably involved Juror #4, who socialized with the police witnesses and who would have vouched to the other jurors in favor of the police officers that he knew. Altogether, these events resulted in the jury note because of bias against Juan and the rest of the co-defendants.

Although Juror #4 admitted that he played more than 100 times in the police basketball league, the First Circuit decided that the fate of the accused could be entrusted on the hands of Juror #4 because he assured the District Court that the experiences and relations created during hundreds of times in which he played in the police league, inside the police station premises, would not affect him. However, no matter how many times Juror #4 repeated that said experience would not influence him when deciding the credibility of the police witnesses against the credibility of defense witnesses, Juror #4 already had a previous personal extensive knowledge of the police force involved in the investigation of the case and could not be impartial even if he tried his best. After more than 100 times of sharing time with this group of officers, Juror #4 could not be impartial.

Either taken separately, or together, the errors were not harmless in light of the weak evidence against Juan and of the evidence that suggested his innocence. As will be explained below, only two cooperating witnesses testified against Juan, CW Ferrer and CW Vega, and their testimonies were unreliable.

Therefore, Juan requests the Honorable Court to grant this petition for certiorari review on these matters.

3. Whether Juan was deprived of his Sixth Amendment right to confrontation when the District Court denied Juan's cross-examination of a key prosecution witness aimed at proving that the witness lied on a material issue regarding his in-court identification of Juan.
4. Whether Juan was deprived of his Sixth Amendment right to confrontation and to an adequate defense when the District Court denied Juan's request to present testimonial and documentary evidence to show that a key prosecution witness lied during the direct examination to gain credibility before the jury.

Questions 3 and 4 will be discussed together as they are intricately related.

The only two witnesses that testified against Juan were CW Vega and CW Ferrer.

As DEA case agent Cedeno testified at trial, none of the reports of the interviews conducted by agents of CW Vega contained any information regarding Juan. However, somehow, more than five years after the investigation, at trial, CW Vega, who was one of only two key prosecution witnesses, surprisingly testified that he had seen Juan receiving drugs from co-defendants Joel Rivera-Alejandro and co-defendant Carlos Rivera-Alejandro, at their home located in VM, and providing drugs to other persons, at the premises of LCT.

More surprising is the fact that this testimony came after CW Vega had been on the stand for five days, had identified all of the co-defendants standing trial except for Idalia and Juan, and had even testified extensively about several other persons that allegedly participated in the conspiracy and who were not on trial, before identifying Idalia and Juan who had been sitting in front of CW Vega during his previous five days of testimony.

And even more surprising is the fact that this testimony came immediately after CW Vega had a private meeting with the prosecutors who had all their trial materials on hand which included photographs of Juan. After these meetings, CW Vega identified Idalia even though he had failed to identify her at the beginning of CW Vega's testimony several days earlier. A few minutes later, CW Vega identified Juan.

Instead of striking CW Vega's testimony against Idalia and Juan after learning of the meeting, the District Court prohibited the defense from challenging CW Vega's testimony by bringing to the attention of the jury that before identifying Idalia and Juan, CW Vega had met privately with the prosecutions and their trial materials. [App., p. 148]

When Idalia attempted to conduct said challenge and asked CW Vega if he had met with the prosecutors, during his testimony, before identifying Idalia, CW Vega flat out lied and said "no". When Idalia and Juan attempted to bring to the jury the fact that CW Vega had met twice with the prosecutors and was, therefore,

lying on the stand when he denied it, the District Court did not allow the cross-examination. [App., p. 148]

The First Circuit confirmed the District Court's actions stating that they were reasonable limitations on the scope of the cross-examination which did not constitute an abuse of discretion. [App., p. 51, 52]

The First Circuit's decision conflicts with its own precedent in US v. Beauchamp, 986 F.2d 1, 3(1st Cir. 1993). It found that evidence to prove the falseness of CW Ferrer's statement about having a legal job made during his direct examination by the prosecutor had no bearing on the issue of Juan's own culpability in that same conspiracy, and was therefore a collateral matter.

However, CW Ferrer's testimony about having a "legal job" was brought by the prosecution on direct examination and was designed to minimize his culpability, arouse the sympathy of the jury and be more credible to the jury. The prosecution began CW Ferrer's direct examination by asking him what he did to pay for his drug addiction. CW Ferrer then testified that he would sell drugs, ask his grandmother for money and work in a "legal job".

When the defense cross-examined CW Ferrer about his testimony about having a legal job which was designed to minimize his participation and to arouse sympathy before the jury, CW Ferrer lied under oath as he testified falsely that he had two legal jobs believing that he would not be challenged. CW Ferrer went even further to testify that he quit one of his legal jobs because he was paid with a check

that bounced due to insufficient funds. Juan attempted to present witnesses and objective documentary evidence to prove that CW Ferrer was lying.

However, Juan was not allowed to present to the jury the testimony of the accountant of one of the companies for which CW Ferrer claimed that he worked for and the accounting files that showed that CW Ferrer was not on the payroll and did not work for said employer, and, therefore, no check could have ever bounced. By the same token, Juan was not allowed to present to the jury the testimony of the owner of the small security company for which CW Ferrer testified that he worked for during trial. The owner would have testified that CW Ferrer never worked for his company.[2] [App., p. 152, 155]

The First Circuit stated that it failed to see how CW Ferrer's employment contemporaneous with his participation in a drug distribution conspiracy has any bearing on the issue of Juan's own culpability in the conspiracy. [App., p. 58] However, Juan explained how CW Ferrer's testimony about a legal job was designed to minimize his culpability and that the testimony was brought on direct examination of every single one of the CW presented by the prosecution as part of a strategy and not simply by chance, or by CW Ferrer's volition. Nevertheless, the First Circuit decided that Juan had no right to challenge that statement and to show to the jury that CW Ferrer lied.

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[2] With the benefit of this information in her hands, the District Court should have stricken CW Ferrer's testimony.

The proceedings before the District Court demonstrate that it was not a collateral matter, as during trial, the District Court allowed ample cross-examination of CW Ferrer as to his legal job which led to further testimony about a bounced check and other legal jobs. Juan was allowed to cross-examine CW Ferrer as to said statement because it was a relevant matter. If the matter was collateral and, therefore, not relevant, the prosecution would have objected to the cross-examination and the District Court would have sustained the objection. Obviously, the matter was not collateral, and it was relevant as the statement added to CW Ferrer's credibility and minimized his culpability.

The problem came when Juan announced and proffered evidence to impeach CW Ferrer. Then, the matter became collateral and was no longer relevant, and the District Court did not allow Juan to challenge said statement with documents and witness testimony after CW Ferrer lied blatantly on the stand. The only way to challenge said false testimony was through the testimony of the witnesses and the documentary evidence that Juan announced and summoned to trial.

The opinion of the First Circuit means that a prosecution witness can testify to false matters on direct examination to minimize his culpability and arouse sympathy from the jury and that the defense will not be able to bring evidence to challenge them adequately. That is unfair and such a wrong precedent will lead to numerous appellate proceedings.

The cross-examination that was permitted defense counsel was not adequate to develop the issue of the impeachment of CW Vega and CW Ferrer, who were the

two key witnesses at trial. While counsel was permitted to ask CW Ferrer about his legal jobs and CW Vega about his meetings with prosecutors before his in-court identification of Juan, counsel was unable to make a record from which to argue why both witnesses might have been lying at trial. On the basis of the limited cross-examination that was permitted, the jury might well have thought that defense counsel was engaged in a speculative and baseless line of attack on the credibility of an apparently blameless witness. On these facts it is clear that to make any such inquiry effective, defense counsel should have been permitted to expose to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness. Petitioner was thus denied the right of effective cross-examination which would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it. Davis v Alaska, 415 US 308 (1974).

The constitutionally improper denial of a defendant's opportunity to impeach a witness for providing false statements, like other Confrontation Clause errors, is subject to *Chapman* harmless-error analysis. The correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt. Whether such an error is harmless in a particular case depends upon a host of factors, all readily accessible to reviewing courts. These factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or

contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case. Delaware v Arsdall, 475 U.S. 673 (1986).

The importance of CW Vega and CW Ferrer to the prosecution's case was enormous, as they were the only two key witnesses presented against Juan. Their testimony was not cumulative as they testified to different events. CW Vega and CW Ferrer did not know each other, nor corroborated each other's testimony. There is no evidence corroborating the testimony of both witnesses on material points with the exception of the unreliable hearsay that was erroneously admitted, as will be discussed below. On the other hand, there is evidence contradicting the testimony of both witnesses on material points. Finally, as will also be discussed below, the overall strength of the prosecution's case against Juan was very low.

These errors were not harmless since although CW Vega and CW Ferrer admitted to having lied previously to probation officers, prosecutors and judges and to have committed several crimes, evidence that CW Vega and CW Ferrer had just lied on the stand would have meant the total discredit of their testimonies. It is very different for the jury to hear that CW Vega and CW Ferrer had lied before but were now telling the truth to the jury, than having the jury know that they were still liars and lied to the jury. In the absence of these errors, Juan would have been acquitted.

Therefore, Juan requests the Honorable Court to grant this petition for certiorari review on this matter.

5. Whether Juan was deprived of his Sixth Amendment right to confrontation when the District Court allowed the prosecution to present documents, that contained prejudicial hearsay, to give some credibility to the perjured testimony of the key prosecution witnesses who lied on the stand.

In the face of the weak and perjured testimony, as described in the above discussion of questions 3 and 4, which should have been stricken by the District Court, the prosecution was allowed to bring unreliable hearsay handwritten over business records that sealed Juan's fate as they seemed to corroborate the weak perjured testimony in the eyes of the jury.

During trial, the prosecution brought evidence of the use by the alleged conspirators of telephone units that also worked as "walkie-talkies" which were different than regular cellular phone units. The prosecution then presented records from a company called Northsight Communications that allegedly sold those kind of telephone units. The records contained handwritten notes on top of them. Although there was no evidence of who made the notes, the notes were not required by the company, the information contained in the notes was not verified by the company's employees and the notes were not made by any codefendant, the District Court allowed the jury to see the notes. [App., p. 158]

This sealed Juan's fate as the notes were presented for the purpose of linking Juan to other co-defendants, and the notes can be interpreted, to correspond to the names, or nicknames, of the persons that were the users of the particular phone units which were part of the same account. As the evidence was that this different

and particular units were only used by the conspirators, the existence of a note that spelled "Tio" which means uncle in Spanish, among names, or nicknames, similar to those of other alleged conspirators, placed Juan as one of the conspirators because "Tio" is also his nickname. These notes were used by the prosecution to corroborate the weak testimony of CW Ferrer and CW Vega to prove that Juan, or "Tio", was a member of the conspiracy. Not only was the evidence unreliable as a business record, but "Tio" can refer to anyone who has nephews and, in this case, there was testimony that some of the alleged conspirators, and not Juan, were the uncles of other alleged conspirators.

The First Circuit's decision is contrary to its own precedent in US v. Pridgen, 518 F.3d 87, 91 (1st Cir.2008), as it held that the evidentiary error consisting of the admission of inaccurate and unreliable double hearsay that seriously prejudiced Juan was harmless, in spite of the fact that the evidence was not strong, as it was in Pridgen. [App., p. 43]

The First Circuit found that the error in admitting the handwritten notes on top of business records that linked Juan to the conspiracy was harmless in spite of the weak and non-overwhelming evidence consisting of the unreliable and perjured testimony of CW Ferrer and CW Vega, as was described in the previous discussions of questions 3 and 4.

CW Ferrer testified in a very vague and general manner about one time in which CW Ferrer accompanied his cousin to visit Juan's apartment and saw his cousin and Juan conduct a drug tally. This testimony was placed into doubt by DEA

case agent Evaristo Cedeno who testified that the DEA conducted a surprise search of Juan's apartment after CW Ferrer had informed them about the drug tally that he witnesses his cousin and Juan conduct at Juan's apartment, and found nothing illegal.

CW Ferrer admitted that he lied when it was convenient for him and that he even tried to get a prosecutor to lie for him in relation to his violations of his conditions of release for this same case. CW Ferrer also testified that he made other people lie to take the blame for CW Ferrer's criminal acts.

The evidence presented by the prosecution against Juan was weak. Even though the police conducted an extensive investigation, there was no audio, or video, recording incriminating him, nor police testimony about interventions with Juan, in which drugs were seized.

Therefore, in conclusion, the evidence consisted of two weak testimonies by two admitted liars, who lied under oath at trial, and the unreliable notes written on top of the Northsight business records.

Upon this extremely weak evidence, the error in admitting the handwritten notes was not harmless. However, the First Circuit stated that without the notes, there was other evidence to show that Juan associated with other alleged members of the drug conspiracy and that the notebook seized from the kitchen of Juan's apartment included a list of names and phone numbers that corresponded to nicknames of several of the other alleged members of the organization. [App., p. 44]

But that would amount to finding Juan guilty by association and, besides, the notebook also contained highly exculpatory evidence showing that Juan was a regular person who had a family budget and was responsible with his family's income and not a drug dealer with cash flowing from his pocket. The notebook is not incriminating as it does not include any reference to drug dealing or illegal conduct. The First Circuit, then, stated that a police officer testified that during an illegal intervention conducted by the police with a group of persons that were not committing any illegal acts, Juan told another person to obey the police officers' orders even though they were illegally searched. The First Circuit characterized it as an order which is highly speculative, therefore this testimony is evidence of nothing more than Juan assisting the police in its illegal search by talking one of the illegal searched persons to ignore the illegality and just allow the officers to search him. [App., p. 44-45]

The First Circuit, then, stated that CW Vega also testified that he saw Juan receive pre-packaged drugs from other people CW Vega knew to be members of the drug enterprise. [App., p. 45] But CW Vega's testimony is not reliable, as it was contradicted by DEA Cedeno and as CW Vega lied in open court as to meeting with the prosecutors during his direct examination.

Finally, the First Circuit stated that CW Ferrer incriminated Juan by testifying that he allegedly saw co-defendant Joel Rivera-Alejandro ("Joel") use a phone unit which was similar to the North Sight units to talk to Juan and that he

recognized Juan's voice because he had been at Juan's apartment previously and saw Juan and his cousin conduct a drug tally. [App., p. 45]

This testimony further added to the importance of the erroneous admission of the handwritten notes, as the handwritten notes undeservedly gave credibility to CW Ferrer's weak and uncorroborated testimony by appearing to corroborate that Juan had one of those particular phone units and that CW Ferrer knew about it.

As we stated before, CW Ferrer's testimony was weak and unreliable as the witness is a proven liar and lied in open court.

The First Circuit incorrectly concluded that the error in the admission of damaging double hearsay was harmless in light of the above-described weak and non-overwhelming evidence of guilt.

Therefore, Juan requests the Honorable Court to grant this petition for certiorari review on this matter.

6. Whether Juan was deprived of his Eight Amendment right to be free from cruel and unusual punishment when, as a first time offender, he was sentenced to a 235-month prison sentence, as a result of an erroneous guideline calculation reached by extrapolating the drug quantity corresponding to a drug point that had no relation to Juan, in the absence of evidence regarding the quantities of sales that corresponded to the drug point that Juan allegedly operated, and that resulted in direct disparity with other similarly situated co-defendants who received 108-month prison sentences.

Appellate review of sentencing decisions is limited to determining whether they are 'reasonable.' Gall v. US, 552 U.S. 38, 46, 128 S. Ct. 586, 169 L.Ed.2d 445 (2007). Appellate court's revision process is bifurcated: the court first determines whether the sentence imposed is procedurally reasonable and then determines whether it is substantively reasonable.

The First Circuit's decision conflicts with its own precedent in US v. Marrero, 160 F.3d 768 (1st Cir. 1998), as there was no particularized drug quantity finding, pursuant to the Federal Sentencing Guidelines, to support the Base Offense Level (BOL), and the First Circuit had no choice but to vacate and remand for resentencing.

The evidence showed that there was a drug point at Villa Margarita (VM), known as the "curve", and that there was another drug point in the premises of the Los Claveles Tower (LCT). While the evidence placed Juan at the LCT drug point, there was no evidence of Juan having any knowledge or relation to the "curve" drug point. Additionally, the persons working for the conspiracy at the "curve" drug point were different to the persons working at LCT. Only three out of thirty-one alleged sellers in the indictment are linked to both LCT and the "curve" by the evidence, while the other twenty-eight are linked to the "curve" only. Also, according to the evidence, Juan was the only runner for LCT while there were seven runners for the "curve". These evidence shows that the two drug points operated separately and that the "curve" operation was seven times greater than LCT's operation in proportion to the number of runners, or ten times greater in proportion to the

number of sellers. Therefore, a possible drug calculation for Juan could have been seven, or ten, times lower than the "curve" estimates. However, although there is no evidence to show that the sales at the "curve" were foreseeable to Juan, the District Court sentenced Juan to 235 months on the basis of the "curve" sales. [App., p. 162]

The First Circuit stated that there was testimony to support Juan's movements and actions at and between both locations and that, therefore, it was reasonably foreseeable that while Juan primarily worked at LCT, the sales at VM would be both attributable and attributed to him. Therefore, the First Circuit concluded that the District Court did not abuse its discretion when using the drug quantities calculated from the sales at VM when calculating and imposing Juan's sentence. [App., p. 115]

Although the District Court may rely on reasonable estimates and averages to reach its drug-quantity determination, those estimates must possess adequate indicia of reliability and demonstrate record support. US v. Rivera-Maldonado, 194 F.3d 224, 228 (1st Cir. 1999). A hunch, or intuition, won't cut it, US v. Correa-Alicea, 585 F.3d 484, 489 (1st Cir. 2009).

There is no evidence to establish that the drug sales at the "curve" were foreseeable to Juan. There is no evidence that Juan knew about the "curve" drug point operations located far from LCT. It was a five-minute car drive between both places; therefore, the drug points are not even contiguous.

Extensive camera video footage failed to show Juan at the "curve" as well as the testimony of four cooperating witnesses, including CW Ferrer and CW Vega,

and extensive police testimony of fourteen agents that testified at trial who extensively patrolled the area.

CW Ferrer never testified about seeing Juan at any place near VM, or the "curve". CW Ferrer testified that his cousin took a drug tally to Joel's house and that Joel called Juan from his house.

CW Vega testified that he saw Juan, enter Joel's house in a motorcycle and he was given bags with drugs before riding in the direction of LCT. CW Vega also testified that he saw Juan at LCT dealing drugs. But CW Vega did not testify that he saw Juan at the "curve". Juan had nothing to do with the "curve". Therefore, the sentence is procedurally unreasonable.

As to the substantive reasonableness of the sentence, in this case, defendant #5 was a drug point owner and runner and received a 108-month prison sentence, defendant # 8 was a drug point owner, runner and seller and received a 108-month sentence, defendants #11 and 12 were runners and received 108-month sentences and, defendant #13 was a drug point owner and enforcer and received a 108-month sentence. All of these 5 co-defendants were charged with the same violations as Juan, and allegedly performed similar, or more dangerous, roles than Juan who, as a runner, received a 235-month sentence which is 127 months longer than the 108-month prison sentences imposed on those similarly situated co-defendants.

Additionally, as stated above, the evidence showed that the two drug points operated separately and that the "curve" operation was seven times greater than LCT's operation in proportion to the number of runners, or ten times greater in

proportion to the number of sellers. Therefore, a possible drug calculation for Juan should have been seven, or ten, times lower than the "curve" estimates.

The sentence imposed on Juan, who is a first-time offender, was unreasonable and constituted cruel and unusual punishment.

Therefore, Juan requests the Honorable Court to grant this petition for certiorari review on this matter.

CONCLUSION

WHEREFORE, Petitioner respectfully requests that the Honorable Court grant this petition.

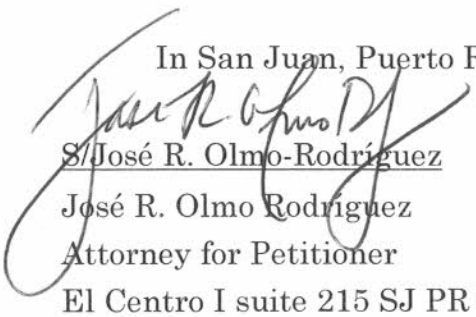
Respectfully Submitted, in San Juan, Puerto Rico, this 12th day of January 2022.

S/José R. Olmo-Rodríguez
José R. Olmo Rodríguez

CERTIFICATE OF SERVICE

I, José R. Olmo-Rodríguez, court appointed counsel for the petitioner Juan Rivera-George, hereby CERTIFY that I deposited copies of the foregoing Petition for a Writ of Certiorari, Motion for Leave to Proceed in Forma Pauperis, and the correspondent Appendix into the United States Mail, with the proper Priority Mail postage affixed, addressed to: Supreme Court of the United States, Clerk's Office, 1 First Street, NE, Washington, DC 20543; and to the U.S. Solicitor General of the Justice Department in Washington D.C. to 950 Pennsylvania Avenue NW, Washington D.C. 20530, United States.

In San Juan, Puerto Rico, this 12th day of January 2022.



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