

No. _____

**SUPREME COURT OF THE UNITED
STATES**

JOSE GARCIA

SOLORZANO, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

**MOTION FOR LEAVE TO PROCEED *IN FORMA
PAUPERIS***

Pursuant to Title 18 United States Code § 3006A(d)(7) and Rule 39 of this Court, Petitioner Jose Garcia Solorzano asks leave to file the attached Petition for Writ of Certiorari without prepayment of fees and costs and to proceed *in forma pauperis*.

Undersigned counsel was appointed to represent Petitioner pursuant to the Criminal Justice Act in the U.S. Court of Appeals for the Seventh Circuit.

Dated: April 6, 2022 at Oak Park, Illinois.

Respectfully submitted,

By: _____/s/_____

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Attorney for Petitioner

DECLARATION

The undersigned, Amir Mohabbat, states that he was appointed to represent petitioner by the United States Court of Appeals for the Seventh Circuit pursuant to the Criminal Justice Act.

The petitioner is in custody and does not have the financial ability to afford an attorney on this petition to the United States Supreme Court for a writ of certiorari.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and accurate. Executed on April 6, 2022 at Oak Park, Illinois.

By: _____/s/_____
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No. _____

SUPREME COURT OF THE UNITED STATES

JOSE GARCIA SOLORZANO,

Petitioner v.

UNITED STATES OF AMERICA, Respondent

**ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Did the district court err in not granting Mr. Solorzano a reduction in sentence for his acceptance of responsibility under U.S.S.G. §3E1.1 ?

PARTIES

The caption of the case contains the names of all of the parties.

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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.

OPINION BELOW

The decision of the United States Court of Appeals for the Seventh Circuit whose judgment is sought to be reviewed is docketed at *United States v. Jose Garcia Solorzano*, No. 1:19-CR-00933(1), Case No. 21-2267, and is reprinted in the appendix to this petition at A-1.

JURISDICTION

The decision of the court of appeals was entered on March 28, 2022.

This Court has jurisdiction under 28 U.S.C. § 1254.

This case involves the interpretation of the United States Sentencing Guidelines.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

§3E1.1. Acceptance of Responsibility

- (a) If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by **2** levels.
- (b) If the defendant qualifies for a decrease under subsection (a), the offense level determined prior to the operation of subsection (a) is level **16** or greater, and upon motion of the government stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by **1** additional level.

STATEMENT OF THE CASE

On March 5, 2021, Petitioner pled guilty to one count of conspiracy to possess with intent to distribute a controlled substance, in violation of 21 USC 841(a)(1); 846. R.63. At sentencing on July 1, 2021, At sentencing, the government opposed a reduction under U.S.S.G. § 3E1.1(a) based on acceptance of responsibility. Arguing that Petitioner had not accepted responsibility for reasonably foreseeable consequences of the conspiracy because he had not admitted that a co-defendant, Robinson, possessed a firearm for the planned drug deals. The government sought a Guidelines range of 41 to 51 months imprisonment based on a total offense level of 22.

The district court accepted the government's argument and sentenced Petitioner to 48 months in prison. It found Petitioner had acted in a manner inconsistent with acceptance of responsibility by falsely denying that Robinson possessed a weapon—relevant conduct within the scope of the joint criminal enterprise. The court noted that Robinson's possession of a weapon was reasonably foreseeable to Petitioner because Robinson had promised to provide Petitioner with security during future transactions: “guns go with drug trafficking. That is not a surprise to anyone, and it's clearly foreseeable that someone who was providing ... security would be armed.” R. 114 at 8. The court also imposed a two-level enhancement to reflect possession of a firearm during the offense. U.S.S.G. § 2D1.1(b)(1).

Petitioner argues that the district court clearly erred by denying Petitioner the sentencing reduction for acceptance of responsibility.

REASONS FOR GRANTING THE WRIT

If this Petition is granted it would add clarity to how U.S.S.G. §3E1.1 should be construed and implemented so that unduly harsh results, such as the one in this case, will not be repeated by appellate and district courts throughout the nation.

The District Court erred by denying Petitioner the sentencing reduction for acceptance of responsibility when it imposed sentence at the July 1, 2022 hearing.

The undersigned has not located a case directly on point but has located close corollaries in support of his position.

The U.S. Court of Appeals for the Seventh Circuit has held that “a defendant ‘accepts responsibility’ only when he fesses up to his actual offense. *United States v. Escobar-Mejia*, 915 F.2d 1152, 1153 (7th Cir. 1990). And that, candidly, “evidence pointing toward acceptance of responsibility may be outweighed by other incompatible acts or statements”, *U.S. v. Sellers*, 595 F.3d at 793, citing U.S.S.G. §3E1.1 cmt. n.3. And “one factor that a judge should consider in making this determination is whether the defendant voluntarily ended his criminal conduct and associations.” *U.S. v. Sellers*, 595 F.3d at 793, citing U.S.S.G. §3E1.1 cmt. n.1(b). In interpreting the reasoning of the Application Notes in U.S.S.G. §3E1.1, the court has stated that the notes are on the “right track in emphasizing deeds over words—external, verifiable, expiatory acts over self-serving, unverifiable report of inferior mental states. Not only are deeds better evidence than words (‘putting money where your mouth is’), but they have value to the law-enforcement authorities, compared

to which breast-beating before the sentencing judge is debased currency indeed.”

U.S. v. Beserra, 967 F.2d 254, 256 (7th Cir. 1992).

In the instant case, the district court denied Mr. Solorzano a reduction in sentence for acceptance of responsibility in connection with the Robinson gun. Tellingly, Mr. Solorzano was not charged pursuant to a gun crime, such as 18 USC 924(c), most likely because he was not in possession of a gun and did not conspire concerning the possession of a gun.

In *Escobar-Mejia*, the defendant was held to have not accepted responsibility because he depicted himself as being a minor participant in the drug offense and denied the actual quantity of drugs he carried. *Escobar-Mejia*, 915 F.2d at 1153. The prosecution’s evidence made the defendant to be a drug wholesaler with many customers. *Escobar-Mejia*, 915 F.2d at 1153. The court found that the defendant was not candid about his own acts and therefore had not accepted responsibility for them. *Escobar-Mejia*, 915 F.2d at 1153. In this case, Mr. Solorzano did not minimize his role and fully confessed to the crime he committed and for which he was charged in Count 1 of the indictment.

In *Beserra*, the defendant was found to have not accepted responsibility because he attempted to shift responsibility from himself to “the demon alcohol and evil companions.” *Beserra*, 967 F.2d at 255. In this case, Mr. Solorzano blamed no one but himself for his crime.

In *Sellers*, the defendant was found to have not accepted responsibility because he made post-arrest calls to his wife in which he instructed her to inform a

drug contact to get rid of his drugs and to keep quiet about their actions. *Sellers*, 595 F.3d at 792. Also, Mr. Sellers attacked another prisoner during a card game while detained. *Sellers*, 595 F.3d at 792. In this case, Mr. Solorzano engaged in no such cover-up or violence.

In *Escobar-Mejia*, *Beserra* and *Sellers*, each defendant engaged in affirmative conduct or statements which demonstrated that the defendant had not abandoned a life of crime or had not truly admitted their actions in their offenses. In the instant case, Mr. Solorzano did not engage in such conduct. In fact, Mr. Solorzano never blamed others for his actions, he never tried to justify his actions, he never took a step that was inconsistent with admitting responsibility or forfeiting a criminal lifestyle, and by pleading guilty in a timely manner, he saved the Government and the district court from the expense and burden of a trial.

The facts show that Mr. Solorzano accepted responsibility by fessing up to his actual offense. *United States v. Escobar-Mejia*, 915 F.2d at 1153. And Mr. Solorzano did not engage in incompatible acts or statements, *U.S. v. Sellers*, 595 F.3d at 793.

In addition, the United States Sentencing Guidelines consists of many pages and provisions. Mr. Solorzano argued, via counsel, to the district court that an enhancement under USSG §2D1.1(b)(1) should not apply, largely for the reasons stated *supra*. Mr. Solorzano takes the position herein that the court erred by imposing the enhancement under USSG §2D1.1(b)(1). Mr. Solorzano also highlights herein that the court's analysis under USSG §2D1.1(b)(1) seems to be one and the

same as its analysis in determining the applicability of U.S.S.G. §3E1.1. Mr. Solorzano argues herein that each provision of the USSG was not independently evaluated and that the district court erred in denying the reduction of offense levels under U.S.S.G. §3E1.1.

If this Petition is granted it would add clarity to how U.S.S.G. §3E1.1 should be construed and implemented so that unduly harsh results, such as the one in this case, will not be repeated by appellate and district courts throughout the nation.

For these reasons, the sentence should be vacated and this case remanded for further proceedings.

CONCLUSION

Wherefore, the District Court erred by err in not granting Mr. Solorzano a reduction in sentence for his acceptance of responsibility under U.S.S.G. §3E1.1 ?

Date: April 6, 2022

Respectfully submitted,

/s/
Amir Mohabbat

THE SUPREME COURT OF THE UNITED STATES

JOSE GARCIA SOLORZANO,

Petitioner v.

UNITED STATES OF AMERICA, Respondent

On Petition for Writ of Certiorari to the

United States Court of Appeals for the Seventh Circuit

APPENDIX

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Argued March 1, 2022
Decided March 28, 2022

Before

MICHAEL S. KANNE, *Circuit Judge*

DIANE P. WOOD, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 21-2267

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JOSE GARCIA SOLORZANO,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

No. 1:19-CR-00933(1)

John J. Tharp Jr.,
Judge.

ORDER

Jose Garcia Solorzano pleaded guilty to conspiracy to possess cocaine with intent to distribute after being arrested by an undercover officer at a 2019 cocaine sale. The district court denied a sentencing reduction for acceptance of responsibility after finding that Solorzano falsely or frivolously denied conduct relevant to the offense. Solorzano had disputed that his co-conspirator, Phillip Robinson, possessed a gun and brought it to the 2019 drug deal. Solorzano now challenges the denial of the reduction

No. 21-2267

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on the theory that he timely pleaded guilty and was unaware of the weapon. But in his plea agreement Solorzano acknowledged Robinson had promised to provide him security during drug transactions. Because Solorzano reasonably should have foreseen Robinson's possession of a firearm at the drug deal in furtherance of that criminal activity, the district court did not clearly err in denying Solorzano credit for accepting responsibility. Therefore, we affirm.

Starting in 2019, Solorzano, a former Mexican police officer, coordinated with Robinson, a drug dealer, to travel to Chicago and sell cocaine. After Solorzano was robbed during one such transaction, Robinson assured him that he would provide security for future deals. A few days later, Solorzano arranged to sell cocaine to a prospective buyer. He and Robinson drove to a parking lot in Evergreen Park, Illinois, where the buyer—an undercover law enforcement officer—arrested the two men. Other officers recovered a bag of cocaine from the car and a gun that Robinson had tucked into his waistband.

Solorzano pleaded guilty to one count of conspiracy to possess with intent to distribute a controlled substance, 21 U.S.C. §§ 841(a)(1); 846. In his plea agreement, Solorzano specifically disputed that Robinson had possessed a gun, but Solorzano did not dispute the statement in the plea agreement that Robinson had agreed to provide him with security whenever he conducted drug transactions.

At sentencing, the government opposed a reduction under U.S.S.G. § 3E1.1(a) based on acceptance of responsibility. Arguing that Solorzano had not accepted responsibility for reasonably foreseeable consequences of the conspiracy because he had not admitted that Robinson possessed a firearm for their planned drug deals, the government sought a Guidelines range of 41 to 51 months based on a total offense level of 22.

The district court accepted the government's argument and sentenced Solorzano to 48 months in prison. It found Solorzano had acted in a manner inconsistent with acceptance of responsibility by falsely denying that Robinson possessed a weapon—relevant conduct within the scope of their joint criminal enterprise. The court noted that Robinson's possession of a weapon was reasonably foreseeable to Solorzano because Robinson had promised to provide him security during future transactions: "guns go with drug trafficking. That is not a surprise to anyone, and it's clearly foreseeable that someone who was providing ... security would be armed." R. 114 at 8. The court also imposed a two-level enhancement to reflect possession of a firearm during the offense. U.S.S.G. § 2D1.1(b)(1).

The sole issue in this appeal is whether the district court clearly erred by denying Solorzano the sentencing reduction for acceptance of responsibility. Solorzano maintains he was entitled to the reduction because he “fess[ed] up” to the offense of conviction, made no attempt to minimize, cover up, or offset blame for the crime to which he confessed, and, by timely pleading guilty, saved the government and district court the expense and burden of going to trial. Claiming he was “naïve to Robinson’s proclivity to have a gun,” Solorzano insists that nothing in the record shows he knew Robinson had a gun at the sale. We review a district court’s refusal to apply an acceptance of responsibility reduction under U.S.S.G. § 3E1.1 for clear error, see *United States v. Edwards*, 836 F.3d 831, 838 (7th Cir. 2016), deferring to the judge’s credibility determination that a denial is false or frivolous, see, e.g., *United States v. Etchin*, 614 F.3d 726, 739–40 (7th Cir. 2010).

More than a guilty plea is needed before a defendant is entitled to credit for acceptance of responsibility. *United States v. Collins*, 949 F.3d 1049, 1055 (7th Cir. 2020). To be eligible for a reduction under § 3E1.1, a defendant must “clearly demonstrate[] acceptance of responsibility for his offense.” And “a defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility.” U.S.S.G. § 3E1.1, cmt. n.1(A). Relevant conduct, in turn, includes all acts of others in a jointly undertaken criminal activity within the scope of, in furtherance of, and reasonably foreseeable in connection with that activity. *Id.* § 1B1.3(a)(1)(B). Acknowledging the dangerous nature of the drug industry, we permit sentencing judges to use their common sense in evaluating whether the presence of firearms is foreseeable. See *United States v. Ramirez*, 783 F.3d 687, 690–91 (7th Cir. 2015).

The district court did not err in denying Solorzano a reduction. The court appropriately justified its ruling based on Solorzano’s false denial of relevant conduct—Robinson’s possession of a firearm. Noting Solorzano’s admission in the plea agreement that Robinson had pledged security to him during drug deals, the court found it foreseeable that someone providing security at a drug deal would be armed, a commonsense conclusion.

AFFIRMED

IN THE
SUPREME COURT OF THE UNITED STATES

No.:

JOSE GARCIA SOLORZANO

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

CERTIFICATE OF SERVICE

I, Amir Mohabbat, counsel of record, hereby certify that in this case I have served, as required by Supreme Court Rule 29, the Petition for a Writ of Certiorari and Motion to Proceed *In Forma Pauperis* on the United States of America by mailing three copies of each on April 6, 2022, in an envelope properly stamped and addressed to: Solicitor General of the United States, Department of Justice, 950 Pennsylvania Avenue, N.W., Room 5614, Washington, DC 20530-0001, which envelope was deposited in the United States Post Office at Oak Park, Illinois.

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