

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2022

NO. _____

FILIBERTO CHAVEZ,

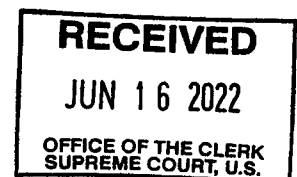
Petitioner,

-vs.-

UNITED STATES OF AMERICA,

Respondent.

BENJAMIN P. LECHMAN
964 Fifth Avenue, Suite 214
San Diego, California 92101
Telephone: (619) 733-9789
Attorney for Petitioner Chavez



QUESTION PRESENTED FOR REVIEW

1. Can a sentencing court use the elements of a lesser offense to increase a defendant's sentence in a different, legally unrelated, offense beyond the original statutory maximum without violating *Apprendi v. New Jersey*, 530 U.S. 466 (2000)?

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IN THE SUPREME COURT OF THE UNITED STATES

FILIBERTO CHAVEZ,

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-vs.-

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**PETITION FOR WRIT OF CERTIORARI TO
REVIEW THE JUDGEMENT OF THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Petitioner Filiberto Chavez respectfully prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on December 15, 2021.¹

¹ No other petitioner is involved in this petition. A copy of the Ninth Circuit's opinion is attached as Appendix A.

OPINION BELOW

The Ninth Circuit Court of Appeal denied Mr. Chavez's direct appeal on December 15, 2021. *United States v. Chavez*, 19-10374, *United States v. Chavez*, No. 19-10374, 2021 U.S. App. LEXIS 37013 (9th Cir. Dec. 15, 2021).

His petition for rehearing was denied on Feb. 17, 2022. *United States v. Chavez*, 2022 U.S. App. LEXIS 4378 (2022).

JURISDICTION

On Feb. 17, 2022, the Ninth Circuit denied Mr. Chavez's petition for rehearing. The Court has jurisdiction under 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. U.S. Const. Amend. V (“[n]o person shall . . . be deprived of life, liberty, or property, without due process of law”).

2. U.S. Const. Amend. VI (“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 defense.”).

I. INTRODUCTION AND FACTUAL SUMMARY

On September 6, 2017, Mr. Chavez was arrested and subsequently charged in a 38-count Indictment with possessing, distributing and conspiring to possess, with intent to distribute, 113 grams of methamphetamine (in violation of 21 USC § 841(a)(1), three counts conspiracy to engage in interstate transportation for prostitution (in violation of 18 U.S.C. §§ 371 and 2421(a)), and one count of use of a facility of interstate commerce to promote prostitution in violation of 18 U.S.C. § 1952(a). Mr. Chavez was convicted at trial and initially (erroneously) sentenced to 400 months in custody based on another person's criminal record being incorrectly imputed to him. A week later, the district court, apprised of its mistake, resentenced him to 250 months.

The district court based its draconian sentence on the drug counts on the "aggravating" fact that Mr. Chavez had engaged in the pimping offense. However, the statutory maximum for the pimping offenses was 60 months. Mr. Chavez argued to the Ninth Circuit Court of Appeal that the district court should not have been able to base a 250-month drug sentence on an unrelated offense that carried only a 60-month statutory maximum. However the Ninth Circuit affirmed Mr. Chavez's

sentence, ignoring his *Apprendi* argument entirely. The Ninth Circuit similarly denied Mr. Chavez's petition for rehearing with no analysis whatsoever.

II. REASONS FOR ISSUANCE OF THE WRIT

What is the point of having a statutory maximum for an offense if a sentencing court can increase it via an unrelated offense with a greater statutory maximum? Such an approach eviscerates this Court's *Apprendi* rule as well as Congressional rule over statutory maximums. Currently, the law is unsettled on this issue and this Court can and should provide guidance to lower courts on how to properly resolve this issue.

Supreme Court Rule 10(a) provides in part that this Court may grant the writ of certiorari where a United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter ... or has so "far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power."

The Ninth Circuit's decision in Mr. Chavez's case is in conflict with the decision of this Court in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and conflicts with the Fifth and Sixth Amendments.

III. ANALYSIS

A sentencing court cannot use the elements of a lesser offense to increase a defendant's sentence in a different, legally unrelated, offense beyond the original statutory maximum without violating *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

In *Apprendi*, this Court held that, " other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490. A group of federal circuit courts of appeal have reasoned that *Apprendi* does not apply to sentencing findings that elevate a defendant's sentence within the applicable statutory limits and that *Apprendi* does not apply to enhancements under the sentencing guidelines when the resulting sentence remains within the statutory maximum. See *United States v. Fields*, 251 F.3d 1041, 1043-44 (D.C. Cir. 2001); *United States v. Caba*, 241 F.3d 98, 101 (1st Cir. 2001); *United States v. Jackson*, 240 F.3d 1245, 1249 (10th Cir. 2001); *United States v. Garcia*, 240 F.3d 180, 182-84 (2d Cir. 2001); *United States v. Williams*, 235 F.3d 858, 862-63 (3d Cir. 2000); *United States v. Doggett*, 230 F.3d 160, 166 (5th Cir. 2000); *Talbott v. Indiana*, 226 F.3d 866, 869-70 (7th Cir. 2000).

But the Ninth Circuit's ruling in Mr. Chavez's case is different.

Mr. Chavez's conviction on the prostitution related offenses carried with it a five-

year statutory maximum, well below the 250-month sentence he ultimately received.

Five years is the maximum Congress has allowed for that offense. 18 U.S.C. § 2421(a). The district court erred in using those facts – limited at five years – to increase Mr. Chavez’s sentence. Enhancing his sentence based on the same facts to a term in excess of five years violates Mr. Chavez’s Fifth and Sixth Amendment rights.

Sentencing a defendant for an aggravated crime when he was tried only for a lesser crime, violates a defendant's Sixth Amendment right to a trial. *United States v. Lewis*, 802 F.3d 449 (3d Cir. 2015). In *Lewis*, the defendant was convicted of using or carrying a firearm during and in relation to a crime of violence, in violation of 18 U.S.C.S. § 924(c)(1)(A)(i), but sentenced for the "brandishing" offense, pursuant to § 924(c)(1)(A)(ii), he was sentenced for a crime for which he was not convicted. 802 F.3d at 451. The Third Circuit reversed under the deferential plain error standard, concluding that this Court’s decision in *Apprendi* prevented the defendant from being sentenced on a greater statutory maximum on the basis of an offense which carried a lesser statutory penalty. *Id.*

While *Lewis* is not identical to Mr. Chavez’s situation, it is animated by the same rationale. Similarly, in *United States v. Stubbs*, 279 F.3d 402 (6th Cir. 2002), the defendant was convicted of violating 18 U.S.C.S. § 924(o) but the district

court sentenced him pursuant to the harsher statutory penalties available under 18 U.S.C.S. § 924(c). 279 F.3d at 405. The Sixth Circuit reversed under the deferential plain error standard, holding that the defendant's Sixth Amendment rights, like those of Mr. Chavez, in the instant case, were violated by his sentence to the greater statutory offense. 279. F.3d at 408-410.

A sentencing court can basically make an end-run around Congressional intent and the Fifth and Sixth Amendments whenever a defendant is convicted of multiple counts, by enhancing the sentence on the offense with a higher statutory maximum by the presence of an unpalatable offense with a lesser statutory maximum, thereby eviscerating the statutory maximums set by Congress. This problem, will persist unless and until this Court does something about.

IV. CONCLUSION

This Court should grant review to provide badly needed guidance to lower courts in this recurring issue, as there is currently little guidance available. For the foregoing reasons, Petitioner prays that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on October 16, 2018.

Respectfully submitted,

Dated: May 12, 2022

s/Benjamin P. Lechman
BENJAMIN P. LECHMAN
964 Fifth Ave. Suite 214
San Diego, CA 92101
(619) 733-9789
benlechman@hotmail.com
Attorney for Petitioner Mr. Chavez