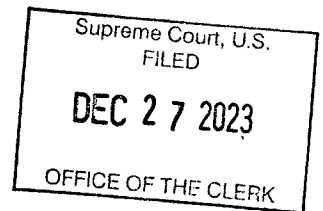


No. USAP5# 22-40212

22-7439

IN THE

SUPREME COURT OF THE UNITED STATES



Julio Osorio — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Julio Osorio #15523-479
(Your Name)

P.O. Box 33
(Address)

Terre Haute, IN 47808
(City, State, Zip Code)

n/a
(Phone Number)

QUESTION(S) PRESENTED

The Fifth Circuit Court Of Appeals has entered a decision in conflict with the decision of other Courts Of Appeals on the same important question of Federal Law that has not been, but should be, settled by this Court. Moreover, the Fifth Circuit Court Of Appeals has decided this important Federal question in a way that conflicts with relevant decisions of this Court. The important Federal question of law has to do with an ambiguous 6-point enhancement for crimes against Government that is being misapplied to crimes against civilians.

The Fifth Circuit holding pertaining to the ransom enhancement pursuant to USSG 2A4.1(b)(1) forecloses Petitioner's argument about its inapplicability to regular civilians.

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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:

United States Attorney
Michael A. Hyden AUSA
1000 Louisiana St Ste 3200
Houston, TX 77002
Ph (713) 567-9102

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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

☒ 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 Document 46-2; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district 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☐ is unpublished.

☐ 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.

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JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 16, 2022.

[] 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: 11/16/22, and a copy of the order denying rehearing appears at Appendix A.

[] 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).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

See attached

STATEMENT OF THE CASE

On 5/2/2016 I was indicted by a Federal Grand Jury on charges 18 USC 1201 Conspiracy to Kidnap. At sentencing, the District Court applied a 6-Point Ransom Enhancement pursuant to USSC 2A 4.1 (b) (1). My appointed counsel filed an Anders Brief and withdrew.

In Pro Se, I filed a brief raising the issue that present the Court today arguing the 6-point Ransom Enhancement did not apply in the instant case. The Fifth Circuit Court of Appeals affirmed judgment and sentence.

I timely filed a writ pursuant to 28 USC 2255 with the District Court. The District Court denied my motion and denied Certificate Of Appealability. I filed notice of appeal to the Fifth Circuit to grant me Certificate Of Appealability but it declined to do so because my argument is foreclosed because of Circuit Precedent. I motioned for rehearing en banc and was denied.

There are compelling reasons to grant Petition for a Writ of Certiorari. The 5th Circuit Court Of Appeals has entered a decision in conflict with the decision of other Courts Of Appeals on the same important Question of Federal Law that has not been, but should be, settle by this Court. Moreover, the Fifth Circuit Court Of Appeals has decided this important federal question in a way that conflict with relevant decisions of this Court.

The important Federal question of Law has to do with an ambiguous 6-point enhancement for crimes against the Government that is being misapplied to crimes against civilians and the Rule of Lenity.

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REASONS FOR GRANTING THE PETITION

See Attached Pages 17-21 of 24

REASONS FOR GRANTING THE PETITION

P.1

There are compelling reasons to grant petition for a writ of Certiorari. The 5th Court Of Appeals has entered a decision in conflict with the decision of other Courts Of Appeals on the same important question of Federal Law that has not been, but should be, settled by this Court. Moreover, the 5th COA has decided this important Federal question in a way that conflict with relevant decisions of this Court. The important Federal question of law has to do with an ambiguous 6-point enhancement for crimes against the Government that is being misapplied to crimes against civilians and the Rule of Lenity.

Reasons for Granting P.2
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The Fifth Circuit holding pertaining to the ransom enhancement pursuant to USSG 2A4.1(b)(1) forecloses Petitioner's argument about its inapplicability to regular civilians, it is unconstitutionally vague and warrants Supreme Court review to strike it down.

Petitioner argued the inapplicability of this enhancement to civilians to the 5th Circuit Court Of Appeals, which refused to grant Certificate of Appealability, followed by issuance of the Court's mandate December 12, 2022. Supreme Court review of this enhancement that plainly applies "if a ransom demand of the Gov't was made" is warranted to overturn 5th Circuit holding otherwise and resolve any inter-circuit split on this matter.

The Supreme Court, explicitly mandates the duty on the Court to expansively and liberally construe pro se submissions no matter that they fail to present a complete legal theory or fail to cite correct or pertinent authority.

The Court's duty applies with special force to pro se inmates:

It is an entrenched principle that pro se filings, however inartfully pleaded "are held to less stringent standards than formal pleadings drafted by lawyers." Huges v. Rowe, 449 US 5, 9 (1980) (Per Curiam) (quoting Haines v. Kerner, 404 US 519, 520 (1972)); Hamilton v. United States, 67 F.3d 761, 764 (9th Cir 1995). We are specifically directed to "construe pro se filings liberally." 2 Hamilton, 67 F.3d at 764. This duty applies equally to pro se motions and with special force to filings from pro se inmates. See e.g., Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010); Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001). n.2. Although the Supreme Court has described our duty regarding pro se pleadings as "settled law," it has not clearly articulated its purpose. See generally Rory K. Schneider, liberal construction of pro se pleadings, 159 v. Pa.L. Rev 585, 604 (2011). But whatever its purpose, it has deep roots.

Reasons for Granting P.3
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See, e.g. Bretz v. Kelman, 773 F.2d 1026, 1027 n.1 (9th Cir 1985)(en banc) (affording pro se litigant "the benefit of any doubt")

United States v. Qazi, 975 F.3d 989 (9th Cir. 2020)

Appellant is proceeding pro se while confined in a maximum security prison.

Petitioner's legal argument that the 6-point enhancement pursuant to USSG 2A4.1 subsection (b)(1) isn't applicable to making a ransom demand on a regular civilian is preserved by Petitioner's trial counsel Mr. Tellez who lodged an objection, which the Court noted and overruled. See ECF 204 pps. 23-33.

Specifically, Mr. Tellez filed objections to the PSR which he argued before the Court at sentencing. He argued that the plain meaning of the way that its written - - "if a ransom demand or a demand upon the Government is made" - - it all pertains to whether a demand or a ransom demand was made upon the Government, not necessarily the way that it *is* being in this case. Petitioner would add to this argument that a "demand upon the Government was made" standing alone would not warrant a 6-point enhancement lest the demand was "a ransom demand." In other words, as Mr. Tellez argued, subsection (b) |, when they talk about Government, plainly means there was a ransom demand upon the Gov't - - not upon a regular civilian. Further, Mr. Tellez argued that if the plain meaning of the section is ambiguous, then the Supreme Court has said in numerous decisions that the Rule of Lenity should be applied.

The Court responded as follows:

I appreciate your argument. [] the Fifth Circuit is squarely against you on that. They have upheld the enhancement when kidnappers contacted family members with ransom demands, a 2014 case, U.S. v. Cedillo-Narvaez, 761 F.3d 397 at pg. 400.

I know that your talking about in sentence structure and Rule of Lenity. I just don't think it's applicable. Under your theory, it would always have to involve a Gov't actor in order for this enhancement to apply. And I think that's wrong. [] objection is noted ECF 204 pps, 26-27, 33.

Reasons For Granting P. 4
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From the above, it is clear that trial counsel preserved the legal argument and objections for Appellate review. However, counsel then filed an Anders Brief to the 5th Circuit Court of Appeals and withdrew.

On habeas, Petitioner raised the argument in a round about way pointing to the inapplicability of USSG 2A4.1 (b)(1) in the instant case and the Appellant's counsel Mr. Tellez was ineffective for failure to raise this on direct appeal. It's true appellate counsel does not have to raise an issue that appears to be foreclosed.

Had Mr. Tellez raised it on appeal, it would have been denied under existing 5th Circuit law. If he had included this claim in petitioner's direct appeal, Petitioner likely would have recieved relief from the United States Supreme Court because of the 'Rule of Lenity' is well established in Dunn v. US and US v. Shahan, supra. Counsel's deficient performance prejudiced Petitioner because it foreclosed relief from the highest Court, which prejudiced him with an inapplicable several 6-point enhancement to an already high guideline advisory sentence. Mr. Tellez does raise the objection at sentencing and the Magistrate's Report and Recommendation points to the objection and finds it viable.

Specifically, the Magistrate said:

During sentencing counsel objected to inclusion of an enhancement for a ransom demand based on Congress' grammatical drafting of USSG 2A4.1(b). Counsel had a more viable objection to inclusion.

This shows that counsel was remiss for failure to preserve this argument on direct appeal for en Banc review.

Petitioner has made "a substantial showing of the denial of a Constitutional right." The ambiguity in what Congress enacted is a 5th and 6th Amandment Constitutional question; because Due Process requires adequate notice of crimes and punishments, which is absent in subsection (b)(1). Specifically, the 'Rule of Lenity' fosters the Constitutional Due Process principle"

Reasons For Granting P. 5
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that no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited."

US v. Rivera, 265 F.3d 310, 312 (5th Cir. 2001) (Quoting Dunnv. US, 442 US 100, 112 (1979)).

The rule "applies only when, after consulting traditional cannons of statutory construction," This Court is left with an ambiguous statute." Id. (Quoting US v. Shahan, 513US10, 17 (1994)).

In interpreting the guidelines, this Court applies "the ordinary rules of statutory construction."

US v. Serfass, 684 F.3d 548, 551 (5th Cir. 2012).

If "the language of the Guidelines is ambiguous, the plain meaning of the language is controlling unless it creates an absurd result." Id.

Only where that language is ambiguous does the Rule of Lenity apply and require that the ambiguity be resolved in favor of a criminal defendant. Id.

Based on the foregoing, Petitioner has made the requisite showing of a Constitutional right under the 5th Amendment Due Process Clause. Thereby Petitioner requests Court grant Certiorari in this Federal question of law.

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Julio Osorio

Date: Apr 7, 2023