No. 23 - 5074

IN THE SUPREME COURT OF THE UNITED STATES

October Term 2022

JUAN CARLOS VALLES, JR.,

PETITIONER,

v.

THE UNITED STATES OF AMERICA,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
With incorporated Appendix

JUAN CARLOS VALLES, JR.
Petitioner, *Pro Se*
Reg.No. 50415-179 FCI Marianna
Federal Correctional Institution
PO Box 7007
Marianna FL 32447

QUESTIONS PRESENTED

I, Petitioner Juan Carlos Valles, Jr., state that this petition presents an issue of great public importance, addressed to the policy of Federal Prosecutions and a claim of selective prosecution or selective enforcement, in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

Question One: Is the Federal Bureau of Prisons a statutory corporation which is governed by federal laws? If so, is it not the obligation of federal prosecutors to prosecute all federal inmates who commit "index offenses" that are indictable offenses, and not just select certain inmates for prosecution ? And is the way that the policy that federal prosecutors use in their discretion written in such a way that causes them to commit, in relation to Bureau of Prisons matters, by means of non-performance, in spite of having absolute obligations and statutory obligations? If so, should the policy be modified to stop the commission of offenses against Public Justice and Authority?

Question Two: Were Petitioner's (my) Fifth and Fourteenth Amendment rights violated by means of selective prosecution or selective enforcement by prosecuting and sentencing me to five years when every other such prison incident is handled administratively within the BOP?

LIST OF PARTIES

The parties to this proceeding are your Petitioner, Juan Carlos Valles, Jr., and the Respondent, the United States of America.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

United States District Court Northern District of Florida
(Panama City Division)
United States v. Juan Carlos Valles, Jr.
No. 5:21-cr-5-TKW-MJF
Final Judgment: December 30, 2021

United States Court of Appeals, Eleventh Circuit
United States v. Juan Carlos Valles, Jr.
No. 22-10069
Opinion: January 6, 2023
Timely-filed Petition for Rehearing Denied April 17, 2023

I am currently in "special housing." I have very limited access to a law library, no access to a typewriter, and can only have lined yellow legal pad paper. My CJA appellate attorney typed my handwritten petition and sent it to me to sign and date and mail to the Court.

Juan Carlos Valles, Jr.
Petitioner Pro Se

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PETITION FOR A WRIT OF CERTIORARI

Opinion Below

A copy of the opinion of the United States Court of Appeals for the Eleventh Circuit is in the Appendix at the end of this Petition at Appendix A. The six-page opinion was entered on January 6, 2023. It is non-published and affirms the conviction following a guilty plea to charges of assault with a dangerous weapon, and possession of contraband in prison. The issue on appeal arose from a claim of selective prosecution.

Jurisdiction

The judgment of the court of appeals was entered on January 6, 2023. A Petition for Rehearing was timely filed and was denied by Order of April 17, 2023. The jurisdiction of this Court is invoked under 18 U.S.C. Section 1254(1). A copy of the Order of Denial is included in the Appendix at B.

Constitutional Provisions Involved

The Fifth Amendment

The Fifth Amendment of the United States Constitution provides that:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, or be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.
>
> U.S. Const. amend. V.

The Fourteenth Amendment

The Fourteenth Amendment of the United States Constitution, Section One, provides that:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. XIV.

Petitioner's Introductory Statement

Petitioner appealed to the Eleventh Circuit Court of Appeals, from a final judgment of conviction and sentence entered by the Northern District of Florida. Judgment was entered on December 30, 2021, following a guilty plea to a charge of assault with a dangerous weapon with intent to do bodily harm, 18 U.S.C. Section 113(a)(3); and possession of contraband in prison, 18 U.S.C. Sections 1791(a)(2) and 1791(b)(3). The sentence was 60 months as to each count, run concurrently. Petitioner had court-appointed counsel in the district court and in the appellate court.

This case involves use of a weapon in prison known as a "slock" (a combination lock inside a sock). The victim was the cellmate of Petitioner's friend. The friend was weak, vulnerable, 67-years old and was bullied by his cellmate, a convicted sex-offender who twice attempted to rape Petitioner's friend. Petitioner assaulted his friend's sex-offender cellmate only after administrative efforts failed to have the frail, elderly friend moved to a different cell.

Petitioner's Status of Incarceration

Petitioner is incarcerated at the Federal Correctional Institution in Marianna, Florida with a presumptive release date of May 20, 2025.

Statement of the Case
Procedural History & Relevant Facts

Consistent with the issue raised by district court counsel, appellate counsel argued on appeal that the district court erred and abused its discretion by denying Petitioner's motion to dismiss on grounds of selective prosecution. One argument was that such matters ordinarily are handled administratively within the BOP.

A two-count indictment was returned in the Northern District of Florida in February 2021, charging Petitioner with assaulting a fellow inmate at FCI Marianna with intent to do bodily harm (18 U.S.C. Section 113(a)(3)); and charging that Petitioner, an inmate of FCI Marianna knowingly obtained, made, and possessed a prohibited object defined in 18 U.S.C. Section 1791(d)(1)(B), specifically a combination lock to be used as a weapon violating 18 U.S.C. Sections 1791(a)(2) and (b)(3).

At a hearing before the magistrate judge, scheduled for a change of plea, the assistant federal defender informed the court that based upon Petitioner's own research, Petitioner wanted a motion to dismiss filed on grounds of selective prosecution. Counsel was concerned about how that might affect potential cooperation.

The magistrate judge gave the attorney and client an opportunity to confer, and upon return to the bench after doing research, found case law suggesting that selective prosecution would be a jurisdictional defect. Were there a legitimate legal basis for the motion it should be raised prior to trial or plea. The federal defender withdrew the change of plea request, said he anticipated that a motion to dismiss for selective prosecution would be filed, but that appointment of another attorney would be necessary to prepare and file the motion.

The federal defender moved to withdraw. CJA counsel was appointed. In a telephone status conference with the district judge in September 2021, the prosecutor provided the factual background: that Petitioner, an inmate at FCI Marianna, was charged with possessing a weapon and assaulting another inmate with it. At the change of plea hearing in April it was revealed that Petitioner told counsel that he firmly believed he had a colorable claim of selective prosecution. A CJA attorney was appointed. New counsel would present the potentially-jurisdictional motion to the court, the prosecution would respond. The case would proceed.

Newly-appointed CJA counsel explained that Petitioner was adamant based on his own research, that the selective prosecution issue be presented to the court in a written motion. He wanted the court to consider the motion, and if it were denied, he would enter a plea.

A motion was filed for "miscellaneous relief ...to dismiss the indictment based on the claim of selective prosecution." The government filed a response in opposition. On September 20, 2021, the court entered a six-page order denying the motion to dismiss. On October 20, 2021, a change of plea hearing was held. Petitioner entered into a written agreement to plead guilty to both counts reserving the right to appeal the denial of his motion to dismiss.

A draft presentence investigation report was filed. Petitioner submitted a response stating that PSR paragraph 18 asserting that Petitioner and his friend, the victim's cellmate, were in a romantic relationship, which was incorrect. His best friend, the vulnerable elder, needed protection from the cellmate's bullying. There were, Petitioner argued, unusual mitigating circumstances not taken into consideration by the Sentencing Commission in formulating the guidelines. This case was unique and warranted a downward departure or variance because (1) Petitioner was facing an undischarged term of imprisonment, (2) he acted only to protect his friend, a fragile, elderly, fellow inmate; and (3) Petitioner has a sentence to serve in the State of Texas upon release from the BOP. Any sentence imposed in this matter could be tantamount to adding ten more years because of the impending ten-year Texas sentence, at the conclusion of the present sentence.

Petitioner asked for a downward departure and variance under Guidelines Section 5G1.3(d), providing that "... in any other case involving an undischarged term of imprisonment, the sentence for the present offense may be imposed to run concurrently, partially concurrent, or consecutively to the prior undischarged term of imprisonment to achieve a reasonable punishment for the instant offense." Considering the ten-year Texas state prison sentence, Petitioner asked for a concurrent sentence. He asked the Court to consider his efforts, albeit futile, to peacefully resolve the conflicts between himself, his friend, and the bully cellmate as much as that was possible for inmates.

Petitioner acted to protect his friend from further victimization, hoping to avoid lockdowns for all inmates over the holidays. Petitioner believed the reasonable solution was to move the bully to another cell. He spoke with a counselor convinced his timid friend to discuss it with Special Investigation Services. They told his friend that there would be no cell changes.

Three days after Christmas, after trying to peacefully resolve the situation, Petitioner took matters into his own hands to defend his weak friend from further bullying and sexual assaults. His friend was too fearful, too old, and too nice to stand up for himself. Petitioner said that during the assault he felt pity for the victim. In an interview with FBI agents, Petitioner said that he felt bad that it took

the guards a long time to come to the rescue.

The PSR failed to demonstrate fully Petitioner's adverse childhood experiences in his formative years. Violence was a regular part of his life. At just five years old, he contemplated suicide, and attempted to end his miserable life. As the family "black sheep" he was frequently beaten for not bathing his siblings or "whatever" while his mother disappeared for days at a time. At age nine he was beaten for using marijuana rather than something more "manly" such as cocaine. He recalled that when he was eleven or twelve, his grandmother set up lines of cocaine for the grandchildren. He grew up in a Texas border town surrounded by violence. People routinely "disappeared." Friends "went missing." He did not see what happened to them, but he knew. Violence was not limited to the streets. The Petitioner recalled that at age thirteen one of the many "dudes" who visited his mother pulled a gun on his mother during a domestic dispute. When the "dude" was sleeping, he beat the man with a two-by-four board and ran away from home. He was frequently kicked out of his home. He also ran away, causing him to be homeless as a child. He turned to gangs. He found a place to call his own when he started "moving drugs."

The horrific reality of these childhood experiences was understated. The effects that such trauma had on the child that he once was, could probably be stu-

died studied by "nurture versus nature" researchers. The sentencing court had latitude from policy statements in the guidelines to grant a downward variance by considering the appalling lack of youthful guidance endured by the Petitioner. Ignoring those facts understated their significance in his pathetic childhood that led him down a misguided life path.

The court ultimately did depart below the advisory range, imposing 60 months imprisonment for each count to run concurrently, three years' supervised release, concurrent, a $200 special assessment, and restitution of $3,175 for the victim's hospital bills.

What usually happened, however, for a "slock" incident in prison was loss of good time, loss of privileges, and transfer to a different facility; that's all. Petitioner was preparing for his release, and thought he would help out his vulnerable friend before leaving.

> ... I know even though everybody has their own choice of how to live, whatever, because when I – I'm not a kid no more, you know what I mean. I could have changed a long time ago. But I just did my whole life, I've just done what I've been taught ... the way with the drugs, the way of how to make money, like, that's what brought me into the prisons and stuff like that. That's what constantly, one time after another, time after another time I've came [sic] to prison for living the lifestyle that I was taught or seen...my whole life since I've been a youth. So I feel that – unfortunately, that's what made me do everything I've done up to this point.

Now, when it comes down to what happened with this man, with my victim, that's a different ballgame. That has nothing to do with my youth. That's just – to me, I just did something that I would have – I would hope that somebody would do if my dad was ....I would hope that if you see somebody's going to get raped and he's vulnerable, that you jump in and try to protect him and try to help the situation. That's what I would hope, you know what I mean. I mean, I couldn't – live like – well I mean, ... it would be bad not to do nothing. And then ... knowing that the man got raped... when I could have prevented all that, I could have helped this man from getting raped.

I see – ... and I say – he was my friend. What kind of friend am I just to leave him just to die,.. But like I said, if I would have known that I would have got time or I would have been in this position for hitting him with the lock, I would have never done that. I'm trying to leave. I'm trying to go home. I'm trying to get my life straight. I've been trying to do that, ...

I've said countless times, I'm done with all this. That's why I left the [Mexican] mafia. That's why I - I've separated myself from my family That's why when I get out, whatever the outcome of this might be, whatever it might be, how much time you give me, I'm moving over here to Florida . ... I don't want to be close to my family. I've told them that ... The only good people that I have communication with right now are my brothers and sisters. I don't talk to nobody – for that simple fact that, man instead of helping us out, you just- ruining our lives more and more. I don't have nothing to do with that kind of lifestyle no more.

... Whatever you might choose to do today, I'm moving over here. I want – I'm trying to get as far away from that lifestyle as possible. I feel that that's' the only way. That's my final, you could say "step" to changing my life completely that I – that I need to do.

I left the Mafia . I stopped the gang-bang right by leaving the Mexican Mafia. – all those classes I've done to try to better my life – I got too much in my hands that I could do with the books and the blueprints that I've made from the houses and apartments and my

> invention. I could honestly say I found a better way. I just got to get through this little bump...

After reviewing the PSR, arguments of counsel, and Petitioner's testimony the court determined that reading about Valles' childhood story was one thing, but hearing him in person, in his own voice, telling the story of his astounding, traumatic, pathetic childhood was quite another. The court found that a downward departure was appropriate and imposed a sentence of five years on Counts One and Two, concurrent. There were no objections to the sentence.

Reasons for Granting the Writ

I, Petitioner Juan Carlos Valles, Jr., state that this petition presents an issue of great public importance concerning the policy of Federal Prosecution and a claim of selective prosecution or selective enforcement, all in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

Reason One

It was Unconstitutional for the Federal Criminal Prosecutor to Prosecute me, Petitioner Juan Carlos Valles, for an Incident that is always refused by Means of a Non-Prosecution Letter and are Left to be Handled Within the Bureau of Prisons.

The Federal Bureau of Prisons is a statutory corporation governed by federal laws. It is not, therefore, the obligation of federal Prosecutors to prosecute all federal inmates who commit "index offenses" that are indictable offenses?

The way the policy that federal prosecutors use in their discretion, is written apparently in such a way that causes them to commit, in relation to Bureau of Prisons matters, by means of non-performance, in spite of being in absolute obligation and statutory obligation. That policy should be modified to end the discretion to commit offenses against Public Justice and Authority.

The United States Bureau of Prisons is a statutory corporation which is created by a special act of the legislature. It is not a branch of government unto itself, but rather is a governmental unit that is an instrumentality; an entity that is governed by federal laws. The federal government has jurisdiction over the BOP.

Petitioner is presently incarcerated at FCI Marianna, a federal correctional institution. Acts in violation of federal law at federal facilities must be submitted by means of referrals to the FBI. Referrals arise from "index offenses" which are

all indictable offenses. After the FBI is made aware of an offense, they then can notify the Department of Justice or the United States Attorney's Office about it. It is from the referral going forward when the prosecutors misuse prosecutorial policies and abuse their prosecutorial discretion.

If the United States Attorney's office does not want to prosecute an alleged offender, they prepare and send a no-prosecution letter to the federal prison facility, which itself, is misprision of a felony and misprision of treason. This is the way it is done even to this very day for many index offenses occurring within the Bureau of Prisons.

Once the prosecutor's office sends out the no-prosecution letter, the BOP will discipline the inmate for his/her actions. The greatest penalties are several months' loss of privileges such as access to telephone, visitors, commissary, and email, loss of 41 days good time, disciplinary segregation for 30 days, and then transfer to a different prison. Nothing more.

When it comes down to "slock" incidents, this is why there are no cases to be found in legal research or court records. Not even one "slock" incident case can be found.

The problem here is that as explained, the U.S. Bureau of Prisons is not a branch of government, nor does it have its own jurisdiction and its own laws. Thus

all laws that are violated within the indictable offenses, for which prosecutors are notified of such violations, with proof beyond a reasonable doubt, have to be prosecuted by federal prosecutors. They are the authorities who have jurisdiction over the federal prisons. Because the U.S. Bureau of Prisons is within their jurisdiction, it is their duty and absolute obligation to prosecute violations of law that occur within federal prison facilities, and yet they rarely do.

Reason Two

The Fifth and Fourteenth Amendments of the United States Constitution Prohibit Selective Prosecution When Incidents Are Always Pushed Back by the U.S. District's Office so That BOP Handles Them.

From the inception and throughout these proceedings your Petitioner has remained adamant that the federal prosecutors acted in bad faith by exercising their discretion to prosecute me (Juan Carlos Valles, Jr.), based on an offense within the Bureau of Prisons, for which no one is usually or ordinarily criminally prosecuted in the United States Courts. Throughout the history of prisons people have been hit with "slocks." Petitioner has personal knowledge that in the Texas department of Criminal Justice, it used to be done with "JackMack" (canned jack mackerel fish), until the Texas Department of Criminal Justice stopped selling JackMack in the commissary.

No one ever was sentenced to prison time for that. In the US Bureau of Prisons, they previously sold combination locks that weighed at least four times what the present locks weigh. They were sold in the commissary until too many inmates were assaulted with "slocks." Yet no one ever was sentenced to additional prison time for those incidents either.

Petitioner contends that he was prosecuted and sentenced to five additional years in custody because he was so close to his release date, and the United States Attorney decided to prosecute him to keep him enslaved in the prison system.

Based on guarantees in the Fifth and Fourteenth Amendments of the United States Constitution, prosecutors should not have the right to pick and choose whom to prosecute when offenses within their jurisdiction occur in federal prisons. Every person who violates the Law of the Land should be accounted for in the same manner as the previous person; and it is the prosecutor's duty and obligation to do so to ensure that the Law of the Land is being upheld.

The Court system is in place for many purposes. One is to differentiate on a case-by-case basis, not just by prosecutors, and one is to differentiate persons on a case-by-case basis, not the prosecutors. By allowing prosecutors to pick and choose which case to prosecute and which to not prosecute is itself a violation of the Fifth and Fourteenth Amendments, when it is in their jurisdiction to prosecute.

If it is in another jurisdiction, then they should be allowed to exercise their discretion to prosecute a person; but not if it is their own jurisdiction. The policy that federal prosecutors use to pick which cases to prosecute and which not to prosecute is a "legal regime."

Prosecutors use the supremacy-of-text principle to decide how it can be used. They also use the omitted-case cannon for their own discretion. The policy is an operative construction and therefore can be attacked by the overbreadth doctrine. The way the policy is written has opened a misconstruction and an as-applied challenge has opened a misconstruction and an as-applied challenge because it has a defect of form. The policy is unconstitutionally vague with vagueness. Because of the loophole in the policy, it results in prosecutors committing offenses against Public Justice and Authority. It is in the Liberty Interest of all people of the United States of America that said policy be run through a modification because of the way it is written. It has caused thousands of cases in prisons to be forgotten, and thus has caused thousands more families to live in fear for the safety of their incarcerated loved ones.

It has caused prosecutors to not do their duty to prosecute people in prison, which has tainted our national system and beliefs of being equal and safe. Because prosecutors have failed to prosecute people in prison it has enabled indi-

viduals' constitutional rights to be violated when they are prosecuted as Your Petitioner has been prosecuted.

The policy must be modified in such a way that the loophole is removed yet still allowing prosecutors the flexibility to use their discretion. It must be precise in stating that that the prosecutors can pick and choose what cases to prosecute only if it is another jurisdiction.

The policy must clearly state that if it falls within their jurisdiction, they must prosecute the violation of the law. It is understandable if the violation of law happened in state jurisdiction and the federal prosecutors decided not to use their resources to prosecute at the federal level, and just let the state handle the matter. A person broke the law and the federal authorities decided that the state should proceed with the case. Therefore, that would be aligned with Fifth Amendment Due Process and Fourteenth Amendment Equal Protection.

But if a law within federal jurisdiction was broken, and not the state's jurisdiction, it is the federal prosecutor's responsibility and obligation to use their resources to prosecute the person who broke the Law of the Land, which would mean that the law will be rightfully upheld. Only then would the Fifth and Fourteenth Amendment guarantees be upheld, recognized, respected, and not violated.

If Your Petitioner's case would have been on a state level and the federal prosecutor refused to interfere, then that would be acceptable, and the policy would be used correctly in alignment with the Fifth and Fourteenth Amendments. But because the federal prosecutors refuse to prosecute "slock" incidents in federal prisons and only prosecuted me, Petitioner Juan Valles, out of thousands of the same incidents, that is what resulted in a violation of Your Petitioner's Fifth and Fourteenth Amendment rights.

Federal prosecutors are seeing and using the policy regarding federal prisons as if the BOP has its own jurisdiction or is in a state's jurisdiction when it is not. Either they allow the U.S. BOP to deal with the issues or they decide to jump in and prosecute the person that broke the law. That is just not right, fair, or just. The BOP was not designated by Congress as its own branch of government. Therefore federal prosecutors must prosecute every person who commits an "index offense" within the BOP – not one, or some, but ALL who break the same law.

The term "crime of violence" has the same meaning as in Title 18, Section 924(c) of the United States Code. Therefore, a violation of the law is a violation of the law, no matter how small or great it is.

In society when all laws are broken, they are handled accordingly, whether state, federal, or armed forces. Even if they are within a prison, the prosecutors are

responsible to prosecute all people of whom they are aware have been accused of breaking the law. But because they have been misusing their policy of discretion when it comes down to prisons; and because they do not prosecute people for "slock' incidents, they singled me out - Your Petitioner, Juan Valles - and violated my Fifth and Fourteenth Amendment rights by means of selective prosecution and selective enforcement.

The way the policy the federal prosecutors use is written has caused them not only to compound, but also committing a crime by means of their no-prosecution letters. They have connived and failed in special diligence. They are supposed to be law enforcement, but because of the way the policy is written, they have become and have committed misprision of a felony and misprision of treason. The federal prosecutors know that they have jurisdiction over the federal prisons, and they still commit negligence in law by willful neglect and even inexcusable neglect. They have exhibited nonperformance. Yet they are by law in absolute obligation and statutory obligation to do their duty, they have used omission. That is wrong and constitutes committing offenses against Public Justice and Authority. When there is proof beyond a reasonable doubt, the federal prosecutors are the only ones that can prosecute a federal inmate when a law has been violated; but they use the policy in their best of interest.

They know they are required to enforce the law but instead they just let it be. Thousands of people in this country have been hit with a "slock" in prison, yet only Your Petitioner Juan Valles, was prosecuted. This is because prosecutors refuse to prosecute others and just let the BOP take care of their own. By only prosecuting Petitioner Juan Valles, the United States has violated my rights under the Fifth and Fourteenth Amendments by means of singling me out because I am Hispanic. Court records from across the United States show that no other person of another race has been prosecuted for a "slock" incident involving an inmate against another inmate. I am not talking about a group against one person.

The prosecutor who prosecuted Your Petitioner did not use equity. By his actions engaged in a form of invidious discrimination and indirect discrimination by forms of undue prejudice and abuse of discretion. He was unjust in a willful and *mala fide* type of way. By selective enforcement he gave rise not only to partial, but it being done in a particular malice way that is wrong, transitory, and with an intentional wrong way of doing it; wrongly and with willfulness.

All in all, he committed an abuse of power. The prosecutor knows that no one criminally prosecutes "slock" incidents and yet he selectively enforced Your Petitioner's case just because the victim of the attack was a sex-offender and because it happened in a prison that is intended to protect sex offenders. Another

reason the prosecutor decided to prosecute me, Petitioner Juan Valles, was because I was so close to being released without supervised release or probation when the incident occurred. I, Juan Valles had only one month to serve before being released.

In open court and on the record, the prosecutor said he would not have prosecuted if I had one or two years left, or a life sentence. But just because I was scheduled to be released, he wanted to "send a message" to all other inmates in prison. The prosecutor also argued that the BOP did not have the ability to properly sanction me, and that is why they stepped in to do it.

There are so many things wrong with the reasons the prosecutors gave why they decided to prosecute me. For one, saying that if I had more than 2 years left on the sentence, they would not have prosecuted me. That clearly placed me in a special category.

The thing is, when a "crime of violence" is committed in a prison, the sentence imposed on the person who committed the act would not start until after he completes the time he is serving. That time is not run concurrently, but consecutively and therefore, it should not matter how much time an inmate has left until his release. They all are the same, yet the prosecutor created a special bracket or category of "inmate with less than a year to serve," knowing that by using a

person to send a message to the inmate population, by means of a criminal prosecution, when the same is not done for other inmates who commit the same act, is in itself done in bad faith. The only message the prosecutors sent out was that if an inmate touches a sex-offender, no matter what the reason is, they will be prosecuted.

And the BOP still had every administrative penalty available to punish me. They were still able to take away good time and privileges, and give me 30 days in confinement, just like they would for any other inmate for the same incident.

Further, the prosecutor said that because of my criminal history I should be prosecuted, and not processed administratively.

Not only is this insidious discrimination, but also it is *mala fide* and unjust. My criminal history resulted in the sentences I received and served and should not have been used to violate my constitutional rights. Allowing prosecutors to argue that and take it into consideration enabled them to further violate my rights. By means of racial profiling and discrimination. There is no difference between a person with a criminal history or not, when it comes to the rights guaranteed to a Untied States citizen. Any court, no matter which one, that allows that to happen, is wrong. By doing so, the defendant is unduly prejudiced. The prosecutor prosecuted with particular malice, simply because I was a disadvantaged person.

The deeper issue with my motion to dismiss was that if my constitutional rights were being violated, by denying my motion and allowing the prosecution against me to proceed, that rose to the level of manifest constitutional error and miscarriage of justice which was unjust and wrongful. The court was aware that no one is prosecuted for "slock" incidents in the Bureau of Prisons. Therefore, it was an abuse of discretion to allow the prosecution to go forward.

By allowing the United States Attorney's office to prosecute me, when no other person has been prosecuted; and by denying my motion to dismiss on grounds of my criminal background, which was not one of violence, was an abuse of power and discretion because the court sided with the prosecutors.

In *United States v. Armstrong*, 571 U.S. 456 (1996), this Court held that in order to demonstrate selective prosecution, an individual must show that a prosecutorial policy had both a discriminatory purpose and a discriminatory effect. In other words, they must show that prosecutors did not charge similarly situated people of other races (or inmates with lengthier release dates). Federal prosecutors are entitled to a general presumption that they are properly exercising the broad discretion accorded to them, unless a defendant introduces clear evidence to the contrary. The Fifth Amendment's Equal Protection guarantee requires that race, religion, and other arbitrary classifications may not be the basis for prosecu-

ting an individual. Someone bringing a constitutional claim under this provision must show both discriminatory effect and discriminatory purpose or motivation.

The discriminatory effect element involves a showing that the government did not prosecute similarly situated individuals of another race (or inmates having lengthier presumptive release dates, unlike Petitioner, who had about one month left to serve before release). The lack of "slock" prosecutions showing up in case law demonstrates that such prosecutions are rare.

In *United States, v. Kahl*, 583 F.2d 1351 (5th Cir. 1978), Gordon Kahl, proceed *pro se*, argued that the district court erred in denying his claim that the government singled him out for selective prosecution based on his status as a tax protester. Kahl presented his claim in pretrial proceedings. The district judge found that he failed to establish his claim. There was a stipulation to the fact that the government does have a policy of selectively prosecuting tax protestors, and Kahl argued that the stipulation was sufficient to sustain his claim of selective prosecution. Ultimately, the Fifth Circuit did not agree.

In *Commonwealth v. Franklin*, 376 Mass. 885, 385 N.E. 20 (Mass.1978), the defendants argued that they were selectively prosecuted because they were Black. Again, the Court disagreed with their arguments.

The Government prosecuted me with bad faith and invidious, indirect discrimination. My United States Constitutional rights under the Fifth and Fourteenth Amendments were violated by means of selective prosecution and selective enforcement. My right to equal justice under the law means that I should have been treated the same as everyone else regardless of my background. I should have equal protection under the Equal Protection Clause, regardless of whether I am a disadvantaged person. Undue prejudice was not supposed to happen in a United States Court. No one is prosecuted for "slock" incidents in prison facilities. Your Petitioner should not have been prosecuted either. Just because I had only one month until release, did not make me any different than any other inmate who might have years yet to serve.

But because of selective prosecution, while the nature of the structural law does not change, it can change when substance such as reasons of race, religion, gender and other ways to categorize people in the world outside prison. Within prison, however, there also are gang members, drop-out former gang members, sex offenders, LGBTQ individuals, and 5K1.1 inmates. This is why there are different prison facilities that house different types of inmates. Although the laws do not change, the substance does change because prison it its own world within this country, and society outside prison walls is another. An inmate preparing for

imminent release is in a different category from those who have years yet to serve. At least that was the reason given for my prosecution.

I was prosecuted so I would be confined to prison for many more years, making my case a political issue. The court nor the prosecution took into consideration in the attendant circumstances.

Apparently they did not or would not consider or understand that the incident occurred under exigent circumstances and for the reason of defense of another inmate who could not protect himself. The victim's aggressive actions and behavior toward a meek and vulnerable elderly inmate was the catalyst for the slock" incident to happen. Requests for an administrative solution (simply moving the aggressor-bully-sex-offender OR the meek, elderly inmate) to another cell with a different cellmate) would have quickly and easily solved the problem, but that request was simply DENIED by institution staff. Neither the court nor the United States seemed to appreciate that I acted to protect the safety of a vulnerable fellow inmate. They were wrong and discriminated against me by pursuing the incident with a criminal prosecution. I believe this is one of those prerequisite situations.

Conclusion

I, Juan Carlos Valles Jr., Your Petitioner, firmly believe that the way the policy of the federal prosecutors with regard to alleged offenses reported to have occurred within federal prison facilities, is written and is executed, is the main reason that my United States Constitutional rights under the Fifth Amendment Due Process and Fourteenth Amendment Equal Protection guarantees were violated. For this reason, this petition for writ of certiorari should be granted. The existing policies underlying U.S. Department of Justice decisions whether to prosecute or not prosecute alleged offenses of federal law committed within federal prisons should be modified so they are fair, consistent, and constitutional, and are fairly and constitutionally applied to all persons who are similarly situated.

Respectfully submitted by

Juan Carlos Valles Jr

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Signed and Dated on: June 29, 2023

Certificate of Mailing at FCI Marianna:

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