

No.

23-5135

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

111 - 4 2023

OFFICE OF THE CLERK

LEONARDO BURGOS-VALENCIA,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
PETITION FOR WRIT OF CERTIORARI

LEONARDO BURGOS-
VALENCIA
Reg. No. 12308-196
FCI FORT DIX
FEDERAL CORRECTIONAL
INSTITUTION
P.O. BOX 2000
JOINT BASE MDL, NJ 08640

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- I. WHETHER THE LOWER COURT'S SUMMARY AFFIRMANCE VIOLATED PETITIONER BURGOS-VALENCAI'S RIGHT TO BE HEARD?**
- II. WHETHER THE DISPARITY IN COMPARISON TO OTHER CASES VIOLATES PETITIONER BURGOS-VALENCIA'S SUBSTANTIAL RIGHTS?**

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:

RELATED CASES

All related cases arise out of the United States District Court for the District of Arizona and the Ninth Circuit Court of Appeals

TABLE OF AUTHORITIES CITED

CASES

Bellamy v. United States , No. 2:03-cr-197, 474 F.Supp.3d 777, 785–86, (E.D. Va. July 22, 2020)

Concepcion v. United States, __ U.S. __, 142 S. Ct. 2389, 2396 (2022)

Padilla v. Kentucky, 559 U.S. 356, 364

United States v. Arey , 461 F.Supp.3d 343, 350 (W.D. Va. 2020)

United States v. Aruda, 993 F. 3d 797, 801-02 (9th Cir. 2021),

United States v. Chen, __ F. 4th __, No. 20-50333, 2022 WL 4231313, at *3 (9th Cir. Sept. 14, 2022)

United States v. Day , No. 1:05-cr-460, 474 F.Supp.3d 790, 806–07, (E.D. Va. July 23, 2020)

United States v. Douglas, Crim. Action No. 10-171-4 (JDB), at *28 (D.D.C. Jan. 20, 2021)

United States v. Favela, 1:94-cr-05044-DAD

United States v. Ledezma-Rodriguez, --- F.Supp.3d ---- (2020) (United States District Court, S.D. Iowa, Case No. 3:00-CR-00071, Signed 07/14/2020)

United States v. Luis Cano, 1:95-cr-00481-CMA (S. D. Fla., 12-17-2020

United States v. Maumau , No. 2:08-cr-0758, 2020 WL 806121, at *7 (D. Utah Feb. 18, 2020)

United States v. Millan, 91-CR-685 (LAP), 2020 WL 1674058, at *9 (S.D.N.Y. Apr. 6, 2020)

United States v. Price, 496 F. Supp. 3d 83 (D.D.C. 2020)

United States v. Redwine

United States v. Sergio Santamaria, Case No. 4:04-cr-00199-RP-RW (S. D. Iowa, 2-01-2021)

United States v. Tidwell, Crim. Action No. 94-353, — F. Supp. 3d —, 2020 WL 4504448, at *1 (E.D. Pa. Aug. 5, 2020)

United States v. Urkevich , No. 8:03-cr-37, 2019 WL 6037391, at *8 (D. Neb. Nov. 14, 2019)

United States v. Wildcat, Case No. 4:99-cr-00002-BLW, 2020 WL 7872509, at *1 (D. Idaho Dec. 31, 2020)

STATUTES AND RULES

U.S.S.G. § 1B1.13
18 U.S.C. §3553, et seq.
18 U.S.C. §3553(a)
18 U.S.C. § 3582(c)(1)(A)

OTHER

- Richard S. Arnold, Remarks Before the Judicial Conference of the Eighth Circuit: The Art of Judging (Aug. 8, 2002).

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 _____ ; 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 B 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 _____ to the petition and is

appears at _____ ; or,
Appendix

reported at
 has been designated for publication but is not yet reported; or, is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was on **April 20, 2023**.

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: , 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. § 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- United States Constitution Amendment 5th
- United States Constitution Amendment 6th
- United States Constitution Amendment 8th
- Richard S. Arnold, Remarks Before the Judicial Conference of the Eighth Circuit: The Art of Judging (Aug. 8, 2002).

STATEMENT OF THE CASE

Appellant Burgos is 67 years old, he has had one kidney removed due to cancer, has high blood pressure, and he is obese. Appellant was convicted of trafficking large amounts of marijuana which were transported into and sold in this country. He was the Mexico supplier for marijuana, which was just one of the many drugs trafficked into the United States by a large drug trafficking operation, involving approximately 18 codefendants, that continued for an extended period of many years. He was convicted of marijuana drug trafficking offenses, conspiracy to possess with intent to distribute, and participating in a continuing criminal enterprise.

Appellant is serving a non-violent crime.

REASONS FOR GRANTING THE PETITION

I. WHETHER THE LOWER COURT'S SUMMARY AFFIRMANCE VIOLATED PETITIONER BURGOS-VALENCAI'S RIGHT TO BE HEARD?

Petitioner Burgos-Valencia submits that Summary affirmation is not appropriate because the defendant has alleged factual information and legal arguments that the district court has not previously considered and rejected. In denying the defendant's first motion for summary affirmation, **the district court agreed that some of the defendant's medical conditions may put him at greater risk of death should he become infected with COVID-19**, but found that the prisons were addressing the risk of exposure. In a continuing criminal enterprise that trafficked large amounts of very dangerous drugs, not just marijuana[,"] (Here the records does not show other than marijuana).

In the instant case, the records demonstrate that **Petitioner suffers from numerous serious medical issues.**

Petitioner Burgos-Valencia is 70-years old, not a recidivism risk or a significant danger to the public. Petitioner is "simply suggesting that [he is a] human being[]," with flaws, virtues, and a need for empathy. Richard S. Arnold, Remarks Before the Judicial Conference of the Eighth Circuit: The Art of Judging (Aug. 8, 2002).

Petitioner Burgos-Valencia submits that the Supreme Court, the Ninth Circuit, and the United States District Court for the Eastern District of California have issued opinions in three cases that bear on the analysis of Burgos-Valencia’s motion for a reduction in sentence. First, the Supreme Court in **Concepcion v. United States**, __ U.S. __, 142 S. Ct. 2389, 2396 (2022), concluded that in deciding a motion for a reduction in sentence pursuant to 18 U.S.C. § 3582(c)(1)(B), “a district court adjudicating a motion under the First Step Act may consider other intervening changes of law (such as changes to the Sentencing Guidelines) or changes of fact (such as behavior in prison) in adjudicating a First Step Act motion.” **Concepcion**, 142 S. Ct. 2389 at 2396. More broadly, the Concepcion court recognized, “It is only when Congress or the Constitution limits the scope of information that a district Court may consider in deciding whether, and to what extent, to modify a sentence, that a district court’s discretion to consider information is restrained.” *Id.*

In part relying on Concepcion, the Ninth Circuit in turn held that “[i]n the absence of an applicable policy statement from the Sentencing Commission, the determination of what constitutes extraordinary and compelling reason for sentence reduction lies squarely within the district court’s discretion.” **United States v. Chen**, __ F. 4th __, No. 20-50333, 2022 WL 4231313, at *3 (9th Cir. Sept. 14, 2022). Chen also noted that in **United States v. Aruda**, 993 F. 3d 797, 801-02 (9th Cir. 2021), the Circuit “determined that the Sentencing Commission’s current policy statement,

which is applicable to motions filed by the BOP Director, does not also apply to defendant filed motions for compassionate release, and thus, there is no applicable policy statement binding the district court's consideration of extraordinary and compelling reasons" in prisoner-filed cases. See **Chen**, 2022 WL 4231313, *3.

Applying these recent precedents among others, this Court in **United States v. Favela**, 1:94-cr-05044-DAD, Docket entry no. 649 (ED CA filed Sept. 23, 2022), granted compassionate release to reduce a life sentence for a first-time drug offender, someone with more serious and lengthier sentence than Petitioner Burgos-Valencia's, to time served.

Petitioner Burgos-Valencia respectfully submits that in **United States v. Price**, 496 F. Supp. 3d 83 (D.D.C. 2020) the Court held that, where Congress has not made a reduction in mandatory-sentencing minimums retroactive, courts may determine that this constitutes an "extraordinary and compelling reason" to grant compassionate release to affected defendants, even in the absence of serious health issues.

Congress has now recognized that the sentencing scheme in place in 2008 was, in this Court's words, "draconian," such that today a defendant similarly-situated to Mr. Price would face only a 15-year mandatory minimum. (See Supp. Mot. at 1-2 (explaining why due to amendments to the drug sentencing laws, the 1988 conviction would no longer count and the mandatory minimum sentence for one prior drug conviction is now 15 years).) But those changes to the law have not been made retroactive. Nonetheless, this situation, as a number of courts have

recognized, can present an extraordinary and compelling reason to reduce a defendant's sentence, even in the absence of serious health issues. See, e.g. , **United States v. Arey** , 461 F.Supp.3d 343, 350 (W.D. Va. 2020) ("The fact that if [the defendant] were sentenced today for the same conduct he would likely receive a dramatically lower sentence than the one he is currently serving constituted an 'extraordinary and compelling' reason justifying potential sentence reduction under § 3582(c)(1)(A)."); **United States v. Day** , No. 1:05-cr-460, 474 F.Supp.3d 790, 806–07, (E.D. Va. July 23, 2020) (finding extraordinary and compelling reasons where "were Defendant sentenced today, his sentence with respect to Count 1 would be dramatically different. Instead of a mandatory Life sentence (predicated on two qualifying § 851 offenses), Defendant would today face a mandatory minimum sentence of 15 years (predicated on a single qualifying § 851 offense), with a substantially lower than Life Guidelines sentence."); see also **United States v. Quinn** , 467 F.Supp.3d at 829 ("enormous sentencing disparity created by subsequent changes to federal sentencing law ... constitutes an 'extraordinary and compelling reason' for ... compassionate release"); **Bellamy v. United States** , No. 2:03-cr-197, 474 F.Supp.3d 777, 785–86, (E.D. Va. July 22, 2020) (considering "the disparity between individuals sentenced before and after the passage of the FIRST STEP Act"); **United States v. Urkevich** , No. 8:03-cr-37, 2019 WL 6037391, at *8 (D. Neb. Nov. 14, 2019) ("A reduction ... is warranted by extraordinary and compelling

reasons, specifically the injustice of facing a term of incarceration forty years longer than Congress now deems warranted for the crimes committed."); **United States v. Maumau**, No. 2:08-cr-0758, 2020 WL 806121, at *7 (D. Utah Feb. 18, 2020) ("[T]he changes in how § 924(c) sentences are calculated is a compelling and extraordinary reason to provide relief on the facts present here.").

II. WHETHER THE DISPARITY IN COMPARISON TO OTHER CASES VIOLATES PETITIONER BURGOS-VALENCIA'S SUBSTANTIAL RIGHTS?

Petitioner submits that compassionate release granted to heinous and grand scale crimes more serious and lengthier sentence than Petitioner Burgos-Valencia's, to time served.

Inter alia, in **United States v. Luis Cano**, 1:95-cr-00481-CMA (S. D. Fla., 12-17-2020), the Petitioner was sentenced to 13 life sentences and, in addition, 1260 years (Compassionate Release Granted).

Moreover, **United States v. Douglas**, Crim. Action No. 10-171-4 (JDB), at *28 (D.D.C. Jan. 20, 2021), the Court held that, Federal courts have granted relief to defendants with lengthy portions of their sentences remaining unserved, including in cases like Douglas's where a consecutive federal sentence has begun more recently following a more substantial state sentence. For example, in **United States v.**

Redwine, the U.S. District Court for the Eastern District of Virginia released a man convicted of several armed bank robberies in 1988 "roughly eight months" into his twenty-five year federal consecutive sentence after he was granted parole in Virginia where he served approximately thirty-three years in state prison. See Crim. No. 3:87cr70, 2020 WL 6829848, at *3 (E.D. Va. Nov. 20, 2020). Other courts have reduced even life without parole sentences doled out for heinous and repeated criminal conduct, including multiple killings, where extraordinary and compelling circumstances have been found to justify release. (emphasis added). See, e.g., **United States v. Tidwell**, Crim. Action No. 94-353, — F. Supp. 3d —, 2020 WL 4504448, at *1 (E.D. Pa. Aug. 5, 2020) (reducing life without parole to time served after twenty-seven years for man convicted of two counts of murder among other conspiracy, drug, and weapons offenses); Rodriguez, 2020 WL 5810161, at *1 (reducing life without parole to thirty years for man convicted of torturing and executing government witness among other conspiracy and racketeering offenses); see also **United States v. Wildcat**, Case No. 4:99-cr-00002-BLW, 2020 WL 7872509, at *1 (D. Idaho Dec. 31, 2020) (reducing thirty-year sentence to time served after approximately 262 months for man convicted of two counts of second-degree murder).

Petitioner Burgos-Valencia respectfully submits that after his 18 years of incarceration, and his medical conditions, he is no longer the same immature and

irresponsible person whom this honorable Court incarcerated several years ago. See **United States v. Millan**, 91-CR-685 (LAP), 2020 WL 1674058, at *9 (S.D.N.Y. Apr. 6, 2020). If released from prison, Petitioner Burgos-Valencia has immediate employment.

Petitioner Burgos-Valencia has a reentry plan that will allow him to abide by all terms of supervised release. Petitioner Burgos-Valencia will attest that should this Honorable Court of Appeal grant Burgos-Valencia's Motion for Compassionate Release, Burgos-Valencia would be employed immediately upon release. Petitioner Burgos-Valencia has strong family ties to support his compassionate release.

Finally, any concerns this Court may still have regarding Burgos-Valencia's release, possible recidivism upon his release can be addressed by adding additional strict conditions to his sentence of supervised release, or in the alternative deport the Petitioner.

SECTION 3553 FACTORS

Petitioner Burgos-Valencia submits that the honorable Court needs to protect the public from further crimes of the defendant. § 3553(a)(2)(C). Petitioner Burgos-Valencia has served several years of his sentence and further incarceration is not the only form of punishment and means to protect the public, and deter Petitioner from further activity, if any. However, incarceration is not the only "kind[] of sentence

available,” and there are other ways to achieve the same public protection. § 3553(a)(3). Further, Petitioner Burgos-Valencia will most likely be deported upon release, which is itself a punishment. **Padilla v. Kentucky**, 559 U.S. 356, 364 (“{D]eportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants....” (footnote omitted)). Any lingering public safety concerns are mooted by the fact that Petitioner Burgos-Valencia’s impending deportation.

As the Government would agree, the Petitioner Burgos-Valencia will be deported. Petitioner Burgos-Valencia did make his request to BOP after 30 days, Petitioner filed his Motion for Compassionate Release, and his medical records are located at the BOP Medical Department.

CONCLUSION

For the abovenamed reasons, Petitioner Burgos-Valencia prays this honorable High Court Grant, Reverse, or Remand Petitioner Burgos-Valencia's Appeal to the Court of Appeals for the Ninth Circuit with instructions to Grant Petitioner's Request for a reduction in Sentence and or be deported to Mexico immediately. See, **United States v. Sergio Santamaria**, Case No. 4:04-cr-00199-RP-RAW (S. D. Iowa, 2-01-2021); and **United States v. Ledezma-Rodriguez**, --- F.Supp.3d ---- (2020) (United States District Court, S.D. Iowa, Case No. 3:00-CR-00071, Signed 07/14/2020).

The petition for a writ of certiorari should be granted.

Date: July 4, 2023,

Respectfully submitted, LEONARDO BURGOS-VALENCIA

