

No. _____

In the Supreme Court of the United States

WALTER RAUL MAGUINA, *PETITIONER*,

v.

UNITED STATES OF AMERICA, *RESPONDENT*

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

MAUREEN SCOTT FRANCO
Federal Public Defender

ERIK ANTHONY HANSHEW
Assistant Federal Public Defender
Western District of Texas
727 E. César E. Chávez Blvd., B-207
San Antonio, Texas 78206-1205
(210) 472-6700
(210) 472-4454 (Fax)

Counsel of Record for Petitioner

QUESTION PRESENTED FOR REVIEW

Whether a district court's failure to address the prejudicial nature of extrinsic evidence requires remand.

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Petitioner Walter Raul Maguina asks that a writ of certiorari issue to review the opinion and judgment entered by the United States Court of Appeals for the Fifth Circuit on May 19, 2023.

PARTIES TO THE PROCEEDING

The caption of this case names all parties to the proceeding in the court whose judgment is sought to be reviewed.

RELATED PROCEEDINGS

All proceedings directly related to the case are as follows:

- *United States v. Maguina*, No. EP-19-CR-2607-KC (W.D. Tex. Nov. 18, 2021) (judgment)

- *United States v. Maguina*, No. 21-51163 (5th Cir. May 19, 2023) (unpublished opinion)

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DECISION BELOW

A copy of the unpublished opinion of the court of appeals, *United States v. Maguina*, No. 21-51163 (5th Cir. Mar. 19, 2023) (per curiam), is attached to this petition as Appendix A.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The opinion and judgment of the United States Court of Appeals for the Fifth Circuit was entered on May 19, 2023. This petition is filed within 90 days after entry of judgment or order sought to be reviewed. *See* Sup. Ct. R. 13.1, 13.3. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

FEDERAL STATUTE INVOLVED

The text of Federal Rule of Evidence 404 is reproduced in Appendix C.

STATEMENT

Petitioner Walter Raul Maguina was charged with two counts: transporting aliens and conspiracy to do the same in violation of 8 U.S.C. § 1324. App. B.

Maguina was found guilty as charged by a jury.

Before and during trial, Maguina objected to the government introducing extensive evidence of a prior conviction for transporting of aliens pursuant to FED. R. EVID. 404(b). Specifically,

Maguina argued that said evidence was unduly prejudicial. Despite these objections, the district court never addressed how the probative value outweighed the extreme prejudice.

Maguina timely appealed. On appeal, Maguina argued that the district court erred by failing to address the prejudicial component of the two-part inquiry governing admission of extrinsic evidence. The court of appeals affirmed his sentence. App. A.

REASONS FOR GRANTING THE WRIT

The Court Should Grant Certiorari to Consider Whether a District Court's Failure to Address the Prejudicial Nature of Extrinsic Evidence Requires Remand.

Maguina made numerous objections to the government's introduction of his prior alien smuggling conviction arguing that any probative value was substantially outweighed by its undue prejudice. Despite these objections, the district court never uttered the word "prejudice," let alone explained how it was balancing probative value against undue prejudice, when overruling Maguina's objections. Instead, the district court summarily concluded that said evidence was probative.

Under Rule 404(b)(1), "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." But bad act evidence "may be admissible for

another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” FED. R. EVID. 404(b)(2). Courts apply a two-step test for admissibility which “requires a determination that (1) ‘the extrinsic offense evidence is relevant to an issue other than the defendant’s character’ and (2) the evidence ‘possess[es] probative value that is not substantially outweighed by its undue prejudice ... and meet[s] the other requirements of [Federal Rule of Evidence] 403.’” *United States v. Juarez*, 866 F.3d 622, 627 (5th Cir. 2017) (alterations in original) (quoting *United States v. Beechum*, 582 F.2d 898, 911 (5th Cir. 1978) (en banc)).

Here, the district court failed to provide any explanation as to whether it considered, let alone balanced, the requisite prejudice prong. Such an omission requires remand.

The Court should grant certiorari.

CONCLUSION

FOR THESE REASONS, Maguina asks that this Honorable Court grant a writ of certiorari.

Respectfully submitted.

MAUREEN SCOTT FRANCO
Federal Public Defender
Western District of Texas
727 E. César E. Chávez Blvd., B-207
San Antonio, Texas 78206
Tel.: (210) 472-6700
Fax: (210) 472-4454

s/ Erik Anthony Hanshaw
ERIK ANTHONY HANSHEW
Assistant Federal Public Defender

Counsel of Record for Petitioner

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