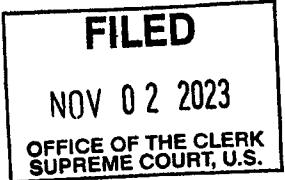


NO 23-6057

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Juan J. Zuniga-Bruno — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

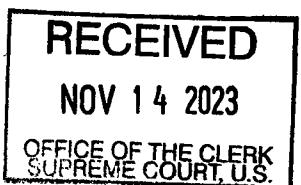
PETITION FOR WRIT OF CERTIORARI

Juan J. Zuniga-Bruno
(Your Name)

USP Terre Haute,
(Address)

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

(Phone Number)



QUESTION(S) PRESENTED

First Question

1. Whether the Court of Appeals of the First Circuit's affirming opinion in Zuniga-Bruno's case is conflicting with First Circuit precedents United States V. Lara 970 F.3d 68 74 (1st Cir. 2020), United States V. Garcia Ortiz 657 F.3d 25 (1st Cir. 2015), and Supreme Court precedent Bravo Fernandez V. United States 196 LED2D 242 U.S. (2016)?

The answer to this question is YES.

Because the vacator of Zuniga-Bruno's predicate felonies clearly barred issue preclusion on the auxiliary offenses, thus affirming the District Court's decision to NOT re-sentence Zuniga-Bruno on the non vacated Count's of Conviction goes against Prior Supreme Court and First Circuit Court's precedents cited above.

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:

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- 1) 18 U.S.C.S. 1951
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- 3) 18 U.S.C.S. 1513
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- 5) 18 U.S.C.S. 924(c)(j)
- 6) 18 U.S.C.S. 924(c)(3)

OTHER

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

[X] 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 _____ 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.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 14, 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 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 18 U.S.C.S..924(c) 3
2. 18 U.S.C.S. 1951
3. 18 U.S.C.S. 9245
4. 18 U.S.C.S. 1513
5. 18 U.S.C.S. 1203
6. Fifth Amendment, US Constitution
7. Sixth Amendment, US Constitution

STATEMENT OF THE CASE

Procedural Background

The Defendant Juan Zuniga-Bruno was subject of a Five-Count indictment. Count 1 charged the Defendant with "conspiracy to interfere with interstate commerce by robbery, in violation to the 18 U.S.C.S. 1951". Count (2) charge him with violation to the 18 U.S.C.S. 924(j) with the use of a firearm in relation to a crime of violence. Count (3) asserted that the Defendant in the Course of this offense had engaged in carjacking in violation to the 18 U.S.C.S. 2119. Count (4) charge the Defendant with conspiring to take a hostage in violation to the 18 U.S.C.S. 1203. Count (5) charge the Defendant with retaliation in violation to the 18 U.S.C.S. 1513(a)(1)(B).

On Summer of 2002 the trial start and after hearing all the testimony the jury found him guilty in all counts. The Defendant appealed. On May 2005 the First Circuit vacate and remanded the sentence for Conspiracy to take a hostage and remanded for resentencing. On 2019 Zuniga-Bruno file a motion under 28 U.S.C.S. 2255 invoking Johnson V. United States 576 U.S. 591, 135 S.Ct. 2551 192 L.Ed. 2d 569 (2015)(Johnson II), and argued that his conviction under 18 U.S.C.S. 924(c) and (j) should be vacated. The District Court denied the motion and Zuniga-Bruno appealed to the First Circuit which granted certificate of appealability as to whether, following the United States Supreme Court's decision in (Johnson II) and in United States V. Davis 139 S.Ct. 2319 204 L.Ed. 2d 757 (2019), Conspiracy to Commit Hobbs Act Robbery 18 U.S.C.S. 1951(a) the offense undergirding Zuniga-Bruno's conviction under 18 U.S.C.S. 924(c) and (j) constitutes a crime of violence under section 924(c)(3)(A).

Appellate Court vacated and remanded so that the District Court consider the matter anew in light of First Circuit precedent United States v. Lara 970 F.3d 68 74 (1st Cir. 2020).

On remand the District Court vacated the life sentence on Zuniga-Bruno's invalidate section 924(j) conviction, leaving the rest of his sentencing package undisturbed. See (Dockett #619, 620).

Zuniga-Bruno appeals the court's judgment on the ground that it should have granted him further relief by either reversing his entire judgment of conviction, vacating all five convictions and ordering a new trial on the four non-vacated counts, or to order a plenary resentencing on the non-vacated counts.

On August 17, 2023 the appeals court affirmed the District Court judgment.

Davis 139 S.Ct. 2319 (2019), see Appendix # A

continued on aux. pg. 2

aux. pg. 2:

The District Court in the first heard correctly vacated Zuniga- Bruno's 924(c) and (j) convictions, but in the other heard incorrectly leave the rest of Zuniga-Bruno's sentencing package undisturbed.

Zuniga-Bruno contends that on appeal he argued that his case should have been vacated and remanded for re-sentence, but that the first circuit erroneously affirm the District Court's judgment. Zuniga-Bruno assert that the appeals court by affirming the incorrect judgment of the District Court, it missed mark and overlooked the contrariness of the District Court's judgment to the appellate courts' precedent United States V. Garcia Ortiz 657 F.3d 25 (1st Cir. 2015), Through its affirmance of the District Court's judgment the Court of Appeals of the First Circuit has created a tangible conflict between Zuniga-Bruno's case and the Garcia Ortiz case and the Lara Case and the Bravo Fernandez Supreme Court case (2016).

REASONS FOR GRANTING THE PETITION

ARGUMENT

Whether the Court of Appeals of the First Circuit affirming opinion in Zuniga-Bruno's case is conflicting with First Circuit precedent United States V. Lara 970 F.3d 68 74 (1st Cir. 2020), and United States V. Garcia Ortiz, 657 F.3d 25 (1st Cir. 2015)?

The answer is YES in these circumstances.

Here, there is no doubt that the First Circuit's affirmance of the district court's judgment directly creates and issue of a first impression, on which the first circuit court affirmation of Zuniga-Bruno's appeal ignore a prior court's precedent and mandate which correctly assert the proper procedure to be apply in cases were the remaining conviction stands after its predicate offense has been invalidate through a new supreme court constitutional established rule and to further and to better explain these matters, Zuniga-Bruno asserts the following;

First, Zuniga-Bruno was convicted for conspiracy to commit Hobbs Act robbery as his predicate offense, then he was charged for possession of a firearm in relation to a crime of violence in violation to the 18 U.S.C.S. 924(c) and (j). Then he was charged with violation to the 18 U.S.C.S. 1203(a)(b)(2). Undoubtedly these offenses all stemmed from the first and original transaction, Conspiracy to Commit Hobbs Act Robbery, and were clearly interdependant one from the other since they were charged under aiding and abetting form, causing the district court to calculate Zuniga-Bruno's sentence through a grouping sentencing guideline calculation. Once the Supreme Court decision in Davis 139 S.Ct. 2319 (2019) came down, Zuniga-Bruno's 924(c) and (j) convictions became invalid and were vacated and the case remanded for consideration anew, but the first circuit specifically and correctly based its remanding opinion for the district court to follow the court's mandate on a prior first circuit precedent, United States V. Lara 970 F.3d 68 74 (1st Cir. 2020) as a guidance for the First District court to adopt the first circuit prior decision in "Lara Case" which vacated and remanded for re-sentence after Lara 924(c) conviction were vacated in light of Davis 139 S.Ct. 2319 (2019).

Zuniga-Bruno contends that the heart of the conflict lays on the two different sets of standards applied by the court of appeals in their reasoning process that led the court to make two different sets of choices in related issues contradicting one ruling from the other, creating a controversy that puts into question the court's reasoning for making such a ruling.

Here there are not one, but three cases precedent that should have been followed by the First Circuit court in Zuniga-Bruno's case. See Lara 970 F.3d 68 74 (1st Cir. 2020) and United States V. Garcia Ortiz 657 F.3d 25 (1st Cir. 2011) and Bravo Fernandez Supp. (2016).

continued on "reasoning pg. 2"

reasoning pg. 2:

In United States v. Lara 970 F.3d 68 74 (1st Cir. 2020) the court of appeals for the First Circuit vacated defendant's 924(c) convictions in light of supreme court case Davis, 139 S.Ct. 2319 (2019) and remanded the case reasoning that these defendants should be re-sentenced after the vacatur of defendant's predicate offense.

Here Zuniga-Bruno possessed the same exactly circumstance as in Lara case so identical situated that the court of appeals urged the District Court to treat Zuniga-Bruno just as the Lara case, the issue becomes problematic when the District Court ignored these First Circuit precedents and entered a judgment but leave the rest of Zuniga-Bruno's sentencing package undisturbed. See Docket 619, 620 in Civil Case 2021 U.S. App LEXIS 35282, Zuniga-Bruno v. United States (2021).

Now shifting our focus to the First Circuit holdings on its precedent case of United States v. Garcia Ortiz 657 F.3d 25 (1st Cir. 2011).

In Garcia Ortiz, the first circuit held after acknowledging that Garcia Ortiz fully assented to sharing the risks, responsibility on the criminal venture and after considering the interdependency of Garcia's conviction, the court anulled Garcia Ortiz's 924(j) conviction and remanded for re-sentence on the other (non vacated counts).

Here, like Garcia Ortiz, Zuniga-Bruno's conviction and sentence under 924(j) count was vacated. Id.

Here, Like Garcia Ortiz, Zuniga-Bruno fully assented to sharing the risks, responsibilities and rewards of the venture with his confederates and just like in Garcia Ortiz, Zuniga-Bruno successfully made a challenged one of several interdependent sentence in the lower court in light of these First Circuit precedents, there for the proper course, the First Circuit court should has follow was in dee to remand Zuniga-Bruno's case in order to resentence him on the other non-vacated count after the vacatur of his predicate offense and 924(c) and (j) conviction in light of Davis 139 S.Ct. 2319 (2019). Just like it has reasoned to do in Lara case and Garcia Ortiz case.

Juan Zuniga-Bruno contends that the court of appeals for the first circuit it has erroneously preclude him from receiving the relief he has coming on the remaining non vacated counts through its affirmance.

Zuniga-Bruno lastly asserts that these first circuit reasoning goes against supreme court case principles which was set as a standard for a procedure to follow when a predicate offense it has been aquittal and in how to treat auxiliar offenses. See Bravo Fernandez V. United States 196 Led2D 242 US (2016). On which issue preclusion barred acceptance of the guilty verdicts on the auxiliar offenses because the same jury had aquitted her predicate felonies;

continued on "reasoning pg. 3"

reasoning pg. 3:

Here to there is no doubt that the vacatur of Zuniga-Bruno 924(c) and (j) will clearly barred the prior sentence to stand on the auxiliar offenses because the same court had vacate Zuniga-Bruno's predicate felonies, the same weight and amount of consideration must be aply as it was on Bravo Fernandez case.

Conclusion

That the first circuit court's affirmance of Zuniga-Bruno case be overturned and the case remanded for re-sentence in accord with First Circuit Precedents United States V. Lara 970 F.3d 68 74 (1st Cir. 2020), United States v. Garcia Ortiz 657 F.3d 25 (1st Cir. 2011), and Supreme Court precedent Bravo Fernandez V. United States 196 LeD2D 242 US (2016).

It is so pray.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Juan J. Zuriga-Burke

Date: October 30, 2023