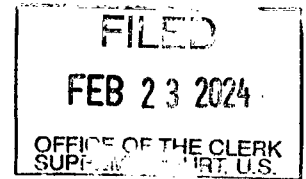


No. 23-6827

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Victor Leon-Moya — PETITIONER
(Your Name)

vs.

The United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Victor Leon-Moya #97903-509

(Your Name)

USP Atlanta, P.O. Box 150160

(Address)

Atlanta, GA 30315

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether a defendant's suggestion for a codefendant to pay a supplier what the codefendant owed said supplier constitutes "directing" per USSG § 3B1.1.
- 2) Whether the enhancement under USSG § 2D1.1(b)(5) and §2D1.1(b)(16)(C) applies when the only evidence presented to support importation of any controlled substances is that the defendnat made a single trip to his home country and that an admitted supplier directs coconspirators in the United States.
- 3) Whether Petitioner's sentence is substantively unreasonable in light of the district court's reliance on the above enhancements in beginning it's calculations.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

- | | |
|--|-----------------------------------|
| 1) Juan Carrillo - Codefendant | 7) Susan Elaine McGahey - Codef. |
| 2) Nectali Catalan - Codefendant | 8) Douglas Edward Storey - Codef. |
| 3) Joshua Keith Farnam - Codefendant | 9) Jorge Villegas - Codef. |
| 4) Johnny Lee Howard - Codefendant | 10) Joel Keith Wood - Codef. |
| 4) Victor Leon-Moya - Petitioner | 11) Ryan Keith Wood - Codef. |
| 5) Javier Longoria-Cardoza - Codefendant | |
| 6) Ivan Guadalupe Lujan - Codefendant | |

RELATED CASES

Petitioner apologizes to the Court, but he does not have enough information to provide a detailed response here, he only knows that each related case has the same case number, save for the last digit in the case number for each codefendant - but he does not know which codefendant is assigned which number - nor does he have any reasonable means to discover such.

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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 _____; 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 10/11/2023.

☒ 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

The 5th Amendment to the United States Constitution's Due Process Clause

The Sixth Amendment to the United States Constitution's Confrontation Clause

18 USC § 1956(a)(1)(A)(i)

18 USC § 2

18 USC § 3553(a)

21 USC § 841(a)(1)

21 USC § 841(b)(1)(B)(ii)(II)

21 USC § 846

STATEMENT OF THE CASE

I. Indictment

On April 20, 2022, Mr Leon-Moya was named in four counts of a fifteen count indictment charging him with one count of conspiracy to distribute more than 500 grams of a mixture or substance containing methamphetamine in violation of 21 USC § 841(a)(1), 841(b)(1)(A)(viii), and 846, two counts of aiding and abetting money laundering in violation of 18 USC § 1956(a)(1)(A)(i) and one count of conspiracy to distribute a mixture or substance containing cocaine in violation of 21 USC §§ 841(a)(1), 841(b)(1)(B)(ii)(II) and 846. (R.Doc 1). On April 29, 2022, Mr. Leon-Moya was arraigned before the Honorable Mark E. Ford, U.S. Magistrate Judge, with CJA Appointed Counsel John E. Bauries representing him, he entered a plea of not guilty to all counts, and an order of detention was entered. (R.Docs 46, 49, & 50).

On June 17, 2022, Mr. Leon-Moya was named in corresponding counts of an eighteen count superseding indictment. On April 29, 2022, he appeared with his CJA appointed counsel and entered a plea of not guilty on all counts, and the previous detention order remained in effect. (R.Doc. 130)

II. Change of Plea Hearing

Mr. Leon-Moya appeared with counsel on September 14, 2022, before the Honorable P.K. Holmes, US District Judge, and pleaded guilty to only Counts 13 (aiding and abetting money laundering) and Count 14 (conspiracy to distribute more than 500 grams of cocaine) pursuant to a written plea agreement filed on the same date. (R.Docs 182 and 183).

No mention of an international component occurred at this colloquy, however the United States presented that the drugs were ordered from a "supplier in Mexico" and that Mr. Leon-Moya directed codefendant Nectali Catalan to conduct a financial transaction to Mexico.

The presiding judge then accepted his guilty plea (P.TR. p 14).

III. Presentence Investigation Report

The presentence investigation report (PSR) was filed on December 22, 2022 (R.Doc 262). According to the PSR, the DEA determined that Mr. Leon-Moya operated a drug trafficking organization (DTO) that was distributing large quantities of methamphetamine and cocaine in the Clarksville, AK

area (PSR ¶30). The PSR determined that the DTO's source of supply was located in Guadalajara, Mexico, with the supplier being identified as one "Vibora" - PSR ¶ 31. The PSR determined that Leon-Moya oversaw codefendant Nectali Catalan, who in turn oversaw at least two distributors in the Clarksville area - PSR ¶32; based on a single recorded phone conversation between Mr. Leon-Moya and Catalan where Leon-Moya suggested to Catalan that he pay Vibora what Mr. Catalan owed for Vibora's role in supplying Catalan. (R.Doc333, at 13-19).

Mr. Catalan informed government agents that he had many more suppliers than Vibora, that have no connection to Mr. Leon-Moya - PSR ¶ 139.

The district court overruled Leon-Moya's objections and sentenced him based on a guideline calculation that included all of Catalan's calculated drug weight included in Leon-Moya's adduced drug weight calculation. TR. p 39.

An appeal ensued, and the Eighth Circuit summarily affirmed Leon-Moya's conviction and sentence. The only document Leon-Moya possesses concerning any decision the appeal court made is included as Appendix A.

REASONS FOR GRANTING THE PETITION

This Court should grant the petition because the use of a coconspirator's other drug conspiracies in sentencing Leon-Moya should be seen as violating Due Process under the 5th Amendment, and the inability to confront those on the additional conspiracy that generated the calculated drug weight violates the 6th Amendment's Confrontation Clause.

These principles are bed-rock protections that the Founding Fathers saw fit to provide criminal defendants based upon abuses perpetrated against the American Colonists in order to justify draconian penalties where lesser penalties were warranted.

This Court should find that the instant case is not an outlier in its application of irrelevant facts presented in a PSR that serve to enhance a defendant's sentence unjustly - but rather that this practice has become the norm. This should concern this Court as the widespread nature of these acts has been sanctioned by previous incarnations of this Court through the refusal to address the reasonableness and constitutionality of the Sentencing Guidelines. As this Court has previously (in other incarnations) refused to address any issue concerning the Guidelines (save for whether they are to be treated as mandatory or advisory), almost every federal defendant now has a number of enhancements that do not withstand rational scrutiny.

Supposedly, the standard is "preponderance of the evidence", but in practice, the lack of Supreme Court review has led to the sanctioned lowering of this standard to "some evidence" instead.

These issues, therefore, affect a large number of federal defendants, and should be addressed by this Court on that basis.

For these reasons, I, Victor Leon-Moya, request for this Court to GRANT Certiorari.

I. The District Court Committed Clear Error by Applying Enhancement Under USSG § 2D1.1(b)(5) and § 2D1.1(b)(16)(C).

USSG § 2D1.1(b)(5) states that a 2-point enhancement should apply if the offense involved the importation of drugs that the defendant knew was

imported unlawfully, and does not receive an adjustment for mitigating role. USSG § 2D1.1(b)(16)(C) states that if the defendant receives an aggravating role and the defendant was directly involved in the importation of the drug, to increase by 2 points... totaling a four point increase. According to the Guidelines, the burden to prove such is on the Government, on a preponderance of the evidence standard. United States v Rivera-Mendoza, 632 F.3d 730, 733 (8th Cir 2012).

In Rivera-Mendoza, the defendant admitted to knowing that the drugs came from Mexico - whereas here, such did not occur, even at the Rule 11 hearing.

Instead, the PSR and the district court below, assumed that because Vibora lives in Mexico, that the drugs necessarily came from Mexico. At sentencing, the defense pointed out that the drugs, in fact, according to codefendant proffers, came from California and Texas.

As such, the district court did not have before it enough to determine that Leon-Moya knew of international transmission of the drugs unless the actual standard used was "some evidence" - as it necessarily ignored the codefendant proffers to conclude that Leon-Moya should receive this set of enhancements. Leon-Moya contends now that this one decision violated both the Due Process Clause of the 5th Amendment for using the wrong standard, and the Confrontation Clause of the Sixth Amendment because the Government presented no evidence or testimony to refute the admissible codefendant proffers stating that the drugs were not generated in Mexico but rather in either California or Texas (depending on whether it was cocaine or methamphetamine being discussed).

This Court should, therefore Grant Certiorari on this issue.

II. The District Court Committed Clear Error By Enhancing Leon-Moya Under USSG § 3B1.1(a)

Leon-Moya was also assessed a leadership role in the overall conspiracy. He was given a 3 point enhancement for directing Catalan - even though the record reflects that Catalan was the driving force behind the conspiracy and considered himself to be Leon-Moya's boss - PSR ¶ 140 (Where it is determined that in fact, it was Catalan who ordered Leon-Moya to deliver drug proceeds to Vibora). The district court even admitted that it was not sure who was in charge - R.D. 333, at 37, then applies the instant enhancement anyway. This should clearly indicate that the enhancement was not

applied under the Preponderance of the Evidence standard, but rather on the "some evidence" standard. Accordingly, Leon-Moya's substantive and procedural rights were violated and this Court [] should Grant Certiorari.

III. The Sentence Imposed, Due to The Aforementioned Errors, Was Unreasonable.

The sentence of 280 months imprisonment was substantively unreasonable as it does not, even with the downward departure from 720 months, reflect the actual conduct that Leon-Moya engaged in. Leon-Moya was given decades worth of enhancements under the "some evidence" standard. He was prejudiced by this error in nearly every way that a defendant can be prejudiced. His sentence, even though lowered from the calculated guideline, began with the calculated guideline. Essentially for connecting two criminals, Leon-Moya was enhanced as though he was the driving force of the conspiracy - he was asked by one coconspirator to connect him with another. Afterward, the two maintained their own correspondence. This should have resulted in a minor role adjustment, as again, Catalan was directing Leon-Moya (PSR ¶ 140) - not the other way around.

These constitutional violations arise, Leon-Moya contends, from the Supreme Court's hands-off attitude toward the sentencing guidelines - and should now be addressed by the current incarnation of this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Victor Leon

Date: January 9 2024