

23-888
No. 23-_____

In the
Supreme Court of the United States

ALFREDO FELIPE RASCO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

FILED

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SUPREME COURT, U.S.

ORIGINAL

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February 8, 2024

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QUESTION PRESENTED

Whether the Eleventh Circuit's decision to deny my C.O.A. and the district court's denial of my motion to withdraw my guilty plea contravenes this Court's pronouncement in *Padilla v. Kentucky*, 519 U.S. 2010. My attorney rendered ineffective assistance of counsel and Rule 11 violation by the district court of the deportation consequences by pleading guilty.

PARTIES TO THE PROCEEDINGS

Petitioner

- Alfredo Felipe Rasco

Respondent

- United States of America

LIST OF PROCEEDINGS

2255 Proceedings

U.S. Court of Appeals for the Eleventh Circuit
No. 23-10328

Alfredo Felipe Rasco, *Petitioner-Appellant v.*
United States of America, *Respondent-Appellee.*

Date of Judgment: June 14, 2013

Date of Rehearing Denial: July 24, 2023

U.S. District Court for the Southern District
of Georgia Savannah Division

No. CV414-171, CR408-100

Alfredo Felipe Rasco, *Petitioner v.*
United States of America, *Respondent.*

Date of Judgment: January 3, 2023

U.S. Court of Appeals for the Eleventh Circuit
No. 17-11045

Alfredo Felipe Rasco, *Petitioner-Appellant v.*
United States of America, *Respondent-Appellee.*

Date of Final Opinion: July 17, 2019

Prior Proceeding

U.S. District Court for the Southern District of
Georgia Savannah Division

No. 4:08-mj-0006

United States v. Alfredo Rasco et al.

Judgment Date: September 30, 2011

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OPINIONS BELOW

The decision of the U.S. Court of Appeals for the Eleventh Circuit denying my C.O.A. was issued on June 14, 2023. (App.1a). The order denying motion for reconsideration was denied on July 24, 2023. (App.46a).



JURISDICTION

The Court of Appeals denied a timely filed petition for rehearing on July 24, 2023. (App.46a). Jurisdiction is invoked under 28 U.S.C. § 1254(1).



CONSTITUTIONAL AND JUDICIAL RULES INVOLVED

Fed. R. Crim. P. 11 – Pleas

[...]

- (b) Considering and Accepting a Guilty or Nolo Contendere Plea.
 - (1) Advising and Questioning the Defendant. Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must

inform the defendant of, and determine that the defendant understands, the following:

[. . .]

- (O) that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.
- (2) Ensuring That a Plea Is Voluntary. Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats, or promises (other than promises in a plea agreement).

[. . .]



STATEMENT OF THE CASE

On June 6, 2008, Petitioner Alfredo Rasco and his wife were charged by a grand jury in the Southern District of Georgia, Savannah Division, in an indictment alleging thirty-four counts of conspiracy (18 U.S.C. § 371), health care fraud (18 U.S.C. § 1347), and aggravated identity theft (18 U.S.C. § 1028A). The indictment contained a forfeiture count seeking forfeiture of approximately \$1.3 million dollars. Petitioner was arrested in the Southern District of Florida, where he lived with his wife and family. He was released on bond and hired counsel. Shortly thereafter

Petitioner agreed to cooperate with authorities and was debriefed on May 30, 2008 and August 26, 2008.

The indictment was superseded multiple times. The first superseding indictment added a co-defendant, Riccy Mederos, who performed the billing function for multiple fraudulent clinics in Florida was added. It also increased the number of health care fraud counts and added a charge of making false statement under 18 U.S.C. § 1001 against Mrs. Rasco. Petitioner and his wife entered not guilty pleas to the superseding indictment and pretrial motions were filed. One of the pretrial motions contended to the Government had violated its proffer agreement in order to obtain the superseding indictments. New counsel appeared on Petitioner's behalf because original defense counsel became a witness in the case. The Government filed a response in opposition to the motions to dismiss and moved to disqualify Petitioner's new counsel based on counsel's previous employment as an Assistant United States Attorney. Several hearings were held on the possible conflict matter and the *Kastigar* issue.

The next superseding indictment removed Mederos. Mederos had a proffer session with the Government in May of 2009 (a year after Petitioner proffered), entered into a negotiated plea agreement and guilty plea. Mederos was sentenced to 48 months imprisonment and \$4.6 million in restitution.

The final superseding indictment added Iris Oswald, who was Petitioner's partner at United Therapy, through which the fraudulent billings occurred. Count 1 of the third superseding indictment charged the three defendants with a conspiracy to commit health care fraud in violation of 18 U.S.C. § 2 and 1349. Counts 2 through 54 charged Mr. Rasco

and Iris Oswald with submitting specific false claims to Medicare in violation of 18 U.S.C. § 1347 and 2. Count 55 charged all three defendants with submitting a false claim to Medicare, thereby committing health-care fraud in violation of 18 U.S.C. § 1347 and 2. Counts 56 and 58 charged Petitioner and Iris Oswald with aggravated identity theft in violation of 18 U.S.C. § 1028A. Count 59 charged all three defendants with aggravated identity theft, in violation of 18 U.S.C. § 1028A. Count 60 charged Mrs. Rasco with making false statements to a F.B.I. agent, in violation of 18 U.S.C. § 1001.

Ultimately, the district court allowed the third Superseding Indictment to stand, and the case was set for jury trial on August 30, 2010. The trial began on that day, but after the jury was selected, all three remaining defendants entered plea agreements with the Government and entered guilty pleas. Mrs. Rasco pled guilty to a misdemeanor violation of 42 U.S.C. § 1230a-7b(e) and was sentenced to three years of probation. Iris Oswald pled guilty to an information charging her with violating 42 U.S.C. § 1320a-7(b)(2): offering and paying remuneration in order to induce someone to use a service which may be paid for by a federal health care program. On January 19, 2011, Mrs. Oswald, who admitted that she co-owned United Therapy, handled the marketing, and split the profits from it with Petitioner, was sentenced to 13 months imprisonment and a \$20,000 fine.

Petitioner pled guilty to Count 1, conspiracy to commit health care fraud, and Count 56m aggravated identity theft. A year after the guilty plea, the Government moved the district court to set a sentencing date. On September 19, 2011, Petitioner's attorney

moved to withdraw and to allow Petitioner to proceed pro se at sentencing. The magistrate judge held a Faretta hearing on September 27, 2011, and granted the motion, but directed counsel to appear as standby counsel at sentencing. Petitioner requested a postponement of sentencing in order to move to withdraw his guilty plea, which he said he had been trying to get his counsel to do for months. He told the court the reason he sought to discharge counsel was so he could file a motion to withdraw his guilty plea. The district court denied the motion to continue so Petitioner could file a motion to withdraw and stated clearly that it "would not entertain" a motion to withdraw the plea, saying that the Rule 11 hearing established that Petitioner's plea was given "freely and voluntarily." As a result, Petitioner withdrew his request to himself at sentencing.

In contrast with the sentences of co-defendants Mederos and Oswald, who received 48 and 13 months respectively, the district court sentenced Mr. Rasco to 109 months of imprisonment as to Counts 1- and 24-months imprisonment to be served consecutively on Count 56, for a total term of 133 months imprisonment. (App.1a). The district court also imposed restitution in the amount of \$3.9 million dollars. (App.37a).

Petitioner filed an appeal to the Eleventh Circuit raising the following issues:

- I. Mr. Rasco's Pleas to Counts 1 and Count 56 Was Involuntary Because He Was Not Informed Regarding the Restitution on Count 1 or the Mandatory Minimum Sentence the Court Was Required to Impose on Count 5.

- II. The District Court Erred in Failing to Appoint Counsel for Mr. Rasco.
- III. The District Court Erred In Applying A Sophisticated Means Enhancement.
- IV. The District Court Erred In Applying A Four Point Role Enhancement.
- V.. Mr. Rasco's Sentence of One Hundred Thirty-Three Months Is Unreasonable.

The Eleventh Circuit denied all of his claims in an unpublished opinion on November 19, 2013. A petition for Panel rehearing was filed based on the fact that the Panel had misapprehended a number of facts that were critical to its determination that the conviction and sentence should be affirmed. The Panel denied hearing on December 30, 2013, and this Petition followed.



REASONS FOR GRANTING THE PETITION

Under Supreme Court Rule 10(a) the court should exercise its supervisory authority over the Eleventh Circuit, which has entered an opinion that extends the burden of plain error review upon a defendant who was prevented by the district court to withdraw my guilty plea. My attorney clearly provided ineffective assistance of counsel by not advising me of the consequences of deportation by accepting a guilty plea. A violation supported by *Padilla v. Kentucky*. Also, a clear violation of Rule 11 by the district court of not advising me of the consequences of the deportation by pleading guilty.

The Eleventh Circuit's decision to apply plain error and the Eleventh Circuit's decision to deny my C.O.A. when the facts were clear that my attorney rendered ineffective assistance of counsel which contravenes this court's pronouncement in *Padilla v. Kentucky* and also the clear violation of Rule 11 by the district court.



CONCLUSION

In light of the foregoing argument and the fact that I submitted two proffers to the government which detailed every detail of the conspiracy of the Medicare fraud, I pray and respectfully request this court to grant the writ, vacate my conviction and dismiss all charges and indictments. And to please order the Government to return all forfeited money and property. Thank you, God bless you.

Respectfully submitted,

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February 8, 2024