

24-6554

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JAN 01 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Adriano Cortez — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Adriano Cortez (Pro'se)
(Your Name)

P.O. Box 700
(Address)

Yankton, SD 57078
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- I. Whether 18 U.S.C. § 3290 Violates the Fifth Amendment (Due Process), if no evidence was presented to the Jury at trial to determine the purpose and intent of the Defendant's absence.
- II. If the answer to the first question is "yes", the following is presented: Whether, in a case in which the accused was not charged by indictment or information within the Statute of limitations period, can the Government invoke 18 U.S.C. § 3290 to toll the limitations period, denying the person charged with the crime the right to be protected by the Statute of limitations.
- III. What burden of proof does the Government bear when invoking the fleeing-from-justice exception pursuant to 18 U.S.C. § 3290

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

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Brouse v. United States, 68 F.2d 294 (1 st Cir. 1933)	
Donnel v. United States, 229 F.2d 560 (5 th Cir. 1956)	
Jhirad v. Ferrandina, 536 F.2d 478 (2 ^d Cir. 1976)	
Musacchio v. United States, 577 U.S. 237 (2016)	
Streep v. United States, 160 U.S. 128 (1895)	
Toussie v. United States, 397 U.S. 112 (1970)	
United States v. Florez, 447 F.3d 145 (2 ^d Cir 2006)	
United States v. Gonsalves, 675 F.2d 1050 (9 th Cir. 1982)	
United States v. Haymond, 139 S. Ct. 2369 (2019)	
United States v. Ponzio, 853 F.3d 558 (1 st Cir. 2017)	

STATUTES AND RULES

28 U.S.C. § 1254	
28 U.S.C. § 1651	
28 U.S.C. § 2101(e)	
Sup. Ct. R. 10	
Sup. Ct. R. 11	
Sup. Ct. R. 12	
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OTHER

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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 United States Court Of Appeals for the First Circuit; 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 July 10, 2024.

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: October 4, 2024, and a copy of the order denying rehearing appears at Appendix B.

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 Constitutional and Statutory provisions involved are set forth here within: U.S. Const. Amend. V; 18 U.S.C. § 3282; 18 U.S.C. § 3290; 21 U.S.C. 841; 21 U.S.C. § 846

STATEMENT OF THE CASE

After a jury trial in the United States District Court for the District of Massachusetts, the Petitioner was Convicted of Conspiracy to distribute and to Possess with intent to distribute 40 grams or more of fentanyl, in violation of 21 U.S.C. § 846 and 21 U.S.C. § 841 (b)(1)(B), and of Possession with intent to distribute 100 grams or more of heroin and 40 grams or more of fentanyl, in violation of 21 U.S.C. § 841 (a)(1) and 21 U.S.C. § 841 (b)(1)(B). The Petitioner was Sentenced to 121 months of imprisonment, to be followed by four years of Supervised release. The United States Court of Appeals for the First Circuit entered Judgment on July 10, 2024, affirming the Conviction and Sentence. On October 4, 2024, First Circuit ordered the Petition for rehearing and Petition for rehearing en-banc be denied.

1. The Underlying Facts

On March 30, 2015, the Petitioner was arrested for the distribution of Cocaine, which led to law enforcement Seizing and arresting Mr. Cortez with Contraband.

2. The District Court Proceedings

On October 7, 2021, the Petitioner was Charged in a two-Count Superseding indictment in the District of Massachusetts. The Petitioner was found guilty on both Counts. During the trial proceedings, the jury was never presented with evidence by the Government pertaining to the Petitioner's fugitive status. The trial Judge found that everything points out to this case being a case that falls within the fleeing-from-justice exception provided in 18 U.S.C. § 3290, by the preponderance of the evidence standard. The jury was never given an opportunity to determine the Petitioner's purpose and intent of absence pursuant to 18 U.S.C. § 3290.

3.

The Court Of Appeals Decision

On appeal, the Petitioner initially argued that Count two of the Superseding indictment was untimely, and challenged the denial of his motion to dismiss the indictment for Statute of limitations violations and the Court's failure to give a Particular jury instruction in regards of the Statute of limitations pertaining to Count two.

Following, the denial of the direct appeal the Petitioner filed a Petition for rehearing en-banc. The Petitioner first argued that the Panel's decision resulted in an error by finding that the Petitioner failed to "show that the evidence adduced at trial supported the requested instruction. He next argued that the Appellate Court erred by finding the indictment was timely. And last argued, that the Panel erred in it's finding when it decided that "everything points out to this case being a case that fell within the fleeing-from-justice exception provided in 18 U.S.C. § 3290. The Petition for rehearing en-banc was denied on October 4, 2024.

REASONS FOR GRANTING THE PETITION

The Petitioner contends that the reasons for granting this Petition consist of, the United States Court of Appeal for the First Circuit made a decision that departs from two findings of the Supreme Court of the United States. Also, the Petitioner argues that the United States Court of Appeals for the First Circuit has entered a decision that conflicts with the decision of the United States Court of Appeals for the Fifth Circuit, on the same important matter regarding the fleeing-from-justice exception pursuant to 18 U.S.C. § 3290.

Additionally, the Petitioner states that although the United States Court of Appeals for the First Circuit in *Brouse v. United States*, 68 F.2d 294, 296 (1st Cir. 1933), established the appropriate standard for applying Section 3290, it failed to specify who should decide the factual question of "fleeing from justice" and what burden of proof should apply to that determination. This issue is of first impression of this Court. The Petitioner believes that all issues raised above constitutes compelling reasons for granting this Petition, and also believes that this matter is of such imperative public importance as to justify deviation from normal appellate practice and requires immediate determination in this Court, pursuant to 28 U.S.C. § 2102(e).

This Honorable Court's finding in *Musacchio v. United States*, 577 U.S. 237 (2016), has profoundly made it clear that: "When a defendant presses a limitations defense, the Government then bears the burden of establishing with the limitations by presenting evidence that the crime was committed within the limitations period, or by establishing an exception to the limitations period." *Id.*, at 248 - 249.

Furthermore, the Supreme Court has also held in *Toussie v. United States*, 397 U.S. 112 (1970), that: "the relevant Statute of limitations, 18 U.S.C. § 3282(a) provides except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or information is instituted within five years next after, such offense shall have been committed." *Id.*, at 114-115.

A. Cortez has an Unsettled Understanding about the timing of the indictment

In this matter, Count two of the Superseding indictment refers to a crime that was committed on March 30, 2015. The Government filed an indictment sixty-seven months (October 7, 2020), after the crime was completed for the distinctive offense. An arrest does not toll the Statute of limitations; rather, it is the return of the indictment or the filing of information which must be done before expiration of Statutory period, and may occur before as well as after arrest. Therefore, the Petitioner is under the impression that the indictment involving this matter was untimely, time barred, and that the First Circuit's Panel decision departs from the holding in *Toussie*.

B. The First Circuit's Decision Departs from the finding in *Musacchio*.

Moreover, the decision entered on July 10, 2024, indicates that Mr. Cortez failed to show that the evidence adduced at trial supported the requested instruction. This decision strongly departs from the finding in *Musacchio*, in a way that it relieved the Government of their burden of establishing compliance with the limitations by presenting evidence that the Petitioner's crime was committed within the limitations period.

C. The Court of Appeals are in active conflict over what Standard of Proof should be applied in accordance with 18 U.S.C. § 3290

Since 1956 the Court of Appeals have been in an ongoing conflict on what burden of proof should apply in relation to 18 U.S.C. § 3290. The First Circuit's Panel decision conflicts with a decision previously issued out of the Fifth Circuit pursuant to 18 U.S.C. § 3290. For instance, in *Donnell v. United States*, 229 F.2d 560, 565 (5th Cir. 1956), the Fifth Circuit held that "in determining whether a person charged with a crime will be denied the right to be protected by the statute of limitations, the purpose and intent of his absence is an important matter to be inquired into the jury. See e.g., *United States v. Ponzio*, 853 F.3d 558, 570-71 (1st Cir. 2017.)

Other circuits have held on the issue addressing the burden of proof under Section 3290 requires proof by a fair preponderance of the evidence standard. See e.g., *Jhirad v. Ferrandina*, 536 F.2d 478 (2^d Cir. 1976); See also *United States v. Gonsalves*, 675 F.2d 1050 (9th Cir. 1982). Does this statute allow the Government to prove their burden by the preponderance of the evidence standard. See *United States v. Florez*, 447 F.3d 145, 150-151 (2^d Cir. 2006). Or does 18 U.S.C. § 3290 bear the burden of the Government to prove flight beyond a reasonable doubt to a jury? See *Streep v. United States*, 160 U.S. 128 (1895).

In *Streep*, this Court instructed the jury that: "if they found the defendant was fleeing from justice between the times of the commission of the offenses and of the finding of the indictment, they might find him guilty, notwithstanding the indictment was found more than three years after the commission of the offense." *Id.*, at 130.

D. The Lower federal Courts are in active need of guidance on what Standards and requirements must be applied Pursuant to 18 U.S.C. § 3290

However, this matter requires this Honorable Court to answer a challenging question of first impression. What burden of proof does the government bear when invoking the fleeing-from-justice exception Pursuant to 18 U.S.C. § 3290. This question is also of exceptional importance in relation to the Fifth Amendment to the United States Constitution. See U.S. Const. Amend. V.

"The Fifth Amendment generally require the Government in Criminal Cases to prove every fact essential to an individuals punishment." See United States v. Haymond, 139 S. Ct. 2369 (2019).

18 U.S.C. § 3290, titled "Fugitives from Justice," States that: "No Statute of limitations shall extend to any person fleeing from Justice." See 18 U.S.C. § 3290. The problem with the plain language of this Statute fails to specify what borden of proof the Government bears when invoking § 3290, or if the Government even has a borden. Therefore, the Petitioner respectfully request that this Honorable Court Set the Standard Clarifying the Government's requirements when invoking § 3290, making it Clear to all Circuits.

Conclusion

The Judgment below is unique in regards to departure from decisions of this Court that require that Convictions based on a violation of Due Process be set aside at any time after Conviction. As Such, it represents a breach in the wall erected by the Fifth Amendment to the United States Constitution and the decisions of this Court that were designed to protect a Citizen from being Convicted by the Government through the violation of Due Process. Mr. Cortez respectfully request this Honorable Court to Carefully Consider the merits of this Case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, Adriano Cortez (Pro'se)

Adriano Cortez

Date: 01/01/25