No._____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2024

ADONIS BATISTA,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

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

DAVID AUTRY, OBA #11600
1021 N.W. 16TH Street
Oklahoma City, OK 73106
(405) 521-9600
(405) 521-9669 [fax]
dbautry77@gmail.com

Lawyer for Petitioner,
Adonis Batista

QUESTION PRESENTED

Were Petitioner's Fifth Amendment due process rights and Sixth Amendment rights to jury trial violated when the jury in his drug conspiracy trial found him accountable, beyond a reasonable doubt, for less than 50 grams of a mixture or substance containing methamphetamine, but at sentencing, the district court, under a preponderance of the evidence standard, found him accountable for much more than what was reflected in the jury's verdict, thus raising his advisory guideline sentencing range dramatically and forming a basis the ultimate sentence of twenty years imprisonment?

PARTIES TO THE PROCEEDINGS

The Petitioner is Adonis Batista, an individual. The Respondent is the United States of America.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

CASES:

CONSTITUTIONAL PROVISIONS:

STATUTES AND FEDERAL SENTENCING GUIDELINES:

COURT RULES:

To: The Honorable Chief Justice and Associate Justices
of the United States Supreme Court

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The Tenth Circuit's order and judgment affirming Mr. Batista's conviction and sentence appears in the Appendix to the petition and is unpublished. *United States v. Batista,* No. 23-6204 (10th Cir. December 10, 2024). The issue which forms the basis for this petition for writ of certiorari – whether the district court improperly found Petitioner accountable for a far greater drug quantity than was found in the jury verdict, thus dramatically raising his advisory guideline sentencing range – was raised in the district court before and during sentencing, and was again argued on appeal to the Tenth Circuit.

JURISDICTION

The Tenth Circuit's unpublished order and judgment affirming Mr. Batista's conviction and sentence was issued on December 10, 2024. (Appendix) The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 and Rules 10, 12 and 13 of the Rules of this Court.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part: "No person shall ... be deprived of life, liberty, or property, without due process of

law... ."

The Sixth Amendment to the United States Constitution provides in pertinent part:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed [.]"

STATEMENT OF THE CASE/PERTINENT FACTS

1. District Court proceedings

Since Mr. Batista is not challenging his conviction here, the underlying facts of the case are of little relevance. Stated simply, Petitioner and several other defendants were charged with conspiracy to possess with intent to distribute and to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. § 841(a)(1). *United States v. Batista,* No 23-6204 (10th Cir. Dec. 10, 2024, at p. 1)(unpublished order and judgment). As stated by the Tenth Circuit:

> On July 16, 2022, the Oklahoma City Drug Enforcement Administration ("DEA") investigated a drug-related house fire in Del City, Oklahoma. II R. 39. The residence turned out to be a methamphetamine conversion lab. Id. DEA agents seized approximately 750 grams of methamphetamine and 35 gallons of liquid methamphetamine. Id. 40. Several documents in the house identified Mr. Batista, including his medical marijuana card, credit cards and a T-Mobile receipt with his name, and a passport card with his photograph. I R. 188-190, 193-94; III R. 68-69. Agents also found a Wal-Mart receipt, which was used to gain access to Wal-Mart surveillance footage showing Mr. Batista shopping with his co-defendants. III R. 73-74.

Id. at p. 2.

Defendant and others were ultimately indicted on the above-described drug conspiracy. It was alleged that Mr. Batista and a co-defendant traveled from Florida to

Oklahoma City, where, for a brief period of time, Petitioner supposedly worked in the conversion lab. Alone among the defendants, Mr. Batista went to trial. He testified in his own behalf, denying any involvement in the drug conspiracy.

As noted, the indictment alleged Petitioner and his co-defendants were responsible for 500 grams or more of methamphetamine. *Id.* at p. 3; I R. 12-14. A special interrogatory was presented to the jury, directing it to find, beyond a reasonable doubt (if Mr. Batista was found guilty of the drug conspiracy) whether he was responsible for 500 grams or more of methamphetamine, 50 to 500 grams of methamphetamine, or less than 50 grams of methamphetamine. After lengthy deliberations for a relatively short trial, the jury convicted Petitioner of the drug conspiracy, but held him responsible for less than 50 grams of methamphetamine. This set his statutory sentencing range at zero to twenty years imprisonment. Had Mr. Batista been convicted as charged (500 or more grams of methamphetamine), he would have faced a sentence of a mandatory minimum of ten years imprisonment, and a maximum of life. Had Petitioner been convicted of a drug conspiracy involving 50 to 500 grams of methamphetamine, his statutory sentencing range would have been five to forty years imprisonment. *Id.* at p. 4; I R. 285.

Despite the jury's finding holding Mr. Batista accountable for less than 50 grams of methamphetamine, the presentence report held him responsible for the entirety of the crystal (693 grams) and liquid methamphetamine (35 gallons) found in the Del City conversion lab. This amounted to a "converted drug weight" of 267,874.866 kilograms of

methamphetamine for purposes of sentencing. II R. 46-47. This resulted in a base offense level of 38, the highest in the advisory guidelines drug table. II R. 47. *Id.* at p. 4 and n. 1.

Petitioner objected to the Probation Office's drug calculation, because the jury's special interrogatory verdict "showed that he 'was acquitted of being involved in a conspiracy'" involving more than 50 grams of methamphetamine. It was argued that the district court was limited to the jury's "specific finding of fact that [he] was accountable for less than 50 grams of methamphetamine." Based on the jury's verdict as to quantity, the base offense level for the offense of conviction should have been 22, not 38. *Id.* at 4. II R. 114-115.

Mr. Batista's objection was overruled by the district court. Under the preponderance of evidence standard (and even under a clear and convincing evidence standard, according to the district court), Mr. Batista was accountable for the massive drug quantity determined by the Probation Office. The district court said Petitioner was receiving the benefit of the jury's drug quantity finding (less than 50 grams), which limited the sentence to a maximum of twenty years imprisonment. Mr. Batista was sentenced to twenty years. *Id.* at p. 4; R. III 692, 730.

2. Appeal

On appeal to the Tenth Circuit, Petitioner argued, as he did in the district court, that the district court was limited to and bound by the jury's affirmative finding of drug

quantity in the special interrogatory, *i.e.*, that Mr. Batista was responsible for fewer than 50 grams of methamphetamine. *Id.* at 5. Procedural error[1] was committed when the district court went well above this, adopting the quantity found by the Probation Office, and setting Mr. Batista's base offense level at 38, rather than 22, the level fixed by the jury verdict.

For this argument, as he did in the district court, Petitioner relied on the Ninth Circuit case of *United States v. Pimental-Lopez,* 859 F.3d 1134, 1140 (9th Cir. 2016). In *Pimental-Lopez,* the Ninth Circuit ruled that when the jury makes an "affirmative finding[] under the highest standard of proof known to our law [proof beyond a reasonable doubt]," the district court "cannot attribute more than that amount to defendant without contradicting the jury on a fact it found as a result of its deliberations." *Id. See Batista, supra* at p. 5. In *Pimental-Lopez,* the jury, just as it did in Mr. Batista's case, found in a special interrogatory that the defendant was accountable for less than 50 grams of methamphetamine. Nevertheless, the district court, just as it id in Petitioner's case, ignored the jury verdict and attributed a greater drug quantity to Pimental-Lopez for purposes of sentencing and for setting the base offense level. Aplt. Br. at 27-29. The Ninth Circuit found this to be error which contradicted the jury's affirmative finding as to drug quantity, and remanded the case for resentencing.

---

[1] As noted by the Tenth Circuit, procedural errors include "failing to calculate (or improperly calculating) the Guidelines range" among other types of error. *Gall v. United States*, 552 U.S. 38, 51 (2007). *Id.* at 5.

The Tenth Circuit rejected Petitioner's argument and the reasoning of the Ninth Circuit, relying on its previous decision in *United States v. Magallanez,* 408 F.3d 672, 682, 684 (10th Cir. 2005)[2] and this Court's decision in *United States v. Watts,* 519 U.S. 148, 157 (1997). In *Magallanez* at p. 684, quoting *Watts,* the Tenth Circuit ruled that "'[a] jury verdict of acquittal on related conduct [] 'does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence.'" The jury in the *Magallanez* case, in a special interrogatory like that presented to the jury in Mr. Batista's case, found the defendant responsible for 50-500 grams of methamphetamine, rather than 500 or more grams of the drug. At sentencing, the district court held Magallanez accountable for a greater quantity, 1.2 kilograms, under the preponderance of evidence standard. The Tenth Circuit affirmed the sentence, reasoning that "when a district court makes a determination of sentencing facts by a preponderance test ... it is not bound by jury determinations reached through application of the more onerous reasonable doubt standard. *Magallanez* at 685. *See Batista, supra* at p. 6.

Importantly, in rejecting Mr. Batista's argument that the trial court was bound by the jury's verdict as to drug quantity, the Tenth Circuit acknowledged "that the Ninth

---

[2] The Tenth Circuit followed *Magallanez* in other cases. *United States v. Keck,* 643 F.3d 789, 798 (10th Cir. 2011); *United States v. Gunn,* No. 21-6168, 2023 WL 2808109, at * 16 (10th Cir. Apr. 6, 2023)(unpublished order and judgment). *See Batista, supra,* at p. 6.

Circuit panel opined that cases like *Magallanez* did not directly address the argument that 'the affirmative finding by the jury precluded a contradictory finding by the district judge at sentencing.'" *Pimental-Lopez,* 859 F.3d at 1141. The Tenth Circuit pronounced itself unpersuaded, noting that a judge on the Ninth Circuit *Pimental-Lopez* panel, dissenting from the denial of rehearing *en banc*, said "'[a] verdict form such as the one in this case is best understood to mean that the government proved its case only with respect to some amount of drugs weighing less than 50 grams.'" *Pimental-Lopez,* 859 F.3d at 1137. *See Batista, supra* at p. 7.

Concluding its analysis, the Tenth Circuit held the district court's sentencing decision in Petitioner's case comported with *Magallanez.* The district court found that under both the preponderance and even the clear and convincing evidence standard Mr. Batista was responsible for the "huge quantities" of methamphetamine, crystal and liquid, found in the conversion lab after the house fire was extinguished. *See Batista, supra* at p. 7; R. III R. 688, 691-692.

REASONS FOR GRANTING THE PETITION

THERE IS A CIRCUIT SPLIT WITH RESPECT TO THE ISSUE PRESENTED HERE. IGNORING AN AFFIRMATIVE JURY FINDING AS TO DRUG QUANTITY ACCOUNTABILITY DENIED PETITIONER HIS FIFTH AND SIXTH AMENDMENT RIGHTS. WHAT AMOUNTS TO ACQUITTED CONDUCT CANNOT BE USED IN DETERMINING THE SENTENCE.

The petition for writ of certiorari should be granted. There is a circuit split on the issue presented here. The Tenth Circuit and the Ninth Circuit are at polar opposites on

this question. *United States v. Magallanez, supra*; *United States v. Pimental-Lopez, supra.* To counsel's knowledge, the Ninth Circuit's position is in a minority of one where this issue is concerned.

Importantly, the Tenth Circuit acknowledged in Mr. Batista's case that *Magallanez* did not, in fact, address the exact issue presented here: Whether the district court is free to ignore for sentencing purposes and under a lesser standard of proof than beyond a reasonable doubt an affirmative finding of the jury of a fact, as opposed to the jury simply failing to find a fact, as occurs, for instance, with what might be termed a "general acquittal," as was the case in *United States v. Watts, supra.* The question here, put a slightly different way, concerns a "positive" finding of fact by the jury as opposed to the failure to find a fact, or the absence of a finding of fact. As the court stated in *Pimental-Lopez, supra*, a court is not empowered to ignore the affirmative finding of the jury in direct response to a special interrogatory submitted by the trial court itself. Ignoring a jury verdict deprives an accused of due process and the right to a jury trial.

Finally, for the district court to have considered, for purposes of sentencing, drug quantities well in excess of those found by the jury in the special interrogatory is a form of using acquitted conduct to determine the sentence. The jury in Mr. Batista's case, by its answers to the special interrogatory, acquitted Petitioner of being responsible for anything but less than 50 grams of methamphetamine. The use of acquitted conduct at sentencing has been criticized increasingly, and this Court recognizes that it is an

important issue that should be revisited. In a statement accompanying the denial of certiorari in *McClinton v. United States,* 600 U.S.___, No. 21-1557 (June 30, 2023), Justices Sotomayor, Kavanaugh, Barrett and Gorsuch said declining to review that decision and like decisions "should not be misinterpreted." The use of acquitted conduct to alter the range of the advisory federal sentencing guidelines "raises important questions."

CONCLUSION

For the reasons and authorities stated above, the petition for writ of certiorari should be granted.

Respectfully submitted,

David Autry, OBA #11600
1021 N.W. 16th Street
Oklahoma City, OK 73106
(405) 521-9600
(405) 521-9669 [fax]
dbautry77@gmail.com

Lawyer for Petitioner,
Adonis Batista