No. ____________________

____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2017

CHRISTOPHER L. LAUREANO-PEREZ — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

IN THE 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

CHRISTOPHER L. LAUREANO-PEREZ REG. No. 41035-069
(Your Name)

F.C.C. COLEMAN, USP-1
P.O. BOX 1033
(Address)

COLEMAN, FLORIDA 33521
(City, State, Zip Code)

____
(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE PANEL DECISION DIRECTLY CONFLICTS WITH THE DECISION OF THE UNITED STATES SUPREME COURT DECISION IN EDWARDS v. UNITED STATES,523 U.S. 571,515, 140 L. ED. 2D 703, 118 S. CT. 1475 (1998), AND WHETHER THE COURT OF APPEALS HAS NEGLECTED TO ADDRESS THE PETITIONRE'S VALID AND TIMELY CLAIM, WHERE HIS SENTENCE OF FORTY(40) YEARS EXCEEDED THE MAXIMUM SENTENCE THAT THE STATUTE PERMIT FOR A MARIJUANA-ONLY CONSPIRACY, I.E., FIVE(5) YEARS.

LIST OF PARTIES

[x] 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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TABLE OF AUTHORITIES CITED

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,
[x] 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[ ] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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 October30, 2017.

[x] 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

U.S. CONST. AMEND V

No person shall be held to answer for a capital, or otherwise infamous crime, unless presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person ... be deprived of life, liberty, or property, without due process of law;

U.S. CONST. AMEND VI

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; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation;

STATEMENT OF THE CASE

On November 20, 2012, a grand jury for the United States District Court for the District of Puerto Rico issued a nine count Superseding Indictment. The Petitioner was only charged with count seven and nine of the Superseding Indictment, alleging in Count Seven that, under 21 U.S.C. Section 846, 841(a)(1) and 860, which charges Conspiracy to Possess with Intent to Distribute a Controlled Substance in a Protected Location that the defendants did knowingly and intentionally combine, conspire and agree with each other and with diverse other persons, known and unknown to the Grand Jury, to commit and offense against the United States, that is: to possess with the intent to distribute (1)kilogram or more of a mixture or substance containing a detectable amount of heroin, a Schedule I Narcotic Drug Controlled Substance; two-hundred and eighty(280) grams or more of a mixture or substance containing a detectable amount of cocaine base ("crack"), a Schedule II Narcotic Drug Controlled Substance; five(5) kilograms or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II Narcotic Drug Controlled Substances; and a measurable amount of a mixture or substance containing a detectable amount of marijuana, a Schedule I Controlled Substance; a mixture or substance containing detectable amounts of Oxycodone (commonly known as Percocet), a Schedule II Controlled Substance; and a mixture or substance containing detectable amounts of Alprazolam (commonly known as Xanax), a Schedule IV Controlled Substance, all within one thousand(1,000) feet of the real property comprising a public elementary school known as Escuela de la Comunidad Rexville, a housing facility owned by a public housing authority, that is, the Villas de Monterrey Public Housing Project and a playground located within Villas de Monterrey, and other areas within and near the Municipality of Bayamon, Puerto Rico; In Count Nine, under 18 U.S.C. Section 924(o) charging Conspiracy to Possess Firearms in Furtherance of Drug Trafficking Crime in violation of 18 U.S.C. Section 924(o) that the defendants did knowingly combine, conspire, confederate and agree together and with each other, and with diverse other persons known and unknown to the Grand Jury, to commit an offense against the United States, that is, to knowingly and unlawfully possess firearms, as that term in is defined in Title 18, United States Code, Section 921(a)(3), that is: firearms of unknown brands, models, calibers and serial numbers, in furtherance of drug trafficking crimes, as that term is defined in Title 18 United States Code, Section 924(c)(1)(D)(2), that is: possession with intent to distribute heroin, cocaine base, cocaine, marijuana, Oxycodone, and Alprazolam, offenses for which they may be prosecuted in a court of the United States as a violation of Title 21, United States Code, Section 841(a)(1), 846 & 860 as charged in Count Seven.

The jury trial in this matter began on June 5, 2013. On June 14, 2013, the Petitioner was found guilty on both Count Seven and Count Nine of the Superseding Indictment.

The Petitioner was sentenced on September 27, 2013, to a term of life imprisonment on Counts Seven and Nine to be served concurrently with each other. Additionally the Petitioner was sentenced to a term of supervised release for five years to be served concurrently with each other by the Honorable Judge Jose A. Fuste.

The Petitioner was represented by Attorney Osvaldo Carlos-Linares of San Juan, Puerto Rico. On October 3, 2013, the Petitioner filed a timely notice of appeal in the Federal District Court.

On July 30, 2015 the First Circuit Court of Appeals issued its decision in this matter and vacated and remanded the case to the United States District Court in order for the Petitioner to be sentenced individually on Count Seven and Count Nine of the Superseding Indictment. **United States v. Laureano-Perez,**795 F.3d 45 (1st Cir. 2015).

On January 8, 2016 the Petitioner was re-sentenced by Judge Fuste to 480 months on Count Seven and 240 months on Count Nine to be served concurrently to each other. Additionally the Petitioner was sentenced to a term of supervised release of five years as to Count Seven and three as to Count Nine to be served concurrently. On January 29, 2016 the Petitioner filed a timely Notice of Appeal.

On October 30, 2017, the First Circuit Court of Appeals issued its decision in this matter and affirmed Petitioner's conviction and sentenced. thus, this Petition for Writ of Certiorari ensue.

REASONS FOR GRANTING THE PETITION

The Panel Decision Directly Conflicts Wit The Decision Of The United States Supreme Court Decision in Edwards v. United States,523 U.S. 571, 515, 140 L. Ed. 2d 703, 118 S. Ct. 1475 (1998), And Whether The Court Of Appeals Has Neglected To Address The Petitioner's Valid And Timely Claim, Where His Sentence Of Forty(40) Years Exceed The Maximum Sentence That The Statute Permit For A Marijuana-Only Conspiracy, i.e., Five(5) Years.

The 1984 decision in **United States v. Orozco-Prada**,732 F. 2d 1076, 1083-1084 (2nd Cir. 1984), took on more importance when it was cited by the Supreme Court in **Edwards v. United States**,523 U.S. 511, 140 L. Ed. 2d 703, 118 S. Ct. 1475 (1998), in a pre-**Apprendi** holding. In **Edwards**, the defendant was indicted for conspiring "to possess with intent to distribute...mixtures containing" two controlled substances, namely "cocaine...and cocaine base [i.e., crack]". The district court instructed the jury that "the government must prove that the conspiracy...involved measurable amounts of cocaine or cocaine base". The jury returned a general verdict of guilty. Against the background the district court imposed a sentence that did not exceed the maximum if the defendant had been convicted of conspiracy limited to cocaine only. The Supreme Court affirmed the Seventh Circuit's upholding of the sentence. In doing so, however, Justice Breyer, writing for a unanimous court, opined:

> Of Course, petitioner's statutory and constitutional claims would make a difference if it were possible to argue, say, that the sentence imposed exceeded the maximum that the statutes permit for a cocaine-only conspiracy. That is because a maximum sentence set by statute trumps a higher sentence set forth in the Guidelines. But, as the Government points out, the sentence imposed here were within the statutory

> limits applicable to a cocaine-only conspiracy, given the quantities of that drug attributed to each petitioner. **Edwards v. united States,**523 U.S. 511, 545, 140 L. Ed. 2d 703, 118 S. Ct. 1475 (1998) (relying in part on **Orozca-Prada,** 732 F. 2d at 1083-1084, for the proposition that a court may not sentence a defendant under statutory penalties for a cocaine conspiracy where the jury may have found only a marijuana conspiracy).

In the case at bar, the decision in **Alleyne v. United States,** 133 S. Ct. 2162 (U.S. 2013); **Apprendi v. New Jersey,**530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000); **United States v. Dale,** 178 F. 3d 429 (6th Cir. 1999); and **United States v. Rhynes,**196 F. 3d 207 (4th Cir. 1999), had been issued. The **Dale-Rhynes** decision addressed the sentencing problem that arises where the government alleges a conspiracy of multiple controlled substances, (in this case, heroin, cocaine base ("crack"), cocaine, marijuana, oxycodone, and alprazolam), there is no special verdict as to either substances, and the maximum sentence for an unspecified amount of each substance differ.

Title 21 U.S.C. §841(b)(1)(A)-(D) provides for a maximum sentence of five years for an unspecified amount of marijuana, oxycodone, and alprazolam; and a maximum sentence of life of imprisonment for a specified amount of cocaine (5 kilograms or more), heroin (1 kilogram or more), and cocaine base (280 grams or more), absent enhancements for prior drug felony convictions.

The drug conspiracy alleged in Count Seven described six controlled substances as objects of the conspiracy: heroin, cocaine, cocaine base ("crack"), marijuana, oxycodone and alprazolam. The Petitioner was found guilty of this count. The jury's verdict as to Count Seven is a general verdict, not a special verdict, and that Count Seven, did allege a quantity of heroin, cocaine, and cocaine base, but did not allege a quantity of marijuana, oxycodone and alprazolam.

Count Seven of the Superseding Indictment charging the Petitioner with conspiracy alleged, in relevant part:

> That, under 21 U.S.C. Section 846, 841(a)(1) and 860, which charges conspiracy to Possess with Intent to Distribute a Control Substance in a Protected Location that the defendants did knowingly and intentionally combine, conspire and agree with each other and with diverse other persons, known and unknown to the Grand Jury, to commit an offense against the United States, that is: possess with the intent to distribute (1) kilogram or more of a mixture or substance containing a detectable amount of heroin, a Schedule I Narcotic Drug Controlled Substance; two-hundred and eighty(280) grams or more of a mixture or substance containing a detectable amount of cocaine base ("crack"), a Schedule II Narcotic Drug Controlled Substance; five (5) kilograms or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II Narcotic Drug Controlled Substance; and a measurable amount of a mixture or substance containing a detectable amount of marijuana, a Schedule I Controlled Substance; a mixture or substance containing detectable amounts of Oxycodone (commonly known as Percocet), a Schedule II Controlled Substance; and a mixture or substance containing detectable amounts of Alpraxolam (commonly known as Xanax), a Schedule IV Controlled Substance, all within one thousand(1,000) feet of the real property comprising a public elementary school known as Escuela de la Comundia Rexville, a housing facility owned by a public housing authority, that is, the Villas de Monterey Public Housing Project and a playground located within Villas de Monterrey, and other areas within and near the Municipality of Bayamon, Puerto Rico.**Id. at p.11.**

See Exhibit A (a copy of an excerpt from the Superseding Indictment, p.ii, for this Honorable Court's viewing and conveniences) .

The Sixth Circuit in **United States v. Dale,**178 F. 3d 429 (6th Cir. 1990), determined/found that the conspiracy count charging more than a single type of a controlled substance, i.e., marijuana and crack, was not duplicitous; rather, the Defendant's sentence that was based on a quantity of crack was improper, based on a general verdict, where the sentence exceeded the maximum sentence for conspiracy to distribute marijuana. The **Dale** Court followed the teaching of **United States v. Orozco-Prada,**732 F. 2d 1076, 1083-1084 (2nd Cir. 1984), which held that while special verdicts were generally not favored in criminal cases, they were appropriate when the information sought is relevant to the sentence to be imposed.**Id. at 1084.**

Thus, the Sixth Circuit in **Dale**, held that the district court gave a specific unanimity charge as to two controlled substances, marijuana and crack but the jury only was given a general verdict. Applying **Griffin v. United States,**502 U.S. 46, 56-57, 116 L. Ed. **2d 371, 112** S. Ct. 466 (1991), the conviction was not disturbed, except on the basis of the sentence. The **Dale Court then** opined:

> Seven of the eight circuits that have directly considered this issue have decided that the punishment imposed cannot exceed the shortest maximum penalty authorized in the statutes criminalizing the multiple objects if the punishment authorized by the conspiracy statute depends on the punishment provided for the substantive offense which were the objects of the conspiracy.

That is the case here. The maximum sentence for conspiring to distribute a controlled substance depends on the controlled substance to be distributed. 21 U.S.C. §846. Given the facts in this case, the maximum sentence for a conspiracy to distribute marijuana is five years, 21 U.S.C. §841(b)(1)(D), while a conspiracy to distribute crack would yield a forty-year maximum sentence, 21 U.S.C. §841(b)(1)(B).

Five courts of appeals have held that when the jury returns a general verdict to a charge that a conspiratorial agreement covered multiple drugs, the defendant must be sentenced as if he distributed only the drug carrying the lower penalty.

The Fourth Circuit in **United States v. Rhynes,**196 F. 3d 207 (4th Cir. 1999), vacated in part en banc, 218 F. 3d 310 (4th Cir. 2000), found that the defendants were charged with conspiracy to possess with intent to distribute cocaine, crack, heroin and marijuana. The district court submitted a general verdict as to the conspiracy count and used the conjunction "or" to indicate to the jury that it could find a defendant guilty of the conspiracy count if it found that the defendant had conspired to distribute or possess with intent to distribute heroin, or cocaine, or crack, or marijuana. In that case, neither the defendants nor the government requested a special verdict as to the object of the conspiracy. The **Rhynes** court followed **Dale** and concluded, in the absence of a special verdict, that it could not sentence beyond the maximum sentence for the least serious of the four alleged control substances, i.e., marijuana. **Rhynes,** 196 F. 3d at 239.

Consequently, in this case, because the government alleged a conspiracy of multiple controlled substances, i.e., heroin, cocaine base, cocaine powder, marijuana, oxycodone and alprazolam, and the jury returned a general verdict to a charge that a conspiratorial agreement covered multiple drugs, the district court erred when it imposed a sentence 480 months/40-years on Count Seven, therefore, the Defendant must be sentenced as if he distributed only the drug carrying the lower penalty, that is, marijuana, a maximum of five years.

Accordingly, the Petitioner's sentence should be vacated and remand to the district court for re-sentencing in accordance to the teachings of **Edwards, Orozca-Prada, Dale and Rhynes.**

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: January 19, 2018