

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

EDUARDO BUENO — PETITIONER
(Your Name)

vs.

~~UNITED STATES OF AMERICA~~ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EDUARDO BUENO

(Your Name)

UNITED STATES PENITENTIARY-TUCSON

P.O. Box 24550

(Address)

Tucson AZ 85734

(City, State, Zip Code)

NONE

(Phone Number)

QUESTION(S) PRESENTED

1. DID THE LOWER COURT ERR IN ITS FINDINGS REGARDING THE DUE PROCESS RIGHTS OF PETITIONER WHERE PETITIONER WAS AFFORDED HIS MIRANDA RIGHTS UPON BEING DETAINED?
2. DID THE LOWER COURT ERR WHEN THAT COURT ADDED AN ADDITIONAL 5 POINT ENHANCEMENT FOR A CRIMINAL ELEMENT THE PETITIONER HAS NOT BEEN FOUND GUILTY OF?

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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:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Alleyne v United States, 186 L.Ed 2d 314	10

STATUTES AND RULES

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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 D 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☒ is unpublished.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 E 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.

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JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 1, 2017.

☐ 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 03, 2017, 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).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitutional Amendment IV

United States Constitutional Amendment XIV

United States Constitutional Amendment VI

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STATEMENT OF THE CASE

On January 5, 2016, HSI and other law enforcement executed a search warrant at the Petitioner's residence and an arrest warrant for the Petitioner. He was not administered his Miranda rights at this time.

An eight(8) count indictment was returned on January 20, 2016, and on February 12, 2016, Petitioner appeared before Magistrate Judge Douglas E Miller for a Rule 11 hearing on a plea agreement wherein Petitioner agreed to plead guilty to one(1) count of Possession of Child Pornography. Petitioner was NOT found guilty nor did Petitioner plead guilty to any other charge. All other counts in the indictment were dismissed per the Plea Agreement.

On May 31, 2016, the Petitioner appeared before the District Court for sentencing. The court imposed a forty-year sentence after applying an additional enhancement for Distribution to which NO plea was offered and which was not found by Jury beyond a reasonable doubt.

REASONS FOR GRANTING THE PETITION

In accordance with this Court's decision in ALLEYENE, a defendant may NOT be sentenced for an element of a criminal activity absent a finding of guilt beyond a reasonable doubt.

In this instant case, the defendant was assessed additional points and additional sentence based on those points for Distribution which was not a part of the Plea Agreement.

The United States Sentencing Commission clarified the guidelines requiring Distribution must be PROVEN and may not be applied based on a preponderance of evidence.

The Defendant DID NOT plead guilty to an element of Distribution Nor was Distribution proven before a jury beyond a reasonable doubt.

The Lower Court, at sentencing, stated that "where there is possession, distribution naturally follows." That statement is at definite odds with this Court's decision in ALLEYENE and any sense of fairness allowing a reasonable minded person to question the reliability of the outcome of these proceedings.

The fact that the Defendant was intimidated by three armed officers, without benefit of Miranda warnings also brings into question the reliability of the proceedings brought against the Defendant where incriminating statements should have been suppressed at pretrial hearings and were not suppressed.

For these reasons, Petitioner prays that this Court GRANT this Petition.