

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ISREAL ELIAS JIMENEZ — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ISREAL ELIAS JIMENEZ

(Your Name)

FEDERAL CORRECTIONAL COMPLEX

COLEMAN USP 1 / P.O. BOX. 1033

(Address) Coleman, Florida 33521

COLEMAN, FLORIDA 33521

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether the district court "erred" by their action of not allowing a jury to have determine the drug amount?
- 2) Whether the district court "erred" by their illegal action of contructively amending the charged indictment statute of §841(a)(1) - (b)(1)(B) to §841(a)(1) - (b)(1)(A) WITHOUT a Grand Jury Finding?
- 3) Whether Almenderez-Torres v. United States was in violation of the defendants 6th Amendment. When the district court increased his sentence on alleged **FACTS** (other than a prior conviction) that **had not been presented to a jury and proven beyond a reasonable doubt?**
- 4) Whether their exist a circuit split that reaquires the Supreme Courts intervention?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[x] 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:

Mr. James Wesley Hendrix

Mr. Isreal Elias Jimenez

Ms. Karen S. Mitchell

United States of America

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 G to the petition and is

☐ reported at N/A; 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☐ is unpublished.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 B to the petition and is

☐ reported at N/A; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

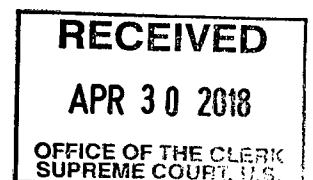
☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the N/A court appears at Appendix _____ to the petition and is

☐ reported at N/A; 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 01/25/2018.

☒ No petition for rehearing was timely filed in my case.

N/A ☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix .

N/A ☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**: N/A

The date on which the highest state court decided my case was N/A.
A copy of that decision appears at Appendix N/A.

N/A ☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix .

N/A ☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A. N/A

N/A The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a). N/A

N/A

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT #6

RIGHTS OF THE ACCUSED: 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, to be confronted with the witness against him, and to have compulsory process for obtaining witnesses in his favor, and to have the "Effective Assistance of Counsel for his Defense."

AMENDMENT#5

CRIMINAL ACTIONS-PROVISIONS CONCERNING DUE PROCESS OF LAW: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in militia. when in actual service of war or public danger, nor shall any person be subjected for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

FEDERAL RULES OF CRIMINAL PROCEDURE RULE#11

SIGNING PLEADINGS ,MOTIONS, AND OTHER PAPERS: REPRESENTATION TO THE COURTS SANCTIONS:

(c) Sanctions. (1) In general, If, after notice and a reasonable opportunity to respond, the Court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any Attorney, Law Firm, or party that violated the rule or is responsible for the violation committed by it's partner, associate, or employee. (3). On the Court's Initiative. On it's own, the curt may order an Attorney, Law Firm, or Party to show cause why conduct specifically described in the the order has not violated Rule 11(b).

FEDERAL RULES OF CRIMINAL PROCEDURE RULE 52(b)

PLAIN ERROR: A plain error that affects the substantial rights may be considered even though it was not brought to the courts attention

STATEMENT OF THE CASE

From sometime in 2011 up and to November 2012, in Forth Worth - TEXAS and others unknown areas in the greater area of Texas. Defendant(s) Isreal Jimenez Jr, and Stephanie White were alleged to have distributed heroin to/with Terry Watkins, Jason Walker, Artist Drayden, Garwett Watkins, and Alfred Wright. The indictment charged Count ONE: Conspiracy to distribute and possess a controlled substance with intent to distribute (heroin), in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B) and § 846. A fine of \$5,000,000 - not less than 5 years imprisonment nor more than 40 years imprisonment, or both such find and imprisonment - plus a term of supervised release of not less than 4 years.

On June 27, 2013, the defendant, Isreal Jimenez, entered into a TIMELY plea agreement with the government and was fully accepted by the court on the above listed date. By the controlling advice of his counsel of record, the defendant admitted and plea guilty to being "apart" of a conspiracy to possess & distribute a controlled substance heroin in the greater are of Forth Worth Texas during the year 2011 and 2012.

Defendants counsel of record informed him that his plea agreement sentence would be structured as such: "That he would be sentenced under the U.S.S. G. at a Base Offense Level of 26, with a criminal history score of II, would then provide for him to ONLY exposed to a advisory sentencing range of 70 to 87 months imprisonment. Counsel explicitly informed the defendant, that if he did not accept the plea agreement the government was offering, and proceeded to trial he would be exposed and/or received a sentencing exposure of 324 months to 405 months."

The defendant, Isreal Jimenez plea agreement states that he was pleading guilty to a drug quantity amount of 100 grams. That is the only amount of drugs that he was responsible for. Yet, because the government claimed to have seized a total of 3.23 kilograms of narcotics throughout the various drug transactions from late 2011 thru April 2013. The district court ingored the defendants plea agreement to only 100 grams of heroin, and sentence him under a penalty statute, 841 (b) (1) (A), which did not correlate with the agreed upon and KNOWN drug amount of 100 grams. The 100 grams penalty statute is 841 (b) (1) (B). It is not 841 (b) (1) (A)! "But For" the misinformation that his counsel provided to him, and the Courts abuse of discretion to BREAK his plea agreement to 100 grams. The defendant would have proceeded to trial and preserved all of his rights to have allowed for a JURY to have determine the amount of drugs that he was inadvertantly held accountable for - even though he, his counsel and the U.S. Attorney had all agreed that he was ONLY to be held accountable/responsible for 100 grams of heroin - instead of 3.23 kilograms - and then penalized under a different 841 drug statute that he agreed to. The defendant was sentence to 20 years instead of a sentencing exposure of only 121 months, because of the wrong penalty statute being applied [841(b)(1)(A)! (5)

REASONS FOR GRANTING THE PETITION

- (1). The United States District Court, For the Northern District of Texas, Fort Worth Division - Entered a erroneous sentencing decision against the defendant's indicted charged statute violation of 21 U.S.C. §841(a)(1) & (b)(1)(B) penalty statute and the plea agreement that was reached or based off of this statute ONLY!
- (2). On June 27, 2013, the defendant entered into a plea agreement with the government, to plea guilty to his indictment charged offense violation of 21 U.S.C. §846, §841(a)(1), and §(b)(1)(B) - which carried a 5 to 40 year sentencing exposure with the worse case criminal backgroud.
- (3) The plea agreement that was agreed upon by the parties was: (a) That the defendant had only partiscipated in the conspiracy to distribute heroin from 2011 thru November 20-12, (b) That the defendant would ONLY be held personally responsible for the distribution of 100 grams of heroin pursuant to 21 U.S.C. §841(a)(1) & (b)(1)(B) with a sentencing exposure of 5 to 40 years. This defendants Counsel informed him that because he ONLY had a criminal history of II and a base offense level of ONLY 26 - That in reality, he would only be facing a sentencing range of 70 to 87 months - based off the drug quantity amount. Counsel informed him that he would not receive a sentence over 121 months period! For these reasons listed above, the defendant then knowing entered into this plea agreement.
- (4) The above plea agreement was then BREECHED by the sentencing judge on the very day of the defendants sentencing. The district court judge on his own accord and with only the suggestion from the government. In error, claimed that the defendant was guilty of partis- cipating in the drug conspiracy from 2011 thru 2013 (a whole year futher than what the government originally said ^{his} participation to have been) with only a vouching from the gov- ernment. The sentencing judge further "constructively amended" the defendants grand jury charged indictment of §841(a)(1) & (b)(1)(B), to be altered and/or changed to §841(a)(1) & (b)(1)(A)- - A higher penalty phase statute than what the grand jury found, and a higher sentencing ~~penalty~~ statute than what he was indicted on and agreed to in his plea agreement!

(5) The district court judge, without a jury determination, came to the decision that the defendant was personally responsible for distributing the drug amount of 3.23 kilograms of cocaine, invalidated the governments factual plea offer/agreement, and sentence the defendant to 240 months in prison - based off and on a penalty phase statute that had never been found by a grand jury nor the U.S Attorneys Office.

(6) The district court judge CANNOT "constructively amend" a grand jury indictment statute on his own. The district court judge was required by federal law, to have presented the defendants case back to a grand jury - if he or she was so inclined to ~~change the~~ ~~change~~ the grand jury ~~found~~ indictment of §841(a)(1) & (b)(1)(B) to §841(a)(1) & (b)(1)(A)! It was a violation of judicial law, which is voted in by congress, for the district court judge to have ~~altered and/or changed~~ the grand juries factual found charged indictment on his own! Thus, it is clear that the defendant could not have possibly knowingly plea guilty to the charged offense or sentencing exposure that was ~~altered and changed (breached)~~ at the last minute - prior to his being sentence on the statute that he was indicted on, and on the agreed sentencing range that he had brookered with the U.S Attorneys Office.

(7) Clearly, any last minute changes to the defendants penalty phase statutes by the sentencing judge, proves that the defendant understanding of the nature of the charges against him, and the consequences of his plea ~~were not~~ what he had first understood them to have been. Thus, the defendants plea was indeed made unknowingly and unwillingly! It is also obvious that such a shocking change in circumstances cannot be said to have allowed the defendant to have made a voluntary and intelligent decision to have waived his fundamental protections.

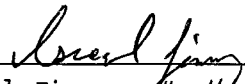
(8) This defendant was incorrectly informed of the consequences of his plea. Specifically, he was not informed that the Judge could "contructively amend" a criminally charged indictment that was found by the grand jury - at the last minute - and without a grand jury finding.

I am requesting that the Supreme Court of the United States "Grant" me permission for a Writ of Certiorari, and vacate the district court judgment and appeals courts affirming that judgment - remand back for further proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Mr. Isreal Jimenez # 461-26177

Date: April 20 - 2018

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