No. _____

In The

Supreme Court of the United States

GILBERTO RAMOS,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

When does a state post-conviction remedy qualify as a "successful attack" on a prior state sentence, such that a subsequent federal sentence enhancement is invalidated, and resentencing is warranted?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Gilberto Ramos respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

On March 19, 2019, the Court of Appeals for the Fourth Circuit denied Petitioner's petition for a Certificate of Appealability ("COA") to appeal the district court's denial of his 28 U.S.C. § 2255 motion.

JURISDICTIONAL STATEMENT

This Court's Jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

The Fourteenth Amendment provides in relevant part: " . . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."

21 U.S.C. § 841(b)(1)(A): "If any person commits a violation of this subparagraph . . . after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years."

21 U.S.C. § 802(44): "The term 'felony drug offense' means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances."

Cal. Health and Safety Code § 11361.8(e): "A person who has completed his or her sentence for a conviction under Sections 11357, 11358, 11359, and 11360, whether by trial or open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under the Control, Regulate and Tax Adult Use of Marijuana Act had that act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the conviction dismissed and sealed because the prior conviction is not legally invalid or redesignated as a misdemeanor or infraction in accordance with Sections 11357, 11358, 11359, 11360, 11362.1, 11362.2, 11362.3, and 11362.4 as those sections have been amended or added by that act."

Cal. Health and Safety Code § 11361.8(f): "Once the applicant satisfies the criteria in subdivision (e),

the court shall redesignate the conviction as a misdemeanor or infraction or dismiss and seal the conviction as legally invalid as now established under the Control, Regulate and Tax Adult Use of Marijuana Act."

Cal. Health and Safety Code § 11361.8(h): "Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor or infraction under subdivision (f) shall be considered a misdemeanor or infraction for all purposes. Any misdemeanor conviction that is recalled and resentenced under subdivision (b) or designated as an infraction under subdivision (f) shall be an infraction for all purposes."

INTRODUCTION

This case involves a square circuit split[1] concerning the question left open by this Court in *McNeill v. United States*, 563 U.S. 816, 825 n.1 (2011):

> [There could be] a situation in which a State subsequently lowers the maximum penalty applicable to [a prior] offense and makes that reduction available to defendants previously convicted and sentenced for that offense. We do not address whether or under what

[1] *Compare United States v. Cebreros*, No. 17-56843 (9th Cir. Feb. 22, 2018) (denying Certificate of Appealability on question presented) *with United States v. McGee*, No. 18-5019 (10th Cir. Jul. 16, 2018) (granting Certificate of Appealability on the identical issue).

> circumstances a federal court could consider the effect of that state action.

McNeill, 563 U.S. at 825 n.1.

In briefing its case before this Court in *McNeill* (and before lower courts confronting the same issue), the government conceded that federal recidivist sentences should be reduced when, as here, predicate prior state sentences are retroactively reduced by state action. *See* Br. for the United States, *McNeill v. United States*, 563 U.S. 816 (2011) (No. 10-5258), 2011 WL 1294503, at *18 n.5.

This position is consistent with this Court's holdings in *Custis v. United States*, 511 U.S. 485, 497 (1994) ("If [a defendant] is successful in attacking [prior] state *sentences*, he may then apply for reopening of any federal sentence enhanced by the state *sentences*") (emphasis added), and *Johnson v. United States*, 544 U.S. 295, 303 (2005) (same). In *Johnson*, the government also agreed that "a defendant who successfully attack[s] his state conviction in state court . . . [can] then apply for reopening of any federal sentence enhanced by the state sentences[.]"

That is exactly what happened here.

Mr. Ramos is serving a mandatory 20 year sentence under 21 U.S.C. §§ 841, 856 for conspiracy to distribute five kilograms or more of cocaine. He was subject to a statutory mandatory minimum 20 year sentence because he had a prior conviction for a "felony drug offense," which the government used as a

sentencing enhancement under 21 U.S.C. § 851(a)(1). That prior felony drug conviction was a marijuana possession conviction from California. It is not disputed that at the time of his federal conviction and sentence, Mr. Ramos' 1990 California marijuana possession conviction qualified as a prior felony drug offense and the sentence enhancements were properly imposed.

However, five years later, Mr. Ramos successfully attacked his marijuana possession conviction following voter-approved reforms to California's marijuana laws. *See* Adult Use of Marijuana Act of 2016 ("Proposition 64"), enacting Cal. Health and Safety Code § 11361.8. On February 14, 2017, the California Superior Court for Los Angeles County granted Mr. Ramos' petition to recall his 1990 marijuana possession felony conviction and resentence him to a misdemeanor for the offense, pursuant to then-recently enacted Cal. Health and Safety Code § 11361.8(e). Under this law, "A felony conviction that is recalled and resentenced [under its provisions] shall be considered a misdemeanor for all purposes." Cal. Health and Safety Code § 11361.8(h).

Mr. Ramos' successful attack of the felony underlying his current sentence entitles him to relief under *Custis*, 511 U.S. at 497, and *Johnson*, 544 U.S. at 303.

The Fourth Circuit disagreed, ruling that Mr. Ramos is not even entitled to a Certificate of Appealability ("COA") on the issue of whether the reduction of his predicate drug felony to a misdemeanor under California law entitles him to resentencing relief. *United States v. Ramos*, No. 18-7055 (4th Cir. Mar. 19, 2019).

As discussed below, there is a circuit split on this exact issue, as the Tenth Circuit reached the opposite result by granting a COA on the identical question in *United States v. McGee*, No. 18-5019 (10th Cir. Jul. 16, 2018).

This confusion arises, in part, because of the various types of post-conviction relief provided by the States. State courts, of course, can and do provide a variety of avenues for challenging state convictions or state sentences on a variety of substantive bases. Just a few of the forms of relief available include expungement of conviction, sealing of conviction, cancellation of conviction, vacation of conviction, discharge of conviction, set aside of conviction, and pardon of conviction. These terms, however, have no fixed meaning – they are interpreted and applied differently in each of the fifty states. *See* Forgiving & Forgetting in American Justice: A 50-State Guide to Expungement and Restoration of Rights, 30 Fed. Sent. R. 348, 351, 2018 WL 3371300 (Vera Inst. Just.) In fact, the existing mechanisms for challenging a prior conviction vary so greatly that scholarly attempts to find uniformity amongst the various state approaches has been called "an exercise [in] pounding square pegs into round holes." *Id.* at 354.

This Court should grant certiorari in order to provide guidance to lower courts in addressing this issue, resolve the split and address the question left unanswered in *McNeill*, 563 U.S. at 825 n.1.

STATEMENT OF THE CASE

1. On August 30, 2012, the government indicted Mr. Ramos, alleging he conspired distribute five kilograms or more of cocaine in violation of 21 U.S.C. §§ 841, 846. On March 13, 2013, a jury convicted Mr. Ramos and on September 16, 2013, Mr. Ramos was sentenced to a mandatory minimum sentence of 20 years. Mr. Ramos' sentence was enhanced under 21 U.S.C. §§ 841(b)(1)(A) due to a prior felony conviction of marijuana possession in 1990 in the State of California. Mr. Ramos is currently incarcerated at the Federal Correctional Institution, Lompoc in Lompoc, California.

2. Mr. Ramos diligently sought post-conviction relief throughout his imprisonment. On September 27, 2013, Mr. Ramos filed a notice of appeal in the Fourth Circuit. On May 8, 2014, the Fourth Circuit affirmed his conviction and sentence. Mr. Ramos subsequently filed an unsuccessful petition for a writ of habeas corpus under 28 U.S.C. § 2255 on November 17, 2015.

3. On November 9, 2016, California voters passed Proposition 64, the Adult Use of Marijuana Act, which among other things added Section 11361.8 to the California Health and Safety Code, providing Petitioner and others the opportunity to petition to recall felony convictions and have them retroactively reduced to misdemeanors.

4. In 2017, Mr. Ramos filed a petition under Cal. Health and Safety Code section 11361.8 to have his 1990 state drug conviction reduced to a misdemeanor.

On February 14, the California Superior Court for Los Angeles County granted Petitioner's application to recall his felony conviction for marijuana possession, which is the predicate felony for his currently mandatory sentence, and redesignated the offense as a misdemeanor "for all purposes" under Proposition 64 and Section 11361.8(e) and (h). (Case No. LA000817.)

5. On February 12, 2018, Mr. Ramos filed in the district court a new motion for sentencing relief under 28 U.S.C. § 2255, raising claims based on his redesignated state predicate conviction. On July 24, 2018, the district court dismissed Mr. Ramos' petition on the merits. *Order by Hon. Leonie M. Brinkema* dated 7/24/18, Case No. 18cv01556 GBL. The district court expressly declined to issue a Certificate of Appealability. On August 23, 2018, Mr. Ramos filed a Notice of Appeal with the U.S. Court of Appeal for the Fourth Circuit. On March 19, 2019, the Court issued an order denying a Certificate of Appealability. (Entered 3/19/19, No. 18-7055).

REASONS FOR GRANTING THE WRIT

I. THERE IS A DIRECT CIRCUIT SPLIT ON THE PRECISE ISSUE PRESENTED.

On March 19, 2019, in this case, the Fourth Circuit ruled that no reasonable jurist would find it debatable that Mr. Ramos states a valid claim for the denial of a constitutional right, denying him a Certificate of Appealability. *United States v. Ramos*, No. 18-7055 (4th

Cir. Mar. 19, 2019) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). The decision is consistent with similar cases from the Ninth Circuit, *United States v. Diaz*, 838 F.3d 968 (2016) (denying relief on statutory grounds), and, *United States v. Cebreros*, No. 17-56843 (9th Cir. Feb. 22, 2018) (denying relief and denying a Certificate of Appealability).[2]

By contrast, the Tenth Circuit reached the exact opposite result in *United States v. McGee*, No. 18-5019 (10th Cir. Jul. 16, 2018), granting a Certificate of Appealability on an identical issue: whether a sentencing enhancement under 21 U.S.C. § 841(b)(1)(A) is undermined when a California court retroactively reduces petitioner's prior drug felony to a misdemeanor under the State's Proposition 47. In *McGee*, the Tenth Circuit reversed a district court ruling, which denied a Certificate of Appealability, and explained:

> This court now grants a COA under 28 U.S.C. 2253(c) on the following issue: Since one of the predicate state felony drug convictions used to enhance Mr. McGee's sentence to a mandatory life sentence under 21 U.S.C. § 841(b)(1)(A) has been retroactively changed to a misdemeanor offense, does Mr. McGee's life

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[2] *Diaz* and *Cebreros* both involved the redesignation of felony drug crimes from felony to misdemeanor under another retroactive reform, Proposition 47, as codified in Cal. Penal Code § 1170.18. That section has language related to redesignation nearly identical to the language in Cal. Health and Safety Code § 11361.8 and also requires that a redesignated felony be considered a misdemeanor "for all purposes." *See* Cal. Penal Code § 1170.18(k).

> sentence now violate the Due Process Clause or the Eighth Amendment, in light of *United States v. Johnson*, 544 U.S. 295 (2005), and related cases.

McGee, No. 18-5019 (Slip op. at 2).

This Court should therefore grant Mr. Ramos' writ to resolve the conflicts below.

II. ON THE MERITS, MR. RAMOS IS ENTITLED TO HABEAS RELIEF BECAUSE HE SUCCESSFULLY ATTACKED ONE OF THE PRIOR FELONIES UNDERLYING THE ENHANCEMENT IMPOSED PURSUANT TO 21 U.S.C. § 84(B)(1)(A).

Mr. Ramos' current sentence was imposed under 21 U.S.C. § 841(b)(1)(A), which requires a 20-year sentence if the defendant has a prior drug related felony conviction. There is no dispute that at the time of his federal conviction, Mr. Ramos had a prior drug related felony conviction for possession of marijuana in 1990. There is also no dispute that, following his federal conviction and sentence, Mr. Ramos successfully attacked that felony in California state court. On February 14, 2017, the California Superior Court for Los Angeles County recalled marijuana possession felony from 1990 and re-designated the crime as a misdemeanor "for all purposes," pursuant to Cal. Health and Safety Code § 11361.8(h).

Mr. Ramos is therefore entitled to habeas relief because his sentence violates due process, the Eighth

Amendment, and this Court's decisions in *Johnson*, 544 U.S. at 303, and *Custis*, 511 U.S. at 497.

A. Federal law relies on state law to determine whether a state conviction qualifies as a "felony drug offense."

21 U.S.C. § 802(44) defines the term "felony drug offense" as used in § 841(b)(1)(A) as "an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State . . . that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances." *Burgess v. United States*, 553 U.S. 124, 129 (2008).

Courts look to sentence lengths determined by state law in order to determine whether a state conviction qualifies as a "felony drug offense." *Id.* at 127-128. 21 U.S.C. § 802(44) defines the term "felony drug offense" as used in § 841(b)(1)(A) as "an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State . . . that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances." *Id*. at 124, 129 (2008); *see also See Ewing v. California*, 538 U.S. 11, 25 (2003) (reiterating this Court's commitment and practice of deferring to state legislatures for determining sentence lengths for state crimes).

B. Proposition 64 transformed and corrected California drug laws prospectively and retroactively.

When California voters enacted the Adult Use of Marijuana Act (Proposition 64) on November 9, 2016, they legalized consumption of marijuana for nonmedical use and provided a mechanism for individuals to petition to retroactively reclassify certain old felony convictions. Proposition 64 aimed not only to legalize marijuana, but also to "reduce[] penalties for minor marijuana-related offenses." Proposition 64, Control, Regulate and Tax Adult Use of Marijuana Act "The Adult Use of Marijuana Act" (Ca. 2016).

Among other things, Proposition 64 added section 11361.8 to the California Health and Safety Code to allow a person who has completed his or her sentence for a conviction of certain marijuana-related felonies to petition to have their conviction redesignated as a misdemeanor or an infraction. Cal. Health and Safety Code § 11361.8(e). The section allows a person's prior felony conviction to be "recalled" and then "redesignated" as a misdemeanor or infraction. *Id*. The section mandates that a felony conviction redesignated as a misdemeanor must be considered a misdemeanor "for all purposes." Cal. Health and Safety Code § 11361.8(h).

In 2017, Mr. Ramos filed a petition to have his 1990 California state drug conviction reduced to a misdemeanor. On February 14, 2017, the California Superior Court for Los Angeles County granted Mr. Ramos' petition, recalled his 1990 marijuana felony conviction,

which is the predicate felony for his current mandatory sentence, and retroactively reduced the offense to a misdemeanor, pursuant to Cal. Health and Safety Code § 11361.8(e), (h). *People v. Gilberto Ramos*, California Superior Court for Los Angeles County, Case No. LA000817.

Relief under Proposition 64 is transformative. Any individual who already served a sentence for a former felony conviction that Proposition 64 has reduced to a misdemeanor can apply for mandatory redesignation of the conviction as a misdemeanor pursuant to California Health and Safety Code sections 11361.8(e) and (f). The mandatory nature of the reclassification from felony to misdemeanor reflects that California has recalibrated the appropriate punishment for this crime, both prospectively and retroactively. [3]

C. This Court has previously stated that a defendant who "successfully attacks" a state conviction could apply to reopen federal sentence enhancements that relied on the state conviction.

This Court has repeatedly held that a defendant who successfully challenges his or her prior sentences or convictions in state court can return to federal court to reopen a federal sentence that was enhanced on the

[3] Even individuals who are serving a current sentence in California state prison for a felony conviction reduced by Proposition 64 are entitled to resentencing and potentially release from custody. *See* Cal. Health and Safety Code § 11361.8(a).

basis of those prior convictions. *See Custis*, 511 U.S. at 497; *Johnson*, 544 U.S. at 303. Furthermore, in related cases, the government has conceded that prior felonies that are reduced by operation of retroactive state law also undermine enhancements based on those felonies. *See* Br. for the United States, *McNeill v. United States*, 563 U.S. 816 (2011) (No. 10-5258), 2011 WL 1294503, at *18 n.5; *Saxon v. United States*, 2016 WL 3766388, at *6 (S.D.N.Y. July 8, 2016) ("The Government does not dispute that in those cases where offenders have applied for and received relief under the [state statutes retroactively reducing sentences] the [federal sentencing] enhancement is not available.").

In *Custis*, 511 U.S. 485, the defendant was convicted of the possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g). Before trial, the Government notified Custis that it would seek an enhanced penalty under 18 U.S.C. § 924(e)(1) based on prior state convictions. *Id.* The Government's notice charged that Custis had three prior qualifying felony convictions: (1) a 1985 Pennsylvania state-court conviction for robbery; (2) a 1985 Maryland state-court conviction for burglary; and (3) a 1989 Maryland state-court conviction for attempted burglary. *Id.* at 488. At sentencing, Custis argued that his 1985 and 1989 convictions in Maryland were invalid and could not be used to enhance his federal sentence. *Id.* at 488. Although Custis did not actually go to state court to challenge these convictions, he argued both were the result of the ineffective assistance of counsel. *Id.* The Court affirmed Custis' sentence but held that if he

successfully attacked these prior sentences in state court, he then had a right to return to federal court and "apply for reopening of any federal sentence enhanced by the state sentences." *Id.* at 497.

In *Johnson*, 544 U.S. 295, the defendant pled guilty to a violation of 18 U.S.C. § 841(a)(1) for distributing cocaine base and he received an enhanced sentence as a career offender under the Federal Sentencing Guidelines due to his two prior 1989 state convictions in Georgia for distributing cocaine. Three years after being sentenced for his federal crime, Johnson successfully obtained a "vacatur" of one of these prior state convictions. *Id.* at 301. Johnson then brought a 28 U.S.C. § 2255 motion in federal court, requesting a new sentence. *Id.* All parties agreed that the reversal of Johnson's prior conviction otherwise "entitled [Johnson] to federal resentencing," but the Government argued that Johnson's claim was untimely. *Id.* at 302-303. This Court confirmed that "a prisoner could proceed under § 2255 . . . after favorable resort to any postconviction process available under state law"; *id.* at 304, and that "a defendant who successfully attacked his state conviction in state court . . . could then 'apply for reopening of any federal sentence enhanced by the state sentences.'" *Id.* at 303 (quoting *Custis*, 511 U.S. at 497). However, this Court ultimately agreed with the Government that Johnson failed to act with the requisite due diligence and was time-barred from bringing this motion under 28 U.S.C. § 2255(f)(4). *Id.* at 310.

In *McNeill*, 586 U.S. 816, this Court addressed a variant of the same issue. That case involved a defendant charged under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 942(e)(2)(A)(ii), which enhances sentences for defendants previously convicted of a drug offense punishable by ten years or more. McNeill had two prior offenses from North Carolina, which were punishable by ten years when he was convicted of those crimes. *McNeill*, 863 U.S. at 818. By the time he committed his federal ACCA offense, however, North Carolina had reduced the punishment for the state crimes to less than four years. *Id.* This Court ruled that McNeill remained subject to the ACCA enhancement because the prior offenses carried ten-year sentences when they were committed, and North Carolina did not make its sentencing reforms retroactive. *Id.* at 817.

This Court explicitly reserved judgment on a situation most analogous to Mr. Ramos' case: "[where] a State subsequently lowers the maximum penalty applicable to an offense and makes that reduction available to defendants previously convicted and sentenced for that offense." *Id.* at 825, n.1. In fact, as already noted, the Government conceded in multiple cases, including its briefing to this Court in *McNeill*, that federal recidivist sentences should be reduced when predicate prior convictions are retroactively reduced by state action:

> Of course, if a State subsequently lowered the maximum penalty and made that reduction available to defendants previously sentenced as of the same date as the defendant now at

> issue, the defendant could plausibly look to that reduced maximum as stating the law applicable to his previous conviction. For example, if such a defendant had taken advantage of state sentence-modification proceedings to lower his sentence in accordance with a reduced maximum . . . that reduced maximum could apply to his conviction for [sentence enhancement] purposes.

Br. for the United States, *McNeill v. United States*, 563 U.S. 816 (2011) (No. 10-5258), 2011 WL 1294503, at *18 n.5; *see also Johnson*, 544 U.S. at 302-303 (acknowledging government concession); *Saxon*, 2016 WL 3766388, at *6 (S.D.N.Y. July 8, 2016).

In applying *Custis*, *Johnson* and *McNeill*, courts of appeals have granted relief in cases similar to Mr. Ramos. In *Cortes-Morales v. Hastings*, 827 F. 3d 1009 (11th Cir. 2016), the Eleventh Circuit ruled that a retroactive reduction of prior state law *would*, in fact, undermine a federal recidivist sentence enhancement. In that case, the defendant received a mandatory sentence enhancement under the Armed Career Criminal Act, 18 U.S.C. § 924(e), based on prior state convictions by New York State. *Id.* at 1014. The defendant argued that his predicate state convictions were subsequently undermined by recently enacted state law reducing his prior drug felonies to misdemeanors. The court agreed and held that a defendant has a valid challenge to his federal sentence enhancement if he has successfully challenged his prior state conviction through obtaining

a court order retroactively declaring his prior felony conviction a misdemeanor.[4] *Id.*

Similarly, the First Circuit held that a federal prisoner was "entitled to resentencing [where] the convictions upon which [his sentencing] calculations were based [we]re no longer valid" even though "[t]he state court did not vacate the [state] convictions on constitutional grounds." *Cuevas v. United States*, 778 F.3d 267, 270, 271 (1st Cir. 2015). Likewise, the Fourth Circuit ordered resentencing where a petitioner had obtained a state court judgment that his conviction had been stricken. *See United States v. Dorsey*, 611 Fed. App'x 767, 769-770 (4th Cir. 2015) (unpublished). And the Sixth Circuit ordered resentencing where the underlying state court judgment was "set aside" because the sentence entered on that judgment was set to run concurrently with a federal sentence in violation of state law. *See Watt v. United States*, 162 Fed. App'x 486, 489, 503 (6th Cir. 2006) (unpublished).

Several district courts have adopted similarly broad interpretations. In *United States v. Jackson*, No. 13 Cr. 142 (PAC), 2013 WL 4744828, at *3-6 (S.D.N.Y. Sept. 4, 2013) the district court for the Southern District of New York held certain drug felonies reduced to misdemeanors under the DLRA[5] may no longer

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[4] However, the court ultimately rejected the defendant's challenge on the grounds that the state law did not apply to the facts of his case.

[5] The DLRA is very similar to California's Proposition 47 in that it reduced the maximum sentences for some crimes and

constitute predicates for an enhanced federal sentence under the Armed Career Criminal Act.

> Where the state law's sentencing modifications apply retroactively, . . . logic strongly suggests that the application [of the federal enhancement] should be dependent on the revised state sentencing provisions . . . [otherwise a defendant may] be punished more harshly because he was sentenced prior to the 2009 DLRA, as compared to an identical defendant who committed precisely the same crime, but was sentenced after the 2009 DLRA's enactment . . . [I]n light of the 2009 DLRA's generally retroactive nature with respect to Class B felonies and "the consistent view of . . . state lawmakers . . . that the Rockefeller [drug laws] were too severe, then as now, [the defendant's] prior state law convictions do not quality as predicate convictions for ACCA purposes.

Id. at *5-6.

One year later, the district court reiterated this view in *United States v. Calix*, No. 13 CR 582 RPP, 2014 WL 2084098, at *12 (S.D.N.Y. May 13, 2014) ("Congress chose to defer to the state lawmakers' judgement [on the severity of punishments].").

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allowed certain classes of felons to petition the state for resentencing. *See* N.Y. Crim. Proc. § 440.46 (McKinney 2016).

CONCLUSION

For the foregoing reasons, this Court should grant Mr. Ramos' petition for certiorari.

Respectfully submitted,

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