

No. \_\_\_\_\_

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*In the*  
**Supreme Court of the United States**

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**FABIAN SANDOVAL-RAMOS, PETITIONER**

**V.**

**UNITED STATES OF AMERICA.**

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

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

21 U.S.C. § 846 provides: “Any person who attempts or conspires to commit any offense defined in this subchapter [involving controlled substances] shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.”

21 U.S.C. § 841 prescribes a number of mandatory minimum sentences that must be imposed upon conviction of a substantive crime involving certain quantities of a controlled substance or when death results from the use of that controlled substance.

The question presented is:

In order to trigger a mandatory minimum sentence, must the government allege and prove that an enhancement factor was the *object* of the conspiracy, or can the government simply allege and prove the *occurrence* of an enhancement factor?

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No. \_\_\_\_\_

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**IN THE**  
**SUPREME COURT OF THE UNITED STATES**

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**FABIAN SANDOVAL-RAMOS,**

Petitioner,

v.

**UNITED STATES OF AMERICA,**

Respondent.

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Petition for Writ of Certiorari  
To the United States Court of Appeals  
For the Ninth Circuit

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Petitioner Fabian Sandoval-Ramos respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on June 12, 2018.

**I. Opinions and Orders Below**

The Court of Appeals for the Ninth Circuit issued an unpublished memorandum opinion affirming the judgment of the District Court.

## **II. Jurisdictional Statement**

The District Court originally had jurisdiction over this criminal matter pursuant to 18 U.S.C. § 3231. A jury convicted Mr. Sandoval, and the District Court imposed sentence on April 14, 2016. Mr. Sandoval timely appealed.

The Ninth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291. The Ninth Circuit panel issued an unpublished memorandum decision affirming the District Court judgment on March 19, 2018. Mr. Sandoval petitioned the Court of Appeals for a rehearing *en banc*, which was denied on June 12, 2018.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

## **III. Statutory Provisions Involved**

21 U.S.C. § 841, attached as Appendix D, delineates a number of prohibited substantive acts related to the distribution of controlled substance. § 841 also assigns a variety of maximum and minimum penalties related to the distribution of specific quantities of a variety of controlled substances, and imposes a mandatory minimum sentence of 20 years if death or serious bodily injury results from the use of such substance.

A *conspiracy* to violate a controlled substance, however, is

governed by its own statute, 21 U.S.C. § 846, which states, in its entirety:

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

This writ of certiorari concerns the overlap of §§ 846 and 841.

#### **IV. Statement of the Case**

Fabian Sandoval and six others were charged with two counts of Conspiracy to Distribute Heroin in violation of 21 U.S.C. §§ 846 and 841(a)(1). See Indictment at Appendix C. Other co-defendants were charged with related substantive offenses, but Mr. Sandoval was not. Count 1 of the indictment further charged that “[the] conspiracy distributed heroin, the use of which resulted in the death of another person . . .” in violation of 21 U.S.C. §§ 846 and 841(a)(1) and (b)(1)(C). Count 2 further charged that “[the] violation involved 1,000 grams or more of . . . heroin,” in violation 21 U.S.C. §§ 846 and 841(a)(1) and (b)(1)(A)(i). Notably, the indictment did *not* charge that it was an object of the members of the conspiracy that heroin use result in the death of another person, nor did the indictment charge that it was an object of the conspirators to deliver 1,000 grams of heroin.

## A. General Facts

“J.D.” died of a heroin overdose on March 29, 2014. Police investigators quickly surmised that the heroin that resulted in J.D.’s death was provided to him by his friend Morgan Godvin. Morgan Godvin admitted to selling heroin to J.D. earlier that day and identified her own supplier as Michael Rosa. Mr. Rosa in turn identified his supplier as Shane Baker. Mr. Baker identified *his* supplier as a person he knew as “Mexican Bobby,” who he had met once and with whom he communicated primarily by phone.

Mr. Baker agreed to and subsequently participated in a controlled buy of heroin from “Mexican Bobby.” “Mexican Bobby” took the order over the phone and sent his runners Placido Ramirez-Coronel and Raul Arcila to deliver the heroin. Police performed a records check on the car driven by the runners and discovered that it was registered to Fabian Sandoval. They followed the car back to a stash house used by the runners, and later identified Fabian Sandoval as the subscriber for the power at the stash house. Mr. Sandoval’s car registration identified a second residence for Mr. Sandoval.

Police set up a second controlled buy and arrested Mr. Ramirez-

Coronel and Mr. Arcila at the scene.

After arresting the runners, police searched both the stash house and Mr. Sandoval's residence, and also arrested Mr. Sandoval. Police surveillance prior to the arrest of Mr. Sandoval revealed that Mr. Sandoval and others at his residence had discarded some garbage bags in a communal dumpster in the time period after the arrest of Mr. Ramirez-Coronel and Mr. Arcila. Among the items thrown away was a cellular phone that had been bent in two, and a number of unopened bags of cutting agent that matched opened bags of cutting agent that had been found at the stash house.

The broken phone found in the dumpster revealed communications with "Mexican Bobby," the same phone number that Shane Baker had called to order heroin, during the time that Mr. Ramirez-Coronel and Mr. Arcila had been arrested. It did not appear that Mr. Sandoval had communicated with Mr. Ramirez-Coronel or Mr. Arcila during that time period.

#### **B. Trial and Convictions of Mr. Sandoval and Mr. Arcila**

Mr. Sandoval and Raul Arcila proceeded to trial and were both convicted on November 6, 2015 of conspiring to distribute heroin. As to

Count 1, the jury further found beyond a reasonable doubt that (1) “[J.D.] used heroin distributed in the course of this conspiracy which resulted in his death,” and (2) “death resulting from use of the distributed heroin was a reasonably foreseeable result of the Count 1 conspiracy.” As to Count 2, the jury further found that “1,000 grams or more of heroin was involved in [the conspiracy alleged in Count 2].” The jury did not find any object of the conspiracy beyond the simple distribution of heroin.

### **C. Sentencing**

At sentencing, Mr. Sandoval asked the court to impose a sentence of 188 months, arguing that since the only *object* of the conspiracy was the simple distribution of heroin, § 846 in concert with § 841(b)(1)(C) limited the maximum sentence to 20 years imprisonment with no mandatory minimum. The government asked for a sentence of 21 years imprisonment. The court imposed what it considered the mandatory minimum of 20 years imprisonment, noting, “It’s an entirely different question what sentence would be imposed if that minimum was not in place.”

Sandoval appealed to the Ninth Circuit, reiterating the sentencing

arguments along with other assignments of error. The Ninth Circuit affirmed the imposition of the mandatory minimum sentence.

## **V. Reason for Granting This Petition**

The conspiracy charge has long been “that darling of the modern prosecutor’s nursery,” as Judge Learned Hand opined more than ninety years ago. *Harrison v. United States*, 7 F.2d 259, 263 (2d Cir. 1925).

The breadth and scope of the government’s use of conspiracy law has only grown since the Roaring Twenties. With this Petition for Certiorari, Mr. Sandoval asks this court to interpret and define the contours and limitations set by 21 U.S.C. § 846. The extent to which a mandatory minimum sentence applies in a prosecution for conspiracy to distribute controlled substances is an important question of federal law that has not been, but should be, settled by this Court.

“[T]he fundamental characteristic of a conspiracy is a joint commitment to an endeavor which, if completed, would satisfy *all of the elements* of the underlying substantive criminal offense. *Ocasio v. United States*, 136 S. Ct. 1423, 1429, 194 L.Ed.2d 520 (2016) (emphasis added, internal citations omitted). A substantive offense is both “the core crime and the fact triggering the mandatory minimum sentence

together,” which together “constitute a new, aggravated crime[.]” *Alleyne v. United States*, 133 S.Ct. 2151, 2161 (2013). The substantive offense of delivery of heroin with resulting death “has two principal elements: (i) knowing or intentional distribution of heroin, § 841(a)(1), and (ii) death caused by (“resulting from”) the use of that drug, § 841(b)(1)(C).” *Burrage v. United States*, 134 S.Ct. 881, 887 (2014).

In the instant case, the government convicted Mr. Sandoval of involvement in a simple conspiracy to distribute heroin, then shoehorned the substantive law concerning the distribution of a controlled substance onto his sentence for conspiracy. This approach ignores the clear language of § 846. § 846 does not simply bootstrap § 841 in its entirety—as posited by the government and as held by the Court of Appeals below—instead § 846 limits the sentences available to “those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.”

A straightforward reading of 21 U.S.C. § 846 through the lenses provided by *Ocasio*, *Alleyne* and *Burrage* makes it clear that, for a defendant to be exposed to a mandatory minimum sentence for a conspiracy conviction in this context, that defendant must first be

convicted of a conspiracy with the object to commit “all of the elements of the underlying criminal offense,” *Ocasio, supra*. See, e.g. *United States v. Macias-Valencia*, 510 F.3d 1012, 1013 (9th Cir. 2007) cert. denied, 553 US 1026 (2008) (upholding mandatory minimum sentence for a conspiracy with the object of distributing 50 grams of methamphetamine “even when no actual contraband was involved in the commission of the offense”).

As stated in *Burrage*, the substantive offense that would trigger a mandatory minimum in the instant context has two principal elements: distribution of heroin and death resulting from the use of that heroin. Since the instant conviction was for a conspiracy offense that had as its object only one of the two principal elements, § 846 acts to limit the sentencing exposure to the substantive offense of the simple distribution of heroin.

Respectfully submitted September 10, 2018.



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