No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

CRAIG ALEXANDER — PETITIONER
(Your Name)

vs.

U.S. Supreme Court — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals 5th Cir.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Craig Alexander
(Your Name)

P.O. Box 1033 Coleman (1)
(Address)

Coleman, FL 33521
(City, State, Zip Code)

_____
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the Supreme Court should resolve spilt decisions in the lower court as to how far a Judge must explain and/or elaborate on a decision to grant or deny a Movant's petition under §3582?

2. Whether a Defendant should be considered as having a bad Criminal History score when Defendant is only at category 3 without any violence on a Criminal History Chart of I thru VI?

3. Can a Judge continue to use old non-violent disciplinary infraction even after a Defendant has displayed several years of clear conduct? At what point does his old infractions stop haunting him?

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:

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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 _____ 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[ ] is unpublished.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 _____ 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[ ] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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 March 21, 2018.

[✓] 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

Fifthe Amendment; to the United States Constitution provides in relevant part "No person shall be deprived of life, liberty, or property, without due process of law.

Fourteenth Amendment; to the United States Constitution provides in relevant part "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United state; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the "Equal Protection of the laws".

STATEMENT OF CASE

NOW COMES, Craig Alexander (herein after referred to as "Defendant"), who's proceeding, via, pro se representation, and respectfully moves this Honorable Court to direct modification of his sentence pursuant to 18 U.S.C.§3582(c)(2) and U.S.C. §994(o). Based upon -Re**troactive** - Amendment: 782, 750 and 706 to the United States Sentencing Guidelines, applicable to cocaine base, ("crack") offenses ["U.S.S.G" §1B1.10(b)(2)(A)].

The Defendant's base offense level has been lowered to 30, whereas the Sentencing Court held Defendant **Alexander** responsible for more than **2.8 kilograms of cocaine base:** which makes him eligible under Amendment 750 resulting in a base offense level of 34, combined with a three point enhancement for organizer/leader and a two point enhancement for obstruction of justice, the defendant's sentencing guideline range is 324 to 405, based on a total offense level of 39.

On or about 19, 2001, Defendant, Craig Alexander, was named in a three Count Indictment charging him as follows:

Count 1: Conspiracy to Distribute and Possess with Intent to Distribute more than 50 grams of a mixture and substance Containing Cocaine Base (Crack Cocaine), in violation of 21 U.S.C. §846, §841(a)(1) and §841(b)(1)(A)(iii); and

Count 2 & 3: Possession with Intent to Distribute more than 50 grams of a mixture and Substance Containing Cocaine Base (Crack Cocaine) and Aiding and Abetting, in violation of 21 U.S.C. §841(a)(1) and §841(b)(1)(A)(iii), and 18 U.S.C. §2

On September 19, 2001, Defendant was found guilty by a jury on all three counts of the indictment. At presentence report(PSR)

was prepared finding Craig Alexander responsible for more than 2.8 kilograms of cocaine base, resulting in a base offense level of 38. Five additional levels were added to his base offense level under U.S.S.G §3B1.1(a) for his alleged role as a leader and organizer of a criminal activity that involved five or more participants or was otherwise extensive, and obstruction of justice resulting in a total offense level of 43: combined with criminal history category of III. Alexander's sentencing guideline range of imprisonment was calculated to be life. On January 11, 2002, Alexander was sentenced to a term of life imprisonment on each count, to be served concurrently.

Alexander appealed and on January 17, 2002, the Fifth Circuit affirmed his conviction and sentence. Alexander filed a motion under 28 U.S.C. §2255 on December 25, 2004, which was denied by the District Court on July 30, 2005. The Fifth Circuit denied Alexander's Certificate of Appealability on the District Court's denial on his §2255 motion on August 8, 2005.

On February 25, 2008, your Defendant filed a motion for reduction of sentence under section §3582(c)(2). The government filed a response in opposition. The District Court then denied Alexander's motion on April 22, 2008.

On December 7, 2011, the Defendant filed a motion to reduce his sentence under §3582 pursuant to Amendment 750. The government filed a motion in opposition to the Defendant's motion for reduction of his sentence, *** in which the government erroneously calculated your Defendant's applicable guideline range, including held him accountable for at least 4.1395 kilograms of cocaine

base, and then requested that the Court deny the motion because Amendment 750 does not alter the Defendant's original sentencing range.

THE DEFENDANT IS ELIGIBLE FOR A REDUCTION OF SENTENCE BECAUSE THE AMENDMENTS SUBSEQUENTLY LOWERED HIS GUIDELINE RANGE.

Section §3582(c)(2) provides:

[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. §994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or its own motion, the court may reduce the term of imprisonment after considering the factors set forth in section §3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statement issued by the Sentencing Commission. 18 U.S.C. §3582(c)(2).

In U.S.S.G. §1B1.10, the Sentencing Commission has indentified the amendments [Amendments: 706, 711, 750 and 782] that a court may apply retroactively pursuant to this authority, and articulated the proper procedure for implementing the amendments in a concluded case. The version of section §1B1.10 applicable in this case has became effective November 1, 2011 and 2014, and added Amendments 750 and 782 to the list of amendments to be applied retrocatively.**Id.**

The revised version of this Guideline emphasizes, that a defendant may take advantage of the relief section §3582(c)(2) offers if the amendment(s) has the effect of lowering the defendant's Guideline Range.**Id.**

In 2011 the Sentencing Commission again retroactively lowered the base offense level for most offenses involving crack cocaine: At least 8.4 kilograms would yield a 38, while 2.8 to 8.4 kilograms corresponded to a 36. **See** U.S.S.G. App. C, Amends 748, 750 (2011).

However, the Sentencing Commission has now authorized the Federal Court's to review crack cocaine sentences retroactively under §3582(c)(2) and the revised sentencing guidelines beginning in November of 2015. **See:** United States Sentencing Commission: Amendment to the Sentencing Guidelines (Preliminary) (July 18, 2014) 20140718__RFP__Amendents__Retroactively. pdf. This makes Amendment 782 retroactive. **See Also: United States v. Simmons,** 586 Fed. 663 (6th Cir. 2014).

Thus, Mr. Alexander, Defendant is eligible for a sentencing reduction under Amendment 782. Whereas, calculating Defendant's lowered applicable guideline range, it yields an offense level of 39,with a criminal history category III and Guideline range of "One hundred and eighty-eight to two hundred and thirty-five months 324 months to 405 imprisonment", under the application of Amendments 782, 750 and 706.

REASON FOR GRANTING PETITION.

I. THERE EXIST A FUNDAMENTAL BASIS TO MODIFY THE TERMS OF IMPRISONMENT UNDER THOSE FACTORS ARTICULATED UNDER 18 U.S.C. §3553(a).

We need not pause to find whether there is a ["fundamental basis"] to modify the terms of imprisonment your Defendant suffers under the sentencing guidelines and statutory frameworking of 21 U.S.C. §841, et seq.. What Congree has said pursuant to 18 U.S.C.

§3553(a) is "The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purpose set forth in paragraph (2) of this section. The court, in determining the particular sentences imposed, shall consider, the kinds of sentences available, (a)(3) and the kind of sentencing range established for the applicable category of offenses committed by the defendants as set forth in the sentencing guidelines, (a)(4). ...

Mr. Alexander suffer from a Life sentence, which is greater than necessary, but Amendments 782 and 750, et seq, now entitles him to relief.

Several factors warrant reduction of the defendant's sentence in the instance case as authorized by the relevant statute and guideline. First among them is the clear applicability of the amended, retroactive guideline to Alexander's case. The United States Sentencing Commission, supported by a wealth of study, legal analysis, and consultation with judicial and other sources, has concluded that the original enhancement of the offense level was unduly severe, particularly in comparison with the lesser sentences imposed as to defendants involved with much larger quantities of powder cocaine. Pursuant to the statutory process, the November 1, 2007 and 2011 amendments to §2D1.1 was submitted to Congress and became effective on those dates. See: **Kimbrough**, 2007 WL 4292040, at *12 (noting significance of Congress' "tacit acceptance of the 2007 and 2010 amendments"). [**Kimbrough v. United States**,552 U.S. 85 2007)))].

The amended guidelines of 2007, 2011 and 2014 were made

retroactive for the purpose of granting relief in cases like the instant case in which the defendant's offense of conviction was enhanced on the now-superseded cocaine guidelines. **"This court should also consider the sentence it would have imposed had the amendment been in effect at the time the defendant was sentenced". Id.**

In the instant case, it is not unreasonable to find - that given the Court's position at sentencing, the defendant was sentenced to Life, but this Honorable Court may now, taken into account the Amendments to the Federal Sentencing Guidelines,[sic] (Amendments 782 and 750) and extending such position under the balancing factors articulated pursuant to ß3353 and ß994(o), the Supreme Court should direct the District Court to reduce your Defendant's sentence between 324-405 months of imprisonment as now applicable to Alexander's case by common law. See: **Kimbrough v. United States**,552 U.S. 85, 97-99 128 S. Ct. 858, 169 L. Ed. 2d 482 (2007).

Defendant gains further support under **Duncan v. Walker**,533 U.S. 167, 174, 121 S. Ct. 2120, 150 L. Ed. 2d 251 (2000), where the United States Supreme Court noted that a statute should be construed so that no word shall be superfluous, void or insignificant. In applying this reasoning to the instant motion, Defendant contends that courts has statutory authority to modify the term of imprisonment under §3582(c)(2), given the authority vested by mandate of §3553(a) to the extent applicable, where such reduction is consistent with applicable policy statement issued by the Sentencing Commission, under Amendments 706, 750,

and 782, and applying such terms nunc pro tunc, there is no doubt that the Court would have imposed a substantially lower term of imprisonment had the Amendments been in effect at the time of sentencing.

Additionally, Defendant's conduct subsequent to his commission of the offense is consistent with the rehabilitative goals of the sentencing guidelines.

Sixteen years ago, a jury convicted Defendant [Mr. Alexander] -then twenty-seven(27)years old - on three counts: cocaine base (crack) offenses, in violation of 21 U.S.C. §846, §841(a) and (b).

In light of Amendment 706 and 750 along with the newly promulgated Amendment 782 to the U.S.S.G. which become effective November 1, 2014 and applies retroactive to reduce most drug quantity base offense levels by two levels, a district court may accept motions for retroactive application prior to November 1, 2015 provided that.....any potential sentencing reduction not take effect until November 2015. United States Sentencing Guidelines Manual §1B1.10, cmt., application n.6. See **United States v. Thomas,** 775 F.3d 982 (8th Cir. 2014); and **United States v. Alegandro-Montanez,**778 F.3d 352 (1st Cir. 2015).

Thus, Defendant, Mr. Alexander, is eligible for a reduction as set forth herein.

Defendant [Mr. Alexander] respectfully prays the Supreme Court remand defendant for resentencing under Amendment 782, [750 "FSA"], 714, 711 and 706 to his sentence, and sus sponte modify Defendant's Life sentence. Under the New Sentencing Guidelines to [the new ratio under the FSA"] to Amendment 750 and 782, Defendant's total offense level is now 39 and his criminal history

category is III, which yields a sentencing guideline range of 324 months to 405 months. Therefore, Defendant humbly ask that this Honorable Court would remand sentencing to what is just, accordingly. As it is clear that this Honorable Court has sentencing discretion to direct relief sought in the instant §3582(c)(2) Motion.

Petitioner, would like the Court to take notice that the United States Probation Office and the United States Government both agreed that Petitioner is eligible for a sentence reduction pursuant to 18 U.S.C. 3582(c)(2).

Furthermore, the United States Government did not oppose a reduction in sentence. The District Court has relied on Petitioner's post-conviction conduct to deny Petitioner any relief. While the Court should consider post-conviction conduct violations conduct, Alexander's post-conviction violations are no more egregious than other defendants who have received reductions. Petitioner has already been punished for his post-conviction conduct. They have been handled administrately by the institutions in which he was confined. See, **United States v. Ayala**,No-05-CR-008 (2008) WL 555525 at W.D. VA.Feb 26, 2008). No bar to sentence reduction because such conduct may be dealt with administrately through loss of good time and/or privileges. See also 2017 **U.S. Dist LEXIS**, 6771 **U.S. v. Holtsclaw**, Jan 18, 2017.

There is nothing in nature in my particular crack cocaine offense or my post conviction conduct that cause for a more severe sentence than the one called for under the new sentencing guidelines. Petitioner would like too point out that the infractions that were committed were very minor infractions

especially considering the harsh environment that I have been placed. Condemned to a life sentence for a non-violent drug offense at a very young age of 27. Alexander had little motivation to obtain positive conduct. Petitioner is not trying to justify any negative actions on his part, he would just like to address it to the Court that he is not a bad person or a threat to society, and ask this Honorable Court to render justice in his sentence.

Prior to Alexander's present conviction as well as during his incarceration may it please the Court that Mr. Alexander has never been charged or convicted of a crime of violence. This alone substantiates the fact that Mr. Alexander needs rehabilitation not incarceration. Pursuant to 3553(a) factors.

In Petitioner's Order from the District Court, the District Court states, "Defendant received a sentence of Life. This sentence was fair in light of factors in Title 18 U.S.C. Section 3553(a)". There is nothing fair about a life sentence when there has been a retro-active change in law. The District Court has continued to use the same out-dated 100 to 1 ratio that has long ago been deemed bias and unfair.

Criminal History: The District Court relies on Petitioner's criminal history, offense conduct or relevant conduct to deny him relief. Alexander has only two prior state convictions, D Delivery of Controlled Substance (less than a gram) and Theft of a Person. Both convictions occurred 1992 when defendant was 19 years of age. Alexander was never incarcerated for more than one year for either offense. Two points resulted from defendant being placed on probation for those two offenses thus placing Alexander

in a criminal history category of (3).

This alone shows that defendant does not have an extensive criminal history.

Post Conviction Conduct: In Petitioner's post conviction conduct, Petitioner would like the Court to take notice of the 98 vocation, educational and recreational program certificates that he has successfully completed, (See Exhibit A) which outweighs the 26 minor infractions that he has in his 16 years of [illegible] incarceration.

Relevant Conduct: Although each factor in Section 3553(a) does not have to be proven, the District Court has relied on offense conduct or relevant conduct that does not reflect the record. There is nothing in the record showing defendant has any extreme offense conduct or relevant conduct that the District Court is relying on. Defendant received a 3 level enhancement for a manager role under 3B1.1(b) in a small four person conspiracy.

The District Court failed to consider as a whole the 3353(a) factors. The District Court cannot pick from the 3553(a) factors and disregard other factors from the provision. See, **United States v.Sawyer**,2016 U.S. Dist. LEXIS, 166316).

Defendant contends that the District Court abused its [illegible] discretion by falling to consider all the 3553(a) factors in making its determination. See, 3553(a)(6). "Any pertinent factors of policy statement, and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct". The 3553(a) factors clearly states: "To provide just punishment for the offense by considering

the kind of sentence available and the sentencing range, the need to avoid unwarranted disparities.

The Sentencing Reform Act of 1984, 18 U.S.C. 3351 et seq., calls for the creation of Sentencing Guidelines to inform judicial discretion in order to reduce unwarranted disparities in federal sentencing. The Act allows retroactive amendments to the Guidelines for cases where the guidelines becomes a cause of inequality, **not a bulwark against it.** Section 3582(c)(2) permits defendants sentenced based on a sentencing range that has been modified to move for a reduction sentence. Alexander's crack-cocaine range is a prime example of unwarranted disparities that section 3582(c)(2) is designed to cure.

In every case the Judge must exercise discretion to impose an appropriate sentence. This discretion in turn, is framed by the sentencing Guidelines, and that guidelines must be consulted in the regular course. Section 3582(c)(2) empowers District Court Judges to correct sentences that depend on framework that later prove unjustified. There is no reason to deny Section 3582(c)(2) relief to defendant who lingers in prison pursuant to sentences that would not have been imposed but for a since rejected, excessive range. See, **Freeman v. United States**,564 U.S.___,__,13 1 S. Ct. 2685, 2688, 180 L. Ed. 2d 2d 519). Simply stating certain 3553 factors that are not indifferent to other defendants with the same criminal history, offense conduct or post-conviction conduct and enforce a a harsher sentence than required is clearly an improper application of the law and use of erroneous legal standards.

The sentencing Commission has clarified the type of drug

quantity that required to trigger a term of life imprisonment. Therefore, the District Court abuse of discretion and interpretation of the guideline is based upon an error of law and clearly erroneous assessment of the evidence it relies on concerning Movant's Criminal History, Offense Conduct and Post Sentencing Conduct. None of these factors are of such aggravating nature to warrant an upward departure from the guidelines to continue to enforce a life term sentence. Petitioner asserts that he is not a risk or danger to the community.

Defendant would specifically like this Court to take notice that the United States Attorney Office has agreed with Defendant's request for a sentence reduction and recommends that the Defendant be resentenced to the top end of his new guideline range which is 405 months. (See enclosed Exhibit B). In closing Defendant requests to be resentenced to 324 months, the low end of his new guideline range.

II

As stated previously the District relies on Defendant's Criminal History Category as well as post conviction conduct and relevant conduct. Petitioner ask that this Court review cases similar to Movant's record and conduct and order the District Court to apply the 3553(a) factors to avoid unwarranted sentence disparities. See **United States v. Neron Christie**,736 F.3d 2013 U.S. App LEXIS 23073 second circuit). In **U.S. v.Christie, Christie's** Criminal History Category is a Category (5)five much greater than Defendant's Category (3)three. Unlike **Christie,** defendant's criminal history does not involve firearms nor does

defendant have any violence pre or post-conviction. **Christie** was awarded with a reduction dispite a greater Criminal History and a firearm offense.

III

In the Government's response, although agreeing that Petitioner (alexander) is eligible for a reduction and did not oppose a reduction in sentence. Government miscalculated the time frame for Defendant's latest incident report. Government states that Defendant's last infraction was committed December 2016, which is incorrect, (See pages 3 of Exhibit B). This major miscalculation carry a great weight when the District Court rendered its decision for Petitioner's motion. Petitioner's last incident report was on November 4, 2013.(See Exhibit C). This is extremely significant because Defendant has displayed good conduct incident free, for nearly five years in his last 17½years of incarceration.

IV

Petitioner's claim is that the District Court abused its discretion by simply stating it considered the relevant 18 U.S.C. §3353(a) factors, offense conduct, criminal history and post-sentencing conduct without elaborating. In addition the District Court also issued a standard AO-247 form stating the same without elaborations.

Circuits are split on degree of explanation necessary to satisfy 3582. Several circuits have found that elaborations are required when deciding a motion under 3582. See **United States v. Adaucto Chavez-Meza**,854 F.3d 655; 2017) also See **United States v. Christie**,736 F.3d 191, 195 (2nd Cir. 2013). A problem arises from

the fact that its impossible to ensure the District Court did not abuse its discretion if the order shows only that the District Court exercised its discretion rather than showing how it exercised its discretion without further elaborations.

In closing Defendant ask that this Court hold his petition in abeyance until a decision is render on **United States v. Adauct-Chavez-Meza**,854 F.3d pending with the United States Supreme Court.

Respectfully Submitted,

Date: May 29th ,2018

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