

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

**18-7964**

IN THE

SUPREME COURT OF THE UNITED STATES

RAFAEL SANTOS

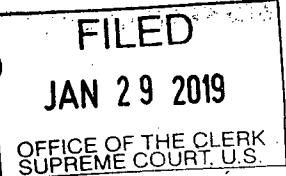
**PETITIONER**

(Your Name)

vs.

UNITED STATES OF AMERICA **RESPONDENT(S)**

ON PETITION FOR A WRIT OF CERTIORARI TO



COURT OF APPEALS FOR THE SECOND CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

Rafael Santos Reg. No. 15557-054

(Your Name)

Federal Medical Center Devens

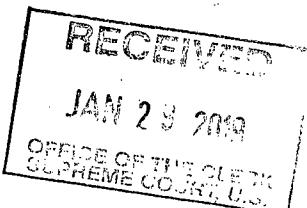
(Address)

P.O. Box 879  
Ayer, MA. 01432

(City, State, Zip Code)

N/A

(Phone Number)



## **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 is unpublished.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 is unpublished.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 is unpublished.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 is unpublished.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 November 16, 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**

### **FIFTH AMENDMENT**

Due Process of Law

## **REASONS FOR GRANTING THE PETITION**

THE DISTRICT COURT ERRED WHEN IT DENIED  
PETITIONER'S SECTION 3582(c)(2) MOTION

## TABLE OF AUTHORITIES CITED

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<b>CASES</b>	
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## STATUTES AND RULES

18 U.S.C. § 3582(c)(2)

## OTHER

**QUESTION(S) PRESENTED**

WHETHER THE DISTRICT COURT ERRED WHEN IT DENIED  
PETITIONER'S SECTION 3582(c)(2) MOTION?

STATEMENT OF THE CASE

Indictment SS 88-cr-642(RJW) charged Rafael Santos (hereinafter, "Petitioner) with seven counts relating to a drug trafficking conspiracy in which he shot a federal officer. Count one of the indictment charged him with conspiring to distribute cocaine, in violation of 21 U.S.C. § 846. Count two charged him with possessing one kilogram of cocaine, in violation of 21 U.S.C. § 841(b)(1)(A). Count three charged him with use of a firearm, in violation of 18 U.S.C. § 924(c). Count (4) charged him with assaulting a federal officer, in violation 18 U.S.C. § 111. Count (5) charged him with conspiring to murder a federal officer, in violation of 18 U.S.C. 1117. Count (6) charged him with attempted murder of a federal officer, in violation of 18 U.S.C. §§ 1111 and 1114. Count (7) charged him with the receipt and possession of a firearm with a defaced serial number, in violation of 26 U.S.C. §§ 5861(h) and 5871.

Following a jury trial, Petitioner was convicted as charged and sentenced to life imprisonment. All appeals and post-conviction motions were denied.

THE LOWER COURTS ERRED IN DENYING  
PETITIONER'S SECTION 3582(c)(2) MOTION

In Hughes v. United States, 138 S. Ct. 1765 (2018), the Supreme Court held that a sentence imposed pursuant to a binding plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C) is based on the defendant's Sentencing Guidelines range in the typical case. Meaning a defendant who was sentenced under a binding plea agreement

prior to a retroactive amendment to the Sentencing Guidelines is not precluded from seeking a reduction in sentence pursuant to 18 U.S.C. § 3582(c)(2). In the case at bar, it is undisputed that the Petitioner was sentenced under the guidelines controlled by drugs.

It is Petitioner's position that this Honorable Court should take a broad examination of all the circumstances in light of the Supreme Courts' decisions in Hughes v. United States, 138 S. Ct. 1765 (2018) ("what is at stake in this case is a defendant's eligibility for relief, not the extent of that relief"); Rosales-Mireles v. United States, 138 S. Ct. 18797 (2018)(concluding that a Court abused its discretion in determining that a miscalculated Guidelines range did not affect the fairness of judicial proceedings); and Molina-Martinez v. United States, 136 S. Ct. 1338 (2016) ("Given the Guidelines complexity, a District Court's use of an incorrect guidelines range may go unnoticed"). See Now, Illinois v. Lidster, 540 U.S. 419, 424 (2004), noting "[G]eneral language in judicial opinions [should be read] as referring in context to circumstances similar to the circumstances then before the Court and not referring to quite different circumstances that the Court was not considering"). See also, Apprendi v. New Jersey, 530 U.S. 466 (2000), where a State defendant entered into a plea agreement. Federal Courts have repeatedly held that the rule in Apprendi applies to all federal defendants that when to trial. In sum, the Supreme has not addressed whether or not (e.g., Hughes applies a judge's decision to accept the recommended Pre-sentence Investigation Report (PSI), over the defendant's objections), That question should be addressed here.

(i) When Considering Eligibility For A Reduced Sentence A District Court Abuses Its Discretion in Declining To Reduce A Sentence Based On Inaccurate facts:

A Sentencing Court must apply the offense guideline referenced in the Statutory Index for the statute of conviction. The Court may not use uncharged conduct to identify the appropriate Guideline. See United States v. West, 244 F. App'x 498, 500 (3rd Cir. 2007) ("The initial selection of the offense guideline [must] be based only on the statute of conviction (or offense) of conviction rather than on judicial findings of conduct [such as drug quantity] that will never be made by the jury").

The general rule that the offense of conviction is the offense conduct charged in the indictment has a limited exception:

"Where a stipulation that is set forth in a written plea agreement or made between the parties on the records during a plea proceeding specifically established facts that prove a more serious offense or offenses than the offense or offenses of conviction, the Court is to apply the guideline most applicable to the more serious offense ...U.S.S.G. 1B1.2 Comment (n.1)(explaining application of 1B1.2(a))."

See Braxton v. United States, 500 U.S. 344, 346 (1991). In the current case there were no stipulation of any kind present. See United States v. Audain, 2018 U.S. App. Lexis 20504 (11th Cir. 2018) (citing, Hughes), vacating the District Court's decision to deny § 3582(c)(2) relief and remanding case for the District Court to reconsider whether a reduced sentence is warranted without erroneously relying on an improper factual finding to deny § 3582(c)(2) relief.

(ii) 18 U.S.C. § 3582(c)(2):

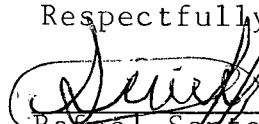
Section 3582(c)(2) empowers District Judges to correct sentences

that depend on framework that later proved unjustified." Freeman v. United States, 131 S. Ct. 2685, 2690 (2011). There is no reason to deny § 3582(c)(2) relief to defendants who linger in prison pursuant to sentences that would not have been imposed but for a since-rejected, excessive range." Id. Thus, section 3582(c)(2) modification proceedings should be available to permit the District Court to revisit a prior sentence to whatever extent the sentencing range in question was a relevant part of the analytic framework the judge used to determine the sentence ... " Freeman, 131 S. Ct. at 2692-93. Section 3582(c)(2) contributes to the Sentencing Reform Act's goal of creating a comprehensive sentencing scheme in which those who commit crimes of similar severity under similar conditions receive similar sentences by "ensuring that District Courts may adjust sentences imposed pursuant to a range that the Commission concludes are too severe out of step with the seriousness of the crime and the sentencing ranges of analogous offenses, and inconsistent with the Act's purposes." Id.

#### CONCLUSION

This Honorable Court should consider, Hughes, supra., Rosales-Mireles, supra., and Molina-Martinez, supra., and exercise its discretion to consider the Petitioner's ~~medical~~ problems, work history, exemplary custodial record, and educational/program pursuits as reasons to grant the pending section 3582(c)(2) motion.

Respectfully Submitted,

  
Rafael Santos, pro-se