IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2019

NO. _____

Cordero Robert Seals,

Petitioner,

-vs.-

United States of America,

Respondent.

Petition for Writ of Certiorari to
the United States Court of Appeals
for the Eighth Circuit
(8th Cir. Case No. 18-1042)

Clemens A. Erdahl
Nidey, Erdahl, Fisher,
Pilkington & Meier, PLC
425 2nd Street SE, Suite 1000
Cedar Rapids, IA 52401
Telephone: (319) 369-0000
E-mail: cerdahl@eiowalaw.com

ATTORNEY FOR PETITIONER
CORDERO ROBERT SEALS

QUESTIONS PRESENTED

I. WHETHER THE EIGHTH CIRCUIT MISINTERPRETED THE BUT-FOR CAUSATION TEST IN LIGHT OF THE GOVERNMENT'S BURDEN, AND INAPPROPRIATELY APPLIED THE CONTRIBUTING CAUSATION TEST REJECTED BY THIS COURT IN *BURRAGE?*

II. WHETHER IN DOING SO, THE EIGHTH CIRCUIT'S OPINION IS IN CONFLICT WITH THE SEVENTH CIRCUIT'S DECISION IN *GAYLORD V. UNITED STATES*?

III. WHETHER THE EIGHTH CIRCUIT'S ALTERNATIVE HOLDING MISINTERPRETED *BURRAGE* AND APPLIED AN ERRONEOUS SPECIAL RULE OF INDEPENDENTLY SUFFICIENT CAUSE?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases — Pages

Statutes and Rules — Pages

Other

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Cordero Robert Seals, respectfully prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Eighth Circuit in this matter.

OPINION BELOW

On February 15, 2019, the United States Court of Appeals for the Eighth Circuit entered its Opinion and Judgment, App. 1, affirming the December 28, 2017, Judgment and sentence of the United States District Court for the Northern District of Iowa.

JURISDICTION

The Eighth Circuit's jurisdiction was based on 28 U.S.C. § 1291. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The Eighth Circuit filed its Opinion and Judgment on February 15, 2019. App. 1. Mr. Seals filed a timely Petition for Rehearing and Rehearing En Banc (after the grant of a requested extension) on March 15, 2019. The Eighth Circuit summarily denied that Petition on April 11, 2019. This Petition for Writ of Certiorari is timely filed within ninety (90) days of the filing of the Eighth Circuit's denial of Mr. Seals' Petition for Rehearing and Rehearing En Banc.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

> In the case of a controlled substance in schedule I or II, . . . such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, . . .

21 U.S.C. § 841(b)(1)(C) (emphasis added).

STATEMENT OF THE CASE

On June 21, 2017, a grand jury returned a two-count Superseding Indictment against Petitioner/Defendant Cordero Seals. (Docket #26).[1] Count 1 charged Defendant with distribution of a controlled substance resulting in serious bodily injury in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and Count 2 charged Defendant with possession with intent to distribute a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). *Id.*

On July 17, 2017, a jury trial commenced. (Docket #45). At the close of the Government's evidence, Defendant moved for a judgment of acquittal. (Docket #47). The Court reserved ruling on the motion as to the serious bodily injury enhancement of Count 1. *Id.* Defendant renewed his motion for judgment of acquittal at the close of his case. (Docket #49). The Court again reserved ruling on the motion. *Id.* On July 19, 2017, the jury found Defendant guilty on both counts. (Docket #53). On July 28, 2017, Defendant filed a post-trial renewed motion for judgment of acquittal. (Docket #57). The District Court denied

---

1 "Docket" refers to the District Court's docket in *United States v. Seals*, N.D. Iowa CR-17-00028-LRR. "TT" refers to the transcript of trial, held July 17-19, 2017, found at Docket 87, 88. "ET" refers to the separate transcript of the trial testimony of the Government's experts, found at Docket 59.

Defendant's motion on October 18, 2017. (Docket #67).

The gist of the case against Cordero Seals as charged in Count 1 was that J.V. had purchased heroin and fentanyl from Mr. Seals at the Hawkeye Convenience Store located at 1581 First Avenue on November 4, 2016. (Trial Transcript, hereinafter "TT," Docket #87-88, at 24). J.V. went inside a bathroom to use drugs, and minutes later became unconscious; when police arrived, J.V. was found lying down between gas pumps not visibly breathing and with a rapid pulse. (TT 25). An officer found a syringe and a makeshift spoon made from a pop can and a lighter in J.V.'s front pocket. (TT 27). There was a burnt residue on the makeshift spoon. (TT 29). The residue was later tested and found to contain heroin and fentanyl. (TT 183).

As FBI forensic examiner Roman Karas testified, testing of J.V.'s blood revealed unknown quantities of methamphetamine, morphine (a by-product of heroin), codeine, fentanyl, and acetylfentanyl (Expert Transcript, hereinafter, "ET," Docket # 59, at 9-12). Karas testified that the effects of acetylfentanyl would be similar to that of fentanyl - - both of them being very potent. He also testified he could not determine how long the acetylfentanyl had been in the blood stream. (ET 6). He testified that while fentanyl has a medical use and can be found in hospitals,

acetylfentanyl does not. (ET 7). A half-life for acetylfentanyl has not been established. (ET 6-7).

Furthermore, Karas testified that he was not able to determine the quantity of any of the drugs in J.V.'s system because of the small sample size taken. (ET 23). Karas could not determine which substance had more of an impact on J.V.; nor could he determine the "specific effect" of any of the drugs in J.V.'s system (ET 23).

> A. Fentanyl was identified in the blood sample and acetylfentanyl was detected.
>
> Q. In your report of examination - - okay. Excuse me. Did - - but were you not able to determine the quantity of fentanyl or acetylfentanyl?
>
> A. That's correct.
>
> Q. you would not be able to determine whether or not the acetylfentanyl or the fentanyl would have more of an impact upon the user?
>
> A. From the testing that was done, no.
>
> Q. Nor could you determine whether the acetylfentanyl or the morphine that you determined had more impact upon the individual body in this case?
>
> A. Again, because of the types of testing that was done, I can't determine which drug was having the specific effect on there.

(ET 7-8).

The only opinion arguably regarding factual causation came from

Dr. Joshua Pruitt, a medical examiner and the treating physician at the emergency room for J.V. on the night in question. (ET 25-26). Dr. Pruitt testified that an opiate was the but-for cause of J.V.'s injury. (ET 53). However, he could not specify which opiate was the but-for cause of the injury, and testified that, "in regards to the morphine or the fentanyl or the acetylfentanyl, any one of those could have - - in the right concentration could have caused him to become unresponsive." (ET 60).[2]

Furthermore, Dr. Pruitt confirmed that no testing for concentration could be completed on the blood sample.

> Q. All right. You would not be able to determine whether it's the morphine, codeine, fentanyl or acetylfentanyl that was having impact on [J.V.]; correct?
>
> A. I - - I believe it is much less likely that the codeine was impacting him just based on the - - the time frame of symptoms. Codeine tends to be a longer acting and less potent opiate to - - it would be unusual for codeine to cause someone to lose consciousness like [J.V.] did. But in regards to the morphine or the fentanyl or the acetylfentanyl, any one of those could have - - in the right concentration could have caused him to become unresponsive.
>
> Q. From your view of the reports, there's no way of determining the concentration of any one of those three substances.
>
> A. That's correct; not - - not based on the laboratory

2 Morphine, fentanyl, and acetyl-fentanyl are all opiates. (ET 12).

reports we have.

(ET 17). In other words, Dr. Pruitt testified that any one of the morphine, fentanyl, and acetyl-fentanyl could have caused the injury, but without measurement of the concentrations of each, he could not opine which it was (or which combination of the three it was).

Based solely on the fact that seven minutes elapsed between J.V. exiting the bathroom and collapsing, Dr. Pruitt's concluded that, in his non-expert opinion, it was more likely that the heroin-fentanyl mixture, and not the acetyl-fentanyl, caused J.V.'s injury. However, he was unable to testify to that opinion to a reasonable degree of medical certainty.

> Q. The significance of seven minutes from the time that [J.V.] exited from the restroom to the time period that he's seen collapsing by the side of his vehicle, what significance does that have in terms of determining what particular drug might have been in his body?
>
> A. Again, *it really depends on the concentration of each of those drugs, so it would be hard to say which one achieved the effect of – of causing him to become unconscious that quickly or during that period of time.* It's – it's hard to say. It would be – my – my most educated opinion would be that it would probably be more of the heroin or morphine than it would have been the fentanyl because fentanyl typically has an even – an even faster onset of – symptoms.
>
> Q. Uh-huh. *But you can't tell for any sort of degree of medical certainty*.

A. That's correct.

(ET 17) (emphasis added).

REASONS FOR GRANTING THE WRIT

Certiorari is properly granted as the Eighth Circuit "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Supreme Court Rule 10(c). Additionally, the Eighth Circuit's decision in this case conflicts with the decision of the Seventh Circuit in *Gaylord v. United States*, 829 F.3d 500, 507 (7th Cir. 2016). *See* Supreme Court Rule 10(a) ("a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter").

I. THE EIGHTH CIRCUIT MISINTERPRETED THE BUT-FOR CAUSATION TEST IN LIGHT OF THE GOVERNMENT'S BURDEN, AND INAPPROPRIATELY APPLIED THE CONTRIBUTING CAUSATION TEST REJECTED BY THIS COURT IN *BURRAGE.*

In *Burrage*, this Court held that "at least where use of the drug distributed by the defendant is not an independently sufficient cause of the victim's death or serious bodily injury, a defendant cannot be liable under the penalty enhancement provision of 21 U.S.C. § 841(b)(1)(C)

unless such use is a but-for cause of the death or injury." *Burrage v. United States*, 134 S. Ct. 881, 892 (2014). But-for causation "requires proof that the harm would not have occurred in the absence of—that is, but for—the defendant's conduct." *Id.* at 888.

Burrage adopted the but-for test even though application of the but-for test would lead to situations where a result has no factual cause at all, allowing a defendant to escape criminal liability under § 841(b)(1)(C). *See Burrage,* 134 S. Ct. at 891.

Under the but-for test, a result will have no cause at all in cases of causal overdetermination, i.e. "cases in which the defendant's act plays a role in the causal mechanism underlying the harm but is potentially superfluous." *People v. Nere*, 2018 IL 122566, ¶ 55, 115 N.E.3d 205, 225 (rejecting the but-for cause test under state law because of the problem of causal overdetermination). For example, if two individuals simultaneously fatally shoot a third person, "the but-for test would say that the harm has no cause at all." *Id.* (*citing Price Waterhouse v. Hopkins*, 490 U.S. 228, 241 (1989) ("Events that are causally overdetermined . . . may not have any 'cause' at all [when the but-for test is used].").

In light of the problem of casual overdetermination, the Government in *Burrage* argued for alternatives to the but-for test for § 841(b)(1)(C), contending that addicts will often take drugs in combination, and a defendant will thus escape liability. *See Burrage*, 134 S. Ct. at 890. In particular, the Government first proposed a special rule for multiple independently sufficient causes. *See, e.g., Hous. 21, L.L.C. v. Atl. Home Builders Co.*, 289 F.3d 1050, 1056 (8th Cir. 2002) ("[B]ut-for causation need not be established when two causes concur to bring about the event, and either one of them, operating alone, would have been sufficient to cause the identical result."). This Court ultimately did not address the special rule for independently sufficient causes. This issue is discussed in Section III below.

Second, the Government in *Burrage* proposed a contributing cause test "under which an act or omission is considered a cause-in-fact if it was a 'substantial' or 'contributing' factor in producing a given result." *Burrage*, 134 S. Ct. at 890. This Court rejected the contributing cause test, requiring strict but-for causation. *See Burrage*, 134 S. Ct. at 890-91.

In the instant case, the Eight Circuit erroneously concluded that Petitioner's reading of *Burrage* is incorrect:

> Seals contends that merely because the acetyl-fentanyl alone could have caused the overdose [i.e. it "could have been an independently sufficient cause"], this possibility must be excluded as a matter of law in order to find that the heroin was a but-for cause. This is derived from the logical principle that the heroin is not a but-for cause of overdose if J.V. might have overdosed in the absence of the heroin. This reading of *Burrage* is strained.

App. 5 (Ruling, at 5).

1. *The Eighth Circuit Misapplied the But-For Test.*

As the Eighth Circuit correctly noted, Petitioner's position requires that the Government, in some sense, prove a negative proposition, as the but-for inquiry is counterfactual. Here the Government must prove that J.V. *would not have suffered* an injury but-for the drugs provided by Petitioner Seals. *See Burrage*, 134 S. Ct. at 887-888.

This is distinct from proof that J.V. *may not have suffered* an injury but-for the heroin-fentanyl mixture. "Evidence that the victim might not have died but for the defendant's conduct-that 'it was possible that the victim could have survived'--does not suffice to prove that she would not have died but for the defendant's conduct." Eric A. Johnson, *Criminal Liability for Loss of A Chance*, 91 Iowa L. Rev. 59, 68–69 (2005).

Here, the Eighth Circuit acknowledged that the acetyl-fentanyl could have been an independently sufficient cause of J.V.'s injury. (App. 5, Ruling, at 5). Because the acetyl-fentanyl could have been an independently sufficient cause, the Government is unable to satisfy the but-for test. Even considered in the light most favorable to the Government, because the evidence equally supports the acetyl-fentanyl's exclusive causal role, the Government cannot show that J.V. *would not have* suffered an injury but for the heroin-fentanyl mixture because there is a real possibility that J.V. would have suffered his injury even without the heroin-fentanyl mixture. Johnson, *supra*, at 69 ("[T]he jury must acquit if there is a 'real possibility' that the defendant's conduct was not a but-for cause of the result; that is, the jury must acquit if there is a real possibility that the result would have occurred even without the defendant's conduct.").

2. The Eighth Circuit Misapprehended the Government's Burden under the Strict But-For Test.

Because the Eighth Circuit misinterpreted the but-for test, it did not properly evaluate the Government's burden. Again, the *Burrage* formulation of but-for causation requires the Government, in some

sense, to prove a negative proposition, *i.e.* that a result would *not have occurred* absent the defendant's conduct. Thus, the Government must exclude the real possibility that J.V.'s injury would have occurred even without the heroin-fentanyl mixture. The Eighth Circuit found that Petitioner Seals' position "conflicts with our longstanding legal principle that, '[a]lthough the evidence must be consistent with guilt, it need not be inconsistent with every other reasonable hypothesis.'" (App. 5 – Ruling, at 5) (*citing Klein v. United States*, 728 F.2d 1074, 1075 (8th Cir. 1984)).

Klein did not involve causation, and Petitioner can find no case applying this proposition from *Klein* to the but-for causation inquiry. Even if *Klein* did apply, it would be consistent with Petitioner's interpretation of *Burrage*, because his argument is that, applying *Burrage* to the case at bar, the evidence is not consistent with guilt in light of the Government's burden under the but-for test.

Applying the Eighth Circuit's interpretation of *Klein* to cases of but-for causation is inconsistent with the very nature of the but-for causation inquiry, and would absolve the Government of its burden in a criminal case: "*the government at least must prove* that the death or injury would not have occurred had the drugs not been ingested: 'but for'

(had it not been for) the ingestion, no injury." *United States v. Hatfield*, 591 F.3d 945, 948 (7th Cir. 2010) (emphasis added); *see also Burrage*, 134 S. Ct. at 888 (endorsing the *Hatfield* Court's formulation of but-for causation).

Petitioner's position is consistent with Eighth Circuit precedent in the tort law context. The Eighth Circuit has previously described a plaintiff's burden in situations of causal overdetermination as follows:

> As we have said, the burden is on the plaintiffs to persuade the trial court that their theory as to the cause of the fire is correct, and *that burden is not satisfied by testimony which tends to show that the negligence of the defendant may have caused or even that it probably did cause the fire* *if it appears that the fire may have resulted from some other cause for which the defendant was not responsible*.

Arena Co. v. Minneapolis Gas Co., 234 F.2d 451, 458 (8th Cir. 1956) (emphasis added).

If a plaintiff in a tort lawsuit cannot satisfy its burden of preponderance of the evidence where it appears that a result "may have resulted from some other cause for which the defendant was not responsible," the Government, in a criminal case, cannot satisfy the stricter burden of proof beyond a reasonable doubt under the same circumstances; especially in light of the rule of lenity. *See Burrage*, 134 S. Ct. at 891; *see also United States v. Schmidt*, 626 F.2d 616, 618 (8th

Cir. 1980) ("[W]e believe that proof of some more direct causal connection between act and result should be required in criminal cases than would be sufficient to uphold liability in tort."). Securing a conviction under § 841(b)(1)(C) where a victim's injury "may have resulted from some other cause for which the defendant was not responsible" amounts to shifting the Government's burden to the defendant.[3]

Applying *Arena* to the criminal context, the Government cannot satisfy its burden of proof beyond a reasonable doubt because, absent any evidence regarding the concentration of the drugs in J.V.'s system, his injury "may have resulted from some other cause [i.e., the acetyl-fentanyl] for which the defendant was not responsible." Thus, the Government cannot satisfy its burden of proving factual causation.

---

[3] Recognizing the failure of the but-for test in cases "where two or more persons by their acts are possibly the sole cause of a harm[,]" tort law has explicitly created rules shifting the burden and requiring a defendant to prove "that the other person . . . was the sole cause of the harm." *See Summers v. Tice*, 33 Cal. 2d 80, 85, 199 P.2d 1, 3 (1948). Here, it would be impermissible to shift the burden to Petitioner/Defendant, and to require him, however implicitly, to present evidence that the acetyl-fentanyl was the factual cause of J.V.'s injury. *See Mullaney v. Wilbur*, 95 S. Ct. 1881, 1884 (1975) (noting that it violates due process to shift the production burden or the persuasion burden to defendant in a criminal case).

3. The Eighth Circuit Inappropriately Applied the Contributing Cause Test.

Lastly, the Eighth Circuit interpreted *Burrage* in a way that inappropriately applies the contributing factor test. As the *Burrage* Court notes, the contributing cause test is satisfied even where the drug distributed by a defendant is neither a but-for cause of injury nor an independently sufficient cause of injury. *Burrage*, 134 S. Ct. at 890. This is an acknowledgment that, in those circumstances, the drug would be causally superfluous.

Even though the Eighth Circuit found that the acetyl-fentanyl could have been independently sufficient to cause J.V.'s injury, it reasoned that "[t]he evidence also showed that the heroin-fentanyl mixture could have been either a but-for cause or an independently sufficient cause of J.V.'s overdose." (App. 5 - Ruling, at 5). However, this ignores the possibility the heroin-fentanyl mixture could have played merely a causally superfluous role.

The Eighth Circuit's conclusion thus requires application of the contributing cause test rejected in *Burrage*. If the heroin-fentanyl mixture only played a causally superfluous role, and was neither a but-for cause nor an independently sufficient cause, then Petitioner would only be liable here because the heroin-fentanyl mixture *contributed* to

the underlying causal mechanism. *See Burrage*, 134 S.Ct. at 890. Thus, given the facts of the case at bar, the only reasonable conclusion is that the Eighth Circuit inappropriately applied the contributing cause test.

II. THE EIGHTH CIRCUIT'S OPINION IS IN CONFLICT WITH THE SEVENTH CIRCUIT'S DECISION IN *GAYLORD.*

There is a conflict between the Eighth Circuit's opinion in this case and the Seventh Circuit decision in *Gaylord v. United States*. In *Gaylord*, defendant distributed oxycodone to the victim. The postmortem and forensic pathology reports stated that the cause of death was "oxycodone and cocaine intoxication." The Seventh Circuit found that defendant's counsel was ineffective for failing to challenge the application of the "death results" enhancement on the basis that his actions did not fit the statutory language of the enhancement. The Seventh Circuit noted:

> In [defendant]'s case, there was no evidence that the oxycodone he distributed was the but-for cause of death. Rather, the postmortem and forensic pathology reports stated that the cause of death was "oxycodone and cocaine intoxication." In other words, *even without the oxycodone, the cocaine concentration may have been enough to result in [the victim]'s death*.

Gaylord v. United States, 829 F.3d 500, 507 (7th Cir. 2016) (emphasis

added).

The Eighth Circuit did not dispute that *Gaylord* is persuasive authority, but rather unsuccessfully attempted to distinguish *Gaylord* from the case at bar: "Here, there was ample evidence that the heroin was either a but-for cause or an independently sufficient cause of the overdose. In *Gaylord*, the evidence was equivocal." (App. 6 - Ruling, at 6).

First, *Gaylord* is consistent with prior Eighth Circuit precedent. Applying the reasoning of *Arena* to mixed-drug intoxication cases, the Government's burden "is not satisfied by testimony which tends to show that the [conduct] of the defendant may have caused or even that it probably did cause the [injury] if it appears that the [injury] may have resulted from some other cause for which the defendant was not responsible." *Arena Co.,* 234 F.2d at 458. Second, the Eighth Circuit ignored the possibility that the heroin-fentanyl mixture was causally superfluous, *i.e.* J.V.'s injury "may have resulted from some other cause [*i.e.* the acetyl-fentanyl] for which the defendant was not responsible." *Id.* Thus, contrary to the Eighth Circuit's conclusion, the evidence in the case at bar *is* equivocal. According to Dr. Pruitt's testimony, the morphine, the fentanyl, or the acetylfentanyl, "any *one* of those . . . in

the right concentration," could have caused J.V.'s injury. (ET 60) (emphasis added).

If, as Dr. Pruitt testified, the acetyl-fentanyl, on its own, could have caused J.V.'s injury, then in such a situation the heroin-fentanyl mixture would neither be a but-for cause nor an independently sufficient cause, and, at most, would be a superfluous contributing cause. The Eighth Circuit misapprehended the import of *Gaylord* in light of the problem of causal overdetermination, and thus incorrectly distinguished *Gaylord* from the case at bar. In both cases, the evidence regarding causation is equivocal, and thus, the Government has failed to meet its burden. *See Arena Co.,* 234 F.2d at 458.

III. THE EIGHTH CIRCUIT MISINTERPRETED *BURRAGE* AND APPLIED AN ERRONEOUS SPECIAL RULE OF INDEPENDENTLY SUFFICIENT CAUSE.

The Eighth Circuit made the alternative finding that "[e]ven if the jury *had* determined that the acetyl-fentanyl was an independently sufficient cause of the overdose, *Burrage* explicitly carved out an exception for cases where there are multiple independently sufficient causes[.]" (App. 6 - Ruling, at 6) (emphasis in original). The Eighth

Circuit then cites to an example cited in the *Burrage* decision where the Government argues for a special rule for multiple independently sufficient causes. *Id.* The *Burrage* Court explicitly refused to endorse such a special rule: "*We need not accept or reject the special rule developed for these cases*, since there was no evidence here that Banka's heroin use was an independently sufficient cause of his death. No expert was prepared to say that Banka would have died from the heroin use alone." *Burrage*, 134 S. Ct. at 890 (internal citations omitted) (emphasis added).

Thus, the Eighth Circuit misinterpreted *Burrage* and applied a special rule that this Court refused to accept in *Burrage*. Even if the *Burrage* Court had adopted this rule, it would not apply for the same reasons it would not have applied in *Burrage*: the Government did not meet its burden of proving that the concentration of the heroin-fentanyl mixture alone caused J.V.'s injury. In fact, the upshot of the expert testimony was that any of the three opiates – morphine, fentanyl and acetyl-fentanyl could have caused the injury – alone or in combination, but that because the concentrations of each had not been measured, the experts could not opine whether each was an independently sufficient cause or whether some combination of the three opiates caused the

injury. In other words, the evidence did not establish that the heroin-fentanyl mixture was independently sufficient, without the acetyl-fentanyl, to cause the injury. Thus, unlike the hypothetical discussed in *Burrage,* there was no evidence that the stabbing (the heroin-fentanyl mixture) and the shooting (the acetyl fentanyl) were each independently sufficient to cause the injury to the victim. The possibility that all three opiates combined (*i.e.* each was a contributing cause) was not ruled out.

Thus, in this case, the Government conceded in its Brief before the Eighth Circuit that it was not arguing that that the heroin-fentanyl mixture was independently sufficient to cause J.V.'s injury. (Gov. Brief at 43). Nor could the Government prove that the heroin-fentanyl mixture was independently sufficient to cause J.V.'s injury, as there could be no analysis of the lethality of each component of the mixture without concentration. *See, e.g., United States v. Snider*, 180 F. Supp. 3d 780, 796 (D. Or. 2016).

As there was no evidence of the *concentration* of any of the numerous drugs in his body, the jury was left with evidence that the acetyl-fentanyl "in the right concentration" could have caused J.V.'s injury. (ET 60) ("in regards to the morphine or the fentanyl or the acetylfentanyl, any one of those could have - - in the right concentration

could have caused him to become unresponsive."). Again, the failure of proof in both directions was the failure of the Government to present evidence of the concentration of the drugs in J.V.'s system, upon which its expert testimony depended. Absent such evidence, the Government cannot satisfy its burden of proof beyond a reasonable doubt. This burden is demanded because, in a criminal case, a defendant has an "interest of transcending value" at stake, i.e. his liberty. *Speiser v. Randall*, 357 U.S. 513, 525—526 (1958). This transcending value should not yield to a misapprehension of the strict nature of but-for causation.

CONCLUSION

Petitioner Cordero Robert Seals respectfully requests this Court to grant certiorari in this matter. Petitioner Seals further requests this Court to reverse and remand this matter to Court of Appeals for the Eighth Circuit with directions to remand to the District Court for resentencing.

Respectfully Submitted,

*__/S/ Clemens A. Erdahl*_____

Clemens A. Erdahl
Nidey, Erdahl, Fisher,
Pilkington & Meier, PLC
425 2nd Street SE, Suite 1000
Cedar Rapids, IA 52401
Telephone: (319) 369-0000
E-mail: cerdahl@eiowalaw.com

ATTORNEY FOR PETITIONER
CORDERO ROBERT SEALS

CERTIFICATE OF FILING

I hereby certify that on the 9th day of July, 2019, I electronically filed the following Petition for Writ of Certiorari with the Clerk of the United States Supreme Court using the CM/ECF system. The electronic Writ has been scanned for viruses and the scanned showed no virus.

I further certify that I filed paper copies of this Petition for Writ of Certiorari on the 3rd Day of July, 2019, by placing an original and 10 copies in the United States Mail to United States Supreme Court Clerk , United States Supreme Court, 1 First Street NE, Washington DC 20543.

*__/S/ Clemens A. Erdahl*_____
Clemens A. Erdahl

CERTIFICATE OF SERVICE

I hereby certify that on the 3rdth day of July, I served this Petition for Writ of Certiorari by causing one copy thereof to be delivered via first class United States mail, postage paid to Dan Chatham, Assistant United States Attorney, Northern District of Iowa, 111 Seventh Avenue SE, Box 1, Cedar Rapids, IA 52401, and by causing one copy thereof to be delivered via first class United States mail, postage paid to Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001.

I further certify that on the 3rd day of July, 2019, a copy of this Petition for Writ of Certiorari was forwarded to Petitioner Cordero Robert Seals via first class United States mail, postage paid, to Cordero Robert Seals, Register No. 17127-029, FCI Greenville, Federal Correctional Institution, P.O. Box 5000 Greenville, IL 62246.

*__/S/ Clemens A. Erdahl*_____
Clemens A. Erdahl