No. 19-5995

IN THE SUPREME COURT OF THE UNITED STATES

JASON L. CLARK, PETITIONER

V.

UNITED STATES OF AMERICA

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

REPLY BRIEF FOR THE PETITIONER

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INTRODUCTION

Because the Government raised a new point asserting that This case would be an unsuitable vehicle for addressing the question presented the Petitioner has opted to "Reply."

TABLE OF CONTENTS

STATEMENT OF AUTHORITIES

STATUTES

UNDER THE MENNA BLACKLEDGE DOCTRINE THIS CASE IS A SUITABLE VEHICLE FOR ADDRESSING THE QUESTION PRESENTED

Because the Petitioner was subject to the statutory provisions of 21 U.S.C. 851(e) and the provisions of 18 U.S.C. 924(e), his case is a suitable vehicle for addressing the "question presented to the High Court. Contrary to the Government's rendition on case related defects the constitutional claim at issue here are consistent with the Petitioner's admission that he engaged in the conduct alledged in the indictment. The Petitioner's challenge does not in anyway deny that he engaged in the conduct to which he admitted, instead, he seeks to raise a claim which judged on it's face based upon the existing record, would extinguish the Government's power to 'constitutionally prosecute the Petitioner if the claims are successful. See Menna v. New York, 423 U.S. 21 (1974)‡ Citing Blackledge v. Perry, 417 U.S. 21 (1974)‡ also see Haynes v. United States, 390 U.S. 85, 87 n. 2 (1968) ("a defendant's plea of guilty did not... waive his previous constitutional claim.") (Justice Harlan's opinion)‡ also see United States v. Ury, 106 F.2d 28, Treas. Dec. 49950 (CA2 1939) (holding‡ the plea of guilty did not foreclose the appellant, who argued that a statute was unconstitutional, "from the review he now seeks."); also see United States v. Broce, 488 U.S. 563 (1989)‡ and Class v. United States, 200 L.Ed 2d 37 (2018) ("But the cases to which we have referred make clear that a defendant's guilty plea does not make irrelevant the kind of claim Class seeks to make.")

The Petitioner claims in the instant case is that "Congress framed a law that judicially has no pertinent guidelines, delegating authority to administrators, prosecutors, juries and judges to make ad hoc decisions implicates "Union" of the judicial and legislative powers." 21 U.S.C. 851(e), is also implicated as a miscarriage of justice that " conflicts with reddress (customarily afforded) in violation og due process." See Petitioner's brief page 10-11. (Pet. brief) ("with the exception of the limits set in 851(e), allprior predicates are subject to the categorical or modified categorical approach, with regards to statutory enhancements and a determination is reached as to whether the statutory enhance-ment is lawful or unlawful based on advanced principles uniformally established by trial and error in the Courts." quoting Descamp v. United States, 133 S.Ct. 2276 (2013); and Mathis v. United States, 136 S.Ct. 2243 (2016); also see Moncrieffe v. Holder, 569 U.S. 84). 851(e). conflicts with very principle that; "a prisoner may move the court that imposed a sentence in violation of the Constitution or laws of the United States for relief. It is not solely a matter of rather whether "a sentence carries a penalty in excess of the statutory maximum, that makes Petitioner's claim an exception to a waiver of his rights, such is not marginal to the constitutional validity of the conviction. Haring v. Prosise 462 U.S. 306,321 (1983). The same is true with the Petitioner's 18 U.S.C. 924(e) claim asserting that the statute of conviction is unconstitutionally vague. Though contention is available that the Petitioner's sentence is in excess of the statutory maximum as it pertains to 18 U.S.C. 922(g), the Petitioner went on to as-

sert that; "Congress left room for 18 U.S.C. 924(e) to be circumvented and suject to the preference of the judiciary, instead of placing emphasis on it's meaning. See Pet. Brief. pg. 12. The argument was based on the fact that the statute fails to inform individuals that it would be state legisture that defines "a maximum sentence of ten years or more." The statute invited arbitrary power...leaving people in the dark about what the law demands and allowing prosecutors and the Courts to make it up. See Sessions v. Dimaya, No. 15-1498. Actually read on it's face the statute indicates that the drug offenses are "as defined under the federal Controlled Substance Act." There is no back drop to concerns that are case related, the claim pertains to the statute of conviction being unconstitutional, clearly outside the reach of---the Government's waiver.

However, a valid guilty plea "forgoes not only a fair trial, but also other accompanying-constitutional guarantees." Ruiz, 536 U.S. at 628-629 (United States v. Ruiz, 536 U.S. 622, 629 (2000)). While those "simutaneously" relinquished right include the privilege against compulsory self-incrimination, the jury trial right, and the right to confront accusers, McCarthy v. United States, 394 U.S. 459, 466 (1969), they do not include "a waiver of the privilege which exist beyond the confines of the trial." Mitchell v. United States, 526 U.S. 314, 324 (1999). A valid guilty plea also renders irrelevant-and thereby prevents the defendant from appealing-the constitutionality of case-related government conduct that takes place before the plea is entered. See e.g. Haring, supra at 320. (holding a valid guilty plea "results in the

defendant loss of any meaningful opportunity he might otherwise have had to challenge the admissibility of evidence obtained in violation of the Fourth Amendment.") Neither can a defendant later complain that the indicting grand jury was unconstitutionally selected. Tollett v. Henderson, 411 U.S. 258, 266-267 (1973)). Furthermore, a valid guilty plea relinquishes any claim that would contradict the admissions necessarily made upon a voluntary plea of guilty." Broce, supra, at 573-574.

So contrary to the Government's assertion that "Nothing in this Court's decision in Class, calls into question a defendant's ability to expressly waive his right to collateral attack his sentence, including on the basis of constitutional claims, where the waiver is knowingly and voluntarily made." See Brief in opposition Page 12. (Opp. Brief.) Class, explained the significance of the Menna Blackledge, doctrine, stating that; "where North Carolina indicted and convicted Jimmy Seth Perry, on a misdemeanor assault charge. When Perry exercised his right under a North Carolina statute to a de novo trial in a higher court, the state reindicted him, but this time the state charged a felony, which carried a heavier penalty, for the same conduct. Perry pleaded guilty. He then sought habeas relief on the grounds that the reindictment amounted to an unconstitutional vindictive prosecution. The State argued that Perry's guilty plea barred him from raising his constitutional challenge. But this Court held that it did not. The Court noted that a guilty plea bars appeals of many claims,

including some "antecedent constitutional violations" id. at 30. (quoting Tollett v. Henderson, 411 U.S. 258, 266-267 (1973)). While Tollett claims were "of constitutional dimension," the Court explained that "the nature of the underlying constitutional infirmity is markedly different from a claim of vindictive prosecution, which implicates "the very power of the state to prosecute the defendant." Blackledge, 417 U.S. at 30. Also see Menna v. New york, 423 U.S. 61 (1975) ("A plea of guilty to a charge does not waive a claim that-judged on it's face-the charge is one which the state may not constitutionally prosecute.") Menna's claim amounted to a claim that "the state may not convict" him "no matter how validly his factual guilt is established." Ibid. Menna's guilty plea, there [did] not bar the claim." Ibid. See Haynes v. United States, 390 U.S. 85, 87 n. 2 (1968) ("A defendant's plea of guilty did not... waive his previous [constitutional] claim.")

Notable is that the Government's argument, the District Court's findings and that of the Appellate Court of Appeals, all conflict with the Menna Blackledge, doctrine. What the Government seeks to offer with it's view on the waiver issue is arbitrary and capricious. Foreclosing a challenge to law that is illegal or may very well be found to be, goes hand-in-hand with "Reaching back 30 years for a prior offense to heighten penalties, then in the next breath, foreclosing challenge opposing use of the offense because it is 5 years old." See 21 U.S.C. 851(e). And it certainly is in rythm with the slight of hand or variation that that encapsulates 18 U.S.C 924(e)(ii). Pinning Congres-

sional legislature on it's face (a faint) then hammering defendant's based on legislature that's contrary to the Controlled substance Act, state legislature that supplements what Congress defined generically. Where as a 1987 conviction for "sales of .40 grams of crack cocaine under state legislature may involve a term of imprisonment of ten years or more but under the CSA, the threshold amount of 28 grams or more is consistent with the Drug Quantity Table and the Equivalency Table when defining a serious drug trafficking offense. Even had the threshold amount remained at 5 grams, in most cases already tried on the subject the state offense would not categorically match what Congress implemented by terms set in the CSA. Certainly Petitioner's legal circumstances are suitable as a vehicle for addressing the question presented to this Honorable Court, particularly, where the government offered not one paragraph disavowing the relevance of the Menna Blackledge, doctrine, which supports a favorable finding on behalf of the Petitioner and if necessary "Oral Arguments," and "Appointment of Counsel or what ever the court deems fair and just.

Wherefore, the Petitioner duly Prays,
that the High Court grants the opportunity to be heard on the claims that the statutes of conviction are "Arbitrary," "Capricious," and "Vague law."

Respectfully submitted.