

No. 19-6142

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IN THE  
SUPREME COURT OF THE UNITED STATES

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SANTO LEONE — PETITIONER  
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Santo Leone

(Your Name)

P.O. Box 10

(Address)

Lisbon, Ohio. 44432

(City, State, Zip Code)

N/A

(Phone Number)

## QUESTION(S) PRESENTED

Whether district court abused its discretion by concluding motion to amend should be denied as untimely?

Whether district court erred when failure to apply the categorical approach to Petitioner's 1997 & 2009 prior marijuana drugs convictions?

Whether Petitioner's 1997 & 2009 marijuana drug convictions no longer qualifies as predicate offenses under § 851?

Whether Petitioner is eligible to receive relief under the First Step Act 2018, Section 401(a)(2)?

Whether Texas Health & Safety Code Section § 481 is divisible that sets out one or more elements of the offense in the alternative?

## 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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CASES	PAGE NUMBER
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Mathis v. United States, 136 S. Ct. 2243 (2016)	6.
Descamps v. United States, 570 U.S. S. Ct. 2276 (2013)	6.
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United States v. Tanksley, 848 F.3d 347 (5th Cir. 2017)	6.
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## OTHER

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   B   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 is unpublished.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   A   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 05/23/2019.

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: 06/13/2019, and a copy of the order denying rehearing appears at Appendix C.

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

### Amendment V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### Amendment VI [1791]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

## STATEMENT OF THE CASE

In 2012, Petitioner Santo Leone, was indicted on one count of conspiring to distribute at least 1,000 kilograms of marijuana (Count 1) and four substantive counts of smuggling marijuana on various dates in 2009 and 2010 (Counts 2-5). (Cr. Dkt. 1). He ultimately pleaded guilty to the conspiracy charge in (Count 1), and the Court sentenced him under Section 21 U.S.C. § 841(b)(1)(A) to 240 months in prison. (Cr. Dkt. 211 at 1-2). Although a sentence under Section § 841(b)(1)(A) normally carries a 10-year mandatory minimum sentence his sentence was enhanced under that Section to a mandatory minimum of 20 years because he had a prior felony conviction for marijuana possession that qualifies as a felony drug offense. (Cr. Dkt. 240 at 7). Petitioner later appealed his sentence, and on July 17, 2014, the Fifth Circuit summarily dismissed his appeal as frivolous. (Cr. Dkt. 276 at 1). He did not file a petition for writ of certiorari. (Dkt. 1 at 2). Petitioner timely filed, pro se motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence. (Dkt. 1; Cr. Dkt. 303); and (2) Petitioner's motion to amend his Section § 2255 motion, so that he can add a new ground for relief. (Dkt. 4; Cr. Dkt. 312). District court denied Petitioner's Section § 2255 motion. (Dkt. 5; Cr. Dkt. 313). Petitioner filed a timely notice of appeal to the United States Court of Appeals for the Fifth Circuit. (Dkt. 8; Cr. Dkt. 315); (Case No. 18-40476). On May 23, 2019, (USCA) denied Petitioner's request for (COA), to proceed (IFP) on appeal, and appointed counsel. (Case No. 18-40476). On June 13, 2019, (USCA) denied Petitioner's petition for Rehearing. (Case No. 18-40476). On July 10, 2019, (USCA) denied Petitioner's petition for Rehearing En Banc. (Case No. 18-40476).

## REASONS FOR GRANTING THE PETITION

### STATEMENT

The Petitioner Santo Leone, is a pro se litigant and pro se pleadings are held less stringent standard than formal pleadings drafted by lawyers. (See Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972)).

### ARGUMENT

#### I. TIMELY FILED MOTION TO AMEND OR SUPPLEMENT PURSUANT FEDERAL RULE OF CIVIL PROCEDURE 15(c)(1)(B)

Under Rule 15(c), "an amended pleading relates back to the date or the date of the original pleading if it asserts a claim arising out of the conduct, transaction, or occurrence that was set out in the original pleading." (See Davenport v. U.S., 217 F.3d 1341, 1343-44 n. 4 (11th Cir. 2000)(explaining that, if otherwise untimely claim relates back, it can be considered as if it had been filed when the timely claims were filed);(see also Fed.R.Civ. P. 15(c)(1)(B).

District court abused its discretion when denied Petitioner's motion for leave to amend his Section § 2255 motion under Fed.R.Civ.P. 15(c)(1)(B).

First, the Petitioner timely filed his Section § 2255 motion under 28 U.S.C. § 2255 to Vacate, set Aside, or Correct Sentence. (Dkt. 1; Cr. Dkt. 303). Then the Petitioner filed an timely motion for leave to amend his Section § 2255 motion before the district court's judgment was entered. (Dkt. 4; Cr. Dkt. 312). District court denied Petitioner's § 2255 motion and motion to amend. (Dkt. 5; Cr. Dkt. 313). Second, Petitioner's claim in his motion to amend "relates back" to his "original claims" in his Section § 2255 motion asserting his 1997 & 2009 prior marijuana drug convictions. (Dkt. 1; Cr. Dkt. 303). So therefore, district court should have considered Petitioner's motion for leave to amend his Section § 2255 motion under Fed.R.Civ.P. 15(c)(1)(B).

#### II. TEXAS HEALTH & SAFETY CODE SECTION § 481 IS DIVISIBLE AND THE CATEGORICAL APPROACH SHOULD HAVE BEEN APPLIED BY THE COURT

III. FIRST STEP ACT 2018, SECTION § 401(a)(2), APPLIES TO PETITIONER  
BECAUSE HE WAS ON APPELLATE REVIEW

On September 24, 2018, Petitioner filed motion to request (COA) and brief in support. (Case: 18-40476, Dkt. 1);(also see Appendix F). On May 23, 2019, (USCA) denied Petitioner's motion for a (COA), (IFP), appointed counsel. (Case: 18-40476, Dkt. 2);(Appendix B). On June 06, 2019, Petitioner filed petition for Rehearing. (Case: 18-40476, Dkt. 3). On June 13, 2019, (USCA) denied petition for Rehearing. (Case: 18-40476, Dkt. 4);(Appendix C). On June 19, 2019, Petitioner filed motion for leave to amend or supplement pursuant the First Step Act 2018, Section 401(a)(2). (Case: 18-40476, Dkt. 5);(Appendix D). On June 24, 2019, Petitioner filed petition for Rehearing En Banc. (Case: 18-40476, Dkt. 6). On July 10, 2019, (USCA) denied petition for Rehearing En Banc. (Case: 18-40476, Dkt. 7);(Appendix E).

The record reflects that Petitioner filed an motion for leave to amend or supplement (Dkt. 5) while on appellate review. While the Fifth Circuit Court states that the Petitioner's motion to amend or supplement was not filed properly which was under Fed.R.Civ.P. 15, but in light of Supreme Court's decision in Haines v. Kerner, the Court was suppose to [construe] Petitioner motion to amend or supplement under the proper rule Fed.R.App.P. 28(j). Because the Petitioner is a pro se litigant and pro se pleadings are held less stringent standard than formal pleadings drafted by lawyers. (See Haines v. Kerner, 404 U.S. 519, 520-21, 92 S. Ct. 594, 30 L. Ed. 2d 672 (1972)). Therefore, the Petitioner's motion to amend or supplement the First Step Act 2018, Section 401(a)(2), should have been [construed] as such and accepted, and reviewed by the Court.

Pursuant to the recent U.S. Supreme Court's decision in Wheeler v. U.S., No. 18-7187, S. Ct. Granted, Vacated & Remand (June 3, 2019), the Petitioner is eligible to receive relief under the First Step Act 2018, Section § 401(a)(2).

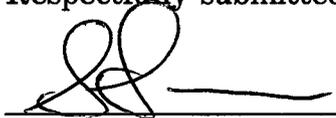
In Wheeler, the Supreme Court determined that Wheeler's motion for leave to amend or supplement was valid to insert the First Step Act 2018, Section § 401(a)(2), pertaining amended 21 U.S.C. § 841(b)(1)(A) to reduce the statutory minimum sentence for drug offenses from (20) years to (15) years because Wheeler was still on "appellate review". (See Wheeler v. U.S.. No. 18-7187, S. Ct. Granted, Vacated & Remand (June 3, 2019);(see also First Step Act 2018, Section § 401(a)(2))).

On July 17, 2013, Petitioner was sentenced under 21 U.S.C. § 841(b)(1)(A) and received a

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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Date: 9/09/2019