

Case No. 19-6942

**IN THE
SUPREME COURT OF THE UNITED
STATES**

Savon Germain Carter,
Applicant/Petitioner,

v.

**United
States of
America,**
Respondent.

**REPLY IN SUPPORT OF PETITION FOR A
WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
TENTH CIRCUIT**

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DISCUSSION

The Opposition Brief focuses on the factual circumstances under which a buyer-seller instruction is appropriate and claims that the facts of this case make it inappropriate to apply the buyer-seller rule. Opp. Br. at 8-18.

This issue, however, was neither raised by the government below, addressed in the Tenth Circuit opinion, nor raised by Savon Carter in his Petition for Writ of Certiorari.¹

The Tenth Circuit relied solely on Mr. Carter's status as a seller to categorically reject application of the buyer-seller rule, holding that "our court recognizes that 'the purpose of the buyer-seller rule is to separate *consumers*, who do not plan to redistribute drugs for profit, from street-level, mid-level, and other distributors, who do intend to redistribute drugs for profit, thereby furthering the objective of the conspiracy.'" *United States v. Carter*, 781 F. App'x 707, 716 (10th

¹Similarly, the issue whether the failure to instruct the jury regarding the buyer-seller rule (Mr. Carter's theory of defense) is a harmless error was neither raised by the government below nor addressed in the Tenth Circuit opinion. Regardless, such failure could not be harmless. A reasonable jury could conclude that the transactions Mr. Carter was personally involved in were mere buy-sell agreements. Such conclusion would prevent application of *Pinkerton v. United States*, 328 U.S. 640, 647-48 (1946). In the absence of *Pinkerton* liability, there was not sufficient evidence to convict Mr. Carter of a conspiracy to distribute 500 grams or more of methamphetamine (based on reasonably foreseeable acts of his co-conspirators) and the District court could not have imposed a base offense level of 30.

Cir. 2019) (emphasis added) (quoting *United States v. Ivy*, 83 F.3d 1266, 1285–86 (10th Cir. 1996)).

As such, the main question raised in Mr. Carter’s petition addresses the circuit split on the pure question of law “[w]hether the buyer-seller rule (that a mere agreement to buy and sell is insufficient to establish a drug conspiracy) applies to all participants – not just the end-users.” Cert. Pet. at i.

This case is the suitable vehicle to resolve the circuit split on this pure legal question.

DATED this 26th day of February 2020.

Respectfully submitted,

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