

No. _____

19-7172

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

LARRY ANTONIO SIMMONS

— PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA

— RESPONDENT(S)

FILED

DEC 18 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FOURTH CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

Larry Antonio Simmons # 21353-171

(Your Name)

FCI-Williamsburg, P.O. Box 340

(Address)

Salters, S.C. 20590

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I.

Whether the United States District Court for the District of South Carolina the Honorable Bruce H. Hendricks, Judge, Assistant United States District Attorney Nick Bianchi, Fourth Circuit Court of Appeals judges, Keenan, Diaz, and Shedd violated the judicial code of ethics when they refused to recognize a Congressional Act (First Step Act of 2018) signed into Federal Law by President Trump when they refused to grant this Petitioner a sentence reduction under said Act because they are admitted "Never Trumpers" and will not recognize any Act that he signs?

LIST OF PARTIES

[X] 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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TABLE OF AUTHORITIES CITED

CASES

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United States v. Simmons, 649 F. 3d. 237; 2011 U.S. App. LEXIS 17038

STATUTES AND RULES

First Step Act of 2018, Public Law No. 115-015, § 404, 132 Stat. 015, 015 (2018).

Fair Sentencing Act of 2010, Public Law No. 111-220, § 2, 124 Stat 2372, 2372 (2010).

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 A 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 is unpublished.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 B 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 is unpublished.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 26, 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: _____, 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

First Step Act of 2018, Public Law No. 115-015- § 404, 132 Stat. 015, 015 (2018); Sec 401 (a) (1) (57) (A) (B) and Sec. 404 (b)

Fair Sentencing Act of 2010, Public Law, No. 111-220, § 2, 124 Stat, 2372 2372 (2010).

STATEMENT OF THE CASE

On December 21, 2018, Congress enacted the First Step Act and thereafter President Trump signed it into Federal Law, said act incorporated the Fair Sentencing Act of 2010, making provisions of the Fair sentencing Act retroactive and applicable to all defendants sentenced for crack cocaine offenses.

On March 26, 2013, appearing before the United States District Court for the District of South Carolina, Petitioner after entering into a plea agreement to the charges of 21 USC § 841 (B)(1)(B) and § 851 for Possession With Intent To Distribute Cocaine Base in the amount of 50 grams or more. Petitioner was thereafter sentenced to a term of 262 months imprisonment.

Petitioner subsequently filed a Motion titled 3582 (c)(1)(B), into the United States District Court for a reduction of sentence pursuant to the First Step Act of 2018 and the Fair Sentencing Act of 2010, for which under said act he was eligible for said reduction. The court issued an order for the District Attorney to file a response on March 20, 2019 Petitioner received the A.U.S.A.'s response where he blatantly refused to recognize the Congressional act known as the First Step Act stating that Petitioner did not qualify for a reduction under said act in that he was sentenced as a career offender designation.

Obviously the A.U.S.A. failed to read the whole First Step Act in that it covers defendants that were sentenced as career offenders and they are also qualified for a reduction in sentence based on their crack cocaine offenses.

It should also be noted that the prior state convictions used to enhance this petitioner to career offender did not qualify as serious drug offenses per the First Step Act, in that he never served more than 12 months imprisonment, this issue was brought before the court by the Public defenders Office and the court just ignored the evidence and ruled in favor of the A.U.S.A. theory.

STATEMENT OF THE CASE CONTINUED

In order to establish this type of enhancement predicate the government must establish that petitioner actually served more than one year on said offense. Under United States v. Simmons, 649 F. 3d. 237; 2011 U.S. App. LEXIS 17038, the court held the defendant must have actually served more than one year imprisonment to receive the enhancements predicates, case was Vacated.

Under the First Step Act enacted by Congress and signed into Federal law by President Trump on December 21, 2018, Sec 401 states: Reduce and Restrict enhanced sentencing for prior drug felonies:

(a) Controlled Substance Act Amendment - The Controlled Substance Act (21 USC § 801 et seq.) is amended -

(1) in section 102 (21 USC § 802) by adding at the end the following:

(57) the term "serious drug felony" means an offense described in section 924 (e)(2) of title 18 USC for which - " (A) the offender served a term of imprisonment of more than 12 months;

(B) the offenders release from any term of imprisonment was within 15 years of the commencement of the instant offense.

The court had documented records establishing that petitioner had never served more than one year on any prior conviction, but chose to ignore the facts and evidence. Here the evidence has established that this petitioner does not now nor ever qualify as a career offender and the instant offense must be vacated under the principles of the First Step Act.

REASONS FOR GRANTING THE PETITION

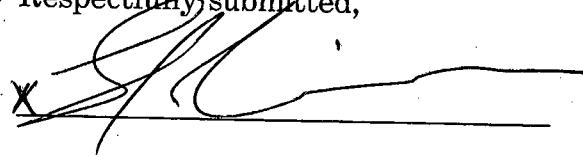
The writ should be granted because the United States District Court for the District of South Carolina are rejecting the mandatory obligations and the basic principles established under the First Step Act based entirely on their hatred for President Trump (Never Trumpers). Specifically, Petitioner in fact qualifies for a sentence reduction under the First Step Act and the fact that he was not a career offender.

He therefore, asks this Honorable Court to Vacate and Remand to the Fourth Circuit Court of Appeals for further actions that are consistant with the principles of the First Step Act

CONCLUSION

The petition for a writ of certiorari should be granted. Based on the above listed facts and evidence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. M. [Signature]".

Date: 12-19-2019