19-7804

No.

IN THE
SUPREME COURT
OF THE
UNITED STATES
Term

RAMON F. FLORES

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For a Writ Of Certiorari
To The United States Court of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

RAMON F. FLORES
PRO SE
#24538-298
F.C.I. Fort Dix
P.O. Box 2000
JBMDL, NJ 08640

QUESTION PRESENTED

In a sentence reduction application matter pursuant to 18 U.S.C. § 3582(c)(2) under Amendment 782 to the Sentencing Guidelines, if a defendant objects to the drug quantity finding made at sentencing but does not pursue this issue on direct appeal because the reasonable outcome of a drug quantity appeal, even if successful in reducing defendant's determined quantity, would not likely affect defendant's Guideline range - is that defendant later procedurally barred from appealing the District Court's original drug quantity determination repeated in the Denial of Defendant's Sentence Reduction motion when the reasonable outcome of a drug quantity appeal, if successful in reducing defendant's determined drug quantity, would now likely affect the defendant's Guideline range?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

No.

in the

Supreme Court

of the

United States

Term,

RAMON F. FLORES,
Petitioner,
vs.
UNITED STATES OF AMERICA
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Petitioner, Ramon F. Flores, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth CIrcuit entered in the above-entitled proceeding on Nov. 7, 2019.

OPINION BELOW

A copy of the United States Court of Appeals for the Sixth Circuit Opinion, Case No. 18-5861, dated Nov. 7, 2019, is attached as App. pages 1 -5.

A copy of the United States District Court, Western District of Kentucky, Order Case No. 3:10CR-51-CRS-26, dated July 25, 2018, is attached as App. pages 6,7.

JURISDICTION

The Sixth Circuit denied Petitioner's appeal on November 7, 2019. This petition is timely filed. The jurisdiction of the Court is invoked under 28 U.S.C. § 1254/§ 1291 and Supreme Court Rule 12.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution states:

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 offence 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.

The Fourteenth Amendment to the United States Consitution states:

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its juridiction the equal protection of the laws.

STATEMENT OF THE CASE AND FACTS

On June 8, 2010, a second superseding indictment was filed in the Western District of Kentucky charging the Petitioner, Ramon (F.) Flores, (along with other co-defendants) with one count of conspiracy to possess with the intent to distribute five kilograms or more of a mixture or substance containing cocaine, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A)(ii). (R.156, Second Superseding Indictment, PAGE ID #356-367). Ramon F. Flores was one of twenty-six people so charged. In December 2012, Ramon F. Flores, along with co-defendant, Abel Flores (his brother, who has since died in prison), went to trial. After a five-day trial, a jury convicted (Ramon F.) Flores of conspiracy to possess with intent to distribute and to distribute five kilograms or more of cocaine in violation of 21 U.S.C. §§ 841(a)(1), (b)(A)(ii) and 846. The evidence at trial showed that (Ramon F.) Flores and his brother Abel Flores supplied hundreds of kilograms of cocaine from California to Michael McCarthy in Louisville, Kentucky, and received millions of dollars in return. The district court sentenced Ramon F. Flores to 360 months of imprisonment followed by five years of supervised release.

Subsequent to the trial, a timely Notice of Appeal was filed and Appellate counsel was obtained. Appellate counsel reviewed pre-trial proceedings and the trial transcript. Appellate counsel concluded that the trial testimony supported a drug quantity of 150 kilograms or more of cocaine (which produced a Guidelines level of 38, the highest level) and filed an appeal on grounds other than drug quantity. The Sixth Circuit denied the appeal

and affirmed the District Court judgment under Case # 13-5763 dated 9/29/2014 (Document 55-2).

In January 2018, Ramon F. Flores filed a Motion To Modify And/Or Reduce Sentence Under 18 U.S.C. § 3582(c)(2), pursuant to Amendment 782, with the District Court. In January 2018, the United States of America filed a Response to Motion To Modify And/Or Reduce Sentence Under 18 U.S.C. § 3582(c)(2), pursuant To Amendment 782, urging that said motion be denied. By Order dated July 25, 2018, (Document 1118, Page #6034), the District Court denied the motion reasoning, "The Court is authorized to grant a sentence reduction under § 3582(c)(2) only in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o). At the time the defendant was sentenced, the top offense level, 38, applied to defendants who trafficked 150 kilograms or more of cocaine. Amendment 782 lowered the offense levels at the USSG § 2D1.1(x) drug tables for many drug quantities. The highest offense level remained 38, but the amendment raised the quantity from 150 to 450 kilograms or more of cocaine. In the presentence investigation report (PSR), the defendant was held accountable for 842 kilograms of powder cocaine. At sentencing, the Court overruled the defendant's objection to the drug quantity found in the PSR and sentenced the defendant to 360 months of imprisonment. That quantity generated a base offense level of 38, a total offense level of 42 due to the defendant's leadership role, and a sentencing range of 360 months to life in prison. This

is the same offense level and sentencing range generated by Amendment 782. Therefore, Amendment 782 does not lower the sentencing range, and a reduction is not authorized under § 3582(c)(2). Further, the 360-month sentence remains sufficient but not greater than necessary to satisfy the purposes of sentencing. The defendant argues that at sentencing the Court overruled his objection to the drug quantity but did not specifically adopt the PSR or find the drug quantity to be 842 kilograms. The record reflects that at sentencing, the Court indicated, 'I think the presentence report did a credible job and arrived at 842 but...even if you just take the dealings between June of 2007 and the end of 2008 and add on 42, you're way far and above what is necessary for the 2D1.1 drug table at a level 38 to be brought into play. So for those reasons, we'll overrule that objection' (DN 943, sentencing transcript, pp. 21-22). The Court found a minimum of 540 kilograms of cocaine between June 2007 and December 2008 plus an additional 42 kilograms on April, 2010, attributable to the defendant (DN 943, sentencing transcript, pp. 18,22). As this drug quantity is well over the 450 kilograms of cocaine required for the highest base offense level of 38 under Amendment 782, the Court overrules the defendant's argument."

Subsequent to the July 25, 2018 Denial Order, Petitioner filed a timely Notice of Appeal. The main thrust of Petitioner's Appeal was that the District Court's drug quantity determination was clearly erroneous. Primary reasons given in support of that argument on Appeal were: a. the drug quantity determination,

in good part, flowed from PSR calculations, but, the PSR quite clearly stated that drug quantity could not be accurately determined, b. the drug quantity determination, in good part, flowed from the out-of-court statements of George Zavala, but, since Mr. Zavala was not available for cross examination, the existence and reliability of such supposed statements was highly questionable and, consequently, such supposed statements cannot be considered particularly competent evidence, and, c. the drug quantity determination, in good part, flowed from the trial testimony of Michael McCarthy, but, Mr. McCarthy's testimony depended on what Mr. Zavala allegedly told him and was otherwise suspect in a number of ways and again cannot be considered particularly competent evidence.

Without reaching the merits of Petitioner's Appeal, the Sixth Circuit held that Petitioner was absolutely procedurally barred from disputing the drug quantity under the facts and circumstances of the case, "...Although Flores now wishes to dispute the district court's finding as to the drug quantity, he did not challenge the district court's calculation on direct appeal and a motion for a senctence reduction is not the proper place to do so." (No. 18-5861, dated Nov 7, 2019). This Petition for Writ of Certiorari is now filed following the Nov. 7, 2019 Sixth Circuit decision.

REASONS FOR GRANTING THE PETITION

Reason One: There exists a split and a conflict in the circuits over how to handle the question or every subsidiary question fairly included therein. The Sixth Circuit has found an absolute procedural bar to appellate review in Petitioner's case while other circuits disagree.

In Denying Petitioner's appeal concerning his sentence reduction application pursuant to 18 U.S.C. § 3582(c)(2) under Amendment 782 to the Sentencing Guildelines, the Sixth Circuit relied upon Sentencing Guidelines Statements, specifically § 1B1.10 of the Sentencing Guidelines, Dillon v. United States, 560 U.S. 817, 825-26 (2010) and United States v. Metcalf, 581 F.3d 456, 459 (6th Cir. 2009) regardless of the fact that Petitioner had objected to drug quantity determinations made at sentencing. Simply put, the Sixth Circuit held that Petitioner was absolutely procedurally barred from raising issues concerning drug quanity on appeal because, "...he did not challenge the district's court's calculation on direct appeal and a motion for sentence reduction is not the proper place to do so."

With similar legal and factual backgrounds (although not exactly the same), different Appellants in different circuits have not all been turned away so cavalierly. In various scattered unpublished opinions (such as United States of America v. Robins, 703 Fed. Appx. 271 [5th Cir. 2017] - "On appeal, Robins argues that the district court erred in determining that he was ineligible for a reduced sentence pursuant to 18 U.S.C. § 3582(c)(2). We agree."... "In determining whether an amendment has altered a movant's

Sentencing Guidelines range, a court shall 'determine the amended [G]uideline range that would have been applicable if the amendment had been in effect at the time the defendant was sentenced.'" ... "It does 'not consider any issues...other than those raised by the retroactive amendment,'" ... "Here the quantity of drugs that the Probation Office attributed to Robins in recommending that the district court deny his motion is unsupported by the record. At his sentencing in 1991, the Government presented a ledger computing the amount that Robins was responsible for as between 48,004 and 83,345 kilograms of marijuana." ... "These statements by the district court, vaguely estimating a minimum and maximum quantity potientially attributable to Robins cannot reasonably be construed as an adoption of the Probation Office's estimated amount of 90,720 kilograms." ... "We vacate the district court's order denying a sentencing reduction based on Robin's ineligibility and remand for further proceedings.") the procedural bar cited by the Sixth Circuit was breached and a decision on the merits was reached. More importantly, in certain published decisions, again the procedural bar cited by the Sixth Circuit was breached and appellate decision of sorts on the merits was reached. These decisions include United States of America v. Moises Candelaria Silva, 714 F.3d 651 (1st Cir. 2013) and the chain of United States v. Mercado-Moreno, 869 F.3d 942,948 (9th Cir. 2017) and United States of America v. Emilo Huaracha Rodriguez, 921 F.3d 1149 (9th Cir. 2019).

In the Moises Silva case, Moises Silva's appeal, similar to Petitioner's appeal, revolved around the factual findings

underlying the district court's eligibility determination. Finding no procedural bar in place, the First Circuit found, "Moises' appeal revolves around the factual findings underlying the district court's eligibility determination." ... "Applying this standard to the record before us, we find clear error in the district court's factual finding..." Likewise in the Mercado-Moreno and Rodriguez chain, the Ninth Circuit held that if the prior drug quantity finding at original sentencing was ambiguous or incomplete (as was the case with Petitioner when the district judge relied upon PSR determined quantities although the author of the PSR stated, "This investigation revealed a drug trafficking conspiracy involving a number of individuals, including Ramon Flores. Investigative material indicates Ramon Flores was one of the primary cocaine sources in California for Michael McCarthy Jr.. The scope of the conspiracy is large and spans in duration from approximately August 2007 to May 2010. The specific details are too voluminous to be contained in this report and the specific amount of cocaine involved cannot accurately be determined." para 15,PSR, and, "Ramon Flores was one of the primary sources of cocaine for the McCarthy DTO and is seen as a leader/organizer of the group. As indicated before in this report the investigative material does not conclusively state the amount of cocaine involved in the conspiracy." para 27,PSR, and the district judge also stated, "COURT: All right. Thank you. I'm going to overrule the objection. (to drug quantity) I think that there is so much cocaine here that it's easy to get to 150 or above. First of all, we have the 42 kilograms at the end that are really not

in dispute. We have the dealings with the individual in Indianapolis, Zavala, (who did not testify at trial) who obviously and by his own information was Mr. Ramon (F.) Flores's distributor. And that's from 2006 to February 2007 at 30 kilograms a month. Then we have dealings between May and June of 2007 to the end of 2008. So even is you take 2007 and go to the end of 2008, and if the range was 30 to -- 30 keys to 50 to 75 keys, even if you just take the 30 kilograms once a month, you come out with **340**. And the testimony was one and sometimes twice a month and the quantity range was even as high as 50 to 75 kiligrams, rather than 30. There's just an abundance here; an abundance of dealings here directly attributable to Mr. (Ramon F.) Flores, even if you exclude the dealings with the fellow in Indianapolis, although it's pretty clear from the evidence that those dealings were involving Mr. Ramon (F.) Flores through his subdistributor in Indianapolis until the subdistributor pulled out of the arrangement. So we have the March trip to California by McCarthy to meet Mr. Ramon (F.) Flores at the -- at the store there. So I believed there is just an abundance -- even if we take the most conservative values, we have much more than 150. I think the presentence report did a credible job and arrived at 842 but, you know, even if you just take the dealings between June of 2007 and the end of 2008 and add on 42, you're way far above what is necessary for the 2D1.1 drug table at a level 38 to be brought into play. So for those reasons, we'll overrule that objection." (DN 943, sentencing transcript, PP. 18,22 - emphasis addded), a district court in § 3582(c)(2) proceedings may need to make supplemental findings

of drug quantity.

The Ninth Circuit went on to say that, "In making supplemental findings of drug quantity, Mercado-Moreno instructed, "the district court may consider..."the trial transcript, the sentencing transcript, and the portions of the presentence report that the defendant admitted to or the sentencing court adopted.'"" The Rodriquez court also indirectly recognized the impracticality of filing a direct appeal concerning drug quantity in regard to the original sentencing if such appeal would likely be futile in changing the Guideline's Range, "...But there is no need routinely to anticipate that possibility (a retroactive change in drug quantity Guidelines levels) - which may never come to pass - in the original sentencing proceeding. As we shall explain, supplemental fact-findings as part of any future proceedings are available and suffice" (which is suggestive that if a defendant objects to original drug quantity, but, does not pursue this issue on direct appeal because the defendant anticipates that any such appeal, while possibly reducing determined drug quantity, would likely not have the effect of reducing determined drug quantity sufficient to change the Guidelines Range - nonetheless - this type of defendant perserves the original objection to drug quantity for Appellate review if Guidelines base offense levels are retroactively sufficiently changed subsequent to the original drug quantity determination).

Petitioner's request for a writ of certiorari should be granted because the ultimate controlling case Dillon v. United States,

560 U.S. 817 has been interpreted by the various circuits in conflicted ways as above discussed. As the Dillon case observed, "Dillon's arguments in this regard are premised on the same misunderstanding of the scope of 3582(c)(2) proceedings dispelled above. As noted, 3582(c)(2) does not authorize a resentencing. Instead, it permits a sentence reduction within the narrow bounds established by the Commission. The relevant policy statement instructs that a court proceeding under 3582(c)(2) shall substitute the amended Guidelines range for the initial range and shall leave all other guideline application decisions unaffected. 1B1.10(b)(1). Because the aspects of his sentence that Dillon seeks to correct were not affected by the Commission's amendment to 2 D1.1, they are outside the scope of the proceeding authorized by 3582(c)(2), and the District Court properly declined to address them." Because Petitioner's aspects of his sentence are directly afected by the Commission's retroactive amendment to 2D1.1, the District Court is free to repeat in the § 3582(c)(2) proceeding the original drug quantity determination, but, the defendant should be free to appeal the District Court's § 3582(c)(2) drug quantity determination, particularly if defendant properly objected to the original drug quantity determination (as Petitioner did). Either the Sixth Circuit or other Circuits (as evidenced by the various cases cited) continue to have a misunderstanding of the scope of 3582(c)(2) proceedings. Because the amended Guidelines range particularly impacts a defendant (like Petitioner) who was at the highest drug quantity level, the natural consequences of Dillon include a right to appeal

concerning drug quantity (particularly is the defendant objected to drug quantity determination at sentencing). Of course, the right to an appeal does not include the right to be successful on appeal, only the possibility of success is possible. The absolute procedural bar held by the Sixth Circuit eliminates this possibility and is contrary to Dillon's holdings.

Reason Two: If a defendant in a sentence reduction application matter pursuant to 18 U.S.C. § 3582(c)(2) under Amendment 782 to the Sentencing Guidelines is absolutely procedurally barred from appealing the District Court's original drug quantity determination repeated in the Denial of Defendant's Sentence Reduction motion (as the Sixth Circuit has held in Petitioner's case) even when that Defendant originally objected to the drug quantity determination at original sentencing but did not file a direct appeal on the issue at that time because such an appeal would have been likely futile in changing the applicable Guidelines range, then, such a procedural bar is a violation of defendant's Due Process and Equal Protection rights and such a procedural bar is likely to lead to an unjust result.

American criminal jurisprudence has always shown great deference to the concepts of due process and equal protection. In fact, due process protections and the concepts of equal protection are enshrined in the United States Constitution and are visible in every aspect of criminal prosecutions. Simply put, due process protections ensure that defendants are treated fairly by the State (federal government or state governments) and said protections reasonable ensure that the outcome of any judicial

proceeding has a very high chance of being just and impartial. Likewise, equal protection concepts help to ensure just and impartial results by essentially requiring that similarly situated defendants are treated the same.

The prison sentence of an illegal drug offender is determined in great part by the drug quantity attributable to the defendant which generates a base offense level as set forth in the drug quantity table specified in the United States Sentencing Guidelines § 2D1.1. For sentencing purposes in a drug distribution conspiracy conviction, aside from his or her own acts, a defendant is accountable only for all reasonably foreseeable quantities of illegal drugs that were within the scope of the criminal activity that he jointly undertook.

For any particular drug distribution conspiracy defendant, drug quantity amounts can be admitted to or can be determined by a District Court judge. Absent an appeal waiver, a criminal defendant always has the right to dispute drug quantity on direct appeal provided drug quantity determinations were objected to and an appropriate Notice of Appeal was filed. This is an example of due process because the appeal process is critical to protecting the rights of the defendant. The fact that all similarly situated defendants have the right of appeal is an example of equal protection.

For a defendant (like Petitioner) who is at the top (level 38) of the drug quantity table, a direct appeal concerning drug quanity is meaningless and without value unless such a defendant reasonably believes that such an appeal can reduce determined

drug quantity below the cut off point that produces level 38. For example, if 150 kilograms of powder cocaine produces a level 38, then, a direct appeal only matters to the defendant if there is a reasonable chance to achieve a drug quantity determination below 150 kilograms. If, say, a particular defendant was held accountable for 1,000 kilograms of powder cocaine by a District Court judge, and if the cut off point was 150 kilograms, then, a direct appeal would be meaningless if a defendant reasonably believed that he could establish a reduced drug quantity of 750 kilograms or 400 kilograms (just for example) through the direct appeal process because 750 kilograms or 400 kilograms would still generate the same base offense level of 38 (150 kilograms or more) .

It is only when the drug quantity table changes that an appeal becomes meaningful to the drug conspiracy defendant who is over the original base offense level of 38 via drug quantity, but, is potentially under the new base offense level of 38 (i.e. a drug conspiracy defendant who is held accountable by the district court for 1,000 kilograms of powder cocaine who reasonably believes an appeal would result in a drug quantity of 400 kilograms when the original level 38 was premised on 150 kilograms or more of powder cocaine and the new adjusted retroactive drug quantity table sets level 38 to be 450 kilograms or more).

By finding an absolute procedural bar to an appeal concerning drug quantity at the time of 3582(c)(2) application, the Sixth Circuit has eviscerated a defendant's important due process right to the protections of Appellate review in the circumstance

where a defendant objects to drug quantity determinations but does not pursue a direct appeal at that time because such an appeal, while possibly changing drug quantity determinations would not likely change the base level determination. Moreover, the absolute procedural bar (as noted above) violates equal protection concepts because only some drug conspiracy defendants will have a meaningful right to appellate review concerning disputed drug quantity while other drug comspiracy defendants will not have a meaningful right to appellate reveiw.

Meaningful appellate review, of course, is a critical due process right of defendants. If a defendant (like Petitioner) is denied appellate review concerning drug quantity (when drug quantity was originally objected to at sentencing and when a proper Notice of Appeal was filed in connection with the denial of the 3582(c)(2) application) on strictly procedural grounds, same is a violation of defendant's constitutionally protected due process and equal protection rights. In addition, denial of the right to appellate review will lead to an unjust result in those cases where defendants would prevail (have appellate success).

Reason Three: If a defendant in a sentence reduction application matter pursuant to 18 U.S.C. § 3582(c)(2) under Amendment 782 to the Sentencing Guidelines is absolutely procedurally barred from appealing the District Court's original drug quantity determination repeated in the Denial of Defendant's Sentence Reduction motion (as the Sixth Circuit has held in Petitioner's case) even when that Defendant originally objected to the drug quantity

determination at original sentencing but did not file a direct appeal on the issue at that time because such an appeal would have been likely futile in changing the applicable Guidelines range, then, such a procedural bar has the potential of leading to wasteful appeals made in anticipation of retroactive amendments - which may never come to pass.

The Guidelines use a drug quantity table, based on drug type and weight, to establish the base offense levels for drug-related offenses, with a maximum of level 38. See U.S.S.G. § 2D1.1(c). Amendment 782, adopted by the U.S. Sentencing Commission ("Commission") in 2014, modified the drug quantity table by reducing the base offense level for most drugs and quantities by two levels. U.S.S.G. supp. app. C. amend. 782 (Nov. 1, 2014). Shortly thereafter, the Commission made Amendment 782 retroavtive for defendants like Petitioner Flores who had been sentenced before the change to the Guidelines. U.S.S.G. supp. app. C amend. 788 (Nov. 1, 2014). Pursuant to Amendment 782, the quantity of cocaine that triggers the maximum base offense level of 38 moved from 150 kilograms to 450 kilograms. See U.S.S.G. § 2D1. As above noted, at the time the Petitioner was sentenced, the quantity of cocaine that triggered the maximum base offense level of 38 was 150 kilograms. Although there was some confusion regarding drug quantity attributable to Petitioner at the sentencing hearing (i.e. 340 kilograms "COURT: Right? At 30 keys a month, that's 18 months. DAVIS: Right. COURT: That's -- that's 340 right there; right? DAVIS: Yes, sir." Sentencing transcript pgs 18,21 and 842 kilograms estimate of PSR), all numbers mentioned were

in excess of 150 kilograms of cocaine. As such and in light of the overall record, Appellate counsel had no incentive or legal reason to raise the issue of drug quantity on direct appeal despite the fact that Petitioner had properly objected to drug quantity determinations at the sentencing hearing. Only later, when the level 38 drug quantity was increased to 450 kilograms did the objections made by Petitioner to drug quantity become relevant because if Petitioner could establish a drug quantity in excess of 150 kilograms but less than 450 kilograms, Petitioner would then become eligible for a "two point" reduction which in Petitioner's matter would result in a new Guidelines Range of 292-365 months (as opposed the original range of 360 to life).

However, the Sixth Circuit has found an absolute procedural bar to disputing drug quantity if no direct appeal was taken on the issue regardless of an objection being raised concerning drug quantity at sentencing and regardless of the maximum base offense quantity being increased by 300 kilograms (for powder cocaine). Of course, appellate counsel did not know at the time of original sentencing that the base offense drug quantity would be increased with retroactive implementation. What does all this mean for cautious defense appellate counsel? If there exists an absolute procedural bar to disputing drug quantity on appeal upon a retroactive change to the Guidelines (as the Sixth Circuit has held), then, except in cases involving massive amounts of drugs, cautious defense appellate counsel would realize that there exists a legal incentive to dispute drug quantity on direct appeal for nearly all defendants of level 38 in anticipation of a possible

future change in drug quantity amounts. This can't be correct. For if it were correct, a lot of effort would be wasted arguing over drug quantities that may never (will likely never) become relevant to Guidelines ranges.

To summarize, if a criminal defendant (like Petitioner) is held accountable for a Guidelines level 38 (the highest level) quantity of drugs and if that defendant reasonably wants to dispute the drug quantity amount, even if disputing will not likely lower the Guidelines range, then that defendant is forced to wastefully dispute drug quantity on direct appeal (wasteful because who knows if future drug quantity Guidelines levels will be changed, and, even if changed, who knows the amount of change that will occur) if the Sixth Circuit is correct that disputing drug quantity can only occur on direct appeal. Contrary to the Sixth Circuit holding, the Dillon case and common sense would argue defendants (like Petitioner) should be allowed to appeal drug quantity determinations on appeal in the event of a retroactive drug quantity change to the Guidelines (particularly if they objected to drug quantity determinations at original sentencing).

CONCLUSION

Because this matter raises important questions for Petitioner and for others, and, because different circuits disagree with the Sixth Circuit concerning the right of appeal in the 3582(c)(2) setting and because this matter raises compelling issues related to justice and fairness, the Supreme Court should exercise its supervisory power to clarify existing law by granting Petitioner's request for a Writ of Certiorari.

Date: 1-13-26

Respectfully Submitted,

Ramon F. Flores

Ramon F. Flores