

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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EFRAIN SIFUENTES  
Petitioner

V.

UNITED STATES OF AMERICA,  
Respondent

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On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Fifth Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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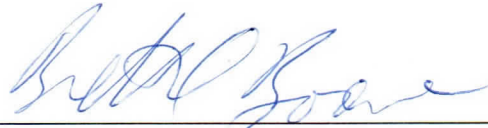
## **QUESTIONS PRESENTED**

1. Did the United States Court of Appeals for the Fifth Circuit improperly condone the District Court's error in applying the United States Sentencing Guidelines §2S1.1, resulting in an unreasonable sentence?

## **PARTIES TO THE PROCEEDINGS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualifications or recusal.

1. United States of America
2. Efrain Sifuentes
3. Honorable John McBryde, United States District Senior Judge for the Northern District of Texas
4. Honorable Jeffrey Cureton, United States Magistrate Judge for the Northern District of Texas
5. Shawn Smith, Assistant United States Attorney for the Northern District of Texas
6. Erin Nealy Cox, United States Attorney for the Northern District of Texas
7. James Wesley Hendrix, United States District Judge for the Northern District of Texas (former Assistant United States Attorney for the Northern District of Texas)
8. Amber M. Grand, Assistant United States Attorney for the Northern District of Texas
9. William Barr, Attorney General of the United States.
10. Jeffrey Rosen, Deputy Assistant Attorney General.



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EFRAIN SIFUENTES

V.

UNITED STATES OF AMERICA

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

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**PETITION FOR WRIT OF CERTIORARI**

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Comes now, Petitioner, EFRAIN SIFUENTES, who submits this his petition for writ of certiorari as follows. Petitioner is currently confined in the United States Bureau of Prisons pursuant to the judgment and sentence of the District Court below.

**OPINION BELOW**

This opinion of the Fifth Circuit Court of Appeals is available at United States v. Sifuentes, 945 F.3d 865 (5<sup>th</sup> Cir. 2019). A copy of the opinion is attached at

Appendix A-1.

### **STATEMENT OF JURISDICTION**

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. §1254, as an appeal from final judgment of the Fifth Circuit Court of Appeals. This Writ of Certiorari is timely because it is filed within 90 days of judgment from the Fifth Circuit Court of Appeals under Rule 13 of the Rules of the Supreme Court of the United States.

### **STATEMENT OF CASE**

#### **I. Nature of the Case**

Defendant Sifuentes pled guilty to a Second Superseding Indictment naming only Sifuentes and charging him with money laundering only, in violation of 18 U.S.C. §1956(h); 18 U.S.C. §1956(a)(1)(A)(i); 18 U.S.C. §1956 (a)(1)(B)(i); and 18 U.S.C. §1956(a)(2)(B)(i).

#### **II. Course of Proceedings and Disposition in the Court Below**

EFRAIN SIFUENTES pled guilty and sentencing was held on August 17, 2018. The Court imposed a sentence of 160 months. Petitioner filed a timely Notice of Appeal. The Fifth Circuit affirmed by published opinion dated December 19, 2019. Petitioner now brings this Writ of Certiorari.

### **III. Statement of the Facts**

The District Court decided that United States Sentencing Guidelines §2S1.1(a)(1) should apply to Sifuentes. Sifuentes objected and urged that U.S.S.G. §2S1.1(a)(2) was the more appropriate guideline. Instead of being sentenced as a money launderer, the court sentenced Sifuentes as if he were a drug dealer, resulting in an unreasonably harsh sentence.

The District Court and the 5<sup>th</sup> Circuit both erred in their assessment of the applicability of U.S.S.G. §2S1.1(a)(2).

### **REASONS FOR GRANTING CERTIORARI**

- 1. The U.S.S.G. sets out different criteria and less harsh treatment for “indirect” or third party money launderers such as Petitioner herein, Efrain Sifuentes, who are not committing the underlying offense generating the money being laundered. “Direct” money launderers, who are committing the underlying offense are treated more severely by the U.S.S.G. The District Court circumvented those guidelines to more harshly punish Petitioner Efrain Sifuentes with 160 months confinement as opposed to 70-87 months, and the 5<sup>th</sup> Circuit condoned this. This is such an injustice for Sifuentes himself, his family, his friends, and all those who would see the American judicial system operate in a just and dignified manner, that it calls for the United States Supreme Court to exercise its supervisory powers in the interest of Justice.**

#### **I. Standard of Review**

The Appellate Court reviews the district court’s interpretations and applications of the guidelines *de novo* and its factual findings for clear error. United States v.

Hernandez, 876 F.3d 161, 164 (5<sup>th</sup> Cir. 2017) (citing United States v. Trujillo, 502 F.3d 353, 356 (5<sup>th</sup> Cir. 2007)).

The Appellate Court reviews preserved challenges to sentences, whether inside or outside the guidelines range, for an abuse of discretion. Gall v. United States, 128 S.Ct. 586, 594-598 (2007). This Court “must first ensure that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the §3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence.” *Id.* In making this determination, this Court reviews the district court’s interpretation and application of Sentencing Guidelines *de novo* and its factual findings for clear error. United States v. Cisneros-Gutierrez, 517 F.3d 751, 764 (5<sup>th</sup> Cir. 2008). If there is no procedural error, this Court should then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard. Gall, at 594-598. If a challenge is not preserved for appeal, this Court reviews for plain error. United States v. Juarez, 626 F.3d 246, 253-254 (5<sup>th</sup> Cir. 2010).

## **II. Discussion**

The District Court and Fifth Circuit Court of Appeals misapplied the sentencing guidelines; thereby calculating the sentencing guideline range of

imprisonment incorrectly. For convictions of money laundering under 18 U.S.C. §1956 - the proper sentencing guideline is U.S.S.G. §2S1.1. Within that guideline is a choice of two means of calculating the base offense level.

The proper choice between §2S1.1(a)(1) or §2S1.1(a)(2) is set out clearly in United States v. Anderson, 526 F.3d 319, at 324 (6<sup>th</sup> Cir. 2008). §2S1.1(a)(1) is generally used for “direct” money laundering; that is, for money launderers who are committing (or are responsible for) the “underlying offense” which initially generated the funds which eventually get laundered. §2S1.1(a)(2) is generally used for money launderers who do not participate in the underlying offense, and provides for a “base offense level” of 8.

The general rules are clearly stated in Anderson at 324 regarding the choice. “Before using the base level of the underlying offense, however, subsection (a)(1) first requires that two conditions be met: (A) that the defendant is responsible for the underlying offense, either because she committed it or it is relevant conduct, as defined in §1B1.3; and (B) that the base level of the underlying offense be determinable.”

So in cases where the base offense level of the underlying offense is not determinable, §2S1.1(a)(2) should be used. Likewise, if the money launderer is not criminally responsible for the underlying offense, §2S1.1(a)(2) should be used. In

Anderson the defendant fully participated in the underlying methamphetamine offense, knowingly allowing her house to be used in her presence to receive, store, and distribute methamphetamine, so §2S1.1(a)(1) was proper.

There is no dispute that Sifuentes was not involved in Obregon's acquiring and distributing drugs. It is also not disputed that Sifuentes was given money by Obregon and Sifuentes sent money back to Mexico, i.e., the laundering. Certainly this is a situation wherein §2S1.1(a)(2) would properly be applied and it should have been, because Sifuentes did not commit the underlying offense and it was not relevant conduct.

The District Court and Appellate Court decided to apply §2S1.1(a)(1) on the following ground: two phone calls.

Sifuentes only participation in any methamphetamine dealing were these two phone calls,. In one phone call Sifuentes' cousin in Mexico asked Sifuentes if he could try to locate and pick up a mis-delivered package. Sifuentes says he cannot, but calls Aaron to see if Aaron could do so. Aaron declined. That is all. Even if one presumes there was an illegal drug in the package, there is no way to determine what amount, so the base offense level on these two phone calls is not determinable. Consequently, the use of §2S1.1(a)(2) would be proper.

The Anderson analysis tells us that application of §2S1.1(a)(1) requires... (B)

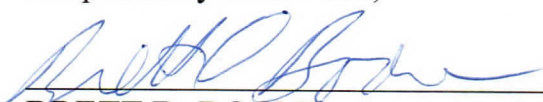
that the base level of the underlying offense be determinable.” The base offense level to apply regarding a package that was never received, which may, or may not, have had any illegal drugs in it, is not determinable. Therefore, the proper guideline to apply to Efrain Sifuentes is §2S1.1(a)(2).

Below, the government and the appellate court based much of their justification for applying §2S1.1(a)(1) on the fact that Sifuentes had a “deeper understanding” of Zavala’s smuggling of drugs to Obregon. This knowledge makes Sifuentes guilty of money laundering; it does not make him a “stevedore” guilty of drug smuggling. To sentence him as such under §2S1.1(a)(1) was inappropriate and unjust.

### **CONCLUSION**

Petitioner, EFRAIN SIFUENTES requests this Court grant relief and grant the Petition for Certiorari.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**


I, BRETT D. BOONE, Counsel of Record for EFRAIN SIFUENTES, being first duly sworn according to law, depose and say that the required number of the following documents:

1. Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit; and
2. Motion for Leave to Proceed in Forma Pauperis;

were filed with this Court and served on counsel for the United States on this same



date, by depositing the required number of originals and copies of the documents into the United States Mail in sealed envelopes, first class United States postage prepaid or by delivery to a third-party commercial carrier for delivery within 3 calendar days and addressed to: Supreme Court of the United States, Office of the Clerk, 1 First Street N.E., Washington, DC 20543, and United States Attorney for the Northern District of Texas, 801 Cherry Street, Suite 1700, Fort Worth, TX 76102 (Phone: 817-252-5253)(counsel for Respondent) and Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001 (Phone: 202-514-2217)(counsel for Respondent).

Date: March 14, 2020   
BRETT D. BOONE  
Attorney for Petitioner Sifuentes