

No. 20-6281

IN THE  
SUPREME COURT OF THE UNITED STATES

KEVIN L. RATLIFF

(Your Name)

— PETITIONER

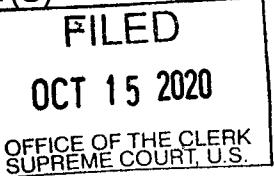
**ORIGINAL**

VS.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



U.S. Court of Appeals For the Eleventh Circuit

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

PETITION FOR WRIT OF CERTIORARI

KEVIN L. RATLIFF, Reg. # 12245-017

(Your Name)

FCI-Coleman Medium, P.O. Box 1032

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Coleman, Florida 33521-1032

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(Phone Number)

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SUPREME COURT, U.S.

**QUESTION(S) PRESENTED**

**Whether the Lower Courts have discretion to reduce  
Petitioner's sentence under U.S.S. Guideline Amendment 782,  
regardless of Petitioner's career offender status?**

## **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:

**TABLE OF AUTHORITIES CITED**

<b>CASES</b>	<b>PAGE NUMBER</b>
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United States v. Rivera, Case No. 10-1199 (2nd Cir. Oct. 21, 2011). . . . .	14

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**STATUTES AND RULES**

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Title 21 U.S.C. § 841(b)(1)(A)  
Title 21 U.S.C. § 841(b)(1)(B)  
Title 21 U.S.C. § 841(b)(1)(C)  
First Step Act § 404, of §§ 2 and 3.

**OTHERS**

United States Sentencing Guideline Amendment 782  
United States Sentencing Guideline § 4B1.1, § 4B1.2

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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 is unpublished.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  
9/14/2020.

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**

**Eighth Amendment of the United States Constitution**

**Sixth Amendment of the United States Constitution**

**Fifth Amendment of the United States Constitution**

### **STATUTORY PROVISIONS**

**Title 18 U.S.C. § 3553(a) 1-7 Factors.**

**Title 18 U.S.C. § 3582(c) (2)**

**Title 21 U.S.C. § 841(b) (1) (A)**

**Title 21 U.S.C. § 841(b) (1) (B)**

**Title 21 U.S.C. § 841(b) (1) (C)**

### **UNITED STATES SENTENCING GUIDELINES**

**§ 4B1.1, § 4B1.2**

**Amendment 782**

### **FIRST STEP ACT**

**§ 404(a), §§ 2 and 3.**

## STATEMENT OF THE CASE

Petitioner filed a Title 18 U.S.C. § 3582(c)(2), Motion, for a U.S.S Guideline 782 Amendment two point reduction of his sentence. He was denied in the U.S. District Court, based on the Lower Court stating that they had no discretion to reduce Petitioner's sentence based on his career offender status; yet, The First Step Act, § 404 of Sections 2 and 3, stipulate under The Fair Sentencing Act, that the Lower Court and the U.S. Court of Appeals did have such discretion and authority to reduce the Petitioner's sentence, by a two point reduction, for a sentence, that he had already been over-sentenced for from the very start, from Title 21 U.S.C. § 841(b)(1)(A) to Section (b)(1)(B), when it should have after the First Step Act, been § 841(b)(1)(C), and then another two points for U.S.S.G. Amendment 782, regardless of Petitioner's career offender status, his sentence, was now a U.S.S.G. Sentence, even under career offender Guidelines. Thereby, allowing the Lower Courts discretion and authority to reduce Petitioner's sentence under U.S.S.G. Amendment 782.

## REASONS FOR GRANTING THE PETITION

1) I, understand that review of this Writ of Certiorari, is not a matter of right, but of judicial discretion. However, The United States Lower Federal Courts have entered a decision against Petitioner, that is in total conflict with other Lower U.S. District and Circuit Federal Courts, in regards to their discretion in the Lower U.S. District Courts, to depart from the United States Sentencing Guidelines, based on, if the Lower U.S. District Courts, want to sentence a defendant below the Guidelines, by using its discretion to do so, based on Title 18 U.S.C. § 3553(a), 1-7 factors, and the fact that Petitioner was sentenced under amended Guidelines, that were incorrect, even before The First Step Act of § 404(a) became law. When the First Step Act did become law, the Lower Courts continued to state that they did not have discretion to reduce Petitioner's sentence, further, then it did, because Petitioner was a career offender, unknowing that it had the discretion to sentence the Petitioner outside of his career offender status, under § 3553(a), 1-7 factors, and U.S.S.G. Amendment 782, because of the Fair Sentencing Act, under § 404(a) in regards to United States Sentencing Guideline Amendment 782. Because Petitioner was sentenced before August 3rd, 2010. Thereby, making Petitioner eligible for a 782 Amendment, two point reduction, in his sentence, because Petitioner was subject to a Guideline

sentence, and not a mandatory minimum sentence.

2) This is a very important Federal issue for the United States Supreme Court, that is truly a matter of judicial importance, to all Federal Criminal Courts, that should be finally settled by the United States Supreme Court, simply because the Lower Federal U.S. District Court in the Northern District of Florida, and the United States Court of Appeals For The Eleventh Circuit refuse to believe that it have the discretion to lower Petitioner's sentence, under United States Sentencing Guideline Amendment 782, regardless if Petitioner was classified as a career offender or not. According to The First Step Act, of § 404(a), Petitioner officially was declared to be under non mandatory United States Sentencing Guidelines, based on 6.5. grams of crack cocaine, for which became his "career offense," based on The First Step Act of § 404(a).

3) Petitioner, honorably requests that the United States Supreme Court settle this issue, in Petitioner's case to be the case for the nation to follow when confronted with such a judicial situation, such as in the Petitioner's case in point, in which he is presently being unconstitutionally subjected to, in violation of his Fifth Amendment Rights to Due Process, to be sentenced under, correct United States Sentencing Guidelines, and Petitioner's Sixth Amendment Rights to the Element Clause based on an original unconstitutional statute offense, to the jury, that never applied to the Petitioner from the very start,

under Title 21 U.S.C. § 841(b)(1)(A), when in fact, Petitioner's "covered offense" should never have from the start, ever been § 841(b)(1)(A), to the jury. Because even the jury stated, in its verdict, that Petitioner was only responsible for 6.5. grams of crack cocaine, and nothing more. Nor relevant conduct to any other amount, only 6.5 grams, and that is all. Nothing more, and nothing less. Honorable Justices of the United States Supreme Court, this is why Petitioner is requesting that this Writ of Certiorari be granted.

#### **ARGUMENT ONE**

##### **Whether the Lower Courts have Discretion to Reduce Petitioner's Sentence Under U.S.S. Guideline Amendment 782, Regardless of Petitioner's Career Offender Status**

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1) Petitioner was unconstitutionally charged and indicted for Title 21 U.S.C. § 841(b)(1)(A), (50) fifty grams or more of crack cocaine, of which was presented to Petitioner's jury. However, the jury decided that Petitioner was only responsible for what he was arrested for, which was 6.5 grams of crack cocaine, not 50 grams or more, an amount that he never possessed, nor an amount that the jury itself, ever felt Petitioner was responsible for. A juror who was disturbed about how unfairly the Petitioner had been treated, and charged, contacted the U.S. Attorney 's Office, and stated, that the jury

compromised. See Appendix "C" - page 13, line 1-5, and that his jury vote was in fact a compromised vote.

2) Even though it was true that Petitioner's jury had been compromised, Petitioner was still sentenced under Title 21 U.S.C. § 841(b)(1)(A), 50 grams or more of crack cocaine even though the jury stated that he was responsible for only 6.5 grams at most.

3) It was The First Step Act, of § 404(a), that allowed the Petitioner's sentence to be reduced from 30 years to Life, to 262 months, based on the 6.5. grams. But before The First Step Act, Petitioner's Base Offense Level had been unconstitutionally calculated at Base Offense Level 37, category 6, and Petitioner was sentenced to 30 years in a federal United States prison. After the passing of The First Step Act, Petitioner's Base Offense Level became from Base Offense Level 37, (3) three point down) to a 34. When Petitioner should have received a Base Offense Level of 32, because he was responsible for a Title 21 U.S.C. § 841(b)(1)(C, (5) five grams or more, but less than 27 grams or more, which would have placed Petitioner at a § 841(b)(1)(C). Petitioner was never responsible for a statute § 841(b)(1)(A), because that statute was too high, to place the Petitioner in, for 6.5 grams of crack cocaine.

4) Petitioner according to The First Step Act, should have been placed in § 841(b)(1)(C), in which no mandatory minimum was required, based on the fact that § 841(b)(1)(C), has no

mandatory minimum attached to it. However, Petitioner after The First Step Act, was wrongly and unconstitutionally placed in § 841(b)(1)(B), with a five year mandatory minimum. When in fact his base offense level was category 6, offense level 32, which is for a lesser sentence, than base offense level 34, category 6. Therefore, Petitioner's sentence should have been less than 262 months after he was resentenced under The First Step Act, of § 404(a), see also, Hughes, 137 S. Ct. 1765 (2018).

5) Petitioner had been declared a career offender when he was first sentenced, but even his state priors did not qualify for career offender predicates. Because, the Petitioner's State of Florida priors, were of one specific case, not multi cases, but one case with several counts, to that one case, for which was separated into several cases, unconstitutionally and inappropriately applied to Petitioner, as career offender predicates. (1) For leaving the scene of an accident, (2) felony fleeing and (3) attempting to elude, with possession to sell or deliver, which is not a controlled substance act under **United States v. Cordero**, case #19-3543, 2020, U.S. App. LEXIS 28128 (6th Cir. Sept.3, 2020); see also, **United States v. Havis**, 2019, en banc decision, another 6th Circuit case, which states that Petitioner's state prior for possession with intent to sell is not a controlled substance offense for career offender status. Nor were any of Petitioner's state priors eligible for career offender status, because no **Shepard v. United States**, 544 U.S. 13, 26 (2005), documentation was ever verified to validate any

of the Petitioner's state priors. Petitioner did object at sentencing to these state priors. Therefore, they should not have been used as evidence against the Petitioner. Because they were invalid and inappropriate for career offender status, based on **Shepard** and **United States v, Cordero**, *supra*. and **Havis**, *supra*. Therefore, Petitioner should never have been classified as a career offender from the start. Petitioner's Presentence ¶ 35, 39, 41 and 43, were thereby, unconstitutionally applied to him as predicated for career offender purposes.

6) According to The First Step Act, Petitioner should have been sentenced to a much lesser sentence, than the 262 months and not base offense level 34, category six, based on the above stated reasons.

7) According to Title 18 U.S.C. § 3553(a), 1-7 factors, the Lower Courts had discretion to sentence Petitioner to a Base Offense Level, less than Base Offense Level 34, category 6, because § 3553(a), 1-7 Factors, allow such discretion. According to The First Step Act, Petitioner should have received a sentence under § (b) (1) (C), not § (b) (1) (B), because The First Step Act amended the statute for (b) (1) (A) and (b) (1) (B). Thereby, pushing Petitioner's sentence to a § (b) (1) (C) sentence, of base offense level 32, category 6, and not base offense level 34, category 6.

8) Regardless of Petitioner's career offender status, the Lower Courts still had discretion to reduce the Petitioner's sentence

under U.S. Guideline Amendment 782, to two points, allowing the Petitioner even a lesser sentence. However, the Lower Courts stated that they did not have such discretion under The First Step Act, to reduce the Petitioner's sentence under U.S.S. Guideline Amendment 782, even though The Fair Sentencing Act affected Petitioner's 782 Amendment, two point reduction, because Petitioner was sentenced before August 3rd, 2010. And therefore, Amendment 782 applied to Petitioner's case in point, regardless of his career offender status or not. Plus, The First Step Act itself applied to reducing Petitioner's 50 grams or more status, under § 841(b)(1)(A), even though the jury stated in its verdict that Petitioner was responsible for § (b)(1)(B), (5) five grams or more, but The First Step Act, stated in its passage, that Petitioner was now a § (b)(1)(C), with no statutory minimum period. Thereby, reducing Petitioner's sentence, to Base Offense Level 32, category 6, not Base Offense Level 34. Could it be, that the Lower Courts, did not understand that they could reduce the Petitioner's sentence under The First Step Act of § 404(a), and §§ 2 and 3, in regards to Amendment 782, because Amendment 782 is part of The First Step Act in regards to Petitioner. Because he was sentenced before August 3rd, 2010, and is also entitled to a two point lower reduction of his sentence, under U.S.S.G. Amendment 782 of the Fair Sentencing Act, which is included in The First Step Act as well. Thereby, allowing such Lower Court discretion even under U.S.S.G. Amendment 782. Because Petitioner's sentence was

reduced to a U.S.S.G. sentence, under The First Step Act, to a lower Base Offense Level of 34, and not 32, he was entitled to even a lesser Base Offense Level of 30 under U.S.S.G. Amendment 782 of The First Step Act. § 404(a), §§ 2 and 3, of the Fair Sentencing Act.

9) Could it be, Honorable Justices, that the Lower Courts did not realize that they had such discretion under U.S.S.G. Amendment 782, even under career offender status, and that they had discretion to reduce Petitioner's U.S.S.G. sentence - two points. And that they mistakenly miscalculated Petitioner's 6.5 grams, as being § 841(b)(1)(B), when in fact, The First Step Act amended 6.5 grams to § 841(b)(1)(C), a U.S.S.G. sentence, making Petitioner even eligible for another two point reduction to Base Offense Level 30, under the Fair Sentencing Act, because he had been sentenced before August 3rd, 2010. Could the Lower Courts have mistakenly missed using their discretion under these unfortunate circumstances, or felt that they did not possess such discretion.

10) Petitioner states that yes, according to **United States v. Collins**, Case No. 19-13686-GG; and **United States v. Allen**, U.S. Court of Appeals for the 11th Circuit case no. 19-11505/ 19-10758, state that the Lower Courts did have such discretion, and authority to reduce the Petitioner's sentence, under U.S.S.G. Amendment 782, under the Fair Sentencing Act, regardless of his career offender status because the **Allen** case,

states it had such authority, and the **Collins** case, and § 3553(a), 1-7 Factors of Title 18 U.S.C., states so, and The First Step Act under the Fair Sentencing Act states so, as well. The Lower Courts were eligible to do so, under all of the above stated reasons. It had such discretion in **Allen** and **Johnson**, under the **Allen** case, recently decided in the **Allen** case in the Eleventh Circuit Court of Appeals.

11) The Lower Courts, therefore, abused its discretion when it applied incorrect standards to Petitioner's case in point, as stated above. **Diveroli v. United States**, 803 F.3d 1258, 1262 (11th Cir. 2015). See also, **United States v. Allen**, 956 F.3d 355, 357 (6th Cir. 2020). See also, **Collins**, *supra*.

12) It is not clear in Petitioner's case in point, whether the lower courts understood its authority to have the discretion to reduce Petitioner's sentence or not, below the revised guideline range, regardless of his career offender status, U.S.S.G. Amendment 782, was part of The First Step Act, based on retroactivity, specifically for cases like Petitioner's case in point. Petitioner therefore, hopes and prays that this great United States Supreme Court send a message to the lower courts who may not know that they have such authority and discretion, and inform them in Petitioner's case in point throughout the nation that yes, they do have such discretion and authority according to the U.S.S.G. Amendment 782, based on the Fair Sentencing Act of § 404(a), and §§ 2 and 3, and Title 18 U.S.C. § 3553(a), 1-

7 Factors, and because of **United States v. Munn**, 595 F.3d 183, 192 (4th Cir. 2010); **United States v. McGee**, 553 F.3d 225, 228-29 (2d Cir. 2009); **United States v. Rivera**, No. 10-1199 (2nd Cir. Oct. 2011); **United States v. Miller**, 4:98-CR-00120 (MND Aug. 6, 2010); **United States v. Kimbrough**, 552 U.S. at 97-98; **United States v. Allen** 956 F.3d 355, 357 (6th Cir. 2020); and **Jackson v. United States**, U.S. Court of Appeals for the Eleventh Circuit, case no. 19-11505 (6/16/2020); **Hughes v. United States**, 137 S. Ct. 1765 (2018); **Alleyne v. United States**, 133 S. Ct. 2151 (2013); **Molina-Martinez v. United States**, 136 S. Ct. 1338 (2016). All of these cases verify that the lower courts had such authority and discretion, and that Petitioner was totally sentenced outside of his U.S.S.G. range. Petitioner therefore, hopes and prays that this Writ of Certiorari be granted by this Honorable United States Supreme Court.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin L. Stiff".

Date: 10/9/2020