

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

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**SUPREME COURT OF THE UNITED STATES**

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**DEMARCUS DEANDRE MORRIS,  
Petitioner,**

**VERSUS**

**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 A WRIT OF CERTIORARI**

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**MOTION FOR LEAVE TO PROCEED  
*IN FORMA PAUPERIS***

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Pursuant to Supreme Court Rule 39, the Petitioner, DEMARCUS D. MORRIS, by and through his court-appointed attorney, requests that the Court grant him leave to proceed *in forma pauperis*. In support of this Motion, the Petitioner avers that:

I.

Petitioner is unable to afford the cost of representation in this matter.

II.

Petitioner proceeded below in district court and on appeal with court-appointed counsel appointed pursuant to *18 U.S.C. §3006A*.

III.

Because of his continuing inability to afford counsel, and pursuant to *18 U.S.C. §3006A*, undersigned counsel represents the Petitioner in his petition before this Court.

**WHEREFORE**, the Petitioner, DEMARCUS D. MORRIS, by and through undersigned counsel, respectfully requests that he be allowed to proceed *in forma pauperis* without payment of filing fees or service of notice fees, and for such other relief as the Court deems just and proper.

Respectfully submitted this 6<sup>th</sup> day of November, 2020.

Respectfully Submitted,

GREENWALD LAW FIRM, L.L.C.

/s/ Joseph W. Greenwald, Jr.  
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**ATTORNEY FOR PETITIONER**

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**ATTORNEY FOR PETITIONER**

## **QUESTIONS PRESENTED FOR REVIEW**

Mr. Morris respectfully submits the followed errors occurred at the trial court level, which, individually and collectively, necessitate the reversal of his conviction and order of a new trial.

- 1) Count One (RICO) of the Indictment is unconstitutionally vague.
- 2) Count Two (Conspiracy to Distribute Controlled Substances) of the Indictment is unconstitutionally vague.
- 3) The evidence failed to support the three convictions for distribution of crack cocaine.
- 4) The Trial Court committed legal error by not requiring the jury to identify the specific predicate acts of “racketeering activity” in the Verdict Form.
- 5) The grouping of convictions for sentencing purposes constitutes multiple punishment for the same conduct and therefore violates the Double Jeopardy Clause of the Fifth Amendment.

## **CERTIFICATE OF INTERESTED PERSONS**

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 disqualification or recusal.

### **District Court:**

Honorable Elizabeth E. Foote  
United States District Judge,  
Western District of Louisiana  
300 Fannie Street, Suite 4100  
Shreveport, LA 71101

### **United States Fifth Circuit:**

Honorable Jolly, Jones and Willett  
United States Court of Appeals, Fifth Circuit  
600 S. Maestri Place  
New Orleans, LA 70130

### **Defendant – Appellant:**

Demarcus Deandre Morris  
USP Hazelton  
Reg. No. 19870-035  
1640 Sky View Drive  
Bruceton Mills, WV 26525

### **Attorney for Defendant – Appellant:**

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-Attorney for Demarcus Morris

### **Attorneys for the Government – Appellee:**

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**SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI**

**PETITION FOR WRIT OF CERTIORARI**

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINION BELOW**

The Opinion of the United States Court of Appeals for the Fifth Circuit is set forth at *Appendix A*. The Opinion was not designated for publication.

**JURISDICTION**

On August 11, 2020, the United States Court of Appeals for the Fifth Circuit issued its Opinion affirming the District Court's Judgment. *Appx. A*.

No Petition for Rehearing was filed.

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

The Petition for Writ of Certiorari is due by November 9, 2020.

**CONSTITUTIONAL AND  
STATUTORY PROVISIONS INVOLVED**

This issue presented in this Writ involves the violation of Mr. Morris's constitutionally protected rights. Specifically, his Fifth Amendment rights were violated in having to defend himself against two unconstitutionally vague statutes (RICO & Conspiracy to Distribute Controlled Substances).

## **STATEMENT OF THE CASE**

### **A. Brief overview of the case:**

On June 29, 2017, the Government filed an 18-count Indictment charging Demarcus D. Morris (hereafter referred to as “Morris” or “Defendant”) and eight others with an array of criminal activity dating back to 2012. (Exhibit “A”). As described in Count One (RICO), the Government accused the defendants to be members of the “Block Boyz”, a street gang that engaged in illegal activities, such as conspiracy to distribute controlled substances, distribution of controlled substances, and acts involving murder and robbery.

On September 17, 2018, Morris, Jimmie Durden, Lonnie Johnson, Gary McCain and Larshanda Davenport went to jury trial. After 13 days of testimony, on October 3, 2018, the defendants were found guilty on all counts. (See Verdict Form, attached as Exhibit “B”).

On August 27, 2019, Morris was sentenced to a total of 405 months in prison, ordered to pay \$108,130 in restitution to three victims and placed on supervised release for a total period of five years. A Judgment memorializing the sentence was filed September 10, 2019. (Exhibit “C”). Morris timely appealed, and on August 11, 2020, the Fifth Circuit affirmed the conviction and sentence.

**B. Factual Summary:**

The following factual summary tracks the Counts of the Indictment and Counts of the Verdict Form.

Count One involves the Racketeering Influenced and Corrupt Organization Conspiracy and alleges that the Block Boyz acted as a Racketeering Enterprise. The racketeering activities included attempted murder, robbery, attempted robbery, conspiracy to possess with intent to distribute controlled substances, conspiracy to distribute controlled substances, possession with intent to distribute controlled substances, and distribution of controlled substances. The RICO charge also contained 66 separate Overt Acts, presumably committed by the Defendants and done in furtherance of the Enterprise. These acts included crimes such as drug dealing, firearm offenses, armed robberies; and telephone calls between the defendants discussing their criminal activities. The jury found Morris guilty of Count One, and found that he committed five racketeering offenses.

Count Two charges Conspiracy to Distribute Controlled Substances and alleges that from April 13, 2014 until the date of the Indictment, Morris and other co-defendants conspired to distribute crack cocaine, powder cocaine, hydrocodone, roxicodone, marijuana, ecstasy and alprazolam.

Count Nine charges Distribution of Crack Cocaine and alleges that on May 31, 2016, Morris sold more than 28 grams of crack cocaine. The evidence

established that Morris facilitated the sale of 41 grams of powder cocaine to a government informant. After the sale was complete, the government informant paid Morris to cook the powder cocaine into crack.

Count Ten charges Distribution of Crack Cocaine and alleges that on June 8, 2016, Morris sold crack cocaine. The evidence established that Morris facilitated the sale of 19 grams of powder cocaine to the same government informant. After the sale was complete, the government informant paid Morris to cook the powder cocaine into crack.

Count Eleven charges Distribution of Crack Cocaine and alleges that on June 22, 2016, Morris sold crack cocaine. The evidence established that Morris facilitated the sale of 10 grams of powder cocaine to the same government informant. After the sale was complete, the government informant paid Morris to cook the powder cocaine into crack.

Count Twelve charges Possession of a Firearm by a Convicted Felon and alleges that on June 27, 2016, Morris, having previously been convicted of a felony, sold a shotgun to an undercover agent.

Count Fifteen charges Possession of a Firearm by a Convicted Felon and alleges that on August 8, 2016, Morris and Jimmie Durden were found inside a vehicle that contained multiple guns.

**C. Procedural History:**

The Indictment charged Morris with the following crimes:

Count One: Racketeer Influenced and Corrupt Organizations Conspiracy

Count Two: Conspiracy to Distribute Controlled Substances

Count Three: Conspiracy to Possess Firearms

Count Six: Violent Crime in Aid of Racketeering

Count Seven: Using and Carrying of Firearms During and in Relation to a  
Crime of Violence

Count Nine: Distribution of Crack Cocaine

Count Ten: Distribution of Crack Cocaine

Count Eleven: Distribution of Crack Cocaine

Count Twelve: Possession of a Firearm by a Convicted Felon

Count Thirteen: Conspiracy to Commit a Violent Crime in Aid of  
Racketeering

Count Fourteen: Possession of a Firearm in Furtherance of a Crime of Violence

Count Fifteen: Possession of a Firearm by a Convicted Felon

On June 21, 2018, the Government filed a Notice of Intent to Introduce Other Crimes Evidence against Morris. The acts involved two separate shootings which allegedly occurred in 2008, and a battery which allegedly took place in 2012. By Order dated August 15, 2018, the Trial Court overruled Morris' objection to the introduction of the 404(b) evidence.

On September 7, 2018, the Fifth Circuit Court of Appeals issued its ruling in

*U.S. v. Davis*, striking §924(c)'s residual clause as unconstitutionally vague. No. 16-10330 (5<sup>th</sup> Cir. 09/07/18). In response, the Government dismissed Count 3 (Conspiracy to Possess Firearms), Count 4 (Violent Crime in Aid of Racketeering), Count 5 (Using and Carrying of a Firearm During and in Relation to a Crime of Violence), Count 6 (Violent Crime in Aid of Racketeering), Count 7 (Using and Carrying of a Firearm During and in Relation to a Crime of Violence), Count 13 (Conspiracy to Commit a Violent Crime in Aid of Racketeering), and Count 14 (Possession of a Firearm in Furtherance of a Crime of Violence).

On September 17, 2018, the jury trial commenced, with a verdict being returned on October 3, 2018. Morris was found guilty of all counts, which consisted of: Count One (RICO), Count Two (Conspiracy to Distribute Controlled Substances), Count Nine (Distribution of Crack Cocaine), Count Ten (Distribution of Crack Cocaine), Count Eleven (Distribution of Crack Cocaine), Count Twelve (Possession of a Firearm by a Convicted Felon) and Count Fifteen (Possession of a Firearm by a Convicted Felon).

On August 27, 2019, Morris was sentenced to a term of imprisonment for 240 months as to Counts 1, 2, 10 and 11; 405 months as to Count 9; and 120 months as to Counts 12 and 15; all to run concurrently. Restitution in the amount of \$108,130 was ordered and he was placed on supervised release for a period of three years as to Counts 1, 2, 10, 11, 12 and 15; and a term of five years as to Count 9; to run

concurrently. A Judgment to this effect was entered on September 10, 2019. Morris timely appealed and on August 11, 2020, the Fifth Circuit affirmed the conviction and sentence.

**D. Pre-Sentence Report:**

On March 12, 2019, the Pre-Sentence Report was issued, taking the seven counts of convictions and combining them into three separate groups for sentencing guideline purposes.

The first group, referred to in the PSR as “Count Group 1” consisted of all seven counts of conviction: Count 1 RICO, Count 2 Conspiracy to Distribute CDS, Count 9 Distribution of Crack Cocaine, Count 10 Distribution of Crack Cocaine, Count 11 Distribution of Crack Cocaine, Count 12 Possession of a Firearm by a Convicted Felon and Count 15 Possession of a Firearm by a Convicted Felon. After adding the specific offense characteristics to the base offense, the adjusted offense level for this group was 34.

The second group, referred to in the PSR as “Count 1 RICO (Overt Act 5)” involved an armed robbery occurring on January 28, 2014, at the Briarwood Apartments. Overt Act 5 is listed in Count 1 (RICO) of the Indictment. The adjusted offense level for this group was 33.

The third group, referred to in the PSR as “Count 1 RICO (Overt Act 61)” involved an attempted armed robbery occurring on August 8, 2016. Overt Act 61 is



listed in Count 1 (RICO) of the Indictment. The adjusted offense level for this group was 29.

Pursuant to *U.S.S.G. §3D1.4*, a multiple count adjustment was performed to determine the combined offense level. Adding 3-levels to the adjusted offense level of 34 (Count Group 1), the PSR had a total offense level of 37.

Morris had a criminal history score of 10, category V.

Based upon a total offense level of 37 and a criminal history category of V, the guideline imprisonment range was 324 to 405 months.

The statutory provisions for each conviction are listed below:

Count 1 (RICO): maximum term of imprisonment is 20 years.

Count 2 (Drug Conspiracy): maximum term of imprisonment is 20 years.

Count 9 (Distribution of Crack Cocaine, more than 28 grams): 5 to 40 years.

Count 10 (Distribution of Crack Cocaine): maximum term of 20 years.

Count 11 (Distribution of Crack Cocaine): maximum term of 20 years.

Count 12 (Poss. Firearm Conv. Felon): maximum term of 10 years.

Count 15 (Poss. Firearm Conv. Felon): maximum term of 10 years.

Defendant submitted the following objections to the Pre-Sentence Report:

a) Because all 7 counts of conviction were included in Count 1 (RICO),

Morris's sentence should receive one, concurrent sentence, limited to 18

*U.S.C. §1963(a)(RICO).*

- b) Morris objected to the second and third grouping counts, which involved overt acts 5 and 61 because both were included in Count 1 (RICO).
- c) Morris objected to the drug quantity attributable to him in the PSR. [The PSR attributed 112 grams of crack cocaine to Mr. Morris.]
- d) Morris objected to the inclusion of overt acts 5 and 61 in the PSR because there was no finding of guilty with regard to either act.
- e) Morris objected to the two-level enhancement for committing the instant offense while under a criminal justice sentence.
- f) Morris objected to the four-level enhancement for being an organizer or leader of the criminal activity.

**E. Sentencing:**

On August 27, 2019, the Trial Court overruled all of the objections and, after receiving evidence concerning the total drug weight, found a drug weight of 126.96 grams of crack cocaine. The Court next adopted the factual findings of the PSR. The court then sentenced Morris to 240 months as to each Counts 1, 2, 10 & 11; 405 months as to Count 9; and 120 months as to Counts 12 & 15; all to run concurrent. Upon release from prison, Morris will be placed on supervised release for a combined term of five years. The Court order restitution in the amount of \$108,130; and ordered Morris to pay \$700 to the Victim's Crime Fund. (ROA.5026).

#### **F. Appeal:**

On 11, 2020, the Fifth Circuit affirmed the lower court's Judgment, finding no reversible error. The Appellate Court specifically rejected the RICO vagueness challenge, noting that the Fifth Circuit had previously ruled on that issue in *Abell v. Potomac Ins. Co. of Ill.*, 946 F.2d 1160 (5<sup>th</sup> Cir. 1991). The Court next found drug-conspiracy statute was not unconstitutionally vague. The Court found no error with the general verdict form, which did not require the jury to specifically identify the crimes. Lastly, the Court rejected Morris' double jeopardy argument.

#### **REASONS FOR GRANTING THE WRIT**

Morris respectfully submits that Writ should be granted to determine if his Fifth Amendment rights were violated in having to defend himself against two unconstitutionally vague statutes (RICO & Conspiracy to Distribute Controlled Substances). Writ should also be granted because the evidence failed to support the three convictions for distribution of crack cocaine. Further, the Trial Court committed legal error by not requiring the jury to identify the specific predicate acts of "racketeering activity" in the Verdict Form. Lastly, the grouping of convictions for sentencing purposes constitutes multiple punishment for the same conduct and therefore violates the Double Jeopardy Clause of the Fifth Amendment.

## **SUMMARY OF THE ARGUMENT**

Morris respectfully submits the followed errors occurred at the trial court level, which, individually and collectively, necessitate the reversal of his conviction and order of a new trial.

- 1) Count One (RICO) of the Indictment is unconstitutionally vague.
- 2) Count Two (Conspiracy to Distribute Controlled Substances) of the Indictment is unconstitutionally vague.
- 3) The evidence failed to support the three convictions for distribution of crack cocaine.
- 4) The Trial Court committed legal error by not requiring the jury to identify the specific predicate acts of “racketeering activity” in the Verdict Form.
- 5) The grouping of convictions for sentencing purposes constitutes multiple punishment for the same conduct and therefore violates the Double Jeopardy Clause of the Fifth Amendment.

## **ARGUMENT**

### **I. Count One (RICO) is Unconstitutionally Vague.**

The RICO Statute, *18 U.S.C. §§1961*, is unconstitutionally vague on its face and as applied.

The Fifth Amendment provides that “[n]o person shall ... be deprived of life, liberty, or property, without due process of law.” Our cases establish that the Government violates this guarantee by taking away someone's life, liberty, or property under a criminal law so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357–358, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983). The prohibition of vagueness in criminal statutes “is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law,” and a statute that flouts it “violates the first essential of due process.” *Connally v. General Constr. Co.*, 269 U.S. 385, 391, 46 S.Ct. 126, 70 L.Ed. 322 (1926).

Count One (RICO) of the Indictment alleges that Morris and the other eight defendants engaged in a racketeering enterprise starting in 2012 and lasting until the date of the Indictment (2017). It is important to note at the outset that Morris is related to some of the some of the co-defendants and life-long friends with others. His mother (Larshandra Davenport), brother (Frank Morris) and brother-in-law

(Jimmie Durden) are named defendants; and the other defendants are friends. As such, there are normal, noncriminal associations and activities shared by all of them.

Count One alleges that the co-defendants (except Golanda Atkins) were all members and associates of a criminal organization referred to as the “Block Boyz”; an organization engaged in, among other things, conspiracy to distribute controlled substances, distribution of controlled substances, and acts involving murder and robbery. Count One alleges the purpose of the enterprise was the enrichment of its members, preserving and protecting power, intimidating witnesses and obstructing law enforcement.

Count One further alleges that each defendant agreed that a conspirator would commit at least two of the following racketeering acts in the conduct of the affairs of the enterprise: murder, robbery, dealing controlled substances, and multiple offenses involving narcotics trafficking.

In furtherance of the conspiracy, Count One alleges that the defendant committed 66 separate overt acts. The overt acts cover a five-year period and relate to drug dealing, firearm offenses, robberies and other criminal activity.

The sheer volume of criminal activity alleged in Count One makes it hard to determine what evidence the jury considered to reach a guilty verdict.

Morris challenges the Count One RICO conviction on the grounds that the

RICO statute, *18 U.S.C. §§1961-1963*, is unconstitutionally vague on its face and as applied. Terms such as "associated with," "enterprise," "conduct," "participate," "indirectly," "affairs," and "pattern of racketeering activity" provide no guidance as to what conduct the statute prohibits, resulting in virtually unlimited discretion for judges and law enforcement officials.

Morris asserts that because of the broad array of criminal activity extending over such a long period of time, it was impossible for him to adequately address the charges and prepare a reasonable defense.

Morris further asserts that any criminal activity he committed was done for his individual purpose and not in furtherance of a criminal enterprise or as part of a conspiracy.

As described by the late Justice Scalia when trying to interpret the RICO statute:

Thus, when §1961(5) says that a pattern "requires at least two acts of racketeering activity" it is describing what is needful but not sufficient. (If that were not the case, the concept of "pattern" would have been unnecessary, and the statute could simply have attached liability to "multiple acts of racketeering activity"). But what that something more is, is beyond me. As I have suggested, it is also beyond the Court.

Today's opinion has added nothing to improve our prior guidance, which has created a kaleidoscope of Circuit positions, except to clarify that RICO may in addition be violated when there is a "threat of continuity." It seems to me this increases rather than removes the vagueness. There is no reason to believe that the Courts of Appeals will be any more unified in the future, than they have in the past, regarding the content of this law.

No constitutional challenge to this law has been raised in the present case, and so that issue is not before us. That the highest Court in the land has been unable to derive from this statute anything more than today's meager guidance bodes ill for the day when that challenge is presented. *Inc. v. Northwestern Bell Telephone Company*, 492 U.S. 229, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989).

Morris submits the RICO statute is too vague to provide any meaningful guidance regarding the nature and scope of the charges. He requests this Court so declare it unconstitutionally vague.

## **II. Count Two (Drug Conspiracy) is Unconstitutionally Vague.**

Count Two (Drug Conspiracy), *21 U.S.C. §§841(a)(1) & 846*, is unconstitutionally vague on its face and as applied. Count Two alleges that from April 13, 2014, to the date of the Indictment (June 2017), Morris and six other co-defendants conspired to distribute and possess with intent to distribute crack cocaine, powder cocaine, hydrocodone, roxicodone, marijuana and ecstasy. Obviously, this Count is in addition to Count One (RICO) and the three counts of crack distribution, which allege similar conduct.

To establish a drug-trafficking conspiracy, the government must show "(1) the existence of an agreement between two or more persons to violate narcotics laws, (2) knowledge of the conspiracy and intent to join it, and (3) voluntary participation in the conspiracy." *United States v. Nieto*, 721 F.3d 357, 367 (5th Cir. 2013). The government may prove an agreement by demonstrating the coconspirators' concert of action with respect to distribution of drugs. *United States*



*v. Mitchell*, 484 F.3d 762, 769 (5th Cir. 2007).

Because of the vagueness of Count Two, or lack of specificity, it is unknown what evidence was used to sustain this conviction. Did the jury use some of the overt acts or predicate offenses contained in Count One as evidence of the drug conspiracy? Did the jury use the evidence from the crack distribution counts as evidence of the drug conspiracy? Due to the lack of specificity in the Indictment, it is impossible to know what evidence was used to obtain the conviction.

Additionally, had the Trial Court elected to include specifying language in the Verdict Form, such as a date of offense, it would be possible to know what evidence was considered in support of the conviction.

Because it is unknown what evidence was considered by the jury in reaching their verdict, Morris cannot now make a “sufficiency of evidence” claim. For these reasons, he respectfully prays the Count Two (Drug Conspiracy) conviction be reversed.

**III. The evidence fails to support the three convictions for distribution of crack cocaine.**

Morris did not distribute crack cocaine. As discussed in detail below, the evidence clearly established the following facts with regarding to each of the three distribution counts:

- 1) The Government sent a confidential informant to purchase cocaine from  
Morris;

- 2) Morris assisted in the purchases by acting as a middle-man;
- 3) A third person actually delivered the cocaine;
- 4) It was powder cocaine;
- 5) After the drug transaction, the C.I. paid Morris to cook the powder cocaine into crack.

The above-referenced activity may be illegal, but it fails to meet the elements for Distribution of Crack Cocaine.

**i. May 31, 2016 Transaction (Overt Act 16)(Count 9):**

Special Agent Jerry Alkire, with the FBI's Northwest Louisiana Violent Crime Task Force, was in charge of the investigation and testified regarding the controlled drug purchases. At trial, Agent Alkire described the May 31<sup>st</sup> transaction that was initiated and orchestrated by the Government. The evidence established that Q.T., the Government's Confidential Informant, purchased two-ounces of powder cocaine from Ktreion Mingo. When asked about the controlled buy, Agent Alkire responded:

Well, he was charged \$2600 for the 2 ounces. When the 2 ounces was delivered, it was in powder form. Mr. Morris agreed to cook the powder into crack cocaine in exchange for another \$400. So the entire \$3,000 of buy money that was provided was spent.

On cross-examination, Q.T. described the drug transaction as follows:

Q. Once at the house, did another individual drive up and bring the cocaine?

A. Yes.

Q. Is it accurate to say that at some point -- and I believe it was in your car -- you, Mr. Morris, and this third person are seated in the car together?

A. Yes, we were.

Q. This third-party shows up, cocaine appears, and then you give the money to whoever supplied you with the drugs?

A. I give the money to GG [Morris].

Q. Did you see GG hand it to the third-party in your vehicle?

A. Yes.

Q. Okay. After you got the cocaine, Mr. Morris cooked it for you? Is that correct?

A. Yes.

Q. And at whose request?

A. I asked him, would he cook it.

Q. You asked him to? Why?

A. I needed to cook it because I don't know how to cook.

Q. You weren't going to sell it. I mean, why did you need it cooked?

A. It was, I wanted crack and not powder.

When Q.T. was asked on direct-examination about converting the powder cocaine into crack, he responded:

Q. And you asked what you would charge me to cook one of them. What were you asking for?

A. Cook the powder cocaine into crack.

Q. And did he indicate that he could do that for you?

A. Yes, he did.

When specifically asked about the May 31<sup>st</sup> purchase, Q.T. said:

Q. And then after the cocaine arrived, did Mr. Morris cook it into crack?

A Yes, he did.

The evidence clearly shows that Morris was the middleman in a drug transaction for powder cocaine. Q.T. contacted Morris, who contacted a third party,

who delivered powder cocaine to Q.T.. Thereafter, Q.T. had Morris cook the powder into crack. Morris did not distribute crack cocaine and the conviction should be reversed.

**ii. June 8, 2016 Transaction (Overt Act 17)(Count 10):**

In this controlled purchase, Q.T. was instructed to purchase one-ounce of cocaine from Morris. Q.T. went to a local convenience store and met Morris and another individual who was driving a black Mercedes. The individual in the Mercedes supplied the powder cocaine, which Morris then cooked into crack, at Q.T.'s request. Here is Q.T.'s testimony:

Q. Mr. Morris didn't have an ounce of powder cocaine on him prior to the black Mercedes arriving?

A. I don't know -- no, he didn't; no, he didn't.

Q. And I believe on this one, after you received the ounce of powder cocaine, you had Mr. Morris cook it into crack?

A. Yes.

Again, this may be evidence of criminal activity, but not distribution of crack cocaine. Morris prays this conviction be reversed.

**iii. June 22, 2016 Transaction (Overt Act 18)(Count 11):**

In this controlled purchase, Q.T. was instructed to purchase one-ounce of cocaine from Morris. After arriving at the predetermined location, Q.T. purchased a half-ounce of powder cocaine from Albert Johnson, aka Albo. Morris was present during the transaction and after the sale, at the request of Q.T., cooked the powder cocaine into crack.

When Q.T. was asked about the transaction, he stated:

Q. Mr. Morris didn't have any drugs on him?

A. No, he didn't.

Q. And again, you asked him to drop it for you? And what does that mean?

A Cook it.

In all three controlled buys, the elements necessary to sustain a conviction for Distribution of Crack Cocaine are missing. All three transactions involved powder cocaine and, only after the transactions were complete, did Morris cook the powder into crack. Because the elements for distribution of crack cocaine were not met, all three convictions should be reversed.

**IV. The Trial Court committed legal error by not requiring the jury to identify the specific predicate acts of “racketeering activity” in the Verdict Form.**

The Trial Court committed legal error by not requiring the jury to specify which “predicate acts” Morris was guilty of committing.

Count One of the Verdict Form required the jury to answer whether Morris was guilty of the RICO Conspiracy. In order to obtain a conviction under RICO, the government needed to prove, *inter alia*, that each conspirator did or would commit at least two acts of racketeering activity. *18 U.S.C. §1962(c)*. As such, the jury was asked to determine if Morris committed one or more of the follow acts and whether he committed the act one time or more: attempted murder, robbery, attempted robbery, conspiracy to possess with intent to distribute controlled substances,

conspiracy to distribute controlled substances, possession with intent to distribute controlled substances and distribution of controlled substances.

The jury answered:

<b>Predicate Act:</b>	<b>Yes/No:</b>	<b>Once or more than time:</b>
Attempted Murder	No	
Robbery	No	
Attempted Robbery	Yes	More than one time
Conspiracy to possess with intent to distribute CS	Yes	More than one time
Conspiracy to distribute CS	Yes	More than one time
Possession with intent to distribute CS	Yes	More than one time
Distribution of CS	Yes	More than one time

From the Verdict Form, we know the jury decided Morris was guilty of five predicate acts and the jury decided that he committed each of those predicate acts more than one time. What we don't know is what evidence the jury considered in reaching their decision. What evidence was considered to find Morris committed multiple attempted robberies? What evidence was considered to find Morris committed multiple drug conspiracies and sales? Was it the same evidence used in each predicate act or did each act require independent evidence?

Morris requested the jury be asked to identify each such predicate act. Morris cannot even make a "sufficiency of evidence" argument because he doesn't know what evidence the jury considered.

Because Morris was severely prejudiced by the Trial Court's error in not requiring the jury to specify what evidence was being considered for each predicate act, his conviction for Count One (RICO) should be reversed.

**V. The grouping of convictions for sentencing purposes constitutes multiple punishment for the same conduct and therefore violates the Double Jeopardy Clause of the Fifth Amendment.**

Morris was convicted of the following Counts:

Count 1 (RICO)

Count 2 (Drug Conspiracy)

Count 9 (Distribution of Crack Cocaine)(May 31, 2016)

Count 10 (Distribution of Crack Cocaine)(June 8, 2016)

Count 11 (Distribution of Crack Cocaine)(June 22, 2016)

Count 12 (Firearm Felon)(June 27, 2016)

Count 15 (Firearm Felon)(August 8, 2016)

It is undisputed that all of the criminal activity allegedly committed by Morris is contained in Count 1 (RICO). Count 1 list distributing controlled substances and multiple offenses involving narcotics trafficking, which is the same criminal conduct alleged in Count 2. Count 1 specifically list the three distribution of crack cocaine offenses (See Overt Acts 16, 17 & 18) which is the same criminal conduct alleged in Counts 9, 10 & 11. Count 1 specifically list the possession of a firearm by a convicted felon on June 27, 2016 (overt Act 19), which is the same criminal conduct alleged in Count 12. Lastly, Count 1 specifically list the possession of a firearm by a convicted felon on August 8, 2016 (Overt Acts 60 & 61), which constitutes Count 15.

Because Morris was convicted of Count 1, which included all the other counts, his sentence should have been confined to the punishment for Count 1 (*18 U.S.C. §1963(a)*). Instead, the Trial Court accepted the Pre-Sentence Report, which grouped all the counts together, then added two additional, separate groups for Overt Acts 5 and 61. By adding the two groups, Morris' offense level went from 34 to 37. *See PSR, ¶ 75*. Morris concedes that §3D1.2 specifically excludes robbery offenses for grouping purposes, but asserts it still violates the Double Jeopardy Clause of the Fifth Amendment.

Morris submits he was punished twice for the same conduct, and that because all of the illegal conduct was contained in Count 1, his sentence should have been confined to the Count 1 RICO conviction.

### **CONCLUSION**

For the reasons stated herein, Demarcus D. Morris respectfully submits that this Court issue a Writ of Certiorari to review the Judgment of the Fifth Circuit Court of Appeals.



Respectfully Submitted,

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**ATTORNEY FOR PETITIONER**

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

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

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**DEMARCUS DEANDRE MORRIS,  
Petitioner,**

**VERSUS**

**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 A WRIT OF CERTIORARI**

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**CERTIFICATE OF SERVICE**

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I, Joseph W. Greenwald, Jr., the undersigned counsel, hereby certify that on this 6<sup>th</sup> day of November, 2020, one copy of the Petition for Writ of Certiorari and Motion for Leave To Proceed *In Forma Pauperis* in the above-entitled case was electronically filed and will be delivered to FedEx for next day delivery to the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington D.C. 20530-0001, and was e-mailed to the Office of the Solicitor General at SupremeCtBriefs@usdoj.gov, and one copy was mailed to Assistant U.S. Attorney, Finnuala Kelleher Tessier, 950 Pennsylvania

Avenue, NW Ste 1264, Washington, District of Columbia, 20530, and was e-mailed to [Finnuala.Tesslier3@usdoj.gov](mailto:Finnuala.Tesslier3@usdoj.gov).

I further certify that all parties required to be served have been served.

Respectfully Submitted,

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