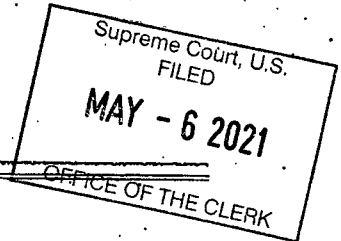


No.

20-8327

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



Roberto Barrio PETITIONER

-VS-

United States of America RESPONDENT

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

PETITIONER FOR WRIT OF CERTIORARI

NAME: Roberto Barrio

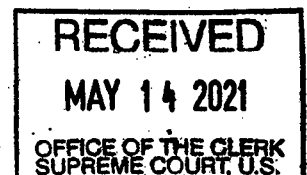
REG NO. 14535-064

UNITED STATES PENITENTIARY

U.S.P. ATWATER

P.O. BOX 019001 6A-125

ATWATER, CA 95301



QUESTION(S) PRESENTED

Whether a single count (Count One) listing two types of cocaine, one powder, one base, as found by jury triggers the "covered offense" required per the First Step Act to render reduction of Life sentence where the Act now creates two distinct statutory minimums and different maximums?

## 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

### CASES

### PAGE NUMBER

United States v. Barrio 41 F. Appx 169  
(10th Cir. 2022)

### STATUTES AND RULES

21 USC § 841(b)(1)(A)(ii)

21 USC § 841(b)(1)(B)(i)

### OTHER

First Step Act - 2018 Section 404(b)

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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☒ is unpublished.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 ECF Doc. No. 1078 1/13/2020; 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☒ is unpublished.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 3/23/2021.

☐ 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: 4/12/2021, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

21 USC § 841(b)(1)(A)(i)

21 USC § 841(b)(1)(B)(i)

21 USC § 851(a)(1)



STATEMENT OF THE CASE

Mr. Barrio is currently serving a mandatory life sentence for conspiracy to distribute and possess cocaine powder and cocaine base. See *U.S. v Barrio* 41 F. Appx 169 (10th Cir. 2002), cert. denied 537 U.S. 939 (2002).

#### REASONS FOR GRANTING THE PETITION

The Opinion and Order conflicts with different Published opinions that have concluded that a count of conviction listing two types of drugs, one covered one not may still receive reduction of sentence where the First Step Act as amended § 841(b)(1)(A) now renders two distinct statutory maximums. A general verdict per single count of conviction with distinct statutory minimums or maximums are per se illegal general sentences

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Roserto Barrio

Date: May 7, 2021