

IN THE SUPREME COURT OF THE UNITED STATES

---

JOSE CESAR SANCHEZ, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

---

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

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

---

ELIZABETH B. PRELOGAR  
Solicitor General  
Counsel of Record

KENNETH A. POLITE, JR.  
Assistant Attorney General

FRANCESCO VALENTINI  
Attorney

Department of Justice  
Washington, D.C. 20530-0001  
SupremeCtBriefs@usdoj.gov  
(202) 514-2217

---

---

QUESTION PRESENTED

Whether petitioners are entitled to plain-error relief on their claim that, in a drug-conspiracy prosecution under 21 U.S.C. 846, each conspirator's statutory sentencing range must be based on a jury finding about the quantity of drugs with which the conspirator was personally involved or that he could reasonably foresee, rather than the quantity of drugs attributable to the conspiracy as a whole.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (C.D. Cal.):

United States v. Laredo, No. 13-cr-537 (Apr. 17, 2017)

United States Court of Appeals (9th Cir.):

United States v. Sanchez, No. 17-50139 (Mar. 15, 2021)

IN THE SUPREME COURT OF THE UNITED STATES

---

No. 21-5511

JOSE CESAR SANCHEZ, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

---

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

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

---

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A13) is not published in the Federal Reporter but is reprinted at 850 Fed. Appx. 472. The judgments of the district court are unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 15, 2021. A petition for rehearing was denied on June 22, 2021 (Pet. App. B1-B2). The petition for a writ of certiorari was filed on August 24, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a jury trial in the United States District Court for the Central District of California, petitioners were convicted of conspiring to commit racketeering, in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1962(d) (Count 1), and conspiring to possess with intent to distribute and to distribute controlled substances, in violation of 21 U.S.C. 841(a)(1) and 846 (Count 3). C.A. E.R. 681-704. Petitioner Dorado was also convicted of conspiring to commit assault in aid of racketeering, in violation of the Violent Crime in Aid of Racketeering statute (VICAR), 18 U.S.C. 1959(a)(6) (Count 2); possessing with intent to distribute controlled substances, in violation of 21 U.S.C. 841(a)(1), (b)(1)(B)(viii), and (b)(1)(C) (Count 5); and unlawfully possessing a firearm and ammunition as a felon, in violation of 18 U.S.C. 922(g)(1) (Count 11). C.A. E.R. 681-704. Petitioner Sanchez was also convicted of possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c) (Count 7). C.A. E.R. 681-704. The district court sentenced petitioner Sanchez to 238 months of imprisonment, to be followed by five years of supervised release; sentenced petitioner Dorado to life imprisonment; and sentenced petitioner Casado to 121 months of imprisonment, to be followed by five years of supervised release. C.A. E.R. 725, 731, 737, 743. The court of appeals affirmed. Pet. App. A1-A13.

1. Petitioners were members of the Florencia 13 street gang, which operated in southern California and engaged in drug trafficking, extortionate "tax" collection from drug dealers, and violence. Gov't C.A. Br. 5-9 (summarizing trial evidence). Florencia 13 was controlled by the Mexican Mafia prison gang, and in particular by Leonel Laredo and brothers Arturo and Braulio Castellanos, all of whom were incarcerated in state prison. Id. at 6, 8.

The Mexican Mafia appointed "shot-callers" to run the gang's activities in accordance with their orders and also to collect "taxes" and provide the proceeds to Mexican Mafia leadership. Gov't C.A. Br. 8. To carry out the Mexican Mafia's orders, the shot callers delegated work to younger gang members, known as "soldiers," who were required to commit violence and to earn money for the gang through drug trafficking and collecting "taxes" from drug dealers. Id. at 9. "Secretaries" were part of the gang's "management," handling the gang's profits from its illegal activities and passing messages between Mexican Mafia leaders and the shot callers on the streets. Ibid.

Dorado was a trusted confidant of Javier Manual Ulloa, a higher-level soldier in the gang. Gov't C.A. Br. 18. Dorado played an integral role in Ulloa's drug-trafficking operation, which included repeated attempts to smuggle drugs into correctional facilities. Ibid. As part of his smuggling efforts, Dorado personally recruited a co-conspirator, Eduardo Ayala, to

hide drugs in his body and then turn himself in on an outstanding warrant. Id. at 19-20. In a recorded jail call with Ulloa, Dorado repeatedly referenced his previous drug-smuggling activities with Ayala. Ibid. In March 2010, jail officers seized 4.3 grams of methamphetamine from Ayala as Ayala -- in cooperation with Dorado -- attempted to smuggle it into the Los Angeles County Jail. Ibid. Dorado also carried out assaults -- and participated in the murder of a gang member who was suspected of cooperating with law enforcement -- on behalf of Ulloa. Id. at 18-19, 21-27. At the conclusion of the investigation, agents executed a search warrant at Dorado's residence and found a gun, ammunition, and drugs. Id. at 20.

Sanchez was a soldier who provided security at the gang's "casitas" -- illegal businesses involving gambling, alcohol, and drug trafficking. Gov't C.A. Br. 16 (citation omitted). Sanchez had to be present and armed during activity at the casitas, and he also sold cocaine and methamphetamine at the casitas several times a week. Ibid. Sanchez was arrested twice during the investigation, and both times the arresting officers found drugs and guns either on his person or on the premises where he was located. Id. at 17-18.

Casado was a Florencia 13 secretary. Gov't C.A. Br. 10. She relayed gang-related messages from incarcerated Mexican Mafia leaders, managed illicit proceeds, and assisted with drug trafficking activities. Id. at 10-16. Through her role as a

secretary, Casado was intimately aware of the gang's illegal operations, including drug trafficking, as she referenced in multiple recorded calls. See ibid.<sup>1</sup>

2. A federal grand jury in the Central District of California returned an indictment charging petitioners and numerous other defendants with various offenses related to Florencia 13. C.A. E.R. 365-413. Many defendants pleaded guilty, but petitioners proceeded to trial on charges of conspiring to commit racketeering, in violation of RICO, 18 U.S.C. 1962(d) (Count 1); conspiring to possess with intent to distribute and to distribute controlled substances, in violation of 21 U.S.C. 841(a)(1) and 846 (Count 3); in the case of petitioner Dorado, conspiring to commit assault in aid of racketeering, in violation of VICAR, 18 U.S.C. 1959(a)(6) (Count 2), and possessing with intent to distribute controlled substances, in violation of 21 U.S.C. 841(a)(1), (b)(1)(B)(viii), and (b)(1)(C) (Count 5); in the case of petitioners Sanchez and Dorado, unlawfully possessing a firearm or ammunition as a felon, in violation of 18 U.S.C. 922(g)(1) (Counts 9, 10, and 11); and, in the case of petitioner Sanchez, possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. 924(c) (Counts 6 and 7). C.A. E.R. 365-413.

---

<sup>1</sup> Tannous Fazah, another soldier in the crew who originally joined in the petition for a writ of certiorari in this Court, has subsequently withdrawn in order to file a new petition. See 11/8/21 Order.

At trial, the government presented evidence including the testimony of three Florencia 13 insiders who detailed the inner workings of the gang and petitioners' involvement in the conspiracies; physical evidence, including drugs, firearms, incriminating notes, and correspondence seized from petitioners' homes, gang businesses, and elsewhere; wiretap intercepts; jailhouse calls; videos of Casado's visits to the gang's leader in state prison; and the testimony of law enforcement officers. See Gov't C.A. Br. 6-7. The government also presented evidence of specific, identified seizures showing 198.48 grams of actual methamphetamine distributed by the conspiracy. See id. at 133-134.

The district court instructed the jury regarding drug quantity as follows:

If you find the defendants guilty of the charge in Count Three of the Indictment, you must then determine whether the government proved beyond a reasonable doubt that the amount of methamphetamine, the amount of a mixture or substance containing a detectable amount of methamphetamine, the amount of marijuana, the amount of heroin, or amount of cocaine, or mixture or substance containing a detectable amount of cocaine, equaled or exceeded certain weights.

Each of the verdict forms includes a section that asks you to note such findings about the drug amounts involved in this case.

Your determination of weight must not include the weight of any packaging material. Your decision as to weight must be unanimous.

The government does not have to prove that the defendants knew the quantity of methamphetamine, marijuana, heroin, or cocaine.

C.A. E.R. 559; see Gov't C.A. Br. 139-140.<sup>2</sup>

The jury received a separate verdict form for each petitioner. The verdict forms instructed the jury that, if it found petitioners guilty of conspiracy to distribute controlled substances, it was required to find beyond a reasonable doubt the drug type and quantity involved in the conspiracy in which each petitioner participated. C.A. E.R. 684, 691, 697, 703; see Gov't C.A. Br. 140.

The jury found all three petitioners guilty of RICO conspiracy (Count 1) and conspiracy to distribute controlled substances (Count 3). See C.A. E.R. 681-704. In addition, it found Sanchez guilty of possessing a firearm in furtherance of a drug trafficking crime (Count 7); and Dorado guilty of conspiring to commit VICAR assault (Count 2), possessing a firearm as a felon (Count 11), and possessing with intent to distribute heroin (Count 5). Ibid. In connection with the drug-conspiracy count (Count 3), the jury also returned special verdicts for each petitioner finding beyond a reasonable doubt that the conspiracy involved over 50 grams of methamphetamine. Id. at 684, 691, 697, 703; see Gov't C.A. Br. 28.

---

<sup>2</sup> Casado objected to the last sentence of the instruction, contending that a jury finding as to knowledge was required under this Court's decision in Alleyne v. United States, 570 U.S. 99 (2013); the other petitioners raised no objections to the instruction. Gov't C.A. E.R. 3258-3260; see Gov't C.A. Br. 140. None of the petitioners contests the forfeiture of the specific argument that they asserted on appeal and reassert in this Court.

4. The Probation Office prepared a presentence investigation report (PSR) for each petitioner. Based on the jury's drug-quantity finding, the reports reflected a statutory sentencing range of 10 years to life imprisonment for Sanchez's drug-conspiracy conviction (Count 3); a statutory sentencing range of 20 years to life imprisonment for Dorado's conspiracy conviction (enhanced due to his prior conviction for a felony drug offense); and a statutory sentencing range of up to life imprisonment for Casado's conspiracy conviction, with no statutory minimum sentence applicable because of her eligibility for safety-valve relief under 18 U.S.C. 3553(f). See C.A. E.R. 172; Sanchez PSR ¶ 123; Dorado PSR ¶¶ 152-153; Casado PSR ¶ 110. Prior to each petitioner's sentencing, the government submitted briefing regarding drug-quantity calculation under the Sentencing Guidelines, maintaining that each petitioner should be held accountable for 198.48 grams of methamphetamine. C.A. E.R. 705-721; Gov't C.A. E.R. 3308-3360; see Gov't C.A. Br. 135. The district court found each petitioner responsible for at least 150 grams of methamphetamine, which resulted in a Sentencing Guidelines base offense level of 32. C.A. E.R. 148, 172, 188-189, 231, 262-263; see Gov't C.A. Br. 135.

The district court sentenced Sanchez to 238 months of imprisonment, to be followed by five years of supervised release; Dorado to life imprisonment; and Casado, who received safety-valve relief, to 121 months of imprisonment, to be followed by five years

of supervised release. C.A. E.R. 725, 731, 737, 741; see Gov't C.A. Br. 136-137.

5. In an unpublished opinion, the court of appeals, applying plain-error review, found no reversible error in the instructions to the jury regarding its drug-quantity determinations. Pet. App. A8-A9. The court observed that it had recently determined, in its en banc decision in United States v. Collazo, 984 F.3d 1308 (9th Cir. 2021), that "a defendant convicted of conspiracy under [21 U.S.C.] § 846 is subject to a penalty under [21 U.S.C.] § 841(b)(1)(A)-(B) if the government has proven beyond a reasonable doubt that the underlying § 841(a)(1) offense involved the drug type and quantity set forth in § 841(b)(1)(A)-(B). The government does not have to prove that the defendant had any knowledge or intent with respect to those facts." Pet. App. A8-A9 (quoting Collazo, 984 F.3d at 1336). And the court found that, having read "together the jury instructions and the verdict form, which required a finding that the conspiracy that the defendant joined involved a specified quantity of drugs," the jury in this case "was not misled." Id. at A9 (citing United States v. Pineda-Doval, 614 F.3d 1019, 1031 (9th Cir. 2010)).

The court of appeals also found sufficient evidence supporting the jury's findings of drug quantity as to each petitioner, because "evidence supported the conclusion that fellow gang members sold the requisite quantities of drugs." Pet. App. A9. The court cited Collazo for the proposition that "[w]hen the

government proves that a defendant had a knowing connection with an extensive enterprise (such as a drug trafficking organization) and had reason to know of its scope, a fact-finder may infer that the defendant agreed to the entire unlawful scheme." Ibid. (quoting Collazo, 984 F.3d at 1319).

The court of appeals additionally rejected petitioners' other claims, with the exception of Dorado's challenge to his sentence on a different count. See Pet. App. A13. It accordingly affirmed, but with a limited remand for resentencing on that one count. Ibid.

#### ARGUMENT

Petitioners contend (Pet. 13-19) that they are entitled to plain-error relief because the district court, for purposes of establishing the statutory sentencing range for petitioners' convictions for conspiring to traffic in controlled substances in violation of Sections 846 and 841, instructed the jury to assess the drug quantities attributable to the conspiracy as a whole, rather than requiring "knowledge with respect to type and quantity." Pet. 18. The court of appeals correctly rejected that contention, and its decision does not warrant further review. Indeed, the plain-error posture of this case would make it a poor vehicle for additional consideration. This Court has repeatedly denied petitions for writs of certiorari raising similar questions. See Meeks v. United States, 137 S. Ct. 332 (No. 15-9273); Carvahlo v. United States, 565 U.S. 1116 (2012) (No. 11-

6039); Robinson v. United States, 558 U.S. 818 (2009) (No. 08-1374). It should follow the same course here.

1. When a defendant is convicted under 21 U.S.C. 846 of conspiring to distribute controlled substances in violation of 21 U.S.C. 841(a), he is "subject to the same penalties as those prescribed for the offense, the commission of which was the object of the \* \* \* conspiracy." 21 U.S.C. 846. Under 21 U.S.C. 841(b), the penalties for a violation of Section 841(a) depend, inter alia, on the type and amount of drugs "involv[ed]" in the "violation." 21 U.S.C. 841(b) (1) (A) and (B).

In United States v. Collazo, 984 F.3d 1308 (2021), the en banc Ninth Circuit determined, consistent with the holdings of all other regional courts of appeals, that Section 841(b)'s drug- and amount-specific statutory penalties do not require proof that the defendant knew the specific drug type and quantity involved in the offense.<sup>3</sup> The en banc Ninth Circuit reiterated that once the

---

<sup>3</sup> See Collazo, 984 F.3d at 1322-1329; see also United States v. Collazo-Aponte, 281 F.3d 320, 326 (1st Cir.), cert. denied, 537 U.S. 869 (2002); United States v. Andino, 627 F.3d 41, 45-47 (2d Cir. 2010); United States v. Barbosa, 271 F.3d 438, 458 (3d Cir. 2001), cert. denied, 537 U.S. 1049 (2002); United States v. Brower, 336 F.3d 274, 277 (4th Cir.), cert. denied, 540 U.S. 936 (2003); United States v. Betancourt, 586 F.3d 303, 308-309 (5th Cir. 2009), cert. denied, 559 U.S. 1021 (2010); United States v. Dado, 759 F.3d 550, 569-570 (6th Cir.), cert. denied, 574 U.S. 992 (2014); United States v. Carrera, 259 F.3d 818, 830 (7th Cir. 2001); United States v. Ramos, 814 F.3d 910, 915-917 (8th Cir.), cert. denied, 137 S. Ct. 177 (2016); United States v. De La Torre, 599 F.3d 1198, 1204 (10th Cir.), cert. denied, 562 U.S. 898 (2010); United States v. Sanders, 668 F.3d 1298, 1310 (11th Cir. 2012); United States v. Branham, 515 F.3d 1268, 1275-1276 (D.C. Cir. 2008).

government proves that the defendant "knowingly or intentionally" distributed a controlled substance in violation of 21 U.S.C. 841(a), Section 841(b) establishes a statutory penalty range based on the type and quantity of the drug that the defendant actually distributed, without any further showing of the defendant's knowledge or intent with regard to drug types and amounts. See Collazo, 984 F.3d at 1325-1329. Turning to the conspiracy statute, which prescribes "the same penalties as those prescribed for the offense, the commission of which was the object of the \* \* \* conspiracy," 21 U.S.C. 846, the en banc Ninth Circuit in Collazo stated that the conspiracy penalty range follows the same structure. Thus, the government must prove that the defendant knew or intended that the conspiracy would result in a violation of Section 841(a), but need not prove that the defendant knew or intended that the violation would involve specific types or quantities of controlled substances. See Collazo, 984 F.3d at 1329-1333.

2. The court of appeals correctly determined that petitioners were not entitled to plain-error relief on their unpreserved claim of instructional error here. See Pet. App. A8-A9; see also p. 7 n.2, supra. In order to obtain plain-error relief on their claim of instructional error, petitioners would need to establish (inter alia) that the understanding of Section 846 adopted by the Ninth Circuit in Collazo was "clear[ly]" and "obvious[ly]" incorrect, and that it "affect[ed] [their]

substantial rights" when applied in this case. United States v. Olano, 507 U.S. 725, 734-736 (1993) (describing the showings a defendant must make to obtain plain-error relief). Petitioners cannot make either of those showings.

First, the Ninth Circuit's decision in Collazo reflects, at a minimum, a plausible interpretation of Sections 846 and 841. Collazo explained that its construction gives effect to the plain meaning of both 21 U.S.C. 846, which aligns the penalties for defendants convicted of drug conspiracy offenses and defendants convicted of substantive drug-trafficking offenses, and 21 U.S.C. 841(b) (1), which -- as all courts of appeals agree, see p. 11 n.3, supra -- does not require proof of a defendant's knowledge of drug type and drug quantity in order to establish the applicable statutory penalties. See 984 F.3d at 1320-1329, 1331-1332. That construction is consistent with the "framework" used by this Court "for determining whether the intent requirement for a conspiracy count is 'greater than' the intent required for the underlying substantive offense." Id. at 1331 (quoting United States v. Feola, 420 U.S. 671, 686 (1975)). This Court has explained that "where an element of the underlying substantive offense does not include an intent requirement, the same will be true for a conspiracy to commit that offense, 'unless one of the policies behind the imposition of conspiratorial liability is not served' by having the same intent." Id. at 1330 (quoting Feola, 420 U.S. at 693).

Petitioners suggest that the district court's alleged error was nevertheless plain, relying on pre-Collazo circuit decisions in effect at the time of their trial. See Pet. 11 (citing United States v. Becerra, 992 F.2d 960, 966 (9th Cir. 1993), overruled by Collazo, supra). But the relevant question for purposes of plain-error relief is whether the error is plain "at the time of review." Henderson v. United States, 568 U.S. 266, 273 (2013); see id. at 271. Because Becerra had been expressly overruled by the time of the court of appeals' decision in petitioners' case, it does not assist them in establishing that any error in their case was "clear" or "obvious." Olano, 507 U.S. at 734.

Even if petitioners could establish a clear or obvious error, moreover, they cannot demonstrate that such an error affected their substantial rights -- i.e., that it "affected the outcome of the district court proceedings" in a manner that was "prejudicial." Olano, 507 U.S. at 734. Sanchez was sentenced to 178 months of imprisonment on Count 3 (C.A. E.R. 725), well above the 120-month statutory-minimum sentence that was based on the jury's drug-quantity finding. See id. at 697; 21 U.S.C. 841(b) (1) (A). Casado, for her part, was found eligible for safety-valve relief under 18 U.S.C. 3553(f) and, as a result, was sentenced without regard to any statutory-minimum sentence. See C.A. E.R. 172; Casado PSR ¶ 110. And the sentences that Sanchez and Casado received were also below the 20-year unenhanced statutory maximum that would have been applicable in the absence of any drug-amount finding by the

jury. See 21 U.S.C. 841(b)(1)(C). Any errors relating to the jury's drug-quantity findings therefore did not affect the sentences they received for violating Section 846.

Dorado likewise cannot show prejudice. Like Sanchez, Dorado received a sentence (in his case, life imprisonment) well above the statutory-minimum sentence applied to him on Count 3 based on the jury's drug-quantity finding. C.A. E.R. 231, 737; 21 U.S.C. 841(b)(1)(A). He therefore cannot establish that the jury's drug-amount finding, and the resulting 20-year statutory minimum, affected his sentence.<sup>4</sup> Nor did Dorado's sentence of life imprisonment exceed the statutory maximum sentence that would have been applicable had the jury received and applied an individualized, defendant-specific drug-amount instruction. Overwhelming evidence established that Dorado was individually responsible for, at the very least, 5 grams or more of methamphetamine. See, e.g., Gov't C.A. Br. 134 (describing trial evidence that established that law enforcement seized 4.3 grams of methamphetamine from Dorado's residence), 148-149 (describing Dorado's admission that he smuggled methamphetamine on other occasions). Even under a conservative 5-gram assumption, Dorado -- with his prior conviction for a felony drug offense, see p. 8, supra -- would have faced the same life-imprisonment statutory maximum sentence that he ultimately received. 21 U.S.C.

---

<sup>4</sup> Dorado was subject to a 20-year, rather than 10-year, statutory minimum because he had a prior conviction for a felony drug offense. C.A. E.R. 231; see 21 U.S.C. 841(b)(1)(A).

841(b)(1)(B). He therefore cannot establish that the instructional error he alleges resulted in a higher sentence.

Moreover, all three petitioners also received concurrent sentences for their RICO conspiracy convictions which were identical in length to the sentences they received for violating Section 846. See C.A. E.R. 725, 737. Petitioners have not challenged those sentences in this Court. And Dorado's sentence was remanded for a limited correction on a different count, rendering his petition interlocutory. See Pet. App. A13; Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R., 389 U.S. 327, 328 (1967) (per curiam) (explaining that a case remanded to district court "is not yet ripe for review by this Court"); Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916) (recognizing that the interlocutory posture of a case "alone furnishe[s] sufficient ground for the denial of the application").

3. Other courts of appeals have construed Sections 846 and 841 to limit the statutory sentencing range for a drug-distribution conspiracy to the type and quantity of drugs that a particular co-conspirator was personally involved with or could reasonably foresee.<sup>5</sup> For the reasons discussed above, however, petitioners

---

<sup>5</sup> See, e.g., United States v. Pizarro, 772 F.3d 284, 293-294 (1st Cir. 2014); United States v. Culbertson, 670 F.3d 183, 189-190 (2d Cir. 2012); United States v. Williams, 974 F.3d 320, 365 (3d Cir. 2020), cert. denied, Nos. 20-1523, 20-7796, 20-7868, 20-7889 (Oct. 4, 2021); United States v. Collins, 415 F.3d 304, 314 (4th Cir. 2005); United States v. Haines, 803 F.3d 713, 742 (5th Cir. 2015), cert. denied, 137 S. Ct. 2107 (2017); United

would not be entitled to plain-error relief even if they were to establish that the Ninth Circuit's interpretation of Sections 846 and 841 is incorrect. The petition for a writ of certiorari accordingly would not be a suitable vehicle in which to address the conflict in the lower courts on that issue.

In any event, the circuit conflict is unlikely to have significant practical effects. As a threshold matter, Collazo itself requires proof that a defendant had "reason to know of the scope" of a conspiracy as a prerequisite to an inference that he "agreed to the entire unlawful scheme." 984 F.3d at 1319. Furthermore, in January 2014, after the original indictment in this case had been filed, see D. Ct. Doc. 1 (Aug. 1, 2013), the Department of Justice adopted a nationwide charging policy for drug-conspiracy cases. See Br. in Opp. at 3, Meeks v. United States, No. 15-9273 (Sept. 20, 2016) (describing policy). Under that policy, all federal prosecutors in drug-conspiracy cases have been instructed to charge, and to request an instruction requiring the jury to find, an individualized drug quantity corresponding to the relevant statutory threshold for each defendant based on the

---

States v. Swiney, 203 F.3d 397, 406 (6th Cir.), cert. denied, 530 U.S. 1238 (2000); United States v. Rivera, 411 F.3d 864, 866-867 (7th Cir.), cert. denied, 546 U.S. 966 (2005); United States v. Foxx, 544 F.3d 943, 952-953 (8th Cir. 2008), cert. denied, 558 U.S. 839 (2009); United States v. Dewberry, 790 F.3d 1022, 1030 & n.7 (10th Cir. 2015); United States v. Bacon, 598 F.3d 772, 778 (11th Cir. 2010); United States v. Stoddard, 892 F.3d 1203, 1221 (D.C. Cir. 2018).

amount of drugs that the defendant was personally involved with or could reasonably foresee in the course of the conspiracy.

Because a defendant may not be subjected to a statutory minimum sentence based on a drug quantity that is higher than the quantity charged in the indictment and found by the jury, see Alleyne v. United States, 570 U.S. 99, 103 (2013), that policy ensures that drug-conspiracy defendants nationwide are subject to statutory-minimum terms based on individualized drug quantities, regardless of the circuit in which the case is tried. And because the Department has chosen to maintain that policy nationwide following Collazo, the variations in circuit law with respect to the question presented are unlikely to affect the outcomes of future cases.

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Solicitor General

KENNETH A. POLITE, JR.  
Assistant Attorney General

FRANCESCO VALENTINI  
Attorney

NOVEMBER 2021