

NO:  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_TERM, 2022

---

HUGO VALENCIA MENDOZA

*Petitioner,*

v.

UNITED STATES OF AMERICA

*Respondent,*

---

On Petition for Writ of Certiorari from the  
United States Court of Appeals  
for the Eleventh Circuit

---

PETITION FOR WRIT OF CERTIORARI

---

MICHAEL H. SAUL  
Counsel of Record for Petitioner  
Georgia Bar Number 627025  
P.O. Box 4504  
301 Washington Ave.  
Marietta, Georgia, 30061  
404-281-1542  
saulattorney@gmail.com

MICHAEL T. ROSS  
Co-Counsel for Petitioner  
Georgia Bar Number 763334  
301 Washington Ave  
Marietta, GA 30060  
770-722-3661  
mtrosslaw@gmail.com

QUESTIONS PRESENTED FOR REVIEW

The questions presented are:

1. Is the term “involved” under Section 2D1.1(b)(5) of the United States Sentencing Guidelines Unconstitutional under the Vagueness Doctrine through the Fifth Amendment of the United States Constitution and therefore should not have been applied to Mr. Mendoza?

**INTERESTED PARTIES**

There are no parties to the proceeding other than those named in the caption of the case.

**Table of Contents**

|   |           |
|---|-----------|
| <b>QUESTIONS PRESENTED FOR REVIEW .....</b>                         | <b>2</b>  |
| <b>INTERESTED PARTIES .....</b>                                     | <b>3</b>  |
| <b>TABLE OF CONTENTS-----</b>                                       | <b>4</b>  |
| <b>INDEX OF APPENDICES-----</b>                                     | <b>5</b>  |
| <b>TABLE OF AUTHORITIES-----</b>                                    | <b>6</b>  |
| <b>OPINIONS BELOW.....</b>  | <b>7</b>  |
| <b>STATEMENT OF JURISDICTION.....</b>                               | <b>8</b>  |
| <b>STATUTORY AND SENTENCING GUIDELINE PROVISIONS INVOLVED .....</b> | <b>9</b>  |
| <b>INTRODUCTION.....</b>  | <b>10</b> |
| <b>STATEMENT OF THE CASE.....</b>                                   | <b>11</b> |
| <b>REASONS FOR GRANTING THE WRIT.....</b>                           | <b>13</b> |
| <b>CONCLUSION .....</b>   | <b>16</b> |
| <b>CERTIFICATE OF SERVICE .....</b>                                 | <b>17</b> |
| <b>CERTIFICATE OF SERVICE .....</b>                                 | <b>18</b> |

**INDEX OF APPENDICES**

|            |  |
|------------|--|
| Appendix A | Decision of Eleventh Circuit Court of Appeals                                    |
| Appendix B | Decision of United States District Court for the Northern<br>District of Georgia |

**TABLE OF AUTHORITIES**

**Cases**

|  |        |
|--|--------|
| <i>Beckles v. United States</i> , 137 S. Ct. 886 (2017).....   | 10     |
| <i>Molina-Martines v. U.S.</i> , 578 U.S. ____ (2016)-----     | 13, 14 |
| <i>Peugh v. U.S.</i> 569 U.S. ____ (2016)(slip op., at 9)----- | 13     |

**Statutes**

|                           |   |
|---------------------------|---|
| 28 U.S.C. § 1254(1) ..... | 8 |
|---------------------------|---|

**Other Authorities**

|                             |                     |
|-----------------------------|---------------------|
| §3B1.2 .....                | 9                   |
| U.S.S.G. §2D1.1(b)(5) ..... | 2, 9, 10, 12, 1, 14 |

**Rules**

|                              |   |
|------------------------------|---|
| Supreme Court Rule 13.1..... | 8 |
|------------------------------|---|

IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_TERM, 2022

---

HUGO VALENCIA MENDOZA

*Petitioner,*

v.

UNITED STATES OF AMERICA

*Respondent,*

---

On Petition for Writ of Certiorari from the  
United States Court of Appeals  
for the Eleventh Circuit

---

PETITION FOR WRIT OF CERTIORARI

---

Hugo Mendoza respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

**OPINIONS BELOW**

The Eleventh Circuit’s unpublished opinion affirming Mr. Mendoza’s direct appeal is located at *United States v. Hugo Valencia Mendoza*, No. 21-10342, (11th Cir. November 29, 2021), and is included in the Appendix at Appendix A.

The District Court’s judgement and commitment is located at *United States v. Hugo Valencia Mendoza*, No. 1:19-cr-00278-LMM-JSA-1 , (N.D.G.A. 2021), and is included in the Appendix at Appendix B.

**STATEMENT OF JURISDICTION**

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The decision of the court of appeals affirming the district court's sentence of Mr. Mendoza was entered on November 29, 2021. This petition is timely filed pursuant to Supreme Court Rule 13.1.



**STATUTORY AND SENTENCING GUIDELINE PROVISIONS INVOLVED**

United States Sentencing Guideline §2D1.1 states, in pertinent part:

**§2D1.1(b)(5). Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy**

If (A) the offense involved the importation of amphetamine or methamphetamine or the manufacture of amphetamine or methamphetamine from listed chemicals that the defendant knew were imported unlawfully, and (B) the defendant is not subject to an adjustment under §3B1.2 (Mitigating Role), increase by 2 levels.

## **INTRODUCTION**

This petition presents one question that requires the Court's resolution: (1) Whether *Beckles v. United States*, 137 S. Ct. 886 (2017) (holding the Sentencing Guidelines were not unconstitutionally vague...because the Sentencing Guidelines are a simply a guide to assist judges exercise discretion in sentencing) should be overruled and that U.S.S.G. §2D1.1(b)(5) which calls for a 2-level enhancement if the offense involved the importation of methamphetamine should be held unconstitutionally vague and overbroad. In *Beckles*, Justice Ginsburg and Justice Sotomayor agreed that *Beckles* was not the right case to decide whether the Vagueness Doctrine applied to the sentencing guidelines. (Ginsburg, J., Sotomayor, J. concurrence).

Notwithstanding the facts here, the term 'involved' in 2D1.1(b)(5) is unclear and is not defined by the United States Sentencing Commission. It fails to put a defendant on fair notice regarding what conduct will give rise to the 2-level enhancement.

It is imperative the Court overrule *Beckles* on whether loose and imprecise words in the sentencing guidelines are subject to a vagueness challenge.

**STATEMENT OF THE CASE**

Since early 2019, Mr. Mendoza used cell phones to broker methamphetamine transactions while he was incarcerated in a Georgia State Prison in Reidsville, GA. These transactions occurred in the Northern District of Georgia and elsewhere. Mr. Mendoza communicated with an individual and co-conspirator by the name of Kevin Brown (not incarcerated at the time) to facilitate the distribution of methamphetamine to customers. Mr. Mendoza would coordinate with couriers to deliver the methamphetamine to Mr. Brown. These transactions were coordinated through telephone calls and text messages.

On May 11, 2019, Mr. Mendoza coordinated a methamphetamine transaction between Mr. Brown and Ms. Gomez at a McDonald's restaurant in Atlanta, GA. D.E.A. agents intercepted calls between Mr. Mendoza and Mr. Brown, wherein Mr. Brown and Mr. Mendoza organized a transaction for one (1) kilogram of methamphetamine. Mr. Brown received the one (1) kilogram of methamphetamine on May 11, 2019. Later in June 2019, Mr. Brown and Mr. Mendoza coordinated with cell phones a two (2) kilogram methamphetamine transaction that took place at a bank on Clairmont Road in Atlanta, GA. The two (2) kilograms from this transaction were discovered in Mr. Brown's truck at a traffic stop. Mr. Brown told

the authorities that he received the methamphetamine from Ms. Gomez and that he coordinated the transaction with Mr. Mendoza.

In July 2019, agents intercepted Mr. Mendoza speaking with a woman, later identified as Katherine Fuentes, where they spoke about Ms. Fuentes traveling to Mexico to acquire methamphetamine. Agents intercepted Mr. Mendoza discussing with another woman that Fuentes would acquire sixty (60) kilograms of methamphetamine. Ms. Fuentes eventually travelled to Mexico, and while attempting to cross the United States-Mexico border, agents intercepted Mr. Mendoza and Ms. Fuentes speaking on a cell phone. (Mr. Mendoza was providing directions to Ms. Fuentes on how to cross the border and where to drive). Ms. Fuentes was eventually stopped, and fifty-six (56) kilograms of methamphetamine were discovered in the vehicle driven by Ms. Fuentes.

Additionally, Mr. Mendoza had been previously convicted of trafficking methamphetamine in the Clayton County Superior Court, Georgia, in case 2012-CR-02084 on March 12, 2013.

At sentencing, Mr. Mendoza objected to the Court's application of the importation enhancement under U.S.S.G. §2D1.1(b)(5).

The District Court overruled Mr. Mendoza's objection to the application of the importation enhancement under U.S.S.G. §2D1.1(b)(5).

1. On direct appeal, the United States Court of Appeals for the Eleventh Circuit rejected Mr. Mendoza's argument that the importation enhancement was void for vagueness.

2. Mr. Mendoza timely filed this petition for certiorari.

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

1. Whether *Beckles* should be overruled and allow the sentencing guidelines to be challenged under the Vagueness Doctrine.
  - a. The United States Sentencing Commission uses key words throughout the guidelines to aid United States district courts calculate the appropriate sentence for defendants. However, some of these key words are not defined, leading to varying interpretation and applicability from court to court. In this case, the word ‘involved’ under U.S.S.G. §2D1.1(b)(5) is not defined by the sentencing commission as it relates to importing drugs. The question that each court asks and gets a different answer is, “How close does a defendant need to be in relation to the importing of drugs to have the importation enhancement applied in his sentencing calculation?”
  - b. In *Beckles*, both Justice Ginsburg and Justice Sotomayor agreed that the *Beckles* opinion went too far. Both Justices believed it was improper, and not an appropriate set of facts to declare the whole sentencing guidelines as being immune from a vagueness challenge. “The Guidelines anchor every sentence imposed in federal district courts. They are, “in a real sense[,] the basis for the sentence.’” *Molina-Martinez v. United States*, 578 U. S. \_\_\_, \_\_\_ (2016) (slip op., at 9) (quoting *Peugh v. United States*, 569 U. S. \_\_\_, \_\_\_

(2013) (slip op., at 11); emphasis deleted). The Due Process Clause requires that rules this weighty be drafted “with sufficient definiteness that ordinary people can understand” them, and “in a manner that does not encourage arbitrary and discriminatory enforcement.” *Kolender v. Lawson*, 461 U. S. 352, 357 (1983).” *Beckles* at 898, Sotomayor, J. concurring.

“It is therefore no exaggeration to say that the Guidelines are,’ ‘in a real sense[,] the basis for the sentence’ ‘imposed by the district court.’ *Molina–Martinez*, 578 U.S., at —, 136 S.Ct., at 1345 (quoting *Peugh*, 569 U.S., at —, 133 S.Ct., at 2083; emphasis deleted).” *Beckles* at 900. “A defendant is entitled to understand the legal rules that will determine his sentence. But a vague Guideline is by definition impossible to understand.” *Id.*

- c. The sentencing guidelines should be subject to vagueness challenges. Although the statute the defendant violated is clear regarding what the sentencing range is, where the defendant falls in the sentencing range is not clear. Defendants are not on fair notice how the guidelines are going to be applied to sentencing ranges in statutes.
- d. The court should clarify whether vague and uncertain words in the sentencing guidelines can be challenged on vagueness grounds. There is too much flexibility in these factors from circuit to circuit.

- e. The court clearly erred when it gave Mendoza a 2-level enhancement as required by U.S.S.G. §2D1.1(b)(5). The district court should have not applied this enhancement and should have declared this provision void for vagueness.

**CONCLUSION**

The Supreme Court of the United States should GRANT the Petition for Writ of Certiorari.

Respectfully submitted February 24, 2022,

/s/Michael H. Saul  
MICHAEL H. SAUL  
Attorney for Petitioner  
Georgia Bar Number 627025  
P.O. Box 4504  
301 Washington Ave.  
Marietta, Georgia, 30061  
404-281-1542  
saulattorney@gmail.com

/s/Michael T. Ross  
Michael Ross  
Co-Counsel for Petitioner  
Georgia Bar Number: 763334  
301 Washington Ave  
Marietta, Georgia 30060  
770-722-3661  
mtrosslaw@gmail.com



**CERTIFICATE OF SERVICE**

This is to certify that I have this day served Merrick Garland, Attorney General listed below a copy of the attached Petition by depositing a copy of same in the U.S. Mail in a properly addressed envelope, with adequate postage affixed thereon to wit:

Elizabeth Prelogar  
Acting Solicitor General of the United States,  
Department of Justice,  
950 Pennsylvania Ave., N.W., Room 5614,  
Washington, D. C. 20530-0001

February 24, 2022

/s/Michael H. Saul  
Michael H. Saul  
Counsel for Petitioner  
Georgia Bar No. 627025

P.O. Box 4504  
301 Washington Ave.  
Marietta, Georgia, 30061  
404-281-1542  
saulattorney@yahoo.com or saulattorney@gmail.com

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served Kurt Erskine, Acting United States Attorney for the Northern District of Georgia, listed below a copy of the attached Motion by depositing a copy of same in the U.S. Mail in a properly addressed envelope, with adequate postage affixed thereon to wit:

Kurt Erskine, Acting United States Attorney  
John DeGenova, Assistant United States Attorney  
William Gavin Traynor, Assistant United States Attorney  
600 U.S. Courthouse  
75 Ted Turner Drive, SW  
Atlanta, GA 30303  
404-581-6000

February 24, 2022

/s/Michael H. Saul  
Michael H. Saul  
Counsel for Petitioner  
Georgia Bar No. 627025  
P.O. Box 4504  
301 Washington Ave.  
Marietta, Georgia, 30061  
404-281-1542  
saulattorney@yahoo.com or saulattorney@gmail.com

/s/Michael T. Ross  
Michael Ross  
Co-Counsel for Petitioner  
Georgia Bar No. 763334  
301 Washington Ave  
Marietta, GA 30060  
770-722-3661  
mtrosslaw@gmail.com