

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

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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.

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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The Eleventh Circuit's unpublished opinion affirming Mr.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,

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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:

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February 24, 2022

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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:

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