21-7342

No. _____

In the Supreme Court of the United States

ALEJANDRO SALINAS GARCIA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for A Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 404 of the First Step Act of 2018 ("FSA2") makes the Fair Sentencing Act of 2010 ("FSA1") retroactive by authorizing courts to impose reduced sentences for "covered offense[s]." Pub. L. No. 115-391, § 404(b), 132 Stat. 5194, 5222. The term "covered offense" means "a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010." Id. Section 2 of the FSA1 amended 21 U.S.C. § 841 by altering the crack-cocaine quantities associated with the three tiers of penalties in § 841(b)(1). The FSA1 shifted Subparagraph (b)(1)(A)'s 10-year-to-life range from more than 50 grams to more than 280 grams; Subparagraph (b)(1)(B)'s 5-to-40-year range from between 5 grams and 50 grams to between 28 grams and 280 grams; and Subparagraph (b)(1)(C)'s 0-to-20-year range from less than 5 grams to less than 28 grams (or an unspecified quantity). It is well settled that the statutory sentencing parameters triggered by conviction for a violation of § 841 alleging multiple drug types, and thereby triggering different statutory sentencing parameters, is the least harsh set of potential statutory sentencing parameters triggered.

Does the record demonstrate that a defendant was sentenced in accordance with the FSA1 for violations of 21 U.S.C. § 841, involving multiple drug types with different statutory sentencing parameters – some unimpacted by the FSA1 –, where the defendant was sentenced without reference to the properly applicable, least harsh statutory sentencing parameters?

PARTIES TO THE PROCEEDINGS

There are no parties to the proceeding other than those listed in the style of the case.

RELATED CASES

- *United States v. Salinas Garcia*, No. 20-6075, U.S. Court of Appeals for the Fourth Circuit. Opinion affirming denial of FSA relief entered Nov. 15, 2021.

- *United States v. Salinas Garcia*, No. 5:09-cr-25 (W.D.N.C.). Order denying FSA relief entered Nov. 4, 2019.

- *United States v. Salinas Garcia*, No. 20-6075, U.S. Court of Appeals for the Fourth Circuit. Order denying rehearing entered Jan. 10, 2022.

- *United States v. Salinas Garcia*, No. 5:09-cr-25 (W.D.N.C.). Order reducing sentence under § 3582 & USSG amend. 782 entered Feb. 17, 2016.

- *United States v. Salinas Garcia*, No. 15-7890, U.S. Court of Appeals for the Fourth Circuit. Order denying COA entered June 7, 2016.

- *Salinas Garcia v. United States*, No. 5:13-cv-149 (W.D.N.C.). Order denying § 2255 motion entered Sept. 30, 2015.

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The Opinion of the United States Court of Appeals for the Fourth Circuit affirming denial of FSA relief is unpublished and may be found at USCA Case No. 20-6075; *United States of America v. Salinas Garcia* (Nov. 15, 2021) (*Appendix - A1*).

The Order of the United States District Court for the Western District of North Carolina, denying Petitioner relief under the FSA is unpublished and may be found at USDC Case No. 5:09-cr-25; *United States of America v. Salinas Garcia* (Nov. 4, 2019) (*Appendix - A10*).

The Order of the United States Court of Appeals for the Fourth Circuit, denying rehearing is unpublished and may be found at USCA Case No. 20-6075; *United States of America v. Salinas Garcia* (Jan. 10, 2022) (*Appendix - A12*).

STATEMENT OF JURISDICTION

The order denying the motion for rehearing was issued on January 10, 2022. The opinion affirming the denial of FSA relief was issued on November 15, 2021. This petition is timely filed pursuant to Sup. Ct. R. 13. This Court's jurisdiction rests on 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Section 404 of First Step Act of 2018 provides:

(a) DEFINITION OF COVERED OFFENSE.—In this section, the term "covered offense" means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372), that was committed before August 3, 2010.

(b) DEFENDANTS PREVIOUSLY SENTENCED.—A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

(c) LIMITATIONS.—No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111–220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.

Pub. L. No. 115-391, § 404, 132 Stat. 5194, 5222 (2018). Other relevant statutes are contained in the Petition Appendix.

STATEMENT OF THE CASE

A. Introduction.

This petition could impact an alarmingly large subset of defendants who will be denied the opportunity to seek the discretionary relief Congress intended to make available to all defendants who had been sentenced based on the unfair 100-to-1 crack to powder ratio – which our evolving standards of decency make clear is both unconscionable and indefensible by virtue of its arbitrary nature and racially disproportionate impact on minority defendants like the Petitioner – as a result of the Fourth Circuit's decision to apply a form of willful blindness to the determination of whether a defendant was sentenced in accordance with the Fair Sentencing Act ("FSA1"). Quite simply, if the Fourth Circuit's analysis in this case is allowed to stand, defendants sentenced for multi-drug violations of § 841 – after the FSA1 became law, based on conduct which occurred prior to the FSA1 becoming law – will be unable to obtain discretionary relief, as the Fourth Circuit's analysis will be that they were sentenced according to the FSA1, because the sentence imposed was justified – in their erroneous analysis – by the other drug types. Obviously, this does NOT mean that the FSA1 was applied at sentencing. Most tellingly, this expedient, cursory and specious form of analysis is shown to be nothing more than a dodge by the appellate court, when one considers the plethora of caselaw holding that the

proper statutory sentencing parameters for a defendant convicted of a violation of § 841, where multiple drug types are alleged and a general verdict is returned, or the defendant pleads guilty, is the least punitive statutory sentencing parameters which applied to any of the charged drug types/amounts in the indictment. *See e.g., United States v. Rhynes,* 196 F.3d 207, 238 (4th Cir. 1999), vacated in part on other grounds on reh'g en banc, 218 F.3d 310 (4th Cir. 2000) (holding that when there is a general verdict in a multiple-drug conspiracy, the defendant may be sentenced only up to the maximum for the least-punished drug offense on which the conspiracy verdict might have been based). This holding applies to defendants like the Petitioner, despite their having pleaded guilty to an indictment which set forth the drug types – which are set out in the statute in the disjunctive – in the conjunctive. This is true because caselaw holds that charging the drug types in the conjunctive makes no difference. For example, in *United States v. Vann*, 660 F.3d 771, 775 (4th Cir. 2011) the Fourth Circuit held that "[t]he 'formal criminal charge,' as explained in *Rhynes*, is nothing more than the least serious of the disjunctive statutory conduct, not the entirety of the conduct alleged in the conjunctive."

B. Statutory Background.

1. The Fair Sentencing Act ("FSA1")

Under the Anti-Drug Abuse Act of 1986, 21 U.S.C. § 841, thousands of people—overwhelmingly, Americans in the racial minorities—received draconian crack-cocaine

sentences under a system that treated crack offenses 100 times more harshly than equivalent powder offenses. *Kimbrough v. United States*, 552 U.S. 85, 98 (2007). In 2010, Congress repudiated that system. The Fair Sentencing Act ("FSA1") reduced crack penalties across the board by shifting upwards the quantities corresponding to each of § 841(b)(1)'s three penalty tiers. The FSA1 changed Subparagraph A, which sets a 10-year-to-life range, to apply to 280 or more grams (up from 50 or more grams). It altered Subparagraph B, which sets a 5-to-40-year range, to apply to 28 or more grams (up from 5 or more grams). And it changed Subparagraph C, which sets a residual 0-to-20-year range applying "except as provided in subparagraphs (A) [and] (B)," to apply to less than 28 grams (up from less than 5 grams), or an unspecified quantity. The Sentencing Commission, recognizing that the Act comprehensively modified what constitutes a "reasonable" crack sentence, in turn changed the corresponding Sentencing Guidelines at every quantity.

Since the Anti-Drug Abuse Act of 1986, criminal offenses for crack and powder cocaine (and other controlled substances) have been governed by 21 U.S.C. § 841. *See Kimbrough*, 552 U.S. at 95.

Subsection 841(a) enumerates two sets of "Unlawful Acts"—namely, to "manufacture, distribute, or dispense, or possess with intent to [do so] ... a controlled substance," or to commit similar acts with a "counterfeit substance." 21 U.S.C. § 841(a)(1)-(2).

Subsection (b)(1) then defines the "Penalties" for these unlawful acts, providing how "any person who violates subsection (a) of this section shall be sentenced." *Id.* § 841(b).

- Subparagraph A addresses the largest drug quantities (with the amount differing by drug). For such quantities, defendants "shall be sentenced to . . . not . . . less than 10 years or more than life." *Id.* § 841(b)(1)(A).

- Subparagraph B addresses a middle range of quantities (again, differing by drug). For such quantities, defendants "shall be sentenced to . . . not . . . less than 5 years and not more than 40 years." *Id.* § 841(b)(1)(B).

- Subparagraph C creates, via a crossreference, a residual category for small (or unspecified) quantities: "[E]xcept as provided in subparagraphs (A) [and] (B) . . . , such person shall be sentenced to a term of imprisonment of not more than 20 years." *Id.* § 841(b)(1)(C).

- Subparagraph D, concerning marihuana offenses, is irrelevant here.

Under the 1986 Act, Subparagraph A applied to "50 grams or more of" crack cocaine; Subparagraph B applied to "5 grams or more"; and Subparagraph C, via the cross-reference, applied to less than 5 grams (or an unspecified quantity). 21 U.S.C. § 841 (effective Oct. 27,

1986). By contrast, it required 100 times more powder cocaine to trigger the same penalties – yielding the now infamous – "100-to-1 ratio." *Kimbrough*, 552 U.S. at 96; *Dorsey v. United States*, 567 U.S. 260, 266 (2012).

These harsh sentences fell overwhelmingly on Americans from the ethnic minorities and caused skyrocketing incarceration rates that filled America's prisons and devastated minority communities nationwide. *See Kimbrough*, 552 U.S. at 98 (noting that "[a]pproximately 85 percent of defendants convicted of crack offense in federal court are [B]lack; thus the severe sentences required by the 100-to-1 ratio are imposed 'primarily upon [B]lack offenders'") (citation omitted). By 2004, African American defendants served almost as much time in prison for non-violent drug offenses (58.7 months) as white defendants did for violent offenses (61.7 months). See Bureau of Just. Stat., U.S. Dep't of Just., *Compendium of Federal Justice Statistics 2003*, Table 7.16, at 112 (2005), http://bjs.ojp.usdoj.gov/content/pub/pdf/cfjs03.pdf.

"In 2010, Congress enacted" the FSA1 to "reduc[e] the crack-to-powder cocaine disparity" and to redress its discriminatory effects. *Dorsey*, 567 U.S. at 264. The Act modified each of § 841(b)'s three penalty categories—not by altering the terms of imprisonment, but by changing the quantities that triggered them and thus altering the quantity/sentence pairs. The Act altered Subparagraph A's 10-to-life range "by striking '50 grams' and inserting '280 grams'"; altered Subparagraph B's 5-to-40 range "by striking '5 grams' and inserting '28 grams'"; and altered

Subparagraph C's residual—again, via the cross-reference to "subparagraphs (A) [and] (B)"—to cover less than 28 grams (or, again, an unspecified quantity). Fair Sentencing Act of 2010, Pub. L. No. 111-220, § 2, 124 Stat. 2372, 2372. In view of the cross-reference, the Act did not edit the words of Subparagraph C.

The Sentencing Commission recognized that the Fair Sentencing Act changed, at every quantity level, the sentences that defendants should and will receive for crack cocaine offenses. The Sentencing Guidelines in part seek to achieve uniformity by pegging their recommendations to what judges will regard as "reasonable" sentences, based on "actual ... decisions." *Gall v. United States*, 552 U.S. 38, 46 (2007); *United States v. Booker*, 543 U.S. 220, 264 (2005); *U.S.S.G. § 1A.1, intro. cmt., pt. A, at 15* (2018). And because the FSA1 changed the quantity thresholds that structure all crack sentences, the Commission ensured that the FSA1's changes were "consistently and proportionally reflected throughout the Drug Quantity Table at all drug quantities." *U.S.S.G. App. C Amend. 750* (2011).

The FSA1, however, did not apply retroactively to defendants who had been sentenced before its August 3, 2010 effective date. *Dorsey*, 567 U.S. at 264. Hence, people sentenced under the 1986 Act remained subject to their old, higher sentences and the now-rejected 100-to-1 crack/powder ratio. And while the Commission made its own amendments retroactive, *see U.S.S.G. App. C Amend. 759* (2011), the Commission's actions had limited effect. Those actions "only allow[ed] the guideline changes to be

considered for retroactive application"; they did "not make any of the statutory changes in the Fair Sentencing Act ... retroactive." *Id.; see id. Amend. 750.* Moreover, under 18 U.S.C. § 3582(c)(2), courts considering motions for sentencing reductions based on Guidelines changes are bound by the Sentencing Commission's policy statement that courts may not "reduce a term of imprisonment below the minimum of an amended sentencing range except to the extent the original term of imprisonment was below the range then applicable." *Dillon v. United States*, 560 U.S. 817, 819 (2010); *see U.S.S.G. § 1B1.10(b)(2)* (2018). So, if a defendant had received a mandatory minimum, or had been sentenced within the prior Guidelines range, the Guidelines amendments provided limited comfort. For example, defendants sentenced before *Booker*, when the Guidelines were mandatory, could not obtain full relief for within-Guidelines sentences, even if a court applying the FSA1 after *Booker* might have given them below-Guidelines sentences.

2. *The First Step Act* ("FSA2")

To address these continuing injustices, Congress enacted § 404 of the First Step Act. The Act "allow[ed] prisoners sentenced before the Fair Sentencing Act ... to petition the court for an individualized review of their case" and to bring sentences imposed under the pre-FSA1 regime in line with sentences imposed after the FSA1 passed. S. 3649, 115th Cong. (as introduced by S. Comm. on the Judiciary, Nov. 15, 2018). Passed with broad bipartisan support, the "retroactive application of the Fair

Sentencing Act" was regarded as an "historic achievement" that "allowed judges ... to use their discretion to craft an appropriate sentence to fit the crime." 164 Cong. Rec. S7749 (Dec. 18, 2018) (statement of Sen. Leahy); see id. at S7742 (statement of Sen. Durbin); id. at S7756 (statement of Sen. Nelson).

Section 404 effectuates these purposes by providing that "a court that imposed a sentence for a covered offense may ... impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 ... were in effect at the time the covered offense was committed." First Step Act of 2018, Pub. L. No. 115-391, § 404(b), 132 Stat. 5194, 5222 ("1SA"). The Act defines "covered offense" to "mean[] a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act ... that was committed before August 3, 2010." *Id.* § 404(a).

The FSA2 cautions that the authority it grants is permissive only: "Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section." *Id.* § 404(c).

C. Relevant Factual Background.

1. Petitioner's Conviction, Sentence & Sentence Reduction

In December 2009, Petitioner was charged with conspiracy to distribute five kilograms of cocaine, fifty grams of cocaine base or crack cocaine, and one thousane

kilograms of marijuana, pursuant to 21 U.S.C. §§ 841(b)(1)(A) and 846. At the time of the offense, the statutory sentencing parameters triggered by the amount of cocaine base set forth in the indictment was 10 years to Life imprisonment. On February 11, 2010, Petitioner pleaded guilty to the superseding indictment.

Between Petitioner's guilty plea in early 2010 and his sentencing in 2012, the Fair Sentencing Act became law on August 3, 2010. Pub. L. No. 111-220, 124 Stat. 2372 (2010). The FSA1 reduced the statutory mandatory minimums and maximums for certain crack cocaine offenses to rectify the one hundred-to-one sentencing disparity between powder cocaine and cocaine base offenses. *Id.* The FSA1 lowered both the minimum and maximum sentence Petitioner could have received for conspiring to distribute fifty grams of cocaine base. *Id.* Before the FSA1, the minimum sentence Petitioner could have received based on amount of cocaine base was ten years in prison and the maximum was life in prison; after the Act, however, the minimum for the same amount of cocaine base was only five years in prison and the maximum sentence was capped at forty. See 21 U.S.C. § 841 (b)(1)(B); *United States v. Gravatt*, 953 F.3d 258, 261 (4th Cir. 2020) (describing how the Fair Sentencing Act reduced the statutory ranges for cocaine base offenses). But on May 6, 2011, the Fourth Circuit determined that the Fair Sentencing Act did not apply to defendants whose crimes were committed before the FSA1's enactment and yet were sentenced after the Act became law. *United States v. Bullard*, 645 F.3d 237-49 (4th Cir. 2011). Thus, under the reasoning of *Bullard*, the FSA1 would not have

applied at Petitioner's sentencing.

In September 2011, eighteen months after Petitioner pleaded guilty, U.S. Probation finalized Petitioner's PSR. In recognition of Petitioner's extensive cooperation and prompt entry of a guilty plea, the United States agreed that the PSR would reflect that he accepted responsibility for his crime. Consistent with Fourth Circuit precedent at the time the PSR was prepared, there was no mention of the FSA1 in the PSR.

In the interim between the PSR's finalization and Petitioner's sentencing, this Honorable Court decided *Dorsey v. United States*. 567 U.S. 260 (2012) (decided June 21, 2012). *Dorsey* held that, contrary to the Fourth Circuit's holding in *Bullard*, the FSA1 applied to any defendant sentenced after its promulgation. *Id.* at 281. Thus, *Dorsey* mandated that Petitioner's cocaine base offense carry reduced statutory sentencing parameters under the FSA1. *See id.* Despite this, between this Court deciding *Dorsey* in June and Petitioner's sentencing hearing in December, the PSR was not updated to reflect this substantive change in sentencing law.

Petitioner was sentenced on December 5, 2012. The sentencing court adopted the PSR "for all purposes of sentencing." Consistent with the PSR, the sentencing court did not mention *Dorsey* or the FSA1 during the sentencing hearing. Without considering the reduced statutory sentencing parameters for Petitioner's cocaine base offense, the sentencing court determined the guidelines for Petitioner's offense to be 360 months' to Life

imprisonment. The sentencing court sentenced Petitioner to Life imprisonment.

While incarcerated, Petitioner has consistently worked at rehabilitating himself. He completed his GED and earned numerous certificates in several different fields, from financial management to mechanical technology, and has even taught and assisted with courses for his fellow inmates. He has received positive feedback from many prison staff, who have praised his model behavior and his "genuine desire to change . . . and become a responsible citizen."

Roughly six years ago, the sentencing court reduced Petitioner's sentence based on Amendment 782's changes to the Sentencing Guidelines. The sentencing court reduced Petitioner's sentence from Life imprisonment to 360 months' imprisonment, the least possible guidelines sentence. This sentence reduction proceeding occurred without the sentencing court referring to the FSA1.

2. Petitioner's FSA Motion & the Sentencing Court's Denial

Following the passage of the First Step Act, on April 25, 2019, Petitioner filed a motion to reduce his sentence, explaining that he "was sentenced for a covered offense" under the First Step Act and was "neither sentenced nor resentence" under the FSA1. Petitioner argued that he was "eligible for resentencing" under the FSA1 and asked "that the Court impose a reduced sentence."

Without the benefit of a response from the prosecution or U.S. Probation, the sentencing court denied Petitioner's motion. The sentencing court – who was not the original sentencing court or court of conviction – simply assumed that because Petitioner was sentenced in 2012, he must have been sentenced in accordance with the FSA1.

3. The Decision Below

The Fourth Circuit affirmed, largely adopting the sentencing court's simplistic timing based rationale to find that Petitioner must have already received the benefits of the FSA1. The Fourth Circuit stated:

> In February 2010, before Congress passed the Fair Sentencing Act, Appellant was convicted of violating 21 U.S.C. § 841(b)(1)(A), the statutory penalty for which the Act modified. Appellant is therefore eligible for a sentence reduction pursuant to § 404 of the First Step Act unless his sentence was previously imposed in accordance with the Fair Sentencing Act.
>
> Appellant was sentenced more than two years after the enactment of the Fair Sentencing Act and six months after the Supreme Court clarified that the Act applies retroactively. There is nothing in the record demonstrating that Appellant was not sentenced in accordance with the

> Act in December 2012. Therefore, we affirm the district court's order denying Appellant's § 404 motion.
>
> *App. A, A2.*

Later in their opinion the Fourth Circuit doubles down on this erroneous rationale, stating as follows:

> Appellant is eligible for relief pursuant to § 404(b) of the First Step Act -- assuming no exceptions apply. The crack cocaine aspect of the multi-object conspiracy does not ultimately affect Appellant's statutory penalty range because he faced the same penalty range for the powder cocaine and marihuana quantities involved in the conspiracy. But this court's decision in *United States v. Gravatt* makes clear that Appellant was nonetheless convicted of a "covered offense" under the Fair Sentencing Act. 953 F.3d 258, 263–64 (4th Cir. 2020). Since Appellant committed the covered offense before August 3, 2010, he is therefore eligible for a sentence reduction unless the exception in § 404(c) of the First Step Act for defendants previously sentenced in accordance with the Fair Sentencing Act applies.
>
> Timing is everything. Given the timing of Appellant's sentencing and the absence of

any indication that he was not sentenced in accordance with the Fair Sentencing Act, we hold that Appellant was previously sentenced in accordance with the Act in December 2012. Therefore, Appellant is ineligible for a sentence reduction pursuant to § 404 of the First Step Act, and the district court correctly denied his motion on this basis.

Appellant's arguments to the contrary overlook the fact that he was sentenced well after the Supreme Court clarified in *Dorsey* that the Fair Sentencing Act applies retroactively, and the fact that he was subject to the same statutory penalty range before and after the enactment of the Act.

App. A, A6-7.

REASONS FOR GRANTING THE WRIT

This Court should grant the writ of *certiorari*. At a minimum, this Court should order summary reversal because the Fourth Circuit's holding, that Petitioner was sentenced in accordance with the FSA1 simply due to the timing and its assessment, which could only arise from willful blindness, that the record does not support a contrary finding is wrong as a matter of law and will result in not just the Petitioner being deprived of the opportunity to seek the discretionary relief Congress intended to make available to all defendants who had been sentenced based on the unfair 100-to-1 crack to powder ratio – which our evolving standards of decency make clear is both unconscionable and indefensible by virtue of its arbitrary nature and racially disproportionate impact on minority defendants like the Petitioner – but many, many other similarly situated defendants will also be deprived of that opportunity. As a result of the Fourth Circuit's decision to apply a form of willful blindness to the determination of whether a defendant was sentenced in accordance with the Fair Sentencing Act ("FSA1") many deserving prisoners will be unable to receive the measure of sentencing justice which Congress intended to allow them to access when it passed the FSA2. Quite simply, if the Fourth Circuit's analysis in this case is allowed to stand, defendants' sentenced for multi-drug violations of § 841 – after the FSA1 became law, based on conduct which occurred prior to the FSA1 becoming law – will be unable to obtain discretionary relief, as the Fourth Circuit's analysis will be that they were sentenced according to the FSA1, because the sentence imposed was

justified – in there erroneous analysis – by the other drug types. Obviously, this does NOT mean that the FSA1 was applied at sentencing.

First, the timing is not dispositive. There is no rule of law to support the Fourth Circuit's adoption of the sentencing court's overly simplistic rationale that the timing alone is dispositive and this approach is inaccurate and arbitrary. The sole benefit to this self-serving approach taken by the lower courts in this case, is that it's simple and convenient for those courts to apply. Expedience and convenience of the judiciary should not trump the will of Congress or a prisoner's right to equal access to the courts.

Second, the record conclusively demonstrates that Petitioner was NOT sentenced in accordance with the FSA1. As explained in Petitioner's *pro se* informal opening brief, filed in February of 2020:

> The record establishes that Mr. Garcia was not sentenced in accordance with the Fair Sentencing Act. This is true because Mr. Garcia, who was convicted of a conspiracy to distribute and to possess with intent to distribute cocaine, cocaine base and marijuana, was sentenced to a term of Life imprisonment in 2012. The quantity of cocaine base alleged in the indictment was "at least fifty (50) grams," which triggered a statutory maximum of 40 years' imprisonment under the Fair

Sentencing Act.

Had Mr. Garcia been sentenced in compliance with the Fair Sentencing Act, his statutory maximum sentence would have been capped at the 40 years' imprisonment under controlling Fourth Circuit precedent, which requires that the least harsh statutory penalty parameters apply when the count of conviction contains multiple drug types and there is no specific admission by the defendant or special verdict by the jury, establishing the drug type. *See e.g., United States v. Rhynes*, 196 F.3d 207, 238 (4th Cir.1999), vacated in part on other grounds on reh'g *en banc*, 218 F.3d 310 (4th Cir.2000) (holding that when there is a general verdict in a multiple-drug conspiracy, the defendant may be sentenced only up to the maximum for the least-punished drug offense on which the conspiracy verdict might have been based). That Mr. Garcia pleaded guilty to an indictment which set forth the drug types – which are set out in the statute in the disjunctive – in the conjunctive, makes no difference, as this Court has held that the "[t]he 'formal criminal charge,' as explained in Rhynes, is nothing more than the least serious of the disjunctive statutory conduct, not the entirety of the conduct alleged in the

> conjunctive." *See United States v. Vann*, 660 F.3d 771, 775 (4th Cir. 2011). Mr. Garcia's sentencing is devoid of any argument or findings as to which drug type and statutory maximum was applicable, for a simple reason; Mr. Garcia was NOT sentenced in compliance with the Fair Sentencing Act. Thus, none of the limitations in § 404(c) apply to render Mr. Garcia ineligible and the district court erred in so ruling.
>
> Informal Opening Brief, filed on 2/3/20, in *United States v. Salinas Garcia*, 4th Cir. No. 20-6075.

This Court Should Summarily Reverse the Fourth Circuit's Holding that Petitioner was Sentenced in Accordance with the FSA1

This Court has authority to "reverse any judgment" brought before it and "remand the cause and direct entry of such appropriate judgment . . . or require such further proceedings to be had as may be just under the circumstances." 28 U.S.C. § 2106. Summary reversals are "usually reserved by this Court for situations in which the law is well settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting); *see, e.g., United States v. Bass*, 536 U.S. 862, 864 (2002) (ordering summary reversal because the decision below was "contrary to" established law);

Maryland v. Dyson, 527 U.S. 465, 467 (1999) (ordering summary reversal); *Leavitt v. Jane L.*, 518 U.S. 137, 145 (1996) (ordering summary reversal where the decision under review was "plainly wrong"). The Fourth Circuit's order affirming denial of FSA relief is based on two faulty premises and is patently wrong. Petitioner clearly was NOT sentenced in accordance with the FSA1. This case warrants summary reversal.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of *certiorari* to the United States Court of Appeals for the Fourth Circuit, vacate the Fourth Circuit's order affirming denial of FSA relief and remand the matter to the Fourth Circuit with instructions to reverse the sentencing court's order finding Petitioner ineligible for relief under the FSA.

Respectfully submitted,

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