

No. 21-7494

FILED
MAR 10 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

David Samuels — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of APPEALS for The Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID SAMUELS 29129D34
(Your Name)

P.O Box 1033 USP
(Address)

COLEMAN FL 33521
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Did Petitioner make a Substantial Showing of a denial of a Constitutional right. As required by 28 USC 2253(c)(1) ?

Did the Court of Appeals err in denying Petitioner's request for a Certificate of Appealability. After the district court held that Petitioner had raised several substantive legal claims. ?

Does Fraud constitute a Crime of Violence under 18 USC 16(a)'s elements clause ?

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:

RELATED CASES

United States v. Samuels, Case No. 09-cr-123-S (E.D. LA)

United States v. Samuels, Case No. 11-30525 (USCA-5th Cir.?)

United States v. Samuels, Case No. 21-30342 (USCA-5th Cir.?)

TABLE OF CONTENTS

| | |
|--|---|
| OPINIONS BELOW..... | 1 |
| JURISDICTION..... | |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | |
| STATEMENT OF THE CASE | |
| REASONS FOR GRANTING THE WRIT | |
| CONCLUSION..... | |

INDEX TO APPENDICES

APPENDIX A

District Court order

APPENDIX B

Court of Appeals Order

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

| | PAGE NUMBER |
|---|-----------------------|
| Miller-El v. Cockrell, 537 U.S. 322 (2003) | 537 U.S. at 348 |
| Slack v. McDaniel, 529 U.S. 473 (2000) | 529 U.S. at 484 |
| U.S. v Davis, 139 S.Ct. — (2019) | |
| Sessions v. Dimaya, 138 S.Ct 1204 (2018) | 138 S.Ct at 1215-16 |
| Borden v. U.S., 593 U.S. (2021) | |
| U.S. v. Jackson, 2021 U.S. App. LEXIS 22419, 7 F.4th 201 (5th Cir.) | |
| U.S. v. Jones, 935 F.3d 266 (5th Cir. 2019) | at 268, ^{1d} |
| U.S. v. Mirk, 2021 U.S. App. LEXIS 23973, (5th Cir.) | at LEXIS 46 |

STATUTES AND RULES

28 USC 1291, 28 USC 2253(c)(1), 18 USC 1341, 18 USC 844(h)(1),
18 USC 16

OTHER

(F) 8

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 USA v. Samuels, No. 21-30342 ; 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 PLSA v. Samuels, No. 09 CV 123 ; 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 25 February 2022.

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: _____, 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. § 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).

(H)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 USC 2253(c)(1), 18 USC 160, 18 USC 1341, 18 USC 844(k)(1),
18 USC 844(i)

STATEMENT OF THE CASE

On April 23, 2009, a multi-count indictment was returned charging the Petitioner and his Sister, Maria Samuels, and Stefan Michael James, with Conspiracy to commit mail and wire fraud; mail fraud, and Wire Fraud (Solely against the Petitioner) and making a false statement.

On December 4, 2009, the Grand Jury returned a Superseding Indictment for Conspiracy to commit mail and wire fraud, mail fraud, wire fraud, use of fire to commit a felony and false statements. The Superseding

Indictment charged the original defendants, as well as Jerome Surtain, Charles Moss and Damian Landry. Prior to trial, defendants James and Landry were allowed to plead guilty to reduced charges in exchange for their testimony at trial. On May 25, 2011 Petitioner was sentenced to 900 months, while his co-defendants received sentences of 420 months.

Petitioner continued to seek relief, due to recent changes in the law. Petitioner's sentence was enhanced for uncharged conduct, that was not based on a prior conviction. And was not considered by the Grand Jury, nor the trial jury.

(J) 60

REASONS FOR GRANTING THE PETITION

In his 2013, dissenting opinion, Circuit Judge Graves opined that Petitioner's sentence was based on nothing more than speculation. And due to recent changes in the law, that have held, a conspiracy to commit an offense, does not require the use of force, may no longer qualify as a crime of violence. Likewise, the lower court itself has held that there was no discernable textual differences between 18 USC 844(h)(1) and 924(c)(1). Petitioner would contend that 844(h)(1) conviction may no longer qualify as a crime of violence. In light of this Court's holding in *United States v. Davis*, (2019) And *Borden v. United States*, (2021)

Likewise, The Eighth Circuit (USCA) recently held that 18 USC 844(h) does not qualify as a crime of violence as defined by 18 USC 924(c), and vacated that Petitioner's 18 USC 844(h)(1) conviction. Petitioner would ask this Honorable Court to clarify and resolve a split among the Circuits. that since legislative history shows that 844(h) was originally modeled on 924(c). That his penalty should be vacated, Since his predicate offense, Conspiracy to commit wire fraud, does not qualify as a crime of violence.

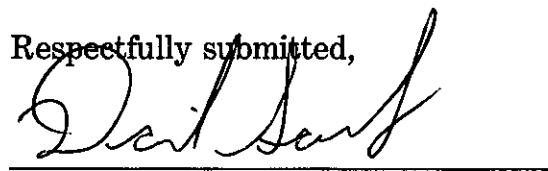
Which would have far reaching implications nation wide. for prisoners and non-prisoners alike.

(R) (C)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 3-4-2022