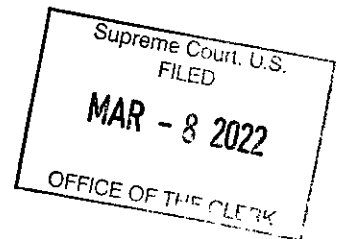


21-7645 **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES



Alimamy Barrie — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

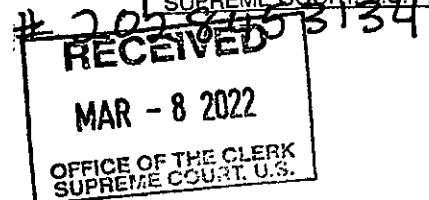
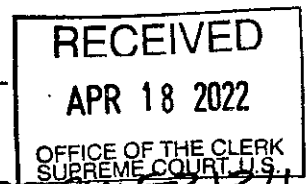
PETITION FOR WRIT OF CERTIORARI

Alimamy Barrie
(Your Name)

5804 Annapolis Road, Apt. 212
(Address)

bladensburg, MD 20710
(City, State, Zip Code)

2028453134
(Phone Number)



QUESTION(S) PRESENTED

- 1.) Should an Error be Corrected in a Motion under Federal Rules of Criminal Procedure Rule 52(b), when the Conditions of US V. Olano are met, even if the Issue/Error is Construed as a Successive filing of a Procedural default?
- 2.) Did the Appellate Court Commit Plain Error when it failed to Remand for Resentencing when Several U.S.S.G Clarifying amendments applicable became effective during the Review Process and was overlooked?
- 3.) Whether Failing to Remand a Case for Resentencing Pursuant to an applicable U.S.S.G Policy Statement for Subsequent amendments after Sentencing and during review Constitutes Plain Error?

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. Barrie; 8:14-CR-00006-PWG-1 (SDMD 4th Circuit)

United States v. Barrie; 15-4001 USCA 4th Circuit; 629 Fed Appx. 541, 2015
U.S. App. lexis 20296 4th Cir. MD Nov. 23rd 2015

United States v. Barrie; 8:16-CV-03198-PWG SDMD 4th Circuit

United States v. Barrie; 17-6782; 704 Fed. Appx 251 Nov. 27th 2017 4th Cir.

United States v. Barrie; 17-7654; 720 Fed. Appx 158 April 24th 2018 4th Cir

United States v. Barrie; 18-7188; 748 Fed Appx 544 Jan. 23rd 2019 4th Cir

Barrie v. United States; (April 18th 2016) U.S. Supreme Court Order.

Barrie v. United States; 139 S. Ct 1639, 203 L. Ed 2d 913, 2019 U.S. lexis
3133 U.S. Apr. 29th 2019

Barrie v. United States; 2019 U.S. lexis 2275 U.S. Mar. 25th 2019

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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 B 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 United States district court appears at Appendix C to the petition and is

☐ reported at _____; 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 November.

☐ 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: December 14th, 2021, and a copy of the order denying rehearing appears at Appendix A.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rules of Criminal Procedure 52(b)

18 U.S.C. § 3582(c)(2)

28 U.S.C. § 2255

18 U.S.C. § 1343

18 U.S.C. § 1028A

USSC Amendment 791 § 2B1-1(b)(1)

USSC Amendment 792 § 2B1-1 Application Note 3(A)(ii)

USSC Amendment 794 § 3B1-2 Application Note 5

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

United States v. Oland; 507 U.S. 113 S. Ct 1770, 123 L. Ed 2d 508 (1993)
Rosales-Mireles v. US; 582 U.S. 138 S. Ct 1900, 201 L. Ed 2d 379 (2018)
Henderson v. US; 568 U.S. 266; 133 S. Ct 1121, 185 L. Ed 2d 85 (2013)
Hicks v. US; 582 U.S. 137 S. Ct 2000, 198 L. Ed 2d 718 (2017)
Molina-Martinez v. U.S; 578 U.S. 136 S. Ct 1338, 194 L. Ed 2d 444 (2016)
United States v. Jordan; 438 Fed. App'x 180, 181-82 (4th Cir 2011)

STATUTES AND RULES

Federal Rules of Criminal Procedure 52(b)

OTHER

STATEMENT OF THE CASE

Petitioner was Convicted after a Jury Trial for Two Counts of Wire Fraud 18 U.S.C. § 1343 and One Count of Aggravated Identity Theft 18 U.S.C. § 1028A. He was sentenced to a total of 112 months Plus 1 day to be ran consecutive to a 48 months Sentence he was already serving for an Unrelated Case. A Notice of appeal was filed on December 30th, 2014. The Fourth Circuit Court of appeals Affirmed Petitioner's Sentence and Conviction on November 23rd, 2015. While Petitioner's Direct appeal was Pending the U.S.S.C (United States Sentencing Commission) enacted Amendments 791, 792 and 794 on November 1st, 2015. The enacted amendments were applicable to Petitioner's Case and Under the Fourth Circuit Laws and Precedents, whenever the U.S.S.C enacts an amendment that is Clarifying during the Direct Review Process the Practice is to Vacate and Remand for Resentencing. However this Important fact was Overlooked by the Court and Counsel also failed to Notify the Court of these enacted guidelines that were applicable to Substantially Reduce Petitioner's Sentence and this Error Constitutes a Plain Error Under the Fed. R. Crim. P. 52(b). Amendment 791 revises the loss table Under § 2B1.1 (b)(1); due to Inflation; Amendment 792 (Intended loss) revises the Commentary at § 2B1.1 Application Note 3(A)(ii) to Settle a disagreement among the Court of Appeals; and Amendment 794 Clarified when a defendant may be eligible for a minor-role Reduction. The U.S.S.C did not designate any of these Amendments as being Retroactive for Purposes of a 3582(c)(2) Motion. Petitioner has continuously been Seeking Review of this Error but due to appellate and habeas Counsel Ineffectiveness he is Precluded from any application of them. Petitioner has filed a Motion Under 2255; 3582(c)(2) and also Under "Cause and Prejudice" but due to a Procedural default through no fault of his own he has been denied Review on the Merits. Petitioner's Recent Motion Under Fed. R. Crim P. 52(b) was Construed as a Successive 3582(c)(2) Motion and the Court declined to Correct the Error. Due to this Oversight Petitioner has Significantly been denied a Right. The U.S Constitution guarantees effective Counseling and also Promotes Fairness. The discretion of the Court of Appeals to Correct it's own error has also denied Petitioner Justice because the error Seriously affects the Fairness, Integrity or Public reputation of Judicial Proceedings. See U.S V. Jordan 438 Fed Appx 180, 181-82 (4th Cir 2011)

REASONS FOR GRANTING THE PETITION

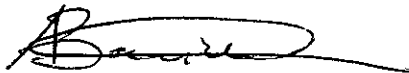
As a Matter of last Resort and to also Issue a directive for the lower Courts this Court should grant the Certiorari and Provide a guideline on the application of Plain Error Review. In some of the Previous Cases that this Court has decided regarding Plain Error Review, most have originated from the District Court. In Petitioner's Case this Error was Committed by the Court of appeals and only this Court has the authority to Correct the Current error and any other Error under Plain Error Review. In *US v. Olano* this Court established three Conditions that must be met in order for a Court to Consider exercising its discretion, however the fourth Condition overrides that Previous three because it is not mandatory to Correct the forfeited Error and a Court that has Committed Such Error would be Very reluctant to Correct its own Error. Petitioner has been able to meet all three Conditions established Under *Olano* but Cannot get Pass the Fourth Condition which is basically a discretion rather than a law. This Court has Stated that a Plain U.S Sentencing guidelines manual error that affects a defendant's Substantial Rights is Precisely the type of Error that Ordinarily Warrants relief under Fed. R. crim. P 52(b) See *Rosales-Mireles v. US*, 582 U.S 138 S. Ct 1900, 201 L. Ed 2d 379 (2018). An appellate Court must apply the law in effect at the time it Renders its decision. See *Henderson v. US* 568 U.S 266; 133 S. Ct 1121; 185 L. Ed 2d 85 (2013). This Court also routinely remands Cases Involving Inadvertent or Unintentional errors, Including Sentencing Errors for Consideration of *Olano*'s fourth Prong with the Understanding that Such errors may qualify for Relief. See *Hicks v. US* 582 U.S; 137 S. Ct 2000, 198 L. Ed 2d 718 (2017). The Possibility of additional Jail time thus Warrants Serious Consideration in a determination whether to exercise discretion under Rule 52(b). Moreover a remand for resentencing, while not Costless does not Involves the Same difficulties as a remand for retrial does. See *Molina-Martinez v. US*, 578 U.S; 136 S. Ct 1338, 194 L. Ed 2d 444 (2016). Another Important factor for this Court to also decide is that whether Plain Error must still be Corrected even though a defendant has Procedurally defaulted on a Claim. This is Very Important because there is a Split in the Circuit Courts regarding the application of a Post-Sentencing guideline amendment that is applicable to Reduce a defendant's Sentence. In Petitioner's Case the Fourth Circuit law Supports a Remand for Resentencing but this Important fact was overlooked.

Most Courts have agreed that a Sentencing Error Such as the one Presented here is a Complete miscarriage of Justice regardless of any Procedural default. The fact that Petitioner is entitle to Relief Presents a Meritious Claim for the district Court to have Reviewed the Motion as it was Presented rather than Construing it as a 3582(c)(2) Motion and denying it as being Successive. The Plain Error Standards are a Very high bar to meet and not all claims would be Cateogorically Suited to fall under it's narrow exceptions. Most Notably this Court should grant Certiorari to Issue a new rule of law regarding the Application of Plain Error Review. Given the fact of the Language it Composes, should Plain Error be Considered and Corrected regardless of a Procedural default or a Successive Motion. This Court has also Previously debated on Plain Error and Some Justices have dissented in its Ruling. Granting the writ would also give the Court another Chance to Clarify when and how it should be used and Whether Mandatory or a discretion, or Error at any Stage of the Process.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 03-03-2022