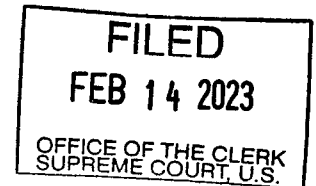


22-7171

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 2022

DOCKET NO. _____



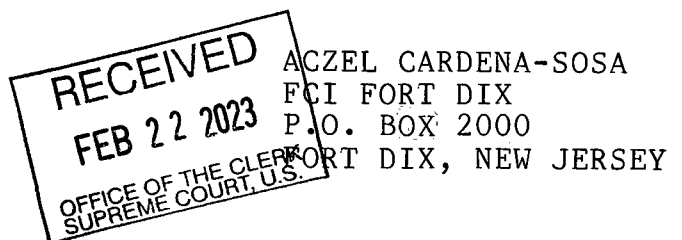
ACZEL CARDENA-SOSA
Petitioner-Appellant,

-against-

UNITED STATES OF AMERICA,
Respondent-Appellee,

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

PETITION FOR A WRIT OF CERTIORARI



QUESTION PRESENTED

(1) Whether Certiorari should be granted to determine whether Concepcion v. United States, 142 S. Ct. 54 (U.S. June 27, 2022) govern Civil Litigation against the United States Air Force base for violating the Clean Water Act. The water contains high levels of the chemical PFOS and PFOA which are life threatening harm, falls within the standards of Concepcion's "Extraordinary Circumstances"?

(2) Whether the First Step Act of 2018, still governs that less than 12 months served on a prior felony conviction, is a non "serious drug felony" and does those factors constitute "extraordinary circumstances" under Concepcion's standard of review

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ARGUMENT

(1) Whether Certiorari should be granted to determine whether Concepcion v. United States, 142 S. Ct. 54 (U.S. June 27, 2022) govern Civil Litigation against the United States Air Force base for violating the Clean Water Act. The water contains high levels of the chemical PFOS and PFOA which are life threatening harm, falls within the standards of Concepcion's "Extraordinary Circumstances"?

(2) Whether the First Step Act of 2018, still governs that less than 12 months served on a prior felony conviction, is a non "serious drug felony" and does those factors constitute "extraordinary circumstances" under Concepcion's standard of review.

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term 2022

DOCKET NO. _____

ACZEL CARDENA-SOSA
Petitioner-Appellant,

-against-

UNITED STATES OF AMERICA,
Respondent-Appellee,

PETITION FOR A WRIT OF CERTIORARI

ACZEL CARDENA-SOSA
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ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioner Aczel Cardena-Sosa, respectfully request that a Writ of Certiorari be issued to review a summary order of the United States Court of Appeals for the Fourth Circuit, entered in the above-captioned proceeding, on December 27, 2022. The Order of the Court of Appeals affirmed, Motion for Reduction of Sentence under 18 U.S.C. § 3582(c)(1)(A) pursuant to the First Step Act of 2018 and Compassionate Release. Petitioner pled guilty in the United States District Court, For the Northern District of West Virginia in front of the (Hon. Gina M. Groh, U.S.D.J.). Petitioner plead Guilty to Count 8, Distribution of Methamphetamine in violation of 21 U.S.C. § 841(a) and 18 U.S.C. § 2; And Count 17, Illegally re-entering the United States after having been convicted of an aggravated felony and having been deported in violation of 8 U.S.C. § 1326. On May 31, 2005, Petitioner was Sentenced to 444 months on Count 8, and 240 months on Count 17, to run concurrent. Five years of Supervised Release was imposed. Petitioner is requesting that this Court grant him permission to file the instant petition in forma pauperis.

OPINION BELOW

The unpublished summary order of the Court of Appeals and the Lower District Court is reproduced in the appendix hereto.

STATEMENT OF SUBJECT MATTER
JURISDICTION AND APPELLATE JURISDICTION

This Appeal is from a final judgment of the United States Court of Appeals for the Fourth Circuit which had jurisdiction pursuant to 18 U.S.C. § 3231. This United States Supreme Court has Jurisdiction to review pursuant to 28 U.S.C. § 1254(1). The Order of the Fourth Circuit Court of Appeals was entered on December 27, 2022, and this Petition is timely made within 90 days of that date.

Statement of Issues Presented For Reveiw

This appeal focuses on the following questions:

(1) Whether Certiorari should be granted to determine whether Concepcion v. United States, 142 S. Ct. 54 (U.S. June 27, 2022) govern Civil Litigation against the United States Air Force base for violating the Clean Water Act. The water contains high levels of the chemical PFOS and PFOA which are life threatening harm, falls within the standards of Concepcion's "Extraordinary Circumstances"?

(2) Whether the First Step Act of 2018, still governs that less than 12 months served on a prior felony conviction, is a non "serious drug felony" and does those factors constitute "extraordinary circumstances" under Concepcion's standard of review.

Statement of the Case

Petitioner plead guilty Count 8 and Count 17. Count 8, charged Distribution of Methamphetamine in violation of 21 U.S.C. § 841(a) and 18 U.S.C. § 2; Count 17, charged Illegally re-entering the United States after having been convicted of an aggravated felony and having been deported in violation of 8 U.S.C. § 1326.

On May 31, 2005, Petitioner was Sentenced to 444 months on Count 8 and 240 months on Count 17, to run concurrent. Five years of Supervised Release was imposed

SUMMARY OF ARGUMENT

The Fourth Circuit December 27, 2022, Denial Judgement requires certiorari review, to address whether the contamination of the ground and drinking water at FCI Fort Dix and the large volume of documentary evidence produced by Civil Litigation falls under the Concepcion standard of review.

REASON FOR GRANTING THE WRIT

POINT ONE

WHETHER THE CONCEPCION STANDARD ON "EXCEPTIONAL CIRCUMSTANCES" COVERS CIVIL LITIGATION EVIDENCE OF OTHER MILITARY BASES WHERE THE GROUND AND DRINKING WATER WERE CONTAMINATED AND DOES THIS WARRANT A REDUCTION OF SENTENCE UNDER THE EXCEPTIONAL CIRCUMSTANCES STANDARD IN CONCEPCION.

Petitioner asserts herein that Certiorari review is warranted because the First Step act has held since Concepcion v. United

States, 142 S. Ct. 2389 (June 2022) that intervening change in law and facts can constitute a reduction of sentence based on "exceptional circumstances".

In fact, a month after petitioner filed the First Step Act and Compassionate Release Motion, the United States Supreme Court handed down Concepcion, which holds that "District Court may consider intervening changes of law or facts as "exceptional circumstances" in adjudicating First Step Act motion. Meaning the factual nature surrounding the U.S. Military's known water contamination which is affecting petitioner's overall health should constitute "exceptional circumstances". Thus, the claims raised by petitioner in the district court, that the Fourth Circuit declined to reverse fall squarely within the Concepcion standard of required review:

(i) Whether Aczel Cardena-Sosa being subject to bathing and drinking contaminated water at FCI Fort to which Staff are all aware that it was conceded in Civil Litigation in Camp Leguene Military Base, constitutes "extraordinary circumstances" warranting a reduction of sentence.

It is Petitioner's position that as a result of the contaminated drinking and Ground water, his immediately health is in jeopardy as a result of the Willful conduct of The United States Government and the Fort Dix Federal Institution. Fort Dix Federal Institution lease the Prison land from McGuire Air Force Base. Both parties have known that PFOS and PFOA are used at all United States Military Installations to fight fuel and other flammable liquid fires. It is also used as a fire suppresant. When

the chemicals are mixed with water, a foam solution is formed. The foam is sprayed onto fires to produce an aqueous film. This film blocks the fire's supply of oxygen, generating a cooling effect and creates an evaporation barrier preventing re-ignition. In fact it is well documented, that the United States of America is one of the Countries largest users of the above mentioned chemicals. A single fire-fighting training event can release thousands of gallons of foam laced water into the environment:

1. New Jersey Department of Environmental Protection has promulgated enforceable standards regulating the amount of (PFOA) and (PFOS) and other named chemicals herein in the named in the ground and drinking water. The United States has waived it's sovereign immunity and agreed to follow New Jersey's Environmental Protection Agencies Health base standards for drinking water for it's in-state government facilities. See State of New Jersey Department of Environmental Protection v. United States of America, Docket No. 2:18-mn-2873; See Also, In re Aqueous Film-Forming Foams Prods. Liab. Litig, 2019 U.S. Dist. LEXIS 119283 (D.S.C. May 24, 2019)(Military Bases in New York State that used PFOS and PFOA which contaminated New Yorks natural resources and created a public health risk); Dep't of Defense, Aqueous Film Forming Foam Report to Congress, cleared for open publication, <https://www.denix.osd.mil/derp/home/documents/aqueous-film-forming-report-to-congress/>.

2. The United States is negligent by allowing the contamination in New Jersey's drinking water knowing that leasing the property to the Federal Bureau of Prisons, subjects it's prisoners to exposure to (PFOA) and (PFOS) and other chemical contaminates.

3. Camp LeJeune's Toxic Water Justice Act.

4. The United States is negligent by allowing (PFOS) and (PFOA) which are known bioaccumulative and toxic substances within the class of chemicals known as Polyfluoroalkyl substances to flow into the ground and drinking water of it's leased properties.

5. The United States was negligent because it knew that (PFOS) and (PFOA) are highly mobile. That they do not biodegrade and persist

indefinitely in the environment, bioaccumulate in individual organisms and humans. And biomagnify up the food chain and remains in the body for many years after exposure ends. (PFOS and PFOA) have been shown to be toxic at very low levels.

6. Civil Actions against United States Military Bases for Ground and Water contamination. See In re Aqueous Film-Forming prods, liab. litig, 2019 U.S. Dist. LEXIS 119283 (D.S.C. 2019); State of New Jersey, Department of Environmental Protection v. United States of America, Docket No. 2:18-mm-2873 (D.S.C. 2018)(Judge Richard Gergel)

REASONS FOR GRANTING THE WRIT
POINT TWO

Petitioner asserts herein that Certiorari review is warranted because the First Step act has held since Concepcion v. United States, 142 S. Ct. 2389 (June 2022) that intervening change in law and facts can constitute a reduction of sentence based on "exceptional circumstances". This holding covers the claims raised by Petitioner in the lower District Court. Petitioner's prior felony information enhancement pursuant to 21 U.S.C. § 841(a), where less than 1 year is served on a prior felony conviction is no longer considered as a "serious felony offense".

The claims raised by petitioner in the lower District Court, fall squarely within the Concepcion standard:

Whether the First Step Act's change in the "prior felony Information" Statute, holding that serving less than 1 year no longer constitutes a "serious felony offense" is exceptional circumstances as held under Concepcion.

Thus, the Fourth Circuit's December 27, 2022, denial holding "Upon review, we discern no reversible error in the district court's denial of Cardena-Sosa's motion. We therefore affirm the

district court's order. United States v. Cardenas-Sosa, No. 3:03-cr-00031-GMG-10 (N.D. W. Va. Sept. 9, 2022), requires certiorari review.

The First Step Act of 2018, laws and facts have changed to now holding that, prior felony enhancements under 841(a) no longer qualifies were less than a year was served.

Thus Petitioner respectfully request that this Court grant certiorari so as to settle this unresolved circuit split. If this Court determines that Concepcion applies to the above mentioned conduct and such factors creates "exceptional circumstances" warranting a reduction of Sentence under the Concepcion.

Petitioner herein respectfully request that certiorari be granted to review the above issue. Petitioner asserts that there is a circuit split, which warrants certiorari review unresolved Circuit split as to what Concepcion deems "exceptional circumstances".

CONCLUSION

WHEREFORE, for the foregoing reasons, Aczel Cardena-Sosas's petition for a writ of certiorari should be granted.

DATED: FORT DIX, NEW YORK
FEBRUARY 15, 2023



Respectfully Submitted,
ACZEL CARDENA-SOSA

Cardenas-Sosa

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