

No. _____

In the Supreme Court of the United States

LUIS ACEVES-RAMIREZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**Petition for Writ of Certiorari
to the
United States Court of Appeals for the Fifth Circuit**

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QUESTION PRESENTED FOR REVIEW

Whether the two-level enhancement in U.S.S.G. § 2D1.1(b)(5) for a drug offense that involves imported methamphetamine requires that the defendant knew that the methamphetamine was imported.

TABLE OF CONTENTS

Question Presented for Review	i
Appendix <i>United States v. Aceves-Ramirez</i> ,.....	ii
Table of Authorities	iii
Parties to the Proceeding	1
Opinion Below.....	1
Jurisdiction of the Supreme Court of the United States	1
Constitutional Provisions Involved	1
Statement of the Case	2
Reasons for Granting Cert	3
The Fifth Circuit erroneously permits a defendant's sentence to be enhanced because he dealt with imported methamphetamine, though he had no knowledge of its importation.....	4
Conclusion.....	7
Appendix <i>United States v. Aceves-Ramirez</i> , No. 22-50954 (5th Cir. Oct. 18, 2023)	

TABLE OF AUTHORITIES

Cases

<i>Flores-Figueroa v. United States</i> , 556 U.S. 646 (2009)	6
<i>Rehaif v. United States</i> , 139 S. Ct. 2191 (2019)	5
<i>United States v. Arayatanom</i> , 908 F.3d 444 (5th Cir. 2020)	6
<i>United States v. Hernandez-Astudillo</i> , 777 F. App'x 374 (11th Cir. 2019)	3
<i>United States v. Job</i> , 871 F.3d 852 (9th Cir. 2017)	3
<i>United States v. Johnson</i> , 738 F. App'x 872 (6th Cir. 2018)	3
<i>United States v. Nunley</i> , 29 F.4th 824 (6th Cir. 2022)	6
<i>United States v. Serfass</i> , 684 F.3d 548 (5th Cir. 2012)	3, 4
<i>United States v. Werkmeister</i> , 62 F.4th 465 (8th Cir. 2023)	3

Statutes

28 U.S.C. § 1254(1)	1
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Rules

Supreme Court Rule 13.1	1
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Constitutional Provisions

U.S. Const. Amend. V	1
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Other Authorities

The Chicago Manual of Style ¶ 5.138 (17th ed. 2017) 5

United States Sentencing Guidelines

U.S.S.G. § 2D1.1(b)(5).....i, 3, 4, 7

U.S.S.G. § 2D1.1(c)(1) 6

PETITION FOR WRIT OF CERTIORARI

Luis Aceves-Ramirez asks that a writ of certiorari issue to review the opinion and judgment entered by the United States Court of Appeals for the Fifth Circuit on October 18, 2023.

PARTIES TO THE PROCEEDING

The caption of the case names all the parties to the proceedings in the court below.

OPINION BELOW

The unpublished opinion of the court of appeals is appended to this petition.

JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The opinion and judgment of the court of appeals were entered on October 18, 2023. This petition is filed within 90 days after entry of judgment. *See* Supreme Court Rule 13.1. The Court has jurisdiction to grant certiorari under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the U.S. Constitution provides, in pertinent part, that “no person shall be ... deprived of ... liberty ... without due process of law.” U.S. Const. amend. V.

STATEMENT OF THE CASE

Petitioner Luis Aceves-Ramirez was found guilty, after a guilty plea, of possession with intent to distribute methamphetamine and sentenced to 236 months' imprisonment. In the district court and on appeal, Aceves-Ramirez argues that the district court erroneously enhanced his sentence based on its finding that he sold methamphetamine imported from Mexico.

Aceves-Ramirez was born and raised in Mexico, has family in Mexico, and is not a citizen of the United States. He was arrested for distributing high-purity methamphetamine. His co-conspirator admitted to authorities upon arrest that one of the suppliers, "Carter," resided in Mexico. The evidence did not establish that Aceves-Ramirez knew the methamphetamine was imported.

REASONS FOR GRANTING CERT

This Court should grant certiorari to resolve a longstanding circuit split, unresolved by the Sentencing Commission, over whether a sentence may be enhanced for imported methamphetamine, pursuant to U.S.S.G. § 2D1.1(b)(5), when the government does not prove that the defendant knew the methamphetamine was imported.

The Fifth Circuit has held that the importation enhancement, § 2D1.1(b)(5), does not require that the defendant knew the methamphetamine was imported. *United States v. Serfass*, 684 F.3d 548, 551 (5th Cir. 2012). The Eighth Circuit agrees. *United States v. Werkmeister*, 62 F.4th 465, 469 (8th Cir. 2023).

The Ninth Circuit, however, requires that the defendant knew the methamphetamine was imported for the enhancement to apply. *United States v. Job*, 871 F.3d 852, 871-72 (9th Cir. 2017). The Eleventh and Sixth Circuits agree. *United States v. Hernandez-Astudillo*, 777 F. App'x 374, 376-77 (11th Cir. 2019) (affirming application of enhancement because government showed that methamphetamine was imported, and defendant knew of its importation); *United States v. Johnson*, 738 F. App'x 872 (6th Cir. 2018) (“Under the United States Sentencing Guidelines, a defendant receives a

two-point offense-level enhancement if the offense ‘involved the importation’ of methamphetamines ‘that the defendant knew were imported unlawfully.’”) (quoting U.S.S.G. § 2D1.1(b)(5)).

The Court should review this case in order to resolve this enduring and deepening split.

The Fifth Circuit erroneously permits a defendant’s sentence to be enhanced because he dealt with imported methamphetamine, though he had no knowledge of its importation.

The Guideline for drug offenses requires a two-level enhancement:

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).

U.S.S.G. § 2D1.1(b)(5).

The plain language of the Guideline clearly requires the government to prove that the offense involved imported methamphetamine that the defendant knew was imported. In *Serfass*, the Fifth Circuit relied on a fallacious grammatical argument. 684 F.3d at 551-52. The Fifth Circuit believed that the use of the plural “were” indicated that the clause it introduced modified only the

plural “chemicals.” *Id.* But, as applied to this enhancement, grammar rules cannot be used to determine the reach of the *mens rea* element.

“When a verb has two or more subjects connected by *or* or *nor*, the verb agrees with the last-named subject {**Bob or his friends have** your key} {neither the **twins nor Jon is** prepared to leave}.”

The Chicago Manual of Style ¶ 5.138 (17th ed. 2017) (emphasis and brackets in original). Thus, the enhancement’s use of the plural merely agreed with “chemicals” the last-named subject; it was not an incredibly vague way of instructing district courts that a defendant’s culpability varies depending on whether he knew chemicals used to manufacture methamphetamine were imported but not on whether he knew the methamphetamine itself was imported.

The Fifth Circuit’s holding also conflicts with this Court’s previous cases on the reach of a *mens rea* element. This Court has repeatedly held, in the statutory construction context, that, “[a]s ‘a matter of ordinary English grammar,’ we normally read the statutory term ‘knowingly’ as applying to all the subsequently listed elements of the crime.” *Rehaif v. United States*, 139 S. Ct. 2191, 2196 (2019) (quoting *Flores-Figueroa v. United States*, 556 U.S. 646,

650 (2009)). While the knowingly requirement here comes at the end of the sentence, it makes equal grammatical sense to conclude that it applies to all the antecedently listed elements of the enhancement.

Further, the absence of a requirement that the defendant knew the methamphetamine was imported destroys the ability of the enhancement to serve as a meaningful way of distinguishing culpability between different defendants. *See United States v. Nunley*, 29 F.4th 824, 830-31 (6th Cir. 2022) (a district court may “impose two enhancements arising from the same conduct, provided the enhancements penalize distinct harms”). Thus, to the extent possible, different Guideline enhancements should be read not to double count the same conduct. As the Fifth Circuit wrote here, it has “previously recognized” that “high-purity methamphetamine” is “evidence of importation.” *Appendix*, at 2 (citing *United States v. Arayatanom*, 908 F.3d 444, 452 (5th Cir. 2020)). The Guidelines already provide a substantial enhancement when the methamphetamine is pure, as opposed to a substance containing methamphetamine. *See, e.g.*, U.S.S.G. § 2D1.1(c)(1) (providing for a base offense level of 38 for a defendant who possesses more than 45 kilograms of methamphetamine but requiring only 4.5 kilograms of

“actual” or pure methamphetamine for the same offense level). The Fifth Circuits interpretation of the enhancement permits district courts to apply it anytime a defendant’s offense involves pure methamphetamine, and for that reason, it should be rejected.

CONCLUSION

The Fifth Circuit’s holding that knowledge of methamphetamine’s importation is not required to apply the 2-level § 2D1.1(b)(5) enhancement conflicts with the plain text of the Guideline and is inconsistent with the purpose of the Guidelines. That interpretation has resulted in a deepening circuit split that this Court should intervene to correct. Because, here, there was no evidence that Aceves-Ramirez knew the methamphetamine was imported, this case presents an ideal vehicle for this Court to review the split.

For these reasons, Petitioner asks that this Court grant a writ of certiorari and review the judgment of the court of appeals.

s/ Shane O’Neal
Counsel of Record for Petitioner
Dated: January 16, 2024