

No. **24 - 6333**

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Supreme Court U.S.
FILED

NOV 26 2024

OFFICE OF THE CLERK

STEVEN LAMAR CLOUD JR. — 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 FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

STEVEN LAMAR CLOUD JR.
(Your Name)

P. O. BOX 1033
(Address)

COLEMAN, FLORIDA 33521
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I RESPECTFULLY ASK COULD THIS HONORABLE COURT PLEASE SELECT AND REVIEW THE 3 LEVEL ENHANCEMENT WHICH HAS BEEN VACATED IN OTHER CASES WITH SIMILAR CONDUCT TO AVOID UNWARRANTED SENTENCE DISPARITY AMONG DEFENDANTS? AND THE INSUFFICIENT DRUG AMOUNT?

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

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STATUTES AND RULES

OTHER

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 _____; 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☒ is unpublished.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 _____; 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 SEPTEMBER, 17 2024

☐ 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: NOVEMBER 5, 2024, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

DUE TO THE INSTITUTIONAL LOCKDOWN AT COLEMAN USP-1
I CAN NOT ACCESS THE LAW LIBRARY TO COMPLETE THIS
SECTION OF THIS MOTION.

STATEMENT OF THE CASE

MR. CLOUD BELIEVES THAT THE COURT HAS MISTAKENLY OVERLOOKED ALOT OF KEY POINTS INTO HIS ROLE, SPECIFICALLY IN THE INSTANT OFFENSE WHEN IT COMES TO THE MANAGER ROLE RESULTING IN A 3 LEVEL ENHANCEMENT UNDER 3B1.1(b), AS WELL AS THE 2,000 GRAMS OF GHOST DRUGS THAT MR. CLOUD WAS ALLEGEDLY RESPONSIBLE FOR. FOURTH CIRCUIT CASE LAW SUPPORTS WHERE IT HAS CONSIDERED IN PREVIOUS CASES WHEN IT COMES TO MANAGEMENT ROLES. THERE IS ABSOLUTELY NO SUBSTANTIAL EVIDENCE THAT MR. CLOUD SHOWED ANY POTENTIAL OF DIRECTIVE CONTROL OR MANAGEMENT OR FORCIBLE AND FORESEEABLE MANAGEABLE DECISION MAKING ROLE. THE EVIDENCE DOES NOT SUPPORT THE 7 PRONGS OF REQUIREMENTS UNDER USSC 3B1.1(b). THERE IS NO CONVERSATION THAT WOULD SUPPORT DIRECTIVE, CONTROL, GIVING ORDERS, COLLECTING MONEY FROM PARTICIPANTS, RANKS OF POSITIONS IN THIS ALLEGED CONSPIRACY CONCERNING MR. CLOUD. THE RECORD SUPPORTS MR. CLOUD ARGUMENT THAT BOTH CO-DEFENDANTS MISS SANDERS AND MISS ANDERSON TESTIFIED THAT EVERYTHING THEY DID WAS OF THEIR OWN FREE WILL. MISS SANDERS TESTIFIED SHE DID NOT SEE DRUGS AND DID NOT KNOW IF SHE EVEN HAD DRUGS. MISS ANDERSON TESTIFIED THAT MR. CLOUD DID NOT HAVE ANYTHING TO DO WITH WHATEVER SHE HAD AND WAS NOT TAKING A TRIP FOR MR. CLOUD FOR DRUGS. THE COURT HAS HELD IN UNITED STATES V. BURNLEY (4TH CIRCUIT 2021) THAT THIS DOES NOT SUSTAIN AN ENHANCEMENT FOR A LEADERSHIP ROLE, AS WELL AS OTHER CASES IN THIS CIRCUIT. (SEE: US V. BLADE, CHAMBERS, SAYLES) ALL OUT OF THE 4TH CIRCUIT.

1. Whether the district court abused its discretion in applying the 3 level enhancement under USSG 3B1.1(b)

REASON TO CONSIDER GROUNDS CONTAINING MERIT:

Mr. Cloud respectfully asserts that the government failed to meet its burden that the defendant was a manager during his limited role in the alleged conspiracy. Although the guidelines do not define the term manager this court utilizes the dictionary's definition of a specific theme (as a business, an institution or particular phrase or activity within a business or institution). *United States v. Chambers* 985 F.2d, 1263, 1268 (4th Cir 1993) quoting Webster's 3rd omitted. The Enhancement is appropriate where the evidence demonstrates that the defendant controlled the activities of other participants or exercised management responsibility, *Bartley*, 230 F.3d at 673-74 (internal quotation marks omitted) and *United States v. Slade*, 631 F.3d 185, 190 (4th Cir 2011) See *United States v. Sayles*, 296 F.3d 219, 225 (4th Cir 2002) (but being a buyer and seller of illegal drugs even in a league with more than 5 or more other persons does not establish that a defendant has a function as a manager or criminal activity) In the light of the above mentioned Mr. Cloud respectfully argues that the government failed to provide substantial and material evidence to establish its case in chief that he was a manager.

The government seeks to blow smoke screens in from of the district courts eyes by attempting to bolster its otherwise circumstantial evidence under USSG 3B1.1(b) as a general matter of course that evidence may be sufficient whether its testimonial, documentary, direct evidence, but it must be at some point connected to allow the trier of fact to draw the inference that the fact asserted is true. But that rule treating all testimony and evidence the same has no real application here, because as the record shows and supports that the government failed to meet its burden to qualify a 3 level enhancement at no point on the record has the government produced any evidence by alleged codefendants, Miss Sanders, Miss Anderson, Miss Watkins. Mr Davis never testified that Mr. Cloud was his boss or manager in any shape or form, nor was there any testimony from either codefendant that Mr. Cloud gave them specific orders to sell drugs or any orders directing them to bring monies back to him from any alleged transactions or to do anything aside from their own free will. Nor was there any testimony that any of the codefendants did not benefit from any alleged transactions that the government presumes. There was no evidence that Mr. Cloud divided any funds or proceeds between those codefendants based upon the record.

There was no evidence or testimony of any type that would suggest that any codefendants held positions or were ranked by Mr. Cloud. There was no evidence of control or power or directory over any alleged codefendants by Mr. Cloud. The government seeks to manipulate the fact that it was a text message from Miss Anderson talking about pills and the fact that Miss Sanders and Miss Anderson taking trips to Atlanta assuming that it was for picking up drugs for Mr. Cloud. With respect to the codefendants Miss Sanders statement, she testified that she did trips to Atlanta because she was hoping to get signed to Mr. Clouds label. (See TT page 8, lines 3-8) With that being it said it proves that she made those trips willingly and not by

instruction from Mr. Cloud. Same as Miss Anderson, in her testimony she states she was going to Atlanta to pick up money for Mr. Cloud which appears to be her boyfriend that was romantically involved with Mr. Cloud to retrieve money for Mr. Cloud from Mr. Watkins from a feature / song that he did with Mr. Watkins. Again there was no evidence or testimony that Mr. Cloud was a boss in the alleged conspiracy and for the government to speculate off of no substantial evidence was insufficient evidence to establish a 3 level enhancement. Mr. Cloud now points out to this Honorable Court where the District Court mistakenly overlooked the 7 prongs to this 3 level enhancement under USSG 3B1.1.

The Sentencing guidelines do not define the terms manager or supervisor so the appellate courts apply the common meanings in so doing, the sentence court must consider 7 factors; 1.) the exercise of decision making authority, 2.) the nature of participation in the commission of the offense. 3.) the recruitment of accomplices. 4.) the claim right to a larger share of the fruits of the crimes. 5.) the degree of participation and planning or organizing the offense. 6.) the nature in scope of the illegal activity and 7.) the degree of control and authority exercised over others.

Mr. Cloud respectfully asserts concerning the District Courts explanation for applying the 3B1.1 3 level enhancement precludes meaningful appellate review. because section 3B1.1 of the Sentencing Guidelines allows for sentencing enhancements based on a defendants leadership role in the offense USSG 3B1.1 (backg'd) (conspiracy the size of a criminal organization and the degree to which the defendant was responsible for committing the offense)

Section 3B1.1 provides for a three point enhancement if the defendant was a manager or supervisor or leader and the criminal activity involved 5 or more participants or was otherwise extensive USSG 3b1.1(b) finding that Mr. Cloud did not act as a supervisor because the evidence did not show that he supervised people and no-one testified that he performed a single supervisory task. (relying on dictionary definitions of manager as one who directs people in so doing)

The sentencing court must consider 7 factors that described under USSG 3B1.1 (see US v. Cameron, 573 F.3d 179, 184 (4th Cir 2009))

Based upon these factors under 3B1.1 the government failed to meet the 7 prongs under 3B1.1, and did not show where Mr. Cloud directed or organized the conspiracy managing and advising street-level dealers, setting prices and payment terms and arranging acquisitions and delivery logistics. see US v. Keelam, 368 F.3d 125, 147-48 (4th Cir 2009) US v. Bartley 230 F.3d 667. Keelam and Bartley show where the courts approved the enhancement of 3 levels because the evidence showed that the defendants exercised supervisory and responsibility by controlling operators, enforcing...rules (2021 US APP. Lexis 8) and punishing employees who failed to abide thereby. citing US v. Slade 631 F.3d 185, 190-91 (4th Cir 2011) indeed in Slade a Co-Conspirator was responsible for chauffeuring the defendant to the buyers, and various co-conspirators sold drugs for him, yet those facts did not justify the imposition of an enhancement for a management or supervisory role 631 F.3d at 190-91.

So in Mr. Clouds case at hand, the district courts explanation for affirming the 3 level enhancement was because of the co-defendants Miss Sanders and Miss Anderson was taking trips to Atlanta assuming it was for Mr. Cloud for drugs, that's all. Stating for the record when referring to Miss Sanders testimony she stated that she never knew if it was drugs in the box that Mr. Cloud allegedly gave her. She stated she never once opened the box, so till this day no-one really knows what was in this box, not even the government nor the district court. And there is no way that anyone could draw inference from any prior occasion that could determine what was in the box on that particular day. There was no lab work done, no reports of any pills being tested from this box, we have only speculation that is not sufficient to convict (see TT page 12 pages 5-14).

So this explanation was mistakenly characterized by the District Court and was insufficient to facilitate meaningful appellate review, see Chambers 985 F.2d at 1269 as in Chambers this honorable courts will not find a basis for the record for concluding that the district court considered the factors in making this finding, because in Chambers the district court stated only that the defendant was at least a supervisor at some level, but where as here in Mr. Clouds case at hand the district court referred to a few facts as were not connected to any analysis of the 7 available factors under USSG 3B1.1. So it is unclear what evidence the district court generalized assessment refers to and why it supports a finding of management as opposed to mutual participation in the conspiracy, see Slade 631 F.3d at 190-91, US V Baker 539 F.3d 299, 384-05 (4th Cir 2013) (finding clear error where the evidence showed only that three co-conspirators all acted cooperatively when selling crack but not that they acted at the defendants direction or under his control.)

Same as in Mr. Clouds case Miss Anderson and Miss Sanders testified that it was in their own personal will to take the alleged trips to Atlanta (cooperatively)... so reviewing this 3 level enhancement evidence, the evidence leans more to Mr. Cloud asking someone to do something rather than directing them to do something, in which asking is absolutely different then directing. In the light of all of this its the District Judge not the appellate courts that must make an individualized assessment based on the facts presented, see US v. Carter, 564 F.3d 325, 329-330 (4th Cir 2009) quoting Gall v. US 552 US 38 49-50, 128 S.Ct 586, 16 LED 2d 445 (2007). In reviewing this assessment in Mr. Clouds case made by the district court an appellate court may not

guess at the district courts rationale, searching the record for...any other clues that might explain its sentencing decision. Here the District Court made no such assessment in its rationale was indeterminable because it did not apply the relevant factors set forth in US v. Chambers as mentioned above.

While the District court properly adopted the finding of fact in the PSR, it erred by failing to specifically apply the USSG 3B1.1 factors to those findings, so therefore ultimately this honorable court should reach issues of evidentiary sufficiency or error in the district courts fact findings. See US v. Horton 693 F.3d 463, 483-84 N.3 (4th Cir 2012) if this court of appeals resolution of the dispositive legal issue...its fully disposes of the sentencing claim as Mr. Clouds case comes before this court, this court should stop there. Instead the honorable court should procedural error under US v. Chambers and vacate the sentence, and remand and resentence Mr. Cloud without the 3 level enhancement.

And to avoid an unwarranted sentence disparity among defendants with similar conduct. See 18 USC 3553 (A)(6)

in order to prove that the disparities in sentence is unwarranted the defendant must point to similar situated defendants. (see cited cases above)

(see) US v. Chambers

(see) US v. Slade

(see) US v. Sayles

(see) US v. Burnley

All which are out of the Fourth Circuit that appealed their 3 level enhancement and was vacated based off the fact finding by the district court was insufficient and what Mr. Cloud argues is that in all of these cases that are cited they received a vacated sentence and were more detailed than his; meaning there more things that occurred that Mr. Clouds case lacks. And we pray good faith that this motion be granted based on grounds and merit mentioned above.

TO:

SUBJECT: Ground Cont

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a

Mr. Cloud does not argue that the alleged charge conspiracy involved fewer than 5 participants but rather he raises a single contention that the government did not produce evidence that Mr. Cloud functioned as any sort of manager that the District Court respectfully implemented on the record for reasons then applying the 3 level enhancement under USSG 3B1.1. There is no evidence that Mr. Cloud facilitated a criminal enterprise by paying for trips to Atlanta for Co Defendants nor, renting cars or providing hotel or travel expenses for trips to Atlanta, but the government only acquires the fact that Mr. Clouds Co-defendants took trips to Atlanta. (See US v. Kincaid, 964 F2d, 325 329 (4th Cir 1992) Affirming 3B1.1 adjustment when a defendant exercised control over co-conspirators by providing him or her with specific instructions on the circumstances in which he could sell narcotics. Mr. Cloud exercised no management responsibility when the record supports that Co-defendants Miss Sanders testified that she made those trips to Atlanta for her own personal benefit hoping that she would get signed to Mr. Clouds label, Pressure Game (see T.T. Page 8, Lines 1-13) her testimony completely demonstrated that Miss Sanders respectfully showed self interest, no signs of control over, directory, instructions but more like it she had her own personal reasons for her actions. The Court should not need to look any further from this point to determine if Mr. Cloud is responsible for a management role under USSG 3B1.1.

There was no evidence offered by the government that Mr. Cloud recruited any drug couriers or that he claimed a larger share of the fruits of the alleged conspiracy. The government failed to present such evidence giving the total absence of evidence as to Mr. Clouds alleged role of management. We must conclude that the District Court mistakenly and clearly erred in its application of USSG 3B1.1. (see US v. Harriot, 976, F2d. 198,202 (4th Cir 1992) 2002 US App. Lexis 21 vacating and remanding for resentencing when the district court clearly erred in applying USSG 3B1.1. Mr Cloud respectfully asserts just like in (US v. Burnley 988, F3d 184 2021 US App. Lexis 4888 (4th Cir. 2021) There are women that are listed as Mr. Burnleys Codefendants to only be discovered that one of the woman was romantically involved with Mr. Burnley where it highlights the self interest in this case that was taken into consideration by the same Honorable Courts in the 4th Circuit. So when referring to the same case at hand like in Mr. Clouds case, there were woman that were listed as codefendants and one of the woman Miss Anderson was romantically involved with Mr. Cloud based on the record. It appears to be her boyfriend and with this being said it gives all the inference that her involvement with Mr. Cloud was self interest not actions of instruction or management but her own will.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing motion has been furnished by US Postal Service to all listed parties. ~~United States District Court for the District of Columbia~~

SUPREME COURTS OF THE UNITED STATES

1 FIRST STREET, N.E.

WASHINGTON, D.C. 20543-0001

STEVE L. CLOUD JR.

#18163509

TO:
SUBJECT: Motion - Cloud - ground 2
DATE: 05/10/2023 01:33:47 PM

GROUND 2

****Challenging the sufficiency of the drug amount of 2000 grams of Entylone****

Mr. Cloud asserts that as a general matter or course that it is a correct statement of law evidence may be sufficient whether it is testimonial, documentary, direct or circumstantial, nevertheless although the test for evaluating circumstantial is the same as in evaluating direct evidence it must at some point connect to allow the trier of fact to draw the inference that the fact asserted is true. US v. Henderson 693 F.2d 1028, 1030-31 (11th Circuit 1982) But the rule treating all testimony and evidence the same has no real application here because the problem here is that the government lacks the evidence to attribute 2000 grams of Entylone to Mr. Cloud because the record supports that there was no physical evidence nor substantial evidence of 2000 grams of Entylone.

- 1.) No lab reports that this was actually Entylone
- 2.) No lab reports of the amount of weight.

Mr. Cloud asserts that this court of appeals must foresee that this is approximately 2000 grams of Entylone that the government is trying to attribute to Mr. Cloud, but there is no evidence whatsoever that the government seeks to introduce and is an attempt to bolster its otherwise weak case against Mr. Cloud by making speculation, guessing, "it could have" are assumptions. The question that is now raised is what Miss Sanders could have in the box that was allegedly given to her by Mr. Cloud in which the contents of this box that was never substantiated through testimony or evidence. There is no identification of pills only a mere text message that says "4,000" but does not stipulate pills or make reference to drugs, the message does not say 4,000 pills that the government presents as evidence. The message does indicate in any way what it is referring to. This is pure speculation, no certainty, this is what the courts determined as ghost drugs, something that is not documented or actually exist.

Does it satisfy the United States Constitution for someone to be convicted on speculation or assumption regarding something that has not been confirmed or identified period.

Miss Sanders testified that she does not know what was in the box, the government does not know what was in the box, the district court does not know what was in the box at this particular time Miss Sanders was allegedly in possession of a box; and for the district court to mistakenly assume or guess what was in the box and state that it was Entylone would be unfair and prejudice to attribute those ghost drugs to Mr. Cloud when there is no evidence of what the contents actually were.

And for the sake of an argument, if it was argued that a inference could be drawn because it was alleged that Miss Sanders simply took a trip to Atlanta a week prior to this incident how could they draw the inference that it was Entylone, that would be a strawman argument that wouldn't carry any weight to it because the first time it was alleged that the first time Miss Sanders made a trip for Mr. Cloud there was never a box mentioned that she had with her on her first trip. The second trip in question it was alleged that a box that no-one still knows to this day what exactly the contents were. The government assumes or speculates that it was Entylone and the only way that one could draw the inference or foresee that the box contained drugs is if Miss Sanders testified that she had the same box on the first trip a week prior to this one then one could draw the inference due to the fact because Miss Sanders never had a box on the first trip there is not enough evidence to draw any potential inferences that would suggest that the box contained 2000 grams of Entylone.

For example, I tell my wife to take this money to the bank, I put 5 \$100 bills in my wife's hand to take to the bank. One week later I give my wife a box to take to the bank could we draw the inference that money could be in that box? She get to the bank and the teller opens the box, inside of the box there are 7 cashier checks not cash money that my wife may have assumed based on her previous trip to the bank for me that money could have been in the box but instead it was totally different it was cashier checks. So using this example not to belittle the courts intelligence but to show that what the government speculates and assumes was in the box is not a fact but assumption, how could one draw any inference that it was drugs at all.

So just like in this case at hand Miss Sanders could have believed what she wanted but the law prohibits one to be convicted based off belief, assumption, speculation and that's clearly what the government has presented before this district court.

Mr. Cloud understands that this court of appeals is not permitted to delve into a case but only to review for reversible error and

Mr. Cloud has done just that, he has presented enough evidence in his grounds for the court or appeals to consider reversible error. And Miss Sanders is the only "one" that could know what was in that box, but she never at no time choose to look in the box and for the government to believe that it has this magical mind-set to predict what was in the box is not realistic because there's absolutely no evidence that Mr. Cloud sold pills or ever got arrested for buying pills, no testimony stating that he sold pills or bought pills. Mr. Cloud has no history of selling pills so there's NO inference to draw that the box that Miss Sanders possessed contained pills.

Mr. Cloud asserts that it would be unfair and prejudiced him and is a violation of his Due-Process rights to allow the government to speculate its way to contribute 2000 grams of ghost drugs that no-one has ever seen or witnessed on Mr. Cloud is very unfair and not realistic.

REASONS FOR GRANTING THE PETITION

TO AVOID AN UNWARRANTED SENTENCE DISPARITY AMONG DEFENDANTS WITH SIMILAR CONDUCT 18 USC 3553 (A)(6)

AN ERROR THAT UNREASONABLY RAISES A DEFENDANTS GUIDELINES, RESTING ON PROCEDURAL ERROR NO MATTER HOW COMFORTABLY IS UNJUST IN THE VIEW OF THE PUBLIC AND CREATES A GREAT LEVEL OF DEVASTATION IN AMERICA IN AND OUT OF OUR JUDICIAL SYSTEM. POINTING TO SIMILAR SITUATED DEFENDANTS SEE CITED CASES: U.S. V. CHAMBERS, U.S. V. SLADE, U.S. V. SAYLES, U.S. V. BURNLEY.

IN THE CASE AT HAND THERE WAS NO EVIDENCE THAT THE GOVERNMENT OFFERED THAT SUPPORTS THE ENHANCEMENT OR DRUG AMOUNT. AND GIVEN THE TOTAL ABSENCE OF EVIDENCE WE MUST CONCLUDE THAT AN ERROR WAS COMMITTED THAT NOT ONLY SERIOUSLY AFFECTS MR. CLOUD BUT ALSO OTHER DEFENDANTS AND SHOULD BE VACATED AND FAILURE TO CORRECT THE ERROR WOULD SERIOUSLY AFFECT THE FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

STEVEN LAMAR CLOUD JR

Date: DECEMBER 26TH, 2024