

IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

Case No.:

24-6694

Supreme Court, U.S.
FILED

JAN 15 2025

OFFICE OF THE CLERK

Emilio Santiago

Petitioner

v.

United States of America

Respondent

Petition For Writ Of Certiorari

Emilio Santiago
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P.O. Box 725
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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Should A Intervening Decision By A United States Court Of Appeals Invalidating A Defendant's Career Offender Enhancement Be Applied Retroactive?

PARTIES/CORPORATE DISCLOSURE STATEMENT

All parties to the Case are listed in the caption. Petitioner is not affiliated with any Corporation. Furthermore, no Corporation has any interest in the outcome of this Appeal.

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APPENDIX

- A.) Decision by District Court
- B.) Decision by U.S. Court of Appeals

TABLE OF AUTHORITIES

<u>United States v. Dupree,</u>	7
57 F.4th 1269 (11th Cir. Jan. 18, 2023) (en banc)	

<u>United States v. Smith,</u>	7
54 F.3d 690 (11th Cir. 1995)	

OTHER

Fifth Amendment To The United States Constitution

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 2024 U.S. App. Lexis 19104; 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☐ is unpublished.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 A to the petition and is

☐ reported at 2023 U.S. Dist. Lexis 200579; 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.

1.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 31, 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: _____, 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 1-22-2024 (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).

STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides due process of Law in all criminal prosecutions. This case presents a question of whether the due process Clause is violated when a United States Court of Appeals determines that a Defendant's Career Offender status is incorrect as a matter of Law. However, the decision is not applied retroactive. In sum, is that fundamentally fair?

STATEMENT OF THE CASE

Petitioner was indicted and convicted of a stand-alone violation of 21 U.S.C. § 846; (The Instant Offense). Based on the instant offense, Petitioner was sentenced as a Career Offender. Subsequent to the imposition of the sentence, the Eleventh Circuit Court of Appeals in United States v. Dupree, 57 F.4th 1269 (11th Cir. Jan. 18, 2023) (en banc) held that the term "controlled substance offense" in Section 4B1.2(b) "unambiguously excludes inchoate offenses." Id. at 1277. The decision overruled United States v. Smith, 54 F.3d 690 (11th Cir. 1995).

Petitioner filed a Motion under 28 U.S.C. § 2255 relying on Dupree seeking a resentencing absent the Career Offender. The District court denied the Section 2255 Motion. The Eleventh Circuit Court of Appeals denied a Motion of Certificate of Appealability and failed to reach the merits of the case. In sum, and other words, Petitioner is without question sentenced as a Career Offender and has no meaningful access to the Court. The Petitioner seeks review by this Court for determination does such a situation run afoul of the due process Clause.

Petitioner asserts that it does , and thus, the court should remand this case back for further proceedings.

REASONS FOR GRANTING THIS PETITION

This case presents the Court a circumstance of National importance. Many Defendants have [been] sentenced as Career Offenders under now "advisory guidelines." Those guidelines are for a lack of better description a work in progress. Although, the Career is a guideline enhancement [that] is based on statutory law and designed to ensure that a Defendant is sentenced to the high-end of the statutory range; thus, is tantamount to a statutory maximum. Most importantly, those discussed guidelines are interpreted and applied by the Courts. Many of the Defendants sentenced under those harsh enhancements are subsequently determined not to be a Career Offender under intervening Court decisions interpreting the guidelines. However, due to statutory limitations on post-conviction, the Defendants are left to serve unreasonable and unwarranted sentences for the crime committed. Such cases in the very least run afoul of the due process Clause of the United States Constitution. The case presents the Court with a substantial question, i.e., should intervening Court decisions determining a Defendant is erroneously sentenced as a Career Offender be retroactively applicable to at least on the first timely filed Motion under 28 U.S.C. § 2255. In sum, this is a question to determine whether the due process Clause protects a Defendant from serving an unreasonably long sentence that is clearly erroneous under subsequent changes in the law. The Court is needed to determine if the due process Clause of the United States Constitution is overridden by the advisory United States Guidelines. Accordingly, the Court [grant] the Petitioner a writ of Certiorari to determine the Constitutional question presented.

CONCLUSION

For the reasons discussed above, the Court should grant the Petition.

Respectfully Submitted on 1-10-2024



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cc: Solicitor General of the United States
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