

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ROYRICK MILLER – PETITIONER
VS.
UNITED STATES OF AMERICA – RESPONDENT

On Petition for Writ of Certiorari to the
United States Court of Appeals for
the Ninth Circuit, No. 17-15022

PETITION FOR WRIT OF CERTIORARI

DAVID L. ANNICCHIARICO
California Bar Number 247544
584 Castro Street, Suite 654
San Francisco, California 94114
Telephone: (415) 948-5576
Email: WriteToDavidA@gmail.com

Counsel of Record for Petitioner
Royrick Miller

QUESTIONS PRESENTED

1. Is a Supreme Court opinion contrary to the appellant's claim a lawful ground for the Court of Appeals to dismiss an appeal prior to full briefing on the merits, or must the appellant be permitted to proceed with his appeal by attempting to distinguish the Supreme Court case or by making a good-faith argument for a change in the law?
2. Is the United States Sentencing Commission Guidelines Manual subject to a challenge that one of its provisions is unconstitutionally vague?

LIST OF PARTIES

Petitioner is Royrick Miller.

Respondent is the United States of America.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES.....	v
OPINIONS BELOW.....	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS.....	1
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE PETITION	4
I. THIS COURT SHOULD GRANT THE PETITION TO INSTRUCT THE LOWER COURTS THAT ADVERSE SUPREME COURT AUTHORITY IS NOT A GROUND FOR DISMISSAL OF AN APPEAL	4
A. Introduction	4
B. The Underlying Substantive Issue.....	6
C. The Court of Appeals Plainly Erred by Dismissing Mr. Miller’s Appeal, Prior to Briefing, Where There Was No Procedural Defect	9

D. Negative Supreme Court Authority Is Not Grounds for Dismissal Because the Appellant Must Be Allowed the Opportunity to Distinguish It or Argue for a Change in the Law	12
E. Conclusion	15
II. THIS COURT SHOULD GRANT THE PETITION TO RECONSIDER ITS PRIOR RULING THAT THE GUIDELINES ARE NOT SUBJECT TO VAGUENESS CHALLENGES; VAGUENESS IN THE GUIDELINES LEADS TO ARBITRARY AND INCONSISTENT CRIMINAL SENTENCING	16
CONCLUSION	20

TABLE OF AUTHORITIES

CASES

<i>Agostini v. Felton</i> , 521 U.S. 203 (1997)	11
<i>Anders v. California</i> , 386 U.S. 738 (1967)	14
<i>Coleman v. C.I.R.</i> , 791 F.2d 68 (7th Cir. 1986)	14
<i>Johnson v. United States</i> , 135 S.Ct. 2551 (2015)	<i>passim</i>
<i>Oriola v. Thaler</i> , 84 Cal.App.4th 397 (2000)	14
<i>People v. Feggans</i> , 67 Cal.2d 444 (1967)	14
<i>Pillsbury Co. v. Midland Enterprises, Inc.</i> , 904 F.2d 317 (5th Cir. 1990)	14
<i>Price v. United States</i> , Nos. 16-cv-12623, 99-cr-90837, 2017 WL 2666114, (E.D.Mich. Jun. 21, 2017)	12
<i>United States v. Benjamin</i> , 812 F.2d 548 (9th Cir. 1987)	9
<i>United States v. Booker</i> , 543 U.S. 220 (2005)	13
<i>United States v. Gonzalez</i> , 981 F.2d 1037 (9th Cir. 1992)	10
<i>United States v. Michlin</i> , 34 F.3d 896 (9th Cir. 1994)	10
<i>United States v. Nicholson</i> , 272 F. App'x 732 (10th Cir. 2008)	14
<i>United States v. Shah</i> , 878 F.2d 272 (9th Cir. 1989)	9

<i>Welch v. United States</i> , 136 S.Ct. 1257 (2016)	7
---	---

STATUTES

18 U.S.C. § 924	6
28 U.S.C. § 1254	1
28 U.S.C. § 2253	3
28 U.S.C. § 2255	3, 8, 12

CONSTITUTIONAL PROVISIONS

U.S. CONST. amend. V.....	1, 6
---------------------------	------

UNITED STATES SENTENCING GUIDELINES

U.S.S.G. § 4B1.1 (2011)	2, 8
U.S.S.G. § 4B1.2 (2011)	2, 7, 9

PETITION FOR WRIT OF CERTIORARI

Petitioner Royrick Miller respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The unpublished order of the United States Court of Appeals is attached as Appendix A.

The unpublished order of the United States District Court is attached as Appendix B.

JURISDICTION

The United States Court of Appeals issued its decision on September 29, 2017. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Due Process Clause of the Fifth Amendment to the United States Constitution provides, “No person shall be . . . deprived of life, liberty, or property without due process of law”

The United States Sentencing Commission Guidelines Manual,

§ 4B1.1(a) (2011), provided, “(a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.”

The United States Sentencing Commission Guidelines Manual,

§ 4B1.2(a) (2011) provided, “(a) The term “crime of violence” means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that-- (1) has as an element the use, attempted use, or threatened use of physical force against the person of another, or (2) is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another.”

STATEMENT OF THE CASE

On May 17, 2016, Mr. Miller filed a motion to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255, arguing that the district court had erroneously sentenced him as a “career offender” under the United States Sentencing Commission Guidelines Manual (hereafter “the Guidelines”). His claim was based on *Johnson v. United States*, 135 S.Ct. 2551, 2557 (2015), which held that the “residual clause” of the Armed Career Criminal Act’s definition of a “violent felony” was impermissibly vague, in violation of due process. He argued that an identically worded definition of the phrase “crime of violence” found in the Guidelines is likewise unconstitutionally vague. The district court denied the motion on January 4, 2017 and issued a certificate of appealability under 28 U.S.C. § 2253(c).

The Court of Appeals had jurisdiction pursuant to 28 U.S.C. §§ 2253(a), 2255(d). On March 10, 2017, the government filed a motion to dismiss the appeal, citing *Beckles v. United States*, 137 S.Ct. 886, 890 (2017), which held that the Guidelines are not subject to vagueness challenges. On August 23, 2017, Mr. Miller filed a response to the motion to dismiss, arguing that contrary

authority of this Court was not a ground for dismissal of an appeal prior to full briefing. The government filed a reply on August 24, 2017. On September 29, 2017, the Court of Appeals issued an order dismissing the appeal.

REASONS FOR GRANTING THE PETITION

I. THIS COURT SHOULD GRANT THE PETITION TO INSTRUCT THE LOWER COURTS THAT ADVERSE SUPREME COURT AUTHORITY IS NOT A GROUND FOR DISMISSAL OF AN APPEAL.

A. Introduction

Mr. Miller was erroneously denied his day in court through the use of a procedure that this Court should condemn. Before Mr. Miller had the opportunity to file an opening brief in his appeal, the government filed a motion to dismiss the appeal, citing a decision of this Court apparently contrary to his claim. The request for dismissal was not due to any jurisdictional or other procedural impediment. Rather, the government sought to have the appeal dismissed on the merits prior to full briefing of the substantive legal issues. The Court of Appeals granted the motion and dismissed the appeal.

This procedure was fundamentally unfair for two reasons. First, Mr. Miller was denied his right to the standard appellate process of an appellant's opening brief, an appellee's brief, and then the appellant getting the last word -- as the party with the burden of persuasion -- via an appellant's reply brief. Instead, Mr. Miller was put immediately on the defensive as to the substance of his appellate claims, with no opportunity for a reply brief. Second, adverse United States Supreme Court authority is not justification for dismissal of an appeal. Mr. Miller had the right to proceed with his appeal by distinguishing the High Court case or arguing for a change in existing law. Absent some jurisdictional or procedural impediment, there were no grounds for dismissing the appeal outright without full briefing of the matter.

The Court of Appeals' unwarranted denial of Mr. Miller's day in court so departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Review on a writ of certiorari is therefore appropriate under Rule 10 of the Rules of the Supreme Court of the United States.

B. The Underlying Substantive Issue

In *Johnson*, the defendant challenged a provision of the Armed Career Criminal Act of 1984 (hereafter “the ACCA”), which provided for more severe punishment if the offender had three or more prior convictions for a “serious drug offense” or a “violent felony.” 18 U.S.C. § 924(e); *Johnson*, 135 S.Ct. at 2555. The ACCA defined “violent felony” as:

any crime punishable by imprisonment for a term exceeding one year . . . that--

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; *or*

(ii) is burglary, arson, or extortion, involves use of explosives, *or otherwise involves conduct that presents a serious potential risk of physical injury to another*

18 U.S.C. § 924(e)(2)(B) (emphasis added). The italicized phrase is known as the “residual clause.” *Johnson*, 135 S.Ct. at 2556. *Johnson* held that clause to be unconstitutionally vague. *Id.* at 2557.

A criminal law violates the Due Process Clause of the Fifth Amendment where it is “so vague that it fails to give ordinary people fair notice of the conduct it punishes, or [is] so standardless that it invites

arbitrary enforcement.” *Johnson*, 135 S.Ct. at 2557. The *Johnson* Court held that the ACCA’s residual clause fails this test because “conduct that presents a serious potential risk of physical injury to another” is an insufficiently clear standard that does not provide adequate notice to a defendant and risks arbitrary enforcement by judges. *Id.* The residual clause “leaves grave uncertainty about how to estimate the risk posed by a crime.” *Id.* It is an excessively amorphous standard because “[i]t ties the judicial assessment of risk to a judicially imagined ‘ordinary case’ of a crime, not to real-world facts or statutory elements.” *Id.* Moreover, the vague test “leaves uncertainty about how much risk it takes for a crime to qualify as a violent felony.” *Id.* at 2558. *Johnson* therefore invalidated that portion of the ACCA as a violation of due process. *Id.* at 2563.

In a subsequent opinion, the Court held that the *Johnson* rule applies retroactively in cases on collateral review. *Welch v. United States*, 136 S.Ct. 1257, 1265 (2016).

Then, earlier this year in *Beckles*, the Court addressed a vagueness challenge to the version of section 4B1.2(a)(2) of the Guidelines then in

effect. Section 4b1.1(a)(2) defined a “crime of violence” identically to the residual clause of the ACCA held unconstitutional in *Johnson*, for purposes of a “career offender” designation, which increases a defendant’s criminal history score, *see* § 4B1.1. *Beckles*, 137 S.Ct. at 890. That is the same provision that Mr. Miller challenged as vague in his section 2255 motion to the district court. The majority in *Beckles* held, however, that despite the identical language, the provision cannot be unconstitutionally vague because the Guidelines are not subject to vagueness challenges. *Id.* It therefore rejected the petitioner’s claim. *Id.*

In finding the Guidelines exempt from the void-for-vagueness doctrine, *Beckles* relied on the fact that the Guidelines are merely advisory and do not require district courts to impose the sentences they recommend. *Beckles*, 137 S.Ct. at 894. The Court also observed that, “in the long history of discretionary sentencing, this Court has ‘never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range.’ [Citation.]” *Id.* at 893. *Beckles* concluded,

Unlike the ACCA . . . the advisory Guidelines do not fix the permissible range of sentences. To the contrary, they merely

guide the exercise of a court's discretion in choosing an appropriate sentence within the statutory range. Accordingly, the Guidelines are not subject to a vagueness challenge under the Due Process Clause. The residual clause in § 4B1.2(a)(2) therefore is not void for vagueness.

Beckles, 137 S.Ct. at 892.

C. The Court of Appeals Plainly Erred by Dismissing Mr. Miller's Appeal, Prior to Briefing, Where There Was No Procedural Defect.

Neither the government nor the Court of Appeals cited any valid authority for dismissal of an appeal under these circumstances, and indeed there was none. There was nothing procedurally defective about Mr. Miller's appeal that would justify dismissing it instead of permitting full briefing on the merits. This was not a case, for example, where the government moved for dismissal based on an asserted lack of jurisdiction. *See, e.g., United States v. Benjamin*, 812 F.2d 548, 549 (9th Cir. 1987).¹ Nor was there any other procedural impediment to deciding the merits of the appeal in the normal manner, such as where the defendant's plea agreement included a provision that waived his right to appeal. *See, e.g.,*

¹ *Disagreed with on another point in United States v. Shah*, 878 F.2d 272, 274 (9th Cir. 1989).

United States v. Michlin, 34 F.3d 896, 898 (9th Cir. 1994) (dismissing appeal because defendants waived their right to appeal).

The appeal waiver context provides an important analogy. Even where the plea agreement includes an appeal waiver, and the government moves to dismiss on that basis, the case must proceed beyond the Court of Appeals' motions panel to the merits panel where the defendant challenges the validity of the waiver itself. *Michlin*, 34 F.3d at 898; *United States v. Gonzalez*, 981 F.2d 1037, 1038 (9th Cir. 1992). The same holds in Mr. Miller's case. Since he intended to challenge *Beckles* as distinguishable or wrongly decided, there was a question of law for the Court of Appeals to determine after full briefing of the issues.

Neither the government nor the Court of Appeals offered any authority for dismissing a procedurally proper appeal. The government cited no precedent where the result was dismissal under similar circumstances, and it provided no standard the Court of Appeals should apply to such a motion. That is because unfavorable case law on the merits of an appellate issue is not a legitimate ground to dismiss an appeal.

Rather, the appellant is entitled to file an opening brief, have the benefit of reviewing the responsive authorities cited in the government's brief, and then, as the party with the burden of persuasion, have the last word by filing a reply brief. Yet here, the government short-circuited the normal briefing process and forced Mr. Miller to muster all of his arguments on the merits up front, with no opportunity to reply.

In its one-sentence dismissal order, the Court of Appeals cited only one opinion, *Agostini v. Felton*, 521 U.S. 203, 237-38 (1997). *Agostini*, however, does not support dismissal under these circumstances.

This Court should reject the government's attempt to deny Mr. Miller his right of appeal. The case merely stands for the unobjectionable proposition that "[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Id.* at 237. Mr. Miller does not dispute that only this Court can overrule its prior decision. But nothing in *Agostini* supports that an appeal should be

dismissed prior to full briefing because there is apparently contradictory Supreme Court authority. Instead, as explained below, the appellant is entitled to have his day in court by distinguishing the Court's prior case or making a good-faith argument for a change in the law.

D. Negative Supreme Court Authority Is Not Grounds for Dismissal Because the Appellant Must Be Allowed the Opportunity to Distinguish It or Argue for a Change in the Law.

An unfavorable Supreme Court opinion is not justification for dismissal of an appeal. Mr. Miller does not dispute that *Beckles* is Supreme Court authority apparently contrary to the relief he requests. A decision of the High Court will not control, however, if it can be distinguished on the law or the facts. For instance, in *Price v. United States*, Nos. 16-cv-12623, 99-cr-90837, 2017 WL 2666114, at *1 (E.D.Mich. Jun. 21, 2017), the defendant made a section 2255 motion to vacate his sentence on similar grounds as Mr. Miller's motion, and the district court denied it based on *Beckles*.

However, in a motion for reconsideration, Price offered new argument distinguishing his case from *Beckles* on the basis that he was sentenced before the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220

(2005), which rendered the formerly mandatory Guidelines now advisory-only. *Id.* Because a key part of the reasoning in *Beckles* for exempting the Guidelines from the ambit of the vagueness doctrine was that the Guidelines are merely advisory, *Beckles* might not apply to defendants who were sentenced before *Booker*. *Id.* at 1-2. *Price* therefore granted the defendant's motion for reconsideration and ordered additional briefing. *Id.*

Mr. Miller was sentenced after the Guidelines became advisory-only under *Booker*, so he will not make the same claim for distinguishing his case from *Beckles* as the *Price* defendant did. However, *Price* supports Mr. Miller's point that an appeal should not be dismissed simply because there is facially contradictory Supreme Court authority, since the appellant may make an argument for distinguishing that authority.

Moreover, dismissal was also unwarranted because Mr. Miller was entitled to proceed with his appeal by arguing for a change to existing law. Indeed, a procedurally proper appeal should only be dismissed if the issue it raises is frivolous, and an appeal is not frivolous if it makes a colorable argument for a change in the law. *See Pillsbury Co. v. Midland Enterprises,*

Inc., 904 F.2d 317, 318 (5th Cir. 1990) (“‘This court has no desire to deter any litigant from advancing any claim or defense which is arguably supported by existing law, or any reasonably based suggestion for its extension, modification, or reversal.’ [Citation.]”); *see also* *People v. Feggans*, 67 Cal.2d 444, 447 (1967) (Implementing the right to an appeal under *Anders v. California*, 386 U.S. 738 (1967), “counsel serves both the court and his client by advocating changes in the law if argument can be made supporting change.”); *Oriola v. Thaler*, 84 Cal.App.4th 397, 414 (2000) (“Litigants and attorneys . . . have a right to present issues that are ‘arguably correct’ even if they do not ultimately prevail. [Citation.] . . . ‘[T]he power to dismiss frivolous appeals should be exercised in only the ‘clearest cases’ [Citation.]”); *cf.* *Coleman v. C.I.R.*, 791 F.2d 68, 71 (7th Cir. 1986) (“A petition to the Tax Court, or a tax return, is frivolous if it is contrary to established law and unsupported by a reasoned, colorable argument for change in the law.”); *United States v. Nicholson*, 272 F. App’x 732, 737 (10th Cir. 2008), (O’Brien, J. concurring) (same standard applies to civil litigation under Fed. R. Civ. P. 11). Thus, even unfavorable Supreme Court case law directly on

point is not a ground for dismissal of an appeal if the appellant makes a reasoned argument for a change in the law.

Indeed, Mr. Miller made such a claim in his opposition to the government's motion to dismiss his appeal. He reiterates this argument in Argument II, *post*, explaining there is a compelling claim that the *Beckles* majority erred. While *Beckles* was a recent decision, it was decided by a divided Court, and two current Supreme Court justices have not yet weighed in on the issue: Justices Kagan and Gorsuch did not participate in the decision. Moreover, the concurring opinions in *Beckles* provide persuasive arguments that the majority's analysis of the issue was infirm.

E. Conclusion

For the foregoing reasons, the Court of Appeals plainly erred by dismissing Mr. Miller's appeal, denying him the customary appellate procedure and full briefing of his claims. To protect all similarly situated appellants, this Court should exercise its supervisory power and clarify the proper grounds for dismissal of an appeal.

II. THIS COURT SHOULD GRANT THE PETITION TO RECONSIDER ITS PRIOR RULING THAT THE GUIDELINES ARE NOT SUBJECT TO VAGUENESS CHALLENGES; VAGUENESS IN THE GUIDELINES LEADS TO ARBITRARY AND INCONSISTENT CRIMINAL SENTENCING.

Respectfully, *Beckles* was wrongly decided, and this Court should reverse course to ensure consistency and fairness in criminal sentencing.

The concurring opinions in *Beckles* offer persuasive reasons for reconsideration of the decision, and there are two members of the Court who have yet to weigh in.

First, Justice Kennedy authored a concurrence in *Beckles* leaving open the possibility that the Guidelines could be challenged as vague but under a different constitutional analysis than the void-for-vagueness doctrine that derives from the Due Process Clause. *Beckles*, 137 S.Ct. at 897.

Justice Ginsburg also concurred in the result, because the official commentary to the Guidelines specifically listed *Beckles*'s crime of possession of a sawed-off shotgun as a "crime of violence," but she would not have issued the broad holding that the Guidelines are not subject to vagueness challenges. *Beckles*, 137 S.Ct. at 897-98.

The greatest critique of the majority’s reasoning came from Justice Sotomayor’s concurrence, which provided a thorough and persuasive analysis. Attacking the majority’s reliance on the fact that the Guidelines are not mandatory, Justice Sotomayor explained, “The Guidelines anchor every sentence imposed in federal district courts. They are, in a real sense[,] the basis for the sentence.” *Beckles*, 137 S.Ct. at 898 (citation and quotation marks omitted). “Although no longer binding on federal courts [citation], the Guidelines nonetheless ‘provide the framework for the tens of thousands of federal sentencing proceedings that occur each year,’ [citation].” *Id.* at 899. The district court must begin all sentencings by correctly calculating the Guidelines range applicable to the crime and the offender. *Id.* at 899-900. If the court incorrectly calculates the Guidelines range, it commits reversible error. *Id.* at 900. The court is required to explain any deviation from the Guidelines on the record, and provide a compelling justification for the variance. *Id.*

Justice Sotomayor further observed, “The importance of the Guidelines in this process, as we explained last Term, makes them ‘not

only the starting point for most federal sentencing proceedings but also the lodestar.’ [Citation.]” *Beckles*, 137 S.Ct. at 900. “In most cases, it is the range set by the Guidelines, not the minimum or maximum term of imprisonment set by statute, that specifies the number of years a defendant will spend in prison. District courts impose a sentence within the Guidelines (or below the Guidelines based on a Government motion) over 80% of the time.” *Id.* “It follows from the central role that the Guidelines play at sentencing that they should be susceptible to vagueness challenges under the Due Process Clause.” *Id.* “A defendant is entitled to understand the legal rules that will determine his sentence.” *Id.*

Justice Sotomayor’s concurrence also challenged the majority by pointing out that “a district court’s reliance on a vague Guideline creates a serious risk of ‘arbitrary enforcement.’” *Beckles*, 137 S.Ct. at 901 (quoting *Johnson*, 135 S.Ct. at 2556). “It introduces an unacceptable degree of arbitrariness into sentencing proceedings to begin by applying a rule that is so vague that efforts to interpret it boil down to ‘guesswork and intuition.’” *Id.* (quoting *Johnson*, 135 S.Ct. at 2559). Although a defendant can ask the

judge for a downward departure from the Guidelines, he must accept the Guidelines range as the starting point for the request. *Id.* “[H]e is negotiating from a baseline he cannot control or predict.”² *Id.* “The result is a sentencing proceeding hopelessly skewed from the outset by ‘unpredictability and arbitrariness.’” *Id.* (quoting *Johnson*, 135 S.Ct. at 2558). “The Due Process Clause does not tolerate such a proceeding.” *Id.* Justice Sotomayor concluded, “Nothing of substance, in other words, distinguishes the Guidelines from the kind of laws we held susceptible to vagueness challenges in *Johnson*; both law and Guideline alike operate to extend the time a person spends in prison. The Due Process Clause should apply equally to each.” *Id.* at 902.

Mr. Miller respectfully urges the new composition of this Court to reconsider the holding in *Beckles* in order to ensure fairness and consistency in federal sentencing.

² Mr. Miller additionally observes that the Guidelines are the framework within which plea negotiations are conducted, and thus a vague guideline unduly burdens those very frequent proceedings as well.

CONCLUSION

Based on the foregoing, this Court should grant the petition for a writ of certiorari.

Dated: December 28, 2017

Respectfully submitted,



DAVID L. ANNICCHIARICO
Counsel of Record for Petitioner
California Bar No. 247544

CERTIFICATE OF SERVICE

I, David L. Annicchiarico, hereby swear or declare that, on this date, December 28, 2017, as required by Supreme Court Rule 29, I have served the enclosed Motion for Leave to Proceed *in Forma Pauperis*, Petition for a Writ of Certiorari, and the Appendix on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within three calendar days, addressed as follows:

SOLICITOR GENERAL OF THE UNITED STATES, Room 5614, Dept. of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001

ROYRICK MILLER, Register Number: 98115-011, USP Canaan, U.S. Penitentiary, P.O. Box 300, Waymart, PA 18472

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December 28, 2017



DAVID L. ANNICCHIARICO