

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Marvin Steve Martinez-Hernandez — 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 FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Marvin Steve Martinez-Hernandez
(Your Name)

P.O. Box 26040
(Address)

Beaumont, Texas 77720
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether the Petitioner was sentenced in violation of the Constitution by the District Court who sentenced the Petitioner pursuant to the U.S.S.G. §2L1.2, Sixteen Point enhancement for having a Violent Felony. And whether the District Court did not correctly construe the Petitioner's 18 U.S.C. §3582 Motion as a 28 U.S.C. §2255 Motion.

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:

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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☒ is unpublished.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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 11, 2017.

☒ 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 _____ (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~~

United States Sentencing Guidelines §2L1.2

United States Code Service Title 18 §3582

28 U.S.C. §2255

Johnson v. United States,

United States of America Constitution

STATEMENT OF THE CASE

The Petitioner was convicted of a violation of United States Code Service (U.S.C.) Title 8 §1326. This triggered the United States Sentencing Guidelines (U.S.S.G.) §2L1.2(B)(1)(A). Since the Court used the 2015 Guidelines the Petitioner received a Sixteen (16) Point enhancement since the Petitioner had a previous conviction for a "Crime of Violence."

However, the same guidelines a few months later did not have this enhancement because of this Court's decision in Johnson v. United States, 192 L. Ed. 2d 569, 135 S. Ct. 2551 (2015), and the Sentencing Commissions subsequent Amendment that changed the Sentencing Guidelines.

So, the Petitioner filed a 18 U.S.C. 3582 trying to get relief from the sentence that the Petitioner should not have received since the District Court knew that the predicate offense would not have been considered a Crime of Violence in just a few months time. The Petitioner's Motion could have been construed as any motion that would have had a productive effect. Reyes Requena v. United States, 243 F.3d 893, 901(5th Cir. 2001).

The Petitioner was given a substantial longer sentence for no other reason than the District Court's refusal to sentence the Petitioner to the appropriate Guidelines. Then

STATEMENT OF THE CASE PAGE TWO

again when the Petitioner went before the District Court with a Motion to Correct the Sentence the District Court again denied this motion because the Petitioner did not file an appropriate motion. But the District Court had the opportunity to correct the Petitioner's sentence.

REASONS FOR GRANTING THE PETITION

The Petitioner's sentence is larger then it would have been if the Petitioner would have been sentenced just a few months later, and under the new Sentencing Guidelines. The Guidelines that came into effect just months after the Petitioner was sentenced did not even have the term within 2L1.2 of "Crime of Violence." The Petitioner could not have had the Federal Sentence tripled.

This is coupled with the fact that the Petitioner's predicate offense did not qualify as a "Crime of Violence" and the Sixteen Point enhancement for that prior is unconstitutional, because of this Court's ruling in Johnson v. United States, 192 L. Ed. 2d 569, 135 S. Ct. 2551

The enhancement tripled the Petitioner's Offense Level from eight points to Twenty Four, and thereby creates a miscarriage of justice since the increase is at that much of a variance. The length of the sentence that is developed from being sentenced just a few months before the change in the United Sentencing Guidelines is paramount to Miscarriage of Justice since the disparity is at such a large variance.

The Petitioner's sentence is unconstitutional, and that is why the Sentencing Commission took the enhancement out of the United States Sentencing Guidelines and this Court ruled in favor of Johnson, and Dimaya.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Marvin Martinez", is written over a horizontal line.

Date: January 2, 2018.