

No:

**In the
Supreme Court of the United States**

EDWIN JASSIEL PERALTA-CASTRO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

Edwin Jassiel Peralta-Castro
Register Number: 97057-379
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Big Spring, TX 79720

QUESTIONS PRESENTED FOR REVIEW

Should a writ of certiorari be granted to determine whether the district court erred in misapplying the provisions of the sentencing guidelines, resulting in a sentence that was substantively unreasonable and grossly disproportionate to the conduct violated?

Should a writ of certiorari be granted to determine whether the district court procedurally erred in applying U.S.S.G. §2S1.1(a)(1), instead of U.S.S.G. §2S1.1(a)(2), and in considering the relevant conduct of the underlying offense at sentencing?

Should a writ of certiorari be granted to determine whether the trial court procedurally erred in failing to apply U.S.S.G. § 2S1.1, Application Note 2(c) and sentencing Peralta-Castro in accordance with the relevant conduct of the underlying offense from which the laundered funds were derived?

**PARTIES TO THE PROCEEDINGS
IN THE COURT BELOW**

In addition to the parties named in the caption of the case, the following individuals were parties to the case is the United States Court of Appeal for the Fifth Circuit.

None of the parties is a company, corporation, or subsidiary of any company or corporation.

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PETITION FOR WRIT OF CERTIORARI

Edwin Jassiel Peralta-Castro, the Petitioner herein, respectfully prays that a Writ of Certiorari is issued to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled cause.

OPINION BELOW

The opinion of the Court of Appeals for the Fifth Circuit, whose judgment is herein sought to be reviewed, is an unpublished opinion *United States v. Peralta-Castro*, 699 F. App'x 407 (5th Cir. 2017) dated October 26, 2017, and is reprinted as Appendix A to this Petition.

STATEMENT OF JURISDICTION

The Fifth Circuit Court of Appeals opinion was entered on October 26, 2017. The Jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND RULES INVOLVED

Title 18 U.S.C. § 1957 - Laundering of monetary instruments, provides in relevant part:

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--

(A)(i) with the intent to promote the carrying on of specified unlawful activity;
or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States--

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent--

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term “represented” means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Penalties.--

(1) In general.--Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of--

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) \$10,000.

(2) Jurisdiction over foreign persons.--For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

(b)(1) Except as provided in paragraph (2), the punishment for an offense under this section is a fine under title 18, United States Code, or imprisonment for not more than ten years or both. If the offense involves a pre-retail medical product (as defined in section 670) the punishment for the offense shall be the same as the punishment for an offense under section 670 unless the punishment under this subsection is greater.

(2) The court may impose an alternate fine to that imposable under paragraph (1) of not more than twice the amount of the criminally derived property involved in the transaction.

(c) In a prosecution for an offense under this section, the Government is not required to prove the defendant knew that the offense from which the criminally derived property was derived was specified unlawful activity.

(d) The circumstances referred to in subsection (a) are—

(1) that the offense under this section takes place in the United States or in the special maritime and territorial jurisdiction of the United States; or

(2) that the offense under this section takes place outside the United States and such special jurisdiction, but the defendant is a United States person (as defined in section 3077 of this title, but excluding the class described in paragraph (2)(D) of such section).

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General.

(f) As used in this section—

(1) the term “monetary transaction” means the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument (as defined in section 1956(c)(5) of this title) by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B) of this title, but such term does not include any transaction necessary to preserve a person’s right to representation as guaranteed by the sixth amendment to the Constitution;

(2) the term “criminally derived property” means any property constituting, or derived from, proceeds obtained from a criminal offense; and

(3) the terms “specified unlawful activity” and “proceeds” shall have the meaning given those terms in section 1956 of this title.

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) Court authority over assets.--A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) Federal receiver.--

(A) In general.--A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under section 981 or 982, or a criminal sentence under section 1957 or subsection (a) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) Appointment and authority.--A Federal Receiver described in subparagraph (A)--

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in section 754 of title 28, United States Code; and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant--

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury; or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section--

(1) the term “knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity” means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term “conducts” includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box,

or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term “financial transaction” means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term “monetary instruments” means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term “financial institution” includes--

(A) any financial institution, as defined in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101);

(7) the term “specified unlawful activity” means--

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving--

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

- (iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978));
- (iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;
- (v) smuggling or export control violations involving--
 - (I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or
 - (II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774);
- (vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or
- (vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts;
- (C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);
- (D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 175c (relating to the variola virus), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 541 (relating to goods falsely classified), section 542 (relating to entry of goods by means of false statements), section 545

(relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 554 (relating to smuggling goods from the United States), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844(f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking), section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to fraudulent Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), section 1030 (relating to computer fraud and abuse), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2252A (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, section 2260 (production of certain child pornography for importation into the United States), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services), section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries),

section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices), section 2339A or 2339B (relating to providing material support to terrorists), section 2339C (relating to financing of terrorism), or section 2339D (relating to receiving military-type training from a foreign terrorist organization) of this title, section 46502 of title 49, United States Code, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 [7 U.S.C.A. § 2024] (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 [42 U.S.C.A. § 1490s(a)(1)] (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)

Id. Title 18 U.S.C. 1957

STATEMENT OF THE CASE

A. Course of Proceedings in the Lower Courts

On September 9, 2015, a two count Superseding Indictment was filed in the United States Court for the Southern District of Texas, Houston Division, naming Edwin Jassiel Peralta-Castro and eleven other co-defendants. Count 1 of the indictment charged all of the defendants with conspiracy to possess with intent to distribute 1 kilogram or more of heroin and 50 grams or more of methamphetamine, from early 2013 through the date of the Superseding Indictment, in violation of 21 U.S.C. §§ 846, 841(a)(1), 841 (b)(1)(A)(I), and (viii).

Count Two of the Superseding Indictment charged Christopher Glen Clark and Jessica Soto Eriza with the laundering of monetary instruments, which occurred from mid-2013 to on or about late January 2014, in violation of 18 U.S.C. § 1956(a)(2)(A), and (2). On April 27, 2016, a one count Superseding Information was filed in the United States District Court for the Southern District of Texas, Houston Division, naming Peralta-Castro, as the defendant. Count 1 charged the defendant with engaging in monetary transactions in property derived from specified unlawful activity, on or about June 20, 2013, in violation of 18 U.S.C. § 1957.

On May 12, 2016, Peralta-Castro appeared before United States District Judge, Hon. Sim Lake, for a re-arraignment. Peralta-Castro entered a plea of guilty to

Count 1 of the Superseding Information, pursuant to a Rule 11(c)(1)(A) and (B) written Plea Agreement. The Plea Agreement was sealed. The Court accepted the Peralta-Castro's guilty plea and ordered the preparation of a Presentence Investigation Report.

The Presentence Investigation Report stated that Peralta-Castro was an average participant and wholly failed to provide a minor role adjustment. Peralta-Castro filed objections to the Presentence Investigation Report, mainly to ¶¶'s 12 and 19, because it sought to hold Peralta-Castro accountable for the relevant conduct of the underlying offense (drug trafficking) after he had entered a plea of guilty to engaging in monetary transactions in property derived from specified unlawful activity in violation of 18 U. S. C. §1957.

The Presentence Investigation Report provided for an advisory guideline range of imprisonment of 121 - 151 months, however, pursuant to U. S. S. G. § 5G1.1(a), the guideline range became the statutory authorized maximum term of 120 months imprisonment. Peralta-Castro's objections were overruled and the district court sentenced him to the statutory authorized maximum term of imprisonment of 120 months.

STATEMENT OF THE FACTS

According to the Presentence Investigation Report, in early 2013, law enforcement officials in Houston, Texas determined that a drug trafficking organization based in Michoacan, Mexico, was recruiting individuals to drive vehicles fitted with hidden compartments filled with narcotics, across the Mexican border with the Southern District of Texas. Once those vehicles entered the United States, they were driven from Texas to their ultimate destinations. One of those destinations was New York, where the drivers would give possession of the vehicle to a specified individual who would take the vehicle for a day or so, then return the vehicle to the driver. At the time of the vehicle's return, it would have United States currency concealed in its hidden compartment. The vehicle would then be driven back to Mexico.

During 2013, several drugs and/or currency seizures in the Southern District of Texas were linked to the Mexican drug trafficking organization. In 2014, Maria Carranza, a co-defendant, was identified as a member of the drug trafficking organization who assisted in the flow of drugs and money. In March 2016, an undercover officer had been introduced into the drug trafficking organization by a confidential source. The undercover officer was in telephone contact with an individual known as "Rodolfo" one of the narcotics suppliers in Mexico.

Agents received information from the confidential source that the drug trafficking organization was operating a stash house at 14907 Leila Oaks in Houston, Texas. Agents conducted surveillance at the residence and determined that Peralta-Castro was an occupant of the house. On June 3, 2013, law enforcement agents observed a Volvo parked at the house. The Volvo was registered to A.O. The next day, the same Volvo was stopped in Beaumont, Texas. The driver of the vehicle was identified as M.S.

A search of the vehicle revealed 16 kilograms of methamphetamine hidden in a secret compartment of the Volvo. The investigation revealed that A.O. had multiple international crossings at the U. S. Border in Brownsville, Texas, and had crossed the border several times with Christopher Clark.

When interviewed, M.S. Advised the law enforcement agents that she gave the Volvo to the Peralta-Castro on June 3, 2013, who kept the vehicle for several hours. Peralta-Castro returned the Volvo to M. S. Later that evening and also provided M. S. with money to travel to Atlanta, Georgia. A review of telephone records confirmed cellular phone contact between M. S. and Peralta-Castro during the particular time. M.S. admitted that she had been hired by an individual to drive the drugs to Atlanta, Georgia.

On June 7, 2013, Christopher Glen Clark was a passenger in a vehicle driven by A.O. The vehicle was a black Dodge Journey SUV and had been registered to

Christopher Glen Clark in May 2013. The officers that conducted a traffic stop on the vehicle recovered 10 kilograms of heroin from a hidden compartment. Law enforcement agents had previously observed the black Dodge Journey SUV at 14907 Leila Oaks, Houston, Texas. A.O. admitted working for the drug trafficking organization for approximately three months. A.O. stated she was paid between \$2,000.00 and \$3,000.00 per trip and admitted to making multiple trips from Mexico to various points in the United States. A.O. stated that on several of her trips, she dropped off the stash vehicle with Peralta-Castro for a short period of time prior to leaving Houston and again upon her return to Houston. Christopher Glen Clark confirmed that Peralta-Castro assisted with the pickup and delivery of the vehicles from the drug trafficking organization. Telephone records confirmed multiple contacts between Christopher Glen Clark, A. O., and Peralta-Castro.

On June 20, 2013, Peralta-Castro purchased a Honda Pilot SUV from Spring Branch Honda in Houston, Texas for \$14,149.68 in cash. On June 21, 2013, the vehicle was registered to B.H. On July 18, 2013, B.H. was arrested at the United States Border Patrol checkpoint in Sarita, Texas. Law enforcement officers recovered 16 kilograms of heroin in an aftermarket compartment located under the vehicle. B.H. was interviewed and admitted driving the vehicle to New York, picking up money, and driving the loaded vehicle to Mexico. B.H. stated that she traveled to Houston and picked up the Honda Pilot at the direction of Peralta-

Castro. Both M.S. and A.O. identified Peralta-Castro as the person in Houston who delivered load cars to them and provided expense money. Peralta-Castro gave them \$1,000 and \$2,000.00 per trip for expenses.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT HAS INTERPRETED A FEDERAL STATUTES IN A WAY THAT CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT

Supreme Court Rule 10 provides in relevant part as follows:

Rule 10 CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

(1) A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a ... United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.... *Id.*

Id. Supreme Court Rule 10.1(a), (c)

QUESTIONS PRESENTED

SHOULD A WRIT OF CERTIORARI BE GRANTED TO DETERMINE WHETHER THE DISTRICT COURT ERRED IN MISAPPLYING THE PROVISIONS OF THE SENTENCING GUIDELINES, RESULTING IN A SENTENCE THAT WAS SUBSTANTIVELY UNREASONABLE AND GROSSLY DISPROPORTIONATE TO THE CONDUCT VIOLATED.

The district court sentenced Peralta-Castro to 120 months incarceration as to Count 1, of the Superseding Information, after denying a request for a variance.

At sentencing, Peralta-Castro objected to the application of U.S.S.G. 2S1.1(a)(1) and 1B1.3 (Relevant Conduct), but the district court overruled the objections.

The 120 month sentence Peralta-Castro received was substantively unreasonable because the district court misapplied U.S.S.G. §2S1.1. “After *Booker*, the courts must consider the factors in 18 U.S.C. § 3553(a).” *U.S.S.G. §5K2.0, Comm. 20*. The district court erred by incorrectly relying entirely on the United States Sentencing Guidelines and the Government’s estimate of the number of narcotics that were included in Peralta-Castro’s relevant conduct under U.S.S.G. §2S1.1(a)(1) and §1B1.3.

It was an abuse of discretion for the district court to overrule Peralta-Castro’s objections to the incorrect application of U.S.S.G. §2S1(a)(1), when there was nothing in the information provided in ¶’s 8, 9, and 10, of the Presentence Investigation Report, that proved that the defendant “committed, aided, abetted,

counseled, commanded, induced, procured, or willfully caused” the trafficking of narcotics as suggested by the probation officer.”

Furthermore, there was nothing in ¶’s 8, 9, and 10, of the Presentence Investigation Report that proved that the acts of “A. O.”, “M. S.” and Christopher Glen Clark were all reasonably foreseeable acts and omissions of others in furtherance of any jointly undertaken criminal activity of Peralta-Castro. The information provided in paragraphs 8, 9, and 10 of the Presentence Investigation Report only demonstrated that automobiles were either delivered to Peralta-Castro or picked up from the Peralta-Castro. There was nothing that proved that the Peralta-Castro loaded the vehicles with the narcotics that were eventually found in the vehicles. Neither, “A.O.” nor “M. S.” nor Christopher Glen Clark stated that they saw the Peralta-Castro load the narcotics onto the vehicles.

While Peralta-Castro may have provided “A.O.”, M.S.”, and/or Christopher Glen Clark with money for trip expenses, there was no scintilla of evidence that the Peralta-Castro knew that he was providing money in furtherance of any jointly undertaken criminal activity. The probation report went to great lengths to apply U.S.S.G. § 2S1.1(a)(1), however, Peralta-Castro, submitted to this Court that contrary to the Presentence Investigation Report, Peralta-Castro’s offense level for that offense cannot be determined for the purposes of applying U.S.S.G. § 2S1.1(a)(1). U.S.S.G. § 2S1.1(a)(1) states, “*Base Offense Level: The offense level*

for the underlying offense from which the laundered funds were derived, if (A) the defendant committed the underlying offense (or would be accountable for the underlying offense under section (a)(1)(A) of § 1B1.3 (Relevant Conduct)): and (B) the offense level can be determined. The district court's sentence was substantively unreasonable.

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand order the Court of Appeals for the Fifth Circuit.

SHOULD A WRIT OF CERTIORARI BE GRANTED TO DETERMINE WHETHER THE DISTRICT COURT PROCEDURALLY ERRED IN APPLYING U.S.S.G. §2S1.1(A)(1), INSTEAD OF U.S.S.G. §2S1.1(A)(2), AND IN CONSIDERING THE RELEVANT CONDUCT OF THE UNDERLYING OFFENSE AT SENTENCING.

Peralta-Castro's plea as Count 1 of the Superseding Information was made with regard to "Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity" in violation of Title 18, United States Code 1957.

Peralta-Castro's submits to this Court that the Presentence Investigation Report incorrectly captured the advisory sentencing guideline calculations and Peralta-Castro should only be held accountable for having purchased a vehicle with money that he knew or had reason to believe came from narcotic transactions, (specified unlawful activity). Therefore, Peralta-Castro's advisory sentencing guideline calculations should begin with § 2S1.1(a)(2), which is a base offense level of 8, plus 4 levels from the table from § 2B1.1, plus 6 levels from § 2S1.1(b)(1), plus 1

level from § 2S1.1(b)(2), for an adjusted level of 19, minus 2 levels under the “Safety Valve”, and minus 3 levels for acceptance of responsibility, resulting in a total offense level of 14, Criminal History Category of I, with a guideline range of 15 - 21 months incarceration.

A sentence within the advisory sentencing guideline range of 15 - 21 months imprisonment would have reflected the seriousness of the offense, promoted respect for the law, and provided just punishment for the offense; it also afforded adequate deterrence to criminal conduct and protected the public from further crimes of the Peralta-Castro. Furthermore, sentencing Peralta-Castro within the recalculated advisory sentencing guidelines range of 15 - 21 months incarceration, would have been a sentence that was “sufficient, but not greater than necessary” to comply with the purposes set forth in 18 U S C §3553(a).

The trial court incorrectly considered the Peralta-Castro’s relevant conduct in the underlying offense and wholly failed to consider and apply *Application Note 2(C) of U.S.S.G. §2S1.1, Application of Chapter Three Adjustments – Notwithstanding § 1B1.5 (c) in cases in which subsection (a)(1) applies, application of any Chapter Three adjustments shall be determined based on the offense covered by this guideline (i.e., the laundering of criminally derived funds) and not on the underlying offense from which the laundered funds were derived.*”

“An application note to the guideline that governs the calculation of the offense level for money laundering instructs courts to consider only the money laundering offense itself and not the underlying crime that generated the money that was laundered. *United States Sentencing Guidelines § 2S1.1 cmt. n. 2(C) (2013)*.¹ In this case, the district court in calculating the guidelines range mistakenly considered the defendant's role in the drug conspiracy that generated the laundered money. As a result, the defendant received a higher adjusted offense level and guidelines range than he might have received if the application note to § 2S1.1 had been followed. That mistake and the resulting miscalculation must be “laundered out of the sentence in a re-sentence proceeding.” *United States v. Salgado*, 745 F.3d 1135, (11th Cir. 2014) Furthermore, U.S.S.G.”§ 1B1.5(c) provides that if the offense level is determined by reference to another guideline, the adjustments in Chapter 3 are also determined in respect to the referenced offense guideline, *except* as otherwise expressly provided and Note 2(C) of § 2S1.1, is one of those (“Otherwise provided situations”).” Therefore, the defendant should have been viewed as a minor role participant and not as an average participant. *Id. Salgado*

For these reasons and in failing to apply U.S.S.G. §2S1.1(a)(2), the district Court committed a significant procedure error that substantially harmed the

Peralta-Castro. Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand order the Court of Appeals for the Fifth Circuit.

SHOULD A WRIT OF CERTIORARI BE GRANTED TO DETERMINE WHETHER THE TRIAL COURT PROCEDURALLY ERRED IN FAILING TO APPLY U.S.S.G. § 2S1.1, APPLICATION NOTE 2(C) AND SENTENCING PERALTA-CASTRO IN ACCORDANCE WITH THE RELEVANT CONDUCT OF THE UNDERLYING OFFENSE FROM WHICH THE LAUNDERED FUNDS WERE DERIVED.

The issue is not the district court's finding that Peralta-Castro's role in the narcotics distribution conspiracy made him an average participant, which would be a factual issue reviewed only for clear error. *United States v. Rodriguez De Varon*, 175 F.3d 930, 937 (11th Cir.1999) (en banc). Section §1B1.5(c) of the guidelines provides that: "If the offense level is determined by a reference to another guideline under subsection (a) or (b)(1) above, the adjustments in Chapter Three (Adjustments) also are determined in respect to the referenced offense guideline, except as otherwise expressly provided." U.S.S.G. § 1B1.5(c). That provision means that where a guideline determines a defendant's offense level by reference to another offense, the Chapter Three adjustments are to be based on the guideline and rules for that other offense. The provision is, however, only a default rule, as the last five words of it indicate: "except as otherwise expressly provided." Application Note 2(C) of § 2S1.1 is one of those "otherwise expressly provided" situations. It instructs us that when setting an offense level under § 2S1.1(a)(1), a court should make Chapter Three adjustments based on the defendant's conduct in

the money laundering offense itself, not based on his conduct in the offense from which the money that was laundered was obtained.

Notwithstanding § 1B1.5(c), in cases in which [§ 2S1.1(a)(1)] applies, application of any Chapter Three adjustment shall be determined based on the offense covered by this guideline (i.e., the laundering of criminally derived funds) and not on the underlying offense from which the laundered funds were derived. *U.S.S.G. § 2S1.1 cmt. n. 2(C)*.

That application note's meaning for this case is straightforward: When the district court calculated Peralta-Castro's offense level under § 2S1.1(a)(1), it should have based a role adjustment on his conduct in the money laundering conspiracy but not on his conduct in the underlying drug conspiracy. The application and understanding of Application Note 2(C) are consistent with the decisions of other sister circuits. The Sixth Circuit has held that Application Note 2(C) bars a defendant from receiving a role adjustment under § 3B1.2(a) based on her minimal role in the underlying drug conspiracy instead of her role in the money laundering conspiracy. *United States v. Anderson*, 526 F.3d 319, 328 (6th Cir.2008).

Similarly, the Tenth Circuit has held that a defendant's conduct in an underlying drug conspiracy cannot be used to apply Chapter Three adjustments if the court is calculating his offense level under § 2S1.1(a)(1). *United States v. Keck*, 643 F.3d 789, 800-01 (10th Cir.2011) ("We interpret Application Note 2(C) as

governing only the applicability of adjustments on money-laundering convictions, as opposed to the offense calculations of other, related offenses."). In *United States v. Byors*, 586 F.3d 222 (2d Cir. 2009) the Second Circuit implicitly took the same view. It did so by adopting a reading of the obstruction of justice enhancement under § 3C1.1 that is consistent with Application Note 2(C)'s instruction to base Chapter Three adjustments only on the money laundering offense when calculating an offense level under § 2S1.1(a)(1). *See Id.* at 226-28.

The Seventh Circuit has summarized those holdings of the Second, Sixth, and Tenth Circuits as standing for the principle that a Chapter Three adjustment "is permissible in a money laundering case—but only when the [adjustment] relates to the money laundering itself rather than to the underlying offense (the offense that generated the money that the defendant laundered)." *United States v. Rushton*, 738 F.3d at 859 (citing U.S.S.G. § 2S1.1 cmt. n. 2(C), *Keck*, *Byors*, and *Anderson*). And the First Circuit has also observed that "application note 2(C) to the money-laundering guideline provides that Chapter Three adjustments should be determined with reference to the money-laundering offense and not to the underlying offense." *United States v. Cruzado-Laureano*, 440 F.3d 44, 49 (1st Cir.2006) (dicta) (emphasis omitted).

The government may argue that a straightforward reading of Application Note

2(C) contravenes § 1B1.3's instruction that courts should consider all relevant conduct when determining a defendant's role. *See Rodriguez DeVaron*, 175 F.3d at 934 ("The district court must measure the defendant's role against her relevant conduct, that is, the conduct for which she has been held accountable under U.S.S.G. § 1B1.3."). However, that argument would overlook the first three words of § 1B1.3, which tell courts that it defines the defendant's relevant conduct "[u]nless otherwise specified." *U.S.S.G. § 1B1.3(a)*. Application Note 2(C), as Peralta-Castro points out, does specify otherwise. That means, for purposes of § 2S1.1(a)(1), a defendant's relevant conduct for Chapter Three adjustments is limited to his part in the money laundering offense. *Cf. United States v. Kluger*, 722 F.3d 549, 558-59 (3d Cir.2013) (treating guidelines commentary as a specification for purposes of § 1B1.3(a)). The specific exception or carve out in Application Note 2(C) to § 2S1.1 is expressly provided for in the general provision that is § 1B1.3(a).

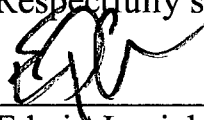
Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand order the Court of Appeals for the Fifth Circuit.

CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand order the Court of Appeals for the Fifth Circuit.

Done this 23, day of January 2018.

Respectfully submitted,



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