

No. _____

In the Supreme Court of the United States

TERRANCE CHAPPELL,
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for Writ of Certiorari from the Sixth
Circuit Court of Appeals to the
Supreme Court of Ohio**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Sixth Circuit is permitted to decline to resolve a properly presented appellate issue of sentencing entrapment and sentencing manipulation and "leave it for another day." There is a split in the circuits regarding the application of sentencing entrapment and sentencing manipulation which needs to be resolved and applied to Terrance Chappell's case.

Whether this Court should resolve the issue regarding the legality of the outrageous government's conduct in "stash-house" sting operations, which has been widely criticized.

PARTIES TO THE PROCEEDING

The parties appearing here and below are: (1) Terrance Chappell, the Petitioner named in the caption; and (2) the United States, the Respondent names in the caption. Petitioner is not a corporation.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Terrance Chappell, respectfully petitions this Honorable Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The per curium decision of the Sixth Circuit Court of Appeals at Appendix A was not recommended for publication.

JURISDICTION

The judgment of the Sixth Circuit Court of Appeals was entered on October 24, 2017. A timely petition for rehearing en banc was denied by the Court of Appeals on January 3, 2018, and a copy of the order denying rehearing appears at Appendix B. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The government's outrageous conduct in this case was so excessive that it violated due process. The Fifth and Fourteenth Amendments to the United States Constitution each contain a due process clause stating, "No person shall ...be deprived of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

Terrance Chappell and his four co-defendants, Kali Alexander, Kenneth Flowers, Justin Maxwell, and Rasheam Nichols, were recruited by the government for a false ATF "stash-house sting." These recruited individuals were all young African American men from impoverished areas of Cleveland, Ohio, as are the overwhelming number of "stash-house-sting" targets across the nation.

A. PROCEDURAL BACKGROUND

On September 23, 2014, Terrance Chappell and his four co-defendants were named in an 11-count indictment in the United States District Court for the Northern District of Ohio for a false "stash-house sting" operation that occurred on September 3, 2014.

The Defendants filed a motion to dismiss the indictment based on the outrageous government conduct in this case, which was denied by the district court. (Pet. App., p. 5). The Defendants argued that the Government's conduct "created and encouraged the defendants' commission of the offense by luring the impoverished . . . defendants with the promise of a large payoff, making repeated requests for meetings over a short period of time, making repeated demands for their commitment to the conspiracy, suggesting and enabling their possession of firearms, by providing transportation via the confidential informant to a pre-robbery meeting, and by providing them with a car to use for purposes of the robbery."

The Defendants also filed a joint motion seeking to preclude the enhancement of their sentences based upon the fictional amount of cocaine involved, alleging that the amount was selected specifically by ATF to increase their

sentences and subject the Defendants to mandatory minimum sentences. (Pet. App., p. 18). The trial court deferred ruling on the motion, finding it more appropriate to address at sentencing. *Id.*

All five defendants went to trial, which concluded on May 29, 2015. On June 1, 2015, Chappell was convicted by a jury of Counts 2, 6, and 11, conspiracy to possess with intent to distribute and to distribute “eight to nine kilograms” of cocaine purportedly located in the stash house in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846; using or carrying a firearm during and in relation to that cocaine conspiracy in violation of 18 U.S.C. § 924(c)(1)(A); as well as a charge of being a felon in possession of a firearm in violation of 18 U.S. C. § 922(g).

At the sentencing hearing, the district court overruled the Defendant's objections to the mandatory minimum sentencing range, reasoning that the Sixth Circuit has not yet recognized sentencing entrapment or sentencing manipulation.

Terrance Chappell received a total sentence of 211 months imprisonment, 121 months as to Count 2, 120 months as to Count 11 to run concurrent, and 60 months as to Count 6 to run consecutive. Chappell timely filed a notice of appeal to the Sixth Circuit Court of Appeals on September 9, 2015.

The Sixth Circuit affirmed the decisions of the district court but declined to resolve Chappell's properly presented appellate issue(s) regarding sentencing manipulation and sentencing entrapment, and “[left] it for another day.” The Sixth Circuit also affirmed the district court's denial of the motion to dismiss the indictment relying on *United States v. Tucker*, 28 F.3d 1420, 1424 (6th

Cir. 1994) ("There is no authority in this circuit which *holds* that the government's conduct in inducing the commission of a crime, if 'outrageous' enough, can bar prosecution of an otherwise predisposed defendant under the Due Process Clause of the Fifth Amendment.")

After reviewing the totality of the arguments presented by all five Defendants on appeal, the Sixth Circuit affirmed the Defendants' convictions and sentences. (Pet. App., p. 26). The Honorable Circuit Judge Jane B. Stranch, wrote a concurring opinion expressing her significant "discomfort" with the "stash house sting" operation in this case. *Id.* at 27.

Further review by this Court is necessary to resolve the conflict between the circuits regarding the availability of an outrageous government conduct defense, sentencing manipulation, and sentencing entrapment. This Court could provide much-needed guidance on these very important issues, as well, as, stop this improper practice of "stash-house stings" by the government. Most importantly, the Sixth Circuit Court of Appeals should not be permitted to decline to resolve a properly presented issue. Terrance Chappell and his co-defendants are entitled to relief. Because these issues are of great practical importance, this Court should grant review.

B. FACTUAL BACKGROUND

In this case, Cleveland ATF initiated a reverse sting operation by creating a plan to rob a "stash house." In the summer of 2014, ATF Special Agents Richard Zayas and Russell Johnson ran a reverse sting operation, creating a fake conspiracy to commit a robbery of illegal drugs from a stash house and split the proceeds. (Pet. App., p. 2). Informant 2302 was imported to Cleveland by ATF but

Zayas had previously worked with him in Connecticut on a fictitious stash house operation. *Id.* Informant 2302 was working for money, approximately \$100 per day, and Informant 9097 was working to reduce the potential criminal sentence he was facing. *Id.* The informants were directed by ATF to go out to the community and return with information they obtained and report to the Agents what they had seen. *Id.*

Informant 2302, approached Chappell's co-defendant, Kali Alexander, and the men had a discussion concerning the possible transaction of firearms in late July or early August 2014. *Id.* Informant 2302 was unsuccessful in procuring weapons from Alexander so instead, he arranged for Alexander to sell the CI heroin. *Id.* At some point during informant's conversations with Alexander, the informant allegedly discussed the idea of a potential stash-house robbery with Alexander, although Agent Zayas was unaware of what the informant and Alexander discussed, as that conversation was not recorded. *Id.*

On Monday, August 25, 2014, Zayas, the two ATF CIs, and Defendant Alexander had a meeting to conduct the heroin purchase from Alexander, who sold them 6.5 grams of heroin for \$900 of ATF buy money. *Id.* Zayas had been in the presence of Defendant Alexander for approximately one minute during the drug transaction before he tried to entice Alexander with the potential "too good to be true" robbery of a stash house.

Zayas told Alexander that he picks up a kilogram of cocaine at a time from a stash house that treats him unfairly, so he proposed that together, they rob the stash house of its cocaine, approximately 8 to 9 kilograms of cocaine. Zayas proposed that the parties split the cocaine 50/50, and made a statement suggesting that Alexander

should bring accomplices. At one point during the conversation, Alexander expressed concerns that he doesn't do this type of thing.

Ultimately, there was no stash house, there was no cocaine, and the entire "too good to be true" story was fabricated by Zayas. On Wednesday, August 27, 2014 Zayas and his two CI's met with Alexander and Nichols to further discuss Zayas' concocted plan to rob a fake stash house. Zayas told Alexander and Nichols that the fake drugs they were allegedly going to steal, approximately 8 to 9 kilograms of cocaine, would be distributed half and half, half for his crew and half for Zayas people. Zayas made up extensive details regarding how easy this would be.

On Tuesday, September 2, 2014, Zayas and one of his two CI's met with Defendants Alexander and Justin Maxwell at Grandpa's Kitchen to further discuss Zayas' concocted plan to rob a stash house of 8 to 9 kilograms of cocaine. Zayas briefly goes over the parameters of the robbery and Zayas asks Alexander and Maxwell if they need a car. *Id.* at p. 3. They established that they will be provided with a car and that the CI will pick up Alexander and his crew to take them over to the robbery.

The fourth meeting occurred the next day, on Wednesday, September 3, 2014. ATF's plan was to have the CI drive a vehicle over to Grandpa's Kitchen and collect Alexander, Nichols and Maxwell. When the CI arrived, Alexander sat in the front passenger seat and Defendants Nichols, and Maxwell were behind him. Defendant Terrance Chappell and Kenneth Flowers also got in the CI's vehicle. The CI drove the vehicle to a CVS located at 10022 Madison Ave. to pick up Zayas. *Id.* During the drive from Grandpa's Kitchen to CVS, Nichols, Maxwell, and

Alexander were talking about the plan and asking the CI questions.

Terrance Chappell did not say anything during the twenty (20) minute ride with the CI from Grandpa's Kitchen to CVS. The video shows Chappell on his phone during the car ride. When the vehicle arrived at CVS, the CI blew the car's horn to let Zayas know he was there. Zayas got out of his vehicle and sat in the driver's seat of the vehicle with the Defendants. They proceed to have a less than four (4) minute discussion.

After the discussion with Zayas, the CI gets back in the vehicle, and they follow Zayas to 10302 Madison Avenue, which is approximately three blocks away. The men exit that vehicle and approach the new vehicle being provided by Zayas. All men approach the vehicle except Chappell who was walking away or "milling around." Zayas takes a phone call which is his way of alerting the tactical team that they are about to initiate the arrest by SWAT.

The Defendants were quickly arrested but since Chappell did not approach the vehicle, he ran and jumped over a fence. *Id.* Chappell did ultimately surrender to police. A Ruger Model P95 firearm was recovered from near Chappell's person at the time of his arrest. Zayas had never heard of Terrance Chappell before the arrest on September 3, 2014. Chappell was never mentioned on August 25, 2014, August 27, 2014, or September 2, 2014.

C. STASH-HOUSE STING OPERATIONS

The sting that targeted Terrance Chappell is one in a long list of nearly identical operations conducted by the ATF across the country. Brad Heath, *ATF Uses Fake*

Drugs, Big Bucks to Snare Suspects, USA Today (June 28, 2013, 11:26 AM), <https://www.usatoday.com/story/news/nation/2013/06/27/at-fstash-houses-sting-usa-today-investigation/2457109/> (noting that more than 600 individuals have been prosecuted following similar “stash house stings”).

Since 2006, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (the “ATF”) has engaged in sting operations wherein undercover agents present individuals in this District with an opportunity to rob a fictitious drug stash house. *See generally United States v. Mayfield*, 771 F.3d 417, 419-24 (7th Cir. 2014); *United States v. Lewis*, 641 F.3d 773, 777 (7th Cir. 2011). At the end, many of the stash-house sting defendants face sentencing guideline ranges that have been significantly inflated by the government’s false drug house scenarios. *United States v. Washington*, 869 F.3d 193, 222-23 (3rd Cir. 2017), cert denied, 2018 WL 311803 (Jan. 8, 2018).

These sting operations have used tremendous public resources to investigate and prosecute a large number of principally minority individuals for fictitious crimes. “In this era of mass incarceration, in which we already lock up more of our population than any other nation on Earth, it is especially curious that the government feels compelled to invent fake crimes and imprison people for long periods of time for agreeing to participate in them.” *United States v. Black*, 750 F.3d 1053, 1057 (9th Cir. 2014). Over and over again, these “tawdry” stings have been “directed at unsophisticated, and perhaps desperate defendants...who easily take the all-too-tempting bait put out for them by the government.” *United States v. Conley*, 875 F.3d 391, 402-3 (7th Cir. 2017)(citations and internal quotation marks omitted).

This ATF tactic has rightly drawn criticism in the news, scholarly writings, and from the judiciary. An investigative report from USA Today explored the risks and high costs associated with the stings, and the assurance that defendants involved would receive lengthy sentences. Heath, *supra* (“USA TODAY reviewed thousands of pages of court records and agency files, plus hours of undercover recordings. Those records—many of which had never been made public—tell the story of how an ATF strategy meant to target armed and violent criminals has regularly used risky and expensive undercover stings to ensnare low-level crooks who jump at the bait of a criminal windfall.”)

Scholarly writing has also criticized the stings, noting that the government does not have to “target existing criminal enterprises or have prior suspicion of potential targets,” that it has “full control over the amount of time its targets spend in prison because it can specify the amount of drugs involved in the fictional conspiracies,” and that the tactic has a disproportionate effect on poor minority defendants. See Marc D. Esterow, Note, *Lead Us Not into Temptation: Stash House Stings and the Outrageous Government Conduct Defense*, 8 Drexel L. Rev. 1, 28–31 (2016); *United States v. Kindle*, 698 F.3d 401, 414 (7th Cir. 2012) (Posner, J., concurring and dissenting) (citing Katherine Tinto, *Undercover Policing, Overstated Culpability*, 34 Cardozo L. Rev. 1401 (2013)) (referring to these stings as a “disreputable tactic” and noting that “[l]aw enforcement uses them to increase the amount of drugs that can be attributed to the persons stung, so as to jack up their sentences”).

The effect on poor minority communities is the subject of litigation in the United States District Court for the Northern District of Illinois, where a recently filed

expert report concludes that there was a clear pattern of racial disparities in Illinois sting cases, and found that the disparities are inexplicable on grounds other than race. Report of Jeffrey Fagan, Ph.D., NDIL 1:12-cr-00632, R. 510-2. “Our criminal justice system should not tolerate false stash house cases in 2018.” *Id.* at 2. In particular, he critiques the operation for primarily ensnaring people of color: “The inherent problems of this District’s false stash house cases must be seen through the lens of our country’s sad history of racism.” *Id.* at 4. Judge Castillo further notes that false stash house cases “generate great disrespect for law enforcement efforts,” *Id.* at 1, and implores the government to “relegat[e]” them to “the dark corridors of our past,” *Id.* at 1-2. He also says that the people who agree often have “minor criminal records” and “face sentencing guidelines ranges that have been significantly inflated by the government’s false drug house scenarios.” *Id.* at 3.

The concept of these “stash house sting” operations at odds with the American criminal justice system that treats defendants fairly and equally under the law. Judges increasingly are objecting to these sting operations and prosecutors are responding. *See, e.g. United States v. McLean*, 199 F.Supp.3d 926 (E.D. Penn. 2016); Michael Tarm, *Federal prosecutors drop dozens of stash house sting charges*, AP (Jan. 30, 2015), available at <http://www.msn.com/en-us/news/crime/federal-prosecutors-drop-dozens-of-stash-house-sting-charges/ar-AA8Lxuy>. Prosecutors are finally refusing to prosecute these cases.

It is time for these false stash-house cases to end. The government’s conduct violates fundamental fairness and shocks the universal sense of justice mandated by the Due Process Clause of the Fifth Amendment

REASONS FOR GRANTING THE PETITION

I. THE SIXTH CIRCUIT DECLINED TO RESOLVE THE QUESTION OF SENTENCING ENTRAPMENT AND MANIPULATION IN THIS CASE AND THERE IS A SPLIT IN THE CIRCUITS REGARDING THIS ISSUE.

Chappell properly presented appellate arguments regarding sentencing manipulation and sentencing entrapment, and the Sixth Circuit opined, “**We decline to resolve that question here and leave it for another day.**” (Pet. App., p. 18-19). The decision to “decline to resolve that question here and leave it for another day” means Mr. Chappell will serve over five thousand (5,000) days in prison waiting for another day. Courts have a “virtually unflagging” obligation to resolve cases or controversies within their jurisdiction. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 96 S.Ct. 1236 (1976). Issues that are properly raised, properly preserved, and properly argued should be resolved on the merits. See *Corcoran v. Levenhagen*, 58 U.S. 1, 2, 130 S.Ct. 8, 9 (2009) (it was error for court of appeals to dispose of habeas claims without explanation).

The Sixth Circuit erred as a matter of law in failing to address whether sentencing manipulation and entrapment is an available defense in the Sixth Circuit. The question was properly before the panel on direct appeal and argued by Mr. Chappell in his Appellant's brief and in oral argument. The Sixth Circuit was required to address the legal question properly raised by Mr. Chappell and his co-appellants, as it is a legal question that had been raised and decided on in other circuits.

Sentencing manipulation is an available defense in the majority of Circuits. The doctrine of sentencing manipulation provides that a defendant should not be sentenced as heavily as the sentencing guidelines recommend because the government acted outrageously or improperly for the sole purpose of increasing the defendant's sentence. *Joan Malmud, Defending a Sentence: The Judicial Establishment of Sentencing Entrapment and Sentencing Manipulation Defenses*, 145 U. Pa. L. Rev. 1359, 1373 (1997). Cases involving sentencing manipulation focus on the **government's actions and its motivation for those actions**. See, e.g., *United States v. Cannon*, 88 F.3d 1495, 1507 (8th Cir. 1996) (examining acts of government agents for outrageous conduct).

“Sentencing entrapment is similar to the subjective theory of entrapment and ‘focuses on the defendant’s lack of predisposition to commit the greater offense.’” *United States v. Hammadi*, 737 F.3d 1043, 1048 (6th Cir. 2013) (citing *United States v. Strickland*, 342 Fed. App’x 103, 107 (6th Cir. 2009)). On the other hand, sentencing manipulation “tracks the objective theory of entrapment, and ‘focuses on the [g]overnment’s conduct.’” *Id.* (citing *Strickland*, 342 Fed. App’x at 107). The Sixth Circuit has not yet recognized either sentence manipulation or sentence entrapment. *Hammadi*, 737 F.3d at 1048 (6th Cir. 2013) (noting that under the facts of the case, it “need not decide whether to adopt or reject these doctrines”).

In *Hammadi*, the Sixth Circuit chose not to decide whether to recognize the doctrines of sentencing manipulation or sentencing entrapment, however, the Court determined there were not facts sufficient to support the argument raised, “because Hammadi would not qualify for a departure under [either doctrine].” *Id.* Therefore, it made sense for the Sixth Circuit to decline to address the legal

question at issue when the facts would not support application of the legal doctrine in the case. This is contrary to the arguments presented by Chappell and his co-appellants.

There is a split among the circuits as to the availability of sentencing manipulation or entrapment with the majority of the circuits recognizing either or a combination of the doctrines. The Eighth, First, and D.C. Circuits expressly recognize sentence manipulation. *United States v. Torres*, 563 F.3d 781 (8th Cir. 2009); *West v. United States*, 631 F.3d 563 (1st Cir. 2011); *United States v. Bigley*, 786 F.3d 11 (D.C. Cir. 2015). The Seventh and Ninth Circuits have rejected sentence manipulation, but have expressly recognized sentencing entrapment. *United States v. Turner*, 569 F.3d 637 (7th Cir. 2009). The Second, Third, Fourth and Fifth Circuits have declined to decide the viability of sentencing manipulation due to the lack of factual basis to support the defense in the cases before them. *United States v. Floyd*, 375 Fed.Appx. 88, 89 (2nd Cir. 2010); *United States v. Sed*, 601 F.3d 224, 229 (3d Cir. 2010); *United States v. Jones*, 18 F.3d 1145, 1154 (4th Cir. Cir 1994); *United States v. Tremlling*, 43 F.3d 148, 151 (5th Cir. 1995).

Sentencing entrapment relates to an individual's predisposition and focuses on the propensity of the defendant to commit his actual crime as opposed to some lesser crime. *Malmud*, supra, at 1372. The Sixth Circuit has defined sentencing entrapment in the context of a drug offense as "outrageous official conduct which overcomes the will of an individual predisposed only to dealing in small quantities for the purpose of increasing the amount of drugs and the resulting sentence of the entrapped defendant." *Biggs v. United States*, 3 Fed. App'x 445, 448 (6th Cir. 2001).

As to the motivation aspect of sentencing manipulation, the relevant inquiry is into the government's motivation for taking certain actions. *United States v. Calva*, 979 F.2d 119, 122-23 (8th Cir. 1992). The doctrine of outrageous conduct, as applied to sentencing, is closely connected to the doctrines of both sentencing entrapment and sentencing manipulation. See *United States v. Eaton*, 260 F.3d 1232, 1239, n.4 (10th Cir. 2001) (“‘Outrageous governmental conduct’ is the same concept as ‘sentencing entrapment.’”); *United States v. Gagliardi*, 506 F.3d 140, 148 (2nd Cir. 2007) (noting that showing outrageous government conduct is an element of sentencing manipulation).

The ATF Agents, with their knowledge of federal law, knew that 5 kilograms or more of cocaine carries a higher penalty than a quantity of less than 5 kilograms. The Agents manipulated the fake offense they created in this case to ensure that a mandatory minimum sentence would apply.

Chappell was not predisposed to commit a drug trafficking offense, particularly one involving 8 to 9 kilograms of cocaine. Chappell's criminal history includes a juvenile conviction of misdemeanor menacing, a felony of the fourth degree burglary and a minor misdemeanor marijuana possession. He has no prior convictions for any drug trafficking offenses and he does not have any history of drug trafficking or cocaine use, nor does he have any history of robbery. According to the substance abuse section of his PSR, Chappell has never even used cocaine, which supports his lack of knowledge of the severity of 8 to 9 kilograms of cocaine, as compared to the wealth of knowledge the ATF Agents had regarding the harsh criminal penalties.

When considering the factors of 18 U.S.C. § 3553(a)(1) in fashioning an appropriate sentence, the District Court is supposed to take into account “the nature and circumstances of the offense, and the history and characteristics of the defendant.” Unfortunately, even when considering all of the § 3553 factors in this case in the light of the government's reverse-sting operation, the District Court had no choice but to impose the mandatory minimum term of imprisonment of ten (10) years as it relates to Count 2 of the Indictment against Chappell. The sentence Chappell received in this case violates fundamental fairness, overstates his criminal culpability and condones the outrageous conduct used by the government in this case designed to secure a longer mandatory prison term.

This Court should grant certiorari to remedy this error and resolve the ongoing circuit split regarding the availability of sentencing manipulation and sentencing entrapment in cases such as these. Further, the Sixth Circuit must resolve properly presented issues and should not be permitted to decline to resolve a properly presented legal issue presented for its review.

**II. A MAJORITY OF CIRCUITS HAVE
RECOGNIZED THE OUTRAGEOUS
GOVERNMENT DEFENSE BUT THE SIXTH
CIRCUIT HAS DECLINED TO
ACKNOWLEDGE IT.**

This case presents the due process defense of outrageous government conduct as a bar to prosecution, an issue of exceptional importance, which has not been foreclosed by the United States Supreme Court. This issue has been recognized by a majority of the circuits, but has not been adopted by this Court. The circuits that have

recognized the outrageous government defense imposes such a high burden on defendants that the defense rarely results in dismissal of charges. See *United States v. Guzman*, 282 F.3d 56, 59 (1st Cir. 2002); *United States v. Al Kassar*, 660 F.3d 108, 121 (2d Cir. 2011); *United States v. Twigg*, 588 F.2d 373, 377 (3d Cir. 1978); *United States v. Hasan*, 718 F.3d 338, 343 (4th Cir. 2013); *United States v. Gutierrez*, 343 F.3d 415, 421 (5th Cir. 2003); *United States v. Boone*, 437 F.3d 829, 841 (8th Cir. 2006); *United States v. Black*, 733 F.3d 294, 303-04 (9th Cir. 2013); *United States v. Dyke*, 718 F.3d 1282, 1287 (10th Cir. 2013); *United States v. Augustin*, 661 F.3d 1105, 1122-23 (11th Cir. 2011); *United States v. Hsia*, 81 F.Supp.2d 7, 19 (D.D.C. 2000). This high burden is not just in cases such as this one.

In *United States v. Black*, the Ninth Circuit examined a stash house sting and, despite reservations, affirmed the district court's determination that the operation did not constitute outrageous government conduct because the defense is "limited to extreme cases" where the government's conduct is "so grossly shocking and so outrageous as to violate the universal sense of justice." 733 F.3d at 298, 302. There, the same ATF agent, Richard Zayas, orchestrated a sting, telling a familiar story: he was a disgruntled drug courier who suggested robbing a cocaine stash house guarded by two men, at least one of whom would be armed. *Id.* at 298-301. The day of the proposed robbery, the defendants arrived at the agreed upon location and were arrested, then convicted of conspiracy to possess cocaine with intent to distribute and use of a firearm in furtherance of a drug trafficking offense. *Id.* at 297-98.

Despite affirming, the court was troubled:

"The crimes of conviction . . . resulted from an operation created and staged by ATF. Most of the hard evidence against the defendants consisted of words used at meetings Zayas set up Zayas invented the scenario, including the need for weapons and for a crew, and the amount of cocaine involved. The only overt actions by the defendants involved showing up at meetings, including arriving at the parking lot with four hidden, loaded weapons and then driving to the storage warehouse where they were arrested. Although those actions clearly corroborate the defendants' intent to carry out an armed robbery, defendants were responding to the government's script."

Id. at 302-03. The court was also concerned with how the government recruited the defendants. The ATF was not "infiltrating a suspected crew of home invasion robbers, or seducing persons known to have actually engaged in such criminal behavior." *Id.* at 303. Rather, the ATF found the defendant by "trolling for targets, " sending the informant to "cast his bait in places defined only by economic and social conditions." *Id.* Also as here, the court recognized that agents can guarantee long sentences for defendants:

"In fictional stash house operations like the one at issue here, the government has virtually unfettered ability to inflate the amount of drugs supposedly in the house and thereby obtain a greater sentence for the defendant The ease with which the government can manipulate these factors

makes us wary of such operations in general
...."

Id. at 303 (citing *United States v. Briggs*, 623 F.3d 724, 729-30 (9th Cir. 2010)).

Terrance Chappell and his co-defendants filed a joint Motion to Dismiss the Indictment based upon the outrageous government conduct by the ATF agents in this case. This investigation only began after a CI was unable to complete an illegal firearm transaction with Alexander. As a result, the ATF agents manipulated the impoverished Defendants to potentially join in a robbery conspiracy even though they showed no propensity to commit such a crime. The ATF agents here crossed a line. But for the extreme inducement of the Agents, including the "too good to be true" deal, none of the Defendants would ever commit such a crime as charged in this Indictment.

Unfortunately, the Courts remain without an established vehicle in the law to define a dividing line between law enforcement practices that are honorable and those that are not. In the interim, these questionable schemes continue to use significant government resources and to adversely impact the poor, minorities, and those attempting to re-integrate into society. And they apparently do so with no increase in public safety and no deterrence of or adverse effect on real stash houses. These costly and concerning sting operations do not accord with the principles of our criminal justice system.

These stash-house sting operations must be discontinued. The question presented herein stands to make a real difference in not only the lives of Mr. Chappell, but also can put a stop this horrible practice. This Court should grant certiorari to remedy this error and resolve the ongoing

circuit split regarding the outrageous government conduct defense, sentencing entrapment and sentencing manipulation. The Courts should have a proper vehicle to dismiss cases such as these.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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