

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES.

ADOLPH SPEARS, SR. — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ADOLPH SPEARS, SR.
(Your Name)

P.O. BOX 5000
(Address)

SHERIDAN, OREGON 97378
(City, State, Zip Code)

(Phone Number)

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 _____ 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☐ is unpublished.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 _____ 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 December 19, 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

UNITED STATES CONSTITUTION

14TH AMENDMENT-EQUAL PROTECTION

1 U.S.C. § 109

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Montgomery v. Louisiana, 136 S.Ct 718 (2015)	7, 8
Teague v. Lane, 489 U.S. 288, 109 S.Ct 1060	7
Davis v. United States, 41 Fed 2d 109, 417 US333 (1974)	7

STATUTES AND RULES

1 U.S.C. §109	7
18 U.S.C. § 3582(c)(2)	8

OTHER

QUESTION(S) PRESENTED

1. When there is a substantive change in law reviewable by the Supreme Court, should the change be attended by a procedure that enables a prisoner to show that he falls within the category of persons whom the law may no longer punish?

2. When an element of a criminal offense is deemed unconstitutional, should a prisoner convicted under that offense receive a new trial where the government must prove the prisoner's conduct still fits within the modified definition of the crime.

3. Does the General Savings Statute, 1 U.S.C. § 109, prevent petitioner from realizing his U.S. Constitutional 14th Amend. right to equal protection by denying the opportunity to seek a reduction in the term of sentence from a substantive rule change, particularly the Fair Sentencing Act of 2010, which reduced the 100-to-1 crack cocaine ratio?

STATEMENT OF THE CASE

On December 7, 2000, a jury found defendant guilty of conspiracy to possess with intent to distribute cocaine, conspiracy to launder monetary instruments, possession with intent to distribute cocaine, and money laundering. On May 7, 2001, the Court sentenced defendant to life imprisonment on Count 1 and 240 months imprisonment on Counts 2, 8, 9, 45, and 47, to be served concurrently, followed by a ten-year term of supervised release. In doing so, the Court adopted most of the findings of the presentence report, including over defendant's objection findings regarding the quantity of drugs involved. Defendant filed a direct appeal of his convictions and sentence and filed two motions under 28 U.S.C. § 2255, all of which were unsuccessful. In addition, defendant filed Fed.R.Crim P. 33 and the court liberally construed his filing to consider whether there may be some other legal basis on which defendant can bring the motion. Defendant continues to request the court liberally construe his filing and grant relief where necessary.

REASONS FOR GRANTING THE WRIT

Petitioner contends the United States Supreme Court held in *Montgomery v. Louisiana* that a person has a right to a new trial based on a substantive rule or a new rule of constitutional law. "an intervening change in law is a factor to be weighed, along with other aspects of the particular case, against the public and private interest in finality of judgment." *Davis v. United States*, 41 Fed 2d 109, 417 US 333 (1974). Even if the district was correct in noting that defendant's motion is time barred, there must be some way to bring petitioner back because any time Congress repeals a law, it is as if it had never been. If it is as if it had never been, then petitioner should not still be held accountable for a crime that is no longer a crime or the same type of crime.

Petitioner clearly fits within the category of persons whom the law may no longer punish. Substantive constitutional rules have been defined as those that place, as a matter of constitutional interpretation, certain kinds of primary, private conduct beyond the power of the criminal law-making authority to proscribe. The first exception set forth in *Teague* should be understood to cover not only rules forbidding a criminal punishment of a certain primary conduct but also rules prohibiting a certain category of punishment for a class of defendants because of their status or offense. The first exception speaks in terms of substantive categorical guarantees accorded by the constitution, regardless

of the procedures followed. The 100-to-1 crack laws that were changed in the 2010 Fair Sentencing Act are that set of laws that punished a class of defendants because of their status and offense. Petitioner is an African American man who is part of the disproportionate sentencing when it comes to the 100-to-1 crack laws.

The district court in its order stated that the FSA does not apply to defendants who were both convicted and sentenced before the FSA went into effect. And went on to state that in such cases The General Savings Statute applies. (1 U.S.C. § 109). If § 109 is the sole reason for stopping petitioner from receiving the benefit of retroactive relief of the FSA and receiving the benefit of the substantive categorical guarantees accorded by the U.S. Constitution, that statute must be deemed unconstitutional, or invalid in part, regarding this issue, as the court may deem necessary.

The U.S. Constitution requires substantive rules to have retroactive effect regardless of when a conviction became final. *Montgomery v. Louisiana*, 136 S.Ct 718 (2015). If this is true, the General Savings Statute is what prevents petitioner from receiving the effect of this retroactive application. If § 3582 (c)(2) is the correct vehicle to achieve petitioner's redress, then the court should recognize that as the primary part of petitioner's motion under a liberal construing of petitioner's motion.

Because so many prisoners have been sentenced under the old 100-to-1 crack laws, this is an event that is important to the public at large and should be brought before the court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Adolph Spear

Date: March 12th, 2018