

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ANDREW HOWARD — 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 SEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANDREW HOWARD
(Your Name)

FCI TERRE HAUTE
(Address)

TERRE HAUTE, IN 47808
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

1. DID THE LOWER COURTS ERR WHEN THEY DETERMINED THEY LACKED JURISDICTION AND AUTHORITY TO GRANT PETITIONER A SENTENCE REDCUTION?

2. DID THE LOWER COURTS ERR WHEN THEY FOUND THEY HAD NO AUTHORITY TO REDUCE PETITIONER'S CONVICTION FOR CCE, 21 U.S.C. § 848, WHERE A MANDATORY TERM OF LIFE IMPRISONMENT, UNDER SECTION § (B) THEREOF WAS APPLIED, DESPITE THE FACT THAT PETITIONER WAS INDICTED OR, HELD TO, AND CONVICTED BY A JURY OF VIOLATING 21 U.S.C. § 848 (A), WHICH WOULD HAVE ALLOWED A MAXIMUM TERM OF 240 MONTHS IMPRISONMENT?

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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 28, 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

FIFTH AMENDMENT

UNITED STATES CODE, SECTION 3582

STATEMENT OF THE CASE

Petitioner, ANDREW HOWARD, filed a motion for reduction of sentence, pursuant to 18 U.S.C. § 3582(c), based on an amendment to the Sentencing Guidelines which lowered the base offense levels applicable to narcotics offenses.

Petitioner was a member of the Gangster Disciples, a Chicago street gang that operated a massive drug distribution business in Chicago and surrounding areas. **United States v. Jackson**, 207 F.3d 910 (7th Cir. 2000), **United States v. Hoover**, 246 F.3d 1054 (7th Cir. 2001). The gang had an elaborate hierarchy with a "chairman of the board" (Larry Hoover) at the top and "board members" who were below Hoover and exercised control over the entire gang. **Hoover**, 246 F.3d at 1057. Petitioner was a "board member" who "reported directly to Larry Hoover" and who "served the Gangster Disciple both on the street and in the Illinois Department of Corrections." Board members were "responsible for the operations of the Gangster Disciples in large geographic areas, where the administrators of the gang immediately below Larry Hoover, and were the persons to whom the governors reported." Each governor had more than 1,000 gang members under his leadership and maintained smaller geographic areas than the board members.

ON or about August 30, 1995, an indictment was returned charging Petitioner with participation in a drug conspiracy.

On or about December 5, 1996, a superseding indictment was returned charging Petitioner with conspiracy, in violation of 21 U.S.C. § 846 (Count 1), engaging in a continuing criminal enterprise, in violation of 21 U.S.C. § 846(a)(Count 2), using minors in violation of 21 U.S.C. § 846 and 18 U.S.C. § 2 (Counts 3 and 4), distribution of cocaine or cocaine base in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (Counts 5 through 9, 11 through 18, 38 and 39), using a communications facility in violation of 21 U.S.C. : 843(b) and 18 U.S.C. § 2 (Counts 10, 19 through 37), and using a firearm in relation to the commission of a drug trafficking crime in violation of 18 U.S.C. §§ 924(c) and 2 (Count 40).

On May 9, 1997, Petitioner was found guilty of Counts 1 through 40.

On May 9, 1997, the United States Probation Office prepared a Pre-Sentence Investigation Report ("PSR") in the case. Using the Guidelines Manual in effect at the time of sentencing (the November 1, 1998 edition), Probation determined that the base offense level for Count 1 under U.S.S.G. § 2D1.1 was 38, because "the narcotics conspiracy involved in excess of 150 kilograms of cocaine or 1.5 kilograms of crack cocaine." In addition, Probation found that, "[d]ue to the gang's structure and rules, it appears that each of the defendants was aware of the scope of the drug conspiracy," and was "accountable for the distribution of at least 150 kilograms of cocaine and 1.5 kilograms of crack cocaine."

Probation based its drug quantity calculations on recorded conversations involving the Petitioner and Larry

Hoover¹ in which Hoover estimated that the Gangster Disciples' profits from narcotics sales "easily totaled \$300,000 per day" (\$109,5000,000 annually), a figure that translated to approximately 4.5 kilograms of crack cocaine, or 15 kilograms of powder cocaine, being sold on a daily basis.

Probation also noted that the government's evidence had shown that Petitioner "was a Board of Director of the Gangster Disciples, who was at the highest level of management in the gang with the exception of Larry Hoover; that the narcotics conspiracy involved well in excess of 300 times the 5 grams of crack cocaine (1.5 kilograms of crack cocaine) required for the mandatory minimum sentence; and that the conspiracy grossed \$109,500,000 annually." Accordingly, Probation found that Petitioner was subject to mandatory life imprisonment on Count two.

Probation concluded that Petitioner's total combined offense level was 43, which, with a criminal history category of IV, produced a Sentencing Guideline range of life imprisonment.

On April 23, 1999, this Court held a sentencing hearing and adopted the factual findings and Guidelines application in the PSR. Based on these findings, this Court found that the Guidelines range applicable to Petitioner was life imprisonment and that Petitioner was subject to mandatory life imprisonment on Count two. The district court thus imposed

¹ Petitioner vigorously challenged this allegation as untrue. In the event, both Petitioner and Hoover were in two (2) different prisons, and as such no phone call or conversation was possible. This statement in the PSR is demonstrably false.

mandatory life imprisonment on Count two, 10 years for each of Counts 12, 17, and 39, 20 years on Counts 3 and 4, 20 years on Counts 5 through 9, 11, 14 through 16, 18, and 38, four years on Counts 10, 19 through 37, and five years on Counts 13 and 40.

Petitioner appealed, challenging his conviction and sentence. In **United States v. Hoover**, 246 F.3d 1054 (7th Cir. 2001), this Court affirmed Petitioner's conviction and sentence.

Plainly stated, Petitioner argued before the district court that Amendment 782 to the United States Sentencing Guidelines served to lower-- and thereby remove, Petitioner's life term.

Further, Petitioner argued that his CCE conviction should be reduced concomittant with the §§ 841 et seg sentence, based upon the fact that the life term for the § 848 conviction was imposed mandatorily under section (b) thereof, this, despite the fact that Petitioner was indicted for, held to, and convicted by jury verdict for violating § 848(a), which allowed a 240 month term. Life was not corrigible.

The district court, by final order entered on April 21, 2017, denied Petitioner's motion, finding that at the time of Petitioner's sentencing in 1999, an offense level of 38 required a defendant to have distributed 1.5 kg of crack cocaine or 150 kg of powder cocaine. 18 U.S.C. app. § 2D1.1 Drug Quantity Table (1999). Now, the same offense level calls

for 25.2 kg of crack cocaine or 450 kg of powder cocaine. 18 U.S.C. app. § 2D1.1, Drug Quantity Table (2017).

Accordingly, even with the new threshold quantities, Petitioner's base offense level would remain unchanged at 38 unless the Court finds that he was accountable for something less than 25.2 kg of crack cocaine and 450 kg of powder cocaine. Crucially, any finding the Court now makes must be supported by the record and cannot be inconsistent with what it previously found at Petitioner's sentencing. See, **United States v. Davis**, 682 F.3d 596, 615 (7th Cir. 2012), overruled on other grounds by **United States v. Taylor**, 778 F.3d 667, 671 (7th Cir. 2015)("A new factual finding on a § 3582(c)(2) motion is appropriate so long as it is not inconsistent with the district court's findings at the original sentencing hearing."); **United States v. Hall**, 600 F.3d 872, 876 (7th Cir. 2010)("[I]n ruling on a § 3582(c)(2) motion, the district court may consider the record as a whole....")."

The record shows that at Petitioner's sentencing, the Court found that he was responsible for "approximately 4.5 kilograms of crack cocaine, or 15 kilograms of powder cocaine, being sold on a daily basis." This means that Petitioner had to be part of the drug conspiracy for only a month to meet the threshold weight in powder cocaine, and less than a week to do the same in terms of crack cocaine. There is absolutely nothing in the record to support a finding that Petitioner

was involved with the Gangster Disciples for such a short time. In fact, it seems highly improbably that he could have risen to the second highest position in the gang by being associated with it for less than a week."

"Petitioner presses that he was in prison from 1973 to 1992 and so "had no rold or participation" during this time. But this is insufficient to support a finding that the drug quantities that should be attributed to him are less than the threshold quantities for a level 38 offense. Hoover - the leader of the gang - was likewise behind bars during the time that he ran the Gangster Disciples. See, **United States v. Jackson**, 207 F.3d 910, 913 (7th Cir. 2000)(describing the Gangster Disciples as "a gang some 6,000 strong engaged mainly in the sale of crack and powder cocaine, led by and Illinois state prison inmate named Larry Hoover"). Being in prison thus was no barrier to participation in the criminal enterprise. In fact, so many Gangster Disciples' board members were prison inmates that the gang had "two boards, one for Disciples in prison and the other for those at large." *Id.* at 919."

"Moreover, even if Petitioner had no involvement with the Gangster Disciples before 1992 (an implausible hypothetical as one did not become a director upon joining the gang), he was still a director "at large" during the years from his release to 1995, when the gang's leadership was indicted. See, EFC No. 860. A conservative two years' participation in the

criminal enterprise as its director means that Petitioner was responsible for more than ten times the quantity of powder sentenced as a level 38 offender. Other courts have held accountable for the full weight of the drugs distributed by the Gangster Disciples' low-ranking member than a director like Petitioner, as well as a director who had the post for six months. See, **Hoover**, 246 F.3d at 1058 (finding that members of the gang lower in the hierarchy than board members were nonetheless responsible for the size of the Gangster Disciples' operation); **United States v. Gholson**, Nos. 96 CR 553, 02 C 6988, 2003 U.S. Dist. LEXIS 10914, at 6 (N.D. Ill. June 25, 2003)(holding accountable as a principal of the CCE an individual who was a board member for six months); see also, **United States v. Knight**, 342 F.3d 697, 712 (7th Cir. 2003)("[T]he evidence establishes that these defendants were the core members of this conspiracy and not fringe members; the full weight of drugs involved were thus foreseeable and attributable to each."). The Court has no reason to treat Petitioner differently."

"Petitioner also attacks the accuracy of the PSR. The information supporting the drug quantities reported by the PSR came from a recorded jailhouse conversation between Petitioner and Hoover, during which Hoover discussed the size of the Gangster Disciples' operation. Petitioner claims that he never had this conversation with Hoover. But the Court is

not at liberty to revisit the PSR's findings; it adopted them in sentencing Petitioner, and it cannot disregard them now, See, **White v. United States**, 745 F.3d 834, 836 (7th Cir. 2014)(stating that in ruling on a § 3582(c)(2) motion "the judge takes as established the findings and calculations that led to the sentence and changes only the revised Guideline, leaving everything else the same")' **United States v. Woods**, 581 F.3d 531, 538-39 (7th Cir. 2009), overruled on other grounds by **Taylor**, 778 F.3d at 671 ("[D]istrict courts in §3582(c)(2) proceedings cannot make findings inconsistent with that of the original sentencing court."); **United States v. Edwards**, 370 F. App'x 738, 739 (7th Cir. 2010)("To the extent that Edwards is contesting the calculation of his relevant conduct at his original sentencing, that subject is outside the scope of § 3582(c)(2).")."

"Petitioner argues that the mandatory lifetime sentence he received for violating 21 U.S.C. § 848(b) cannot stand in light of **Alleyne v. United States**, 133 S. Ct. 2151 (2013). While Petitioner is right that **Alleyne** is relevant for sentencing under § 848(b), he is wrong where it counts. **Alleyne** was an extension of **Apprendi v. New Jersey**, 530 U.S. 466 (2000) and its line of cases. **Apprendi** has held that "[a]ny fact that, by law, increases the penalty for a crime is an 'element' that must be submitted to the jury and found beyond a reasonable doubt." **Alleyne**, 133 S. Ct. at 2155. To

this, **Alleyne** added that "[m]andatory minimum sentences increase the penalty for a crime." *Id.* As such, "any fact that increases the mandatory minimum is an 'element' that must be submitted to the jury." *Id.*

At first blush, **Alleyne** appears pertinent for Petitioner because his mandatory life sentence for the CCE violation rests on not just findings made by a jury, but also those made by this Court. A jury found Petitioner guilty of violation 21 U.S.C. 848(a); the Court made additional findings as to Petitioner's role and the size of the enterprise to sentence him under 21 U.S.C. § 848(b). Moreover, these additional facts increased his punishment. The sentencing range under § 848(a) is 20 years to life; the sentence under § 848(b) is mandatory life. Section 848(b) thus alters § 848(a)'s range by increasing the statutory minimum (20 years) and making it coincide with the statutory maximum (life). Yet despite the additional findings having the effect of increasing the penalty for Petitioner's crime, they were not submitted to a jury. The situation thus seems to contravene **Alleyne**."

"In sum, the Court cannot find that Petitioner's base level decreased as a result of Amendment 782. As such, it is not authorized to reduce his sentence regardless of how deserving he may be because of his post-sentence behavior or current ill health. See, **Dillon**, 560 U.S. at 826 ("A court must first determine that a reduction is consistent with : 1Bl.10

[the policy statements] before it may consider whether the authorized reduction is warranted, either in whole or in part, according to the factors set forth in § 3553(a)."); **United States v. Koglin**, 822 F.3d 984, 986-87 (7th Cir. 2016)("If the [guideline] range would not have been lower, then the defendant is ineligible for a sentence reduction and the inquiry ends.").

On Appeal, Petitioner presented the following questions:

1. Did the District Court err when it determined it lacked jurisdiction and authority to grant Petitioner a sentence reduction?
2. Did the District Court err when it found it had no authority to reduce Petitioner's conviction for CCE, 21 U.S.C. § 848, where a mandatory term of life imprisonment, under section § (B) thereof was applied, despite the fact that Petitioner was indicted for, held to, and convicted by a jury of violating 21 U.S.C. § 848 (a), which would have allowed a maximum term of 240 months imprisonment?

There after, on September 28, 2017 United States Court of Appeals Affirmed the District Court.

REASONS FOR GRANTING THE PETITION

It is respectfully submitted that this Court should Grant Certiorari on two important questions"

1. The Court's below decision that it lacked jurisdiction to reduce Petitioner's sentence based upon Amendment 782 to the Sentencing Guidelines, claiming that the Amendment had no effect in reducing the unadjusted guideline range determined at sentencing, and that the Court lacked authority to correct an obvious and apparent mistake in the PSR was Error.

2. The Doctrine of Res Judicata was not applied to Petitioner's case. Despite the Stare Decisis Issue being Precedential when it found that it could not reduce Petitioner's sentence for his 21 U.S.C. § 848 conviction from a Mandatory Life Term, to a 240 month term based upon the actual jury verdict at trial.

A term of imprisonment constitutes a final judgment that may not be modified except in limited circumstances. *Dillon v. United States*, 560 U.S. 817, 130 S. Ct. 2683, 2690 (2010). Section 3582(c)(2) creates "an exception to the general rule of finality in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered" and made retroactive by the Sentencing Commission. *Id.* (quoting 18 U.S.C. § 3582(c)(2)).

Section 3582(c)(2) allows a district court to reduce a sentence if two conditions are met: (1) the original sentence was "based on a sentencing range that has subsequently been lowered by the Sentencing Commission," and (2) "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission[,]" Namely § 1B1.10(a). 18 U.S.C. § 3582(c)(2); **United States v. Guyton**, 636 F.3d 316, 318 (7th Cir. 2011); U.S.S.G. § 1B1.10(a)(2), p.s. (Nov. 2011). If the "first condition is not met, a district court lacks subject-matter jurisdiction to consider the movant's request for a sentence reduction under § 3582(c)(2)." **United States v. Forman**, 553 F.3d 585, 588 (7th Cir. 2009); **Lawrence**, 535 F.3d at 637. As to the second condition, a sentence reduction pursuant to Amendment 782 is not consistent with the Sentencing Commission's applicable policy statements if Amendment 782 "does not have the effect of lowering the defendant's applicable guideline range." U.S.S.G. § 1B1.10(a)(2)(B), p.s. (Nov. 2011)(emphasis added). After determining that a sentence reduction is consistent with applicable policy statements, § 3582(c)(2) instructs a district court to consider the § 3553(a) factors and determine whether, in its discretion, the reduction authorized by reference to the Sentencing Commission's policies is warranted in whole or in part under the particular circumstances of the case. **Dillon**, 130 S. Ct. at 2692. Further, the Supreme Court

had clarified that § 3582(c)(2) "does not authorize a sentencing or resentencing proceeding. Instead, it provides for the 'modification of a term of imprisonment' by giving courts the power to 'reduce' and otherwise final sentence in circumstances specified by the [Sentencing] Commission." Id at 2690.

Herein, the District Court found that Petitioner's length of time as a member of the Gangster Disciples made clear that the drug weight findings which were relied on at sentencing woefully understated Petitioner's total drug weight.²

While it is inarguable that Petitioner was a member of the gang for 20 plus years at the time of conviction, the Court was required to take notice of the fact that for 20 plus of those years, he was in Illinois State Prison. Despite efforts by the United States, no proof that Petitioner had benefited from the drug actions taking place while he was imprisoned ever surfaced. Indeed, the United States relied on Petitioner's financial worth and trust fund statements, all of which showed that over 20 years in State Prison, Petitioner's sole source of income was a prison stipend. There

2. It is anserous that the Court can, on the one-hand, determine a new and much higher drug weight than that determined by the PSR, while concomittantly finding that the PSR allegation that the Petitioner and Hoover had been recoreded on phone conversations, while both were in separate prisons, and in the total absence of proof as such conversation was a physical impossibility, is unchallangible.

were no riches or proceeds which Petitioner received or benefited from.

Likewise, the District Court found no reason to reduce Petitioner's sentence, based upon a finding that no other gang member had received any sentence reduction under 18 U.S.C. § 3582. This finding is belied by the Record below, where no-less-than three other members, one of whom was sentenced to death, all received sentence reductions from Death/Life to a period of months.³

In all events, the District Court should have determined the total drug weight which Petitioner was to be sentenced under, or adhered to the PSR finding of 1.5 kilograms of crack cocaine. It is clear that had the Court done so, Petitioner's Life Term would no longer obtain.

Federal Courts are forbidden, as a general matter, to modify a term of imprisonment once it has been imposed, but the rule of finality is subject to a few narrow exceptions. **Freeman v. United States**, 564 U.S. 522 (2011).

One such exception is identified in 18 U.S.C. § 3582(c)(2).

In determining whether a defendant has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission, the

3. In fact, not-less-than three of Petitioner's co-defendants received relief from their sentences. See: **United States v. Eric Wilson**, 03C1434(NDIL); **United States v. Darryl Johnson**, ND IL, and **United States v. Clarence Haywood**, ND IL.

court must first identify "the amended guideline range that would have been applicable to the defendant had the relevant amendment been in effect at the time of sentencing. **Dillon v. United States**, 560 U.S. 817 (2010). See, also: U.S.S.G. § 1B1.10(b)(1)[2015].

It is inarguable that at the time of Petitioner's sentencing below, the applicable drug weight for which Petitioner was accountable, was set at **1.5 kilograms of crack cocaine**.

Parenthetically, the United States asserts that a different drug weight should now obtain, based on **recorded conversations between [Petitioner] and Larry Hoover**. And see: Page 3 of Government's response. Such claim is inaccurate, as there were no, and are no recorded conversations between Petitioner and Hoover. Indeed, during the period from **March 17, 1973** and **December 18, 1992**, Petitioner was incarcerated in the Illinois Department of Corrections (IDOC), as was Hoover, albeit in a different facility. Plainly stated, no such conversations took place. The United States urges the Court to recalculate the drug weight for which Petitioner should therefore be held, and as such, determine that no reduction is warranted. **United States v. Forman**, 553 F.3d 383 (7th Cir. 2009). Yet, this urging is further misplaced, as again, for more than 20 years of the time the Conspiracy was found to be in operation, Petitioner was imprisoned, had no role or

participation in any drug trafficking during his imprisonment, and received no proceeds, profits, or income from the other members of the Gangster Disciples. (GD).

More plainly stated, Petitioner is not similarly situated as the other codefendants who have sought a reduction under § 3582. Petitioner's situation is factually distinguishable from those other cases, and such should inure to Petitioner's benefit.⁴ Petitioner does not argue that this Court is prevented from making a new drug weight determination. Cf.: **United States v. Hall**, 582 F.3d 816 (7th Cir. 2009). Instead, Petitioner submits that the Court should conduct any review it deems necessary, and applying the known and distinguishable facts to the paradigm, adhere to the finding of 1.5 kilograms of crack as the amount for which Petitioner is accountable.

Should the Court do so, it is beyond cavil that Petitioner's base offense level would not be **Level 36**. The Court would be required to "leave all other guideline application decisions unaffected." U.S.S.G. § 1B1.10(b)(2)(A). Doing so would provide for a Guideline range of **324-405** months, not Life.

As well, the Court may consider post-sentencing conduct. *Id.*, 18 U.S.C. § 3661; 18 U.S.C. § 3353 cmt. n.1(B).

Petitioner's Base Offense Level has been reduced, with a

4. Taking notice of Petitioner's 20 plus years in IDOC, juxtaposed with his exemplary post-sentence rehabilitation--as noted by the District Court, requires an individualized decision, not one based upon Petitioner's gang membership or described role.

corollary reduction in the applicable guideline range. And, as the previous Guideline Range of Life was mandatorily imposed, this Court may also exercise discretion which was not previously allowed. See: **United States v. Booker**, 543 U.S. 220 (2005).

2. The Doctrine of Horizontal Stare Decisis was ignored by the District Court in denying Petitioner relief from the § 848 Life term.

"[S]tare decisis reflects a policy judgment that in most matters it is more important that the applicable rule of law be settled than that it be settled right." And concerns about maintaining settled law are strong when the question is one of statutory interpretation. See, e.g., **Hohn v. United States**, 524 U.S. 236, 251 (1998).

In a case exactly on point with Petitioner's, this district denied multiple motions under § 3582, based upon retroactive amendments to the U.S.S.G. because of an § 848 (b) sentence, See: § 505; § 706; and § 750. See: **United States v. Wesson**, 33 F.3d 788 (7th Cir. 2016).

In the event, **Wesson** applied for a reduction of sentence, after Amendment 782 was given retroactive application, the Court granted the § 3582. After apparently finding that **Wesson** was convicted under § 848(a), but sentenced under § 848(b), based upon facts which increased the minimum mandatory sentence, not charged, admitted, or found by a jury. The Court thusly reduced **Wesson's** term to 360 months. The sentence was reduced, and the same Prosecutor's office as herein neither

opposed nor appealed the Court's decision. See: **United States v. Wesson**, 92 CR 118 (N.D. IL 2016).

As such, and as a matter of equal protection and due process clauses of the United States Constitution, Petitioner requests that this Court rule consistent with the **Wesson** Court, and in light of the United States Attorney's implicit consent.

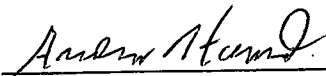
Here, a Court of Competent Jurisdiction granted **Wesson's** Motion. In the same District Court, indeed in the same Federal Courthouse. The mere fact that the Judge in Petitioner's case did not understand the decision is of no importance. **Stare decisis** as abovesaid, compels adherence to a prior decision, on a horizontal plain, irrespective of an individual Judge's opinion.

Accordingly, Petitioner's sentence of **Life** under § 848(b) should be reduced concomittantly with the sentence for 21 U.S.C. § 846 et seq.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



ANDREW HOWARD

Date: December 8, 2017

Pro Se