

No. 17-9333

IN THE
SUPREME COURT OF THE UNITED STATES

MATTHEW F. THYBERG,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari To the
United States Court of Appeals for the Tenth Circuit

PETITION FOR REHEARING FROM THE DENIAL OF CERTIORARI

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PETITION FOR REHEARING

The petitioner herein, Matthew F. Thyberg, respectfully moves this Court for an order 1) vacating its denial of the petition for writ of certiorari, entered on October 1, 2018, and 2) granting the petition, if this Court grants a writ of certiorari in *Sandoval v. United States*, No. 17-9171.

JURISDICTION

This Court denied Mr. Thyberg's petition for a writ of certiorari on October 1, 2018. Supreme Court Rule 44 permits a petition for the rehearing of an order denying a petition for a writ of certiorari to be filed within 25 days after the date of the order of denial. Mr. Thyberg's petition for rehearing is therefore timely and this Court has jurisdiction.

STATEMENT OF THE CASE

Mr. Thyberg's petition for a writ of certiorari presented the question of whether New Mexico's residential burglary offense extends more broadly than generic "burglary" under the Armed Career Criminal Act. The same question is posed and pending before this Court in the petition for writ of certiorari in *Sandoval v. United States*, No. 17-9171.

This Court denied Mr. Thyberg's petition on October 1, 2018, but has yet to issue a decision in *Sandoval*. Mr. Sandoval's petition is to be considered at this Court's conference on October 26, 2018. Should this Court grant Mr. Sandoval's petition for a writ of certiorari, Mr. Thyberg's petition should be granted as well because the cases

present identical issues. The close identity of issues in this case and in the *Sandoval* case justifies a reconsideration of the denial of certiorari here. In fact, it would be appropriate for this Court to hear and consider the instant case at the time it hears and considers the *Sandoval* case.

Under Rule 44.2, rehearing may be granted based on “intervening circumstances of a substantial or controlling effect.” This Court has repeatedly held that the fact that the same or a related issue has come before the Court in other cases still pending is an intervening circumstance that warrants rehearing of the denial of a writ of certiorari. *See* Gressman et al., *Supreme Court Practice*, §15.6(b) at 819 (citing *Pickett v. Union Terminal Co.*, 313 U.S. 591, 314 U.S. 704 (1941), 315 U.S. 386, 394 (1942); *Forgett v. United States*, 383 U.S. 926 (1966), 390 U.S. 203 (1968); *Simmons v. Sea-Land Servs., Inc.*, 459 U.S. 931 (1982), 462 U.S. 1114 (1983)) (9th ed. 2007).

Granting Mr. Sandoval’s petition would be an intervening circumstance that warrants rehearing of the denial of Mr. Thyberg’s petition for a writ of certiorari.

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for a writ of certiorari, petitioner respectfully requests this Court grant rehearing of the order of denial, vacate that order, grant the petition and remand for further proceedings if this Court grants the petition for a writ of certiorari in *Sandoval v. United States*, No. 17-9171.

Date: October 15, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 44.2

Pursuant to Rule 44.2, I certify that this Petition is presented in good faith and not for the purposes of delay and that the ground for rehearing is “limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.”

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