

18-8095
No. _____

Supreme Court, U.S.
FILED

FEB 12 2019

OFFICE OF THE CLERK

JAN 2019 TERM

IN THE

SUPREME COURT OF THE UNITED STATES

ENRIQUE GAMINO-PEREZ — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ENRIQUE GAMINO - PEREZ # 38723-051

(Your Name)

FEDERAL MEDICAL CENTER
P.O. BOX 15330

(Address)

FORT WORTH, TX 76119

(City, State, Zip Code)

N/A
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

WHETHER A CLARIFYING AMENDMENT UNDER
UNITED STATES SENTENCING GUIDELINES SHOULD
APPLY RETROACTIVELY UNDER 18 USC 3582(C)

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:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
UNITED STATES V EVANS, 587 F.3d 667, 672 (5 th CIR 2009)	6
UNITED STATES V GUERRERO, 691 F. Appx 179 (5 th CIR 2017)	6
UNITED STATES V SANCHEZ-VILLARREAL, 857 F.3d 714 (5 th CIR 2017)	7
UNITED STATES V WAITE BIRD, 55 F.3d 1007 (5 th CIR 1995)	7

STATUTES AND RULES	
28 U.S.C. § 1291	
18 U.S.C. § 3582	4, 5
21 U.S.C. § 841(a)(1)(b)(1)(B)	4
28 U.S.C. § 994(a)(2)	7
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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 B 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☒ is unpublished.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 A 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☒ is unpublished.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☐ is unpublished.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 JANUARY 8, 2019.

☒ 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

U.S. CONST. AMEND V

U.S. CONST. AMEND VI

U.S.S.G. § 3B1.2

STATEMENT OF THE CASE

This is an appeal from a denial of a 18 USC 3582(c)(2) Reduction Motion.

ON 01/23/2013, Petitioner was charged by Indictment with Possession W.I.D. a controlled substance, Vio: 21 USC 841(a)(1)(B).

ON _____ 2013, Petitioner pleaded guilty to the Indictment

ON 10/15/2013, Petitioner was sentenced to 168 months imprisonment.

ON 4/8/2016, Petitioner's sentence was modified to 135 months
ON 04/20/2018, Petitioner filed a motion seeking a sentence reduction Pursuant to Amendment 794.

ON 07/31/2018, Petitioner sought a Review of the District Courts order of denial.

Appellant is not arguing innocence but simply trying to apply a Guideline clarification to his benefit. The Government waived argument and the motion was administratively considered by district judge and subsequently denied.

SUMMARY OF THE ARGUMENT

The District Court Judge denied Appellants' 18 U.S.C. § 3582(c)(2) Motion to apply Amendment No. 794 and citing one side of a circuit split decision regarding the retroactivity of the Amendment. Appellant has attempted to be considered for a guideline level reduction based on the minor role he played in the offense. The facts of this case, however, prove that, Appellant was entitled to be considered for minor role reduction at the time of his sentencing.

ARGUMENT
ISSUE NO 1

I WHETHER THE DISTRICT COURT ABUSE ITS DISCRETION BY DENYING THE MOTION TO APPLY AMENDMENT NO 794

STANDARD of REVIEW

The Fifth Circuit review a district court's denial of a motion for reduction of sentence pursuant to 18 U.S.C. § 3582 (c) (2) for abuse of discretion. E.g., United States v Evans, 587 F.3d. 667, 672 (5th CIR. 2009).

Proceeding pro/se, Appellant appeals the district court's denial of his 18 U.S.C. § 3582 (c) (2) Motion for reduction of sentence based on Amendment No 794 to the Sentencing Guidelines

Appellant clearly states that he is eligible for application of Amendment NO 794 Minor-Rule

The district court denied the motion on the standing the Amendment 794 was not retroactive because it is not listed in U.S.S.G. § 1B1.10 (see United States v Guerrero, 691 F. App'x 179 (5th CIR 2017). which was decided on June 21, 2017. This Court has also found that "Amendment 794 was a clarifying amendment and thus retroactive applicable

to his sentence . . . " United States v. Sanchez-Villarruel
857 F.3d 714 (5th CIR. 2017) on May 23, 2017.

Appellant concedes that Amendment 794 is not listed in § 1B1.10 but is confused by this Court's conflicting decision in Sanchez-Villarruel. "18 U.S.C. § 3582(c)(2) motion is not [a] second opportunity to present mitigating factors to sentencing Judge, nor is it [a] challenge to [the] appropriateness of the original sentence, but rather, it is simply [a] vehicle through which appropriately sentenced prisoners can urge court to exercise leniency to give certain defendants benefits of amendments to guideline." United States v. Whitebird, 55 F.3d 1007 (5th CIR 1995). Appellant hopes to use § 3582(c)(2) as a vehicle to apply Amendment 794 to be considered for guideline adjustments. Under 18 U.S.C. § 3553(a)(5)(A) a sentence is subject to any amendments made pursuant to 28 U.S.C. § 994(a)(2). Thus, Amendment 794 should have been applied retroactively.

REASONS FOR GRANTING THE PETITION

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit

Based on the fact that there is a split in the Court of Appeals, with respect to when a

Clarifying amendment should apply retroactively.

The Ninth Circuit has ruled in favor of those that have filed seeking the application of

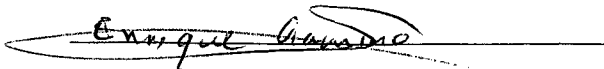
Amendment NO 794, MINOR-Role adjustment Under USSC 5 3B1.2.

Petitioner prays that the Court grant review and remand his case back to the Court of Appeals for application of USSC Amendment NO 794.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Enrique Guzmán", is written over a horizontal line.

Date: 02/11th/2019