

25-6957

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

CESAR CASTILLO-PENA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Cesar Castillo-Pena
Federal Correctional Institution
P.O. Box 1000
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QUESTION PRESENTED

Does U.S.S.G. § 4C1.1(a)(7) violate the Ex Post Facto Clause as applied to Petitioner Cesar Castillo-Pena?

LIST OF PARTIES

All parties appear in the caption on the cover page of this Petition.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Cesar Castillo-Pena respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The opinion below is unpublished and is reprinted in the Appendix to this Petition.

JURISDICTION

The Ninth Circuit Court of Appeals issued its decision on August 19, 2025. Hence, this Petition is timely. This Court has jurisdiction to review the decision of the Court of Appeals under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

This petition involves United States Sentencing Guideline Manual § 4C1.1 and the Ex Post Facto Clause to the United States Constitution, which are reprinted in full in the Appendix to this Petition.

INTRODUCTION

While well-intentioned, the Nation's "War on Drugs" is an obviously-failed public policy. Controlled substances are becoming deadlier, more readily available and less expensive. Meanwhile, our Nation's prisons are bursting at capacity and draining the public's purse.

Basic economics, the Nation's historical experience during Prohibition and common sense all suggest why this is happening. By artificially limiting the supply of controlled substances, the Controlled Substances Act creates an attractive profit opportunity that invites violations of its mandates. Prohibition teaches the futility of regulatory decrees restricting the public's access to addictive substances.

Common sense suggests that one should not put distributors (cartel members) and retailers (the Nation's inner-city youth) in a common environment (federal prison) where they can network and strengthen the flow of controlled substances from the places where they are produced into the hands of customers.

Many of the real players in the controlled substances industry never see the inside of a federal prison. Instead, they remain in their lavish homes while their

lower-level employees are warehoused in prisons with little to do other than network in an effort to advance their status.

In recognition of these dynamics, the Sentencing Commission promulgated a provision that reduces by two levels the offense level used to calculate the advisory sentencing guideline range faced by people with zero criminal history points at sentencing. This provision, which is commonly referred to as the “zero-point offender” provision, would have a far more sweeping impact if it did not unlawfully eliminate from its benefits most of the currently-incarcerated people who could benefit from it.

At issue in this Petition is a subparagraph that disqualifies people who possessed a firearm while committing their offense conduct from receiving the benefits of the zero-point offender provision. Petitioner possessed a firearm while committing his controlled substances offense, but he did so before the zero-point offender provision became effective. Petitioner is being penalized based on offense conduct that occurred before the penalty was enacted—or, as the Ninth Circuit described it, the “Guidelines [have an] increased sentencing exposure for possessing a firearm in connection with a drug offense...”

This result is precisely what this Court rejected in *Peugh v. United States*, 569 U.S. 530, 133 S. Ct. 2072, 186 L. Ed. 2d 84 (2013). In *Peugh*, this Court held that the Ex Post Facto Clause is violated when a change to the Guidelines adopted after an offense was committed results in an increased sentencing range. *Id.* at 544-45. Petitioner is serving a longer time in prison based on offense conduct that was

penalized less harshly at the time it was committed. The Court can and should intervene to enforce its decision in *Peugh* and to prevent the Circuit Courts from eroding *Peugh's* important holding.

In doing so, the Court will not only be helping Petitioner, but it will helping thousands of other prisoners who are, in violation of the Ex Post Facto Clause, being denied the benefits of an important reform measure aimed to address, in some small part, the Nation's mass-incarceration crisis.

Finally, the Court will be helping end the cycle of subjecting first time offenders like Petitioner to irrationally lengthy sentences that leave Petitioner and others like him with few practical options but to do his best to network in federal prison and make up for lost time when he is released.

Future offenders are now on notice that they will be denied the benefits of the zero-point offender provision if they possess a firearm while committing their offense conduct. Petitioner had no such notice, and that lack of notice violates the Ex Post Facto Clause.

STATEMENT OF FACTS

1. On November 8, 2021, the district court sentenced Petitioner Cesar Castillo-Pena to a 180-month term of imprisonment for possession of methamphetamine with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(viii). At sentencing, Petitioner faced an advisory sentencing guideline range of 210-262 months based on a total offense level of 37 and criminal history category I.

2. Petitioner had zero criminal history points.

3. On March 22, 2024, Petitioner filed a sentence reduction motion under 18 U.S.C. § 3582(c)(2) based on Amendment 821's retroactive addition of U.S.S.G. § 4C1.1. Section 4C1.1 provides for a two-level reduction in offense level for offenders with zero criminal history points. A two-level reduction in Petitioner's offense level would have left him with an advisory sentencing guideline range of 168-210 months. Petitioner sought to reduce his sentence to 168 months.

4. The government opposed Petitioner's motion, arguing that U.S.S.G. § 4C1.1.(a)(7) barred Petitioner from obtaining relief. Section 4C1.1.(a)(7) provides in relevant part that a defendant is disqualified from section 4C1.1 relief if the defendant "possess[ed] ... [or] transported ... a firearm or other dangerous weapon in connection with the offense." U.S.S.G. § 4C1.1.(a)(7).

5. Petitioner responded with a Second Amendment challenge to U.S.S.G. § 4C1.1.(a)(7) under the standard articulated in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022) and an argument that his offense conduct did not come within the scope of U.S.S.G. § 4C1.1.(a)(7)'s plain text.

6. The district court denied Petitioner's motion. As for Petitioner's textual argument, the district court held that Petitioner possessed a firearm "in connection" with his offense. The district court summarized Petitioner's offense conduct:

In 2020, defendant participated in four transactions selling methamphetamine. During Defendant's last transaction, law enforcement seized from Defendant's car the suspected

methamphetamine, in addition to a loaded firearm, and arrested defendant.

Order Denying Motion to Reduce Sentence.

7. The district court found that the presence of a loaded firearm in Petitioner's car during a planned distribution of methamphetamine was sufficient as a matter of law to demonstrate that Petitioner possessed a firearm to protect him from the dangers of his work. The district court then found that Petitioner's failure to provide an alternative explanation for possessing the firearm established that Petitioner's possession of the firearm was "in connection" with his offense of distribution of methamphetamine. The district court concluded that U.S.S.G. § 4C1.1.(a)(7) barred Petitioner from obtaining relief under U.S.S.G. § 4C1.1's retroactive provisions.

8. The district court's denial order did not address Petitioner's other arguments.

9. The Ninth Circuit rejected Petitioner's Ex Post Facto Clause challenge to U.S.S.G. § 4C1.1.(a)(7) without citing or attempting to distinguish *Peugh*.

REASON FOR GRANTING THE PETITION

Petitioner respectfully requests that the Court accept review of the question presented to ensure *Peugh's* continuing vitality. The Ex Post Facto Clause prohibits the government from creating laws that retroactively penalize conduct. *Peugh* held that the Ex Post Facto Clause applies to the Sentencing Guidelines. The Ninth Circuit held that the Ex Post Facto Clause does not apply to U.S.S.G. § 4C1.1.(a)(7)'s retroactive disqualification of Petitioner from U.S.S.G. § 4C1.1's

benefits. There is no way to reconcile *Peugh* and the Ninth Circuit's holding. Indeed, the Ninth Circuit did not even mention *Peugh* in its decision.

Of course, the mere fact that the Ex Post Facto Clause prohibits U.S.S.G. § 4C1.1(a)(7) from disqualifying Petitioner from U.S.S.G. § 4C1.1's zero-point offender provision is no guarantee that Petitioner will actually benefit from it; the statute governing sentence reduction motions based on retroactive guideline amendments, 18 U.S.C. § 3582(c)(2), requires the district court to exercise its discretion in deciding whether to grant a sentence reduction. Thus, this Court should vacate the Ninth Circuit's order and remand with instructions for the district court to exercise its discretion in deciding whether to grant Petitioner's sentence reduction motion.

CONCLUSION

The Court should grant this Petition.

Respectfully submitted,

Dated: November 7, 2025



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RULE 33 CERTIFICATION

The undersigned certifies that the above Petition for a Writ of Certiorari complies with the page count limitation of Supreme Court Rule 33. This document was prepared in 12-point Century Font. Its body contains less than 40 pages.



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APPENDIX

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