

No. 13-274

In the Supreme Court of the United States

DEWEY C. MACKAY, III, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT*

MEMORANDUM FOR THE UNITED STATES

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DISCUSSION

Petitioner contends that the evidence at his jury trial was insufficient to support his conviction under 21 U.S.C. 841(a)(1) and (b)(1)(C) for distributing oxycodone resulting in death, and also insufficient to support his conviction under 21 U.S.C. 841(a)(1) and 841(b)(1)(E)(i) for distributing hydrocodone resulting in death. Pet. 12-21; see *id.* at i.

On April 29, 2013, this Court granted certiorari in *Burrage v. United States*, No. 12-7515 (oral argument scheduled for Nov. 12, 2013), to consider (1) “[w]hether the crime of distribution of drugs causing death under 21 U.S.C. § 841 is a strict liability crime, without a foreseeability or proximate cause requirement”; and (2) “[w]hether a person can be convicted for distribution of heroin causing death utilizing jury instructions which allow a conviction when the heroin

that was distributed ‘contributed to,’ death by ‘mixed drug intoxication,’ but was not the sole cause of death of [a] person.”

Because this Court’s decision in *Burrage* may affect the proper resolution of this case, the petition for a writ of certiorari should be held pending the Court’s resolution of *Burrage*, and then disposed of as appropriate in light of the decision in that case.*

* * * * *

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General

OCTOBER 2013

* The government waives any further response to the petition unless this Court requests otherwise.