

LB
KW ✓
ORIGINAL

No. 04-5564

Supreme Court U.S.
FILED
AUG 9 - 2004
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD WAYNE DREWRY, 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

PAUL D. CLEMENT
Acting Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

IN THE SUPREME COURT OF THE UNITED STATES

No. 04-5564

RICHARD WAYNE DREWRY, 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

Petitioner contends that his sentence under the federal Sentencing Guidelines was imposed in violation of the rule announced in Blakely v. Washington, 124 S. Ct. 2531 (2004). This Court has granted certiorari in United States v. Booker, No. 04-104 (cert. granted August 2, 2004), and United States v. Fanfan, No. 04-105 (cert. granted August 2, 2004), to consider whether Blakely applies to the federal Sentencing Guidelines, and, if so, how federal sentencing should be conducted in light of such a conclusion. If the Court were to hold that Blakely applies to the Guidelines, the proper disposition of petitioner's claim could be affected by such a holding (as well as by any applicable doctrines

of waiver, forfeiture, and harmless error). Accordingly, the petition for a writ of certiorari should be held pending this Court's decisions in Booker and Fanfan, and then disposed of as appropriate in light of the decisions in those cases.'

PAUL D. CLEMENT
Acting Solicitor General

AUGUST 2004

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