

IN THE SUPREME COURT OF THE UNITED STATES

No. 04-104

UNITED STATES OF AMERICA, PETITIONER

v.

FREDDIE J. BOOKER

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

No. 04-105

UNITED STATES OF AMERICA, PETITIONER

v.

DUCAN FANFAN

ON PETITION FOR A WRIT OF CERTIORARI
BEFORE JUDGMENT TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

MOTION TO EXCEED THE PAGE LIMITS

Pursuant to Rules 21, 22, and 33(d) of the Rules of this Court, the Acting Solicitor General, on behalf of the United States of America, respectfully submits this motion to exceed the page limits for the consolidated reply brief that the government is

filing in support of the petitions for certiorari in these cases. The government requests leave to file a consolidated brief not to exceed 20 printed pages (i.e., the same length as two 10 page printed reply briefs).

1. On July 21, 2004, the government filed the petitions for certiorari in the above-captioned cases and a motion to expedite consideration of the petitions. On the same day, this Court ordered that the respondents file briefs in response to the petitions one week later, on July 28, 2004. On that date, three separate briefs were filed in response to the petitions: Booker filed a 17 page response; Fanfan filed a 17 page brief in opposition; and Amici National Association of Criminal Defense Lawyers, et al. (NACDL) filed a 19 page brief addressing not only the petitions in Booker and Fanfan, but also the petitions in at least two other cases on the Court's docket (Bijou v. United States, No. 04-5272, and Pineiro v. United States, No. 04-5263). NACDL contends that those cases present superior vehicles for addressing the questions presented by the government. NACDL also proposes reframing the questions presented by the government - a suggestion with which Booker and Fanfan apparently agree.

All of these cases involve the critically important issues surrounding the implications of Blakely v. Washington, 124 S. Ct. 2531 (2004), for the federal Sentencing Guidelines. The decision by this Court whether to grant review, and, if so, in which cases and on what issues, is of enormous significance to all those concerned with federal criminal justice. The Court would be

benefitted by an adequate discussion by the government of the various alternative vehicles before it decides how to proceed.

2. This Court's Rule 33(g)(iii) sets forth a 10-page limit for a reply to a brief in opposition. Rather than file two 10-page reply briefs in the above-captioned cases, the government seeks leave to file a single consolidated brief of no more than 20 printed pages. (The typescript version of the brief would not exceed 22 typescript pages.) The brief will address not only respondent's and amici's objections to the government's petitions, but also the cases (Bijou and Pineiro) that are being offered as alternatives. The government intends to file today briefs in response to the petitions in Bijou and Pineiro, but believes that the Court would find it more convenient to be able to consider the government's comparative analyses of the cases in a single brief, rather than having the discussion divided into several briefs.

3. In light of the expedited schedule that the government has proposed for consideration of the petitions, the government's consolidated reply brief will be filed one day after the responses were received. Accordingly, this motion is not being filed within the 15-day period specified in Rule 33(d).

Respectfully submitted.

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Acting Solicitor General
Counsel of Record

JULY 2004