

United States v. Elvis Santana, et al., 09 Cr. 1022 (SDNY, Karas, J.)
Summary of Oral Argument on Application of Fair Sentencing Act of 2010
(as reported by Alex Eisemann, counsel for defendant William Anderson)

On December 8, 2010, oral argument was held on the motions of the defendants in United States v. Elvis Santana, et al., to declare that the provisions of the Fair Sentencing Act of 2010 (FSA) apply to them. In his reply brief, defendant William Anderson had argued, in part, that the savings statute should not be applied as long as there was any evidence of congressional intent about the effective date of a statute (and that the rule of lenity should control if there were even slight evidence that Congress intended immediate application). During oral argument on this point, however, counsel for Mr. Anderson modified that position, explaining that when a statute is silent on its effective date, there should be a rebuttable presumption that the savings statute applies, and that the ample evidence of congressional intent marshaled in this case rebutted the presumption. Counsel believes that position better harmonizes with precedent concerning the savings statute.

In addition, Professor Douglas Berman, arguing as amicus, added an important argument that was not included in his written submissions. He stated that if the FSA were not applied to pending cases, major drug dealers would get the immediate benefit of the FSA (because their sentences are already above the mandatory minimum but their guideline sentences would still potentially be much lower). Minor players (those whose offenses had no mandatory minimums because the quantities were so low) would also receive the benefit, as their guidelines would be lower too. Medium level players – a “middle class” so to speak – however, would get no benefit even though their guidelines would be lower, because the pre-FSA mandatory minimums would continue to apply. According to Professor Berman, such a distinction would have no rational basis, and, as such, would have constitutional implications.