

NO.

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IN THE  
SUPREME COURT OF THE UNITED STATES

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JOSE RAMON PULIDO-NOLAZCO,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED FOR REVIEW**

**The decision of the Eleventh Circuit that Mr. Pulido-Nolazco's thirty year old sex offense is a factor for the Court to consider when determining whether to impose sex offender treatment as a condition of Supervised Release is in direct conflict with a majority of other Circuits that have determined that the age of the prior conviction is a factor that the court must consider. Therefore, this Court must grant Certiorari to resolve the conflict to this very important issue.**

## **INTERESTED PARTIES**

There are no parties to the proceeding other than those named in the caption of the case.

## TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW .....	i
INTERESTED PARTIES .....	ii
TABLE OF AUTHORITIES .....	iv
PETITION.....	1
OPINION BELOW.....	2
STATEMENT OF JURISDICTION .....	2
STATUTORY AND OTHER PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT .....	5
CONCLUSION.....	8

## APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit, <i>United States v. Jose Ramon Pulido-Nolazco</i> , 17-13912 .....	A-1
Order on Petition for Rehearing <i>En Banc</i> .....	A-2
Judgment imposing sentence .....	A-3

## TABLE OF AUTHORITIES

### Cases

<i>United States v. Carter,</i>	
463 F.3d 526 (6th Cir. 2006) .....	6
<i>United States v. Dougan,</i>	
684 F.3d 1030 (10th Cir. 2012) .....	6
<i>United States v. Johnson,</i>	
756 F.3d 532 (7th Cir. 2014) .....	6
<i>United States v. Moran,</i>	
573 F.3d 1132 (11th Cir. 2009) .....	5, 6, 7
<i>United States v. Scott,</i>	
270 F.3d 632 (8th Cir. 2001) .....	6
<i>United States v. T.M.,</i>	
330 F.3d 1235 (9th Cir. 2000) .....	7

### Statutes

18 U.S.C. § 2250.....	7
18 U.S.C. § 3742.....	2
18 U.S.C. § 3553(a) .....	5
18 U.S.C. § 3553(a)(2)(D).....	3, 5
28 U.S.C. § 1254(1) .....	2
28 U.S.C. § 1291.....	2

## **Other Authorities**

U.S.S.G. § 5D1.2 cmt.1 .....	7
U.S.S.G. § 5D1.3(d)(5).....	3, 5
U.S.S.G. § 5D1.3(d)(7).....	3, 5

## **Rules**

SUP. CT. R. 13.1 .....	2
SUP. CT. R. PART III.....	2

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Jose Ramon Pulido-Nolazco respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 17-13912 in that court on April 19, 2018, *United States v. Jose Ramon Pulido-Nolazco*, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, the Petition for Rehearing was denied on June 27, 2018.

## **OPINION BELOW**

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix. (A-1). A copy of the denial of the Petition for Rehearing *En Banc* is contained in the Appendix. (A-2).

## **STATEMENT OF JURISDICTION**

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on April 19, 2018, however, the Petition for Rehearing *En Banc* was denied on June 27, 2018. This petition is timely filed pursuant to SUP. CT. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

## **STATUTORY AND OTHER PROVISIONS INVOLVED**

Petitioner intends to rely upon the following constitutional provisions, treaties, statutes, rules, ordinances and regulations:

18 U.S.C. § 3553(a)(2)(D) provides:

[t]o provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

The Supervised Release Section of the Guidelines U.S.S.G. § 5D1.3(d)(7) provides:

If the defendant is required to register under the Sex Offender Registration and Notification Act, the defendant shall comply with the requirements of that Act.

## STATEMENT OF THE CASE

On February 1, 2017, Jose Ramon Pulido-Nolazco was charged by a grand jury with being a felon in possession of a firearm. Following a two-day trial, a jury found Mr. Pulido-Nolazco guilty. The district court sentenced Mr. Pulido-Nolazco to 63 months in prison followed by three years of supervised release. The presentence investigation report recommended that the court require Mr. Pulido-Nolazco to participate in sex offender treatment as a special condition of supervised release. This treatment is “to include psychological testing and polygraph examination.” Presumably, this was because Mr. Pulido-Nolazco was convicted of sexual battery, attempted sexual battery, and lewd and lascivious assault in 1988. He was sentenced to 15 years in prison for those convictions. Mr. Pulido-Nolazco subsequently failed to register as a sex offender in 2007 and 2010. He was adjudicated guilty for the 2007 charge, and he pled nolo contendre to the 2010 charge. He was sentenced to two and five years in prison, respectively.

The defense did not object to the PSI. At sentencing, the court imposed a 63-month prison term and a 36-month supervised-release term that included the sex offender treatment condition. The court did not explain why the condition was imposed, saying only that Mr. Pulido-Nolazco was to comply with “Part G of the PSI about sex offender treatment, sex offender registration, unpaid restitution, fines, special assessments, all that’s noted in Part G of the presentence investigation report.”

## REASONS FOR GRANTING THE WRIT

Mr. Pulido-Nolazco was sentenced to a special condition of supervised release requiring mental health treatment based on a single sex offense that occurred nearly three decades before his sentencing. Mr. Pulido-Nolazco argued, in reliance on the plain text of the governing statute, that the condition was unlawful because the record did not support a finding that it was needed. The sentencing statute authorizes a court to require only “with *needed* ... medical care, or other correctional treatment... .” 18 U.S.C. § 3553(a)(2)(D) (emphasis added). The district court did not make any finding that the sex-offender treatment was necessary, as the government conceded. Further, the guidelines recommend mental health treatment only “[i]f the court has reason to believe that the defendant is in need of psychological or psychiatric treatment...” or “[i]f the instant offense of conviction is a sex offense.” U.S.S.G. § 5D1.3(d)(7). Disregarding the statute’s plain text, the panel concluded merely that the condition was “reasonably related to relevant § 3553(a) factors ... .” Opinion at 6. The Eleventh Circuit erred when it used that standard.

The Eleventh Circuit determined that the district court’s requirement that Mr. Pulido-Nolazco participate in sex offender treatment was supported by “clear precedent,” namely, *United States v. Moran*, 573 F.3d 1132 (11th Cir. 2009). However, *Moran* did not hold, and the government did not argue, that sentencing courts can require mental health treatment prophylactically, just in case it is necessary. The case, moreover, bears only the most superficial similarities to this one. Mr. Pulido-Nolazco’s only sex offense occurred 29 years before his federal

possession of a firearm case was filed on May 10, 2018. While Mr. Moran’s two sex offenses occurred within ten years of his sentence. *See* 573 F.3d at 1135–36. Also, Mr. Pulido-Nolazco has shown no signs of recidivism or a persistent problem or condition. The record in *Moran* evidenced an ongoing problem. 573 F.3d at 1135 (noting that the defendant was convicted twice and separately arrested three times for sex offenses).

The Eleventh Circuit’s erroneous belief that *Moran* resolved this case puts it in conflict with numerous other circuits that have held that convictions much more recent than Mr. Pulido-Nolazco’s did *not* establish a need for treatment. *See, e.g.*, *United States v. Johnson*, 756 F.3d 532, 541 (7th Cir. 2014) (“Johnson’s sex-related misdemeanor occurred fifteen years before he was sentenced for the current offenses. The government has not explained why sex-offender treatment is necessary at this point to rehabilitate Johnson or to protect the public.”); *United States v. Dougan*, 684 F.3d 1030, 1037 (10th Cir. 2012) (“Even with a failure to register, no appellate court has upheld the imposition of special sex-offender conditions of release when based upon an underlying offense that is seventeen years old.”); *United States v. Carter*, 463 F.3d 526, 532–33 (6th Cir. 2006) (“We need not and do not decide precisely how much time must elapse before a sex offense becomes too remote in time to be reasonably related to a sex-offender condition, as the instant gap — Carter’s 1988 sex offenses occurred seventeen years before the imposition of the sex-offender-treatment condition in 2005 — fits comfortably within the cases.”) (footnote omitted); *United States v. Scott*, 270 F.3d 632, 633 (8th Cir. 2001) (“Here,

the past sex offense was 15 years old at the time of the District Court's relevant order. And, as we have said, this record contains no information indicating that Scott is likely to repeat the offense, or that additional restrictions on his freedom are necessary to deter him from doing so."); *United States v. T.M.*, 330 F.3d 1235, 1240 (9th Cir. 2000) ("In summary, T.M.'s twenty-year-old conviction and forty-year-old dismissed charge, along with his subsequent probation violations and therapeutic evaluations, even considered cumulatively, do not establish a reasonable relationship between his sexually-related conditions of supervised release and either deterrence, public safety, or rehabilitation.").

The Eleventh Circuit clearly erred in considering Mr. Pulido-Nolazco's convictions for failure to register relevant to whether Mr. Pulido-Nolazco is in present need of mental health treatment. *See* U.S.S.G. § 5D1.2 cmt.1 (stating that the term "sex offense" "does not include an offense under 18 U.S.C. § 2250 (Failure to register)"). Strangely, the Eleventh Circuit incorrectly asserted that *Moran* somehow supported the idea that failing to register as a sex offender has anything to do with whether mental health treatment is presently necessary. *See* Opinion at 6–7. *Moran* does not list failure to register as a reason for imposing mental health treatment. The *Moran* decision held only that the condition need not be related to the offense of conviction, that Mr. Moran's ten-year-old conviction was not too temporally remote to support the condition, that Mr. Moran's heart condition did not render the condition unduly burdensome, and that the condition amounted to an "excessive infringement" on his liberty. 573 F.3d at 1139. *Moran* makes no mention of a

failure to register in connection with the mental-health treatment condition. The Eleventh Circuit's conclusion therefore has no support, and is contrary to a majority of other Circuits. Therefore, this Court should grant Certiorari to resolve the conflict among the circuits on this very important question that could affect many people.

## CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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September 25, 2018