

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANTONIO LEDON JONES,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Eleventh Circuit decided the opinion below based on inaccurate information and thereby betrayed the due process guarantees of the Fifth Amendment?
2. Whether the Eleventh Circuit's consideration of inaccurate information and refusal to engage in an analysis of 18 U.S.C. § 3553(a)(6) ignored the requirement set forth by Congress that courts "shall consider...the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct?"

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.....	iii
OPINION BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
A. Factual Background.....	2
B. Sentencing Hearing.....	5
C. Eleventh Circuit Opinion.....	9
REASONS FOR GRANTING THE WRIT.....	10
I. This Court Should Exercise Its Supervisory Power and Vacate the Eleventh Circuit Opinion Because It Violated the Due Process Guarantees of the Fifth Amendment	11
A. Due Process Rights at Sentencing	11
B. The District Court and the Eleventh Circuit Decided This Case Based on Inaccurate Information	12
C. The Eleventh Circuit Failed to Protect Due Process Guarantees at Sentencing.....	14
II. This Court Should Vacate the Eleventh Circuit Opinion Because It Sanctioned the District Court’s Refusal to Consider Unwarranted Sentencing Disparities, Which Ignored a Mandate from Congress and Threatens to Write 18 U.S.C. § 3553(a)(6) Out of the Statute.....	15
A. This Sentence Created Unwarranted Sentencing Disparity.....	15

B. Because the Eleventh Circuit Opinion Relied on Inaccurate Information, the Panel Failed to Uphold 18 U.S.C. § 3553(a)(6)16

CONCLUSION17

APPENDICES

PETITIONER’S APPENDIX A: Opinion of United States Court of Appeals for the Eleventh Circuit

PETITIONER’S APPENDIX B: Order of the United States Court of Appeals for the Eleventh Circuit denying the petition for rehearing

TABLE OF AUTHORITIES

CASES:

<u>Gardner v. Florida</u> , 430 U.S. 349 (1977)	12
<u>Mullane v. Cent. Hanover Bank & Trust Co.</u> , 339 U.S. 306 (1950)	11
<u>Townsend v. Burke</u> , 334 U.S. 736 (1948)	11
<u>United States v. Ausburn</u> , 502 F.3d 313 (3rd Cir. 2007)	12
<u>United States v. Nappi</u> , 243 F.3d 758 (3d Cir. 2001).....	12
<u>United States v. Tucker</u> , 404 U.S. 443 (1972)	11, 15

STATUTES:

18 U.S.C. § 3353	1
18 U.S.C. § 3553	<i>passim</i>
28 U.S.C. § 1254	1

OTHER AUTHORITIES:

Federal Rule of Criminal Procedure 32	2, 11, 12
Fifth Amendment to the United States Constitution	1, 11
U.S.S.G. § 4B1.1	4, 13

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Antonio Ledon Jones, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION BELOW

The unpublished opinion of the United States Court of Appeals for the Eleventh Circuit, *United States v. Jones*, — Fed. Appx. —, 2018 WL 4146620 (11th Cir. Aug. 29, 2018), is included as Appendix A. The unpublished order of the United States Court of Appeals for the Eleventh Circuit denying the petition for rehearing is included as Appendix B.

JURISDICTION

The Eleventh Circuit entered its judgment on October 3, 2018. This Court has jurisdiction to consider this petition pursuant to 28 U.S.C. § 1254(1), which permits review of criminal cases in the courts of appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in part: “No person shall...be deprived of life, liberty, or property, without due process of law.”

18 U.S.C. § 3353(a)(6) states:

- (a) Factors to be considered in imposing a sentence.--The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--
 - (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct[.]

Federal Rule of Criminal Procedure 32 covers the procedure for sentencing and judgment in federal criminal cases.

STATEMENT OF THE CASE

The Fifth Amendment guarantees a defendant's due process right to be sentenced based on accurate information and ensures that the defendant has notice of evidence the court will consider and an opportunity to respond. This due process guarantee is further enshrined in Rule 32 of the Federal Rules of Criminal Procedure. In this case, the district court departed from the accepted and usual course of judicial proceedings in deciding a sentence based on inaccurate information and assumptions, thereby violating the guarantees of the Fifth Amendment and Rule 32. The Eleventh Circuit Court of Appeals not only sanctioned that departure but also used inaccurate information itself in affirming the district court's sentence.

On top of that, the Eleventh Circuit panel's use of inaccurate information led to its refusal to analyze sentencing disparity under 18 U.S.C. § 3553(a)(6). The panel's refusal to analyze sentencing disparity ignored the requirements set by Congress and threatens to write 18 U.S.C. § 3553(a)(6) out of the statute. Because the district court and Eleventh Circuit betrayed a defendant's due process rights at sentencing and ignored a mandate from Congress, this Court should step in and exercise its supervisory power by vacating the sentence and remanding the case to the district court for a new sentencing hearing.

A. Factual Background

As part of a special prosecutorial initiative in the Northern District of Georgia, Antonio Jones was arrested for selling less than one gram of heroin to undercover

officers. Around that time, the United States Attorney's Office ("USAO") had launched an unprecedented initiative aimed at improving the English Avenue neighborhood, a small community within Atlanta, and eradicating the heroin market that had plagued the neighborhood for decades. Beginning in 2014, the USAO implemented this special prosecutorial initiative called the English Avenue Drug Market Intervention program ("DMI"). The goals of DMI were (1) partnering with local police and residents to dismantle the open air drug market, (2) reducing violence and restoring neighborhood trust, and (3) federally prosecuting the most substantial and violent drug dealers (Tier 1 offenders) while providing dealers with a lesser criminal history a "second chance" and support with drug treatment and job training (Tier 2 offenders).¹

The government classified Mr. Jones and others with a criminal history as Tier 1 offenders. Even though these defendants did have a criminal history, these cases typically would not be prosecuted in federal court, as all of the cases involved a small amount of drugs. Starting in 2015, the government began bringing indictments against these Tier 1 offenders and called this stage of DMI prosecutions "Phase 1." The government indicted approximately 30 people in Phase 1. Mr. Jones was part of this first phase of DMI. By that time, however, Mr. Jones had left the neighborhood

¹ United States Attorney's Office, Northern District of Georgia, *Community Outreach Annual Report 2016: Prevention, Enforcement, Reentry*, at 9, available at <https://www.justice.gov/usao-ndga/page/file/1010066/download> (hereinafter "USAO Community Outreach Annual Report").

and was living with his sister. Therefore, he did not get arrested on the indictment until much later and did not know about the DMI initiative.

While Mr. Jones was living and working outside the English Avenue neighborhood, the government continued DMI. Following the initial phase of the program, the government implemented "Phase 2," which targeted people who continued to deal drugs after federal law enforcement began to crack down and make their presence known in the community. Between Phase 1 and Phase 2 of DMI, the government has prosecuted more than 60 people convicted of selling heroin in the English Avenue neighborhood.

Even though most of the Tier 1 defendants sold a small amount of heroin, many of them received a career offender enhancement under the United States Sentencing Guidelines. *See* U.S.S.G. § 4B1.1. Mr. Jones was one of those defendants. In all such career offender DMI cases with no aggravating factors, the government offered a plea agreement with a joint recommendation of 60 months in custody. The government recommended this sentence, a sentence significantly below the career offender guideline range of 151-188 months, in recognition of the fact that these low-level drug cases would not typically be in federal court but for the government's initiation of DMI.

Between 2015 and 2017, seven judges of the Northern District of Georgia sentenced a total of 22 DMI defendants who qualified as career offenders. Fourteen of those defendants received the jointly-recommended sentence of 60 months imprisonment. Of the eight defendants who received longer sentences, two of those

cases had aggravating factors, such as higher drug quantity and firearm enhancements, and one defendant entered a straight plea without the benefit of the government's plea agreement. District Judge Evans, the district judge who sentenced Mr. Jones, sentenced the remaining five defendants of the 22 defendants who qualified as career offenders. Mr. Jones was the last DMI career offender to be sentenced. Judge Evans had not followed the 60-month recommendation in the other four cases before her while the other judges in the Northern District of Georgia uniformly followed the joint recommendation in these cases. At each of the four sentencing hearings prior to Mr. Jones's hearing, Judge Evans expressed concern about the government recommending a uniform sentence without an individualized assessment of the cases.

As counsel for the government and Mr. Jones were aware of the district court's concerns regarding the uniform 60-month recommendation for career offender DMI cases, the parties spent a significant amount of time in negotiations and put forward concerted effort to fashion a reasonable, individualized sentencing recommendation for Mr. Jones. Following that, Mr. Jones entered a negotiated plea of guilty. In the plea agreement, the parties agreed to jointly recommend a sentence of 72 months imprisonment.

B. Sentencing Hearing

At the sentencing hearing, Mr. Jones showed the court that the requested sentence of 72 months was consistent with the sentences in the four prior career offender DMI cases that had come before the court. Mr. Jones presented the following chart to illustrate that point.

PRIOR DMI CASES BEFORE JUDGE EVANS

Case	Incident Date	DMI Phase	Amount of drugs	Role	Prior prison time	Criminal History	Sentence
U.S. v. Outlaw (1:15-CR-447)	6/17/14 9/9/2015	Phase 2	2.82 grams	- Sold drugs from his porch - 10 bags found on porch	- 7 times prior in prison - Total of 7 years, 2 months, and 20 days	12 points	90 months
U.S. v. Cook (1:16-CR-186)	2/11/2016	Phase 2	Less than 2 grams (\$100 worth sold on 2/11/2016. 14 bags found on him on day of arrest – not sold.)	- 10 bags (\$10 each) sold to CI after witnessing another sale - 14 bags on day of arrest	- 1 time prior - Total of 2 months	6 points	74 months
U.S. v. Hughley (1:16-CR-383)	7/27/2016	Phase 2	Less than 1 gram (\$60 worth)	Stash house conspiracy advertised on social media	- 2 times prior - 6 months and 12 days	10 points	70 months
U.S. v. Hoard (1:16-CR-383)	8/3/2016	Phase 2	Less than 1 gram (\$130 worth)	Stash house conspiracy advertised on social media	- 10 times prior - 12 years, 11 months, and 15 days	19 points	115 months

RECOMMENDATION FOR ANTONIO JONES

U.S. v. Jones (1:15-CR-222)	5/12/2015	Phase 1	Less than 1 gram (\$40 worth)	Hand-to-hand street sale	- 2 times prior (one on a probation revocation) - Total of 9 months, 19 days	10 points	72 months
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As the chart shows, Mr. Jones's crime preceded the other cases and was part of the first phase of DMI, which made him less culpable from the government's perspective because he did not continue to sell drugs after the prosecutions began. Also, Mr. Jones sold the least amount of drugs, selling just \$40.00 worth of heroin. In addition, Mr. Jones happened to encounter undercover officers and conducted a hand-to-hand transaction whereas the other defendants were engaged in a larger-scale, long-term drug dealing operation. Regarding specific deterrence, Mr. Jones showed that he had served significantly less prison time in his life than the two defendants who had received the highest sentences from Judge Evans. Mr. Jones also showed that his criminal history was distinct from those two defendants. Mr.

Jones had 10 criminal history points and argued that his case was most similar to Mr. Hughley, who also had 10 criminal history points and received a sentence of 70 months. The government agreed with all of Mr. Jones's arguments and also argued that Mr. Jones was most similar to Mr. Hughley and therefore that the court should treat them similarly.

The recommended sentence of 72 months was already more than what the other career offender DMI defendants received, but Mr. Jones requested this sentence due to the district court's statements that it did not like the cookie-cutter recommendation of 60 months. The chart below shows the sentences of the other 17 career offender DMI defendants.

Defendant	Case No.	Judge	Sentence (Months)	Pre-Career Offender Offense Level/ Pre-Career Offender Criminal History Score
Beard, Betty	1:16-CR-285-3	Jones	60	Offense Level 12 / Criminal History VI
Brown, Charles	1:16-CR-285-1	Jones	87	Offense Level 18 / Criminal History III 20-40 grams of heroin; Firearm enhancement
Burns, Jacoby	1:16-CR-221	May	84	Offense Level 12 / Criminal History V Straight plea; Government recommended 96 months
Clay, Octavius	1:16-CR-285-3	Jones	72	Offense Level 16 / Criminal History V Firearm enhancement
Cook, Carl	1:16-CR-186	Evans	74	Offense Level 12 / Criminal History III
Freeman, Kerrick	1:15-CR-188	Thrash	60	Offense Level 12 / Criminal History VI
Harper, Clarence	1:15-CR-196	Cohen	60	Offense Level 12 / Criminal History IV
Hollis, Richard	1:16-CR-135	Ross	60	Offense Level 12 / Criminal History V
Jenkins, Terry	1:15-CR-200	Ross	60	Offense Level 12 / Criminal History VI

Defendant	Case No.	Judge	Sentence (Months)	Pre-Career Offender Offense Level / Pre-Career Offender Criminal History Score
Johnson, Antonio	1:15-CR-220	May	60	Offense Level 12 / Criminal History IV
Moss, Quenton	1:15-CR-193	Cohen	60	Offense Level 12 / Criminal History CH V
Outlaw, Dwaine	1:15-CR-447	Evans	90	Offense Level 12 / Criminal History CH V
Reese, Christopher	1:15-CR-199	Jones	60	Offense Level 12 / Criminal History CH IV
Render, Christopher	1:16-CR-285-4	Jones	60	Offense Level 12 / Criminal History CH VI
Simmons, Calvin	1:15-CR-217	May	60	Offense Level 12 / Criminal History VI
Tye, Bruce	1:15-CR-191	Totenberg	60	Offense Level 12 / Criminal History VI
Walker, Reginald	1:15-CR-218	Batten	60	Offense Level 12 / Criminal History VI
Waller, Tarrus	1:15-CR-197	Jones	60	Offense Level 12 / Criminal History VI
Wilcox, Johnnie	1:15-CR-206	Ross	60	Offense Level 12 / Criminal History V

Following the argument of both parties, including comparison of Mr. Jones to the other four career offender DMI defendants the court had sentenced, the court sentenced Mr. Jones to 130 months in custody. The court gave no explanation of why Mr. Jones deserved the highest sentence of all 22 career offender DMI defendants. Both Mr. Jones and the government objected to the sentence and agreed that it was substantively unreasonable.

During the sentencing hearing, the court and the parties did not discuss the criminal histories of the four other career offender DMI defendants that had come before the court other than in relation to the chart that counsel for Mr. Jones presented. The parties clarified for the court that everyone on the chart was a career offender like Mr. Jones. At no time did the court review the PSRs or the criminal histories of the four other defendants or name any specific crime they committed. The

only information known about the other offenders at the sentencing hearing was the information provided on the chart – the date of the arrest, DMI phase, amount of drugs sold, role in the crime, prior prison time served, and their criminal history points.

C. Eleventh Circuit Opinion

On appeal, the Eleventh Circuit panel concluded that the sentence was reasonable and affirmed the sentence. Mr. Jones had argued that the sentence was substantively unreasonable because the district court gave undue weight to his criminal history and did not consider the fact that all of the defendants arrested as part of the initiative who were career offenders, by definition, had significant criminal history. In considering that argument, the panel stated that the district court found that Mr. Jones's criminal history was more serious than that of the other defendants arrested as part of the DMI initiative. Pet. App. A, p. 7. However, that is not accurate. The district court did not engage in a comparison of Mr. Jones's criminal history and the other defendants' criminal histories other than when reviewing the chart counsel for Mr. Jones presented. Judging by the information in the chart, Mr. Jones did not have a more serious criminal history than the other four defendants listed on the chart.

Mr. Jones also argued that the district court failed to give adequate consideration to the sentences of the defendants arrested as part of the initiative and created unwarranted sentencing disparities in violation of 18 U.S.C. § 3553(a)(6). The Eleventh Circuit panel stated that the district court did consider the other sentences but found that Mr. Jones's criminal history outweighed that factor because

his criminal history was worse than the other defendants' criminal histories. Pet. App. A, p. 8. Again, the district court did not discuss the criminal histories of the other defendants and find that Mr. Jones's criminal history was worse. Because the Eleventh Circuit panel incorrectly concluded that Mr. Jones's criminal history was more serious than the other defendants, the panel did not engage in the claim that the sentence created unwarranted sentencing disparities and violated the mandate of 18 U.S.C. § 3553(a)(6).

REASONS FOR GRANTING THE WRIT

The Fifth Amendment guarantees a defendant's due process right to be sentenced based on accurate information. In this case, the district court relied on inaccurate information in deciding the sentence and therefore violated Mr. Jones's due process rights. The Eleventh Circuit then compounded the due process violation when it failed to recognize the district court's error and remand the case back to the district court as it should have done. Specifically, the Eleventh Circuit stated that the district court compared Mr. Jones's criminal history to other similarly-situated defendants and found it to be worse, but the record does not support that finding.

Because the Eleventh Circuit panel relied on this inaccurate information, the panel did not engage Mr. Jones's claim that his sentence created unwarranted sentencing disparities in violation of 18 U.S.C. § 3553(a)(6). The panel's refusal to analyze sentencing disparity in this case ignored a mandate from Congress, which states that sentencing courts "shall consider...the need to avoid unwarranted sentence disparities among defendants with similar records who have been found

guilty of similar conduct.” 18 U.S.C. § 3553(a)(6). This Court should grant certiorari to address the due process violation and to prevent 18 U.S.C. § 3553(a)(6) from becoming meaningless and effectively written out of the statute by district courts.

I. This Court Should Exercise Its Supervisory Power and Vacate the Eleventh Circuit Opinion Because It Violated the Due Process Guarantees of the Fifth Amendment

A. Due Process Rights at Sentencing

The Fifth Amendment and Rule 32 of the Federal Rules of Criminal Procedure protect a defendant’s right to be sentenced based on accurate information. A sentence based on inaccurate information is invalid and cannot stand. *Townsend v. Burke*, 334 U.S. 736, 741 (1948) (holding that a sentence based on inaccurate assumptions about the defendant’s criminal history is inconsistent with due process of law); *United States v. Tucker*, 404 U.S. 443, 447-448 (1972) (finding that sentence partly based on convictions obtained in violation of defendant’s constitutional rights offends due process and must be remanded). In this case, the Eleventh Circuit had the opportunity to correct the inaccuracies and incorrect assumptions of the district court, but instead, the Eleventh Circuit continued the pattern of the district court and issued its opinion based on inaccurate information, which violated Mr. Jones’s constitutional rights.

The Fifth Amendment to the United States Constitution provides in part: “No person shall...be deprived of life, liberty, or property, without due process of law.” This Court has held that the due process clause of the Fifth Amendment applies to sentencing hearings. In *Mullane v. Cent. Hanover Bank & Trust Co.*, this Court

stated “at a minimum...that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.” 339 U.S. 306, 313 (1950). And, further, specific to criminal cases, “the sentencing process, as well as the trial itself, must satisfy the requirements of the Due Process Clause.” *Gardner v. Florida*, 430 U.S. 349, 358 (1977). Rule 32 also codifies defendants’ due process rights throughout the sentencing process, including during investigation for presentence reports, the opportunity to review and object to information used at sentencing, the introduction of evidence at sentencing, the right to speak at sentencing, and the right to appeal. *See* FED. R. CRIM. P. 32.

The general rule that defendants have a due process right to be sentenced based on accurate information is the law of the land, as this Court and circuit courts across the country have consistently upheld this principle.

In federal practice, a defendant’s “due process right to be sentenced based upon accurate information” is “safeguard[ed]” by Federal Rule of Criminal Procedure 32, which “contains specific requirements that ensure that the defendant is made aware of the evidence to be considered and potentially used against him at sentencing, and is provided an opportunity to comment on its accuracy.”

United States v. Ausburn, 502 F.3d 313, 322 (3rd Cir. 2007) (quoting *United States v. Nappi*, 243 F.3d 758, 763 (3d Cir. 2001).

B. The District Court and the Eleventh Circuit Decided This Case Based on Inaccurate Information

In deciding the sentence in this case, the district court relied on inaccurate information, and at the urging of the government in its brief, the Eleventh Circuit relied on the same inaccurate information in affirming the sentence. Specifically, the

Eleventh Circuit stated that the district court found that Mr. Jones's criminal history was more serious than that of the other defendants arrested as part of the DMI initiative. Pet. App. A, p. 7. However, the record shows that the district court did not discuss the criminal histories of the other defendants and ever make any such finding.

At the sentencing hearing, the government argued forcefully for the joint recommendation of 72 months and even objected to the court's sentence stating that it was substantively unreasonable. Interestingly, on appeal, the government incorrectly insisted that the district court gave Mr. Jones this particular sentence because the court found he had a worse criminal history than the other defendants the court sentenced. But, the district court did not actually distinguish Mr. Jones's criminal history from the other career offender DMI defendants during the sentencing hearing. Instead, the court only discussed the criminal histories of the other career offender DMI defendants in terms of criminal history points based on the chart that counsel for Mr. Jones presented. As the chart shows, Mr. Jones had the second lowest criminal history points. And, of course, each defendant on the chart was a career offender just like Mr. Jones. The court did note that Mr. Jones had a very serious criminal history, including drug crimes and crimes of violence. Yet, that is the very definition of being a career offender. *See* U.S.S.G. § 4B1.1.²

² (a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense. U.S.S.G. § 4B1.1.

In addition, at one point during the sentencing, the court assumed that Mr. Jones's criminal history included older convictions for serious crimes that did not count for criminal history points and that the other defendants did not. However, that was an inaccurate assumption. The record does not show that the court made this distinction between Mr. Jones and the other career offender DMI defendants, as the record does not mention the other defendants' convictions or when they occurred. The court and the parties never reviewed the presentence reports or criminal histories of the other four defendants or named any specific conviction they had. Moreover, counsel for Mr. Jones pointed out multiple times that the other defendants also had older convictions that did not count for criminal history points similar to Mr. Jones.

C. The Eleventh Circuit Failed to Protect Due Process Guarantees at Sentencing

Federal courts of appeals "determine whether or not the law was applied correctly in the trial court."³ In that role, courts of appeals safeguard constitutional rights and guarantee fairness in the application of the law. Here, the Eleventh Circuit abdicated that role and instead seemed to adopt the government's factually inaccurate argument without closely reviewing the record. The result is that the Eleventh Circuit opinion rests on incorrect factual findings that led the panel to make incorrect legal conclusions of constitutional importance. As in *United States v. Tucker*, "we deal here, not with a sentence imposed in the informed discretion of a

³ United States Courts, "Court Role and Structure," available at <https://www.uscourts.gov/about-federal-courts/court-role-and-structure> (last visited January 2, 2019).

trial judge, but with a sentence founded at least in part upon misinformation of constitutional magnitude.” 404 U.S. at 447. Because the Eleventh Circuit departed from the accepted course of judicial proceedings in deciding an appeal based on inaccurate information, this Court should step in to protect Mr. Jones’s due process rights.

II. This Court Should Vacate the Eleventh Circuit Opinion Because It Sanctioned the District Court’s Refusal to Consider Unwarranted Sentencing Disparities, Which Ignored a Mandate from Congress and Threatens to Write 18 U.S.C. § 3553(a)(6) Out of the Statute

A. This Sentence Created Unwarranted Sentencing Disparity

18 U.S.C. § 3553(a)(6) states that in determining the sentence to be imposed, the court “shall consider...the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” The facts on the record in this case show that Mr. Jones’s sentence created exactly what 18 U.S.C. §3553(a)(6) forbids – vast and unwarranted sentencing disparities with similarly-situated defendants.

For no discernable reason, Mr. Jones received the harshest sentence of all 22 career offender defendants prosecuted in the government’s DMI program. Fourteen of the defendants sentenced by other judges received a 60-month sentence. Of the 21 other defendants who received lower sentences than Mr. Jones, nine of them had a higher criminal history category than him. With 10 criminal history points, Mr. Jones had a criminal history category of V – the lowest score in criminal history category V. Nine of the defendants were criminal history category VI, which means

they had 13 or more criminal history points. Seven of the career offender DMI defendants had the same criminal history category as Mr. Jones. Only five of 21 defendants had a lower criminal history category than Mr. Jones. Moreover, the fact that the government prosecuted Mr. Jones in Phase I of DMI and his less culpable role in the offense show that, if anything, he should have received a lower sentence than many of the 21 other defendants. Yet, he received a sentence of 130 months. Sentencing Mr. Jones to 130 months in custody, by far the harshest sentence of the career offender DMI defendants, was unwarranted and simply inexplicable.

B. Because the Eleventh Circuit Opinion Relied on Inaccurate Information, the Panel Failed to Uphold 18 U.S.C. § 3553(a)(6)

Even though there could not be a more clear case for a court to analyze unwarranted sentencing disparities under §3553(a)(6), the Eleventh Circuit failed to engage the sentencing disparity argument because it inaccurately concluded that Mr. Jones's criminal history was worse than that of the other defendants. By refusing to engage in this argument, the Eleventh Circuit ignored the law as written by Congress, and the opinion, if it stands, threatens to erode 18 U.S.C. § 3553(a)(6) and render it meaningless.

The text of 18 U.S.C. § 3553(a)(6) is unambiguous. The statute directs sentencing courts to avoid disparate sentences for people "with similar records who have been found guilty of similar conduct." The 22 career offender DMI defendants here are precisely what the language of § 3553(a)(6) contemplates. They all have similar records because they are all career offenders, and they all have been found

guilty of similar conduct. All of the conduct occurred on the same streets in the same small neighborhood on the west side of Atlanta. In addition, the government's very selection of them for prosecution in this special initiative shows that the government itself considered them similarly-situated.

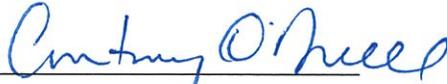
Despite this case presenting the perfect test for analyzing sentencing disparity, the Eleventh Circuit failed to address Mr. Jones's claim of sentencing disparity because incorrect information clouded the opinion. The Eleventh Circuit did not have the authority to ignore a mandate from congress stating that courts "*shall consider...the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.*" 18 U.S.C. § 3553(a)(6) (emphasis added). This Court should grant certiorari to stop the Eleventh Circuit from abdicating its responsibility to address the unwarranted sentencing disparity in this case and to prevent 18 U.S.C. § 3553(a)(6) from becoming meaningless and effectively written out of the statute by district courts.

CONCLUSION

For all the foregoing reasons, petitioner submits that the petition for a writ of certiorari should be granted.

Dated: This 2nd day of January, 2019.

Respectfully submitted,



Courtney O'Donnell
Counsel of Record