No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

GADIEL ROMERO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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QUESTIONS PRESENTED

I. Is it proper for a sentencing court to apply the substantial 6-level increase to a defendant's offense level contemplated in Section 2A4.1(b)(1) of the United States Sentencing Guidelines where a ransom demand was made during the commission of a kidnapping offense but was never communicated to a third party?

II. Does a sentence of 276 months imposed on a defendant convicted of Conspiracy To Commit Kidnapping in violation of 18 U.S.C. § 1201(c) constitute cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution where the national mean for such an offense is 192 months and where the defendant's similarly situated co-conspirators received sentences ranging from 131 to 192 months of imprisonment?

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Gadiel Romero, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit entered in this case.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the First Circuit, entered on October 12, 2018, affirming petitioner's conviction and sentence, is reported at *United States v. Romero*, 906 F.3d 196 (1st Cir. 2018) and, together with the judgment, is found at Appendix A.

JURISDICTION

The Court of Appeals issued its Opinion on October 12, 2018. This petition is filed within ninety days of the issuance of that Opinion. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984), 28 U.S.C. § 994, provides for the establishment of the United States Sentencing Commission to develop guidelines that will further the basic purposes of criminal punishment. The Act delegates broad authority to the Commission to promulgate the United States Sentencing Guidelines ("U.S.S.G"). U.S.S.G. § 2A4.1(b)(1) provides in relevant part:

> **2A4.1 <u>Kidnapping, Abduction, Unlawful Restraint</u>**
> * * *
> (b) Specific Offense Characteristics
> (1) If a ransom demand or a demand upon government was made, increase by 6 levels.
> * * *

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

The Opinion below contains all of the facts and rulings pertaining to the issues presented in this Petition. It is contained within the Appendix along with the Judgment challenged. The most relevant facts and rulings are summarized here.

Mr. Romero pled guilty to one count of Conspiracy To Commit Kidnapping in violation of 18 U.S.C. § 1201(c), and was sentenced to 276 months' of imprisonment. Prior to imposing its sentence on Mr. Romero, the trial court found that the 6-level enhancement found in U.S.S.G. § 2A4.1(b)(1) applied to the determination of Mr. Romero's offense level under the United States Sentencing Guidelines and to the applicable guidelines sentencing range. Mr. Romero failed to object to the application of the 6-level sentencing enhancement to his guidelines calculation at the time of the imposition of his sentence.

On appeal, Mr. Romero raised numerous objections to the process by which his sentence was imposed, including a challenge to the 6-level enhancement applied to his guidelines offense level pursuant to U.S.S.G. § 2A4.1(b)(1) for a ransom having been made during the commission of the offense of conviction. Citing to *United States v. Reynolds*, 714 F.3d 1039 (7th Cir. 2013), Mr. Romero argued that the 6-level ransom demand offense level increase only applied under the guidelines where the demand was communicated to a third-party other than the abducted person. In *Reynolds*, the Seventh Circuit held that the ransom enhancement contemplated in Section 2A4.1(b)(1) "may be applied only if kidnappers' demands for money or other consideration reach someone *other* than the captured person." 714 F.3d at 1044. In Mr. Romero's case, the undisputed facts were that demands for ransom payment were communicated only to the individuals captured and not to any third party. Accordingly, Mr. Romero argued that it was plain error for the sentencing court to have imposed the enhancement

under the circumstances.

Countering, the government asserted that Mr. Romero's challenge to the application of the ransom enhancement failed to rise to the level of plain error because *Reynolds* was not controlling authority – a position later adopted by the First Circuit. Further, the government argued that the Seventh Circuit's position in *Reynolds*, requiring that the ransom demand be communicated to someone other than the captured party, was contradicted by rulings of the Second, Fifth and Eleventh Circuits. On this point, the First Circuit again sided with the government, noting in addition that the Second Circuit had explicitly recognized that it had taken "a different approach" than the Seventh Circuit had taken in *Reynolds* on the issue of the ransom demand guideline. Mr. Romero's conviction and sentence was affirmed because of the absence of clear, binding authority requiring that the ransom demand be made to a party other than the captive.

REASONS THE PETITION SHOULD BE GRANTED

I. This Court Should Grant Certiorari To Resolve the Apparent Circuit Split and Address the Important Question of Federal Law of Whether the Substantial Sentencing Enhancement Contemplated Under USSG § 2A4.1(b)(1) Can Properly Be Applied Where No Ransom Demand Is Communicated To a Third Party.

Congress created the United States Sentencing Commission for the primary purpose of establishing sentencing norms to reduce sentencing disparities and promote transparency and proportionality in sentencing. 18 U.S.C. §§ 991(b)(1) and 994(f); *see also United States v. Booker*, 543 U.S. 220, 292 (2005)("[t]he elimination of sentencing disparity, which Congress determined was chiefly the result of a discretionary sentencing regime, was unquestionably Congress' principal aim" in enacting sentencing reform). Pursuant to that Congressional directive, the Sentencing Commission has promulgated detailed guidelines that create "categories of offenses" based on

various factors, including

> (1) the grade of the offense; (2) the circumstances under which the offense was committed which mitigate or aggravate the seriousness of the offense; (3) the nature and degree of the harm caused by the offense, including whether it involved . . . a person [or] a number of persons . . . . (4) the community view of the gravity of the offense; (5) the public concern generated by the offense; (6) the deterrent effect a particular sentence may have on the commission of the offense by others; and (7) the current incidence of the offense in the community and in the Nation as a whole.

18 U.S.C. § 944(c)(1)-(7).

Section 2A4.1 of the United States Sentencing Guidelines was promulgated by the U.S. Sentencing Commission for use in establishing the proper category of offense for "Kidnapping, Abduction, [and] Unlawful Restraint" applicable to defendants like Mr. Romero who are convicted of violations of certain federal criminal laws, including violations of 18 U.S.C. § 1201(c), Mr. Romero's offense of conviction. *See* U.S.S.G. §§ 1B1.2(a), 2A4.1 and Statutory Index (Appendix A). Among the many factors deemed relevant in determining the offense category or "offense level" applicable to an offender convicted of kidnapping is whether "a ransom demand or a demand upon government was made . . . ." U.S.S.G. § 2A4.1(b)(1). The determination of the applicability of this one factor is of no small moment for a defendant facing incarceration under the federal sentencing scheme. If the sentencing court determines that a "ransom demand . . . was made," the defendant's offense level is increased by 6 levels, from level a base offense level of 32 to level 38 (and may be subject to further upward or downward adjustments as well). The Seventh Circuit correctly recognized the 6-level offense level increase for ransom demands for what it is: a "substantial adjustment" that places a defendant's offense level among the very highest contemplated under the Guidelines. *Reynolds*, 714 F3d. at 1044; *see also* U.S.S.G. §§ 2A4.1(b)(1) and 5A (Sentencing Table).

The impact of such large offense-level increase under the Sentencing Guidelines cannot be

overstated. This Court has made it clear that although the Sentencing Guidelines are now advisory rather than mandatory, district courts are still required to begin all sentencing proceedings by correctly calculating the applicable Guidelines range. *Gall v. United States*, 552 U.S. 38, 49 (2007). "As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." *Id.* Even where the sentencing court varies from the recommended Guidelines sentencing range, as was the case with Mr. Romero, the Guidelines still are "in a real sense a basis for the sentence" since the judge is required to use "the sentencing range as the beginning point to explain the decision to deviate from it...." *Freeman v. United States*, 564 U.S. 522, 529 (2011). It follows then that where two circuits apply differing standards as to the applicability of a particular sentencing enhancement under the guidelines – particularly one that amounts to a "substantial adjustment" – consistency in sentences is jeopardized.

In Mr. Romero's case, the sentencing court determined that the "substantial adjustment" of Section 2A4.1(b)(1) was applicable and increased Mr. Romero's offense level by 6 levels. *Romero*, 906 F.3d at 202. After consideration of other applicable sentencing factors, the sentencing court determined that an adjusted offense level of 42 applied to Mr. Romero's case, placing his adjusted offense level among the highest contemplated by the Sentencing Commission. *Id.* Taking into account Mr. Romero's criminal history, the sentencing court determined that Mr. Romero's recommended guidelines sentencing range was 360 months to life in prison. *Id.* Based on its consideration of other pertinent sentencing factors as set forth in 18 U.S.C. § 3553(a), the sentencing court imposed a 276-month term of imprisonment on Mr. Romero, which represented a downward variance from the otherwise applicable guidelines sentencing range as determined by the court. *Id.* at 204.

On appeal, Mr. Romero challenged (among other sentencing matters) the application of the 6-level enhancement of Section 2A4.1(b)(1) to his circumstances. As is noted above, Mr. Romero argued that the increase was improper in his case because the ransom demand at issue was not communicated to a party other than the individual held captive. Mr. Romero is not alone in his interpretation of Section 2A4.1(b)(1) argued before the First Circuit on appeal. The Seventh Circuit had previously adopted the same view of Section 2A4.1(b)(1) as was asserted by Mr. Romero in its ruling in *Reynolds*, the only circuit-level case to tackle directly the issue of whether the ransom demand enhancement of Section 2A4.1(b)(1) applies to situations where the demand was not communicated to a third party. 714 F.3d at 1044. The Seventh Circuit's reasoning in *Reynolds* is sound and should have been followed by the First Circuit in Mr. Romero's case.

The persuasive arguments for the adoption of the Seventh Circuit's position are myriad. The Seventh Circuit first noted the untenable nature of the contrary notion, stating that if "ransom" were interpreted to include even demands for payment made only to the captured victim, then "even a simple mugging would include a 'ransom' demand if at some point during the attack the assailant offered to let the victim go in exchange for her valuables or some other benefit." *Reynolds*, 714 F.3d at 1044. Next, the Seventh Circuit turned to the language of the guidelines, which it noted "presupposes the existence of a third party . . . [because] [t]he adjustment applies if a ransom demand *or* a demand upon government was made." *Id.* (internal citation and quotation marks omitted). Commenting that a demand upon the government cannot be made during a kidnapping without communication of the demand to third parties, the Seventh Circuit found that a "ransom demand," which it noted was coupled with a "demand upon the government" in Section 2A4.1(b)(1), must also fairly be read to require a "third-party element." *Id.* According to the Seventh Circuit, the "substantial adjustment" of Section 2A4.1(b)(1) makes sense in such a

context, stating,

> additional punishment is warranted when demands reach third parties because those who are contacted will experience great stress and may attempt a rescue, escalating the threat of violence. Moreover, kidnapping someone in order to compel *others* to act, as a substitute for confronting or attempting to rob those others in person, can be a very effective way to accomplish crime that merits heightened deterrence.

Id. Conversely, the court observed that "when a kidnapping is conducted without the knowledge of anyone except for the victim, the scope of the crime and risk of harm to others . . . is not as great." *Id.*

The Seventh Circuit also looked to the ways in which other courts addressed similar matters to inform its decision in *Reynolds.* Somewhat surprisingly in light of the recent ruling in the present case, the Seventh Circuit found support for its position in the First Circuit's opinion in *United States v. Alvarez-Cuevas,* 415 F.3d 121, 126-27 (1st Cir. 2005). In *Alvarez-Cuevas*, the First Circuit construed Section 2A4.1(b)(6) – a similar subsection of the same guideline provision that was applied to Mr. Romero – to "apply only to situations involving third parties even though the section makes no explicit reference to them because of additional harm implicated in such situations." *Reynolds*, 714 F.3d at 1044-45 (citing *Alvarez-Cuevas*, 415 F.3d at 126-27). The Seventh Circuit saw in *Alvarez-Cuevas* support for its conclusion that the "substantial adjustment" under Section 2A4.1(b)(1) was justified by the increased risk inherent in the communication of a ransom demand to a third party, which involves additional victims in the kidnapping offense, creates an increased risk of violence, and opens up new avenues of manipulating otherwise uninvolved individuals.

Finally, the Seventh Circuit looked to the Hostage Taking Act ("HTA"), 18 U.S.C. § 1203, to which U.S.S.G. § 2A4.1 also applies. That statute is violated when a person "seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third

person or a governmental organization to do or abstain from doing any act as an explicitly or implicit condition for the release of the person detained." 18 U.S.C. § 1203(a). In the view of the Seventh Circuit, the HTA was describing a "ransom demand" – i.e., a demand communicated to a third party that requires the third party to engage in certain conduct to secure the release of the captive victim. *Reynolds*, 714 F.3d at 1045.

Relying on its exhaustive analysis, the Seventh Circuit concluded "that [U.S.S.G.] § 2A4.1(b)(1) may be applied only if kidnappers' demands for 'money or other consideration' reach someone *other* than the captured person." *Id.* at 1044 (emphasis in original). Its ruling was unambiguous.

Given the Seventh Circuit's assertion that "no [other] appellate court h[ad] considered whether § 2A4.1(b)(1) requires the communication of demands to third parties," *Reynolds*, 714 F.3d at 1045, Mr. Romero argued that the sentencing court should have been aware of this solitary appellate interpretation of the guideline at issue and thus erred by applying the enhancement to Mr. Romero where the facts in his case established that the demands for ransom were communicated only to the captive victims and not to any third parties. *Romero*, 906 F.3d at 205-06.

The First Circuit disagreed with Mr. Romero, citing to an apparent circuit split, among other things, as grounds for its rejection of both the *Reynolds* ruling and Mr. Romero's argument on appeal. *Id.* at 209. Challenging the Seventh Circuit's claims that it had "not found a single appellate decision where the adjustment had been applied to a defendant who did not intend for his demands to reach a third party," *Reynolds*, 714 F.3d at 1045, the First Circuit cited to three cases that it contends "took a different approach" to the ransom demand issue than was adopted by the Seventh Circuit: *United States v. DiGiorgio*, 193 F.3d 1175 (11th Cir. 1999)(per curiam); *United States v. Andrews*, 503 F. App'x 257 (5th Cir. 2012)(per curiam); *United States v. Escobar-Posado*,

112 F.3d 82 (2nd Cir. 1997)(per curiam). *Romero*, 906 F.3d at 209. Mr. Romero takes issue with the First Circuit's interpretations of these cases as being in contradiction of the Seventh Circuit's *Reynolds* analysis and asserts that the application of the enhancement to his circumstances was, in fact, clearly erroneous in contradiction of clear authority. He requests that this Court grant this petition to resolve any actual or apparent circuit split that may exist on the matter and to reverse the First Circuit's ruling in contravention of the proper application of the relevant provision of the Guidelines to his case.

None of the cases cited by the First Circuit has a holding directly on point. Instead, all focus on a different question: whether money already owed to the kidnapper can serve as ransom. *See DiGiorgio*, 193 F.3d at 1177 (holding that ransom includes money the kidnapper believes is owed to him); *Escobar-Posado*, 112 F.3d at 83 (same); *cf. Andrews*, 2012 WL 6634319 at * 1 (refusing to resolve question of whether money owed can be a ransom due to lack of factual support for alleged debt). More significantly, two of the cases cited by the First Circuit (*Escobar-Posado* and *Andrews*) involve factual scenarios where the ransom demand was communicated to a third party. The remaining case (*DiGiorgio*) involved a conspiracy to kidnap that never was effected but that may have involved a demand for ransom on a third party had the kidnapping been carried out as planned.

The defendant in *DiGiorgio* conspired with another to kidnap a victim who owed the kidnappers a substantial sum of money. 193 F.3d at 1177. As is noted above, the issue in the case was not whether a ransom demand must involve a third party, but rather whether a demand for payment of money already owed could constitute a ransom demand under U.S.S.G. § 2A4.1(b)(1). *Id.* at 1178. The Eleventh Circuit held that money previously owed could be ransom. *Id.* In doing so, that court noted that the defendant intended to demand a ransom from the abductee. *Id.* at

1177. But the court also noted the kidnappers' intentions to to hold the abductee "until that . . . money is paid . . . ." without determining who was expected to make the payment for the victim's release. *Id.* at 1177.

In *Andrews*, the abduction was, in reality, an attempted scam to obtain money from a man known as Anderson, an older friend of the defendant's associate, a woman named Byrd. 2012 WL 6634319 at *1. To effect the plan, Byrd went to Anderson's house and called the defendant and another man to come to the residence. *Id.* When the defendant and his confederate arrived, they held their co-conspirator, Byrd, and her friend, Anderson, at gunpoint demanding money from Byrd on the false pretense that she owed the gunmen $2,000. *Id.* The defendant and Byrd then put Anderson in a car and drove him at gunpoint to a casino to cash a check for $2,000, ostensibly to secure Anderson's *and Byrd's* release. *Id.* (emphasis added). The court held that the demand for the $2,000 payment under those circumstances involved a ransom warranting an enhancement under Section 2A4.1(b)(1). *Id.*

Finally, there is the *Escobar-Posado* case. There, the kidnappers abducted two drug couriers and their roommate and tortured and interrogated them in an effort to locate $300,000 in missing drug money. 112 F.3d at 83. Eventually, the kidnappers released one of the couriers and demanded that she return with money to secure the release of the *other* two victims, including the roommate. *Id.* The court held that such a demand for the courier to return with money to secure the release of the *other* two abductees constituted a ransom demand even though the money was allegedly already owed to the kidnappers. *Id.*

The First Circuit's opinion below suggests not only that there is a split among the circuits as to the applicability of Section 2A4.1(b)(1) to situations where the ransom demand is not communicated to a third party, but also that the Seventh Circuit stands alone in the opposition to

the Second, Fifth and Eleventh Circuits. *Romero*, 906 F.3d at 209. That is not the case. The Ninth Circuit, considering sentences imposed under the HTA, reached the same conclusion as to the applicability of Section 2A4.1(b)(1) as did the Seventh Circuit in *Reynolds*, stating that the provision "applies anytime a defendant demands money from a *third party* for release of a victim." *United States v. Sierra-Velasquez*, 310 F.3d 1217, 1221 (9th Cir. 2002)(emphasis added). The holding in *Sierra-Velasquez*, however, addressed only the issue of whether money already owed could be a ransom and not whether the demand for that ransom had to be communicated to a third party other than the captive. *Id.* Thus, the Ninth's Circuit's opinion as to the latter issue is only dicta, like those in *DiGiorgio, Andrews,* and *Escobar-Posado*. *See Reynolds,* 714 F.3d at 1045, n. 3 (citing favorably to *Sierra-Velasquez*, but noting that the language in that case was "likely dicta because the only issue before the court was whether a kidnapper demands 'ransom' if he is owed the money he has demanded").

The First Circuit's reliance on *DeGiorgio, Andrews* and *Escobar-Posado* to contradict the *holding* of *Reynolds* elevates dicta over the Seventh Circuit's clear holding in *Reynolds* and flies in the face of the language and intent of the relevant Guidelines provision. The clarity of the holding in *Reynolds* – that Section 2A4.1(b)(1) applies only to situations where a ransom demand is communicated to a third party – is not diminished by the First Circuit's references to cases from other circuits that only elliptically address the issue at hand. The First Circuit erred in finding that the sentencing court was justified in applying the ransom demand enhancement of Section 2A4.1(b)(1) where there was no communication of the demand to a third party other than the abducted individual. The only appellate court *holding* on the issue was articulated in *Reynolds,* and that ruling made clear that the "substantial" 6-level offense-level increase of Section 2A41.1(b)(1) could only be applied where the ransom demand was made on a third party – a

factual scenario that does not pertain here.

The issue is a significant one that goes to the heart of the purpose of the Sentencing Guidelines: avoiding disparity in sentencing. If Mr. Romero had been sentenced in the Seventh Circuit rather than the First Circuit, his offense level would have determined to be 6-levels lower than that which ultimately was used to calculate his advisory sentencing range in the present matter. Absent the increase in his offense level applied pursuant to Section 2A4.1(b)(1), Mr. Romero's properly calculated guidelines sentencing range would have been based on an offense level of 32, which would have reduced the proper "starting point" for the determination of his sentence from 360-life to 324-405 months. Thus, the starting point for determining Mr. Romero's sentence was significantly higher than the starting point that would have applied to him if he had committed his offense in the Seventh Circuit's jurisdiction rather than that of the First Circuit. The consequence is that similarly situated defendants are likely to receive significantly disparate sentences depending on where they commit their offense.

Certiorari is thus necessary to resolve the apparent, if not actual, split among circuit authorities on the applicability of USSG § 2A4.1(b)(1) to situations like Mr. Romero's where a ransom demand is made but not communicated to a third party other than the captive. The grant of this petition will permit this Court to provide clear guidance to all lower courts as to the circumstances where the "substantial adjustment" of Section 2A4.1(b)(1) may properly be applied to increase offenders' sentences to ranges that are among the most serious contemplated under the current federal sentencing scheme. Such a ruling would foster unity among the federal courts on this important sentencing matter and eliminate the significant sentencing disparities inevitably flowing from the divergent application of the 6-level increase contemplated in Section 2A4.1(b)(1).

II. The Sentence Imposed Was So Grossly Disproportionate to the Offense of Conviction and to the Sentences Imposed on Other Culprits Convicted of the Same Crime As To Warrant Reversal As a Violation of the Eighth Amendment's Prohibition on Cruel and Unusual Punishment.

The Eighth Amendment to the United States Constitution, which prohibits the imposition of cruel and unusual punishment, contains a "narrow proportionality principle" that applies in non-capital cases such as Mr. Romero's. *Harmelin v. Michigan*, 501 U.S. 957, 996-97 (1991). This Court has found that a sentence that is "grossly disproportionate" to the underlying offense of conviction runs afoul of that prohibition. *Ewing v. California*, 538 U.S. 11, 21 (2003). In assessing a challenge under the Eighth Amendment, three criteria must be considered:

> (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions.

Solem v. Helm, 463 U.S. 277, 292 (1983). While such challenges should be "rare," this Court has stated that "no penalty is *per se* constitutional." *Id.* at 290. "[A] single day in prison may be unconstitutional in some circumstances." *Id.*

Here, Mr. Romero asserted that his sentence of 276 months violated the Eighth Amendment's cruel and unusual punishment clause because it was exceedingly harsh in light of the nature of the offense, his role in the offense conduct and his past criminal history. Mr. Romero was "not the mastermind" of the operation. *Romero*, 906 F.3d at 204. He was not a leader, did not engage in any torturing of the abducted individuals, and did not assist in equipping the kidnap crews or the tracking of potential victims. *Id.* His co-conspirators were responsible for those types of things and all of them (except the group's leader) received sentences significantly lower than Mr. Romero, ranging from 131 months to 192 months. *Id.* at 204-05.

In addition to being disproportionately harsh in light of the offense of conviction, which

admittedly is a serious crime, Mr. Romero's sentence also constitutes a cruel and unusual punishment since it so significantly and unjustifiably exceeds the sentences imposed on his co-conspirators. *Id.; see also Solem*, 463 U.S. at 292. With the exception of the kidnap conspiracy's ring leader, Mr. Romero's sentence exceeded those imposed on his co-conspirators by at least 7 and as many as 12 years and further exceeds the "national mean" of 192 months by fully 7 years, as well. *Romero*, 906 F.3d at 204; *Solem*, 463 U.S. at 292. Such a disparity not only undermines the basic principles of the federal sentencing scheme, but also constitutes cruel and unusual punishment under the factors enunciated by this Court in *Solem.*

The First Circuit rejected Mr. Romero's Eighth Amendment arguments in a footnote. *Romero*, 906 F.3d at 205, n. 3. In doing so, the court failed to address pressing questions of national importance, including whether discretionary sentences that so gravely exceed those imposed on a perpetrator's co-defendants as well as the national mean sentence violate the constitutional bounds established in the Eighth Amendment.

This Court should grant certiorari to address that issue.

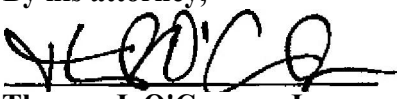
CONCLUSION

This Court should take this opportunity to resolve the inconsistencies in the application of the "significant adjustment" contemplated under U.S.S.G. § 2A4.1(b)(1) among the circuits. Review by this Court is necessary to resolve the conflict and provide uniform direction on the matter which potentially affects many individuals. This Court should hold that the 6-level increase under Section 2A4.1(b)(1) for making a ransom demand applies only where the demand is communicated to someone other than the kidnapped captive. Furthermore, this Court should take this opportunity to revisit its jurisprudence on the application of the cruel and unusual clause of the Eighth Amendment to lengthy prison sentences that are disproportionate to the offense

conduct and to the other sentences imposed on co-defendants in the same case and the mean sentence imposed on defendants nationwide.

For the foregoing reasons, petitioner respectfully requests that this Court grant the Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit, determine that the court erred in affirming Mr. Romero's sentence, vacate Mr. Romero's sentence and remand this case for further proceedings.

Respectfully submitted,
Gadiel Romero
By his attorney,



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