No. 18-7575

IN THE

Supreme Court of the United States

ALEXIS VALDES GONZALEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

SECOND SUPPLEMENTAL BRIEF FOR PETITIONER

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SECOND SUPPLEMENTAL BRIEF FOR PETITIONER

Pursuant to this Court's Rule 15.8, Petitioner files this Second Supplemental Brief to advise the Court of material developments following Petitioner's First Supplemental brief of December 18, 2019. These developments confirm that the due process question presented is one of great practical importance warranting review.

* * *

In his Petition (at 16–17, 47a–50a), Reply Brief (at 3 n.1), and First Supplemental Brief (at 1–2 & n.1), Petitioner documented how the Eleventh Circuit has repeatedly relied on its holding in *United States v. St. Hubert*, 909 F.3d 335, 345–46 (11th Cir. 2018), *reh'g denied*, 918 F.3d 1174 (11th Cir. 2019) to adjudicate scores of direct criminal and post-conviction appeals. As Petitioner has explained, that method of adjudication violates procedural due process because it precludes meaningful consideration of a defendant's argument. *See* Pet. 20–25; Reply Br. 5–9.

That unconstitutional practice continues in earnest. In numerous cases over the last few months, the Eleventh Circuit has continued affording preclusive effect to published orders issued on successive applications.[1] The substantial impact of that

[1] *See, e.g.*, *United States v. Cummings*, __ F. App'x __, 2020 WL 1898806, at *1 (11th Cir. Apr. 17, 2020); *United States v. Buckner*, __ F. App'x __, 2020 WL 1527727, at *4–5 (11th Cir. Mar. 31, 2020); *United States v. Gibbs-King*, __ F. App'x __, 2020 WL 1527700, at *2 (11th Cir. Mar. 31, 2020); *United States v. McCant*, __ F. App'x __, 2020 WL 1157025, at *3 (Mar. 10, 2020); *Walker v. United States*, 796 F. App'x 702, 703–04 (11th Cir. Mar. 2, 2020); *Crawford v. United States*, __ F. App'x __, 2020 WL 916939, at *3 (11th Cir. Feb. 26, 2020); *Levatte v. United States*, __ F. App'x __, 2020 WL 823889, at *1–2 (Feb. 19, 2020); *Wilkes v. United States*, 791 F. App'x 883, 884 & n.2 (11th Cir. Jan. 27, 2020); *United States v. Harvey*, 791 F. App'x 171, 171 n.1 (11th Cir. Jan. 23, 2020); *United States v. Hanks*, 795 F. App'x 783, 785 (11th Cir. Jan. 13, 2020); *United States v. Henderson*, 798 F. App'x 468, 470 (11th Cir. Jan. 7, 2020);

method of adjudication is now manifest. The Eleventh Circuit continues to employ it despite the sharp criticism expressed by five members of that court in *St. Hubert*. And the court continues to do so despite growing calls for this Court's intervention.

Rather than "exercis[ing] more caution," *St. Hubert*, 918 F.3d at 1191 (Jordan, J., concurring in the denial of rehearing en banc), the Eleventh Circuit has recently added even more published orders to its body of precedent. *See* First Supp. Br. 2–3 (discussing published orders issued on *pro se* successive applications limiting the scope of relief under *United States v. Davis*, 139 S. Ct. 2319 (2019)). And it has begun affording those new orders preclusive effect too. *See, e.g.*, *Calderon v. United States*, __ F. App'x __, 2020 WL 1921930, at *3–4 (11th Cir. Apr. 21, 2020); *Valdes v. United States*, 793 F. App'x 997, 998–99 (11th Cir. Feb. 13, 2020); *Paige v. United States*, 798 F. App'x 470, 472 (11th Cir. Jan. 8, 2020). Thus, the Eleventh Circuit's unconstitutional method of adjudication is not only continuing but expanding.

Given that continuation and expansion, more federal prisoners are turning to this Court to vindicate their due process rights. Five months ago, Petitioner observed that there were already four more pending petitions seeking this Court's review, and he predicted this number would continue to grow. First Supp. Br. 4. That prediction has come to pass. Over the last few months, several more criminal defendants have presented the same due process question for this Court's review. *See, e.g.*, *Alston v.*

United States v. Scott, 798 F. App'x 391, 396 (11th Cir. Dec. 27, 2019); *Vega v. United States*, 794 F. App'x 918, 919–20 (11th Cir. Dec. 23, 2019); *Rodriguez v. United States*, 789 F. App'x 205, 206 (11th Cir. Dec. 20, 2019); *Smith v. United States*, 787 F. App'x 684, 685–86 (11th Cir. Dec. 11, 2019).

United States, No. 19-7672; *Hunt et al. v. United States*, No. 19-7506; *Smith v. United States*, No. 19-7527; *Boston v. United States*, No. 19-7148. They will continue to come.

Petitioner supports this Court's review in any of the pending cases. But, as previously explained, he maintains that his case is the best vehicle. *See* Reply Br. 10–14; First Supp. Br. 4–5. To reiterate: 1) Petitioner argued below that *In re Burgest*, 829 F.3d 1285 (11th Cir. 2016) was not binding precedent; the panel squarely rejected that argument and affirmed his sentence based exclusively on that decision; and, after suffering that unconstitutional adjudication, Petitioner clearly pressed and thoroughly briefed a due process claim in a petition for rehearing; 2) Petitioner's case is on direct review (where an appeal is statutorily guaranteed), not collateral review (where an appeal is statutorily conditioned on a COA); 3) Petitioner's underlying sentencing argument has been unanimously embraced by the only circuit to consider it with the benefit of briefing and adversarial testing; and 4) rather than presenting tangential issues for review, Petitioner challenges only the due process problem at the heart of the Eleventh Circuit's method of adjudication. Petitioner is unaware of any other pending petition that shares all (or even many) of these salient attributes.

In sum, the Eleventh Circuit has demonstrated, time and again, that it has no qualms about employing its anomalous method to adjudicate criminal cases. Thus, there is every reason to believe that this practice will continue for years to come, continuing to prejudice scores of federal criminal defendants in Florida, Georgia, and Alabama. Only this Court can end that unconstitutional practice and ensure that defendants in the southeast receive due process of law, just like everyone else.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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