No. 19-_____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2019

AL-MALIK FRUITKWAN SHABAZZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent,

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

PETITION FOR WRIT OF CERTIORARI AND APPENDIX

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August 16, 2019

QUESTIONS PRESENTED

I. Whether robbery under Connecticut General Statutes § 53a-133 categorically qualifies as a "violent felony" under the force clause of the Armed Career Criminal Act of 1984 ("ACCA"), 18 U.S.C. § 924(e)(2)(B), even though Connecticut robbery is broader than Florida robbery, which was considered by this Court in *Stokeling v. United States*, 139 S. Ct. 544 (2019).

II. Whether Mr. Shabazz's case should be remanded to the District Court for a full resentencing of Mr. Shabazz as he stands before the Court today, *see Pepper v. United States*, 562 U.S. 476 (2011), rather than have his original sentence reinstated, which would include a mandatory five-year term of supervised release despite him already having served more than two-and-one-half years of supervised release.

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OPINIONS AND ORDERS BELOW

The Opinion of the United States Court of Appeals for the Second Circuit vacating the District Court's judgment is reported at 912 F.3d 73 and appears at Appendix A to this petition. The Opinion of the United States Court of Appeals for the Second Circuit denying the petition for panel rehearing is reported at 923 F.3d 82 and appears at Appendix B to this petition. The Ruling and Order of the United States District Court for the District of Connecticut granting Mr. Shabazz's 28 U.S.C. § 2255 petition and vacating Mr. Shabazz's original sentence is not reported, but is available at 2017 WL 27394, and appears at Appendix C to this petition. The Order of the United States Court of Appeals for the Second Circuit denying the petition for rehearing *en banc* is not reported, but appears at Appendix D to this petition.

JURISDICTION

With the United States Court of Appeals for the Second Circuit having vacated the ruling of the District Court by an opinion dated January 4, 2019, and having thereafter denied a petition for panel rehearing on April 26, 2019, and for rehearing *en banc* on May 21, 2019, this Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742(b), and the District Court had jurisdiction pursuant to 18 U.S.C. § 3231 and 28 U.S.C. § 2255(a).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 924(e)(1) enhances the penalty for a violation of 18 U.S.C. 922(g)(1) to a mandatory 15 years to life if the offender has three previous convictions for a "violent felony or a serious drug offense, or both, committed on occasions different from one another."

18 U.S.C. § 924(e)(2)(B)(1) defines "violent felony" as:

> [A]ny crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use of carrying of a firearm, knife, or destrictive device that would be punishable by imprisonment for such term if committed by an adult, that—
>
> **(i)** has as an element the use, attempted use, or threatened use of physical force against the person of another[.]

18 U.S.C. § 3742(f)-(g) provides:

> **(f) Decision and disposition.**--If the court of appeals determines that--
>
> > **(1)** the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate . . .
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> . . .
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> **(g) Sentencing upon remand.**--A district court to which a case is remanded pursuant to subsection (f)(1) or (f)(2) shall resentence a defendant in accordance with section 3553 and with such instructions as may have been given by the court of appeals, except that--
>
> > **(1)** In determining the range referred to in subsection 3553(a)(4), the court shall apply the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that were in effect on the date of

> the previous sentencing of the defendant prior to the appeal, together with any amendments thereto by any act of Congress that was in effect on such date[.]

Connecticut General Statutes, § 53a-133 provides:

> A person commits robbery when, in the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of: (1) Preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or (2) compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny.

STATEMENT OF THE CASE

This petition originates with the District Court's grant of habeas corpus under 28 U.S.C. § 2255 in favor of Petitioner Al-Malik Fruitkwan Shabazz (formerly known as Edward Singer), who raised a successive habeas petition pursuant to *Johnson v. United States*, 135 S. Ct. 2551 (2015) ("*Johnson II*"), and *Welch v. United States*, 136 S. Ct. 1257 (2016). The grant resulted in the reduction of Mr. Shabazz's federal sentence for unlawful possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) and § 924(e)(1). When Mr. Shabazz was originally sentenced in 2005, the District Court concluded that Mr. Shabazz was subject to a mandatory minimum term of imprisonment of 15 years under ACCA, 18 U.S.C. § 924(e), and five years of supervised release. At the time, Mr. Shabazz had prior Connecticut state-court robbery convictions under Conn. Gen. Stat. § 53a-133. Following this Court's decisions in

Johnson II, and *Welch*, Mr. Shabazz filed a habeas petition arguing that he no longer qualified for an ACCA sentence because his prior robbery convictions do not categorically qualify as "violent felony" predicates under ACCA. The District Court agreed with Mr. Shabazz and granted his petition in a ruling that the Court of Appeals described as "thoughtful" and "scholarly." (See App. A 2).

The District Court held that robbery under Conn. Gen. Stat. § 53a-133 does not necessarily involve the use of force that is capable of causing pain or injury, and that therefore Mr. Shabazz had fewer than three prior violent felonies and did not qualify for mandatory sentencing under ACCA. The District Court reasoned that simple robbery under Conn. Gen. Stat. § 53a-133, without aggravating factors, does not qualify as an ACCA predicate because the crime can be committed by use of levels of force so slight that they are not capable of causing pain or injury. In reaching its holding, the District Court relied on Connecticut state law, including numerous decisions by the Connecticut Supreme Court.

The District Court vacated Mr. Shabazz's prior sentence of 235 months' imprisonment, resentenced him to 120 months' imprisonment, and ordered his release from custody because he had completed service of the new sentence, and to commence a term of supervised release reduced from five to three years. Released on January 6, 2017, Mr. Shabazz has been a free man for more than 2 ½ years.

The government appealed, arguing that Connecticut's robbery statute does

require force (or the threat of force) that is capable of causing pain or injury. The Court of Appeals agreed with the government and vacated the District Court's judgment. The Court of Appeals held that the use or threat of even minimal force on another person in aid of the theft of that person's property is inherently capable of causing pain or injury, with the result that any violation of § 53a-133 qualifies as an ACCA predicate. The Court of Appeals' opinion did not cite a single Connecticut case or other authority, aside from the robbery statutes. Instead of remanding for resentencing, the Court of Appeals reinstated Mr. Shabazz's original sentence of 235 months' imprisonment.

Shabazz filed a petition for panel rehearing or rehearing *en banc*, which the Court of Appeals denied by another opinion as to the petition for rehearing and then a short order as to the petition's request for rehearing *en banc*.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT THE PETITION AND REVERSE THE COURT OF APPEALS BECAUSE CONNECTICUT ROBBERY, UNLIKE FLORIDA ROBBERY, IS BROADER THAN COMMON-LAW ROBBERY.

The Court of Appeals has decided an important question of federal law that (1) has not been, but should be, settled by this Court; (2) is in conflict with Connecticut law; and (3) uses reasoning that conflicts with this Court's precedent in *Stokeling v. United States*, 139 S. Ct. 544 (2019) and *Johnson v. United States*, 559 U.S. 133, 138 (2010) ("*Johnson I*"). The *Shabazz* Court's sweeping conclusion that "the threat of force capable of causing pain or injury is inherent in the crime of robbery," (App. A 2) was undertaken with minimal analysis and without considering interpretive state law as required by the categorical approach. The conclusion has broad implications for petitioners challenging their ACCA sentencing enhancements in the wake of *Johnson II*, for Sentencing Guidelines calculations, and for criminal and immigration cases relying upon the definition of "crime of violence" in 18 U.S.C. § 16, which contains language nearly identical to ACCA.

Although the Court of Appeals and the *Stokeling* Court similarly analyzed common-law robbery, that is where the similarities end. As required by the categorical analysis rubric, *see Johnson I*, 559 U.S. at 138, the *Stokeling* Court engaged in an extensive analysis of Florida state-court precedent concerning robbery. *See Stokeling*, 139 S. Ct. at 554–55 (reviewing Florida statute and then discussing distinctions found in state case

law). The District Court in this case had done likewise as to Connecticut precedent. (*See* App C 18-20.) The Court of Appeals, however, did not discuss a single Connecticut case. That flaw in the analysis is fatal to the decision below. *See Johnson I*, 559 U.S. at 138 ("We are . . . bound by the Florida Supreme Court's interpretation of state law, including its determination of the elements of Fla. Stat. § 784.03(2)."); *cf. Cross v. United States*, 892 F.3d 288 (7th Cir. 2018) (Wood, C.J.) (relying on "authoritative interpretation of Wisconsin law," *i.e.*, decisions by the Wisconsin Supreme Court, in holding that Wisconsin robbery statute does not trigger the force clause in U.S.S.G. § 4B1.2(a)(1)).

For example, the Court of Appeals did not address that in Connecticut state court, it is the larceny-from-a-person offense—rather than simple robbery—that categorically involves the risk of face-to-face confrontation emphasized in *Stokeling*[3] and is, therefore, the more serious offense. *See State v. Wright*, 246 Conn. 132 (1998). In comparing potential sentencing consequences, the Connecticut Supreme Court has determined that the state legislature could rationally have concluded that larceny from the person was the more serious offense because, under Connecticut law, that offense is the one that requires a face-to-face confrontation, whereas simple robbery does not:

> [T]he close proximity can lead to confrontation and escalating violence; a risk of injury invariably accompanies the physical contact; and the invasion of the person, especially on the street or in some other public setting—where the legislature might reasonably

[3] *See Stokeling*, 139 S. Ct. at 553 (". . . robbery that must overpower a victim's will – even a feeble or weak-willed victim – necessarily involves a physical confrontation and struggle.").

> have believed the crime most often occurs—is a degrading, humiliating and frightening experience.

Id. at 146. In contrast to larceny, the Connecticut Supreme Court observed that robbery involves "a relatively low level" of force and does not require any physical confrontation. *Id. Cf. Stokeling*, cited *supra*, n.1. *See also State v. Reed*, 157 Conn. 464, 466 (1969) (noting that historically, "Connecticut statutes have distinguished between common-law robbery and robbery with violence," but finding that offense in that case, which involved threatening use of unloaded gun, was in latter category). Even the plain language of Connecticut's robbery statute, which does not include the term "violence," allows for robbery to be met by compelling someone to "deliver up the property or to engage in other conduct which aids in the commission of the larceny." Conn. Gen. Stat. § 53a-133. *See, e.g., State v. Littles*, 31 Conn. App. 47, 55 (1993) (upholding second-degree robbery conviction where defendant parked in deserted area and watched as his companions approached victim, told him to hand over his coat and necklace, and told him to run away after he did so).

By comparison, in *Stokeling*, the Florida robbery offense required a physical confrontation in which physical force must be employed to overcome a victim's resistance. *See Stokeling*, 139 S. Ct. at 553. In finding the requisite force in Florida robbery, *Stokeling* relied on the enactment of a "sudden snatching" offense that dispensed with the physical force requirement in snatching cases. *Id.* at 555. The Court of Appeals did not address this point, despite that Connecticut law recognizes a

distinction. In *Wright*, *supra*, the Connecticut Supreme Court made clear that the state's larceny-from-a-person offense is the more serious offense because it is the provision that requires the physical confrontation. By not requiring the confrontation on which *Stokeling* relied, Connecticut's robbery offense is broader, but the *Shabazz* Court avoided this discrepancy by never engaging in analysis of Connecticut cases.

Stokeling concludes that even if an offense requires only that minimal physical force be used, that offense will categorically involve the violent physical force necessary to qualify under the ACCA's force clause ***if the statute requires that the physical force is used to overcome a victim's resistance in a confrontation***. Connecticut's robbery statute, Conn. Gen. Stat. § 53a-133, is not such an offense because it criminalizes a far broader range of conduct. Accordingly, Conn. Gen. Stat. § 53a-133 cannot qualify as a violent felony under the force clause.

Connecticut law is thus inconsistent with *Shabazz*'s central conclusion that robbery offenses should qualify as violent felonies because they are generally more serious offenses than other forms of larceny. (*See* App. A 4 ("Scholars of the criminal law underline the inherent potential for physical harm to the victim as the explanation why robbery developed as, and continues to be treated as, an aggravated felony, generally carrying harsher punishments than other forms of larceny.").) While this conclusion may generally hold true, including in *Stokeling*, that is not the case in Connecticut. The Court of Appeals, however, did not address Connecticut state law;

instead, the opinion below relied extensively on the broader definition of robbery "as it is understood in the common law," referencing the Model Penal Code and two legal treatises. (*Id.*)

Indeed, under Connecticut law, "physical force" and "violence" are separately defined concepts, with physical force being far broader. Connecticut jury instructions recognize that "physical force" requires only a minimal level of force, which does not rise to the level of violence: "'Physical force' means the ***external physical power over the person***, which can be effected by hand or food or another part of the defendant's body applied to the other person's body or applied by an implement, projectile or weapon. . . . ***Physical force may take many forms.***" Connecticut Judicial Branch Criminal Jury Instructions, 6.4-3, Robbery in the Third Degree – § 53a-133 and § 53a-136, available at https://jud.ct.gov/JI/Criminal/Criminal.pdf (emphasis added).

Connecticut statutes list "physical force" and "violence" separately, thereby indicating distinctive definitions. *See, e.g.*, Conn. Gen. Stat. § 53a-56(7) (in the sexual assault context, "'[u]se of force' means: (A) Use of a dangerous instrument; or (B) use of actual physical force ***or*** violence ***or*** superior physical strength against the victim") (emphasis added). The different meanings of these statutory terms is reflected in the case law—"[N]othing . . . in our law, suggests that proof of physical violence is necessary to establish that the sexual intercourse or contact has been compelled by the use of force or a threat of the use of force. . . ." *State v. White*, 139 Conn. App. 430, 437

(2012). The terrorism statute also distinguishes between physical force and violence. Conn. Gen. Stat. § 53a-300(a) provides, "[a] person is guilty of an act of terrorism when such person, with intent to intimidate or coerce the civilian population or a unit of government, commits a felony involving the unlawful use or threatened use of physical force ***or*** violence." (emphasis added).

Moreover, *Stokeling* answered a more narrow question about Florida's definition of robbery than is presented here and in Connecticut's definition. In *Stokeling*, the Court decided "whether a robbery offense that has as an element the use of force sufficient to overcome a victim's resistance necessitates the `use of physical force' within the meaning of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B)(i)." 139 S. Ct. at 516 (emphasis added). Although the Connecticut statute includes "[p]reventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking, Conn. Gen. Stat. § 53a-133(1), the statute also includes an option of using force for the purpose of "compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny," *id.*, §53a-133(2). While the word "resistance" does appear in Connecticut's statutory definition of robbery, it is not identified (as in Florida) as a facet or characteristic of either the perpetrator's conduct, the degree of force used by the perpetrator, or the victim's reaction to the perpetrator's conduct. Rather, resistance is a component (of only one of two alternatives) regarding the perpetrator's

purpose, and overcoming resistance is not even a requirement of that alternative. Accordingly, resistance is not even an element that Connecticut juries are required to find in assessing a robbery accusation.[4] In short, "overcoming resistance" is not required, and Connecticut robbery is therefore more broad than Florida robbery and not a violent felony.[5]

II. CONSISTENT WITH *PEPPER V. UNITED STATES*, 562 U.S. 476 (2011), THE COURT SHOULD GRANT THE PETITION TO VACATE AND REMAND TO THE DISTRICT COURT FOR A FULL RESENTENCING OF MR. SHABAZZ AS HE STANDS BEFORE THE COURT TODAY.

In ordering the reinstatement of Mr. Shabazz's ACCA-based-sentence instead of remanding to the District Court for a full resentencing, the Court of Appeals' decision is incompatible with its prior holding in *Villanueva v. United States,* 893 F.3d 123 (2d Cir. 2018), and this Court's ruling in *Pepper v. United States*, 562 U.S. 476 (2011).

In *Villanueva*, the Court of Appeals reversed a Connecticut district court's habeas determination that Connecticut first-degree assault was not a violent felony under ACCA, but remanded for resentencing. *See id.* at 132 (ordering "remanded with directions to vacate the ruling of June 10, 2016, vacate the sentence imposed on June 14, 2014, and resentence").

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[4] See Connecticut Judicial Branch Criminal Jury Instructions, 6.4-3, Robbery in the Third Degree – § 53a-133 and § 53a-136, available at https://jud.ct.gov/JI/Criminal/Criminal.pdf (emphasis added).

[5] Whether New York robbery is a violent felony is under review in *Thrower v. United States*, Supreme Court No. 19-5024.

> "[A] court's duty is always to sentence the defendant as he stands before the court on the day of sentencing," *United States v. Bryson*, 229 F.3d 425, 426 (2000), and a court is "required to resentence [the defendant] in light of the circumstances as they stood at the time of resentencing," *Werber v. United States*, 149 F.3d 172, 178 (2d Cir. 1998). At resentencing, Villanueva will have been out of prison for more than two years (after having served more than the ACCA mandatory fifteen year sentence). That is a circumstance the District Court is entitled to consider in deciding whether to impose a sentence that requires him to serve all, part, or none of the unexpired term of the original sentence. *See Pepper v. United States*, 562 U.S. 476, 590 (2011) (rehabilitation since prior sentencing may be considered on resentencing); *United States v. Hernandez*, 604 F.3d 48, 55 (2d Cir. 2010) (defendant's rehabilitation during prolonged freedom pending resentencing warranted consideration).

Id. *See also United States v. Core*, 125 F.3d 74, 77 (2d Cir. 1997) (vacating and remanding for court's refusal to consider post-conviction rehabilitation in resentencing for drug conviction following successful habeas challenge as to § 924(c) conviction, holding, "[the court] was required to consider [the defendant] as he stood before the court at that time"), superseded by amendment to Guidelines as stated in *Quesda-Mosquera v. United States*, 243 F.3d 685, 686 (2001), but abrogated by *Pepper*. The *Villanueva* court recognized, as has this Court, that "a court's duty is always to sentence the defendant as he stands before the court on the day of sentencing." *United States v. Bryson*, 229 F.3d 425, 426 (2d Cir. 2000) (*per curiam*) (quoted in *Pepper v. United States*, 562 U.S. 476, 492 (2011)).

The allowance for resentencing that considers the defendant's status at that time is rooted in 18 U.S.C. § 3742.[6]

> **(f) Decision and disposition.**--If the court of appeals determines that--
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> > **(1)** the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate . . .
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> . . .
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> **(g) Sentencing upon remand.**--A district court to which a case is remanded pursuant to subsection (f)(1) or (f)(2) shall resentence a defendant in accordance with section 3553 and with such instructions as may have been given by the court of appeals, except that--
>
> > **(1)** In determining the range referred to in subsection 3553(a)(4), the court shall apply the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that were in effect on the date of the previous sentencing of the defendant prior to the appeal, together with any amendments thereto by any act of Congress that was in effect on such date[.]

18 U.S.C. § 3742(f) – (g). While the statute allows for a court of appeals to give "instructions," the statute plainly contemplates the sentencing court "determining the [Guidelines] range," and, more broadly, that the "district court . . . resentence a defendant in accordance with section 3553." *Id.*

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[6] Parties in federal criminal appeals, including the Government, commonly invoke 18 U.S.C. § 3742 as a basis for the court of appeals's jurisdiction. *See, e.g.*, *United States v. Ekhator*, 853 F. Supp. 630, 635 n.5 (E.D.N.Y. 1994) (Glasser, J.) ("Decisions and dispositions of appeals from sentencing are governed by 18 U.S.C. § 3742(f), which was specifically enacted for that purpose, ...").

This Court has recognized the importance of any resentencing hearing enabling the resentencing court to consider the contemporaneous defendant, rather than the one as presented at the original sentencing:

> . . . district courts may impose sentences within statutory limits based on appropriate consideration of all of the factors listed in § 3553(a), subject to appellate review for "reasonableness." *Gall*, 552 U.S., at 49–51, 128 S. Ct. 586. ***This sentencing framework applies both at a defendant's initial sentencing and at any subsequent resentencing after a sentence has been set aside on appeal.*** See 18 U.S.C. § 3742(g) ("A district court to which a case is remanded . . . shall resentence a defendant in accordance with section 3553.") . . . .

Pepper v. United States, 562 U.S. 476, 490 (2001) (emphasis added).

Here, assuming – without conceding – that the Court does not reverse the Court of Appeals as to the issue of whether Connecticut robbery is a violent felony, the Court should vacate on this point and remand to allow the District Court to resentence Mr. Shabazz. The Court of Appeals' conclusion that the effect here "is to reinstate the original sentence, " (*see* App. A 4), is inconsistent with equity and the law. Mr. Shabazz has been on supervised release for more than 2 ½ years, establishing a life that illustrates that he is not the same man as the one sentenced in 2005 and that application of the § 3553(a) factors should yield a different outcome, even if the 15-year mandatory prison term has been reestablished. Denial of a meaningful resentencing plainly is inconsistent with *Pepper*, *Villanueva*, the statutory directives, and basic fairness. The District Court should be allowed to conduct a full hearing and "sentence the

defendant as he stands before the court on the day of sentencing." *Villanueva*, 893 F.3d at 132.

The uncertainty in the sentencing analysis, in this context, compels returning this case for the opportunity for the District Court to resentence. *See United States v. Vasquez*, No. 09-CR-259 (JG) 2010 WL 1257359, at *1 (E.D.N.Y. Mar. 30, 2010) (Gleeson, J.) ("[T]he truth is that most of the time miscarriages of justice occur in small doses, in cases involving guilty defendants. This makes them easier to overlook. But when they are multiplied by the thousands of cases in which they occur, they have a greater impact on our criminal justice system than the cases you read about in the newspapers or hear about on *60 Minutes*."). The Court should order a resentencing so that the District Court can assess the 18 U.S.C. § 3553(a) factors as they apply today.

Indeed, now in his 50s, Petitioner would return to prison and serve years more, even though he already has completed more than two years of his three-year supervised release term. Two U.S. probation officers, including his supervising officer, both have indicated that Petitioner is doing well, working full-time and maintaining steady housing and a relationship. They noted one incident in April, 2018, when he was outside the District without authorization and arrested for offenses arising from an automobile accident, all of which has been brought to the District Court's attention, but observed that that appears to be a bump in the road in his doing well.

Reinstating the sentence would including re-imposing a mandatory five-year term of supervised release, with no relief afforded to recognize the two-plus years already spent on supervision. This outcome cannot be correct and is contradictory to rules more than a century old. *See Ex parte Lange*, 85 U.S. 163, 164 (1873) ("If there is anything settled in the jurisprudence of England and America, it is that no man shall be twice punished by judicial judgments for the same offence."). This outcome also is contrary to not only *Villanueava*, but also principles learned after decades of over-punishment and swelling the prison system. *See Pepper*, 562 U.S.. at 492-93 (reasoning that defendant's recent good behavior "may be taken as the most accurate indicator of his present purposes and tendencies and significantly to suggest the period of restraint and the kind of discipline that ought to be imposed upon him" (internal quotations omitted)). Allowing no opportunity to consider Petitioner's progress and where he stands today is contrary to signals from Congress and the President that signal a shift away from the reflexive favoring of more prison time.

> In imposing a reduction of defendant's sentence, this court considered Congress's intention, first with the Fair Sentencing Act of 2010 and now with the First Step Act of 2018, to limit government spending on incarceration and to decrease the number of inmates in federal custody. *See* 18 U.S.C. § 3553(a)(5). Public safety is not served by a defendant spending more time in prison than necessary. An overly harsh sentence may prove counterproductive, increasing a defendant's likelihood to recidivate. The money it costs to keep defendant behind bars can be better spent on other means of crime control and prevention. *See* H.R. Rep. No. 115-699, at 23 (2018).

United States v. Simons, 375 F. Supp. 3d 379, 389 (E.D.N.Y. 2019) (citation omitted). The discretion to determine a defendant's sentence should rest with the District Court, where there is the opportunity to fully review who the defendant is today, and not just re-impose a sentence that is nearly 15 years old and no longer makes sense.

CONCLUSION

In light of the foregoing, Petitioner requests that this Court grant this petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Second Circuit.

AL-MALIK FRUITKWAN SHABAZZ

Dated: August 16, 2019

By /s/Charles F. Willson/s/_____

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