No. 19-7375

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JOAQUIN MARIO VALENCIA-TRUJILLO,

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

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JOAQUIN MARIO VALENCIA-TRUJILLO
REG. NO. 02440-748
RIVERS CORRECTIONAL INSTITUTION
P.O. BOX 630
WINTON, NC 27986

Pro Se

QUESTIONS PRESENTED

In this Court's seminal decision in Strickland v. Washington, 466 U.S. 668 (1984), this Court set forth the standard for determining whether a criminal defendant's counsel provided him with ineffective assistance of counsel ("IAC"). Id. The standard set forth by the Court established a two-prong analysis requiring the courts to find both "cause" and "prejudice" to warrant the vacatur of a conviction or sentence. Id. 466 U.S. at 687. To establish "cause," this Court has held that a criminal defendant is required to show that counsel's performance "fell below an objective standard of reasonableness" judged by "prevailing professional norms." Id. Coloring the Court's articulation of this standard is the fact that this court has emphasized that the "reasonableness" of counsel's performance is to be judged according to "an adopted rule of contemporary assessment," viewing counsel's conduct under the law existing at the time it was rendered. See Maryland v. Kulbicki, 136, S. Ct. 2,4 (2015)(citing Lockhart v. Fretwell, 506 U.S. 364, 372 (1993); See also Strickland, 466 U.S. at 690. In adopting this Standard, the Kulbicki Court held counsel can NOT be ineffective for failing to "predict" changes in law that were "settled" and "uncontroversial" at the time defense counsel had rendered his assistance. Id. The Kulbicki Court did NOT, however, decide whether counsel has a "general duty" to anticipate developments in the law that, though "unsettled," are clearly foreshadowed" by other circuit precedents and, therefore, should require "reasonable counsel" to raise such issues with the courts in order to maintain a baseline of attorney effectiveness in conformity with Strickland. The question of whether such a general duty exists as an exception to (or as a component of) Strickland's "rule of contemporary assessment" has divided the Courts of Appeals, with the First, Second, Fourth, Sixth and Seventh Circuits finding a "foreshadowed" exception and/or component to the contemporary assessment rule of Strickland, and the Third, Fifth, Eighth, Ninth, Tenth, Eleventh and D.C. Circuits conversely finding no such exception. In light of this Circuit split, the following questions are presented.

1. Whether, Despite Strickland's Contemporary Assessment Rule, Strickland's Test For Determining Whether A Criminal Defendant's Counsel Was Ineffective Incorporates An Unsettled/Foreshadowed Exception Or Component Into Its IAC Analysis, As Held By The First, Second, Fourth, Sixth, And Seventh Circuits, Or Whether Such A Rule Is Absolutely Barred By Strickland And Its Progeny As Held By The Third, Fifth, Eighth, Ninth, Tenth, Eleventh and D.C. Circuits?

2. Whether Strickland's Interpretation Of The Sixth Amendment Imposes A General Duty On A Criminal Defendant's Counsel To Anticipate Developments In Law Where (a) The Law In Effect At The Time Of Counsel's Performance Is unsettled In The Circuit Where The Assistance Has Been Rendered, And (b) The development In Law Is Foreshadowed By Decisions In Other Circuits On The Same Issue Of Law?

3. Whether Counsel Was Ineffective For Failing To Secure Vicarious Standing From A Surrendering Country For Purposes Of Objecting To Violations Of An Extradition Agreement Where (a) The Law Of The Eleventh Circuit Was Unsettled On The Issue At The Time Counsel Rendered His Assistance, (b) Other Circuits Had Held Obtaining An Objection From A Surrendering Country Would Bestow A Criminal Defendant With Vicarious Standing To Object To Violations Of An Extradition Agreement To Which He Was Subject To, And (c) The Surrendering Country In This Case Later Lodged Objections With The United States Asserting Violations Of Extradition Agreement Made With The United States With Respect To The Petitioner?

4. Whether, In Light Of Colombia's Protests Asserting That The Eleventh Circuit's Holding Violates The Terms And Conditions Of Its Extradition Agreement In This Case, This Case Presents Questions Of Exceptional Importance Warranting This Court's Review Of The Eleventh Circuit's Judgement Below?

LIST OF PARTIES

- Solicitor General Of The United States

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No._____

IN THE
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v.

UNITED STATES OF AMERICA,

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PETITION

Comes now Petitioner, Joaquin Mario Valencia Trujillo, Pro Se, and petitions the Court, pursuant to Supreme Court Rule 10, to review the judgement below of the United Court of Appeals for the Eleventh Circuit located at **Appendix A.**

OPINIONS BELOW

The unpublished decision of the United States Court of Appeals for the Eleventh Circuit, below, was issued on 02 August 2019 affirming the Judgement of the United States District Court for The Middle District of Florida following the Petitioner's partially succesful motion under 28 U.S.C. Section 2255 and the award of a Certificate of Appealability ("COA") under 28 U.S.C. Section 2253 (c)(1)(B). **See Appendix A.**

The Eleventh Circuit Court of Appeals denied the Petitioner's timely-filed petition for rehearing and rehearing en banc on 18 October 2019. **See Appendix B.**

The United States District Court for the Middle District of Florida issued its decision granting in part, and denying in part, the Petitioner's 28 U.S.C. Section 2255 motion on 04 August 2017. **See Appendix C.**

The published decision of the United States Court of Appeals for the Eleventh Circuit underlying the Petitioner's conviction, sentence and first direct appeal is provided herewith within the Appendix. **See Appendix D.**

JURISDICTION

This Court has jurisdiction to review the judgement of the United States Court of Appeals for the Eleventh Circuit. See 28 U.S.C. Section 1254(1).

The instant Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit is timely filed within 90 days of the Eleventh Circuit's Order denying the Petitioner's timely-filed petition for rehearing and rehearing en banc on 18 October 2019. **See Appendix B; See Also Supreme Court Rule 13.1.**

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The instant petition involves questions as to the scope and guarantees of the Sixth Amendment's right to the assistance of counsel in all criminal prosecutions, which reads:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and to have the Assistance of Counsel for his defence".

Id. U.S. Constitution, Amendments Six.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The relevant procedural history of this case can be found within the Eleventh Circuit's PUBLISHED decision in United States v. Valencia Trujillo, 573 F.3d 1171(11th Cir. 2009)(Appendix D). The following statement of the case and relevant procedural history is taken from that source unless otherwise noted.

1. The Petitioner's Indictment:

On 22 August 2002, a grand jury returned a four count indictment against the Petitioner. Counts I, II and IV were conspiracy allegations. Count III alleged that the Petitioner conducted a Continuing Criminal Enterprise ("CCE")

in violation 21 U.S.C. Section 848(a) during which he violated provisions of the United States Code, "including but not limited to, Sections 841, 843(b) 846, 952 and 963." The Count listed chronologically thirty-six (36) "predicates acts" relating to eighteen alleged smuggling events which, the indictment alleged, had "begun no later than 1988 and had continued until the date of indictment." Id. 573 F.3d at 1174.

2. Petitioner's Extradition:

On 23 January 2003, the American Embassy requested that Colombia arrest the Petitioner, which it did three days later. In March of 2003, the U.S. Embassy sent Diplomatic Note 449 ("DN 449") to Colombia requesting the Petitioner's extradition. The Note invoked "Article 35 of the Constitution of Colombia of 1991, as amended by the extradition reform act which entered into force on 17 December 1997, the appropriate sections of the 2000 Colombian Criminal Procedure code, entered into force on 24 July 2001, and applicable principles of international law." Id. 573 at 1174.

As amended, Article 35 of the Colombian Constitution provides that: "Extradition can be... granted or offered in accordance with the public treaties, or in their absence, with the law... Extradition will not apply when the facts took place previous to the promulgation of this norm." That "norm" was promulgated on 17 December 1997. The limitations placed on the Petitioner's extradition were further delineated by successive Executive Resolutions. Id. 573 F.3d at 1174-77

The United States did NOT, however, invoke the preexisting Treaty On

Extradition between the United States and Colombia as that Treaty, though previously ratified by the United States Congress, was struck down by the Colombia Supreme Court in the year 1986. Id. 573 F.3d at 1174, n.1.

The Petitioner was then, according to the terms of the extradition agreement preceded by the series of Executive Resolutions issued by the Government of Colombia, extradited to the United States to face prosecution for Counts I, II, III and IV subject to the limitation that the petitioner NOT be "judged" for any "acts or facts" ocurring before 17 December 1997, including those listed in Count III as predicate acts. Id. 573 F.3d at 1174-77.

3. Alleged Extradition Agreement Breaches And Standing:

Following the Petitioner's extradition to the United States, the Petitioneer, through his Court-Appointed Counsel, filed objections alleging breaches of the extradition agreement. Id. 573 F.3d at 1176. The issue whether the Petitioner had "standing" to assert violations of the extradition agreement never arose, and the Government did NOT assert the Petitioner lacked standing in the District Court. Id. 573 F.3d at 1177.

At the time of the Petitioner's objections to the violations of his extradition agreement, the Eleventh Circuit had noted that there was a Circuit split on the question of standing confronted in this case. See United States v. Puentes, 50 F.3d 1567, 1572 n.2 (11th Cir. 1995)(collecting cases). The Eleventh Circuit held, in Puentes, that a criminal defendant has standing to allege a violation of the Rule of Specialty (the type of objection made in the case at bar) independent of an objection from the Country surrendering a criminal defendant, but only to the extent that such a Surrendering Country

might. Id. As noted in Puentes, the flipside of the Circuit split on the issue presents a series of cases that hold a criminal defendant does NOT possess standing in the absence of an express objection of the Surrendering Country. See Puentes, 50 F.3d at 1573-74.

Moreover, the Puentes Court noted that these Circuits' opposing view on the question of standing was based on the distinction between extraditions treaties that had been "ratified" by congress and those that had not. See Puentes, 50 F. 3d at 1573-74 (citing United States v. Rauscher, 119 U.S. 407, 422 (1886)). And thus Puentes, and the other Circuits' decisions representing a split on the question of standing, "foreshadowed" the Eleventh Circuit's decision, below, that an extradition agreement made in the absence of a "ratified" treaty on extradition did NOT confer upon an extradited person a right of standing at the time the Petitioner was, through this Court-Appointed Counsel, making objections to alleged breaches of the extradition agreement in his case. Compare, Valencia-Trujillo, 573 F.3d at 1180-81 ("Because extradition agreements are not treaties, they do not become part of the law of this country")(making standing distinctions based on question of whether extradition was pursuant to a "ratified" treaty on extradition)(citing Puentes, 50 F.3d at 1571-75))(**Appendix D**).

Despite the above foreshadowing the strained question of standing, Court-Appointed Counsel did NOT attempt to obtain, from the Government of Colombia, an "express objection" concerning breaches of the extradition agreement NOT conducted pursuant to any "ratified" treaty on extradition that would have clothed the Petitioner with a vicarious right of standing.

However, despite the issue of standing failing to arise, the District Court granted in part and denied in part the Petitioner's motion to enforce the extradition agreement and its Rule of Specialty ("ROS) component. See Valencia

-Trujillo, 573 F.3d at 1176.

For his part, the Petitioner maintained that the ROS was STILL being violated. Id. 573 F.3d at 1176-77. Those continuing objections would persist on direct appeal. See part 4, infra.

4. Direct Appeal Of Extradition Issues:

Despite the fact the Petitioner was NOT extradited to the United States pursuant to a "ratified" treaty on extradition, the Court-Appointed Counsel claimed a right of standing by claiming, implausibly, that the Petitioner was extradited pursuant to the invalidated U.S./Colombia extradition Treaty when that Treaty had been invalidated by the Colombian Supreme Court in the year 1986. See Valencia-Trujillo, 573 F.3d at 1177-78 (**Appendix D**).

With the Petitioner's only theory of standing disappearing with the fact that he was NOT extradited to the United States pursuant to a "ratified" treaty on extradition, the Eleventh Circuit concluded it lacked jurisdiction to hear the Petitioner's breach claims on their merits. Id. 573 F.3d at 1177, 1181.

5. Petitioner Alleges IAC in A Post-Conviction Motion:

Following the Petitioner's District Court proceedings and direct appeal, the Petitioner filed a 28 U.S.C. Section 2255 Motion to Vacate, Set Aside, or Correct Sentence alleging his Court-Appointed Counsel was ineffective in both the District Court and again on direct appeal for failing, inter alia, to seek an express objection from the Government of Colombia for the purpose of obtaining vicarious standing to bring claims that the extradition agreement,

and by extension the ROS, were breached. See Valencia-Trujillo v. United States, 2019 U.S. App. LEXIS 23148, *4 (11th Cir. 2019)(Appendix A).

6. Colombia Objects Alleging Breaches Of The Extradition Agreement:

Following Court-Appointed Counsel's performance in the District Court and again on direct appeal to the United States Court of Appeals for the Eleventh Circuit, and while the Petitioner's Section 2255 motion was pending, the Government of Colombia filed formal Diplomatic Notes issued in the years 2014 and 2016 expressing the view that the Eleventh Circuit Court of Appeals' decision in Valencia-Trujillo, 573 F.3d 1171 (11th Cir. 2009)(Appendix D), and the District Court's ruling on the ROS issues, violated its extradition agreement it had with the United States and requested the Petitioner be granted relief. See DN 14-004401/14-0762; DN 14-081142; and DN 16-1267; See Valencia Trujillo v. United States, 2019 U.S. App. LEXIS 23148, *4-5 (11th Cir. 2019)(Appendix A).

7. Petitioner's Section 2255 Motion Granted In Part And Denied In Part:

The District court then granted in part, and denied in part, the Petitioner's 28 U.S.C. Section 2255 motion claiming IAC. See Valencia-Trujillo v. United States, 2017 U.S. Dist. LEXIS 122952 (M.D. Fla., 04 August 2017)(Appendix C). The District Court denied the Petitioner's IAC claim that lies at the heart of this petition.

8. The Eleventh Circuit Granted A COA On The IAC Claim:

Nothing that the Petitioner's IAC claims presented new evidence that the

Government of Colombia had objected to the District Court's and Eleventh Circuit's decisions as breaches of its extradition agreement in this case, the Eleventh Circuit granted the Petitioner a COA on the question of whether Court-Appointed Counsel provided IAC for failing to obtain vicarious standing on behalf of the Petitioner so that he might press his claims that the extradition agreement, and by extension the ROS, was violated. See Valencia-Trujillo. United States, 2018 U.S. App LEXIS 21354 (11th Cir. 2018).

9. The Eleventh Circuit Affirms And Issues Its IAC Holding:

The Eleventh Circuit Court of Appeals affirmed the District court's denial of the Petitioner's IAC claim that Court-Appointed Counsel was ineffective for failing to anticipate the Eleventh Circuit's decision, below, holding that because the Petitioner was NOT extradited pursuant to a "ratified" treaty on extradition, he would need to obtain the "express objection" of the Surrendering Country (Colombia) in order to have "standing" to raise his alleged breach claims. Valencia-Trujillo v. United States, 2019 U.S. App. LEXIS 23148 (11th Cir. 2019)(Appendix A).

In affirming the District Court's denial of the IAC claim, the Eleventh Circuit cited Strickland's standard for determining whether a criminal defendant's counsel was ineffective under the Sixth Amendment to the U.S. Constitutional. Id. at Page 6.

There, the Eleventh Circuit held that to show he was denied his Sixth Amendment right to effective assistance of counsel a prisoner must show, inter alia, that "his counsel's performance fell below an objective standard of reasonableness." Id. (citing Strickland v. Washington, 466 U.S. 688).

This "reasonableness" inquiry under Strickland's "performance" prong, the Eleventh circuit held (without exception), "cannot and does not include a requirement to make arguments based on predictions on how the law may develop." Id. at Pages 5-6 (citing Spaziano v. Singletary, 36 F.3d 1028, 1039 (11th Cir. 1994).

This interpretation of Strickland's performance prong, therefore, led the Court to conclude that counsel was NOT ineffective because, at the time Court-Appointed Counsel rendered his assistance, the Eleventh Circuit's procedents "did not establish that such protests were necessary to preserve standing." Id. at Page 6. Thus, the Court concluded Court-Appointed Counsel was NOT ineffective for failing to predict that it would later, in the Petitioner's own case, draw a distinction between extraditions conducted pursuant to a ratified treaty on extradition from those conducted pursuant to non-ratified extradition agreements -the latter of which would necessitate a "protest" from the Surrendering Country (Colombia) in order to preserve standing. Id. at Page 6.

Moreover, as noted supra, the Eleventh Circuit's interpretation of Strickland's performance/reasonableness prong did NOT allow for, or incorporate into, its analysis any possibility that IAC can result when a defense attorney fails to anticipate developments in relevant law that are "foreshadowed" by preexisting precedents of other courts on the same issues of law. Cf. Valencia-Trujillo, 2019 U.S. App. LEXIS 23148, *5-6 (11th Cir. 2019) (Appendix A).

REASONS FOR GRANTING THE WRIT

I. After Every Circuit Has Weighed In On The Question, The Circuits Are

Deeply Divided On The Question Of Whether, To Maintain A Baseline Of Attorney Effectiveness Under Strickland's IAC Standard Of Reasonableness Governing Attorney Performance, Criminal Defense Attorneys Must Anticipate Changes If Law That, Though Unsettled At The Time Of Their Performance, are Foreshadowed By Precedents Existing On Other Courts On The Same Issues Of Law. This Court Should, Therefore, Grant Certiorari To Resolve This Frequent And Recurring Question On Which The Circuits Are Divided.

The Sixth Amendment to the United States Constitution Guarantees a criminal defendant the right to "effective" assistance of counsel. Strickland, 466 U.S. 668, 686.

Under Strickland, a criminal defendant must prove that "counsel's representation fell below an objective standard of reasonableness." Id. 466. at 687-88.

No holding of the Supreme Court currently establishes that, in order to perform within the "wide range of reasonable professional assistance," Strickland, id. 466 U.S. at 689, criminal defense attorney's must anticipate changes in, or developments of, law.

In Maryland v. Kulbicki, 136 S. Ct, 2 (2015), this Court emphatically held that counsel, under Strickland's test for proving IAC, is not ineffective for failing to anticipate changes of law when the law in effect at the time of counsel's performance was "settled" and "uncontroversial." Id. 136 S. Ct. at 4 (citing Strickland's "rule of contemporary assessment").

Kulbicki did NOT decide, and therefore left open, the questions presented in this case that ask whether an exception to Strickland's contemporary assessment rule used to determine IAC (and the "reasonableness" of counsel's performance) imposes a general duty on counsel to anticipate changes or developments in law that are clearly "foreshadowed" by other precedents of other Courts on the same "unsettled" questions of law.

Though not addressed in Kulbicki, every Court of Appeals has weighed in on the questions presented in this case and are now deeply divided on these frequent and recurring questions of law used to determine whether a criminal defense attorney has provided IAC.

In the case at bar, the Eleventh Circuit, below, held that an attorney can never be ineffective for failing to anticipate developments of law. Valencia-Trujillo v. United States, 2019 U.S. App. LEXIS 23148, *5-6 (11th Cir. 2019). The Eleventh Circuit has held that its precedents "completely foreclose" any such contention that counsel may be constitutionally required to anticipate developments in the law. See United States v. Ardley, 273 F.3d 991, 993 (11th Cir. 2001)(Carnes, J., concurring on petition for rehearing). Thus, the Eleventh Circuit's precedents do NOT permit a "foreshadowed" exception to the "rule of contemporary assessment" adopted in Strickland.

The Eleventh Circuit's holding in this regard is joined by the holdings of the Third, Fifth, Eghth, Ninth, Tenth, and D.C. Circuits. See Sistrunk v. Vaughn, 96 F. 3d 666, 670-71 (3rd Cir. 1996); United States v. Mctizie, 377 Fed. Appx. 391, 393-94 (5th cir. 2010)(collecting published authorities); Nelson v. Estelle, 642 F.2d 903, 908 (5th Cir. 1981); Wajda v. United States, 64 F.3d 385, 388 (8th Cir. 1995); Lowry v. Lewis, 21 F. 3d 344, 346 (9th Cir. 1994); United States v. Harms, 371 F.3d 1208, 1221-22 (10th Cir. 2004); United States v. Glover, 872 F.3d 625, 633 (D.C. Cir. 2017).

Contravening the decisions of the Third, Fifth, Eighth, Ninth, Tenth, Eleventh, and D.C. Courts of Appeals, the First, Second, Fourth, Sixth and Seventh Circuit Courts of Appeals hold that an attorney may, despite the contemporary assessment rule of Strickland, be constitutionally ineffective for failing to anticipate developments in law that are clearly "foreshadowed" by existing decisions of other courts on the same issue. See Larrea v.

Bennett, 368 F.3d 179, 183 (2nd Cir. 2004); United States v. Morris, 917 F.3d 818, 823 (4th Cir.2019); Thompson v. Warden, 598 F.3d 281, 288 (6th Cir. 2010); Shaw v. Wilson, 721 F. 3d 908, 916-17 (7th Cir. 2013).

As this Circuit split reveals, the Courts of Appeals are deeply divided on the questions presented.

Thus, where this case involves interpretation of this Court's IAC standards set forth in Strickland, and calls into question how the "reasonableness" of counsel's performance is to be judged under Strickland's adopted "rule of contemporary assessment," this Court should, as it has in the past, grant certiorari on these questions of exceptional importance dividing the Courts of Appeals. See Padilla v. Kentucky, 559 U.S. 356 (2010)(granting certiorari to resolve questions as to what constitutes "reasonable performance" under "objective standard of prevailing professional norms" under strickland); See also Supreme Court Rule 10(a).

II. The Petitioner's Case Represents An Ideal Vehicle To Resolve The Questions Presented As The Legal Issues Involved Were Clearly Presented And Decided Below.

This Court should grant certiorari in this case as this case represents an ideal vehicle to resolve the questions presented for this Court's review.

At the time the Petitioner's Court-Appointed Counsel rendered his assistance, the Eleventh Circuit's "Standing precedent noted that the Courts of Appeals were (a) split on the question of whether an extradited person needed the "protests" of a Surrendering Country to preserve standing, (b) that this Court's precendent in Rauscher, itself, distinguished extraditions conducted pursuant to a ratified treaty from those conducted via non-ratified extradition agreements, and (c) that the split on the question of standing was based on the relief that the ROS was a component of "customary International

law" (as opposed to any ratified treaty obligation) and, therefore, necessitated a protest from the Surrendering Country to secure standing to object to violations of the ROS if extradition was NOT conducted pursuant to a "ratified" treaty on extradition. See United States v. Puentes, 50 F.3d 1567, 1572-74 (11th Cir. 1995).

Moreover, Puentes' standing holding was based on the fact that Puentes was extradited pursuant to a "ratified" treaty existing between the United States and Uruguay.

As the Petitioner was NOT extradited pursuant to a "ratified" treaty on extradition, Puentes was therefore inapposite and, if anything, such indicated that the other Courts holdings, stating a protest from the Surrendering Country was necessary to preserve standing to assert ROS violations, foreshadowed the decision of the Eleventh Circuit in the Petitioner's own case.

That is, the Petitioner's extradition was conducted wholly as a matter of international comity in the absence of a ratified treaty on extradition. Puentes did NOT, therefore, constitute "settled" law on the issue of standing in circumstances akin to those confronted in Valencia-Trujillo (Appendix D). Indeed, it is imperative to note that the Eleventh Circuit did NOT even attempt to claim it was "overruling" any aspect of Puentes to make the decision it made in the Petitioner's own case. Rather, The Eleventh Circuit merely, "distinguished" the Petitioner's extradition agreement from that confronted in Puentes and then made a decision in accord with those cases Puentes noted existed on the other side of the standing issue -a distinction that hinged on the fact of whether or not the extradition agreement was ratified by the United States Congress, or not. Id. The law on the issue was not, therefore, "settled," but was indeed "foreshadowed" by the precedent

noted in Puentes as representing the flipside of the standing question where vicarious standing was deemed to be required as a collateral consequense of the extradition agreement and its ROS component lacking "law of land status" that is otherwise imparted through ratification by the U.S. Congress.

Being thus unsettled and foreshadowed, the question of whether the Petitioner received IAC runs squarely into the questions presented and decided below and, therefore, presents an ideal vehicle to resolve the question of whether a criminal defendant, like the Petitioner, could have received IAC for Court-Appointed Counsel's failure to anticipate developments in the law that, though unsettled, were foreshadowed by other precedents existing in other courts on the same issue of standing -a contention that the Eleventh Circuit has viewed as being "completely foreclosed" by its precedents. Cf Ardley, supra, 273 F.3d at 993.

For the reasons stated above, this Court should grant certiorari in this case to resolve the circuit split on the questions presented.

III. This Court Should Grant Certiorari In This Case Because The Questions Presented Are Both Exceptional And Impportant Where The Government Of Colombia Has Indicated It Views The District Court's And Eleventh Circuit's Holdings In This Case As Unilateral Violations Of The ROS Thereby Calling Into Question The Propriety Of The Judiciary Usurping Executive Functions.

As noted supra in the Statement Of The Case And Relevant Procedural History, id. Part 3, the Executive Branch of Government, represented by the U.S. Attorney's Office for the Middle District of Florida, did NOT contest the Petitioner's standing to allege breaches of the ROS component of his extradition agreement. See also Valencia-Trujillo, 573 F.3d at 1177 (Appendix D).

Also noted supra is the fact that the Petitioner's extradition was conducted wholly as a matter of international comity and as a result foreign relations in the abscence of a ratified treaty on extradition. See Statement Of The Case And Relevant Procedural History, id. Part 2; See also Valencia-Trujillo, 573 F.3d at 1178, 1181 (Appendix D).

Because the U.S. Constitution vests the Executive Branch of Government with the power to conduct foreign relations, it is the sole prerogative of the Executive Branch to decide if, when, and how to offend the Government of Colombia by breaching the non-ratified agreement on extradition reached in this case.

The Eleventh Circuit in this case unilaterally raised the question of standing sua sponte. Valencia-Trujillo, 573 F.3d at 1177 (Appendix D).

The Eleventh Circuit then not only rejected the Petitioner's claim of standing to enforce the ROS, but also held that the ROS in limited in application only to ratified treaties on extradition. Id. 573 F.3d at 1177-81 (Appendix D). The Eleventh Circuit's ruling, therefore, goes further by implying the ROS cannot and does not apply in a case, such as the Petitioner's, where the extradition is conducted as a matter of foreign relations and international comity. Id.

Included within the Appendix are three (3) Diplomatic Notes issued by Colombia protesting the non-observance of the ROS in this case. See DN No. 14004401/14-0762 (Appendix E); DN No. 14-081142 (Appendix F); DN No. 16-1267 (Appendix G). These Diplomatic Notes indicate the Government of Colombia views the District Court's and Eleventh Circuit's standing/ROS holdings as unilateral breaches of its extradition agreement with the United States. See also Statement Of The Case And Relevant Procedural History, id. Part 6. Such a

breach, at the hands of the Judicial Branch, therefore implicates an actual and/or perceived violation of the Separation of Powers doctrine because, as noted supra, it is the prerogative of the Executive Branch, not the Judicial Branch, to breach the Petitioner's extradition agreement.

This case, therefore, presents questions of exceptional importance warranting this Court's granting of certiorari to review the judgement below where the Colombian Government has since expressly objected to perceived violations of the ROS and extradition agreement that are inextricably intertwined with the questions presented in this case.

CONCLUSION

Wherefore, the Petitioner respectfully requests his motion be granted on this 16 day of January, 2020.

Joaquin Mario Valencia Trujillo
Reg. No. 02440-748
Rivers Correctional Institution
P.O. Box 630
Winton, NC. 27986

Petitioner/Pro Se