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NO. \_\_\_\_\_

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IN THE  
SUPREME COURT  
OF THE  
UNITED STATES

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2019-2020 TERM

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LENIN MARTINEZ-ALVARADO

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

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**QUESTIONS PRESENTED**

I.

WHETHER CERTIORARI REVIEW SHOULD BE GRANTED WHERE THE ELEVENTH CIRCUIT HELD THAT IT DID NOT HAVE JURISDICTION TO REVIEW THE DISTRICT COURT'S DENIAL TO GRANT MARTINEZ-ALVARADO'S REQUEST FOR A DOWNWARD DEPARTURE PURSUANT TO U.S.S.G. §4A1.3

II.

WHETHER CERTIORARI REVIEW SHOULD BE GRANTED WHERE THE ELEVENTH CIRCUIT AFFIRMED THE DISTRICT COURT'S DENIAL OF MARTINEZ-ALVARADO'S REQUEST FOR HIS SENTENCES TO RUN CONCURRENTLY INSTEAD OF CONSECUTIVELY.

III.

WHETHER CERTIORARI REVIEW SHOULD BE GRANTED WHERE THE ELEVENTH CIRCUIT AFFIRMED MARTINEZ-ALVARADO'S SENTENCES THAT WERE NOT SUBSTANTIVELY REASONABLE CONSIDERING 18 U.S.C. §3553(A)-(F).

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**PETITION FOR WRIT OF CERTIORARI  
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The Petitioner, LENIN MARTINEZ-ALVARADO, (hereinafter “MARTINEZ-ALVARADO”), by and through his undersigned counsel, respectfully prays that a Writ of Certiorari issue to review the opinion of the United

States Court of Appeals for the Eleventh Circuit entered in the proceedings on October 25, 2019.

### **OPINION OF THE COURT BELOW**

The Court of Appeals for the Eleventh Circuit entered a non-published opinion affirming the District Court's Conviction and Sentence, *United States of America v. Lenin Martinez-Alvarado*, on October 25, 2019. *Appendix 1*.

### **JURISDICTION**

The judgment of the Eleventh Circuit Court of Appeals affirming the Judgment of the United States District Court was entered on October 25, 2019. The Eleventh Circuit Court of Appeals entered its Order Denying MARTINEZ-ALVARADO'S Petition for Rehearing and Petition for Rehearing *En Banc* on January 10, 2020. *Appendix 2*. The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. §1254 and Rule 10.1, Rules of the Supreme Court. This Petition for Writ of Certiorari is filed pursuant to Rule 13.1, Rules of the Supreme Court.

### **CONSTITUTIONAL PROVISIONS**

#### ***UNITED STATES CONSTITUTION, AMENDMENT V***

The Fifth Amendment to the Constitution provides, in relevant part that: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or

naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person ... be deprived of life, liberty, or property, without due process of law....”

***UNITED STATES CONSTITUTION, AMENDMENT VI***

The Sixth Amendment to the Constitution provides in relevant part that: “In all criminal prosecutions, the accused shall enjoy the right ... 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 witnesses in his favor; and to have the assistance of counsel for his defence.”

**STATEMENT OF THE CASE**

**1. Course of Proceedings**

On May 20, 2014, a complaint was filed in Western District of Texas under case number, 2:14-cr-00837-RTH-1, against LENIN MARTINEZ-ALVARADO (“MARTINEZ-ALVARADO”), charging him with illegal re-entry into the United States after deportation, in violation of 8 U.S.C. §1326(a)(1) (DE: 1)

On March 16, 2015, MARTINEZ-ALVARADO was sentenced to twenty-four months incarceration followed by three years of supervised release and a special assessment of \$100.00. (DE:28, 29).

On February 6, 2018, a Petition for Warrant or Summons for Offender Under Supervision was issued alleging that MARTINEZ-ALVARADO violated the conditions of his supervised release. (DE:1).

On February 28, 2018, a federal grand jury issued a one (1) count indictment against LENIN MARTINEZ-ALVARADO (“MARTINEZ-ALVARADO”), charging him with illegal re-entry into the United States after deportation and illegal re-entry into the United States, on or about February 25, 2015, and was therefore deported, excluded, and removed from the United States on or about March 16, 2016, and who had not received the consent of the Attorney General or the Secretary of Homeland Security to reapply for admission to the United States, in violation of 8 U.S.C. §1326(a) and 8 U.S.C. §1326(b)(1) (DE: 1)

On March 29, 2018, MARTINEZ-ALVARADO’S case was transferred from Western District of Texas to the Middle District of Florida. (DE:10). Said jurisdiction was accepted by the Middle District of Florida on March 30, 2018. (DE:11)

On January 2, 2019, MARTINEZ-ALVARADO appeared before Magistrate Judge Mac R. McCoy and entered a plea of guilty as to Count I of the Indictment. (DE:51). MARTINEZ-ALVARADO pled guilty without the benefit of a written plea agreement. During the plea hearing, MARTINEZ-ALVARADO admitted his conduct and a factual basis for the plea was established.

On March 25, 2019, the District Court sentenced MARTINEZ-ALVARADO, to twenty-one (21) months confinement followed by three (3) years supervised release with an assessment in the amount of \$100.00. Said sentence was to run consecutive to MARTINEZ-ALVARADO'S thirty-three (33) month incarceration sentence imposed in Case No.: 2:18-cr-36. (DE:39:19;34). MARTINEZ-ALVARADO filed a timely Notice of Appeal and is confined. (DE:35)

On October 25, 2019, the Eleventh Circuit affirmed MARTINEZ-ALVARADO'S convictions and sentence. On January 10, 2020, the Eleventh Circuit denied MARTINEZ-ALVARADO'S Petition for Rehearing and Rehearing *En Banc*.

## **2. Statement of the Facts.**

MARTINEZ-ALVARADO was charged in the United States District Court for the Western District of Texas, Del Rio Division, with Illegal Reentry into the United States, and was sentenced on March 9, 2015 (see Adult Criminal Convictions section, Docket No.: DR-14-CR- 00837(01)-RTH). MARTINEZ-ALVARADO was ordered removed on May 18, 2014 and was removed from the United States to Honduras on March 16, 2016, through New Orleans, Louisiana, with an order that prohibited him from returning to the United States at any time. (PSI:17)

On January 18, 2018, MARTINEZ-ALVARADO was arrested by the Charlotte County Sheriff's Office in Punta Gorda, Florida, for First Degree Petit Theft (see Adult Criminal Convictions section, Docket No.: 18-MM-125). While at the Charlotte County Jail for that offense, Bureau of Immigration and Customs Enforcement (ICE) agents lodged a detainer against MARTINEZ-ALVARADO. (PSI:5)

On February 6, 2018, a Petition for Warrant or Summons for Offender Under Supervision was issued alleging that MARTINEZ-ALVARADO violated the conditions of his supervised release. (DE:1).

### **3. Facts Pertaining to MARTINEZ-ALVARADO'S Sentence and Sentencing Hearing.**

The probation officer who prepared MARTINEZ-ALVARADO'S PSI set his base offense level at 8, pursuant to U.S.S.G. §2L1.2(a). (PSI:25) The probation officer enhanced MARTINEZ-ALVARADO'S base offense by four levels pursuant to U.S.S.G. §2L1.2(b)(1)(A), because MARTINEZ-ALVARADO committed the instant offense after sustaining a conviction for a felony that is an illegal reentry offense and another four levels pursuant to U.S.S.G. §2L1.2(b)(3)(D), because, after MARTINEZ-ALVARADO was ordered deported or ordered removed from the United States for the first time, MARTINEZ-ALVARADO engaged in criminal conduct that, at any time, resulted in a conviction for any other felony offense (other

than an illegal reentry offense). (PSI:26-27). Bringing MARTINEZ-ALVARADO'S adjusted offense level to 16. (PSI:31).

The probation officer gave MARTINEZ-ALVARADO a three-level decrease for acceptance or responsibility, pursuant to U.S.S.G. §3E1.1(a) and U.S.S.G. §3E1.1(b). (PSI:33-34) Accordingly, the probation officer set MARTINEZ-ALVARADO'S total offense level at 13. (PSI:35)

The probation officer found that MARTINEZ-ALVARADO had a total offense level of 13 and a criminal history category of VI. As such, the guideline imprisonment range was 33 to 41 months. (PSI: 106).

MARTINEZ-ALVARADO filed objections to the PSI arguing that his criminal history category was overstated due to the fact that several of the crimes he is being scored with occurred almost ten (10) years ago.

MARTINEZ-ALVARADO also filed a Sentencing Memorandum where he requested a variance and downward departure. MARTINEZ-ALVARADO argued he was entitled to a variance because he accepted responsibility immediately and is not a threat to the community. See generally, *United States v. Whitehead*, 532 F.3d 991 (9<sup>th</sup> Cir. 20008). (DE:25). MARTINEZ-ALVARADO also sought a variance because of the factors of 18 U.S.C. §3553(a) and because the District Court must impose a sentence sufficient, but not greater than necessary based upon the statutory objectives and relevant factors of 18 U.S.C. §3553(a). *United States v. Booker*, 543

U.S. 220, 125 S.Ct. 738 (2005), and *Gall v. United States*, 552 U.S. 38, 128 S.Ct. 586 (2007). *See, United States v. Livesay*, 525 F.3d 1081, 1089-90 (11<sup>th</sup> Cir. 2008) (summarizing current sentencing procedures in Eleventh Circuit); *United States v. Pugh*, 513 F.3d 1179, 1188-91 (11<sup>th</sup> Cir. 2008).

MARTINEZ-ALVARADO also sought a downward departure due to MARTINEZ-ALVARADO'S criminal history category being over-represented. MARTINEZ-ALVARADO argued that the United States Sentencing Guidelines, Section 4A1.3(b), provides that “[i]f reliable information indicates that the defendant’s criminal history category substantially over-represents the seriousness of the defendant’s criminal history or the likelihood that the defendant will commit other crimes, a downward departure may be warranted”.

MARTINEZ-ALVARADO'S sentencing hearing was held on March 25, 2019 (DE:68). At the sentencing hearing, defense counsel argued MARTINEZ-ALVARADO'S objections to the PSI and his request for a variance and downward departure due to his criminal history being overstated. (DE:68) Counsel also argued for the sentences to run concurrent and not consecutive. (DE:39:17). The District Court denied said request and sentenced MARTINEZ-ALVARADO to twenty-one (21) months confinement followed by three (3) years supervised release with an assessment in the amount of \$100.00. Said sentence was to run consecutive to MARTINEZ-ALVARADO'S thirty-three (33) month incarceration sentence

imposed in Case No.: 2:18-cr-36. (DE:39:19;34) (DE:68:12-15; 61). As a result of the sentence that was imposed, MARTINEZ-ALVARADO timely filed his Notice of Appeal and is incarcerated. (DE:63)

***A. The Eleventh Circuit Erred In Finding That It Did Not Have Jurisdiction To Review The District Court's Denial To Grant MARTINEZ-ALVARADO'S Request For A Downward Departure Pursuant To U.S.S.G. §4A1.3***

It is clear that the District Court has discretion in granting or denying a downward departure. Therefore, if the District Court has discretion, then the Appellate Court has jurisdiction to rule on this issue to determine if in fact the District Court abused its discretion. In all of his briefs and Petition for Rehearing and Rehearing *En Banc*, MARTINEZ-ALVARADO has argued that the District Court abused its discretion and therefore the Eleventh Circuit should not have affirmed MARTINEZ-ALVARADO'S sentences.

***B. The District Court's Denial of MARTINEZ-ALVARADO'S Request For His Sentences To Run Concurrently And Not Consecutively Should Not Have Been Affirmed By The Eleventh Circuit.***

In affirming the District Court's ruling that MARTINEZ-ALVARADO'S sentences should run consecutive and not concurrent, the Eleventh Circuit failed to consider that although it is the policy of the Commission to run sentences

consecutive and not concurrent, the District Court does retain discretion to make the sentence concurrent and not consecutive. U.S.S.G. §7B1.3(f); *See generally, United States v. Taylor*, 628 F.3d 420 (7<sup>th</sup> Cir. 2010). Based on the totality of the circumstances and the personal characteristics of MARTINEZ-ALVARADO, the sentences should have been concurrent and not consecutive and therefore, the Eleventh Judicial Circuit should have not affirmed MARTINEZ-ALVARADO'S sentences.

***C. MARTINEZ-ALVARADO'S Sentence Should Not Have Been Affirmed By The Eleventh Circuit Where MARTINEZ-ALVARADO'S Sentences Were Not Substantively Reasonable Considering 18 U.S.C. §3553(A)-(F)***

A sentence will be found to be “substantively reasonable” if when considering the totality of the circumstances, the purposes of 18 U.S.C. §3553(a) are met by the District Court. *United States v. Pugh*, 515 F.3d at 1191.

MARTINEZ-ALVARADO'S sentences were unreasonable in light of the sentencing factors listed in 18 U.S.C. §3553(a)-(f) and the totality of the circumstances; more particularly, the fact that MARTINEZ-ALVARADO took immediate acceptance of responsibility and his criminal history was grossly overstated. Moreover, the sentences were not minimally sufficient or “appropriate” as the District Court alluded to, but greater than necessary to comply with the

purposes of sentencing under 18 U.S.C. §3553(a). In reviewing the totality of the circumstance, MARTINEZ-ALVARADO'S sentences were far too severe.

### **REASONS FOR GRANTING THE PETITION**

#### **I.**

#### **CERTIORARI REVIEW SHOULD BE GRANTED WHERE THE ELEVENTH CIRCUIT HELD THAT IT DID NOT HAVE JURISDICTION TO REVIEW THE DISTRICT COURT'S DENIAL TO GRANT MARTINEZ-ALVARADO'S REQUEST FOR A DOWNWARD DEPARTURE PURSUANT TO U.S.S.G.**

#### **§4A1.3.**

MARTINEZ-ALVARADO argued in his Briefs that a downward departure was warranted due to MARTINEZ-ALVARADO'S criminal history category being over-represented.

Pursuant to United States Sentencing Guidelines, Section 4A1.3(b), “[i]f reliable information indicates that the defendant's criminal history category substantially over-represents the seriousness of the defendant's criminal history or the likelihood that the defendant will commit other crimes, a downward departure may be warranted”. Based on the evidence and testimony provided, it is quite clear that a criminal history category of VI for what MARTINEZ-ALVARADO was

charged with now and in the past “substantially over-represents the seriousness of the defendant’s criminal history”. Because of this, the District Court erred in not granting the downward departure and the Eleventh Circuit erred in finding that it did not have jurisdiction to rule on said matter.

Caselaw is clear that a District Court has the discretion to grant a downward departure based upon the overrepresentation of a defendant’s criminal history. *United States v. Fayette*, 895 F.2d 1375 (11<sup>th</sup> Cir. 1990). Again, because several of his convictions were approximately ten (10) years ago, the District Court should have found that MARTINEZ-ALVARADO’S criminal history was clearly an overrepresentation of his criminal past and because he has no minimum mandatory, a downward departure should have been granted. *See, United States v. Himick*, 338 F.Supp.2d 1310 (S.D. Fla. 2004) (downward departure denied because prior offenses were within two years of his instant offense); *United States v. Simpson*, 228 F.3d 1294 (11<sup>th</sup> Cir. 2000) (Court erred in granting downward departure from the statutory minimum mandatory). Therefore, because there is “reliable information [to] indicate ... that the defendant’s criminal history category substantially over-represented the seriousness of the defendant’s criminal history or the likelihood that the defendant will commit other crimes, a downward departure may be warranted”. U.S.S.G. §4A1.3(b). If “the district court’s sentencing decision is procedurally sound the appellate court should then consider the substantive reasonableness of the sentence

under the abuse-of-discretion standard". *Gall v. United States*, 552 U.S. 38, 128 S.Ct. 586, 597 (2007). Therefore, the Eleventh Circuit had jurisdiction to determine if the District Court abused its discretion in denying MARTINEZ-ALVARADO'S request for a downward departure because his criminal history was overstated. However, because the Eleventh Circuit did not even address the issue, MARTINEZ-ALVARADO's Petition for Writ of Certiorari must be granted.

## II.

**CERTIORARI REVIEW SHOULD BE GRANTED WHERE  
THE ELEVENTH CIRCUIT AFFIRMED THE DISTRICT  
COURT'S DENIAL OF MARTINEZ-ALVARADO'S REQUEST  
FOR HIS SENTENCES TO RUN CONCURRENTLY INSTEAD  
OF CONSECUTIVELY.**

MARTINEZ-ALVARADO'S request that his sentences run concurrent is consistent with the sentencing procedures that have evolved since the Supreme Court's decisions in *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738 (2005), and *Gall v. United States*, 552 U.S. 38, 128 S.Ct. 586 (2007). *See, United States v. Livesay*, 525 F.3d 1081, 1089-90 (11<sup>th</sup> Cir. 2008); *United States v. Pugh*, 515 F.3d 1179, 1188-91 (11<sup>th</sup> Cir. 2008).

The District Court, "after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should consider all of

the [18 U.S.C.] §3553(a) factors to determine whether they support the sentence requested by a party”. *Livesay* at 1089-90 [quoting, *Gall* and *Pugh*]. Among the factors which the District Court “shall consider” under 18 U.S.C. §3553(a)(1) are “the nature and circumstances of the offense and the history and characteristics of the defendant” and under 18 U.S.C. §3553(a)(2) “the need for the sentence imposed – (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner”.

The District Court “shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth” in 18 U.S.C. §3553(a)(2)(A)-(D). *See, e.g., United States v. McBride*, 511 F.3d 1293, 1296-97 (11<sup>th</sup> Cir. 2007). The Court “***may not presume that the [advisory] guidelines range is reasonable***”. *Gall*, 128 S.Ct. at 596-97 (emphasis added); *see also, United States v. Campbell*, 491 F.3d 1306, 1313-1314 (11<sup>th</sup> Cir. 2007) (“We do not in this Circuit presume reasonable a sentence within the properly calculated guidelines range”). Nor can the District Court presume that a sentence outside the guidelines is unreasonable. *United States v. Turner*, 626 F.3d 566 (11<sup>th</sup> Cir 2010); *United States v. Shaw*, 560 F.3d 1230 (11<sup>th</sup> Cir. 2009), *cert. denied*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 2847 (2009) (“[s]entences outside

the guidelines are not presumed to be unreasonable”). Accordingly, after making an “individualized assessment”, the District Court has the power to grant the sentences requested by counsel, to wit: for the sentence to run concurrent and not consecutive. *Gall*, 128 S.Ct. at 595-97; *Livesay*, 525 F.3d at 1090; *McBride*, 511 F.3d at 1297-98.

Here, the District Court failed to consider the individual history and characteristics and sentenced MARTINEZ-ALVARADO to a sentence that is grossly disproportionate to the offense committed. *United States v. Davis*, 754 F.3d 1205 (11<sup>th</sup> Cir. 2014). The District Court failed to give any credence to the fact that MARTINEZ-ALVARADO accepted responsibility and the fact that most, if not all of his prior convictions were for minor infractions and/or drug and alcohol related and occurred approximately ten (10) years ago. (DE:39). All of the above should have been considered by the District Court, but apparently were not.

The District Court failed to consider the argument raised by Counsel and entered a sentence that is “grossly disproportionate to the offense committed.” *United States v. Flanders*, 752 F.3d 1317 (11<sup>th</sup> Cir. 2014). Therefore, MARTINEZ-ALVARADO’S sentences must be vacated. It is clear that the District Court can vary from the guideline sentence. As such, MARTINEZ-ALVARADO’S counsel requested that the District Court sentence MARTINEZ-ALVARADO to twenty-one (21) months and that the sentence run concurrent and not consecutive to the sentence imposed in Case No.: 2:18-CR-36. Said request was reasonable based upon the fact

that he accepted responsibility, came to this country to seek a better life, that he is a high school drop out who suffers from several physical ailments and the fact that there are no other defendants and therefore disparity between sentences is not an issue. (DE:39:5-8). Again, the District Court “shall impose a sentence sufficient, but not greater than necessary”. 18 U.S.C. §3553(a); *see also, United States v. Jackson*, 408 F.3d 301 (6<sup>th</sup> Cir. 2005). The denial of MARTINEZ-ALVARADO’S request clearly shows that the District Court failed to consider MARTINEZ-ALVARADO’S personal characteristics and therefore failed to consider MARTINEZ-ALVARADO as an individual which caused the District Court to impose a sentence that was clearly “greater than necessary”. Based on the foregoing, MARTINEZ-ALVARADO’S request for his sentences to run concurrent and not consecutive should have been granted.

The denial of MARTINEZ-ALVARADO’S request clearly shows that the District Court failed to consider MARTINEZ-ALVARADO’S personal characteristics and therefore failed to consider MARTINEZ-ALVARADO as an individual which caused the District Court to impose a sentence that was clearly “greater than necessary”. And, the affirming of MARTINEZ-ALVARADO’S sentence by the Eleventh Circuit clearly shows that the Eleventh Circuit also failed to consider the totality of the circumstances. Based on the foregoing, MARTINEZ-ALVARADO’S request for his sentences to run concurrent and not consecutive

should have been granted. Because the Eleventh Circuit affirmed MARTINEZ-ALVARADO'S sentence, thereby allowing a miscarriage of justice to occur, MARTINEZ-ALVARADO'S Petition for Writ of Certiorari must be granted.

### III.

**CERTIORARI REVIEW SHOULD BE GRANTED WHERE  
THE ELEVENTH CIRCUIT AFFIRMED MARTINEZ-  
ALVARADO'S SENTENCES THAT WERE NOT  
SUBSTANTIVELY REASONABLE CONSIDERING 18 U.S.C.  
§3553(A)-(F)**

In affirming the MARTINEZ-ALVARADO'S sentences, the Eleventh Circuit concluded that because the “court’s revocation sentence was lower than the Bureau of Prison’s recommendation, and both sentences were within the guidelines range and below the statutory maximum” that said sentence was “substantively reasonable. However, said analysis fails to consider MARTINEZ-ALVARADO’S argument regarding the District Court failing to consider the factors of 18 U.S.C. §3553(a).

In reviewing MARTINEZ-ALVARADO’S sentences for substantive reasonableness, this Court must consider whether the factors of 18 U.S.C. §3553(a) support his sentences not if it below the Bureau of Prison’s recommendation. *Gall v. United States*, 552 U.S. 38, 128 S.Ct. 586 (2007); *see also, United States v. Johnson*, 485 F.3d 1264 (11<sup>th</sup> Cir. 2007). MARTINEZ-ALVARADO argues that

the District Court abused its discretion when it failed to give proper weight and consideration to the factors enumerated in 18 U.S.C. §3553(a) and instead entered the sentence basing it on “impermissible factors”. *United States v. Sarras*, 575 F.3d 1191, 1219 (11<sup>th</sup> Cir. 2009). And that the Eleventh Circuit failed to consider said argument.

Although the District Court may have discretion in deciding the weight of said factors, said discretion is not unbridled and the District Court must assure that a just and reasonable sentence is given. *See, United States v. Williams*, 456 F.3d 1353 (11<sup>th</sup> Cir. 2006). It is clear that the sentences imposed by the District Court in this case, were both procedurally and substantially unreasonable. Therefore, said sentences should not have been affirmed; but reversed.

Because of the sentences imposed, MARTINEZ-ALVARADO was denied his right to due process of law and reasonable sentences pursuant to the dictates of *Booker, Gall and Kimbrough v. United States*, 552 U.S. 85, 128 S.Ct. 558 (2007). MARTINEZ-ALVARADO sentences did not promote the administration of justice nor law. It did not provide just punishment considering the fact that MARTINEZ-ALVARADO pled guilty and accepted responsibility. Considering the above facts and the sentences that MARTINEZ-ALVARADO received, the Eleventh Circuit should have vacated the sentences, not affirmed them. *Koon v. United States*, 518 U.S. 81, 116 S.Ct. 2035 (1996); *United States v. Livesay*, 525 F.3d 1081 (11<sup>th</sup> Cir.

2008). Based on the errors of both the District Court and the Eleventh Circuit, this Court must grant MARTINEZ-ALVARADO'S Petition for Writ of Certiorari to prevent a further miscarriage of justice. *See also, United States v. Bonilla*, 579 F.3d 1233 (11<sup>th</sup> Cir. 2009).

It is quite clear that the strict application of the advisory sentencing guidelines produced sentences greater than necessary for punishment under Section 3553(a) for MARTINEZ-ALVARADO. The statutory factors set forth in Section 3553(a) weigh strongly in favor of sentences outside of and below the advisory sentencing guidelines. Case law is clear that where circumstances warrant, a District Court can impose sentences that vary downward significantly from the advisory guidelines range and the Appellate Court will affirm such sentences as reasonable. *Kimbrough v. United States*, 552 U.S. 85, 128 S.Ct. 558 (2007); *see also, United States v. Phaknikone*, 605 F.3d 1099 (11<sup>th</sup> Cir. 2010).

Because of the above, the sentences imposed by the District Court should have been reversed by the Eleventh Circuit as there was a “definite and firm conviction that the District Court committed a clear error of judgment in weighing the §3553(a) factors”. *United States v. Pugh*, 515 F.3d 1179, 1191 (11<sup>th</sup> Cir. 2008). Accordingly, the Eleventh Circuit should have reversed the sentence and because it did not, MARTINEZ-ALVARADO'S Petition for Writ of Certiorari must be granted.

In considering all of MARTINEZ-ALVARADO'S arguments, it is clear that MARTINEZ-ALVARADO has met his burden of demonstrating that the sentence imposed by the District Court was substantially unreasonable and that the sentence should have been vacated. *United States v. Thomas*, 446 F.3d 1348 (11<sup>th</sup> Cir. 2006); *see also, United States v. Saac*, 632 F.3d 1203 (11<sup>th</sup> Cir. 2011). Because MARTINEZ-ALVARADO'S sentence was affirmed by the Eleventh Circuit, his Petition for Writ of Certiorari must be granted.

### **CONCLUSION**

This Court should explicitly adopt MARTINEZ-ALVARADO'S position based upon law and equity. The upholding of his conviction and sentences by the Eleventh Circuit seriously affects the fairness, integrity and public reputation of the judicial proceedings. *See generally, United States v. Rodriguez*, 398 F.3d 1291 (11<sup>th</sup> Cir. 2005); *United States v. Olano*, 507 U.S. 725, 113 S.Ct. 1770 (1993). For all of these reasons and in the interest of justice, the Petitioner, LENIN MARTINEZ-ALVARADO, prays that this Court will issue a Writ of Certiorari and reconsider the decision below.

Respectfully submitted,

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By /s/ David J. Joffe  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 21st day of February, 2020, to the SOLICITOR GENERAL OF THE UNITED STATES, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001.

By /s/ David J. Joffe  
DAVID J. JOFFE, ESQUIRE