No. 19-_____

In the
Supreme Court of the United States

Corey Jones,

Petitioner,

v.

United States of America,

Respondent.

On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner was sentenced to 15 years in prison for biting a finger. The Court of Appeals found that "highly unjust, and little short of absurd," and thus ordered "further consideration" of the sentence. On remand, however, the District Judge refused even to read a brief on the merits, and a different panel of the Court of Appeals summarily affirmed without adjudicating Petitioner's claim that the refusal to hear him out denied him due process of law.

This Court's "supervisory power over the judgments of the lower federal courts is a broad one." *United States v. Munsingwear, Inc.*, 340 U.S. 36, 40 (1950). The question presented is whether the Court should exercise that power to order the same or another District Judge to give "further consideration," after hearing from Petitioner, to what constitutes just punishment for his biting a finger.

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The ruling of the United States Court of Appeals for the Second Circuit appears at 777 F. App'x 18 and Petitioner's Appendix ("Pet. App.") 1a-4a.

JURISDICTION

The district court had jurisdiction pursuant to 18 U.S.C. § 3231, and the Second Circuit had it per 28 U.S.C. § 1291. The Circuit entered its judgment on September 16, 2019, and denied rehearing on December 19, 2019. Pet App. 11a. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1254(1) and 2106.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides in part: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

Title 28, Section 2106, of the United States Code provides in part: "The Supreme Court . . . may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

INTRODUCTION

Petitioner Corey Jones, a black man with an I.Q. of 69, was sentenced to 15 years in prison for biting a finger. The Second Circuit found that "highly unjust, and little short of absurd," and thus ordered "further consideration" of his sentence. But on remand, the District Judge refused to hear Jones out, and a different panel of the Circuit then affirmed without adjudicating his claim that he was not heard.

"'The fundamental requisite of due process of law is the opportunity to be heard.'" *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 466 (2000) (citations omitted). Jones was not heard, and the Circuit then refused to adjudicate his claim that he was thereby denied due process of law. Jones thus remains subject, at present, to a "highly unjust" sentence of 15 years in prison for biting a finger.

"It is crucial in maintaining public perception of fairness and integrity in the justice system that courts exhibit regard for fundamental rights and respect for prisoners 'as people.'" *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1907 (2018) (citation omitted). "In broad strokes, the public legitimacy of our justice system relies on procedures that are 'neutral, accurate, consistent, trustworthy, and fair,' and that 'provide opportunities for error correction.'" *Id*. at 1908 (citation omitted). Indeed, "'what reasonable citizen wouldn't bear a rightly diminished view of the judicial process and its integrity if courts refused to correct obvious errors of their own devise that threaten to require individuals to linger longer in federal prison than the law demands?'" *Id*. (citation omitted). That describes this case.

Given the magnitude of the error here and the ease of correcting it, the Court should exercise its broad power under 28 U.S.C. § 2106 and remand the case for further consideration – accounting for Jones's view – of what punishment is just.

STATEMENT OF THE CASE

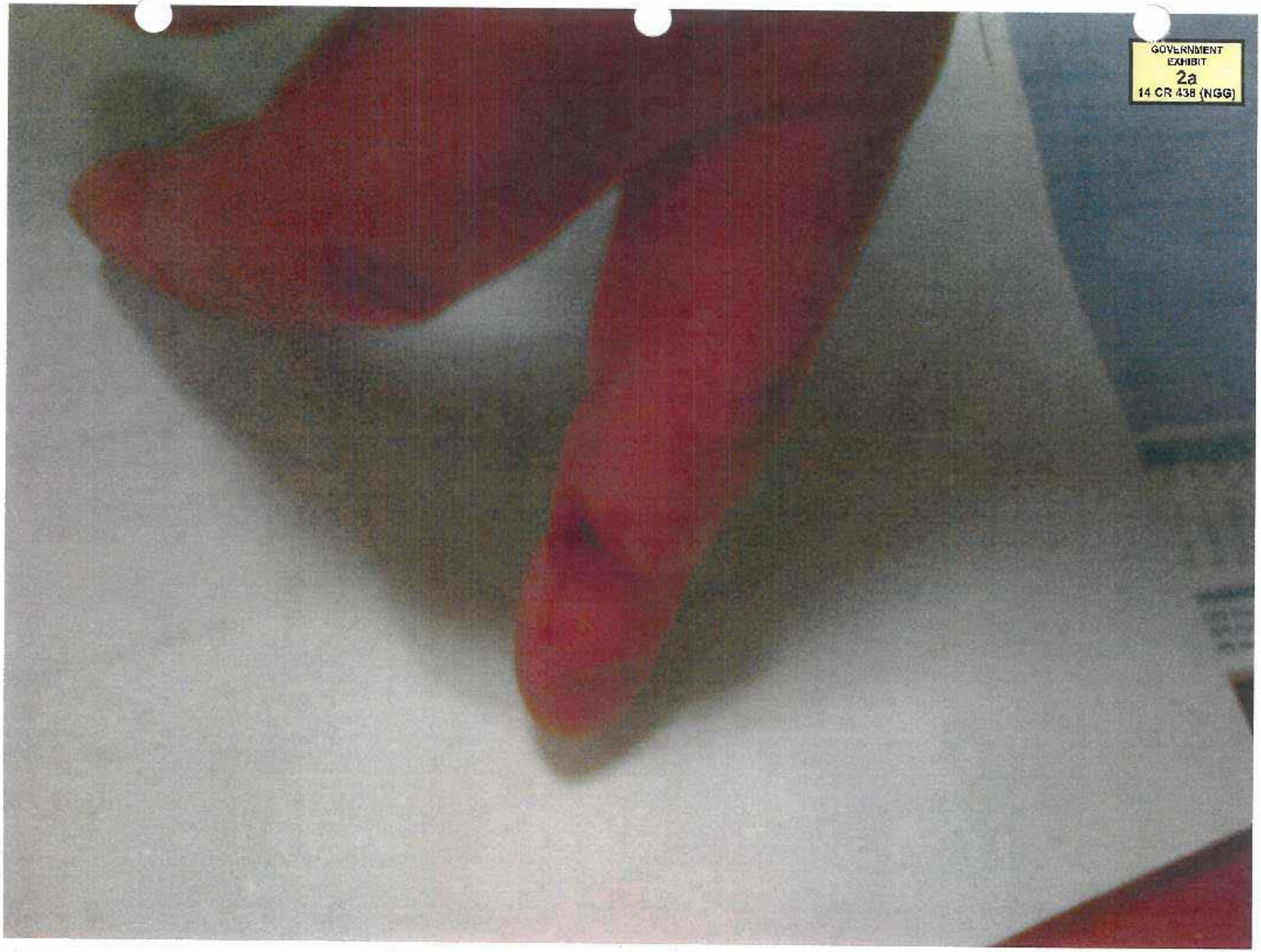
1. Jones was tried for assault of a federal employee in violation of 18 U.S.C. § 111. In June 2013, he was at a halfway house finishing a sentence imposed for unlawful gun possession. He had the gun to protect his daughters, who were

with him when he was shot at by gang members who considered him a snitch for going to the police after someone in his neighborhood tried to kill him. *See* E.D.N.Y. No. 13-cr-438, Docket Entry 46-1 at 3. As to the gun, "[t]here is no information to suggest that the firearm was used." Pre-Sentence Report (PSR) ¶ 28.

Jones was called to an office in the halfway house, where Deputy U.S. Marshals Ryan Westfield and Shawn Larson were waiting. He was told he was being taken back to prison because, the night before, he had "grumbled" a threat to an employee. E.D.N.Y. No. 13-cr-438, Docket Entry 47-2 at 1. He denied this and, as Deputy Westfield recounted at trial, Jones was "not happy with the fact that he was being told that he was going to be sent back to prison." *Id*., Docket Entry 44 at 40-41. But both deputies confirmed Jones did not move toward them. *Id*. at 74-75, 102. Rather, Deputy Westfield used a "football drive block" and "drove Mr. Jones into the corner of the room." *Id*. at 47.

The deputy is 6'1" tall, 295 pounds, and played football in high school. *Id*. at 75-76. Jones is 5'7" tall and weighs 180-185 pounds. *Id*., Docket Entry 46-1 at 3. In "trying to shove [Jones's] head down," *id*., Docket Entry 44 at 77, the deputy's hand "slipped down" and Jones "bit down on [his] right index finger." *Id*. at 50.

The deputy felt a "sharp pain," *id*., but later "provided a sworn affidavit of loss indicating that he has suffered no loss." PSR ¶ 84. At trial, the government conceded the bite caused "not the most serious wound you'll ever see." E.D.N.Y. No. 13-cr-438, Docket Entry 45 at 53. Photos taken 15 minutes after the bite, *id*., Docket Entry 44 at 52, and admitted as trial exhibits, confirm this:


GOVERNMENT
EXHIBIT
2a
14 CR 438 (NGG)

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GOVERNMENT
EXHIBIT
2b
14 CR 438 (NGG)

2. Given the bite, the jury convicted Jones of assault.

The PSR indicated a Sentencing Guidelines range of 41-51 months, but owing in part to a "youthful offender" adjudication for participating in a robbery when he was 16 years old, *see* PSR ¶ 22, Jones was deemed a career offender under U.S.S.G. § 4B1.1. Thus, his Guidelines range roughly quintupled to 210-240 months. PSR ¶ 74.

Jones argued "it would be unjust to sentence him at that heightened guideline level." E.D.N.Y. No. 13-cr-438, Docket Entry 46 at 6. Born into an impoverished African American family, he was exposed to lead paint as a child, hospitalized and later placed in special education. *Id*. at 7. His father died when he was 9, which affected him greatly, and he grew up in a violent housing project. *Id*.

A "battery of psychological tests," *id*., Docket Entry 46-1 at 5, shows Jones has an I.Q. of 69, "commensurate with either mental retardation or borderline intellectual functioning." *Id*. And his "cognitive functions are compromised by neuropsychological factors, possibly referable to his reported ingestion of lead paint as a child and/or to other factors such as head injury." *Id.* (Jones "has one scar on the back of his head from being hit with an ice pick." *Id.* at 2.)

At sentencing, in April 2015, the District Judge cited Jones's priors and the need for "respect for the law," 2d Cir. No. 18-1619, Docket Entry 20 at 50, and said: "I had two deputies on the stand, and they made it clear what they did and what they attempted to do and how you resisted. That's really the problem here." *Id*. at 51.

"I sentence you as follows: 180 months." *Id*. at 53. Jones soon interjected: "He said 180. I got 15, man. Fuck this nigger. 180 figure. You racist is what you

is, a racist. You a racist. That's what you is. Racist and old dude is what you is. Old white faggot. You is racist. Faggot." *Id.* at 55.

3. In 2016, the Court of Appeals vacated Jones's sentence on the ground that, given this Court's ruling in *Johnson v. United States*, 135 S. Ct. 2551 (2015), Jones's "youthful offender" adjudication for robbery was not an adjudication for a "crime of violence" under the Guidelines and, as such, Jones was not subject to the Career Offender Guideline.

Numerous defendants throughout the Second Circuit then received relief based on that ruling. Jones did not, however, as the mandate in his case was stayed given a case pending in this Court: *Beckles v. United States*, 137 S. Ct. 886 (2017).

4. Following *Beckles*, which held the rule announced in *Johnson* does not apply to the advisory Guidelines, the Court of Appeals issued a new opinion in Jones's case. It held the Career Offender Guideline applied given *Beckles*, and that Jones's sentence was not substantively unreasonable: "We may not substitute our own judgment for that of the district court," and Jones's 180-month prison sentence "was considerably below the Guidelines range" of 210-240 months. *United States v. Jones*, 878 F.3d 10, 19 (2d Cir. 2017). "Under these circumstances, we cannot say that Jones' sentence was substantively unreasonable." *Id.* at 20.

Nevertheless, the court remanded the case for "further consideration." *Id.*

In an opinion, styled a concurrence, by two of the panel's three judges, the court said upholding the 15-year term was "highly unjust, and little short of absurd," as Jones was a "man with an I.Q. of 69" and the deputy "suffered no loss." *Id.*

(Calabresi and Hall, JJ.). *See also id.* at 23 (We "agree that the sentence is not substantively unreasonable; but [we] believe the result to be close to absurd.").

The court thus remanded the case for the District Judge to "determin[e] what would, in fact, be an appropriate sentence for Jones." *Id.* at 24. The court said it wanted to know: "In the light of sentences that other similarly guilty defendants have received, and in the light of Jones' own situation, *both of which you, as a district judge, are best suited to determine*, what is the sentence that you deem appropriate in this case?" *Id.* (emphasis in original). As for its authority to order this remand, the court explained that "28 U.S.C. § 2106 permits affirmances and remands for further proceedings in the interest of justice." *Id.* at 24 n.6.

The court's mandate, issued in late 2017, thus directed "further consideration as may be just under the circumstances." 2d Cir. No. 15-1518, Docket Entry 151-1.

5. On remand, the defense traveled to Jones's prison but was denied an in-person or confidential meeting with him. *See* 2d Cir. No. 18-1619, Docket Entry 19 at 16 n.5. The defense thus asked the judge to order Jones moved to New York: "To give effect to the Court of Appeals' mandate and to provide necessary material and background relevant to any further consideration of Mr. Jones' sentence by this Court, the defense requests that the government arrange to have Mr. Jones produced in this District. This will allow defense counsel an opportunity to have Mr. Jones evaluated by mental health or other professionals." E.D.N.Y. No. 13-cr-438, Docket Entry 58. The judge refused.

Instead, the judge ordered "proposals . . . as to how the court should proceed

in this case." Pet. App. 5a. The government proposed "no additional proceedings." E.D.N.Y. No. 13-cr-438, Docket Entry 60 at 1. The defense responded: "We do not believe that would be consistent with the Second Circuit's instruction to give this case 'further consideration.'" *Id.*, Docket Entry 61 at 1 n.1. The mandate "reasonably requires submissions from the parties and a hearing on whether his sentence should be changed." *Id.* at 4. The judge again refused.

Without hearing from Jones on the sentence, and without notice that he was contemplating a merits ruling, the judge issued an order in May 2018 saying that, "upon further reflection," the "sentence that was imposed on Defendant was the appropriate sentence." Pet. App. 9a-10a.

The judge cited information considered at the 2015 sentencing – the "evidence adduced at the trial, the contents of the Presentence Report, Defendant's criminal history" – as well as "the submissions of counsel" in which Jones proposed briefing and a hearing and the government proposed nothing. Pet. App. 10a.

The judge also cited "Defendant's lack of remorse (as evidenced by his documented conduct at the time of sentencing, Tr. of Sentencing Hr'g at 42:9-20[])." Pet. App. 10a. Those lines of the sentencing transcript contain Jones's outburst in April 2015 upon learning of the 15-year term, during which he called the judge a "racist" and "old dude" and "faggot." Citing this, the judge concluded his May 2018 order by saying he "need not order additional submissions from the parties or conduct further proceedings in this matter." Pet. App. 10a.

6. Jones appealed, arguing the judge did not comply with either the letter

or spirit of the mandate to give the case "further consideration as may be just under the circumstances." *See Puricelli v. Argentina*, 797 F.3d 213, 218 (2d Cir. 2015) ("We consider both the express terms and broader spirit of the mandate to ensure that its terms have been 'scrupulously and fully carried out.'") (citation omitted).

He also argued that, "besides not following the mandate, the judge denied Jones due process by not hearing him out." 2d Cir. No. 18-1619, Docket Entry 19 at 21. *See also id*. at 21-24; Docket Entry 52 (Reply Brief) at 5-6.

Jones also filed an unopposed motion for the appeal be decided by the same panel that remanded the case. *Id*., Docket Entry 21. That was denied, and a different panel (which happened to include the judge who did not join the two-judge "concurrence" in the earlier ruling) denied Jones's appeal in a summary order.

The new panel did not adjudicate Jones's due process claim.

As to the mandate, the panel did not say it was "scrupulously and fully carried out." *Puricelli*, 797 F.3d at 218. Rather, it said the judge "accepted and 'consider[ed]' the parties' submissions." Pet. App. 4a (citation omitted). "Granted," the panel noted, "Jones's proposal was a preview of arguments he planned to 'set out in detail' in a later submission." *Id.* The proposal did not address "Jones' own situation" or argue for "what would, in fact, be an appropriate sentence." *Jones*, 878 F.3d at 24 (Calabresi and Hall, JJ.). Jones was thus not heard on that question—the question that prompted the remand. The panel affirmed nonetheless.

Jones sought panel and *en banc* rehearing, alleging a denial of due process. *See* 2d Cir. No. 18-1619, Docket Entry 90. Rehearing was denied. Pet. App. 11a.

REASONS FOR GRANTING THE WRIT

I. The Denial of Due Process is Clear

The "public legitimacy of our justice system relies on procedures that are 'neutral, accurate, consistent, trustworthy, and fair.'" *Rosales-Mireles*, 138 S. Ct. at 1908 (citation omitted). "'The fundamental requisite of due process of law is the opportunity to be heard,'" *Nelson*, 529 U.S. at 466 (citations omitted), but Jones was not heard. "[R]egardless of its ultimate reasonableness, a sentence that lacks reliability because of unjust procedures may well undermine public perception of the proceedings." *Rosales-Mireles*, 138 S. Ct. at 1910. The sentence here fits that bill.

Despite upholding the sentence as not substantively unreasonable, the Court of Appeals remanded Jones's case for "further proceedings in the interest of justice." *Jones*, 878 F.3d at 24 n.6 (Calabresi and Hall, JJ.). As the court said, consigning an intellectually disabled black man to prison for 15 years because of an essentially harmless finger bite is "highly unjust, and little short of absurd." *Id.* at 20.

Thus, borrowing the language of 28 U.S.C. § 2106, the court remanded the case for "further consideration as may be just under the circumstances." *Id.* *See also* § 2106 (A "court of appellate jurisdiction may . . . require such further proceedings to be had as may be just under the circumstances.").

The court did not remand the case for the District Judge to do what he did: adhere to the "highly unjust" sentence after denying Jones's request to be heard. That was not "just under the circumstances," as the court had remanded as "a means of determining what would, in fact, be an appropriate sentence," and had asked the

judge: "[I]n the light of Jones' own situation, . . . what is the sentence that you deem appropriate in this case?" *Jones*, 878 F.3d at 24 (Calabresi and Hall, JJ.). The judge did not answer that question, as he refused to hear about or address "Jones' own situation" in 2018. Instead, he cited information he had considered at the 2015 sentencing: "the evidence adduced at the trial, the contents of the Presentence Report, [and] Defendant's criminal history." Pet App. 10a.

But the case was remanded for further consideration of Jones's sentence "as may be just under the circumstances." *Jones*, 878 F.3d at 20. "'And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.'" *Bell v. Maryland*, 378 U.S. 226, 238-39 (1964) (quoting *Patterson v. Alabama*, 294 U.S. 600, 607 (1935)). "'Highly relevant – if not essential – to [the] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics.'" *Pepper v. United States*, 562 U.S. 476, 488 (2011) (citation omitted). "[I]t is proper – indeed, even necessary for the rational exercise of discretion – to consider the defendant's whole person and personality . . . for whatever light those may shed on the sentencing decision." *United States v. Grayson*, 438 U.S. 41, 53 (1978), *superseded by statute on other grounds as stated in Barber v. Thomas*, 560 U.S. 474, 482 (2010).

The judge refused, however, even to read a brief on "Jones' own situation" or "what would, in fact, be an appropriate sentence." *Jones*, 878 F.3d at 24 (Calabresi and Hall, JJ.). Instead, he cited Jones's calling him a "racist" and "old dude" and

"faggot" at the sentencing 3 years earlier and said he "need not order additional submissions from the parties or conduct further proceedings in this matter." Pet. App. 10a.

When Jones then appealed, a different panel of the Court of Appeals summarily ruled the first panel's mandate had been honored. And whether that was right or wrong – the panel did not say the mandate was "scrupulously and fully carried out," *Puricelli*, 797 F.3d at 218 – the panel altogether ignored Jones's claim that, "besides not following the mandate, the judge denied Jones due process by not hearing him out." 2d Cir. No. 18-1619, Docket Entry 19 at 21. *See also id*. at 21-24; Docket Entry 52 (Reply Brief) at 5-6.

The panel said the judge had "taken the 'submissions of counsel' into account," Pet. App. 4a, but it acknowledged that Jones's submission, which proposed briefing and a hearing, did not engage the merits: it did not address "Jones' own situation" or make any argument about "what would, in fact, be an appropriate sentence." *Jones*, 878 F.3d at 24 (Calabresi and Hall, JJ.). "Granted," the panel said, "Jones's proposal was a preview of arguments he planned to 'set out in detail' in a later submission and was not intended as a final submission to support a motion for resentencing." Pet. App. 4a. Indeed, Jones said in his proposal that "information not available at [his] April 2015 sentencing may inform whether his 15-year sentence" should be reduced. "The legal and factual points outlined above will be discussed in detail in the proposed submissions. For now, however, the Court has sought input only on what procedure to take." E.D.N.Y. No. 13-cr-438, Docket Entry 61 at 6.

In short, Jones's request for briefing and a hearing did not present any argument for "what would, in fact, be an appropriate sentence." *Jones*, 878 F.3d at 24 (Calabresi and Hall, JJ.). This is because he was not allowed to be heard on that question— the very question, of course, that occasioned the remand.

And, in an insult-to-injury twist, Jones was not heard on his appellate claim of not being heard in district court: the panel ignored his due process argument.

"'The fundamental requisite of due process of law is the opportunity to be heard.'" *Nelson*, 529 U.S. at 466 (citations omitted). As the Second Circuit itself has said, in a case Jones cited and the panel declined to acknowledge, even when resentencing is discretionary "a defendant must have an opportunity to . . . persuade the court of the merits of a reduction in sentence." *United States v. Gangi*, 45 F.3d 28, 32 (2d Cir. 1995). "Exercise of discretion still requires that the court give . . . the defendant a chance to present his views." *Id*. The "failure to afford an opportunity to be heard would raise grave due process issues." *Id.*

The judge did not hear Jones on "an appropriate sentence," and the panel did not hear him on his claim of not being heard. Each court denied him due process.

II. The Denial of Due Process Merits Correction

"'[W]hat reasonable citizen wouldn't bear a rightly diminished view of the judicial process and its integrity if courts refused to correct obvious errors of their own devise that threaten to require individuals to linger longer in federal prison than the law demands?'" *Rosales-Mireles*, 138 S. Ct. at 1908 (quoting *United States v. Sabillon-Umana*, 772 F.3d 1328, 1333-34 (10th Cir. 2014) (Gorsuch, J.)).

Recognizing that Jones's 15-year sentence is "highly unjust," *Jones*, 878 F.3d at 20 (Calabresi and Hall, JJ.), the Court of Appeals ordered "further proceedings in the interest of justice." *Id.* at 24 n.6. Yet on remand the judge, and on appeal the new panel, committed "obvious errors of their own devise." *Rosales-Mireles*, 138 S. Ct. at 1908. The judge's was refusing even to read a brief on "Jones' own situation" or "what would, in fact, be an appropriate sentence." *Jones*, 878 F.3d at 24 (Calabresi and Hall, JJ.). And the panel's was refusing to adjudicate Jones's claim that the judge denied him due process by not hearing him out. That claim is plainly meritorious given precedents from this Court and the Second Circuit (among others, *Nelson* and *Gangi*). Finally, the Court of Appeals had – and declined – the chance to correct these errors when it denied Jones's rehearing petition.

Absent correction, the unforced errors here will "require [Jones] to linger longer in federal prison than the law demands." *Rosales-Mireles*, 138 S. Ct. at 1908. That is reason enough for relief: "It is crucial in maintaining public perception of fairness and integrity in the justice system that courts exhibit regard for fundamental rights and respect for prisoners 'as people.'" *Id.* at 1907 (citation omitted). "In broad strokes," moreover, "the public legitimacy of our justice system relies on procedures that are 'neutral, accurate, consistent, trustworthy, and fair.'" *Id*. at 1908 (citation omitted). The procedures here fail those tests.

Accordingly, the Court should remand this case to district court for consideration – accounting for Jones's view – of what punishment is just. And that consideration should be by a different district judge.

The "ability to assign a case to a different judge on remand rests not on the recusal statutes alone, but on the appellate courts' statutory power to 'require such further proceedings to be had as may be just under the circumstances.'" *Liteky v. United States*, 510 U.S. 540, 554 (1994) (quoting 28 U.S.C. § 2106). *See also, e.g., Cascade Nat. Gas Corp. v. El Paso Nat. Gas Co.*, 386 U.S. 129, 142-43 (1967) ("[W]e reverse and remand, with directions that . . . the Chief Judge of the Circuit . . . assign a different District Judge to hear the case.").

"[T]here are circumstances in which," to preserve "'the appearance of justice, an assignment to a different judge is salutary and in the public interest." It "does not imply any personal criticism.'" *United States v. Johnson*, 850 F.3d 515, 525 (2d Cir. 2017) (quoting *United States v. Robin*, 553 F.2d 8, 10 (2d Cir. 1977) (en banc)).

"Having reimposed an identical sentence after the first remand" without hearing from the defense, a "judge may reasonably be expected to have substantial difficulty ignoring his previous views during a third [] proceeding." *United States v. DeMott*, 513 F.3d 55, 59 (2d Cir. 2008) (per curiam). Though Jones's judge adhered to the 15-year term rather than "reimpose" it, the point is the same: he has already "'made up his mind.'" *United States v. Rosner*, 485 F.2d 1213, 1231 (2d Cir. 1973) (citation omitted). Sticking to that "highly unjust" 15-year sentence, *Jones*, 878 F.3d at 20 (Calabresi and Hall, JJ.), and "without eliciting the views of the defendant . . . , bespeaks a lack of receptivity to [Jones's] views and arguments." *DeMott*, 513 F.3d at 59. The "judge's quick reimposition of the same sentence, without hearing further argument" and despite the defendant's request for a

"hearing and the opportunity to proffer additional submissions for the court's consideration, creates an appearance that new arguments will not be fairly heard." *United States v. Peguero*, 367 F. App'x 170, 172 (2d Cir. 2010).

Likewise, reassignment is warranted given the judge's citation of Jones's 2015 outburst as reason to not even read a brief from Jones in 2018. In 2015, Jones called the judge a "racist." 2d Cir. No. 18-1619, Docket Entry 20 at 55. The judge's citing that, and 3 years after the fact, "might be taken to indicate an over-preoccupation with the case and [Jones's] charge of prejudice." *In re Union Leader Corp.*, 292 F.2d 381, 391 (1st Cir. 1961). "This, in turn, might indicate the existence of personal feeling." *Id.* As the appearance-of-justice rule "deals exclusively with appearances" given its aim of upholding "the public's confidence in the impartiality of the judiciary," *In re Basciano*, 542 F.3d 950, 956 (2d Cir. 2008), reassignment is advisable. *See also United States v. Langston*, 720 F. App'x 652, 653 (2d Cir. 2018) (reassigning given "the institutional interest in ensuring that there will be no basis upon which the impartiality of th[e] proceedings could be questioned").

Finally, reassignment will not "entail waste and duplication out of proportion to any gain in preserving the appearance of fairness," *Robin*, 553 F.2d at 10, especially as the issues the Court of Appeals flagged – including "Jones' own situation," *Jones*, 878 F.3d at 24 (Calabresi and Hall, JJ.) – have yet to be addressed. *See also United States v. Johnson*, 387 F. App'x 105, 107 (2d Cir. 2010) ("Though we are mindful of the inefficiencies associated with reassignment, . . . any district judge would be required to update the record and re-weigh the [relevant] factors.").

This case was remanded "in the interest of justice," *Jones*, 878 F.3d at 24 n.6. (Calabresi and Hall, JJ.), but the course it then took was "not consistent with that regularity and fairness which should characterize the administration of criminal justice in the federal courts." *Saldana v. United States*, 365 U.S. 646, 647 (1961) (per curiam). ""The untainted administration of justice is certainly one of the most cherished aspects of our institutions. Its observance is one of our proudest boasts. This Court is charged with supervisory functions in relation to proceedings in the federal courts. Therefore, fastidious regard for the honor of the administration of justice requires the Court to make certain that the doing of justice be made so manifest that only irrational or perverse claims of its disregard can be asserted.'" *United States v. Shotwell Mfg. Co.*, 355 U.S. 233, 242 (1957) (citations omitted).

There is nothing "irrational or perverse" about Jones's claim: he was not heard on his "own situation" or "what would, in fact, be an appropriate sentence." *Jones*, 878 F.3d at 24 (Calabresi and Hall, JJ.).

The Court should correct this denial of due process— not only because Jones is serving a "highly unjust" sentence, *id.* at 20, but because "the public legitimacy of our justice system relies on procedures that are 'neutral, accurate, consistent, trustworthy, and fair.'" *Rosales-Mireles*, 138 S. Ct. at 1908 (citation omitted). "It is crucial in maintaining public perception of fairness and integrity in the justice system that courts exhibit regard for fundamental rights and respect for prisoners 'as people.'" *Id.* at 1907 (citation omitted). The post-remand proceedings here veered far off that track. The Court should set things right by letting Jones be heard.

CONCLUSION

The Court should grant the petition for a writ of certiorari, vacate the ruling below, and remand the case with instructions that a different District Judge give consideration – accounting for Jones's view – of what punishment is just.

Respectfully submitted,

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