No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CARL St. PREUX,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

James T. Skuthan
Acting Federal Defender

Rosemary Cakmis
Senior Litigator, Chief, Appellate Division

Stephen J. Langs, Counsel of Record
Research and Writing Attorney
Florida Bar 0137227; S. Ct. Bar 242621
Federal Defender's Office
201 South Orange Avenue, Suite 300
Orlando, Florida 32801
Phone (407) 648-6338; Fax (407) 648-6095
email stephen_langs@fd.org

QUESTION PRESENTED

Carl St. Preux is serving a *mandatory* life sentence for a federal drug conspiracy conviction. He was found guilty after jury trial in 2007. Because Mr. St. Preux, ostensibly, already suffered from two prior Florida state drug convictions, one from 1995 and a second from 1998, the government filed its obligatory notice (its information), pursuant to 21 U.S.C. § 851(e), seeking that mandatory life sentence under 21 U.S.C. § 841(b)(1)(A). The sentencing court said that in light of the 5-year-limitations period at § 851(e), Mr. St. Preux was prevented from collaterally challenging his prior state convictions to ameliorate his sentencing exposure. In short, Mr. St. Preux was sentenced to a *mandatory* life sentence because of his two prior state drug convictions (which were outside and older than the 5-year-limitations period at § 851(e)).

Following his federal sentencing proceedings in 2007, Mr. St. Preux went back to Florida state court and had one of his prior state convictions invalidated -- the putative 1998 conviction was vacated, set aside, dismissed, and found *void ab initio*. Once his 1998 conviction was abolished, Mr. St. Preux then filed his federal post-conviction motion under 28 U.S.C. § 2255 in 2011 asking the district court to re-sentence him without the 1998 conviction, meaning, Mr. St. Preux would not be exposed to a *mandatory* life sentence. The district court said Mr. St. Preux couldn't do that because, still, the 5-year-limitations period at § 851(e) not only applied

during his federal sentencing proceedings in 2007, it *also* applied during post-conviction § 2255 matters in 2011 to prevent any relief for Mr. St. Preux. The Eleventh Circuit Court of Appeals agreed (§ 851(e) applies not only in federal sentencing proceedings, it also applies during § 2255 post-conviction matters) and affirmed the dismissal of Mr. St. Preux's 2255 motion.

As such, the question presented here is whether 21 U.S.C. § 851(e), which clearly applies at and during federal *sentencing* proceedings, usurps and supplants relief under federal habeas corpus and also applies at and during *§ 2255 post-conviction* proceedings – asked differently, whether Mr. St. Preux is procedurally (as well as substantively) barred from seeking re-sentencing in federal court based on the statute of limitations in 21 U.S.C. § 851(e) even after successfully challenging one of his prior state convictions. *See, e.g., Arreola-Castillo v. United States*, 889 F.3d 378, 384 (7th Cir. 2018) (asking and deciding whether a "district court erred by holding that § 851(e) bars an individual from reopening his federal sentence under § 2255 when the state convictions that enhanced the sentence have since been vacated").

This question has been answered differently by the courts below and there remains a circuit split as to whether the 5-year-limitations period at 21 U.S.C. § 851(e) does or does not apply in habeas corpus and post-conviction proceedings under 28 U.S.C. § 2255.

List of Parties

Petitioner, Carl St. Preux, was the defendant as well as the petitioner in the district court and the appellant in the court of appeals. Respondent, the United States of America, was the plaintiff in the district court and the appellee in the court of appeals.

List of Proceedings

Mr. St. Preux's original criminal matter was resolved in the district court for the Middle District of Florida, Ocala Division, Case No. 5:06-cr-29. He was found guilty after jury trial for one count of conspiracy to possess with intent to distribute more than 5 kilograms of powder cocaine on January 26, 2007. He was sentenced to mandatory life in prison on June 21, 2007. Following his direct criminal appeal to the Eleventh Circuit Court of Appeals, Mr. St. Preux's conviction and sentence were affirmed in a decision and unpublished opinion, *United States v. Dorsey, et al.*, 414 F. App'x 206 (11th Cir. 2011).

Mr. St. Preux then filed his original motion under 28 U.S.C. § 2255 in the district court, Middle District of Florida, Ocala Division, on April 8, 2011, in Civil Case No. 5:11-cv-187. This motion was dismissed on August 28, 2012. On appeal, the Eleventh Circuit affirmed in *St. Preux v. United States*, 539 F. App'x 946 (11th Cir. 2013) (unpublished) (*St. Preux I*), and this Court denied certiorari on June 30, 2014. 573 U.S. 949 (2014).

Finally, Mr. St. Preux filed the motion at issue in the case-at-bar in the district court, Middle District of Florida, Ocala Division, on March 10, 2017. However, rather than filing the motion in the former § 2255 case in Case No. 5:11-cv-187, the clerk of court opened a new case and assigned Mr. St. Preux's motion, which he labeled a Federal Rule of Civil Procedure 60(b) motion, under Civil Case No. 5:17-cv-96. The district court dismissed Mr. St. Preux's ostensible Rule 60(b) motion as an impermissible "second or successive" § 2255 motion in an order entered on March 29, 2017. On appeal, the Eleventh Circuit agreed with the district court and affirmed this dismissal in a decision and unpublished opinion, *St. Preux v. United States*, 800 F. App'x 731 (11th Cir. 2020) (*St. Preux II*). Mr. St. Preux's petitions for rehearing and rehearing *en banc* were denied on March 24, 2020, and the mandate was issued on April 1, 2020.

This petition for a writ of certiorari follows.

TABLE OF CONTENTS

Table of Authorities

Federal Cases **Page(s)**

Table of Authorities – *cont'd*

Federal Cases **Page(s)**

Federal Statutes

Table of Authorities – *cont'd*

Other **Page(s)**

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Carl St. Preux, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case. He comes to the Court after the district court dismissed his Rule 60(b) motion as an improper "second or successive" § 2255 motion and the Eleventh Circuit Court of Appeals affirmed that order.

OPINION BELOW

The Eleventh Circuit's decision and opinion, which was not published, is provided in the Appendix. It can also be found at *Carl St. Preux v. United States*, 800 F. App'x 731 (11th Cir. Jan. 23, 2020) (unpublished). The court's order denying a petition for rehearing and rehearing *en banc* was entered on March 24, 2020, with the mandate having been issued on April 1, 2020. *See* Appendix.

JURISDICTION

The Eleventh Circuit issued its unpublished panel opinion on January 23, 2020. *See* Appendix. An order denying a petition for rehearing and rehearing *en banc* was entered on March 24, 2020, *see* Appendix; and, the court's mandate was issued on April 1, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) ("[c]ases in the courts of appeals may be reviewed by the Supreme Court … [b]y writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree").

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides:

> 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 subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

A person in 2007, like Mr. St. Preux, who was convicted of conspiring to possess with intent to distribute more than 5 kilograms of powder cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846 was ordinarily subject to a mandatory minimum penalty of at least 10 years' imprisonment and a maximum exposure of up to life. However, if such defendant had "two or more prior convictions for a felony drug offense," that defendant "shall be sentenced to a mandatory term of life imprisonment." 21 U.S.C. § 841(b)(1)(A) (2007).

But, per 21 U.S.C. § 851(a), "No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon."

Moreover, under section 851(e):

> No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

21 U.S.C. § 851(e) (2007).

INTRODUCTION

Whether 21 U.S.C. § 851(e) supplants and usurps § 2255 such that it precludes habeas review for federal drug defendants

Mr. St. Preux's case brings a circuit split to this Court's attention; indeed, the district courts themselves, for that matter, fall on both sides of the equation when deciding the question presented.[1] The question impacts and affects any federal drug defendant subjected to enhanced penalties pursuant to 21 U.S.C. §§ 841(b)(1) and 851. Specifically, this case asks whether the 5-year statute-of-limitations under 21 U.S.C. § 851(e) usurps and supplants habeas corpus relief, without any authority, consent, or blessing from Congress, such that a federal inmate who successfully challenges and invalidates a prior state conviction cannot then later come back into federal court for re-sentencing, pursuant to 28 U.S.C. § 2255. *See, e.g., Clay v. United States*, – F. Supp.2d --, 2009 WL 1657095 (N.D. Ga. June 11, 2009) (in which the court held that a defendant *was* entitled to

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[1] *Cf., e.g., Vizcaino v. United States*, 981 F. Supp.2d 104 (D.Mass. Nov. 8, 2013) (section 851(e) does *not* apply in or during section 2255 proceedings), *with United States v. Roberson*, 684 F.Supp.2d 179 (D.Mass. Feb. 16, 2010) (section 851(e) *does* apply in section 2255 matters).

re-sentencing under § 2255 based on the invalidation of a prior state court conviction that was over five years old at the time an information was filed against him). In the underlying decision and opinion from the Eleventh Circuit Court of Appeals, the appellate court said, "'[u]nder the plain language of [§ 851(e)], St. Preux's challenge to the use of his 1998 state conviction as a basis for his federal sentencing enhancement is foreclosed by' the statute's five-year time limitation." *St. Preux v. United States*, 800 F. App'x 731, 733 (11th Cir. 2020) (quoting *St. Preux v. United States*, 539 F. App'x 946, 947 (11th Cir. 2013)). It did so in the context of section 2255 post-conviction proceedings.

The Seventh Circuit Court of Appeals expressly disagrees with the Eleventh, noting "[o]nly the Eleventh Circuit ... has reached the opposite conclusion." *Arreola-Castillo v. United States*, 889 F.3d 378, 388 (7th Cir. 2018). In *Arreola-Castillo*, the court there expressly said, "Section 851(e) does not apply to a § 2255 petition to reopen a federal sentence based on the vacatur of enhancing state convictions." *Id.* at 384. The Seventh also discussed how "two of our sister circuits have adopted this interpretation of §851(e)," including the Ninth Circuit as well as the Second Circuit. *Arreola-Castillo*, 889 F.3d at 388 (citing *United States v. McChristian*, 47 F.3d 1499 (9th Cir. 1995), and *United States v. Gabriel*, 599 F. App'x 407 (2nd Cir. 2015) (unpublished)); *cf. Clay v. United States*, -- F. Supp.2d --, 2009 WL 1657095 (N.D. Ga. June 11, 2009) (asking "whether a defendant

whose federal sentence was enhanced under §§ 841/851 may bring a § 2255 motion to seek resentencing based on the invalidation of his prior state conviction used to enhance his federal sentence" and finding "that there is nothing in §§ 841 or 851 which" limits the court's authority under § 2255 to grant relief), *Vizcaino v. United States*, 981 F. Supp.2d 104 (D. Mass. Nov. 8, 2013) (deciding whether the Controlled Substances Act and § 851 supplant habeas corpus and provide the exclusive forum for challenging prior convictions and concluding "that the better reading of § 851 is that the prohibition on raising 'challenges' that were over five years old only restricts defendants from raising such challenges within the federal sentencing forum" and not in the arena of § 2255 petitions), *with United States v. Roberson*, 684 F. Supp.2d 179 (D. Mass. 2010) (although noting § 851 "does not expressly say that its procedures are 'exclusive[,]'" the district court concluded "that § 851 provides the exclusive means of challenging a prior conviction that could be used to enhance a federal drug sentence," whether at the original sentencing proceeding or a subsequent habeas corpus or § 2255 petition).

For purposes of this petition, Mr. St. Preux comes to the Court with a distinct and narrow legal question – it's Mr. St. Preux's good faith position that his certainly merits this institution's time, effort, and energy. The facts are clean, the record is tight, and the legal posture is clearly framed over these past 13 years. The answer to the question presented (which is either a yes or no answer) has national

impact and intimately plays in the daily function of our nation's criminal courts, prosecutions, and investigations. It also comments beyond doubt the significance of habeas corpus, what we pursue in the aspiration of due process, and when we should address the ideals of reaching justice. If Mr. St. Preux were sentenced today, he would not be subject to a mandatory life sentence – he is, in other words, presently serving an unconstitutional sentence. This Court should grant Mr. St. Preux's petition.

STATEMENT OF THE CASE

As taken from the Eleventh Circuit's unpublished opinion below, Mr. St. Preux "was found guilty in 2007 of conspiracy to distribute cocaine and crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and his sentence was enhanced, through 21 U.S.C. § 851(e), based on two prior felony drug convictions, one from March 1995 and one from November 1998." *St. Preux v. United States*, 800 F. App'x 731, 733 (11th Cir. 2020) (*St. Preux II*); *see also* Appendix. Mr. St. Preux was handed a mandatory life sentence. The court recounts, "In 2011, St. Preux filed a motion in the district court under 28 U.S.C. § 2255, arguing, among other things, that 'he should be re-sentenced because [his 1998] predicate state conviction[,] which was used to enhance his federal sentence to a mandatory term of life imprisonment under 21 U.S.C. 851[,] has now been dismissed by the state court.' *St. Preux v. United States*, 539 F. App'x 946, 947 (11th Cir. 2013)

(unpublished) (*St. Preux I*).[2] The district court rejected this claim," *St. Preux*, 800 F. App'x at 733, and said "that a defendant cannot challenge a predicate conviction used to enhance his sentence under § 851 if that conviction is more than five years old." *Id.* On appeal from the dismissal of his 2011 § 2255 petition, the Eleventh Circuit affirmed, "holding that '[u]nder the plain language of [§ 851(e)], St. Preux's challenge to the use of his 1998 state conviction as a basis for a federal sentencing enhancement is foreclosed by' the statute's five-year time limitation." *Id.* (quoting *St. Preux I*, 539 F. App'x at 948).

Perhaps said differently, then, Mr. St. Preux was convicted of drug conspiracy in 2007. In light of his two previous state drug convictions from 1995 and 1998, he was handed a mandatory life sentence, pursuant to 21 U.S.C. §§ 841(b)(1)(A) and 851.[3] Following his federal sentence, Mr. St. Preux went back to

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[2] For the Reader's benefit, the traffic of Mr. St. Preux's case includes an appeal from the original dismissal of his section 2255 action in 2011 – this was decided in an unpublished opinion at *St. Preux v. United States*, 539 F. App'x 946 (11th Cir. 2013). For purposes of this petition, this will be known as *St. Preux I.*

The underlying unpublished opinion from which this petition flows was decided at *St. Preux v. United States*, 800 F. App'x 731, 733 (11th Cir. 2020). This will be known as *St. Preux II* for citation purposes herein.

[3] Again, the versions of the sentencing statutes Mr. St. Preux was punished in 2007 said, in pertinent part:

> If any person commits a violation of this subparagraph [§ 841(a)] ... after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of

state court and was successful at having his 1998 conviction vacated, set aside, dismissed, and declared *void ab initio*. Subsequently, in 2011, he filed a motion under 28 U.S.C. § 2255 asking the district court to re-open his criminal proceedings and re-sentence him without the mandatory life penalty. The district court said no, it couldn't, because under 21 U.S.C. § 851(e), a defendant is not allowed to collaterally challenge a prior conviction that is older than the 5-year statute-of-limitations. *See* 21 U.S.C. § 851(e) (2007) ("[n]o person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction"). Because Mr. St. Preux

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> life imprisonment without release and fined in accordance with the preceding sentence.

21 U.S.C. § 841(b)(1)(A) (2007).

And, under section 851(a), "No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, ... the United States attorney files an information with the court ... stating in writing the previous convictions to be relied upon." 21 U.S.C. § 851(a)(1) (2007).

Conversely, "No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction." 21 U.S.C. § 851(e) (2007).

was prohibited from challenging any putative conviction older than 2001,[4] the district court said it couldn't even entertain the merits argument that he successfully abolished the conviction from 1998 – he was stuck with his mandatory life sentence; there was no habeas relief available to Mr. St. Preux (unlike for someone sentenced as an Armed Career Criminal or as a Career Offender under the Sentencing Guidelines).

On appeal, the Eleventh Circuit agreed with the district court and affirmed the dismissal of Mr. St. Preux's § 2255 motion filed in 2011. *See St. Preux v. United States*, 539 F. App'x 946 (11th Cir. 2013) (unpublished) (*St. Preux I*).

Then, in 2017, Mr. St. Preux filed a Federal Rule of Civil Procedure 60(b) motion asking the district court to re-visit his § 2255 petition on the ground that the court mistakenly applied the 5-year limitations period at 21 U.S.C. § 851(e) to prevent his process from going forward – it was a procedural error.[5] The district court said that this was an effort at filing a "second or successive" § 2255 motion and, without any appropriate jurisdiction to hear the motion, it dismissed Mr. St. Preux's action as inappropriate and improvident. *See* Order, Doc. 2 (March 29,

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[4] The government filed its information against Mr. St. Preux in the original criminal case, 5:06-cr-29-JA-PRL, at Doc. 179 on December 12, 2006.

[5] Similarly, when Mr. St. Preux filed his Rule 60(b) motion in 2017, for some reason, the clerk did not file it with Mr. St. Preux's original § 2255 matter in Case No. 5:11-cv-187; rather, the clerk opened another event and assigned it Case No. 5:17-cv-96.

2017), Case No. 5:17-cv-96 (M.D.Fla., Ocala Division) (Hodges, D.J.).

Appealing this ruling led to the Eleventh Circuit's agreement with the district court, again, and its conclusion "that St. Preux's motion ... was a successive § 2255 motion." *St. Preux v. United States*, 800 F. App'x 731, 733 (11th Cir. 2020) (*St. Preux II*). "St. Preux's motion makes clear that he is disputing the district court's application of § 851(e) to enhance his sentence," the appellate court found, "which was whether §851(e), as a legal matter, applied to his habeas proceeding." *Id.* at 734. In that Mr. St. Preux "was not entitled to habeas relief," the Eleventh Circuit affirmed the district court's order dismissing Mr. St. Preux's Rule 60(b) motion as a "second or successive" § 2255 petition "because, based on the time limits provided in § 851(e) itself [ ], [Mr. St. Preux] could not use § 851 to challenge his 1998 conviction." *Id.* "Thus," the Eleventh Circuit held, "the district court did not err in dismissing St. Preux's motion for lack of jurisdiction." *Id.*

Mr. St. Preux petitioned for panel rehearing and rehearing *en banc* but was denied relief in an order entered by the appellate court on March 24, 2020. *See* Appendix. The court's mandate was issued on April 1, 2020.

REASONS FOR GRANTING THE WRIT

Mr. St. Preux's petition should be granted to resolve an express circuit split, to address and answer an undeniably important national legal question arising under federal drug sentencing matters, and to cure a manifest injustice for Mr. St. Preux's erroneous life sentence. This Court should intervene and grant certiorari.

The Court should grant review to resolve a circuit split as well as answer a decidedly significant legal question concerning federal drug sentencing. *A fortiori*, Mr. St. Preux is serving a mandatory life sentence grounded on a prior conviction that does not exist. If Mr. St. Preux were sentenced today, he would not be subject to a mandatory life sentence under 21 U.S.C. §§ 841 and 851. Were the Court to hear this case, it could cure a manifest injustice for Mr. St. Preux.

If the Eleventh Circuit's legal interpretation in this case is allowed to stand, then any federal drug defendant facing an 851 information has only one means and chance – and *only* one – to try and collaterally challenge any prior conviction used against him or her at sentencing. And that only includes prior convictions that are within the 5-year statute-of-limitations period and excludes anything older than that. This chance, then, is designated for the time of sentencing. So, the Eleventh Circuit says that any federal drug defendant sentenced under the provisions of 21 U.S.C. §§ 841(b) and 851 may *not* pursue habeas relief and may *never* pursue post-conviction remedies under 28 U.S.C. § 2255 when trying to collaterally

challenge a prior conviction used to enhance a sentence. Congress certainly does not say this anywhere between §§841 and 851.

This simply cannot be the state of the law. The Second,[6] Seventh,[7] and Ninth Circuits[8] agree with Mr. St. Preux's position (and disagree with the Eleventh),[9] but, in the best exercise of brevity, Mr. St. Preux would greatly lift from Chief District Judge Patti B. Saris in her memorandum and order, *Vizcaino v. United States*, 981 F. Supp.2d 104 (D. Mass. 2013). In *Vizcaino*, Chief Judge Saris observed:

> Under the government's reading of section 851, the statute would curtail petitioner's ability to bring habeas motions based on successful challenges in state courts to convictions which are time-barred by § 851(e). Such an interpretation would implicate the longstanding rule requiring a clear statement of congressional intent to repeal habeas jurisdiction, which the Supreme Court emphasized in *INS v. St. Cyr*, 533 U.S. 289, 289 (2001). Implications from statutory text or legislative history are not sufficient to repeal habeas jurisdiction; instead, Congress must articulate specific and unambiguous statutory directives to effect a repeal. Given this framework, the Court must find that the provisions in § 851 were clearly intended to repeal habeas relief under § 2255.
> ...

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6 *See United States v. Gabriel*, 599 F. App'x 407 (2nd Cir. 2015) (unpublished).

7 *See Arreola-Castillo v. United States*, 889 F.3d 378 (7th Cir. 2018).

8 *See United States v. McChristian*, 47 F.3d 1499 (9th Cir. 1995).

9 *See St. Preux v. United States*, 539 F. App'x 946 (11th Cir. 2013) (unpublished) (*St. Preux I*); *see also St. Preux v. United States*, 800 F. App'x 731 (11th Cir. 2020) (unpublished) (*St. Preux II*).

> The Plain language of the statute of limitations indisputably prohibits defendants from challenging convictions outside the five year period at the federal sentencing hearing.
> ...
>
> The government asserts that the plain language of [21 U.S.C. § 851(e)] bars defendants from ever raising challenges to these [prior] convictions, including challenges brought in state court and later raised in a § 2255 petition.
>
> This Court concludes that the better reading of § 851 is that the prohibition on raising "challenges" that were over five years old only restricts defendants from raising such challenges within the federal sentencing forum. ... Congress reasonably limits the use of the federal forum to challenge old, time-barred convictions. However, there is no clear statement that such challenges could not be launched in state court and then used as a basis for a federal habeas motion . . . .

Vizcaino, 981 F. Supp.2d at 108-110 (cleaned up). Judge Saris also noted, "In *Clay v. United States*, No. 2:00-CR-0008-RWS-JRS-1, 2009 WL 1657095 (N.D. Ga. June 11, 2009), the court held that a defendant was entitled to resentencing under § 2255 based on the invalidation of his prior state court conviction that was over five years old at the time an information was filed against him." *Vizcaino*, 981 F. Supp.2d at 108.

The Seventh Circuit agrees with Mr. St. Preux, unlike the Eleventh. When addressing the question presented here, the Seventh Circuit in *Arreola-Castillo v. United States*, 889 F.3d 378 (7th Cir. 2018), framed the issue as whether the district court erred "by holding that § 851(e) bars an individual from reopening his federal sentence under § 2255 when the state convictions that enhanced the sentence have

since been vacated." *Id.* at 384. Hinging its answer to the question posed "on whether [the inmate's] habeas petition challenges the validity of any prior conviction," the Seventh acknowledged that the action there was not "challenging the validity of those [prior] convictions, but rather their very existence." *Id.* at 385. Thus, "[c]ritically," the Seventh found, "although §851(e) bars an individual from challenging the validity of any prior conviction that is more than five years old, it in no way limits an individual's ability to deny that such a conviction exists. 21 U.S.C. § 851(e)." *Id.* at 385.

"Finally," the Seventh emphasized, "it is important to note that § 851(e) does not speak of the ability to file a case attacking a prior conviction." *Id.* at 387. "It would be extraordinary for a federal statute to forbid a person from going to state court and properly filing an action that the state court is prepared to entertain. At the very least, one would expect a clear statement from Congress that such a profound interference with the state-court system was contemplated. Nothing in § 851(e) comes close to a clear statement permitting the federal courts, in effect, to enjoin someone from filing a motion for relief in state court." *Arreola-Castillo*, 889 F.3d at 387.

The Eleventh Circuit even said as much in a more recent case, *United States v. Valentine*, -- F. App'x --, 2020 WL 2849942 (11th Cir. June 2, 2020) (unpublished). "A prisoner in federal custody [like Mr. St. Preux] may file a

motion to vacate, set aside, or correct his sentence by asserting 'that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.' 28 U.S.C. § 2255(a). Typically," the Eleventh notes, "collateral attacks on the validity of a federal conviction or sentence must be brought under 28 U.S.C. § 2255. *Sawyer v. Holder*, 326 F.3d 1363, 1365 (11th Cir. 2003)." *Valentine*, 2020 WL 2849942, at *1.

In other words, "a collateral challenge to an § 851 enhancement is cognizable through a § 2255 motion." *Id.* at *2 (footnote omitted). Indeed, the Eleventh Circuit knows that:

> In *Robert Johnson v. United States*, the Supreme Court held that a federal prisoner who had received a career offender enhancement could challenge the enhancement in a § 2255 motion after a prior state conviction underlying the enhancement was vacated by the state court. 544 U.S. 295, 304-305. The Supreme Court further held that the state court's vacatur was a new "fact" within the meaning of § 2255(f)(4) that triggered a renewed one-year limitations period to file a § 2255 motion. *Id.* at 305-308. ... We have also recognized post-judgment challenges to an §851 enhancement as cognizable through a § 2255 motion. *See Boyd v. United States*, 754 F.3d 1298, 1301-1302 (11th Cir. 2014); *Stewart v. United States*, 646 F.3d 856, 863-8674 (11th Cir. 2011).

Valentine, 2020 WL 2849942, at *2; *see also Custis v. United States*, 511 U.S. 485, 497 (1994) (an Armed Career Criminal Act (ACCA) case), and *Daniels v. United States*, 532 U.S. 374, 382 (2001) (ACCA), which explain that only *after* an

underlying conviction is successfully challenged may a defendant seek relief in federal courts via § 2255.

But still, the Eleventh Circuit found in Mr. St. Preux's case that even though he "filed his initial habeas petition within AEDPA's statute of limitations, so the district court was able to reach the merits of his habeas claim that his sentence should not have been enhanced through § 851(e), and determined that St. Preux was not entitled to habeas relief because, based on the time limits provided in § 851(e) itself (and not AEDPA), he could not use § 851 to challenge his 1998 conviction." *St. Preux II*, 800 F. App'x at 734 (*see* Appendix). The court below said it again in the more recent *Valentine* case. *See Valentine*, 2020 WL 2849942, at *3 (finding that even if petitioner's underlying conviction was vacated, he still was not entitled to 2255 relief because "§ 851 prohibits challenges to prior convictions entered more than five years before the" government's filing of an §851 information).

The Eleventh Circuit's application of the 5-year limitations period at 21 U.S.C. § 851(e) to bar an inmate from re-opening his or her federal sentence after having successfully vacated a prior state conviction used to enhance his or her sentence cuts against the generally accepted jurisprudence on this point as well as this Court's governing precedence. "Assuming he has acted with due diligence," the Eleventh recognizes, "'a defendant given a sentence enhanced for a prior

conviction is entitled to a reduction if the earlier conviction is vacated.' *Johnson*, 544 U.S. at 303." *Stewart v. United States*, 646 F.3d 856, 864 (11th Cir. 2011).

"Together," the Eleventh Circuit goes on to say, this Court's decisions and opinions in "*Custis, Daniels,* and *Johnson* establish that the time for challenging a federal sentence based on a faulty state conviction is only after that conviction has been vacated." *Stewart*, 646 F.3d at 864; *Arreola-Castillo*, 889 F.3d at 390 (stating that "section 851 does not preclude habeas review" and observing that "the Supreme Court has consistently held in other statutory contexts that an individual may move to reopen a federal sentence based on the state court's vacatur of a prior conviction that enhanced the sentence"); *see also United States v. McChristian*, 47 F.3d 1499 (9th Cir. 1995) ("a careful reading of the statute convinces us that §851(e)'s purpose was to exclude from federal court only collateral challenges to convictions and not reports of successful collateral challenges completed in state court").

Now, it is certainly not lost on Mr. St. Preux that he comes to this Court on the dismissal of a putative Rule 60(b) motion because it was thought to be an improper "second or successive" 2255 motion.[10] The point of his Rule 60(b)

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[10] The appellate court below summarized Mr. St. Preux's case thusly:

> Carl St. Preux appeals the district court's denial of his motion, which he argues is a Federal Rule of Civil Procedure 60(b) motion, instead of a second or successive 28 U.S.C. § 255 motion for which he had not

motion, however, was an effort at pointing out to the courts below the procedural error in denying him relief after the state court successfully vacated his prior 1998 conviction. Mr. St. Preux is the victim of the lower courts' misapplication of the 5-year statute-of-limitations at 21 U.S.C. § 851(e) that prevents him from re-opening the original sentencing hearing from 2007 such that he might be correctly sentenced.

For this Court's participation, it has not said expressly, implicitly, or otherwise that the specific statute at question, namely § 851(e), applies in the course of a § 2255 action,[11] whether procedurally or substantively, or should be read categorically to undermine the constitutional remedies afforded by habeas

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> obtained permission. On appeal, St. Preux says that his motion was a proper Rule 60(b) motion because it did not attack the merits of the district court's earlier decision, but rather, argued that the court procedurally erred by apply 21 U.S.C. § 851(e)'s statute of limitations and declining to consider the merits of his claim.

St. Preux v. United States, 800 F. App'x 731, 732 (11th Cir. 2020) (*St. Preux II*); *see* Appendix.

[11] In *Arreola-Castillo v. United States*, 889 F.3d 378 (7th Cir. 2018), the defendant there, just like Mr. St. Preux, received a mandatory life sentence for a federal drug offense because he had two prior felony drug convictions. 889 F.3d at 381. Subsequent to his federal conviction, the New Mexico state court vacated the underlying state felony drug convictions. *See id.* At issue was whether § 851(e), "which prohibits an individual from challenging the validity of a prior conviction that is more than five years old at the time the government seeks the recidivism enhancement," time-barred his challenge. *See id.* The Seventh Circuit held there was no statute-of-limitations concern because the defendant was "not challenging the validity of his prior convictions, but rather their very existence." *See id.* So it is with Mr. St. Preux.

corpus. *See Clay v. United States*, -- F.Supp.2d --, 2009 WL 1657095, at * 4 (N.D.Ga. June 11, 2009) ("[T]here is no published or unpublished opinion addressing the precise issue raised herein; i.e., whether a defendant whose federal sentence was enhanced under §§ 841/851 may bring a § 2255 motion to seek resentencing based on the invalidation of his prior state conviction used to enhance his federal sentence"). Mr. St. Preux submits that it should go without argument or debate that, just as Judge Story wrote in *Clay*, we all agree, generally, the rule is: "'pursuant to federal habeas corpus, a district court may reopen and reduce a federal sentence, once a federal defendant has, in state court, successfully attacked a prior state conviction, previously used in enhancing the federal sentence' pursuant to the [Armed Career Criminal Act (or the ACCA)]." *Clay*, 2009 WL 1657095, at *4 (quoting *Walker*, 198 F.3d at 813).[12]

Why should this not be the case in a matter involving a sentence enhanced by §§ 841 and 851? The magistrate in this case answered the question in its report and recommendation by reasoning, "if [Mr. St. Preux] could not challenge his November 1998 conviction at sentencing because it was time barred by 851(e), then he should not be permitted to make the argument in his § 2255 petition with a

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[12] *See, e.g., United States v. Sanders*, 909 F.3d 895, 902-903 (7th Cir. 2018) ("True, a defendant given a sentence enhanced for a prior conviction is entitled to a reduction if the earlier conviction is vacated. This is not controversial. When a state court vacates a prior conviction, it, in effect, nullifies that conviction; it is as if that conviction no longer exists.").

different result." (Civ.11 at Doc. 46, page 5 (the magistrate judge did not cite to any authority in support of this declaration)). But, no matter how viewed, the court's answer reflects the use of § 851(e) as a procedural shield to prevent any review of Mr. St. Preux's claim on the merits – and that is the question raised by Mr. St. Preux in his Rule 60(b) motion from below, i.e., can § 851(e) be used in such a way during the course of a 2255 action to deflect any chance at ruling on the merits of a prisoner's substantive claim, that he no longer suffers from a qualifying predicate prior conviction?

Hence, Mr. St. Preux's Rule 60(b) motion was not attacking the merits of the district court's prior decision, it was attacking a procedural defect in the resolution of his § 2255 motion, i.e., the improper application of a statute-of-limitations. *See United States v. Carswell*, 773 F. App'x 591, 592–593 (11th Cir. 2019) ("[a] Rule 60(b) motion for relief from judgment on a § 2255 motion is a second or successive § 2255 motion if it seeks to add a new ground for relief or attacks the district court's prior resolution of a claim on the merits, but not when it attacks a defect in the integrity of the § 2255 proceedings") (citing *Gonzalez*, 545 U.S. at 533 (movant's Rule 60(b) motion alleging "that the federal courts misapplied the federal statute of limitations" was permissible and true Rule 60(b) motion, not a "second or successive" 2255 application)). Why would we ever distinguish or treat differently the relief afforded a federal criminal defendant sentenced as a Career

Offender, an Armed Career Criminal, or under § 851 for purposes of collateral challenges brought by § 2255?[13] Judge Story said in *Clay* that he "agrees [ ] there is nothing in §§ 841 and 851 which 'limits this Court's authority and responsibility under 28 U.S.C. § 2255 (or 28 U.S.C. § 2254, for that matter) and related Supreme Court precedent to grant relief in these circumstances.'" *Clay*, 2009 WL 1657095, at *4 (quoting *Pettiford v. United States*, No. 94-12626, 1995 WL 464920, at *9 (D.Mass. July 20, 1995)).

To be sure, Judge Story observed, "'To afford a petitioner no relief, when he has been sentenced to an enhanced period based on prior state convictions that were obtained in violation of the United States constitution, is arguably itself a constitutional violation.'" *Id.* (quoting *Pettiford*, 1995 WL 464920, at *10). In other words, "the better reading of § 851 is that the prohibition on raising 'challenges' that were over five years old only restricts defendants from raising such challenges within the federal sentencing forum." *Vizcaino*, 981 F.Supp.2d at 109. Consequently, § 851(e)'s 5-year-limitations period should not apply in a § 2255 arena to prevent a movant from asking for re-sentencing after having

[13] As noted in *Clay*, the § 2255 movant there "argues that he is entitled to resentencing based on the Supreme Court's decisions in *Custis v. United States*, 511 U.S. 485 (1994), *Daniels v. United States*, 532 U.S. 374 (2001), and *Johnson v. United States*, 544 U.S. 295 (2005). Movant maintains that, although these cases concerned sentence enhancements under the Armed Career Criminal Act, 18 U.S.C. § 924(e), while his sentence was enhanced pursuant to §§ 841(b)(1)(A)(ii) and 851, the rationale of these cases applies to his case because the statutory enhancements are similar." *Clay*, 2009 WL 1657095, at *2 (alterations to internal citations).

successfully vacated a prior state conviction used to enhance his or her federal sentence. *See Johnson v. United States*, 340 F.3d 1219, 1222 (11th Cir. 2003) ("[A] defendant may seek to reopen his federal sentencing pursuant to § 2255 if he has successfully attacked a prior state conviction used to enhance his federal sentence") (citing *United States v. Walker*, 198 F.3d 811, 813 (11th Cir. 1999) ("pursuant to federal habeas corpus, a district court may reopen and reduce a federal sentence, once a federal defendant has, in state court, successfully attacked a prior state conviction, previously used in enhancing the federal sentence.")) (collecting cases).

At no time in the case-at-bar has any court ever adjudicated Mr. St. Preux's claim that his 1998 Florida state conviction was successfully vacated on its merits. This is so because up to this point it has been ruled – as a procedural course – that Mr. St. Preux should be prevented from presenting his substantive claim (that he now lacks a qualifying prior conviction) in light of the proposed application of § 851(e), whether at his sentencing hearing, or, during the course of his 2255 action. Mr. St. Preux should have the legal opportunity to present his substantive claim to the district court that he no longer suffers under any Florida state conviction from 1998.

Mr. St. Preux is serving a mandatory life sentence which is grounded on a fiction – that he suffers from *two* prior state convictions, one from 1995 and the other from 1998. It is his contention, indeed, the record-evidence provided in the court below proves, that his 1998 prior conviction was legally vacated, *void ab initio*, nullified – it no longer factually exists.[14] As this case comes to this Court, Mr. St. Preux does not meet the requirements laid out by §§ 841 and 851 to suffer under a *mandatory* life sentence.

In 2007, the sentencing court found Mr. St. Preux's Sentencing Guidelines score to include a total offense level 38, a criminal history category III, and a proposed prison range between 292 and 365 months (or 24 years, 4 months to 30 years, 5 months (roughly just under 24 ½ to about 30 ½ years in prison)). *See* Doc. 436, page 46. "However," the court resigned, "in view of the two prior convictions properly alleged procedurally and otherwise by the United States under Section 851 of Title 21, the sentence in Mr. St. Preux's case becomes a sentence of mandatory life imprisonment under Section 841(b)(1)(A) of the statutes." Doc. 436, pages 46–47. "As a result," the court concluded, "I have determined that as a matter of law in the case of [defendant St. Preux] that the Court must impose . . . a sentence of life imprisonment." *Id.* at 76. Were Mr. St. Preux sentenced today, it is

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[14] Even during the course of his original sentencing proceedings in 2007, it was Mr. St. Preux's personal position that "his previous [state] counsel had these charges dismissed[.]" (Doc. 436, page 4 (sentencing transcript)).

highly doubtful he would receive the same sentence – significantly so, the district court would not be *obligated* or *required* to impose a life sentence.

Mr. St. Preux should not be deprived of any meaningful opportunity to walk into the courtroom and have the chance to show he was wrongfully sentenced to life in prison, an improper sanction, suspending habeas corpus. Mr. St. Preux acknowledges that "[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion." S. Ct. Rule 10. He would humbly submit that the issues raised by his case merit this Court's attention, time, and resources. At a minimum, the petition presents a square circuit split.[15] Moreover, this case does not involve any "asserted error consist[ing] of erroneous factual findings or the misapplication of a properly stated rule of law." *Id.* It certainly meets all the other conventional requirements for certiorari. *See* S. Ct. Rule 10. Mr. St. Preux assumes the further position that the lower courts have "decided an important question of federal law [as well as deciding] an important federal question in a way that conflicts with relevant decisions of this Court." *Id.* Thus, Mr. St. Preux appeals to this Court for its merit-worthy intervention.

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[15] Clearly, "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter[.]" S. Ct. Rule 10(a).

The question presented warrants this Court's time, energy, resources, and investment. The question here invokes the daily procedural and substantive traffic driven by law enforcement, prosecutors, defense attorneys, and our federal criminal courts. It may very well affect thousands of federal criminal defendants, whether before and at trial or especially during sentencing.[16] There are no factual questions to address and the matter involves only a legal analysis and application of the Court's jurisprudence. It has been studied and written at length that this Court's "case selection decisions [ ] help [ ] define the role that the Court plays within the judicial system and American life."[17] This case certainly presents a question of great national significance and impact, especially for any federal drug defendant subject to an enhanced sentence under 21 U.S.C. §§ 841 and 851. Under this Court's Rule 10, "[a] petition for a writ of certiorari will be granted only for compelling reasons." More particularly, Rule 10 advocates the granting of case

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[16] For example, according to the United States Sentencing Commission's report, *Overview of Federal Criminal Cases, Fiscal Year 2018*, the federal caseload increased 3.8% from the previous fiscal year; cases involving drugs, immigration, firearms, fraud, theft, and embezzlement accounted for 82.8% of all cases reported to the Commission (of which drugs and firearms offenses accounted for 38.9% of all federal cases). *See* United States Sentencing Commission, *Overview of Federal Criminal Cases, Fiscal Year 2018* (June 2019), and available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2019/FY18_Overview_Federal_Criminal_Cases.pdf.

[17] Cordray, Richard, *The Philosophy of Certiorari: Jurisprudential Considerations in Supreme Court Case Selection*, 82 Washington University L. Rev. 389, 396 (2004).

review when "a United States court of appeals has decided an important question of federal law . . . or has decided an important federal question in a way that conflicts with relevant decisions of this Court." S. Ct. Rule 10(c). Rule 10 also "indicate[s] the character of the reasons the Court considers" when allowing for certiorari, of which, one of these considerations includes "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." S. Ct. Rule 10(a). This has happened here; indeed, the case of Mr. St. Preux presents with compelling national interests and legal consequences as well as an express circuit split between the Seventh, Ninth, and Eleventh Circuits. The district courts, too, have demonstrated a decided split in how, when, and whether to apply § 851 during the course of post-conviction proceedings.

Perhaps said differently, this case presents an acknowledged circuit conflict concerning an undeniably important question arising under federal drug sentencing matters – and, an acknowledged circuit conflict on a matter of such material importance to our nation's criminal practitioners should constitute a sufficient reason from which to grant certiorari. In short, the circuit split here is as squarely framed, obvious, and consequential as they come. Indeed, the question presented is also an undeniably important one that warrants this Court's considered review, wisdom, and timely intervention. This Court should intervene and grant certiorari.

CONCLUSION

For the foregoing reasons, the question presented is ripe for review by this Court and the petition should be granted.

Respectfully submitted,

James T. Skuthan
Acting Federal Defender

/s *Stephen J. Langs*
Stephen J. Langs
Research and Writing Attorney
Florida Bar No. 0137227
Supreme Court Bar No. 242621
Federal Defender's Office
201 South Orange Avenue, Suite 300
Orlando, Florida 32801
Phone (407) 648-6338
Fax (407) 648-6095
Email stephen_langs@fd.org
Counsel of Record for the Petitioner

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