No. _____

In The
Supreme Court of the United States

PEDRO PETE BENEVIDES,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Petition For A Writ Of Certiorari To The United States Court of Appeal for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 2008, the Government seized more than $40 million in funds belonging to Pedro Benevides during a narcotics investigation. The Government had to dismiss the case because key witnesses provided false statements. The Government did not return the funds; instead, it changed its story and claimed in a civil forfeiture case that the money came from a Ponzi scheme. The Government never indicted Mr. Benevides, or anyone else, for the Ponzi scheme.

After holding the funds for five years, the Government indicted Mr. Benevides for conspiracy and bank fraud in September of 2013. Mr. Benevides pled guilty to conspiring to commit bank fraud. As a condition of his plea, he had to withdraw his claim to the $40 million seized in the unfounded drug case. He also had to forfeit an additional $44 million.

Mr. Benevides moved to vacate his sentence under 28 U.S.C. § 2255. He argued his counsel provided ineffective assistance by telling him a forfeiture of $44 million was reasonable and failing to tell him it was an excessive fine under the Eighth Amendment. His attorney also told him that the plea would result in a minimal sentence and allow him to retain $3 million. The district court denied his claims without a hearing. The Eleventh Circuit affirmed.

The questions presented are:

1. Does the forfeiture of over $44 million constitute an excessive fine under the Eighth Amendment, where the forfeiture amount is more than 44 times greater

than the statutory maximum fine and almost 3,000 times greater than the lower-end suggested in the Sentencing Guidelines?

2. Did the Eleventh Circuit err in denying a certificate of appealability on whether a defendant receives ineffective assistance where his attorney advises him to agree to a forfeiture amount that is unconstitutional, provides false assurances that his guilty plea will result in a minimal term of incarceration, and incorrectly states that he would be allowed to retain $3 million, and where the defendant would not have taken the guilty plea had he received proper advice from his attorney?

PARTIES TO THE PROCEEDING

There are no parties to the proceeding other than those named in the caption of the case.

STATEMENT OF RELATED PROCEEDINGS

- *United States of America v. Assets Described in "Attachment A" to the Verified Complaint for Forfeiture in Rem*, 6:09-cv-01852-JA-GJK (M.D. Fla. 2015) (Fourth and Final Judgment of Forfeiture issued on July 25, 2014)
- *United State v. Benevides*, Case No. 6:13-cr-00234-GAP-KRS (M.D. Fla. 2014) (judgment issued on April 15, 2015)
- *United States v. Benevides*, Case No. 15-11895 (11th Cir. 2016) (opinion affirming conviction issued May 27, 2016)
- *Benevides v. United States*, Case No. No. 16-6389 (U.S. 2016) (mandate issued July 12, 2016)
- *United States v. Benevides*, Case No. 6:17-cv-01944 (judgment on order denying motion to vacate under 28 U.S.C. § 2255 entered on October 21, 2019)
- *Benevides v. United States*, Case No. 19-14970 (11th Cir. 2020) (order denying motion for certificate of appealability entered on February 14, 2020)

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Pedro Benevides, respectfully petitions the Court for a writ of certiorari to review the Order of the Eleventh Circuit Court of Appeal denying him a certificate of appealability.

DECISIONS BELOW

The unpublished district court order denying Petitioner's Motion to Vacate filed pursuant to 28 U.S.C. § 2255 is reproduced in the appendix at App. 2.

The Eleventh Circuit issued an unpublished order denying Petitioner's request for a certificate of appealability. That order is reproduced in the appendix at App. 1.

STATEMENT OF JURISDICTION

The district court had subject matter jurisdiction over this federal habeas petition under 28 U.S.C. § 2255. The Eleventh Circuit issued its Order on February 14, 2020. App. 1.

Pursuant to this Court's March 19, 2020 Order relating to filing deadlines and the ongoing public health concerns relating to COVID-19, this Petition is timely, as it is filed within 150 days of the order denying Petitioner's Motion for Certificate of Appealability. This Court has jurisdiction. 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Sixth Amendment to the Constitution states that in "all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense."

STATEMENT OF THE CASE

A. The Civil Forfeiture Action.

On October 31, 2008, the Government seized over $40 million from various bank accounts of companies Mr. Benevides owned and operated. App. 11. The Government initially claimed that the funds were the proceeds of narcotics trafficking and money laundering. App. 13. However, the Government was forced to voluntarily dismiss the indictment in that case because witnesses admitted to lying to the Government about Mr. Benevides. App. 13.

Instead of returning the funds, the Government claimed in a civil forfeiture action that the money originated not from drug transactions, but from a Ponzi scheme perpetrated by an individual who had agreed to buy commercial properties owned by Mr. Benevides. App. 11. The Government never filed charges against Mr. Benevides

or anyone else in connection with the alleged Ponzi scheme. Mr. Benevides and his wife filed claims in the Government's forfeiture action, but that case remained unresolved for several years. App. 12.

B. The Criminal Case.

The Benevides' claims in the forfeiture action became more complicated in September of 2013, when the Government charged Mr. Benevides with (1) conspiring to commit bank fraud; (2) bank fraud; and (3) making false statements to federally-insured financial institutions. App. 15.

On July 14, 2014, Mr. Benevides agreed to plead guilty to the conspiracy count in a plea agreement. Pursuant to the agreement, he agreed that the "assets to be forfeited specifically include, but are not limited to, a money judgment in the amount of $44,059,585,[1] which amount represents the proceeds obtained as a result of the offense charged in Count One, including all relevant conduct as defined in United State Sentencing Guidelines §1B1.3(a)." App. 15. Mr. Benevides separately agreed to consent to the forfeiture of the previously-seized $40 million, which was the subject of the civil forfeiture action. App. 15.

[1] Notwithstanding this provision in the plea agreement, the total amount of the loans listed in the indictment only came to $30,375,950.

The Government agreed, for its part, to credit the $40 million against the $44 million amount it claimed Mr. Benevides owed as forfeiture in the criminal case. App. 15. Thus, by leveraging the $44 million forfeiture figure in his criminal case—an amount 44 times the statutory maximum fine for the offense to which he pled guilty—the Government finally managed to bring its six-year effort to retain the $40 million seized from Mr. Benevides back in 2008 to a close.

The district court sentenced Benevides to 108 months of incarceration to be followed by three years of supervised release. App. 3. During the sentencing hearing, the Government conceded that the seized money could not be forfeited in the criminal case because it could not prove by a preponderance of the evidence that the funds were bank fraud proceeds:

> We could not forfeit those funds in this case because we could not prove by a preponderance of the evidence that those funds were bank fraud proceeds. Otherwise, we would have forfeited them in this case. And I think Mr. Greene has somehow confused the money judgment, which is a money judgment against the defendant for $44 million, which represents the proceeds he obtained from the bank fraud somehow with the Ponzi scheme money. And I just wanted the Court to be aware that these are two totally separate pots of money.

App. 15-16 n.3. The district court likewise found that the less than a million dollars of the seized funds were traceable to the criminal offense. App. 30.

On August 26, 2014, the district court entered an order granting the Government's motion for forfeiture money judgment. App. 18. It also ordered Mr. Benevides to pay $10 million in restitution, which represented the actual amount of loss the banks sustained after they foreclosed on the Benevides properties that served as security for the loans. App. 17.

The Eleventh Circuit affirmed Mr. Benevides' Judgment and Sentence on May 27, 2016. *Benevides v. United States*, 650 Fed. Appx. 723 (11th Cir. 2016). On November 14, 2016, this Court denied his Petition for Certiorari.

C. The Post-Conviction Proceedings.

Mr. Benevides raised two claims in a motion to vacate his criminal judgment brought under 28 U.S.C. § 2255. First, he claimed that his trial attorney provided ineffective assistance of counsel by advising him to stipulate to a forfeiture amount of $44 million. App. 21. According to Mr. Benevides, his attorney never told him that the forfeiture amount, which was 44 times greater than the statutory maximum fine, almost 3,000 times greater than the lower-end of the range suggested in the Sentencing Guidelines, and significantly larger than the actual amount of loss sustained by the banks, violated the Eighth Amendment's prohibition against excessive fines. App. 13-16.

Contemporaneous handwritten notes on the proposed plea agreement that were attached as an exhibit to the motion to vacate reflected that Mr. Benevides specifically objected to the excessive forfeiture and restitution amounts contained in the agreement. App. 18. However, he asserted that his attorney advised him to agree to the forfeiture of $44 million because that amount equated to the alleged "intended loss" in the case and was a "reasonable" fine amount. App. 18.

Mr. Benevides relied on a line of forfeiture cases from the Ninth Circuit, including *United States v. Beecroft*, 825 F. 3d 991 (9th Cir. 2016), *United States v. $100,348.00 in U.S. Currency*, 354 F.3d 1110 (9th Cir. 2004), and *United States v. 3814 NW Thurman St.*, 164 F.3d 1191 (9th Cir. 1999), where the appellate court held analogous forfeiture amounts were excessive fines in violation of the Eighth Amendment. App. 25

In his second claim, Mr. Benevides maintained that trial counsel provided ineffective assistance of counsel when he privately assured Mr. Benevides that, if he entered the plea agreement and stipulated to the forfeiture amount, he would (1) only serve a minimal prison sentence; and (2) still retain a Lamborghini and approximately $3 million that the Government initially seized. App. 17. According to Mr. Benevides, his attorney told him that the $3 million was the amount of interest that the $41 million had accrued since the time the Government seized the funds.

App. 17. Mr. Benevides filed communications with his attorney that supported his claim. App. 18.

Mr. Benevides averred that he suffered prejudice as a result of the misadvice of counsel. App. 16-17. Specifically, he claimed that he would not have agreed to the plea and instead would have proceeded to trial if counsel had correctly advised him that (1) the $44 million forfeiture amount violated the Eighth Amendment; (2) his sentence would not be minimal; and (3) he would not be permitted to keep $3 million or the Lamborghini. App. 16-17.

The district court denied both claims without conducting an evidentiary hearing. App. 8. It noted that Mr. Benevides was warned during the plea colloquy that he was waiving the right to challenge the constitutionality of the fine/forfeiture but still agreed to enter a guilty plea. App. 6.

The district court additionally noted that, in contrast to the Ninth Circuit, the Eleventh Circuit had affirmed a forfeiture that exceeded the statutory maximum fine by more than 400%. App. 7 (citing *United States v. Holland*, 722 F. App'x 919, 930 (11th Cir. 2018)).

The Eleventh Circuit summarily denied Mr. Benevides' motion for certificate of appealability, finding that he "failed to make a substantial showing of the denial of a constitutional right." App. 1.

For the reasons that follow, this Court should grant this petition and issue a writ of certiorari to the Eleventh Circuit.

REASONS FOR GRANTING THE WRIT

The Eighth Amendment to the United States Constitution prohibits the imposition of "excessive fines." U.S. Const. amend. VIII. This Court recognized just last year that the protection against "excessive punitive economic sanctions secured by the [Excessive Fines] Clause is . . . both 'fundamental to our scheme of ordered liberty' and 'deeply rooted in this Nation's history and tradition.'" *Timbs v. Indiana*, 139 S. Ct. 682 (2019) (quoting *McDonald v. Chicago*, 561 U.S. 742, 767 (2010)). The *Timbs* decision, while unanimous, left other pressing questions for another day. Chief among them is what constitutes an "excessive" fine within the meaning of the Eighth Amendment.

In *United States v. Bajakajian*, the Court, for the first time, applied the Excessive Fines Clause to strike down a civil forfeiture. *United States v. Bajakajian*, 524 U.S. 321, 324 (1998). In that decision, the Court adopted and applied a standard borrowed from the Cruel and Unusual Punishment Clause cases, holding that the

forfeiture is an excessive fine only if it is "grossly disproportional to the gravity of a defendant's offense." *Id.*

That standard has left the lower courts without meaningful guidance for how to determine whether specific amounts in particular cases surpass the "excessive" threshold, and if so, how much the forfeiture must be reduced to bring it within permissible constitutional bounds. While the Court may have hoped that lower courts would sort out a reasonable and straightforward approach to applying this "grossly disproportional" test, the result has been a patchwork of inconsistent tests from the various circuits.

The Eleventh Circuit applies a three-factor test; yet it criticizes of the "murkiness of these factors." *United States v. Chaplin's, Inc.*, 646 F.3d 846, 852 (11th Cir. 2011). The Tenth Circuit, by contrast, applies a nine-factor test. *United States v. Wagoner Cty. Real Estate*, 278 F.3d 1091, 1101 (10th Cir. 2002).

As demonstrated by this case, those tests have yielded disparate results. If this case had arisen in the Ninth Circuit, Mr. Benevides would likely have prevailed on his argument regarding the excessiveness of his fine. However, under Eleventh Circuit precedent, a forfeiture that exceeds the statutory maximum fine by more than 400% may be constitutionally permissible. This Court should grant this petition,

resolve the split among the circuits, and clarify the proper mode of analysis in determining whether a fine/forfeiture is "excessive."

The Court should also clarify whether a defendant receives ineffective assistance of counsel when his attorney makes false promises to induce a defendant to take a guilty plea. The Court held in *Lee v. United States*, 137 S. Ct. 1958 (2017) that courts must consider how counsel's provision of inaccurate information affected the "defendant's decisionmaking, which may not turn solely on the likelihood of conviction after trial." *Lee*, 137 S. Ct. at 1966.

In this case, however, the district court failed to even grant Mr. Benevides an evidentiary hearing, even though he provided independent evidentiary corroboration for his claim. The district court relied exclusively on the plea colloquy, but the colloquy does not always negate the possibility that defense counsel provided ineffective assistance during private consultations with the client. This Court should grant this petition and hold that, on the facts of this case, Mr. Benevides at the very least established his entitlement to an evidentiary hearing to prove his claims.

I. This Court should Resolve the Split in the Courts of Appeals are over What Constitutes an Excessive Fine.

The ability the Government to seize assets from suspected criminals through civil forfeiture—"without any predeprivation judicial process" and "even when the

owner is personally innocent"—has proven irresistible, in no small measure because the seizing agency usually gets to keep the seized assets for its own use. *See Leonard v. Texas*, 137 S. Ct. 847, 847-48 (2017) (Thomas, J., dissenting from denial of petition for writ of certiorari); *Timbs*, 139 S. Ct. at 689. "Increasing application of forfeiture procedure in the war on drugs has caused the number and size of asset forfeitures to skyrocket over the past thirty years." David Pimentel, *Forfeitures and the Eighth Amendment: A Practical Approach to the Excessive Fines Clause as a Check on Government Seizures*, 11 HARV. L. & POL'Y REV. 541, 543 (2017).

Given the potential for abuse, it is not surprising that the Court concluded in *Bajakajian* that forfeitures are "fines" if "they constitute punishment for an offense." *Bajakajian*, 524 U.S. at 328. The Court explained that the "touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *Id.* at 334.

In order for a fine to be excessive, the imposed fine must be grossly disproportional to the gravity of the criminal offense. *Id.* at 336. The Court relied on several factors to be used in determining the gravity of a defendant's criminal offense. *Id.* at 337.

First, it looked at the "essence" of the defendant's underlying criminal offense. *Id.* at 337. Next, it looked to whether the defendant's "violation was unrelated to any other illegal activities." *Id.* In addition, the Court looked to whether the defendant's "violation was unrelated to any other illegal activities." *Id.* Fourth, it considered the maximum sentence and fine that "could have been imposed" under the Sentencing Guidelines. *Id.* Fifth, the Court looked to "the other penalties that the Legislature has authorized" under the statute. *Id.* at 339 n.14. Finally, the Court considered whether the "harm that [the defendant] caused was . . . minimal." *Id.*

Lower courts have experienced considerable difficulty applying this test. The Eleventh Circuit, for example, has bemoaned the "murkiness of these factors" as well as the "inherent difficulty of monetizing the gravity of an offense." *Chaplin's, Inc.*, 646 F.3d at 852. The Eleventh Circuit's post-*Bajakajian* precedent requires courts to consider three-factors: "(1) whether the defendant falls into the class of persons at whom the criminal statute was principally directed; (2) other penalties authorized by the legislature (or the Sentencing Commission); and (3) the harm caused by the defendant." *United States v. Browne*, 505 F.3d 1229, 1282 (11th Cir. 2007). It has cautioned, however, that this is not "an exclusive checklist." *Chaplin's, Inc.*, 646 F.3d at 851 n.18.

On the other end of the spectrum, factors have proliferated in the Tenth Circuit. That court now applies a test that can turn on nine different factors, which include, in addition to the five factors articulated in *Bajakajian*, "the general use of the forfeited property, any previously imposed federal sanctions, the benefit to the claimant, the value of seized contraband, and the property's connection with the offense." *Wagoner Cty. Real Estate*, 278 F.3d at 1101.

It should come as no surprise, given the stark divergence in the tests applied in the circuit courts of appeal, that different courts of appeals have reached different results. This case illustrates the point.

Here, for the offense of conspiracy to commit bank fraud, Mr. Benevides faced a sentence of up to 30 years in prison. *See* 18 U.S.C. §§ 1344 and 1349. Pursuant to the Guidelines, the sentencing range was between 108 months to 135 months. Mr. Benevides could be ordered to pay a fine of up to $1 million per count, with a Guidelines range of $15,000 to $1,000,000. USSG § 5E1.2(c)(4) (2014). The total loan amount identified in the indictment equaled $30,375,950, and Mr. Benevides was ordered to pay just $10 million in restitution based on the actual losses to the financial institutions after recoupment.

Had this case originated in the Ninth Circuit, there can be little doubt that the forfeiture would be considered an excessive fine. *See $100,348.000 in U.S. Currency*, 354 F. 3d at 1123 (holding that a forfeiture amount between 3 and 20 times greater than maximum fine would be unconstitutionally excessive); *Thurman Street*, 164 F. 3d at 1198 (rejecting forfeiture amount "more than 40 times the maximum fine permitted under the Guidelines"). The district court rejected Mr. Benevides' reliance on those cases and concluded under Eleventh Circuit precedent that the fine was not excessive. The Eleventh Circuit affirmed that decision.

The dangers associated with affording the Government the unfettered ability to seize property through civil forfeiture are well-documented, *Leonard*, 137 S. Ct. 847, 848 (2017); *Timbs*, 139 S. Ct. at 689, and this case exemplifies the sort of abuses that can arise if the Government is left unchecked. The Government first seized more than $40 million of Mr. Benevides under the guise of a narcotics investigation. When it could not prove any wrongdoing, the Government claimed those same funds were the proceeds from a Ponzi scheme, but it never brought any charges related to the purported scheme. Undeterred, the Government inflated the amount of money associated with the underlying criminal case so that it could keep all of the funds it seized in the prior forfeiture action.

As this Court observed in *Timbs,* imposing such "[e]xhorbitant tolls undermine other constitutional liberties." *Timbs*, 139 S. Ct. at 689. In this case, the excessive forfeiture amount undermined Mr. Benevides' Sixth Amendment right to counsel, which in turn resulted in his waiving other constitutionally protected trial rights.

Mr. Benevides respectfully submits that the analysis should resemble the Court's treatment of punitive damages under the Due Process Clause, as suggested by Professor Pimentel. *See Forfeitures and the Eighth Amendment: A Practical Approach to the Excessive Fines Clause as a Check on Government Seizures*, 11 HARV. L. & POL'Y REV. 541, 543 (2017).

When looking at punitive damage awards, courts often use the rule of thumb that if the ratio of punitive damages to compensatory damages is above single digits, there is a presumption that it violates due process. *See State Farm v. Campbell*, 538 U.S. 408, 411 (2003). The same rule should apply to forfeitures, such that any forfeiture that exceeds the statutory maximum by a double digit ratio should be deemed presumptively unconstitutional under the Excessive Fines Clause.

If the Court were to apply that rule to this case, Mr. Benevides would have little trouble establishing that his forfeiture ran afoul of the Eighth Amendment. The amount of the forfeiture was more than 44 times greater than the statutory maximum fine and almost 3,000 times greater than the lower-end of the range suggested in the

Sentencing Guidelines. As in the punitive damages context, other factors could support a ratio in the double digits. In this case, however, no other factor could overcome the staggering disparity between the maximum statutory fine and the forfeiture ordered. Accordingly, this Court should grant this petition, review the first question presented, and reverse the Eleventh Circuit.

II. This Court should Clarify whether a Defendant Receives Ineffective Assistance of Counsel when his Attorney Makes False Promises to Induce the Defendant to Take a Guilty Plea.

This petition also raises important questions regarding the outer limits of effective assistance of counsel in the plea bargaining context. In *Brady v. United States*, this Court observed that the decision to enter a guilty plea "is a grave and solemn act to be accepted only with care and discernment." 397 U.S. 742, 748 (1970). Because it operates as a waiver of important constitutional rights, the plea must be entered "knowingly, and intelligently, 'with sufficient awareness of the relevant circumstances and likely consequences.'" *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005) (quoting *Brady*, 397 U.S. at 748). It must reflect "a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970).

The "the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant." *Missouri v. Frye*, 566 U.S. 134, 144 (2012). Thus, before "deciding whether to plead guilty or proceed to trial, a defendant is entitled to the effective assistance of competent counsel." *Padilla v. Kentucky*, 559 U.S. 356, 364 (2010).

To prevail on an ineffective assistance of counsel claim, a petitioner must establish that: a) counsel's performance was deficient; and b) the deficient performance caused prejudice to the defendant. *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984).

To establish prejudice under *Strickland*, a defendant does not need to show that he was likely to be successful at trial, but instead "can show prejudice by demonstrating a 'reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" *Lee*, 137 S.Ct. at 1965 (2017) (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). "That is because, while we ordinarily 'apply a strong presumption of reliability to judicial proceedings,' 'we cannot accord' any such presumption 'to judicial proceedings that never took place.'" *Lee*, 137 S. Ct. at 1965 (quoting *Roe v. Flores-Ortega*, 528 U.S. 470, 482-83 (2000)). This Court must therefore consider how counsel's provision of inaccurate information

affected the "defendant's decisionmaking, which may not turn solely on the likelihood of conviction after trial." *Lee*, 137 S. Ct. at 1966.

In this case, Mr. Benevides asserted in his verified motion that during the plea negotiation his attorney provided faulty advice in three different respects. First, his attorney assured him that the forfeiture amount was "reasonable." Second, his attorney told him that he would only serve a "minimal" sentence if he accepted a guilty plea. Third, his attorney told him that he would be allowed to keep $3 million and a Lamborghini if he agreed to plead guilty.

Critically, he also alleged that, were it not for the ineffective assistance of counsel, he would have eschewed a guilty plea and proceeded to trial. That constitutes *Strickland* prejudice under this Court's precedent. *See Lee v. United States*, 137 S. Ct. 1958 (2017). Mr. Benevides should have been given an evidentiary hearing to prove his claims.

Furthermore, the Eleventh Circuit's failure to grant him a certificate of appealability, even though his claims were at the very least debatable, presents another example of the "troubling tableau" emerging from that circuit's treatment of post-conviction cases. *St. Hubert v. United States*, 19-5267, 2020 WL 3038291 (U.S. June 8, 2020) (Sotomayor, J., dissenting from denial of petition for writ of certiorari).

"Obtaining a certificate of appealability 'does not require a showing that the appeal will succeed,' and 'a court of appeals should not decline the application . . . merely because it believes the applicant will not demonstrate an entitlement to relief.'" *Welch v. United States*, 136 S. Ct. 1257, 1264-65 (2016) (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003)). Mr. Benevides raised serious constitutional issues that were corroborated by contemporaneous evidence. Accordingly, this Court should grant this petition and hold that Mr. Benevides is entitled to a certificate of appealability on his ineffective assistance of counsel claims.

CONCLUSION

This Court grant this petition, issue a writ of certiorari to the Eleventh Circuit Court of Appeals, and remand this matter for further proceedings.

Respectfully submitted on this 13th day of July, 2020.

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