No. 20-6944

ORIGINAL

IN THE

SUPREMRE COURT OF THE UNITED STATES

JOSE ZAVALA-MARTI,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PROCEEDING PRO-SE
JOSE ZAVALA MARTI
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DATED:

TABLE OF CONENTS

QUESTION(S) PRESENTED

I. WHETHER ZAVLA MADE A SUBSTANTIAL SHOWING OF A DENIAL OF HIS RIGHT TO DUE PROCESS OF LAW AS SECURED UNDER FIFTH AMENDMENT OF THE UNITED STASTES CONSTITUTION ENCOURAGING THE FIRST CIRCUIT COURT OF APPEALS TO PROCEED FURTHER AND GRANT HIM THE COA.

II. WHETHER THE FIFTH AMENDMENT PROTECTIONS EXTENDS TO HABEAS CORPUS PETITIONER UNDER THE UNITED STATES CONSTITUTION TO A DEFENDANT WHO PLEAD GUILTY DURING TRIAL AND FILED HIS CLAIM PURSUANT 28 U.S.C. S 2255 PROCEEDINGS AFTER EXHAUSTING HIS DIRECT APPEAL AND LEARNING THAT HIS CO-DEFENDANTS CONVICTION WAS OVERTURNED AND ORDERED A NEW TRIAL DUE TO THE GOVERNMENT SUPPRESSION OF BRADY MATERIAL DURING THEIR THE PRE-TRIAL AND TRIAL PROCESS REQUIRES EQUAL APPLICATION OF JUSTICE TO ALL THE DEFENDANTS WHOM DECIDED TO STAND TRIAL REGARDLESS THE LEGAL STAGE WHERE THE CLAIM WAS FIRSTLY RAISED UNDER DOCTRINE OF BRADY AND THIS COURT STARE DECICES CASES.

III. WHETHER DISTRICT COURT'S DECISION TO SUA SPONTE DISMISS HABEAS CORPS PETITIONS AFTER REFERING THE PETITIONS TO A MAGISTRATE JUDGE FOR 2255 PROCEEDINGS AND REPORT AND RECOMMENDATIONS VIOLATES THE FEDERAL MAGISTRATE ACT AND THE RULES GOVERNING 2255 PROCEEDINGS TO HAVE PARTIES CONTROVERTED FACTS AND ISSUES BE HEARD AND RESOLVED THROUGH EVIDENTIARY HEARINGS.

LIST OF PARTIES

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INDEX TO APPENDICES

TABLE OF AUTHORITIES

CASES:

Supreme Court

Court of Appeals

STATUTES AND RULES:

21 U.S.C. 860

28 U.S.C.A. § 636

28 U.S.C. § 2253(c)(2)

28 U.S.C. § 2255

Rules Governing § 2255 Proceedings

Rule 6, Discovery.

Rule 7. Expanding the Record

Rule 8. Evidentiary Hearing

First Cir. Loc. R. 22.1(a).

OPINION BELOW

The Court of Appeals for the First Circuit did not issue an opinion in this case. The Court of Appeals simply denied the request for Certificate of Appealability for the following reasons.

Petitioner Jose Daniel Zavala Marti seeks a certificate of appealability ("COA") in relation to the district court's denial of his motion pursuant to 28 U.S.C. §2255. After careful consideration of the papers and relevant portions of the record, we conclude that the district court's rejection of petitioner's claims was neither debatable nor wrong and that petitioner, therefore, is not entitled to a COA. See Slack v. McDaniel, 529 U.S. 473, 484 (2000) (COA standard); see also 28 U.S.C. § 2253(c) (statutory COA standard: "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right").

In particular, we conclude that petitioner has not demonstrated that reasonable jurists would disagree with the district court's conclusion, made after full consideration of an affidavit from trial counsel, that petitioner had not shown cause and prejudice capable of excusing the procedural default that occurred when petitioner failed to raise his claim(s) under Brady v. Maryland, 373 U.S. 83 (1963), in a pre-sentencing motion to withdraw his guilty

plea or in his original direct appeal.

Moreover, petitioner has failed to cast as debatable or wrong the district court's conclusion that counsel was not constitutionally ineffective for failing to press a "double counting" claim, as the potential success of such a challenge was far from clear, and petitioner points to no binding

Case: 20-1542 Document: 00117638015 Page: 1 Date Filed: 09/04/2020 Entry ID: 6364863. **Appendix H.**

The opinion of the United States District Court is reported at Zavala-Marti v. United States, 448 F. Supp. 3d 109 (D.P.R. 2020)**Appendix J.**

JURISDICTION

This Court jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1). The Court of Appeals order denying petitioner's Certificate of Appealability was entered on September 4, 2020.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendments to the Constitution of the United States of America

Amendment 5 Annotations

No person shall be deprived of life, liberty, or property, without due process of law.

The Federal Magistrate Act.

28 U.S.C.A. § 636 Jurisdiction, powers, and temporary assignment

(b)(1) Notwithstanding any provision of law to the contrary—

(B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion except in subparagraph (A), of applications for posttrial1 relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate judge shall file his proposed findings and recommendations under subparagraph

(B) with the court and a copy shall forthwith be mailed to all parties.

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

CERTIFICATE OF APPEALABILITY

28 U.S.C.A. § 2253 Appeal

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from--

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

FEDERAL HABEAS CORPUS

28 U.S.C.A. § 2255

§ 2255. Federal custody; remedies on motion attacking sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground 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, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain--

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

RULES GOVERNING § 2255 PROCEEDINGS

Rule 1, 28 U.S.C.A. foll. § 2255

Rule 1. Scope

These rules govern a motion filed in a United States district court under 28 U.S.C. § 2255 by:

(a) a person in custody under a judgment of that court who seeks a determination that:

(1) the judgment violates the Constitution or laws of the United States;

(2) the court lacked jurisdiction to enter the judgment;

(3) the sentence exceeded the maximum allowed by law; or

(4) the judgment or sentence is otherwise subject to collateral review; and

(b) a person in custody under a judgment of a state court or another federal court, and subject to future custody under a judgment of the district court, who seeks a determination that:

(1) future custody under a judgment of the district court would violate the Constitution or laws of the United States;

(2) the district court lacked jurisdiction to enter the judgment;

(3) the district court's sentence exceeded the maximum allowed by law; or

(4) the district court's judgment or sentence is otherwise subject to collateral review.

Rule 3. Filing the Motion; Inmate Filing

(a) Where to File; Copies. An original and two copies of the motion must be filed with the clerk.

(b) Filing and Service. The clerk must file the motion and enter it on the criminal docket of the case in which the challenged judgment was entered. The clerk must then deliver or serve a copy of the motion on the United States attorney in that district, together with a notice of its filing.

(c) Time to File. The time for filing a motion is governed by 28 U.S.C. § 2255 para. 6.

(d) Inmate Filing. A paper filed by an inmate confined in an institution is timely if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. Timely filing may be shown by a declaration in compliance with 28 U.S.C. § 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

Rule 4. Preliminary Review

(a) Referral to a Judge. The clerk must promptly forward the motion to the judge who conducted the trial and imposed sentence or, if the judge who imposed sentence was not the trial judge, to the judge who conducted the proceedings being challenged. If the appropriate judge is not available, the clerk must forward the motion to a judge under the court's assignment procedure.

(b) Initial Consideration by the Judge. The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to

file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

Rule 5. The Answer and the Reply

(a) When Required. The respondent is not required to answer the motion unless a judge so orders.

(b) Contents. The answer must address the allegations in the motion. In addition, it must state whether the moving party has used any other federal remedies, including any prior post-conviction motions under these rules or any previous rules, and whether the moving party received an evidentiary hearing.

(c) Records of Prior Proceedings. If the answer refers to briefs or transcripts of the prior proceedings that are not available in the court's records, the judge must order the government to furnish them within a reasonable time that will not unduly delay the proceedings.

(d) Reply. The moving party may file a reply to the respondent's answer or other pleading. The judge must set the time to file unless the time is already set by local rule.

Rule 6. Discovery

(a) Leave of Court Required. A judge may, for good cause, authorize a party to conduct discovery under the Federal Rules of Criminal Procedure or Civil Procedure, or in accordance with the practices and principles of law. If necessary

for effective discovery, the judge must appoint an attorney for a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A.

(b) Requesting Discovery. A party requesting discovery must provide reasons for the request. The request must also include any proposed interrogatories and requests for admission, and must specify any requested documents.

(c) Deposition Expenses. If the government is granted leave to take a deposition, the judge may require the government to pay the travel expenses, subsistence expenses, and fees of the moving party's attorney to attend the deposition.

Rule 7. Expanding the Record

(a) In General. If the motion is not dismissed, the judge may direct the parties to expand the record by submitting additional materials relating to the motion. The judge may require that these materials be authenticated.

(b) Types of Materials. The materials that may be required include letters predating the filing of the motion, documents, exhibits, and answers under oath to written interrogatories propounded by the judge. Affidavits also may be submitted and considered as part of the record.

(c) Review by the Opposing Party. The judge must give the party against whom the additional materials are offered an opportunity to admit or deny their correctness.

Rule 8. Evidentiary Hearing

(a) Determining Whether to Hold a Hearing. If the motion is not dismissed, the judge must review the answer, any transcripts and records of prior proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.

(b) Reference to a Magistrate Judge. A judge may, under 28 U.S.C. § 636(b), refer the motion to a magistrate judge to conduct hearings and to file proposed findings of fact and recommendations for disposition. When they are filed, the clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within 14 days after being served, a party may file objections as provided by local court rule. The judge must determine de novo any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.

(c) Appointing Counsel; Time of Hearing. If an evidentiary hearing is warranted, the judge must appoint an attorney to represent a moving party who qualifies to have counsel appointed under 18 U.S.C. § 3006A. The judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare. These rules do not limit the appointment of counsel under § 3006A at any stage of the proceeding.

(d) Producing a Statement. Federal Rule of Criminal Procedure 26.2(a)-(d) and (f) applies at a hearing under this rule. If a party does not comply with a Rule 26.2(a)

order to produce a witness's statement, the court must not consider that witness's testimony.

Rule 10. Powers of a Magistrate Judge

A magistrate judge may perform the duties of a district judge under these rules, as authorized by 28 U.S.C. § 636.

Rule 11. Certificate of Appealability; Time to Appeal

(a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, a party may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability. These rules do not extend the time to appeal the original judgment of conviction.

Rule 12. Applicability of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure

The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, to the extent that they are not inconsistent with any statutory provisions or these rules, may be applied to a proceeding under these rules.

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY.

Jose Manuel Zavala Marti was charged in a Superseding Indictment alongside 46 co-defendants in nine counts alleging that from on or about the year 2004 until the return of the superseding indictment on February 5, 2008, he participated in a conspiracy to possess with intent to distribute 100 grams or more of heroin, 50 grams or more of crack cocaine, 500 grams or more of cocaine, and a measurable amount of marihuana within 1,000 feet of the Victor Berrios Public Housing Project; or of a public school, the Rosa Costa Valdivieso Middle School located in the Municipality of Yabucoa, P.R. (all in violation of 21 U.S.C. 841(a)(1), (b)(1)(A)(iii), 846 and 860 (count one); conspiracy to possess firearms during said time period in furtherance of a drug trafficking crime in violation of 18 U.S.C. 924(c)(1)(A) and (o); and four substantive aiding abetting counts of possession with intent to distribute 100 grams or more of heroin (count three), 50 grams or more of crack (count four), 500 grams or more of cocaine (count five) and a measurable amount of marihuana (count six) in violation of 21 U.S.C. 841 (a)(1) and 18 U.S.C. 2; conspiracy to tamper with a government witness in violation of 18 U.S.C. 1512(b)(1) and (k) (count seven); aiding and abetting to tamper with a government witness in violation of 18 U.S.C. 1512(b)(1) and 2(count eight) and aiding and abetting to bribe a government witness in violation

of 18 U.S.C. 201(b)(3) and 2.(count nine) A narcotics forfeiture count requesting 10 million dollars was included. (count ten).

The case was assigned to Hon. Judge Perez-Gimenez. After the trial of the present case had begun on October 13, 2009, Zavala-Marti entered a straight plea on October 16, 2009. [07-cr-318 Docket 1573] The trial that was being held pertained to counts 1-6 of the indictment since the court had severed the trial of counts 7-9 that pertained to the obstruction of justice-witness tampering offenses. [07-cr-318 Docket 1353] Since a straight plea was entered Zavala-Marti pled guilty to all counts of the indictment. A pre-sentence report was prepared and subsequently amended. [07-cr-318 Docket 2165] On 1/28/11 Zavala-Marti was sentenced to life imprisonment. [07-cr-318 Docket 2579] Zavala-Marti filed a timely notice of appeal and the First Circuit on 5/14/13 vacated the sentence and remanded the case for re-sentencing before a different judge. [07-cr-318 Docket 3136] Upon remand the case was assigned to Hon. District Court Judge Francisco Besosa. [07-cr-318 Docket 3143] A re-sentencing hearing was held on 10/16/13 where Hon. Judge Besosa imposed 35 years imprisonment in counts one, three to six, 20 years as to count two all concurrent one with the other; ten years in counts seven and eight and fifteen years in count nine those concurrent one with the other but consecutive to the 35 years imposed in counts 1-6 for a final total sentence of 50 years. (Exh. 1) Zavala-Marti filed a timely notice of appeal. [07-cr-318 Docket

3197] The First Circuit on 2/05/15 affirmed the 50 year sentence. [07-cr-318 Docket 3267] U.S. v. Zavala-Marti, 601 Fed. Appx. 6 (1st Cir. 2015) A Petition for Rehearing was denied on 3/30/15. A timely Petition for a Writ of certiorari was filed on 6/12/15, which was denied on 10/5/15. (Exh. 2) On October 4, 2016, Zavala filed motion pursuant to Title 28 U.S.C. 2255 to vacate, set aside or correct sentence. [16-cv-02762 Docket 1] On October 4, 2016, the Court referred the 2255 Petition to Magistrate Judge, the case was assigned to the Honorable Magistrate Judge Marcos E. Lopez for a Report and Recommendation. [16-cv-02762 Docket 2-3] On November 22, 2016 Zavala filed Supplemental Motion to submit Affirmation by trial attorney Maria H. Sandoval in support of Zavala's 2255 Petition. [16-cv-02762 Docket 7] On December 15, 2016 Zavala filed motion "Providing Additional Evidence" in support of his correction of sentence issue argument. [16-cv-02762 Docket 9] On March 1, 2017, the United States filed its Response in Opposition as to Zavala's 2255 application [16-cv-02762 Docket 16] On March 6, 2017 Zavala filed Motion for Leave to file Reply as to the United States Response in Opposition Motion, and on April 5, 2017 Zavala filed his Reply to the United States Response in Opposition Motion. [16-cv-02762 Docket 11-19] On March 25, 2020, the Court without holding an evidentiary hearing or waiting for the Magistrate Judge Report and Recommendation issued Opinion and Order dismissing Zavala's 2255 Application with prejudice and

entered the judgment accordingly. [16-cv-02762 Docket 20-21] On June 10, 2020 Zavala filed in the First Circuit Court of Appeal Certificate of Appealability. [Appeal Case No. 20-1542] On September 4, 2020, the First Circuit Court of Appeal denied Zavala his request for Certificate of Appealability. [Appeal Case No. 20-1542]

REASONS FOR GRANTING THE PETITION

Zavala submits that the reasons for granting the petition for a Writ of Certiorari rest on the principles of equal justice for all under the constitution of the United States. In memory of the late Justice Ruth Bader Ginsburg Zavala believes she would have approved his pleading for justice under the circumstances of his case.

The tale of this criminal story is that Zavala was charged in a criminal conspiracy involving multiple participants some which decided to plead guilty prior to trial in fear of receiving a draconian sentence for exercising their right to trial and the leaders of the organization whom decided to stand trial. The leaders opted to stand trial because they contended since the beginning of the criminal prosecution that the government main witness had fabricated a story against them and even developed other witnesses to help the prosecution secure a jury guilty verdict to save himself from criminal prosecution and severe punishment. Unbeknownst to Zavala the government had suppressed Brady material from him

during the pretrial and trial process, and on the third day of trial his attorney instructed him to plead guilty and avoid a draconian sentence since the government's evidence appeared to be an uphill battle which could had resulted as it did in guilty verdict returned by the jury against his codefendants. The government in bad faith tendered a straight guilty plea which Zavala's attorney advise him to accept, and he did. Eight months after Zavala had pleaded guilty the leaders of the organization who stand trial discovered, and the government admitted that it suppressed Brady material during the pre-trial and trial process. Zavala's trial attorney watched and waited Zavala's codefendant's Brady suppression battle before the District Court to raise the issue if they prevailed but declined to do so after the Court denied the relief requested by his codefendants. At sentencing Zavala received a 50-year sentence and his trial attorney withdrew from his representation. For reasons unknown to Zavala his Appellate lawyer did not raise the Brady issue on direct appeal, nevertheless, it would have been immaterial since Zavala's trial attorney did not raised the issue at the trial court level. Zavala's appeal was dismissed on other sentencing grounds, and afterwards, the First Circuit Court of Appeal appellate ordered a new trial on Zavala's codefendants, after finding that the government had violated the constitutional principles enunciated in Brady during Zavala's and his codefendant's pre-trial and trial prosecution. On remand the main leader of the

organization Cruz Roberto Ramos-Gonzalez who initially received a life sentence negotiated a new 15-year sentence plea deal. See Judgment and Commitment Order [Document 3484, 07-cr-00318-PG] And Carlos Omar Bermudez-Torres the second leader who initially received a 50-years negotiated a new 12-year sentence plea deal. See Judgment and Commitment Order [Document 3409, 07-cr-00318-PG] In view of the First Circuit new trial order Zavala filed Habeas Corpus in the District Court contending that he was entitled to relief under a 2255 Petition because his conviction and sentence were both obtained in violation of the United States Constitution and laws because the government had obtained a guilty plea criminal conviction after Zavala's third day of trial in violation of the doctrine enunciated in Brady and his due process rights as secured under the Fifth Amendment of the United States Constitution. The District Court rejected his claim by finding that once Zavala plead guilty even after the third day of trial had he surrendered any right to receive any pre-trial and trial Brady material. Thus, failing to apply a long line of judicial precedent requiring Zavala's guilty plea be set aside and a order for new trial has it was done in his codefendants case on direct appeal. The injustice in this case is that Zavala was denied equal access to the protections of our constitution guarantees and stands executing a 50-year sentence being a line worker in the criminal organization where it's leaders received new sentences of 12-15 years for the same legal reasons the District Court

and the First Circuit denied him the relief he sought in vindicating the violation of his constitutional rights to due process during his pretrial and trial process.

Therefore, based on the foregoing constitutional and legal argument Zavala is humbly asking the Supreme Court of the United States to do justice in his case has the late Justice Ginsburg did for many years in the quest of justice for all in this Country.

FIRST ISSUE

I. WHETHER ZAVLA MADE A SUBSTANTIAL SHOWING OF A DENIAL OF HIS RIGHT TO DUE PROCESS OF LAW AS SECURED UNDER FIFTH AMENDMENT OF THE UNITED STASTES CONSTITUTION ENCOURAGING THE FIRST CIRCUIT COURT OF APPEALS TO PROCEED FURTHER AND GRANT HIM THE COA.

A. THE LAW.

In order to obtain a COA a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tse v. United States, 290 F.3d 462, 465 (1st Cir. 2002) In determining whether to grant a COA, the Court of Appeals "look[s] to the District Court's application of AEDPA to petitioner's constitutional claims and ask[s] whether that resolution was debatable amongst jurists of reason." Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S.Ct. 1029, 1039, 154 L.Ed.2d 931 (2003). Miller-El explained what is required. As mandated by federal statute, a prisoner seeking a writ of habeas corpus has no

absolute entitlement to appeal a district court's denial of his petition. 28 U.S.C. § 2253. Before an appeal may be entertained, a prisoner who was denied habeas relief in the district court must first seek and obtain a COA from a circuit justice or judge. This is a jurisdictional prerequisite because the COA statute mandates that "[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals...." § 2253(c)(1). As a result, until a COA has been issued federal courts of appeal lack jurisdiction to rule on the merits of appeals from habeas petitioners. A COA will issue only if the requirements of § 2253 have been satisfied. "The COA statute establishes procedural rules and requires a threshold inquiry into whether the circuit court may entertain an appeal." Slack v. McDaniel, 529 U.S. 473, 482, 120 S.Ct. 1595 (2000); Hohn v. United States, 524 U.S. 236, 248, 118 S.Ct. 1969 (1998). Section 2253(c) permits the issuance of a COA only where a petitioner has made a "substantial showing of the denial of a constitutional right." In Slack, supra, at 483, 120 S.Ct. 1595, the Court recognized that Congress codified the prior judicial certificate of probable cause ("CPC") standard, announced in Barefoot v. Estelle, 463 U.S. 880, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983), for determining what constitutes the requisite showing. Under the controlling standard, a petitioner must "sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were

'adequate to deserve encouragement to proceed further.'" 529 U.S., at 484, 120 S.Ct. 1595 (quoting Barefoot, supra, at 893, n. 4, 103 S.Ct. 3383).

Zavala submits that for the reasons articulated in his Certificate of Appealability the First Circuit Court of Appeals should have granted his COA and this Honorable Court should issue a COA accordingly.

SECOND ISSUE

II. WHETHER THE FIFTH AMENDMENT PROTECTIONS EXTENDS TO HABEAS CORPUS PETITIONER UNDER THE UNITED STATES CONSTITUTION TO A DEFENDANT WHO PLEAD GUILTY DURING TRIAL AND FILED HIS CLAIM PURSUANT 28 U.S.C. S 2255 PROCEEDINGS AFTER EXHAUSTING HIS DIRECT APPEAL AND LEARNING THAT HIS CO-DEFENDANTS CONVICTION WAS OVERTURNED AND ORDERED A NEW TRIAL DUE TO THE GOVERNMENT SUPPRESSION OF BRADY MATERIAL DURING THEIR THE PRE-TRIAL AND TRIAL PROCESS REQUIRES EQUAL APPLICATION OF JUSTICE TO ALL THE DEFENDANTS WHOM DECIDED TO STAND TRIAL REGARDLESS THE LEGAL STAGE WHERE THE CLAIM WAS FIRSTLY RAISED UNDER DOCTRINE OF BRADY AND THIS COURT STARE DECICES CASES.

A. THE LAW DUE PROCESS VIOLATION PURSUANT TO BRADY.

Zavala submitted in his 2255 memorandum of law and COA that the government violated his due process rights as secured under the Fifth Amendment, when it concealed and destroyed impeachment material evidence favorable to his defense, causing his trial lawyer to ineffectively advise him to enter straight guilty plea at the third day of trial, which resulted in a sentence of 50 years, entered

involuntarily, unintelligently, and unknowing that the government had committed misconduct and misrepresentations during the trial process. Has relief Zavala requested the First Circuit to grant his COA because the District Court erred in not having his plea set aside, under the post sentence reasonable probability standard application, because had the government provided Zavala the Brady material during the pretrial or trial process, he would have insisted in ending his trial, would have regardless prevailed on appeal, and the result of the proceedings would have been different, as in the case of this codefendant, thus subjecting this manifest injustice subject to collateral attack pursuant to §2255, and the vindication of his constitutional rights.

Zavala based his reasoning in the Supreme Court of the United States firm ruling "that the Due Process Clause of the Fifth Amendment forbids the Government's from suppressing evidence favorable to the accused where the evidence is material to guilt or punishment. *Brady v. Maryland, 373 U.S. 83 (1963).* See *United States v. Flores-Rivera, 787 F.3d 1 (1st Cir. 2015)(Ordering new trial due to Brady-Giglio violations).* "Thus, the law makes it easier for [habeas petitioners] to obtain a new trial where the government has engineered an unfair trial by withholding material exculpatory or impeachment evidence." See *United States v. Joselyn, 206 F.3d 144, 153 (1st Cir. 2000).* See also *Conley v. United States, 415 F.3d 183, 189 (1st Cir. 2005)(quoting United States v. Bagley,*

473 U.S. 667, 683 (1985)); United States v. Agurs, 427 U.S. 97, 112 (1976). And also United States v. Cunan, 152 F.3d 29, 34 (1st Cir. 1998)(explaining a petitioner may be entitled to a new trial under Brady without convincing the court of the certainty of a different outcome). The Government's suppression of impeachment evidence, therefore, warrant a new trial "where the evidence is highly impeachable or when the witness' testimony is uncorroborated and essential to the conviction." *United States v. Martinez-Medina, 279 F.3d 105, 126 (1st Cir. 2002)(emphasis added). Giglio v. United States, 405 U.S. 150, 154-155 (1972)*(requires a new trial wherever the failure to disclose material evidence regarding the credibility of a given witness results in a violation of due process).

Based on the above mentioned ruling Zavala argued that the First Circuit Court of Appeals ruling in *United States v. Flores-Rivera, 787 F.3d 1 (1st Cir. 2015), setting aside the convictions of his co-defendants*, and remanding the case back for a new trial, due to *Brady-Giglio* violations that occurred during his criminal and trial process, prior to him pleading guilty, clearly established the Fifth Amendment constitutional violations he argued required the habeas relief he was denied by the District Court and the issuance of a COA. "A plea obtained in violation of due process of law, and in violation with the right to the effective assistance of counsel," it's a plea, which clearly "substantiates the showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Tse v. United States, 290

F.3d 462, 465 (1st Cir. 2002), and which requires the issuance of COA. Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S.Ct. 1029, 1039, 154 L.Ed.2d 931 (2003).

B. THE POST SENTENCE RULE ALLOWING THE COLLATERAL ATTACK ON UNCONSTITUTIONAL CONVICTIONS AND SENTENCES PURUSANT TO §2255.

A motion filed pursuant to section 2255 is not a substitute for a direct appeal. *Foster v. Chatman, 136 S. Ct. 1737, 1758 (2016).* And when a § 2255 petitioner does not raise a claim on direct appeal, that claim is barred from judicial review unless the petitioner can demonstrate both (1) cause for the procedural default, and (2) actual prejudice resulting from the error asserted. *United States v. Frady, 456 U.S. 152, 167-68 (1982).*

As to the aspects of prejudice, the Supreme Court has treated the "materiality" requirement for *Brady v. Maryland* claims and the "prejudice" requirement for ineffective assistance of counsel claims as synonymous. See *Hill v. Lockhart, 474 U.S. 52, 57, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)* (stating that "the appropriate test for prejudice finds its roots in the test for materiality of exculpatory information not disclosed to the defense by the prosecution...."); *Ruiz v. United States, 339 F.3d 39, 43 (1st Cir.2003) ("Brady [v. Maryland]* claims are subject to the same prejudice requirement as ineffective-assistance claims," citing Strickland and Bagley); Miller, 848 F.2d at 1321–22.

The government suppression of Brady-Giglio material during Zavala's pretrial and posttrial criminal proceedings established prejudice, since Zavala's trial counsel was deprived by the government actions to discharge her constitutional duties own to Zavala under the due process and effective assistance of counsel clauses secured under the Fifth and Sixth Amendment to the United States Constitution.

As to the aspects of cause, the Supreme Court recognized in *Coleman v. Thompson, 501 U.S. 722,753 (1991)*:

> "... "cause" under the cause and prejudice test must be something external to the petitioner, something that cannot fairly be attributed to him: "We think that the existence of cause for a procedural default must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule". 477 US at 488. For example, "a showing that the factual or legal basis for a claim was not reasonably available to counsel, ... or that 'some interference by officials' .... Made compliance impracticable, would constitute cause under this standard". Ibid. See also id., at 492 ("Cause for a procedural default on appeal ordinarily requires a showing of some external impediment preventing counsel from constructing or raising the claim.")"

And that in *Bousely v. U.S., 523 U.S. 614,618-619 (1998)* the Supreme Court granted habeas 2255 relief that was based on a guilty plea that was not entered intelligently and knowingly. It held:

> "A plea of guilty is constitutionally valid only to the extent it is "voluntary" and "intelligent". Brady v. U.S., 397 US 742, 748, 25 L.Ed.2d 747, 90 S.Ct. 1463 (1970). We have long held that a plea

> does not qualify as intelligent unless a criminal defendant first receives "real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process". Smith v. O'Grady, 312 US 329, 334, 85 L.Ed 859, 61 S.Ct. 572 (1941).". . "a "plea of guilty entered by one fully aware of the direct consequences" of the plea is voluntary in a constitutional sense "unless induced by threats ..., misrepresentation..., or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business."

Although, Zavala pointed out in his COA that the First Circuit had set a different standard of review in, *Ferrara v. United States, 456 F.3d 278, 289 (1st Cir. 2006)*: where the Court held that:

> Under limited circumstances, the prosecution's failure to disclose evidence may be sufficiently outrageous to constitute the sort of impermissible conduct that is needed to ground a challenge to the validity of a guilty plea[1]. See Bouthot, 878 F.2d at 1511 (stating that a defendant could attack his plea under Brady v. United States by showing that the prosecution's failure to provide information constituted a "material omission tantamount to a misrepresentation"); see also Matthew v. Johnson, 201 F.3d 353, 364 n. 15 (5th Cir.2000) (suggesting that, "[e]ven if the nondisclosure is not a Brady [v. Maryland] violation," there may be situations in which the prosecution's failure to disclose evidence makes it "impossible for [a defendant] to enter a knowing and intelligent plea"). (Ibid 291)
>
> .....
>
> A finding of impermissible conduct is a necessary but not a sufficient condition for the success of an involuntariness argument. The petitioner also must show "a reasonable probability that, but for [the misconduct], he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). For purposes of this standard, a

[1] This Court already found the prosecution's failure to disclose evidence during this case trial process was outrageous, as to requiring a new trial order. See *United States v. Flores-Rivera, 787 F.3d 1 (1st Cir. 2015)*

reasonable probability is a probability sufficient to undermine confidence in a belief that the petitioner would have entered a plea. See Miller v. Angliker, 848 F.2d 1312, 1320 (2d Cir.1988). (Ibid 293-294)

.....

A court charged with determining the existence of a reasonable probability that a defendant would have insisted on a trial in the absence of government misconduct must take an objective approach. See United States v. Walters, 269 F.3d 1207, 1215 (10th Cir.2001); United States v. Avellino, 136 F.3d 249, 256 (2d Cir.1998). The elementary question is whether a reasonable defendant standing in the petitioner's shoes would likely have altered his decision to plead guilty had the prosecution made a clean breast of the evidence in its possession. See Miller, 848 F.2d at 1322. Because a multiplicity of factors may influence a defendant's decision to enter a guilty plea, a court attempting to answer this question must use a wide-angled lens. See Brady v. United States 397 U.S. at 749, 90 S.Ct. 1463. Relevant factors include, but are not limited to, (i) whether the sequestered evidence would have detracted from the factual basis used to support the plea, see Matthew, 201 F.3d at 365; (ii) whether the sequestered evidence could have been used to impeach a witness whose credibility may have been outcome-determinative, see Conley v. United States, 415 F.3d 183, 189 (1st Cir.2005); (iii) whether the sequestered evidence was cumulative of other evidence already in the defendant's possession, see id. at 192; (iv) whether the sequestered evidence would have influenced counsel's recommendation as to the desirability of accepting a particular plea bargain, see Hill, 474 U.S. at 59, 106 S.Ct. 366; and (v) whether the value of the sequestered evidence was outweighed by the benefits of entering into the plea agreement, see White v. United States, 858 F.2d 416, 424 (8th Cir.1988). (Ibid at 295)

In support of this argument Zavala submitted that the record in his case established that the cause of external circumstances that prevented him from raising the issue before the District Court and on direct appeal where clearly

justified in his 2255 Habeas Corpus and COA. For an elaborated discussion[2] of the issues Zavala argued in his 28 U.S.C. s 2255, the United States Response argument, the District Court ruling, and Zavala's COA argument. Please see **APPENDIX B** MEMORANDUM OF LAW UNDER 28 U.S.C. 2255, **APPENDIX C** MOTION SUPLEMENTING 2255 PETITION, **APPENDIX D** GOVERNMENT'S OPPOSITION 28 U.S.C. 2255, **APPENDIX E** MOVANT'S REPLY TO GOVERNMENT OPPOSITION, **APPENDIX F** DISTRICT COURT DECISION AND OREDER, and **APPENDIX G** CERTIFICATE OF APPEALABILITY.

Zavala also argued in his COA that the District Court also committed constitutional error when it ruled that he had no constitutional right to receive impeachment evidence prior to pleading guilty by relying in *United States v. Ruiz, 536 U.S. 622 at 629 (2002),* an issue which the First Circuit resolved in the opposite. *In Ferrara, supra, the First Circuit ruled that United States v. Ruiz, 536 U.S. 622, 122 S.Ct. 2450, 153 L.Ed.2d 586 (2002),* d[id] not indicate that *Ferrara* [w]as barred from litigating his Brady v. Maryland claim or from being provided relief if he proves that claim. Rather, Ruiz supports this court's conclusions.

The First Circuit, went on and explained, that in *Ruiz, supra,* the Supreme

[2] Zavala submits that he has omitted the entire discussion of his 2255 Petition and COA because he could not accommodate the same in the limited 40 pages limit as per the Supreme Court rules and order that Zavala filed a new brief in compliance Rule 33.2(b).

Court held:

> on a direct appeal of a defendant's sentence that the constitution does not prohibit the government from requiring a defendant to waive his right to impeachment information in return for a "fast-track" plea agreement that will result in a lower sentence. See 536 U.S. at 633, 122 S.Ct. 2450.
>
> The Court was not addressing the government's constitutional duty to provide a defendant with material information that tends to negate his guilt. Indeed, the Court referenced the interest in "securing those guilty pleas that are factually justified." Id. at 631, 122 S.Ct. 2450. It also noted that its enduring concern about the possibility that guilty pleas might be tendered by, and accepted from, innocent individuals was addressed by Ruiz's plea agreement.
>
> More specifically, the Court wrote:
>
> [T]he proposed plea agreement at issue here specifies that the Government will provide "any information establishing the factual innocence of the defendant [ ]." That fact, along with other guilty-plea safeguards, see Fed. Rule Crim. Proc. 11, diminishes the force of Ruiz's concern that, in the absence of impeachment information, innocent individuals, accused of crimes, will plead guilty.
> Id. Quoting Brady v. United States, 397 U.S. at 748, 90 S.Ct. 1463, the Court reiterated that, "the Constitution insists, among other things, that the defendant enter a guilty plea that is 'voluntary' and that the defendant must make related waivers 'knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and likely consequences.' " Id. at 629, 122 S.Ct. 2450. It then explained that "impeachment information is special in relation to the fairness of a trial, not in respect to whether a plea is voluntary ('knowing,' 'intelligent,' and 'sufficient[ly] aware.')." Id. at 629, 122 S.Ct. 2450 (emphasis omitted).
>
> Therefore, Ruiz reemphasizes the importance of guilty pleas being entered intelligently. It does not alter the Supreme Court's ruling in Brady v. United States, 397 U.S. at 757, 90 S.Ct. 1463, that misrepresentations or other impermissible conduct by the government can undermine the intelligence of a plea. Nor does it erode the

> reasoning of Miller, 848 F.2d at 1322, that the improper failure of the government to disclose material information tending to negate guilt actually renders unintelligent and invalid a guilty plea.
>
> As many Circuits have recognized, in Brady v. United States, 397 U.S. at 757–58, 90 S.Ct. 1463, the Supreme Court authorized collateral relief for cases in which there is proven government misconduct that creates a reasonable probability that an innocent individual, advised by competent counsel, has falsely pled guilty to avert the risk of a wrongful conviction and a much longer sentence.

Lastly, Zavala argued in his COA that the government misrepresentations to his trial counsel as to the suppressed Brady-Giglio material evidence also deprived him of his constitutional his trial rights as secured under the Sixth Amendment effective assistance of counsel, since the government misconduct cause trial counsel to throw in the towel in the middle of the trial in exchange for a straight guilty plea which resulted in **prejudiced**, of a 50 year sentence, when there was a reasonable probability that if the government would had produce the suppressed impeaching material, trial counsel would have taken a different course[3], which could have resulted in acquittal, or even in a sentence of 12 years, which was given to the leader of the indictment of the case upon remand for a new trial.

Since at least 1984, the Supreme Court has treated the "materiality"

[3] Petitioner submits, that within the numerous courses of action that trial counsel would have pursued if the government would have complied with its constitutional trial duties imposed under Brady, trial counsel has affirmed by way of Affidavit that she had multiple available trial strategies, and that there is a reasonable probability that the outcome of the trial would have been different. See Motion Supplementing 2255 Petition Facts -Affirmation Submitted by Attorney Maria H, Sandoval [16-cv-02762 Document 7] , incorporated herein by reference.

requirement for Brady v. Maryland claims and the "prejudice" requirement for ineffective assistance of counsel claims as synonymous. See Hill v. Lockhart, 474 U.S. 52, 57, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (stating that "the appropriate test for prejudice finds its roots in the test for materiality of exculpatory information not disclosed to the defense by the prosecution...."); Ruiz v. United States, 339 F.3d 39, 43 (1st Cir.2003) ("Brady [v. Maryland] claims are subject to the same prejudice requirement as ineffective-assistance claims," citing Strickland and Bagley); Miller, 848 F.2d at 1321–22. To establish "materiality" or "prejudice," a petitioner must prove a "reasonable probability that ... the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. 2052; see Bagley, 473 U.S. at 682, 105 S.Ct. 3375; Ruiz v. United States, 339 F.3d at 41. The Supreme Court held in 1985 that a "different result" includes a "reasonable probability that [a defendant] would not have pleaded guilty and would have insisted on going to trial[4]." Hill, 474 U.S. at 59, 106 S.Ct. 366; Miller, 848 F.2d at 1322.

Therefore, it is clear that reasonable jurist from this Honorable Court would find that the district court's assessment in dismissing Petitioner's due process of law constitutional claims, and the First Circuit denial of his COA are "debatable or

[4] The fact that Petitioner commenced trial and entered a straight guilty plea at the third day of trial, is a fact that establishes that Petitioner in fact was going to trial and was serious about exercising his trial by jury rights.

wrong," Miller-El v. Cockrell, 537 U.S. 322, 337-38, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003) (quoting Slack v. *879 McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000), and deserves the encouragement proceed further.

Furthermore, this Honorable Court should settle if the Fifth Amendment protections extends to habeas corpus petitioner claims filed pursuant 28 U.S.C. s 2255 proceedings regardless if not brought first on direct appeal where the same defendants who stood trial benefited from the government brady violations as long as a criminal defendant had an available vehicle designed to correct the violation and vindicate constitutional rights as embedded in the habeas corpus constitutional clause and the equal application of the laws and justice to all under the Constitution of the United States.

III. WHETHER DISTRICT COURT'S DECISION TO DISMISS HABEAS CORPUS PETITIONS SUA SPONTE AFTER REFERING PETITIONS TO MAGISTRATE JUDGES FOR 2255 PROCEEDINGS AND REPORT AND RECOMMENDATIONS VIOLATES THE FEDERAL MAGISTRATE ACT AND THE RULES GOVERNING 2255 PROCEEDINGS TO HAVE PARTIES CONTROVERTED FACTS AND ISSUES BE HEARD AND RESOLVED THROUGH EVIDENTIARY HEARINGS.

A. THE LAW.

Pursuant to 28 U.S.C. § 636(b)(1)(B), petitions for writs of habeas corpus may be referred to a magistrate judge for proposed findings and recommendations.

28 U.S.C. § 636(b)(1)(B); See McCarthy v. Bronson, 500 U.S. 136, 140 (1991) (concluding that § 636(b)(1)(B) permits reference to a magistrate judge for "applications for habeas corpus relief pursuant to 28 U.S.C. §§ 2254 and 2255 and actions for monetary or injunctive relief under 42 U.S.C. § 1983"); Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009) (stating that § 636(b)(1)(B) permits, but does not require, a district judge to refer a case to a magistrate judge); United States v. Reyna-Tapia, 328 F.3d 1114, 1118 (9th Cir. 2003) (en banc) (stating that petitions for writs of habeas corpus "may be referred" to a magistrate judge for evidentiary hearings and proposed findings and recommendations).

Furthermore, once a matter has been referred to a magistrate judge, the statute that governs reports and recommendations states that the magistrate judge shall "submit ... proposed findings of fact and recommendations for the disposition" of a referred matter, and that "the magistrate judge shall file his proposed findings and recommendations ... with the court," and that a copy of the report and recommendation should "be mailed to all parties." *28 U.S.C. § 636(b)(1)(B)–(C).* Likewise, *Rule 72(b)(1)* of the Federal Rules of Civil Procedure states that "[t]he magistrate judge must enter a recommended disposition, including, if appropriate, proposed findings of fact.

Lastly, *28 U.S.C. § 636(b)(1)(C)* sets forth a procedure by which any party can object to the magistrate judge's findings and recommendations, and provides

that the district judge can "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *28 U.S.C. § 636(b)(1)(C)*; see also *Thomas v. Arn, 474 U.S. 140, 148–55 (1985)* (examining § 636(b)(1)(C)); Nevertheless, see *Hinman v. McCarthy, 676 F.2d 343, 348 (9th Cir. 1982)* (stating that, pursuant to § *636(b)(1)(C),* "the district judge retains the power to make the final decision on an application for writ of habeas corpus").

B. The Facts.

The record in this case established that On October 4, 2016, Zavala filed motion pursuant to Title 28 U.S.C. 2255 to vacate, set aside or correct sentence. [16-cv-02762 Docket 1] On October 4, 2016 the Court referred the 2255 Petition to Magistrate Judge, the case was assigned to the Honorable Magistrate Judge Marcos E. Lopez for a Report and Recommendation. [16-cv-02762 Docket 2-3] On November 22, 2016 Zavala filed Supplemental Motion to submit Affirmation by trial attorney Maria H. Sandoval in support of Zavala's 2255 Petition. [16-cv-02762 Docket 7] On December 15, 2016 Zavala filed motion "Providing Additional Evidence" in support of his correction of sentence issue argument. [16-cv-02762 Docket 9] On March 1, 2017, the United States filed its Response in Opposition as to Zavala's 2255 application [16-cv-02762 Docket 16] On March 6, 2017 Zavala filed Motion for Leave to file Reply as to the United States Response in Opposition Motion, and on April 5, 2017 Zavala filed his Reply to the United

States Response in Opposition Motion. [16-cv-02762 Docket 11-19] On March 25, 2020, the Court without holding an evidentiary hearing or waiting for the Magistrate Judge Report and Recommendation issued Opinion and Order dismissing Zavala's 2255 Application with prejudice and entered the judgment accordingly. [16-cv-02762 Docket 20-21]

C. Argument.

Zavala submitted in his COA that the District Court's actions violated the Federal Magistrate Act and the Rules Governing 2255 Proceedings.

In support of this arguments Zavala contended that once his 2255 habeas petitions was referred to the magistrate judge, the magistrate judge had the statutory duty to first comply the rules governing 2255 proceeding[5], enforce the rules governing 2255 proceedings, and he only had the sole power to decide the proposed findings of fact and recommendations for the disposition without the interruption of the Court. Furthermore, Zavala posited, that since he was an adverse party, he had the statutory right to file objection to the magistrate judge's findings and recommendations, and only then the district judge retained the power to make a final decision as to Zavala's 2255 motion, by either "accepting, rejecting, or modifying, in whole or in part, the findings or recommendations made

[5] Pursuant to Rule 10. Powers of a Magistrate Judge. A magistrate judge may perform the duties of a district judge under these rules, as authorized by 28 U.S.C. § 636.

by the magistrate judge, and issuing an opinion and order, either favoring or disfavoring Zavala's constitutional claims.

It is Zavala's position, before this Honorable Court that once federal judges referred 2255 petitions to a Magistrate Judge, Congress have empowered the Magistrates to preside over 2255 proceedings to its fullest extent, and federal judges are powerless in retaining the case back until all the procedures governing 2255 proceedings are fully observed and the case is final, and subject to the issuance of the Magistrate Judge Report and Recommendations for further consideration of District Court ruling as to either request objections to the parties, review the Magistrate Judges findings of fact and application of the law de novo, or grant or deny the prisoner's substantive constitutional claims.

Therefore, a COA should have been issued because the District Court actions in this case violated Zavala's procedural due process rights as secured under the Habeas Corpus and the Rules Governing 2255 Proceedings.

According to the record, On October 4, 2016 the District Court referred the 2255 Petition to Magistrate Judge, and the case was assigned to the Honorable Magistrate Judge Marcos E. Lopez for a Report and Recommendation. Three years later, on March 25, 2020, the District Court acting sua sponte and without allowing the Magistrate Judge to exercise its statutory powers in either holding an evidentiary hearing or waiting for his Report and Recommendation, went an took

the 2255 motion back from the Magistrate Judge and without even informing the parties that the Court was going to retain back its powers in handling to Zavalas 2255 proceedings, went and issued Opinion and Order dismissing Zavala's 2255 petition with prejudice and entered the judgment accordingly, without even observing the Habeas Corpus and the rules governing 2255 proceedings.

The District Court's actions violated Zavala procedural due process rights as secured under Fifth Amendment under the constitutional duties imposed under the Habeas Corpus and the statutory duty imposed under the Rules Governing 2255 Proceedings.

Furthermore, let it be clear that the Federal Magistrate Act is a creature of Congress and the Court are not free to suppress the Magistrate Judges powers to perform duties of a district judge once granted by the Court itself. See Rule 10. Powers of a Magistrate Judge, A magistrate judge may perform the duties of a district judge under these rules, as authorized by 28 U.S.C. § 636.

It follows then, that once this power is given to the Magistrate Judge, and a Habeas Corpus is assigned to him for appropriate legal proceedings the prisoner subject to the controversy is statutorily expecting that the rules governing 2255 proceedings are observed and followed as to ensure that the rights conferred to him by congress are enforced and implemented according to law. Withing rules the following were not observed due to the District Court wrongful intervention with

the Magistrate Judge duties.

Zavala was not allowed to exercise many rights afforded to him under the rules governing 225 proceedings. In example, right to seek leave and further discovery and depositions once the Magistrate Judge decided to enter an order to proceed with case. See Rules Governing § 2255 Proceedings, Rule 6, 28 U.S.C.A. § 2255 Rule 6. Discovery. The right to expand the record had the Magistrate Judge ordered so. See Rule 7. Expanding the Record. And the right to hold an evidentiary hearing since the 2255 motion was prematurely dismissed without allowing Zavala to develop the record throughout the 2255 proceedings in accordance with Rule 8. Evidentiary Hearing.

All which have resulted in the violation of Zavala procedural rights as secured under the due process clause since the Habeas Corpus and the Rules Governing 2255 Proceedings, are laws established by an act of Congress pursuant to Article I of the United States Constitution implementing in the United States Judicial System the statutory process that District Court must be observe when handling a Prisoner's 2255 Petition challenging the conviction and sentence he contends was imposed in violation of the laws and constitution and the United States.

This is an issue of national importance in the administration of criminal justice and this Court is under the constitutional duty to interpret and say what the

law is under the Federal Magistrate Act, and decide whether the District Court's action, violated congress intentions under the Federal Magistrate Act law as written.

CONCLUSION

WHEREFORE, based on all the aforementioned reasons, the panel who denied Zavala's COA failed to apply Supreme Court judicial precedents, and this Honorable Court should reevaluate the denial of the COA entered in this case, by the First Circuit, and reconsider by way of writ of certiorari the issues respectfully submitted in this petition, accordingly.

The petition for a writ of certiorari should be GRANTED.

Respectfully submitted, on this the 7th, day of January, 2021.

I hereby certify under penalty of perjury pursuant 18 U.S.C. s 1746, that on this same date, I placed the forgoing document in the Institution Mail Box to be mailed to Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543

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