No. 20-7010

IN THE

SUPREME COURT OF THE UNITED STATES

ISRAEL SANTIAGO-LUGO — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATESCOURT OF APPEALS FOR THE FIRST CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ISRAEL SANTIAGO-LUGO, U.S.M # 10947-069
(Your Name) WP: UCC 1-207(or 308)
PRO SE
FCI TALLADEGA, P.M.B. 1000
(Address)

TALLADEGA, AL 35160
(City, State, Zip Code)

----N/A---
(Phone Number)

QUESTION(S) PRESENTED

1) WHETHER THE SENTENCE WAS IMPOSED UNDER U.S.S.G. §2D1.1(c) TO ESTABLISH THE BASE OFFENSE, THE GUIDELINES ARE IN REAL SENSE THE BASIC FOR THE SENTENCE TO APPLY THE AMENDMENT 782 ACCORD PEUGH V. U.S., 133 S.CT 2072 (2013) and MOLINA-MARTINEZ V. U.S., 136 S.CT 1338 (2016) ?

2) WHETHER THE SENTENCE WAS IMPOSED UNDER 21 U.S.C. §848(a) AND (b), THE SENTENCE IS AMBIGUOUS AND THE RULE OF LENITY REQUIRES THAT THE AMBIGUITY SHOULD BE RESOLVER IN PETITIONER'S FAVOR ACCORD U.S. V. DAVIS, 139 S.CT 2319 (2019) ?

3) WHETHER THE DISTRICT COURT'S FAILURE TO FINALICE A PRELIMINARY AND FINAL ORDERS OF FORFEITURE AND INCORPORATE IT INTO THE JUDGMENT, ALLOW THE APPLICABILITY OF THE SUPREME COURT'S INTERVENING DECISIONS IN HONEYCUTT V. U.S., 137 S.CT 1626 (2017) AND NELSON V. COLORADO, 137 s.ct 1249 (2017) ?

4) WHETHER THE COURT OF APPEALS HAS JURISDICTION TO DIRECT THE DISTRICT COURT TO CONFORM WITH FED.R.CRIM.P. 32.2(b)(4)(B) BY AMENDING THE 1996 JUDGMENT WHERE THE FED.R.CRIM.P. 32.2 WAS AMENDED SUBSTANTIALLY IN 2009 ?

LIST OF PARTIES

[ ]X All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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I. TABLE OF AUTHORITY

STATUTES AND RULES

OTHER AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

II. OPINIONS BELOW

[XX] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[XX] is unpublished.

The opinion of the United States district court appears at Appendix B & C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[XX] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

III. JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was on October 1, 2019.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: on November 10, 2020, and a copy of the order denying rehearing appears at Appendix D.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

IV. STATEMENT OF THE CASE

Israeli Santiago-Lugo ("Petitioner") was indicted on February 14, 2995, for a gran jury with other thirty-one(31) codefendants for the following charges" count one(2) for conspiracy to distribute (21 U.S.C. §§846 & 841(a)); count two(2) for a CCE (21 U.S.C. §848 (a),(b),(c) & 18 U.S.C. §2); count three(3) for firearm (18 U.S..C. 18 U.S.C. §924(c)); counts four(4) thorugh forty-five(45) with money laundering (18 U.S.C. §§1957 & 2)); and counts forty-eight(48) through fifty(50) for forfeiture (21 U.S.C. §853 & 18 U.S.C. §982). The district court following the Supreme Court's decisions in Bailey and Rutledge vacated the firearm count, the conspiracy count was set aside.

On April 17, 1996, the district court imposed at the sentencing bearing a total offense level of 43, criminal history of I, life imprisonment for the CCE, and 10-year for each money laundering count, running concurrent according the U.S. Sentencing Guideline. Also, its was noted that §848(b) required a mandatory minimum of life, being the sentence of life imprisonment on both §848(a) and (b). See, appendix E.

In 1998, Petitioner has filed a motion to correct the judgment pursuant to Fed.R.Crim.P. 36 (Appendix F), because those counts (15,31 & 37) never went to the trial jury consideration, even though the district had not jurisdiction once a notice of appeal was filed. Nevertheless, the criminal judgment was amended to reflect those counts have been previously dismissed under Fed.R.Crim.P. 35(c). See, Appendix G. The First Circuit affirmed Petitioner's convictions and sentences without mention the forfeiture counts. See, U.S. v. Santiago-Lugo, 167 F.3d at 83 (1st cir.1999).

in 2005, the government sought under Fed.R.Crim.P. 36 to amend the Preliminary Forfeiture Order, Original and Amended Judgments, and Transcript of Sentence to include that penalty (Doc.3066). On August 12, 2005, the district court granted the government's Rule 36 motion (Doc.3074), and the First Circuit affirmed. See, Appendix H. However, the Judge Jose A. Fuste refused to enter the new amended criminal judgment under Fed.R.Crim.P. 36 in the docket sheets the last twenty-three(23) years.

On July 1, 2016, a §3582(c)(2) motion was filed, where the U.S. Sentencing Commission reduced the quantities of drug under Amendment 782. Here, the sentence imposed at that time was ambiguous, and the federal Courts have ignored this undispued fact, when it was denied two(2) prior petitions under §3582(c)(2). See, Appendices I & J. On April 11, 2017, the clerk's Office ordered to the Magistrate Judge perform with the Court's Administration Directive, Misc.14-426(ADC). On July 3, 2018, the Magistrate Judge issued an initial Report and Recommendation, and an Amended Report and Recommendation. The district court denied on October 12, 2018. See, Appendix B.

On June 21, 2017, a motion to correct Preliminary and Final Orders of Forfeiture was filed, because the district court had pending the forfeiture penalty, entering a Second Amended Judgment pursuant to Correction of Sentence for Order of Forfeiture and Money Judgment on October 10, 2019 (Doc.3944), when the Rules 32.2, 35 and 36 were amended substantially in 2009, however, the district court denied on October 12, 2018. See, Appendix C.

V. REASON WHY A WRIT OF CERTIORARI SHOULD ISSUE

ARGUMENT

THE COURT OF APPEALS HAS IGNORED THAT THE RULE OF LENITY REQUIRES THAT PETITIONER'S MOTION FOR REDUCTION OF SENTENCE PURSUANT TO AMENDMENT 782 THE AMBUIGUITY OF THE SENTENCE SHOULD BE RESOLVED IN PETITIONER'S FAVOR

The case at hand is controled by Peugh v. U.S., 133 S.Ct 2072, 2084 (2013): Molina-Martinez v. U.S., 136 S.Ct 1338, 194 L.Ed.2d 444 (2016): Mistretta v. U.S., 488 U.S. 361, 102 L.Ed 714, 109 S.Ct 647 (1989): and U.S. v. Davis, 139 S.Ct 2319, 2333, 204 L.Ed.2d 757 (2019), and the situation here is determining if a reduction of sentence is appropriate based on the Amendment 782 rely on the rule of lenity.

In this case, at the sentencing hearing, after stating his view of the case as a whole and the reasons for his decision, the district court pronounced the following punishment:

> The instant case involved a continuing criminal enterprise to facilitate drug trafficking activities. And under the **provisions of USSG** section 2D1.5, the applicable offense level must be four levels higher than that of the underlying trafficking offense. The base offence level under 2D1.1 is 38. Since the commissions involved--the commission of the offense involved the use of firearms, a two-level increase is authorized **by USSG** section 2D1.1(b)(1).
>
> Additionally, the offense conduct charged in counts 1,2 and counts 4 through 45, is **groupable under the provisions of guideline** section 3D1.2(b), groups of closely related counts, as the counts comprise similar and related conduct. As monetary laundering is a type of statutory offense that facilitates the completion of some other underlying offense, it is appropriate to consider the money laundering offense as closely interwined and groupable with the underlying offense. There are no **other applicable guideline adjustments**.
>
> The resulting total offense level is then 44, which is 38, plus two for weapons, for a total of 40 under 2D1.1, plus four under 2D1.5, the commentary section to Chapter 5, the sentencing table directings that an offense level greater than 43 be treated as a 43 lebel, which is the highest level in the--in the sentencing table.
>
> Based on the total offense level of 43, and criminal history category of one, the **guideline imprisonment range** in this

> particular--there is no guideline imprisonment range, as a matter of fact. As I was saying, based on the offense level of 43 and criminal history category of one, there is no **guideline imprisonment range** and life sentence is mandatory with a fine range of 25,000 to $4 million, plus supervised release of five years as to count 2 and two to three yeats as to each remaining count.
>
> The court also notes tht under the provisions of Title 21 of the U.S. code section 848, I think it's section B, since he was found to the principal administrator of this continuing criminal enterprise, **the court is also required to impose** a life sentence as to count 2.

See, Appendix E,pp.5-6.

Two(2) stages are present, first, it does not appear that Petitioner's life sentence was imposed under subsection (b). Rather, the district court arrived at the life sentnence under§848(a) by a Guideline calculation that properly took into account a broad range of factors, some of which have been relevant to a conviction under subsection (b): and Second, the district court has "note[d]" that §848(b) "required" a mandantory life sentence, instead, the Courts ignored that the oral pronounced sentence was ambiguous, because the district court cannot impose a mandatory guideline sentence and statutory mandatory at the same time under §848(a) and (b). See, U.S. v. Story, 439 F.3d 226 (5th cir.2006) ("unclear or ambiguous sentence must be vacated and remanded for clearification").

Instead, the district court adopted the Magistrate Judge's Report and Recommendation ("R&R") because "**the jury found**[1/] that [Petitioner]

1/ This Honorable Court should note that the district court has used the words "the jury found" and the disjuntive "and" to support their decision, but there was no special verdict for requiring the jury to identify and find that ths substance was cocaine, or cocaine base, or heroin. See, Appendix K. Neither were there any substantive narcotic counts charged against Petitioner from which it could be said that the jury found one (or multiple) types and quantities of drugs from which they found Petitioner guilty "of the drug laws involved more then 300 times the quantity described in 21 U.S.C. §841(b)(1)(B)", because the district court "noting that court, not jury, determine drug quantity under §841(b)". U.S. v. Barners, 890 F.2s 545, 551 n.6 (1st cir.1989).

was the 'principal administrator, organizer, or leader of the continuing criminal enterprise, or one of several such principal administrators or leaders', and that the continung criminal enterprise involved in excess of one hundre fifty(150) kilograms of cocaine, fifteen hundred (1500) grams of cocaine base ('crack') and thirty (30) kilograms of heroin', in violation of 21 U.S.C. §848(a)-(c) and 18 U.S.C. §2". Appendix B p.1. And "the sentencing court held that 21 U.S.C. §848(b) imposes a mandatory life sentence for [Petitioner]'s conviction on count 2. The Court sentenced [Petitioner] accordingly". Appendix B. For the foregoing, "the Court agree[d] with the Amended R&R that [Petitioner] is ineligible for a sentence reduction in accordance with Amendment 782 because his sentence reflects a statutorily mandated term of life imprisonment". Appendix B.

In other words, "even if the judge sees a reason to vary from the guideline, if the judge uses the sentencing range as the beginning point to explain the decision to deviate from it, then the guidelines are in real sense the basis for the sentence". Peugh, supra. This case is governed by the Guidelines which, as the Court declared in Mistretta, are a "mandatory" system that "binds judges and Courts in the exercise of their uncontested responsibility to pass sentence in criminal case". Mistretta, 488 U.S. at 367, 368-69, 391. As Justice Scalia stated, "while the products of the Sentencing Commission have been given the modest name 'Guideline', they have the force and effect of laws, prescribing the sentences criminal defendants are to receive. A judge who disregards them will be reversed". Mistretta, 488 U.S. at 413 (dissenting).

As an undisputed fact, the Courts ignored that the ambiguity "about the breadth of a criminal statutes should be resolved in the [Petitioner]'s favor", because the Petitioner is not subject under Amendment 782 to a mandatory life sentence on the CCE charge under

§848(b), but rather a sentence of twenty(20) years to life under §848(a). See, U.S. v. Black, 523 F.3d 892 (8th cir.2008)("original sentencing range was based in part on the quantity of drugs under USSG. §2D1.1(c), he was eligible for a reduction of his sentence under §3582(c)(2)"); U.S. v. Burrell, 665 Fed.Appx 91, 94 (2d cir.2016). To avoid disparities, a reduction is warranted since similarly situated defendants sentenced today will receive the benefit of reduced base offense levels. See, U.S. v. Kennedy, 2015 U.SDist.LEXIS 102511 (E.D. La. 2015)(distributed about 1,400 kilograms of cocaine over the course of several years); U.S. v. Rivera, 2015 U.S.Dist.LEXIS 171929 (S.D.N.Y. 2015)(responsible for 100 to 300 kilograms of heroin); U.S. v. Alvares, 2016 U.S.Dist.LEXIS 194642 (D. AZ 2016)(responsible for a total of 7,198 kilograms of cocaine); U.S. v. Thomas Wesson, Crim No.92-118-1 (N.D. Ill.); U.S. v. Roberto Riojas, Crim No.95-00142, Doc.6294 (S.D. Tex); U.S. v. Eskridge, 2018 U.S.App.LEXIS 4095 (10th cir.2018); U.S. v. Duke, No.4:89-cr-0094-DSD-1, Doc.264 (D. Minn 2016); U.S. v. Dixon, 2015 U.S.Dist.LEXIS 46994 (S.D.W. Va. 2015); U.S. v. Beasley, 2014 U.S.Dist.LEXIS 165746 (N.D. Cal. 2014); U.S. v. Jennings, 2018 U.S.App.LEXIS 20470 (2d cir.2018).[2/]

Therefore, this petition for writ of certiorari should be granted following Peugh, Molina-Martinez, Mistretta and Davis.

[2/] Also, this Honorable Court should note that the First Circuit found (because the district court conceded 20-year after) that the principal proof of evidence necessary to calculate exactly a drug quantity to sustain a §848(b)(2)(A) "assumed a fact not in evidence", "was inconsistent with prior testimony", and "was probably mistaken". U.S. v. Candelaria-Silva, 714 F.3d 651, 658 (1st cir.2013). The First Circuit concluded erroneously that "during an one-year period from 1990 to 1991, the conspiracy handled approximately 8.8 kilograms of heroin and 19.5 kilograms of powder cocaine". U.S. v. Ortiz-Baez, Appeal No.12-2127 (1st cir. 2014). But, the 19.5 (x 7(yrs)- 133.5) kilograms of powder cocaine, one of the elements of the offense of §848(b) was not met.

THE COURT OF APPEALS ERR WHEN IT WAS AFFIRMED THE DISTRICT COURT'S ORDER DENYING PETITIONER'S MOTION TO CORRECT PRELIMINARY AND FINAL ORDERS OF FORFEITURE AND DIRECT THE DISTRICT COURT TO CONFORM WITH FED.R.CRIM.P. 32.2(b)(4)(B) BY AMENDING THE 1996 JUDGMENT TO INCLUDE THE FINAL ORDER OF FORFEITURE NUNC PRO TUNC WHERE THE FED.R.CRIM.P. 32.2 WAS AMENDED SUBSTANTIALLY IN 2009

The case at hand is controled by Griffith v. Kentucky, 479 U.S. 314, 321 n.6, 107 S.Ct 708, 93 L.Ed.2d 649 (1986); Dolan v. U.S., 560 U.S. 605, 622, 130 S.Ct 2433, 177 L.Ed.2d 108 (2010); Honeycutt v. U.S., 137 S.Ct 1626, 198 L.Ed.2d 73, 80 (2017); Nelson v. Colorado, 137 S.Ct 1249, 1265, 197 L.Ed.2d 611 (2017); and Manrique v. U.S., 137 S.Ct 1266, 1271, 197 L.Ed.2d 599 (2017), and the situation here is determining if a challenges to the property of the forfeiture orders are untimely.

In this case four(4) stages are present, first, the district court has held that Petitioner's "challenges to the property of the forfeiture orders are untimely". Appendix B. And the Court of Appeals did mention "that omission, however, does not make the forfeiture order susceptible to substantive challenge at this time". Appendix A. Second, once the district court did not enter pre-October 10, 2019, a new amended judgment incorporating the forfeiture orders, Petitioner's challenge to those orders should be considered timely, because pre-October 10, 2019, a new amended judgment is not part in the criminal case the forfeiture counts 48,49 and 50 are not final, and any new rule should be applied; Third, the First Circuit holding in 2006 does not confort with the Fed.R.Crim.P. 32.2 after amended in 2009; and Fourth, the federal Courts have an obligation to establish the amount of forfeiture, rejecting the jointly and severally liability of any amount, and Petitioner must be presumed innocent of the forfeiture count 49 once the count one(1) was dismissed; i.e., "the jury determination that the conspiracy realized $6,000,000 in proceed".

Petitioner timely contested the seven(7) of the government's forfeiture allegations, but his objections were entirely ignored, even though "the parties agree[d] that the forfeiture order was not announced as part of the sentence nor contained in the original or amended judgment and that, therefore, there was a violation of Rule 32.2(b)(3)". Appendix H. Here, the district court does not reminded Petitioner that the preliminary order of forfeiture was final, nor the district court orally informed Petitioner of the preliminary forfeiture as required by Fed.R.Crim.P. 32.2(b)(4)(B). As it now states, in relevant part:

> The court must include the forfeiture **when orally announcing the sentence or must otherwise ensure that the deffendant knows of the forfeiture at sentencing.** The Court must also include the forfeiture order, directly or be reference, in the judgment, but the Court's failure to do so may be corrected at any time under Rule 36.

See, Fed.R.Crim.P. 32.2(b)(4)(B).

Even as amended, the rule does not allow correction "at any time" of a failure to include forfeiture in the sentence as announced at the sentencing hearing on April 17, 1996. See, Appendix 5; U.S. v. Diaz-Rivera, 806 F.Supp.2d 479, 483 (D.P.R. 2011)(the amended Rule still does not allow the court to amend judgment to add a forfeiture order where none was included at sentencing). Nevertheless, the district court entered a Second Amended Judgment on October 10, 2019, post-Petitioner's motion to correct forfeiture orders. Thus, the original 1996 forfeiture is fatally flawed because forfeiture was not mentioned orally at sentencing and is not included in the judgment. See, U.S. v. Shakur, 691 F.3d 979 (8th cir.2012): U.S. v. Muzio, 757 F.3d 1243, 1257-58 (11th cir.2014); U.S. v. Petix, 2019 U.S.App.LEXIS 11049 (2d cir.2019).

Instead, Petitioner was denied timely determination of "the

requisite nexus", Rule 32.2(b)(1)(A)[3]; a hearing on the contested allegations, Rule 32.2(b)(1)(B)[4]; the entry of an appropriate preliminary and final orders "directing the forfeiture of specific property", Rule 32.2(b)(2)(A); and entry of that order "sufficiently in advance of sentencing" to allow him to seek revisions, Rule 32.2(b)(2)(B). Finally, after sentencing, Petitioner was denied inclusion of a preliminary and final forfeiture in his judgment of conviction, Rule 32.2(B)(4)(B), which deprived him of 'the right to have the entire sentence imposed as a package and reviewed in a single appeal". Shakur, 691 F.3d at 988.

In Petix, the Court also rejected the government's argument that there was no error because the Court had "otherwise ensure[d]" that the defendant knew of the forfeiture amount, since the indictment included a forfeiture provision, the Court advised the defendant during the plea colloquy that it would impose a forfeiture in an amount to be determined, and the preliminary order of forfeiture stated the forfeiture amount. Id. The appellate Court was "not convinced". Id. In particular, the Court noted that those forms of notice are required by other rules provisions: if those prior warning alone suffice, there would be no need for Rule 32.2(b)(4)(B) to require that the defendant be informed of the forfeiture "at sentencing". Id. The Court held that, as a result of the district court's error in failing to provide notice of the monetary forfeiture during the sentencing hearing, the entire

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[3] See, U.S. v. Lustyik, 2015 U.S.Dist.LEXIS 41915, at 9 (D. Utah. 2015) (Court had job to determine how much money defendant would be ordered to pay); U.S. v. Cheeseman, 600 F.3d 270, 274-75 (3d cir.2010); U.S. v. Beltrames, 785 F.3d 287, 290-91 (8th cir.2015).

[4] See, U.S. v. Crews, 2012 U.S.Dist.LEXIS 114347, at 2 (E.D. Pa. 2012) (if the government seeks a personal money judgment, the court must determine the amount of money that the defendant will be ordered to pay).

monetary forfeiture would be stricken. It vacated the judgment in part and remanded with instructions that a corrected judgment be entered that removed the monetary forfeiture from the defendant's sentence. Petix, 2019 U.S.App.LEXIS 11049, [WL] at 3.

Also, the government sought a personal money judment, the court must determine the amount of money that the Petitioner will be ordered to pay, Fed.R.Crim.P. 32.2(b)(1)(A), the count 49 alleged that the Petitioner is joint and severalliable for forfeiture of $6 millions. See, U.S. v. Candelaria-Silva, 166 F.3d at 26 (1st cir.1999)(count 49 alleged that defendants' joint and several liability for forfeiture of $6,000,000, included substitute assets, as authorized by 21 U.S.C. §853). But, the Fed.R.Crim.P. 32.2(b)(5)(A) "does not apply to the monetary forfeiture sought by the government in this case. With respect to monetary forfeiture, Federal Rule of Criminal Procedure 32 does not permit the district court to do anything other than 'determine the amount of money that the defendant will be ordered to pay', in an amount determined by statute". U.S. v. Phillips, 704 F.3d at 771 (9th cir.2012). Severalcircuit joined. See, U.S. v. Grose, 461 Fed.Appx 786, 806 (10th cir.2012); U.S. v. Gray, 443 Fed.Appx 515, 523 (11th cir.2011); U.S. v. Gregoire, 638 F.3d 962, 972 (8th cir.2011); U.S. v. Ponzo, 853 F.3d at 589 (1st cir.2017).

The Petitioner's case, "the wholesale violation of these Rule 32.2(b) mandated denied [Petitioner] a meaningful opportunity to contest the deprivation ofhis proper[ies] rights, as due process required. In these circumstances, [this Honorable Court must not have] difficulty concluding that the district court's forfeiture order of [April 3, 1996], did not merely correct a 'clerical error', as Rule 36 permits. The violations were prejudicial legal errors, not clerical errors. Accordingly, Addonizio make clear the court was without power to enter

that orden, and it [must be] removed". Shakur, 691 F.3d at 788-89.

Directing the district court to conform with Fed.R.Crim.P. 32.2 (b)(4)(B), by amending the 1996 judgment to include the final order of forfeiture,nunc pro tunc, from June 15, 2006 Judgment in U.S. v. Santiago-Lugo, Appeal Nos.05-2254 and 06-1107, now would constitute a gross injustice and violation of Petitioner's Constitutional rights. moreover, at the sentencing hearing, the words "forfeit" and "forfeiture" were never so much as mentioned. Forfeiture was not part of the sentence handed down during the sentencing hearing.

The Judgment simply noted that the Petitioner had been found guilty by a jury on the counts 1,2, 4-45 in the superseding indictment and that the court adjudicatedhim guilty of the same counts. The Judgment identifies the counts 1,2, 4-45 as charged in the superseding indictment, including the counts 48-50 for "Criminal Forfeiture" in violation of 21 U.S.C. §853 and 18 U.S.C. §982, but it does not incorporate or reference the property or sum of money to be forfeited. See, Appendix E. The sentencing provisions of the Judgment reference only a prison term of life as to count 2, and ten(10) years as to counts 4-45, and a supervised release term of 5 years as to count two, and 3 years as to remaining counts. it enumerates the assessment the mandatory criminal monetary penalty of $2,250.00. There is no place in which the term "forfeit" appears in the penalty portion of the judgment. See, Appendix F.

As a result of both the failure to include forfeiture in the oral pronouncement of sentence or in the Judgment, it is also very clear that Petitioner was never put on notice that a money forfeiture judgment or properties was part of his sentence. The failure to include the forfeiture in the Judgment or to reference forfeiture at sentencing amounts in this case to more than a mere "clerical error", as the

courts found in Bennet, Yeje-Cabrera, and other similar cases. Simply stated, more notice was required under the circumstances of this case. Forfeiture was not "made a part of the sentence" as required by the version of Rule 32.2(b)(3) in effect at the time, nor did the court "otherwise ensure that the [Petitioner] knows of the forfeiture at sentencing", as Rule 32.2(b)(4)(B) now allows, given tht the issue of forfeiture was never so much as mentioned, by any party, at the sentencing hearing. Accord Petix, 2019 U.S.App.LEXIS 11049, 2019 WL 1749176, at 2. Under these circumstances, the Court lacks authority to modify the sentence imposed almost twenty-three(23) years ago. Accord Dolan v. U.S., 560 U.S. 605, 622, 130 S.Ct 2533, 177 L.Ed.2d 108 (2010)(Robert, J., dissenting ("once a sentence has been imposed, moreover, it is final, and the trial Judge's authority to modify it is narrowly circumscribed". (citaion omitted)); See Fed.R.Crim.P. 35(a)(2005)(givingthe court 7days (now 14) to correct an error in the sentence announced at the sentencing hearing).

Petitioner himselfhad no reason to appeal the preliminary and final orders of forfeiture, because his oral sentence nor the written Judgment incoporate forfeiture. The onus was on the government to move to correct the sentence under Rule 35. Otherwise, the government must appeal, and seek resentencing or remand". (Citing 18 U.S.C. §3742(b), (g)); See also Peace, 331 F.3d at 811 (noting that the government could have cross-appealed the district court's failure to include order of forfeiture in its final judgment under 18 U.S.C. §3742(b)).

The government did not seek to correct the sentence and did not appeal. As a result, Petitioner's sentence does not include forfeiture pre-Second Amended Judgment. See, Appendix L. The government lacks the authority to effect the forfeiture of the seven(7) properties, and the Court is required to vacate the preliminary and final orders

of forfeiture. Accord U.S. v. Shakur, 691 F.3d 979, 986-87 (8th cir. 2012)(a final order of forfeiture that is not part of the judgment "has no effect"); Peace, 331 F.3d at 813-14 (finding that the government's interest in a defendant's property does not "come to fruition", "that is, the government [does not actually acquire] the defendant's interest in the subject property" until and unless the district court includes an order of forfeiture in the judgment); Yeje-Cabrera, 430 F.3d at 13 ([F]orfeiture, to be valid, must be included in the judgment". (Citing Pease)).

Assuming, arguendo, the district court keep jurisdiction from the money judgment, because "an appeal ordinarily will not lie until after final judgment has been entered in a case", Cunningham v. Hamilton County, Ohio, 527 U.S. 198, 203, 119 S.Ct 1915, 144 L.Ed.2d 184 (1999), however, the Supreme Court has cautioned that "no statute or rule... specifies the essential elements of a final judgment", U.S. v. F. & M. Schaefer Brewing Co., 356 U.S. 227, 233, 78 S.Ct 674, 2 L.Ed.2d 721 (1958), and "[n]o form of words and no peculiar formal act is necessary to evince" a final judgment. U.S. v. Hark, 320 U.S. 531, 534, 64 S.Ct 359, 88 L.Ed 290 (1944). But the Court has held that "a final judgment for money must, at least [] determine, or specific the means for determining, the amount" of the judgment. 356 U.S. at 233. At the very least, therefore, a money judgment lacks finality when it fails to "specify either the amount of money due the plaintiff or a formula by which the amount of money could be computed in mechanical fashion". Buchanan v. U.S., 82 F.3d 706, 707 (7th cir.1996)(Per Curiam) (Citing F. & M. Schaefer Brewing Co., 356 U.S. at 227).

The district court's Judgments were not a "final judgment", and so the Court of Appeals lacked jurisdiction over the direct appeal from the preliminary and final orders of forfeiture, relying on the

money judgment. In this case, any new amended judgment failed to states that the united States is entitled to $6,000,000 as of April 3, 1996 order, and other statutory additions accruing after that date until paid in full based on liability. Petitioner dispute that the judgments do not adequately "specif[ies] the amount of money due" as of April 3, 1996 order. Thus, the judgments failed to specify the portions of the $6,000,000.00 based on liability that are attributable to the individual defendant, or course, the district court cannot determine how much it owes in statutory additions without those figures. See, Griffith v. Kentucky, 479 U.S. 314, 321 n.6, 107 S.Ct 708, 93 L.Ed.2d 649 (1986)(explaining that new rules for the conduct of criminal prosecution apply retroactively to all case "not yet final").

The federal Courts have an obligation to establish the amount of forfeiture following the Supreme Court's intervening decisions in Honeycutt, where Honeycutt rejected the Petitioner jointly and severally liable of any amounts. And Nelson, where Petitioner must be presumed innocent of the forfeiture count 49 once the count one was dismissed; i.e., "the jury determination that the conspiracy realized $6,000,000 in proceed". As the court in Nelson observed: "Once...the presumption of their innocence was restored", a federal court "may no presume a person, adjudged guilty of no crime, nonetheless guilty enough for [sanction to apply". Nelson entails not only that Petitioner may not be penalized for acquittal conduct, but also that Petitioner may not be punished for dismissed or even uncharged conduct.

As explained above, the government's Rule 36 motion pull that sum from thin air. Because the judgments failed tospecifies both "the amount of money due the plaintiff" as of April 3, 1996 order and "a formula by which that amount of money" owed in statutory additions accruing thereafter "could be computed in mechanical fashion", Buchanan,

82 F.3d at 707, the judgments lacked finality and the Court of Appeals does not had jurisdiction of this appeal ab inition. See, 28 U.S.C. §1291; Manrique v. U.S., 137 St 1266, 1271, 197 L.Ed.2d 599 (2017)(noting that 18 U.S.C. §3742(a) and appellate Rule 4 contemplate that a defendant will file the notice of appeal from an issue after the district court decided the issue); U.S. v. Naphaeng, 906 F.3d 173, 178 (1st cir.2018) ("He should have waited to file the second notice of appeal until after the amended judgment was entered on the docket").

Therefore, Petitioner's motion to correct forfeiture orders was timely, and this petition for writ of certiorari should be granted following Griffith, Dolan, Honeycutt, Nelson and Manrique.

VI. CONCLUSION

This Honocrable Court has stated that "an analysis focusing solely on mere outcome determination, without attention to whether the result of the proceeding was fundamentally unfair or unreliable, is defective". Lockhart, 506 U.S. at 369 (1993). Under the United States Const., the goal of the criminal justice process is to archieve equality in the administration of the process to defendant in similar circumstance. Long ago, Justice Jackson, J., stated "[D]ue process of the law is not for the sole benefit of an accused. it is the best insurance for the government itself against those blunders which leave lasting stain on a system of justice". Jackson., dissenting in Shaughnessy v. U.S. ex rel Mezei, 345 U.S. 206, 73 S.Ct 625, 97 L.Ed 956 (1953).

This Court has repeatedly stated that "all persons similarly situated should be treatedalike". Cleburne v. Clerburne Living Center Inc., 473 U.S. 432, 439 (1985); Plyler v. Doe, 457 U.S. 202, 216 (1982); Reed v. Reed, 404 U.S. 71, 76 (1971). The First Circuit's decisons, first ignoring the rule of lenity for a reduction of sentence, and second ignoring the Petitioner's motion to correct forfeiture orders

timely, this certioary must be granted for all the claims under jurisprudence in Peugh, Molina-Martinez, Mistretta, Davis, Griffith, Dolan, Honeycutt, Nelson and Manrique. It is a paradigmatic abuse of discretion for a Court base its judgment on an erroneous view of the law. See, Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405, 110 L.Ed.2d 359, 110 S.Ct 2447 (1990). It's about this court's ability to act to prevent a manifest injustice. It is about fairness, justice and due process of law.

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Respectfully Submitted

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