No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JEAN LEONARD TEGANYA,
Petitioner,

v.

UNITED STATES,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATE COURT OF APPEALS FOR
THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Christine DeMaso
Federal Defender Office
51 Sleeper Street, 5th Floor
Boston, MA 02210
Tel: 617-223-8061
Attorney for Petitioner

QUESTION PRESENTED

1. The United States Sentencing Guidelines permit a two-point increase in offense level if the defendant obstructed or impeded the administration of justice, including by committing perjury. U.S.S.G. §3C1.1. In some cases, including those where the defendant was charged with perjury, application of the enhancement requires a finding that the defendant committed a "significant further obstruction." *Id.*, Application Note 7. Can this enhancement apply in a false-statements case where the defendant testified at trial and repeated the falsehoods charged in the indictment?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF CONTENTS ii

INDEX TO APPENDICES iii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE PETITION 5

I. The Sentencing Guidelines provide that a defendant's sentence can be enhanced if he or she committed "a significant further obstruction" during the case. The district court applied this enhancement to Mr. Teganya after he testified at trial and repeated alleged falsehoods that were charged in the indictment. The Circuits are split as to whether repeating charged falsehoods is a "significant further obstruction" meriting application of this enhancement. This Court should grant certiorari to resolve this split in analysis. 5

CONCLUSION 9

INDEX TO APPENDICES

Appendix A

Judgment—*United States v. Teganya*, 997 F.3d 424 (1st Cir. 2021), United States Court of Appeals for the First Circuit, May 17, 2021.

Appendix B

Judgment—*United States v. Teganya*, United States District Court for the District of Massachusetts, July 2, 2019.

Appendix C

Sentencing Transcript—*United States v. Teganya*, United States District Court for the District of Massachusetts, July 1, 2019.

TABLE OF AUTHORITIES

Page

CASES

United States v. Brewer,
332 Fed.App. 296 (6th Cir. 2009) (unpublished) 8

United States v. DeZarn,
157 F.3d 1042 (6th Cir. 1998) 7

United States v. Dunnigan,
507 U.S. 87 (1993) 5, 6, 8, 9

United States v. Fernandez,
389 Fed.App. 194 (3d Cir. 2010) (unpublished) 8

United States v. Johnson,
812 F.3d 757 (9th Cir. 2016) 7

United States v. McCoy,
316 F.3d 287 (D.C. Cir. 2003) (per curiam) 7, 8

United States v. Pattan,
931 F.2d 1035 (5th Cir. 1991) 7

United States v. Teganya,
997 F.3d 424 (1st Cir. 2021) ..... *passim*

United States v. Thomas,
193 Fed.App. 881 (11th Cir. 2006) (per curiam) (unpublished) 6, 7, 8

STATUTES AND RULES

18 U.S.C. §1546 3

18 U.S.C. §1621 3

28 U.S.C. §1254 1

U.S.S.G. §2J1.3 ..... 2, 5

U.S.S.G. §3C1.1 ..... *passim*

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

The petitioner, Jean Leonard Teganya, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit entered in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit can be found at Appendix A and is reported at 997 F.3d 424 (1st Cir. 2021). The district court's judgment and sentencing transcript are Appendix B and C, respectively.

JURISDICTION

The Court of Appeals issued its opinion on May 17, 2021. Pursuant to this Court's order of July 19, 2021, this petition is being filed within 150 days of that denial. Mr. Teganya invokes this Court's jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

U.S.S.G. 3C1.1

If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by **2** levels.

***

7. Inapplicability of Adjustment in Certain Circumstances.—If the defendant is convicted of an offense covered by §2J1.1 (Contempt), §2J1.2 (Obstruction of Justice), §2J1.3 (Perjury or Subornation of Perjury; Bribery of Witness), §2J1.5 (Failure to Appear by Material Witness), §2J1.6 (Failure to Appear by Defendant), §2J1.9 (Payment to Witness), §2X3.1 (Accessory After the Fact), or §2X4.1 (Misprision of Felony), this adjustment is not to be applied to the offense level for that offense except if a significant further obstruction occurred during the investigation, prosecution, or sentencing of the obstruction offense itself (*e.g.*, if the defendant threatened a witness during the course of the prosecution for the obstruction offense).

STATEMENT OF THE CASE

After an 18-day trial, Jean Leonard Teganya was convicted of lying when he applied for asylum in 2014. App. A 5-6.[1] Specifically, he was charged with lying about his participation in the 1994 Rwandan genocide.[2] *Id.* at 4-6. The indictment charged three counts of perjury in violation of 18 U.S.C. §1621 and two counts of fraud and misuse of visas, permits, and other documents in violation of 18 U.S.C. §1546(a). *Id.*

> The counts under 18 U.S.C. §1546(a) and 18 U.S.C. §1621(2) alleged that [Mr. Teganya] had failed to disclose in his asylum application that he was personally a member of the MRND party and the Interahamwe, a youth militia wing of the MRND party; and that he had falsely stated in that application that he had never personally ordered, incited, assisted, or otherwise participated in causing harm or suffering to another because of that individual's membership in a particular social group. The count under 18 U.S.C. § 1621(1) alleged that he falsely stated at his immigration proceeding, while under oath, that he had never belonged to a political party in Rwanda and that he had not observed atrocities at the National University Hospital while he was in that country during the genocide.

Id. at 5.

Mr. Teganya pled not guilty and went to trial. *Id.* at 6. The jury convicted him on all counts. *Id.* To reach this verdict, the jury had to determine what happened during the Rwandan genocide, nearly 25 years before, across an ocean

---

[1] Citations are as follows: App. A refers to Appendix A to this petition, the First Circuit's decision affirming Mr. Teganya's conviction and sentence; and App. C refers to Appendix C, the district court sentencing transcript.

[2] The Rwandan genocide began after years of strife between Rwanda's main ethnic groups, the Hutus and the Tutsis. Over the course of 100 days, Hutus killed 800,000 people, mainly Tutsis. The genocide was led by the Hutu government, which was controlled by the MRND (*Mouvement Révolutionaire National pour le Développement*). App. A at 5, n.1. Much of the violence was perpetrated by civilians, including militias like the Interahamwe. The genocide ended when the Tutsi-led Rwandan Patriotic Front (RPF), gained control of Rwanda.

and a cultural divide. The government presented 14 witnesses. App. C at 5. Twenty witnesses, including Mr. Teganya, testified in his defense. *Id.* The pictures painted by these two groups could not have been more different. The government witnesses described Mr. Teganya as a high-ranking MRND official and Interahamwe member who committed atrocities, including raping and killing Tutsis. App. C at 5-9, 12-22. The defense witnesses described a quiet, dedicated medical student who had no time for politics. *Id.* at 5-6, 22-26. Some explained that Mr. Teganya, like them, lived through the horror of the genocide without witnessing, let alone participating in, the individual atrocities that comprised it. *Id.* at 5-6.

At sentencing, the court applied a two-point enhancement for obstruction of justice under §3C1.1. App. A at 6, 10. It found that this enhancement was appropriate because Mr. Teganya's trial testimony conflicted with "the testimony taken as a whole." *Id.* at 6. The district court "did not specify which of the statements Teganya made at trial it found were perjurious." *Id.* at 12. Nor did it "make particular findings that Teganya committed specific atrocities." *Id.* The First Circuit concluded that the district court's findings were sufficient because the verdict "necessarily" showed that the jury did not believe Mr. Teganya's testimony that he was never a member of MRND and that he did not see any atrocities at the hospital. *Id.* Neither court found that Mr. Teganya committed perjury beyond repeating the charged falsehoods.

On appeal, the First Circuit considered Mr. Teganya's argument that repeating the charged falsehoods could not be a "significant further obstruction" as

required by Application Note 7 to §3C1.1. *Id.* at 9-11. Relying on a D.C. Circuit case, the First Circuit concluded that §3C1.1 can apply where the defendant testified at trial and repeated the charged falsehoods. *Id.* at 10-11. It rejected contrary Eleventh Circuit precedent in a footnote. *Id.* at 11, n.8. The First Circuit affirmed Mr. Teganya's conviction and sentence. *Id.* at 13.

REASONS FOR GRANTING THE PETITION

I. The Sentencing Guidelines provide that a defendant's sentence can be enhanced if he or she committed "a significant further obstruction." The district court applied this enhancement to Mr. Teganya after he testified at trial and repeated the falsehoods alleged in the indictment. The Circuits are split as to whether repeating charged falsehoods is a "significant further obstruction" meriting application of this enhancement. This Court should grant certiorari to resolve this split in analysis.

The Guidelines permit a two-point increase in offense level if "the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction." U.S.S.G. §3C1.1. This "provision is not intended to punish a defendant for the exercise of a constitutional right," but the application notes include perjury as an example of obstruction. §3C1.1, notes 2, 4. The notes include an additional requirement applicable in perjury cases.[3]

> If the defendant is convicted for an offense covered by…§2J1.3…this adjustment is not to be applied to the offense level for that offense except if a significant further obstruction occurred during the investigation, prosecution, or sentencing of the obstruction offense itself (e.g., if the defendant threatened a witness during the course of the prosecution for the obstruction offense)."

[3] Not all the charges against Mr. Teganya are covered by §2J1.3. However, the government conceded that because of the grouping rules, "application of the enhancement is appropriate only if such a 'significant further obstruction' occurred." App. A at 10, n.7.

§3C1.1, note 7.

This Court considered the constitutionality of this enhancement in *United States v. Dunnigan*, 507 U.S. 87 (1993). In *Dunnigan*, the defendant was charged with conspiring to distribute drugs. *Id.* at 89. Five witnesses testified for the government, and the defendant was the "sole witness in her own defense." *Id.* at 89-90. She denied "all criminal acts attributed to her," as well as the government witnesses' "inculpatory statements." *Id.* at 90. The judge found that her testimony was false and applied the obstruction enhancement. *Id.* at 90-91. This Court held that the application of this enhancement did not unconstitutionally burden the defendant's right to testify because "a defendant's right to testify does not include a right to commit perjury." *Id.* at 96.

Dunnigan was not a perjury case and did not raise the issue presented here. Application Note 7 was not relevant in *Dunnigan*, and the opinion did not discuss what might constitute a "significant further obstruction" that could justify the application of the enhancement in a perjury case. There is a Circuit split on the question of whether a defendant, charged with making false statements, who testifies consistently with the charged falsehoods, has committed a "significant further obstruction" as required by Application Note 7 to §3C1.1.

In an unpublished opinion, the Eleventh Circuit wrote that note 7 "explicitly except[s]" a defendant from the 3C1.1 enhancement where he or she repeated the charged perjury at trial. *United States v. Thomas*, 193 Fed.App. 881, 890 (11th Cir. 2006) (per curiam) (unpublished). It found no "significant further obstruction"

where the defendant testified "consistent with the grand jury testimony that formed the basis for her criminal conviction for perjury." *Id.* It concluded that note 7 so clearly exempted this conduct that the district court plainly erred by applying the enhancement. *Id.* at 890.

The Ninth Circuit has reserved ruling on the issue. *United States v. Johnson*, 812 F.3d 757, 760-62 n.2 (9th Cir. 2016). In *Johnson*, the defendant was charged with lying to a grand jury, and the Ninth Circuit found that the obstruction enhancement was appropriate where he made *new* perjurious statements at trial. *Id.* It did not "reach the issue of whether identical false testimony qualifies as a 'significant further obstruction.'" *Id.* In false-statement cases upholding the application of the enhancement, the Fifth and Sixth Circuit noted that the defendant made new false statements, suggesting that the outcome might be different if the defendant had repeated the charged statements. *See United States v. Pattan*, 931 F.2d 1035, 1037, 1042-43 (5th Cir. 1991) (finding evidence that defendant made "further false statements" sufficient to support obstruction enhancement); *United States v. DeZarn*, 157 F.3d 1042, 1054 (6th Cir. 1998) (upholding obstruction enhancement based on false statements made at trial that were not "mere reiterations" of charged falsehoods).

Cases that have permitted the application of the enhancement when the defendant testified and repeated charged falsehoods rely on *United States v. McCoy*, 316 F.3d 287, 289 (D.C. Cir. 2003) (per curiam). In *McCoy*, the defendant argued that "she did not obstruct justice by repeating the same perjured testimony

at her criminal trial…." *Id.* at 288-89. Citing *Dunnigan*, which did not discuss the "significant further obstruction" requirement, the panel wrote:

> We are reluctant to hold that Note 7 gives a defendant license to perjure herself in a criminal proceeding in order to avoid enhanced punishment for, of all things, perjury. Lying under oath to protect oneself from punishment for lying under oath seems to us—and to the Supreme Court—to be precisely the sort of "significant further obstruction" to which Note 7 refers.

Id. at 289. The panel did not cite additional authority or provide further explanation beyond its reluctance and perception. Other cases that have relied on *McCoy* similarly do not provide additional relevant analysis. *See United States v. Brewer*, 332 Fed.App. 296, 310 n.9 (6th Cir. 2009) (unpublished) (noting that obstruction enhancement is appropriate "where a defendant took the stand in a perjury trial" and citing *McCoy*); *United States v. Fernandez*, 389 Fed.App. 194, 202-04 (3d Cir. 2010) (unpublished) (observing that "there is no free pass for consistent perjury").

In this case, the First Circuit found the D.C. Circuit's brief opinion persuasive. App. A at 10-11. Like *McCoy* and other cases that have relied on it, the First Circuit did not provide additional support for its position other than citing *Dunnigan*. *Id.* Also like these other Circuits, the First Circuit did not explain why the logic of *Dunnigan* should extend to impact the definition of "significant further obstruction," which is an additional prerequisite to enhancement in perjury cases. *Id.* The Eleventh Circuit's ruling is more persuasive. *See Thomas*, 193 Fed.App. at 890. Application Note 7 contains an additional requirement that must be met before the obstruction enhancement can be imposed in a perjury case. §3C1.1, Application Note 7. Testifying consistently with charged falsehoods is not a "significant further

obstruction." *Dunnigan*, which did not involve a perjury charge or Note 7, does not answer this question.

The facts of this case show why the application of the §3C1.1 enhancement is inappropriate where the defendant testified and repeated the charged falsehoods. Mr. Teganya was subject to the higher range because he testified—consistent with the charges, consistent with his not guilty plea, consistent with his counsel's argument, and consistent with his witnesses. App. A at 11. Had he forgone his right to voice his own defense, he would not have been subject to a higher Guidelines range. Mr. Teganya's insistence that he did not lie was not a surprise; it did not go beyond what he had already said by pleading not guilty. He did not commit a significant further obstruction by testifying. His choice to testify does not make him more deserving of punishment than if he had put on his entire defense without testifying.

CONCLUSION

For the foregoing reasons, Mr. Teganya asks this Court to grant this petition, determine that the First Circuit erred in affirming his sentence and remand this case for further proceedings.

Respectfully submitted,

/s/ Christine DeMaso
Christine DeMaso
Federal Defender Office
51 Sleeper Street, 5th Floor
Boston, MA 02210
(617) 223-8061

Date: September 21, 2021