

21-7582

No. \_\_\_\_\_

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SUPREME COURT, U.S.

In the  
Supreme Court of the United States

**ORIGINAL**

FRANCISCO ABREU TARTABULL,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

*On Petition for A Writ of Certiorari to the United  
States Court of Appeals for the Eleventh Circuit*

**PETITION FOR A WRIT OF CERTIORARI**

FRANCISCO ABREU TARTABULL  
*Pro Se Petitioner*  
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### **QUESTION PRESENTED**

Whether the Eleventh Circuit's denial of a certificate of appealability, where the district court erred or alternatively abused its discretion by denying Mr. Tartabull's §2255 motion without holding an evidentiary hearing because his entitlement to relief on his claim of ineffective assistance of counsel was not conclusively refuted and the live testimony of Mr. Tartabull, his former counsel, Denis Gonzalez, and another attorney who was a witness to Gonzalez's deficient performance, Joaquin Perez, was integral to the accurate assessment of the merits of Mr. Tartabull's claim, is irreconcilable with controlling precedent, such that this Court should remand to the United States Court of Appeals for the Eleventh Circuit with instructions to issue a certificate of appealability?

## PARTIES TO THE PROCEEDINGS

There are no parties to the proceeding other than those listed in the style of the case.

## RELATED CASES

- *United States v. Francisco Tartabull*, No. 1:19-cr-20605-CMA-1, U.S. District Court for the Southern District of Florida at Miami. Judgment entered April 30, 2020.
- *United States v. Francisco Tartabull*, No. 20-11861-C, U.S. Court of Appeals for the Eleventh Circuit. Judgment of Dismissal entered Aug. 12, 2020.
- *Francisco Tartabull v. United States*, No. 1:21-cv-21606-CMA, U.S. District Court for the Southern District of Florida at Miami. Judgment entered May 31, 2021.
- *Francisco Tartabull v. United States*, No. 21-12193-E, U.S. Court of Appeals for the Eleventh Circuit. Judgment denying COA entered Nov. 3, 2021; judgment denying reconsideration of the denial of COA entered Jan. 7, 2022.

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**OPINIONS BELOW**

The Judgment of the United States Court of Appeals for the Eleventh Circuit denying Petitioner's motion for certificate of appealability is unpublished and may be found at USCA Case No. 21-12193-E; *Francisco Tartabull v. United States of America* (Nov. 3, 2021) (Appendix - A1).

The Order of the United States District Court for the Southern District of Florida at Miami denying Petitioner's motion to vacate and denying him a certificate of appealability is unpublished and may be found at USDC Case No. 1:21-cv-21606-CMA; *Francisco Tartabull v. United States of America* (May 31, 2021) (Appendix - A2).

The Judgment of the United States Court of Appeals for the Eleventh Circuit denying Petitioner's motion for reconsideration of the denial of a certificate of appealability is unpublished and may be found at USCA Case No. 21-12193-E; *Francisco Tartabull v. United States of America* (Jan. 7, 2022) (Appendix - A12).

**STATEMENT OF JURISDICTION**

The judgment denying reconsideration of the denial of Petitioner's motion for certificate of appealability was issued on January 7, 2022. This petition is timely filed pursuant to Sup. Ct. R. 13. This Court's jurisdiction rests on 28 U.S.C. §1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This case involves a federal criminal defendant's constitutional rights under the Sixth Amendment, which provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense.

This case also involves the application of 28 U.S.C. § 2253(c). 28 U.S.C. § 2253(c) provides that:

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

(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.

## STATEMENT OF THE CASE

### *1. Mr. Tartabull's Criminal Prosecution*

In the underlying criminal case, Mr. Tartabull was indicted by a federal grand jury, on September 19, 2019, and was charged with one count of conspiracy to commit health care and wire fraud, in violation of 18 U.S.C. § 1349, relating to insurance claims submitted to Blue Cross Blue Shield by South Dade Medical Center, Inc., which Tartabull owned and operated. [DE #3] (DE refers to entries to the criminal docket in the district court).

Mr. Tartabull hired attorney Denis Gonzalez as counsel to represent him on the indictment, and Gonzalez filed his notice of appearance on November 6, 2019. [DE #6]. Nearly three months later, on January 28, 2020, Gonzalez filed an unopposed motion to continue the trial setting, alleging that he was unprepared for trial and needed a 60- day continuance. [DE #30 at 1] (“The undersigned is not ready for trial, and is requesting an additional 60 days to take sworn statements from two prospective witnesses . . .”). The district court denied the continuance motion on January 29, 2020, and on the following day set the case for a change of plea. [DE #31, #32].

On February 7, 2020, Mr. Tartabull signed a plea agreement and entered a plea of guilty to the indictment. [DE #34]. A factual proffer was also prepared by the government and signed by Mr. Tartabull. [DE # 35]. The proffer alleged, in conclusory form, that Mr. Tartabull had

conspired with others to submit false health insurance claims to Blue Cross and that, in view of his operation of the medical center, was responsible for filing false claims and paying patients recruitment incentives. *Id.*

Mr. Tartabull's plea agreement provided for a loss amount of more than \$1.5 million, even though the factual basis indicated that Blue Cross had paid only \$920,644 in claims. [DE #34 at 4; #35 at 3]. The plea agreement also called for an aggravating role enhancement of three levels, even though the factual basis did not claim that Mr. Tartabull had personally recruited, managed, or supervised anyone. [DE #34 at 4].

The district court conducted a Fed. R. Crim. P. 11 plea colloquy, accepted the plea, and set Mr. Tartabull's case for sentencing. [DE #36]. On April 21, 2020, one day prior to the scheduled sentencing date, attorney Gonzalez moved for a continuance of the sentencing hearing, stating: "The undersigned has been unable to confer with the Defendant during the COVID-19 Pandemic because the undersigned's office has been closed. ... The undersigned is **not ready** to proceed with sentencing and is requesting more time from the court." [DE #42 at 1]. (emphasis in original). In his continuance motion, Gonzalez explained that he had been sick with Covid-19 symptoms and had only begun to start meeting with clients again. *Id. at 2.* The district court denied the motion for a 30-day continuance, but granted an additional week to April 30, 2020. [DE #44]. The day prior to sentencing, Gonzalez filed, in outline form, what he styled as objections to the presentence report, but which were principally statements

of non-objection to all material allegations and calculations. [DE #45]. The district court sentenced Mr. Tartabull to a 64-month term of imprisonment, seven months above the recommendation made by the government of a low-end guideline sentence, and ordered restitution in the amount of \$920,644. [DE #51].

#### *2. Proceedings on Mr. Tartabull's § 2255 Motion*

On April 26, 2021, Tartabull timely filed his *pro se* § 2255 motion, alleging as his sole claim that his plea counsel, Denis Gonzalez, was ineffective. [Doc #1 at 4] (Doc refers to entries to the civil (§ 2255) docket in the district court). Mr. Tartabull's sworn allegations in support of the § 2255 motion set forth deficient performance by counsel in that: counsel had lied to Mr. Tartabull in order to convince Mr. Tartabull of the existence of incontrovertible evidence of Mr. Tartabull's knowing participation in the health care fraud conspiracy (in the form of an audio recording in which Mr. Tartabull incriminated himself); counsel had misled Tartabull regarding the sentencing implications of the plea agreement, in that counsel had assured Mr. Tartabull that he would serve little or no prison time; and counsel had failed to follow through on plea negotiation requests by Tartabull to modify the terms of the plea agreement. Mr. Tartabull further alleged that his mental state at the time of the plea was unsound. *Id.*; see also [Doc #1-1 at 1-3]. Mr. Tartabull stated that at an evidentiary hearing, he would produce an additional witness in support of his claims, specifically, attorney Joaquin Perez, who "is aware of Mr. Gonzalez' reprehensible behavior and should

also be subpoenaed to testify to this miscarriage of justice." [Doc. #1-1 at 4].

In response to Mr. Tartabull's § 2255 motion, the government filed, on May 21, 2021, a memorandum of law citing the district court's compliance with Fed. R. Crim. P. 11 at the plea colloquy as mitigating any misstatements by Gonzalez regarding the effect and value of the plea agreement. [Doc #6 at 1-6]. Regarding Mr. Tartabull's allegation that Gonzalez had lied to him about the existence of an audio tape that made going to trial a futile exercise, the government also filed and relied on what it labeled as an "affidavit" by attorney Gonzalez (even though the document was unsworn and lacked notarization) that contradicted Mr. Tartabull. [Doc #6 at 6; #6-3]. The government argued:

As to defendant's first contention, his allegation is flatly denied by the record. His trial counsel, Dennis Gonzalez, asserts that there were no audio recordings of Tartabull nor did he ever inform defendant of the existence of any such recording. See Affidavit of Dennis Gonzalez, Jr., (Ex. 3) at ¶ 12. The only recordings provided by the Government in discovery involved digital recordings of Tartabull captured at a bank drive through which were reviewed by Tartabull. Id. at ¶ 13. That Tartabull entered a guilty plea to the conspiracy charge belies his assertion that he was innocent. Hence, petitioner does not

establish prejudice or materiality because of this alleged omission on the part of this counsel. Accordingly, this allegation of ineffectiveness does not warrant relief.

[Doc #6 at 6].

Ten (calendar)/ five (business) days after the government's filing, and without affording incarcerated *pro se* movant Tartabull an opportunity to reply, the district court, on May 31, 2021, entered an order denying the § 2255 motion and asserting that the Gonzalez "affidavit" and the plea proceedings refuted Tartabull's sworn claims. [Doc #7 at 6] ("Movant insists 'being lied to by his lawyer clearly falls [below] any objective standard of reasonableness.' ... Movant conclusively states he would have gone to trial had counsel performed effectively.").

The district court concluded that Mr. Tartabull's claim that Gonzalez had lied to him and that the lie induced his guilty plea was "palpably incredible and refuted by the record." *Id.* The district court reasoned that Mr. Tartabull could not have been influenced by the asserted lie by counsel about the existence of conclusive proof that would render trial futile, because at the plea hearing, in response to the question whether he was pleading guilty for the reason that he was guilty, Mr. Tartabull agreed. *Id.* According to the district court, Tartabull's plea colloquy answer that he was pleading guilty because he was guilty meant that he could not have made the decision to plead guilty based on a false claim by Gonzalez of incontrovertible evidence of guilt. *Id.*

The district court also relied directly on the government-submitted document that the district court described as a “sworn affidavit” by attorney Gonzalez. [Doc #7 at 7]. The district court failed to recognize that the document was not an affidavit, in that it lacked notarization or, in the alternative, compliance with 28 U.S.C. § 1746. The district court also failed to note that factual contradictions between claims of counsel and client in a § 2255 proceeding should not be resolved on the basis of simply crediting counsel’s recollection over the competing recollection of the accused. *See Gallego v. United States*, 174 F.3d 1196, 1198–99 (11th Cir. 1999).

The district court also noted that at the plea hearing Mr. Tartabull responded affirmatively to the district court’s questions regarding whether Mr. Tartabull was satisfied with counsel and whether he was pleading guilty knowingly and voluntarily. *Id.* Addressing the remaining aspects of Tartabull’s allegations of plea counsel’s ineffectiveness, the district court relied on both the Gonzalez “affidavit” and the plea hearing transcript as refuting Tartabull’s claims that counsel misled him regarding the sentencing import of the plea agreement (i.e., that counsel had told Tartabull he would serve minimal prison time) and that counsel had failed to make requested changes to the plea agreement. [Doc. #7 at 7–9]. The district court rejected Mr. Tartabull’s claim that he was in an emotionally traumatized state when counsel induced him to plead guilty, in light of Tartabull’s denial at the plea hearing that he was coerced or threatened. [Doc #7 at 9]. The district court made no findings regarding Tartabull’s actual appearance or apparent

emotional state when he entered the plea.

On June 29, 2021, Mr. Tartabull timely filed his notice of appeal. [Doc #9].

On November 3, 2021, the United States Court of Appeals for the Eleventh Circuit denied COA, [App. A, A1], and on January 7, 2022, the Eleventh Circuit denied reconsideration of the denial of COA. [App. C, A12]. This petition is timely submitted, within 90 days of the Eleventh Circuit's January 7, 2022 judgment denying reconsideration of the denial of COA. [App. C].

#### **REASONS FOR GRANTING THE WRIT**

This Court should grant the writ of *certiorari*. At a minimum, this Court should order summary reversal because in denying a certificate of appealability, the Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by the district court, as to call for an exercise of this Court's supervisory power. This is true because the district court's procedural ruling, denying Mr. Tartabull the evidentiary hearing to which he was statutorily entitled – where his entitlement to relief on his claim of ineffective assistance of counsel was not conclusively refuted and the live testimony of Mr. Tartabull and his former counsel, MSSRS. Gonzalez and Perez, was integral to the accurate assessment of the merits of Mr. Tartabull's claim – is irreconcilable and in direct conflict with 28 U.S.C. § 2255, and was thus clearly debatable amongst jurists of reason under controlling

precedent. Additionally, Petitioner's claim of ineffective assistance of counsel provided the required constitutional dimension for a certificate of appealability.

Specifically, Mr. Tartabull's §2255 presented a claim that he was deprived of his right to the effective assistance of counsel, enshrined in and guaranteed by the Sixth Amendment to the United States Constitution, by trial counsel's lies, misadvice and failure to adequately participate in plea negotiations, and that absent such lies and misadvice, Mr. Tartabull would not have pled guilty, but would have exercised his right to trial by jury.

The district court denied Mr. Tartabull's motion to vacate without holding the evidentiary hearing to which he was statutorily entitled, by virtue of the reality that his claims were neither refuted by the record, palpable incredible or conclusory, and where if proven Mr. Tartabull's claim would entitle him to vacation of his conviction and sentence.

Mr. Tartabull's claim of ineffective assistance of counsel at trial is of constitutional dimension as it states a violation of the Sixth Amendment. *See Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d (1984).

The lower courts' resolution of Mr. Tartabull's claim is debatable amongst reasonable jurists, as shown herein. Specifically, the district court's decision to deny Mr. Tartabull's claim, without holding an evidentiary hearing, where he made a *prima facie* showing of ineffective

assistance of counsel, is debatable amongst jurists of reason and deserves encouragement to proceed further. The Eleventh Circuit's cursory adoption of the district court's rationale to deny Mr. Tartabull the COA to which he is entitled should be summarily reversed by this Court.

**A. The Certificate of Appealability Standard.**

To obtain a certificate of appealability, a *habeas* petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, the petitioner need not demonstrate that he would prevail on the merits. Rather, he "must '[s]how 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.'" *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)) (some internal quotation marks omitted)).

"[A] COA does not require a showing that the appeal will succeed." *Id.* at 337. As this Court has explained: "We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Id.* at 338. In *Slack*, 529 U.S. at 478, this Court held:

when the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue (and an appeal of the district court's order may be taken) if the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Reasonable jurists could debate the merits of Petitioner's ineffective assistance of counsel claim and his entitlement to an evidentiary hearing on the same. The legal arguments, set forth below, demonstrate that Petitioner has satisfied the § 2253(c) standard because, at a minimum, both the constitutional question and the procedural one are "debatable among jurists of reason." *Miller-El*, 537 U.S. at 336 (quoting *Barefoot*, 463 U.S. at 893 n.4).

**B. Reasonable Jurists Could Debate or, for that Matter, Agree that an Evidentiary Hearing was Statutorily Mandated.**

The district court erred and abused its discretion by denying Mr. Tartabull's §2255 motion without holding an evidentiary hearing where his entitlement to relief on his claim was not conclusively refuted and the live testimony of Mr. Tartabull and his former counsel, MSSRs. Gonzalez and Perez, was integral to the accurate assessment of the merits of Mr. Tartabull's claim.

Title 28 U.S.C. § 2255 provides that "[u]nless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall . . . grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto." (Emphasis added). Federal courts have applied the foregoing statutory mandate to require that a district court hold an "evidentiary hearing and rule on the merits of a petitioner's claim [] if the petitioner alleges facts that, if true, would entitle him to relief." *Rosin v. United States*, 786 F.3d 873, 877 (11th Cir. 2015). Instructively, courts recognize that "[w]hen [] factual allegations 'relate[ ] primarily to purported occurrences outside the courtroom and upon which the record could, therefore, cast no real light,' and where the ultimate resolution rests on a credibility determination, an evidentiary hearing is especially warranted." *United States v. White*, 366 F.3d 291, 302 (4th Cir. 2004) (internal citations omitted).

An objective review of the record before the district and appellate courts reveal that nothing conclusively established that Mr. Tartabull was not entitled to relief on the claim of ineffective assistance of counsel, presented in his motion to vacate. Thus, Mr. Tartabull enjoyed a statutory entitlement to an evidentiary hearing to allow the district court to hear live testimony from Mr. Tartabull and his former counsel and make the credibility assessments necessary to resolve his claim for relief.

As shown in his motion to vacate and supporting papers, Mr. Tartabull's former counsel was constitutionally deficient: 1) in lying to his former client concerning an audio recording which Mr. Gonzalez stated the prosecution possessed and which according to Gonzalez made Mr. Tartabull's conviction at trial a certainty; and 2) for misadvising his former client concerning the consequences of accepting the plea offer counsel recommended – such that Mr. Tartabull believed that he would receive little or no prison time if he accepted the plea offer. Mr. Tartabull's statements of fact in support of this claim were submitted under penalty of perjury.

At the point that the district court denied Mr. Tartabull the evidentiary hearing to which he was entitled, instead erroneously denying his motion to vacate, the lower court was confronted by Mr. Tartabull's verified memorandum brief and an unsworn, unverified, and unnotarized submission from his former counsel, Mr. Gonzalez. The statement from Mr. Tartabull's former counsel, Denis Gonzalez, was no more inherently credible

that Mr. Tartabull's and did not provide an adequate basis to deny Mr. Tartabull's claim. To the contrary, the version of events set forth under penalty of perjury by Mr. Tartabull "if true, would entitle him to relief." There was nothing in the record to refute Mr. Tartabull's claim.

Section 2255(b) imposes no requirement of independent corroboration, and a declaration is not inherently unbelievably merely because it is self-serving. *Cf. Nigro v. Sears, Roebuck & Co.*, 784 F. 3d 495, 497 (9th Cir. 2015) (on summary judgment, a district court may not disregard a piece of evidence . . . solely based on its self-serving nature."). The versions of events offered by the parties could only have been properly reconciled through the district court assessing the credibility of the live testimony of Mr. Tartabull and his former counsel, MSSRs. Gonzalez and Perez, at the statutorily mandated evidentiary hearing.

The record demonstrates that the district court's decision to deny Mr. Tartabull the evidentiary hearing to which he was statutorily entitled was based on several errors which are more than debatable, they either represent clearly erroneous findings of fact, application of the wrong legal standard, or legal conclusions which conflict with controlling precedent. First, the district court clearly erred in considering Mr. Gonzalez's signed statement an affidavit. It was neither sworn and notarized, nor verified under penalty of perjury, pursuant to 28 U.S.C. § 1746. [Doc. #6-3]. Notably, this reality would have been brought to the lower court's attention by the *pro se* movant, but for the fact that the district court

ruled within days of the prosecution's filing of said statement, meaningfully depriving Mr. Tartabull of the right to submit a reply, as called for under Rule 5 of the Rules Governing Section 2255 Proceedings in the United States District Courts.

Second, the district court applied the wrong standard to determine whether Mr. Tartabull was entitled to an evidentiary hearing. Specifically, in its order denying Mr. Tartabull's motion to vacate, the lower court explicitly applied the standard governing whether a state prisoner, moving for relief under 28 U.S.C. § 2254, should be granted an evidentiary hearing, rather than the more movant-friendly standard requiring an evidentiary hearing be granted to a federal prisoner, seeking relief under 28 U.S.C. § 2255, whenever his or her claim is not conclusively refuted by the record or palpably incredible. [Doc #7, pp. 9-10].

Third, the district court violated the statutory mandate of 28 U.S.C. § 2255, by denying Mr. Tartabull the evidentiary hearing to which he was entitled. Specifically, the lower court credited the signed statement of Mr. Tartabull's former counsel over Mr. Tartabull's statements of fact, which were verified under penalty of perjury. In a case of dueling affidavits – which is NOT the case here, as Mr. Gonzalez did not submit an affidavit, only a signed statement, cross-dressed as such – a district court violates the statutory mandate of 28 U.S.C. § 2255 and controlling precedent when it credits counsel's affidavit over a movant's affidavit without hearing their respective live testimony – which would allow the court to

make the requisite credibility determinations. Moreover, there was nothing about Mr. Tartabull's claim which rendered it palpably incredible nor was the same conclusively refuted by the record.

An evidentiary hearing is generally required if a habeas motion presents a colorable claim that arises from matters outside the record. *See Advisory Committee Notes to Rule 8, Rules Governing § 2255 Proceedings; Townsend v. Sain*, 372 U.S. 293, 312–13 (1963); *Aron v. United States*, 291 F.3d 708, 715 n.6 (11th Cir. 2002). An evidentiary hearing can be dispensed with in § 2255 proceedings only when the record conclusively refutes the allegations of the movant. The district court denied relief based on that court's disbelief of the § 2255 claims, rather than conclusive refutation by the record. Putting to one side the district court's error in crediting the unsworn competing recollection of Gonzalez, and turning instead to the remainder of the analysis by the district court, although the district court asserted that the § 2255 claims were "palpably" incredible, [Doc #7 at 6], there was nothing in the plea colloquy, plea agreement, or factual proffer that contradicted anything alleged by Mr. Tartabull.

Nothing in the record of the criminal case even touched on whether attorney Gonzalez—due either to his own confusion or an intentional misstatement—told Mr. Tartabull that he could not prevail at trial because the government had an audio recording of Tartabull that clearly manifested Tartabull's guilt.

The plea hearing transcript simply says nothing one way or the other regarding whether Gonzalez made such a fundamental misrepresentation to Tartabull. The factual basis says nothing specific at all regarding any action taken personally by Tartabull. And the plea agreement contains essentially boilerplate language of waiver, rather than a description of any statements made to Tartabull by Gonzalez. Thus, the underlying record of the criminal case did not conclusively refute the core § 2255 claim in any way. *See Fontaine v. United States*, 411 U.S. 213, 215 (1973) (relying upon § 2255's language to reverse summary dismissal and remand for a hearing because the record of the case did not "conclusively show" that under no circumstances could the petitioner establish facts warranting relief under § 2255"); *Harris v. Nelson*, 394 U.S. 286, 292 (1969) ("There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus.").

On this basis, Mr. Tartabull was entitled to an evidentiary hearing to allow the district court to hear and assess the credibility of the live testimony of Mr. Tartabull and his former counsel, Messrs. Gonzalez and Perez. Thus, the district court's denial of Mr. Tartabull's motion to vacate under 28 U.S.C. § 2255, where an evidentiary hearing was mandated, is more than debatable amongst jurists of reason, it is simply an abuse of discretion. COA should issue as to this question or some derivative.

The Eleventh Circuit denied Petitioner a COA in a cursory single sentence judgment. [App. A, A1]. Both the

district court's erroneous ruling and the Eleventh Circuit's cursory denial of COA are unsupportable on the record. As reasonable jurists could debate the appropriateness of the district court's decision as described, *supra*, a COA should issue as to this question.

**C. This Court Should Summarily Reverse the Eleventh Circuit's Denial of COA.**

This Court has authority to "reverse any judgment" brought before it and "remand the cause and direct entry of such appropriate judgment . . . or require such further proceedings to be had as may be just under the circumstances." 28 U.S.C. § 2106. Summary reversals are "usually reserved by this Court for situations in which the law is well settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting); *see, e.g., United States v. Bass*, 536 U.S. 862, 864 (2002) (ordering summary reversal because the decision below was "contrary to" established law); *Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (ordering summary reversal); *Leavitt v. Jane L.*, 518 U.S. 137, 145 (1996) (ordering summary reversal where the decision under review was "plainly wrong"). The Eleventh Circuit's order denying Petitioner's motion for a certificate of appealability is clearly wrong. Petitioner clearly satisfied the standard for a certificate of appealability. This case warrants summary reversal.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of *certiorari* to the United States Court of Appeals for the Eleventh Circuit, vacate the Eleventh Circuit's order denying COA and remand the matter to the Eleventh Circuit with instructions to grant COA.

Respectfully submitted,

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