**NO:**

**IN THE**
**SUPREME COURT OF THE UNITED STATES**

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**SONNY RAMDEO,**

***Petitioner*,**

**v.**

**UNITED STATES OF AMERICA,**

***Respondent*.**

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

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# PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

When Congress enacted the Sentencing Reform Act of 1984 (Pub. L. No. 98-473, Tit. II, ch. II, 98 Sta. 1987; 18 U.S.C. §3551, et seq.), it provided a few exceptions to the general rule that final judgments are unassailable. One of the exceptions was relief from a judgment through compassionate release, provided for in 18 U.S.C. §3582(c)(1)(A). This exception was expanded by the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, §603(b) (2018) ("FSA 2018"), which for the first time allowed defendants to file their own compassionate release motions with the courts.

**The question presented for review in this case** is whether the expanded compassionate release statute, 18 U.S.C. §3582(c)(1)(A) (2018) triggers any sentencing guideline policy statements when defendants file their own motions, specifically whether U.S.S.G. § 1B1.13 is applicable to defendant-filed motions, or whether U.S.S.G. § 1B1.13 is inapplicable to such defendant-filed motions.

This question is the subject of a circuit split with eight circuits agreeing that U.S.S.G. §1B1.13 does not bind defendant-filed motions, while the Eleventh Circuit alone, finds that §1B1.13 is binding and limits defendant-filed compassionate release motions.

## INTERESTED PARTIES

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

## RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

*United States v. Sonny Ramdeo*, No. 12-80226-Cr-Marra (February 10, 2021)

United States Court of Appeals (11th Cir.):

*United States v. Sonny Ramdeo*, No. 21-10836 (January 26, 2022)

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**IN THE**
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Sonny Ramdeo respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 21-10836 in that court on January 26, 2022, which affirmed the district court's order denying petitioner's motion for compassionate release in the United States District Court for the Southern District of Florida.

## OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the district court's order denying petitioner's motion for compassionate release in the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

## STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on January 26, 2022. This petition is timely filed pursuant to SUP. CT. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

## STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely on the following statutory and guideline provisions:

### 18 U.S.C. §3582(c)(1)(A):

> The court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment * * *, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that * * * extraordinary and compelling reasons warrant such a reduction * * * and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

### U.S.S.G. §1B1.13

> Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. §3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that--
> **(1)(A)** Extraordinary and compelling reasons warrant the reduction; or
>
> **(B)** The defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned;
> **(2)** The defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and

**(3)** The reduction is consistent with this policy statement.

## Commentary to U.S.S.G. §1B1.13

**Application Notes:**

**1. Extraordinary and Compelling Reasons.--** Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the circumstances set forth below:

**(A) Medical Condition of the Defendant.--**

**(i)** The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

**(ii)** The defendant is--

**(I)** suffering from a serious physical or medical condition,

**(II)** suffering from a serious functional or cognitive impairment, or

**(III)** experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

**(B) Age of the Defendant.--**The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

**(C) Family Circumstances.--**

**(i)** The death or incapacitation of the caregiver of the defendant's minor child or minor children.

**(ii)** The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

**(D) Other Reasons.--**As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

* * *

**4. Motion by the Director of the Bureau of Prisons. --** A reduction under this policy statement may be granted only upon motion by the Director of the Bureau of Prisons pursuant to 18 U.S.C. § 3582(c)(1)(A). The Commission encourages the Director of the Bureau of Prisons to file such a motion if the defendant meets any of the circumstances set forth in Application Note 1. The court is in a unique position to determine whether the circumstances warrant a reduction (and, if so, the amount of reduction), after considering the factors set forth in 18 U.S.C. § 3553(a) and the criteria set forth in this policy statement, such as the defendant's medical condition, the defendant's family circumstances, and whether the defendant is a danger to the safety of any other person or to the community.

## STATEMENT OF THE CASE

Petitioner was previously convicted of one count of wire fraud pursuant to 18 U.S.C. §1343 and one count of money laundering in violation of 18 U.S.C. §1956(a)(1)(B)(i). He was sentenced to 240 months imprisonment, 3 years supervised release and $21,442,173 in restitution. He appealed, but his conviction and sentence were affirmed. He was also denied a petition for writ of certiorari to this Court.

Over the next eight years, Mr. Ramdeo pursued rehabilitation through Bureau of Prison programs. He completed 55 BOP courses. He also completed a program in which he earned a certificate as a Legal Assistant/Paralegal. He earned this certificate over three years, and he had invested approximately 915 hours to complete it. He had minimal PATTERN and BRAVO scores, and BOP did not consider him a danger as it had placed him in a low security facility. He made regular payments towards his restitution.

In April 2020, Mr. Ramdeo began seeking relief from his sentence thorough new expanded rights for compassionate relief through the Bureau of Prisons. His request was ultimately denied, and he filed a motion for compassionate release with the district court.

In his motion, Mr. Ramdeo explained that "extraordinary and compelling reasons" existed because COVID-19 was spreading rapidly throughout federal prisons, and specifically, that his facility had cases of COVID. He further explained

that according to the Centers for Disease Control ("CDC"), he was at high risk because he had many health conditions that put him at high risk of complications and morbidity due to COVID. These conditions included obesity with a BMI of 42.7, hypertension, prediabetes, latent TB, chronic bronchitis, and anxiety. He also had daily respiratory problems and coughing spells. He argued that conditions in prison were especially difficult because it was impossible to observe proper safety protocols such as social distancing, and personal safety equipment, such as masks and sanitizer, were scarce.

At the time he filed his motion, he had earned 3 months of early release credit and he worked at UNICOR as a quality assurance inspector as part of the Department of Labor Quality Control Inspector Apprenticeship Program. He had served approximately 7.5 years in prison.

The government opposed Mr. Ramdeo's motion for compassionate release. It argued that his request failed because his health conditions did not meet the requirements set out in U.S.S.G. §1B1.13. In particular, the government argued that Mr. Ramdeo had failed to establish that he had a terminal condition which rendered him unable to perform self-care in prison. Additionally, he was not elderly, and he did not demonstrate deterioration of a physical or mental condition due to aging. According to the government, the fact that his health conditions fell short of 1B1.13's standard meant that he could not obtain compassionate relief. The government argued that Mr. Ramdeo could not avoid this result because §1B1.13 was

a binding guideline that governed the inquiry of whether there was extraordinary and compelling reasons. Since Mr. Ramdeo could not meet the strict requirements of §1B1.13, he could not obtain compassionate relief.

The government did not address Mr. Ramdeo's substantial rehabilitative efforts, and it indicated that he had not served a sufficient amount of his sentence since he had only been in prison for approximately 37.5% (based on gross time from date of arrest to time of compassionate release proceedings) - 44% (based on projected release date) of his sentence.

The district court denied Mr. Ramdeo's motion, finding that Ramdeo's medical conditions did not qualify as extraordinary and compelling reasons due to U.S.S.G. §1B1.13 (policy statement) application note 1. The court agreed with the government that 1B1.13 limited extraordinary and compelling reasons to scenarios such as when a defendant's health condition was terminal or diminished the defendant's ability to provide self-care, or when the director of the Bureau of Prisons determined an extraordinary and compelling reason existed. The court found that Ramdeo had failed to meet 1B1.13's requirements. Thus, the district court found that Ramdeo had failed to show that he suffered from a serious medical or physical condition that qualified as an extraordinary and compelling reason in confluence with COVID-19.

Mr. Ramdeo filed a renewed motion and a motion for reconsideration which were both denied. By the time he litigated his motion for reconsideration, he had

accumulated more good time credit and had served approximately 8.2 years, which was slightly over the 50% mark of the time that he was scheduled to serve. The district court denied his renewed motion and motion to reconsider, citing its earlier reasoning that §1B1.13 governed.

Mr. Ramdeo appealed. The Eleventh Circuit affirmed the denial of his compassionate release motion. *United States v. Ramdeo*, 11th Cir. No. 21-10836, 2022 WL 225411, *3 (11th Cir. 2022) (*per curiam*). The court found that Mr. Ramdeo had not shown extraordinary and compelling reasons justifying compassionate release because his request did not match the standards set out in U.S.S.G. §1B1.13 or its commentary. *Id.* at *2-*3. The court found that §1B1.13's policy statement was binding on Mr. Ramdeo's "defendant-filed" compassionate release motion pursuant to *United States v. Bryant*, 996 F.3d 1243, 1251 (11th Cir. 2021), *cert denied*, 142 S.Ct. 583 (2021). The court reasoned:

> Under the prior panel precedent rule, we are bound by prior published decisions that have not been overruled by the Supreme Court or by us sitting *en banc*. . . . In *Bryant*, we held the Sentencing Commission's definition of "extraordinary and compelling reasons" that permit reduction of an incarcerated defendant's sentence are binding upon courts presented with motions under 18 U.S.C. sec. 3582(c)(1)(A). . . . We . . . concluded that while defendants may file § 3582(c)(1)(A) motions, district courts must still follow the extraordinary and compelling reasons set out by the BOP and may not independently determine what may constitute extraordinary and compelling reasons for reducing a defendant's sentence.
>
> Mr. Ramdeo argues that we incorrectly decided *Bryant*, and notes that eight of our sister circuits disagree with our position. Whatever the merits of that argument, *Bryant* applies to Mr.

> Ramdeo's motion for compassionate release and constitutes binding precedent for us as a later panel.

*United States v. Ramdeo*, 2022 WL 225411, *1.

The court further found that §1B1.13 limited the conditions qualifying as extraordinary and compelling reasons as follows:

> [§1B1.13] states that extraordinary and compelling reasons exist if (among other things) the defendant is suffering from a terminal illness or a serious physical or medical condition that substantially diminishes his ability to provide self-care within the environment of prison and from which he is not expected to recover. *Id.*, *comment*. n.1(A). The policy statement in U.S.S.G. §1B1.13 applies to all motions filed under §3582(c)(1)(A), including those filed by prisoners, and thus, district courts may not reduce a sentence under §3582(c)(1)(A) unless a reduction would be consistent with §1B1.13.

*Id*. at *2.

Thus, the court concluded:

> Given our decision in *Bryant*, we cannot say that the district court abused its discretion. We accept that Ramdeo's medical conditions are serious, but even taken collectively they did not diminish his ability to provide self-care while incarcerated as required by the Sentencing Commission's policy statement. *See* §1B1.13, comment n.1(A). The conditions therefore did not constitute extraordinary and compelling reasons for a sentence reduction.

*Id*. at *3.

Because the court ruled that Mr. Ramdeo was ineligible, it did not address any other arguments that Mr. Ramdeo raised in his appeal. *Id.* at *3 n.2. Mr. Ramdeo seeks further review and requests that this Court grant his petition for writ of certiorari.

## REASON FOR GRANTING THE WRIT

**This Court should grant the petition to resolve an important circuit conflict of whether the expanded compassionate release statute, 18 U.S.C. §3582(c)(1)(A) (2018), triggers any sentencing guideline policy statements when defendants file their own motions, specifically whether U.S.S.G. § 1B1.13 is applicable to defendant-filed motions as held by the Eleventh Circuit, or whether U.S.S.G. § 1B1.13 is inapplicable to such defendant-filed motions as held by eight other circuit courts of appeal based on §1B1.13's express textual language.**

In the courts below, Mr. Ramdeo sought relief from his incarceration through the amended compassionate release statute, 18 U.S.C. §3582(c)(1)(A) (2018). He noted that his several serious medical conditions and the COVID-19 pandemic constituted extraordinary and compelling reasons for compassionate release.

The compassionate release provision was originally a part of Congress' Sentencing Reform Act of 1984 (18 U.S.C. §3551, et seq.), which was enacted to make the federal sentencing process more fair and uniform. As part of that effort, Congress also created the Sentencing Commission and authorized it to promulgate sentencing guidelines and policy statements. See 28 U.S.C. §§991, 994(a). The system recognized that final judgments in criminal cases were generally unassailable, but Congress also provided for a few exceptions that allowed post-judgment modifications of criminal sentences. 18 U.S.C. §3582(c). One of those exceptions was if a defendant could establish "extraordinary and compelling reasons," warranting "compassionate release." 18 U.S.C. §3582(c)(1)(A). The compassionate release provision was a safety valve for sentences that may have been reasonable

when they were first imposed, but later became unreasonable due to new circumstances.

As first enacted, the Director of the Bureau of Prisons ("BOP") was the only party that could file a motion for compassionate release on behalf of a defendant. See 18 U.S.C. §3582(c)(1)(A) (1998). Years later, the Sentencing Commission promulgated U.S.S.G. §1B1.13 (policy statement) & commentary n.1, which set out four examples of extraordinary and compelling circumstances: (1) the defendant's medical condition was terminal or interfered with the defendant's self-care in the prison setting; (2) the defendant was aged 65 or older with serious deterioration related to aging and completed at least 10 years or 75% of his term of imprisonment; (3) the defendant had family circumstances where the defendant's child or spouse was in need of a caregiver and the defendant was the only available caregiver; or (4) there was "an extraordinary and compelling reason other than, or in combination with," the reasons already described above "as determined by the Director of the Bureau of Prisons." Sentencing Guidelines App. C, Amend. 683 (2006); Amend 698 (2007). The same commentary, n.4, stated that, "A reduction under this policy statement [§1B1.13] may be granted only upon motion by the Director of the Bureau of Prisons pursuant to 18 U.S.C. §3582(c)(1)(A)." U.S.S.G. §1B1.13, commentary, app. n.4.

However, BOP did not administer the compassionate release program well. See Dep't of Justice, Office of the Inspector General, *The Federal Bureau of Prisons' Compassionate Release Program* i-iii (Apr. 2013) (OIG Report) at 11. To correct the

situation, Congress amended §3582(c)(1)(A) in the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, §603(b) (2018). Under those amendments, Congress expanded and expedited federal compassionate release, and allowed courts to grant relief even when BOP found release inappropriate. The amendments provided that a district court could grant compassionate relief upon motion of the BOP or the defendant. 18 U.S.C. §3582(c)(1)(A) (2018). As amended, Section 3582(c)(1)(A) states:

> The court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment * * *, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that * * * extraordinary and compelling reasons warrant such a reduction * * * and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. §3582(c)(1)(A).

Thus, once a defendant has properly filed a motion, a court may resentence the defendant if the court finds the reduction is warranted by "extraordinary and compelling reasons" and is "consistent with applicable policy statements issued by the Sentencing commission." The statutory question that has arisen in post-FSA 2018 compassionate release motions is whether §1B1.13 (policy statement), note 1, is an "applicable policy statement," in the case of defendant-filed motions, or whether it

is non-applicable since it only contemplated and only expressly applied to BOP-filed motions.

The Eleventh Circuit in *United States v. Bryant*, 996 F.3d 1243, 1251 (11th Cir. 2021), *cert denied*, 142 S.Ct. 583 (2021), held that U.S.S.G. §1B1.13 policy statement and n.1 were applicable and binding on defendant-filed compassionate release motions. The *Bryant* court recognized that several other circuit courts had held otherwise. However, it veered from these other circuits through its interpretation of §3582(c)(1)(A)'s word "applicable." *Bryant*, 996 F.3d at 1252-53. It looked to a dictionary definition of the word "applicable," and found that §1B1.13 was capable of being applied. *Id*. Although the Court acknowledged that the plain terms of §1B1.13 were expressly directed only at BOP-filed motions, and that the policy statement was promulgated at a time when only BOP-filed motions existed, the *Bryant* majority reasoned that those portions of the policy statement referencing the BOP were "mere prefatory" clauses that had no operative effect. *Id*. at 1259-60. Thus, the majority concluded that §1B1.13 applied to defendant-filed motions created by the First Step Act and constrained the grounds on which a district court could grant relief. *Id*. The decision drew a dissent, which objected to striking or ignoring the express language of §1B1.13 referencing BOP which made it inapplicable to 18 U.S.C. §3582(c)(1)(A). *Id*. at 1269-70. The dissent also stated that making the §1B1.13 policy statement binding on defendant-filed motions defeated the purpose of the FSA 2018 amendments to the compassionate release provision because it put such

motions back in the hands of the BOP director who had proven to be derelict in properly requesting such relief on behalf of defendants. *Id*. at. 1273.

The *Bryant* court is in conflict with every other circuit to decide the issue. The Second, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, and District of Columbia Circuits all decided that the U.S.S.G. §1B1.13 policy statement was not applicable or binding in defendant-filed compassionate release motions. *United States v. Brooker*, 976 F.3d 228, 235 (2d Cir. 2020); *United States v. McCoy*, 981 F.3d 271, 282 (4th Cir. 2020); *United States v. Shkambi*, 993 F.3d 388, 392-93 (5th Cir. 2021); *United States v. Jones*, 980 F.3d 1098, 1109-1111 (6th Cir. 2020); *United States v. Gunn*, 980 F.3d 1178, 1180-81 (7th Cir. 2020); *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021); *United States v. McGee*, 992 F.3d 1035, 1050 (10th Cir. 2021); *United States v. Long*, 997 F.3d 342 (D.C. Cir. 2021). These courts reasoned both that §1B1.13 & n.1 applied only to motions filed by the BOP Director and that the Sentencing Commission was not contemplating defendant-filed motions when it promulgated 1B1.13.

The D.C. Circuit issued its opinion after the Eleventh Circuit's *Bryant* case, and discussed the conflict head-on. It stated:

> [A] divided decision of the Eleventh Circuit ruled that U.S.S.G. §1B1.13 is applicable to defendant motions for compassionate release. The court reasoned that the pre-First Step Act policy statement is "capable of being applied" to those motions, and so it must be "applicable" within the meaning of 18 U.S.C. §3582(c)(1)(A).

But that opinion's reliance on dictionary definitions of "applicable" misses the forest for a tree. The decision ignores all of the other words in Section 1B1.13 that already state in plain and clear terms when the policy statement applies: "Upon motion of the Director of the Bureau of Prisons[.]" U.S.S.G. §1B1.13. As [dissenting] Judge Martin explained, the opinion's "dictionary-based theory about when a policy statement may be 'applicable' flies in the face of the statement's plain text that tells us when it is actually 'applicable.' In other words, this policy statement "is capable of being applied" to Long's motion, only if we take an eraser to the words that say the opposite.

The Eleventh Circuit backhanded the policy statement's express text as "prefatory" language that just "orients the reader by paraphrasing the statute as it existed at the time the policy statement was enacted." No so. The opening language is not mere prologue. Quite the opposite, the policy statement's first words – "Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. §3582(c)(1)(A)" – set out a rigid and indispensable condition of release: that the Bureau of Prisons itself agrees that relief is warranted. In that way, the beginning of the policy statement puts into effect Congress's (now superseded) command that motions for compassionate release may be filed only by the Bureau of Prisons. . . . To dismiss these words as inert preface is to ignore a direct textual instruction and central statutory feature of the compassionate release scheme prior to the First Step Act.

That essential function of Section 1B1.13's opening words makes stark the policy statement's inapplicability to the post-First Step Act world where Congress took compassionate release motions out of the Bureau of Prisons' exclusive control. Those words likewise highlight that Section 1B1.13 does not reflect any policy statement or policy judgment by the Sentencing Commission about how compassionate release decisions should be made under the First Step Act, in which a Congress dissatisfied with the stinginess of compassionate release grants, deliberately broadened its availability.

At bottom, for a policy statement to be "applicable," it must, at a minimum, take account of the relevant legislation and the congressional policy that it embodies. Section 1B1.13 does not do that.

*Long*, 997 F.3d at 358-59. (citations omitted).

The compassionate release provision is a safety valve for sentences that may be reasonable when imposed, but may become less so due to changing circumstances. Overall, its purpose is to make the court system more just. Congress recognized that this safety valve was not operating properly, and so, it took measures to fix it. The lion's share of the circuits have implemented these changes through proper statutory interpretation of 18 U.S.C. §3582(c)(1)(A)'s directive to apply the relief "consistent with applicable policy statements issued by the Sentencing Commission." However, the Eleventh Circuit through its misreading of the term "applicable," has added obstacles to the amended compassionate release provisions that neither Congress nor the Sentencing Commission authored. Thus, there will be unjust disparities in the application of compassionate release requests for defendants in Florida, Georgia, and Alabama as compared to other similarly situated defendants across the nation. The Court should grant review to resolve the conflict over this issue, which is important to both defendants and to the quality and nature of the federal justice system.

## CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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