No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RALEIGH FIGUERAS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ERIN J. RADEKIN
State Bar No. 214964
1001 G Street, Suite 107
Sacramento, California 95814
erinjradekin@gmail.com
Telephone: (916) 504-3931

Attorney for Petitioner
RALEIGH FIGUERAS

QUESTION PRESENTED

1. When a circuit court unambiguously and erroneously applies a subjective standard in assessing whether a habeas petitioner has established the prejudice necessary to demonstrate ineffective assistance of counsel pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984), should this Court invoke 28 U.S.C. § 2106 in order to summarily vacate and remand the case to the circuit court with directions to conduct the ineffectiveness inquiry pursuant to the proper objective standard?

LIST OF PARTIES

Petitioner, Raleigh Figueras, is represented by Erin Radekin, of Sacramento, California.

Respondent, the United States of America, is represented by Assistant United States Attorney Michelle Rodriguez, of Sacramento, California.

TABLE OF CONTENTS

Page

INDEX TO APPENDIX

TABLE OF AUTHORITIES

Federal Cases **Page(s)**

Federal Statutes

Other

IN THE SUPREME COURT OF THE UNITED STATES

RALEIGH FIGUERAS,
Petitioner,

v.
UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Raleigh Figueras, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINION BELOW

The opinion of the court of appeals in docket number 21-15886, App., *infra*, 1-4, is unpublished, but available online at *United States v. Figueras*, 2022 U.S. App. LEXIS 3666, 2022 WL 414694 (CA9 2022). The unreported order of the court of appeals, denying Mr. Figueras' petition for panel rehearing and/or rehearing en banc is included in the Appendix. App., *infra*, 5.

The district court's order denying Mr. Figueras' petition for habeas relief pursuant to 28 U.S.C. § 2255 in docket number 2:16-cr-00045 MCE-EFB P, filed on May 14, 2021, App., *infra*, 6-15, is unpublished, but available online at *United*

States v. Figueras, 2021 U.S. Dist. LEXIS 93276, 2021 WL 1961742 (E.D. Cal. 2021). That order rejected the assigned magistrate judge's unpublished recommendation to grant habeas relief, which was filed on November 3, 2020, and which is included in the Appendix. App., *infra*, 18-33.

JURISDICTION

The judgment of the court of appeals was filed on February 10, 2022. The court of appeals denied Mr. Figueras' petition for panel rehearing and/or rehearing en banc on March 18, 2022. This petition is timely filed pursuant to Supreme Court Rule 13.1. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). *Hohn v. United States*, 524 U.S. 236 (1998).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

8 U.S.C. § 1101(a)(43)(G) provides:

(a) As used in this Act—

(43) The term "aggravated felony" means—

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year;

8 U.S.C. § 1227(a)(2)(A)(iii) provides:

(a) Classes of deportable aliens. Any alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens:

(2) Criminal offenses.

(A) General crimes.

(iii) Aggravated felony. Any alien who is convicted of an aggravated felony at any time after admission is deportable.

8 U.S.C. § 1229b(a)(3) provides:

(a) The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien —

(3) has not been convicted of any aggravated felony.

18 U.S.C. § 1708 provides:

Whoever steals, takes, or abstracts, or by fraud or deception obtains, or attempts so to obtain, from or out of any mail, post office, or station thereof, letter box, mail receptacle, or any mail route or other authorized depository for mail matter, or from a letter or mail carrier, any letter, postal card, package, bag, or mail, or abstracts or removes from any such letter, package, bag, or mail, any article or thing contained therein, or secretes, embezzles, or destroys any such letter, postal card, package, bag, or mail, or any article or thing contained therein; or

Whoever steals, takes, or abstracts, or by fraud or deception obtains any letter, postal card, package, bag, or mail, or any article or thing contained therein which has been left for collection upon or adjacent to a collection box or other authorized depository of mail matter; or

Whoever buys, receives, or conceals, or unlawfully has in his possession, any letter, postal card, package, bag, or mail, or any article or thing contained therein, which has been so stolen, taken, embezzled, or abstracted, as herein described, knowing the same to have been stolen, taken, embezzled, or abstracted—

Shall be fined under this title or imprisoned not more than five years, or both.

28 U.S.C. § 2106 provides:

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

28 U.S.C. § 2255(a)-(d) provide:

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

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

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

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

The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT

This case presents a question concerning the remedy this Court should fashion when a circuit court unambiguously and erroneously applies a subjective prejudice standard in assessing whether a habeas petitioner has established the prejudice necessary to demonstrate ineffective assistance of counsel pursuant to *Strickland v. Washington*, 466 U.S. 668 (1984) and its progeny.

In 2017, Mr. Figueras, who is not a United States citizen, pled guilty to several offenses pursuant to a plea agreement with the government. App. 47-59. Based upon all the offenses to which he pled guilty; the district court sentenced him to an aggregate prison term of 36 months. One of those offenses was a violation of 18 U.S.C. § 1708, which proscribes possession of stolen U.S. mail. The specific sentence the district court imposed for that stolen mail offense was a 12-month term, which the court ran concurrent to other subsidiary components of the aggregate 36-month term. App. 6-19.

Because the district court imposed a 12-month term for the stolen mail offense, it constitutes an aggravated felony for purposes of immigration law, 8 U.S.C. § 1101(a)(43)(G), thereby rendering Mr. Figueras automatically deportable, 8

U.S.C. § 1227(a)(2)(A)(iii), and ineligible for cancellation of removal. 8 U.S.C. § 1229b(a)(3).[1] None of the other offenses on which he was convicted and sentenced carry the same drastic immigration consequences as the § 1708 stolen mail offense. App. 19.

While Mr. Figueras was serving the 36-month prison term, immigration authorities informed him that removal proceedings against him had commenced due to the aggravated felony conviction. App. 19. Thereupon, Mr. Figueras filed a habeas petition pursuant to 28 U.S.C. § 2255, seeking relief due to ineffective assistance of counsel, because (1) his trial counsel did not advise him during plea negotiations that imposition of a prison term of 12 months or more on the 18 U.S.C. § 1708 conviction would render that offense an aggravated felony and make him automatically deportable, and (2) counsel failed to request the district court to impose a term of one day less than 12 months on the § 1708 conviction, i.e., a request which, if granted, would have prevented the conviction from being deemed an aggravated felony. App. 19-20, 26-27.

In the § 2255 proceedings below, Mr. Figueras's trial counsel executed a declaration and testified that he failed to discern and convey to Mr. Figueras that a sentence of 12 months or more on a conviction for violating 18 U.S.C. § 1708, would render him automatically deportable. Counsel mistakenly believed that the length

---

[1] *Sessions v. Dimaya*, 138 S.Ct. 1204, 1210-1211 (2018) ("The Immigration and Nationality Act (INA) renders deportable any alien convicted of an 'aggravated felony' after entering the United States. [Citation.] Such an alien is also ineligible for cancellation of removal, a form of discretionary relief allowing some deportable aliens to remain in the country [Citations.]. Accordingly, removal is a virtual certainty for an alien found to have an aggravated felony conviction.…")

of the sentence imposed for the § 1708 conviction would have no bearing on whether the offense was deemed an aggravated felony. Rather, he mistakenly believed the possibility of the offense being deemed an aggravated felony depended entirely on the amount of loss associated with the offense. Thus, the efforts he undertook to avoid immigration consequences were misdirected in accordance with his mistaken belief. App. 27-32, 44-46.

If the district court had sentenced Mr. Figueras to one day less than 12 months for that conviction, but left intact his overall sentence of 36 months, the offense would not be deemed an aggravated felony, and Mr. Figueras would not be deportable. App. 28-32.[2] Mr. Figueras' former counsel has acknowledged that he would have requested a sentence of one day less than 12 months on the § 1708 conviction were it not for his legal misunderstanding, and he believes it is reasonably likely that request would have been granted, as it would have had no impact on the length of the overall sentence imposed by the district court. App. 31. However, Mr. Figueras has now been ordered deported based on the 12-month term imposed for the 18 U.S.C. § 1708 conviction, App. 40, which caused it to be deemed an aggravated felony.

The magistrate judge assigned to the case conducted an evidentiary hearing and recommended granting habeas relief due to trial counsel's prejudicial ineffectiveness in failing to discern that a sentence of 12 months or more caused the

[2] "[P]recedent establishes that [a] conviction under 18 U.S.C § 1708 with a one year sentence is an aggravated felony." *Figueras v. Barr*, No. 20-70403, 2020 U.S. App. Lexis 23545, *2 (CA9 July 24, 2020) (citing *Randhawa v. Ashcroft*, 298 F.3d 1148, 1151 (CA9 2002)).

§ 1708 conviction to be an aggravated felony, failing to convey that fact to Mr. Figueras before his guilty plea, and failing to ask the district court to structure the sentence so as to avoid subjecting Mr. Figueras to automatic deportation. App. 18, 26-33. The magistrate judge found that counsel had candidly acknowledged his legal mistakes. App. 27-28. Further, the magistrate judge elicited a representation from the government that the government's concern was the overall sentence length, and not the specific length of the concurrent term on the § 1708 conviction. App. 30-31.

Despite the foregoing, the district judge, who is the same judge who imposed Mr. Figueras' sentence, rejected the magistrate judge's recommendation, and denied relief, App. 6-15, stating it "would not have imposed less than a twelve-month sentence on [the § 1708 conviction] just so [Mr. Figueras] could avoid immigration consequences." App. 14.

On appeal, the Ninth Circuit decided the case based "only on the prejudice prong" of *Strickland* analysis. App. 1-4. In its prejudice analysis, the Ninth Circuit noted "[t]he same district judge presided over both sentencing and the § 2255 proceedings." App. 3. The circuit court then stressed the above-quoted remark of the district judge, that, in denying habeas relief, the district court "'would not have imposed less than a twelve-month sentence … just so [Figueras] could avoid immigration consequences.'" App. 3 (ellipsis and brackets in the original). Based on this assertion of the district judge, the Ninth Circuit concluded "[t]he record does not support the conclusion that the sentencing judge would have given Figueras a

shorter sentence [on a concurrent term] had counsel sought one…." App. 3.

These express terms of the Ninth Circuit's opinion reveal it transgressed this Court's long-established precedent by erroneously applying a *subjective* standard to determine whether Mr. Figueras demonstrated the prejudice necessary to support the claim of ineffective assistance of counsel. "[T]he *Strickland* prejudice inquiry is an *objective* one." *Bailey v. Lemke*, 735 F.3d 945, 950 (CA7 2013) (italics added). The objective inquiry is whether a reasonable probability exists that the result of the proceeding would have been different in the absence of counsel's unprofessional errors. *Strickland*, 466 U.S. at 694. "A court doesn't ask whether a particular factfinder would have found a reasonable probability from a subjective standpoint…." *Bailey v. Lemke*, 735 F.3d at 950 (internal quotation marks omitted). Instead, the determination is "made objectively, without regard for the idiosyncrasies of the particular decisionmaker." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985) (internal quotation marks omitted).

The objective *Strickland* prejudice inquiry cannot rest on "the trial judge's say-so." *Garner v. Lee*, 908 F.3d 845, 862 (CA7 2018) (internal quotation marks omitted). Instead of assessing the impact effective representation would have had on a "particular judge", the reviewing court must consider, "more abstractly," how constitutionally sufficient representation would have impacted "an unspecified, objective factfinder." *Saranchak v. Beard*, 616 F.3d 292, 309 (CA3 2010).

Here, the Ninth Circuit court acted contrary to this Court's unequivocal precedent, by "accept[ing] the subjective 'assessment' … of a particular district court

judge." *United States v. Abney*, 812 F.3d 1079, 1094 (CADC 2016). "*Strickland* itself indicated that the views of the actual sentencing judge are irrelevant to the prejudice inquiry." *Ray v. Alabama Department of Corrections*, 809 F.3d 1202, 1207 n. 3 (CA11 2016) (citing *Strickland*, 466 U.S. at 700 (noting "that testimony [from the sentencing judge] is irrelevant to the prejudice inquiry"). "[A] particular judge's sentencing practices[] should not be considered in the prejudice determination." *Strickland*, 466 U.S. at 695. The Ninth Circuit's "approach" in this case improperly "replace[d] *Strickland's* objective prejudice analysis with a test that falls somewhere between a subjective inquiry and a deference doctrine." *Abney*, 812 F.3d at 1094.

Pursuant to this Court's Rule 10(a), review on certiorari is warranted in order for this Court to "exercise" its "supervisory power" to rectify a "depart[ure] from the accepted and usual course of judicial proceedings…." Furthermore, pursuant to this Court Rule 10(c), review on certiorari is warranted to correct a circuit court decision "that conflicts with relevant decisions of this Court." As the magistrate judge found in recommending habeas relief, the record shows it is probable a reasonable judge would have imposed a concurrent sentence of less than twelve months on the count in question. App. 31.

In light of the Ninth Circuit's application of a patently incorrect subjective standard in its assessment of the prejudice prong of Mr. Figueras' *Strickland* IAC claim, Mr. Figueras respectfully requests this Court to grant certiorari and to apply 28 U.S.C. § 2106 in order to summarily reverse or vacate the Ninth Circuit's decision, and to remand the case to that court, with directions to apply the correct

objective prejudice standard in deciding the case. Indeed, this Court may "vacate the judgment below and remand for further proceedings when such a result is "just under the circumstances." *Benton v. Maryland*, 395 U.S. 784, 788 (1969).

A. Basis for Jurisdiction in the Lower Courts

This is a federal habeas action brought pursuant to 28 U.S.C. § 2255. The district court had jurisdiction pursuant to 28 U.S.C. §2255. The court of appeals had jurisdiction of the appeal pursuant to 28 U.S.C. §§ 1291, 2253(a) and 2255(d).

B. Factual and Procedural Background

Based on an attorney's admitted unawareness and admittedly flawed advice concerning the intersection of intricate points of immigration and criminal law, Mr. Figueras unwittingly pled guilty to an offense that is deemed a deportable aggravated felony. Had the attorney ascertained the relevant law, he could have accurately advised Mr. Figueras regarding the actual immigration consequences, and he could have reasonably sought to prevent those consequences by requesting a one-day shorter concurrent prison term. App. 26-33, 44-46. Given the government's representation to the magistrate judge that its concern was with the length of the aggregate sentence, rather than the length of concurrent components of the sentence,[3] it is reasonably likely that a reasonable district court would have granted

[3] "As the government conceded in argument at the [evidentiary] hearing [on the § 2255 petition], the goal of the prosecution was to secure an overall prison sentence that was just, not to secure [Mr. Figueras'] deportation. That goal was readily available even if Count 10 had been reduced by one day. To the extent that one day was material to achieving a just sentence, it could easily have been added to the sentence on another count." App. 30-31.

the request concerning the technical structure of the sentence.

This can and should be an easy fix. Unfortunately, however, after the magistrate judge recommended granting habeas relief to Mr. Figueras based on counsel's errors, App. 18-33, a series of troubling, unjust maneuverings and preposterous judicial rulings have ensued, thwarting the manifestly just and lawful result recommended by the magistrate judge.

1. Mr. Figueras' Immigration Status

Mr. Figueras was born in the Philippines on July 2, 1981. He came to the United States in 1998, when he was 17 years old. He is not a citizen of the United States, but he attained status a legal permanent resident of the United States. His wife is a United States citizen. He also has two children who are United States citizens. Tr. 184[4]

2. Offense Conduct, Plea Agreement, and Sentencing

In 2017, pursuant to a written plea agreement, Mr. Figueras pled guilty to the four charges in an indictment: Count 4 – bank fraud and attempted bank fraud, in violation of 18 U.S.C. § 1344(2); Count 9 – aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1); Count 10 – possession of stolen United States mail, in violation of 18 U.S.C. § 1708; Count 11 – unlawful possession of five or more identification documents, in violation of 18 U.S.C. § 1028(a)(3). App. 19, 47-59.[5]

[4] "Tr." refers to the reporter's transcript of the evidentiary hearing conducted by the magistrate judge during the course of § 2255 proceedings in the district court.

[5] The district court dismissed the remaining counts in the indictment pursuant to the parties' plea agreement. App. 19.

"By all accounts, [Mr. Figueras] was, at all times, desperate to avoid removal." App. 24. Indeed, defense counsel acknowledged that Mr. Figueras conveyed this sense of desperation to him. App. 24, 31, 44. And, defense counsel responded by inaccurately telling Mr. Figueras he could avoid aggravated felon status if the court deemed the loss amount associated with the § 1708 count less than $10,000. App. 27-28. Defense counsel did not accurately advise Mr. Figueras that the pivotal point of determining whether the § 1708 count constituted an aggravated felony depended on *length of sentence*, rather than amount of loss. Counsel failed to perceive and advise Mr. Figueras that avoidance of disastrous immigration consequences on the § 1708 count hinged on securing a sentence of less than 12 months on that count. App. 44-46.

The district court sentenced Mr. Figueras to a serve a 36-month term of imprisonment in the Bureau of Prisons. The 36-month term of imprisonment consisted of 12-month concurrent terms on Counts 4, 10, and 11, plus a consecutive 24-month term on Count 9. App. 6.

3. Immigration Authorities Commence Removal Proceedings While Mr. Figueras is Serving His 36-Month Term

"On November 2, 2018, and while [Mr. Figueras] was serving his prison sentence, he was contacted by immigration officials and told that he would be deported because his conviction for possession of stolen mail was an aggravated felony that precluded any possible defense to removal." App. 19.

/ /

4. Former Counsel's Ineffective Representation Is Brought to Light and Admitted.

During § 2255 proceedings below, the assigned magistrate judge conducted an evidentiary hearing and recommended the district court grant habeas relief based on the prejudicial ineffectiveness of Mr. Figueras' former counsel. App.. 18-33. In the evidentiary hearing, counsel testified he had not been "on the ball" with respect to the specific provisions of immigration law applicable to one of the charges to which Mr. Figueras pled guilty. Tr. 74-75. The magistrate judge found that, during plea negotiations, counsel "fail[ed] to recognize that [Mr. Figueras'] conviction of possession of stolen mail would be an aggravated felony if it resulted in a sentence of one year or more." App. 38. Further, counsel "admit[ted] that he did not advise [Mr. Figueras[that a sentence of more than one year on [that charge] would constitute an aggravated felony." App. 41. Counsel "agree[d] he made the mistake, and, as was explained in detail in the findings and recommendation to grant [Mr. Figueras'] section 2255 motion, the mistake resulted in an aggravated felony conviction … which deprived [Mr. Figueras] of an opportunity to contest his deportation." App. 42. "Thus, it cannot be said that [Mr. Figueras] 'accepted' the risk of an aggravated felony status by taking the plea agreement." App. 31.

"Upon being sentenced to twelve months on [the stolen mail charge, Mr. Figueras] was left without any viable defense to immigration removal. [Counsel's] lack of awareness prevented him from negotiating with the government a recommended sentence of just under 12 months or requesting such a sentence from [the district judge] during the sentencing hearing." App. 26.

Counsel "testified that he just blew it … and … gave materially incorrect legal advice to [Mr. Figueras]." Tr. 205.

5. Final Order of Removal

Mr. Figueras is now "subject to a final order" of removal. App. 55; Tr. 168, 183. There is currently "no legal impediment to the execution of the removal order." App. 55.

6. The District Court Denies Habeas Relief

Despite counsel's acknowledged errors, the court stated it "is not convinced that [counsel] improperly advised [Mr. Figueras] as to the immigration consequences of his guilty pleas." App. 11. Instead of accepting counsel's concession of error, which the magistrate judge characterized as "candid[,]" App. 27, the district court concluded Mr. Figueras "knew deportation was [a] potentially inevitable" consequence of his plea agreement. App. 11. Furthermore, the court stated "it would not have imposed less than a twelve-month sentence on [the stolen mail conviction] just so [Mr. Figueras] could avoid immigration consequences." App. 14. Thus, the court denied habeas relief.

7. The Ninth Circuit Affirms the District Court

The Ninth Circuit affirmed the district court's order by employing a *Strickland* analysis which "address[ed] only the prejudice prong." App. 2. The circuit court concluded no prejudice was established, because the record purportedly "does not support the conclusion that the sentencing judge would have given [Mr.] Figueras a shorter sentence had counsel sought one…." The court predicated this

conclusion on the facts that "[t]he same district judge presided over both sentencing and the § 2255 proceedings[,]" and the district judge's remarks that "he 'would not have imposed less than a twelve-month sentence just so Figueras could avoid immigration consequences.'" App. 3. Further, and inconsistently with counsel's own admissions, the Ninth Circuit stated that counsel "consistently advised [Mr.] Figueras that he would be deported as a result of pleading guilty." App. 3 (ellipses and internal quotation marks omitted).

REASONS FOR GRANTING THE PETITION

The Ninth Circuit erroneously conducted a subjective *Strickland* prejudice inquiry, rather than an objective inquiry.

This Court's unequivocal and long-standing precedent calls for the *Strickland* prejudice inquiry to be "made objectively, without regard for the idiosyncrasies of the particular decisionmaker." *Hill v. Lockhart*, 474 U.S. at 59 (internal quotation marks omitted). Thus, when conducting a *Strickland* prejudice inquiry, "[a] court doesn't ask whether a particular factfinder would have found a reasonable probability from a subjective standpoint…." *Bailey v. Lemke*, 735 F.3d at 950 (internal quotation marks omitted)

In light of the foregoing unambiguous precedent, the Ninth Circuit's erroneous application of a prejudice standard directly at odds with the standard articulated by this Court in *Strickland* nearly 40 years ago is nigh incomprehensible. By expressly predicating its finding of no prejudice on the district court's remarks that it would not have imposed a sentence of one day less than 12

months just to prevent Mr. Figueras from suffering adverse immigration consequences, App. 3, the Ninth Circuit patently transgressed this Court's precedent. The conclusion that the Ninth Circuit erred is ineluctable. It is crystal clear error, which cannot be denied.

No split of authority exists concerning the legal principle that the mode of *Strickland* prejudice inquiry is objective. This Court and all circuit courts apply objective *Strickland* prejudice inquiries. Thus, the Ninth Circuit's application of a subjective *Strickland* prejudice inquiry in this case appears to be a rogue outlier.

The question presented is how this Court should respond to such an aberrant and manifest error. 28 U.S.C. § 2106 supplies the answer. That statute provides:

> The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

Based on this statute, this Court can simply vacate the Ninth Circuit's judgment and remand the case to Ninth Circuit, with directions to adjudicate this case pursuant to the objective *Strickland* prejudice standard. Mr. Figueras respectfully suggests this Court should remedy the error here in this fashion.

Although "[e]rror correction is 'outside the mainstream of the Court's functions'" *Cavazos v. Smith*, 565 U.S. 1, 11 (2011) (Ginsburg, J, dissenting) (quoting E. Gressman, K. Geller, S. Shapiro, T. Bishop, & E. Hartnett, Supreme Court Practice § 5.12(c)(3), p. 351 (9th ed. 2007)), this Court "is not prepared to abandon error correction altogether." Bruhl, The Remand Power and the Supreme

Court Role, 96 Notre Dame L. Rev. 171, 183 (2020). Rather, this Court "occasionally correct[s] … egregious error[s]," and tries more generally to keep up professional standards in the lower courts it supervises." *Id.* In this regard, this Court "has the power not only to correct errors of law in the judgment under review but also to make such disposition of the case as justice requires." *Minnesota v. National Tea Co.*, 309 U.S. 551, 555 (1940).

Given the flagrant and unprecedented nature of the Ninth Circuit's error in this case, Mr. Figueras respectfully submits summary vacatur and remand is warranted. 28 U.S.C. § 2106 is "a federal statute of extraordinary breadth[,]" which vests this Court with the power to fashion such a remedy. Bruhl, The Remand Power and the Supreme Court Role, 96 Notre Dame L. Rev. at 174. This remedy serves the laudable purposes of undoing an unjust and manifestly erroneous judgment which is in direct conflict with this Court's precedent.

CONCLUSION

The petition for a writ of certiorari should be granted.

Date: June 6, 2022

Respectfully Submitted,

/s/ Erin J. Radekin
ERIN J. RADEKIN
1001 G Street, Suite 107
Sacramento, California 95814
erinjradekin@gmail.com
Telephone: (916) 504-3931

Attorney for Petitioner
RALEIGH FIGUERAS