Supreme Court, U.S.
FILED
JUL 08 2022
OFFICE OF THE CLERK

No. 22-5192

IN THE

SUPREME COURT OF THE UNITED STATES

Jose Manuel Hernandez-Miranda — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jose Manuel Hernandez-Miranda
(Your Name)

FCI Coleman Medium, P. O. Box 1032
(Address)

Coleman, Florida 33521-1032
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Whether the Petitioner should receive compassionate release based on the stated extraordinary and compelling reasons in this Petition to this Honorable Court.

LIST OF PARTIES

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

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

RELATED CASES

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

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[X] is unpublished.

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

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[X] is unpublished.

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

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

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[ ] is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

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[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was 4/14/2022.

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

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

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

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

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

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Eighth Amendment of the United States Constitution

STATEMENT OF THE CASE

The U.S. District Court for the Middle District of Florida sentenced Petitioner to multiple life terms in a Federal prison, for Title 18 U.S.C. § 1959, counts 1, 5, and 7, RICO conspiracy for counts 6 and 8, life concurrent with counts 1, 5, and 7, in aid of racketeering activity. Petitioner was also charged with Title 18 U.S.C. § 924(j), carrying a firearm during a murder committed in connection to a drug offense. Petitioner was sentenced to life on that count as well, and he was sentenced for a § 924(c) count as well, thereby never ever to be a free citizen ever again. All of these sentences are based on the fact that Petitioner proceeded to trial.

REASONS FOR GRANTING THE PETITION

Petitioner understands that this Honorable United States Supreme Court does not have to accept this writ of certiorari, that it has discretion to accept whatever cases it wants to hear. However, the reason why Petitioner, who is serving multi life terms, is requesting for his case to be heard is because he was only 17 years of age when this crime transpired, yet he was still tried as an adult and sentenced to multi life terms in a Federal United States prison, for the rest of his natural life. In **Miller v. Alabama**, 132 S. Ct. 2455 (2012), the Supreme Court held that juveniles, such as in Petitioner's case in point, may not and should not be sentenced to mandatory life imprisonment under the Eighth Amendment of the United States Constitution.

Petitioner hopes and prays that the Justices will accept this case and allow the Petitioner's case to be decided by the nine justices of the United States Supreme Court.

REASONS FOR GRANTING THE PETITION CONTINUED (PAGES 2-25)

According to **Miller v. Alabama**, 567 U.S. 460, 469-70 (2012), Appellant's sentences do violate the Eighth Amendment's prohibition of cruel and unusual punishment. Petitioner was sentenced to mandatory life without possibility of parole. He was never found to be "permanently incorrigible" before a life sentence was imposed. **Jones v. Mississippi**, U.S. Supreme Court cite, 209 L Ed 2d 390 2021 LEXIS 2110 (2021); **Miller v. Alabama**, 122 S. Ct. 2455 (2012); **Montgomery v. Louisiana**, 136 S. Ct. 718, 725 (2016); **Graham v. Florida**, 560 U.S. 48, 70, 79 (2010); and **Roper v. Simmons**, 543 U.S. 551, 578 (2005).

Petitioner's extremely low I.Q. level, his rehabilitation progress while incarcerated for over 20 years of his life, his inadequate medical care plaguing the Federal prison system. COVID-19 virus, Omicron, Delta, they are viruses, and he is subjected to them because of his prison environment and how many inmates are suffering from these viruses. All of these are compelling and extraordinary reasons to allow the Petitioner to be released. And they are explained in this Response to the Government's Response as to why Petitioner's release justifies extraordinary and compelling reasons for his compassionate release motion.

The district sentenced Petitioner to a life sentence as to each of the five counts on which he was convicted. As to Counts 1, 5, and 7 (the drug conspiracy count and the two counts charging the commission of violent crimes in aid of racketeering activity), the court ran the life sentences concurrently with each other. As to Counts 6 and 8 (the two § 924(j) counts charging use of a firearm during a drug trafficking offense to commit murder), the court imposed each of these two life sentences to run concurrently to each other and to the other counts, as required by statute.

As to how the District Court arrived at a life sentence for each of these counts, the two § 1959 counts -- charging the commission of violent crimes on February 11, 1998 in aid of racketeering activity -- carried a mandatory term of life imprisonment. As to the § 924(j) convictions for carrying a firearm during a murder committed in connection with a drug trafficking offense, the Sentencing Guidelines called for an offense level of 43 for those convictions, as well as for the conviction on Count 1 (drug trafficking conspiracy). Ultimately, Petitioner final offense level was 47. The Guidelines chart, however, tops out at an offense level of 43, which requires a life sentence for such an offense level. Accordingly, the District Court imposed a life sentence on each of those counts.

Petitioner, at the start of this Conspiracy, was just 17 years old, "a juvenile," and was entenced to "life in prison without the possibility of parole. **Miller v. Alabama**, 122 S. Ct. 2455 (2012), held that the Eighth Amendment prohibits sentencing a juvenile to "life in prison without parole absent consideration of the juvenile's special circumstances." See e.g., **Montgomery v. Louisiana**, 136 S. Ct. 718, 725 (2016).

Counts 5 and 7 were Murder in the Aid of Racketeering Activity in violation of 18 U.S.C. § 1959(a)(1) and (2). Petitioner was convicted of the murder of two victims Jesus Sanchez and Omar Sanchez. Petitioner received two life sentences for both of these murders running concurrent and two additional life sentences running consecutively in violation of 18 U.S.C. § 924(c) for carrying a firearm during and in relation to a drug trafficking crime and § 924(j) because in the course of the drug trafficking crime, two murders were committed (Counts 6 and 8) respectively.

Among other things, Petitioner's indictment is defective due to a multiplicity violation. The conspiracy to possess with intent to distribute methamphetamine and marijuana is a lesser included offense of the Murder in Aid of Racketeering Activity in violation of 18 U.S.C. § 1959(a)(1) and (2), because all of the elements of the drug conspiracy in violation of Title 21 U.S.C. § 841(a) and 21 U.S.C. § 846 are also included in the Murder in Aid of Racketeering Activity which includes the additional elements for the murder of the two victims Jesus Sanchez and Omar Sanchez, that is excluded from the drug trafficking conspiracy.

In addition, Petitioner contracted COVID-19 as follows:

Outbreak

On March 31, 2020, the Acting Warden, C. M. Rijos locked down FCI Coleman Medium for the "National Observation of COVID-19."

Meanwhile, there were no confirmed active cases. See e.g., **United States v. Capote**, No. 1:92-cr-00314-ODE-JED (N.D. Ga. May 5, 2020) pg. 12, Paragraph 4 (Government claiming: "[t]here is only one confirmed inmate COVID-19 case" at FCI Coleman Medium. Contrary to those claims, the virus spread rapidly.

To illustrate, on June 1, 2020, two of twelve units (B-4 and C-3) had outbreaks of COVID-19 and were quarantined. Each unit in its entirety was tested

for COVID-19. As a result, in each unit, thirty to forty inmates were confirmed positive with the virus.

Initially, FCI Coleman Medium had no housing units for isolation. Meanwhile, Petitioner and all the residents of the A-1 Skills Program were relocated by scattering them among nine different housing units. Unit A-1 became the isolation unit; nonetheless, prior to the move, no testing for COVID-19 was administered.

Exposure

On Friday, September 4, 2020, Petitioner was directly exposed to COVID-19. Unit A-1 was previously used as an isolation unit to house inmates infected with COVID-19. Supposedly, three hours prior to relocating its residents, participants, and mentors , the Unit was thoroughly cleansed and disinfected. Undoubtedly, "...[s]tudies have shown that the coronavirus can survive from three hours to three days on various surfaces." See e.g., **United States v. Williams**, No. 3:04-cr-0095-CR-CJK (N.D. Fla. Apr. 1, 2020) n.9.

During the second week of September 2020, inmate Kennedy Harris was the first confirmed case in the A-1 Skills Program to become infected with COVID-19. Simply put, many others became ill, showing signs and symptoms of coronavirus infection. Consequently, the following week (Sept. 16, 2020), the entire unit was quarantined. On the 21st of September 2020, the entire unit of sixty-eight inmates was tested by PCR for COVID-19. Forty-one inmates tested positive for the virus (60.29 percent).

Medical Care

Petitioner's medical care has been inadequate; for he has contracted COVID-19 and has not had any follow-up care or been retested with a PCR test to determine if he was actually free from infection (negative PCR test). Nor has he had a physical to assess the damage done to the endocrine organs (heart, lungs, liver, kidneys, etc.). Nonetheless, the BOP has labeled him as "recovered."

"The Supreme Court has ruled that the Government must provide [adequate] medical care for those whom it punishes by incarceration." See e.g., **Costello v. Wainwright**, 397 F. Supp. 20 (M.D. Fla. 1975).

Petitioner's exposure to COVID-19 was a result of the mingling of inmates who tested positive with inmates who tested negative for COVID-19. Medical staff's actions are an absolute disregard for its most vulnerable inmates in Unit A-1.

"'Deliberate indifference' by prison personnel to an inmate's serious illness or injury constitutes cruel and unusual punishment under the Eighth Amendment." See e.g., **Estelle v. Gamble**, 429 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976); Also see **City of Revere v. Massachusetts General Hospital**, 463 U.S. 239, 103 S. Ct. 2979, 77 L. Ed. 2d 605 (1983).

Prison Conditions

Petitioner's incarceration is more laborious than this Court intended and "...[t]he punishment goes beyond legitimate penal aims." See e.g., **Rhodes v. Chapman**, 452 U.S. 357, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981); **Gregg v. Georgia**, 428 U.S. 153, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976). The pandemic of COVID-19 was not foreseeable at sentencing. Meanwhile, Petitioner shares the same confined, recycled air, showers, etc. with confirmed positive inmates. Although, Petitioner is exposed to the virus (SARS-CoV-2) that causes COVID-19; as a result, he has tested positive.

Contrary to the BOP's Action Plan, staff at FCI Coleman Medium are supposed to ensure by oversight that all of the facilities to include the toilets, sinks, cells, common area, etc., are disinfected.

Simply put, these living "...conditions of confinement [are] subject to 8th Amendment scrutiny." See e.g., **Hutto v. Finey**, 437 U.S. 678, 685 (1978). "In reviewing ... the Supreme Court has distinguished between two kinds of official conduct: (1) that which is part of the punishment formally imposed for a crime and (2) that which does not purport to punishment, such as conditions of confinement, medical care, and restoration over inmates. See **Wilson v. Seiter**, 501 U.S. 294, 297-303 (1991) (8th Amendment prohibits only "cruel and unusual punishment" and "[t]he infliction of punishment is a deliberate act intended to chastise or deter"). The Wilson court reasoned that "[i]f the pain inflicted is not formally

meted out as punishment by the statute or the sentencing judge, some mental element must be attributed to the inflicting officer before it can qualify" as cruel and unusual punishment. Id. at 300.

"Generally, a court 'may not modify a term of imprisonment sentence is narrowly limited by statute.'" [**United States v. Phillips**, 597 F.3d 1190, 1194-95 (11th Cir. 2010)]. Section 3582(c) of Title 18 provides that the district court may not modify a defendant's imprisonment except: (1) if the Bureau of Prisons files a motion and extraordinary or compelling circumstances warrant modification or if the defendant is at least 70 years old and has served 30 years in prison; (2) if the modification is expressly permitted by statute or Federal Rule of Criminal Procedure 35; or (3) if the defendant's original sentencing range has subsequently been lowered as a result of an amendment to the Guidelines by the Sentencing Commission. 18 U.S.C. § 3582(c). **United States v. Shaw**, 711 F. App'x. 552, 554-55 (11th Cir. 2017); see also **United States v. Celedon**, 353 F. App'x. 278, 280 (11th Cir. 2009); **United States v. Diaz-Clark**, 292 F.3d 1310, 1316-18 (11th Cir. 2002). Thus, '[t]he law is clear that the district court has no inherent authority to modify a sentence; it may do so only when authorized by statute or rule."

United States v. Rivas, No. 19-11691, 800 Fed. App'x. 742, 2020 WL 398208, at *4 (11th Cir. Jan. 23, 2020) (quoting **United States v. Puentes**, 803 F.3d 597, 605-06 (11th Cir. 2015)); see also **United States v. Llewlyn**, 879 F.3d 1291, 1296-97 (11th Cir. 2018) (quoting **Dillon v. United States**, 560 U.S. 817, 827, 130 S. Ct. 2693, 177 L. Ed. 2d 271 (2010)).

Above all, § 3582 sets out the order in which this Court should analyze a criminal defendant's entitlement to a sentencing reduction. First, when the defendant brings the motion himself, the Court must ascertain whether he "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 [whether there has been a] lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." 18 U.S.C. § 3582(c)(1)(A). Second, the Court should "consider the factors set forth in § 3553(a) to the extent that they are applicable." Id. Third, the Court should turn to the "extraordinary and compelling reasons" test, as outlined in U.S.S.G. § 1B1.13 cmt.n.1. And fourth, the Court should determine whether the defendant poses a "danger to the safety of any other

person or to the community as provided in 18 U.S.C. § 3142(g)." Id. **United States v. Stuyvesant**, No. 09-60184-CR, 2020 U.S. Dist. LEXIS 65721, 2020 WL 1865771, at *2 (S.D. Fla. Apr. 14, 2020). Thus, in order to grant Defendant's request pursuant to § 3582(c)(1)(A), the court must: (1) find that Defendant has exhausted his administrative remedies with the BOP; (2) weigh the relevant § 3553(a) factors; (3) conclude that extraordinary and compelling reasons warrant compassionate release in this case, and (4) determine Defendant is not a danger to the community. Moreover, Defendant bears the burden of establishing that compassionate release is warranted. See: **United States v. Hamilton**, 715 F.3d 328, 337 (11th Cir. 2013) explaining that "a defendant as the Movant, bears the burden of establishing that "compassionate release is warranted, but that, even where a defendant satisfies this burden, "the district court still retains discretion to determine whether a sentence reduction is warranted."

Petitioner, Hernandez-Miranda, is sentenced as a juvenile to five life sentences without the possibility of parole in violation of his Eighth Amendment rights against cruel and unusual punishment and his Fifth Amendment rights to due process of law affecting his liberty. The Supreme Court in **Montgomery v. Louisiana** held that Miller establishes a new substantive rule that applies retroactively on collateral review. See **Montgomery**, 136 S. Ct. at 734.

"[C]ommunity consensus, while entitled to great weight, is not itself determinative of whether a punishment is cruel and unusual." **Graham v. Florida**, 560 U.S. 48, 70, 79 (2010), (internal quotation marks omitted). The court retains the responsibility of interpreting the Eighth Amendment. Id. (citing **Roper v. Simmons**, 543 U.S. 551, 578 (2005)). To that end, "[t]he judicial exercise of independent requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question." Id. at 67. The Court in Roper, Graham, and Miller thus looked to the available scientific and sociological research at the time of the decisions to identify differences between juveniles under the age of 18 and fully mature adults -- differences that undermine the penological justifications for the sentences in question. See **Roper**, 543 U.S. at 569-72; **Graham**, 560 U.S. at 68-75; **Miller**, 567 U.S. at 471, ("Our decisions rested not only on common sense -- on what "any parent knows" -- but on science and social science as well.") The Supreme Court in these cases identified "[t]hree general differences between juveniles under 18 and adults"; (1) that juveniles have a "lack of maturity and an

underdeveloped sense of responsibility," often resulting in impetuous and ill-considered actions and decisions;" (2) that juveniles are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;" and (3) that "the character of a juvenile is not as well formed as that of an adult." **Roper**, 543 U.S. at 569-70; see also **Graham**, 560 U.S. at 68; **Miller**, 567 U.S. at 471-72.

Because of these differences, the Supreme Court concluded that juveniles are less culpable for their crimes than adults, and therefore, the penological justifications for the death penalty and life imprisonment without the possibility of parole apply with less force to them than to adults. See **Roper**, 543 U.S. at 570-71; **Graham**, 560 U.S. at 69-74; **Miller**, 567 U.S. at 472-73. Retribution is less justifiable because the actions of a juvenile are less morally reprehensible than those of an adult due to diminished culpability. See **Graham**, 560 U.S. at 71. Likewise, deterrence is less effective because juveniles' "impetuous and ill-considered actions" make them "less likely to take a possible punishment into consideration when making decisions." Id. at 72. Nor is incapacitation applicable because juveniles' personality traits are less fixed and therefore it is difficult for experts to "differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irrepairable corruption." Id. at 72-73 (quoting **Roper**, 543 U.S. at 572). FInally, rehabilitation cannot be the basis for life imprisonment without parole because that "penalty altogether forswears the rehabilitation ideal" by "denying the defendant the right to reenter the community." Id. at 74.

In reaching its decision, the Roper Court replied on the Court's decision in Thompson v. Oklahoma, 487 U.S. 815, 108 S. Ct. 2687, 101 L. Ed. 702 (1988), which held that the Eighth Amendment prohibited the execution of a defendant convicted of a capital offense committed when the defendant was younger than 16 years old. See **Roper**, 543 U.S. at 570-71. The Roper court pointed to the Thompson court's reliance on the significance of the distinctive characteristics of juveniles under the age of 16 and stated, "We conclude the same reasoning applies to all juvenile offenders under 18." Id. The court now looks to the Roper court's reliance on the same characteristics and concludes that scientific developments since then indicate that the same reasoning also applies to an 18-year-old. See Steinberg Rr. at 70-71 (stating that he is "[a]bsolutely certain" that the scentific findings that underpin his conclusions about those under the age of 18

also apply to 18-year-olds); Alexandra Cohen et. al., When Does a Juvenile Become an Adult? Implications for Law and Policy, 88 Temple L. Rev. 769 (2016); Post-Hr'g Mem. In Supp., Ex. 1, Laurence Steinberg, et. al., Around the World, Adolescence is a Time of Heightened Sensation Seeking and Immature Self-Regulation, Developmental Science 00 (2017) (Doc. No. 115-1).

As to the first characteristic identified by the Roper Court -- "lack of maturity and an underdeveloped sense of responsibility" as manifested in "impetuous and ill-considered actions and decisions" -- the scentific evidence before the court clearly establishes that the same traits are present in 18-year-olds. See **Roper**, 543 U.S. at 569. Cruz's evidence consists of the expert testimony of Dr. Laurence Steinberg and scentific articles offered as exhibits. See e.g., Cohen et. al., When Does a Juvenile Become an Adult?; Steinberg et. al., Around the World.

In the case at hand, the was 17 years old when the conspiracy began and Miller announced a new rule of Constitutional law that was made retroactive to cases on collateral review; in which forbids a juvenile to be sentenced to life without the possibility of parole. See **Montgomery**, 136 S. Ct. at 134. "[T]he majority assumes that Appellant's sentence violates Miller." See In Re Jose Hernandez-Miranda, Case No. 16-12893-J, U.S. Court of Appeals, (11th Cir. 2016) J. Martin (dissenting) "[M]r. Hernandez-Miranda's case [was] decided just weeks after [it was] filed, without any input or advocacy from lawyers and without the deliberation that goes into a normal appeal." Id. at 14. (See Appendix-6 in Appellant's original Appeal Brief already submitted to the Court.)

It is an "extraordinary and compelling" circumstance that the Eleventh Circuit Panel in Id. ruled that the "concurrent sentence doctrine" was a jurisdictional bar to review; in which, precedent case law says it... "[i]s not a jurisdictional bar to review, but a tool of judicial convenience exercised at the court's discretion," see e.g., **United States v. Fuentes-Jimenez**, 750 F.2d 1495, 1497 (11th Cir. 1985).

Moreover, it is even more "extraordinary and compelling" circumstances warranting relief when the very sentence that was ran concurrently (count 1, conspiracy to possess with the intent to distribute methamphetamine and marijuana) is a lesser included offense (counts 5 and 7 charging the commission of violent

crimes in aid of racketeering activity). The drug conspiracy as part of the racketeering activity making count 1 (conspiracy to possess with the intent to distribute methamphetamine and marijuana) charge multiplicity in violation of the Fifth Amendment Constitutional rights of the U.S. Constitution against double jeopardy. See e.g., **Blockburger v. United States**, 284 U.S. 299, 304 (1932). "[T]he Double Jeopardy Clause of the Fifth Amendment prohibits dual prosecution for the same offense." 45 G.E.O. L.J.ANN.REV. CRIM. PROC. 985 (2016); "...[e]stablishing 'same elements' test to determine whether multiple offenses are actually singular." **Blockburger**, 284 U.S. 299, 304 (1932). Thus, all of the elements of drug conspiracy is completely established within the elements of the racketeering activity violating the Petitioner's U.S. Constitutional Rights of the Fifth Amendment against double jeopardy and affecting his Due Process Rights to liberty resulting in an additional unwarranted life sentence.

Above all, the enactment of the First Step Act, Pub. L. 115-391, § 403 [clarification of § 924(c)], 132 Stat. 5194 (2018) invalidated stacking of § 924(c) convictions that was not subsequent to any prior conviction for a § 924(c). Likewise, Petitioner has two § 924(c) convictions for the same conduct that happened during the same time, on the same day at the same place for conspiracy to aid in racketeering activity that was the same conduct as the Count 1 drug conspiracy that resulted in two murders killing both Omar Sanchez and Jesus Sanchez, in violation of 18 U.S.C. § 1959 and § 924(j). The § 924(j) is a § 924(c) conviction. The only difference is that a death occurred in the course of the racketeering activity in violatiion of 18 U.S.C. § 1111 on two counts (5) and (7); but not subsequent to any other prior conviction for either a § 924(c) conviction nor § 924(j) conviction.

Among other things, after the [clarification of § 924(c) in Section 403, Id., if the Petitioner was sentenced today, he would not have been sentenced to five life sentences. (Just two: Counts 5 "violent crime" in aid of racketeering and Count 6, § 924(j) in violation of 18 U.S.C. § 1111). Thus, these circumstances warrant relief under the newly amended statute § 3582(c)(1)(A)(i) for "Extraordinary and Compelling reasons." See e.g., **United States v. Bryant**, 2020 U.S. Dist. LEXIS 75681, 2020 WL 2085471, (D. Md., Apr. 30, 2020); **United States v. McCoy**, 981 F.3d 271 (4th Cir. 2021); **United States v. Maumau**, No. 2:08-CR-00758-TC-11, 2020 U.S. Dist. LEXIS 86395, (S.D. Fla., Apr. 10, 2020); **United States v. Kimbrough**, 2018 U.S. Dist. LEXIS 26336 (M.D. Ala., Feb. 20, 2018).

Moreover, in all these cases, supra, the majority of courts view stacking as an "extraordinary and compelling reason" that warrants relief after the enactment of the First Step Act of 2018, Pub. L. 115-391, 132 Stat. 5194, § 403 (2018).

More importantly, Miller is applicable to his circumstances because he was just 17 years old when the conspiracy began in April of 1995. Even so, the Petitioner was 19 years old at the time in which the murders of both Omar and Jesus Sanchez took place. If you follow the science as Dr. Steinberg explained in **Miller**, 132 S. Ct. 2455, 2475 (2012):

"[A]lthough eighteen to twenty-one-year-olds are in same ways similar to individuals in their mid-twenties, in other ways, young adults are more like adolescents in their behavior, psychological functioning, and brain development. Thus, developmental science does not support the brightline boundary that is observed in criminal law under which eighteen-year-olds are categorically deemed to be adults." See Elizabeth Scoot, Richard Bonnie, and Lawrence Steinberg, Young Adulthood as a Transitional Legal Category, 85 Fordham Law Rev. 641, 645 (2016).

"[P]rofessor Steinberg, whose expertise is beyond question, began his testimony with a definition of adolescence. It is age ten through twenty. T. 9/13/17, 6. Adolescence can be divided into three phases. Early adolescents are age ten through thirteen, middle adolescents are age fourteen through seventeen and late adolescents are age eighteen through twenty. Generally, adolescents are:

- More impulsive than adults,
- Prone to engage in risky and reckless behavior
- Motivated less by punishment and more reward,
- Less oriented to the future and more oriented to the present, and
- Susceptible to the influence of others. T. 9/13/17, 6.

(33) With late adolescents in particular, risk taking and reward seeking intensifies when they are in unsupervised groups of their peers. T. 9/13/17, 24..." Id.

(34) "'[T]he social brain' is a brain system that is more active during adolescence. It is responsible for how we perceive other people, judge their opinions of us and their emotions, expressions, and so on. In particular,

adolescents are more sensitive than adults to:

- Their standing within a social group,
- The impressions they make on others, and
- The opinions others have of them...

This explains why humans' behavior in groups changes as they get older. T. 9/13/17, 25-26. Specifically relevant to the question of sentencing -- and to the facts of this case as described by [Petitioner], which involve hot cognition, peer influence, fear, sensitivity to status, and so on -- is this: "[U]nder conditions of emotional arousal when hot cognition is operating, adolescents are less likely to pay attention to the downside of a risky decision, and they're more focused on the rewards of it, so it means that the prospect of being punished for something is less salient than it is to an adult." T. 9/13/17, 29. This is why the deterrent effect of punishment is not effective as to adolescents. They are not paying attention to negative consequences during hot cognition, the way they would during cold cognition, or the way an adult would in either case..." See Dr. Steinberg, 'Part one: The science' **Cruz v. United States**, No. 3:94-cr-112(AHN) (D. Conn. Nov 6, 2017).

U.S.S.G. § 1B1.13 is not binding on any prisoner that brings their motion to the courts after the enactment of the First Step Act, Pub. L. 113-391, 132 Stat. 5194, (2018). Thus, this Court has the sole discretion to determine what is 'Extraordinary and Compelling Circumstances' warranting relief. See e.g., **United States v. Brown**, 835 Fed. Appx. 120; No. 20-4052; 2021 U.S. App. LEXIS 2923; 2021 Fed. Appx. 0066N (Feb. 3, 2021 (6th Cir.)); **U.S. v. Topete**, No. 3:05-CR-00257-SLB-HNJ-15, 2021 U.S. Dist. LEXIS 41752 (N.D.A/2 Mar. 5, 2021); **United States v. Moore**, 5:93-CR-00137-SLB-SGC-1, 2021; **United States v. Jones**, 980 F.3d 1098, 1107-08 (6th CIr. 2020); **United States v. Brooks**, 2021 U.S. App. LEXIS 7800, C.A. No. 20-2884 (Jan. 7, 2021) (3rd Cir.); **United States v. McGee**, Case No. 20-5047, 2021 U.S. App. LEXIS 9074 (10th Cir. Mar. 29, 2021).

Petitioner recently received on 02/18/2021 from the Bureau of Prisons Psychology Services his intellectual evaluation. Provider: Colon-Berrios, Amariles PsyD, revised by Ramos, I, Ph.D. / Deputy Chief Psychologist.

Petitioner scored a 43 on his full-scale I.Q. (FSQ), which places him in the extremely low range of intelligence and 0.1% percentile rank.

Intellectual disability (Intellectual Development Disorder): Moderate, F71-Current.

This case is about the science of culpability. In **Moore v. Texas**, 137 S. Ct. 1039, 1048 (2017), which is about executing the intellectually disabled, Justice Ginsberg emphasized the superiority of Scientific Consensus over the discretion of the States (See **Hall v. Florida**, [134 S. Ct. 1986 (2014)].

Brief interlude: National Consensus is not the only parallel between adolescence and cognitive disabilities. The inappropriate of bright lines is as well. Two years before Moore, the Supreme Court in **Brumfield v. Cain**, 135 S. Ct. 2269 (2015), vacated a decision of a State post-conviction Court and Remanded for a Hearing. Because of Petitioner's extremely low I.Q. (43), coupled with his youth at the time of his crimes, the gang leader and the other members were able to manipulate Petitioner at will. These facts are significant in Petitioner's case, and should be considered "Other Extraordinary and Compelling Circumstances" for a reduction of his sentence.

In deciding Petitioner's request for a sentence reduction, the court must determine whether, after considering the factors set forth in 18 U.S.C. § 3553(a), a lower sentence would be appropriate, in addition to making a finding that Petitioner is subject to removal by the United States Immigration Service to Mexico.

All of the § 3553(a) factors weigh strongly in favor of relief in Petitioner's case. Also, there have been several changes in sentencing policies and the law that would lead to a much lower sentence if Petitioner was before the court today. The Sentencing Guidelines in 1996 discouraged courts from considering Petitioner's youthfulness as a basis to sentence below the Guidelines Range. U.S.S.G. § 5H1.1 (1998) ("Age" (including youth) is not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range"). The Guidelines were updated in 2010 to allow the consideration of age (including youthfulness) in appropriate circumstances when deciding whether a departure is warranted.

Petitioner was at a young age when he committed his crimes, and his good behavior and personal accomplishments during his incarceration all support a

reduced sentence. The more than 20 years Petitioner has already served in prison have been transformative for him. He has dedicated himself to his education and rehabilitation, personifying the objectives of § 3553(a)(2) that incarceration "provide[s] the defendant with needed educational or vocational training, medical care, or other correctional treatment." This factor weighs heavily in support of granting relief. Petitioner has accepted responsibility for his actions and is deeply remorseful for the decisions he made in his youth. However, he has used the time he has spent in prison to turn his life around.

Petitioner would not pose a danger to the community if released. Since his arrest and incarceration, Petitioner has been a model inmate.

Petitioner is currently working in the Skills Program A-1 Unit as a head orderly, and he continues to receive good evaluation reports for his work details. Also, he is serving others as a Mental Health Companion/Mentor in the BOP Skills Program under Dr. P. Benitez, Ph.D.'s guidance.

Petitioner has demonstrated an extraordinary change of character in the last 20 years of his incarceration and has been a 'role model' in his community. He has completely rehabilitated himself, and poses no threat to others. Appellant learned how to read and write in prison. This educational progress has bettered his language skills. Petitioner has worked tirelessly to educate himself while incarcerated, participating in over 3800 hours of educational programs.

Petitioner participated in the Challenge Program at the USP-1 Coleman, Florida and completed the program on December 17, 2014. The Challenge Program is a Modified Therapeutic Community Program in which inmates engage in half-day programming for a minimum of 500 hours over an average of a 12 to 16 month period.

Dr. Javier Mouriz, Ph.D., Challenge Program Coordinator wrote commends of Petitionerfor his dedication to the Program:

"I have known inmate Jose Hernandez-Miranda since August 2003 when he was designated to his facility... He enrolled in the Challenge Program in June 2013 in an effort to seek rehabilitation. During the treatment phase, he addressed his history of violence and drug use. He sincerely expressed remorse for his crimes

and the loss of life for which he is responsible. Despite having been involved in organized crime and coming to prison very young, he managed to change into a rule-abiding and respectful individual who exhibits prosocial values and behaviors. He has integrated these new prosocial values into his personality and on a daily basis demonstrated faithful adherence to them..."

Petitioner has been a resident within the Skills Residential Mental Health Program at FCI Coleman Medium as a Mental Health Companion/Mentor. While participating in a wide range of programming, Petitioner has worked tirelessly as a Mental Health Companion in the Skills Program, a position he has held since April 21, 2017. Dr. Benitez, Ph.D. wrote commends of Petitioner's dedication to the Program: "Since his assignment as a [Mental Health] Companion/Mentor[,] inmate Hernandez-Miranda has offered guidance, support, and life skills tutoring to Skills Program participants in the development of basic life, social, communication, coping, and relation skills. Inmate Hernandez-Miranda takes his work detail as a [Mental Health] Companion/Mentor seriously. He has been a positive role model and positive influence in the Skills Program Unit..."

Also, Appellant has participated in a large amount of programming in an effort to better himself as a Mentor.

Petitioner is deserving of mercy. With the passage of the First Step Act, Congress emphasized the imperative of reducing unnecessary incarceration and avoiding unduly punitive sentences that do not serve the ends of justice. **United States v. Simmons**, No. 07-CR-00874, 2019 WL 1760840, at *8 (E.D.N.Y. Apr. 22, 2019). Petitioner's conduct and initiative during his incarceration demonstrate excellent rehabilitation.

Through Petitioner'sincarceration, his growth has been his model and base of his character. In almost two decades that have passed since he was arrested and despite no realistic hope of release, Petitioner has done everything in his power to rehabilitate himself, as demonstrated by his genuinely exceptional accomplishments and meritorious prison records.

Petitioner feels significant remorse for his crimes he committed. He understands that he made prior decisions, and going to prison for his crimes has given him time to reflect. This has ultimately made him a better person and is in part why he has decided that he would like to devote his life to helping others upon his release from prison.

According to the Federal Juvenile Delinquency Act (FJDA), the FJDA provides specialized handling of juveniles charged with Federal crimes. 18 U.S.C.A. § 5032. See also 18 U.S.C. § 5037. See **United States v. Hoo**, 825 F.2d 667, 670 (2nd Cir. 1987). Petitioner was less than 21, he was 17 years of age. Petitioner was denied his Fifth Amendment rights to invoke the protections of the FJDA so long as the criminal charges and proceedings against him began before he turned twenty-one. See 18 U.S.C. § 5031. **United States v. Hoo**, 825 F.2d 667, 669-670 (2nd Cir. 1987). Petitioner was denied these above stated protections because the government deprived the Petitioner. These protections by waiting until the Petitioner was over seventeen to bring charges against the Petitioner. See 18 U.S.C. § 5031-5042; 825 F.2d at 699, n.1. There is no valid reason why thePetitioner should not have been charged as a juvenile, and he was still not twenty-one (21) years of age. When he was indicted, he was only 20 years old, thereby still violating his Fifth Amendment right protections, as well as his Eighth Amendment rights under the United States Constitution to cruel and unusual punishment. There was no valid reason for the delay in the Petitioner's reason other than to wait and age the Petitioner out until he was 20 years old and then charge him as an adult, so that he could be prevented from being charged as a juvenile, yet the age is not up to 20 years old, in which the Petitioner was indicted at after waiting his age and by the government purposefully, but the age is 21, not 20. Therefore, it was cruel and unusual punishment to violate the Petitioner's Fifth and Sixth Amendment rights to due process and cruel and unusual punishment. These are very extraordinary and compelling circumstances and reasons.

In this case of the Petitioner, not only was he denied his Fifth and Sixth Amendment rights through pre-indictment delay, but he was still not yet 21 years of age when he was indicted for crimes that he committed when he was 17 years of age.

According to **Miller v. Alabama**, 122 S. Ct. 2455 (2012), the Eighth Amendment prohibits sentencing a juvenile to "life imprisonment without parole absent consideration of the juvenile's special circumstances." **Montgomery v. Louisiana**, 136 S. Ct. 718, 725 (2016).

Petitioner was 17 years of age when he joined this conspiracy for which he was sentenced to life in prison without possibility of parole. This is cruel and unusual punishment in violation of Petitioner's Eighth Amendment rights under unusual extraordinary and compelling reasons, and circumstances, for Appellant appeals to this Honorable Court. See **Jones v. Mississippi**, U.S. Supreme Court cite 18-1259.

Also, Petitioner suffers from a below normal I.Q. level for which he was seriously evaluated for. **McWilliams v. Dunn**, U.S. Supreme Court cite 16-5294; **Moore v. Texas**, U.S. Supreme Court cite 797; **Ake v. Oklahoma**, 470 U.S. 68, 83 (1985); **Atkins v. Virginia**, 536 U.S. 304 (2002); **Hall v. Florida**, 134 S. Ct. 1986 (2014); **Moore v. Texas**, U.S. Supreme Court cite 18-443 (2019); **Vost v. United States**, 88 F.3d 587, 591 (8th Cir. 1996).

Under these extraordinary and compelling reasons for Petitioner's compassionate release, and Petitioner's severity of his grotesque sentence and the extent of the harshness between the Petitioner's sentence and violations of his Eighth and Fifth Amendment rights, and the First Step Act. The U.S. District Court's decision was a decision based on an individualized judgment. Therefore, Petitioner requests that this Honorable Court make its decision based on the Petitioner's extraordinary and compelling reasons and circumstances of the product of individualized assessments of the Petitioner's five life terms for which he was individually sentenced too harshly. The U.S. District Court relied not only on the Petitioner's rejected request for juvenile status, to harshly sentence him in violation of his Fifth and Eighth Amendment rights, and § 5031-35 factors, but also on the § 924(c) counts as well. Petitioner now requests the Appeals Court to individualize Petitioner's unusually harsh sentence and circumstances, for which were grotesquely used against the Petitioner to sentence him for juvenile crimes, when he joined into a conspiracy when he was only of the age of 17 years, denied Federal juvenile offender status, and sentenced to over five life terms in Federal United States penitentiaries for the rest of his natural life, never ever to see the free world ever again.

Petitioner was only 17 years old at the time of these offenses, not yet 18 nor 21, a factor that many courts have found relevant under § 3582(c)(1)(A)(i). See e.g., **Zullo**, 976 F.3d at 238; **Jones**, U.S. Dist. LEXIS 156098, 2020 WL 5359636, at *7. Petitioner has already been incarcerated since 1998, twenty-three (23) years in a Federal United States prison. From 17 to 23 years, that means that Petitioner

has spent close to or more than half his life in prison. **Jones**, 2020 U.S. Dist. LEXIS 156098, 2020 WL 5359636, at *7 ("[B]ecause Mr. Jones was only 22 years old when he began serving his sentence, he has spent more than half his life in prison"). During Petitioner's time in prison, Petitioner has taken substantial steps toward rehabilitation.

These are extraordinary and compelling reasons for a reduction in Petitioner's sentence to time served, based on all of the above stated extraordinary and compelling reasons and circumstances.

NEW COVID-19 OMICRON VARIANT

Petitioner would like to point out that there has been a surge of new COVID-19 cases reported in the past two (2) weeks (from December 12, 2021 to December 26, 2021). According to https://www.bop.gov/coronavirus/, the amount of total inmates infected with COVID-19 or any of its variants, climbed over 8% from December 12 to December 18, 2021 compared with the previous week's statistics. Coleman Medium, where the Petitioner is currently incarcerated, was one (1) of five (5) Federal prisons that reported ten or more new inmate COVID-19 cases the week of December 12, 2021. As a result, Mr. S. Salem, Coleman Medium's warden, published a Memorandum to the inmate population on December 20, 2021, stating that the institution was "Level 3 - Red Guidance." The Memorandum states that Programs within many departments and Social Visitation would be suspended until further notice, "[d]ue to the elevated numbers of inmates being found COVID-19 positive."

The COVID-19 omicron variant is disrupting the United States along with the Bureau of Prisons. Omicron is spreading so rapidly despite vaccinations, that as of December 17, 2021, New York State broke its previous record for new daily cases, which was set 11 months ago. "This is changing so quickly. The numbers are going up exponentially by day," New York Governor Kathy Hochul said on December 17, 2021. On December 20, 2021, the National Institutes of Health Director Dr. Francis Collins told CNN, "If Americans don't take COVID-19 seriously, the country could see 1 million daily infections."

Nationally, the number of confirmed omicron cases increased 97% from December 17 to December 18, 2021 and is now in 50 states out of 50. The United States is

recently averaging over 800,000 new COVID-19 cases each day with over 2,000 deaths each day. Michael Osterholm, director of the Center for Infectious Disease Research and Policy at the University of Minnesota, told CNN on December 16, 2021, "I think we're really just about to experience a viral blizzard. I think in the next three to eight weeks, we're going to see millions of Americans are going to be infected with the virus, and that will be overlaid on top of Delta, and we're not yet sure exactly how that's going to work out."

An Oxford University study released in December of 2021 found that two (2) doses of the Pfizer vaccine are much less effective at warding off the COVID-19 omicron variant than previous variants of the coronavirus, especially beyond 28 days after the second dose of either vaccine. When omicron was introduced to those samples, scientists reported a substantial fall in the neutralizing antibodies that fight off COVID-19 compared to the immune responses seen against earlier variants. The research paper noted that some vaccine recipients failed to neutralize the virus at all. The Johnson & Johnson vaccine produced virtually no antibody protection against omicron, underlying the new strain's ability to get around one pillar of the body's defenses, according to one of the researchers. A December 16, 2021 Imperial College of London study found that the risk of reinfection with the COVID-19 omicron variant is more than five (5) times higher, with no sign of being milder than prior COVID-19 variants.

According to a USA TODAY article published on December 22, 2021, Salim Abdool Karim, a South African epidemiologist and infectious diseases specialist and member of the Massachusetts Consortium on Pathogen Readiness, noted that omicron is more contagious than other variants since "[t]here were 35,000 to 45,000 cases in South Africa in the first month of the beta and delta waves and 133,000 cases in the first month of omicron." The omicron variant has also overtaken delta in the United States. According to the CDC, as of December 18, 2021, the omicron variant has accounted for 73.2% of new COVID-19 infections in the nation, up from 12.6% the previous week. Dr. Jeremy Luban, another member of the Massachusetts Consortium on Pathogen Readiness, and others were surprised to see how many differences omicron has from its predecessor variants. Dr. Luban said, "The virus may be doing things that are not under our magnifying glass and we can't actually see." He also said, "We've learned the same lesson again and again. The virus is transmitted in enclosed spaces with lots of people congregating," as in the Petitioner's case in point by being incarcerated with too many inmates in such close proximity.

In the last six (6) months, many courts have cited the questionable fact that if an individual already contracted COVID-19, he or she is less likely to contract it again or contract it more seriously. Additionally, judges are holding that being vaccinated reduces the risk to a level where compassionate release is unnecessary. Petitioner would like to point out that the omicron variant has now kicked the legs out from under both of these scenarios. In other words, these two arguments can no longer be made against the Petitioner due to the overwhelming amount of evidence presented to the Court in this entire "NEW COVID-19 OMICRON VARIANT" section.

If the Petitioner were to contract the omicron variant, he could very possibly decease in Federal prison due to the continued dangers posed by the omicron variant combined with his serious medical conditions or a possible severe reaction to the omicron variant. Due to the elevated number of inmates being found positive for COVID-19 suddenly in Coleman Medium Federal prison, there is a high chance that the Petitioner could contract COVID-19 through the powerful and contagious omicron variant.

According to a report by the Marshall Project on December 22, 2021, "[E]verything about prisons and jails makes them a setup to magnify the harms of omicron. 'The overcrowding. The poor sanitary conditions. The lack of access to health care.'"

According to a USA TODAY article titled "US reports record number of new cases" on December 29, 2021, the U.S. on December 27, 2021 reported more than half a million new COVID-19 cases -- vastly worse than any other single day of the entire pandemic. According to a USA TODAY analysis of John Hopkins University data, December 27's tally of over 500,000 new cases was higher than the nation's previous record of more than 303,000. In the world, 5.9 million new cases were reported, the worst week ever for COVID-19 cases.

The omicron variant is also rapidly and furiously making its way into the Federal Bureau of Prisons. As of January 10, 2022, over 50,000 federal inmates and over 8,500 staff personnel have tested positive for COVID-19, with 3,761 inmates with active cases (up 575% in 14 days primarily due to the omicron variant). See https://experience.arcgis.com/experience/ab22fb4c564e4f4b986e257c685190e8/page/page_2/.

The following three (3) statistics can be verified by accessing the BOP's COVID-19 webpage at https://www.bop.gov/coronavirus/. (1) As of January 10, 2022, COVID-19 was present in 127 of the BOP's 128 institutions (94%). (2) Over 290 federal inmates have died in BOP and private federal prisoner facilities.

BOP staff COVID-19 case numbers have remained consistently climbing since hitting a June 24, 2020 low of 133. Today, the number stands at 922, a number that has increased by 141% in the last 14 days. Although President Biden ordered federal employees to get vaccinated and recently announced that over 92% of federal employees have been vaccinated (see the following Web site link for more details: https://www.washingtonpost.com/politics/federal-workers-vaccines/2021/11/24/54b438f6-4c88-11ec-b73b-a00d6e559a6e_story.html), less than 70% of BOP workers have chosen to do so (according to the BOP's COVID-19 webpage). At FCC Coleman, only 61.6% of the 1,343 BOP staff members having direct contact with inmates have been vaccinated.

As of January 10, 2022, 57% (or 25 of the last 44) of federal inmates to die of COVID-19 -- all since the end of March 2021 -- died after the BOP had declared them to be "recovered." In light of its own experience, the BOP cannot seriously claim that a prior case of COVID protects against a more serious case later.

New evidence refutes the Government's claim that vaccination protects against COVID omicron. No evidence supports this assertion. The Centers for Disease Control and Prevention, which has long represented that vaccines provide robust protection against COVID, now admits that "we don't yet know ... how well available vaccines and medications work against it." See https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html.

All of the previously stated facts, reasons, and circumstances are sufficient to qualify under extraordinary and compelling circumstances/reasons under compassionate release. As demonstrated, the Petitioner had to depict the seriousness of the omicron variant, which is adding to the grave dangers that the Petitioner is still facing while incarcerated. Every day that the Petitioner has to wake up is another 24 hours that he has to be extremely concerned for his life because he has a high probability of becoming infected with the omicron variant

and deceasing. To alleviate these concerns, the concept of compassionate release was implemented in order to grant the Petitioner relief, which is warranted based on the ongoing and continuing COVID-19 pandemic and now its omicron variant, which is still presently causing FCI Coleman Medium to remain on Code Red restrictions this very day.

To avoid questioning the validity of Points (59) to (69) under this section outlining the dangers of the omicron variant, the Petitioner used all of the following recent sources (unless a source is otherwise already noted):

(a) NPR, U.S. could see 1 million cases per day, warns departing NIH director Francis Collins (December 19, 2021)

(b) NBC, 'This is a Whole New Animal:' NY Reports Highest Single-Day Case Total of Pandemic (December 17, 2021)

(c) CNN, the latest on the coronavirus pandemic and the omicron variant (December 17, 2021)

(d) Wanwisa Dejnirattisai, et. al., Reduced neutralisation of SARS-COV-2 Omicron-B.1.1.529 variant by post-immunisation serum (Oxford University, December 13, 2021)

(e) Bloomberg Quint, Johnson & Johnson shot loses antibody protection against omicron in study (December 14, 2021)

(f) Neil Ferguson, et. al., Growth, population distribution and immune escape of omicron in England (Imperial College - London, December 16, 2021)

(g) USA TODAY, Experts race to pin down omicron (Karen Weintraub, December 22, 2021)

DISTRICT COURT'S DENIAL OF PETITIONER COMPASSIONATE RELEASE

The District Court's denial of Petitioner's compassionate release motion was not clearly a matter of law, especially under the reasons for which the Petitioner has just explained to this Honorable U.S. Court of Appeals, and Title 18 U.S.C. § 3553(a) 1-7 factors, for which are extraordinary and compelling reasons in Petitioner's case in point, and such a reduction in Petitioner's sentence would be consistent with the applicable policy statements issued by the Sentencing Commission and the First Step Act in U.S. Senate Bill 756, allowing the Petitioner to be released under these extraordinary and compelling reasons. Also § 3553(a) 1-7 factors support a reduction in Petitioner's sentence, under Extraordinary and Compelling reasons, for which the District Court never considered in Petitioner's

case. Also, under United States Sentencing Guidelines, in which established four categories of "extraordinary and compelling reasons" that render Petitioner eligible for a sentence reduction. Petitioner suffers from a very serious medical condition of a very low I.Q. level of below 60. **McWilliams v. Dunn**, **Moore v. Texas**, **Ake v. Oklahoma**, **Hall v. Florida**, **Atkins v. Virginia**, and **Vost v. United States**, all supra. Petitioner needs help and assistance with reading, writing, comprehension, and understanding normal things that normal people usually comprehend on a regular and natural basis. He has been incarcerated for 20 years of his life, since the age of 17 years old of the crime. His family is willing to take him home, offer some kind of help and assistance for him, and help him to continue to strive to better himself and his position in life so that he can be a productive member of society if ever released. Petitioner's compassionate release would therefore be within the First Step Act revision of U.S. Senate Bill 756, Dec. of 2018, under Title 18 U.S.C. § 3582(c)(1)(A)(i) and 1B1.13, and Application Note 1(D). In other words, Petitioner disagrees with the **Bryant** decision of 996 F.3d at 1248, under the circumstances in which the Government states it does not apply to the Petitioner The Petitioner has established extraordinary and compelling circumstances that renders him eligible for release. Petitioner's sentence alone, under extraordinary and compelling reasons renders him compassionate release. See **Miller v. Alabama**, **Montgomery**, **Roper**, and **Jones v. Mississippi**, all supra. Petitioner's sentence as a juvenile is cruel and unusual punishment in violation of the Eighth Amendment, and the above mentioned United States Supreme Court cases and in regards to the Federal Juvenile Delinquency Act, 18 U.S.C. § 5032, 5037, **United States v. Hoo**, 825 F.2d 667, 670 (2nd Cir. 1987). See § 5031-5042, see 825 F.2d at 699, n.1, why it states that Petitioner's sentence is unconstitutional and violates his Eighth Amendment rights under the United States Constitution. Honorable Justices, the Government does not even argue for nor against Title 18 U.S.C. § 5031, or **United States v. Hoo**, 825 F.2d 667, 669-670 (2nd Cir. 1987). Petitioner was 17 years old, not 21 years old, and his sentence also violates 18 U.S.C. § 5031, **Hoo**, 825 F.2d 667-669-670 (2nd Cir. 1987), because he was under 21 years of age. Also, he was never told that he was so incorrigible that he could never be released from Federal prison. He was unconstitutionally sentenced to life without the possibility of parole, in violation of all of the above stated United States Supreme Court cases and Title 18 U.S.C. § 5031, 5032, and 5037-5042. These are truly extraordinary and compelling reasons for the Petitioner's compassionate release, and reasons legally justified under the First Step Act of U.S. Senate Bill 756, in regards to Title 18 U.S.C. § 3582(c)(1)(A)(i).

Petitioner's medical condition (mentally), his rehabilitation, Title 18 U.S.C. § 5031-5042, and the First Step Act revisions in § 3582(c)(1)(A)(i), clearly qualifies the Petitioner for release under these extraordinary and compelling reasons, and his sentence for a juvenile that was only 17 years of age, is cruel and unusual punishment according to **Miller**, **Roper**, **Jones**, and the other above stated cases from the United Stats Supreme Court. Additionally, Petitioner tested positive for COVID-19, in which he could not even self-care for himself, and now he faces a very strong possibility of contracting omicron or any of the COVID-19 variants all over again becuase the prison he is incarcerated in, has 1400 to 1500 federal inmates all using the same food utensils, showers, and clothes, and always around each other, as well as prison staff bringing in the virus and giving it to the prisoners on a regular basis. Prisoners are constantly deceasing from the COVID-19 virus. The prison system has thousands upon thousands of inmates with the virus, and therefore, it cannot handle nor contain the virus. The Bureau of Prisons Director and his Assistant Director are both resigning for the same reasons the Government is trying to mislead the Honorable Court into believing that the Federal Bureau of Prisons is containing the COVID-19 virus and all its variants, when in fact, federal prisoners are constantly getting sick, many thousands of them are contracting the virus, and many are either dead or about to die, and the Federal Director Mr. Carvajal and his Assistant Director Mr. Beasley, tried to downplay and hide the numbers from the United States Senate and from U.S. Senator Durbin, but they were caught, and that is one of the several reasons why they both have to resign by May 31, 2022.

In **Miller v. Alabama**, 132 S. Ct. 2455 (2012), the Supreme Ccurt held that juveniles may not be sentenced to a mandatory term of life in prison under the Eighth Amendment. The Court reasoned that such a harsh sentence "precludes consideration of Petitioner's chonological age and its hallmark features among them, immaturity, impetuosity, and failure to appreciate risks and ccnsequences." **Miller v. Alabama**, 132 S. Ct. 2455, 2468 (2012).

The United States Supreme Court held that **Miller** is a retroactive case and that a juvenile offender's youth should be considered before imposing a life without parole sentence; **Miller** established that the penological justifications for life without parole collapse in light of the distinctive attributes of youth. **Montgomery v. Louisiana**, 136 S. Ct. 718, 734 (2016) (quoting **Miller** at 2465).

The life sentence imposed on the Petitioner is in violation of the Eighth Amendment of the United States Constitution.

Petitioner states under these extraordinary and compelling circumstances and reasons for compassionate release, that he was only a juvenile when this crime transpired. Petitioner was only aged 17, yet he was tried as an adult under federal law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jose Hernandez

Date: July 8, 2022