

CASE No. _____

In The Supreme Court of the United States

THOMAS A. GUERRIERO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Eleventh Circuit's prior precedent rule, which bars consideration of arguments not raised or decided previously, should be overturned.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION.....	1
STATUTORY PROVISIONS INVOLVED.....	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	3
CONCLUSION.....	4
APPENDIX A - Eleventh Circuit - June 2, 2022, Opinion & Judgment	
APPENDIX B - January 24, 2022, District Court Order	
APPENDIX C - November 15, 2021, District Court Order	

TABLE OF AUTHORITIES

CASES

<i>Brecht v. Abrahamson</i> , 507 U.S. 619, 631 (1993).	3
<i>Boeing N. Am., Inc. v. Roche</i> , 298 F.3d 1274, 1283 (Fed. Cir.2002).....	4
<i>United States v. Bryant</i> , 996 F.3d 1243 (11th Cir. 2021)	2

STATUTES

28 U.S.C. § 1254(1)	1
28 U.S.C. § 1291.....	2

RULES

Supreme Court Rule 13.1	1
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PETITION FOR WRIT OF CERTIORARI

Petitioner Thomas A. Guerriero (“Petitioner”) respectfully petitions this Court for a writ of certiorari to review the United States Court of Appeals for the Eleventh Circuit's judgment.

OPINIONS BELOW

The Eleventh Circuit’s opinion and judgment was entered June 2, 2022. (“App.”) A. The district court’s opinions were entered January 24, 2022, and November 15, 2021. App. B. & App. C.

JURISDICTION

The Eleventh Circuit’s judgment was entered on June 2, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), and Part III of the Rules of the Supreme Court of the United States. This petition is timely pursuant to Supreme Court Rule 13.1.

STATUTORY PROVISIONS INVOLVED

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District

Court of Guam, and the District Court of the Virgin Islands.... 28

U.S.C. § 1291.

STATEMENT OF THE CASE

1. Guerriero moved for a reduction in sentence on compassionate release grounds in the district court.
2. Guerriero argued that the district court was free to decide what constituted extraordinary and compelling reasons in support of a sentence reduction because U.S.S.G. § 1B1.13 was itself unlawful because it improperly subdelegated the authority to define extraordinary and compelling reasons to the Bureau of Prisons.
3. The district court denied relief. App. B & C.
4. Guerriero appealed to the Eleventh Circuit re-advancing the same argument he presented in the district court.
5. While noting that *United States v. Bryant*, 996 F.3d 1243 (11th Cir. 2021) did not address Guerriero's unlawful sub-delegation argument because it was not raised in that case, the Eleventh Circuit held that Guerriero could not advance his unlawful sub-

delegation claim because of its “prior-precedent rule,” which it described as holding “that a prior panel precedent cannot be circumvented or ignored on the basis of arguments not made to or considered by the prior panel.”

6. As a result, the Eleventh Circuit summarily affirmed the judgment of the district court.

REASONS FOR GRANTING THE WRIT

I. The Eleventh Circuit’s Prior Precedent Rule Is Inconsistent With Decisions From This Court And Other Circuits

7. This Court has previously recognized that the principles of *stare decisis* do not apply when the Court has “never squarely addressed the issue” presented. *Brecht v. Abrahamson*, 507 U.S. 619, 631 (1993).
8. The Eleventh Circuit’s overly rigged prior panel precedent rule is inconsistent with *Brecht* because it bars litigants from raising arguments that were never presented to a previous panel of the court. *Stare decisis* does not apply when the issue has never been “squarely addressed.” *Id.*

9. The Eleventh Circuit expressly acknowledged that Guerriero's unlawful sub-delegation argument was not raised or decided by *Bryant*.
10. The Eleventh Circuit's prior panel precedent rule also conflicts with decisions from at least one other circuit. The Federal Circuit, for example, has held that it is not bound by prior decisions where the argument advanced in an appeal was "neither argued nor discussed in our opinion." *Boeing N. Am., Inc. v. Roche*, 298 F.3d 1274, 1283 (Fed. Cir. 2002).
11. The Court should grant *certiorari* to resolve the split among the circuits on this important question.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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