

No. _____

In the
Supreme Court of the United States
OCTOBER TERM, 2022

JUAN SALVADOR CORDOVA-BRIENO,
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

- I.** Did the district court abuse its discretion in applying the 4-level enhancement for transporting an unaccompanied minor under U.S.S.G. § 2L1.1(b)(4) ?
- II.** Did the government establish, by a preponderance of the evidence, that Mr. Cordova-Briseno transported unaccompanied minors?
- III.** Did the district court improperly apply a "strict liability" standard, rather than considering whether it was reasonably foreseeable that a minor would be involved in the offense?
- IV.** Did the Fifth Circuit wrongly conclude that the enhancement lacked a scienter requirement?

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REPORTS OF OPINIONS

The decision of the Court of Appeals for the Fifth Circuit is reported as *United States v. Cordova-Briseno*, No. 21- 51063 (5th Cir. October 7, 2022)(not published). It is attached to this Petition in the Appendix.

JURISDICTION

The decision by the United States Court of Appeals for the Fifth Circuit affirmed the District Court's judgment of conviction and sentence in the Western District of Texas.

Consequently, Mr. Cordova-Briseno files the instant Application for a Writ of Certiorari under the authority of 28 U.S.C., § 1254(1).

BASIS OF FEDERAL JURISDICTION

IN THE COURT OF FIRST INSTANCE

Jurisdiction was proper in the United States District Court for the Western District of Texas because Mr. Cordova-Briseno was indicted for violations of Federal law by the United States Grand Jury for the Western District of Texas.

CONSTITUTIONAL PROVISIONS

The Fifth Amendment says to the federal government that “no person shall be . . . compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.

FEDERAL RULE OF CRIMINAL PROCEDURE INVOLVED

The question presented involves Federal Rule of Criminal Procedure 52(b), which provides: “A plain error that affects substantial rights may be considered even though it was not brought to the court’s attention.” Fed. R. Crim. P. 52(b).

STATEMENT OF THE CASE

1. Procedural History.

On April 08, 2021, a Federal Grand Jury for the Western District of Texas – Pecos Division returned a two count Indictment against Mr. Cordova-Briseno and one co-defendant. Count One charges Mr. Cordova-Briseno and his co-defendant with Conspiracy to Transport Illegal Aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I) & (B)(I). The offense occurred on or about March 22, 2021. Count Two charges Juan Salvador Cordova-Briseno and his co-defendant with Transportation of Illegal Aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) & (B)(ii). The offense occurred on or about March 22, 2021. ROA. 11-12.¹

On June 3, 2021, Mr. Cordova-Briseno entered a plea of guilty to the Indictment without a written plea agreement. ROA.54. Pursuant to an oral agreement, the Government agreed to dismiss Count One.

Mr. Cordova-Briseno was subsequently sentenced to a term of imprisonment of 46 months. ROA. 129. The District Court imposed a three-year term of supervised release. ROA. 129. Mr. Cordova-Briseno is a deportable alien. The District Court stated at sentencing that:

¹In the references to the Record on Appeal, references are made according to the pagination assigned by the Clerk of the Court.

.....if the Defendant's excluded, deported, or removed upon release, the term of supervision shall be nonreporting. The Defendant shall not illegally re-enter the United States. If the Defendant is released from confinement or not deported or lawfully re-enters the United States during the term of supervision, the Defendant shall immediately report in person to the nearest U.S. Probation Office. ROA. 129-130.

No fine was imposed, but Mr. Cordova-Briseno was ordered to pay a \$100 special assessment. ROA. 130. Thereafter, Mr. Cordova-Briseno filed a Notice of Appeal. ROA.32-33. The Fifth Circuit affirmed Mr. Cordova-Briseno's conviction and sentence in an unpublished opinion dated October 7, 2022.

2. Statement of Facts.

Mr. Cordova-Briseno is a 46-year old man who was born in Mexico and is one of 12 children. He has six children of his own. He has always worked at a variety of jobs both in Mexico and in the United States. He was visiting the United States on a tourist visa during when the Covid-19 pandemic broke out and he was unable to return to Mexico for an extended period of time. Mr. Cordova-Briseno has no criminal history and was scored as a Category I for his criminal history category.

The Government alleged that, on or about March 22, 2021, Mr. Cordova-Briseno and co-defendant Felipe Alejandro Aleman Murrillo violated 8 U.S.C. § 1324(a)(1)(A)(ii) & (B)(ii) by transporting Illegal Aliens. That is the conduct that comprised the charge to which he entered a plea of guilty. ROA. 54.

The Presentence Report (PSR) assigned Mr. Cordova-Briseno a base offense level of 12 for Count Two, pursuant to §2L1.1(a)(3).² Because the PSR Officer found that the offense involved the attempted smuggling, transporting, or harboring of twenty-five unlawful aliens, the offense level was increased by six levels. U.S.S.G. §2L1.1(b)(2)(B). Based on the PSR Officer's finding that two of the aliens apprehended were minors of approximately 16 and 17 years of age, with no indication that any of the other aliens apprehended were parents or legal guardians, the offense level was increased by four levels. U.S.S.G. §2L1.1(b)(4).

The PSR officer found that, during the commission of the offense, Mr. Cordova-Briseno and the co-defendant were responsible for fitting a total of 16 aliens, not including the two smugglers, into a vehicle with a maximum seating capacity of eight. Additionally, the PSR officer noted that Mr. Cordova-Briseno fled in the vehicle with both a door and the rear hatch unlatched. Aliens could be seen holding on and hanging partially out of the vehicle as it fled. Based on these findings, the offense level was increased by two levels pursuant to U.S.S.G. §2L1.1(b)(6).

The PSR officer made a further finding that Mr. Cordova-Briseno recklessly created a substantial risk of death or serious bodily injury to another person in the

²"PSR" refers to the Presentence Investigation Report filed by the United States Probation Department (under seal).

course of fleeing from a law enforcement officer. Based on this finding, the PSR officer increased the offense level by two levels pursuant to U.S.S.G. §3C1.2.

Mr. Cordova-Briseno received a three-level reduction for acceptance of responsibility. Based upon a total offense level of 23 and a criminal history category I, the guideline range of imprisonment was 46 to 57 months. ROA. 143. There were no objections made by either party to the PSR.

The District Court sentenced Mr. Cordova-Briseno to a 46-month term of imprisonment. ROA. 129. The District Court also sentenced Mr. Cordova-Briseno to serve a three-year term of supervised release. ROA.130. The conviction and sentence were memorialized in the District Court's written judgment. ROA.140-145.

After the sentencing hearing, Mr. Cordova-Briseno filed a notice of appeal. On October 7, 2022, the Fifth Circuit affirmed Mr. Cordova-Briseno's conviction and sentence. *See United States v. Cordova-Briseno*, No. 21- 51063 (5th Cir. 2022)(not published).

REASONS WHY CERTIORARI SHOULD BE GRANTED

The District Court erred by applying the unaccompanied minor enhancement under U.S.S.G. § 2L1.1(b)(4) to Mr. Cordova-Briseno's offense level. The District Court, therefore, reversibly erred by miscalculating Mr. Cordova-Briseno's sentencing guideline range. The District Court applied a 4-level increase for transporting two unaccompanied minors under U.S.S.G. § 2L1.1(b)(4) without sufficient factual foundation to support the enhancement. Mr. Cordova-Briseno also contends that the District Court erroneously used a "strict liability" standard to find that the application of the enhancement was warranted, without further inquiry into Mr. Cordova-Briseno's specific knowledge regarding the presence of the teen aliens. But for the District Court's sentencing error, Mr. Cordova-Briseno would have faced a Guideline range of only 30 to 37 months.³ The Government cannot show the error was harmless given the fact that the Court's 46-month sentence exceeded the correct Guideline range applicable to the offense. Accordingly, Mr. Cordova-Briseno asks this Court to vacate his sentence and to remand his case to the District Court for sentencing anew.

³ Based upon a total offense level of 23 and a criminal history category I, Mr. Cordova-Briseno's guideline range of imprisonment was 46 to 57 months. ROA. 143.

Under § 2L1.1(b)(4) of the Sentencing Guidelines, an individual's sentence for the offense of smuggling, transporting, or harboring an unlawful alien is increased by 4-levels if the offense "involved the smuggling, transporting, or harboring of a minor who was unaccompanied by the minor's parent, adult relative, or legal guardian." U.S.S.G. § 2L1.1(b)(4). The commentary to the provision further explains the term "minor" means an individual who had not attained the age of 18 years. U.S.S.G. § 2L1.1 cmt. n.1.

When imposing the § 2L1.1(b)(4) enhancement, district courts may rely on the "Relevant Conduct" Guideline. *See* U.S.S.G. § 1B1.3(a)(1)(B). Section 1B1.3(a)(1)(B) of the Guidelines provides that, in the case of a jointly undertaken criminal activity, whether or not it is charged as conspiracy, a particular special offense characteristic should be determined based on "all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity, that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense." U.S.S.G. § 1B1.3(a)(1)(B).

First, the District Court erroneously relied on a "strict liability" standard as opposed to a "reasonable foreseeability" standard in sentencing Appellant. It appears that the District Court applied the wrong standard in applying this guideline increase.

The PSR relied chiefly upon the fact that a 16-year old and a 17-year old minor were amongst the undocumented aliens smuggled to impose the § 2L1.1(b)(4) enhancement. The District Court should have examined the particular circumstances of the alien smuggling ring as well as Mr. Cordova-Briseno's role within it to assess whether it was reasonably foreseeable that unaccompanied minors would be involved in the offense. Because the District Court failed to apply the proper legal standard, Appellant requests that this Court to hold the lower court clearly erred in imposing the unaccompanied minor enhancement to his sentence.

Further, there is insufficient evidence from which the District Court could have inferred that it was reasonably foreseeable to Mr. Cordova-Briseno that an unaccompanied minor alien would be among those smuggled, transported, or harbored. There is insufficient reliable evidence for the lower court to infer that it was "reasonably foreseeable" to Mr. Cordova-Briseno that unaccompanied minor would be included among the other aliens. There is insufficient evidence indicating that Mr. Cordova-Briseno knew that undocumented minors were involved in this offense. Because there is no evidence from which the District Court could have inferred that it was reasonably foreseeable to Mr. Cordova-Briseno that a minor alien would be among those being transported and harbored by the trafficking ring, the District Court clearly erred in imposing the unaccompanied minor enhancement.

The District Court further erred because the Court had no basis to find the minor in question was “unaccompanied” as required by the Guidelines. There were several adult aliens in the vehicle so there is insufficient evidence that the minors were not “accompanied” by the other individuals. Therefore, the District Court erred in imposing the enhancement to his sentence. This sentence must be vacated.

Plain Error Analysis

As noted, trial counsel made no objection to the District Court’s Unpreserved error requires a showing of: 1) error, 2) that is clear or obvious, 3) that affects substantial rights, and 4) that seriously affects the fairness, integrity, or public reputation of judicial proceedings, meriting discretionary relief. *See United States v. Olano*, 507 U.S. 725, 732 (1993). A “plain” error is one that is “clear or obvious, rather than subject to reasonable dispute.” *Puckett v. United States*, 556 U.S. 129, 136 (2009). A defendant can show that a plain sentencing error affects substantial rights when there exists a “reasonable probability that but for the district court’s misapplication of the guidelines, he would have received a lesser sentence.” *United States v. Villegas*, 404 F.3d 355, 364 (5th Cir. 2005).

“The reasonable probability standard [on plain error] is not the same as, and should not be confused with, a requirement that a defendant prove by a preponderance of the evidence that but for the error things would have been

different.” *United States v. Dominguez-Benitez*, 542 U.S. 74, 83 n. 9 (2004); *see also* *Kyles v. Whitley*, 514 U.S. 419, 434 (1995).

To satisfy the third prong of plain error, a party need only “undermine confidence” that his current sentence would have been the same; he need not prove a different result by a preponderance of the evidence. *Dominguez-Benitez*, 542 U.S. at 83, n. 9. “[W]hether a sentencing error seriously affects the fairness, integrity or public reputation of judicial proceedings is dependent upon the degree of the error and the particular facts of the case.” *United States v. John*, 597 F.3d 263, 288 (5th Cir. 2010). But “when there is no indication that the district court would have selected the sentence regardless of the applicable Guidelines range, and the sentence imposed is based on an erroneously calculated Guidelines range, it is appropriate to exercise our discretion to vacate the sentence and remand the proceeding, at least when the sentence is materially or substantially above the properly calculated range.” *John*, 597 F.3d at 289.

An error that “clearly affects a defendant’s sentence” often implicates the fairness, integrity or public reputation of judicial proceedings. *United States v. Price*, 516 F.3d 285, 290 (5th Cir. 2008); *see United States v. Andino-Ortega*, 608 F.3d 305, 311-312 (5th Cir. 2010).

Discussion

1. There was error and 2) the error was plain.

The District Court improperly increased the offense level with the unaccompanied minor enhancement. Error in this case follows from several well-settled propositions, and is accordingly plain.

3. The error affected substantial rights

That enhancement produced an increase in Mr. Cordova-Briseno's sentencing guideline range. "When a defendant is sentenced under an incorrect Guideline range . . . the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error." *Molina-Martinez v. United States*, 578 U.S. 189 (2016). The court should exercise discretion to reverse and remand. "[Courts] sometimes exercise discretion to correct a plain error where the imposed sentence is 'materially or substantially above the properly calculated range.'" *United States v. Rosales-Mireles*, 850 F.3d 246, 250 (5th Cir. 2017); *see also United States v. John*, 597 F.3d 263, 289 (5th Cir. 2010).

For instance, in *United States v. Mudekanye*, this Court concluded that a substantial disparity of 19 months between the imposed sentence and the applicable Guidelines range warranted the exercised of discretion to correct the error absent evidence suggesting that the court would have imposed the same sentence

irrespective of the correct Guidelines range. 646 F.3d 281, 290- 91 (5th Cir. 2011).

In this case, the court sentenced appellant on the low end of the Guideline range at 46 months.

The proper guideline range was 30 to 37 months. If the court were to sentence Mr. Cordova-Briseno at the low end of the correct Guideline range, the difference would be 16 months or over two years. Abstaining from error correction in this case would result in “a miscarriage of justice.” *Olano*, 507 U.S. at 736.

This Court’s “precedent is clear that absent additional evidence, a defendant has shown a reasonable probability that he would have received a lesser sentence when (1) the district court mistakenly calculates the wrong Guidelines range, (2) the incorrect range is significantly higher than the true Guidelines range, and (3) the defendant is sentenced within the incorrect range.” *United States v. Mudekunya*, 646 F.3d 281, 289-290 (5 Cir. 2011); *see also John*, 597 F.3d at 284-385 (finding an effect on substantial rights under those circumstances); *United States v. Garza-Lopez*, 410 F.3d 268, 275 (5th Cir. 2005); *see also United States v. Villegas*, 404 F.3d 355 (5th Cir. 2005), *United States v. Insaugarat*, 378 F.3d 456, 468, n.17 (5th Cir. 2004), and *United States v. Gracia-Cantu*, 302 F.3d 308, 312 (5th Cir. 2002). Those conditions are met in this case.

4. Discretionary remand is merited.

The error merits discretionary remand for at least two reasons. First, the size of the anticipated sentence reduction is at least nine months, a fact that weighs heavily in favor of remand. *See Andino-Ortega*, 608 F.3d at 311-12 (5th Cir. 2010)(“[B]ecause the district court’s error clearly affected [Defendant]’s sentence, we also find that the error seriously affected the fairness, integrity, or public reputation of judicial proceedings.”); *Price*, 516 F.3d at 290 (“Finally, the sentencing error seriously affects the fairness, integrity, or public reputation of judicial proceedings because it clearly affected the defendant’s sentence.”); *compare United States v. Akande*, 594 Fed.Appx. 239, 241 (5th Cir. 2014)(unpublished)(slight extension of defendant’s sentence did not affect fairness, integrity, or public reputation of judicial proceedings).

Even if Mr. Cordova-Briseno were sentenced at the high end of his reduced Guideline range, his sentence would be reduced by 9 months. This is a significant amount of time to spend in prison on the basis of a mistake. Second, Mr. Cordova-Briseno has no criminal history. The sentence should be vacated and the case remanded.

CONCLUSION

This Petition for Writ of Certiorari should be granted and the decision of the Fifth Circuit should be vacated, and the case should be remanded for proceedings consistent with this Court's opinion.

Respectfully submitted,

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RELIEF REQUESTED

FOR THESE REASONS, the Petitioner moves this Court to grant a Writ of Certiorari in order to review the Judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

/s/ Amy R. Blalock

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CERTIFICATE OF SERVICE

I certify that on the 21th day of October, 2022, I served one (1) copy of the foregoing Petition for Writ of Certiorari on the following individuals by mail (certified mail return receipt requested) by depositing same, enclosed in post paid, properly addressed wrapper, in a Post Office or official depository, under the care and custody of the United States Postal Service, or by other recognized means pursuant to the Rules of the Supreme Court of The United States of America, Rule 29:

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In the
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OCTOBER TERM, 2022

JUAN SALVADOR CORDOVA-BRISENO,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

APPENDIX

OPINION OF THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals for the Fifth Circuit

No. 21-51063
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
October 7, 2022
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JUAN SALVADOR CORDOVA-BRISENO,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-333-1

Before BARKSDALE, HIGGINSON, and HO, *Circuit Judges*.

PER CURIAM:*

For his guilty-plea conviction, Juan Salvador Cordova-Briseno challenges his 46-months' prison sentence for transporting illegal aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii), (B)(ii). He challenges the district court's imposition of a four-level enhancement under Sentencing Guideline

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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§ 2L1.1(b)(4), which applies when the offense involved transporting an alien under the age of 18 who was unaccompanied by a parent, adult relative, or legal guardian (unaccompanied). U.S.S.G. § 2L1.1(b)(4) & cmt. n.1. The court imposed the enhancement based on the presentence investigation report's (PSR) stating: the transported aliens included two minors; and there was no indication they were accompanied.

Cordova contends the court erred by failing to consider whether he had knowledge of the minors' presence, or whether their presence was reasonably foreseeable, as required by Guideline § 1B1.3(a)(1)(B). He also claims the evidence was insufficient to support a finding the minors were unaccompanied.

Cordova (as he concedes) did not raise these two issues in district court. Therefore, review is only for plain error. *E.g., United States v. Broussard*, 669 F.3d 537, 546 (5th Cir. 2012). Under that standard, Cordova must show a forfeited plain error (clear-or-obvious error, rather than one subject to reasonable dispute) that affected his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes that showing, our court has the discretion to correct the reversible plain error, but generally should do so only if it "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings". *Id.* (citation omitted).

The district court did not commit the requisite clear or obvious error in applying Guideline § 2L1.1(b)(4). The reasonably-foreseeable standard in Guideline § 1B1.3(a)(1)(B) applies when determining whether the actions of others, occurring during a jointly undertaken criminal activity, are considered in calculating a defendant's Guidelines sentencing range. The enhancement in Guideline § 2L1.1(b)(4), however, applies to the defendant's own actions, without consideration of his knowledge, or the foreseeability, of the minors' involvement. Guideline § 1B1.3(a)(1)(A), (B);

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§ 2L1.1(b)(4); *United States v. Flores-Avila*, 783 F. App'x 440, 440–41 (5th Cir. 2019) (Although unpublished, *Flores-Avila* is “highly persuasive” because it “explicitly rejected [an] identical argument”. *United States v. Pino Gonzalez*, 636 F.3d 157, 160 (5th Cir. 2011)).

For his second issue, Cordova contends the evidence was insufficient to show the minors were unaccompanied because there were several adults among the aliens he transported. Generally, the PSR “bears sufficient indicia of reliability to be considered as evidence by the sentencing judge in making factual determinations”. *United States v. Harris*, 702 F.3d 226, 230 (5th Cir. 2012) (citations omitted). Therefore, the court “may adopt the facts contained in a [PSR] without further inquiry if those facts have an adequate evidentiary basis with sufficient indicia of reliability and the defendant does not present rebuttal evidence or otherwise demonstrate that the information in the PSR is unreliable”. *Id.* (alteration in original) (citations omitted). Along that line, if defendant fails to present rebuttal evidence, the court is “free to adopt the PSR’s findings without further inquiry or explanation”. *United States v. Rodriguez*, 602 F.3d 346, 363 (5th Cir. 2010).

At sentencing, Cordova did not question the information presented in the PSR about the unaccompanied minors, nor did he offer any rebuttal evidence. The PSR noted its information was obtained from the investigative files of the United States Border Patrol and Homeland Security Investigations. In *Harris*, our court ruled the district court did not err by relying on information in the PSR taken from police reports in the absence of any attempt by defendant to question the reliability of that information at sentencing. 702 F.3d at 228, 230–31. For the same reasons here, the court did not commit the requisite clear or obvious error by relying on information in the PSR to find the minors were unaccompanied. *See id.*; *see also Rodriguez*, 602 F.3d at 363; *Flores-Avila*, 783 F. App'x at 441 (defendant’s comment at sentencing “the minor was not alone because he was accompanied by two

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people was insufficient to demonstrate, contrary to the PSR, that the minor was accompanied by the minor's parents, adult relative, or legal guardian").

AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

October 07, 2022

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 21-51063 USA v. Cordova-Briseno
USDC No. 4:21-CR-333-1

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through **41**, and **5TH CIR. R. 35**, **39**, and **41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

A handwritten signature in cursive script that reads "Melissa Mattingly". The signature is written in black ink on a white background.

By:

Melissa V. Mattingly, Deputy Clerk

Enclosure(s)

Ms. Amy R. Blalock
Ms. Margaret Mary Embry
Mr. Joseph H. Gay Jr.