IN THE SUPREME COURT OF THE UNITED STATES

22-5972

UNITED STATES OF AMERICA

V

WILLIAM MARION PATTERSON

PETITION FOR CERTIORARI

From the Eleventh Circuit Court of Appeals

ON APPEAL FROM THE ELEVENTH CIRCUIT

COURT OF APPEALS

No. 21-10488-JJ

PRO SE

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Questions Presented

1. Whether the Staff Attorney Program in the Eleventh Circuit and the Middle District of Florida violate the non-delegation principles of Article III duties to non-Article III decision makers; exceeding the limited rule making authority of the federal courts.

2. Whether Pro Se appeals are Unconstitutionally being decided by Staff Attorneys who are supervised not by Article III judges, but rather by "Supervisory" Staff Attorney, thereby reducing the quality of decision by the lower courts and allowing for opinions seemingly issued by Article III judges, but in reality issued by non-judicial actors who are frequently only a year or two out of law school, who have abitions to become prosecutors (thereby compromising impartiality), and with only "rubber stamping" by Article III judges which results in a "pay to play" venue in the lower courts as Pro Se filers under this scheme do not have access to Article III Judge determinations, while counseled petitions do have such access.

3. Whether the "law of the case" doctrine requires a court to at the very least explain why it is reversing a decision held previously in the same case - or to "stick with: the previously held decision.

4. Whether the inclusion of simple receipt and possession of pornography under the definition of "child predator" or even "sex offender" represents an irrebuttable presumption that is overly broad in definition, and if so whether reliance on "the nature and characteristics" of the crime under the §3553(a) Factors to justify a denial of "compassionate release" under 18 U.S.C. § 3582(c)(1)(A), in light of the evidence actually presented before the lower courts and the Sentencing Commission's study on non-contact offense recidivism.

Table of Contents

Table of Authorities

Pro Se Filers are to be held to a less stringent standard.

Statutes Referenced

Other Authorities

Other Authorities (Cont'd)

Petition For a Writ of Certiorari

William Marion Patterson, III respectfully submits this Petition for a Writ of Certiorari

Opinion Below

Jurisdiction

The Eleventh Circuit entered judgment on March 21, 2022; and denied rehearing en banc on July 20, 2022. Jurisdiction to review the judgment rests on 28 U.S.C. §1254(1).

Statutory Provisions Involved

28 U.S.C. § 715 et. seq.

Statement of the Case

Petitioner William M. Patterson, III filed for compassionate release on the issues of his asthma, diabetes, and other chronic illnesses causing vulnerability to the novel coronavirus; and citing the unusually harsh and ineffective response by the B.O.P. at his facility in relation to his sentencing factors. The Government's response relied chiefly on Patterson's crime of conviction, citing Patterson's status as a sex offender and the "frightening and high" recidivism rate that has been thoroughly debunked by every studdy to tackle the matter - even those conducted as far back as the 1940's. The district court cited generally back to the Government's response on the Sentencing Factors, and determined that Patterson is a "danger to the community" should he be released at that time. It also declared that Patterson is vulnerable to the virus. The determination that Patterson is at high risk for recidivism was despite the fact that Patterson sent a rebuttal to the lower court which contained the Sentencing Commission's prior study which determined that defendants in Patterson's position 1)are oversentenced due to certain enhancements that were created before the proliferation of computers and the internet; and 2) are among those **least** likely to recidivate - a fact that is supported by Patterson's B.O.P. PATTERN Score of minimum, which was also before the district court.

Patterson appealed to the Eleventh Circuit Court of Appeals, citing to that Circuit's Cook case, and another Eleventh Circuit case, Almeyda-Lonergan, which fit Patterson's case almost word for word. In Almeyda's case, he was denied principally on his sex offender status, and the Eleventh Circuit determined that Almeyda's district court used "boilerplate language" to determine that his sex offender status caused him to fail on both the Sentencing Factors and the "danger to the community analysis". Almeyda's appeal was counseled, Patterson's was Pro Se. Patterson also argued that the "law-of-the-case" doctrine prevented the district court from reversing its previous determination that the 18 U.S.C. § 3142 factors weigh in favor of release. This argument was not addressed by either lower court, despite being Patterson's main thrust to show that the district court has abused its discretion in the instant denial.

Patterson contends now that his Pro Se status placed him before a Staff Attorney who actually made the decision to deny him, with an Article III judge only "rubberstamping" those denials, thus creating separate tiers for Pro Se versus counseled motions.

The Constitution, under Article III, requires the vetment and independence of those who would decide weighty matters in a Federal Court; requiring life tenure and guaranteed pay for those who would be placed over decision-making matters of those same courts. Additionally, Congress has authorized limited rule-making authority for Federal Courts themselves. Said limitation, though, forbids the delegation of the ability to make decisions on cases to "staff attorneys", as will be discussed in the Reasons For

Granting the Petition section. But courts across the nation have determined that someone other than a vetted Article III judge making a determination on a case constitutes structural errors that would require reversal, granting of habeas petitions, and constitute serious abuse of the law clerk system and be ground for grave concern. The Elevnth Circuit's Staff Attorney program, Patterson avers, is just that - a program that delegates non-delegatable decision making authority to non-Article III actors who make determinations in proxy for the Article III judges; with true oversight being provided by a "supervisory staff attorney" rather than an Article III judge, who merely "rubberstamps" the opinions placed before the various panels by the staff attorneys, thereby reducing the quality of judicial opinions and even in some cases creating binding precedent in the Eleventh Circuit (see Appendix D).

Reasons for Granting the Petition

I. Problems Caused by the Delegation of Prisoner Pro Se Cases

A) Increased Workload on The Supreme Court

In the cases where Staff Attorneys, rather than Article III Judges, make judicial opinions in the Eleventh Circuit, or any Circuit for that matter, the result of an inexperienced newly licensed attorney reducing the quality of judicial opinions is inevitably that the Supreme Court's Certiorari Pool will be more bloated than it otherwise would. Indeed, since the creation of the various staff attorney programs, the average number of Certiorari petitions has grown steadily, with the vast majority being in the prisoner Pro Se category - see U.S. Courts, Table C-2 - Statistical Tables For the Federal Judiciary (June 30, 2015), available at http://www.uscourts.gov/statistics/tablec-2/statistical-tables-federal-judiciary/2015/06/30 [hereinafter Table C-2] (listing cases that constitute "prisoner petitions"); see also Patricia W. Hatamyar Moore, The Civil Caseload of the Federal District Courts, 2015 U.Ill.L.Rev. 1177, 1211-15 (2015); and U.S.Courts, Table C-13 - Civil Pro Se and Non Pro Se Filings (Sept. 30, 2014), available at http://www.uscourts.gov/statistics/table/c-13/judicial-business/2014/09/30 - at Note 10, indicating that 93% of such cases are brought Pro Se. Additionally, see Appendix D, which is a table compiled by Judge R. Posner in his book Reforming the Federal Judiciary, Amazon Createspace (Sept. 2017), pp 161-167. This table shows that in the Eleventh Circuit, staff attorneys decide a wide range of cases, including ones like Patterson's - Pro Se Direct Appeals. (Appeals from the denial of a "compassionate release" request are treated as direct appeals in the Eleventh Circuit - United States v Fair, 326 F.3d 1317, 1318 (11th Cir. 2003)(noting that proceedings under §3582(c) are criminal in nature and therefore covered by the rules applied to criminal cases).

B) Claims That Cannot Be Delegated

Delegation of Article III power has received significant scrutiny in bankruptcy cases, which may include some claims that do not require Article III adjudication, alongside claims that do require Article III adjudication. If Congress creates legislation that vests Article III Judicial power over Article III claims in non-Article III actors, the delegation may create a structural error, and expansion without Congressional authorization may be an Unconstitutional expansion of the Federal Court's limited rule-making authority. This Court should see such an expansion in relation to staff attorneys deciding Prisoner Pro Se Appeals of compassionate release denials as a violation of

Article III.

Article III vests the federal judicial power in certain courts (U.S. Const. Art. III, §1 - "The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."); and also determines who may sit on those courts, Id ("The judges, both of the Supreme Courts and inferior Courts, shall hold their offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during the Continuance in Office."); see also N.Pipeline Const. Co. v Marathon Pipe Line Co., 458 U.S. 50, 59 (1982)("The 'good Behaviour' Clause guarantees that Art. III judges shall enjoy life tenure, subject only to removal by impeachment," whreas "[t]he Compensation Clause guarantees Art. III judges a fixed and irreducible compensation for their services"). In addition, Article III provides that the judicial power may only be exercised by those who enjoy life tenure and fixed compensatio Thomas v Union Cable Carbide Agric. Products Co., 473 U.S. 568, 582 (1985). These judicial qualifications are meant to ensure judicial branch independence and permit judges to be free from the pressure that might otherwise be exerted on them by the remaining branches (N.Pipeline Const. Co., 458 U.S. at 59). In addition, the requirements protect litigants by providing a forum and adjudicator "free from potential domination" by others - Commodity Futures Trading Comm'n v Schor, 478 U.S. 833, 848 (1986)(quoting United States v Will, 449 U.S. 200, 218 (1980)). Still, the right to an Article III judge is not absolute, Id. Congress may, in some instances, delegate certain decision-making to non-Article III judges without creating Constitutional problems, Id at 847. But in this case, Staff Attorneys do not derives their powers from Congressional act, but rather from "local" rule of procedure that are often not even publicly available.

The modern doctrine regarding delegation of the judicial power to judges who do not enjoy life tenure and fixed compensation begins with United States v Will, 449 U.S. 200 (1980). There, the Supreme Court struck down a law through which Congress repealed previous legislation giving federal judges cost-of-living pay increases - see Jonathan L. Entin, Erik M. Jensen; Taxation, Compensation, and Judicial Independence, 56 Case W. Res.L.Rev. 965, 976 (2006). In finding a Compensation Clause violation, the Court emphasized that the Clause is aimed at promoting judicial independence- Will, 449 U.S. at 218.

Moreover, the Court traced the roots of the Compensation Clause to Hamilton's concern for protecting judicial pay (Id) - "In the general course of human nature, a power over a man's subsistence amounts to a power over his will"; and the Act of Settlement of 1701, which sought to "correct abuses prevalent under the reign of Stuart Kings" by inter alia, giving judges "ascertained and established salaries¶ Id (quoting 12 & 13

Will. III, ch 2, § III, cl. 7 (1701)). Though colonial judges originally enjoyed salary protection and life tenure, by 1761 they served at the pleasure of the King - Id, at 219. This "interference" would lead the Framers to ensure that "both tenure and the compensation of judges would be protected from one of the evils that had brought on the Revolution" Id. - Entin & Jensen, supra note 125, at 977. Since Will, cases addressing Article III judicial power delegation have emphasized the importance of judicial independence.

Delegation issues have arisen frequently in bankruptcy cases. In 1982's Northern Pipeline v Marathon, 458 U.S. 50 (1982), the Court addressed whether Congress, through the Bankruptcy Act of 1978, had conferred Article III's judicial power to bankruptcy judges who did not enjoy life tenure or salary security 0 Id, at 52, 53, 60. The bankruptcy judges received jurisdiction "over all matters related to those arising under the bankruptcy laws," a delegation that violated Article III by giving the bankruptcy judges power that only Article III judges could enjoy - Id, at 76. Here, Staff Attorneys are given identical power over Pro Se Prisoner Appeals, but without even an order from Congress. This should be seen by the Court as likewise violating Article III.

The delegation of Article III's judicial power to judges with periodical appointments compromised judicial independence - Id, at 58. The Court emphasized that this cannot be allowed: "our Constitution unambiguously enunciates a fundamental principle - that the 'judicial power of the United States' must be reposed in an independent judiciary" Id, at 60. It saw no need to create courts and judges outside of Article III's purview for matters "related to those arising under the bankruptcy laws" - Id, at 76; including the appellant's "right to recover contract damages to augment its estate" - Id, at 71. This Court also rejected the argument that Congress could create courts with judges not subject to Article III's constraints simply because there was no need for such courts to adjudicate claims arising under specialized legislation - Id, at 72-73. Just such a case of delegation exists here in the Staff Attorney Program for both of the lower courts in this instance. Staff Attorneys operate without actual judicial oversight, working under a "supervisory staff attorney" rather than an Article III judge. Accordingly, this Court should find that the delegation of Pro Se criminal appeals to staff attorneys violates Article III of the Constitution.

This view has been upheld by the Court before - see Stern v Marshall, 564 U.S. 462, 469 (2011); wherein the Court addressed whether a bankruptcy judge could render a final judgment in a "core" proceeding involving a common law tort counterclaim. The Court held that, although legislation permitted a non-Article III decisionmaker to do so, the Constitution did not - Id, at 485. Constitutionally, a bankruptcy judge improperly exercises the judicial power by entering final judgment in a state common law tort claim - Id, at 487. The Court emphasized the importance of keeping the judicial power with those

who, through life tenure and fixed compensation, would render decisions without concern about "currying favor wit Congress and the Executive" Id, at 494. Here, staff attorneys are only temporary hires who are fresh out of law school and go on primarily to become federal prosecutors - engendering a bias toward the Executive, Patterson avers now. To top it off, the staff attorney program is not even created or authorized by legislation, but rather by "local" rules promulgated by the district and appellate courts themselves - which means that if legislation that would vest Article III-like powers in non-Article III actors is Unconstitutional, how much more Unconstitutional is it to have "limited rule-making authority" powers that are not intended to be as broad as Congress' legislative powers do so? This conflict is in direct opposition to the plain words of Article III and the previously cited caselaw. The integrity of the judiciary would be jeopardized, the Court explained, if Congress could confer judicial powers on non-Article III actors - Id. This is even more true when the limited rulemaking authority vested in the federal courts themselves is exceeded, as the Staff Attorney Program clearly does in the Eleventh Circuit (See Appendix D).

Stern prohibited Congress from altering who wields Article III judicial power by forbidding Congress from assigning away any claim brought within federal jurisdiction "made of ' the stuff of the traditional actions at common law tried by the courts at Westminster in 1789'" Id. This category is commonly understood to mean claims that were the subject of suit "at common law, or in equity, or in admiralty" Id; see also Murray's Lessee v Hoboken Land & Imp. Co., 59 U.S. 272, 284 (1855)(stating that Congress cannot "withdraw from the judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty; nor, on the other hand, can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination"). Article III judges in Article III courts must decide them: Stern, 564 U.S. at 494 (quoting N. Pipeline Constr. Co. v Marathon Pipe Line Co., 458 U.S. 50, 86-87 (1982)).

Such matters include "the mundane as well as the glamorous, matters of common law and statute as well as constitutional law" Id. The Court resoundingly refused to give weight to the argument that its holding, which would limit the work bankruptcy judges could do, would delay bankruptcy and render it more costly - Id, at 506. Instead, it noted that there is not a constitutional pass given to a law or procedure that is "efficient, convenient, and useful in facilitating functions of government" Id (quoting INS v Chadha, 462 U.S. 919, 944 (1983)); and the Court should do likewise here for direct criminal appeals being handled by staff attorneys.

This view has been supported by Chief Justice Roberts in his dissent to Wellness Int'l Network Limited v Sharif, 135 S.Ct. 1932, 1939 (2015)(wherein the Court announced that a party may knowingly and voluntarily consent to adjudication by a non-Article III judge) -

distinguishable from the instant case in that Patterson was never given the chance to "opt out" of having a staff attorney decide his case. In his dissent, Chief Justice Roberts emphasized that party consent is not a cure for a constitutional violation; a party, he wrote, "has not authority to compromise the structural separation of powers or agree to an exercise of judicial power outside of Article III" Id, at 1954 (Roberts, C.J., dissenting). Echoing his majority opinion in Stern, Justice Roberts again noted that "practical considerations of the Constitution," even if the Congressional incursion into Article III is "de minimus" - Id, at 1959. Nevertheless, Wellness Internatinal's majority is the law; consent can in fact cure a structural constitutional violation in a civil context - see Id, at 1957-67 (2015)(Roberts, C.J. dissenting). The claims at issue here, however, are not (as is Wellness) being pulled between legislation and Article III courts; as here, no argument between public rights and private rights is being presented. Instead, they are claims arguably adjudicated by nonjudicial staff working within an Article III court - AND the Pro Se Prisoner has no recourse to "opt out" of having a nonjudicial actor decide his case, so no consent can even be given to "cure" the structural error. Add to that, the fact that this is a direct criminal appeal, and the protections of the Constitution become that much more important than those same protections are in civil matters.

C) Opinions That Cannot Be Delegated

Much attention has been devoted to delegation of appellate opinion writing, which also raises concerns about improper delegation of the Article III power. These concerns about improper delegation are anchored in institutionalized motions of who should be responsible for certain tasks.

In the context of appellate opinion writing, the concern over who writes important decisions intersects with concerns about litigants' increased reliance on decisions that were marked as "unpublished". In 1964, the Judicial Conference decided that "only opinions of 'general precedential value'" would be published - Marin K. Levy, "Judicial Attention as a Scarce Resource: A Preliminary Defense of How Judges Allocate Time Across Cases in the Federal Courts of Appeals," 81 GEO. WASH. L.REV. 401, 414-15 (2013). In 2006, the Federal Rules of Appellate Procedure were amended to permit citation of unpublished opinions - see Penelope Pether, "Sorcerers, Not Apprentices: How Judicial Clerks and Staff Attorneys Impoverish U.S. Law," 39 ARIZ.ST.L.J. 1, 2-5 (2007)(Pether does not challenge the assumption that staff attorney and law clerk work is second-rate. Instead, her article tackles the "discriminatory origins" of what she refers to as "institutionalized unpublication" - Id, at 7. As a result of the rule change, "circuit courts can no longer forbid lawyers to cite back to the [] decisions they have made but

designated 'not for publication,' nor sanction them if they do." Id, at 8-9. Given the way all opinions are now in fact published, at a minimum, in some kind of electronic format, describing them as published or not is a distinction that makes little sense.

Still, there was significant judicial opposition to the seemingly innocuous change to the appellate rules (Fed. R. App. P. 32.1(d)). One explanation for the outsized reaction is the judicial perception that unpublished opinions do not create new law; instead, they represent decisions in routine matters and therefore merely affirm preexisting precedent - see Polly J. Price, "Precedent and Judicial Power After the Founding," 42 B.C.L.Rev. 81, 111 (2000). But why worry about permitting citation to another kind of carefully drafted judicial writing? Perhaps because the unpublished decisions did not actually represent judicial writing (see Chart, Appendix D, labeled PP. 164-65 for Eleventh Circuit Staff Attorney decision workload). Refocused this way, the resistance to unpublished opinions begins to look like a resistance to opinions written by individuals who are not Article III judges. Indeed, if this were the case, then one would expect to see published opinions that contradict unpublished opinions supposedly written by the same judge. Such a contradiction can be seen in the Eleventh Circuit by Judge Tjoflat, who authored the published opinion in United States v Sigma Int'l, 244 F.3d 841, 853 (11th Cir. 2001) stating: "[a]lthough Bank of Nova Scotia did not explicitly overrule Mechanik, we query what, if anything remains of the Mechanik rule" and later, in an unpublished opinion states that Mechanik controls with the same set of circumstances as laid out in Sigma Int'l - see United States v Cobb, 856 Fed. App'x 812, 813 (11th Cir. 2021). The difference is that the former case was counseled, whereas the latter was a Pro Se Criminal appeal and therefore went to the Staff Attorney's Office for adjudication under the Eleventh Circuit's Staff Attorney Program (see Appendix D).

Many of the judges who opposed the new citation rule believed that unpublished appellate opinions were authored "predominantly [by] recently-graduated corps of judicial clerks and staff attorneys," individuals who are not meaningfully supervised - Pether, Supra note 165, at 10. These opinion authors were described as "kids that are just out of law school" Id, at 6. Their work was understood to be "sloppy or wrong" Id, at 17. One author has suggested that "[c]lerks and staff attorneys are more likely than judges to make factually or legally wrong findings because they have missed or misinterpreted something where a more thoroughly trained or more experienced person might not have done" Id, at 39-40. The perception is that citable appellate opinions should be written by Article III judges because Article III judges are more likely to get the law right. Accordingly, this Court should see the Staff Attorney Programs as they exist currently, to be Unconstitutional.

D) Tasks That Cannot Be Delegated

Like the resistance to giving increased stature to appellate opinions authored by law clerks and staff attorneys, there is significant discomfort when law clerks and staff attorneys take on typically judicial tasks. Judges should be presiding over cases, not their law clerks, and certainly not staff attorneys who often don't have any personal interaction with judges and in many courts don't even work in the same building as the judges they supposedly report to. Writing in 1981, Wade McCree, an esteemed former federal trial and appellate judge, and then Solicitor General, warned against increasing the number of law clerks working for federal judges - see Wade McCree, "Bureaucratic Justice: An Early Warning," 129 U.Pa.L.Rev. 777, 787 (1981). He worried that an increase in the number of law clerks would encourage an increase in the "critical aspects" of judicial work delegated to the new law clerks - Id, at 789. Honing in on the Article III implications of such a practice, he also warned that "excessive delegation poses a threat to the traditional institutional structure of the judicial office," Id. Judge Posner has summarized the problem with over-delegation to law clerks: a law clerk cannot try a case for a judge because such a delegation would convert law clerks into judges - see Geras v Lafayette Display Fixtures, Inc., 742 F.2d 1037, 1046 (7th Cir. 1984)(Posner, J. dissenting). The same would be true if staff attorneys in any instance where the staff attorney made the factual and legal conclusions in any case or appeal - just as Appendix D shows is done in the Eleventh Circuit for Pro Se Direct Appeals.

There are several reported examples of law clerk conduct that too closely resembled judicial action. A law clerk cannot rule on whether a victim's testimony can be read back to the jury, nor can one preside over the readback - Parker B. Potter, Jr., "Law Clerks Gone Wild," 34 Seattle U.L.Rev. 173, 184-85 (2010)(citing Riley v Deeds, 56 F.3d 1117, 1120 (9th Cir. 1995)). Such an error is so significant that it renders the trial in which it occurs unfair - Riley, 56 F.3d at 1118 (suggesting that such an error is structural and will result in the granting of a habeas corpus petition). In Riley, the Ninth Circuit refused to review such an error for abuse of discretion because the standard "presupposes the trial judge exercised some judicial discretion in the matter under review" and that in the underlying criminal case, the "judge was not present when the jury requested that the testimony be read back, nor does the record reflect he was consulted about the matter;" instead, the "law clerk made the decision to grant the jury's request to read back the testimony." Id, at 1120. At least one court has criticized a judge's decision to allow a law clerk to "settle" issues involving jury instructions; see United States v Sloan, 811 F.2d 1359, 1361 n.2 (10th Cir. 1987)(explaining that "instructions were settled with a law clerk and not the judge," even though "the Judge must resolve all the issues pertaining to the instructions, for

it is the sole responsibility of the judge to see to it that the jury is correctly instructed upon the law" (emphasis in original)). A law clerk also may not preside over a final pretrial conference (Sanders v Union Pac. R.R. Co., 193 F3d 1080, 1082 (9th Cir. 1999)(Tashima, J. concurring), or handle peremptory challenges (United States v Visinaiz, 428 F.3d 1300, 1313 n.4 (10th Cir. 2005).

Courts have often rejected losing parties' arguments that a decision should be reversed because law clerks were acting as de facto judges on the grounds that the allegations were not true - see, e.g. United States v Kaiser, No. 305-CR-80, 2006 WL 3751452, at *3 (D.N.D. Dec. 19, 2006); but each court to do so has noted that if the allegations were true, they would constitute an example of shifting Article III power away from Article III judges. See Id.

In the Eleventh Circuit, just such a shift of power away from Article III judges has occurred, Patterson avers, as shown by the charts in Appendix D. Accordingly, this Court should see fit to declare the Staff Attorney Program as it is practiced in the Eleventh Circuit to be a violation of Article III, and reverse the denial of Patterson's Appeal, Request for Rehearing, and because the district court is operating in the same manner, also reverse the denial of Patterson's Compassionate Release Motion and Remand for further proceedings that do not run contrary to established precedent.

II. LAW OF THE CASE DOCTRINE PRECLUDES REVERSING PREVIOUSLY HELD DECISIONS

A) Whether the Doctrine of "Law-of-the-Case" Precludes the District Court From Changing Its Analysis of the 18 U.S.C. § 3142(g) Factors As Determined In Patterson's Detention Hearing.

18 U.S.C. § 3582 proceedings are criminal proceedings - United States v Fair, 326 F.3d 1317, 1318 (11th Cir. 2003)(collecting cases on same). Once an issue has been decided in a criminal case, it cannot later be changed without intervening changes in law, and law-of-the-case doctrine applies to §3582 proceedings - see United States v Bueno-Sierra, 806 Fed. App'x 676, 678 (11th Cir. 2020)(citing Christianson v Colt, 486 U.S. 800, 815-16 (1988) for law-of-the-case standard). Here, the district court determined that the § 3142(g) factors weighed in favor of release at Patterson's detention hearing - he was released under the determination that he was **not** a danger to the community or anyone in it (§3142 seems to anticipate a conviction in its language). The same fact cannot now provide justification to deny release (under the irrebuttable presumption of dangerousness discussed later). The §3142(g) Factors are largely static - unchanging over time. Only §§3(A) contains any language that reference circumstances that may change over time, and Patterson's "character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community

ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings" (§§3(A)) has not changed toward a determination of dangerousness since his detention hearing. If anything, it should be considered to have changed in Patterson's favor, as his "physical and mental condition" has deteriorated while incarcerated due largely to B.O.P.'s actions in response to the pandemic, as shown in the Exhibits Patterson produced to the district court below.

There are only three exceptions to the law-of-the-case doctrine. See United States v Desoto, 2018 U.S. App. LEXIS 24106, at *3 (11th Cir. 2018): "(1) the existence of new evidence; (2) a change in controlling law that discusses a different result; or (3) where the prior decision is clearly erroneous and its implementation would cause manifest injustice." None of these exceptions apply here, the only one that may is an argument that the decision was clearly erroneous - except that such a claim would be based upon the same irrebuttable presumption that Patterson discusses below.

B) The Irrebuttable Presumption of Patterson's Dangerousness Violates Supreme Court Precedent.

A long line of Supreme Court precedent has invalidated irrebuttable presumptions deny persons important interests - see e.g. Turner v Dep't of Employment Security, 423 U.S. 44, 96 S.Ct. 249, 46 L.Ed 2d 181 (1975); Cleveland Bd. of Education v LaFleur, 414 U.S. 632, 94 S.Ct. 791, 39 L.Ed 2d 52 (1974); Vlandis v Kline, 412 U.S. 441, S.Ct. 2230, 37 L.Ed 2d 63 (1973); Stanley v Illinios, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed 2d 551 (1972); Bell v Burson, 402 U.S. 535, 91 L. Ed 2d 90 (1971); applying this doctrine when the private interests are important and the governmental interests are based upon a false premise - see LaFleur, supra 414 U.S. at 647 "convenience alone is insufficient to make valid what otherwise is a violation of due process of law."

The reason this is an unconstitutional practice is that there is no reasonable opportunity to demonstrate that the premise is false - Gurmankin v Costanzo, 556 F.2d 184, 187 and n. 5 (3d Cir. 1977), thus violating the Due Process clauses of both the Fifth and Fourteenth Amendments.

The "important interest" in this case would the Patterson's interest in factual, rather than fear-based determinations which are based upon no other reasoning than pure hatred.

Patterson has placed before both lower courts a series of studies that support his claim that he is not a "danger" to any community, nor any particular person in any community - see, e.g. Doc. 72, exhibits; Opening Brief, exhibits; and Petition For Rehearing, exhibits. But the district court adopted the reasoning presented by the Government in its opposition to Patterson's RIS request - wherein the Government quoted "frightening and high" recidivism for "all sex offenders", leaning on "the nature and circumstance

of the offense" before describing the very items that the Sentencing Commission has itself produced a study (which was before the district court in Patterson's exhibits) that concluded should not be considered in "non contact" offender cases like Patterson's. In his attempt to point this out, Patterson requested for the district court to reconsider its denial, again placing more reports and studies before it to refute his dangerousness and was denied. So he appealed, on the same grounds, and was given the response that the district court had reasonably concluded that Patterson is "dangerous" and that the §3553(a) Factors do not warrant relief - the same contradictions of fact that the district court had come to. Both lower courts had Patteron's PATTERN Score before them, which "maintained a high level of predictive validity (see USDOJ, 2020a)" (National Institute of Justice 2021 Review and Revalidation of the First Step Act Risk Assessment Tool, p. 6 - also included as Appendix E). Patterson's score is now and has always been Minimum - both lower courts knew this, yet both courts decided to place more weight on the myth of "frighteningly high recidivism" of sex offenders across the board than on the evidence and set of facts before them. In short, the lower courts based their decisions on a set of "irrebuttable presumptions" which the Supreme Court has repeatedly ruled violates due process when the basis for those decisions contradicts the data. In addition the studies produced in the courts below, Patterson presents the Department of Justice First Step Act Annual Report, April 2022 (Appendix F). On page 25, the report discusses further the predictive ability of the PATTERN system, just as was concluded in the NIJ December 2021 Review, this Tool has been shown to be, while not perfect, highly predictive of "danger" in the form of recidivism - see Id, pp 53-56. In this section, the DOJ has broken down the raw numbers for all inmates released from BOP custody from the enactment of the First Step Act to December 31, 2021 - a total of 9,790 releasees. Of these, the majority of all categories did not reenter prison for any reason - see p. 54, under the "percent not recidivating" column. Under this column, Patterson fits within the "sex offenses" category, which had a 78.6% rate of clear conduct. The DOJ only found 21.4% to have returned to prison for any reason - and there is no data listed for new crimes, so there is no way to tell with these numbers whether the returnees were merely committing technical violations or new crimes. But in any case, these numbers directly contradict the "danger to the community" conclusion of the lower courts in the instant case - as did all of Patterson's exhibits before both courts. This provides further showing that the decisions were unreasonable and should therefore be seen by this Court as violating the "irrebuttable presumption" doctrine. In addition to this, the DOJ report contains a chart that shows the recidivism rates when broken down by sentence length (Appendix F, p 55). This chart shows that the highest recidivism rates are for those serving a sentence between 11-15 years. Patterson currently fits into the 6-10 years category, which has a recidivism

rate of 16.6%; and had the district court granted his RIS request, he would have been in the "up to five years" category, which carries a recidivism rate of 15.4% - the exact opposite conclusion proffered by the district court in its denial below. According to this DOJ chart, Patterson would be less likely to recidivate (the "danger" analysis) had the district court granted his request, and Patterson placed similar information before the district court (see, e.g. Docs 72-76, as well as accompanying exhibits). Also in addition to these, on page 55 of Appendix F, this Court can see that security level assignation by the BOP has a high correlation to eventual recidivism outcome. Patterson is currently held at the Bureau of Prisons' Satellite Low Facility in Jesup, Georgia. This facility is a "camp with a fence", which fits somewhere between a Minimum and a Low security facility, as the inmates housed here have to have Minimum level security points (10 or less- Patterson has much less than ten), but who have some sort designation that B.O.P. policy states disqualifies them from actually going to a Minimum security facility - Patterson has the "Public Safety Factor" designation of "sex offender", which is itself based upon the same irrebuttable presumption that all sex persons designated sex offenders are "dangerous" with a "frighteningly high" recidivism rate - but he is not challenging the PSF designation here - he is only pointing out that without the irrebuttable presumption, he would be fully classified as a Minimum security inmate. All of this brings the argument around to say that Patterson fits within the literal lowest re-offense category in the DOJ's Official opinion. Yet when he files court doscuments, the reasoning presented for denial is that he will reoffend - based solely upon the irrebuttable presumtion complained of herein.

As such, this Court should GRANT Certiorari review in order to once and for all, set the record straight, in a public forum, on what recidivism is, and where the facts actually lie.

These definitions are (vaguely) codified in 34 U.S.C. § 20901 and § 20911, with the specific offense as it relates to Patterson enumerated at § 20911(7)(G). In these statutes, Congress listed dozens of reasons for SORNA Registration, mostly in the form of specific instances of crimes that were committed by apparent first time offenders, who have subsequently not reoffended - the only exceptions are reasons # 10, a repeat sexual offender; and #11, an ACCA offender at the time. Then Congress goes on to expand the definition of who qualifies as a sex offender in § 20911, adding possession of child pornography when the Declaration of Purpose carries zero non-contact offenses. This expansion without explanation again represents an irrebuttable presumption as applied specifically to defendants like Patterson who are non-contact. As such, this Court should GRANT Certiorari review on this matter.

CONCLUSION

Both of the lower courts in this instance had a plethora of information and data points before them that should have led them to find that Patterson is not a "danger to the community" per the definition of such contained in 18 U.S.C. § 3142(g). Both of these lower courts disregarded the evidence before them in favor of supporting an irrebuttable presumption that has been prevalent in the Courts for nearly two decades and stems from an offhand comment made by a Supreme Court Justice in a published Opinion of this Court. This Court should, therefore, see this issue as purely the Court's responsibility to correct. The irrebuttable presumption is codified in Federal Law, and therefore said laws should be declared unconstitutional by this Court as violative of Supreme Court Precedent.

Additionally, the Staff Attorney programs as currently practiced in the lower courts remove prisoner pro se petitions from Article III Judicial Review, and should likewise be declared unconstitutional.

For these reasons, I, William Marion Patterson, III, request Certiorari review of the questions presented herein, and/or any other questions as this Court may certify.

Respectfully Submitted,

William Marion Patterson, III

10-6-22

Date