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February 14, 2023

Office of the Clerk  
Supreme Court of the United States  
1 First Street N.E.  
Washington, DC 20543

Re: United States v. Jaquain Young, No. 22-6563: Possible Consideration of Petition at 2/24/23 Conference with Co-appellants with Common Issues

Dear Clerk,

I am counsel for petitioner Jaquain Young in the above-referenced case. I am writing to suggest that Young's petition for writ of certiorari, presently scheduled to be considered at the February 17, 2023 conference, be moved to the February 24, 2023 conference where it can be considered with the cert. petitions of two co-appellants that present common issues.

Petitioner Young and his former co-appellants Charles Heard (22-6569), Esau Ferdinand (22-6553), and Adrian Gordon (22-6554) were convicted together at a joint trial. The Ninth Circuit affirmed their convictions in separate appeals that were consolidated for decision. Young, Heard, Ferdinand, and Gordon all filed separate cert. petitions within a day of each other in January.

The government filed its waiver of the right to respond in Heard's and Young's cases on January 23 and January 24, respectively. It filed its waivers in Ferdinand's and Gordon's cases on February 6. The effect of the timing of the government's waivers was that Young's and Heard's petitions were distributed for consideration at the February 17, 2023 conference. Ferdinand's and Gordon's petitions were distributed for consideration at the February 24, 2023 conference.

Although all the petitions were filed separately, Young's petition has key claims in common with both Ferdinand and Gordon. Young and Ferdinand both ask this Court to decide that the RICO conspiracy instruction approved by the Ninth Circuit fails to adequately instruct the jury on what the defendant must agree to in order to be guilty. Young and Ferdinand also both ask this Court to decide that the Ninth Circuit erred in

limiting its analysis of whether their cases should have been severed from each other to the question of whether their defenses were mutually antagonistic. Young and Gordon both ask this Court to decide that a *Pinkerton* instruction on coconspirator liability may not be given where the government has made no effort to prove who in the larger universe of coconspirators may have committed the charged crime.

Given these common legal questions and so that this Court may have a fuller understanding of the proceedings below when it decides the parties' petitions, this Court may wish to reschedule Young's petition for consideration with Ferdinand's and Gordon's at the February 24, 2023 conference.

Thank you for your assistance with this matter. Please do not hesitate to contact me with any questions.

Very truly yours,

/s/Steven S. Lubliner  
Steven S. Lubliner