No._____

IN THE SUPREME COURT OF THE UNITED STATES

SAMUEL TRELAWNEY HUGHES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ of *Certiorari* To The United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

In Boykin v. Alabama, 395 U.S. 238, 243-44 (1969), the Court held that due process principles require a trial court to conduct a change-of-plea hearing such that the defendant demonstrates that he is entering his plea knowingly and voluntarily. Boykin also held that a trial court needs to develop a record sufficient for an appellate court examining the plea to determine that such the defendant knowingly and voluntarily relinquished core constitutional rights. Id.

The question presented is as follows:

Did the Ninth Circuit's rejecting Petitioner's due process claim regarding his change-of-plea hearing conflict with Boykin and its progeny, particularly considering that the district court record in its totality evidenced that Petitioner had serious cognitive deficiencies associated with his having Autism Spectrum Disorder, about which the district court did not inquire?

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:

LIST OF DIRECTLY RELATED PROCEEDINGS

1. United States District Court for the Central District of California, United States of America v. Samuel Trelawney Hughes, No. 2:20-cr-00332-DSF-1. The district court entered judgment on November 15, 2021.

2. United States Court of Appeals for the Ninth Circuit, United States of America v. Samuel Trelawney Hughes, No. 21-50304. The Ninth Circuit entered judgment on April 25, 2023.

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Petitioner Samuel Trelawney Hughes respectfully requests that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered on April 25, 2023.

OPINION BELOW

A three-judge panel of the Ninth Circuit issued an unpublished memorandum disposition and entered judgment on April 25, 2023, affirming Petitioner's conviction and sentence.[1] App. 1, 7.

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[1] A copy of the memorandum disposition is included in the Appendix. See App. 1-7 (United States v. Hughes, No. 21-50304 (9th Cir. Apr. 25, 2023)

JURISDICTION

The Ninth Circuit entered judgment in this case on April 25, 2023. App. 1-7. This Court has jurisdiction under 28 U.S.C. § 1254(1). See also S. Ct. R. 13.3; S. Ct. Miscellaneous Order, July 19, 2021.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment reads as follows: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor 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; nor shall private property be taken for public use, without just compensation."

STATEMENT OF THE CASE

Petitioner draws the following factual recitation from the district court record, including two evaluations that psychologists – one in the United Kingdom, the other in Los Angeles – wrote after examining Petitioner in, respectively, 2015 and 2021. See App. 264-83, 311-41.

(unpublished).

A. Psychologists in the UK Diagnose Petitioner at Age Six as Having ASD, Causing Severe Intra-Familial Emotional Strife

Petitioner Samuel Trelawney Hughes was born in Cornwall, a county located in the UK's southwest, in 1989. His parents were both medical doctors who worked as general practitioners for the UK's National Health Service. App. 264, 319. Petitioner has one sibling. App. 68.

When he was a young boy, Petitioner manifested what one of his evaluating psychologists termed "difficult behavi[ors]," causing others to view him as being "naughty []." Following professional evaluations when Petitioner was six years old, two psychologists diagnosed him as having ASD (separately referred to as "Autism Spectrum Condition"). App. 319-20.

Sadly, however, except for Petitioner's mother, all of his relatives refused to "accept the" ASD "diagnosis," electing instead to "blame[]" her for Petitioner's "behavi[or]." Consequently, the dual combination of not only having a young son with ASD but also receiving her relatives' opprobrium resulted in Petitioner's mother developing "severe depression," a condition that unfortunately worsened over the following eighteen years. App. 319-20.

As Petitioner will discuss infra in depth, his being on the ASD spectrum is significant because it not only prevents him from understanding the consequences

to people who receive letters, emails, and other forms of digital communications from him that contain vile epithets and threatening language, but also – most pertinent to this petition – makes it difficult for him to understand concepts communicated to him orally in settings such as court hearings.

B. Petitioner Suffers from Serious Mental Health Issues, Resulting in Multiple Instances of Self-Harm and Suicidal Ideations as an Adolescent and Young Adult

Compounding his ASD, Petitioner has long suffered from depression and a compulsion to harm himself. The first such incident – suicidal ideations while he was walking on a bridge – occurred in 2004 when he was only 15 years old. App. 322. A year later, "bullying" that Petitioner experienced, ostensibly in high school, resulted in self-harm incidents. And in 2006, authorities briefly detained Petitioner "due to risk of self-harm and suspected possession of a knife and gun," although they released Petitioner after discovering that he did not possess any weapons. Id.

Unfortunately, although mental health professionals prescribed medication to treat Petitioner's depression, problems resulting from that condition persisted. For instance, in November 2009 while Petitioner was a student at the University of Plymouth, "he was seen urgently by the Mental Health team due to concerns about suicidal ideation," and also "received some anger management training."

App. 322.

Six years later, law enforcement authorities in the UK accused Petitioner of "sending malicious emails to his uncle Derek . . . ." App. 323. That brief encounter with the UK's criminal justice system ostensibly triggered Petitioner's depression, resulting in his "cut[ting] his wrists and end[ing] up in [a] hospital." Id.

C. Petitioner Performs Well Academically in the Computer Science Field, But His Cognitive Challenges Make It Difficult to be Employed Gainfully

Because of his ASD, Petitioner relied throughout his academic career on personal tutors who "help[ed] him with things he did not understand." App. 264. With that significant help, Petitioner graduated from the UK equivalent of high school, before matriculating to the College of Further Education in Cornwall, where he received a "Higher National Diploma in IT." App. 320. From there, he advanced to the University of Plymouth, and he graduated with a Bachelor's Degree in Computer Science. Id.

Despite having received such advanced technical training, however, Petitioner's ASD made it challenging to receive and maintain gainful employment. Indeed, as of late-October 2015, Petitioner had worked only two months in the private IT industry in the UK in 2012, and had been terminated years earlier from

a brief stint at a gasoline station while he was a college student because "he was not able to fulfil[l] the requirements." App. 320-21. Indeed, the psychologist in the UK who evaluated Petitioner in 2015 stated that "in the jobs [Petitioner] has done so far it became clear he struggles following instructions; when the instructions were too open he did not understand what to do; and he did not deliver within a reasonable time frame." App. 321.

D. Petitioner's Mentally Ill Mother Kills Petitioner's Father, Resulting in Her Being Committed Involuntarily to a Treatment Facility in the UK

Quite sadly and tragically, Petitioner's mother's mental health continued to deteriorate as she became older, eventually devolving into "psychotic" behaviors. In November 2013, Petitioner's mother's behavior took an even darker turn, as her psychosis resulted in her killing Petitioner's father. She was later convicted of manslaughter for that offense, resulting in her being committed to a "psychiatric" treatment facility in Birmingham under the UK's Mental Health Act. App. 264, 319-20.

E. A Psychologist in the UK Opines That Petitioner's ASD Precludes Him from Being Employed Regularly

After his father's tragic death, Petitioner applied to the UK's NHS to obtain "a dependent's pension," a payment scheme available under the NHS Pension

Scheme for "a child" of an NHS pensioner "who is incapable of earning a living due to a permanent physical or mental infirmity." App. 315. Unfortunately for Petitioner, the NHS denied his application, determining that his "depression" was "the cause for his inability to work rather than his permanent and underlying [ASD]." App. 316. The NHS opined that "with time and appropriate treatment [Petitioner] would be able to recover sufficiently and undertake suitable employment." App. 315.

Disagreeing with the NHS's conclusion, Petitioner filed an appeal. Under NHS appellate procedures, "a report from a medical expert with expertise in [ASD was] required," therefore resulting in his being examined by Dr. Hildegard Schakel, a Dutch psychologist who resided and practiced in the UK. App. 315-16. In a nutshell, Dr. Schakel produced a written report on October 29, 2015, that disputed the NHS's determination, opining that Petitioner "will struggle and will continue to struggle significantly in obtaining and retaining a job." App. 338. She also stated that being employed would be "detrimental to" Petitioner's "mental health," and "there will not be any significant long-term improvement in [] [Petitioner's] condition." Id.

Additionally, Dr. Schakel's report contained several additional conclusions about Petitioner's ASD that are pertinent to the issues that he raises in this

petition. To wit:

- Dr. Schakel opined that Petitioner "struggles with using common sense" (App. 322), and because he "has significant difficulty with reading non-verbal communication such as facial expression, body language, tone of voice and gestures," Petitioner "misses out a significant amount of communication and is prone to misinterpretations and misunderstandings." App. 323-24; see also App. 333.

- Additionally, Dr. Schakel noted that Petitioner "experiences delayed processing of events," a cognitive deficiency that precludes him from being "able to take in all the information discussed or the details may become confused and mixed up . . . ." App. 325; see also App. 334. Concomitantly, he "has little ability to problem-solve adequately, either in practical or social situations," therefore resulting in being "unable to understand the different elements and layers of a problem and [he] therefore cannot unravel the problems to find solutions." App. 326; see also App. 333. This leads to Petitioner's having "struggles getting his head around new things and new behavio[rs] as he lacks the ability to understand what it entails." App. 333.

- Petitioner, Dr. Schakel further concluded, "gives the impression that he understands the language and the words used in the communication.

However, when tested it became clear that his understanding of the communication is limited." This is because, Dr. Schakel explained, Petitioner "tends to interpret words more literally than intended and struggles to understand metaphorical and/or more abstract language." Quite importantly for this case's purposes, Petitioner "struggles to pick up the meaning of words from the context in which they are used, causing difficulty as the same words often have different meanings when used in a different context." App. 326 (emphasis added).

Indeed, "[t]hese difficulties in language and communication will not be immediately obvious to others and will be causing many miscommunications and misinterpretations in daily communication." App. 327. And therefore, "[o]nly by explicitly asking about his understanding of specific words and concepts will one be able to detect the misunderstandings." App. 327 (emphasis added); see also App. 333.

- Additionally, Petitioner "tends to think in black and white and does not have the ability to entertain nuances and grey areas." App. 328. This leads him to become "extremely rigid in his interpretations and once he has made up his mind it is difficult to get it changed." Id.

- Petitioner, Dr. Schakel opined, "suffers from an almost constant high level of anxiety due to his difficulties he experiences in coping with day-to-

day life and the demands of social interactions placed on him." App. 330.

Notwithstanding Dr. Schakel's overall conclusions, however, as a high-functioning person with ASD, Petitioner ultimately made some major life choices – namely, relocating to the United States without an adequate support system (see App. 265-66) – that he would ostensibly come to regret.

F. Enamored with Living and Working in the United States, Petitioner Obtains a Non-Immigrant Visa and Moves from the UK, But He Struggles Without Any Support System

Dr. Schakel's 2015 report made plain that Petitioner then had "a passion for the USA and loves everything American. He likes visiting the USA." Perhaps most importantly, Dr, Schakel added, Petitioner then had "a strong belief that everything American is good, that 'there are no bad people there' and" – based on past trips here – "he feels accepted without any prejudice by any of the Americans." App. 321.

Although Petitioner's laudable feelings about the U.S. were perhaps a bit too utopian, they explain why he decided to apply for a non-immigrant U.S. visa that would permit him to live in the U.S. for a defined time period. Consequently, following a successful application process, Petitioner arrived in the U.S. and intended to launch businesses here, App. 264-65.

But rather unfortunately, in attempting to satisfy his Americanophilism,

Petitioner divorced himself from support systems in the UK that had mitigated negative byproducts of his ASD and depression. Indeed, Dr. Betty Jo Freeman, a psychologist in Los Angeles who examined Petitioner before his sentencing hearing, opined in a written report that "[w]hen [Petitioner] is in a supportive environment, as he was prior to coming to the United States he is able to function fairly well. However, when he came to the U.S., with no supports in place for him, he was on his own, with no knowledge or skills of how to interact in the real world." App. 266; see also App. 280.

In the longer term, as Dr. Freeman observed, "in [Petitioner's] attempts to develop a social network, he became obsessive and did not know how to deal with his obsessions, and he did not have a support system to help guide him." App. 266.

G. Angered By Others' Repeatedly Rebuffing His Attempts to Establish Social Relationships and Addled By His ASD and Depression, Petitioner Retaliates By Sending Threatening, Vulgar, and Misogynistic Messages

As Dr. Schakel opined in her written report, because of his ASD, Petitioner "does not know how to make and maintain friendships and" – perhaps even more importantly – "does not seem to understand the concept of friendships or relationships." App. 324. This results from Petitioner's having "significant

difficulty understanding the social world." Id. Dr. Schakel added that Petitioner "struggles to pick up social cues and social rules in social situations as most of these cues and rules are expressed non-verbally. He therefore has significant difficulties understanding social situations and understanding which behavio[r] is expected of him." Id.

It is against this psychological backdrop that Petitioner – ostensibly committed to being an IT entrepreneur in Pasadena – began to attend social networking events in Los Angeles and Orange Counties in 2019 and 2020. And Petitioner's unfortunate interactions after meeting people there undergirds what ultimately resulted in an attempted guilty plea in the district court. See, e.g., App. 45-52.

Although the government contends that Petitioner's conduct related to those events involved ten victims (see, e.g., App. 203), Petitioner will – for brevity's sake – focus his factual recitation on his conduct directed toward the person whom both the indictment and plea agreement refer to as Victim 4.

While attending a "writing workshop" in the Los Angeles metropolitan area on October 2, 2019, Petitioner met Victim 4, who was a fellow participant. During their brief conversation there, Petitioner apparently learned Victim 4's "profile name" on the LinkedIn professional networking site. App. 205. The next

day, Petitioner attempted to follow up with Victim 4 through LinkedIn, asking her via a message to meet to "discuss a film proposal" that Petitioner had. Petitioner concomitantly followed Victim 4's Instagram account, where he left ostensibly unsolicited comments on her posts that "compliment[ed]" Victim 4 on her physical "appearance." Id.

Uncomfortable with Petitioner's overtures, Victim 4 responded by blocking Petitioner from following her on Instagram. She also replied to Petitioner's LinkedIn message, informing him that "she would not be available to meet." App. 205.

For many single people, Victim 4's spurning Petitioner's advances would have been a cue to move on from her and try to meet someone else. But because of Petitioner's ASD, Dr. Freeman opined, he – like many other similarly situated persons – decided to "lash out at others," such as Victim 4, "when [he] bec[ame] frustrated. This often takes the form of written threats, as in this case." App. 281.

Consequently and unfortunately, two weeks later, Petitioner decided to follow Victim 4 on Instagram, this time by "using a different [] account." App. 205. Victim 4 responded by once again blocking Petitioner, resulting in his sending an email to Victim 4 that "complain[ed]" about her precluding him from viewing her Instragram posts. Petitioner further ratcheted up his animosity toward

Victim 4 by "post[ing] a negative review on the Facebook page" corresponding to "Victim 4's business." Id. And he also posted a message on his Instagram account, affixing a misogynistic epithet to Victim 4's photograph, accompanied by a short screed that contained another vile word and what one could characterize as a misogynistic rant about women generally. Id. Petitioner added about Victim 4, "'I will defame her indefinitely.'" Id.

Quite understandably, Victim 4 sent Petitioner an email the next day, requesting that Petitioner "stop contacting her" and informing him "that she was saving his messages to provide to law enforcement." App. 205. Petitioner responded positively, sending Victim 4 an email on October 19, 2019, in which he told her that he would accede to her wishes. App. 205-06.

But after Victim 4 followed through by reporting Petitioner's online actions to the Los Angeles Police Department on October 22, 2019, her doing so ostensibly enraged Petitioner. Eight days later, Petitioner anonymously sent Victim 4 an email that contained obscenities, misogynistic epithets, and threats to assault her physically and commit arson against Victim's 4 house and car. Petitioner signed the email, "'Regards, Your Nemesis.'" App. 206.

Addled and afflicted by his lifelong ASD, Petitioner unfortunately persisted in lobbing digital threats at Victim 4. This is because, as Dr. Freeman explained in

her report, "[Petitioner] sees the threat[s] as just words . . . . To [Petitioner's] way of thinking, he wrote words but did not hurt anyone. He fails to grasp the concept that saying certain words and making threats are problematic in our society." App. 265.

Thus, continuing to be obsessed with Victim 4's having spurned him, Petitioner sent her several additional emails from an anonymous account between November 10 and November 24, 2019. As was true of the earlier ones, these were replete with expletives, misogynistic language, and threats of physical violence and sexual assault. Petitioner unfortunately broadened the targets of his ire to include unnamed relatives of Victim 4, and he made plain that Victim 4 should desist in reporting his conduct to the LAPD. App. 206. Separately, Petitioner also sent an anonymous email to one of Victim 4's colleagues on November 11, 2019, falsely accusing Victim 4 of being a "'meth-addicted child molester.'" App. 207.

Unsurprisingly, Victim 4 once again reported Petitioner's digital threats to the LAPD. Petitioner then sent an email to Victim 4 on December 8, 2019, in which he stated, "'Because you accused me of sexual harassment and made accusations, I hope my reviews of you have destroyed your reputation . . . , I hope sometime you come apologi[z]e to me because this will still keep going . . . ." App. 207. Two days later, Petitioner sent an anonymous email to Victim 4 that

further contained expletives, threats of physical harm, and a crude misogynistic epithet. Id.

Several months then elapsed before Petitioner fired off a final digital salvo at Victim 4. In a non-anonymous email on May 16, 2020, Petitioner referred to "'anonymous death threats'" Victim 4 had received, before reverting to the obscene and misogynistic language characteristic of someone with ASD who did not understand the mental injuries that it inflicts on the recipient. App. 207.

H. Based on Petitioner's Conduct Toward Victim 4 and Other Persons, the Government Files a Criminal Complaint Against Him

Following an investigation, the government filed a complaint in the United States District Court for the Central District of California on July 10, 2020, charging Petitioner with one count of violating 18 U.S.C. § 875(c) by allegedly transmitting a threatening communication with intent to injure. App, 146-57. The government effectuated Petitioner's arrest two weeks later, on July 24, 2020. App. 163.

That same day, a magistrate judge granted the government's request to remand Petitioner to detention. She determined so in part because of Petitioner's status as a UK citizen, without substantial ties to the United States. App. 165, 176, 179, 181-84.

I. A Grand Jury Indicts Petitioner

Later, a grand jury empaneled in the Central District of California returned a twenty-six count indictment of Petitioner on August 4, 2020. It charged Petitioner under five different statutes: (a) cyberstalking, 18 U.S.C, §§ 2261A(2)(A) and (B) and 2261(b)(5) (counts 1, 4-6, 13, 20, and 24); (b) transmitting a threat interstate, 18 U.S.C. § 875(c) (counts 2-3, 7, 11-12, 14, 16, 18, and 21); (c) threatening someone via the U.S. Mail, 18 U.S.C. § 876(c) (counts 8, 23, and 25); and (d) witness tampering, 18 U.S.C. § 1512((b)(3) (counts 9-10, 15, 17, 19, 22, and 26). App. 106-45.

At an arraignment on August 13, 2020, Petitioner pleaded not guilty to all of the indictment's counts. App. 187, 192-93.

J. Petitioner Executes a Plea Agreement with the Government

Following negotiations, the parties executed a plea agreement, which they filed in the district court on October 21, 2020. App. 196-218.

Among other things, Petitioner agreed to plead guilty to three counts involving Victim 4: counts 5 (cyberstalking), 10 (witness tampering), and 11 (transmitting a threat interstate). App. 196-97, 205-08. And they further agreed to recommend the following Guidelines calculations to the district court: (1) for count 5, a base offense level of 18 under U.S.S.G. § 2A6.2(a), enhanced by two

levels because of a purported pattern of harassment or stalking (U.S.S.G. § 2A6.2(b)(1)(E); (2) for count 10, a base offense level of 14 under U.S.S.G. § 2J1.2(a), enhanced by eight levels because of a supposed threat of physical injury (U.S.S.G. § 2J1.2(b)(1)(B) and two levels for putative obstructive conduct (U.S.S.G. § 3C1.1)); and (3) for count 11, a base offense level of 12 under U.S.S.G. § 2A6.1(a), enhanced by two levels because of supposed multiple threats (U.S.S.G. § 2A6.1(b)(2)(A)). App. 208-09. Further, the government agreed that it would recommend at least a two-level downward adjustment under U.S.S.G. § 3E1.1 because Petitioner had accepted responsibility timely. App. 199.

Based on those potential sentencing-related parameters, the government agreed to waive its right to appeal if the district court were to sentence Petitioner to a custodial term "at or below the statutory maximum" applicable to Petitioner's offenses. App. 211.

Petitioner and the government also stipulated to a set of agreed-upon, offense-related facts, which Petitioner summarized supra (at 12-16). App. 203-08. He further agreed to an appellate waiver regarding his conviction, and a limited one regarding his sentence – albeit one that the district court would obviate if it were to sentence him to a term exceeding "the high-end of the Sentencing Guidelines range calculated by the" district court. App. 211. And Petitioner also

stipulated to having the government remove him from the United States, and return him to the UK, after he completed his custodial sentence. App. 220-29.

K. The District Court Apparently Violates Rule 11(b)(2) During Petitioner's Change-of-Plea Hearing By Neither Asking Petitioner Any Questions About His ASD and Depression, Nor Recognizing That Petitioner's Medications or Sleep Deprivation May Have Made It Difficult for Him to Comprehend the District Court's Advisals and Queries

During a change-of-plea hearing on October 28, 2020, the district court appeared to comport with the mandatory advisals that Rule 11(b)(1) requires regarding – among other things – the rights that Petitioner agreed to waive, the sentencing procedures the district court would employ, and the scope of Petitioner's purported appellate waiver. App. 21-45. But the district court unfortunately seemed to deviate from Rule 11(b)(2) in two key respects.

First, the parties ostensibly were well aware that Petitioner had long been diagnosed as having ASD. But not a single question from the district court even so much as suggested anything regarding Petitioner's life-defining condition. See App. 10-61. At bottom, therefore, the district court did not make the comprehensive inquiry that Rule 11(b)(2) requires "to confirm [Petitioner's] competence and intelligence to enter a plea of guilty." United States v. Fuentes-Galvez, 969 F.3d 912, 915 (9th Cir. 2020).

Instead, the district court queried Petitioner only generally, "Do you suffer from any mental condition or disability that would prevent you from fully understanding the charges against you or the consequences of your guilty plea?" App. 17. Petitioner responded vaguely, noting only that ". . . I have, you know, that sometimes it effects interaction. Sometimes, especially a case where I swear I know if I fully understand what to say, it sometimes affects communications. Sometimes it's superficial and sometimes I'm not [sic]." App. 17-18.

Further, Petitioner also noted that he suffered from "major depressions," making him "feel" periodically "like my mind is very cloudy and I may not always make the right decisions. Sometimes I have fear and anxiety; fear affects a lot." App. 18. But although Petitioner gave the district court ample Rule 11(b)(2)-related fodder to mull over, the district court did not follow up, instead asking Petitioner how he was "feeling right now." Id.

By not questioning Petitioner specifically about his ASD and the effect that might have on his ability to understand the profuse information that a district court conveys during a Rule 11 colloquy, the district court "did not make any inquiries as to whether [Petitioner] was capable of knowingly and voluntarily entering a plea at that time," including ". . . questions that might bear on whether [Petitioner] understood the nature of his plea)." Fuentes-Galvez, 969 F.3d at 915; App. 17-18.

And given Petitioner's decades-long struggles with ASD, it is particularly surprising that the district court avoided that topic categorically, especially considering ASD's effects on a person's ability to process and comprehend unfamiliar information. See supra at 8-9; see also App. 55.

Second, although the district court correctly questioned Petitioner about whether he was then taking medications, it did not recognize that Petitioner's lengthy description of their side effects illustrated he was at risk of not being cognitively acute during the hearing. See App. 17-21. More particularly, Petitioner told the district court that he was then using Lexapro as an "anti-depressant medication," and had been doing so since June 2020. App. 16-17. Petitioner stated in response to the district court's queries that taking Lexapro "help[ed]" him to "make better decisions than before." App. 17.

But when Petitioner later responded to the district court's query about how he was then "feeling," he responded that he was "quite drowsy," perhaps suggesting the medication was at least temporarily affecting him. App. 18. Petitioner also added that he was not aware that he was appearing in the district court by video that day for a change-of-plea hearing, alternatively raising the possibility that he was sleep deprived. Id.

The district court then asked Petitioner whether he was "comfortable

proceeding today or do you want to change it to another date?" App. 18. Petitioner responded ambiguously, noting he was "happy to get it under the conference today." Id. Perhaps aware that Petitioner might not have been mentally and cognitively prepared to proceed with a change of plea, the district court interjected, "Okay. Well, again, if you feel at any time like you're not really able to understand what's going on or if you want to talk to [your counsel] or if you just don't feel like going forward today, then just let us know and we'll stop." App. 18-19. The district court further added, "I want to make sure that you understand what's going on and that you can make good decisions for yourself today because this is an important day. And as I said, we can postpone it if at any time you tell me that you don't want to go forward today. All right?" App. 19.

Petitioner eventually responded, "I do not see any reason why not. Umm, I'm a bit more aware now what's going on." App. 19. Following queries from the district court, Petitioner's defense counsel stated that she "believe[d] that [Petitioner] wants to go forward, and it's in his best interest and it's going to be fine." She also answered affirmatively when the district court asked her if she "believe[d] that [Petitioner was] in possession of his faculties and competent to proceed." App. 20.

Despite those serious issues involving whether Petitioner – because of his

ASD and admitted drowsiness – was capable of proceeding under Rule 11(b)(2), the district court ultimately accepted Petitioner's change of plea, deeming it – at least in the district court's estimation – to be knowing and voluntary. App. 59-60. More particularly, the district court concluded that Petitioner was "in full possession of his faculties and [was] competent to proceed." App. 20-21.

L. Petitioner Requests a Sentencing Departure Because of His ASD, But the Government Disagrees

In a lengthy sentencing memorandum – supported by Dr. Schakel's and Dr. Freeman's expert reports – Petitioner argued that the district court should grant him a downward departure under U.S.S.G. §§ 5K2.0 or 5K2.13 because of his ASD. Among other things, Petitioner noted that he had already been in presentencing custody for more than 17 months and, coupled with his guaranteed removal to the UK after being released, that was sufficient punishment given this case's unique circumstances. See, e.g., App. 258-60.

The government disagreed, however, contending in its sentencing memorandum that although Petitioner warranted a two-level Guidelines variance because of his ASD, it requested a 37-month custodial term. App. 344, 346-47. It also recommended that the district court impose a three-year supervised release period and fine Petitioner $15,000. App. 347.

M. The District Court Sentences Petitioner to a 37-Month Custodial Term and Imposes a $15,000 Fine

During a sentencing hearing on November 15, 2021, the district court used grouping principles for Guidelines calculations purposes (see U.S.S.G. § 3D1.2(b), 3D1.3(a)), therefore apparently starting with a base offense level of 14 (for count 10) because it was the highest one for the three counts to which Petitioner had attempted to plead guilty. See supra at 17-18; App. 87. As the parties agreed, the district court then ostensibly enhanced it by eight levels under § 2J1.2(b)(1)(B), resulting from Petitioner's purported violent threats, and the district court further added two levels under U.S.S.G. § 3C1.1 because of Petitioner's supposed obstructive efforts. App. 87.

Finally, because Petitioner had timely accepted responsibility for his putative offenses, the district court seemingly adjusted downward by three levels under § 3E1.1(b), therefore arriving at an adjusted base offense level of 21. App. 87. Coupled with Petitioner's not having a criminal record, therefore placing him in Category I, that yielded an advisory Guidelines range of 37 to 46 months. Id.

Before adopting those calculations from the PSR, however, the district court heard Petitioner's succinct allocution (in which he twice stated he was "sorry" and

noted that his "autism" had "ma[de] it very hard to understand other people's feelings" (App. 68)) and arguments from Petitioner's sentencing counsel and the government's prosecutor (essentially reaffirming its recommendation of 37 months (App. 68-72)). Further, the district court heard heartfelt impact statements from five of Petitioner's putative victims. App. 73-84.

Following the arguments and statements, the district court noted that Petitioner "is a rather unique defendant based on his autism spectrum disorder," before adding that "it is not clear that he has a significantly reduced mental capacity that contributed substantially to the commission of the offense." App. 85. The district court also disagreed with Dr. Freeman's opinion that Petitioner had not attempted to cause psychological harm to the people he targeted, referring specifically to a letter that Petitioner rather unfortunately had sent to the government's prosecutor, in which he referred to what he had done as "temporary harm" and "payback and seemed pleased with his accomplishments . . . ." App. 85-86.

The district court further opined, ". . . [T]hat [Petitioner] may not have intended to follow through on the threats or cause physical harm to anyone doesn't matter. The threat itself is the harm." App. 86. Continuing, it added that Petitioner "might not have realized the full extent of the incredibly traumatizing

affects his conduct would have on his victims, but he certainly understood and intended that this would harm them in some way." Id.

Consequently, the district court determined that Petitioner's requested downward departure from the Guidelines was "not appropriate." App. 87. But after considering the applicable factors under 18 U.S.C. § 3553(a), including Petitioner's father's tragic death, it did agree to vary downward by two levels under the Guidelines – from 21 down to 19 – because Petitioner had attempted to plead guilty at such an early stage. App. 88-89.

With the newly adjusted Guidelines range now 30 to 37 months, the district court decided to sentence Petitioner to an upper-end custodial term, concurrent for all three counts. App. 90. It also imposed a three-year supervised release period, also concurrent. And it fined Petitioner $15,000 – $5,000 for each of the counts. App. 90-91.

Regarding Petitioner's appellate waiver, the district court noted that Petitioner had "a right to appeal [his] conviction if [he] believe[d] that [his] guilty plea was somehow unlawful or involuntary or if there was some other fundamental defect in the proceedings that was not waived by [his] guilty plea." App. 95. It added that Petitioner could appeal his sentence "under some circumstances particularly if you think your sentence is contrary to law." App. 95-96.

The district court also noted that it would sign a proposed order to effectuate Petitioner's stipulated future removal from the United States, and it did so on November 16, 2021. App. 97, 354-59.

N. The Court of Appeals' Disposition

Following briefing and without hearing oral argument, a merits panel of the Ninth Circuit affirmed Petitioner's conviction and sentence via an unpublished memorandum disposition on April 25, 2023. Attempting to distinguish Fuentes-Galvez, the Ninth Circuit panel reasoned that the district court had "addressed [Petitioner's] 'competence to enter the plea,'" including a colloquy with Petitioner regarding the medications he was then taking and giving Petitioner reassurances that he "could stop the hearing at any time if he did not understand something, needed to consult with his counsel, or no longer wished to plead guilty." App. 2-3. The Ninth Circuit panel also emphasized that Petitioner "confirmed that he discussed the plea agreement with his counsel, did not need any additional time to discuss the agreement, and understood its terms." App. 3.

Notably, however, the memorandum disposition noted that there was no "explicit mention" during the early stages of the hearing of Petitioner's ASD. App. 3. The panel did deem it significant, though, that Petitioner's counsel alluded to the ASD's contributory role when later discussing Petitioner's conduct,

while simultaneously disclaiming that Petitioner was legally incompetent or insane for Rule 11 purposes. App. 5.

Additionally, the panel highlighted another Ninth Circuit case – United States v. Ferguson, 8 F.4th 1143 (9th Cir. 2021) – that at least implicitly attempted to minimize Fuentes-Galvez's holdings. In particular, the panel quoted Ferguson's language regarding the Petitioner's having "'admitted guilt and expressed remorse' at sentencing" and not having stated "'he wanted to change his plea or suggest[ing] his plea was involuntary.'" App. 6 (quoting Ferguson, 8 F.4th at 1147).

Although Petitioner had contended alternatively that the district court violated the Fifth Amendment's Due Process Clause by having accepted his guilty plea despite patent concerns in the district court record about whether it had been knowing and voluntary, the Ninth Circuit only perfunctorily addressed that issue in its unpublished memorandum disposition. App. 7. There, the panel emphasized among things that, based exclusively on its Rule 11(b)(2)-related analysis, "the record contains '*some* affirmative evidence that [Petitioner] entered his plea knowingly and willfully," including his counsel's ostensible abilities, the express advisals that he had received under Rule 11(b)(1), and his 'opportunity to voice any confusion audibly'" during the hearing. Id. (quoting United States v. Diaz-

Ramirez, 646 F.3d 653, 658 (9th Cir. 2011) (original emphasis)).

REASONS FOR GRANTING THE WRIT

1. As the Court held in seminal opinions decades ago, such as Boykin v. Alabama, 395 U.S. 238, 243-44 (1969), due process principles require a trial court to conduct a change-of-plea hearing such that the defendant demonstrates that he is entering his plea knowingly and voluntarily. Concomitant to that constitutional rule, Boykin also held that a trial court must develop a record sufficient for an appellate court examining the plea to determine that the defendant knowingly and voluntarily relinquished core constitutional rights, such as a right to proceed to a jury trial with appointed counsel. See infra at 30-31.

2. The Ninth Circuit's approach in the present case, however, effectively endorsed the district court's having contravened Boykin and similar opinions from the Court that require such a fulsome on-the-record development of the defendant's ability to enter a knowing and voluntary plea. This is particularly so here considering that the record in its totality demonstrated that Petitioner suffered from a decades-long ASD condition that materially impacted his ability to process orally communicated information and convey correctly to others that he did not understand what others were trying to tell him. See supra at 8-9; infra at 31-33.

Thus, by not inquiring whatsoever regarding Petitioner's history with ASD,

the district court did not comply with Boykin's dictates. And the Ninth Circuit essentially ratified that error by not evaluating Petitioner's ASD's role in impeding his ability to enter a plea knowingly and voluntarily. See supra at 19-23; infra at 31-33.

3. Consequently, because the Ninth Circuit's disposition deviates from Boykin and related cases, the Court should grant certiorari to resolve that discrepancy. See S. Ct. R. 10(c).

The Court should therefore grant Petitioner's petition for a writ of certiorari.

I. IN BOYKIN, THE COURT MADE PLAIN THAT REVERSIBLE ERROR OCCURS WHEN A TRIAL COURT DOES NOT DEVELOP AN ADEQUATE RECORD TO ESTABLISH THAT A DEFENDANT IN A CRIMINAL CASE KNOWINGLY AND VOLUNTARILY PLEADED GUILTY.

Expanding on the Court's seminal opinion in Johnson v. Zerbst, 304 U.S. 458, 464 (1938), regarding due process principles and their interplay with a defendant's needing to knowingly and voluntarily relinquish constitutional rights when pleading guilty, Boykin held that trial courts must exercise "the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence." Boykin, 395 U.S. at 243-44; see also Brady v. United States, 397 U.S. 742, 747 n.4 (1970) ("The new element added in Boykin was the

requirement that the record must affirmatively disclose that a defendant who pleaded guilty entered his plea understandingly and voluntarily.").

In particular, Boykin noted that human experiences such as "incomprehension" and "terror" could "be a perfect cover-up of unconstitutionality." Boykin, 395 U.S. at 243. But when a trial court "adequately" creates a record illustrating that within that case's factual circumstances, the defendant's plea occurred knowingly and voluntarily – thus necessarily devoid of factors that could otherwise have rendered it void – then "it leaves a record adequate for any review that may be later sought [] and forestalls the spin-off of collateral proceedings that seek to probe murky memories." Id. at 244.

II. THE NINTH CIRCUIT OVERLOOKED BOYKIN AND ITS PROGENY IN ITS DEPOSITION, INSTEAD FOCUSING NARROWLY ON WHETHER THE DISTRICT COURT HAD COMPLIED WITH RULE 11(b)(2) AND NOT APPRECIABLY ADDRESSING THE ROLE PETITIONER'S ASD PLAYED IN PRECLUDING HIS ENTERING A PLEA KNOWINGLY AND VOLUNTARILY.

A. Simply put, although Petitioner had raised a due process claim in his opening brief in the Ninth Circuit concerning his plea's voluntariness, the Ninth Circuit panel addressed it almost exclusively from a Rule 11(b)(2) perspective, essentially deeming the constitutional question controlled by its separate

procedural-rule-based analysis. See supra at 28-29. And that occurred notwithstanding the district court's record containing evidence – some of which was available to the district court as of the change-of-plea hearing's date – illustrating that Petitioner not only had ASD that severely impacted his ability to process information conveyed to him orally, but also suffered from anxiety and depression that, because of the medications he was then taking (even apart from the ASD), may have impacted him during the Rule 11 colloquy. App. 17-21; supra at 19-23.

B. In so doing, however, the Ninth Circuit panel overlooked the more-than-theoretical possibility that Petitioner's ASD – combined with his other mental-health conditions (see supra at 3-4, 9-10, 20-21) – might have resulted in his being prone to the type of "incomprehension" or "terror" that the Court discussed in Boykin as creating potential constitutional infirmities in the plea context that a trial court needs to address in-court. Boykin, 395 U.S. at 243. Otherwise, as Boykin further noted, an inadequate record could result in a "perfect cover-up of constitutionality." Id.

Simply put, the Ninth Circuit's focusing principally on Petitioner's Rule 11(b)(2) claim – and, more particularly, its seizing upon narrow language in Ferguson to reject it (see App. 6) – resulted in a demonstrable conflict between its

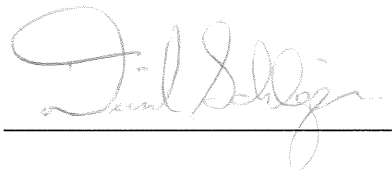
ultimate disposition of Petitioner's direct appeal and what the Court in Boykin and its progeny have long required within the due process context. And at a bare minimum, the Court – if it elects not to address Petitioner's due process claim on the merits – should instead instruct the Ninth Circuit to adjudicate it under the principles the Court has long established. See S. Ct. R. 10(c).

CONCLUSION

The Court should grant the petition for writ of certiorari.

Dated: July 24, 2023

Respectfully submitted,



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Counsel for Petitioner

No._____

IN THE SUPREME COURT OF THE UNITED STATES

SAMUEL TRELAWNEY HUGHES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for A Writ of *Certiorari* to The United States Court of Appeals for the Ninth Circuit

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PROOF OF SERVICE

I, David A. Schlesinger, declare that on July 24, 2023, as required by Supreme Court Rule 29, I served Petitioner Samuel Trelawney Hughes's MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on counsel for Respondent by depositing an envelope containing the motion and the petition in the United States mail (Priority, first-class), properly addressed to her, and with first-class postage prepaid.

The name and address of counsel for Respondent is as follows:

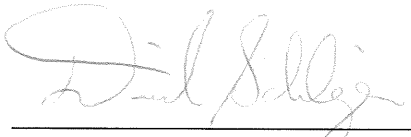
The Honorable Elizabeth B. Prelogar, Esq.
Solicitor General of the United States
United States Department of Justice
950 Pennsylvania Ave., N.W., Room 5614
Washington, DC 20530-0001
Counsel for Respondent

Additionally, I mailed a copy of the motion and the petition to my client, Petitioner Samuel Trelawney Hughes, by depositing an envelope containing the documents in the U.S. mail (for overseas delivery), postage prepaid, and sending it to the following address:

Samuel Trelawney Hughes
3 Pen An Vre, Treliever RD
Mabe Burnthouse
Penryn
Cornwall England
TR109DF
United Kingdom

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 24, 2023



DAVID A. SCHLESINGER
Declarant