No. 23-6145

IN THE

SUPREME COURT OF THE UNITED STATES

STEPHEN CHRISTOPHER PLUNKETT - PETITIONER

vs.

UNITED STATES OF AMERICA - RESPONDENT

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

PETITION FOR WRIT OF CERTIORARI

STEPHEN CHRISTOPHER PLUNKETT
(Your Name) 36265-177

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I. QUESTIONS PRESENTED

A. Did the United States Court of Appeals for the Fifth Circuit completely flout this Court's precedent as set forth in Buck v. Davis, 580 U.S. 100 (2017), which specifically addressed a prior, similar procedural error by the same court in Buck v. Stephens, 623 Fed.Appx. 668 (5th Cir. 2015)(reversed and remanded by Buck v. Davis, Supra), where Petitioner Plunkett clearly demonstrated to the district court and to the Fifth Circuit that the resolution of Plunkett's [illegible] claims was, at the very least, debatable, and at worst completely wrong resulting in a complete miscarriage of justice?

B. If the answer to the first question is in the affirmative, should this Court remand the appeal back to the Fifth Circuit with directions to assign the appeal to a different panel or should this Court exercise its discretion to take up Plunkett's appeal directly due to Circuit Split on the merits issues, the Fifth Circuit's denial of rehearing despite full and thoughtful briefing on the issues, and the political implications of this case?

C. If the answer to the first question is in the affirmative, and this Court takes up Plunkett's appeal directly, did Plunkett demonstrate the threshold showing as articulated by this Court for issuance of a Certificate of Appealability where Plunkett stated multiple, valid claims of the denial of Constitutional rights and where Plunkett also convincingly demonstrated that jurists of reason would find it debatable, at the very least, whether the district court was correct in its ruling on the merits where Plunkett submitted uncontroverted testimony and documentary evidence that his plea, sentencing, and appellate counsel were all ineffective in violation of the Sixth Amendment to the United States Constitution?

D. Did the United States Court of Appeals for the Fifth Circuit err in its summary affirmance, despite thorough and thoughtful briefing on the issues in both the district court and the Circuit court, of the district court's denial of Plunkett's 28 U.S.C. §§144 & 455 Motions to Disqualify/Recuse the district court where Plunkett complied with all statutory requirements of §144, there are open questions in the Fifth Circuit(conflicting intra-Circuit law as to §144 procedure), and the district court failed, in the first instance, to examine its own mind and biases and where the district court's determination on this issue is in violation of this Court's precedent as set forth in Liteky

E. Is the test used by the United States Court of Appeals for the Fifth Circuit, as set forth in United States v. Cervantes, 132 F.3d 1106, 1110 (5th Cir. 1998), to determine whether a "promise" has been made to a criminal defendant by his or her counsel, unconstitutional on equal protection grounds where an incarcerated criminal defendant could virtually never clear the bar of the third prong of the test simply by virtue of his or her incarceration causing an untenable disparity between the criminal defendant who is incarcerated and the one who is not?

F. Is the same test noted in the preceding question ill-advised considering the implications to attorney-client privilege where no such privilege would exist between the criminal defendant and any such "eyewitness" to any such alleged promise and, in any event, the district court is to determine the credibility of witnesses and the plausibility of any such claimed promises after examining the record of the proceedings and any other submitted evidence as a whole and, as such, should the Cervantes test be abrogated by this Court?

G. In the current era of the United States Sentencing Guidelines, where the Guidelines have now been practiced for almost four decades, does a criminal defense attorney, representing a defendant in a guilty plea advisory role, operate outside of "prevailing professional norms" and, therefore, provide ineffective assistance of counsel, by advising his or her client with affirmatively wrong advice concerning how the USSG will operate when applied to the stipulated facts of his or her case and, thereby, cause the defendant to enter a plea of guilty and forfeit an entire judicial proceeding ?

H. If the answer to Question G is yes, is any such ineffective assistance of counsel harmless under the prejudice prong of Strickland v. Washington, 466 U.S. 668 (1984) , if Counsel simply places a written provision in the guilty plea document further advising the defendant of the Statutory Maximum penalty for the charged crime where, according to the United States Sentencing Commission, courts sentence criminal defendants to the Statutory Maximum penalty in less than 1% of cases and, of the 1%, it is likely that the Statutory Maximum is either below or withingthe recommended Guidelines range ?

I. If the answer to Question G is yes, and the answer to Question H is no, is any such alleged prejudice under Strickland and Jae Lee v. United States, 582 U.S. 357 (2017) , cured by the district court at rearraignment where the district court did advise the defendant of the Statutory Maximum penalty, but where the district court also directed the defendant's attention to the very pages in the plea documents where the defendant's understanding of how the USSG would operate when applied to the stipulated facts of his case and where the stipulated facts leading to such operation were plainly laid out and where neither the district court nor the

government voiced any objections or concerns with the stipulated facts or with the recorded understanding of the defendant contained within the plea documents submitted to the Court and the government one month prior to rearraignment?

J. Did the district court err in its denial of §2255 relief, without a hearing, where Plunkett credibly demonstrated that Counsel Mr. Morris did affirmatively misadvise Plunkett as to the operation of the USSG as a result of Plunkett's factual stipulations by submitting as evidence affidavits of two family members recounting Plunkett's contemporaneous understanding of his plea as well as emails between Mr. Morris and AUSA Dunn wherein Mr. Morris, himself, recounts his representations to Mr. Plunkett and where Mr. Morris refused to file a Motion to Withdraw Mr. Plunkett's guilty plea also of which evidence was submitted to the district court?

K. Did the district court err in its denial of §2255 relief, without granting an evidentiary hearing, where Plunkett credibly demonstrated that Counsel Mr. Lewis received a "sentencing offer" from AUSA Dunn prior to sentencing and Mr. Lewis advised Plunkett to 1) refrain from filing a Motion to Withdraw Plunkett's guilty plea and 2) reject the government's "sentencing offer" where, after his investigation, Mr. Lewis found Mr. Morris to be ineffective, prepared at least a portion of a Motion to Withdraw guilty plea recounting Mr. Morris's ineffectiveness, and then submitted portions of the Motion to the district court and the government via email and where the government, in its response to Mr. Plunkett's §2255 Motion, denied that any such offer ever existed and where the government attached emails implicitly contradicting the government's claim that no such offer was ever made?

L. Did the district court err in its denial of limited dis-

covery pursuant to the Rules Governing §2255 Proceedings which was directly related to Plunkett's Napue claim against AUSA Dunn in which AUSA Dunn affirmatively misled the district court regarding Mr. Plunkett's arrest being federal in nature where the nature of Mr. Plunkett's arrest bore directly upon the issue of punishment where AUSA Dunn denied knowledge of any arrest report stating that Plunkett was arrested pursuant to the Bank Robbery warrant out of Texas and where the government had turned over an arrest report by Former Forsyth County Sheriff's Deputy Lieutenant Augusto Sesam stating that PLunkett was so arrested, as well as an email chain between FBI personnel and Forsyth County personnel wherein the FBI agreed, the morning after Plunkett was arrested, to remove the federal warrant from the database to cause the appearance that the federal warrant did not exist in the system at the time of Plunkett's arrest at approximately 10:30 P.M. on April 15, 2014, where Plunkett never received a copy of the subject documents from Counsel, and where Plunkett submitted credible evidence of the existence of the subject documents in the form of a notification email from USAfx to Counsel Mr. Morris, dated January, 2017 and where Mr. Morris claims no such documents ever existed?

M. Did the district court err is its denial of the amendment of Plunkett's §2255 Motion to add certain claims, including the Napue claim aforementioned, where Plunkett submitted both compelling factual argument and Fifth Circuit law supporting such amendment in a thoughtful and thorough brief and where the subject amendments were either submitted prior to AEDPA's one year limitation or related back to timely claims previously submitted?

N. Did the district court err in its denial of §2255 relief, without granting an evidentiary hearing, where Plunkett credibly and

persuasively demonstrated that Counsel Mr. Hooks was ineffective for not appealing several issues urged by Mr. Plunkett the most meritorious of which being the reasonableness of the district court's sentence in light of the fact that the district court did not consider at all a partially concurrent sentence and was only focused on refuting Counsel Mr. Lewis's ineffective arguments as to application of USSG §5g1.3(b) when, under the conditions as they existed at sentencing, USSG §5g1.3(b) was not applicable and where the Commentary to §5g1.3(d), which was the applicable provision at sentencing, specifically counsels that, in situations such as Mr. Plunkett's, a partially concurrent sentence may be the most appropriate solution and where the 18 U.S.C. §3553(a) factors would also have counseled such a sentence and where Mr. Hooks brought a sure loser on appeal; the "firearm enhancement" which, on appeal, carries the "any evidence" standard and where the PSR recorded a purported witness's statement as to having allegedly seen an alleged firearm?

O. Did the United States Court of Appeals commit clear error when it found that Mr. Plunkett had abandoned his claims as to Mr. Morris's and Mr. Lewis's refusal to file Motions to Withdraw Mr. Plunkett's guilty plea where the Fifth Circuit Panel found that Mr. Plunkett had not included those claims in his Amended §2255 Motion where Mr. Plunkett did clearly include those claims in his original §2255 Motion and in his "Final Amended" §2255 Motion, but where the district court did not address those claims?

II. LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

III. RELATED CASES

United States v. Plunkett, No. 3:14-CR-00239, NDTX
United States v. Plunkett, No. 17-11502, 5th Cir.
Plunkett v. United States, No. 3:20-CV-00640, NDTX
Plunkett v. Dep't of Justice, et al., No. 1:21-CV-1232, DDC
Plunkett v. Sheriff Freeman, et al., No. 20CV1404-2, Forsyth County Superior Court (GA)
Plunkett v. Garland, Garrett, et al., No. 2:23-CV-00116, EDAR
Plunkett v. Ward, Garland, et al., No. 5:23-CV-00065, SDGA

IV. TABLE OF CONTENTS

V. INDEX TO APPENDICES

VI. TABLE OF CASES *

*Unless otherwise noted, all page numbers are those of §XI, Reasons for Granting the Petition

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Plunkett respectfully prays that a writ of certiorari issue to review the judgments below:

VII. OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit appears at Appendix A at 1 to 2 and is unpublished but may be viewed at 2023 App. LEXIS 21532.

On Petition for Rehearing, the opinion of the United States Court of Appeals for the Fifth Circuit appears at Appendix A at 3 and is unpublished but may be viewed at 2023 U.S. App. LEXIS 27988.

The opinion of the United States District Court for the Northern District of Texas appears at Appendix A at 4 to 31 and is unpublished but may be viewed at 2022 U.S. Dist. LEXIS 233552, 2022 WL 18009966.

The thoroughly objected-to opinion of the United States Magistrate Judge, adopted over objection by the District Court, of the Northern District of Texas appears at Appendix A at 32 to 43 and is unpublished but may be viewed at 2022 U.S. Dist. LEXIS 234073.

The opinion of the United States Magistrate for the Northern District of Texas recommending denial of IFP Status and certification of no merit appears at Appendix A at 44 to 45 and is unpublished but may be viewed at 2023 U.S. Dist. LEXIS 48208.

The opinion of the United States District Court for the Northern District of Texas adopting, over objection, the false certification of no merit appears at Appendix A at 46 to 47 and is unpublished but may be viewed at 2023 U.S. Dist. LEXIS 47412.

VIII. JURISDICTION

[x] For cases from federal courts:

The date on which the United States Court of Appeals for the Fifth Circuit decided my case was September 11, 2023.

[x] A timely petition for rehearing was denied by the United States Court of Appeals for the Fifth Circuit on the following date: October 19, 2023 and a copy of the Unpublished order denying rehearing appears at Appendix A at 3.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1) and under Article III of the United States Constitution.

IX. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED
(Texts Found at Appendix D)

Constitutional Provisions

Statutes

United States Sentencing Guidelines

Rules

I. STATEMENT OF THE CASE

Petitioner Plunkett entered a guilty plea to a two-count indictment in the Northern District of Texas charging violations of 18 U.S.C. §2113(a) on December 15, 2015. Mr. Plunkett did so after requesting advice from his plea counsel, Mr. Morris, as to how the instant federal sentence would be run in relation to Mr. Plunkett's then-undischarged prison sentence in the State of Georgia. Said Georgia state sentence resulted from Mr. Plunkett's guilty plea to an alleged bank robbery in Forsyth County, GA on April 9, 2014. The charges contained in the federal Northern District of Texas indictment were related to alleged bank robberies which occurred on March 25 and March 28, 2014.

Mr. Morris originally presented a "plea" to Mr. Plunkett in October, 2015. However, Mr. Plunkett was concerned with the prospect of the separate proceedings multiplying his punishment in a disparate fashion. When Mr. Plunkett brought this foremost concern to Mr. Morris's attention, Mr. Morris went back to the drawing board and came back to Mr. Plunkett with a proposed solution and presented Mr. Plunkett with the plea document submitted on December 15, 2015. In that document is recorded the factual stipulations to the counts charged in the indictment as well as a stipulated third count, for purposes of U.S.S.G. §1b1.2(c), related to the bank robbery for which Mr. Plunkett was sentenced in the State of Georgia.

As recorded in the plea document, Mr. Plunkett understood this stipulation would result in an additional offense level being added to his overall total offense level. Mr. Morris further explained that by virtue of this stipulation and the resulting offense level being added, U.S.S.G. §5g1.3(b) would be brought into effect. The applica-

tion of §5g1.3(b), Mr. Morris explained, would result in the Guidelines recommending a concurrent sentence as well as the application of credit for time served on Plunkett's undischarged Georgia sentence. It was upon this advice and understanding that Mr. Plunkett agreed to enter a guilty plea.

On January 16, 2015, a rearraignment hearing was held in front of United States District Court Judge Jane J. Boyle. At the re-arraignment hearing, Judge Boyle had a colloquy with Petitioner Plunkett in which neither the judge nor the government expressed any concerns with any of the stipulations or understandings recorded in the plea documents. No concerns were voiced and no objections were lodged. In fact, Judge Boyle specifically referred to the pages on which the stipulations and understandings were recorded. As such, any such stipulations or understandings cannot be said to be "outside of" the re-arraignment proceeding.

In March, 2015, the United States Probation Office submitted its Presentence Investigation Report ("PSR"). In the original PSR, the USPO calculated that, pursuant to the stipulations, the instant federal sentence should be run concurrent to Petitioner Plunkett's then-undischarged Georgia sentence and Mr. Plunkett should, under U.S.S.G. §5g1.3(b) be granted credit for time served on that sentence. Then, in April, 2015, the government objected. Nevertheless, USPO, in its first Addendum to the PSR, upheld the PSR as written and did not agree with the government's objections. This is where the waters get really murky.

Approximately two weeks later, after apparent back-channel communications between the government and USPO, the USPO issued a seconde Addendum to the PSR. This time, however, citing to an Unpub-

lished Fifth Circuit case, United States v. Harrier, 229 Fed.Appx. 299 (5th Cir. 2007)(unpublished), the USPO rewrote the PSR to recommend that §5g1.3(d) apply instead finding that the Georgia sentence was not "relevant conduct" to the instant federal case citing a "misunderstanding" despite having just upheld the original PSR as written.

Mr. Morris showed up to discuss this new development with Petitioner Plunkett; Petitioner Plunkett asked Mr. Morris to object to the government's objection. After reading the rationale of the PSR, Petitioner Plunkett objected to Mr. Morris that there WAS an agreement. Mr. Morris responded, "It wasn't THAT type of agreement." Mr. Morris did say that he had objections to file to the PSR. Plunkett awaited the objections. After becoming concerned that he was not going to receive the Guidelines recommendations for which he thought he bargained, Mr. Plunkett instructed Mr. Morris to file a Motion to Withdraw the Plea of guilty. Mr. Morris refused to do so even though he told AUSA Lisa Dunn that was precisely what he was going to do in emails submitted as evidence to the district court in Petitioner's §2255 proceeding. Mr. Morris's attitude toward Mr. Plunkett completely changed.

Mr. Plunkett then filed two separate Motions for Substitute Counsel. The first was withdrawn and the second was granted after an ex parte hearing with Magistrate David Horan. Ultimately, Petitioner was appointed Christopher Lewis to represent him. Petitioner then recounted all of the facts concerning Mr. Morris's representation to Mr. Lewis. Mr. Lewis then investigated the claims of Mr. Plunkett and, in the end, prepared a Motion to Withdraw Mr. Plunkett's guilty plea. After Mr. Lewis prepared this Motion to Withdraw, he submitted excerpts of the Motion to the Court and AUSA Dunn which recounted Mr.

Morris's ineffectiveness in relation to the representations made to Mr. Plunkett which induced Mr. Plunkett to enter the plea.

After Mr. Lewis submitted that email, which was attached to the government's Response in Opposition to Mr. Plunkett's §2255 Motion, (See ROA, Vol. at), Mr. Lewis, prior to sentencing, paid a visit to Mr. Plunkett at the Federal Detention Center at FCI Seagoville, TX to inform Mr. Plunkett that the government had made an offer as to sentencing in order to avoid the Motion to Withdraw issues. Mr. Lewis reported to Mr. Plunkett that the government offered to concede the firearm enhancement and to agree to a partially-concurrent sentence beginning from the date of sentencing within a U.S.S.G. range of 92-115 months but that the government wanted a sentence at the "high" end of the range. All of the evidence of this offer is uncontested. Mr. Plunkett submitted a sworn declaration, under penalty of perjury (See ROA, Vol. at). The government submitted only argument, in its Response in Opposition, that the offer never existed. (See ROA, Vol. at). That argument was submitted by Ms. Kristina Williams who is no longer employed by DOJ, but is now an elected state court judge in Dallas, TX.

Mr. Plunkett was denied both discovery and an evidentiary hearing as to any of his claims in his §2255 Motion. Neither Mr. Morris nor Mr. Lewis submitted any affidavits contradicting any of Mr. Plunkett's claims. Mr. Lewis, at the meeting in which he related the government's offer to Mr. Plunkett, advised Mr. Plunkett to reject the agreement. Mr. Lewis based his erroneous advice on his misunderstanding of the application of the U.S.S.G. Mr. Lewis advised Mr. Plunkett that he would prevail in his arguments as to application of U.S.S.G. 5g1.3(b) and that not only should Mr. Plunkett not accept the government's sen-

tencing offer, but also that Mr. Plunkett should refrain from filing his Motion to Withdraw the guilty plea. Instead, Mr. Lewis advised, Mr. Plunkett should take his arguments and objections to the Court and proceed with sentencing as the case stood at that point.

Mr. Plunkett followed the advice of Mr. Lewis and the results were devastating. The Court rejected Mr. Lewis's arguments as to any "agreement" and overruled all of Mr. Lewis's objections. The district court sentenced Mr. Plunkett to 116 months' imprisonment to be run fully consecutively to Mr. Plunkett's undischarged Georgia sentence of 20 years to serve 10. The judgment was amended to reflect a sentence of 114 months due to the district court's purported issues with simple math.

Mr. Plunkett appealed to the United States Court of Appeals for the Fifth Circuit. Mr. Plunkett was appointed Attorney Shannon Hooks on appeal. Mr. Plunkett was transported back to Georgia to finish serving the "state" sentence. After correspondence by both telephone and 8-page letter advocating for Mr. Hooks to argue certain meritorious issues on appeal (See ROA, Vol. at), Mr. Hooks argued a single issue: the district court's application of the firearm enhancement. The Fifth Circuit affirmed. See United States v. Plunkett, 749 Fed.Appx. 306 (5th Cir. 2019)(unpublished).

Mr. Plunkett filed his §2255 Motion timely which was received by the district court on March 10, 2020. At the time of filing, Mr. Plunkett was housed in very restrictive conditions in the State of Georgia and Mr. Plunkett had virtually no access to law library materials. Due to actions of the government, Mr. Plunkett's parole in Georgia was delayed and Mr. Plunkett was transferred to the Fulton County Jail (GA) to face yet another charge which Mr. Plunkett was

told had been long dismissed. However, fortunately, the Fulton County Jail had a good law library.

Over the course of the next two months, Mr. Plunkett amended his §2255 claims. (See ROA, Vol. at). Mr. Plunkett's final amendments, which included a recast Napue claim, were the only amendments filed outside of the AEDPA's One-Year Limitation period. However, the Napue claim related back to Mr. Plunkett's timely claims of ineffective assistance at sentencing. The Magistrate Judge denied the amendment (SEE ROA, Vol. at). Mr. Plunkett objected and even attempted to get the district court to certify the issue for interlocutory appeal (See ROA, Vol. at). The district court overruled the objections and denied certification and adopted the Magistrate's denial (See ROA, Vol. at).

Several times, Mr. Plunkett moved for discovery in relation to the issues of whether an offer had been made both pre-plea and pre-sentencing, documents turned over by the government concerning Mr. Plunkett's arrest being withheld from Mr. Plunkett by Counsel, and documents in possession of the government concerning the true details of Mr. Plunkett's original arrest in Georgia. The district court denied any discovery on any issue.

The government filed its response. (See ROA, Vol. at). Mr. Plunkett filed a thorough reply brief. (See ROA, Vol. at). All merits briefing was concluded by December, 2020. Mr. Plunkett was able to get the wrongful Fulton County, GA charges dismissed for the final time on August 6, 2021. Mr. Plunkett succeeded in having the charges dismissed prior to the 2020 election, but after the election, the Fulton County District Attorney, who was under DOJ investigation, re-indicted the Fulton County charges.

Finally, after several parole cancellations at the request of the government, Mr. Plunkett made parole in the State of Georgia on February 23, 2022. Mr. Plunkett then, after a circuitous route, made his way to FCC FOX - MEDIUM / Forrest City II / Compound II. After almost two years awaiting the district court's ruling in his §2255 case, Mr. Plunkett filed a Petition for Writ of Mandamus with the United States Court of Appeals for the Fifth Circuit in September, 2022. Mandamus was denied noting that the Magistrate had now issued her Report and Recommendation which recommended denial of Mr. Plunkett's §2255 Motion without a hearing.

Mr. Plunkett filed three sets of objections to the Magistrate's R&R. (See ROA, Vol. III at). Odd circumstances made the filing of said objections very difficult. Nevertheless, without benefit of the record, and under extremely tight deadlines, Mr. Plunkett ultimately filed over 30 pages of objections pointing out the Magistrate's factual and legal errors. On December 30, 2022, the district court adopted the R&R and overruled Mr. Plunkett's objections in its own legally and factually spurrious Memorandum Opinion and Order. (See Appendix A at 32-43).

Mr. Plunkett filed a Notice of Appeal. The district court falsely certified that Mr. Plunkett's appeal was frivolous. Mr. Plunkett sought COA in the Fifth Circuit. After thorough briefing, in a 2255 action with a record of over 2,000 pages, no evidentiary hearing, no discovery, and no contradictory affidavits from counsel, in a 2.5-page summary Unpublished Order, the Fifth Circuit denied COA. (See Appendix A at 1-2).

Mr. Plunkett then filed a timely Petition for Rehearing clearly pointing out both procedural and factual errors by the Circuit Court

as well as conflicting Circuit law and controlling Supreme Court precedent which dictated a different result. Construing the Petition for Rehearing as a Motion for Reconsideration, it was denied. And because no active Circuit Court judge asked for a poll, the Petition for Rehearing was denied in a summary two-sentence, unpublished order. (See Appendix A at 3).

Petitioner Plunkett now turns to this Honorable Court to put a stop to a complete miscarriage of justice and a totally unfair process. Mr. Plunkett now asks this Court to either reverse the erroneous judgment of the United States Court of Appeals for the Fifth Circuit by either taking up the appeal directly for presentation of important questions where Circuit authority is split and the Fifth Circuit has ignored the precedent of this Court or by remanding this case to the Fifth Circuit for that court to determine the issues in the first instance.

XI REASONS FOR GRANTING THE PETITION

"Process matters. And it matters not just for plaintiffs and defendants, but for courts too." Pollard v. Phillips, No. 22-3809, (6th Cir. December 14, 2023)(unpublished)(See Appendix B at 1-3). As an initial matter, because both the district court and the circuit court failed to follow proper procedure, this Honorable Court should grant this petition to provide a fair process for Petitioner Plunkett. Thus far, any such fair process has been denied.

The denial of a Certificate of Appealability by the United States Court of Appeals for the Fifth Circuit is a clear violation of this Court's precedent and instruction to that very self-same court in Buck v. Davis, 580 U.S. 100 (2017). Further, to the extent that the Fifth Circuit reached the merits, without COA, the Fifth Circuit's disposition conflicts with this Court's precedents in Strickland v. Washington, 466 U.S. 668 (1984), Hill v. Lockhart, 474 U.S. 52 (1985), Padilla v. Kentucky, 559 U.S. 356 (2010), Lafler v. Cooper, 566 U.S. 156 (2012) and Jae Lee v. United States, 582 U.S. 357 (2017).

Unless this proceeding, from start to finish has been a judicial "hit job," (the implications of which are almost unfathomable) working in conjunction with the Department of Justice, at best it must be considered a "comedy of errors." Errors by consel, errors by the government, and, finally, errors by the courts. The plain truth is that the Petitioner, Mr. Plunkett, should have never been required to seek a COA from the Circuit Court.

Mr. Plunkett clearly pointed out, to the district court, the well thought out, and reasoned, opinion of a "jurist of reason" which placed the district court's disposition of Plunkett's case into question. (See Plunkett's Reply Brief, App. C at 4-5; Plunkett's Third Set

of Objections to the Magistrate's R&R, App. C at
; See also United States v. Valdez, 973 F.3d 396, 406-413 (5th Cir. 2020)(Weiner, J. dissenting))). Plunkett pointed out that Valdez's case was much less compelling than his own and Valdez's case drew a dissent from a Circuit judge. Accordingly, and particularly in the absence of an evidentiary hearing (which issue, unlike the Appellant in Valdez, Supra, Plunkett DID raise in his opening brief to the Fifth Circuit), the district court should have, at a minimum, issued a COA as to the ineffective assistance of Mr. Morris at the plea stage and the resulting involuntary and unintelligent nature of Plunkett's plea.

As pointed out to the district court, no evidentiary hearing was held, no affidavits were submitted by counsel contradicting Plunkett's sworn claims, Plunkett submitted documentary evidence of his claims, and Plunkett's credible family members submitted affidavits on his behalf recounting their recollection of contemporaneous conversations with Mr. Plunkett concerning the nature of his plea and his understanding of its consequences according to the advice of Mr. Morris. The district court should have either granted the §2255 Motion without hearing due to the clear, convincing, and uncontroverted evidence submitted by Mr. Plunkett or the district court should have held an evidentiary hearing where Mr. Plunkett could have questioned his counsel and the counsel for the government, as well as the probation officer, to prove his claims. In the absence of those options, the district court should have issued a COA.

Although resort to the appellate court should have been unnecessary, Plunkett then sought COA in the United States Court of Appeals for the Fifth Circuit. This task, of course, was made more difficult

by virtue of the district court's false certification that Plunkett's appeal had no merit. Accordingly, Plunkett had to overcome the false certification in order to proceed In Forma Pauperis on appeal in addition to pointing out the district court's legal and factual errors. Plunkett did just that.

Unlike the Movant in Valdez, Supra, Plunkett did not make the mistake of raising the issue of the district court's abuse of discretion in its denial of an evidentiary hearing and discovery. In his Motion to Proceed In Forma Pauperis on Appeal and in his Brief in Support of his Motion for COA, Plunkett clearly and succinctly pointed out the district court's glaring errors. Plunkett clearly pointed out conflicting Fifth Circuit and Supreme Court precedent. Plunkett clearly, once again, distinguished the facts of his case to those of the Movant in Valdez, Supra. Plunkett pointed out Fifth Circuit cases in which Movants had been granted evidentiary hearings in much less egregious cases.(See Brief in Support of COA; United States v. White, 840 Fed.Appx. 798 (5th Cir. 2021)(remanded for evidentiary hearing so that Movant could prove his attorney's ineffectiveness notwithstanding United States v. Valdez, Supra))). See also United States v. Herrera, 412 F.3d 577 (5th Cir. 2005)(stating that "[a]n attorney who underestimates his client's sentencing exposure by 27 months performs deficiently..." and remanding for determination of whether alleged misrepresentation was actually made.).

It is difficult to imagine, in the face of properly preserved argument and clear and convincing evidence, how an evidentiary hearing would even be necessary before the district court GRANTED the §2255 Motion. However, it is completely UNimaginable that an evi-

dentiary hearing could be denied prior to the DENIAL of Plunkett's legitimate claims. However, that is exactly what the district court did. And then the United States Court of Appeals for the Fifth Circuit rubber-stamped that decision summarily completely disposing of Plunkett's legitimate claims in a complete denial of due process.

The district court's determinationnon the merits conflicts with this Court's precedent in Strickland v. Washington, Supra; Hill v. Lockhart, Supra; Padilla v. Kentucky, Supra; Lafler v. Cooper, Supra; and Lee v. United States, Supra. Plunkett pointed all of this out to the district court, in the first instance, in his Motion to Proceed In Forma Pauperis in the district court. Plunkett also pointed out, in multiple pre-judgment filings, and in his Motion to Proceed In Forma Pauperis on Appeal, Circuit Judge Weiner's dissent in Valdez, Supra showing that jurists of reason found debatable a less compelling case. The district court ignored these filings.

Plunkett then, as noted, sought COA and IFP in the Circuit Court. Plunkett likewise pointed out in both his Motion to Proceed IFP on Appeal and his Brief in Support of COA the district court's errors and Judge Weiner's dissent. Plunkett distinguished his case, once again from that of Valdez likening his case more to that of the Movant in White, Supra. Plunkett argued that, due to the clear and convincing evidence presented, including counsel's own words, his case was even more compelling than that of White, Id.

Once again, as this Court can see in the Fifth Circuit's Unpublished order, all of Plunkett's meritorious arguments were summarily ignored. In fact, the Fifth Circuit's "opinion" is also replete with factual errors and contains a dearth of reason. The Fifth Circuit's denial of COA, as noted Supra, is procedurally in violation

of Buck v. Davis, Supra.

In its order, the Fifth Circuit summarily determined, without any elaboration of its analysis of the threshold questions, that "Plunkett has failed to make the requisite showing...[a]s such, a COA is DENIED. Plunkett's motion to proceed In Forma Pauperis on Appeal is likewise DENIED." See Order, Appendix A, at 2. Such a summary determination, in the face of the record in this case, would make plenary review on Certiorari difficult if not impossible. This is the reason for Plunkett's request that this Court respectfully take up Plunkett's appeal directly. Moreover, the order issued by the Fifth Circuit is a procedural irregularity and is inconsistent with the vast majority of COA Application dispositions which Plunkett has been able to view made by the Fifth Circuit.

Additionally, it was improper to DENY Plunkett's Motion to Proceed In Forma Pauperis procedurally. If the Court determined that issuance of COA was not warranted, then the proper procedure would have been to dismiss the IFP Motion as moot. However, the Fifth Circuit did purportedly review the issue of disqualification of the district court under 28 U.S.C. §§144 & 455 and summarily affirmed despite substantial briefing and objections on significant legal issues posed in the district court as to the requirements of §144 and prior Fifth Circuit panel and Circuit splits on the application of §144 when invoked by a pro se litigant. Accordingly, not only is the Fifth Circuit's order incorrect procedurally, more should have been required for proper appellate review in a case with a record such as that presented by the instant case.

BUCK v. DAVIS PROCEDURE

"To obtain a COA, [Petitioner] must make a substantial showing

of the denial of a constitutional right. [And o]n application for a COA, we engage in an overview of the claims in the habeas petition and a general assessment of their merits but do not engage in a full consideration of the factual or legal bases adduced in support of the claims, asking only whether the district court's resolution of the claim was debatable among jurists of reason [or wrong]." Buck v. Stephens, 623 Fed.Appx. 668 (5th Cir. 2015)(reversed and remanded by Buck v. Davis, Supra)(alterations supplied); See also Miller-El v. Cockrell, 537 U.S. 322, 336 (2003).

When the district court denies relief on the merits, which it did in the instant case, a prisoner satisfies this standard by demonstrating that reasonable jurists could find the district court's assessment of the constitutional claims debatable or wrong. See Buck v. Davis, Supra. Plunkett clearly did so.

This Court made perfectly clear in its ruling in Buck, Id., and reiterated what it has said before: "A court of appeals should limit its examination at the COA stage to a threshold inquiry into the underlying merit of the claims and ask only if the district court's decision was debatable."Id.(quoting Miller-El, Supra, 537 U.S. at 327, 348 (2003))(cleaned up).

The court must answer the following questions:

1) Would jurists of reason find debatable "whether the petition states a valid **claim** of the denial of a constitutional right" and 2) would those jurists "find it debatable whether the district court was correct in its ruling on the merits." Slack v. McDaniel, 529 U.S. 473, 484 (2000)(emphasis supplied).

If the answer to both is "yes," the court MUST issue a COA.

While the answers to these types of questions can sometimes be difficult to ascertain with a high degree of certainty due to the nature of opinions and "debatability," that is not the case in this instance. This case is clear-cut. A prior juristsof reason's opinion in dissent in just such a case, but less compelling, in the self-same Fifth Circuit, gives the court a clear signal. That signal was, like all other rules, when it comes to Mr. Plunkett, ignored. Summary Denial could be the title of this story. Every case, in every court, summary denial, summary dismissal, summary judgment.

As Tom Hanks's character, an attorney representing an accused spy in "Bridge of Spies," told the CIA operative questioning Hanks about contents of attorney-client communications, there is only one thing which makes us uniquely Americans. One thing; "One, one, one." The rules. The Constitution, which is a set of rules, is that one thing which separates us from the oblivion of Banana Republicanism. All forms of government and courts flow from that Constitution. If the Courts don't play by the rules, then we are all finished. The implications of that are so far-reaching that the Petitioner shudders at the thought. The rules were not followed in this case. The rules were not followed by the Department of Justice, the Federal Bureau of Investigation, the United States Marshals Service, the Forsyth County Sheriff's Department, the Georgia Department of Corrections, the Georgia State Board of Pardons and Paroles, the Fulton County District Attorney's Office, the Fulton County Sheriff's Department, the Georgia state courts, and now, the federal courts including the second-highest federal court in the land, a United States Court of Appeals.

This information is germane to this appeal because is establi-

shes a pattern. And this pattern is being laid out for political reasons; inconvenient politcal facts in the lives of certain politicians. There is no other reason Petitioner Plunkett is still in prison. 2.5 years from filing to a ruling on the merits in a straight-forward §2255 Motion? Malicious prosecution requested by the Department of Justice to delay Petitioner Plunkett's parole in Georgia further? Excessive Use of Force and Assault with OCR spray by Georgia authorities at the request of the Department of Justice just as Plunkett is set to finally make parole? Continued custody in conditions which are in violation of the 8th Amendment to the United States Constitution by denying needed medical diagnosis and treatment? Denial and rejection of Administrative Remedy at all levels despite policy in favor of Plunkett concerning medical treatment and transfer? And when federal suits are brough pointing out the conditions, including tampering with mail, rerouting mail, and blocking access to courts and counsel, and Congress, the suits are summarily dismissed without answer? FOIA suits are summarily handled by the presiding judge? Legal arguments are ignored? Government filings are summarily adopted over legitimate objections with clear, on-point, in-circuit precedent ignored? Need Petitioner Plunkett continue? There is more.

The point is that someone, prayerfully this Court, needs to follow the rule of law on which this Nation was founded. The government, and its current overseers, are simply, and have been for the past at least four years, waiting for Mr. Plunkett to die so that he never leaves prison alive to tell his story. He certainly cannot do so from the current Administrative Complex which is an undisclosed "Communications Management Unit" in violation of Due Process.

Now, back to the questions the Fifth Circuit needed to answer;

As to the first, it is Petitioner's contention that jurists of REASON would find it not only debatable, but certain, that the petition stated multiple, valid claims of the denial of constitutional rights.

As to the second, as already reiterated, the Court need look no further than prior opinions of the Fifth Circuit itself. As pointed out to both the district court and the Fifth Circuit (See Petitioner's Third Set of Objections to the Magistrate's R&R, 3:20-CV-640, NDTX; Brief in Support of COA, 23-10139, 5th Cir., ECF Doc. 20), Circuit Judge Weiner's thorough and thoughtful dissent in United States v. Valdez, Supra, makes crystal clear that Petitioner's claims are, to be generous, debatable. Indeed, on the record of this case, where Mr. Morris's representations as to the operation of the Guidelines to Mr. Plunkett are memorialized in emails, submitted to the district court, between Mr. Morris and AUSA Lisa Dunn, Mr. Morris admitted his ineffectiveness therein, and the emails were then further authenticated and resubmitted to the district court, by their production from EOUSA through FOIA. The same representations were also memorialized in e-mails between Mr. Lewis and the district court and copied to AUSA Dunn and authenticated by virtue of their attachment to the government's appendix to its response to Petitioner's §2255 Motion.(See ROA, Vol. I, pp. 121-128; 117-119; Vol. II, pp. 562-566; See also 3:20-CV-640 ECF Doc. 2 at 18-25).

All of Petitioner's claims of ineffective assistance of counsel are, and were, supported by documentary evidence, Petitioner's Sworn Declaration, and affidavits from reliable third parties. (See ROA, Vol. I, pp. 112-117; 3:20-CV-640 ECF Doc. 2 at 9-24; ROA Vol. I, p. 116; 3:20-CV-640. ECF Doc. 2 at 15; ROA Vol. I, pp.154-155).

Further, as recounted, Supra. No evidentiary hearing was held and none of the alleged ineffective attorneys submitted any sworn affidavits refuting any of Petitioner's claims as they could not credibly do so since their advice was recorded in writing. Accordingly, it is Petitioner's contention that the district court's determination of the Sixth Amendment claims is clearly in error, and wrong, on this record. The Fifth Circuit should have easily recognized this and all of these issues were properly preserved and raised during the IFP and COA process.

There are NO factually on-point precedents which would foreclose §2255 relief to Plunkett on ANY of his claims. This is particularly true in relation to Plunkett's Sixth Amendment claims. In the Fifth Circuit cases, such as White, Supra, and Valdez, Supra, which are even somewhat similar in posture, either evidentiary hearings were held or those Movants' attorneys submitted sworn affidavits either supporting or refuting their claims. As an initial matter, the district court should have granted relief in the first instance. To DENY COA so that the district court's biased and clear factual and legal errors evade appellate review results in a complete and utter miscarriage of justice as the district court's disposition of Plunkett's §2255 claims and Motion is, at the very least, debatable among impartial and unbiased jurists of reason. Accordingly, as a procedural matter, in light of Buck v. Davis, Supra, a COA was required at the Circuit Court level as Plunkett has indisputably met the threshold requirements on the Sixth Amendment ineffective assistance of counsel claims. This is so even if, for the sake of argument, the claims ultimately fail on the merits after a full analysis, after appropriate briefing and, if necessary, oral

argument which was requested at the Circuit court level. A denial at the COA stage was inappropriate as it would have required a full merits analysis. And without issuance of a COA, a full merits analysis is prohibited by THIS Court's precedent as set forth in Buck, Supra. Essentially, the Fifth Circuit decided the appeal without jurisdiction and that is improper. Issuance of COA is statutorily required and, therefore, jurisdictional to decide the appeal on the merits.

MERITS ISSUES

The Fifth Circuit's order states "[b]ecause Plunkett fails to make the necessary showing for the issuance of a COA, we do not reach the questions whether the district court erred by failing to hold an evidentiary hearing or by denying his motions for discovery." See Order, Appendix A at 2. Of course, this determination is based upon the faulty premise that "Plunkett fail[ed] to make the necessary showing for the issuance of a COA[.]"Ibid. As shown, Supra, Plunkett HAS made the necessary showing. In fact, it was only the clear biases of the district court and magistrate which made application to the Fifth Circuit necessary at all. In Plunkett's Third Set of Objections to the magistrate's R&R, Plunkett fully laid out both Circuit Judge Weiner's dissent in Valdez, Supra and other Circuit precedent (in and out of the Fifth Circuit), which could lead to a different result. (See ROA, Vol. III, pp. 948-955). Plunkett also completely, factually distinguished his case from Valdez. Plunkett also pointed the district court to White, Supra, which is, as noted, factually a little more on point and was decided post-Valdez, Supra. See ROA, Vol. II., pp. 588-589). Plunkett did so again to the Fifth Circuit, twice. (See Motion to Proceed In Forma Pauperis, 5th Cir.

23-10139, ECF Doc. 16 at pp. 7-12 as reincorporated in Petitioner's Brief in Support of COA, 5th Cir. 23-10139, ECF Doc. 20 at p.1 §I). And Plunkett pointed this out again to the Fifth Circuit in his Emergency Petition for Rehearing En Banc filed September 18, 2023. The Petition was timely filed by Mailbox Rule on September 11, 2023 despite undeniable attempted interference by prison officials at Administrative Complex Forrest City.

Accordingly, although the Fifth Circuit should not have been forced to waste judicial resources at all at the COA stage (the district court should have either graned relief or issued one), because the district court desired, and attempted, to evade review, the Fifth Circuit should have made its determination correctly. It did not and, instead, seemingly rubber-stamped the district court's erroneous findings. On Petition for Rehearing, the Fifth Circuit construed the Petition as a Motion for Reconsideration and denied it. Also, the Fifth Circuit stated that no judge asked for a poll and, likewise, denied rehearing. (See Appendix A at 3).

The procedural irregularities in this case are manifold and should not have been so easily ignored by the Fifth Circuit. Moreover, as clearly shown herein, the Fifth Circuit violated this Court's precedent as set forth in Buck, Supra. As to the abuse of the district court's discretion in denial of both discovery and an evidentiary hearing which, as stated Supra, the panel did not reach due to the erroneous denial of COA, in the absence of either or both of those evidentiary tools, it is clear that the opposite result was demanded as to the disposition of the 6th Amendment claims. As shown in the §2255 Motion itself, as amended, Plunkett's declarations, the Plunkett and Figley affidavits, Plunkett's Objections to the R&R, Plunkett's brie-

fing to the panel, and Plunkett's Petition for Rehearing, not only are Plunkett's claims NOT refuted by the record or counsel, Plunkett's claims are, in fact, supported by the record, credible documentary evidence of statements by counsel, other credible documentary evidence. (See ROA Vol. I, pp. 112-117; 119; 121-128; 137-139; 149-150; 155; 163-165; 176-185; 237; 240; 242-244; 362-370; Vol. IV, p. 1245).

The district court also abused its discretion in its denial of Plunkett's final amendments to his claims which also had a substantial impact on the outcome of the proceeding. The district court attempted to hold Plunkett to attorney standards when it is clear from Plunkett's conduct of this litigation from the beginning Plunkett has diligently attempted to adhere to, and follow, all of the Federal Rules of Procedure including the somewhat more onerous Local Rules of the Northern District of Texas. As laid out to that court, the Fifth Circuit, and now to this Honorable Court, the circumstances under which Plunkett was being held and transferred, at the direction of the Department of Justice, made pursuing his §2255 Motion extremely difficult to say the least. (See ROA, Vol. I, pp. 362-370; 376-378; 381-387). Of course, the reason for denial of the amendments is easy to see. Denial of the amendment to add the Napue v. Illinois claim, , concerning AUSA Dunn's fraud on the Court at sentencing, both alleviated the need for the district court to consider the claim on its merits and for the district court to grant the discovery which would both prove the claim and make the targeted nature of this prosecution obvious, making the government look bad.

In his well thought-out and thorough objections to the Magistrate's denial of amendment, Plunkett pointed out cases in which the Fifth Circuit held the district court to have abused its discretion in the denial of amendment in much less compelling circumstances. See

United States v. Trevino, 554 Fed.Appx. 289 (5th Cir. 2014). While Trevino is an unpublished case, Trevino attempted to add claims in his reply brief to the government's response. The Fifth Circuit found that the district court's discretion was not broad enough to deny such amendment. All of this was argued to the district court and to the Fifth Circuit. (See 5th Cir. 23-10139, Brief for COA, at III).

The panel's opinion is also factually inaccurate. The panel determined "Plunkett did not raise in his amended §2255 Motion, and the district court did not address, his claim that counsel's cumulative errors resulted in the structural denial of counsel and that Morris and Lewis provided ineffective assistance [of counsel] when they respectively advised Plunkett not to - or refused to - file a motion to withdraw his guilty plea. As such, this Court lacks jurisdiction to consider those claims." See Order, Appendix A, at 1. As an initial matter, without COA, the Fifth Circuit lacked jurisdiction to consider ANY of Plunkett's claims.

Further, even if the panel were to determine it was not an abuse of discretion to disallow Plunkett's amendments to his claims which, itself, would be questionable under this Court's, and the Fifth Circuit's, precedents, Plunkett DID include all of the claims noted by the Fifth Circuit in his "Final Amended Complaint." (See ROA, Vol. I., pp. 228; 244-245). Accordingly, and particularly in light of Haines v. Kerner, the Fifth Circuit's finding on that issue is clear error. Further, the district court's failure was plain error.

That the district court did not address those claims is not surprising. The district court, along with the magistrate, has done everything in its power to avoid any legitimate review of any aspect of this case including the attempt to use technical and procedural ru-

lings against Plunkett who is an indigent proceeding pro se. Further, as mentioned earlier, to avoid consideration of those claims is simply an attempt to avoid inconvenient discovery and the necessary evidentiary hearing in this case. Afterall, it took two years from the close of merits briefing, and only after Petitioning the Fifth Circuit for Mandamus, for the district court magistrate to issue her R&R. Then, after legitimate and meritorious objections (which were also attempted to be impeded as the district court can simply adopt the R&R in the absence of objections with no ability to appeal), without access to the record as noted to the district court, which were firmly rooted in This Court's and Fifth Circuit precedent, the district court issued an even further factually-challenged Memorandum Opinion & Order. (See Appendix A at 32 to 43).

Then, at the urging of the magistrate, the district court falsely certified to the Fifth Circuit that Petitioner's case is frivolous. The course of events in this case is absurd to an egregious degree. The district court and the Fifth Circuit should be ashamed to have participated in whatever this is. The Fifth Circuit's "Unpublished Order," apparently, seeks to improperly uphold such a preposterous result. Thus far, this has led to a complete avoidance of any legitimate judicial review by completely flouting this Court's precedent as well as its own prior holdings in similar, but less compelling, cases. The Fifth Circuit did not follow its normal procedures and stated factual inaccuracies in support of a summary disposition of a case with a record in excess of 1,000 pages in the §2255 proceeding alone. Much of that proceeding is filled with legitimate, accurate and thorough legal briefing on issues such as discovery, amendment of claims, disqualification

recusal, agreements, stipulations, and ineffective assistance of counsel. This is not the run-of-the-mill, pro se case full of incoherent drivel or precedent which either does not apply or has been overruled or abrogated.

Through very difficult circumstances, directed and designed by the government to be so for political reasons or, worse, personal reasons, Plunkett has taught himself how to argue the law effectively over a short span of time with no professional or structured school training. At every stage, while learning along the way, Plunkett has sought to familiarize himself with, and follow to the extent possible, as all litigants must, the rules of every court in which he has litigated. Despite claims to the contrary by the government, Plunkett has brought no frivolous claims in ANY court, much less the Fifth Circuit or This esteemed and hallowed Court.

Indeed, Plunkett's claims have so much merit that the government has now simply resorted to cheating through its use of mail obfuscation by both local prison officials and the United States Postal Service. Plunkett asks this Court to take judicial notice of Plunkett v. Garland, et al., No. 2:23-CV-00116 (E.D. Ar). That case discusses, and provides proof of, the unconstitutional, indeed, illegal, nature of my custody and confinement at the direction of Merrick Garland. This is an attempt at a "bloodless" assassination of a United States citizen for political reasons under the guise of a "valid" judgment in the custody of a facility being operated by the Bureau of Prisons. As this Court well knows and has even pointed out, allegations may be "Strange, but true." Denton v. Hernandez, 504 U.S. 25, 33 (1992).

Recently, the Fifth Circuit GRANTED a COA to a Petitioner in United States v. Griffin, No. 22-60453, U.S. App. LEXIS 15905, (5th

Cir. April 10, 2023). See Appendix B at 4. Two issues are at odds with the Fifth Circuit's ruling in the instant case. First, the circuit court found that "Griffin does not require a COA to challenge the district court's failure to conduct an evidentiary hearing, WHICH WILL BE AN ISSUE FOR A PANEL TO ADDRESS." See Id. (quoting United States v. Davis, 971 F.3d 524, 534 (5th Cir. 2020)(emphasis supplied). That finding and Fifth Circuit precedent conflicts with the panel order at issue in this case. In this case, the "panel" found that since it did not issue a COA, it would not reach the issues of whether the district court abused its discretion in its denial of discovery and an evidentiary hearing. Further, the Fifth Circuit granted COA to Griffin on what seem to be very similar grounds. "[Griffin] contends that...the attorneys who represented him in negotiating a plea agreement and subsequently for sentencing rendered ineffective assistance by misadvising [Griffin] of the sentencing consequences of pleading guilty and going to trial, rendering his guilty plea invalid..." Id. at 1.

Those are very similar allegations and, in addition, Plunkett submitted ample evidence of his counsels' advice and representations.

The Fifth Circuit should have granted COA and should have found that the district court abused its discretion in its denial of 1) an evidentiary hearing, 2) discovery, 3) amendment of Plunkett's claims, 4) disqualification/recusal, and 5)§2255 Relief.

QUESTIONS OF IMPORTANCE

Further on the merits, this proceeding involves questions, as shown, Supra, which place the Fifth Circuit's Order at odds with some of its own precedent as well as that of other United States Courts of Appeals; to wit, did the district court err in its denial, without hearing, of Plunkett's claim that Mr. Morris was ineffective and,

thereby, caused Plunkett to forfeit an entire judicial proceeding where Mr. Morris advised Plunkett to plead guilty pursuant to a guilty plea which included factual stipulations related to another bank robbery in Georgia for the specific purposes of causing the United States Sentencing Guidelines to include the Georgia bank robbery as relevant conduct pursuant to U.S.S.G. §1b1.2(c), add anadditional offense level, and thereby trigger operation of U.S.S.G. §5g1.3(b), where either there WAS an agreement upon which the government "renegged" or Mr. Morris, under the CURRENT prevailing professional norms, should have known such an agreement was required and did not advise Mr. Plunkett of any such requirement? And where, had Mr. Plunkett known the U.S.S.G. would not recommend such an application, Mr. Plunkett would have continued to trial. And where Mr. Plunkett's claims, as laid out, Supra, are not refuted by counsel and, instead, are supported by documentary evidence. And where, further, the re-arraignment district court did not issue any curing admonishments like those issued in Valdez, Supra and did not give Mr. Plunkett the opportunity to withdraw his plea as did the district court in Valdez, Supra.

FIFTH CIRCUIT PRECEDENT AT ODDS WITH DISTRICT COURT AND FIFTH CIRCUIT.

United States v. Griffin, No. 22-60453, U.S. App. LEXIS 15905, (5th Cir. April 10, 2023)(decided while Plunkett's application was pending).

United States v. White, 840 Fed.Appx. 798 (5th Cir. 2021)

United States v. Herrera, 412 F.3d 577 (5th Cir. 2005)(stating that "[w]hen considering whether to plead guilty or proceed to trial, a defendant should be aware of the relevant circumstances and likely consequences of his decision so that he can make an INTELLIGENT choice."

(emphasis supplied).

OTHER CIRCUIT DECISIONS AT ODDS WITH DISTRICT COURT AND FIFTH CIRCUIT.

A majority of Circuits have held that significant errors in advice about sentencing exposure can, depending upon the circumstances, constitute deficient performance.

United States v. Booze, 293 F.3d 516, 518 (D.C. Cir. 2002)(Ginsburg, J.)("A lawyer who advises his client whether to accept a plea offer falls below the threshold of reasonable performance if the lawyer makes a plainly incorrect estimate of the likely sentence due to ingorance of applicable law of which he should be aware.")(cleaned up)

United States v. Hanson, 339 F.3d 983, 990 (D.C. Cir. 2003)(holding that failure to apply career offender enhancement in making Guidelines estimate was deficient, but finding no prejudice).

United States v. Caso, 723 F.3d 215, 224 n.7 (D.C. Cir. 2013)("our cases have made clear that a defense counsel's conduct may be constitutionally deficient if counsel fails to advise his client of the correct Guidelines range he would face upon taking a plea."

United States v. Gaviria, 116 F.3d 1498, 1512 (D.C. Cir. 1997)

United States v. Gordon, 156 F.3d 376, 380 (2nd Cir. 1998)

United States v. Day, 969 F.2d 39, 42-44 (3rd Cir. 1992)

United States v. Mayhew, 995 F.3d 171, 178-79 (4th Cir. 2021)

Magana v. Hotbauer, 263 F.3d 542, 550 (6th Cir. 2001)

Thompson v. United States, 728 Fed.Appx. 527, 533-34 (6th Cir. 2018)(held that counsel might have been deficient when he knew that shots had been fired at officers during a police chase but failed to take that into account in estimating his client's Guidelines range.").

Brock-Miller v. United States, 887 F.3d 298, 310 (7th Cir. 2018)

(Competent performance "would have required little more than reading the Indiana statute and the provisions it cross-referenced, and comparing them to the federal definition of felony drug offense.").

Iaea v. Sunn, 800 F.2d 861, 864-65 (9th Cir. 1986).

United States v. Manzo, 675 F.3d 1204, 1209-10 (9th Cir. 2012) ("Counsel's failure to anticipate that the offenses would be grouped for sentencing purposes and then advise [the defendant] to move to withdraw his agreement to plead guilty was constitutionally deficient.")

United States v. Parker, 720 F.3d 781, 788 n.9 (10th Cir. 2013)([a] miscalculation or erroneous sentence estimation by defense counsel is not a constitutionally deficient performance arising to the level of ineffective assistance of counsel [, but] counsel's failure to understand the basic structure and mechanics of the sentencing guidelines can rise to deficient performance under Strickland.")

Riolo v. United States, 38 F.4th 956 (11th Cir. 2022)(While noting it has avoided the issue in the past, the 11th Circuit has "assume[d], without deciding, that a miscalculation of sufficient magnitude can constitute deficient performande AND cause prejudice under Strickland.")

All of the above cases stand for the proposition that, after almost four decades of practice under the United States Sentencing Guidelines, defense counsel, under current and prevailing professional norms, must be familiar enough with the Guidelines to give his or her client defendant a reasonably accurate representation of how the Guidelines will operate in his or her case. It is no longer sufficient to give a client advice on a guilty plea and then say that any such wrong advice as to how the United States Sentencing Guidelines will operate in his or her case is cured by simply advising the client as to the statutory Maximum. As stated, Supra, under prevailing professional norms in

the now-four-decade-old United States Sentencing Guidelines era, it is Petitioner Plunkett's contention, as supported by the majority of Circuits, that an attorney performs deficiently under the 6th Amendment if he or she materially and substantially misadvises a criminal defendant as to how the United States Sentencing Guidelines will operate in his or her case. And in the case of a guilty plea, as this Court found in Lee v. United States, Supra, the second prong of Strickland v. Washington, Supra, is satisfied if the deficient misadvice caused the defendant to forego an entire judicial proceeding as it clearly did in Plunkett's case.

This is so because the Guidelines are the starting point for EVERY sentence in the federal system. The district court must first properly calculate the Guidelines, and earnestly consider them, in properly exercising its sentencing discretion. Afterall, "[t]he Guidelines are the 'lodestone of sentencing,' for they remain 'the starting point for every sentencing calculation in the federal system.' 'Even after Booker rendered the sentencing guidelines advisory, district courts have in the vast majority of cases imposed either within-Guidelines sentences or sentences which depart downward from the Guidelines on the government's motion.' And when a 'sentencing judge sees a reason to vary from the Guidelines, if the judge uses the sentencing range as the starting point to explain the reason for deviating from it, then the Guidelines are in a real sense the basis for the sentence.'" United States v. Valdez, Supra 973 F.3d at 406 (quoting Peugh v. United States, 569 U.S. 530, 542-44 (2013))(Weiner, J. dissenting).

Further, as explained, Supra, that the defense attorney, or even the district court, simply informed the criminal defendant of the

statutory maximum cannot be said to cure any resulting deficiency in the misadvice. That is particulary true when taken in context of the proceeding as a whole. First, as mentioned, regardless of the statutory maximum, the district court is required to properly calculate and consider the Guidelines in its sentencing decision. While the statutory maximum is certainly one of the factors the sentencing court, no doubt, considers in its analysis, that factor is very unlikely to outweigh the sentencing guidelines.

Consider a criminal defendant facing a statutory range of 10 years to life for a drug conspiracy. Based upon his or her criminal history and calculated drug quantity responsibility, the criminal defendant's Guidelines range falls in CH Category III and Offense Level of 29 yielding an advisory range of 108-135 months' imprisonment. Obviously, absent certain exceptions not relevant for this discussion, the district court cannot sentence below 120 months. Effectively, the range becomes 120-135 months. Again, the district court will surely, along with the 18 U.S.C. §3553(a) factors, consider the statutory maximum of Life imprisonment. However, it is difficult to imagine a scenario in which the district court, absent personal animus or clear bias, or some unforeseen, exigent factor, would ever sentence such a defendant to anywhere close to Life imprisonment. In fact, as argued to the district court in the instant case, "[c]ourts rarely sentence defendants to the statutory maxima." United States v. Haymond, 139 S.Ct. 2369, 2384 (2019)(quoting United States v. Caso, Supra at 224-25 citing Sentencing Commission data indicating that only about 1% of defendants receive the maximum). And as already mentioned, a good portion of those are likely due to the fact that the Guidelines range EXCEEDS the maximum. See Appendix B at

Accordingly, it is no longer acceptable, under prevailing professional norms, for a defense attorney to affirmatively misadvise a criminal defendant as to the consequences of his or her guilty plea as related to the operation of the United States Sentencing Guidelines and then seek to cure any such misadvice by merely advising the defendant of the statutory maximum. This is particularly true when dealing with simple, mechanical operations of the Guidelines such as those present in the instant case. I.E. whether 1b1.2(c)'s provisions are applicable without agreement with the government if no dishonored agreement ever existed which Petitioner Plunkett has never conceded, and whether §5g1.3(b) would be triggered as a result.

Those are straight-forward provisions which are either triggered or are not. Such affirmative misadvice cannot be considered effective assistance of counsel under the Sixth Amendment. For this reason alone, the Court should grant Certiorari and reverse the judgment of the Fifth Circuit at a minimum if not fully reversing the district court directly.

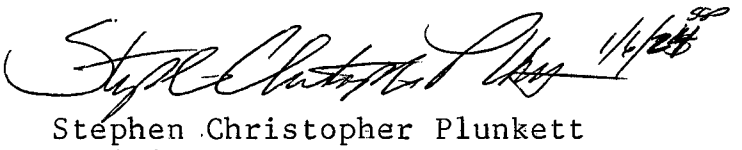
In sum, from beginning to finish, from arrest on April 15, 2014 to this very day almost ten years later, the lack of process, proper procedure, and adherence to the rule of law in the instant case is shocking and has resulted in a complete miscarriage of justice for personal and political reasons. This case is a stain on the honor of the lower courts based upon their complete disregard for the law in an attempt to rubber-stamp government wrongdoing. Petitioner Plunkett trusts THIS HONORABLE Court will not allow itself to likewise be stained. The record is clear for posterity. This Honorable Court should exercise its discretion, its duty, to correct what, thus far, has been a travesty. This Court should GRANT this Petition.

CONCLUSION

For all of the aforementioned reasons, this Honorable Court should GRANT this Petition for Writ of Certiorari and should take up Petitioner Plunkett's appeal under its original jurisdiction under Article III of the United States Constitution in order to avoid a complete miscarriage of justice.

Respectfully submitted this 6th day of January, 2024.

Respectfully,



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