23-6817

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

ISRAEL SANTIAGO-LUGO,
PETITIONER,

V.

UNITED STATES OF AMERICA,
RESPONDENT.

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

PETITION FOR WRIT OF CERTIORARI

Israel Santiago-Lugo
WP: UCC 1-207(or 308)
PRO SE
U.S.M. # 10947-069
FCI Talladega
P.M.B. 1000
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I. STATEMENT OF ISSUES PRESENTED

Petitioner application for a Writ of Certiorari presented different issues:

1) Whether the First Circuit's Judgment perform as a valid decision by a quorum according the Supreme Court's decisions in NGuyen v. U.S., 539 U.S. 69, 156 L.Ed.2d 64, 123 S.Ct 2130 (2003) and Yovino v. Rizo, 139 S.Ct 706, 203 L.Ed.2d 38 (2019)?.

2) Whether the Petitioner's Second notice of appeal is timely according the Supreme Court's decision in Manrique v. U.S., 137 S.Ct 1266, 1271, 197 L.Ed.2d 599 (2017) ?.

3) Whether the Supreme Court's decision in Dolan v. U.S., 560 U.S. 605, 622, 130 S.Ct 2533, 177 L.Ed.2d 108 (2010), similarly apply to the Fed.R.Crim.P. 32.2(b) deadline for forfeiture ?.

II. LIST OF PARTIES IN COURT BELOW

The caption set out contains the names of all the parties.

III. LIST OF CASES DIRECTLY RELATED TO THIS CASE

1) United States Court of Appeals for the First Circuit.

2) Appeal No. 19-2149.

3) United States v. Santiago-Lugo.

4) September 1, 2023.

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V. CITATIONS OF OPINIONS AND ORDERS IN CASE

The original conviction of Petitioner in the United States Court for the District of Puerto Rico is set for at pp.1-10 of the Appendices.

The original conviction of Petitioner was appealed to the United States Court of Appeals for the First Circuit, which affirmed the conviction in all respects an opinion reported at 167 F.3d 83 (1st cir.1999). The forfeiture counts were excluded.

VI. JURISDICTION

The Judgment of the United States Court of Appeals for the First Circuit was entered on September 1, 2023. **Appendix 15.** Petition for Rehearing and Rehearing were sought, the First Circuit denied on November 15, 2023. **Appendix 16.** The jurisdiction of this Court is invoked under Rule 10 and 28 U.S.C. §1254(1).

VII. CONSTITUTIONAL PROVISCOLIAN AND STATUTES INVOLVED

1) The Fifth Amendment, United States Constitution, provides:

> No person shall be held to answer for a Capital, or otherwiese infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases ariding 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, no **be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.

2) The Statute under which Petitioner was prosecuted, though nothing turns on its terms, was 21 U.S.C. §853(a), which provided:

> Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year-shall forfeit to the United States, irrespective of any provision of State-
>
> (1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter II of this chapter, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

VIII. STATEMENT OF THE CASE

The Court of Appeals has decided a federal question in a way in conflict with the applicable decisions of this court.

Petitioner was indicted with 31 codefendants on February 9, 1995, following a jury trial he was found guilty for conspiracy, CCE, firearm, money laundering, and forfeiture counts. **Appendix 1 & 2** (Docs.917 & 918). On February 29, 1996, the government's motion and brief for issuance of apreliminary order of forfeiture was filed, the district court granted his petition. **Appenndix 3 & 4** (Docs.1038 & 1131). The district court docked a Preliminary Order of Forfeiture on March 7, 1996. **Appendix 5.** Following the Supreme Court's decisions in Bailey and Rutledge vacated the firearm count, and the conspiracy count one was set. On April 17, 1996, the district court imposed at the sentencing hearing a total offense level of 43, criminal history of one, life imprisonment for a CCE, and 10-year for each money laundering count, running concurrent, the forfeiture counts were excluded. **Appendix 6,7 &**

8 (Docs.1196,1183 & 2959).

On September 12, 1996, the district court entered a final order of forfeiture. **Appendix 9** (Doc.1441). In 1998, Petitioner filed a motion to correct the judgment, pursuant to Fed.R.Crim.P. 36. The criminal judgment was amended to reflect the counts 15,31 and 37 had been previosly dismissed under Fed.R.Crim.P. 35(c).[1/] The First Circuit affirmed Petitioner's conviction and sentences without mention the forfeiture counts. See, U.S. v. Santiago-Lugo, 167 F.3d at 83 (1st cir.1999).

In 2005, the government sought under Fed.R.Crim.P. 36 to amend the Preliminary Forfeiture Order, Original and Amended Judgments, and Transcript of Sentence to include that penalty (Doc.3066). On August 12, 2005, the district court granted the government's Rule 36 motion (Doc.3074), and the First Circuit affirmed. **Appendix 11.** Thus, the district court ignored to enter the new amended criminal judgment under Fed.R.Crim.P. 36 in the docket sheets the last 17 years.

On 2009, the Fed.R.Crim.P. 32.2(b) was substantially amended. The First Circuit "direct[ed] the district court to conform with the Fed.R.Crim.P. 32.2(b)(4)(B), by amending the 1996 judgment to

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[1/] The disctrict court lacked authority and jurisdiction to enter the Amended Judgment on August 1, 1998, **Appendix 10** (Doc.2379A), two(2) years later that the Petitioner filed a notice of appeal on April 19, 1996 (Doc.1193), and the case was transfered to the court of appeals. See, Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58-59, 103 S.Ct 400, 74 L.Ed.2d 225 (1992)("The filing of a notice of appeal is an event of jurisdiction significance--it confers jurisdiction on the court of appeals and divest the district court of its control over those aspects of the case involved in the appeal").

include the final order of forfeiture, nunc pro tunc". **Appendix 12** (Doc.3938). On October 10, 2019, the district court has entered a Second Amended Judgment. **Appendix 13** (Doc.3944). A second notice of appeal was filed on October 18, 2019. **Appendix 14** (Doc.3947).

On September 1, 2023, the First Circuit held that "the Second Amended Judgment is vacated to the extent it modified the conditions of appellant's supervised release. The original conditions continue to govern. In all other respects--in particular, to the extent that the Second Amended Judgment corrected the criminal judgment in conformance with Fed.R.Crim.P. 32.2(b)(4)(B) and in manner '[consistent with our June 15, 2006 Judgment in United States v. Santiago-Lugo, Appeal Nos.05-2254 and 06-1107', 1st cir. No.18-2112, 10/1/19 Judgment at 2--the Second Amended Judgment is affirmed". **Appendix 15** (Doc.3938).

On September 11, 2023, Petitioner filed a Petition for Rehearing and Rehearing en Banc. The First Circuit denied on November 15, 2023. **Appendix 16.**

IX. ARGUMENT FOR ALLOWANCE OF WRIT

THE FIRST CIRCUIT ERR WHEN ITS WAS DECIDED BY A QUORUM PURSUANT TO 28 U.S.C. §46(d) OF TWO JUDGES

The case at hand is controlled by NGuyen v. U.S., 539 U.S. 69, 156 L.Ed.2d 64, 123 S.Ct 2130 (2003), and Yovina v. Rizo, 139 S.Ct 706, 203 L.Ed.2d 38 (2019)(Per Curiam), where the Supreme Court has interpreted 28 U.S.C. §46 to "require [] the inclusion of at least three [Article III] Judges in the first instance", as a prerequisite to any valid decision by a quorum. NGuyen, supra; And where it was held that under §46(c), a panel two judges, invoking this rule, when one of the judges on three-judge panel dies, retires, or resigns after an appeal is argued or is submitted for decision without argument, the other two judges on the panel may issue a decision if they agree. Yovina, 139 S.Ct at 709, 203 L.Ed.2d at 41.

On June 15, 2006, at least three Article III Judges (Boudin, Selya & Lipez) in the first instance affirmed the district court ruling to amend the Petitioner's sentences to incorporate the forfeiture penalty, pursuant to Fed.R.Crim.P. 36. See, U.S. v. Santiago-Lugo, Appeal Nos. 05-2254 & 06-1107 (1st cir.2006). Despite the district court refused to do so,a different panel Judges (Howard, Thompson & Kayatta) "direct[ed] the district court to conform with Fed.R.Crim.P. 32.2(b)(4)(B), by amending the 1996 judgment to include the final order of forfeiture, nunc pro tunc". U.S. v. Santiago-Lugo, 2019 U.S.App.LEXIS 40060 (1st cir.2019).

Now, the First Circuit's Judgment rendered on September 1, 2023, a panel two judges (Montecalvo & Rikelman), invoked this rule without mention at least one of three requirements ("dies, retires

or resigns) necessary to proceeds, once they are not the same panel who held the previous decisions. The First Circuit indicated that the district court could act pursuant to Federal Rule of Criminal Procedure 36. Rule 36 permits Courts to correct clerical errors in a judgment at any time. See, Fed.R.Crim.P. 36. However, Courts may not rely on Rule 36 to alter the substance of the sentence orally pronounced. See, U.S. v. Spencer, 513 F.3d 490, 491-92 (5th cir.2008). Thus, it is not the proper vehicle for amending a judgment to reflect the Court's original sentencing intentions when those intentions were not pronounced at the sentencing hearing. See id; U.S. v. Burd, 86 F.3d 285, 288 (2d cir.1996). Rather, it is generally used to correct the written judgment when it does not conform to the Court's oral pronouncement. See, Spencer, 513 F.3d at 491-92. Accordingly, the district court did not have authority under Rule 36 to enter an amended judgment to forfeit Petitioner's properties, changing the substance to impose the forfeiture penalty was error, because the text, content, and purpose of Fed.R.Crim.P. 32.2(b) indicated that it was a mandatory claims-processing rule, and the government had not timely appealed or otherwise objected to the trial Court's errors, the First Circuit could not affirm the Second Amended Judgment for forfeiture entered years after Petitioner's sentences became final, Fed.R.Crim.P. 36 did not apply, as there was no clerical error. See, U.S. v. Mattux, 37 F.4th 1170(6th cir.2022). By the time their written judgment were entered, that failure became final, and the government's decision to not cross-appeal was fatal.

In sum, the Supreme Court has recognized that when an error "involves a violation of a statutory provision that 'embodies a

strong policy concerning the proper administration of judicial business'", Courts may vacate the judgment without assessing prejudice. See, NGuyen, supra; Yovino, supra; see also U.S. v. Curbelo, 343 F.3d 273, 282 (4th cir.2003). Here, Petitioner challenges the forfeiture sentences entered a Second Amended Judgment, which was not announced at his sentencing hearing. See, U.S. v. Drown, 942 F.2d 55, 58 (1st cir.1991)(when a defendant unsuccessfully challenges not the judge's exercise of discretion but the constitutionality of the scheme under which he was sentenced, the court of appeals has appellate jurisdiction under 18 U.S.C. §3742(a)(1)). Thus, the panel two judges did not have authority to decide between them to proceeds under §46(d), because they are not the three Article III Judges who determined in the first instance the First Circuit's Judgment. See, 28 U.S.C. §46(d).

Accordingly, the panel two judges's Judgment rendered on September 1, 2023, do not perform with the §46(d), nor §46(b) & (c) requirements. NGuyen, 539 U.S. at 82, 156 L.Ed.2d at 78 ("It is also true that two judges of three-judge panel constitute a quorum legally able to transact business. Moreover, settled law permits a quorum to proceed to judgment when one member of the panel dies or is disqualified").

THE COURT OF APPEALS ERR WHEN ITS WAS AFFIRMED THE DISTRICT COURT'S SECOND AMENDED JUDGMENT AS UNTIMELY TO CONFORM WITH THE FED.R.CRIM.P. 32.2(b)(4)(B)

The case at hand is controlled by Manrique v. U.S., 137 S.Ct 1266, 1271, 197 L.Ed.2d 599 (2017), and Dolan v. U.S., 560 U.S. 605, 130 S.Ct 2533, 177 L.Ed.2d 108 (2010), where it was held that 18 U.S.C. §3742(a) and appellate Rule 4 contemplates that Petitioner will file the notice of appeal from issue after the

district court decided the issue. Manrique, supra. The federal Courts have a split between the claims-processing model and the Time-related model to Fed.R.Crim.P. 32.2. The Second, Fourth and Seventh Circuits have adopted that the Rule 32.2 is a Time-related directive. See, U.S. v. McIntosh, 24 F.4th 857 (2d cir.2022); U.S. v. Martin, 662 F.3d 301 (4th cir.2011); U.S. v. Lee, 77 F.4th 565 (7th cir.2023). And the Sixth and Eighth Circuits have adopted that the Rule 32.2 is a claims-processing rule. See, U.S. v. Mattux, 37 F.4th 1170 (6th cir.2022); U.S. v. Shakur, 691 F.3d 979 (8th cir.2012).

Here, the district court's oral pronouncement of Petitioner's sentences did no include forfeiture. See, U.S. v. Santiago-Lugo, Appeal Nos. 05-2254 & 06-1107 (1st cir.2006)("the parties agree that the forfeiture order was not announced as part of the sentence nor contained in the original or amended judgment and that, therefore, there was a violation of Rule 32.2(b)(3)"). The First Circuit should reject the presumption that all of his claims were adjudicated on the merits according the Supreme Court's decision in Johnson v. Williams, 568 U.S. 289, 302, 133 S.Ct 1088, 185 L.Ed.2d 105 (2013), in which the Supreme Court explained that a judgment is rendered on the merits if it was "deli vered after the court...heard and evaluated **the evidence** and **the parties' substantive arguments**". Id.

Petitioner has filed a notice of appeal (Doc.1193) from the district court entry of the custodial sentence (Doc.1164), which excluded the forfeiture penalty, once the district court entered a Second Amended Judgment on October 10, 2019 (Doc.3944) from the First Circuit's Judgment (Doc.3938), he filed a second notice of

appeal on October 18, 2019, within fourteen(14) days (Doc.3947). See, Fed.R.App.P. 4(b)(1)(A)(i) and Fed.R.Crim.P. 32.2(b)(4)(C) (Time to Appeal). Petitioner has been waiting twenty-six(26) years (or more) to file the second notice of appeal until after the Second Amended Judgment was entered on the docket. See, U.S. v. Naphaeng, 906 F.3d 173, 178 (1st cir.2018)("He should have waited to file the second notice of appeal until after the amended judgment was entered on the docket").

The Fed.R.Crim.P. 32.2 was amended substantially in 2009. It now states, in relevant part:

> The Court must include the forfeiture where orally announcing the sentence or must otherwise ensure that the defendant knows of the forfeiture at sentencing. The Court must also include the forfeiture order, directly or be reference, in the judgment, but the Court's failure to do so many be corrected at any time under Rule 36.

See, Fed.R.Crim.P. 32.2(b)(4)(B), Even as amended, the rule does not allow correction "at any time" for a failure to include forfeiture in the sentence as announced at the sentencing hearing. See, U.S. v. Diaz-Rivera, 806 F.Supp.2d 479, 483 (D.P.R. 2011)(the amended Rule still does not allow the court to amend judgment to add a forfeiture order where none was included at sentencing).

The First Circuit holding in 2006 does not conform with the Fed.R.Crim.P. 32.2 after amended in 2009. See, e.g., U.S. v. Dell Inspiron Laptom, 665 Fed.Appx 708, 712 (10th cir.2016)("the district court orally informed Mr. Grigsby of the preliminary forfeiture order as required by Federal Rule of Criminal Procedure 32.2(b)(4)(B)"). Here, the original 1996 forfeiture is fatally flawed because forfeiture was not mentioned orally at sentencing, Petitioner "could not become effective to appeal the forfeiture order because the district court determined the forfeiture amount

separately". U.S. v. Montemayor, 815 Fed.Appx 406, 410 (11th cir.2020)(Per Curiam); U.S. v. Shehadeh, 962 F.3d 1096, 1099 (9th cir.2019)(a defendant wishing to appeal his conviction and sentence of imprisonment may enter a notice of appeal either within fourteen days following the district court's entry of the custodia sentence, or within fourteen days of the entry of the amended judgment, which includes the amount of restitution); U.S. v. Muzio, 757 F.3d 1243, 1250 (11th cir.2014)(if a subsequent judgment is entered ordering restitution, the defendant may separately appeal that order, and the appeal may be heard separately or consolidated with the initial appeal if that has not yet been resolved).

Reasoning in Dell Inspiron Laptop, Montemayor and Shehadeh circumstances, where as here, the district court does not reminded Petitioner that the preliminary order of forfeiture was final, nor the district court orally informed Petitioner of the preliminary forfeiture as required by Fed.R.Crim.P. 32.2(b)(4)(B), given the clear requirement of Rule 32.2(b)(4)(B), it is apparent on the record that the district court made a legal error by failing to announce forfeiture at sentencing. See, U.S. v. Grebinger, 2021 U.S.App.LEXIS 32948 (2d cir.2021)(The government concede that this was procedural error and seek a limited remand on the forfeiture issue to permit the district court to consider the forfeiture allegation and to allow Grebinger to make any objections); U.S. v. Brooks, 804 Fed.Appx 219 (5th cir.2020)(Per Curiam)(The district court's oral pronouncement of defendant's sentence did not included forfeiture, but it was included in the written judgment; Given the clear requirements of Fed.R.Crim.P.

32.2(b)(4)(B), the district court made a legal error by failing to announce forfeiture at sentencing).

Instead, Petitioner was denied timely determination of "the requisite nexus", Rule 32.2(b)(1)(A); a hearing on the contested allegations, Rule 32.2(b)(1)(B); the entry of an appropriate preliminary and final orders "directing the forfeiture of specific property", Rule 32.2(b)(2)(A); and entry of the order "sufficiently in advance of sentencing" to allow him to seek revisions, Rule 32.2(b)(2)(B). Finally, after sentencing, Petitioner was denied inclusion of a preliminary and final forfeiture in his judgment of conviction, Rule 32.2(b)(4)(B), which deprived him of "the right to have the entire sentence imposed as a package and reviewed in a single appeal". U.S. v. Shakur, 691 F.3d 979, 988 (8th cir.2012); see also U.S. v. Petix, 767 Fed.Appx 119, 123 (2d cir.2019); U.S. v. Muzio, 757 F.3d 1243, 1257-58 (11th cir.2014).

Also, the government sought a personal money judgment, the court must determine the amount of money that the Petitioner will be ordered to pay. See, Fed.R.Crim.P. 32.2(b)(1)(A). The forfeiture count 49 alleged that the Petitioner is joint and several liability for forfeiture of $6 millions. See, U.S. v. Candelaria-Silva, 166 F.3d at 26 (1st cir.1999)(count 49 alleged that defendant 'joint and several liability for forfeiture of $6,000,000, including substitute assets, as authorized by 21 U.S.C. §853). But, the Fed.R.Crim.P. 32.2(b)(5)(A) "does not apply to the monetary forfeiture sought by the government in this case. With respect to menetary forfeiture, Federal Rule of Criminal Procedure 32 does not permit the district todo anything other than

'determine the amount of money that the defendant will be ordered to pay', in an amount determined by statute". U.S. v. Phillips, 704 F.3d at 791 (9th cir.2012). Several Circuits joined that Fed.R.Crim.P. 32.2(b)(5)does not appy to money judgment. See, U.S. v. Grose, 461 Fed.Appx 786, 806 (10th cir.2012); U.S. v. Gray, 443 Fed.Appx 515, 523 (11th cir.2011); U.S. v. Gregoire, 638 F.3d 962, 972 (8th cir.2011).

The Petitioner's case, "the wholesale violation of these Rule 32.2(b)mandated denied [Petitioner' a meaningful opportunity to contest the deprivation of his propert[ies] rights, as due process required. In these circumstances, [the panel Judges must no have] difficulty concluding that the district court's forfeiture order of [April 3, 1996], did not merely correct a 'clerical error', as Rule 36 permits. The violations were prejudicial legal errors, not clericl errors. Accordingly, Addonizio make clear the Court was without power to enter that order, and it [must be]reversed". Shakur, 691 F.3d at 988-89.

It is undisputed, "the order of forfeiture bacame final when the court incorporated it into the [Second Amended] Judgment and sentences [on October 10, 2019]". U.S. v. Brown, 599 F.Supp.3d 1178, 1182 (M.D. Fla. 2022); i.e., "once a criminal sentence is imposed, the judgment is final, both as to what it includes and what it lacks, subject to Rule 35(a) and 36. If the government wishes to 'enlarge [the] sentence' with forfeiture omitted from the sentence it must timely appeal...But clerical errors do not include 'unespressed sentencing expectations, or...errors made by the Court itself...that failure became final, and the government's decision to not cross-appeal was fatal". U.S. v.

Mattux, 2022 U.S.App.LEXIS 17154 (6th cir.2022). Thus, once the Second Amended Judgment was entered nunc pro tunc the Dolan's principle should be applied. See, e.g., U.S. v. McIntosh, 24 F.4th 857 (2d cir.2022)(we think the consideration that pertained to the restitution order in Dolan similarly apply to the Rule 32.2(b) deadline for forfeiture).

Obviously, as a result of both the failure to include forfeiture in the oral pronouncement of sentence or in the original and Amended Judgment, it is also very clear that Petitioner was never put on notice that a money forfeiture judgment or properties was part of his sentence. The failure to include the forfeiture in the original and Amended Judgment or to reference forfeiture at sentencing amounts in this case to more than amere "clerical error", as the Court found in Bennet, Yeje-Cabrera, and other similar cases, Simply stated, more notice was required under the circumstances of this case. Forfeiture was not "made a part of the sentence" as required by the version of Rule 32.2(b)(3) in effect at the time, nor did the Court "otherwise ensure that the [Petitioner] knows of the forfeiture at sentencing", as Rule 32.2(b)(4)(B) now allows, given that the issue of forfeiture was never so much as mentioned, by any party,at the sentencing hearing. AccordPetix, 767 Fed.Appx at 121-22, 2019 WL 1749176, at *2. Under these circumstances, the Court lacks authority to modify the sentence imposed almost twenty-six(26) years (or more) ago. Accord Dolan v. U.S., 560 U.S. 605, 622, 130 S.Ct 2533, 177 L.Ed.2d 108 (2010)(Roberts, J., dissenting ("Once a sentence has been imposed, moreover, it is final, and the trial judge's authority to modify it is narrowly

circumscribed".(citation omitted)); See Fed.R.Crim.P. 35(a)(giving the court 7 days (now 14) to correct an error in the sentencing announced at the sentencing hearing).

Petitioner himself had no reason to appeal the preliminary and final orders of forfeiture, because his oral sentence nor the written original and amended judgment incorporated forfeiture. The onus was on the government to move to correct the sentence under Rule 35 (within seven days of sentencing) or to appeal the Court's failure to incorporate forfeiture into the original and amended judgment. Accord Dolan, 560 U.S. at 623 (Roberts, CJ., dissenting)("if the error is clear,...it might be corrected under Rule 35. Otherwise, the Government must appeal, and seek resentencing on remand". (Citing 18 U.S.C. §3742(b),(g)); See also U.S. v. Pease, 331 F.3d at 811 (11th cir.2003)(noting that the government could have cross-appealed the district court's failure to include order of forfeiture in its final judgment under 18 U.S.C. §3742(b)).

The government did not seek to correct the sentence and did not appeal. See, 18 U.S.C. §3742(b). As a result, Petitioner's sentence does not include forfeiture. The government lacks the authority to effect the forfeiture of the Petitioner's properties, and the Court is required to vacate the preliminary and final orders of forfeiture. Accord Shakur, 691 F.3d at 986-87 (a final order of forfeiture that is not part of the judgment "has no effect"); Pease, 331 F.3d at 813-14 (finding that the government's interest in a defendant's property does not "come to fruition", "that is, the Government [does not actually acquired] the defendant's interest in the subject property "until and unless

the district court includes an order of forfeiture in the judgment); U.S. v. Yeje-Cabrera, 430 F.3d at 13 (1st cir.2005)([F]orfeiture, to be valid, must be included in the judgment". (Citing Pease)).

In sum, the Second Amended Judgment rendered on October 10, 2019, to conform with Fed.R.Crim.P. 32.2(b)(4)(B), by amending the 1996 Judgment to include the final order of forfeiture, nuc pro tunc, from June 15, 2006 Judgment in U.S. v. Santiago-Lugo, Appeal Nos. 05-2254 and 06-1107, now would constitute a gross injustice and violation of Petitioner's Constitutional rights. Moreover, at the sentencing hearing, the words "forfeit" and "forfeiture" were never so much as mentioned. Forfeiture was not part of the sentence handed down during the sentencing hearing. See, U.S. v. Marquez, 685 F.3d 501, 509 (5th cir.2021)(The procedures under Rule 32.2 "are not empty formalities" and instead "serve a vital function in ensuring that a defendant has notice of a criminal forfeiture and an opportunity to challenge any forfeiture sought by the government").

Accordingly, the district court's Second Amended Judgment incorporating the forfeiture counts 48, 49 & 50 on October 10, 2019, failed to provide the Petitioner with an opportunity to dispute forfeiture or adequately to address forfeiture at the sentencing hearing on April 17, 1996. Mattux, 37 F.4th at 1170 (district court failed to discuss forfeiture at sentencing); Shakur, 691 F.3d at 986 (district court stated at sentencing, "I am going to enter a forfeiture in this case" but did not specify the amount). Both Courts held that this was error that could not be corrected after Rule 35's 14 days period elapsed. Compare U.S.

v. Zorrilla-Echavarria, 671 F.3d 1, 9 (1st cir.2011)("we have noted and now conclude that the omission of a forfeiture from the judgment, where there was a proper preliminary order of forfeiture as well as an imposition of forfeiture at the sentencing hearing, can be remedied under Rule 36).

VII. CONCLUSION

WHEREFORE, Petitioner has made a substantial showing of the denial of a Constitutional Right, and this petition for a writ of certiorari should be granted.

Date: December 6, 2023.

Respectfully Submitted,

Israel Santiago-Lugo
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