**No**. ____

October Term, 2023

IN THE
Supreme Court of the United States

RAUL PEREZ,
*Petitioner*,

v.

UNITED STATES OF AMERICA,
*Respondent*.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

# PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

**The United States Sentencing Guidelines provide for a two-level reduction in offense level where the accused accepts responsibility for his offense. U.S.S.G. § 3E1.1. Petitioner, Mr. Raul Perez, entered a plea of guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), because, as determined by a magistrate judge and accepted by a district judge, due to an accident involved in the underlying offense, Mr. Perez simply could not remember his actions in the underlying offense. Nevertheless, Mr. Perez accepted the fact that he in fact committed the offense and demonstrated remorse. At sentencing, the district court denied Mr. Perez an acceptance of responsibility reduction based on his failure to concede the facts of the offense. On appeal, the Eleventh Circuit affirmed the sentence holding that it was proper to deny acceptance based on Mr. Perez's failure to concede facts he could not remember.**

**Question Presented:**

**Does a plea of guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), based on a complete loss of memory of the actions underlying the offense of conviction, preclude an acceptance of responsibility reduction under the United States Sentencing Guidelines where the accused cannot concede the facts of the offense because he has no memory of those facts?**

## INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

## RELATED CASES

***United States v. Raul Perez*, 1:21-cr-20127-JLK-1 (S.D. Fla.)**

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases:**



**Statutes and Other Authority:**

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**On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit**

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# PETITION FOR WRIT OF CERTIORARI

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Mr. Raul Perez respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 22-13873 in that court on December 4, 2023, *United States v. Raul Perez,* which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

## OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District District of Florida, is contained in the Appendix (A-1).

## STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on December 4, 2023. This petition is timely filed pursuant to Sup. Ct. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner intends to rely upon the following constitutional provision:

**U.S. Const., amend. V**:

> No person shall be . . . compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

U.S.S.G. § 3E1.1(a):

> If the defendant clearly demonstrated acceptance of responsibility for his offense, decrease the offense level by **2** levels.

## STATEMENT OF THE CASE

### COURSE OF PROCEEDINGS AND DISPOSITION IN THE DISTRICT COURT

On May 27, 2021, a federal grand jury in Miami-Dade County, in the Southern District of Florida, returned a superseding indictment against Mr. Perez, charging him with carjacking, in violation of 18 U.S.C. § 2119(2) (Count 1); and brandishing and discharging a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii) and (iii) (Count 2). (DE 15).

Prior to his change of plea hearing, the Bureau of Prisons conducted two psychological evaluations with Mr. Perez, concluding that he was competent to proceed with the judicial process. On September 13, 2022, the United States magistrate judge conducted a change of plea hearing with Mr. Perez. (DE 41). At the hearing, Mr. Perez entered a plea of guilty to both counts of the superseding indictment pursuant to *North Carolina v. Alford,* 400 U.S. 25 (1970). The government objected to the acceptance of Mr. Perez's *Alford* plea. (DE 47:3). At the conclusion of the hearing, the magistrate judge accepted Mr. Perez's guilty plea and issued a report and recommendation recommending that the district court accept Mr. Perez's guilty plea. (DE 43). The district court subsequently adjudicated Mr. Perez guilty of both counts. (DE 71:3).

Before sentencing, Mr. Perez filed objections to the presentence investigation report. (DE 46). Mr. Perez objected to the probation officer's failure to recommend an adjustment of responsibility in his presentence investigation report and also

requested a downward variance from the advisory Sentencing Guidelines range. Sentencing began on November 16, 2022. (DE 71). After hearing argument on Mr. Perez's objections, the district court overruled his objection to the denial of an adjustment for acceptance of responsibility and declined to grant a downward departure from the Sentencing Guidelines range. (DE 71:44-45, 64). These rulings resulted in a total offense level of 28 and a criminal history category of three for Mr. Perez, for an advisory guideline range of 97-121 with a consecutive 120 months to follow for Count 2. (DE 71:45). The district court then sentenced Mr. Perez to 97 months imprisonment as to Count 1, and 120 months imprisonment as to Count 2, to be served consecutively to Count 1, to be followed by five (5) years of supervised release, with the sentence to run concurrently with the State case F21-5165. (DE 57). Mr. Perez timely filed a notice of appeal. (DE 58). On appeal, the Eleventh Circuit affirmed the district court's sentence. *United States v. Raul Perez*, no. 22-13873 (11th Cir. Dec. 4, 2023).

**Statement of Facts**

At the change of plea hearing held on September 13, 2022, the government proffered the following facts in support of satisfying the necessary elements to prove Mr. Perez guilty of both counts of the superseding indictment:

On or about February 11, 2021, J.S., the victim, learned from his neighbor that his car, a 2016 Nissan Sentra, had been burglarized. The Nissan Sentra had previously been transported, shipped, or received in interstate or foreign commerce.

The victim, J.S., observed that the doors to his car were open and several items were missing from the car, including his black and white striped Adidas backpack.

Approximately one (1) hour after learning about the burglary, the victim left for work in his vehicle. While driving, the victim observed the defendant walking in the area of NW 6th Avenue and W. Palm Drive, approximately one (1) mile away from the victim's residence, wearing the black and white striped Adidas backpack that had been stolen from the victim's vehicle. The victim pulled into a parking lot located at 580 West Palm Drive in Florida City, which is in Miami-Dade County, Florida, exited his vehicle, leaving the ignition on, and approached the defendant. The victim asked the defendant to return the items taken from his vehicle that morning, including the backpack. The victim observed the defendant loading an extended magazine into a firearm. The defendant then brandished the firearm, approached the victim, and stated, "Do you really want to fuck with me?" The defendant then pointed to the victim's vehicle, asked the victim if that was his vehicle, and entered into the vehicle. The victim, who was in fear for his life, ran away towards a nearby park. The defendant took the vehicle from or in the presence of the victim by force and violence or by intimidation and with the intent to cause serious bodily harm.

The defendant drove the vehicle towards the park where the victim had run and shot three (3) rounds in the victim's direction and then fled in the vehicle. The victim ran away and called 911. The Florida City Police Department issued a "be on the lookout" (or a "BOLO") for the vehicle. A Homestead Police Department officer observed the vehicle described in the BOLO approximately 1.5 miles away from

where the carjacking occurred. Upon observing the vehicle run a stop sign and begin to travel at a high rate of speed, a marked Homestead police vehicle attempted to effectuate a traffic stop on the vehicle. When the Homestead officer activated his emergency equipment, the defendant refused to stop the vehicle and a pursuit ensued. That pursuit concluded when the defendant refused to stop at a red light and ultimately caused a traffic collision in the area of 1400 NE 8th Street in Homestead, Florida, which resulted in a male from another vehicle, whose initials are J.R.A., being air-lifted to Jackson Memorial hospital with critical injuries and a female from a third vehicle, whose initials are M.B., being transported via ambulance to Homestead hospital with complaints of severe neck pain. When officers approached the defendant to render aid following the collision, they observed a Springfield Armory XD40 .40 caliber semi-automatic firearm with an extended magazine in his waistband, with the defendant's hand on it. Officer secured the firearm, which was loaded with thirteen (13) rounds of .40 caliber ammunition in the magazine, and one (1) round in the chamber. Officers also recovered the victim's black and white striped Adidas backpack in the Vehicle. A criminal records check indicated that the defendant has prior adjudications of delinquency and was actively on probation for a juvenile burglary offense. The defendant's actions resulted in serious bodily injury to the victims, J.R.A. and M.B.

The government proffered that these facts, which do not include all of the facts known to the government and the defendant, are sufficient to prove the guilt of the defendant as to the crimes of carjacking, in violation of 18 U.S.C. § 2119(2), and brandishing and discharging a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii) and (iii). (DE 47:30-33).

On September 13, 2022, the United States magistrate judge conducted a change of plea hearing with Mr. Perez. (DE 41). At the hearing, Mr. Perez entered a plea of guilty, pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to both counts of the superseding indictment. DE 47. At the conclusion of the government's proffer, Mr. Perez agreed that he had heard the government's proffer and that he had reviewed the government's evidence provided in discovery. (DE 47:33). Mr. Perez agreed that the government's evidence produced in discovery supported the government's proffer. (DE 47:34). Mr. Perez stated, "I understand and knowingly and willingly accepting a plea of *Alford,* and *Alford* plea. I'm giving up my rights to take this plea to get sentenced." (DE 47:37). Defense counsel explained that Mr. Perez "was involved in a very serious auto accident immediately following the incident" and that "he has no memory of exactly what happened in regard to the case." (DE 47:3).

The government objected to the acceptance of Mr. Perez's *Alford* plea. (DE 47:3). Specifically, the government argued as follows:

> Yes. That is over the government's objection. We're asking that this be a guilty plea. And I want to note that if your Honor does accept that sort of a plea, then the government would not be moving for acceptance of responsibility, given that the defendant's not accepting responsibility. I also want to note – and I didn't mention this to Mr. Abrams – that this defendant was evaluated for competency and underwent a psychological

> evaluation where he admitted to many of the facts that are included in the government's factual proffer so it's difficult for the government to understand or believe that he doesn't remember those facts when he told them to an evaluator. So it would be over the government's objection. So we would be asking that he plead guilty today.

(DE 47 at 3-4). The clear objection by the government was that Mr. Perez was lying to the Court that he could not remember the facts surrounding the offense, and the government relied on statements Mr. Perez made during an initial evaluation as proof of that deception on the Court. The magistrate judge addressed that issue with Mr. Perez who stated that at his initial evaluation, he was under the influence of drugs and "made up a story," but that at the second evaluation, he was sober and honest during his evaluation. *Id*. at 14-17. The government's objections to the *Alford* plea were based on the statements made by Mr. Perez at his initial evaluation.

Mr. Perez reiterated to the magistrate judge, under oath, that he did not remember anything regarding the offense and the ensuing car accident. *Id*. at 35-37. At the conclusion of the hearing, the magistrate judge credited Mr. Perez's statements during the hearing and accepted Mr. Perez's guilty plea. *Id*. at 38-41. The government again renewed its objection that the *Alford* plea was not appropriate since Mr. Perez was not being truthful about remembering facts of the offense and objected to the acceptance of the plea. *Id*. at 41. In response, the magistrate judge made it clear that it had ruled and that the government would have an opportunity to renew that objection following the issuance of the report and recommendation:

> You will have an opportunity to object. Like I said. Since it's going to be a report and recommendation to Judge King, you can assert those objections.

DE 47 at 41.

The magistrate judge subsequently issued a report and recommendation recommending that the district court accept Mr. Perez's *Alford* plea. (DE 43). Importantly, in the report and recommendation, the magistrate judge made clear that any objections to the magistrate judge's report and recommendation were due by September 28, 2022. (DE 43). Specifically, the magistrate judge noted as follows:

> The parties will have fourteen (14) calendar days from the date of service of this Report and Recommendation within which to file written objections, if any, for consideration by the United States District Judge. Pursuant to Federal Rule of Criminal Procedure 59(b), Eleventh Circuit Rule 3-1, and accompanying Internal Operating Procedure 3, the parties are hereby notified that failure to object in accordance with 28 U.S.C. § 626(b)(1) waives the right to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions. *See Thomas v. Arm*, 474 U.S. 140, 155 (1985).

(DE 43 at 5).

Despite the express warning, the government failed to file any objections to the report and recommendation. The district court accepted the report and recommendation and adjudicated Mr. Perez guilty of both counts.

Yet, at the sentencing hearing, the government improperly argued that the statements made by Mr. Perez at his initial evaluation proved that he was lying when he stated that he could not remember the facts of the underlying offense. That factual determination was the basis for the government's request and the district court's judgment that Mr. Perez was not entitled to a downward adjustment for acceptance of responsibility although he timely entered a plea of guilty.

Despite Mr. Perez's timely plea and his clear statement of remorse, and despite the district court's adoption of the magistrate judge's report and recommendation, the district court denied the request for a reduction based on acceptance of responsibility:

> I find that the conduct of this case, that the defendant's actions in refusing to admit key elements, all of the facts of the elements of the crimes charged in the superseding indictment and his change of plea hearing, wherein he did not fully, completely, concede that he committed the carjacking offense, or that he brandished or discharged a firearm, is not complete or accurate or believable to the extent that it entitles him to what the sentencing guidelines require: which is a full and complete admission of all of this, in order to be entitled to the two-point reduction.

DE 71 at 44. On appeal, the Eleventh Circuit affirmed the denial:

> The district court based its decision on Perez's inability to concede to the facts of the crime fully and completely and the legal arguments presented by the parties and discussed at length during the sentencing hearing. Although Perez pled guilty, he did not admit to discharging a firearm in public and causing a severe accident by leading police on a car chase. Even though he expressed remorse during his allocution, Perez only apologized for his inability to remember the incident.

*United States v. Perez*, No. 22-13873 at 6 (11th Cir. Dec. 4, 2023). The Eleventh Circuit made no mention of the findings made by the magistrate judge which were adopted in full by the district court.

## REASONS FOR GRANTING THE WRIT

**An Inter-Circuit Split exists as to whether a defendant who simply has no memory of the facts of the underlying offense and enters a timely plea of guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), and demonstrates remorse at sentencing can be denied an acceptance of responsibility reduction under U.S.S.G. § 3E1.1 for failing to concede to the facts of the crime which he simply cannot remember.**

Petitioner, Mr. Raul Perez, was involved in a serious traffic accident. Mr. Perez was air-lifted to Jackson South Hospital following the motor vehicle accident with loss of consciousness on the scene. (PSR ¶¶ 8; 56). He sustained a traumatic brain injury, liver injury, hemoperitoneum, and probable traumatic intraventricular hemorrhage, or bleeding in the brain. (PSR ¶ 56). Due to his injuries, he experienced serious memory loss. Despite the memory loss, Mr. Perez acknowledged that the government could prove all of the elements for both crimes for which he was charged and did not dispute any of the government's evidence or the government's proffer. He did not put the government to its burden of proof at trial by denying any essential factual elements of guilt for either count in the superseding indictment. At sentencing he expressed remorse for the actions that occurred and for the victims and indicated to the court that he was committed to taking advantage of the wake-up call the charges in this case provided to him to turn his life around. Mr. Perez satisfied all requirements for receiving an adjustment for acceptance of responsibility. Yet, the district court denied him a reduction in his offense level because Mr. Perez could not concede the facts of the crime. On appeal, the Eleventh Circuit affirmed holding that the district court did not err in denying the acceptance-of-responsibility reduction

based on Mr. Perez's "inability to concede to the facts of the crime fully and completely." *United States v. Perez,* No. 22-13873 (11th Cir. Dec. 4, 2023).

Section 3E1.1(a) of the United States Sentencing Guidelines provides for a two-level reduction to a defendant's base offense if the defendant "clearly demonstrates acceptance of responsibility for his offense." U.S.S.G. § 3E1.1. This section provides an additional one-level reduction if the defendant's offense level is above 16 and the defendant timely notifies the government of his intent to enter a guilty plea. *Id.* § 3E1.1(b). Section 3E1.1 provides that a defendant may receive the acceptance of responsibility adjustment whether he pleads guilty or goes to trial. Application Note 2 of the Commentary states, "[t]his adjustment is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse. Conviction by trial, however, does not automatically preclude a defendant for consideration for such a reduction." *Id.* § 3E1.1 comment. (n.2).

Under § 3E1.1, a guilty plea is "significant evidence of acceptance of responsibility" but may be outweighed if the defendant acts in a manner that is inconsistent with acceptance of responsibility. *Id.* § 3E1.1 comment. (n.3). Acceptance of responsibility is "a multifaceted concept" that encompasses "the offender's recognition of the wrongfulness of his conduct, his remorse for the harmful consequences of that conduct, and his willingness to turn away from that conduct in the future." *See United States v. Scroggins*, 880 F.2d 1204, 1215 (11th Cir. 1989).

On February 11, 2021, Mr. Raul Perez carjacked a vehicle at gun point. During his escape, Mr. Perez was involved in a violent car accident. Mr. Perez was airlifted to a local hospital trauma center and remained hospitalized until March 24, 2021 due to the extent of his injuries. As a result of the accident, Mr. Perez suffered serious memory loss.

A federal grand jury charged Mr. Perez in a superseding indictment with one count of carjacking and one count of discharging a firearm in furtherance of a crime of violence. On May 11, 2021, the district court ordered that Mr. Perez be evaluated to ensure that he was competent to stand trial. On May 18, 2022, Mr. Perez was finally deemed competent to stand trial. Soon thereafter, Mr. Perez notified the government of his desire to enter a plea of guilty to the charges.

On September 13, 2022, the United States magistrate judge conducted a change of plea hearing with Mr. Perez. (DE 41). At the hearing, Mr. Perez entered a plea of guilty, pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), to both counts of the superseding indictment. The government objected to the acceptance of Mr. Perez's *Alford* plea. (DE 47:3). Specifically, the government argued as follows:

> Yes. That is over the government's objection. We're asking that this be a guilty plea. And I want to note that if your Honor does accept that sort of a plea, then the government would not be moving for acceptance of responsibility, given that the defendant's not accepting responsibility. I also want to note – and I didn't mention this to Mr. Abrams – that this defendant was evaluated for competency and underwent a psychological evaluation where he admitted to many of the facts that are included in the government's factual proffer so it's difficult for the government to understand or believe that he doesn't remember those facts when he told them to an evaluator. So it would be over the government's objection. So we would be asking that he plead guilty today.

(DE 47 at 3-4). The clear objection by the government was that Mr. Perez was lying to the Court that he could not remember the facts surrounding the offense, and the government relied on statements Mr. Perez made during an initial evaluation as proof of that deception on the Court. The magistrate judge addressed that issue with Mr. Perez who stated that at his initial evaluation, he was under the influence of drugs and "made up a story," but that at the second evaluation, he was sober and honest during his evaluation. *Id*. at 14-17. The government's objections to the *Alford* plea were based on the statements made by Mr. Perez at his initial evaluation.

Mr. Perez reiterated to the magistrate judge, under oath, that he did not remember anything regarding the offense and the ensuing car accident. *Id*. at 35-37. At the conclusion of the hearing, the magistrate judge credited Mr. Perez's statements during the hearing and accepted Mr. Perez's guilty plea. *Id*. at 38-41. The government again renewed its objection that the *Alford* plea was not appropriate since Mr. Perez was not being truthful about remembering facts of the offense and objected to the acceptance of the plea. *Id*. at 41. In response, the magistrate judge made it clear that it had ruled and that the government would have an opportunity to renew that objection following the issuance of the report and recommendation:

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The magistrate judge subsequently issued a report and recommendation recommending that the district court accept Mr. Perez's *Alford* plea. (DE 43).

Importantly, in the report and recommendation, the magistrate judge made clear that any objections to the magistrate judge's report and recommendation were due by September 28, 2022. (DE 43). Specifically, the magistrate judge noted as follows:

> The parties will have fourteen (14) calendar days from the date of service of this Report and Recommendation within which to file written objections, if any, for consideration by the United States District Judge. Pursuant to Federal Rule of Criminal Procedure 59(b), Eleventh Circuit Rule 3-1, and accompanying Internal Operating Procedure 3, the parties are hereby notified that failure to object in accordance with 28 U.S.C. § 626(b)(1) waives the right to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions. *See Thomas v. Arm*, 474 U.S. 140, 155 (1985).

(DE 43 at 5).

Despite the express warning, the government failed to file any objections to the report and recommendation. The district court accepted the report and recommendation and adjudicated Mr. Perez guilty of both counts. Yet, at the sentencing hearing, the government improperly argued that the statements made by Mr. Perez at his initial evaluation proved that he was lying when he stated that he could not remember the facts of the underlying offense. That factual determination was the basis for the government's request and the district court's judgment that Mr. Perez was not entitled to a downward adjustment for acceptance of responsibility although he timely entered a plea of guilty. The government was barred from arguing at sentencing that the statements made by Mr. Perez at his initial evaluation proved that he was lying when he stated that he could not remember the facts of the underlying offense. That fact was decided against the government by the magistrate judge and the government was required to make that factual objection in a timely

objection to the report and recommendation. *See* Fed. R. Crim. P. 59(b). Because the government failed to make such a timely objection, it was clear error for the district court to address and rely on those facts at sentencing.

Despite Mr. Perez's timely plea and his clear statement of remorse, and despite the district court's adoption of the magistrate judge's report and recommendation, the district court denied the request for a reduction based on acceptance of responsibility:

> I find that the conduct of this case, that the defendant's actions in refusing to admit key elements, all of the facts of the elements of the crimes charged in the superseding indictment and his change of plea hearing, wherein he did not fully, completely, concede that he committed the carjacking offense, or that he brandished or discharged a firearm, is not complete or accurate or believable to the extent that it entitles him to what the sentencing guidelines require: which is a full and complete admission of all of this, in order to be entitled to the two-point reduction.

DE 71 at 44. On appeal, the Eleventh Circuit affirmed the denial:

> The district court based its decision on Perez's inability to concede to the facts of the crime fully and completely and the legal arguments presented by the parties and discussed at length during the sentencing hearing. Although Perez pled guilty, he did not admit to discharging a firearm in public and causing a severe accident by leading police on a car chase. Even though he expressed remorse during his allocution, Perez only apologized for his inability to remember the incident.

*United States v. Perez*, No. 22-13873 at 6 (11th Cir. Dec. 4, 2023). The Eleventh Circuit made no mention of the findings made by the magistrate judge which were adopted in full by the district court.

Unlike the Eleventh Circuit, other Circuit Courts of Appeal have held that a defendant who cannot remember the facts of the offense, but who nevertheless admits guilt and demonstrates remorse has demonstrated acceptance of responsibility and warrants a reduction under U.S.S.G. § 3E1.1. In *United States v. Paster*, 173 F.3d

206 (3d Cir. 1999), the Third Circuit held that a defendant who suffered from dissociative amnesia could not be denied acceptance of responsibility pursuant to U.S.S.G. § 3E1.1 for failing to remember details regarding the killing of his wife. *Id*. at 215-216. In *United States v. Kathman*, 490 F.3d 520 (6th Cir. 2007), the Sixth Circuit affirmed the granting of an acceptance of responsibility reduction where the defendant entered an *Alford* plea because he simply could not remember the facts of the offense due to his amnesia. *Id*. at 524. Just as here, the court in *Kathman* found during the plea colloquy that "Kathman was not maintaining his innocence, but was simply unable to truthfully admit a factual basis for a guilty plea due to his amnesia." *Id*.

This Court should grant Mr. Perez's petition for a writ of certiorari to clarify the standard for granting an acceptance of responsibility under U.S.S.G. § 3E1.1 where the accused enters a plea of guilty pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), based on the fact that the accused simply cannot remember the facts of the underlying offense. Here, Mr. Perez clearly accepted responsibility and his offense level should have been reduced by two levels. Such a reduction would have lowered his advisory sentencing range on count one from 97-121 months to 78-97 months. Because the district court sentenced Mr. Perez at the low end of the sentencing range, 97 months, the error affected Mr. Perez's substantial rights.

## CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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March 4, 2024