ORIGINAL

No. 23-6942

IN THE

SUPREME COURT OF THE UNITED STATES

PAULINO GRANDA,

Petitioner,

vs.

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 WRIT OF CERTIORARI

PAULINO GRANDA
REG NO. 07620-045
USP Hazelton
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Bruceton Mills, WV 26525

QUESTION PRESENTED

I. Whether a Petitioner demonstrates that he has made "a substantial showing of the denial of a constitutional right" warranting the issuance of a certificate of appealability under 28 U.S.C. § 2255 and § 2253(c), where the trial court failed to vacate the mandatory life sentence imposed pursuant to 21 U.S.C. § 851, despite the court's determination that Petitioner, pursuant to *Johnson v. United States*, 544 U.S. 295 (2005), diligently obtained the vacatur of the state court conviction used as a predicate to impose the mandatory life sentence.

PARTIES TO THE PROCEEDINGS BELOW

There are no parties to the proceeding other than those listed in the style of the case.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner PAULINO GRANDA respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit Court, rendered and entered in case number 23-11145-A in that court on September 22, 2023, which affirmed the final order of United States District Court for the Southern District of Florida denying relief under Title 28 U.S.C. § 2255.

OPINIONS BELOW

A copy of the Order denying the certificate of appealability ("COA"), entered by a single judge (Hon. Kevin C. Newsom) of the Court of Appeals for the Eleventh Circuit is contained in Appendix A. A copy of the Order denying Granda's motion for reconsideration of the COA, entered by two judges of the Court of Appeals for the Eleventh Circuit is contained in Appendix B.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), *Hohn v. United States*, 524 U.S. 236 (1998) and Part III of the Rules of the Supreme Court of the United States. The decision of the court of appeals was entered on September 22, 2023 and reconsideration was denied on November 2, 2023, consequently this petition is timely filed. The district court had jurisdiction

pursuant to 28 U.S.C. § 2255. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 2253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional and statutory provisions are involved and are set forth below:

U.S. Const. amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . . nor be deprived of life, liberty, or property, without due process of law.

U.S. Const. amend VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

28 U.S.C. § 2253(c):

Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from the final order in a proceeding

under section 2255. A certificate of appealability may issue if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. § 2255 in pertinent part provides:

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall

discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from the final judgment on application for a writ of habeas corpus.

28 U.S.C.§ 1254(1):

Cases in the court of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

STATEMENT OF THE CASE

(i) Course of Proceedings and Disposition of the Case

On March 28, 2022, Petitioner Granda, pursuant to this Court's decision in *Johnson v. United States*, 544 U.S. 295 (2005), timely filed his 28 U.S.C. § 2255 petition seeking to vacate, set aside or correct his sentence based on the state court's vacatur of a third-degree felony drug conviction which served as a qualifying felony drug offense pursuant to the enhancement provisions set forth in 21 U.S.C. § 851, requiring the imposition of a mandatory life sentence, without regard to his criminal history score and criminal history category. In *Johnson*, this Court held that the state court vacatur is a matter of fact for purposes of the limitation rule under the fourth paragraph, but also, the vacatur of a predicate

conviction is a new "fact" that triggers a fresh one-year statute of limitations under § 2255(f)(4), so long as the movant exercised due diligence in seeking that order.

In this case, Granda's § 2255 motion, set forth the requisite facts establishing his due diligence. As the facts clearly demonstrate, Petitioner was not time barred, procedurally barred or otherwise precluded from filing the § 2255 motion or for seeking a re-sentencing based on the vacatur of the underlying state court convictions. In *Spencer v. United States*, 773 F.3d 1132 (11th Cir. 2014), the Eleventh Circuit reiterated that a prisoner may "collaterally attack a sentence enhanced by a prior conviction if that prior conviction has since been vacated." *Id.* at 1139. *See also*, *United States v. Walker*, 198 F.3d 811 (11th Cir. 1999). As a result of the vacatur of the unconstitutionally obtained third degree felony drug conviction, Petitioner no longer qualifies for a mandatory life sentence under 21 U.S.C. § 851, as imposed by the District Court on September 11, 2007.

(ii) Factual Background

On April 20, 2007, Petitioner, along with four co-defendants were indicted and charged in a superseding indictment with conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841 and 846 (Count 1); attempted possession with intent to distribute cocaine, in violation of 21 U.S.C. § 846 (Count 2); conspiracy, and attempt to obstruct commerce through Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a) (Counts 3 & 4); attempted carjacking, in violation

of 18 U.S.C. § 2119 (Count 5); conspiracy to use and carry a firearm during a crime of violence and drug trafficking crime, in violation of 18 U.S.C. § 924(o) (Count 6); carrying a firearm during and in relation to a crime of violence and a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A) (Count 7); and knowing possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (Count 8) (CR-DE 61).

On May 20, 2007, the day before Petitioner's trial had been scheduled to commence, the government electronically filed notice under 21 U.S.C. § 851 of its intent to use Petitioner's prior felony narcotics convictions for sentencing purposes (CR-DE 152).[1]

On May 21, 2007, Petitioner proceeded to trial. The evidence established that in January 2007, confidential informant, Humberto Gamez ("CI Gamez"), who had previously served jail time with Petitioner,[2] but was now actively working with the Miami Dade Police Department, contacted and lured Petitioner to get involved in a reverse sting operation which CI Gamez orchestrated with his handler, Miami

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[1] Admittedly, the government did not properly serve Petitioner or his court appointed counsel with the notice filed on Sunday, May 20, 2007.

[2] Gamez targeted Petitioner because he knew he had a past criminal history, and as such, could not effectively employ an entrapment defense.

Dade Police Detective Juan Sanchez. CI Gamez advised Petitioner that he knew a disgruntled drug courier who wanted help in stealing his employer's drug shipment. Consequently, CI Gamez coordinated a meeting between undercover Detective Sanchez and Petitioner, wherein the undercover officer espoused his desire to steal his employer's load of cocaine.[3] Both CI Gamez and the undercover officer instructed Petitioner regarding the means and manner to effectuate the scheme to steal the contraband.

On February 22, 2007, CI Gamez advised Petitioner to get his people together because the contraband was being delivered later that night. CI Gamez subsequently drove Petitioner and his co-defendants to a gas station, near the location of the tractor trailer. Shortly thereafter, CI Gamez advised Petitioner that he had received word that the delivery had been made and directed Movant and three of his co-defendants to retrieve the alleged contraband. Manuel Tellez drove the black Expedition which was occupied by Alexis ("Alex") Hernandez, Jose Perez, and Petitioner, to the warehouse area where the tractor trailer was located.

Upon arrival at the location where the tractor trailer was parked, Alex exited the Expedition and approached the door of the unoccupied cab. Although law enforcement knew that the tractor trailer by design was unoccupied and that there

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[3] To be sure, there were no actual drugs to be stolen, as this was simply the government's ruse (CR-DE 195:608)

was no contraband concealed therein, when Alex approached the door, the police Special Response Team (SRT) called out from their hidden sniper location, that they were the police and ordered Alex to put his weapon down. Although there was no one in the cab or in the vicinity of the trailer whose life could be placed in danger, once law enforcement officers saw Alex purportedly raise the revolver in his hand (even though there was no one in sight), the officers who were on the roof of the warehouse repeatedly fired on Alex, killing him on the spot.[4] At no time did Alex ever point or discharge any firearm before being shot and killed by police snipers. Immediately thereafter, law enforcement officers directed their aim at the Expedition and sprayed the Expedition with a rain of gun fire, shooting and killing Jose Perez and shooting and gravely injuring Petitioner, who was unarmed and posed no threat.

On May 30, 2007, the jury returned a guilty verdict on each of the counts charged in the superseding indictment. Thereafter, the Court ordered the probation department to prepare a presentence investigation report for purposes of sentencing. After disclosure of the PSI, Petitioner, through counsel, filed

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[4] While Miami Dade Police audio and video recorded each and every meeting, the location where the coordinated take down took place was neither audio nor video recorded, and there exists no evidence to substantiate the officers' claim that Alex raised the revolver in his hand, and certainly no evidence that he brandished the firearm or pointed it toward any individual. Here, only law enforcement discharged their weapons.

numerous objections including his objection to the use and consideration by the court of the two prior felony drug convictions which Petitioner argued were improper and should not be utilized as predicate recidivist drug offenses under 21 U.S.C. § 851. Specifically, Petitioner noted that neither he nor his counsel were served with a copy of the § 851 notice as required. Moreover, Petitioner noted that in the exercise of due diligence, he had moved to vacate the prior drug convictions referenced in the § 851 notice, which motion in state court remained pending at the time of sentencing.

On September 11, 2007, the district court conducted Petitioner's sentencing hearing (CR-DE 281). Although Petitioner challenged the validity of the prior convictions as required, the district court without complying with the safeguards imposed in § 851(b), ultimately determined that Petitioner had not met his burden to show that the prior convictions were invalid and thus overruled his objections. The trial court adopted the findings in the PSI, including the application of 21 U.S.C. § 851. In accordance with the enhancement requirements set forth in § 851, the district court sentenced Petitioner to a mandatory term of life, plus a consecutive 7 years based on the firearm that co-defendant Alexis (Alex) Hernandez allegedly brandished before he was shot and killed by law enforcement snipers. (CR-DE 281 at p.44).

Petitioner appealed, but his appeal was dismissed for want of prosecution

after his attorney withdrew and he failed to timely file a corrected brief. (CR-DE 260, 299). On March 10, 2010, Petitioner filed a Motion for New Trial, which was subsequently denied. (CR-DE 301, 312).

(iii) Motion to Vacate Sentence

On March 28, 2022, in accordance with the mailbox rule, Petitioner filed the underlying § 2255 Motion to Vacate his sentence. *Granda v. U.S.*, No. 22-21025-DMM (S.D. Fla.) (DE-1 at p. 3). As for relief, Mr. Granda requested that his mandatory life sentence imposed pursuant to 21 U.S.C. § 851 be vacated and that a re-sentencing hearing be scheduled. (DE 1; 11). While the district court found that Petitioner's § 2255 motion was not successive, time barred, nor procedurally barred and that Petitioner had exercised due diligence in obtaining the vacatur of the prior state court conviction utilized as a predicate for the § 851 enhancement, the District Court nevertheless entered an Order denying Petitioner's § 2255 Motion, leaving in place the unconstitutional and invalid mandatory life sentence imposed pursuant to 21 U.S.C. § 851.

REASONS FOR GRANTING THE PETITION

The Eleventh Circuit Court of Appeals erred in its interpretation and application of Title 28 U.S.C. § 2253(c) and § 2255, and its decision to deny the certificate of appealability conflicts with this Court's decisions in *Hohn v. United States*, 524 U.S. 236 (1998) and *Miller-El v. Cockrell*, 537 U.S. 332 (2003),

especially where Petitioner has made a substantial showing of the denial of a constitutional right, and has affirmatively demonstrated that he remains sentenced under an unconstitutionally infirm, mandatory life sentence. The Eleventh Circuit's refusal to issue a certificate of appealability, despite the fact that Petitioner has clearly met the standards set forth by this Court, is a compelling reason to grant this petition, vacate the judgment and remand to the Eleventh Circuit.

The standard for the issuance of a certificate of appealability (COA) under 28 U.S.C. § 2253(c)(2) indicates that a COA should issue if the applicant can make a "substantial showing of the denial of a constitutional right" in the proceedings underlying his conviction and sentence. To obtain a certificate of appealability, the applicant must demonstrate that an issue is debatable among jurists of reason or that the questions deserve encouragement to proceed further. *Miller-El*, 537 U.S. at 327. This Court has held that "a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Id.* at 337. Accordingly, a court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate entitlement to relief, as COA's are not reserved merely for claims that will ultimately prevail. *Id.* at 337. The determination whether to issue a certificate of appealability should be a threshold inquiry into

whether the District Court's decision was debatable and does not require a decision on the merits. *Id.* at 342.

Applying the principles set forth by this Court in *Slack v. McDaniel*, 529 U.S. 473 (2000), *Miller-El,* and *Hohn,* a review of the issues presented by Petitioner in his application for a COA, demonstrate that a substantial showing was made of the denial of his constitutional rights and that reasonable jurists could have debated the claim presented.

I. A Certificate Of Appealability Is Warranted Where Petitioner's Motion Presented A Cognizable Claim For Relief.

In *Johnson v. United States*, 544 U.S. 295 (2005), this Court held that the state court vacatur is a matter of fact for purposes of the limitation rule under the fourth paragraph, but also, the vacatur of a predicate conviction is a new "fact" that triggers a fresh one-year statute of limitations under § 2255(f)(4), so long as the movant exercised due diligence in seeking that order.

Section 2255 authorizes a prisoner to move to vacate, set aside, or correct his sentence if the sentence was imposed "in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255(a).

In interpreting the phrase "is otherwise subject to collateral attack," this Court has held that a prisoner that has been given a sentence enhancement for a

prior conviction "is entitled to a reduction if the earlier conviction is vacated" in accordance with § 2255. *Johnson,* 544 U.S. at 303; *see also Custis v. United States,* 511 U.S. 485, 497 (1994) (concluding that a prisoner who has a predicate conviction vacated on which his sentence was enhanced may "apply for reopening of any federal sentence enhanced by the state sentences" through § 2255); *Stewart v. United States,* 646 F.3d 856, 864-65 (11th Cir. 2011) (finding that a prior state court vacatur order gives a defendant both the basis to challenge an enhanced federal sentence and is a new "fact" which triggers a fresh-one-year statute of limitations under Section 2255(f)(4)); *Spencer v. United States,* 773 F.3d 1132 (11th Cir. 2014) (concluding that a prisoner can collaterally attack a sentence enhanced by a prior conviction if that prior conviction has since been vacated").

Mr. Granda has a valid § 2255(a) claim because one of the predicate convictions used to enhance his sentence was subsequently vacated, which properly subjects his sentence to collateral attack. Moreover, as the district court found, Mr. Granda satisfied the threshold requirements of filing his § 2255 motion within the statute of limitations and in pursuing the vacatur of his predicate conviction with due diligence, thus establishing his entitlement to relief.

II. The § 851 Enhancement Is No Longer Valid Thus The Mandatory Life Sentence Imposed Is Constitutionally Infirm and Invalid.

In accordance with the district court's determination that Petitioner's § 2255 motion was not time barred nor procedurally barred, and that Petitioner had

diligently sought to vacate his prior state conviction, it is well settled law that once a petitioner satisfies these threshold requirements, he is entitled to seek resentencing based on the invalidation of his prior state conviction used to enhance his federal sentence. *See United States v. Walker,* 198 F.3d 811, 813 (11th Cir. 1999) ("[A] district court may reopen and reduce a federal sentence once a federal defendant has, in state court, successfully attacked a prior state conviction, previously used in enhancing the federal sentence"). Consequently, once a court finds the petitioner's claim to be valid, as the district court did in this case, the court "shall vacate and set the judgment aside and shall ... resentence him ... or correct the sentence as may appear appropriate." 28 U.S.C. § 2255(b).

In *United States v. Brown*, 879 F.3d 1231 (11th Cir. 2018), the Eleventh Circuit recognized that the federal habeas statute establishes a two-step process in addressing a § 2255 motion. The first step of the inquiry requires the court to determine whether the petitioner has established that the sentence imposed was not authorized by law or is otherwise subject to collateral attack, and if so, the statute specifically provides that the court must vacate and set the judgment aside. The second step of the process requires the court to choose from among the remedies provided for in the statute, which in this case would have required the district court to schedule a resentencing hearing. and shall addressed the two-step process the

circumstances under which the district court is required to hold a re-sentencing hearing.

While the district court readily acknowledged that Petitioner no longer qualifies for an enhanced mandatory life sentence pursuant to § 851, and is entitled to challenge the enhancement in a § 2255 collateral proceeding (DE–13 at p.13), the district court nevertheless erred by circumventing the two-step process provided for in the statute and concluding that "Movant is not entitled to relief because he cannot demonstrate that I would impose a lesser sentence now that the prior conviction has been vacated." (DE-13 at p.11 n.7).

In *Clay v. United States*, 2009 WL 1657095 (N.D. Ga. 2009), the District Court addressed the precise issue raised herein; whether a defendant whose federal sentence was enhanced under §§ 841/851 may bring a § 2255 motion to seek resentencing based on the invalidation of his prior state conviction used to enhance his federal sentence. After Clay successfully obtained the vacatur of a 1992 state court conviction that had been used to enhance his sentence under 21 U.S.C. § 851, he filed a § 2255 motion and sought resentencing based on the invalidation of that prior conviction. The court quoting this Court's decision in *Johnson*, stated that "Congress does not appear to have adopted a policy of enhancing federal sentences regardless of the validity of state convictions relied on for the enhancement." 544 U.S. at 305-06. Moreover, the district court found that there is nothing in §§ 841 or

851 which "limits this Court's authority and responsibility under 28 U.S.C. § 2255 (or 28 U.S.C. § 2254, for that matter) and related Supreme Court precedent to grant relief in these circumstances." *Id.* "To afford a petitioner no relief, when he has been sentenced to an enhanced period based on prior state convictions that were obtained in violation of the United States constitution, is arguably itself a constitutional violation. Therefore, this Court concludes that Movant may seek resentencing based on the invalidation of his 1992 state conviction." *Id.* at *4.

Mr. Granda, like the petitioner in *Clay*, has demonstrated his entitlement to § 2255 relief, and has demonstrated actual prejudice in that the mandatory life sentence which remains in place, is unconstitutional, invalid, and is no longer authorized by law in accordance with *Johnson* and the progeny of cases set forth herein.

In *Brown*, *supra*, the Eleventh Circuit addressed the specific circumstance presented in Petitioner's case and noted that a sentencing hearing is required when a court must exercise its discretion in modifying a sentence in ways it was not called upon to do at the initial sentencing. "For example, if the original sentencing court imposed a mandatory minimum sentence that no longer applies, then a defendant's resentencing hearing may be the first opportunity he has to meaningfully 'challenge the accuracy of information the sentencing judge may rely on, to argue about its reliability and the weight the information should be given,

and to present any evidence in mitigation he may have."' *Id.* at 1239 (quoting *United States v. Jackson*, 923 F.2d 1494, 1496–97 (11th Cir. 1991). In a case like this, the defendant's presence is required at a resentencing hearing to "contribute to the fairness of the procedure." *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987). From this Court's precedent, two inquiries emerge to guide the consideration of whether a defendant is entitled to a resentencing hearing when a change to his sentence is required as a result of his § 2255 motion. First, did the errors requiring the grant of habeas relief undermine the sentence as a whole? Second, will the sentencing court exercise significant discretion in modifying the defendant's sentence, perhaps on questions the court was not called upon to consider at the original sentencing? When these factors are present, a District Court's sentence modification qualifies as a critical stage in the proceedings, requiring a hearing with the defendant present. *Stincer*, 482 U.S. at 745.

In this regard, the Due Process Clause guarantees a defendant's "right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure." *Stincer*, 482 U.S. at 745. Federal Rule of Criminal Procedure 43(a)(3), which this Court has described as "constitutionally based," *Jackson*, 923 F.2d at 1496, specifies that a defendant's right to be present includes his right to be present at sentencing. Fed. R. Crim. P. 43(a)(3). This right is meant to "ensure that at sentencing—a critical stage of the

proceedings against the accused—the defendant has an opportunity to challenge the accuracy of information the sentencing judge may rely on, to argue about its reliability and the weight the information should be given, and to present any evidence in mitigation he may have." *Jackson*, 923 F.2d at 1496–97. Without question, the district court must impose a sentence sufficient, but not greater than necessary, to reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence to criminal conduct, and protect the public from further crimes of the defendant. *See* 18 U.S.C. § 3553(a)(2). In selecting a sentence, the court must consider, among other things, the history and characteristics of the defendant. 18 U.S.C. § 3553(a)(1). The court must also explain the reasons for its chosen sentence. Although the court need not specifically state it has considered every § 3553(a) factor or give them equal weight, the district court must consider all of the applicable § 3553(a) factors to arrive at an appropriate sentence. *United States v. Rosales-Bruno*, 789 F.3d 1249, 1254 (11th Cir. 2015).

Here, Mr. Granda argued that he was entitled to a resentencing hearing where he would be able to address the changes in the advisory guideline sentencing range brought about by the First Step Act, and to directly address the court and present evidence of his post-incarceration conduct. DE-11 at p. 10. Despite his request, the district court decided, without a hearing, that Petitioner's mandatory

life sentence imposed pursuant to § 851 should remain in place because Petitioner cannot demonstrate that the district court would impose a lesser sentence now that the (state) conviction has been vacated. DE-13 p.11 n. 7. By denying Mr. Granda's § 2255 Motion and his request to address the court and present mitigation, the court failed to consider Mr. Granda's post-sentencing conduct and failed to explain why the statutory maximum would now be the only reasonable sentence available. These errors, together and separately, demonstrate that the district court, as well as the Court of Appeals, abused its discretion in denying Mr. Granda relief.

This Court has clarified that evidence of post-sentencing conduct may be highly relevant to the § 3553(a) analysis:

> [E]vidence of post sentencing rehabilitation may plainly be relevant to "the history and characteristics of the defendant." § 3553(a)(1). Such evidence may also be pertinent to "the need for the sentence imposed" to serve the general purposes of sentencing set forth in § 3553(a)(2)-- in particular, to "afford adequate deterrence to criminal conduct," "protect the public from further crimes of the defendant," and "provide the defendant with needed educational or vocational training ... or other correctional treatment in the most effective manner." §§ 3553(a)(2)(B)-(D); see *McMannus*, 496 F.3d, at 853 (Melloy, J., concurring) ("In assessing ... deterrence, protection of the public, and rehabilitation, 18 U.S.C. § 3553(a)(2)(B)(C) & (D), there would seem to be no better evidence than a defendant's post-incarceration conduct"). Post sentencing rehabilitation may also critically inform a sentencing judge's overarching duty under § 3553(a) to "impose a sentence sufficient, but not greater than necessary" to comply with the sentencing purposes set forth in § 3553(a)(2).

Pepper v. United States, 562 U.S. 476, 491 (2011); *see also id.* at 488 ("[W]e have emphasized that highly relevant--if not essential-- to the selection of an appropriate

sentence is the possession of the fullest possible information concerning the defendant's life and characteristics.") (internal quotation marks and alterations omitted); *Id.* at 490 ("[A] district court may consider evidence of a defendant's rehabilitation since his prior sentencing and . . . such evidence may, in appropriate cases, support a downward variance from the advisory Guidelines range.").

Beyond that, there is a defendant's well-recognized right of allocution at sentencing—a chance for the defendant "to make a final plea on his own behalf to the sentencer before the imposition of sentence." *United States v. Prouty*, 303 F.3d 1249, 1251 (11th Cir. 2002).

Here, Petitioner, in accordance with this Court's pronouncement in *Johnson*, and consistent with the progeny of cases addressing this issue, submits that the district court's ruling and the Eleventh Circuit's refusal to issue a certificate of appealability was erroneous and contrary to this Court's established precedent, as his mandatory life sentence is and remains constitutionally infirm, and is no longer authorized by law.

Based on all of the above, jurists of reason would find it debatable whether the district court was correct in denying the § 2255 motion. Accordingly, a COA should issue. *Slack*, 529 U.S. at 484.

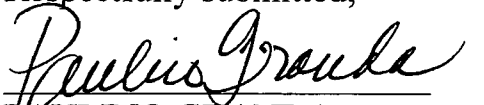
CONCLUSION

For the foregoing reasons, Petitioner GRANDA respectfully requests this

Court grant this Petition for Writ of Certiorari review, vacate the judgment and issue a certificate of appealability based on the substantial showing of the denial of a constitutional right, in this extraordinary case involving the most severe non-capital sentence.

Dated this 26th day of January, 2024.

Respectfully submitted,



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