23-7759

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

ISRAEL SANTIAGO-LUGO
WP: UCC 1-207(or 308)
PRO SE
U.S.M. # 10947-069
FCI TALLADEGA
P.M.B. 1000
TALLADEGA, AL 35160

I. THE QUESTIONS PRESENTED FOR REVIEW

Petitioner application for a Writ of Certiorari presented different questions§

(1) May the District Court and Court of Appeals ignore the Supreme Court's decision in Concepcion v. U.S., 142 S.Ct 2389, 213 L.Ed.2d 731 (2022) ?

(2) May the District Court and Court of Appeals ignore that the orders and Judgment do not explained thier decisions and failed to give a brief statement of reasons to demonstrate that they considered the Petitioner's nonfrivolous arguments according the Supreme Court's decision in Concepcion v. U.S., 142 S.Ct 2389, 213 L.Ed.2d 731 (2022) ?

(3) Whether both federal Courts failed to perform with Concepcion v. U.S., 142 S.Ct 2389, 213 L.Ed.2d 731 (2022), the district court abused its discretion ?

III. LIST OF PARTIES IN COURT BELOW

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

IV. LIST OF CASES DIRECTLY RELATED TO THIS CASE

1) United States Court of Appeals for the First Circuit.
2) Appeal Nos. 21-1654 & 21-1760.
3) United States v. Santiago-Lugo.
4) August 22, 2022.

1) United States Court of Appeals for the First Circuit.
2) Appeal Nos. 20-1594 & 20-1776.
3) United States v. Santiago-Lugo.
4) June 7, 2021.

1) United States Court of Appeals for the First Circuit.
2) Appeal No. 18-2112.
3) United States v. Santiago-Lugo.
4) October 1, 2019.

1) United States Court of Appeals for the First Circuit.
2) Appeal No. 08-1782.
3) United States v. Santiago-Lugo.
4)

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.

II. TABLE OF CONTENT

INDEX OF APPENDICES

V. TABLE OF AUTHORITY

CASE PAGES

STATUTES AND RULES

OTHER AUTHORITIES

VI. CITATIONS OF OPINION 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.4-10 of the Appendices.

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

VII. JURISDICTION

The Judgment of the United States Court of Appeals for the First Circuit was entered on February 28, 2024. **Appendix 1.** Amotion for extension of time to submit a Petition for Panel Rehearing and Rehearing en banc was filed on March 13, 2024. The extension of time was granted. **Appendix 2.** Petitioner for Panel Rehearing and Rehearing en banc were sought, the First Circuit denied on May 3, 2024. **Appendix 3.** The jurisdiction of this Court is invoked under Rule 10 and 28 U.S.C. §1254(1).

VIII. CONSTITUTIONAL PROVISCOLIAN AND STATUTES INVOLVED

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

> No person shall be held to answer for a Capital, or otherwise infamous crime, unless on a presentment or indictment of a Gran 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. §848(a),(b),(c), which provided:

(a) Penalties; forfeiture

Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 20 years and which may be up to life imprisonment, to a fine not to exceed the greater of that authorized in accordance with the provisions of Title 18 or $2,000,0000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, and to the forfeiture prescribed in section 853 of this title; except that if any person engages in such a ctivity after one or more prior convictions of him under this section have become final,he shall be sentenced to a term of imprisonment which may not be less than 30 years and which may be up to life imprisonment, to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of Title 18 or $4,000,000 if the defendant is an individual or $10,000,00 if the defendant is other than an individual, and to the forfeiture prescribed in section 853 of thsi title.

(b) Life imprisonment for engaging in co ntinuing criminal enterprise

Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a) of this section, if-

(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

(2)(A) the violation referred to in subsection (c)(1) of this section involved at least 300 times the quantity of a substance described in subsection 841(b)(1)(B) of this title, or

(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received $10 million dollars in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a substance described in section 841(b)(1)(B) of this title.

(c) "Continuing Criminal Enterprise defined

For purposes of subsection (a) of this section, a person is engaged in a continuing criminal enterprise if-

(1) he violates any provision of this subchapter or subchapter II of this chapter the punishment for which is a felony, and

(2) such violation is a part of a continuing series of violations of this subchapter or subchapter II of this chapter-

(A) which are undertaken by such person in concert with five or more other persons with respect to whom such

person occupies a position of organizer, a supervisory position, or any other position of management, and

(B) from which such person obtains substantial income or resources

IX. 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 4 & 5** (Docs.917 & 918). Following the Supreme Court's decisions in Bailey and Rutledge the district court vacated the firearm count, and the conspiracy count one was set aside. 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 6,7,8,9 & 10** (Docs.1196, 1183, 2959, 3944 & 4184).

On July 9, 2019, a motion to modify term of imprisonment pursuant to the First Step Act of 2018 was filed (Doc.3914). On April 24 2020, the government filed his opposition (Doc.3966). On May 6, 2020, the district court delegated its authority to evaluate Petitioner request for elegibility under the First Step Act of 2018 (Doc.3969). On May 18, 2020, the U.S. Probation Officer filed his own opinion without mention of law and fact, holding that Petitioner's conviction is ineligible (Doc.3989). On May 21, 2020, the district court denied the Petitioner's motion. **Appendix 11** (Doc.3994). A reconsideration was denied. **Appendix 12**(Doc.4007).

On February 23, 2021, the government filed a motion before the

First Circuit requesting remand for further proceedings under §404 of the FSA, because Petitioner is eligible. The First Circuit vacated and remanded with instruction on June 7, 2021. **Appendix 13** (Doc.4043).

On July 23, 2021, the district court denied Petitioner's motions. **Appendix 14** (Doc.4054). On July 30, 2021, Petitioner mailed both a motion for reconsideration and a notice of appeal (Docs.4061 & 4062). The district court declined to rule on the motion for reconsideration on August 17, 2021. **Appendix 15** (Doc.4063). Once again, the government requested before the Court of Appeals to vacate and remand the case. The First Circuit vacated and remanded on August 22, 2022. **Appendix 16** (Doc.4114).

On October 6, 2022, the district court denied Petitioner's motions. **Appendix 17** (Doc.4119). On October 14, 2022, Petitioner mailed a motion for reconsideration within 14 days (Doc.4126). The district court denied on December 20, 2022. **Appendix 18** (Doc.4130).

IX. ARGUMENT FOR ALLOWANCE OF WRIT

THE FIRST CIRCUIT ERRED WHEN AFFIRMED THE DISTRICT COURT'S ORDERS DENYING PETITIONER 'S MOTIONS TO MODIFY TERM OF SENTENCES PURSUANT TO THE FIRST STEP ACT OF 2018

The case at hand is controlled by Concepcion v. U.S., 142 S.Ct 2389, 213 L.Ed.2d 731 (2022), where the Supreme Court has interpreted that "when deciding a First Step Act motion, the district courts bear the standard obligation to explain their decisions and demonstrate that they considered the parties' nonfrivolous arguments", id; i.e., "the Act allows a district court to impose a reduced sentence 'as if' the revised penalties for crack cocaine enacted in the Fair Sentencing act of 2010 were in effect at the time the offense was committed". Id.

During the last 28 years, Petitioner has filed at least three(3) motions to modify term of imprisonment, pursuant to Amendments 706, 750 & 782, the U.S. Sentencing Commission did retroactively the Amendments to proceeds under §3582(c)(2), those motions were denied because the district court imposed a statutory mandatory minimum of life sentence under §848(b), not §848(a). See, U.S. v. Santiago-Lugo, 2019 U.S.App.LEXIS 40060 (1st cir.2019). Now, the First Step Act of 2018 ("FSA") reopen the door to give an opportunity to be heard, and the district court and court of appeals to accomplish justice, because "justice delay is justice denied".

In the instant case, the district court denied Petitioner's motions to modify term of sentences, concluding that the Petitioner resentencing is not proper because:

> (1) "Defendant included collateral attacks in his First Step Act motions. These are outside the scope of the Act's purview";
>
> (2) "Defendant was the 'kingping of a vast drug conspiracy' with over 30 members that operated in at least five housing project in northern municipalities of Puerto

Rico;

(3) "The drug conspiracy defendant commanded ('the Santiago drug ring') planned and engaged in violent conduct such as murder, gun fights, brawls and 'drug wars'";

(4) "In a noteworthy incident, 'the government proffered evidence indicating that the Santiago drug ring was plotting to murder federal agents and local police officers to improve the odds at trial'";

(5) "The drug the Santiago ring pushed and peddled were not limited to crack cocaine-defendant called the shots in the trafficking of shedloads of powder cocaine, heroin, and marijuana";

(6) "A 'conservative estimate' for the drugs distributed in a single housing project 'would be close to 50,000 units having a total value of approximately $3.5 million dollars'".

U.S. v. Santiago-Lugo, 552 F.Supp.3d 200 (D.P.R. Jul 20, 2021); U.S. v. Santiago-Lugo, 2022 U.S.Dist.LEXIS 184238 (D.P.R. Oct 5, 2022).

The district court and court of appeals do not carefully analyzed the FSA and its application to the Petitioner's situation. The district court's opinion and order rendered on October 6, 2022, is a replica, in part, from the district court's opinion and order rendered on July 23, 2021. Here, the government's motion to remand the case noted that:

> "The district court (consistent with this Court's holding in Concepcion) did not consider arguments made by Santiago regarding recent legal and factual development. Specifically, while his earlier motion for sentence reduction under Amendment 782 was denied after a finding that he was ineligible because he was sentenced to a statutory minimum, that statutory minimum no longer applied. Moreover, Santiago has also 'urged' the district court to re-evaluated the §3553(a) sentencing factors, including his rehabilitative efforts".

U.S. v. Santiago-Lugo, 2022 U.S.App.LEXIS 24884 (1st Aug 22, 2022), Motion Requesting Remand Case (July 7, 2022) at p.4. The First Circuit granted the government's motion to remand the case "so that

the same district judge might consider the motion for sentencing relief anew, consistent with Cocepcion v. United States, 142 .Ct 2389 (June 27, 2022)". Id.

The district court's main factors to denial reduce Petitioner's sentences, showing procedural errors, and it was ignored "that punishment should be directly related to the personal culpability of the criminal defendant". U.S. v. Tsarnaev, 968 F.3d 24, 68 (1st cir.2020); U.S. v. Slatten, 865 F.3d 767, 819 (D.C. cir.2017); Puiatti v. McNeil, 626 F.3d 1283, 1313 (11th cir.2020); Motley v. Collins, 18 F.3d 1223, 1230 (5th cir.1994). A sentence is substantively reasonable if the sentencing court has provided a plausible sentencing rationale and reached a defensible result, and "a sentence is procedurally unreasonable when the district court commits a procedural error such as 'failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the §3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence--including an explanation for any deviation from the Guidelines range'". U.S. v. Brown, 26 F.4th 48 (1st cir.2022).

While "the court failed to follow the statutorily prescribed 'parsimony principle'--i.e., that 'a sentence [be] sufficient, but not greater than necessary', to achieve the legitimate objectives of sentencing", U.S. v. Ramos-Gonzalez, 775 F.3d 483, 509 (1st cir.2015), the district court did not mention the Petitioner's nonfrivolous arguments, nor any §3553(a) factors. See, U.S. v. Boyd, 5 F.4th 550 (4th cir.2021)(The district court failed to adequately explains its reasons for rejecting defendant nonfrivolous arguments, and, therefore, abused its discretion); U.S. v. Lathan, 809 Fed.Appx

320 (6th cir.2020). Thus, the district court and court of appeals analysis are procedural errors once are "based on clearly erroneous facts", because "in conducting the leader-organizer analysis, title such as 'kingpin' or 'boss' are not controlling". U.S. v. Chin, 965 F.3d 41, 55 (1st cir.2020). Neither Petitioner was indicted, convicted, or sentenced for "murder, gun fights, brawls and 'drug wars'". See, Docs.322, 875, 917, 918, 1133, 2959 & 3944.

In fact, the government did not refer to any record evidence before the district court and court of appeals that would support the district court's factors and instead argued that the violent acts of his co-conspirators should be attributed to him. But the district court's factors were that Petitioner "commanded planned and engaged in violent conduct such as murder, gun fights, brawls and 'drug war'", and there is not record evidence of Petitioner's violent to support this conclusion. See, U.S. v. Marrero-Ortiz, 160 F.3d at 776 (1st cir.1998)("a codefendant, Miranda, ordered the murders of six people during 1993 and 1994"). Nor Petitioner "'engaged' in violent conduct such as murder". See, U.S. v. Hamilton, 2023 U.S.App.LEXIS 2671 (11th cir.2023)(Per Curiam). And any reference a "gun fights, brawls and 'drug wars'" are uncorroborated verbal hearsay therefore lacked the basic indicia of reliability necessary to establish its probable accuracy, and unreliable hearsay cannot be considering at resentencing. See, U.S. v. Navarro-Santisteban, 83 F.4th 44 (1st cir.2023)(The court thus abused its discretion considering the unreliable hearsay, and we must "reverse unless the government shows the mistake did not affect the sentence").

Nor there exist evidence that Petitioner has been met with the co-conspirators (Davis Martinez Matta, Parra Mercado & Joseph Soto Garcia) "to murder federal agents and local police officers to

improve the odds at trial". See, **Appendix 19** (Doc.171); U.S. v. Towsend, 55 F.3d 168 (5th cir.1995)(The district court improperly failed to inform defendant that it intended to rely on testimony from a co-conspirator's proceeding in denying his motion, denying him a meaningful opportunity to respond. The case was remanded for further proceeding). Moreover, the district court found that "a conservative estimate for the drugs distributed in a single housing project 'would be close to 50,000 units having a total value of approximately 3.5 million dollars'"; i.e., the district court has insinuated that each housing project distributed 50,000 units, when the 50,000 units distributed were to "several drug points". U.S. v. Candelaria-Silva, 714 F.3d 651, 654 (1st cir.2013).

In other words, the district court and court of appeals pretend justify the life sentence under §848(b)(2)(B), and this subsection requires that the Petitioner "received $10 million dollars in gross receipts during any twelve-month period of its existence", and for that reason the district court used the words "a single housing project", to increase the $3.5 million dollars ($3.5 x 5), equivalent of approximately $17.5 million dollars to fall within §848(b)(2)(B), because the words "a single", is singular, the only intention here, went to create and give the appearance of a big organization that distributed big amount of drugs, and received $10 million dollars during 1990 to 1991, the true is, the government does not refer to any record evidence before the court of appeals that would support the district court's conclusion, once again, the district court abused its discretion by relying on a clearly erroneous facts.

Consistent with those observations the district court declined to resentence Petitioner, thus, the district court and court of

appeals overlooked the following nonfrivolous arguments:

(1) **The U.S.S.G. Amendments 706, 750 & 782,** combined with the impact of the FSA was not considered by the district court, the better course is to remand this case to the district court for it to consider the effect of the Act with the Amendments 706, 750 & 782 in the first instance before the district court. See, U.S. v. Charles, 2019 U.S.App.LEXIS 22303 (4th cir.2019); U.S. v. Thomas, 2019 U.S.Dist.LEXIS 94146 n.5 (S.D. AL 2019).

(2) **Post-rehabilitation evidence,** while post-offense rehabilitation efforts may be considered in deciding whether a defandant is entitled to a downward adjustment for acceptance of responsibility, U.S.S.G. §3E1.1, comment n.1(g), impressive rehabilitation efforts may warrant an independent departure, and the mayority of the Court of Appeals had to do so. See, U.S. v. Craven, 239 F.3d 91, 100 (1st cir.2001); U.S. v. Brandstreet, 207 F.3d at 78-79, 83-84 (1st cir.2000). "The district court is in the best position to weight the credibility of a claim of rehabilitationand to balance the sentencing scales in light of such a claim". U.S. v. Cortes-Medina, 819 F.3d 566, 573 (1st cir.2006); U.S. v. Rivera, 994 F.2d 942, 949 (1st cir.1993); U.S. v. Core, 125 F.3d 74 (2d cir.1997); U.S. v. Lombard, 72 F.3d 170, 187 (1st cir.1995); Pepper v. U.S., 562 U.S. 476, 131 S.Ct 1229, 179 L.Ed.2d 196 (2011). However, once the district court failed to provide any explanation for its decision and the presentation of post-rehabilitation evidences in Petitioner's motions were sufficient to rebut the presumption that the district court, in fact, considered all of the relevant evidence. See, U.S. v. McDonald, 956 F.3d 402 (4th cir.2021); U.S. v. Dunn, 2021 U.S.App.LEXIS 18196 (6th cir.2021); U.S. v. Newbern, 51 F.4th 230 (7th cir.2022); U.S. v. Williams, 2022 U.S.App.LEXIS 23019 (4th cir.2022); cf. U.S. v. Johnson, 2022 U.S.App.LEXIS 13997 (5th cir.2022),cert.granted, 143 S.Ct 482, 214 L.Ed.2d275 (2022).

(3) **The statutory minimum,** Petitioner did not receive the lowest statutory penalties that would be available to him under the fair Sentencing Act, and thus, it was procedural error for the district court to deny relief, where the court did not mention "what the new statutory penalties would be". U.S. v. Corner, 987 F.3d 662, 666 (7th cir.2020); U.S. v. Blake, 22 F.4th 637, 642 (7th cir.2022); U.S. v. Palmer, 35 F.4th 841 (D.C. cir.2022); U.S. v. McGriff, 2022 U.S.App.LEXIS 7993 (2d cir.2022); U.S. v. Brown, 974 F.3d 1137, 1139-40 (10th cir.2020); U.S. v. Jones, 962 F.3d 1290, 1305 (11th cir.2020); U.S. v. Godsey, 2021 U.S.App.LEXIS 5185 (6th cir.2021); U.S. v. Reed, 58 F.4th 816 (4th cir.2023); U.S. v. Leonard, 827 Fed.Appx 993, 996 (11th cir.2020); cf. U.S. v. Sims, 842 Fed.Appx 947 (5th cir.2021),cert.granted, 142 S.Ct 2899, 213 L.Ed.2d 1112 (2022). Instead, Petitioner were subject at least

four(4) statutory maximum of 0 to 1[1], or 0 to 5[2], or 0 to 20[3] or 5 to 40. See, U.S. v. Birdine, 962 F.3d 1032, 1034 (8th cir.2020); U.S. v. Hardwick, 802 Fed.Appx 707 (3d cir.2020); U.S. v. Zavala-Marti, 715 F.3d 44, 51 (1st cir.2013); U.S. v. Howard, 824 Fed.Appx 829, 839 (11th cir.2020).

(4) **Intervening change of law or fact as Rutledge, Richardson, Santos, Apprendi, Alleyne, Honeycutt and others.** See, U.S. v. Shileds, 48 F.4th 183 (3d cir.2022); U.S. v. McSwain, 25 F.4th 533 (7th cir.2022); U.S. v. Garcia, 2023 U.S.Dist.LEXIS 57810 (W.S.N.C. 2023); U.S. v. Williams, 2022 U.S.App.LEXIS 24492 (3d cir.2022); U.S. v. Carter, 2022 U.S.App.LEXIS 22831 (9th cir.2022); cf. U.S. v. Fields, 13 F.4th 37 (1st cir.2021),cert.granted, 142 S.Ct 2899, 213 L.Ed.2d 1111 (2022).

(5) **Forfeiture amounts.** See, U.S. v. Sutton, 962 F.3d 979, 982-83 (7th cir.2020). Once the Preliminary Forfeiture Order which issued prior to sentencing exceeded the bound of 21 U.S.C. §853, that it was improperly calculated in light of U.S. v. Helderman, 402 F.3d 220, 223 (1st cir.2005); U.S. v. Jose, 499 F.3d 105, 111 (1st cir.2007); U.S. v. Levesque, 546 F.3d 78 (1st cir.2008).

(6) **The life sentence is substantively unreasonable.** See, U.S. v. Johnson, 26 F.4th 726 (6th cir.2022); cf. U.S. v. Sims, 842 Fed.Appx 947 (5th cir.2021),cert.granted, 142 S.Ct 2899, 213 L.Ed.2d 1112 (2022); See also U.S. v. Hendrix, 74 F.4th 859 (7th cir.2023)("A sentence may also be vacated if it is substantively unreasonable, that is to say, excessively harsh").

---

[1] Petitioner would be re-sentenced under the "catch-all" provision of §841(b)(4) where it carries a much lower statutory maximum sentence that the uncharged/unproven §848(b)(2)(A). See, U.S. v. Barbosa, 271 F.3d 438 (3d cir.2001); U.S. v. Miranda, 248 434, 444 (5th cir.2001); U.S. v. Henderson, 105 F.Supp.2d 523, 535 n.13 (S.D.W. Va. 2000); U.S. v. Lowe, 143 F.Supp.2d 613 (S.D.W. Va. 2000).

[2] For a single conviction under §841 for underterminee amount of marijuana is five years. See, U.S. v. Nordby, 225 F.3d 1053 (9th cir.2000); Derman v. U.S., 298 F.3d at 38 (1st cir.2002); U.S. v. Bailey, 270 F.3d 83 (1st cir.2002); U.S. v. Vigneau, 2 Fed.Appx 53, 54 (1st cir.2001).

[3] In this case, the conspiracy charge did not specify the penalty involved and after Apprendi, trial court may not use §841(b)(1)(A) or (b)(1)(B) for resentencing without drug quantity, the maximum sentence Petitioner could receive under §841(b)(1)(C) for an offense involving an unspecified drug quantity was twenty years. See, U.S. v. Edwards, 2019 U.S.Dist.LEXIS 146571 (N.D. Ill. 2019); U.S. v. Jones, 2019 U.S.Dist.LEXIS 145309 (D. Conn. 2019); U.S. v. Jackson, 240 F.3d 1245 (10th cir.2001); U.S. v. Lafreniere, 236 F.3d 41 (1st

In whole, many Circuit Courts found that Petitioner's nonfrivolous arguments are meritorious within the requirements of the Supreme Court's decision in Concepcion, and they have held that the district court erred for each one of them, therefore, in Concepcion, the Supreme Court's instructs that district court need not reduce any sentence under the FSA. But Concepcion also requires district court to **demonstrate** that they have considered **all** nonfrivolous arguments by the parties, instead, the district court's orders (Dics.4119 & 4130) did not mention of them explicitly, and did not provide sufficient justification for leaving sentences intact. See, U.S. v. Fields, 13 F.4th 37 (1st cir.2021),cert.granted, 142 S.Ct 2899, 213 L.Ed.2d 1111 (2022).

PROCEDURAL REASONABLENESS:

The federal Courts review criminal sentences for both procedural and substantive reasonableness. See, U.S. v. Swain, 49 F.4th 398 (4th cir.2022)(""substantive reaonableness review applies for all section 404 proceedings"); U.S. v. Nelson, 793 F.3d 202 (1st cir.2015). The court of appeals erred once held that "any such error was not prejudicial", first, "while the court ordinarily should identify the main factors upon which it relies, its statement need not either lengthy or detailed", U.S. v. Turbides-Leonardo, 468 F.3d 34, 40 (1st cir.2006), the district court committed at least three(3) procedural errors such as "failing to calculate (or

---

cir.2001); U.S. v. Terry, 240 F.3d 65 (1st cir.2001); U.S. v. Dickerson, 514 F.3d 60, 63 (1st cir.2008); U.S. v. Saldana, 2022 U.S.App.LEXIS 250026 (11th cir.2022)(Per Curiam).

improperly calculating) the Guidelines range", "failing to consider the §3553(a) factors", and "selecting a sentence based on clearly erroneous facts". Nelson, 793 F.3d at 205-06. Thus, procedural errors are present from the district court's orders. See, U.S. v. Hawkins, 2022 U.S.App.LEXIS 13638 (6th cir.2022); U.S. v. Johnson, 813 Fed.Appx 250, 251 (8th cir.2020)(Per Curiam); Ible v. U.S., 2020 U.S.Dist.LEXIS 115620 (S.D. Fla. 2020); U.S. v. Vanzart, 2019 U.S.Dist.LEXIS 127596 (S.D. AL 2019).

CALCULATING THE GUIDELINES RANGE:

The district court's orders did not mention any calculation of the Guideliness range, it is very clear that any determination of, whether is "prejudicial", was no the standard to be applied according Concepcion. See, U.S. v. While, 984 F.3d 76, 81 (D.C. cir.2020); U.S. v. Domenech, 819 Fed.Appx 341, 344 (6th cir.2020); cf. U.S. v. Gonzalez, 9 F.4th 1327 (11th cir.2021),cert.granted, 142 S.Ct 2900, 213 L.Ed.2d 1113 (2022); U.S. v. Eatmon, 2021 U.S.App.LEXIS 27090 (11th cir.2021),cert.granted, 142 S.Ct 2899, 213 L.Ed.2d 1113 (2022); U.S. v. Moyhernandez, 5 F.4th 195 (2d cir.2021),cert.granted, 142 S.Ct 2899, 213 L.Ed.2d 1112 (2022).

Here, the FSA raised the amount of cocaine base offense level of 38, U.S.S.G. §2D1.1(c)(1)(25.2 kg or more), the 1,500 grams attributed to Petitioner under §848(b) results in a base offense levels of 32, U.S.S.G. §2D1.1(c)(4)(At least 840 G but less than 2.8 KG). See, U.S. v. Saldana, 2022 U.S.App.LEXIS 25026 (11th cir.2022). Assuming he continue to receive 6-level enhancements (§§2D1.1(b)(1) & 2D1.5)[4/], resulting in anew total offense level 38.

[4/] The 1988 guidelines must be applied by the district court, as in effect at the date of Petitioner last offense, to avoid offending the Constitutional prohibition on ex post facto law. See, U.S. v. Thompson, 354 Fed.Appx 412, 413 n.1 (11th cir.2009)(Per Curiam).

A total offense level 38, combined with a criminal history category ("CHC") I, results in a new advisory range of 235-293 months. Decrease 6-level enhancements to be applied retroactively from the Amendments 706, 750 & 782, resulting in a new total offense level of 32. A total offense level 32, combined with CHC I, results in anew advisory range of 121-151 months. See, Concepcion v. U.S., 142 S.Ct 2389, 213 L.Ed.2d 731 (2022)("the First Step Act directs district courts to calculate the Guidelines range as if the Fair Sentencing Act's amendments had been in place at the time of the offense").

We have at least two(2) Guidelines range of 235-293 and 121-151 months. On the other hand, the statutory minimum of life sentence does not apply any more imposed twenty-eight(28) years ago, now the statutory minimum is twenty(20) years, and the new Guidelines range of 235-293 or 121-151 months dispute the First Circuit's reasoning that "any such error was not prejudicial", and any reference of life sentence should be construed as substantively unreasonable. See, U.S. v. Eatmon, 2022 U.S.App.LEXIS 24690 (11th

---

Under this circumstances the district court's statement that Petitioner's convictions from the money laundering "sastified the continuing series element of 21 U.S.C. §848", the "date offense concluded 05/27/1993". **Appendix 20.** Thus, "the 1988 version of U.S. Sentencing Guidelines manual 2D1.5 did not allow enhancement for possession of a firearm". Silva v. U.S., 1997 U.S.App.LEXIS 5114 (S.D.N.Y. 1997). Also should be "note[d] that under §2D1.5 of the Guidelines, the district court is prohibited expressly from enhancing the CCE adjusted offense level for [Petitioner]'s 'role in the offense', because the substance of the CCE offense embrances the notion that the [Petitioner] supervised a large-scale criminal operation". Bafia, 949 F.2d at 1475; See also U.S. v. Nixon, 918 F.2d 895 (11th cir.1990)(we decide below that defendant's conspiracy conviction must be vacated, we agree that the enhancement were improper); U.S. v. Anderson, 39 F.3d 357 (D.C. cir.1994)(same).

cir.2022)(Per Curiam); U.S. v. Sims, 842 Fed.Appx 947 (5th cir.2021),cert.granted, 142 S.Ct 2899, 213 L.Ed.2d 1112 (2022).

However, the court of appeals has adopted that Petitioner's sentence "which remained life, as the [district] court had previously determined" from another order (vacated & remanded) not to review before the court of appeals, doing so, they have acted without jurisdiction, and treated this particular appeal like a puzzles, ignoring that they obtained authority and jurisdiction from Petitioner's notice of appeal (Doc.4131), and the notice of appeal contents included only two(2) orders for review. See, Fed.R.App.P. 3(c)(1)(B); Commite Fiestas de la Calle San Sebastian, Inc. v. Soto, 925 F.3d 528, 531 (1st cir.2018). When you look both district court's orders (Docs.4119 & 4130), the substance of those orders do not mention explicitly any conclusion based on life sentence. Infact, the court of appeals erred, and exceeded his authority to affirm this appeal. See, Cook v. Powell, Buick, Inc., 155 F.3d 758, 761 (5th cir.1998); Chaka v. Lane, 894 F.2d 923, 924-25 (7th cir.1990).

In sum, the district court deciding a motion for sentence reduction under FSA, a district court must make "an accurate calculation of the guidelines range at the time of resentencing". U.S. v. Seabrookes, 2022 U.S.App.LEXIS 21546 (3d cir.2022); U.S. v. Saldana, 2022 U.S.App.LEXIS 25026 (11th cir.2022)(Per Curiam); cf. U.S. v. Fields, 13 F.4th 37 (1st cir.2021),cert.granted, 142 S.Ct 2899, 213 L.Ed.2d 1111 (2022). Here, the district court failed to do so, however, assuming the district court look the upward variance, "the district court committed procedural error when it failed to offer an adequate explanation for its upward variances". U.S. v. Garcia-Perez, 9 F.4th 48 (1st cir.2021).

18 U.S.C. §3553(a) FACTORS:

The first factor is "the nature and circumstances of the offense and the history and characteristic of the defendant". Id. §3553(a)(1). Regarding the "circumstances of the offense", to establish a separate CCE count under §848(a),[5] a lesser included offense of §848(b), U.S. v. Torres, 464 F.Supp.3d 651, 652 (S.D.N.Y. 2020)("if those conditions are not satisfied, the defendant is guilty only of a violation of section 848(a), a lesser included offense"), the federal Courts do reference to the conspiracy charge (lesser included offense of 848(a)), as predicate acts to support the continuing series of violation, U.S. v. Escobar-de Jesus, 187 F.3d 148, 162 n.8 (1st cir.1999)(The conspirary conviction is inescapably related to the other predicate offense), at least three(3) predicate acts of **title 21** are needed to support a Petitioner's conviction and sentences as members of a CCE, and because Petitioner's at least three(3) acts never did occur, he cannot be enhanced either as leader[6] or kingpin.[7] See, Richardson v. U.S., 526 U.S. 813, 818 (1999); U.S. v. Santos, 128 S.Ct 2020, 170 L.Ed.2d 912 (2008).

---

[5] The government already conceded before the First Circuit that Petitioner faced a statutory penalties of 20 years up to life imprisonment under §848(a). See, U.S. v. Santiago-Lugo, Appeal Nos. 20-1594 & 20-1776 (1st cir.2021), Motion to Remand Case (February 23, 2021), at p.8 n.4.

[6] A leadership role had to be based upon leadership, and not the Petitioner's importance to the success of the conspiracy, U.S. v. Alberts, 93 F.3d 1469 (10th cir.1996), the lack of evidence that Petitioner controlled others precluded a leadership role. See, U.S. v. Miller, 91 F.3d 1160 (8th cir.1996). Here, the district court failed to make findings there were five or more participant. See, U.S. v. Wester, 90 F.3d 592 (1st cir.1996); U.S. v. Lopez, 957 F.3d 302, 308 (1st cir.2020)(a court msut look to the defendant's role in an enterprise as a whole); **Appendix 21** (Tr.45 pp.4109-10 (Mr. Pagel: We intent if we can, to convict each of these defendant who were charged in that count as if they were charged separately standing alone in separate CCE counts. We contend that each one of them was a manager or an organizer and therefore culpable under

The Supreme Court should look at whether the petit jury could have convicted only on the drug trafficking predicate under the FSA, because the money laundering convictions are not appropriate to sustain the continuing series of violation, U.S. v. Brown, 202 F.3d 691 (4th cir.2000), the conspiracy count one(1) alone is not enough to sustain the CCE sentences, where the law requires at least three(3) predicated offense. See, U.S. v. Chagra, 653 F.2d 26, 27-29 (1st cir.1981); U.S. v. Beckstrom, 647 F.3d 1012, 1014 (10th cir.2011)(A single continuing criminal enterprise conviction, standing alone cannot support a mandatory life sentence under §848(a)). Thus, the district court had broad discretion to "consider intervening change of law or fact in exercise their discretion "following the Supreme Court's decisions in Rutledge, Richardson, Santos, Apprendi, Alleyne, Honeycutt, Concepcion and others. See, U.S. v. Shields, 48 F.4th 183 (3d cir.2022)(The

---

848 title 21 U.S. code 841 CCE. We cain join then in one count, the law permits that...the proof and argument with will stan--will be to--will support the contention that each individually acted as a lieutenant or supervisor and should be guilty for that reasons and that reason alone)); U.S. v. Barona, 56 F.3d 1087 (9th cir.1995).

7/ **Appendix 22** (Tr.40 p.3427 (Mr. Rebollo: In this case there in nobody between Israel Santiago and Nelson Ortiz-Baez, David Martinez Matta, Jose Rosado Rosado, the members that have been also charge with continuing criminal enterprise in this case. So this statute would allow both the government to charge and--and a jury to find other defendant of this nature guilty of this type of violation)(Tr.40 p.3449 (Mr. Rebollo: I also agree that the CCE is intended for the top brass of the criminal organization. But I resubmit to the court that there is nobody in between Nelson Ortiz-Baez, Jose Rasado and David Martinez Matta and Israel Santiago-Lugo))); U.S. v. Lewis, 476 F.3d 369, 378 (5th cir.2007)(the evidence presented by the government was not nearly strong to dispel in the mind of a reasonable jury a reasonable doubt that Lewis organizer, supervised, or managed at least five persons); U.S. v. Garcia-Sierra, 994 F.3d 17 (1st cir.2021)(the record does not support the imposition of the supervisory role enhancement).

district court erred in holding that the First Step Act did not permit consideration of other statutory or sentencing guideline amendments enacted since the date defendant committed his offense, and on the basis of that mistaken premise, refusing to consider defendant's argument that, under current law, he would not be considered a career offender).

Regarding the "history and characteristic of the defendant". Id. §3553(a)(1). Petitioner grew up in an eviroment of Virgilio Davila Housing Project, in part, with his father (deceased), and another place with his mother (deceased). He is a business man, and he has not problem with drugs and alcohol addictions. The current convictions and sentences are the first time, being a first offender, and a life sentence is harsh for a first offender. See, U.S. v. Yu, 1993 U.S.Dist.LEXIS 16839 (S.D.N.Y. 1993)("it is evident that this sentence is harsh for a first offender"). This factor should weight to Petitioner favor.

The second factor is "the need for the sentence imposed". Id. §3553(a)(2)(A)-(D). Regarding "the need for the sentence imposed", the federal Courts have modified the term of sentences for a CCE under FSA,[8/] compassionate release,[9/] and Amendment 782.[10/] During all

---

8/ See, Wright v. U.S., 425 F.Supp.3d 588 (E.D. Va. 2019)(240 months); U.S. v. Miguel Rodriguez, Crim No.95-10227, Doc.326 (D. Mass. 2019)(time served); U.S. v. Dean, 2020 U.S.Dist.LEXIS 86324 (D. Minn. 2020)(time served); U.S. v. Jimenez, 2020 U.S.Dist.LEXIS 76721 (S.D.N.Y. 2020)(340 months); U.S. v. Brown, 2020 U.S.Dist.LEXIS 102685 (E.D. Va. 2020)(time served); Hall v. U.S., 121742 (E.D. Va. 2020)(313 months); U.S. v. Moore, 2020 U.S.Dist.LEXIS 147757 (N.D. Ill. 2020)(360 months); U.S. v. Burrell, 2020 U.S.Dist.LEXIS 155356 (E.D.N.Y. 2020)(30 years); U.S. v. Yate, 2020 U.S.Dist.LEXIS 250232 (N.D. Ill. 2020)(time served); U.S. v. Cotton, 2021 U.S.Dist.LEXIS 70408 (W.D. La. 2021)(20 years); U.S. v. Black, 2021 U.S.Dist.LEXIS 15801 (E.D.N.Y. 2021)(time served); U.S. v. Pettaway, 2021 U.S.Dist.LEXIS 229933 (E.D. Va.2021)(240 months); U.S. v. Mathis, 2022 U.S.Dist.LEXIS 86291 (M.D. Fla. 2022)(time served); U.S. v. White, 2022

these years, Petitioner has completed at least 88 VT Programs, the Supreme Court should note that Petitioner is a man of 54 years old and his maturity may produce a lower risk of recidivism. See, **Appendix 23**; U.S. v. Powell, 468 F.Supp.3d 398, 405 (D.D.C. 2020)(46 years old); U.S. v. Neal, 2020 U.S.Dist.LEXIS 138861 (E.D. Cal. 2020)(36 years old); U.S. v. Brown, 2020 U.S.Dist.LEXIS 237263 (E.D. Wis. 2020)(50 years old); U.S. v. Hall, 2019 U.S.Dist.LEXIS 182388 (W.D. Mich. 2019)(46 years old). This factor should weight to Petitioner favor.

U.S.Dist.LEXIS 152412 (D.D.C. 2022)(33 years & time served); U.S. v. Williams, 2020 U.S.Dist.LEXIS 86773 (W.D.N.Y. 2020)(time served); U.S. v. Gholson, 2022 U.S.Dist.LEXIS 225905 (N.D. Ill. 2022)(time served); U.S. v. Palmer, 2023 U.S.Dist.LEXIS 33556 (D.D.C. 2023)(time served).

9/ See, U.S. v. Cano, 2020 U.S.Dist.LEXIS 239859 (S.D. Fla. 2020)(time served); U.S. v. Millan, 2020 U.S.Dist.LEXIS 59955 (S.D.N.Y. 2020)(time served); U.S. v. Torres, 464 F.Supp.3d 651 (S.D.N.Y. 2020)(time served); U.S. v. Platte, 2020 U.S.Dist.LEXIS 109342 (D.N.H. 2020)(time served); U.S. v. Vigneau, 473 F.Supp.3d 31 (D.R.I. 2020)(time served); U.S. v. Regan, 2020 U.S.Dist.LEXIS (*$)@ (D. Nev. 2020); U.S. v. Kubinsky, 2020 U.S.Dist.LEXIS 84092 (E.D.N.Y. 2020)(time served); U.S. v. Rice, 2020 U.S.Dist.LEXIS 139807 (S.D. Fla. 2020)(time served); U.S. v. Joseph, 2021 U.S.Dist.LEXIS 26216 (S.D. Fla. 2021); U.S. v. Underwood, 2021 U.S.Dist.LEXIS 8378 (S.D.N.Y. 2021)(time served); U.S. v. Fisher, 2020 U.S.Dist.LEXIS 188065 (S.D.N.Y. 2020)(time served); U.S. v. Monsato, 2021 U.S.Dist.LEXIS 19636 (S.D.N.Y. 2021); U.S. v. Williams, 2021 U.S.Dist.LEXIS 216129 (D.D.C. 2021); U.S. v. Favela, 2022 U.S.Dist.LEXIS 172492 (E.D. Cal. 2022)(time served); U.S. v. Davis, 2021 U.S.Dist.LEXIS 216822 (N.D. Cal. 2021); U.S. v. Jackson, 2021 U.S.Dist.LEXIS 103077 (W.D.N.C. 2021)(time served); U.S. v. Whitener, 2021 U.S.Dist.LEXIS 103076 (W.D.N.C. 2021)(time served); U.S. v. Tidwell, 476 Supp.3d 66, 80 (E.D. Pa. 2020)(time served); U.S. v. Piggot, 2022 U.S.Dist.LEXIS 5293 (S.D.N.Y. 2022)(time served); U.S. v. Torres-Nunez, 2021 U.S.Dist.LEXIS 81334 (S.D.N.Y. 2021)(time served); U.S. v. Scarmazzo, 2023 U.S.Dist.LEXIS 18036 (E.D. Cal. 2023)(time served).

10/ See, U.S. v. Kennedy, 2015 U.S.Dist.LEXIS 102511 (E.D. La. 2015)(360 months); U.S. v. Rivera, 2015 U.S.Dist.LEXIS 171929 (S.D.N.Y. 2015)(420 months); U.S. v. Chamber, 2018 U.S.Dist.LEXIS 155268 (E.D. Mich. 2018(360 months); U.S. v. Thomas Wesson, Crim No.92-118-1 (N.D. Ill.); U.S. v. Roberto-Riojas, Crim No.95-00142, Doc.269 (S.D. Tex.)(360 months); U.S. v. Esdridge, 2017 U.S.Dist.LEXIS 131113 (N.D. Okla. 2017)(330 months); U.S. v. Duke, 4:89-CR-0094-DSD-1, Doc.264 (D. Minn. 2016)(365 months); U.S. v.

The third factor is "the kind of sentence available". Id. §3553(a)(3). Regarding "the kind of sentence available", the district court had available time served to individual, as Petitioner, has already served a period of 336 months (or more) in prison. The life sentence for the count two(2) is disproportional severe to a first offender, where the average federal sentence for a CCE was 360 months (or less). See, U.S. v. Rodriguez, 2009 U.S.Dist.LEXIS 63368 (S.D.N.Y. 2009)(340 months); U.S. v. Hernandez-Carrillo, 2011 U.S.App.LEXIS 26794 (6th cir.2011)(360 months); U.S. v. Evans, 826 Fed.Appx 786, 787 (11th cir.2020)(360 months); U.S. v. Smith, 573 F.3d 639, 643 (8th cir.2009)(360 months); U.S. v. Eng, 14 F.3d 165, 168 (2d cir.1994)(151 months). This factor should weight to Petitioner favor.

The fourth factor is "the kinds of sentence and sentencing range established for". Id. §3553(a)(4). Regarding "the sentencing range established for ", following the Amendments 706, 750 & 782, the district court had available the Guidelines range of 121-151 months. This factor should weight to Petitioner favor.

The sixth factor is "the needs to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct". Id. §3553(a)(6). §3553(a)(6) is

---

Dixon, 2015 U.S.Dist.LEXIS 46994 (S.D.W. Va. 2015)(328 months); U.S. v. Beasley, 2014 U.S.Dist.LEXIS 165741 (N.D. Cal. 2014)(312 months); U.S. v. Evans, 826 F.3d 786, 787 (11th cir.2020); U.S. v. Anderson, 2016 U.S.Dist.LEXIS 108640 (W.D.N.Y. 2016)(168 months); U.S. v. Black, 2021 U.S.Dist.LEXIS 15802 (E.D.N.Y. 2021)(360 months); U.S. v. Solano-Moreta, Crim No.95-160, Doc.2138 (D.P.R. 2021)(438 months); U.S. v. Withers, 231 F.Supp.3d 524, 530 (C.D. Cal. 2017); Jones v. U.S., 431 F.Supp.3d 740, 745 (E.D. Va. 2020)(360 months).

"primarily aimed at national disparities". U.S. v. Rivera-Gonzalez, 626 F.3d 639, 648 (1st cir.2010). Most notably, the FSA and Amendment 782 requires reduce the life sentence to time served. By contract, Petitioner in the instant case was sentenced to life where involved at least 1.31 kg of heroin, or 4.73 kg of cocaine, or 5 grams of cocaine base. See, Henderson v. Norris, 258 F.3d 706 (8th cir.2001)(sentence of life without eligibility for parole, imposed upon first offender for sale of .238 grams of cocaine base, was cruel and unusual punishment in violation of 8th Amendment).

It is clear that the punishment presently imposed on him, "life without parole", is disproportionately severe compared to the sentences received by leaders of major drug trafficking organization. See, U.S. v. Arellano-Feliz, 2015 U.S.Dist.LEXIS 77242 (S.D. Cal. 2015)(282 months); U.S. v. Palma-Salazar, 2015 U.S.Dist.LEXIS 104724 (S.D. Cal. 2015)(192 months); U.S. v. Celaya-Valenzuela, 849 F.3d 477 (1st cir.2017)(210 months); U.S. v. Doria, 753 Fed.Appx 1, 2 (2d cir.2018)(324 months); U.S. v. Beltran-Leon, 9 F.4th 485 (7th cir.2021)(28 years); U.S. v. Ochoa-Vazquez, 179 Fed.Appx 572, 573 (11th cir.2006)(365 months). No only has Petitioner's sentence proven disproportionality severe when compared with the sentences received by those notorious and violent drug kingpins, it is also starkly disproportinate to the sentences received by Petitioner's co-defendants, U.S. v. Reyes-Santiago, 804 F.3d 453, 467 (1st cir.2015)(the district court "can consider disparities between condefendants"), almost all of who were released within a period of 22 years, and others have received a reduction under Amendment 782 (Docs.3776,3783,3791,3902). See, U.S. v. McDade, 2014 U.S.Dist.LEXIS 58945 (D.D.C. 2014)(twenty-seven years is very long time). This factor should weight to Petitioner

favor.

As previously said, the issue is whether all nonfrivolous arguments were considered by the district court, and the First Circuit already has determined that the district court's orders failed to do so, at least two(2) nonfrivolous arguments, following the Concepcion's requirements, the district court's orders and First Circuit's Judgment should be vacated, because motions for resentencing brought pursuant to FSA is reviewed for an abuse of discretion. See, U.S. v. Troy, 64 F.4th 177, 184 (4th cir.2023). The district court must consider the revised guidelines range under the Fair Sentencing Act and Petitioner's arguments for a reduced sentence, and explain why the sentence is appropriate in light of the pertinent factors under 18 U.S.C. §3553(a) and individual charcteristics. Troy, 64 F.4th at 185; See also Concepcion, 597 U.S. at 500-02.

"It is a general principle of federal sentencing law that district courts have a duty to explain their sentencing decisions". U.S. v. Emmett, 749 F.3d 817, 820 (9th cir.2014); accord Concepcion v. U.S., 142 S.Ct 2389, 213 L.Ed.2d 731, 2022 WL 2295029, at 12 (2022)("It is well established that a district court generally consider the parties' nonfrivolous arguments before it"). As the duty to provide a reasoned explanation is ultimately grounded in the sentencing Court's responsibility to consider the §3553(a) factors, Trujillo, 713 F.3d at 1009, it applies both "to the initial sentence imposed by the district court, and...to rulings on request for a sentenc[e] reduction", Emmett, 749 F.3d at 820; accord Chavez-Meza v. U.S., 138 S.Ct 1959, 1963, 201 L.Ed.2d 359 (2018)(anchoring this duty in the statutory requirement that judges their explain sentencing decision in open court" (quoting 18 U.S.C.

§3553((c))). Such explanation facilitate "meaningful appellate review" of sentencing decisions, Gall v. U.S., 552 U.S. 38, 50, 128 S.Ct 586, 169 L.Ed.2d 445 (2007), and reinforce "the publics trust in the judicial institution", Rita v. U.S., 551 U.S. 338, 356, 127 S.Ct 2456, 168 L.Ed.2d 203 (2007), by "communicat[ing] that the parties's arguments have been heard, and that a reasoned decision has been made". U.S. v. Carty, 520 F.3d 984, 992 (9th cir.2008).

It is undisputed, the district court's orders do not reflect how its was found that the Guidelines range "which remained life, as the court had previosly determined" was calculated. See, U.S. v. Fields, 2021 U.S.App.LEXIS 27503 (11th cir.2021),cert.granted, 142 S.Ct 2900, 213 L.Ed.2d 1113 (2022); See also U.S. v. Colon-Solis, 354 F.3d 101 (1st cir.2004)(authomatically attributing to the Appellant the full amount of the drugs charged in the indictment and attributed to the conspiracy as a whole. This was error). What constitute sufficient explanation depends on "the complexity of the particular case", including the exhaustiveness of the record and the nature of the parties' arguments, Carty, 520 F.3d at 995-96. Ordinarily, a judge should address any "specific, nonfrivolous argument tethered to a relevant §3553(a) factor in support of a requested sentence", and "explain why he accepts or reject the party's position". Id. at 992-93.

Instead, the First Circuit determined the issue without give the opportunity first to the district court, to perform with their duty and responsibility, thus, is clear, the First Circuit usurped the role of the district court, and erred when its was used a wrong standard of review. See, U.S. v. Sims, 842 Fed.Appx 947 (5th cir.2021),cert.granted, 142 S.Ct 2899, 213 L.Ed.2d 1112 (2022).

This case is distinguished because the district court imposed a statutory mandatory minimum of life sentence under §848(b), at his original sentencing hearing, the district court lacked to consider the §3553(a) factors. See, U.S. v. Grant, 567 F.3d 776, 778 (6th cir.2009)("A statutory mandatory minimum sentence does not permit a sentence judge to fully consider all of the factors normally required for a just sentence under 18 U.S.C. §3553(a)").

Moreover, the question turn whether the district court imposed a sentence that is "greater than necessary", even if it "followe[d] proper procedures and [gave] adequate consideration to [the §3553(a)] factors. A sentence may be substantively unreasonable", or "too long", "when the district court...fails to consider relevant sentencing factors, or gives an unreasonable amount of weight to any pertinent factor". U.S. v. Johnson, 26 F.4th 726 (6th cir.2022). Assuming "the district court's order[s] denying [Petitioner]'s motion[s] under section 404 of the First Step Act of 2018 was procedurally reasonable, it was not substantively so because the district court relied on largely the same factual basis to deny [Petitioner]'s motion[s].....the court placed too little weight on the remedial aims of the First Step Act". U.S. v. Swain, 2022 U.S.App.LEXIS 25740 (4th cir.2022). Thus, "[Petitioner] was in the same legal position as the defendant[s] in the [FSA and Amendment 782], he deserved the same relief". U.S. v. Roberton, 837 Fed.Appx 639, 641 (10th cir.2020).

Therefore, the First Circuit's Judgment conflict with the Supreme Court's decision in Concepcion v. U.S., 142 S.Ct 2389, 213 L.Ed.2d 731 (2022)(§404(c) does not prohibit district courts from considering any arguments in favor of, or against, sentence modification), once the Court of Appeals overlooked at least

seven(7) nonfrivolous arguments, including post-rehabilitation argument already determined as meritorious by the Supreme Court's decision in Concepcion, and many others that the First Circuit set aside without consideration as "meritless", even though the Supreme Court already has rejected the same substances of the First Circuit's Judgment.[11/] Thus, the statutory minimum of life sentence is substantively unreasonable once the Guidelines range of 121-151 months was ignored. See, U.S. v. Roberts, 2022 U.S.App.LEXIS 1155 (4th cir.2022)(we presume that a sentence within or below the Guidelines range is substantively reasonable); U.S. v. Bailey, 27 F.4th 1210 (6th cir.2022); U.S. v. Feemster, 572 F.3d 455, 461 (8th cir.2009)(en banc); U.S. v. Kushimo, 795 Fed.Appx 137, 141 (3d cir.2019).

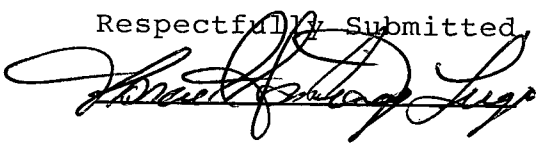
X. CONCLUSION

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

9589 0710 5270 1513 5007 94

Date: May 16, 2024

Respectfully Submitted,



[11/] See, U.S. v. Johnson, 2022 U.S.App.LEXIS 13997 (5th cir.2022),cert.granted, 143 S.Ct 482, 214 L.Ed.2d 275 (2022); U.S. v. Sims, 842 Fed.Appx 947 (5th cir.2021),cert.granted, 142 S.Ct 2899, 213 L.Ed.2d 1112 (2022); U.S. v. Gonzalez, 9 F.4th 1327 (11th cir.2021),cert.granted, 142 S.Ct 2900, 213 L.Ed.2d 1113 (2022); U.S. v. Eatmon, 2021 U.S.App.LEXIS 27090 (11th cir.2021),cert.granted, 142 S.Ct 2899, 213 L.Ed.2d 1113 (2022); U.S. v. Moyhernandez, 5 F.4th 195 (2d cir.2021),cert.granted, 142 S.Ct 2899, 213 L.Ed.2d 1112 (2022); U.S. v. Fields, 2021 U.S.App.LEXIS 27503 (11th cir.2021,cert.granted, 142 S.Ct 2900, 213 L.Ed.2d 1113 (2022); U.S. v. Fields, 13 F.4th 37 (1st cir.2021),cert.granted, 142 S.Ct 2899, 213 L.Ed.2d 1111 (2022).

Israel Santiago-Lugo
WP: UCC 1-207(or 308)
Pro Se
U.S.M. # 10947-069
FCI Talladega
P.M.B. 1000
Talladega, AL 35160