24-5024

ORIGINAL

CASE NO. 24-_____

IN THE
SUPREME COURT OF THE UNITED STATES

TIMOTHY JOHN MIERS,
Pro-Se Petitioner,

V.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.

CORRECTED PETITION FOR WRIT OF CERTIORARI

Timothy John Miers, Pro-Se Petitioner
Reg. No. 11031-050
United States Penitentiary : Tucson
Post Office Box 24550
Tucson, Arizona 85734.

QUESTIONS PRESENTED.

I. Whether the Eleventh Circuit Court of Appeals has so far departed from established Federal Law [28 U.S.C. 2253(c)(2)] and the legal standards set out by this Court in MILLER-EL v COCKRELL, 537 US 322 (2003), when it denied an application for a Certificate of Appealability, which demonstrated the District Court exceeded its own authority when imposing cumulative punishments not authorized by Congress, in direct violation of the Fifth Amendment guarantee against Double Jeopardy and the Constitutional Principle of the Separation of Powers in regards to sentencing, and which was fully-supported by Jurists of reason from the directly-on-point controlling precedents of this Honorable Supreme Court in WHALEN v UNITED STATES, 445 US 684 (1980) and its progeny ?

II. Whether the Eleventh Circuit Court of Appeals has decided an important Federal Question in a way that conflicts with the controlling decisions of this Court, when it decided the separate convictions and cumulative punishments imposed for both, the greater-compound-offense and its necessarily-included lesser-predicate-offense, without the Congressional Authority required, IS NOT in violation of the Fifth Amendment guarantee against Double Jeopardy OR the Constitutional Principle of the Separation of Powers in regards to sentencing, which is contrary to and in manifest violation of the directly-on-point controlling decisions of this Honorable Supreme Court found in : (1) WHALEN v UNITED STATES, 445 US 684 (1980); (2) UNITED STATES v DIXON, 509 US 688 (1993); (3) BALL v UNITED STATES, 470 US 856 (1985); and (4) HARRIS v OKLAHOMA, 433 US 682 (1977) ?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT.

Petitioner Timothy John Miers was the Defendant-Appellant in the Court below. Respondent, who was the Plaintiff-Appellee in the Court below, is the United States of America.

Petitioner is not a corporation. No party is a parent or publicly held company owning 10% or more of any corporation's stock.

STATEMENT OF RELATED PROCEEDINGS.

* UNITED STATES V. MIERS, Case No. 1:14-CR-20642-KMM, U.S. District Court for the Southern District of Florida. Judgment entered on March 16, 2015. Amended Judgment entered on April 28, 2015.

* UNITED STATES V. MIERS, Case No. 15-11124, U.S. Court of Appeals for the Eleventh Circuit. Opinion entered on April 28, 2017. Order denying Rehearing entered on June 27, 2017.

* MIERS V. UNITED STATES, 138 S. Ct. 977 (2018), U.S. Supreme Court. Order denying petition for Writ of Certiorari issued on February 20, 2018.

* MIERS V. UNITED STATES, Case No. 19-CV-20740-KMM, U.S. District Court for the Southern District of Florida. Order denying 28 U.S.C. 2255 (Motion to Vacate) entered on March 21, 2022.

* MIERS V. UNITED STATES, Case No. 19-CV-20740-KMM, U.S. District Court for the Southern District of Florida. Order denying Rule 59(e) Motion entered on July 12, 2022.

* MIERS V. UNITED STATES, Case No. 22-13196, U.S. Court of Appeals for the Eleventh Circuit. Opinion denying a Certificate of Appealability issued on August 29, 2023.

* MIERS V. UNITED STATES, Case No. 22-13196, U.S. Court of Appeals for the Eleventh Circuit. Opinion denying reconsideration issued on January 4, 2024.

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PETITION FOR WRIT OF CERTIORARI.

The Petitioner, Timothy John Miers, respectfully petitions the Court for a Writ of Certiorari to review the opinion issued by the United States Court of Appeals for the Eleventh Circuit.

DECISIONS BELOW.

The United States District Court for the Southern District of Florida entered an order denying Mr. Miers' Motion to Vacate under 28 U.S.C. 2255 and denying a Certificate of Appealability. App. 11.

The United States District Court for the Southern District of Florida entered an order denying Mr. Miers' Rule 59(e) Motion to alter or amend judgment based on a manifest error of law. App. 5.

The Eleventh Circuit Court of Appeals issued an unpublished opinion affirming those decisions and denying a Certificate of Appealability. App. 3.

The Eleventh Circuit Court of Appeals issued an unpublished opinion denying a timely filed Motion for Reconsideration. App. 1.

STATEMENT OF JURISDICTION.

The United States District Court for the Southern District of Florida had jurisdiction over Mr. Miers' Federal Habeas Petition under 28 U.S.C. 2255.

After denying Mr. Miers a Certificate of Appealability pursuant to 28 U.S.C. 2253(c)(2), the Eleventh Circuit issued its opinion on August 29, 2023. APP. 3. Mr. Miers filed a timely Motion for Reconsideration, which the Appellate Court denied on January 4, 2024. App. 1.

This petition for Writ of Certiorari is filed within 90 days of the order dated: January 4, 2024, which denied reconsideration. (SEE: Sup. Ct. R. 13.1). This Honorable Court's Jurisdiction to grant Certiorari is invoked under 28 U.S.C. 1254.

CONSTITUTIONAL PROVISIONS, RULES, TREATISES AND STATUTES INVOLVED.

CONSTITUTIONAL PROVISIONS:

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, except in cases arising 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, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U.S. Const. Article I. Legislative Department.

Section 1. Legislative Powers Vested in Congress.

"All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives".

RULES:

Supreme Court Rule 10:

"Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate that character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision of a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. A petition for a writ of certiorari

is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

Supreme Court Rule 13.1:

"1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the clerk of this Court 90 days after entry of the judgment. A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the clerk within 90 days after entry of the order denying discretionary review."

Supreme Court Rule 14.1(i)(vi):

A petition for writ of certiorari shall contain, an appendix containing, in the order indicated any other material the petitioner believes essential to understand the petition.

Federal Rule of Civil Procedure 59(e): Motion to alter or amend judgment.

"A motion to alter or amend judgment must be filed no later than 28 days after entry of the judgment."

TREATISE:

22 C.J.S. (criminal law) 823 (1961):

"Where an offense cannot be committed without necessarily committing another offense, the latter is a necessarily included offense; and if, the commission of acts made unlawful by one statute, the offender must always violate another, the one offense is necessarily included in the other".

STATUTES:

Title 18, U.S.C. 924(c)(1)(A):

"Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by use of a deadly or dangerous weapon or device) for which the

person maybe prosecuted in a Court of the United States, uses or carries a firearm, and who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime -"

Title 18, U.S.C. 1111(a): Murder

"Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing, or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, child abuse, burglary, or robbery, or perpetrated as part of a pattern or practice of assault or torture against a child or children; or perpetrated premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree".

Title 18, U.S.C. 1201(a)(1):

"Kidnapping ... (a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when --

(1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across the state boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense ..."

Title 18, U.S.C. 1203(a): Hostage Taking.

"Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injury, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts or conspires to do so, shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment".

Title 18, U.S.C. 2261: Interstate Domestic Violence.

(a) Offenses.

(1) Travel or conduct of the offender. A person who travels in interstate or foreign commerce or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel or presence, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(2) Causing travel of victim. A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(b) Penalties.

A person who violates this section or section 2261A [18 USCS 2261A] shall be fined under this title, imprisoned --

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threating bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A [18 USCS 2241 et seq.] if the offense would constitute an offense under chapter 109A [18 USCS 2241 et seq.] (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case,

or both fined and imprisoned.

Title 18, U.S.C. 2241. Aggravated Sexual Abuse

(a) "By force or threat. Whoever, in the special maritime and territorial jurisdiction of the United States of in a Federal Prison, or in any prison, institution, or facility in which persons are held in custody by the direction of or pursuant to a contract or agreement with the head of any Federal Department or agency, knowingly causes another person to engage in a sexual act -

(1) by using force against that other person; or

(2) by threating or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping, or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

Title 21, U.S.C. 843(b). Prohibited Acts C.

(b) Communication facility.

"It shall be unlawful for any person knowing or intentionally to use any communication facility in committing or causing or facilitating the commission of any act or acts constituting a felony under any provision of this title or title III. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term 'communication facility' means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication".

Title 28, U.S.C. 1254. Courts of Appeals; Certiorari; Certified questions.

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) 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;

(2) by certification at any time by a Court of Appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

Title 28, U.S.C. 2253. Appeal

"(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to

the court of appeals from -

(B) the final order in a proceeding under section 2255 [28 USCS 2255].

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right."

Title 28, U.S.C. 2255. Federal Custody; remedies on motion attacking sentence.

"(a) A prisoner in the 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 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".

STATEMENT OF THE CASE.

In 2014, Mr. Miers was a long-distance interstate truck driver. Mr. Miers with his girlfriend, both of whom resided in Miami, Florida, transported goods from Miami to Boston, Massachusetts, and then back to Miami each week.

On August 21, 2014, upon arriving back in Miami, Mr. Miers was arrested by the FBI and charged with two counts of Interstate Domestic Violence [18 U.S.C. 2261(a)(1),(2)], with both counts predicated on one count of Federal Kidnapping [18 U.S.C. 1201(a)(1)].

On October 2, 2014, the government filed a superseding indictment charging one count of kidnapping [1201(a)(1)] (count one), and two counts of interstate domestic violence predicated on the Federal kidnapping, which resulted in serious bodily injury [2261(a)(1),(b)(3) and 2261(a)(2),(b)(3)] in counts two and three. App. 1a.

On December 8, 2014, Mr. Miers proceeded to jury trial and on December 11, 2014, the jury returned a verdict finding Mr. Miers guilty of all three counts charged. App. 1a.

On March 16, 2015, Mr. Miers was sentenced to life imprisonment as to the kidnapping offense in count one and 120 months of imprisonment as to each of the interstate domestic violence offenses in counts two and three, all to be served concurrently. App. 1a.

At that time, Mr. Miers' appointed trial counsel failed to raise a Double Jeopardy objection to the separate conviction and cumulative punishment imposed for the kidnapping offense in count one, which is the necessarily-included - - lesser-predicate-offense required by the greater-compound-offenses of interstate domestic violence in counts two and three. App. 13.

Mr. Miers, through appointed appellate counsel, appealed the judgment to the Eleventh Circuit Court of Appeals, which affirmed his convictions on April 28, 2017. App. 13. However, Mr. Miers' appellate counsel also failed to raise a Double Jeopardy claim regarding the cumulative conviction and punishment imposed for the kidnapping offense as described above. App. 13.

Thus, Mr. Miers, pro-se, petitioned this Supreme Court for a writ of certiorari, based upon one of the claims raised by appellate counsel, which was denied on February 20, 2018. App. 13.

After his conviction became final, Mr. Miers filed a 2255 habeas motion [28 U.S.C. 2255, motion to vacate]. App. 123. In grounds one and two, Mr. Miers claimed that both his trial and appellate counsel failed to raise a Double Jeopardy violation and in ground three, Mr. Miers raised a stand-alone jurisdictional claim, which resulted in both, a due process and double jeopardy violation. App. 125, 138, 140. All three claims were based upon the separate convictions and cumulative punishments imposed for both, the greater interstate domestic violence compound-offense [2261(a)(1),(2)] and its necessarily-included - - lesser-predicate-offense of kidnapping [1201(a)(1)], without the Congressional authorization required. App. 125.

As evidence, because Mr. Miers' claims involved only questions of law, Mr. Miers relied primarily upon the statutes, the charging documents and the well-established, directly-on-point precedential holdings of this Court. In addition, Mr. Miers further relied upon the directly-on-point interstate domestic violence decisions from various Circuit and District Courts below.

First, Mr. Miers pointed to the interstate domestic violence compound-offense statute [18 U.S.C. 2261(a)(1) and (2)] to demonstrate both subsections [(a)(1) and (a)(2)] require the "commi[ssion] or attempted commi[ssion] of a crime of violence against that spouse ...", as an essential element of the offenses. App. 145.-147.

Second, Mr. Miers pointed to each of the charging documents to demonstrate, that; the Federal Kidnapping Offense [18 U.S.C. 1201(a)(1)] is the only substantive offense legally available to

support the interstate domestic violence convictions, as found by the jury. App. 179. The Federal Kidnapping Offense [1201(a)(1)] is the only substantive crime of violence: (1) charged in Mr. Miers' superseding indictment (App. 166); (2) instructed to Mr. Miers' jury (App. 168); (3) returned on the verdict form (App. 179); and (4) contained on the Amended Judgment of Conviction (App. 181).

Third, Mr. Miers pointed to the directly-on-point decisions of other Federal Court's which have specifically reviewed the "crime of violence" element required by the interstate domestic violence offense statute [2261(a)(1), (2)]. Each court agreed that, "in a prosecution for interstate domestic violence, the jury is charged with finding, unanimously and beyond a reasonable doubt, the commission of a specific underlying crime of violence, as well as the elements of that offense". (UNITED STATES V. FAULLS, 821 F.3d 502, 515 (4th Cir. 2016).

Mr. Miers further demonstrated that the defendant in Faulls was found, by the jury, to have committed aggravated sexual assault [18 U.S.C. 2241(a)(1)] as the underlying substantive crime of violence. App. 189. However, the District Court did not impose a separate conviction or cumulative punishment for the underlying substantive sexual assault offense. App. 191. This is because there is no Congressional and/or statutory authority contained in the statutes to impose cumulative punishment.

And fourth, Mr. Miers pointed to this Honorable Supreme Court's binding precedent, to demonstrate the legally correct application of the Blockburger same elements test, to compound-offense statutes, materially indistinguishable from the interstate domestic violence compound statute [2261(a)(1),(a)(2)]. App. 155-156.

This was necessary because, as briefly described above, the interstate domestic violence compound-offense-statute [2261(a)(1),(2)] requires, as an essential element, the commission of a separate and unidentified statutory crime of violence, which is incorporated via the generic phrase; "and who ... commits or attempts to commit a crime of violence against that spouse ..." App. 197.

Thus, Mr. Miers demonstrated that, for the last 50 years, when this Court has been confronted with such a generic phrase, when conducting a double-jeopardy analysis, it incorporated the actual underlying offense elements for comparison under the Blockburger Test and not the generic phrase contained in the text of the statute. App. 113-114.

In addition, Mr. Miers exemplified this Court's incorporation of the actual underlying offense

elements into the Blockburger Test as follows:

* In HARRIS V. OKLAHOMA, 433 US 682 (1977), this Court, when confronted with the prepositional phrase "in the commission of any felony", incorporated the elements of "robbery with firearms" into the Blockburger Test and found; "conviction for the greater crime (felony-murder) could not be had without conviction for the lesser crime (robbery with firearms)", Double Jeopardy found;

* In WHALEN V. UNITED STATES, 445 US 684 (1980), this Court, when confronted with the prepositional phrase "killing a human being in the course of any of six specified felonies", incorporated the elements of "forcible rape of a female" into the Blockburger Test and found; "cumulative sentences for rape and killing in the course of rape are not permitted, since it is plainly not the case that each provision 'requires proof of a fact which the other does not', a conviction for killing in the course of rape cannot be had without proving all the elements of the offense of rape";

* In UNITED STATES V. DIXON, 509 US 688 (1993), this Court when confronted with the generic phrase "commit any criminal offense", incorporated the element of "possession of cocaine with intent to distribute" into the Blockburger Test and found; "because Dixon's drug offense did not include any element not contained in his previous contempt offense, his subsequent prosecution violated the double jeopardy clause ... here, as in Harris, the underlying substantive criminal offense is 'a species of lesser-included-offense'".

Therefore, based on the directly-on-point Federal Law briefly demonstrated here and extensively demonstrated below; interstate domestic violence by kidnapping cannot be had without proving all the elements of the kidnapping offense. Here, in Mr. Miers' case, exactly as in Harris, Whalen, and Dixon, the underlying substantive kidnapping offense - - is a species of lesser-included-offense.

However, the District Court denied Mr. Miers' 2255 motion [28 U.S.C. 2255]. In regard to Mr. Miers' double jeopardy claims, the District Court specifically "rejected [Mr. Miers'] argument that kidnapping is a lesser-included predicate offense constituting the element 'crime of violence' within interstate domestic violence". App. 24.

The District Court adopted the Magistrate's report and recommendation (App. 12), which failed to conduct the legally correct Blockburger same elements test. The Magistrate failed to incorporate the elements of the actual underlying kidnapping offense for comparison in the Blockburger test, as clearly

require by this Court. Instead, the Magistrate compared the generic phrase "commits or attempts to commit a crime of violence against that spouse ..." as contained in the text of the statute. App. 51-58

In conclusion, the Magistrate's report found; "[e]ven if, as suggested, there was a violation, because the sentences imposed were ordered to run concurrently with each other, the double jeopardy clause was not implicated". App. 73. However, the Magistrate's conclusion is contrary to this Court's directly-on-point holdings in BALL V. UNITED STATES, 470 US 856 (1985).

Mr. Miers filed 14 separate objections (No.'s 3 through 17) to the Magistrate's legally erroneous double jeopardy analysis / Blockburger Test and final conclusion that, concurrent sentences do not "implicate" the double jeopardy clause. App. 16, 23.

The District Court overruled Mr. Miers' objections (No.'s 3 through 17). App. 28. The District Court then conducted its own double jeopardy analysis / Blockburger Same Elements Test in which it also failed to incorporate the elements of the actual underlying kidnapping offense for comparison as required by this Court's controlling precedent. The District Court again compared the generic phrase "commits or attempts to commit a crime of violence against that spouse ...", as contained in the text of the statute. App. 24-25.

In conclusion, the District Court found; Mr. Miers "assumes without conclusively establishing that kidnapping ... would necessarily be incorporated as a lesser included predicate offense within interstate domestic violence". App. 26. The District Court denied Mr. Miers' 2255 motion and denied a certificate of appealability when finding Mr. Miers "has not made a substantial showing of the denial of a constitutional right". App. 44.

Mr. Miers immediately filed a motion to alter or amend the District Court's judgment, pursuant to Federal Rule of Civil Procedure 59(e), based on the manifest error of law regarding its legally erroneous application of the Blockburger Same Elements Test. App. 5.

Mr. Miers' Rule 59(e) motion claimed the District Court committed an error of law when failing to incorporate the elements of the actual underlying kidnapping offense for comparison under the Blockburger Same Elements Test, which is in direct disregard and manifest violation of this Court's controlling precedents as conclusively demonstrated above. App. 7-8. As previously shown, the District Court compared the generic phrase "commits or attempts to commit a crime of violence" as contained

in the text of the statute in the Blockburger Same Elements Test. App. 24-25

The District Court denied Mr. Miers' Rule 59(e) Motion. The District Court specifically found; "contrary to movant's arguments ... [this Court] addressed and rejected movant's contention that the Federal kidnapping offense is incorporated as an element of the Federal interstate domestic violence offense through the phrase 'crime of violence'". App. 8. The District Court further found; a certificate of appealability "is not warranted as to the denial of movant's Rule 59(e) motion because movant has failed to establish any manifest error of law". App. 9.

Mr. Miers applied to the Eleventh Circuit Court of Appeals for a certificate of appealability to review the District Court's ruling. App. 106. Mr. Miers' application for a certificate of appealability, with respect to his jurisdictional claim, which involves the cumulative convictions and punishments imposed without the Congressional and / or statutory authorization required and in violation of the double jeopardy clause, spanned 16 pages and was fully-supported by jurists of reason from 10 directly-on-point controlling decisions of this Honorable Court. App. 106-121

However, the Circuit Court denied Mr. Miers application for a certificate of appealability "because he failed to make a substantial showing of the denial of a constitutional right". App. 3.

Mr. Miers immediately filed a motion for reconsideration of the Circuit Court's order denying the certificate of appealability. App. 81. Mr. Miers requested the Circuit Court to reconsider only its specific denial of a certificate of appealability regarding Mr. Miers jurisdictional claim. App. 84.

Mr. Miers' claim regarding the statutory jurisdiction and Congressional Authorization to impose cumulative punishment is a purely legal question. Thus, there exists a significant body of directly-on-point Federal Law (App. 95), together with a significant body of "jurists of reason" from this Honorable Supreme Court which have conclusively answered that legal question. App. 102.

Mr. Miers' motion for reconsideration, which spanned 19 pages, not only extensively and exhaustively demonstrated that significant body of Federal Law, but also every other possible element involved in Mr. Miers' cumulative punishment/double jeopardy claim. App. 81-102. Thus, Mr. Miers' motion for reconsideration is replete with "new" arguments, which is fully supported by "new" case law not presented in Mr. Miers' original application for a certificate of appealability. App. 81-102

However, the Circuit Court denied Mr. Miers' Motion for Reconsideration "because he does not present any new evidence or any new arguments of merit". App. 2.

For the reasons that follow, this Honorable Supreme Court should grant the writ and reverse the ruling of the Eleventh Circuit.

REASONS FOR GRANTING THE WRIT.

The decision below warrants this Court's review for three separate reasons. First and foremost, the petitioner, based upon controlling Federal Law, is currently serving an illegal and cumulative life sentence of imprisonment. At petitioner's sentencing, the District Court exceeded its own authority and jurisdiction, when, without the Congressional Authorization required, it entered separate convictions and imposed cumulative punishments for both, the greater-compound-offense of interstate domestic violence [18 U.S.C. 2261(a)(1),(2)] and the necessarily-included underlying substantive offense of kidnapping [18 U.S.C. 1201(a)(1)]. App. 163-164.

The cumulative convictions and punishments imposed by the District Court, without Congressional Authorization, are in direct violation of : (1) the Fifth Amendment guarantee against double jeopardy; (2) the Constitutional Principle of Separation of Powers; and (3) the directly-on-point controlling precedents of this Court. App. 156, 164. This Court must intercede, review, and reverse the erroneous decision below, which affirmed the illegal and cumulative life sentence of imprisonment imposed by the District Court when denying a Certificate of Appealability. App. 2, 4.

Second, in order for the Circuit Court below to arrive at its decision, which affirmed the cumulative life sentence imposed and denied a Certificate of Appealability, it necessarily had to completely depart from the accepted and usual course of judicial proceedings, which included sanctioning such a complete departure by the District Court.

To be clear, first, the District Court completely departed from the legal standards set out by this Court in WHALEN V. UNITED STATES, 445 US 684 (1980) and its progeny. "In Whalen ... [this] Court modified the analysis and meaning traditionally given Blockburger" (PANDELLI V. UNITED STATES, 635 F.2d 533, 536 (6th Cir. 1980) and set out the modified legal standards for the proper application of the

Blockburger Same Elements Test to "multi-purpose" and compound offense statutes, which are "written in the alternative" and contain "alternative elements". (id at 537).

However, the District Court completely and indisputably departed from the (modified) legal standards set out by this Court in Whalen and instead applied a traditional Blockburger Test to the interstate domestic violence compound offense statute [18 U.S.C. 2261(a)(1) and (2)] and its alternative underlying offense elements in the abstract. App. 24-26.

Thus, as stated, when the Circuit Court below, subsequent to its own double jeopardy analysis, affirmed the cumulative life sentence of imprisonment imposed without the Congressional Authorization required, it necessarily had to depart from the modified Blockburger analysis set out in Whalen and therefore, necessarily sanctioned the exact departure of the District Court.

In addition, the Circuit Court below, when denying a Certificate of Appealability, again and indisputably, completely departed from the Congressional requirement and meaning of the "substantial showing" standard codified in Title 28, U.S.C. 2253(c)(2) and set out by this Court in BAREFOOT V. ESTELLE, 463 US 880 (1983) and its progeny.

This Court has repeatedly made clear; "a C.O.A. may issue 'only if the applicant has made a substantial showing of the denial of a constitutional right' 2253(c)(a). That standard is met when 'reasonable jurists could debate whether (or, for that matter agree that) the petition should have been resolved in a different manner'". (WELCH V. UNITED STATES, 578 US 120, 127 (2016) (quoting SLACK V. McDANIEL, 529 US 473, 484 (2000)).

However, the Circuit Court below denied a Certificate of Appealability to review a claim, involving cumulative punishments imposed without Congressional authorization, which was based upon and materially indistinguishable from the directly-on-point controlling precedent of WHALEN V. UNITED STATES, 445 US 684 (1980) and its progeny, which held;

> "If a Federal Court exceeds its own authority by imposing multiple punishments not authorized by congress, it violates not only the specific guarantee against double jeopardy, but also the constitutional principle of separation of powers in a manner that trenches particularly harshly on individual liberty". (id at 689).

Thus, as clearly demonstrated in the application for a Certificate of Appealability (App. 106-121) and in the Motion for Reconsideration of the lower Court's denial of the Certificate of Appealability (App. 81-105); there is a significant body of "reasonable jurists [that] could debate whether (or for that matter agree that) the [2255] petition should have been resolved in a different matter". (Slack, 529 US at 484).

Therefore, when the Circuit Court below denied the Certificate of Appealability (App. 2, 4) it clearly "has so far departed from the accepted and usual course of Judicial proceedings ... as to call for an exercise of this Court's supervisory powers". [Sup. Ct. R. 10(a)]. This Court must intercede, review, and reverse the erroneous decision below, which denied a Certificate of Appealability. App. 2, 4. The decision of the Circuit Court below is clearly the individual judgment of a Circuit Court Judge and not the (accepted and usual) legal standard set out by this Court beginning BAREFOOT V. ESTELLE, (1983).

And third, when the Circuit Court below denied the Certificate of Appealability, "the order determined not only that [the petitioner] had failed to show any entitlement to relief but also that reasonable jurists would consider that conclusion to be beyond all debate". (WELCH, 578 US at 127). Accordingly, that "determin[ation]" (id) would clearly require the Circuit Court below to have "decided [ ] important Federal question[s] in a way that conflicts with the controlling decisions of this Court". [Sup. Ct. R. 10(c)]

Thus, the Eleventh Circuit Court of Appeals, in conformity with its decision to deny a Certificate of Appealability, necessarily decided that; if a Federal Court exceeds its own authority by imposing separate convictions and cumulative punishments not authorized by Congress, for both the greater and lesser included offenses, IT IS NOT in violation of the double jeopardy clause and IT IS NOT in violation of the constitutional principle of the separation of powers.

However, this decision is contrary to and in manifest violation of the directly-on-point controlling decisions of this Honorable Court in WHALEN; DIXON; BALL; and HARRIS (citations omitted).

Therefore, "unless we wish anarchy to prevail within the Federal Judicial System, a precedent of this Court must be followed by the lower Federal Courts ...". (HUTTO V. DAVIS, 454 US 370, 375, 102 S. Ct. 703, 70 L.ed 2d 556 (1982). Thus, this Court must not only intercede, review and reverse the erroneous decisions of the Eleventh Circuit Court of Appeals, but this Honorable Supreme Court must also order the Eleventh Circuit Court of Appeals back into the "accepted and usual course of judicial

proceedings" [Sup. Ct. R. 10(a)] and back into "the hierarchy of the Federal Court System created by the Constitution and Congress". (HUTTO, 445 US at 375).

A. THE ELEVENTH CIRCUIT COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF THE JUDICIAL PROCEEDINGS AND SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER. [Sup. Ct. R. 10(a)].

When the Eleventh Circuit Court of Appeals decided the "substantial showing" standard required by 28 U.S.C. 2253(c)(2) for issuance of a Certificate of Appealability, IS NOT "met when 'reasonable jurists could debate whether (or, for that matter agree that) the petition should have been resolved in a different manner'" (WELCH, 578 US at 127 quoting SLACK, 529 US at 484), the Court clearly "departed [so far from the accepted and usual course of judicial proceedings" that this Court should intervene. [Sup. Ct. R. 10(a)].

1. Departure from the Congressional requirement and meaning of the "substantial showing" standard, codified in Title 28, U.S.C. 2253(c)(2) and set out by this Court in BAREFOOT V. ESTELLE, (1983).

In 1983, this Court in Barefoot, relying on "the weight of opinion in the Courts of Appeals that a CPC requires petitioner to make a 'substantial showing of the denial of [a] federal right'" adopted that standard. (BAREFOOT V. ESTELLE, 463 US 880, 893 (1983)). To meet that standard, this Court found "the following quotation cogently sums up this standard:

> 'in requiring a 'question of some substance', or a 'substantial showing of the denial of [a] federal right', obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a Court could resolve the issues [in a different manner]; or that the questions are 'adequate to deserve encouragement to proceed further'". (BAREFOOT, 463 US at 893, N.4) (quoting GORDON V. WILLIS, 516 F. Supp. 911, 913 (ND GA 1980)).

In 2000, this Court in Slack, recognized that Congress under the AEDPA of 1996 codified the standard; "a substantial showing of the denial of a Constitutional right" [28 U.S.C. 2253(c)] set out by this Court in Barefoot. "Except for substituting the word 'Constitutional' for the word 'Federal', [28 U.S.C.] 2253 is a codification of the CPC Standard announced in BAREFOOT V. ESTELLE. (citations omitted). Congress had before it the meaning Barefoot had given to the words it selected; and we give the language found in 2253(c) the meaning ascribed it in Barefoot, with due note for the substitution of the word 'Constitutional'". (SLACK, 529 US at 483) (citations omitted in original).

In Slack, this Court explicitly reiterated the meaning of "substantial showing of the denial of a Constitutional right" ascribed to it in Barefoot; "[w]here a District Court has rejected Constitutional claims on the merits, the showing required to satisfy 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the District Court's assessment of the Constitutional claims debatable or wrong". (id at 484).

Then, 20 years later in 2003, this Court in MILLER-EL, reiterated the standard required for issuance of a Certificate of Appealability as follows: "[c]onsistent with our precedent and the text of the habeas corpus statute, we reiterate that a prisoner seeking a COA need only demonstrate 'a substantial showing of the denial of a constitutional right'" [28 U.S.C. 2253(c)(2)]. (MILLER-EL V. COCKRELL, 537 US 322, 327 (2003)) (citing SLACK, 529 US at 484).

In 2016, 33 years subsequent to this Court's opinion in Barefoot, this Court in Welch, reaffirmed the standard for issuance for a Certificate of Appealability as follows: "[a] certificate of appealability may issue 'only if the applicant has made a substantial showing of the denial of a constitutional right'. 2253(c)(2). That standard is met when 'reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner'". (WELCH V. UNITED STATES, 578 US 120, 127 (2016)) (quoting SLACK, 529 US at 484).

This Court further found; "under that standard described above, that order [denying a COA] determined not only that Welch had failed to show any entitlement to relief, but also that reasonable jurists would consider that conclusion to be beyond all debate". (id).

Thus, to date: April, 2024, 41 years post Barefoot (1983), there can be no question and / or argument as to the legal standard required for a Certificate of Appealability to issue, nor the showing

required to satisfy that standard. However, the Eleventh Circuit Court of Appeals has clearly and indisputably departed from the "substantial showing" standard codified in Title 28, U.S.C. 2253(c)(2) and originally set out and followed by this Court for over 40 years in BAREFOOT V. ESTELLE (citations omitted).

The motion for a Certificate of Appealability to review a cumulative sentencing error which resulted in a double jeopardy violation was based upon the directly-on-point controlling precedent of WHALEN V. UNITED STATES, 445 US 684 (1980) and its progeny. App. 103-117.

To be absolutely concrete, the cumulative sentencing error specifically claimed that:

> "The District Court exceeded its statutory authority and / or jurisdiction when entering separate convictions and imposing cumulative punishments for both, the greater-compound offense of interstate domestic violence [18 U.S.C. 2261(a)] and the legally-required lesser-included predicate crime of violence (here, kidnapping [18 U.S.C. 1201(a)], ... without the Congressional and / or statutory authority required to impose cumulative punishments". App. 84-85

Accordingly, this Court in Whalen (id), when reviewing a cumulative sentencing error which resulted in a double jeopardy violation involving the compound-offense of felony-murder specifically held that:

> "If a Federal Court exceeds its own authority by imposing multiple punishments not authorized by congress, it violates not only the specific guarantee against double jeopardy, but also the constitutional principle of separation of powers in a manner that trenches particularly harshly on individual liberty". (WHALEN V. UNITED STATES, 445 US 684, 689 (1980).

Thus, it is indisputable, when the petitioner demonstrated Whalen (id) and its significant progeny, in support of the cumulative sentencing error/double jeopardy violation, the "substantial showing" standard was met by the reasonable jurists of this court who clearly "could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner". (SLACK, 529 US at 484).

The following is a small demonstration of Whalen's substantial progeny, all of which make explicitly clear; Congressional Authorization IS REQUIRED to impose cumulative punishments. (SEE: WHALEN, 445 US at 690) (cumulative punishments "denied the petitioner his constitutional right to be deprived of liberty as punishment for criminal conduct only to the extent authorized by Congress") (App. 116); (MISSOURI V. HUNTER, 459 US 359, 366 (1983)) (quoting WHALEN, 445 US at 692) ("'Accordingly, where two statutory provisions proscribed the same offense, they are construed not to authorize cumulative punishment in the absence of a clear indication of contrary legislative intent'") (App. 92); (SEE ALSO: RUTLEDGE V. UNITED STATES, 517 US 292, 303 (1996)) (citing WHALEN V. UNITED STATES, 445 US 684 (1980)) (Rutledge's "conviction amounts to cumulative punishment not authorized by Congress"); (UNITED STATES V. DIFRANCESCO, 449 US 117, 139 (1980)) (citing WHALEN, 445 US at 697-698) ("a defendant may not receive a greater sentence than the legislature has authorized"); (ALBERNAZ V. UNITED STATES, 450 US 333, 344 (1981)) (quoting WHALEN, 445 US at 689) ("[T]he 'power to define criminal defenses and to prescribe punishments to be imposed upon those found guilty of them, resides wholly with Congress'"); (MONTANA DEPT. REV. V. KURTH RANCH, 511 US 767, 801 (1994)) (quoting WHALEN, 445 US at 688) ("'[T]he question whether punishments imposed by a court after a defendant's conviction upon criminal charges are unconstitutionally multiple cannot be resolved without determining what punishments the legislative branch authorized'").

Clearly, there is a substantial body of directly-on-point controlling law from this Court which prohibits cumulative punishments, without the required Congressional and / or Legislative Authorization. Thus, that substantial body of law is necessarily comprised of a substantial body of reasonable jurists from this Honorable Court.

Therefore, it is equally clear, the Eleventh Circuit Court of Appeals departed from the "substantial showing" legal standards codified by Congress and set out by this Court, when it erroneously denied the issuance of the Certificate of Appealability, which was based upon Whalen and its progeny.

This Honorable Supreme Court must intervene to protect the Constitutional Rights of the petitioner, to protect the integrity of and prevent "anarchy [from] prevail[ing] within the Federal Judicial System". (HUTTO, 454 US at 375). The Eleventh Circuit Court of Appeals must be ordered back to the "accepted and usual course of Judicial Proceedings" [Sup. Ct. R. 10(a)] and back into the "hierarchy of the Federal Court System created by the Constitution and Congress". (id).

2. DEPARTURE FROM THE BLOCKBURGER SAME ELEMENTS TEST AS MODIFIED BY THIS COURT IN WHALEN V. UNITED STATES (1980) FOR APPLICATION TO COMPOUND OFFENSE STATUTE, ALSO RECOGNIZED AS THE "WHALEN ANALYSIS".

When the District Court and the Eleventh Circuit Court of Appeals, both failed to apply the Blockburger Same Elements Test as modified by this Court in Whalen (1980), for the proper double jeopardy analysis of multi-purpose and compound offense statutes, the Eleventh Circuit Court of Appeals not only "departed from the accepted and usual course of Judicial Proceedings [but] sanctioned such a departure by [the District Court below it]". [Sup. Ct. R. 10(a)].

"In Whalen v. United States, 445 US 684, 100 S. Ct. 1432, 63 L.ed 2d 715 (1980), and Illinois v. Vitale, 447 US 410, 100 S. Ct. 2260, 65 L.ed 2d 228 (1980) ... the Supreme Court modified the abstract approach to the double jeopardy clause that was employed by our Court on direct appeal. The [Supreme] Court modified the analysis and meanning traditionally given Blockburger". (PANDELLI V. UNITED STATES, 635 F.2d 533, 536 (6th Cir. 1980)) (citations omitted in original).

This Court's modification of the Blockburger Test was partly in response to multi-purpose and compound offense statutes, which are "written in the alternative", contain "alternative elements" and require predicate offenses. (id at 537). (SEE: 18 U.S.C. 1111(a)) (murder ... committed in the perpetration of any arson ... kidnapping ... aggravated sexual abuse ... burglary or robbery ...); (18 U.S.C. 924(c)(1)(A)) (any person who, during or in relation to any crime of violence or drug trafficking crime ... uses or carries a firearm); (18 U.S.C. 2261(a)(1), Interstate Domestic Violence) (and who, in the course of, or as a result of such travel ... commits or attempts to commit a crime of violence against that spouse ...).

Thus, "Whalen and Vitale make clear, however, that the requisite statutory elements must be examined from the vantage point of the particular case before the Court". (PANDELLI, 635 F.2d at 536). "After reformulating the felony murder statute before it in Whalen, the Court found that rape is a lesser offense included in the felony murder, because all the elements of rape are included within the elements required in a felony murder case based on rape." (id at 537) (citations omitted in original).

Then, in "Illinois v. Vitale ... the Court extended the Whalen Analysis as it reformulated the statute at issue in order to isolate the alternatives applicable to the particular case before it. The two cases [Whalen and Vitale] redefine the task faced by Courts reviewing double jeopardy claims :

> before applying the Blockburger Test they must narrow the statute to be analyzed until it includes only the alternatives relevant to the case at hand". (id at 537-538) (citations omitted).

Notably, in addition to the Sixth Circuit Court of Appeals recognizing "the Whalen Analysis" (id), other circuits also recognized the Whalen Analysis as the "accepted and usual course of judicial proceedings" [Sup. Ct. R. 10(a)] when specifically conducting a double jeopardy analysis on "compound and predicate offenses". (LUCERO V. KERBY, 133 F.3d 1299, 1320 (10th Cir. 1998)) (recognizing the "Whalen Analysis ... as an exception to the traditional analysis [i.e. strict elements application of Blockburger] designed to cope more affectively with the complicated problem of compound and predicate offenses"); (SEE ALSO: JONES V. UNITED STATES, 516 A. 2d 929, 933 N.7 (D.C. 1986)) (recognizing the "Whalen Analysis" is necessary to identify and compare an "underlying crime of violence"); (UNITED STATES V. McLAUGHLIN, 164 F.3d 1, 13 (D.C. Cir. 1998)) (recognizing that the Whalen Analysis is required where a "statute lists several alternative sub-offenses").

However, the District Court and the Eleventh Circuit Court of Appeals, both departed from (modified) Blockburger Test / Whalen Analysis, which was specifically set out by this Court for double jeopardy analysis of "compound and predicate offenses", when the Courts below were conducting a double jeopardy analysis of "compound and predicate offenses". (LUCERO, 133 F.3d at 1320).

First, the District Court for the Southern District of Florida, conducted a traditional abstract Blockburger Test upon the Interstate Domestic Violence Compound-Offense [2261(a)(1),(2)] and its underlying predicate offense of kidnapping [1201(a)(1)]. App. 24-26.

Thus, as the record clearly shows, the District Court did not "reformulate[] the statute at issue in order to isolate the alternatives applicable to the particular case before it", nor did it "narrow that statute to be analyzed until it includes only the alternatives relevant to the case at hand before applying the Blockburger Test", as required by this Court's modified legal standard of review. (PANDELLI, 635 F.2d at 537-538). App. 24-26.

Instead, the District Court compared the generic reference "commits or attempts to commit a crime of violence", verbatim, as contained in the text of the compound offense statute [2261(a)(1),(2)] as an element in the Blockburger Test and in the abstract to the predicate kidnapping offense elements [1201(a)(1)]. App. 24-26.

However, if the District Court had not contravened the legal standard set out by this Court and applied the Whalen Analysis, which requires "reformulating the [interstate domestic violence] statute before it", the District Court would have found, materially indistinguishable from this Court's finding in Whalen (445 US at 693-694);

> Kidnapping [1201(a)(1)] is a lesser included offense of the interstate domestic violence compound offense [2261(a)(1),(2)] because "a conviction for [interstate domestic violence in the course of kidnapping] cannot be had without proving all the elements of the offense of [kidnapping]. (id).

(SEE: PANDELLI, 635 F.2d at 537); (SEE ALSO: UNITED STATES V. DIXON, 509 US 688, 698 (1993)) (quoting ILLINOIS V. VITALE, 447 US at 420) ("Here, as in Harris, the underlying substantive offense is 'a species of lesser included offense'").

Accordingly, the Distsrict Court's complete departure from this Honorable Court's modified legal standard of review involving compound and predicate offenses is clearly demonstrated on the face of the record, including its erroneous conclusion resulting from its failure to follow the law as set out by this court. App. 24-26.

However, the Eleventh Circuit Court of Appeals not only sanctioned that departure of the District Court below it, but also completely departed from the modified legal standard of review set out by this Court in Whalen.

First, the Eleventh Circuit Court of Appeals denied a Certificate of Appealability (App. 2, 4) to review whether or not "the [District] committed a manifest error of law when it applied the [traditional abstract] Blockburger Test and determined the Federal Kidnapping offense, 18 U.S.C. 1201, is not a lesser included offense within the Federal Interstate Domestic Violence Offense, 18 U.S.C. 2261" ..., as claimed in a Fed. R. Civ. P. 59(e) motion. App. 7-8, 120. (SEE: WELCH, 578 US at 127) (when the

court denied a certificate of appealability, "the order determined not only that [Miers] had failed to show any entitlement to relief but also that reasonable jurists would consider that conclusion to be beyond all debate").

And second, the Eleventh Circuit Court of Appeals, subsequent to its review of the cumulative sentencing error / double jeopardy violation claim, in which the required Whalen Analysis was specifically demonstrated (App. 110 N.11), and subsequent to its own double jeopardy analysis of the compound and predicate offense statutes involved:

> Effectively affirmed the illegal and cumulative punishments imposed upon the petitioner for both, the greater interstate domestic violence compound offense and its lesser included predicate offense of kidnapping pursuant to the directly-on-point established Federal Law in Whalen v. United States (1980) (citations omitted) as conclusively demonstrated above;

when denying a certificate of appealability to review the cumulatively imposed punishments. App. 2, 4. (SEE: WELCH, 578 US at 127) (when the Court denied a certificate of appealability, "the order determined not only that [Miers] had failed to show any entitlement to relief but also that reasonable jurists would consider that conclusion to be beyond all debate").

Thus, when the Eleventh Circuit Court of Appeals denied the certificate of appealability, subsequent to its own review, it necessarily had to completely "depart from the accepted and usual" modified legal standard of review set out in Whalen (the modified Blockburger Test / Whalen Analysis) in order to deny issuance of a certificate of appealability, because a properly applied Whalen Analysis demonstrates a glaring double jeopardy violation.

Therefore, "unless we wish anarchy to prevail within the Federal Judicial System" this Honorable Court must not only intercede, review and reverse the erroneous decisions of the Eleventh Circuit Court below, but this Court must order the Court below back into the "accepted and usual course of judicial proceedings" [Sup. Ct. R. 10(a)] and back into the "hierarchy of the Federal Court System created by the Constitution and Congress". (HUTTO, 454 US at 375).

B. THE ELEVENTH CIRCUIT COURT OF APPEALS HAS DECIDED IMPORTANT FEDERAL QUESTION[S] IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT. [Sup. Ct. R. 10(c)].

When the Eleventh Circuit Court of Appeals decided that separate convictions and cumulative punishments imposed for both, the greater-compound-offense and its necessarily-included underlying predicate-offense, without the Congressional Authorization Required, IS NOT in violation of the Double Jeopardy Clause OR the Constitutional Principle of Separation of Powers, its decision violates the directly-on-point controlling decisions of this Court. (SEE: WHALEN V. UNITED STATES, 445 US 684, 689 (1980)) ("If a Federal Court exceeds its own authority by imposing multiple punishments not authorized by Congress, it violates not only the specific guarantee against double jeopardy, but also the Constitutional principle of powers in a manner that trenches particularly harshly on individual liberty").

When the Eleventh Circuit Court of Appeals decided to deny a Certificate of Appealability to review whether the "imposi[tion] [of] multiple punishments not authorized by Congress" (id) violated the double jeopardy clause, its decision necessarily required two separate legal findings. First, the Court below had to find the "imposi[tion] [of] multiple punishments not authorized by Congress" (id) DOES NOT VIOLATE the double jeopardy clause, NOR the separation of powers. Second, the Court below then had to find NO "reasonable jurists could debate whether (or, for that matter agree, that)" (SLACK, 529 US at 484) when a Federal Court "impos[es] multiple punishments not authorized by Congress, it violates not only the specific guarantee against double jeopardy, but also the Constitutional principle of separation of powers ..." (WHALEN, 445 US at 689).

Thus, as briefly and conclusively demonstrated, the Eleventh Circuit Court of Appeals "has decided [ ] important Federal question[s] [i.e. double jeopardy; due process; and separation of powers] in a way that conflicts with relevant decisions of this Court". [Sup. Ct. R. 10(c)]. Specifically, the Eleventh Circuit has directly contravened this Court's controlling precedent of WHALEN V. UNITED STATES, 445 US 684 (1980) and its substantial progeny, in which this Court has repeatedly held, that; cumulative punishments "den[y] the petitioner his constitutional right to be deprived of liberty as punishment for criminal conduct only to the extent authorized by Congress". (id at 690); (SEE ALSO: HUTTO V. DAVIS, 445 US 370, 375 (1982)) ("[A] precedent of this Court must be followed by the lower Federal Courts").

The petitioner, in the Court of Appeals below, relying upon the charging documents, the statutes involved and this Court's controlling decision in Whalen, legally and conclusively demonstrated that the District "Court exceeded its authority by imposing [cumulative] punishments not authorized by Congress". (WHALEN, 445 US at 689). The District Court erroneously imposed cumulative punishments, which were not authorized by Congress, for both the greater-compound-offense of interstate domestic violence [18 U.S.C. 2261(a)(1),(2)] and its legally-required and necessarily-included underlying predicate offense of kidnapping [18 U.S.C. 1201(a)(1)]. App. 12, 181.

Notably, the cumulative sentencing error, the resulting double jeopardy violation and the statutory construction of the provisions involved here, are materially indistinguishable from those reviewed and decided in Whalen. This Court in Whalen, specifically reviewed the "imposi[tion] of multiple punishments not authorized by Congress" (id) for both, the greater-compound-offense of felony-murder and its legally-required and necessarily-included underlying predicate offense of rape. Upon conclusion of its double jeopardy analysis this Court held; "a convictions for killing in the course of rape cannot be had without proving all the elements of the offense of rape". (id at 693-694).

Therefore, in accordance with this Court's legal conclusion in Whalen, a conviction for interstate domestic violence in the course of kidnapping "cannot be had" without proving all the elements of the offense of kidnapping. (id). (SEE ALSO: HARRIS V. OKLAHOMA, 433 US 682 (1977)) ("conviction for the greater crime (felony-murder) could not be had without conviction for the lesser crime (robbery with firearms").

Accordingly, throughout the proceedings below, the petitioner demonstrated the legal conclusions and Constitutional holdings of this Honorable Court in Whalen and its progeny. In addition, the petitioner further demonstrated below, that :

i. "[I]n a prosecution for interstate domestic violence, the jury is charged with finding unanimously and beyond a reasonable doubt, the commission a specific underlying crime of violence, as well as the elements of that offense". (UNITED STATES V. FAULLS, 821 F.3d 502, 515 (4th Cir. 2016)). Consequently, to meet this element, Faulls' jury was instructed upon and unanimously returned Aggravated Sexual Abuse [18 U.S.C. 2241(a)(1)]. However, in accordance with Whalen and its progeny, the Court did not enter separate convictions or impose cumulative punishments. (SEE: FAULLS' charging documents, App. 187-

196); (SEE ALSO: App. 95-96, for five additional interstate domestic violence cases in which the jury was instructed and unanimously returned the required underlying predicate offense);

ii. The Federal Kidnapping Offense [18 U.S.C. 1201(a)(1)] is the underlying predicate offense which supports the interstate domestic violence compound offenses, because it is the only substantive predicate offense on which the jury was instructed and returned unanimously on the verdict form. (SEE: excerpt of petitioner's jury instructions and verdict form, App. 168-179); (SEE ALSO: NEVILLE V. BUTLER, 867 F.2d 886, (5th Cir. 1989)) (finding, because "armed robbery was the sole felony which purported to support the first degree murder count", conviction on both counts improperly resulted in punishing defendant twice for the same offense, which violated the double jeopardy clause); and,

iii. There is no Congressional authorization and / or legislative intent to impose cumulative convictions and punishments within either the interstate domestic violence statute [2261(a) or (b)] or the kidnapping statute [18 U.S.C. 1201(a)]:

a. First, after two separate reviews for legislative intent to cumulatively punish, the Federal kidnapping offense [18 U.S.C. 1201(a)] was found to be a lesser included offense of Federal Murder [18 U.S.C. 1111(a)] and a lesser included offense of Federal Hostage Taking [18 U.S.C. 1203(a)]. App. 98. (SEE: UNITED STATES V. HEADMAN, 594 F.3d 1179, 1180 (10th Cir. 2010)) ("government concede[d] error on double jeopardy issue" involving Federal Murder predicated on Federal Kidnapping); (SEE ALSO: UNITED STATES V. SALAD, 907 F. Supp. 2d 743, 750 (E.D. VA. 2012)) ("kidnapping is a lesser included offense of hostage taking");

b. The interstate domestic violence statute [2261(a)] includes a penalty section [2261(b)] where "Congress has chosen to allocate punishment for the offense ... and provided a gradient scale of punishments depending on the gravity of harm done by the defendant" to the victim. (UNITED STATES V. SHRADER, 675 F.3d 300, 313 (4th. Cir. 2011). In addition, "the plain words of the statute" (id) explicitly and unambiguously states when "a person who ... commits or attempts to commit a crime of violence against that spouse ... shall be punished as provided in subsection (b)". [18 U.S.C. 2261(a)(1) and (2)]; and,

c. The United States Government below has conceded that; "the kidnapping and interstate domestic violence statutes do not authorize cumulative punishments". App. 94, 112. (SEE ALSO: MIERS V. UNITED STATES, Case No. 19-CV-20740-KMM, Docket No. 32, P.6).

Thus, throughout the proceedings below, the petitioner has legally and conclusively demonstrated every element necessary to establish an entitlement to relief under Whalen and its considerable progeny. (SEE: App. 91-101; 106-117; 145-156; and 163-164). To be concrete, as demonstrated above (P. 25), the cumulative sentencing error, the resulting double jeopardy violation and the statutory construction of the compound offense provisions involved here, are materially indistinguishable from those reviewed and ruled upon in Whalen.

Here, in the Court below, the petitioner claimed that the cumulative punishments imposed for both, the greater compound offense of interstate domestic violence and its necessarily-included underlying predicate offense of kidnapping, without the Congressional authorization required, violated the double jeopardy clause. App. 106, 163-164.

In Whalen (1980), this Court reviewed a claim involving the consecutive punishments imposed for both the greater compound offense of felony murder and its necessarily-included underlying predicate offense of rape, without the Congressional authorization required, AND FOUND a double jeopardy violation. (WHALEN, 445 US at 693-694).

Regardless of the fact that the claims are legally identical, the Court of Appeals below denied a certificate of appealability and decided that when demonstrating the very fact that the claim is legally identical to that found in Whalen, the petitioner "failed to make a substantial showing of the denial of a Constitutional right". App. 3-4. However, to reach that legal conclusion the standard requires the Court below to find that NO "reasonable jurists could debate whether (or, for that matter, agree that)" Whalen and / or its holdings were correctly decided. (SLACK, 529 US at 484).

Therefore, it cannot be legally disputed when the Eleventh Circuit Court of Appeals, subsequent to its review of the materially indistinguishable claim and the Federal Law in support, which was provided by this Court's directly-on-point controlling decision in Whalen, decided to deny a certificate of appealability, it necessarily rejected Whalen in its entirety. Thus, the Eleventh Circuit Court of Appeals has "decided important Federal question[s] involving double jeopardy, due process and the separation of powers in a way that conflicts with [the] relevant decisions of this Court" [Sup. Ct. R. 10(c)] in WHALEN, GARRETT, DIXON and BALL. (citations omitted). More importantly, the Eleventh Circuit has outright rejected this Court's controlling decisions in Whalen and its long line of unbroken progeny.

The Eleventh Circuit Court of Appeals has clearly violated the controlling precedents of WHALEN V. UNITED STATES, 445 US 684 (1980); GARRETT V. UNITED STATES, 471 US 773 (1985); UNITED STATES V. DIXON, 509 US 688 (1993); BALL V. UNITED STATES, 470 US 856 (1985); AND HARRIS V. OKLAHOMA, 433 US 482 (1977).

Therefore, "unless we wish anarchy to prevail within the Federal Judicial System, a precedent of this Court must be followed by the lower Courts ..." (HUTTO, 445 US AT 375). Thus, this Court must intercede and order the Eleventh Circuit Court of Appeals to follow not only the decisions of this Honorable United States Supreme Court, but also to follow "the hierarchy of the Federal Court system created by the Constitution and Congress". (id).

1. WHALEN V. UNITED STATES, 445 US 694 (1980); and
GARRETT V. UNITED STATES, 471 US 773 (1985).

This Court in Whalen has clearly held that "the question whether punishments imposed by a Court after a defendant's conviction upon criminal charges are unconstitutionally multiple cannot be resolved without determining what punishments the Legislative Branch has authorized". (Whalen, 445 US at 688). The case in Whalen involved "cumulative punishments for rape" and for "killing committed in the course of the rape" and "if Congress has not authorized cumulative punishments ... [Whalen] has been impermissibly sentenced.

This Court went on to explain its reasoning as follows "[t]he double jeopardy clause at the very least precludes Federal Courts from imposing consecutive sentences unless authorized by Congress to do so. The Fifth Amendment guarantee against double jeopardy embodies in this respect simply one aspect of the basic principle that within our Federal Constitutional framework the legislative power, including the power to define criminal offenses and to prescribe the punishments to be imposed upon those found guilty of them, resides wholly with the Congress". (id at 689) (footnote omitted).

In conclusion of its reasoning prohibiting criminal punishments not authorized by Congress, this Court held; "if a Federal Court exceeds its own authority by imposing multiple punishments not authorized by Congress, it violates not only the specific guarantee against double jeopardy, but also the Constitutional principle of separation of powers in a manner that trenches particularly harshly on

on individual liberty". (id at 689).

As clearly and conclusively demonstrated above, the Eleventh Circuit Court of Appeals has not only contravened this Court's reasoning and legal conclusions in Whalen, but has outright rejected Whalen in its entirety.

In the petitioners case, the District Court exceeded its own authority by imposing multiple punishments not authorized by Congress, for both the compound offense of interstate domestic violence and its necessarily included underlying predicate offense of kidnapping. However, subsequent to repeated demonstrations of this Court's legal conclusions and Constitutional holdings in Whalen, the Eleventh Circuit Court of Appeals not only affirmed the illegal and cumulative punishments, but necessarily found no reasonable jurists could debate the legality of the cumulative sentences imposed in direct violation of Whalen.

In Whalen, this Court recognized that the rule of statutory construction stated in Blockburger v. United States, 284 US 299, 76 L.ed 306, 52 S.Ct. 180 (1932), has been "consistently relied on ever since to determine whether Congress has in a given situation has provided that two statutory offenses may be punished cumulatively. The assumption underlying the rule is that Congress ordinarily does not intend to punish the same offense under two different statutes. Accordingly, where two statutory provisions proscribe the 'same offense', they are construed not to authorize cumulative punishments in the absence of a clear indication of contrary legislative intent. (Whalen, 445 US at 691-692).

"In the Blockburger Case the Court held that '[t]he applicable rule is that where the same act or transaction constitutes a violation of two distinct provisions, the test to be applied to determine Whether there are two offenses or only one, is whether each provision requires proof of fact which the other does not'". (id at 692) (quoting Blockburger, 284 US at 304).

Thus, with no clear indication of legislative intent to impose cumulative punishment found in the statutory provisions involved, felony murder and rape, the Court proceeded to apply the Blockburger Test and found : "[i]n this case resort to the Blockburger Test leads to the conclusion that Congress did not authorize consecutive sentences for rape and for a killing committed in the course of the rape, since it is plainly not the case that 'each provision requires proof of a fact which the other does not'. A conviction for killing in the course of a rape cannot be had without proving all the elements of the offense of rape".

In opposition, "the Government contends that felony murder and rape are not the 'same' offense under Blockburger, since the former offense does not in all cases require proof of a rape, that is, [the statute] proscribes the killing of another person in the course of committing rape or robbery or kidnapping or arson, etc." (id at 694).

However, this Court clearly held, which is the ratio decidendi of this Court's decision in Whalen; "[w]here the offense to be proved does not include proof of a rape - - for example, where the offense is a killing in perpetration of a robbery - - the offense is of course different from the offense of rape, and the government is correct in believing that cumulative punishments for the felony murder and for a rape would be permitted under Blockburger. In the present case, however, proof of rape is a necessary element of proof of the felony murder, and we are unpersuaded that this case should be treated differently from other cases in which one criminal offense requires proof of every element of another offense". (id).

Thus, when the Eleventh Circuit Court of Appeals follows the Government's argument in opposition and finds that the interstate domestic violence offense and its necessarily included predicate offense of kidnapping "are not the same offense under Blockburger, since the former offense does not in all cases require proof of a [kidnapping]", the Eleventh Circuit outright rejects this Court's controlling decision in not only Whalen, but its long line of unbroken progeny.

GARRETT V. UNITED STATES, 471 US 773 (1985).

In Garrett, this Court clearly found that under Blockburger a compound offense statute and its required predicate offenses are the same for double jeopardy purposes. First, this Court found in "applying the test of Blockburger v. United States (citations omitted), each of the predicate offenses is the 'same' for double jeopardy purposes as the CCE Offense because the predicate offense does not require proof of any fact not necessary to the CCE Offense. Because the latter requires proof of additional facts, including concerted activity with five other persons, a supervisory role, and substantial income, the predicates are lesser included offenses of the CCE provision". (Garrett 471 US at 778).

Second, this Court found that "[i]n the present case application of the Blockburger Rule as a conclusive determinant of legislative intent, rather than as a useful canon of statutory construction, would

lead to the conclusion ... that Congress intended the conduct at issue to be punishable either as a predicate offense, or as a CCE Offense, but not both. (id at 779).

Accordingly, "where the same conduct violates two statutory provisions, the first step in a double jeopardy analysis is to determine whether the legislature - - in this case Congress - - intended that each violation be a separate offense." However, relying on Whalen, 445 US at 691-692, "we have recently indicated that the Blockburger Rule is not controlling when the legislative intent is clear from the face of the statute or the legislative history". (id).

Thus, this Court found that because: "[t]he language, structure, and legislative history of the Comprehensive Drug Abuse, Prevention and Control Act of 1970, however, show in the plainest way that Congress intended the CCE Provision to be a separate criminal offense which was punishable in addition to, and not as a substitute for, the predicate offenses. Insofar as the question is one of legislative intent, the Blockburger presumption must of course yield to a plainly expressed contrary view on the part of Congress".

The Eleventh Circuit Court of Appeals has contravened the holdings of this Court in Garrett, when failing to recognize that the greater compound offense of interstate domestic violence and its required underlying predicate offense are the "same for double jeopardy purposes" because the underlying predicate offense does not require proof of any fact not necessary to the interstate domestic violence offense. (id at 778).

Instead, the Eleventh Circuit, under the Blockburger Test, compared the elements of the interstate domestic violence offense including the phrase "commits or attempts to commit a crime of violence against that spouse ...", verbatim from the text of the statute, to the elements of the kidnapping offense in the abstract. Here, the Eleventh Circuit again follows the Government's argument in opposition found in Whalen and not the controlling decisions of this Court here in Garrett or in Whalen. (SEE: Whalen, 445 US at 694).

Therefore, without any "clear indication of [ ] legislative intent" to "authorize cumulative punishments" found in interstate domestic violence compound offense statute [18 U.S.C. 2261(a)(1),(2)] nor the kidnapping statute [18 U.S.C. 1201(a)(1)], the cumulative punishments imposed for both, violate the double jeopardy clause and directly contravene the holding of Garrett and Whalen.

2. UNITED STATES V. DIXON, 509 US 688 (1993);

HARRIS V. OKLAHOMA, 433 US 682 (1977).

In Dixon, the defendant, Alvin Dixon, was arrested and subsequently released on bail. "Dixon's release form specified that he was not to commit 'any criminal offense', and warned that any violation of the conditions of release would subject him 'to revocation of release, an order of detention, and prosecution for contempt of Court'".

"While awaiting trial, Dixon was arrested and indicted for possession of cocaine with intent to distribute. The Court issued an order requiring Dixon to show cause why he should not be held in contempt or have the terms of his pretrial release modified. At the [contempt] hearing, four police officers testified to the facts surrounding the alleged drug offense. The Court concluded that the Government had established 'beyond a reasonable doubt that [Dixon] was in possession of drugs and those drugs were possessed with intent to distribute'".

Dixon cocaine possession, although a criminal offense under [DC Code ANN 33-541(a)] was not an offense under contempt of Court [DC Code ANN 23-1329], "until a Judge incorporated the statutory drug offense into his release order" through the generic phrase "not to commit any criminal offense". (id at 691).

"In this situation, in which the contempt sanction is imposed for violating the order through commission of the incorporated drug offense, the latter attempt to prosecute Dixon for the drug offense resembles the situation the produced our judgment of double jeopardy in Harris v. Oklahoma (citation omitted) (per curiam). There we held that a subsequent prosecution for robbery with a firearm was barred by the Double Jeopardy Clause, because the defendant had already been tried for felony murder based on the same underlying felony". (id at 698).

"The Dixon Court order incorporated the entire governing criminal code in the same manner as the Harris felony-murder statute incorporated the several enumerated felonies. Here, as in Harris, the underlying substantive criminal offense is 'a species of lesser-included offense'". (inner quotations omitted). Accord, Whalen Supra.

However, the Eleventh Circuit Court of Appeals has "rejected Movant's contention that the

Federal kidnapping offense is incorporated as an element of the Federal interstate domestic violence offense through the phrase [commits or attempts to commit a] 'crime of violence'" [18 U.S.C.(a)(1),(2)] (SEE: App. 8), which is in direct violation of this Court [in Dixon] as demonstrated immediately above.

More precisely, the Eleventh Circuit Court of Appeals has not only contravened but has outright rejected this Court's controlling decision's in United States v. Rodriguez-Moreno, 526 US 275 (1999). In Rodriguez-Moreno this Court specifically incorporated the Federal kidnapping offense into the phrase "crime of violence" when holding :

> "In our view, the Third Circuit overlooked an essential conduct element of the 924(c)(1) offense. Section 924(c)(1) prohibits using or carrying a firearm 'during and in relation to any crime of violence ... for which [a defendant] may be prosecuted in a court of the United States'. That the crime of violence element of the statute is embedded in a prepositional phrase and not expressed in verbs does not dissuade us from concluding that a defendant's violent acts are essential conduct elements. To prove a charged 924(c)(1) violation in this case, the Government was required to show the respondent used a firearm, that he committed all the acts necessary to be subject to punishment for kidnapping (a crime of violence) in a court of the United States, an that he used a gun 'during and in relation to' the kidnapping of [the victim]. In sum, we interpret 924(c)(1) to contain two distinct conduct elements - - as is relevant to this case, the 'using and carrying' of a gun AND THE COMMISSION OF A KIDNAPPING". (id at 280) (emphasis added).

Thus, as this Court has clearly held, the Federal kidnapping offense is incorporated into the interstate domestic offense through the prepositional phrase "commits or attempts to commit a crime of violence", as an essential element of the offense. [18 U.S.C. 2261(a)(1),(2)].

The Eleventh Circuit Court of Appeals has not only contravened this Honorable Court's controlling decisions, it has outright and explicitly rejected not only Dixon and Rodriguez-Moreno here, but multiple other thus far.

This Court must intervene and reverse the Eleventh Circuit contumacious behavior.

HARRIS V. OKLAHOMA, 433 US 682 (1977).

In Harris, a terse per curiam decision, this Court held that; "where [Harris] had been convicted of felony murder based on his companions' killing of a victim during the course of an armed robbery, the Double Jeopardy Clause of the Fifth Amendment barred a separate prosecution of [Harris] for the lesser crime of robbery with firearms, since conviction of the greater crime of murder could not be had without conviction of the lesser crime.

Notably, this Court not only incorporated "robbery with firearms" into the felony murder offense as an essential element through the phrase "engaged in the commission of a felony", but also, found it to be a necessarily included lesser predicate offense.

To be concrete, in Harris' felony murder conviction the lesser predicate offense of robbery with firearms has been identified by this Court as "a species of lesser included offense" (SEE: Dixon, 509 US at 698).

However, the Eleventh Circuit Court of Appeals refuses to incorporate the kidnapping offense as an essential element and refuses to recognize the kidnapping offense as "a species of lesser included offense" of the greater compound offense of interstate domestic violence [18 U.S.C. 2261(a)(1),(2)].

3. BALL V. UNITED STATES, 470 US 856 (1985);
RUTLEDGE V. UNITED STATES, 517 US 292 (1996).

In Ball and Rutledge this Court addressed the issue of whether concurrent sentences constituted cumulative punishment unauthorized by Congress. This Court held in Rutledge ; "[u]nder Ball, the collateral consequences of a second conviction make it as presumptively impermissible to impose as it would be to impose any other unauthorized cumulative sentence.

In Ball, which is the controlling case, this Court found that; "having concluded that Congress did not intend petitioner's conduct to be punishable under both [statutes], the only remedy consistent with the Congressional intent is for the District Court, where the sentencing responsibility resides, to exercise its discretion to vacate one of the underlying convictions. The remedy of ordering one of the sentences to be served concurrently with the other cannot be squared with Congress' intention. One of the convictions, as well as its concurrent sentence, is unauthorized punishment for a separate offense. (Ball, 470 US at 864).

This Court in Ball, explained its reasoning as follows: "[t]he second conviction, whose concomitant sentence is served concurrently, does not evaporate simply because of the concurrence of the sentence. The separate conviction, apart from the concurrent sentence, has potential adverse collateral consequences that may not be ignored. Thus, the second conviction even if it results in no greater sentence, is an impermissible punishment." (id at 864-865).

In Rutledge, this Court also found, when relying on Ball, that; "the second conviction carried with it, at the very least, a $50 assessment ... [and] [a]s a result the conviction amounts to cumulative punishment not authorized by Congress". (Rutledge, 517 US at 302-303).

However, the Eleventh Circuit Court of Appeals has contravened this Court's holdings in Ball and Rutledge. The Eleventh Circuit has found "[e]ven if, as suggested, there were a [double jeopardy] violation, because the sentences imposed were ordered to run concurrently with each other, the Double Jeopardy Clause was not implicated. Therefore, movant is not entitled to relief". (SEE: App. 73-74); (SEE ALSO: Miers v. United States, Case No. 19-CV-20740-KMM, Dkt. No. 71, PP. 28-29).

The Eleventh Circuit Court of Appeals clearly does not recognize the United States Constitution; the United States Congress; nor this Honorable United States Supreme Court.

This Court must intervene.

CONCLUSION:

"This Court [ ] has a significant interest in supervising the administration of the Judicial System. See this Court's Rule 10(a) (the Court will consider whether the Courts below have 'so far departed from the accepted course of Judicial proceedings ... as to call for an exercise of this Court's supervisory power"). (SEE: HOLLINGSWORTH V. PERRY, 558 US 183, 196 (2010).

As clearly demonstrated above, the Eleventh Circuit has "so far departed from the accepted course of Judicial proceedings when completely disregarding the substantial showing standard set out by this Court over 41 years ago in Barefoot v. Estelle, 463 US 880 (1983), which was codified by Congress in Title 28, U.S.C. 2253(c)(2).

"This is a federal criminal case, and this Court has supervisory jurisdiction over the proceedings of the federal courts. If it has any duty to perform in this regard, it is to see that the waters

of justice are not polluted. Pollution having taken place here, the condition should be remedied at the earliest opportunity. The untainted administration of justice is certainly one of the most cherished aspects of our institutions. Its observance is one of our proudest boasts. This Court is charged with supervisory functions in relation to proceedings in federal Courts. Therefore, fastidious regard for the honor of the administration of justice requires the Court to make certain that the doing of justice be made so manifest that only irrational and perverse claims of disregard can be asserted". (SEE: MESAROSH V. UNITED STATES, 352 US 1, 14 (1956) (inner quotations omitted).

As clearly demonstrated, the Eleventh Circuit has contravened multiple controlling precedents of this Honorable Supreme Court. The Circuit Court below has clearly refused to recognize the United States Constitution, the United States Congress, and this Honorable Court in its administration of Justice. In order to affirm an illegal cumulative life sentence of imprisonment the Eleventh Circuit belwo has disregarded every controlling decision and constitutional protection available for the petitioner.

The petitioner is illegally sentenced to life imprisonment according to the black letter law of the United States of America. Congress has set the statutory maximum for the compound offense of interstate domestic violence at 10 years [18 U.S.C. 2261(a)(1)(b)(3),(a)(2),(b)(3)]. However, the District Court where the sentencing responsibility resides, has decided to impose a life sentence of imprisonment without Congressional Authority for the necessarily-included lesser predicate offense.

Therefore, the petitioner prays that this Court grant a writ of certiorari to preserve the petitioners double jeopardy and due process rights and resolve the Eleventh Circuit's clear departure from the accepted course of Judicial proceedings and rejection of this Court's controlling decisions and the Constitutional separation of powers.

Respectfully Submitted on the 3RD day of April, 2024.

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CORRECTED AND RESUBMITTED ON JUNE 25, 2024.

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