**NO._____**

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**In The**
**Supreme Court of the United States**
**OCTOBER TERM, 2024**

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**FRANCISCO GERMAN ALVAREZ,**

***Petitioner,***

**v.**

**UNITED STATES OF AMERICA,**

***Respondent.***

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**On Petition for *Writ* of *Certiorari***
**To The United States Court of Appeals**
**For The Ninth Circuit**

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# PETITION FOR *WRIT* OF *CERTIORARI*

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## QUESTION PRESENTED FOR REVIEW

In *Boykin v. Alabama,* 395 U.S. 238, 242-43 (1969), this Court underscored the seriousness and gravity of a guilty plea where a defendant waives the Fifth Amendment right to the privilege against self-incrimination and the Sixth Amendment right to trial by jury. Later, in *United States v. Ruiz,* 536 U.S. 622, 629 (2002), this Court added:

> Given the seriousness of the matter, ***the Constitution insists***, among other things, that the defendant enter a guilty plea that is "***voluntary***" and that the defendant must make related waivers "knowingly, intelligently, [and] with sufficient awareness of the relevant circumstances and likely consequences."

Emphasis added. Therefore, the question presented by Alvarez regarding the voluntariness of his guilty plea is:

In determining the questioned *voluntariness* of the guilty plea, did the Ninth Circuit impermissibly create confusion when it misapplied the lower standard for *competence to stand trial* instead of the more demanding *Boykin/Ruiz* voluntariness analysis to Alvarez's guilty plea?

## PARTIES TO THE PROCEEDING

Petitioner Francisco German Alvarez was the Petitioner-Defendant in the *habeas* proceedings and appellant in the court of appeal. Respondent United States of America was the Respondent-Plaintiff in the district court *habeas* proceedings and appellee in the court of appeal.

## RULE 14(B) STATEMENT OF RELATED CASES

- *USA v. Francisco German Alvarez*, Nos. 18CR01653-GPC; 19CV01489-GPC, U.S. District Court for the Southern District of California. Order Denying 2255 - Judgment entered June 4, 2021.

- *Francisco German Alvarez v. USA*, No. 21-55826, U.S. Court of Appeals for the Ninth Circuit. Judgment entered April 19, 2024.

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# PETITION FOR WRIT OF CERTIORARI

Francisco German Alvarez respectfully petitions for a *Writ* of *Certiorari* to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered on April 19, 2024, expressly misapplying this Court's standard in the determination of the voluntariness of a guilty plea.

## OPINIONS BELOW

On April 19, 2024, the Court of Appeals for the Ninth Circuit filed its Memorandum Opinion affirming the district court's denial without a hearing Alvarez's 28 USC Section 2255 *habeas* petition. App. 1.

Earlier, on January 12, 2023, the Ninth Circuit filed its Order granting Alvarez's request for a certificate of appealability for two of his issues: 1) whether Alvarez's guilty plea was knowing and *voluntary,* and 2) whether he was denied effective assistance of counsel when his lawyer failed to properly investigate Alvarez's mental state before entry of the guilty plea. App. 7. Alvarez focuses here only on the wrong voluntariness analysis applied by the lower court.

## JURISDICTION

On April 19, 2024, the Court of Appeals for the Ninth Circuit filed its Memorandum Opinion affirming the district court's denial without a hearing

Alvarez's 28 USC Section 2255 *habeas* petition. App.1. Jurisdiction of this Court is invoked under Title 28 U.S.C. § § 1651 and 1254(1).

## CONSTITUTIONAL PROVISION INVOLVED IN THIS CASE

United States Constitution, Fifth Amendment:

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

## I.
## STATEMENT OF THE UNIQUE FACTS OF THIS CASE

Alvarez brigs to the Court a narrow set of unique facts showing that, conflating the *voluntariness of his guilty plea with that for his competency to stand trial,* the lower court injected confusion and direct conflict with *Boykin* and *Ruiz,* thereby denying Alvarez his right to due process. Therefore, he focused this Statement of Facts upon the lower court's Memorandum and facts in some of his pleadings before the Ninth Circuit.

In its Memorandum Opinion, affirming the denial of Alvarez's involuntary guilty plea *habeas,* the Ninth Circuit explicitly exhibited its confusion between his asserted *involuntariness* with that of his *competency to stand trial*:

> "Trial counsel has a duty to investigate a defendant's mental state if there is evidence to suggest that the defendant is impaired." *Douglas v. Woodford,* 316 F.3d 1079, 1085 (9th

> Cir. 2003). Alvarez's ineffective assistance claim regarding his trial counsel's failure to investigate Alvarez's ***competency*** before his guilty plea fails because, as Alvarez recognizes, he was competent to stand trial; ***he was therefore competent to plead guilty.***

App. 4, emphasis added. In so holding, the lower court explicitly conflated the more demanding voluntariness standard with the more relaxed *competency* to stand trial.

Alvarez had not questioned his *competency*. He asserted and corroborated with evidence that he pleaded guilty *involuntarily* because of serious, debilitating hallucinations and OCD phobias. Even the lower court noted:

> Alvarez claims that his plea was unknowing ***and involuntary because he was paranoid that prison staff were conspiring to cause him "mental anguish***" and because other inmates treated him poorly due to his germaphobia obsessive compulsive disorder ("OCD").

App. 2, emphasis added. The lower court further revealed its confusion as follows:

> Despite his claimed paranoia and germaphobia OCD, Alvarez clearly ***understood the consequences*** of his available options—either proceed to trial and remain in custody or plead guilty and be sentenced to time served. "[B]eing forced to choose between [these] unpleasant alternatives is not unconstitutional." Id. at 1115–16.

*Id.*, emphasis added. But Alvarez was not *only* disputing his *understanding* of the consequences of his guilty plea (competency); he was also and principally raising his assertion that he had pleaded guilty amid his experienced disabling delusions and oppressive paranoia. *See,* Appellant's Request for Certificate of Appealability

(without its Exhibit A), App. 9; and Appellant's Reply Brief, pages 8-12, App. 29. Indeed, in his Reply Brief to the lower court, Alvarez explicitly noted, *inter alia*:

> The Government and district court failed to meaningfully address this Court's guidance in *Chavez*[1], on the proper procedure mandated ***for the determination of the voluntariness of a guilty plea***. In his *habeas*, Alvarez noted for the district court and Government that in *Chavez*, this Court specifically held of voluntariness issues: "...if the psychiatric and judicial inquiries are too narrow when the question is competence to stand trial, ***they may be of no value when the defendant expresses a desire to waive a constitutional right***." *Id*., at 519, emphasis added. This Court added "a defendant who is competent to stand trial ***is not necessarily competent to plead guilty***." *Chavez* at 519, footnote 3, emphasis added.

*Id.*, App. 30, emphasis in original and added. Alvarez thereby underscored for the lower court its own binding precedent holding that "a defendant who is ***competent to stand trial is not necessarily competent to plead guilty***." Emphasis added. App. 30.

The narrow facts relative to the voluntariness issue raised by Alvarez to the Ninth Circuit in his *habeas* did not centrally argue that he somehow was incompetent as much as he had pleaded guilty *involuntarily*. He was calling into question the district court's wrong application of the standard for competency to his

[1] *Chavez v. United States,* 656 F.2d 512 (9th Cir. 1981).

involuntariness issue. In missing this core specific issue, the Ninth Circuit in turn also exhibited its own failure to faithfully apply *Boykin* and *Ruiz*.

The lower court also noted, but failed to properly apply, the appellate standard of review it implemented:

> We review ***the voluntariness*** of Alvarez's guilty plea *de novo* and the district court's underlying factual findings regarding ***the voluntariness*** of the plea for clear error. *United States v. Kaczynski*, 239 F.3d 1108, 1114 (9th Cir. 2001). "A plea is voluntary if it 'represents ***a voluntary*** and intelligent choice among the alternative courses of action open to the defendant.'" *Id.* (quoting *North Carolina v. Alford*, 400 U.S. 25, 31 (1970)).

App. 2, emphasis added. The Ninth Circuit's unfortunate reliance on *Alford* was misplaced because there, this Court addressed quite different facts - that the defendant insisted upon his innocence but nevertheless, with advice of competent counsel, rationally wanted to plead guilty. This court appropriately applied a *competency* analysis there, noting:

> Confronted with the choice between a trial for first-degree murder, on the one hand, and a plea of guilty to second-degree murder, on the other, Alford ***quite reasonably*** chose the latter and thereby limited the maximum penalty to a 30-year term. When his plea is viewed in light of the evidence against him, which substantially negated his claim of innocence and which further provided a means by which the judge could test whether the plea was being ***intelligently entered***, [citation omitted] its validity cannot be seriously questioned.

*Alford,* 37-38, emphasis added. Explicitly, this Court there applied a rationality and competency analysis, not a *voluntariness* standard as in *Boykin* and *Ruiz*.

Unfortunately for Alvarez, the Ninth Circuit self-evidently applied its *de novo* review *only* to the competency to stand trial issue. The lower court specifically noted there that the defendant in *Alford* made an "intelligent choice among the alternative courses of action open to the defendant."

The lower court also failed to apply the voluntariness issue mandated by its own precedent in *Chavez* at page 519, footnote 3, discussed above.

## II.
## MR. ALVAREZ'S WAIVER OF TRIAL AND GUILTY PLEA, WHILE COMPETENTLY AND KNOWINGLY MADE, WERE NEVERTHELESS PALPABLY INVOLUNTARY.

It is axiomatic that a waiver of trial and guilty plea must be voluntary, unaffected by medication or serious delusion and other mental issues. *Godinez v. Moran*, 509 U.S. 389, 400-01 (1993). There, this Court held:

> A finding that a defendant is competent to stand trial, however, ***is not all that is necessary before he may be permitted to plead guilty or waive his right to counsel***. In addition to determining that a defendant who seeks to plead guilty or waive counsel is competent, a trial court must satisfy itself that the waiver of his constitutional rights is knowing ***and voluntary***.

Emphasis added. *See also, Brady v. United States*, 397 U.S. 742, 748 (1970) ("That a guilty plea is a grave and solemn act to be accepted only with care and discernment has long been recognized"). In *Brady*, this Court specified:

> Of course, the agents of the State may not produce a plea by actual or threatened physical harm ***or by mental coercion overbearing the will of the defendant. But nothing of the sort is claimed in this case***; nor is there evidence that Brady was ***so gripped by fear*** of the death penalty ***or hope of leniency that he did not or could not***, with the help of counsel, ***rationally weigh the advantages*** of going to trial against the advantages of pleading guilty

*Id.*, page 750, emphasis added.

But unlike the defendant in *Brady,* Alvarez provided the district and appellate courts a robust factual basis in his Declaration and medical evidence that cast serious doubt about his psychological and physical conditions at the time of his decision to accept the Government's offer and his guilty plea.

Alvarez also provided evidence of his lawyer's failure to effectively investigate his mental condition before the lawyer expediently advised him to plead guilty. Unquestionably, Alvarez presented evidence of his lawyer's failure to help him "rationally weight the advantages of … pleading guilty" and to properly assess the "mental coercion overbearing the will of the defendant*."* Appellant's Request for Certificate of Appealability, App. 9-27.

Mr. Alvarez's waivers of trial, collateral attack, and guilty plea were demonstrably involuntary and made at a time when he was suffering serious and *continuous* delusions and obsessive disorders, making him extremely paranoid and terrified. His decision to plead guilty and say whatever he had to say were compelled by fears and delusions and under heavy mediation. Both parties knew these facts. *Id.*

## III.
## THE MEDICAL AND JAIL DISCIPLINARY RECORDS ESTABLISHED THAT ALVAREZ WAS DENIED DUE PROCESS.

In his Declaration, Alvarez specifically noted that he pleaded guilty and waived trial only because he had been under extreme paranoia and delusions. He specifically noted that he would have said anything during the guilty plea colloquy, just to get out of what he delusionally imagined as a nightmare in jail [the MCC] which he delusionally saw destined to result *in his death at the hands of inmates*.

### *A. The Reasons Why Mr. Alvarez Involuntarily Waived Trial and Instead Pleaded Guilty*

Mr. Alvarez provided the district court and the Ninth Circuit evidence, medical records, and his sworn Declaration that enlightened the reasons why he waived jury trial and his rights to collaterally attack his conviction and sentence. App. 12-15.

The evidence he provided, much of it undisputed, established that Alvarez made these decisions at a time when he was on and off heavy medication, that he

was still suffering from psychological delusions, constant perceived threats to his safety, and *extreme* phobias that made him irrational. App. 21-23.

In the district courts' selected cases at Exhibit A [not included here] to Appellant's Request for a Certificate of Appealability App. 9-27, there were allegations by petitioners arguing lack of voluntariness because of "depression" *only* - *Tanner v. McDaniel,* 493 F.3d 1135, 1145-46 (9th Cir. 2007)*;* "stress and defendant's difficulty being separated from his family during pretrial detention" – *United States v. Yell,* 18 F.3d 581, 582-83 (8th Cir. 1994)*;* "petitioner suffered from depression and lived with 'a death wish" – *United States v. Hibler,* 2012 WL 2120001 (unreported). But notably, the district court carefully avoided meaningful discussion at pages 8-9 of *Weeden v. Johnson*, 854 1063 99th Cir. 2017), cited by Alvarez.

Contrary to those easily distinguishable cases, the evidence provided by Alvarez established that he was fully diagnosed with a host of serious psychological issues, was often heavily medicated and segregated, was said to have perpetrated assaults on BOP guards at the Metropolitan Correctional Center, San Diego, and even displayed bizarre behavior such as stripping himself naked in the Marshall tank adjacent to the Magistrate's courtroom.

In post-conviction proceedings, where Petitioners challenge the voluntariness of a waiver of trial and of a guilty plea, it is routine to cite to the colloquy given at the time of the waiver and entry of the guilty plea; this to note the "admissions" of facts and acknowledgment of knowledge and the voluntary waivers and guilty plea. Although it is also widely reported in the literature and case law that, like false confessions, increasingly, defendants plead guilty out of necessity even when they are not guilty and where they have meritorious defenses – as in this case. When they do so, they invariably make admissions that are simply not true nor voluntary, as here with Alvarez. *See*, *Anatomy of a Plea*, by Andrew St. Laurent, The Champion, June 19, 2019, pages 42-47, National Association of Criminal Defense Lawyers.

It is simply undeniable here that, *except for the court*, the parties in this case at the time had full knowledge that Alvarez had been suffering from longstanding and serious psychological issues and delusions as far back as June 2017. Of that, there was no doubt. Yet, defense counsel failed to look into this critical are and obvious obligation. Instead, counsel opted for a fast plea and sentence, *without a Presentence Report*.

The record of Alvarez's medical exhibits is clear that his psychological and OCD conditions continued almost unabated. As an example, records note that on May 1, 2018, Alvarez was released from the hospital and given various medications

which were prescribed to help stabilize him. But even a report dated 5-16-2018 (BATES 000094-000095), noted that Alvarez "continued to demonstrate" symptoms. The same report also noted that, when Alvarez was released in the Metropolitan Correctional Center (MCC) general population on May 9, 2018, only eight days after his release from the hospital, "he discontinued" a critical medication prescribed to him. Alvarez also provided additional reports for May 22, 2018, and June 18, 2018, BATES 000012-0000015 and 000078. App. 21.

The 5-16-2018 report is entitled "Reason for Referral and Identifying Information" and notes that Alvarez had created a disruption on 4-19-2018 at the MCC and had committed an "assault" on an officer and that Alvarez was "combative." Yet, by May 9, 2018, he had been released to the general population unmonitored, under medication that he was supposed to take on his own. This is the medication that the record before the district court documented that Alvarez on his own had "discontinued." *Id.*

Alvarez's Declaration indisputably established what was going through his mind when the plea agreement was presented to him on July 14, 2018. He specifically noted the variety of phobias, his fear of the conditions at the MCC, and the reasons why he signed the plea agreement. In contrast, the Government did not

present any *contradictory sworn declaration*. Alvarez's noted to the Ninth Circuit that his sworn Declaration, thus, remained uncontradicted. App. 21-22.

## REASONS FOR GRANTING THE PETITION

The Court must allow this *writ* to clarify the Ninth Circuit's unnecessary creation of confusion in the recurring area of determination of questioned *voluntary* guilty pleas by lower courts, mandated under the exacting *Boykin* standard reaffirmed in *Ruiz,* instead of the more relaxed *competence to stand trial* analysis misapplied to Alvarez.

In *Boykin*, this Court emphasized the high bar required of lower courts in their determination of the voluntariness of questioned guilty pleas. The Court held that due process requires that a guilty plea be knowing but also "voluntary". *Id.,* at 242-43. *See also, Henderson v. Morgan*, 426 U.S. 637, 645 (1976); *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005) ("A guilty plea . . . is valid only if done *voluntarily*, knowingly, and intelligently.")(emphasis added); and *Ruiz*, at 629. ("[T]he Constitution insists," among other things, "that the defendant enter a guilty plea that is voluntary" and that the defendant must "make related waivers knowing[ly], intelligent[ly], [and] with sufficient awareness of the relevant circumstances and likely consequences." (internal quotation marks omitted)). And in *Boykin* at 243– 44 ("What is at stake for an accused facing death ***or imprisonment*** demands the utmost

solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence."). If a guilty plea is not "voluntary …, it has been obtained in violation of due process and is therefore. void." *McCarthy v. United States*, 394 U.S. 459, 466 (1969).

## CONCLUSION

For the foregoing reasons, Francisco German Alvarez respectfully requests this Court grant a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Respectfully Submitted,

Dated: July 17, 2024

/S/ *Ezekiel E. Cortez*

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# CERTIFICATE OF COMPLIANCE

FRANCISCO GERMAN ALVAREZ,

*Petitioner,*

-vs-

UNITED STATES OF AMERICA,

*Respondent*.

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 2760 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 17, 2024.

s/ *Ezekiel E. Cortez*