

24-5972
No:

**In the
Supreme Court of the United States**

ALEX MORALES-VELEZ,

Petitioner,

vs.

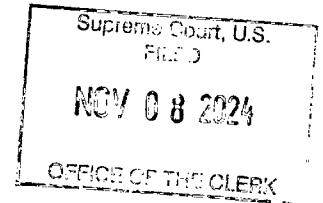
UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether defense counsel's failure to object to the government's high-end sentencing recommendation—contrary to the terms of the plea agreement following Amendment 782—constituted ineffective assistance of counsel, thereby depriving Morales-Vélez of the benefits of the negotiated plea agreement and resulting in an excessively harsh sentence under *Strickland v. Washington*, 466 U.S. 668 (1984).

2. Whether the sentencing court's failure to explicitly apply the discretionary principles established in *Dean v. United States*, 137 S. Ct. 1170 (2017)—specifically, the ability to consider mandatory minimum sentences imposed under 18 U.S.C. § 924(c) when determining sentences for predicate offenses—warrants remand to ensure a proportionate and fair sentence consistent with § 3553(a) and the individualized sentencing objectives articulated in *Dean*.

**PARTIES TO THE PROCEEDINGS
IN THE COURT BELOW**

In addition to the parties named in the caption of the case, the following individuals were parties to the case in the United States Court of Appeals for the First Circuit and the United States District Court for the District of Puerto Rico.

None of the parties is a company, corporation, or subsidiary of any company or corporation.

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OPINION BELOW

The opinion of the Court of Appeals for the First Circuit, whose judgment is herein sought to be reviewed, was entered on August 26, 2024, *Morales-Vélez v. United States*, No. 22-1424 (1st Cir. 2024) and is reprinted in the separate Appendix A to this Petition.

The opinion of the District Court for the District of Puerto Rico, whose judgment is herein sought to be reviewed, was entered on March 31, 2022, *Morales-Vélez v. United States*, No. 19-1999 (SCC), 2022 U.S. Dist. LEXIS 61271 (D.P.R. Mar. 31, 2022) and is reprinted in the separate Appendix B to this Petition.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered on August 26, 2024. The Jurisdiction of this Court is invoked under Title 28 U.S.C. § 1654(a) and 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND RULES INVOLVED

The Fifth Amendment to the Constitution of the United States provides in relevant parts:

No person shall be held to answer for a capital, or otherwise, infamous crime, unless on a presentment or indictment of a Grand Jury... nor

shall any person be subject for the same offense 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

Id. Fifth Amendment

The Sixth Amendment to the Constitution of the United States provides:

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

Id. Sixth Amendment

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

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

* * * * *

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a

prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.

Id. Title 28 U.S.C. § 2255.

STATEMENT OF THE CASE AND FACTS

In *United States v. Cardona-Vicenty*, No. 14-284 (D.P.R. Aug. 28, 2014), Morales-Vélez entered a guilty plea to two counts under a plea agreement: (1) conspiracy to possess with intent to distribute a controlled substance, in violation of 21 U.S.C. § 846 (Count One), and (2) using and carrying a firearm in relation to a drug-trafficking offense, in violation of 18 U.S.C. § 924(c) (Count Six).

The plea agreement established a total offense level of 33 for Count One, with the United States recommending a sentence at the lower end of the applicable Guidelines range. *Id.* at 5. Subsequently, prior to sentencing, the U.S. Sentencing Commission implemented Guideline Amendment 782, which reduced the base offense level for Count One by two levels, resulting in a total offense level of 31. Consequently, the Guidelines sentencing range for Count One shifted from 188-235 months to 151-188 months. During sentencing, the presiding judge acknowledged the applicability of the “new drug table,” reflecting the reduced base offense levels per Amendment 782.

(Sentencing Transcript at 15, *United States v. Cardona-Vicenty*, No. 14-284 (D.P.R. Sept. 28, 2016)). The judge recognized the adjusted range of 151-188 months and, in alignment with the United States' recommendation of 188 months, imposed a sentence of 171 months on Count One. Defense counsel raised no objections, and Morales-Vélez's sentence was affirmed upon appeal.

In a subsequent motion under 28 U.S.C. § 2255, Morales-Vélez argued ineffective assistance of counsel, asserting that his attorney's failure to object to the United States' 188-month recommendation constituted a "clear breach of the plea agreement," thereby prejudicing him by subjecting him to a plain-error review standard on appeal, which he was ultimately unable to overcome. *Docket No. 1-1*, pg. 12. The District Court denied his § 2255 motion and declined to issue a Certificate of Appealability ("COA"), and the First Circuit subsequently denied the COA as well.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE APPLICABLE DECISIONS OF THIS COURT

Supreme Court Rule 10 provides relevant parts as follows:

Rule 10

CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

(1) A review of writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons, therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States Court of Appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with 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 power of supervision.

(b) When a ... United States court of appeals has decided an important question of federal law which has not been but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.

Id. Supreme Court Rule 10.1(a), (c).

ARGUMENT

I. COUNSEL'S FAILURE TO OBJECT TO THE GOVERNMENT'S HIGH-END SENTENCING RECOMMENDATION CONSTITUTED INEFFECTIVE ASSISTANCE, DENYING MORALES-VÉLEZ THE BENEFIT OF HIS PLEA AGREEMENT UNDER AMENDMENT 782 AND RESULTING IN AN EXCESSIVE SENTENCE

Morales-Vélez argues his counsel's performance was constitutionally ineffective because she failed to object when the United States recommended a sentence of 188 months — allegedly a breach of the plea agreement post-Amendment 782. This failure to object, he contends, compelled him to overcome the challenging standard of plain-error review on appeal, leading to an adverse result.

Under the first prong of *Strickland v. Washington*, 466 U.S. 668 (1984), a defendant must show that counsel's actions were not “within the range of competence demanded of attorneys in criminal cases.” *Hill v. Lockhart*, 474 U.S. 52, 56 (1985). In this case, Morales-Vélez's counsel allowed the government to recommend a high-end sentence (188 months) after Amendment 782 without objection, despite the plea agreement's stipulation that the government would recommend a low-end sentence. Courts have held that when counsel fails to hold the government accountable to a plea agreement, this may constitute deficient performance.

Here, Morales-Vélez's counsel's inaction permitted the government to make a high-end recommendation (188 months) rather than enforcing the low-end recommendation stipulated under the plea agreement terms.

The U.S. Sentencing Commission's Amendment 782 lowered the applicable guidelines range for Morales-Vélez's drug offense. As the First Circuit noted, post-Amendment 782, the adjusted guidelines range for the offense was 151-188 months, not the pre-amendment 188-235 months. By not objecting, counsel allowed the judge to consider a sentence at the high end of the amended range, essentially depriving Morales-Vélez of the benefit the amendment intended. *United States v. Glover*, 531 U.S. 198, 204 (2001) holds that failure to object to an incorrect application of the sentencing guidelines may constitute ineffective assistance. Morales-Vélez's counsel's failure to enforce the updated guidelines deprived him of a sentencing outcome more favorable to him, as was intended by Amendment 782. The plea agreement represented a negotiated resolution, including a recommendation by the government for a low-end sentence. As stated in *Santobello v. New York*, 404 U.S. 257, 262 (1971), "when a plea rests in any significant degree on a promise or agreement of the prosecutor, such promise must be fulfilled." Morales-Vélez's counsel should have

recognized that the government's recommendation of 188 months contradicted the "low-end" promise after the amendment, as this recommendation was now at the top of the range. Counsel's failure to hold the government to the plea agreement terms permitted an outcome that directly contradicted Morales-Vélez's understanding of his plea bargain.

The second prong of *Strickland* requires that a defendant demonstrate a reasonable probability that, but for counsel's unprofessional errors, the outcome of the proceeding would have been different. Here, had counsel objected, there is a reasonable probability that the sentencing judge would have considered a true low-end recommendation under the amended guidelines, potentially resulting in a sentence at or near the 151-month mark.

In *Missouri v. Frye*, 566 U.S. 134, 147 (2012), the Supreme Court held that prejudice under *Strickland* can result if counsel's errors undermine the fairness or reliability of the plea process. Morales-Vélez's counsel's failure to correct the record resulted in the court considering a recommendation contrary to what Morales-Vélez reasonably believed he would receive. This directly impacted his sentencing, as he could have received a sentence of 151 months or close to it under a low-end recommendation. When counsel

fails to object to an issue at trial or sentencing, it generally results in plain-error review on appeal, making it more difficult for the defendant to succeed. *Puckett v. United States*, 556 U.S. 129, 134 (2009), underscores the difficulty defendants face when appealing under *plain-error* review, as it requires showing that the error was clear or obvious and affected the fairness of the judicial proceeding. Here, because counsel did not object to the government's high-end recommendation, Morales-Vélez faced a higher burden on appeal, reducing his chance for relief. Thus, counsel's deficient performance directly prejudiced Morales-Vélez by constraining his ability to obtain a more favorable sentencing outcome. A COA should have been granted on this claim. Because his counsel failed to object, he lost the opportunity for a sentence near the low end of that range. In *Lafler v. Cooper*, 566 U.S. 156, 163 (2012), the Court held that counsel's errors that result in a harsher sentence than would otherwise have been imposed can establish prejudice. Here, had counsel objected to the government's high-end recommendation, Morales-Vélez's sentence could have been set closer to 151 months. The difference between the 151-month low end and the 171-month sentence he received demonstrates the prejudicial effect of his counsel's inaction. Under the Strickland framework and bolstered by case

law including *Glover*, *Santobello*, *Frye*, *Puckett*, and *Lafler*, Morales-Vélez's counsel's failure to object to the government's high-end recommendation post-Amendment 782 constitutes deficient performance. This inaction denied Morales-Vélez the benefit of a low-end recommendation and effectively subjected him to a harsher sentence than warranted. The Supreme Court should remand for resentencing to allow Morales-Vélez the benefit of his plea agreement and a sentence reflective of the amended guidelines range. This court's intervention via a writ of certiorari is required.

II. THE SENTENCING COURT'S FAILURE TO EXPLICITLY APPLY THE DISCRETIONARY PRINCIPLES OF *DEAN V. UNITED STATES*, 137 S. CT. 1170 (2017) WARRANTS REMAND TO ENSURE A PROPORTIONATE AND FAIR SENTENCE

In *Dean v. United States*, 137 S. Ct. 1170 (2017), this Court held that sentencing judges may consider the mandatory minimum sentence required under 18 U.S.C. § 924(c) when determining the length of a sentence for a predicate offense. Specifically, the Court held that judges may take into account the additional time a defendant will serve for § 924(c) offenses, even where those sentences impose a lengthy mandatory minimum, when calculating an appropriate sentence for related

convictions. *Dean*, 137 S. Ct. at 1171. This clarification in *Dean* allows sentencing judges to craft proportionate sentences that consider the cumulative impact of mandatory and non-mandatory terms, which aligns with the overall purpose of achieving just and individualized sentences under 18 U.S.C. § 3553(a).

The record in Morales-Vélez's case does not explicitly confirm that the sentencing judge knew or considered this discretion. The absence of such clarification creates ambiguity regarding the fairness and appropriateness of Morales-Vélez's sentence and suggests that the judge may have felt constrained by § 924(c)'s mandatory minimum. Unlike in *Dean*, where the Court remanded due to the sentencing judge's apparent misunderstanding of discretion, Morales-Vélez's record contains no clear indication that the sentencing judge fully understood or applied the discretionary authority to weigh the mandatory minimum. This lack of clarity in the record indicates a potential error warranting resentencing, especially in cases where discretion is an essential component of achieving an individualized, fair sentence.

Although the First Circuit relies on *Worman v. Entzel*, 953 F.3d 1004 (7th Cir. 2020), and *Teague v. Lane*, 489 U.S. 288 (1989), to deny retroactive

application of *Dean*'s procedural rule on collateral review, the case is distinguishable. *Dean* speaks not only to procedural fairness but to ensuring sentencing that is properly individualized and proportional. Furthermore, while *Dean* may be categorized as procedural under the *Teague* framework, it fundamentally impacts the discretionary factors a judge must consider at sentencing. Notably, *Dean* does not impose a new procedural mandate but rather clarifies existing discretion in sentencing. In the interest of fairness and in consideration of individualized justice principles, Morales-Vélez's sentence should be revisited in light of *Dean*.

Dean's clarification on sentencing discretion also aligns with the purpose of the sentencing guidelines, which prioritize a fair and just sentencing process. The sentence Morales-Vélez received, lacking explicit consideration of his § 924(c) mandatory minimum, may not reflect the individualized assessment that *Dean* promotes. Although the First Circuit held that the sentencing judge need not be assumed to have misunderstood the law, Morales-Vélez's sentence should be vacated to confirm that his § 924(c) conviction was considered properly and in alignment with *Dean*'s principles.

Under *Teague*, new substantive rules apply retroactively on collateral review when they alter the scope of conduct punishable or the class of persons punishable. Although the First Circuit held that *Dean* is not substantive under *Teague*, Morales-Vélez argues that it should apply retroactively because *Dean* did not create a new rule but rather clarified the sentencing judge's preexisting discretion. In this sense, *Dean* should be seen as reaffirming the breadth of judicial discretion rather than imposing a procedural requirement, as it directly affects the fairness and proportionality of a sentence. *Dean* promotes fairness in sentencing by allowing judges to consider the total time a defendant will serve, including mandatory minimums under § 924(c). This is not a substantive change to the law but a reinforcement of discretion and a principle of proportional justice. Morales-Vélez's petition, therefore, does not seek the retroactive application of a novel rule but instead aims to ensure the sentencing court properly applied existing principles that this Court clarified in *Dean*.

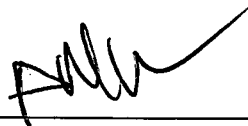
The record does not confirm whether the sentencing judge weighed the § 924(c) mandatory minimum when crafting Morales-Vélez's sentence, as *Dean* requires. Although the judge remarked on the "aggregate of adding the firearms to the drugs," this comment alone does not show that the

judge considered the § 924(c) sentence when calculating the predicate offense sentence. *United States v. Stain*, No. 17-16707, 2021 WL 3523500 (9th Cir. Aug. 11, 2021), which the First Circuit cites, is distinguishable, as the record in *Stain* suggested the judge recognized the § 924(c) minimum sentence's impact. Here, Morales-Velez's sentencing record lacks any explicit statement or confirmation that the court considered the cumulative sentence required by § 924(c), creating reasonable uncertainty about whether the sentence was crafted with full knowledge of this discretion.

CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand to the Court of Appeals for the First Circuit.

Done this 7 day of November 2024.



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