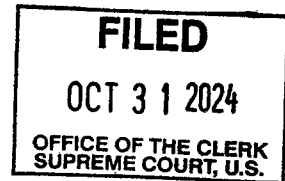


No. 24-6598



IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Rodney Boyles — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eighth Cir.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rodney Boyles #47708-509
(Your Name)

P.O. Box 7000 USP Florence
(Address)

Florence, CO 81226
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1.) Whether arson of Commercial building is subject to prosecution under 18 U.S.C. § 844(i) and Jones vs. United States, 529 U.S. 848, 850, 120 S.Ct. 1904 (2000); Where (A) Lease was terminated by eviction and (B) Building was NO Longer "being in use" of Private Residences for Commercial purposes at the time of offense. ☐
- 2) Whether The Expansion of the Commerce Clause in the Constitution under Article I, § 8, clause 3, conflicts with 18 U.S.C. § 7(3) and 40 U.S.C. § 3112(c) under Adams vs. United States, 319 U.S. 312, 63 S.Ct. 1122 (1943), Where Indictment for 18 U.S.C. § 844(i) offense lacked proof of Federal Criminal Jurisdiction, violated Petitioner's Fifth and Sixth Amendment Rights of Due Process and Notice; And Government never established Federal Criminal Jurisdiction, in the Factual Basis during Plea colloquy under Federal Rules of Criminal Procedure Rule 11(b)(1)(G)?
- 3) Whether Sentence of Ninety-Six Months is in Conflict with Rosales-Mireles vs United States, 585 U.S. 129, 138 S.Ct. 1897 (2018) and Molina-Martinez vs. United States, 136 S.Ct. 1338 (2016), Where incorrect guideline Range ☐ used violated 6th Amendment due process And was Procedural error of the District Court?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was September 17, 2024

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

Petitioner, Rodney Boyles, appeals from denial of a Certificate of Appealability by The United States Court of Appeals For The Eighth Circuit. Petitioner Boyles, filed a 28 U.S.C. § 2255 Motion challenging Three (3) Issues involving Ineffective Assistance of Counsel, Sentencing Errors and Subject Matter Jurisdiction of The District Court.

The District Court denied the §2255 motion without an Evidentiary Hearing, even though Boyles filed an affidavit that supported his out-of-court statements made to his Attorney, Mr. Ermine, and Facts pertaining to his understanding of Plea Stipulation. Attorney Mr. Ermine did not file a rebuttal or Reply affidavit denying any of Petitioner Boyles' claims against him.

The District Court further dismissed Petitioner's Jurisdictional challenge without any regard to the pertinent facts presented, that the Government excluded necessary elements to prove federal Criminal Jurisdiction. The District Court denied Boyles' §2255 Motion on the basis of lack of Merit to his three claims and also denied a certificate of appealability on July 31, 2024.

Petitioner then filed a application for a certificate of appealability to the Eighth Circuit Court of Appeals. Boyles Presented evidence of a denial of a Constitutional claim that reasonable Jurist would find the "District Court's

assessment debatable or wrong". See Slack v. McDaniel, 529 U.S. 473, 484 (2000). The Eighth Circuit dismissed the application for certificate of Appealability without opinion of Court on July 31, 2024.

Petitioner, Rodney Boyles, Now appeals to The United States Supreme Court to prayerfully ask for a grant of a Writ of Certiorari from the denial of Certificate of Appealability on the merits of Petitioner's Constitutional Claims, Conflicts with District Court's Ruling, Article III U.S. Supreme Court precedents in Conflicts involving the U.S. Constitution, Article 1, § 8, Clause 3, and Statutory Laws as applied to Petitioner's Jurisdictional challenge needed to prove Federal Criminal Jurisdiction.

REASONS FOR GRANTING THE PETITION

The Reasons for Granting Writ of Certiorari is as follows:

- (1.) To resolve conflicts of Constitutional and Statutory laws involving the Commerce Clause under Article 1, Section 8, Clause 3; which is Congress' Power "to regulate Commerce with Foreign Nations, and among the Several States ..."; with Title 18 U.S.C. § 7(3) and Title 40 U.S.C. § 3112(c); which together provide the basis of Federal Criminal Jurisdiction and Territorial Jurisdiction of the United States.; with Article III Powers of this Court's Judicial decrees expanding clause.
- (2.) A second Conflict in the Judgement of District Court of Western Missouri in denying Meritorious Constitutional Claim violating Fifth and Sixth Amendment Due Process and Liberty interest under Jones vs. United States, 529 U.S. 848, 850 (2000) For 18 U.S.C. § 844(c) conviction.
It was Proven in Petitioner's 28 U.S.C. § 2255 Motion that the Arson of a Apartment building was "not in use" for commercial purposes at the time of offense.
Thus, Making conviction without Federal Criminal Jurisdiction.;
- (3.) The Writ of Certiorari should be Granted because the District Court's use of an incorrect guideline Range violated this Honorable Court's precedents of Molina-Martinez vs. United States, 136 S.Ct. 1338 (2016), and Rosales-Mirales vs United States, 585 U.S. 129 (2018), and Procedural error violating Sixth Amendment.

Thus, a Severe Miscarriage of Justice plagues Petitioner, Rodney Boyles, by being indicted and convicted without Federal Criminal Jurisdiction and being sentenced by an incorrect guideline which resulted in Petitioner's liberty unconstitutionally being taken and/or for longer than necessary or bargained for from error of Government and District Court enhancing Sentence by "element" not in indictment or admitted by Petitioner.

The United States Supreme Court is obliged to review and resolve conflicts of Constitution Controversies as well as conflicts involving Supreme Court decisions in inferior courts below, under Rule 10(c) of Supreme Court Rules.

QUESTION PRESENTED AND ARGUMENT

- 1.) Whether Arson of Commercial building is subject to Prosecution under 18 U.S.C. § 844(c) and Jones vs. United States, 529 U.S. 848, 120 S.Ct. 1904 (2002); Where (A) Lease was terminated by eviction and (B) Building was no longer "being in Use" of "Private Residences" for commercial purposes at the time of offense?

ARGUMENT

The Supreme Court decision in Jones vs. United States, addressed the issue in instant offense about Federal Criminal Jurisdiction of an 18 U.S.C. § 844(c) affecting

Private residences and commercial buildings NOT "in use" for commercial purposes "at the time of the offence".

The indictment filed in Petitioner Boyles' case stated:

"On or about January 13, 2021 in the Western District of Missouri, the defendant Rodney Boyles did maliciously damage or destroy by means of fire or an explosive, any building, vehicle or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce to wit: by setting a fire inside the occupied and rented apartment building located at 1102-1104 Benton Boulevard, Kansas City, Missouri, contrary to the provisions of Title 18 U.S.C. § 44(c)." "

The property at 1102 Benton Blvd where the alleged arson took place was owned by a Private Owner, SC REI, LLC; And was leased to a Non-profit Company called Restart Inc, and leased Eight apartments specifically at 1102 Benton Boulevard. The Arson never damaged property located at 1104 Benton Boulevard. At the time of the offense only three (3) of the Eight Apartments were occupied by residents who did not pay rent, but were participants or (squatters) Homeless people Restart Inc. had left in building when their lease was terminated on December 1, 2020.

These apartments were under lease and "used in commerce" as "private residences" and "Permanent housing" while the Restart Inc. had the Lease Agreement "Active". When the lease was ended, Petitioner was "squattling" in one of the apartments located at 1102 Benton Blvd on the date of Arson. He was high on narcotic drugs (Methamphetamine / Ice) and drinking alcohol; and began to hear voices of a person saying they "were going to kill him!"

At that time Petitioner, while under the influence of "Ice", "Meth" and alcohol, then lit a piece of paper on fire and threw it in the trashcan in the Kitchen area of Apartment. He then ran and told the mother of his Kids that were squatting with him at time, that the house was on fire because "someone's trying to kill me" and they left the Apartment with the Kids.

Petitioner argues that he is similarly situated in regards application of Jones vs United States, 529 U.S. 848 (2002) on basis that:

(a). The Government's interpretation of 18 U.S.C. § 844(c) did not reach the police powers enumerated by Constitution for an owner-occupied private residence.

(b). At the time of the Arson, 1102 Benton Blvd was NOT being "actively employed" for commercial purposes because Restart Inc.'s lease was terminated December 1, 2020 by "Notice of Termination of Tenancy" see Appendix C.

The Restart program had "to Quit and deliver to landlord or Authorized Agent possession of premises now held and occupied by You"... "said Premises must be Quit and delivered within on January 31st, 2021."

(c). The Facts that the District Court and Government refused to consider under Jones, were the "active commercial purpose" needed to prove a commerce element. And the lease was terminated on December 1st, 2020. Therefore, the "active commercial purposes" ended at 1102 Benton Blvd on the date of Termination of lease between Owner SC REI LLC and Restart Inc.

(d). From December 1st thereafter until January 31st, 2021 was Notice to Restart to "vacate, leave, Quit and deliver the building" and not extension of lease of Building as the Government Argued. The lease was terminated pursuant to section 441.060 of Missouri Revised Statutes for purpose of Terminating the Tenancy. Restart did not have to make Further Payments during the eviction Process. Their business ended on December 1st, 2020 with SC REI, LLC.

(e). Thus, under Jones, the Arson at residence falls into the protection articulated in Jones as a "private residence" under lease and also when the Tenancy was terminated because it was no longer being "used in active employment for commercial purposes". The "squatters" left in the Apartment "used it for private residences", not paying rent and therefore was not subject to §844(i) federal criminal Jurisdiction. See Jones Id. at 857.

(f). Finally, Petitioner supports this issue by a lawsuit filed against owners and managers and Restart, INC. in the Circuit Court of Jackson County, Missouri proving that: "Defendant Restart, Inc. operated a "permanent housing program" "to house persons who experienced chronic homelessness"... "Pursuant to the terms of the lease agreements, the premises was to be "used" as a "private residence" for Restart residents"... See Case No. 2116-CV17212, Division 13, Circuit Court, Jackson County.

The Supreme Court is now confronted with the same Question as in Jones in Petitioners case of whether the Federal Arson statute reached an "owner-occupied Private residence" as applied Petitioner Boyles.

This Court rejected the government's "expansive interpretation" then in Jones and now Must reject it again, under which "hardly a building in the land would fall outside the Federal statute's domain". Id. at 857, 120 S.Ct 1904 (2000).

This Court read that the Statute is to be Read most sensibly and narrowly to reach only buildings "used in active employment for Commercial purposes" and that "arson is paradigmatic common-Law state crime .." And the Governments broad reading will and did significantly change the Federal-State balance." Ibid (Quoting Bass, 404 U.S. at 349 (1971)).

"When Federal Criminal Statutes regulate traditionally local criminal conduct, Courts Must Construe the Federal statute narrowly to Avoid unduly infringing on the Police Power reserved to the states."

QUESTION PRESENTED AND ARGUMENT

- (2.) Whether THE EXPANSION OF THE COMMERCE CLAUSE IN THE CONSTITUTION UNDER ARTICLE I, SECTION 8, CLAUSE 3 CONFLICTS WITH TITLE 18 U.S.C. § 7(3) and TITLE 40 U.S.C. § 3112(c) UNDER ADAMS VS. UNITED STATES, 319 U.S. 312, 63 S.Ct. 1122 (1943); WHERE INDICTMENT FOR 18 U.S.C. § 844(c) OFFENSE LACKED PROOF OF FEDERAL CRIMINAL JURISDICTION VIOLATED PETITIONER'S FIFTH AND SIXTH AMENDMENT RIGHTS OF DUE PROCESS AND NOTICE; AND GOVERNMENT NEVER ESTABLISHED FEDERAL CRIMINAL JURISDICTION IN FACTUAL BASIS DURING PLEA COLLOQUY UNDER F.R.C.R.P. RULE 11(b) (1)(G)?

ARGUMENT

The Government in Petitioner's case in chief failed to provide proof of Federal Criminal Jurisdiction in indictment for an 18 U.S.C. § 844(c) offense, and never established Federal Criminal Jurisdiction during plea colloquy as required by Federal Rules of Criminal Procedure Rule 11(b)(1)(G).

Petitioner Boyles, was indicted for Arson of an Apartment Building located at 1102 Benton Blvd, Kansas City, Missouri. The property was not owned or leased by the United States or was a territory of the United States. The Government in the indictment or at the Plea Colloquy never provided proof of "Exclusive or current Jurisdiction" over said premises by the Governor of Missouri.

Under Title 18 U.S.C. § 7(3), the Apartment in Question was clearly not property of the United States. Secondly under Title 40 U.S.C. § 3112(c), the Government has to prove that it exerted such Jurisdiction by filing the requisite Notice with the Governor of Missouri. See Adams vs. United States, 319 U.S. 312, 87 L.E.D. 1421, 63 S.Ct. 1122 (1943). "The General Services administrator - MUST notify the Governor that the Federal Government is taking concurrent Jurisdiction over the land." See also United States vs. King, 781 F.Supp. 315 (D.N.J. Oct. 21, 1991) and Fountain vs. New Orleans Public Services, Inc., 265 F.Supp. 630, 638 (E.D. LA 1967).

Title 40 U.S.C. § 3112(c) states:

"Presumption: It is conclusively Presumed that Jurisdiction has not been accepted until the Government accepts Jurisdiction over land as provided in this section."

Petitioner argues Attorney never challenged the Jurisdiction when Boyles asked him, "Why his case was Federal?" Thus, under Federal Rules of Criminal Procedure Rule 52(b), plain error review was warranted and Attorney was ineffective for not raising objection to Jurisdiction as requested by Petitioner, violating 6th Amendment.

Nether was the Question of Federal Jurisdiction answered in 28 U.S.C. § 2255 motion. The District Court and Government never proved essential element missing in indictment or at Plea Colloquy, therefore depriving Petitioner Boyles of the "True Nature" of the Charges resulted in a violation F.R.C.R.P. Rule 11(b)(1)(G).

Petition argues that the Government's sole reliance of the "interstate commerce element" in the indictment relieved the Government from providing proof of Federal Criminal Jurisdiction in 18 U.S.C. § 844(G) offense.

As in Jones, This Court ruled the "expansive interpretation" of the commerce clause did not reach for (1) private residences and (2) commercial building was not "actively employed for commercial purposes." Id at 857(2000). Thus proof of an interstate nexus "affecting interstate or foreign commerce" had to be proven.

As stated prior in § 2255(a), the commercial building was not an federal enclave or territory or land owned or given exclusive or current Jurisdiction by the Governor of Missouri.

The arson happened on January 13th, 2021, roughly 45 days after Restart Inc's lease was Terminated, ending ANY commercial business use of the Building with Owner, On December 1, 2020.

The conflict created by this Court's expansion of the Commerce clause of the Constitution Article I § 8, clause 3 and the definition of 18 U.S.C. § 7(B) and requisite proof under Title 40 U.S.C. § 3112(c) brings into question the Constitutionality of both Statutes by the Expansion of the Commerce clause by Article III Judicial decrees violating Article I Powers of Congress and Constitution.

This Court's Commerce Clause Jurisprudence has significantly departed from the original meaning of the Constitution. See Gonzales vs. Raich, 545 U.S. 1, 58-59, 125 S.Ct. 2195 (2005). (dissenting opinion).

The clause's text, structure, and history all indicate that at the time of the Founding, the term "Commerce" consisted of selling, buying and bartering, as well as transporting for these purposes." Raich 545 U.S. at 58. This meaning "stood in contrast to productive activities like manufacturing and agriculture" and Founding era sources demonstrate that "the term 'commerce' [was] consistently used to mean trade or exchange - not all economic or gainful activity that has some attenuated connection to trade or exchange."

By departing from this limited meaning, this Court's cases have licensed Federal regulatory schemes that would have been "unthinkable" to the Constitution's Framers and ratifiers. Raich, 545 U.S. at 59. Petitioner asserts this expansion of the Court superceded their Article III powers of the Judiciary under the Constitution as applied to Boyles because it affected his life and liberty interest under the Fifth Amendment and Sixth Amendment Due Process rights and of Notice. Thereby, creating a conflict between Title 18 U.S.C. § 7(B) along with Title 40 U.S.C. § 3112(c) in the application "interstate commerce clause expansion" to assume Federal Criminal Jurisdiction.

Petitioner's indictment did not prove an "Interstate Commerce" nexus due to the Owners Leasing the building to a local company Restart Inc., that paid the Lease to provide "permanent private residences" for homeless residents of the Kansas City area. This was not a "hotel" and did not have "interstate customers". The lease was a "intrastate" activity while under lease. After the termination of the lease, Petitioner Boyles, "a local squatter" took residence in 1102 Benton Blvd and did not pay rent or had any "commercial interest" in property for it to be still "actively employed."

In Bousley vs. United States, 523 U.S. 614, 618 (1988), the defendant argued, in part, that his guilty plea was involuntary because he was misinformed about the elements of an offense.

This court found that "Petitioner's contention 'that the record reveals that neither he or his Counsel nor the Court correctly understood the essential elements of the crime which he was charged... were this contention proved, petitioner's plea would be... constitutionally invalid.'" Id. at 618-19.

Petitioner Boyles asserts the exact senario in his instant case in guilty Plea and conviction because the Federal Criminal Jurisdiction and commerce element proving "active employment for commercial purposes" at the date of the Arson on January 13th, 2021 was lacking in indictment, nor proven by Government at Plea Colloquy and was insufficient to honor a presumed "interstate commerce nexus" for conviction to be tenable.

Thus, violating Petitioner's "substantial Rights" of the 5th and 6th Amendments of the Constitution. This is represented by the "expansion of the commerce clause" created This Court's Article III powers conflicting with the Article I powers of Congress and the History and Text of the Constitution in Article I, Section 8, clause 3, that the Framers the Constitution does not permit. The conviction should be reversed for lack of Federal Criminal Jurisdiction to avoid a Constitutional Controversy inwhich the rule of lenity dictate should be in favor of Petitioner to meet the "ends of Justice".

QUESTION PRESENTED

And ARGUMENT

- (3) WHETHER SENTENCE OF NINETY-SIX MONTHS IS REASONABLY IN CONFLICT WITH ROSALES-MIRELES vs UNITED STATES, 585 U.S. 129, 138 S.Ct. 1897 (2018) AND MOLINA-MARTINEZ vs. UNITED STATES, 136 S.Ct. 1338 (2018).

ARGUMENT

Petitioner argues that the District Court violated his Sixth Amendment rights and abused its discretion when it sentenced Petitioner by an incorrect guideline range and received an enhanced sentence as a result of 96 months under U.S.S.G. § 2K1.4 (a)(1) for "intentionally causing or creating a risk of injury" to another person during arson under 18 U.S.C. § 844(i) conviction.

Petitioner pleaded guilty to offense, § 844(i) statute that had a penalty of 5-20 years imprisonment. The indictment never included an "injury element or bodily harm element", had it been included the statutory penalty would have changed to 7 to 40 years.

Therefore, under U.S.S.G. § 2K1.4 (a)(2), his base offense should have been calculated from level 20, category VI and after a 3 level reduction for acceptance of responsibility, a total base offense level of 17 (seventeen) would have produced a guideline of 51-63 months, which was within and at the bottom the Statutory penalty of 5-20 yrs.

Under Molina-Martinez vs. United States, 136 S.Ct. 1338 (2016), this Court held that "When a defendant is sentenced under an incorrect guideline range - whether or not the defendant's ultimate sentence falls within the correct statutory range - the error itself can, and most often will be sufficient to show a reasonable probability of a different outcome absent error." 578 U.S. — at — (2018).

In other words, the error resulting in a higher range than the Guidelines provide usually establishes a reasonable probability that a defendant will serve a prison sentence that is more than "Necessary to fulfill the purposes of incarceration." See. 18 U.S.C. § 3553(a)(6) and Rosales-Mireles vs United States, 138 S.Ct. 1897 (2018).

Petitioner asserts that the District Court did not sentence him by "The Statute" and only considered the guideline Range when he sentenced defendant as required by F.R.C.R.P. Rule 32, But the Court chose to use / impute a guideline sentence under U.S.S.C. § 2K1.4(a)(1) based on a "stipulation in the plea agreement".

For the record Petitioner never "admitted" to the stipulation written by the Government and NOT objected to by Attorney, which stated that Defendant "intentionally" set fire with "Knowledge of creating a risk or bodily injury to another". By such an erroneous accusation in the stipulation enhanced Petitioner's base offense level under § 2K1.4(a)(1) to a level 24; without the "stipulation" the base offense level would be 20 under § 2K1.4(a)(2).

This conflict is pertinent because as the Attorney "assumed" Petitioner, the Government did charge Boyles with the higher statutory penalty of 7-40 yrs for "intentionally creating a risk or bodily injury" in the indictment, and forgot to do so. (See Appendix D). The use of the "stipulation" was the government's attempt to make up for their mistake in the indictment by having the P.S.R. calculate the guideline range using § 2K1.4(a)(1) resulting in total guideline range of 77-96 months; which correlates to the minimum of statutory range of 7-40 years they forgot to charge in indictment. The result is staggering Thirty-Three (33) month difference between the Top of the guidelines when compared, $(96 - 63 = 33 \text{ months})$.

Thus, the District Court sentenced Petitioner to higher guideline by use of incorrect calculation. Petitioner never admitted at Plea Colloquy to "intentionally" setting fire and "Knowing it created a risk of bodily injury". He was on Meth and alcohol, he did not have the mens rea "to know" any thing or anybody would be harmed.

✓ The District Court has the ultimate responsibility to ensure that the U.S.S.B. Range it considers is correct and failure to calculate the correct guideline constitutes procedural error" and is in conflict with This Court's decisions in Gall vs United States, 552 U.S. 38, 51 (2008). "A sentence is only substantially reasonable, if the District Court committed no significant procedural error, such as failing to calculate (or improperly calculate) the guidelines range."

Petitioner did not "intentionally abandon or relinquish this error and raised this constitutional violation in his 28 U.S.C. § 2255 Motion and Application for Certificate of Appealability under 28 U.S.C. § 2253 (c) for ineffective assistance of Counsel and reviewable under F.R.C.R.P. RULE 52.

CONCLUSION

The petition for a writ of certiorari should be granted. Prayerfully and

Respectfully submitted, Amen!



Date: 10/31/24