No. 24-7211

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Jeffrey Spivack — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jeffrey Spivack
(Your Name)

604 Banyan Trail, Unit 811172
(Address)

Boca Raton, FL 33481
(City, State, Zip Code)

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(Phone Number)

QUESTION(S) PRESENTED

The Eleventh Circuit has misapprehended the scope and fundamental nature of Petitioner's appeal: Petitioner filed an appeal contesting the district court's involuntary recharacterization—over Petitioner's repeated written objections—of a motion to dismiss pursuant to Fed. R. Crim. P. Rule 12(b)(2) as a motion to vacate under 28 U.S.C. § 2255. The Eleventh Circuit disregarded the explicit, unambiguous notice of appeal as well as Petitioner's initial brief, both of which specified the two individual orders appealed—orders that were completely separate from the order purporting to deny a § 2255—and then re-docketed and processed Petitioner's appeal as a § 2255 appeal and motion for Certificate of Appealability (COA). The Eleventh Circuit persisted in this misapprehension even after being advised with exhaustive motions for reconsideration not once, but twice.

Due to the Eleventh Circuit's erroneous actions, Petitioner's appeal was never decided on the merits, and the disputed recharacterization was never addressed. The following question is presented:

May a Court of Appeals disregard the scope of an appeal when the appellant has clearly articulated the scope and nature of the appeal by identifying the specific final orders appealed in a notice of appeal, and further defined the parameters of the appeal in the initial brief?

LIST OF PARTIES

[X] 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

United States District Court for the Southern District of Florida, West Palm Beach Division:

United States of America v. Jeffrey Spivack, No. 9:21-cr-80016

Jeffrey Spivack v. United States of America, No. 9:23-cv-81236

United States Court of Appeals for the Eleventh Circuit:

United States of America v. Jeffrey Spivack, No. 21-12788

United States of America v. Jeffrey Spivack, No. 22-11220

United States of America v. Jeffrey Spivack, No. 23-11886

United States of America v. Jeffrey Spivack, No. 23-13133

In re: Jeffrey Spivack, No. 23-13870

United States of America v. Jeffrey Spivack (subsequently erroneously re-styled as Jeffrey Spivack v. United States of America), No. 24-10150

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STATUTES AND RULES

OTHER

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

[X] 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,
[X] is unpublished.

The opinions of the United States district court appear at Appendix B to the petition and are

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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 _____.

[ ] 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: October 15, 2024, and a copy of the order denying rehearing appears at Appendix D.

[ ] 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

Article III, Section 2 of the United States Constitution provides in relevant part: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States," and to certain "controversies."

The Fifth Amendment to the United States Constitution provides in relevant part: "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;"

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right ... to be informed of the nature and cause of the accusation;"

28 U.S.C. § 1291 provides in relevant part: "The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States . . .."

28 U.S.C. § U.S.C. 2253(c) provides in relevant part:

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 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.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

Federal Rule of Criminal Procedure 12(b)(2) provides in relevant part: "A motion that the court lacks jurisdiction may be made at any time while the case is pending."

Federal Rule of Appellate Procedure 27(c) provides in relevant part: "A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The court may review the action of a single judge."

STATEMENT OF THE CASE

Petitioner has never been indicted by a grand jury, never signed a waiver of indictment, did not waive reading of the charges at arraignment, was not provided with a copy of the information purportedly filed by the U.S. Attorney's Office at any time before or during arraignment, did not have the allegations in the information read during arraignment or even later during a purported change of plea hearing, and the allegations contained in the information filed without a signed waiver were materially different than allegations contained in the original criminal complaint and plea agreement. The preceding facts have not been disputed and are contained within the record. As a result, Petitioner was not "informed of the nature and cause of the accusation" as required by the Sixth Amendment to the United States Constitution and could not make a knowing, voluntary waiver of the Fifth Amendment right to indictment by grand jury. Without any indictment, and without a knowing, voluntary waiver of indictment, subject-matter jurisdiction was never conferred to the district court, and the district court never had the authority to perform any function other than dismissing the charges against Petitioner.

Petitioner timely filed a notice of appeal of the purported Amended Judgment in a Criminal Case, docketed as Appeal No. 21-12788. Retained trial counsel, who had also been retained (by a relative without Petitioner's knowledge while Petitioner was hospitalized) for the limited purpose of complying with instructions in a Notice of Deficiency issued by the Eleventh Circuit Clerk's office, disregarded Petitioner's explicit written instructions and filed a notice of appearance in the appeal after

having been terminated in writing by Petitioner. The Eleventh Circuit subsequently denied (unauthorized) appellate counsel's motions to withdraw, and appellate counsel refused to perfect an appeal on any grounds other than "the reasonableness of the sentence," even though he advised the appeal on that ground would be futile. However, counsel did advise the Eleventh Circuit that subject-matter jurisdiction of the district court had been disputed, albeit in a footnote of his brief. At Petitioner's request, counsel filed a motion to withdraw with the district court, which was granted.

Once trial counsel was no longer attorney of record in the district court proceedings, the Petitioner filed a *pro se* Motion to Dismiss with Prejudice pursuant to Fed. R. Crim. P. Rule 12(b)(2) based on the court's lack of subject-matter jurisdiction. The district court denied the motion, as well as Petitioner's Motion for Reconsideration with extensive (though demonstrably erroneous) reasoning, but never indicated in either order that the motion should have been filed as a Motion to Vacate under 28 U.S.C. § 2255, nor did the court provide notice of intent to recharacterize the motion as a § 2255 at that time. Petitioner timely filed a notice of appeal of the denial of these motions, which was docketed as Appeal No. 22-11220 and considered by the same merits panel of the Eleventh Circuit and at the same time as Appeal No. 21-12788. Petitioner's Opening Brief thoroughly refuted the district court's factual and legal errors, demonstrated that the district court had been without subject-matter jurisdiction, and requested that the Eleventh Circuit conduct an inquiry and analysis of the district court's disputed subject-matter jurisdiction in

the first appeal docketed, Appeal No. 21-12788 as an alternative remedy in the event that it found any reason to dismiss Appeal No. 22-11220.

The government declined to file a Response Brief for either appeal, and instead filed a Motion for Summary Dismissal based on a purported appeal waiver in Appeal No. 21-12788 and a Motion for Summary Affirmance in Appeal No. 22-11220. This same merits panel of the Eleventh Circuit failed to inquire into the district court's disputed subject-matter jurisdiction in either appeal, and granted both of the government's motions. With respect to Appeal No. 21-12788, unauthorized appellate counsel for Petitioner failed to file a response to the government's motion, and the Eleventh Circuit found the government's claim of an appeal waiver persuasive in the absence of any rebuttal. As to Appeal No. 22-11220, the same panel granted the government's motion without addressing the merits of Petitioner's brief or rebuttal to the government's motion, stating instead only that the district court did not have jurisdiction to consider Petitioner's motions at the time they were filed due to the appellate divestiture rule, and for that reason alone, the appeal was "frivolous."

Although the Eleventh Circuit's application of the appellate divestiture rule as jurisdictional was erroneous in light of this Court's clarification of *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (on which the Eleventh Circuit relied) in *Hamer v. Neighborhood Hous. Servs. Of Chi.*, 538 U.S. 17 (distinguishing statutory jurisdictional requirements from non-jurisdictional mandatory claim processing rules), Petitioner declined to submit a Petition for Certiorari to this Court at that time. A more appropriate and non-discretionary remedy was available: filing a

renewed motion to dismiss pursuant to Rule 12(b)(2) once there was no longer any possible dispute that the district court had been revested with the jurisdiction to consider its own subject-matter jurisdiction.

Petitioner timely filed an Expedited Renewed Motion to Dismiss with Prejudice pursuant to Rule 12(b)(2). On the same day this motion was received and filed with the Clerk, the district court suddenly declared—with scant explanation—that "[b]ased upon the nature of the relief being sought by Defendant, the Court chooses to recharacterize Defendant's motion as his first petition [sic] for relief pursuant to 28 U.S.C. § 2255." The district court included a warning as mandated by *Castro v. United States*, 540 U.S. 375 giving Petitioner 30 days to withdraw the motion or "amend the motion to contain any and all § 2255 claims that he may have," or else the court would "recharacterize Defendant's Expedited Renewed Motion to Dismiss with Prejudice, DE 118, as his first petition [sic] pursuant to 28 U.S.C. § 2255 and proceed to decide it."

Petitioner promptly used the only method specifically enumerated by this Court in *Castro* to contest the recharacterization: filing a Notice of Appeal and Expedited Motion Contesting Recharacterization. In order to prevent the district court and Eleventh Circuit from again erroneously invoking the non-jurisdictional appellate divestiture rule, Petitioner soon thereafter filed an Amended Expedited Consolidated Objections and Motion to Set Aside the Order Recharacterizing Defendant's 12(b)(2) Motion. Nevertheless, the district court seized upon the fact that an appeal (No. 23-11886) had been docketed, and dismissed Petitioner's motion for

lack of jurisdiction, but stated that "[t]his Order is without prejudice to Defendant pursuing the claims asserted in this motion when the pending appeal is resolved and this Court is once again vested with jurisdiction to consider the merits of Defendant's claims."

The Eleventh Circuit next found a new way to avoid passing on the merits of Petitioner's appeal to contest the district court's involuntary recharacterization: it dismissed Appeal No. 23-11886 *sua sponte* for lack of subject-matter jurisdiction, claiming that the orders appealed were not "final and appealable" "because it did not end the litigation on the merits in the district court[]" arguing—despite the fact that as long ago as *United States v. Hayman*, 342 U.S. 205, this Court recognized that "a proceeding under Section 2255 is an independent and collateral inquiry" which generates its own separate case number and file—"[t]he district court has not ruled on the recharacterized § 2255 motion." Nevertheless, with jurisdiction to consider its own jurisdiction unquestionably revested to the district court, Petitioner refiled the Amended Expedited Consolidated Objections and Motion to Set Aside the Order Recharacterizing Defendant's 12(b)(2) Motion. The district court issued an Order recharacterizing the motion to dismiss pursuant to Rule 12(b)(2) as a § 2255 motion, and overruling Petitioners objections to the recharacterization without citing any statutory or case law justification for the decision.

In order to avoid being time barred from ever perfecting an appeal on this issue, Petitioner filed a notice of appeal of this order. Predictably, the appeal, docketed as Appeal No. 23-13133, was also dismissed *sua sponte* by the Eleventh

Circuit as not being the subject of "a final appealable order." The district court docketed what it deemed a § 2255 case and ordered the government to file a responsive motion. When the government filed its response, Petitioner, again to avoid being procedurally barred from contesting the government's response, filed a reply by special appearance, and continued to contest the legitimacy of the recharacterization. While this purported § 2255 "case" was pending before the district court, Petitioner filed a Petition for Writ of Mandamus with the Eleventh Circuit. Although that petition was ultimately denied, the district court saw fit to quickly rule, denying the purported § 2255 motion in an order filled with factual and legal errors.

Now that the Eleventh Circuit could no longer state that "litigation on the merits in the district court" had not ended, Petitioner again filed a notice of appeal. But this notice of appeal *did not* express an intent to appeal the order denying the purported § 2255 motion; rather, this notice of appeal specifically and unambiguously appealed the orders recharacterizing Petitioner's renewed motion to dismiss. Moreover, Petitioner's Initial Brief made clear the scope of the appeal, which did not include the other order purportedly denying the purported 2255. That distinction is critical, because what the Eleventh Circuit did next is what required the filing of this Petition for Certiorari. After Appeal No. 24-10150 had been docketed and Petitioner filed an Initial Brief, and a preliminary motion to exclude evidence that had been obtained by federal felony wiretap violations, a single judge of the Eleventh Circuit denied the motion without any stated reason, and directed the Clerk "to re-docket this appeal as a § 2255 appeal and process Appellant's brief as a motion for a

certificate of appealability." This decision had the effect of determining the appeal against Petitioner, without any explanation, and by a single judge, in violation of Fed. R. App. P. Rule 27(c), this Court's precedent, and indeed the Eleventh Circuit's own binding precedent with respect to the interpretation of Rule 27(c).

Petitioner filed a Motion for Reconsideration of this erroneous Order, which was in turn denied without any explanation or discussion of the merits. Ultimately, another single judge of the Eleventh Circuit issued an Order purporting to deny what was referred to as a "motion for COA." The Order asserts that "Spivack appeals the denial of his 28 U.S.C. § 2255 motion to vacate and seeks a certificate of appealability ('COA')." This assertion is, put politely, diametrically opposed to incontrovertible facts as they appear in the record. As a final entreaty for the Eleventh Circuit to recognize the immutable fact that the subject of the appeal was not a "motion for COA," but instead contested the district court's orders involuntarily recharacterizing Petitioner's motion to dismiss as a 2255 and reinstate the appeal, Petitioner filed a Petition for Panel Rehearing. The Clerk advised that this petition would not be considered in that form and would only be accepted as a "motion for reconsideration." Petitioner complied with this edict, and submitted evidence and argument in the format demanded. Once again, the Eleventh Circuit, this time a panel of two judges, denied the motion for reconsideration, stating only that Petitioner had presented no *new* evidence or argument; notably, they did not dispute the validity of the evidence and argument actually presented. This Petition for a Writ of Certiorari follows.

REASONS FOR GRANTING THE PETITION

The Eleventh Circuit's refusal to adjudicate Petitioner's appeal on the basis under which it was filed—despite twice being advised of its misapprehension of the nature and scope of the appeal—is in conflict with the spirit of this Court's decision in *Rodriguez v. United States*, 395 U.S. 327 (1969). *Rodriguez*, at 330, stood for the principle that "[t]hose whose right to appeal has been frustrated should be treated exactly like any other appellants; they should not be given an additional hurdle to clear just because their rights were violated at some earlier stage in the proceedings." In *Hohn v. United States*, 524 U.S. 234 (1998) at 246, this Court stated that "[w]e further disagree with the contention ... that a request to proceed before a court of appeals should be regarded as a threshold inquiry separate from the merits which, if denied, prevents the case from ever being in the court of appeals. Precedent forecloses this argument."

Moreover, by applying the wrong standard of review (erroneously adopting the 28 U.S.C. § 2255 certificate of appealability (COA) requirements contained in 28 U.S.C§2253(c) instead of the Federal Rules of Appellate Procedure and local rules) as well as the wrong criteria for adjudicating the appeal (allowing the appeal to be decided by a single judge in violation of Fed. R. App. P. Rule 27(c), the Eleventh Circuit's parallel local rule, and even its own precedent in *Villarreal v. RJ Reynolds Tobacco Co.*, 839 F. 3d 958 (CA 11, 2016)), the Eleventh Circuit produces an inequitable result because it illegitimately forecloses a Petitioner from appellate review. This result is anathema to requirement for fundamental fairness expressed

by this Court in *Korematsu v. United States*, 319 U.S. 432 (1943) at 434: "certainly when discipline has been imposed, the defendant is entitled to review."

Petitioner readily acknowledges that reasons typically associated with accepting a case (at least according to the conventional wisdom of experts in the arcane art of what makes a case "cert worthy") may not be immediately obvious in this instance. One litigant being on the receiving end of a bad ruling would not necessarily—or even usually—be deserving of review by this Court in and of itself. There is no circuit split, and no ambiguity in the interpretation of any applicable statute or rule. Ironically enough, blatant disregard by the courts below of the facts make their conduct that much more egregious. What makes this case a matter of profound importance to the public and thus worthy of this Court's intervention is that the courts below knew they were misconstruing the scope of the appeal, and they did it anyway; that is an affront to the integrity of the judiciary.

There is no shame in a court making an erroneous decision, if that court does not obstruct subsequent of correction of the error. Jurists of reason can and do differ on matters such as which canon of statutory interpretation to apply or the correct standard of review in a given situation, but when a court persists in rejecting objective reality and substituting its own, even after dispositive, irrefutable evidence directly contradicting that court's error has been provided to it, allowing such a fundamental miscarriage of justice to stand, and allowing that court to engage in such egregious conduct with impunity constitutes nothing less than an existential threat to the rule of law.

A single judge of the Eleventh Circuit made a mistake: she misapprehended the nature and scope of Petitioner's appeal, and ordered it to be re-docketed as another, inappropriate proceeding, effectively deciding the appeal against Petitioner with absolutely no analysis of the merits. Judges are human; mistakes happen, and the judge in question was newly appointed to the Eleventh Circuit. But even after Petitioner filed a motion for reconsideration and extensively pointed out the error, a two-judge panel doubled down and denied the motion without addressing the facts and arguments raised by Petitioner, compounding its previous error in the process.

Ultimately, another single judge denied the ersatz "motion for COA," thus purportedly ending the appeal. Yet again, Petitioner pointed out the Eleventh Circuit's fundamental mistake and demonstrated beyond any possible dispute that the appeal filed was absolutely, categorically *not* a motion for COA., initially with a Petition for Panel Rehearing, and then with a motion for reconsideration when the Clerk stated that the court would not decide the Petition for Rehearing in that format. This too was denied without addressing the merits. The two-judge panel (consisting of the same two judges who previously made the error) did not contradict any of the factual allegations or legal arguments in Petitioner's petition/motion for rehearing/reconsideration, but instead concluded that they need not reverse their position because Petitioner had not presented any *new* evidence or argument.

Three times the Eleventh Circuit erroneously concluded that Petitioner's appeal—unequivocally contesting two district court orders recharacterizing a motion to dismiss as a § 2255 motion—should for reasons unknown be processed as a motion

for a § 2255 COA, twice after being corrected. As the titular character Auric Goldfinger wryly observed in Ian Fleming's 1959 novel, "'Mr. Bond, they have a saying in Chicago: 'Once is happenstance. Twice is coincidence. The third time it's enemy action.'" Indeed, it strains credulity to accept the recalcitrance of the courts below as anything other than deliberate judicial gaslighting. That said, neither Petitioner nor this Court need speculate on the motivations of the courts below to determine that their orders were not only erroneous, but that they have deprived Petitioner of the appeal on the merits to which he was—and remains—entitled. Although this petition does not comprise the character of issues normally reserved for a full certiorari consideration, the consequences—not only to the Petitioner, but to every future appellant—are as unwarranted as they are catastrophic if this Court does not wield its supervisory powers. In this situation, there is an appropriate remedy available that this Court could and should exercise: Grant, Vacate, and Remand (GVR).

This Court issued a GVR order in *Youngblood v. West Virginia*, 547 U.S. 867 (2006), based not on any then-recent court decision (or confession of error on behalf of the government), but instead based on a showing that the summary affirmance below was directly at odds with longstanding precedent of this Court.[1] Specifically,

[1] *Cf. Stutson v. United States*, 516 U.S. 193 (1996) (issuing GVR order where (*inter alia*) summary affirmance below potentially conflicted with then-18-month-old Supreme Court precedent as construed by several Circuits); *Lawrence v. Chater*, 516 U.S. 163, 170 (1996) (comparing *Stutson* to *Netherland v. Tuggle*, 515 U.S. 951 (1995), vacating summary order below "for probable failure to apply a 12-year-old Supreme Court precedent that the parties briefed to the Court of Appeals"); *Price v. United States*, 537 U.S. 1152 (2003) (issuing GVR order where (*inter alia*) affirmance below potentially conflicted with then-4.5-year-old Supreme Court precedent).

as pointed out in the GVR order, the two rationales of the lower courts in *Youngblood*, in denying a new trial under *Brady v. Maryland*, 373 U.S. 83 (1963), for the government's failure to disclose exculpatory evidence to the accused, had been squarely rejected in *Kyles v. Whitley*, 514 U.S. 419 (1995) (*Brady* applicable even where such evidence is known only to police and not to prosecutors), and *United States v. Bagley*, 473 U.S. 667 (1985) (*Brady* applicable to impeachment evidence as well as exculpatory evidence). *See* 547 U.S. at 869-870. This Court accordingly remanded for determination by the court below whether the *Brady* violation was sufficiently material to the outcome below to warrant a new trial (*id.* at 870), and the court below so held on remand.[2]

A GVR order in this case is at least as appropriate as in *Youngblood*, and is fully consistent with the Court's practice endorsed in the leading case of *Lawrence v. Chater*, 516 U.S. 163 (1996), and otherwise. As recognized in *Lawrence*, flexible exercise of the Court's broad power to issue GVR orders "is important [so] that the meaningful exercise of this Court's appellate powers not be precluded" even where "ambiguous summary dispositions below" may otherwise "lack the precedential significance that we generally look for in deciding whether to ... grant plenary review." *Id.* at 170. Moreover, "the standard ... appl[ied] in deciding whether to GVR is somewhat more liberal than ... a showing that a grant of certiorari and eventual reversal are probable[.]" *Id.* at 168.

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[2] *State v. Youngblood*, 221 W.Va. 20 (2007). This case did not return to the Supreme Court.

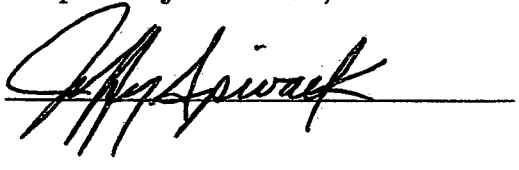
A GVR order is even more important where, as here, the summary decision below purports to reflect 'settled law' that does not warrant publication of the decision (which is thus expressly non-precedential) even though the court below invoked the wrong procedure and standard because it plainly misapprehended the factual basis for, and thus the scope of the appeal. See also Nielson & Stancil, *Gaming Certiorari*, 170 U. Pa. L. Rev. 1129, 1192-1193 (May 2022) ("unpublished opinion may have real-world effects because parties will anticipate a court following the decision even if it is not formally required to do so" as non-publication is a "signal" that the decision "merely applies settled law"). As in *Youngblood*, a GVR order is further warranted in this instance under the general standard set forth in *Lawrence* that the Court can discern a "reasonable probability" that such order may result in different outcome below, "by flagging a particular issue that ... does not appear to have been fully considered" below. 516 U.S. at 167-168.

An order of GVR necessary in this instance to compel the Eleventh Circuit to acknowledge Petitioner's appeal for what it is: an appeal contesting involuntary recharacterization by the district court, to adjudicate the appeal on the merits, and to admonish them against any future attempt to misconstrue or misstate incontrovertible facts.

CONCLUSION

The petition for a writ of certiorari should be granted, or in the alternative, the Court should issue a GVR order granting a writ of certiorari in this case, vacating the judgment of the Court of Appeals below, and remanding this case with instructions to reinstate the appeal for consideration of the merits contained in the Petitioner's initial brief.

Respectfully submitted,



Date: January 13, 2025