APPENDIX A

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10150

JEFFREY SPIVACK,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:23-cv-81236-KAM

ORDER:

Jeffrey Spivack appeals the denial of his 28 U.S.C. § 2255 motion to vacate and seeks a certificate of appealability ("COA"). His motion for a COA is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

/s/ Andrew L. Brasher

UNITED STATES CIRCUIT JUDGE

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-80016-CR-MARRA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEFFREY SPIVACK,

Defendant.
_____/

ORDER AND NOTICE RECHARACTERIZING DEFENDANT'S MOTION TO DISMISS AS A PETITION PURSUANT TO 28 U.S.C. § 2255

THIS CAUSE is before the Court upon Defendant's Expedited Renewed Motion to Dismiss with Prejudice with Incorporated Memorandum of Law [DE 118]. This Court having reviewed the pertinent portions of the record and being duly advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

Defendant pled guilty in this case to four counts of wire fraud in violation of 18 U.S.C. § 1343 and one count of extortion by means of interstate communications in violation of 18 U.S.C. § 875(b). [DE 47]. Defendant was sentenced to 63 months of imprisonment, three years of supervised release, $3,065,305.00 in restitution and a $500.00 special assessment. [DE 65; DE 69]. Defendant pursued a direct appeal which was recently decided against him. [DE 70; DE 116]. Defendant has now moved the Court to vacate his conviction and sentence. [DE 118, incorporating previous motions filed at DEs 95, 98 and 112].

The proper method for a defendant in custody to challenge the validity of his or her federal conviction and sentence is to file a petition pursuant to 28 U.S.C. § 2255. Defendant has not characterized his motion as a petition pursuant to 28 U.S.C. § 2255. Based upon the nature

of the relief being sought by Defendant, the Court chooses to recharacterize Defendant's motion as his first petition for relief pursuant to 28 U.S.C. § 2255. Pursuant to the holding of the United States Supreme Court in *Castro v. United States*, 540 U.S. 375, 383 (2003), the Court hereby notifies Defendant of its intention to recharacterize his motion as a § 2255 petition. The Court also notifies Defendant that he is entitled to file one petition pursuant to 28 U.S.C. § 2255 as a matter of right if it is timely filed. *See* 28 U.S.C. § 2255(f). If the Court recharacterizes Defendant's motion as his first petition pursuant to 28 U.S.C. § 2255 and he ultimately is not successful, he may not file a second or successive petition under § 2255 unless he receives authorization from the Eleventh Circuit Court of Appeals. 28 U.S.C. § 2255(h).

Defendant, if he chooses, may withdraw the motion that he has filed, or he may amend the motion so that it contains all § 2255 claims that he believes he has. The Court shall give Defendant 30 days from the entry of this order to either withdraw this motion or amend it to include any and all § 2255 claims that he may have. If Defendant fails to withdraw the motion or fails to amend the motion to include any and all § 2255 claims that he may have, the Court will recharacterize Defendant's Expedited Renewed Motion to Dismiss with Prejudice, DE 118, as his first petition pursuant to 28 U.S.C. § 2255 and proceed to decide it.

DONE AND ORDERED in West Palm Beach, Florida this 18th day of May, 2023.

KENNETH A. MARRA
United States District Judge

Copies provided to:

All counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-80016-CR-MARRA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JEFFREY SPIVACK,

Defendant.
_____/

ORDER RECHARACTERIZING DEFENDANT'S EXPEDITED RENEWED MOTION TO DISMISS WITH PREJUDICE AS DEFENDANT'S FIRST PETITION TO VACATE HIS SENTENCE AND CONVICTION PURSUANT TO 28 U.S.C. § 2255

THIS CAUSE is before the Court upon Defendant's Expedited Renewed Motion to Dismiss with Prejudice with Incorporated Memorandum of Law **[DE 118]**. This Court having reviewed the pertinent portions of the record and being duly advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

Defendant pled guilty in this case to four counts of wire fraud in violation of 18 U.S.C. § 1343 and one count of extortion by means of interstate communications in violation of 18 U.S.C. § 875(b) [DE 47]. Defendant was sentenced to 63 months of imprisonment, three years of supervised release, $3,065,305.00 in restitution and a $500.00 special assessment. [DE 65; DE 69]. Defendant pursued a direct appeal which was decided against him. [DE 70; DE 116]. Defendant has filed numerous motions with the Court seeking to vacate his conviction and sentence. [DE 118 which incorporated DEs 95, 98 and 112].

Upon receiving and reviewing Defendant's present motion, DE 118, which was filed after the resolution of his direct appeal, the Court provided notice to Defendant of its intention to recharacterize the motion as his first petition for habeas corpus relief pursuant to 28 U.S.C. § 2255 as required by the case of *United States v. Castro,* 540 U.S. 375, 383 (2003). [DE 119]. Under the holding of *Castro*, Defendant was given 30 days to either withdraw the motion or amend it to contain all the § 2255 claims that he may have. Defendant was advised that if he failed to withdraw the motion or amend it to include all § 2255 claims that he may have, the Court would recharacterize the motion as his first petition pursuant to § 2255 and proceed to decide it. *Id.*

Rather than withdrawing or amending his motion, Defendant filed an appeal of the Court's order notifying him of its intention to recharacterize his motion as a § 2255 petition and he objected to the recharacterization. [DE 120 and DE 123]. Defendant also renewed his motion to dismiss. [DE 126]. Defendant's appeal was dismissed for lack of jurisdiction. [Case No. 23-11886, Eleventh Circuit Court of Appeals, decided August 15, 2023]. Now that Defendant's appeal has been dismissed, he has refiled his motion to dismiss and has reasserted his objections to the Court's recharacterization of his motion as a § 2255 petition. [DE 131]. Defendant has not withdrawn his motion or amended it to include all § 2255 claims that he may have.

In view of the foregoing, and in accordance with the Court's May 18, 2023, Order [DE 119], the Court hereby recharacterizes Defendant's Expedited Renewed Motion to Dismiss with Prejudice [DE 118] and his refiling of that motion [DE 131], as Defendant's first petition for habeas corpus relief pursuant to 28 U.S.C. § 2255. The Court overrules Defendant's objections to the recharacterization.

The Clerk of the Court is hereby directed to file Defendant's Expedited Renewed Motion to Dismiss with Prejudice [118] as a new civil action pursuant to 28 U.S.C. § 2255. Upon the opening of the new civil § 2255 case, the Court by separate order will direct the United States to respond to the petition.

DONE AND ORDERED in West Palm Beach, Florida this 7th day of September, 2023.

KENNETH A. MARRA
United States District Judge

Copies provided to:

All counsel

APPENDIX C

MOTION FOR RECONSIDERATION

Appellant, JEFFREY SPIVACK, *pro se*, hereby files this Motion for Reconsideration, and as grounds therefor states:

1. On January 16, 2024, Appellant timely filed a Notice of Appeal in District Court Docket No. 21-80016-CR-MARRA (DE 145)[1] appealing the district court's "Order and Notice Recharacterizing Defendant's Expedited Renewed Motion to Dismiss as a Petition Pursuant to 28 U.S.C. § 2255' (DE 119) and 'Order Recharacterizing Defendant's Expedited Renewed Motion to Dismiss With Prejudice as Defendant's First Petition to Vacate His Sentence and Conviction Pursuant to 28 U.S.C. § 2255' (DE 132)." This Court subsequently docketed the instant case as Appeal No. 24-10150.

2. On April 3, 2024, Appellant filed his Initial Brief (Doc. 15) and appendix. The Clerk was subsequently (erroneously) directed on April 9, 2024 (in Doc. 16) "to re-docket this appeal as a § 2255 appeal and process Appellant's brief as a motion for a certificate of appealability" and complied with the single judge's erroneous order, redesignating the Brief as Doc. 17.

3. On August 2, 2024, a single judge of this Court entered an Order (Doc. 25) beginning with the assertion that "Jeffrey Spivack appeals *the denial of his 28 U.S.C.*

[1] To distinguish references to docket entries in the two courts, Court of Appeals docket numbers are preceded throughout this motion with "Doc." and district court docket numbers are preceded with "DE."

§ 2255 motion to vacate and seeks a certificate of appealability("COA")." (Emphasis added.) That judge's assertion is demonstrably, objectively, indisputably *wrong*. Regrettably, Appellant finds that it is now necessary to resort to what would ordinarily be considered excessively emphatic text formatting and punctuation, i.e., the textual equivalent of shouting, to definitively correct the record of this appeal so that there can be no further excuse for misconstruing the nature of the appeal. To wit: ***APPELLANT DID NOT APPEAL THE DENIAL OF A § 2255 MOTION!***

4. The text describing Appellant's Notice of Appeal (DE 145) in the docket report for district court Docket No. 21-CR-80016-KAM-1 clearly recognizes the nature and scope of the notice of appeal, stating in pertinent part that it is a "NOTICE OF APPEAL by Jeffrey Spivack Re: 119 Order on Motion to Dismiss, 132 Order." A copy of the district court clerk's docket entry DE 145 is attached as Appellant's Exhibit A.

5. The first paragraph of Appellant's Renewed Notice of Appeal (DE 145) plainly specified the scope of the appeal, beginning with this statement: "COMES NOW Jeffrey Spivack, Defendant, *pro se*, and files this Renewed Notice of Appeal of this Court's 'Order and Notice Recharacterizing Defendant's Expedited Renewed Motion to Dismiss as a Petition Pursuant to 28 U.S.C. § 2255' (DE 119) and 'Order Recharacterizing Defendant's Expedited Renewed Motion to Dismiss With Prejudice as Defendant's First Petition to Vacate His Sentence and Conviction

Pursuant to 28 U.S.C. § 2255' (DE 132)." *Absolutely nothing* in Appellant's Renewed Notice of Appeal (DE 145) indicated that the appeal included "the denial of [a] 28 U.S.C. § 2255 motion to vacate [DE 144]" and "certificate of appealability (COA)." *See:* copy of DE 145, attached as Appellant's Exhibit B.

6. On August 12, 2024, Appellant filed with this Court a Petition for Panel Rehearing (Doc. 26) to bring the obvious errors of fact by the single judge who entered Doc. 25 to this Court's attention for the purpose of restoring the instant appeal to the calendar for resubmission of Appellant's brief, requiring a response brief from the government, reply brief by Appellant as necessary, and a ruling on the merits *of the actual basis for the appeal.* On the same day, an employee of the Office of the Clerk of this Court (whose initials are CRL) erroneously entered a Notice of Deficiency (Doc. 27) instructing Appellant to file a Motion for Reconsideration instead. This employee, like the judges who have previously entered orders on motions in this appeal, has failed to grasp the fundamental nature of the appeal, and was apparently laboring under the same delusion: that this was an appeal of a 2255 motion, when even a cursory examination of the record would have revealed the appeal was, in fact, regarding previous orders of the district court (DE 119 and 132), *not* a § 2255 denial. Appellant files this motion to avoid having this Court disregard the merits of the appeal and deny relief by default. Nevertheless, Appellant reiterates that the Petition for Panel Rehearing was the correct form of pleading to file.

ARGUMENT

I. FEDERAL RULES OF APPELLATE PROCEDURE PERMIT APPELLANTS TO DESIGNATE INDIVIDUAL ORDERS INCORPORATED AS PART OF A JUDGMENT APPEALED

Committee Notes on 2021 Amendments to Federal Rule of Appellate Procedure Rule 3[2] recognized that "[o]n occasion, a party may file a notice of appeal after a judgment but designate only a prior nonappealable decision that merged into that judgment." That is precisely what Appellant has done in this instance. Unequivocally. The text of Rule 3(c)(1)(B) specifically permits (indeed, it requires) appellants to "designate the judgment—*or the appealable order*—from which the appeal is taken[.]" (Emphasis added.) Appellant has twice before—in Appeal No. 23-11886 and Appeal No. 23-13133—contested the district court's erroneous recharacterization of the Renewed Motion to Dismiss (DE 118) as a § 2255 motion to vacate, but both appeals were dismissed for lack of subject-matter jurisdiction by this Court *sua sponte* because of the final judgment rule. The Committee Notes, *supra*, explained Appellant's former dilemma this way:

> Designation of the final judgment confers appellate jurisdiction over prior interlocutory orders that merge into the final judgment. The merger principle is a corollary of the final judgment rule: a party cannot appeal from most interlocutory orders, but must await final judgment, and only then obtain review of interlocutory orders on appeal from the final judgment.

[2] According to *United States v. Vonn*, 535 U.S. 55, 64 n.6, 122 S. Ct. 1043, 152 L. Ed. 2d 90 (2002), Advisory Committee Notes on a Federal Rule of Procedure "provide a reliable insight into the meaning of a rule..."

The Appellant's quandary was resolved once the district court entered its "final decision" (DE 144); the orders Appellant *actually* appealed (DE 119 and DE 132) became ripe for appellate review, even to the exclusion of the district court's bald assertions and conclusions in DE 144. This is so because, as in *Kirkland v. Nat'l Mortg. Network, Inc.*, 884 F.2d 1367, 1370 (11th Cir. 1989), the final judgment "incorporates and brings up for review the preceding nonfinal order[s]."

There is simply no factual basis for the assertion in Doc. 25 that the Appellant appealed "the denial of his 28 U.S.C. § 2255 motion to vacate and seeks a certificate of appealability("COA")." On the contrary, in this instance the district court's order purportedly denying a (non-existent) 2255 motion (said order entered as DE 144) was merely a jurisdictional prerequisite to perfecting this appeal of the previously nonfinal orders, DE 119 and DE 132—reinstated with Appellant's Renewed Notice of Appeal (DE 145). That distinction is vital. The untenable result of the single judge's Order (Doc. 25) would be to deprive Appellant of appellate review of the erroneous orders actually designated for appellate review with the notice of appeal (DE 145): DE 119 and DE 132. This single judge's order cannot be allowed to stand because it would effectively affirm those appealable orders without any actual review and analysis by a merits panel of this Court, and thus determine the outcome of the appeal in violation of Fed. R. App. P. Rule 27(c).

III. A SINGLE JUDGE DOES NOT HAVE THE AUTHORITY TO DETERMINE THE OUTCOME OF THIS APPEAL

As a threshold matter, Fed. R. App. P. Rule 27(c) states that:

> 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.* (Emphasis added.)

11th Cir. R. 27-1(d) is in accord:

> Under FRAP 27(c), a single judge may, *subject to review by the court,* act upon any request for relief that may be sought by motion, *except to dismiss or otherwise determine any appeal* or other proceeding.... (Emphasis added.)

The majority in *Villarreal v. RJ Reynolds Tobacco Co.*, 839 F.3d 958, 963 (11th Cir. 2016) (en banc) recognized that "a single judge of our Court 'may not dismiss or otherwise determine an appeal or other proceeding.' Fed. R. App. P. 27(c); *see also* 11th Cir. R. 27-1(d)(same)[.]" *Hohn v. United States*, 524 U.S. 236, 246 118 S. Ct. 1969, 141 L. Ed. 2d 242 (1998) is a case holding that the Supreme Court has jurisdiction to review decisions of the courts of appeals denying applications for certificates of appealability. While the instant case is categorically NOT an application for a certificate of appealability (because Appellant absolutely DID NOT file a motion under § 2255, and specified other specific orders to be appealed), the majority's reasoning is still operative in the context of this Court's duty to fully consider the merits of this appeal. In *Hohn*, the Court repudiated the proposition

"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.*" (Emphasis added.) The *Hohn* Court also reiterated *ante*, at 244, that "even when individual judges are authorized under the Rules to entertain certain requests for relief, *the court may review their decisions.*" (Emphasis added.)

IV. UNDER SUPREME COURT AND THIS COURT'S OWN PRECEDENT, APPELLANT IS ENTITLED TO REVIEW OF THE APPEAL ON THE MERITS AND NOTICE OF APPEAL OF THE DISTRICT COURT'S ORDERS AS FILED

In *United States v. Muzio*, 757 F.3d 1243, 1240 (11th Cir. 2014), this Court recognized its duty to exercise its supervisory powers as particularly important in criminal cases. Citing Supreme Court precedent, this Court stated that: "[t]he Court has said elsewhere that 'certainly when discipline has been imposed, *the defendant is entitled to review.*' *Korematsu*, 319 U.S. at 434, 63 S.Ct. at 1125." (Emphasis added.) Here, Appellant was subjected to imprisonment by a district court that had never been conferred with the subject-matter jurisdiction to impose that penalty or, for that matter, to take *any* action—other than dismissing the charges—and continues to suffer deprivation of liberty while on supervised release, as well as all the collateral consequences that attend a purported criminal conviction. In *Baltin v. Alaron Trading Corp.*, 128 F.3d 1466, 1468 (11th Cir. 1997), this Court recognized

its responsibility to inquire not only into its own subject-matter jurisdiction, but that of the district court below: "[i]ndeed, this court has the *obligation* to inquire into subject matter jurisdiction *whenever it may be lacking*." (Emphasis added.) Moreover, this Court has also said, in *Perez v. Wells Fargo NA*, 774 F.3d 1329, 1342 (11th Cir. 2014) that: "This Circuit expresses a 'strong preference that cases be heard on the merits,' *Wahl v. McIver*, 773 F.2d 1169, 1174 (11th Cir. 1985) (per curiam), and 'strive[s] to afford a litigant his or her day in court, if possible.' *Betty K*, 432 F.3d at 1339."

CONCLUSION

The Appellant has demonstrated beyond any shadow of doubt that the Notice of Appeal (DE 145) specifically defined the scope of this appeal as the district court's erroneous orders expressing the intent to recharacterize (DE 119) and subsequent recharacterization over Appellant's objections (DE 132). This appeal *is not and has never been* an appeal of "the denial of [a] 28 U.S.C. § 2255 motion to vacate."

An unfortunate pattern has emerged during the course of the instant appeal. Appellant has brought to this Court's attention undisputed facts and unassailable legal arguments, only to have numerous motions denied and Appellant's Initial Brief denied with absolutely no discussion of the merits. This Court has rationalized these denials by repeatedly misrepresenting Appellant's basis for the appeal as that of an

appeal of a 2255 motion, even though that assertion has been thoroughly refuted with official court records that are not subject to dispute. Although Appellant levels no such accusation, a cynic might conclude that the repeated misstatements regarding the subject of this appeal by various personnel of this Court were merely pretextual, made to evade ruling on the merits of the appeal, and to avoid the unpalatable chore of ruling in favor of a *pro se* litigant that judges of the Court might view with animosity. Ultimately, the errors made need not have been deliberate; the result is the same regardless of intent: the denial of Appellant's entitlement to a full and fair adjudication on the merits and predicated on the orders *actually appealed*, not the Court's retroactive, patronizing preference of which order to appeal. A quote by Mohandas Gandhi is particularly applicable in this instance: "An error does not become truth by reason of multiplied propagation, nor does truth become error because nobody sees it." Such is the case here. For this Court to willfully ignore the truth after now having been fully informed and provided undeniable evidence would cause nothing less than a fundamental miscarriage of justice. It would also be hubris of a magnitude that would invite review requiring reversal and a stern public rebuke.

Accordingly, Appellant respectfully requests the following:

1. that the full Court vacate the single judge's order (Doc. 25) erroneously deciding the appeal as a § 2255 appeal, resubmit Appellant's Initial Brief, and

reinstate Appeal No. 24-10150 for appellate review of the erroneous orders appealed (DE 119 and DE 132) by a merits panel;

2. in the alternative, that this Court direct the Clerk to rescind the Deficiency Notice (Doc 27) and Grant the relief requested in Appellant's Petition for Panel Rehearing;

3. any other relief that this Court deems to be just and appropriate.

Respectfully submitted,

Jeffrey Spivack, Appellant, *pro se*
604 Banyan Trail
Unit 811172
Boca Raton, FL 33481
jeff.spivack@outlook.com

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2024, the foregoing Motion for Reconsideration, with a Certificate of Interested Persons and Corporate Disclosure Statement incorporated herein was filed using the CM/ECF system, and that a copy is being served on counsel of record for the government AUSA Daniel Matzkin and AUSA Lisa Hirsch using CM/ECF.

Jeffrey Spivack, Appellant, *pro se*

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

This document was prepared with Microsoft Word using Times New Roman, 14 point font. This document complies with the type-volume limit of Fed. R. App. P. Rule 32(a)(7)(B) because, excluding the parts of the document exempted by Rule 32(f), the document contains 2,321 words.

August 15, 2024

Jeffrey Spivack, Appellant, *pro se*

Appellant's Exhibit A

01/16/2024	145	NOTICE OF APPEAL by Jeffrey Spivack Re: 119 Order on Motion to Dismiss, 132 Order. Filing Fee: NOT PAID. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under All Forms and look for Transcript Order Form www.flsd.uscourts.gov/forms/all-forms. (jgo) (Entered: 01/16/2024)

Appellant's Exhibit B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

DOCKET NO. 21-80016-CR-MARRA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFREY SPIVACK,

Defendant.

_____/

RENEWED NOTICE OF APPEAL

COMES NOW Jeffrey Spivack, Defendant, *pro se*, and files this Renewed Notice of Appeal of this Court's "Order and Notice Recharacterizing Defendant's Expedited Renewed Motion to Dismiss as a Petition Pursuant to 28 U.S.C. § 2255" (DE 119) and "Order Recharacterizing Defendant's Expedited Renewed Motion to Dismiss With Prejudice as Defendant's First Petition to Vacate His Sentence and Conviction Pursuant to 28 U.S.C. § 2255" (DE 132). In support thereof, Defendant shows that:

1. Defendant timely filed notices of appeal (DE 120, and DE 135), and the United States Court of Appeals for the Eleventh Circuit docketed corresponding appeals, Appeal No. 23-11886 and Appeal No. 23-13133, respectively. Both of these appeals were subsequently dismissed by

the Court of Appeals *sua sponte* for lack of subject-matter jurisdiction. In both instances, the Court opined that the orders appealed were not "final and appealable" because they "did not end the litigation on the merits in the district court."

2. This Court stated in its "Order Denying Motion for Leave to Proceed In Forma Pauperis on Appeal" (DE 140:2) that "[t]he Court of Appeals clearly indicated that the Court's order would be reviewable on appeal once the recharacterized motion is resolved on the merits. [Eleventh Circuit Court of Appeals Case No. 23-11886, DE 134][.]"

3. This Court issued its "Final Judgment Denying 28 U.S.C. § 2255 Motion to Vacate" (DE 8 in Docket No. 9:23-cv-81236-KAM), which purportedly "'finally dispose[s] of the question ... raised by the post-judgment motion,' 'and there are no pending proceedings [in the criminal action] raising related questions.'" (*Acheron Cap., Ltd. V. Mukamal,* 22 F.4th 979, 986 (11th Cir. 2022) (ellipsis in original). Thus, the orders (DE 119 and DE 132) are now "final and appealable," and the Eleventh Circuit Court of Appeals will have subject-matter jurisdiction to entertain the resulting appeal pursuant to 28 U.S.C. § 1291.

Signed,

Jeffrey Spivack, Defendant, *pro se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 8, 2024 I have sent a copy of this Notice of Appeal by First Class Mail to Attn: AUSA Aurora Fagan at the United States Attorney's Office, 500 S. Australian Avenue, Suite 400, West Palm Beach, FL 33401.

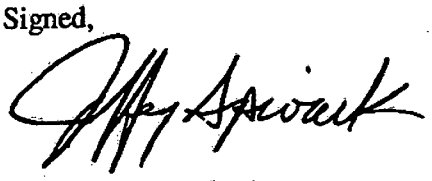
Signed,

Jeffrey Spivack, Defendant, *pro se*

DECLARATION OF INMATE FILING

I HEREBY DECLARE that I am in the custody of the Federal Bureau of Prisons, residing in a Residential Reentry Center. Today, January 8, 2024, I am causing this Notice of Appeal to be via Certified Mail. Pursuant to FRAP Rule 4(c), this filing is considered timely filed.

Signed,



Jeffrey Spivack, Defendant, *pro se*

APPENDIX D

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10150

JEFFREY SPIVACK,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:23-cv-81236-KAM

Before BRASHER and ABUDU, Circuit Judges.

BY THE COURT:

Pursuant to 11th Cir. R. 22-1(c) and 27-2, Jeffrey Spivack moves for reconsideration of this Court's August 2, 2024, order denying him a certificate of appealability, on appeal from the denial of his *pro se* 28 U.S.C. § 2255 motion. Upon review, Spivack's motion is DENIED because he offers no new evidence or meritorious arguments as to why this Court should reconsider its previous order.