ORIGINAL

No. 25-384



In The

# Supreme Court of the United States

FAISAL "SAL" ASHRAF

*Petitioner,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

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

## PETITION FOR A WRIT OF CERTIORARI

FAISAL "SAL" ASHRAF
11933 Barryknoll Ln
Houston, TX 77024
(713) 261-0902
sal@netcoreinc.com

*Petitioner appearing in propria persona*

September 12, 2025

## QUESTION PRESENTED

Whether this Court should grant, vacate, and remand the Ninth Circuit's denial of a certificate of appealability for the plainly substantial issue of an intervening change in law rendering the admitted conduct in connection with a plea agreement noncriminal is an actionable due-process violation?

## PARTIES TO THE PROCEEDINGS

Petitioner Faisal "Sal" Ashraf was the Defendant-Appellant in the Ninth Circuit. Respondent the United States of America was the Plaintiff-Appellee in the Ninth Circuit.

## RELATED PROCEEDINGS

The proceedings under review are:

*United States v. Faisal Ashraf*, No. 8:24-cv-00923-DOC (C.D. Cal. Jul. 19, 2024) (denying motion to vacate, set aside, and/or correct sentence); (C.D. Cal. Feb. 25, 2025) (denying certificate of appealability).

*United States v. Faisal Ashraf*, No. 24-5604 (9th Cir. Jun. 16, 2025) (denying certificate of appealability).

The proceedings related to the direct review of Petitioner's federal criminal conviction are:

*United States v. Faisal Ashraf*, No. 8:13-CR-0088-DOC (C.D. Cal.).

*United States v. Faisal Ashraf*, No. 18-50071, 2023 WL 2570401 (9th Cir. Mar. 20, 2023) (affirming district court's judgment and sentence); (9th Cir. Jul. 6, 2023) (denying rehearing).

*Faisal Ashraf v. United States*, 144 S. Ct. 1006 (2024) (denying petition for a writ of certiorari).

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

# TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued



CONSTITUTIONS

TABLE OF AUTHORITIES—Continued

## INTRODUCTION

This case raises important, recurring, and related questions of the proper review standard for certificate of appealability where a 28 U.S.C. § 2255 motion to vacate raises an issue of intervening law itself not addressed on the merits but barred by another provision. Here, specifically, is the bar that certain circuits apply to factual-basis challenges based on a plea agreement's appeal waiver. While the later affects tens of thousands of criminal defendants each year, this case raises the unfairness where a substantive change to intervening law—that would normally reviewed on the in a § 2255 motion to vacate—was in fact raised on direct review but barred by a plea agreement's appeal waiver only to have a law of the case problem on collateral review and that in turn form the basis of the circuit court's failure to apply the well-established standard for issuance of a certificate of appealability.

This case is particularly worthy for the infrequent—but not impossible—remedy of a summary grant of certiorari, vacatur of the order below, and remand with directions to apply the governing standard and grant the requested certificate of appealability. The lower courts' refusal to address the merits of a federal criminal defendant's single claim § 2255 motion to vacate for violation of the Due Process Clause of the Fifth Amendment merits it here.

Instead of addressing the merits of whether intervening law demonstrated that the conduct Petitioner admitted actually constituted a crime—and merely a regulatory-style misdemeanor at that—the lower courts on direct review and now on review of Petitioner's § 2255 motion have articulated ***three*** separate bases to avoid addressing the merits—

(a) plea agreement appeal waiver (direct review), (b) law of the case, and (c) an impermissibly difficult COA review. Thus, this case presents an effective vehicle to to encourage lower courts to reach the merits directly instead of relying on multiple bars—bars that jurists of reason would debate—simply to avoid addressing the merits of a one-issue § 2255 motion.

One of the salient aspects of a motion filed under 28 U.S.C. § 2255 is the ability to raise on collateral review "decisions that narrow the scope of a criminal statute by * * * constitutional determinations that place particular conduct or persons covered by the statute beyond the State's power to punish." *Welch v. United States*, 578 U.S. 120, 129 (2016). Petitioner Faisal Ashraf pleaded guilty to three misdemeanor offenses under the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030(a)(2). This Court's intervening decision in *Van Buren v. United States*, 593 U.S. 374 (2021), demonstrated that the facts the Petitioner admitted in connection with the guilty plea did not constitute a crime under the CFAA.

Petitioner asserted this substantive due-process right in his § 2255 motion, but the lower courts relied on the court of appeals "deciding" the issue on direct appeal (and otherwise relied upon an inapplicable procedural bar on an issue Petitioner timely raised). Pet. App. 10a-12a.

Rather, through the improper application of the COA standard, the court of appeals merely stated—without analysis or even mentioning the constitutional right Petitioner asserted—that jurists of reason would not debate an issue that is unquestionably debatable. Summary reversal is warranted here with instructions on to consider the merits.

## OPINIONS BELOW

The order of the court of appeals is unpublished, but reproduced at page 1a of the Petition's Appendix. The district court's order denying Petitioner a certificate of appealability is reproduced at Pet. App. 2a-3a. The district court's denial of Petitioner's Motion to Vacate, Set Aside, and/or Correct Sentence Pursuant to 28 U.S.C. § 2255 is reproduced at Pet. App. 4a-13a.

On direct review, this Court denied Petitioner a writ of certiorari, which is reported at *Ashraf v. United States*, 144 S. Ct. 1006 (2024). The Ninth Circuit's unreported opinion is available at No. 18-50071, 2023 WL 2570401, at *1. (9th Cir. Mar. 20, 2023). Pet. App. 14a-19a. The Ninth Circuit's order is unreported and reproduced at Pet. App. 20a. The district court did not issue an opinion on petitioner's plea agreement but made findings that are included at Pet. App. 22a-26a.

## JURISDICTION

The court of appeals entered its judgment on June 16, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS, RULES, AND STATUTES INVOLVED

The Fifth Amendment to the United States Constitution provides that: "No person shall be * * * deprived of life, liberty, or property, without due process of law[.]" U.S. CONST. amend. V.

Federal Rule of Criminal Procedure 11 requires that:

> (b) Considering and Accepting a Guilty or Nolo Contendere Plea.
>
> . . . .

> (3) *Determining the Factual Basis for a Plea.* Before entering judgment on a guilty plea, the court must determine that there is a factual basis for the plea.

FED. R. CRIM. P. 11(b)(3).

The Computer Fraud and Abuse Act criminalizes:

> (a) Whoever—
>
> . . . .
>
> (2) intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains—
>
> . . . .
>
> (C) information from any protected computer;
>
> . . . .
>
> shall be punished as provided in subsection (c) of this section.
>
> . . . .
>
> (c) The punishment for an offense under subsection (a) or (b) of this section is—
>
> . . . .
>
> (A) except as provided in subparagraph (B), a fine under this title or imprisonment for not more than one year, or both, in the case of an offense under subsection (a)(2), (a)(3), or (a)(6) of this section which does not occur after a conviction for another offense under this section, or an attempt to commit an offense punishable under this subparagraph[.]

18 U.S.C. § 1030(a)(2)(C), (c)(2).

This case also involves the application of 28 U.S.C. § 2253(c), which states:

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

28 U.S.C. § 2253(c).

## STATEMENT

Petitioner Faisal Ashraf pleaded guilty, pursuant to a plea agreement with the United States State Attorney that included an appeal waiver, of three misdemeanor counts of intentionally accessing a computer without or in excess of authorization with the intent to obtain information. *See* 18 U.S.C. §§ 1030(a)(2)(C) & 1030(c)(2)(A).

### I. FACTUAL BACKGROUND.

Hewlett Packard offered an "HP Volume Big Deal Rebate Program" that gave discounts to certain high volume purchasers who were obtaining HP products for internal use by specified end-users. Pet. App. 34a-35a. These customers received login credentials to access an online portal through which they could make the purchases. Pet. App. 34a-35a. It was a condition of the Big Deal program that the purchases not be for resale. Pet. App. 34a-35a.

Petitioner's brother, who was his business partner, obtained login credentials from HP. *See* Pet. App. 22a. At his brother's request, petitioner used the login credentials to access the portal and purchase HP

products. Pet. App. 35a-36a. These purchases were ultimately for resale, not internal use. Pet. App. 35a-36a.

## II. PROCEDURAL BACKGROUND.

### A. Petitioner's Guilty Plea.

After the U.S. Attorney filed criminal charges in connection with Petitioner's purchases through the HP portal, Petitioner eventually entered into a plea agreement in connection with the government's Third Superseding Information. Pet. App. 23a, 28a. Petitioner pleaded guilty to three misdemeanor counts of "intentionally accessing a computer, without authorization and in excess of authorization, with intent to obtain information," in violation of 18 U.S.C. § 1030(a)(2)(C) and § 1030(c)(2)(A) of the CFAA. Pet. App. 28a.

The plea agreement contained a "Waiver of Appeal of Conviction" provision, which stated: "[W]ith the exception of an appeal based on a claim that defendant's guilty pleas were involuntary, by pleading guilty defendant is waiving and giving up any right to appeal defendant's convictions on the offenses to which defendant is pleading guilty." Pet. App. 41a. Subdivision (a) of "Defendant's Obligations" under the plea agreement specified that "Defendant understands potential arguments that might be raised pursuant to *United States v. Nosal*, 676 F.3d 854 (9th Cir. 2012) (en banc) and waives those arguments." But *Nosal* involved a different provision of the CFAA (§ 1030(a)(4)) than the provision under which petitioner entered guilty pleas (§ 1030(a)(2)). Pet. App. 28a, 31a. *see also Nosal*, 676 F.3d at 856 (describing charges under § 1030(a)(4)).

In accepting Petitioner's guilty plea, the district judge found "that there's a knowing and intelligent

waiver of your rights, that you understand the nature and consequences of your plea, that your plea is freely and voluntarily entered into, that there's a sufficient factual basis for this plea." Pet. App. 26a. The district court sentenced Petitioner to 18 months' incarceration, one year of supervised release, and ordered Petitioner pay $12.6 million in restitution Pet. App. 8a.

**B. Direct Review.**

Petitioner appealed. Before Petitioner filed his opening brief in the Ninth Circuit, this Court decided *Van Buren*,[1] which made clear that the CFAA "does not cover those who, like Van Buren, have improper motives for obtaining information that is otherwise available to them." 593 U.S. at 378. Pointing to *Van Buren*—which involved 18 U.S.C. § 1030(a)(2), the same section to which Petitioner pleaded guilty—Petitioner argued that his plea agreement lacked the sufficient factual basis required by Rule 11(b)(3) because, at most, it established what fell short of a § 1030(a)(2) violation in *Van Buren*: valid access with an improper motive. *See* Appellant's Opening Brief at 19-21, *United States v. Ashraf*, No. 18-50071 (9th Cir. Mar. 20, 2023), ECF No. 61.

Petitioner noted that the facts he admitted in his plea agreement showed only that he purchased computers through the Big Deal program that were designated for a specific end-user's internal use but then resold them. *See id.* at 20. The plea did not

[1] Petitioner's timely notice of appeal was filed on February 27, 2018, *see* Notice of Appeal at 1, *United States v. Ashraf*, 8:13-cr-00088 (C.D. Cal. Feb. 27, 2018), ECF No. 454; this Court decided *Van Buren* on June 3, 2021, 593 U.S. at 374; and Petitioner filed his opening brief in the Ninth Circuit on March 28, 2022, *see* Appellant's Opening Brief at 43, *United States v. Ashraf*, No. 18-50071 (9th Cir. Mar. 20, 2023), ECF No. 61.

contain facts showing that Petitioner accessed the portal without credentials or that he used the credentials provided by HP for anything other than purchasing computers. *See* Pet. App. 27a-48a.

The Ninth Circuit held that *Van Buren* did not inform whether Petitioner's plea was knowing and voluntary and did not require the Ninth Circuit to evaluate the sufficiency of the factual basis for Petitioner's plea. Pet. App. 15a-16a. The Ninth Circuit pointed to the language in the plea agreement that "Ashraf waived any argument 'pursuant to *United States v. Nosal*.'" Pet. App. 16a. The Ninth Circuit did not acknowledge that *Nosal* arose under a different section of the CFAA, whereas *Van Buren* interpreted the same section under which Petitioner pleaded guilty. *See* Pet. App. 14a-19a.

The Ninth Circuit—pointing to *Van Buren's* reference to *Nosal* in a footnote—wrote that *Van Buren* had "endorsed *Nosal's* holding," and rejected Petitioner' factual-basis-rooted voluntariness challenge, concluding that "Ashraf knew his admitted conduct was arguably noncriminal, and chose to waive the argument and to plead guilty." Pet. App. 16a.

The University of Texas Law School's Supreme Court Clinic filed a certiorari petition on Ashraf's behalf raising the important and still unresolved circuit split as to whether a plea agreement's appeal waiver bars defendant from pursuing a claim that the plea rested on an inadequate factual basis. (No. 23-537). As detailed therein, the Ninth, Tenth, and D.C. Circuits apply a bar while the First, Second, Fourth, Fifth, and Eleventh Circuits require consideration of a defendant's factual-basis challenge.

The CATO Institute filed a brief as *amicus curiae* in support of Ashraf. This Court denied the petition. *Ashraf v. United States*, 144 S. Ct. 1006 (2024).

### C. Petitioner's 28 U.S.C. § 2255 Motion Proceedings.

On April 29, 2024, Petitioner timely filed a Motion to Vacate, Set Aside, and/or Correct Sentence Pursuant to 28 U.S.C. § 2255, raising the sole issue that his admitted conduct did not constitute a criminal offense. The district court denied Petitioner's motion. Pet. App. 4-13. The district court held that the Ninth Circuit's "determination" of the issue barred further review under the "law of the case" doctrine, Pet. App. 10a, and Petitioner procedurally defaulted the claim, Pet. App. 11a-13a.

Petitioner appealed. The district court denied Petitioner a COA. Pet. App. 3 (citing 28 U.S.C. § 2253(c)). The court of appeals denied a COA without identifying Petitioner's sole 2255 claim. Pet. App. at 1.

## REASONS FOR GRANTING THE PETITION

### I. REASONABLE JURISTS COULD DEBATE WHETHER REFUSING TO REVIEW AN INTERVENING CHANGE IN LAW THAT RENDERS THE ADMITTED FACTUAL CONDUCT IN CONNECTION WITH A PLEA AGREEMENT NONCRIMINAL IS A DUE PROCESS VIOLATION.

#### A. The Court Of Appeals Contravened This Court's Consistent Precedent Enforcing The Permissive Standard For A Certificate Of Appealability Which Is Unquestionably Met For Petitioner's Sole Claim Under The Due Process Clause.

Petitioner had no appeal of right to challenge the final order in a proceeding under § 2255. Instead, he needed to obtain a COA, which requires making a

"substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Court's cases clearly and firmly establish that COA must be allowed pursuant to 28 U.S.C.§ 2253(c)(1)(B) and FED. R. APP. P. 22(b)(1) whenever the correctness of the district court's disposition is at least debatable among jurists of reason. *See Buck v. Davis*, 580 U.S. 100, 116-18 (2017).

Whether an issue of procedural default or the substantive right(s) involved where the court of appeals "first decid[es] the merits of an appeal * * * then justif[ies] its denial of a COA based on its adjudication of the actual merits," it has placed too heavy a burden on the prisoner at the COA stage. *Miller-El v. Cockrell*, 537 U.S. 332, 336-337 (2003). A COA is required whenever "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Here, the Ninth Circuit "pa[id] lip service to the principles guiding issuance of a COA," *Tennard v. Dretke*, 542 U.S. 274, 283 (2004), but improperly relied upon difficult questions of procedural bar, *see infra.* Part I.B. & I.C, that actually held Mr. Ashraf to a far more onerous COA standard. More importantly, these bars are actually quite debatable among jurists of reason—one of which is subject to an ever deepening circuit split.

What is beyond reasonable debate is the underlying violation of the Fifth Amendment Due Process Clause. The Due Process Clause does not permit the government to "convict a person of a crime" for engaging in "conduct that its criminal statute, as properly interpreted, does not prohibit." *Fiore v. White*, 531 U.S. 225, 228-29 (2001) (per curiam). Plea agreements based upon noncriminal conduct cannot

serve as a proper basis for convicting or sentencing individuals. *Class v. United States*, 583 U.S. 174, 181 (2018) ("if the facts alleged and admitted do not constitute a crime * * *, the defendant is entitled to be discharged").

"[B]ecause a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts." *McCarthy v. United States*, 394 U.S. 459, 466 (1969). Fair notice is "the first and most universally recognized requirement of due process." *Bousley v. United States*, 523 U.S. 614, 618 (1998) (quoting *Smith v. O'Grady*, 312 U.S. 329, 334 (1941)).

After Petitioner pleaded guilty to three misdemeanor offenses under CFAA § 1030(a)(2), *Van Buren* made clear that the CFAA "does not cover those who, like [Petitioner], have improper motives for obtaining information that is otherwise available to them." 593 U.S. at 378. The Ninth Circuit did not explain its denial of the COA on this sole issue, but the district court held that the Ninth Circuit's denial on direct review by application of the Petitioner's plea agreement appellate waiver constituted a determination entitled to law of the case deference. Pet. App. 9a. On direct appeal, the Ninth Circuit pointed to the language in the plea agreement that "Ashraf waived any argument 'pursuant to *United States v. Nosal*,'" Pet. App. 16a, which arose under a difference section of the CFAA.

Where an individual is punished "for an act that the law does not make criminal," "[t]here can be no room for doubt" that the situation "inherently results in a complete miscarriage of justice' and 'presents exceptional circumstances that justify collateral relief

under § 2255." *Davis v. United States*, 417 U.S. 333, 346-47 (1974) (internal quotation marks omitted).

In addition to *Van Buren's* differences with *Nosal*, the government's and district judge's representations concerning the scope of the waiver at the 2015 plea hearing add to the due-process problems in this matter. The district judge called attention to the *Nosal* provision and asked the Assistant U.S. Attorney assigned to petitioner's case to "explain it" because "I haven't paid too much attention to that case." Pet. App. 23a-24a. The Assistant U.S. Attorney said, "We believe that this case is distinguishable from [*Nosal*] under the facts of the case." Pet. App. 25a. As described by her, *Nosal* "involved an employee of a company who then left the company and asked people who were still working there, his friends who had access to that information that they were properly granted by that company, to send him information to use for a competing company." Pet. App. 24a. She mistakenly said the Ninth Circuit concluded those actions were "not a violation of 1030(a)(2)," Pet. App. 25a, when *Nosal* actually involved § 1030(a)(4), *see* 676 F.3d at 856. The judge pronounced that the government attorney had explained *Nosal* "[b]etter than I can," and Petitioner's then counsel agreed: "Better than I could as well." Pet. App. 25a.

Jurists of reason would debate whether a sufficient doubt is present here as to whether the actions to which Petitioner admitted are in fact criminal. The appropriate remedy for this violation is a summary grant of certiorari, vacatur of the order below, and remand with directions to apply the governing standard and grant the requested certificate of appealability to consider the issue(s)' merits. *See, e.g.*, *Tharpe v. Sellers*, 583 U.S. 33 (2018) (per curiam).

### B. The Decisions Below Reflect a Misunderstanding of this Court's Decisions Regarding the Applicability of the Law of the Case Doctrine to First Motions Pursuant to § 2255.

One of the two grounds for the district court's rejection of Petitioner's claim is that Petitioner raised *Van Buren* to the Ninth Circuit (and this Court) on direct review. Pet. App. 10a. In other words, lower courts are treating the Ninth Circuit's bar to a claim on direct review to constitute a merits determination for purposes of collateral review. Again, it is beyond dispute that Petitioner timely asserted and sufficiently asserted all claims based on *Van Buren*.

In *Davis*, the Court held that a movant could file a § 2255 motion when he had raised the issue on direct appeal and the Supreme Court later validated that *Jones* reaffirmed that *Davis* authorized a collateral attack on convictions after an intervening change in the criminal law. *Jones v. Hendrix*, 599 U.S. 465, 486 & n.9 (2023).

The defendant in *Davis* appealed his conviction to the Ninth Circuit. While his appeal was pending, the Supreme Court decided a case that raised doubt about the conviction, and the Ninth Circuit remanded. The district court reaffirmed Davis's conviction, and the Ninth Circuit affirmed. When the Ninth Circuit later reversed a different defendant's conviction based on the same law, Davis filed his first § 2255 motion. It was denied and the Ninth Circuit affirmed, but this Court reversed, drawing a distinction between defendants who raise a challenge on direct appeal that is later vindicated by the Supreme Court and those who do not, reaffirming the holding in *Sanders v. United States*, 373 U.S. 1 (1963), that a second in time § 2255 motion is not barred if the defendant raised the

challenge on direct appeal or in an earlier 2255 motion. *Davis*, 417 U.S. at 342.

The Court noted that when defendants "pursued the appellate course and failed, their cases would be quite different. But since they chose not to pursue the remedy which they had, we do not think they should now be allowed to justify their failure by saying they deemed any appeal futile." *Id.* at 345 (cleaned up).

Applying these principles to this matter, jurists of reason could conclude that Ashraf's attempt to raise *Van Buren* on direct appeal cannot then constitute a bar if the Ninth Circuit's failure to consider the *Van Buren* point sufficiently—here, the plea agreement's appellate waiver discussed *infra.* Part I.C—then law of the case may not preclude collateral review because (a) the direct review was not a merits determination and (b) the petitioner pursued the appellate course. Thus, the lower courts' application of law in the case conflicts with the Court's *Davis* decision.

### C. Jurist of Reason Would Debate That A Prior Decision's Refusal To Consider A Factual-Basis Challenge Due To A Plea Agreement's Appellate Waiver Sufficient Is To Preclude Consideration By A § 2255 Motion For An Intervening Issue of Law.

The Ninth Circuit did not consider Ashraf's *Van Buren* argument on direct appeal based on the plea agreement's appeal waiver. Pet. App. 16a. Although learned counsel raised that issue in Ashraf's certiorari petition on direct review, the issue is also relevant to the 2255 review because the lower courts relied on the prior determination to deny a COA here.

The intractable five-three divide in the courts of appeal as whether a plea agreement's appellate

waiver bars evaluation of a factual-basis challenge is problematic because "criminal justice today is for the most part a system of pleas, not a system of trials." *Lafler v. Cooper*, 566 U.S. 156, 170 (2012).

A guilty plea "is constitutionally valid only to the extent it is 'voluntary' and 'intelligent.'" *Bousley*, 523 U.S. at 618 (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)). And "a plea does not qualify as intelligeFirnt unless a criminal defendant first receives 'real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.'" *Id.* at 618 (quoting *Smith*, 312 U.S. at 334).

As the general issue, the Tenth and D.C. Circuits have sided with the Ninth Circuit. *In re Sealed Case*, 40 F.4th 605, 608 (D.C. Cir. 2022); *United States v. Novosel*, 481 F.3d 1288, 1289, 1295 (10th Cir. 2007). The First, Second, Fourth, Fifth, and Eleventh Circuits require consideration of a defendant's factual-basis challenge. *United States v. Goodman*, 971 F.3d 16, 19 (1st Cir. 2020); *United States v. Balde*, 943 F.3d 73, 94-95 (2d Cir. 2019); *United States v. McCoy*, 895 F.3d 358, 364 (4th Cir. 2018); *United States v. Trejo*, 610 F.3d 308, 312-13 (5th Cir. 2010) & *United States v. Puentes-Hurtado*, 794 F.3d 1278, 1284-85 (11th Cir. 2015).

The circuit splits itself demonstrates that jurists of reason could disagree on the question that is subject to the circuit split. The filings on direct review (No. 23-537) from the University of Texas Law School's Supreme Court Clinic and Cato Institute also demonstrate such.

The issue is even starker here Ashraf's factual-basis challenge is based on a 2021 decision from the Court. Requiring the Ninth Circuit to conduct a merits

review (by requiring the Ninth Circuit grant the COA) would assist in ensuring uniformity in the plea-bargaining process, which "is the criminal justice system." *Missouri v. Frye*, 566 U.S. 134, 144 (2012) (internal quotation marks and citation omitted).

## II. THIS CASE IS AN IDEAL VEHICLE TO ENCOURAGE THE LOWER COURTS PROPERLY APPLY THE STANDARDS FOR BOTH GRANTING A COA AND EVAULATING INTERVENING CHANGES OF LAW.

This case provides an excellent vehicle to ensure that the courts of appeal both properly apply the COA standard and ensure a meaningful consideration of the merits by the circuit courts when there is an intervening change in the law.

Petitioner acknowledges that collateral review should generally be more difficult than direct review. Here, the lower court's logic is that the obstacle on direct review prohibits any collateral review, which undermines the congressional purpose of a § 2255 motion to vacate.

Granting review here does not undermine important procedural rules, but rather encourages the circuit courts to restrain from multiple applications of procedural default where the merits should be addressed. Here, the Petitioner raised the issues timely and completely. Thus, this case is about much more than just applying the correct standard for COA.

Because reasonable jurists would question the application of those doctrines the lower courts have invoked to avoid addressing the merits of this matter, one cannot help but wonder if the lower courts avoided the merits of this one-issue § 2255 motion because

addressing those merits may well compel changing the result.[2]

## CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari, summarily reverse the judgment of the court of appeals, and remand for consideration on the merits.

Respectfully submitted,

/s/ *Sal Ashraf*

FAISAL "SAL" ASHRAF
11933 Barryknoll Ln
Houston, TX 77024
sal@netcoreinc.com
*Petitioner appearing in propria persona*

September 12, 2025

[2] Notwithstanding the Court's issuance of *Van Buren* in 2021, the Ninth Circuit's 2023 opinion on direct review asserts that Petitioner "was fully informed that his admitted conduct might not constitute a crime." Pet. App. 16a.