No. 25-5871

IN THE

SUPREME COURT OF THE UNITED STATES

ISAIAH S. ALSTAD,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

FROM THE EIGHTH CIRCUIT COURT OF APPEALS

Mr. Isaiah S. Alstad # 22559-509

FCI-Victorville Medium # 1 / P.O. Box 3725

Adelanto, CA. 92301

QUESTION(S) PRESENTED

QUESTON NUMBER ONE:

Whether the district court abused its discretion by Summarily Dismissing Ground One, Conflict of Interest claim and did the Eighth Circuit abuse its discretion by the affirmation of the district court's decision as such claim was not wholly frivolous did this violate the U.S. Supreme Court's Rulings in Conley v. Gibson, 355 U.S. 41 (1957); and Blackledge v. Allison, 431 U.S. 63, 80-82 (1977) ?

QUESTION NUMBER TWO:

Whether the district court abused its discretion by Summarily Dismissing Ground Two, as his ex-lawyer provided him with ineffective assistance of counsel by failing to raise within his pre-trial Motion to Dismiss several defects in his Superseding Indictment, and did the Eighth Circuit abuse its discretion by the affirmation of the district court's decision as such claim is not wholly frivolous did this violate the U.S. Supreme Court's Rulings in Conley v. Gibson, 355 U.S. 41 (1957); and Blackledge v. Allison, 431 U.S. 63, 80-82 (1977) ?

QUESTION NUMBER THREE:

Whether the district court abused its discretion by Summarily Dismissing Ground Three sentencing phase ineffectiveness claim and did the Eighth Circuit abuse its discretion by the affirmation of the district court's decision as such claim is not wholly frivolous did this

violate the U.S. Supreme Court Rulings in Conley v. Gibson, 355 U.S. 41 (1957); and Blackledge v. Allison, 431 U.S. 63, 80-82 (1977) ?

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:

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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

[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 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,

[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

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was May 08, 2025.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 07/07/2025

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) in Application No. ___ A_____.

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

[ ] For cases from **state courts:**

The date in 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

PAGE NUMBER

STATEMENT OF THE CASE

In September of 2023, Petitioner Alstad filed his 2255 Motion to Vacate and Affidavit (Doc. # 493). The Government filed their Response Brief opposing relief being granted on February 21, 2024 (Doc. # 528). In the beginning of April of 2024, Petitioner Alstad filed his 2255 Reply Brief to conclude briefing schedule. The district court ordered that an evidentiary hearing to be conducted as to ineffectiveness claim regarding filing a Notice of Appeal (Doc. # 545), and on March 11, 2025, the district court denied 2255 Motion to Vacate after conducting Evidentiary Hearing (Doc. # 563 and 564). A timely Notice of Appeal was filed and on May 08, 2025, the Eighth Circuit Court of Appeals denied Petitioner Alstad's request for a Certificate of Appealability and issued a 1-page Denial of COA Opinion in the case at bar.

Petitioner Alstad asserts that he now petitions this Honorable U.S. Supreme Court to GRANT his Pro Se Petition for a Writ of Certiorari, thus, issuing a Certificate of Appealability as to Questions One, Two, and Three or as this Supreme Court deems warranted in the case herein.

REASONS FOR GRANTING THE PETITION

Petitioner Alstad, acknowledges that a review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted by this court only for compelling

reasons, see Supreme Court Rule 10.

In the instant case, Petitioner Alstad respectfully request that this Court **GRANT** his pro se Petition for a Writ of Certiorari as to Questions Number One, Two, and Three as relevant to question # 1, 2, and 3, Isaiah Alstad asserts that the district court abused its discretion by Summarily Dismissing Ground One, Two, and Three and the Eighth Circuit's affirmance of the district court's denial of his 2255 Motion to Vacate, thus, such claims was not wholly frivolous in which violated the U.S. Supreme Court Rulings Conley v. Gibson, 355 U.S. 41 (1957); and Blackledge v. Allison, 431 U.S. 63, 80-82 (1977).

Consistent with 28 U.S.C. 2253 (c) (2), and U.S. Supreme Court precedents in **Slack** and **Miller-El,** thus, Isaiah Alstad is entitled to issuance of Certificate of Appealability as to Questions 1, 2, and 3, in the matter herein.

QUESTION NUMBER ONE:

Whether the district court abused its discretion by Summarily Dismissing Ground One, Conflict of Interest claim and did the Eighth Circuit abuse its discretion by the affirmation of the district court's decision as such claim was not wholly frivolous did this violate the U.S. Supreme Court's Rulings in Conley v. Gibson, 355 U.S. 41 (1957); and Blackledge v. Allison, 431 U.S. 63, 80-82 (1977) ?

Question Number One Is Debatable Or Wrong Among Jurists Of Reason

The district court Summarily Dismissed Ground One, Conflict of Interest Sixth Amendment violation as such claim was not wholly frivolous in which violated the U.S. Supreme Court Rulings in Conley v. Gibson, 355 U.S. 41 (1957); Blackledge v. Allison, 431 U.S. 63, 80-82 (1977); and Section 2255 Rules, supra note 2928 at R. 4 (b) (if on face of motion movant is not entitled to relief, judge must summarily dismiss motion).

The U.S. Supreme Court has held that: "The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible." Machibroda v. United States, 368 U.S. 487, 495-496 (1962).

In the instant case, Mr. Alstad, argued that his former attorney operated pursuant to a Conflict of Interest in violation of his Sixth Amendment Rights of the U.S. Constitution.

(1) that counsel actively represented conflicting interests;

Mr. Alstad states that during the course of representation, that his interests do diverge with respect to that of his former attorney Mr. Dunn as he wished to file a Motion to Dismiss Fatally Defective Superseding Indictment but counsel advised he would not pursue

such a pre-trial Motion, thus, courses of actions were not taken which establishes prong number one of the **Cuyler** test in the case herein. Cuyler v. Sullivan, 446 U.S. 335, 348 (1980).

(2) that an actual conflict of interest adversely affected the attorney's performance;

Petitioner Alstad, asserts that a conflict of interest had an adverse effect on specific aspects of counsel's performance as follows:

(1) failed to file Motion to Dismiss Fatally Defective Superseding Indictment

(2) breakdown in communication through counsel and Alstad

(3) Attorney Dunn failed to explain the evidence as it bears on each essential element to establish guilt if he decided to proceed to Jury Trial so that he would know the strength of the Government's evidence to render a rational decision on whether to proceed to Jury Trial or plead guilty.

Mr. Alstad, argues that his guilty plea resulted from counsel's conflict of interest, therefore, but for the conflict's effect on counsel's advice, a reasonable probability existed that Mr. Alstad would have insisted on a trial. Thomas v. Foltz, 818 F.2d 476, 482 (6th Cir. 1987).

The allegations in this case were not in themselves so "vague [or] conclusory," **Machibroda,** 368 U.S. 487, 495 (1962), as to warrant summary dismissal for that reason alone as it relates to Question

Number One.

As it is at least debatable among jurists of reasons that Mr. Alstad suffered from ineffective assistance of counsel, thus, a denial of his Sixth Amendment rights of the U.S. Constitution. See Barefoot v. Estelle, 463 U.S. 880, 893-94 & f.n. 4 (1983) (the U.S. Supreme Court held that a petitioner must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are' adequate to deserve encouragement to proceed further."); and Slack v. McDaniel, 529 U.S. 473, 484 (2000) (same).

QUESTION NUMBER TWO:

Whether the district court abused its discretion by Summarily Dismissing Ground Two, as his ex-lawyer provided him with ineffective assistance of counsel by failing to raise within his pre-trial Motion to Dismiss several defects in his Superseding Indictment, and did the Eighth Circuit abuse its discretion by the affirmation of the district court's decision as such claim is not wholly frivolous did this violate the U.S. Supreme Court's Rulings in Conley v. Gibson, 355 U.S. 41 (1957); and Blackledge v. Allison, 431 U.S. 63, 80-82 (1977) ?

Question Number Two Is Debatable Or Wrong Among Jurists Of Reason

The district court Summarily Dismissed Ground Two, ineffective

assistance of counsel claim as his former attorney omitted several meritorious defects to be included within his pre-trial Motion to Dismiss Fatally Defective Superseding Indictment in violation of his Sixth Amendment Rights of the U.S. Constitution. It follows that the Sixth Amendment violation as such claim was not wholly frivolous in which violated the U.S. Supreme Court Rulings in Conley v. Gibson, 355 U.S. 41 (1957); Blackledge v. Allison, 431 U.S. 63, 80-82 (1977); and Section 2255 Rules, supra note 2928 at R. 4 (b) (if on face of motion movant is not entitled to relief, judge must summarily dismiss motion).

The U.S. Supreme Court has held that: "The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible." Machibroda v. United States, 368 U.S. 487, 495-496 (1962).

In the instant case, Mr. Alstad, argued that his former attorney provided him with pre-trial ineffective assistance of counsel in violation of his Sixth Amendment Rights of the U.S. Constitution.

(1) Counsel's advice and performance fell below an objective standard of reasonableness;

The fatal defects that exist within Count Eight and Ten of his Superseding Indictment are as follows:

A. Count 8 and 10 of the Grand Jury Superseding Indictment omits the

fifth "essential element" of Carjacking through "serious bodily injury" rendering it fatally defective, see Sup. Indictment, at R. 38, Page 9-11, Filed 12/15/20. The omission of an essential element of the Superseding Indictment of Counts 8 and 10 of the Superseding Indictment renders it fatally defective and subject to dismissal. See Appendix D.

Petitioner Alstad, argues that his Superseding Indictment as to Counts 8 and 10 in which omits the fifth "essential elements" of Carjacking "serious bodily injury" in which is fatally defective as it fails to charge a federal offense in violation of his Fifth and Sixth Amendment rights of the U.S. Constitution. See Stirone v. United States, 361 U.S. 212, 219 (1960); United States v. Miller, 471 U.S. 130, 139-40 (1985); Russell v. United States, 369 U.S. 749, 770 (1962); United States v. Demmon, 483 F.2d 1093, 1095 (8th Cir. 1973); and United States v. Olson, 262 F.3d 795, 799 (8th Cir. 2001).

Thus, Mr. Alstad, argues that his Indictment as to Count 8 and 10, is legally insufficient as it fails to charge the "fifth element" of federal Carjacking "serious bodily injury" and subject to dismissal as such counts fail to state a material element of the offense. See United States v. Davis, 184 F.3d 366, 367, 371 (4th Cir. 1999) (indictment charging defendant with violation of "failure to stop" statute insufficient because failed to allege great bodily injury element of

offense, thus preventing defendant from preparing sufficient defense).

Mr. Alstad, argues that his ex-lawyer Attorney Glenn Bruder provided him with 'deficient performance' in which establishes the first prong of the **Hill** test, see Hill v. Lockhart, 474 U.S. 52, 58 (1985). **(2)** the petitioner must show that there is a reasonable probability that, but for counsel's errors, he would not have pleading guilty and would have insisted on going to trial. **Hill,** 474 U.S. at 59 (1985);

Actual prejudice exists as the result of Isaiah S. Alstad's guilty plea was entered unknowingly and unintelligently as there is a reasonable probability that he would not have plead guilty, however, insisted on going to Jury Trial absent Attorney Glenn Bruder's 'deficient performance,' thus, his Sixth Amendment Rights of the U.S. Constitution were violated in the matter herein. See **Hill,** 474 U.S. at 59 (1985). The U.S. Supreme Court in **Lee v. United States,** 137 S. Ct. 1958, 198 L. Ed. 2d 476 (2017) (In **Lee,** the U.S. Supreme Court recently modified the prejudice inquiry of Hill v. Lockhart, second prong test as it focuses on a defendant's decision-making, which, may not turn solely on the likelihood of conviction after trial. Thus, as the result of **Lee** was deprived altogether, therefore, Lee's Sixth Amendment Rights were violated.). The same applies in the case herein, thus, Isaiah S. Alstad was deprived, of a proceeding altogether, therefore, his Sixth Amendment Rights

of the U.S. Constitution were violated in the matter herein.

The allegations in this case were not in themselves so "vague [or] conclusory," **Machibroda,** 368 U.S. 487, 495 (1962), as to warrant summary dismissal for that reason alone as it relates to Question Number Two.

Mr. Alstad, argues that a Certificate of Appealability should issue as to Question Number Two as it is adequately to deserve encouragement to proceed further in the case herein. **Slack,** 529 U.S. 473, 484 (2000) (adequate to deserve encouragement to proceed further).

QUESTION NUMBER THREE:

Whether the district court abused its discretion by Summarily Dismissing Ground Three sentencing phase ineffectiveness claim and did the Eighth Circuit abuse its discretion by the affirmation of the district court's decision as such claim is not wholly frivolous did this violate the U.S. Supreme Court Rulings in Conley v. Gibson, 355 U.S. 41 (1957); and Blackledge v. Allison, 431 U.S. 63, 80-82 (1977) ?

Question Number Three Is Debatable Or Wrong Among Jurists Of Reason

The district court Summarily Dismissed Ground Three, sentencing phase ineffective assistance of counsel claim as his former attorney violated of his Sixth Amendment Rights of the U.S. Constitution. It

follows that the Sixth Amendment violation as such claim was not wholly frivolous in which violated the U.S. Supreme Court Rulings in Conley v. Gibson, 355 U.S. 41 (1957); Blackledge v. Allison, 431 U.S. 63, 80-82 (1977); and Section 2255 Rules, supra note 2928 at R. 4 (b) (if on face of motion movant is not entitled to relief, judge must summarily dismiss motion).

The U.S. Supreme Court has held that: "The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible." Machibroda v. United States, 368 U.S. 487, 495-496 (1962).

In the instant case, Mr. Alstad, argued that his former attorney provided him with sentencing phase ineffective assistance of counsel in violation of his Sixth Amendment Rights of the U.S. Constitution.
(1) that his counsel's performance was deficient, see Strickland v. Washington, 466 U.S. 668, 687 (1984);
A. Failing to entail with Mr. Alstad's Sentencing Memorandum and argue at his federal sentencing to request an "downward variance" due to the harsh pre-trial confinement through COVID-19 pandemic

As Mr. Alstad stated within his Memorandum of Law, at page 11, that: "Through COVID-19 pandemic Petitioner Alstad endured Lockdowns and no visitation with his Family and Loved Ones and a

potential COVID-19 infection and deprived of Medications and proper Medical Treatment, therefore, a "downward variance" was warranted." See United States v. Francis, 129 F. Supp. 2d 612, 616 (S.D.N.Y., 2001) (one level departure granted for pretrial confinement that was harsh); and United States v. Bakeas, 987 F. Supp. 44, 50 (D. Mass., 1997) ("[A] downward departure is called for when, as here an unusual factor makes the conditions of confinement contemplated by the guidelines either impossible to impose or inappropriate.").

During the COVID-19 pandemic the Government were actually recommending to federal judges that criminal defendants receive "downward variance" based upon the COVID-19 pandemic and the harsh conditions of confinement. See United States v. Estrada, 2021 U.S. Dist. LEXIS 80602, 2021 WL 1626309 (S.D. Cal., Apr. 27, 2021) (the court departed from Guideline range of 46-57 months and imposed a non-guideline sentence of 24 months in part due to conditions of confinement were particularly harsh during the pandemic); and United States v. Kramer, 2023 U.S. Dist. LEXIS 11275, 2023 WL 361092 (N.D. Cal., Jan. 23, 2023) (considered the COVID-19 pandemic during sentencing and reduced based upon harsh conditions).

Taken Mr. Alstad's factual allegations as true as required by U.S. Supreme Court precedents Isaiah S. Alstad was in fact

entitled to a prompt evidentiary hearing as to whether counsel provided Alstad with sentencing phase ineffective assistance of counsel by failing to request a "downward variance" due to his harsh pre-trial confinement through COVID-19 pandemic. See Schriro v. Landrigan, 550 U.S. 465, 474 (2007) ("In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief").

Regarding failing to include within Sentencing Memorandum and at his Sentencing Hearing a request for a downward variance due to lack of maturity, however, this claim has been strengthened by the U.S. Sentencing Commission's New Policy Statement-5H1.1-Age-The amendment adds language specifically providing that downward departure may be warranted in cases in which the defendant was youthful at the time of the instant offense or any prior offenses.

At the time of the offenses Mr. Alstad was 21 years old of age and mentally immature, thus, he was not fully aware of his actions by involving himself in the crimes in which he was convicted of as he was not armed with a gun and had a minimal role in the crime all which justified a downward variance in the case herein. See

United States v. Thomas, 2024 U.S. App. LEXIS 9588, 2024 WL 1672371, at *4 (6th Cir. 2024) (As an initial matter, Thomas argued that the criminal history points he accrued before 25 should not count in calculating his criminal history category because his brain had not fully matured.). See United States v. Headley, 923 F.2d 1079, 1084 (3d Cir. 1991) (finding defendant's counsel ineffective where counsel failed to argue for an applicable downward departure); United States v. Castro, 26 F.3d 557, 560 (5th Cir. 1994) (same); and United States v. Harfst, 168 F.3d 398, 404-05 (10th Cir. 1999) (same).

The allegations in this case were not in themselves so "vague [or] conclusory," **Machibroda,** 368 U.S. 487, 495 (1962), as to warrant summary dismissal for that reason alone as it relates to Question Number One.

Mr. Alstad, argues that a Certificate of Appealability should issue as to Question Number Three as it is adequate to deserve encouragement to proceed further in the case herein. **Slack,** 529 U.S. 473, 484 (2000) (adequate to deserve encouragement to proceed further).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Isaiah Olstad

Date: 10/03/2025

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

ISAIAH ALSTAD- PETITIONER

VS.

UNITED STATES OF AMERICA-RESPONDENT(S)

PROOF OF SERVICE

I, Isaiah Alstad, do swear or declare that on this date, Friday, October 03, 2025, as required by Supreme Court Rule 29, I have served the enclosed PETITION For that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

U.S. Solicitor General

Department of Justice

950 Pennsylvania Avenue, N.W.

Room 5616

Washington, D.C. 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 3rd, 2025.

x Isaiah Alstad