

25 - 7697 ORIGINAL

In The
UNITED STATES SUPREME COURT

Supreme Court, U.S.
FILED

SEP 25 2025

OFFICE OF THE CLERK

Case No. _____

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

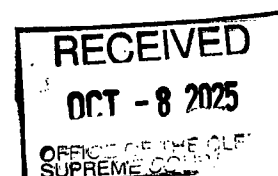
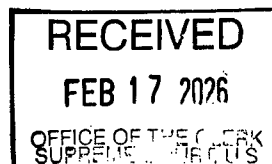
NATHANIEL DAVID STRUENING,
Petitioner,

UNITED STATES OF AMERICA,
Respondent.

PETITION for a WRIT OF CERTIORARI

Submitted by,

Nathaniel David Struening
Petitioner, Pro Se
FCI Oakdale I
Reg # 73685-510
P.O. Box 5000
Oakdale, LA 71463



QUESTION PRESENTED

Whether the appellate court violated Petitioner's constitutional right to proceed pro se by ignoring his proceed pro se in September 2024 before the Opening Brief was submitted.

Whether the district court plainly erred in proceeding to sentencing without a presentence investigation of the docket.

Whether the district court and appellate court plainly erred in knowingly and vindictively applying the pre-2016 Sentencing Guidelines to an offense for which it knew all relevant conduct occurred in and af

PARTIES INVOLVED

Petitioner hereby certifies that the following were the parties to the proceedings below:

1. Struening, Nathaniel David, Defendant;
2. United States of America, Plaintiff.

No other persons were parties to the proceedings below.

OPINIONS AND ORDERS

The following are the opinions and orders relevant to this case:

1. Eleventh Circuit Order Denying Petitioner's Motion for Panel Rehearing and Rehearing En Banc issued September 9, 2025.
2. Eleventh Circuit's Judgment issued July 2, 2025.
3. District Court's Judgment issued on April 3, 2024.

STATEMENT OF JURISDICTION

On September 9, 2025, the United States Court of Appeals for the Eleventh Circuit issued its Order denying
Petitioner's Motion for Panel Rehearing.

This Honorable Court has jurisdiction to hear this case pursuant to 28 U.S.C. 1254(1).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case implicates U.S. Sentencing Guideline enhancement 2G2.2(b)(3)(B) and the Fifth Amendment to the United States Constitution's guarantee that no person shall be deprived of liberty without due process of law based on the district court and appellate court's knowing and vindictive application of outdated and superseded Guideline language.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

1. U.S. v. Nathaniel David Struening, No. 24-11082 (11th Cir. 2025).
2. U.S. v. Nathaniel David Struening, No. 7:23-CR-265 (N.D. Ala. 2023) (entering judgment and conviction).

There are no other proceedings in state or federal courts anywhere in the U.S. that are directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

STATEMENT OF FACTS

Petitioner signed a plea agreement on November 28, 2023. The factual resume accompanying the plea agreement expressly stated that on "May 4, 2020, an FBI Online Covert Employee (OCE) conducted a covert online investigation regarding a group on the "Kik" application. Later, Petitioner was indicted on June 25, 2023, after which he pled guilty to using the Kik application for "more than two years... prior to the agents arriving." The basis for the transportation charge was the image and video that were posted on "May 17, 2020."

At sentencing, there was no presentence investigation report on the docket. Petitioner never saw or was shown the content of the presentence investigation report with counsel. Counsel openly lied in court and confirmed he had reviewed the report with Petitioner despite the fact that it was not even on the docket.

During sentencing, the district judge asked defense counsel, "And you are aware that his admissions in this case and his convictions arise out of events that occurred in 2020?" to which counsel replied, "2020, the Court said." Sent. Trans. 24:2-6.

There was never an allegation much less evidence that any of the relevant conduct occurred prior to 2020.

Before the Opening Brief was submitted, Petitioner requested to proceed pro se citing his appellate counsel's failure to address glaring issues with his case, such as the Sentencing Hearing without the presentence investigation report on the docket as well as the use and application of plainly superseded pre-2016 Guidelines at sentencing. The Court ignored the request to proceed pro se. Petitioner's counsel submitted the Opening Brief, the Government responded, and Petitioner's counsel submitted the final reply. After the appeals court issued its Opinion, Petitioner again submitted a motion expressing his intent to proceed pro se and requesting a rehearing. The appeals court expressly rejected the motion and again insisted that Petitioner could only proceed through counsel. Shocked at the appeals court's insistence that he had no constitutional right to proceed pro se, Petitioner filed a strongly worded objection chastising the court for its blatant disregard of his constitutional rights. In a surprising turn of events, the Clerk of the Appeals Court, in the course, recalled the mandate, and acted upon the rehearing request, which the appeals court subsequently granted. The Clerk of the Court having blatantly disregarded Petitioner's September 2024 request to

REASONS FOR GRANTING WRIT BEFORE JUDGMENT

Pursuant to Rule 10(a) of this Court, by blatantly denying Petitioner his constitutional right to proceed being expressly notified of his intent, knowingly applying outdated Guidelines, and failing to have a present investigation report on the docket prior to or at sentencing, the U.S. Court of Appeals for the Eleventh Circuit departed from the accepted and usual course of judicial proceedings... as to call for an exercise of this Court's power."

ARGUMENT

This case presents three significant issues.

First, the district court committed plain error by proceeding to sentencing with no presentence investigation on the docket. Alternatively, this was ineffective assistance of counsel because Petitioner's counsel never presented a presentence investigation report with him and, because of that, filed no objections.

Second, both the district and appellate court knowingly, intentionally, and vindictively applied the pre-2016 Sentencing Guidelines to apply a severe five-level enhancement. Petitioner was indicted on July 25, 2018, for violations of 18 U.S.C. 2252(a)(1) and (b)(1) and 2252A(a)(5)(B) and (b)(2). Because the criminal statute defines offenses under 18 U.S.C. 2252 and 2252A as "five years" pursuant to 18 U.S.C. 3282(a), it was plain and clear that the earliest possible date of offense could be July 25, 2018; five years prior to the date of indictment. That alone alerted both the district and appellate court to conduct a simple review of the Presentence Investigation Report, Resume, and Plea Agreement; all of which would have revealed that there was no accusation that any of the relevant conduct took place prior to 2020.

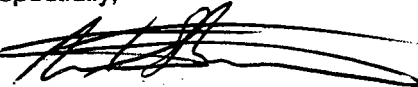
While it is true that the appellate court was legally "bound by previous panel decisions unless 'it is overruled, undermined to the point of abrogation by the Supreme Court...[or] by this court sitting en banc,'" the appellate court was not bound by a clear change in the law. *U.S. v. Beck*, No. 21-13582 (11th Cir. 2003) (quoting *U.S. v. Archer*, 547 F.3d 1215 (11th Cir. 2008)). In this case, the Eleventh Circuit expressly acknowledged that the Guideline language had changed but consciously chose to disregard the law because Petitioner had not expressly stated that the year was 2020. Events occurred in and after 2020, and that the outdated Guidelines no longer applied. This is more than a mere change in the law. This is an appeals court acknowledging a clear change in the law but then choosing to ignore it for precedential case law first. Judicial precedent does not take priority over an acknowledged change in the law. The Circuit's fatal error was acknowledging the change in the law on the record and then choosing to disregard it for pre-amendment case law.

U.S. Sentencing Guideline 2G2.2(b)(3) was amended in 2016; a decade ago. The appellate court's error in misapprehending the plain and obvious fact that even the earliest relevant conduct occurred in and after 2020, and in the appeals court misapplying the pre-2016 Guideline language to an offense that occurred well after the amendment, of this seriously compromises the integrity of our judicial system as it shows far more than willful blindness; it shows a degree of vindictiveness due to the nature of the underlying offense.

Third, to make matters worse, the Eleventh Circuit twice ignored Petitioner's expression of intent to proceed pro se. Petitioner first notified the Eleventh Circuit of his intent in September 2024 before the Opening Brief was served. Once briefing commenced, Petitioner was confused as to why the Eleventh Circuit ignored his request and proceeded with counsel since his life was in jeopardy. During those months, Petitioner diligently studied the law and became more versed in his constitutional right to proceed pro se. Convinced his constitutional right to proceed pro se was being violated, Petitioner again gave "unequivocal" notice of his intent to proceed pro se and motioned the Eleventh Circuit for en banc rehearings. The Clerk of the Eleventh Circuit issued a notice that no action would be taken because Petitioner was represented by counsel. Infuriated at the Eleventh Circuit's complete and utter disregard of his right to proceed pro se, Petitioner filed a strongly worded objection and demanded that they acknowledge his right to proceed pro se. Only then did the Clerk of the Eleventh Circuit finally take notice, recalled the mandate, and allowed Petitioner to be considered by the Eleventh Circuit who ultimately denied it. While there was no prejudice with regard to the panel and en banc rehearings, there was certainly prejudice with regard to the first notice of intent to proceed pro se because the application of pre-2016 Guidelines to a post-2020 offense was a plain and obvious error that was not identified at the district level nor appellate-level counsel properly briefed and addressed despite being instructed by Petitioner of the error. This was an obvious misapprehension of fact by the district court. While appellate attorneys have discretion on legal issues, they do not have discretion to ignore facts; especially facts that wholly determine the correct application of the law.

The district court conducting the sentencing hearing without a presentence investigation report on the facts of the case, the district and appellate court applying plainly and obviously outdated pre-2016 Guideline language to a post-2020 offense, and the appellate court completely ignoring Petitioner's pre-briefing notice of intent to proceed pro se all necessitate that the sentencing be vacated and that Petitioner receive a plenary re-sentencing hearing.

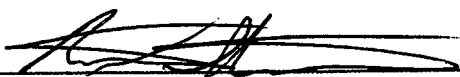
Respectfully,

/s/ 

Nathaniel David Struening
Petitioner, Pro Se
FCI Oakdale I
Registration # 73685-510
P.O. Box 5000
Oakdale, LA 71463

DECLARATION OF INMATE FILING

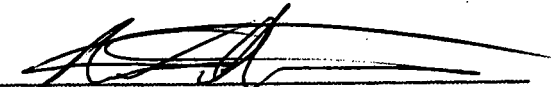
Pursuant to 28 U.S.C. 1746, I, Nathaniel David Struening, declare, under the criminal penalty of perjury, that I mailed this Writ of Certiorari, all the content of which is believed to be true and correct, to the Clerk of the United States Supreme Court on Thursday, September 25, 2025, by placing it in my federal correctional facility's outgoing mailbox in an envelope with sufficient First-Class postage affixed thereto.

/s/ 

Signature of Nathaniel David Struening

CERTIFICATE OF SERVICE

I, Nathaniel David Struening, confirm that I mailed this Writ of Certiorari to the Clerk of the United States Supreme Court and that all other interested parties are registered CM/ECF users who will be electronically notified of the filing by the Clerk of the United States Supreme Court.

/s/ 

Signature of Nathaniel David Struening

UPDATED
12/08/2025

Respectfully,

/s/

Nathaniel David Struening
Petitioner, Pro Se
FCI Oakdale I
Registration # 73685-510
P.O. Box 5000
Oakdale, LA 71463

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/s/

Signature of Nathaniel David Struening

CERTIFICATE OF SERVICE

I, Nathaniel David Struening, confirm that I mailed this updated Writ of Certiorari to the Clerk of the United States Supreme Court and that all other interested parties are registered CM/ECF users who will be electronically notified of the filing by the Clerk of the United States Supreme Court.

/s/

Signature of Nathaniel David Struening

UPDATED
1/26/26

Respectfully,

/s/

Nathaniel David Struening
FCI Oakdale I
Registration # 73685-510
P.O. Box 5000
Oakdale, LA 71463

Petitioner Pro Se

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/s/

Signature of Nathaniel David Struening

CERTIFICATE OF SERVICE

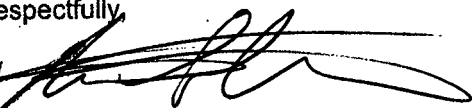
I, Nathaniel David Struening, confirm that I mailed this filed this Writ of Certiorari to the Clerk of the United States Supreme Court and that all other interested parties are registered CM/ECF users who will be electronically notified of the filing by the Clerk of the United States Supreme Court. Nevertheless, I also confirm that I also mailed a copy to the Clerk of the District Court, the United States Attorney General, the Solicitor General, and the United States Attorney's Office.

/s/

Signature of Nathaniel David Struening

UPDATED
5/1/2026

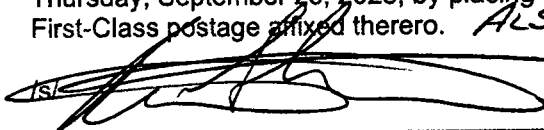
Respectfully,

/s/ 

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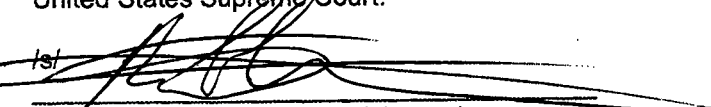
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/s/ 

Signature of Nathaniel David Struening

CERTIFICATE OF SERVICE

I, Nathaniel David Struening, confirm that I mailed this Writ of Certiorari to the Clerk of the United States Supreme Court and that all other interested parties are registered CM/ECF users who will be electronically notified of the filing by the Clerk of the United States Supreme Court.

/s/ 

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