

No.

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IN THE SUPREME COURT OF THE UNITED STATES

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RICHARDSON BIEN AIME,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

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PETITION FOR A WRIT OF CERTIORARI

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## **QUESTIONS PRESENTED**

Whether a sentence appeal waiver provision contained in a plea agreement clearly precludes the defendant from raising a claim of ineffective assistance of sentencing counsel on direct appeal?

If so, whether the waiver creates a clear conflict of interest between a defendant and his counsel such that the district court is required to inquire into the conflict before accepting the plea agreement?

## **PARTIES TO THE PROCEEDING**

Parties to the proceeding include Richardson Bien Aime (Appellant/Petitioner) and the United States of America (Appellee/Respondent).

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## PETITION FOR WRIT OF CERTIORARI

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### OPINION BELOW

The decision of the Eleventh Circuit Court of Appeal, *infra*, is attached as Appendix A.

### JURISDICTION

The Judgment of the Eleventh Circuit Court of Appeal was entered on September 3, 2026. A Petition for Panel Rehearing was timely filed and denied on October 1, 2026. This Court’s jurisdiction is invoked under Title 28 U.S.C. § 1254(1).

### CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

The Sixth Amendment to the United States Constitution provides, in relevant part: “In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence.” U.S. Const. amend. VI.

### STATEMENT

This case presents the Court with an opportunity to resolve a circuit split relating to sentence appeal waivers in plea agreements which affect thousands of criminal defendants every year, and to further establish the safeguards which must be adhered to before the district courts accept such waivers. Given that “the jury trial has given way to a conveyor belt of plea bargains[.]” *Hunter v. United States*, 608 U.S. 713, 730, 146 S. Ct. 1702, 1715, 225 L. Ed. 2d 272 (2026) Gorsuch, J., concurring, both of these issues are of substantial importance and merit this Court’s use of its certiorari jurisdiction.

On November 15, 2023, a federal grand jury in the Middle District of Florida, Fort Myers Division, returned a five-count Indictment naming Richardson Bien Aime as the defendant. Mr. Bien Aime pled guilty to Counts 4 (possession with intent to distribute a controlled substance) and 5 (possession of a firearm by a convicted felon) pursuant to a plea agreement, and Counts 1, 2, and 3 were dismissed.

In the plea agreement, Mr. Bien Aime agreed to waive his right to appeal his sentence, specifically agreeing:

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guideline range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

(Appendix A, at 19).

On June 11, 2024, a change of plea hearing was held, during which the Court went over the appellate waiver with Mr. Bien Aime as follows:

THE COURT: You also understand that your plea agreement has a waiver of your right to appeal your sentence other than those four exceptions?

THE DEFENDANT: Um.

THE COURT: In your plea agreement, you waive your right to appeal the sentence other than there's four exceptions set out there?

THE DEFENDANT: Yes, sir.

(Appendix B, at 11).

Mr. Bien Aime was not provided independent counsel to advise him concerning the appellate waiver, nonetheless, the court accepted Mr. Bien Aime's plea. Mr. Bien Aime was thereafter sentenced to a total of 292 months imprisonment followed by 60 months supervised release on both counts.

Mr. Bien Aime then appealed to the Eleventh Circuit, arguing that because the sentence appeal waiver contained in his plea agreement precluded him from raising a claim of ineffective assistance of sentencing counsel on direct appeal, the waiver created a clear conflict of interest between himself and his counsel that the district court was required to inquire into prior to accepting the agreement, and as the district court failed to do so, he was entitled to have his Plea, Judgment, and Sentence reversed, and his case remanded to the district court with instructions that a proper inquiry be made into the conflict issue prior to the entry of his plea.

Despite having previously found in two unpublished opinions that the appellate waiver contained in Mr. Bien Aime's plea agreement clearly waived his right to raise a claim of ineffective assistance of sentencing counsel on direct appeal, *see, United States v. Pannullo*, 709 F. App'x 683 (11th Cir. 2018) (citing, *Williams v. United States*, 396 F.3d 1340, 1342 (11th Cir. 2005) for the proposition that a "defendant cannot avoid application of an appeal waiver by recasting a sentencing

challenge as an ineffective-assistance-of-counsel claim”); *United States v. Payan*, 760 F. App'x 889 (11th Cir. 2019) (“We have held that a defendant waived his ineffective-assistance-of-counsel-claim regarding counsel's performance during sentencing because ‘a contrary result would permit a defendant to circumvent the term of the sentence-appeal waiver simply by recasting a challenge to his sentence as a claim of ineffective assistance, thus rendering the waiver meaningless.”)(quoting, *Williams*, 396 F.3d at 1342)(citations omitted), the Eleventh Circuit reversed course and concluded that its now unclear whether the appellate waiver precludes a defendant from raising a claim of ineffective assistance of counsel on direct appeal, and thus the district court had no duty to inquire because the waiver did not create a clear conflict of interest triggering the district court’s duty to do so. (Appendix C, at 3). The Eleventh Circuit’s Opinion was once again unpublished. Because the Eleventh Circuit had now taken opposing views on the same issue in three unpublished opinions, Mr. Bien Aime filed a Petition for Panel Rehearing, and a Motion to Publish Opinion to establish whether a sentence appeal waiver does or does not preclude a criminal defendant from raising a claim of ineffective assistance of counsel on direct appeal, but the Petition and Motion were denied. (Appendices D, E, F). Mr. Bien Aime’s Petition for Panel Rehearing also addressed additional issues regarding the panel’s opinion, but the Petition was denied in toto. (Appendices D, F).

This Petition follows.

## REASONS FOR GRANTING THE PETITION

### **I. THIS COURT SHOULD GRANT REVIEW TO RESOLVE A CIRCUIT SPLIT REGARDING WHETHER A SENTENCE APPEAL WAIVER PRECLUDES A DEFENDANT FROM RAISING A CLAIM OF INEFFECTIVE ASSISTANCE OF SENTENCING COUNSEL ON DIRECT APPEAL AND/OR TO ESTABLISH THAT A SENTENCE APPEAL WAIVER PROVISION IN A PLEA AGREEMENT CREATES A CLEAR CONFLICT OF INTEREST TRIGGERING THE DISTRICT COURT'S DUTY TO INQUIRE.**

This petition presents an ideal vehicle for resolving a circuit split affecting thousands of defendants across the country regarding the reach of sentence appeal waivers, as well as the opportunity to establish what is required before any such waiver is accepted.

Despite the Eleventh Circuit's unpublished opinion in Mr. Bien Aime's case, Eleventh Circuit precedent clearly precludes a criminal defendant who enters into a sentence appeal waiver from raising a claim of ineffective assistance of sentencing counsel on direct appeal. *See, Williams*, 396 F.3d at 1342; *Pannullo*, 709 F. App'x at 683–84; *Payan*, 760 F. App'x at 892. That precedent directly conflicts with that of the D.C. Circuit which has held that a sentencing appeal waiver does not preclude a criminal defendant from doing so. *See, In re Sealed Case*, 901 F.3d 397 (D.C. Cir. 2018). In fact, the D.C. Circuit itself recognized its decision conflicts with *Williams*, as well as precedent from the Fourth, Fifth, and Tenth Circuits. *See, In re Sealed Case*, 901 F.3d at 404. Mr. Bien Aime submits that the D.C. Circuit's approach is the better one for the myriad of reasons set forth by it, but in particular because “[i]f a generic appeal waiver *did* encompass a claim of ineffective assistance of counsel at sentencing, the waiver then would give rise to a conflict of interest for counsel: an

attorney generally cannot advise a client about whether to waive a pending claim against the attorney herself, *see* John Wesley Hall, Jr., Professional Responsibility in Criminal Defense Practice § 10:27 (3d ed. 2017), and the same is necessarily true of advice about whether to waive a future claim against the attorney.” *In re Sealed Case*, 901 F.3d at 403–04 (emphasis in original); *see also*, *Hunter*, 608 U.S. at 727-28, 146 S. Ct. at 1713-14 (Holding that “an appeal waiver is unenforceable when it would result in a miscarriage of justice[.]” and recognizing that “a sentence that is infected with a blatant constitutional error” meets that standard). This Court’s intervention is necessary to resolve the circuit split as it is manifestly unfair that criminal defendants who enter into sentence appeal waivers in the D.C. circuit retain the right to raise a claim of ineffective assistance of sentencing counsel on direct appeal, while criminal defendants who do so in the Fourth, Fifth, Tenth, and Eleventh Circuits do not. Absent this Court’s intervention, this split will continue to produce unequal, geography-dependent outcomes.

Mr. Bien Aime notes that in *In re Sealed Case*, the court recognized that the issue may be moot going forward because “[a]fter the plea agreement in this case was executed, the Department of Justice issued a memorandum to all federal prosecutors directing that they ‘no longer seek in plea agreements to have a defendant waive claims of ineffective assistance of counsel whether those claims are made on collateral attack or, when permitted by circuit law, made on direct appeal.’” *In re Sealed Case*, 901 F.3d at 404 (quoting, U.S. Dep’t of Justice, Department Policy on Waivers of Claims of Ineffective Assistance of Counsel (Oct. 14, 2014)). However, that very same

memo was brought to the government's and court's attention in the Response to the Government's Motion to Dismiss in *Payan*, see, *United States v. Payan*, USCA11 Case: 18-12400, Docket Entry 27, at PDF 11-12, and yet the government persisted and the court dismissed the appeal five years after the memo was issued. *Pannullo* was also dismissed four years after the memo was issued. Accordingly, the memo, which is not binding on the courts, and which is not honored by the Department of Justice itself, has not mooted the issue. In short, regardless of the memo, binding precedent from the Fourth, Fifth, Tenth, and Eleventh Circuits still bars the raising of an ineffective assistance of counsel claim where the defendant enters into a sentence appeal waiver, and appeals continue to be dismissed based on that precedent. See, e.g., *United States v. Whipple-Duncan*, No. 22-11806, 2024 WL 981142, at \*4 (11th Cir. Mar. 7, 2024) (Concluding that the defendant's sentence appeal waiver barred her from raising a claim of ineffective assistance of sentencing counsel on direct appeal and dismissing appeal, ten years after the department's memo). Accordingly, it remains necessary to resolve the circuit split.

This Court's resolution of the circuit split dictates whether it is necessary to address the conflict-of-interest issue. If this Court were to approve *In re Sealed Case*, the Court need go no further. However, if the Court determines that a sentence appeal waiver precludes a defendant from raising a claim of ineffective assistance of counsel on direct appeal, then its imperative that this Court establish that such a waiver creates a clear conflict of interest triggering the district court's duty to inquire.

More specifically, in *United States v. Levy*, 25 F.3d 146 (2d Cir. 1994), the defendant argued that his trial counsel's conflict of interest necessitated a new trial, and the Court explained that "[t]he right to counsel under the Sixth Amendment entails 'a correlative right to representation that is free from conflicts of interest.'" *Levy*, 25 F.3d at 152 (quoting, *Wood v. Georgia*, 450 U.S. 261, 271, 101 S.Ct. 1097, 1103, 67 L.Ed.2d 220 (1981) (citing *Cuyler v. Sullivan*, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980) and *Holloway v. Arkansas*, 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978))). "[A] defendant has suffered ineffective assistance of counsel in violation of the Sixth Amendment if his attorney has (1) a potential conflict of interest that resulted in prejudice to the defendant, or (2) an actual conflict of interest that adversely affected the attorney's performance." *Id.* (citing, *Winkler v. Keane*, 7 F.3d 304, 307 (2d Cir.1993) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *United States v. Fulton*, 5 F.3d 605, 609 (2d Cir.1993))).

"When a district court is sufficiently apprised of even the possibility of a conflict of interest, the court first has an 'inquiry' obligation. *Levy*, 25 F.3d at 153 (citing, *Wood*, 450 U.S. at 272–73, 101 S.Ct. at 1103–04; *Cuyler*, 446 U.S. at 347, 100 S.Ct. at 1717–18; *Holloway*, 435 U.S. at 484, 98 S.Ct. at 1178–79). "The court must investigate the facts and details of the attorney's interests to determine whether the attorney in fact suffers from an actual conflict, a potential conflict, or no genuine conflict at all." *Id.* (citing, *Strouse v. Leonardo*, 928 F.2d 548, 555 (2d Cir.1991) ("In order to protect a defendant's right to conflict-free counsel, the trial court must initiate an inquiry when it knows or reasonably should know of the possibility of a conflict of interest.");

*United States v. Aiello*, 814 F.2d 109, 113 (2d Cir.1987) (Sixth Amendment “imposes a duty upon a trial court to inquire”). “Under *Sullivan*, the duty [to inquire] is triggered, even absent objection, where a trial court knows or reasonably should know that a particular conflict exists -- whether that conflict relates to joint representation of codefendants or to other conflicts...” *Dallas v. Warden*, 964 F.3d 1285, 1303 (11th Cir. 2020) (citations omitted). Accordingly, under *Sullivan*, reversal is warranted for the trial court’s failure to inquire if the defendant shows an actual conflict that negatively affected his attorney’s performance. *See, Dallas*, 964 F.3d at 1303–04.

Here, the appellate waiver created an obvious conflict of interest between Mr. Bien Aime and his trial counsel which triggered the district court’s duty to inquire. More specifically, the appellate waiver precluded Mr. Bien Aime from raising a claim of ineffective assistance of sentencing counsel on direct appeal where he has the guaranteed assistance of counsel to aid him in pursuing such a claim. *See, Williams*, 396 F.3d at 1342; *Pannullo*, 709 F. App’x 683; *Payan*, 760 F. App’x at 893. However, M.D. Fla. R. 2.01(e) states:

CONDUCT. A lawyer appearing in the Middle District must remain familiar with, and is bound by, the rules governing the professional conduct of a member of The Florida Bar.

M.D. Fla. R. 2.01(e). Furthermore, in Florida Bar Ethics Opinion 12-1 (2012), “[t]he Committee conclude[d] that a criminal defense lawyer has a personal conflict of interest when advising a client regarding waiving the right to later collateral proceedings regarding ineffective assistance of counsel.” Florida Bar Ethics Opinion 12-1, at 4 (2012); *see also, In re Sealed Case*, 901 F.3d at 403–04 (Recognizing that

where an appellate waiver “encompass[es] a claim of ineffective assistance of counsel at sentencing, the waiver then would give rise to a conflict of interest for counsel.”).

Simply put, Mr. Bien Aime had an interest in preserving his right to challenge the effectiveness of his sentencing counsel’s representation on direct appeal - with the guaranteed assistance of counsel – to ensure he received competent sentencing representation, and counsel had an interest in foreclosing Mr. Bien Aime’s right to do so, as counsel had an interest in protecting his professional reputation, as well as an interest in guarding against the financial and professional consequences such a finding would lead to. *See*, Florida Bar Ethics Opinion 12-1 (2012) (Collecting ethics opinions on the matter). Accordingly, given the circumstances, the district court reasonably should have known that the appellate waiver presented an actual conflict of interest between Mr. Bien Aime and his counsel, and thus the trial court had a duty to inquire and either disqualify counsel or obtain a waiver from Mr. Bien Aime of his right to have conflict free counsel advise him concerning his appellate waiver. *See*, *Dallas*, 964 F.3d at 1303; *Wood*, 450 U.S. at 272–73, 101 S.Ct. at 1103–04; *Sullivan*, 446 U.S. at 347, 100 S.Ct. at 1717–18; *Holloway*, 435 U.S. at 484, 98 S.Ct. at 1178–79; Florida Bar Ethics Opinion 12-1, at 4 (2012); *In re Sealed Case*, 901 F.3d at 403–04; *see also*, *Pittsburg & L.A. Iron Co. v. Cleveland Iron Min. Co.*, 178 U.S. 270, 278, 20 S. Ct. 931, 935, 44 L. Ed. 1065 (1900) (“Everyone is presumed to know the law.”); *The Florida Bar v. Adorno*, 60 So. 3d 1016, 1031 (Fla. 2011)(“[M]embers of The Florida Bar are responsible for knowing the Rules Regulating the Florida

Bar.”)(citations omitted). Because no inquiry was made, reversal is required. *See, Id.*

More specifically, reversal is required because the conflict of interest adversely affected counsel’s performance. The Eleventh Circuit has explained the three-part standard for establishing adverse effect as follows:

To prove adverse effect, a habeas petitioner must satisfy three elements. First, he must point to “some plausible alternative defense strategy or tactic [that] might have been pursued.” *United States v. Fahey*, 769 F.2d 829, 836 (1st Cir.1985); *see also Porter [v. Wainwright]*, 805 F.2d 930, 939–40 (11th Cir.1986), cert. denied, 482 U.S. 918, 107 S.Ct. 3195, 96 L.Ed.2d 682 (1987) ]. Second, he must demonstrate that the alternative strategy or tactic was reasonable under the facts. Because prejudice is presumed, *see Strickland*, 466 U.S. at 692, 104 S.Ct. 2052, the petitioner “need not show that the defense would necessarily have been successful if [the alternative strategy or tactic] had been used,” rather he only need prove that the alternative “possessed sufficient substance to be a viable alternative.” *Fahey*, 769 F.2d at 836. Finally, he must show some link between the actual conflict and the decision to forgo the alternative strategy of defense. In other words, “he must establish that the alternative defense was inherently in conflict with or not undertaken due to the attorney’s other loyalties or interests.” [*Fahey*, 769 F.2d at 836].

*Freund v. Butterworth*, 165 F.3d 839, 860 (11th Cir. 1999) (quoting, *Freund v. Butterworth*, 117 F.3d 1543, 1579-80 (11th Cir. 1997)). “With respect to the third prong-that counsel’s failure to pursue the objectively reasonable defense strategy was linked to the conflict-the *Freund* court explained that the petitioner is entitled to prove such a link in either of two ways: (1) by ‘establish[ing] that the alternative defense was inherently in conflict with ... the attorney’s other loyalties or interests’

(the ‘first aspect of the Freund test’), or (2) by otherwise showing that the alternative defense was ‘not undertaken due to’ those other loyalties or interests (the ‘second aspect of the Freund test’)” *United States v. Nicholson*, 611 F.3d 191, 212 (4th Cir. 2010) (citing, *Freund*, 165 F.3d at 860).

- i. Plausible alternative strategy or tactic that might have been pursued.

Independent counsel, not impaired by the conflict, plausibly could have advised Mr. Bien Aime to refuse to waive his right to pursue such a claim on direct appeal as part of his plea agreement with the government to ensure he received competent sentencing representation. Accordingly, the first prong of the adverse effect standard has been met. *See, Freund*, 165 F.3d at 860 (The first prong of the adverse effect test requires the defendant to point to a plausible alternative defense strategy or tactic that might have been pursued.)

- ii. The alternative strategy or tactic was reasonable under the facts.

Mr. Bien Aime clearly had a vested interest in ensuring that his counsel performed effectively during sentencing. Accordingly, it would have been reasonable for Mr. Bien Aime to refuse to waive his right to pursue a claim concerning the effectiveness of his counsel’s sentencing representation on direct appeal where he enjoyed the right to have counsel assist him with raising such a claim. Accordingly, the second prong of the adverse effect standard has been met. *See, Freund*, 165 F.3d at 860 (The second prong of the adverse effect test requires the defendant to demonstrate that the alternative strategy or tactic was reasonable under the facts.)

- iii. The decision to forego the alternative strategy was inherently in conflict with or not undertaken due to the attorney's other loyalties or interests.

The alternative strategy, which would have been to advise Mr. Bien Aime to refuse to waive his right to pursue a claim of ineffective assistance of sentencing counsel as part of his plea agreement with the government, was inherently in conflict with trial counsel's interest in foreclosing Mr. Bien Aime's ability to attack his representation during sentencing by advising acceptance of the waiver. *See*, Florida Bar Ethics Opinion 12-1. Accordingly, the third prong of the adverse effect standard has been met, and Mr. Bien Aime is entitled to relief. *See, Freund*, 165 F.3d at 860 (The third prong of the adverse effect test requires the defendant to show that the alternative defense was inherently in conflict with or not undertaken due to the attorney's other loyalties or interests); *Nicholson*, 611 F.3d at 212 (The third prong may be met by demonstrating either (1) the alternative defense was inherently in conflict with the attorney's other interests, or (2) the alternative defense was not undertaken due to the attorney's other interest)

- iv. The Court should establish that the failure to inquire into a conflict-of-interest created by a sentence appeal waiver requires reversal.

In short, a sentence appeal waiver creates an obvious and actual conflict of interest, *see*, Fla. Bar Ethics Op. 12-1 (2012); *In re Sealed Case*, 901 F.3d at 403–04, which adversely affects counsel's performance. *See, Freund*, 165 F.3d at 860. Accordingly, this Court should establish that such a waiver triggers the district court's duty to inquire, and that reversal of a defendant's Plea, Judgment, and Sentence is required where no inquiry is made. *See, Sullivan*, 446 U.S. at 349-50,

100 S.Ct. 1708; *see also, Hunter*, 608 U.S. at 724, 146 S. Ct. at 1711 (“an appeal waiver tainted by ineffective assistance is not enforceable.”)

Furthermore, it is vital that this Court take the opportunity to establish that reversal is required in these circumstances and/or resolve the question of whether a sentence appeal waiver precludes a criminal defendant from raising a claim of ineffective assistance of counsel on direct appeal, as by refusing to produce a published opinion on these matters, the Eleventh Circuit has created an incongruity in the law wherein heads the government wins (a sentence appeal waiver clearly precludes a defendant from raising a claim of ineffective assistance of counsel on appeal) and tails the defendant loses (where a defendant claims the waiver creates an actual conflict of interest between himself and counsel, suddenly it is no longer clear whether the waiver precludes such a claim, and thus no obvious conflict of interest exists which would trigger the duty to inquire). Accordingly, it is crucial that this Court address these matters head on to provide guidance to the Eleventh Circuit so that these issues will be decided consistently and predictably going forward. *See, e.g., Herrera v. United States*, No. 25-2428, 2026 WL 2363220, at \*1 (7th Cir. Aug. 14, 2026) (“The doctrine of stare decisis ‘promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.’” (quoting, *Joy v. Penn-Harris-Madison Sch. Corp.*, 212 F.3d 1052, 1065 (7th Cir. 2000) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S.Ct. 2597, 115 L.Ed.2d 720 (1991))). Simply put, that a sentence appeal waiver so clearly precludes a defendant from

raising a claim of ineffective assistance of counsel on direct appeal so as to require the dismissal of his appeal where he raises such a claim, but simultaneously does not do so clearly enough so as to create a conflict of interest which triggers the district court's duty to inquire is an untenable position necessitating this Court's intervention.

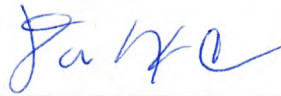
Consequently, this Court should grant review and resolve the circuit split regarding whether a sentence appeal waiver precludes a criminal defendant from raising a claim of ineffective assistance of appellate counsel on direct appeal, and if this Court determines it does so, this Court should further establish that by doing so, such a waiver creates a clear and actual conflict of interest triggering the district court's duty to inquire, reverse Mr. Bien Aime's Plea, Judgment, and Sentence, and remand his case to the district court for a new change of plea hearing, where his plea agreement is only accepted if a proper inquiry and waiver are made, or, in the alternative, should this Court determine that a sentence appeal waiver does not preclude a criminal defendant from raising a claim of ineffective assistance of sentencing counsel on appeal, this Court should remand Mr. Bien Aime's case to the Eleventh Circuit with instructions that he be granted leave to file a Supplemental Merits Brief raising any ineffective assistance of sentencing counsel claims he can set forth in good faith, as his right to do so in the Eleventh Circuit despite the existence of a sentence appeal waiver will be a newly established right he did not have at the time his original Brief was filed, and the failure to grant Mr. Bien Aime leave to file

a supplemental brief in accordance with the newly established right to do so would deny him the right to due process of the law.

### **CONCLUSION**

For the reasons stated above, this Court should grant the instant Petition for Writ of Certiorari.

Respectfully Submitted,



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