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November 8, 2021

**BY ECF**

Hon. Alvin K. Hellerstein  
United States District Judge  
Daniel Patrick Moynihan U.S. Courthouse  
500 Pearl Street - Room 1050  
New York, NY 10007

The request is denied. I ruled on the 2255 Motion because of a change in law based on *United States v. Davis*, 139 S. Ct. 2319 (2019). There is not a similar basis for adding a claim challenging the jury charge referenced in footnote 4 of the Opinion and Order.

/s/ Alvin K. Hellerstein

November 12, 2021

**Re: Joe Fernandez v. USA; USA v. Joe Fernandez  
20-cv-5539 (AKH); S2 10-cr-863-05 (AKH)**

Dear Judge Hellerstein:

We represent the Petitioner-Defendant, Mr. Joe Fernandez, on his motion to vacate, set aside or correct his sentence, pursuant to 28 U.S.C. § 2255 (the “2255 Motion”) (*see* 20-cv-5539, ECF Doc. 1). On November 3, 2021, this Court filed an “Opinion and Order Granting Motion to Vacate Sentence on Count Two of Indictment” (the “Opinion and Order”) (*see* 10-cr-863, ECF Doc. 245). The Opinion and Order indicate that an Amended Judgment will be filed striking the consecutive life sentence imposed under Count Two.

We respectfully request that this Court defer filing an Amended Judgment until December 2, 2021, as we intend to file an application, on Mr. Fernandez’s behalf, to amend the 2255 Motion. We make this request as we seek to add a claim, as noted in footnote 4 of the Opinion and Order, which challenges the jury charge on inferences that can be drawn from an uncalled witness, and a claim of actual innocence.

Thank you in advance for considering this request.

Respectfully submitted,

/s/ Randa D. Maher

Randa D. Maher

cc: AUSA Russell Capone, by ECF  
Mr. Joe Fernandez, by U.S. mail