

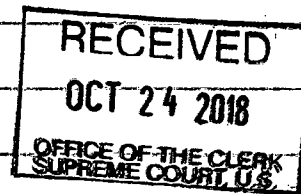
N0: 18-5578

IN THE  
SUPREME COURT OF THE UNITED STATES

ANTONIO U. AKEL - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT



PRO SE

On petition for writ of Certiorari  
TO the UNITED STATES COURT OF APPEALS for the  
ELEVENTH CIRCUIT

PETITION FOR REHEARING AND RELISTING

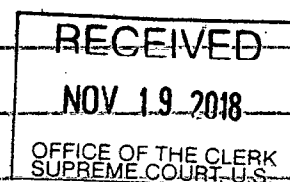
ANTONIO U. AKEL Reg # 06899-017

INCARCERATED PROSE PETITION

BIG SANDY U.S.P.

P.O. BOX 2068

INEZ, KENTUCKY 41224



## BRIEF STATEMENT OF GROUNDS

(1) The petitioner has two (2) separate motions pending before this Court which he suggests that in accordance with fundamental fairness should have been ruled upon prior to a decision pertaining to the Granting or denial of certiorari was rendered, i.e. Motion for leave to Supplement and Motion for leave to Amend.

(2) The denial of certiorari in this case countenances the Eleventh Circuit's Evisceration of the right to counsel, which is supposed to be firmly grounded in the BILL OF RIGHTS, Supreme Court Binding precedent and Federal Rule of Criminal Procedure 44(a).

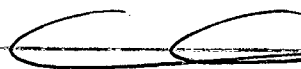
(3) This # 18-5578 petition is the last and only effective means that the AMERICAN CITIZEN has to resist the clear and unequivocal USURPATION perpetrated by the Eleventh Circuit Court of Appeals.

(4) Arguably this honorable Court has a duty to ensure justice is done by Granting Certiorari when as here a PENSON V. OHIO, 488 U.S. 75 (1988) violation is clear, unopposed and easily determined by a simple review of the Docket in Appeal # 08-1371-BB in the Court below.

(5) The Denial of Certiorari in this petition when contrasted with FRANKEL V. UNITED STATES, 130 S. CT 72, 175 L Ed 2d 4 (2009) allows for a Question of Exceptional Importance where the "EQUAL PROTECTION OF ONE" appears to have been knowingly violated by the UNITED STATES DEPARTMENT OF JUSTICE.

## CERTIFICATION OF THE GROUNDS PRESENTED

I, ANTONIO UAKEL hereby certify that the above grounds are limited to intervening circumstances of substantial or controlling effect, i.e. ground #1, and Substantial grounds not previously presented, i.e. grounds # 2, 3, 4 and 5.



## I. STANDARD OF REVIEW

A petition for rehearing of a denial of a petition for certiorari is part of the appellate procedure authorized by the rules of the Supreme Court... The right to such consideration is not to be deemed an empty formality as though such petitions will as a matter of course be denied. The denial of a petition for certiorari should not be treated as a definitive determination in the Supreme Court subject to all the consequences of such an interpretation, see FLYNN v. UNITED STATES, U.S. Sup. Ct. NO. 442, 99 L. Ed. 1298 (1955) (JUSTICE FRANKFURTER)

## II. THIS COURT'S INITIAL DECISION TO DENY CERTIORARI WAS WRONG AND/OR PREMATURE

A. THE PETITIONER HAS TWO SEPARATE MOTIONS PENDING BEFORE THIS COURT WHICH HE SUGGESTS IN ACCORDANCE WITH FUNDAMENTAL FAIRNESS SHOULD BE RULED UPON PRIOR TO A DECISION PERTAINING TO CERTIORARI IS RENDERED.

i. During the month of September 2018 the petitioner filed a "MOTION FOR LEAVE TO SUPPLEMENT..." and a "MOTION TO AMEND..." in this #18-5578 certiorari proceeding.

ii. At the time of this Court's denial of certiorari the Honorable Justices of this Court have made no determination pertaining to these motions.

iii. The petitioner puts forth that the merits and contentions found in the two motions still pending before this Court are critical and imperative to the demonstration that "THE RISK OF UNDERMINING THE PUBLIC'S CONFIDENCE IN THE JUDICIAL PROCESS" is too great to deny certiorari in this case.

B. THE DENIAL OF CERTIORARI IN THIS CASE COUNTENANCES THE ELEVENTH CIRCUITS EVISCERATION OF THE RIGHT TO COUNSEL GROUNDED IN THE BILL OF RIGHTS, SUPREME COURT BINDING PRECEDENT AND FEDERAL RULE OF CRIMINAL PROCEDURE 44(a).

i. Before this Honorable Supreme Court there is no opposition from the UNITED STATES DEPARTMENT OF JUSTICE nor the Judges from the ELEVENTH CIRCUIT, that the petitioner did not have nor waive his Sixth amendment right to counsel on direct appeal.

ii. Factually the SOLICITOR GENERAL in a prior proceeding before this Court has virtually admitted to the Sixth Amendment violation in the appeal below. See ANTONIO U. AKEL V. UNITED STATES, U.S. Sup. CT. CERT. # 16-6032 at GB pg 6.

iii. There is no question that the petitioner was denied his right to counsel on direct appeal in violation of the BLACK LETTER RULE OF LAW put forth by this very Court in DOUGLAS V. CALIFORNIA; HALBERT V. MICHIGAN; GIDEON V. WAINWRIGHT; PENSON V. OHIO; SMITH V. ROBBINS and JOHNSON V. ZERBST.

iv. Federal Rule of Criminal procedure 44(a) States:

"A defendant who is unable to obtain counsel is entitled to have counsel appointed to represent the defendant at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right"

v. As such no fairminded Jurist could disagree that petitioner ANTONIO AKEL like all other Americans was entitled to representation during the appeal below and that because he did not waive the right to counsel there has been a structural error which requires automatic reversal.

vi. Instead of denial of certiorari, the petitioner suggest that the HONORABLE SUPREME COURT JUSTICES should have issued a Summary reversal in light of the indisputable and non-contested facts, like that of which it had done in FRANKEL V. UNITED STATES, 130 S. CT 72, 175 L. Ed 2d 4 (2009)

C. PETITION # 18-5578 IS THE ONLY EFFECTIVE MEANS THAT THE AMERICAN CITIZEN HAS TO RESIST THE CLEAR AND UNEQUIVOCAL USURPATION PERPETRATED BY THE ELEVENTH CIRCUIT COURT OF APPEALS.

i. This Court once stated in SPARE V. UNITED STATES, 156 U.S. 51, 144, 39 L. Ed 343 (1895):

"THE PEOPLE THEMSELVES HAVE IT IN THEIR POWER EFFECTUALLY TO RESIST USURPATION WITHOUT BEING DRIVEN TO AN APPEAL TO ARMS"

ii. It has been said that the right to appeal is a right which is fundamental to the concept of due process of law and therefore has constitutional implications, ARRASTEA V. UNITED STATES, 455 F.2d 736, 739 (5th Cir 1972) and that the procedures used in deciding appeals must comport with due process and equal protection clauses of the Constitution. See MCKANE V. DURSTON, 153 U.S. 684, 14 S. CT 913, 38 L. Ed 867 (1894)

iii. Here, the ELEVENTH CIRCUIT violated petitioner ANTONIO AKELS Sixth amendment right to counsel, he raised the Grievance, and the appellate court has covered up the violation with a boiler plated one word denial with no discussion of the facts or the legal analysis to justify its ruling.

IV. The touchstone of due process is protection of the individual against arbitrary action of Government. Because the Due process clause provides protections from the arbitrary actions of Government employees most egregious conduct and here it is the ELEVENTH CIRCUIT JUDICIARY for which the American citizen seeks protection from, this SUPREME COURT should support the petitioner in his resistance of the clear usurpation and indefensible judicial activism of the Court below.

D. ARGUABLY THIS COURT HAS A DUTY TO GRANT CERTIORARI WHEN AS HERE THE PENSON v. OHIO VIOLATION IS CLEAR AND UNOPPOSED.

i. It is this Court, the HONORABLE SUPREME COURT, to which stated:

"THE SIXTH AMENDMENT GUARANTEES A DEFENDANT THE RIGHT TO COUNSEL" see STRICKLAND v. WASHINGTON 466 U.S. 668, 692

80 L.Ed. 2d 674, 104 S.Ct. 2052 (1984)

ii. If not the Supreme Court, then how do we Americans redeem that "GUARANTEE" of the right to counsel when the appellate courts decide to misuse its judicial power by disregarding the rule of law as well as the truth and render decisions based upon personal preference?

E. THE DENIAL OF CERTIORARI IN # 18-5578 WHEN CONTRASTED WITH FRANKEL v. U.S. 130 S.Ct. 72, 175 L.Ed. 2d 4 (2009) ALLOWS FOR A QUESTION OF EXCEPTIONAL IMPORTANCE WHERE THE EQUAL PROTECTION OF ONE APPEARS TO HAVE BEEN VIOLATED.

i. The petitioner puts forth that the Equal protection and Due process

rationales are intertwined such that denying due process to petitioner ANTONIO AKEL when affording it to the petitioner in FRANKEL v. UNITED STATES is itself a denial of Equal protection and denying equal treatment to similarly situated appellants is itself a denial of due process. see GRIFFIN v. ILLINOIS, 351 U.S. 12, 19, 100 L.Ed. 891 765, ct 585 (1956) and ROSS v. MOFFITT, 417 U.S. 600, 609 n.8 41 LEd 2d 311, 94 S.Ct. 2437 (1974).

## CONCLUSION

With respect, the decision to deny certiorari prior to a ruling and disposition concerning two critical motions filed in this matter was unfair to the incarcerated PROSE petitioner.

Additionally the denial of certiorari in this case will allow the ELEVENTH CIRCUIT COURT OF APPEALS to have gotten away with a deliberate and flagrant instance of JUDICIAL USURPATION whereby it EVISCERATED the Sixth Amendment guarantee of the Assistance of Counsel.

It is one thing for the ELEVENTH CIRCUIT to pride itself on being extremely conservative and extremely harsh as long as it does so within the letter of the law. However, in an era where the EXECUTIVE BRANCH of the UNITED STATES Government has explicitly alleged the Judiciary to be a corrupt institution, allowing the Court below to operate outside the law, making unjustifiable rulings based only upon whim and personal preference whereby the Court violated an American Citizens SIXTH AMENDMENT right to Counsel and has WHITEWASHED the truth, effectively obstructing the relief mandated in light of PENSON v. OHIO and JOHNSON v. ZERBST, not only cast a bad light on the Great majority of the Honorable Courts, Judges and Justices

whom would always do their best to see that justice prevails, but, also leaving the ELEVENTH CIRCUIT free to disregard binding law from this Court would sow chaos as well as "ANARCHY" see HUTTO V. DAVIS 454 U.S. 370, 375. Consequently destroying the public's faith in the Judiciary to afford American citizens fair, truthfull and honorable adjudication of law and administration of Justice.

In sum, because the ELEVENTH CIRCUIT'S Judicial Usurpation is clear, unambiguous and deliberate this honorable Court is implored to rehear/relist petition # 18-5578 and afford the petitioner a merits review of his pending motions and subsequently afford him the EQUAL PROTECTION OF THE SIXTH AMENDMENT right to Counsel on the direct appeal below as established in FED. R. CRIM. P 44(a) and Binding precedents PENSON V. OHIO; DOUGLAS V. CALIFORNIA; HALBERT V. MICHIGAN; GIDEON V. WAINWRIGHT and JOHNSON V. ZERBST.

Diligently Seeking Justice

ANTONIO U. AKEL

### DECLARATION AND CERTIFICATE OF SERVICE

I, ANTONIO AKEL, hereby declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true, correct and a copy of which sent to the following:

U.S. Department of Justice

Office of the Solicitor General

950 Pennsylvania Ave., N.W. Room 5616

WASHINGTON, D.C. 20530

Date: OCT. 19<sup>th</sup>, 2018

RESUBMITTED ON: NOV. 5<sup>th</sup> 2018

ANTONIO AKEL