No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Terrence Denmark — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

11th Cir. Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Terrence Denmark #14465-018
(Your Name)

FCC Coleman Medium P.O. Box 1032
(Address)

Coleman, Florida 33521
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1) Should there be a two-part test for the 28 U.S.C. § 2241 instead of a Five-part test, and should the test be based on (1) illegal unconstitutional confinement; and(2) a new change in statutory interpretation unavailable to petitioners.

2) Did WELCH v. UNITED STATES 136 S.ct 1265 (2016) clarify the standard of Retroactivity in ALL habeas corpus and create a test based on (1) Due Process violation; and(2) a change during collateral proceeding.

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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:

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

[X] reported at No.17-11224-AA; 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[X] is unpublished.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

[X] reported at GW5:14-cv-310-oc-10PRL; 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[X] is unpublished.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[ ] is unpublished.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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was February 12, 2018.

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

[ ] A timely petition for rehearing was denied by the United States Court of Appeals 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. § 1254(1).

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

The date on 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

STATEMENT OF THE CASE

Plead guilty in 2006 to 21 U.S.C. §841(A)(1) and 21 U.S.C. §846 see U.S. v. Denmark 2:05-cr-71-FTM-33DNF. Petitioner's Due Process Rights were violated when he was not Put on Notice for the 851 enhancement until prior to sentencing.

Petitioner appealed [1] his sentence which was affirmed Cr.DE 819 then Petitioner filed a 28 U.S.C. § 2255 Cr. DE 829 which was Denied. At the time Petitioner filed his 2255, the Courts have not decided Mathis v. United States__U.S.__(2016) nor Descamps__U.S.__ 2013. In fact Petitioner's 28 U.S.C. § 2255 was Denied. see Cr.DE 912. Petitioner then sought to get relief through 18 U.S.C. §3582(c)(2) for the 2 point Reduction [2] Petitioner then sought to challenge his confinement through 28 U.S.C. § 2241 because Petitioner was confined in FCC Coleman Medium which is in the Eleventh Circuit and the Warden at FCC Coleman in Coleman Medium is the Person in Chrge of Petitioner's Custody. Petitioner challenged that he is Actually Innocent of his drug Enhancements in light of Barrage v. United States [3] __U.S.__(2013) and Alleyne v. U.S. __U.S.__(2013), [4] Inter-Alia Petitioner also challenged the fact under Mathis v. U.S. __U.S.__(2016) the elements of the priors did not Qualify, also When Petitioner filed the above petition the Eleventh Circuit Precedent was Bryant v. Warden 738 F.3d, 1253, 1262 (2013) which set a high standard for 2241 and then in 2017 the Eleventh Circuit

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(1) Petitioner's Direct Appeal consisted of him filing to sever his appeal from co-defendants.

(2) Which was Denied on the Grounds that Petitioner waved his Right to Collaterally attack his conviction which is a Class v. U.S. violation and also a violation of Hughes v. U.S. and Koons v. U.S. (2018)

(3) id.

(4) Alleyne v. U.S. Petitioner challenged the sufficiency of the Indictment and the Priors used.

over ruled the then Circuit Precedents such as Wofford v. Scott; Bryant v. Warden; and Mackey. When Petitioner was on Appeal Petitioner sought a Stay Pending a decision in McCarthan v. Director of Goodwill Industries.

The Stay was granted in McCarthan because Writ of Habeas Corpus is in fact the available Remedy for Relief.

REASONS FOR GRANTIN THE PETITION

There is a Split amongst the 4th Cir. n United States v. Wheeler No. 16-6073 Decided March 28, 2018 anc the 11th Cir. in McCarthan v. Director of Goodwill Industries Sur oast 851 F.3d 1076 (2017). Petitioner 28 U.S.C. § 2241 was Deniec in light of McCarthan without a hearing on the Merits, whereas a 224 is the appropriate Remedy to attack the validity of his confinem nt. The Writ of habeas corpus was enacted in 1789 under the A 1 Writs Act governed by 28 U.S.C. 1671. Petitioner sought coll teral Review, and direct appeal which was denied. A Second and uccessive would not have been applicable because Mathis v. U.S. _U.S.__(2016) was not deemed Retroactive by the Supreme Court. Desc mps was considered Retroactive in United States v. Mays 817 F.3d 72, 016. But Petitioner was already Pending the Response from the 241 in which was already filed. There are Thousands of Petition rs in the Eleventh Circuit that have available Relief through a 2 41, iner-alia they can not obtain Relief based on the Standar s that have been set. The Eleventh Circuit even stated in McCart an "Habeas corpus at its core an Equitable Remedy". McCarthan q oting Schlup v. Delo, 513 U.S. 298 319, 115 S.ct 851, 130 L. Ed. 2d 808 (1995) McCarthan at 1107. The ruling in McCarthan is mi placed and bars Petitioner from bringing a Constitutional Challen e to his conviction in which the habeas corpus grants Petitio ers the liberty to challenge. The Supreme Court is the most sufficie t court in America that has the ability to right the wrong of he decision in McCarthan. The Ruling in Wheeler v. United States 16-6073 puts Petitioner and thousands all over the country in n awkward position where they would either have to transfer to he 4th circuit where Petitioner

is not from when the decision is Wheeler is 100% correct if you are convicted in a circuit you exhausted all your Available Remedies 28 U.S.C. § 2241 is the appropriate Remedy to use, not a frivolous motion that can and will be denied. Petitioner sought relief in every available Remedy and the 2241 is the appropriate way to Review the Question Presented and solve the Circuit Split amongst McCarthan v. Director of Goodwill and Wheeler. Granting this Cert. would clarify the problem that is happening constantly in courts all over American Jurisprudence. The principles of justice rest upon a clarification of what constitutes Relief in a 28 U.S.C. § 2241 in a simple test not one based on a near impossible standard.

II

Did WELCH v. UNITED STATES 136 S.Ct. 1265 (2016) clarify the Standard of Retroactivity in ALL Habeas Corpus and Create a test based (1) Due Process violation (2) a Change During a Collateral proceeding.

Two terms ago this Court Decided WELCH v. UNITED STATES 136 S.Ct 1265 (2016). WELCH ruled that Johnson was retroactive to cases on Collateral Review. WELCH answered the question of what constitutes Relief in the Retroactive context. Now COurts are confused as to the terminology of Retroactivity. Retroactivity, adl extending in scope or effect to matters that have occurred in the past. Quoting Black's Law Dictionary 2009. Here Petitioner stands convicted of an offense in which retroactivity of that Ruling would clarify a standard in which thousands of petitioners are in prison for non-existent offenses. In WELCH Justice Kennedy stated "A case announces a New Rule if the result was not dictated by precedent existing at the time the defendant's conviction became final." Now, based on a New Rule the Supreme Rules a statutory interpretation every term, and every Court in America waits for the Magical Words of Retroactivity. Welch clarified the example of Retroactivity when (1) a Rule is Retroactive when it alters the range of conduct or the class of persons that the law punishes. WELCH Quoting Schirro, 542 U.S. at 353, "This includes decisions that narrow the scope of a criminal statute by interpreting the scope of a criminal statute by interpreting its terms, as well as constitutional determinations that place particular conduct or persons covered by the statute beyond the states power to punish." Id. Quoting WELCH. Now since WELCH there have been numerous decisions in which are substantive in nature. However, courts across America are only compliant with Johnson & Welch announcing Retroactivity. WELCH have far reached Johnson, for instance Dimaya v. Sessions f__U.S.__(2018) Courts are confused as to the interpretation of Retroactivity when the first Oral Argument the Justices were cognizant of the Retroactivity. However, only the most Elite

Analytical Mind would understand that once a ruling alters the Range or conduct it would pass the WELCH test. Petitioner and 1,000 or others only have one year from Dimaya to file. Petitioners, however, without a cut and dry test, thousands will stand convicted for a non-existent offense.

ARGUMENT

COMES NOW Petitioner Terrence Denmark "Petitioner", who files this Petition "pro-se" prays not to get this motion construed liberally Hains v. Kerner 404 U.S. 519 (1972). Petitioner requests that this Court grant certiorari based on the problem that the lower courts have been faced with the test that have been administered on the writ of habeas corpus 28 U.S.C. 2241. The 2241 is one of the greatest writs in America in which was enacted in 1789, since the Judiciary Act of 1789 Congress has authorized Federal Courts to issue writs of habeas corpus to Federal prisoner.(5) The reconstruction Congress later expanded the scope of writ to reach state prisoners as well.(6) That guarantee can be found in its current form of 2241 of the Judicial Code, which provides that Federal Judges may grant the writ of habeas corpus on the application of a prisoner held "in custody in violation of Constitution or laws or treaties of the United States" 28 U.S.C. 2241(c)(3). The prisoner must direct his petition to "the person who has custody over him" §2242 quoting Wales v. Whitney, 114 U.S. 564 S.Ct 1050 (1885). The Eleventh Circuit has left an unpreceded high hurdle that is difficult to impossible to cross based on the decision in McCarthan v. Director of Goodwill Industries 851 F.3d 1051 (2017) because the test in McCarthan violates due process and causes petitioners' rights to be taken away when procedurally they have exhausted all the remedies and the only availability for relief is 2241, whereas if the Supreme Court does not state the Magic Words of Retroactivity, hundreds if not

(5) All Writs Act of 1789. Ch 20 §14, 1 Stat.82
(6) Act of Feb 5, 1867. Ch 28 §1 14 State. 38.

thousands of petitioners are basically left to figure it out, inter-alia the the Average inmate suffers from a Mental Disability Brumfield v.Cain __U.S.__ (2015)(when it is unconstitutional to put to death the Mentally Retarded. Now there needs to be a uniform Rule for 2241 where ALL courts can use to determine Relief for Petitioners instead of a test where an Inmate is left to climb everest with a toothpick.

II

The WELCH Test for Retroactivity

Since the creation of WELCH v. UNITED STATES 136 S.Ct.1265 That Rule Johnson v. United States was Retroactive it clarified that once a Person or persons stand convicted of Crime that is no longer Criminal that Rule is Substantive WELCH quoting Coates v. Cincinnati (1971) 402 U.S. 611. For instance the Ruling in Dimaya Clarifies the standards of 18 U.S.C. 16(b) and change the statute in a Substantive manner and courts are left with a constant conundrum of waiting again for "Retroactivity" to be announced when the WELCH test have been meet whereas (1) it's a process violation (2) it is a Substantive change in law. With that being said there will be hundreds if not thousands of Petitioners asking for Retroactivity when the WELCH test is appropriate Remedy.

The "Welch Test" is much needed in American Jurisprudence simply because Courts are constantly burdened every year with frivolous motions in which cite Supreme Court cases of importance to clarify habeas corpus, sentencing, trial, civil, labor, employment, trade agreements, that cite previous rulings of the last termDodd v. U.S. 545 U.S. 353 forcloses the case after a year based on AEDPA of 1996, being that Dodd only gives those already convicted a year, the Test of Retroactivity should be based on retroactivity which needs to be considered in this context:(1) is it a due process violation, the due process violation directly has to be based on facts that Petitioner's sentence had to have been final,once ruling of new case was ruled on and previously unavailable to Petitioner or if not available, a show due diligence why Petitioner could not exercise it. (2) A substantive change in law. A substantive change means a statutory change, not legal clarification, a statutory change would be as what occured in Johnson v. U.S. 135 S.Ct. 2251 (2015) where the late Antonin Scalia drafted that the residual clause is void for vagueness and Justice Kagan also ruled that 16(b) carries the same vagueness standards that also carry arbitrary enforcement. With that being said once "ANY" statue has been changed or altered drastically the Welch Test is initiated. Courts are in dire need of such a test to elevate the constant burden of the courts iwth questions of retroactivity. Whereas Petitioner prays that this certiorari gets granted to clarify this issue of retroactivity amongst the lower courts.

Respectfully Submitted,

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Torrence Conman

Date: April 16, 2018