

No. \_\_\_\_\_

\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_

ERIC BRANCH — PETITIONER  
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT OF APPEAL COURT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ERIC BRANCH

(Your Name)

FCI Butner II, PO Box .1500

(Address)

Butner, NC 27509

(City, State, Zip Code)

NA

(Phone Number)

## QUESTION(S) PRESENTED

WHETHER THE TRIAL COUNSELOR AND EVIDENTIARY COUNSELOR WERE INEFFECTIVE WHEN BOTH COUNSELORS FAILED TO FILE THE APPEAL OR FAILED TO EVEN NOTIFY THE PETITIONER OF THE DECISION, ESPECIALLY WHEN THE COUNSELORS WERE BOTH FULLY AWARE OF THE "ANTI-SHUTTLING , IADA VIOLATION AND CORRUPT OFFICIALS THAT WERE INVOLVED IN THE CASE" IN LIGHT OF ROE V FLORES-ORTEGA 528 US 470 (2000) AND GARZA, JR V STATE OF IDAHO. (Granted Cert and Set for Oral Argu..)

## LIST OF PARTIES

- ☒ 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:

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(con't)

(iii)

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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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## STATUTES AND RULES

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## OTHER

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**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☒ reported at 17-7592 (April 27, 2018, 4th Cir); or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☒ reported at 2017 US Dist. Lexis 36088 (EDNC 2017) or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.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☐ is unpublished.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 April 27, 2018.

☐ 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: July 10, 2018, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

### AMENDMENT V OF US CONSTITUTION (1791)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor shall be deprived of life, liberty or property, without **due process of law**; nor shall private property be taken for public use, without just compensation.

### AMENDMENT IV OF US CONSTITUTION (1791)

In all criminal prosecutions, the accused shall enjoy the right to a **speedy trial** and public trial, by an impartial jury of the state and district wherein the crime shall have been committed which district shall be previously ascertained by law, and to be **informed of the nature and accusation**, to be confronted with the witness against him, to have compulsory process for obtaining witnesses in his favor and to **have the assistance of counsel for his defense**

## STATEMENT OF THE CASE

Mr Branch (petitioner hereafter) was serving a 3 yr state sentence in the North Carolina Dept. of Correction (App'x E-G). While serving the state sentence, the Federal Authorities issued a detainer for Branch on 10/5/12 (DOC 1-4) and the State of North Carolina served the petitioner on 10/9/12 and increased his custody level. (App'x E) The USMS picked the petitioner up on Jan. 2, 2013 and the Honorable/Magistrate Judge Marsh arraigned the petitioner on Jan. 2, 2013. At the arraignment the petitioner was offered the waiver of a speedy trial, in which Branch did not sign it (See App'x E) and that same day he was returned to the NC. Dept of Corrections. (See App'x E Email confirmation between counsel and the Marshalls dated Jan. 9 ,2014 thru Jan. 14, 2014)

However, after the petitioner was returned, the Marshalls and Government (Rudy Renfer at the time) realized that Branch did not sign the waiver, so the Marshall created a "bogus charge, and altered the record and then issued a **detainer against a unsentenced prisoner** on Jan. 3, 2013. (See App'x G and also App'x C Evidentiary Hearing Trans. p. 51-52 emp. p. 51 lines 8-16, p. 52 lines 2-22,..he was very angry and was focused on ..he wanted me to get the grand jury transcripts, he thought the indictments were improper and he wanted it all thrown out immediately..and he repeatedly said that he was not "Cream"; See also App'x G Indictment ; App'x C Evid. Hr. p 81 line 19-22..we learned that or what we saw "was there are detainers

that are filed outside of the Court process, as far as what we see on the docket sheet..we don't see detainers lodged by the Marshalls office or ATF...I can't --and I tell folks, I can't explain to you why the US Attorney is charging you; p. 87 lines I don't recall ever recommending someone file an appeal..p. 92 lines 15-17..so after the "verdict" comes back, in your mind, it was "clear" that Eric wanted to Appeal ? Absolutely. He told you that?..Everything about him said that...(p. 93)..there was no question that prior to sentencing, no question in my mind..this was going to be an appeal)

The Marshall's changed the documents without presenting them to the grand jury from "distribution of a quantity of cocaine" (App'x E) to Possession . (App'x C Evid. Hr. p. 97 lines 15-25\*\*, p.98 lines 1-25 and p. 99 lines 1-5\*\*)

The petitioner proceeded to trial in order to preserve his appeal rights and challenge the IADA Anti-shuttling violation and mis-identifaction issues,etc. However, once the petitioner was sentenced he informed the counslors to file the Notice of Appeal and then he was taken back out of the courtroom and then transferred back to the state to finish his sentence again. After several months had passed & no briefs from the counselors the petitioner contacted his mother and told her to call or go up there and ask whats going on with the appeal. (See Evid. Hr. App'x C) but it was later determined that the counselors failed to file the appeal & costing..the petitioner the opportunity to challenge his convictions on the direct appeal..(IN Re: Hawver, 2014 BL 321677,Kan. No. 111,425 (2014)

The petitioner had filed pro se motions that were denied and also filed his 2255 filing, in which the Evidentiary Hearing was Granted. (App'c B-J). The bad part is that the petitioner was appointed a Evidentiary Counselor and after the hearing, the petitioner received a letter from the Counselor clearly stating that he will be notifying Branch of the results and the appeal. (See App'x I Bar Complaints and App'x B Motions to re-open and reconsiderations). Well this 2nd lawyer also failed to provide the petitioner a copy of the magistrate recommendations and the District Judge adopted Order that was issued on Dec. 14, 2016 and adopted by Court on Mar. 14, 2017 in case no. 2016 US Dist. Lexis 185079).

When the petitioner notified the Court of the lack of notice the Court denied the petitioner's request and said that it had served the Counsel and thats all the notice that needed to be given and that its the counselor's responsibility to serve you thereafter. (see App'x A-B) ; US v Poindexter 492 F.3d 263,267-73 (4th 2007)

The petitioner filed for a COA and was denied and now files the Petition for a Writ of Certiorari and request that the Court Grant the Writ, Vacate the Conviction and Sentence or Grant the Restoration of the direct appeal timeframe, so that the petitioner may file his direct appeal and challenge the herein conviction and sentence and jurisdiction. Or in alternative , Grant the Oral Arguments on the Case and Appoint Counsel on the petitioner's behalf and also issue a Amicus Briefing participants...from all willing parties.

## REASONS FOR GRANTING THE PETITION

The Fifth Amendment's Due Process Clause protects a defendant from intentional and prejudicial delay. The Sixth Amendment's "speedy trial guarantees protects Branch and others from undue post-accusation delay" and even prohibits the altering of documentation. The Sixth Amendment right to a speedy trial is not activated before a defendant is actually arrested for charged crimes. In fact, to establish that a due process violation occurred based on pre-accusation delay, the petitioner must show the government's delay was to gain an advantage and the delay resulted in actual and substantial prejudice. In this case, the speedy trial anti-shuttling provision was clearly violated and thus the 2nd detainer and subsequent charges were by-products of government misconduct that was strategically designed to extend the speedy trial rights because the petitioner did not sign the waiver on the initial arraignment. Therefore, the tactical advantage and prejudice prongs are both met and does violate the petitioner's substantial and constitutional rights.

This court has already ruled that the 6th Amendment provides a fundamental right to a speedy trial that serves to prevent undue and oppressive incarceration. (Barker v Wingo 407 US 514 (1972)) This court has also held in US v Marion, 404 US 307 (1971) that the 6th Amendment's right to a speedy trial has no application until an individual became accused, in this case the petitioner was arraigned on Jan. 2, 2013

However, the IADA specifies that a sentenced prisoner, as Branch clearly was (See App'x E-G), who is subject to a detainer relating to pending charges in another jurisdiction has certain rights, including a speedy trial right and a anti-shuttling right. The anti-shuttling provision of 18 USC App. II, Art. IV (E), provides that once a detainer and the prisoner is brought into Federal custody, that the the prisoner may not be returned to local custody until the conclusion of the trial of the federal case. (Alabama v Bozeman 533 US 146, 150-151 (2001)).

In Branch's case, the 4th Circuit has sanctioned the former prosecutor (Rudy Renfer) and others in the EDNC because of these intentional violations that are denying defendants like Branch, Bartko and Obey and Carroll the fair trials and proceedings. (See App'x D News and Observer News Article and recent Bartko v DOJ 16-5333 (DC Aug. 3, 2018) filings) The worst part was when the petitioner had informed 3 different lawyers prior to trial about the loss of jurisdiction and speedy trial violation and all they did was get off of the case. Finally, when the Counsel Thompson was brought in, the counselor failed to file the timely filing and blamed it on the fact that the docket sheet did not reflect it. Well the information had been blocked and the counsel later checked with the USMS Office and it was discovered that the petitioner was returned as he had stated to 3 lawyers (See App'x E emails from Jan. 9, 2014 thru Jan 14, 2014). But unfortunately the petitioner was forced to proceed to

trial to ensure that he preserved his appellant rights, in which the counsel provided the documentation that the appeal would follow after the sentencing due to the delayed filing and denial.(See App'x G letter from S. Thompson dated Sept. 17,2013, and also App'x H pro se filings,responses,denial and letter from S. Thompson dated March 4, 2014)..stating that this ruling "will be addressed during the appeal process after you are sentenced".

The Court has also held in *Roe v Flores-Ortega* that the presumption of prejudice does apply when the counsels failed to file the timely appeal when the petitioner requested. (See *Granted..Cert Case of Garza,jr v State of Idaho* , 17-1026 (2018)). Therefore, because of the constant prejudice being caused by the deficient counselors & government officials, and the Evidentiary Hearing Counselors failure to also notify the petitioner,the petitioner's convictions and sentences are unconstitutional and reep of 5th and 6th Amendment violations that this Court should provide a remedy for, by either Vacating the Conviction and Sentence and Granting Immediate Release or at minimum Order the Amendment in the Trial Courts Judgment in order for the petitioner to file a timely notice of appeal to challenge the jurisdiction and conviction and sentence. In alternative, Grant the Cert and order oral arguments to take place and to provide a equitable remedy to so many constitutional violations and government violations.

Therefore, the petitioner prays that the Court Grants the Cert.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Eric Branch, 56976-056

Date: 9-6- 2018