No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Larry Flenoid — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Larry Flenoid 18797-044
(Your Name)

USP Terre Haute P.O. Box 33
(Address)

Terre Haute, In. 47808
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION[S] PRESENTED

WHETHER THE SUPERVISORY POWERS OF THE UNITED STATES SUPREME COURT WILL BE ASSERTED TO CORRECT THE EIGHTH CIRCUIT COURT OF APPEALS SUMMARILY AFFIRMING THE DISTRICT COURT'S FINDING PETITIONER'S "INSTANT" PETITION "SOLELY" POINTING TO A PROCEDURAL IRREGULARITY IN THE §2255 PROCEEDING WAS A SECOND OR SUCCESSIVE ATTEMPT AT SEEKING RELIEF WHEN THE "INSTANT" PETITION PRESENTED TO THE COURT PURSUANT FEDERAL RULES CIVIL PROCEDURE 60(b)(4) AUTHORIZE AN ATTACK ON A DEFECT IN THE INTEGRITY OF THE PROCEEDINGS WHEN THE DISTRICT COURT HAS ACTED IN A MANNER INCONSISTENT WITH DUE PROCESS UNDER THE FIFTH AMENDMENT BY REFUSING TO FILE AND CONSIDER PETITIONER'S TRAVERSE/REPLY BRIEF FOR BEING OVER-LENGTH BEFORE PASSING JUDGMENT THEREBY DEPRIVING PETITIONER OF HIS DUE PROCESS RIGHT TO NOTICE AN OPPORTUNITY TO BE HEARD AND TO RECIEVE A "FULL AND FAIR" SUBSTANTIVE REVIEW ON THE ENTIRE RECORD?

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:

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CASES PAGE NUMBER

STATUTES AND RULES

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

[ ] reported at _____; 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[X] is unpublished.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

[ ] reported at _____; 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[X] is unpublished.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 May 22, 2018.

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

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: JULY 11, 2018, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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

THE FIFTH AMENDMENT STATE:

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 the 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 be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.

THE SIXTH AMENDMENT STATE:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and and district wherein the crime shall have been committed. Which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

THE EIGHTH AMENDMENT STATE:

Excessive Bail shall not be required, nor excessive fines, nor c cruel and unusual punishments inflicted.

THE FOURTEENTH AMENDMENT STATE:

SECTION 1. All Persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the

18 U.S.C. §751 ESCAPE FROM HALFWAY HOUSE:

Elements... knowingly escape; from custody of institution or place of confinement authorized by direction of the Attorney General

18 U.S.C. §922(g)(1) Felon In Possession of Firearm:

Elements... knowingly possessed a firearm; after being convicted of a crime that was a felony; the firearm was trans ported across state lines.

18 U.S.C. §924(e)(1) PENALITIES:

In the case of a person who violates Section 922(g) of this title and has three previous convictions by any court for a violent felony or serious drug offense, or both, committed on occassions

different from one another shall be fined under this title and imprisoned for no less than fifteen years.

28 U.S.C. § 2255(a) STATE:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon that ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

ARTICLE 1 SECTION 9 clause 2 STATE:

The privilege of the Writ of Habeas Corpus shall not be suspended unless when in cases of Rebellion or Invasion the Public Safety may require it.

STATEMENT OF THE CASE

On January 22,2004, a jury found Petitioner guilty of both counts of a superseding indictment in United States v. Larry Flenoid S1-4:03CR501-DJS. Count I charged an Escape from the Custody of The Bureau of Prisons in violation of 18 U.S.C. §751(a)(1) with a term of 60 months imprisonment being imposed...Count II charged Petitioner with being a Felon in Possession of a Firearm in violation of 18 U.S.C. §922(g)(1), with sentencing to be pursuant 18 U.S.C. §924(e). The court found by a preponderance of evidence Petitioner had killed the victim with the firearm he was convicted of possessing and pursuant a United States Sentencing Guideline (USSG) mandatory "cross-reference" [2A1.1-2K1.2(c)(1)(B)] imposed a concurrent mandatory life sentence. When Appointed Counsel failed to make an Apprendi argument during the sentencing hearing, the Eighth Circuit Court of Appeals affirmed Petitioner's conviction and determined the mandatory life sentence "reasonable" on July 29, 2005, and denied Petitions for rehearing and reconsideration thereafter.

On January 23,2006, the United States Supreme Court denied Petitioner's petition for Writ of Certiorari.

Whereas, on November 2, 2005, with Petitioner's transfer from his federal institution of confinement to St. Louis [Missouri] County Justice Center pursuant a Writ ad Prosequendum with his being placed on Administrative Segregation lock-down for the duration of his confinement there, until convicted on

on State related charges and returned to the federal institution in March 2008. During that time, with the federal proceedings on-going, having no access to federal law books or material, and untrained in matters of law, Petitioner petitioned the court for appointment of counsel [doc #4] to assist in his filing a §2255 and was denied.

On January 3, 2007, Petitioner timely submitted a handwritten pro-se "bare-bones" 28 U.S.C. §2255 [4:07-CV-DJS (Doc #1)] application. Listing the following constitutional GROUNDS authorizing the court to vacate set-aside or correct the imposed sentences...

GROUND ONE...INEFFECTIVE ASSISTANCE OF COUNSEL

(a) Pretrial

(b) Trial

(c) Sentencing

(d) Appeal

GROUND TWO...FIFTH AMENDMENT "DUE PROCESS"

GROUND THREE...SIXTH AMENDMENT & EIGHTH AMENDMENT

GROUND FOUR...FOURTEENTH AMENDMENT "EQUAL PROTECTION-DUE PROCESS"

Petitioner listed the specific facts supporting his GROUNDS on attached 52 handwritten pages. Where, adhering to the plain language on the face of the §2255 application, Petitioner did not "Argue or cite Law".

On June 18, 2007, the government "Responded" to Petitioner's "multifarious" claims. [doc #21]

On July 24, 2007, Petitioner timely filed a 228 page hand-written Traverse/Reply Brief with the district court [doc #24]. Wherein Petitioner presented the district court with facts, law and argument challenging the government's [responded-to] contentions.

On June 18, 2009, the district court issued its Memorandum and Order denying Petitioner's §2255 application. Clearly stating on page #2...

> Flenoid submitted a traverse [doc #24], consisting of 228 handwritten pages plus 65 pages of exhibits, most of which are also documents handwritten by Flenoid. This document grossly exceeds the Court's 15 page limitation for motions, memoranda and briefs set out in E.D.Mo. Local Rule 7-4.01(D). No leave to file the over-length traverse was sought, and none will be granted ...the court does not grant leave for the filing of the 228 page traverse [doc #24], which will not be considered.

The district court did not provide Petitioner with "notice" his traverse/reply exceeded the local rule page limit, nor did the district court apply the local rule in a manner consistent with Federal Rules Civil Procedure 8(d). see Lyons v. Goodson 787 F.2d at 412 (8th cir. 1985), wherein the Eighth Circuit court of Appeals agreed with the Ninth Circuit "that a local rule should not be elevated to the status of a jurisdictional requirement or be 'applied in a manner that defeats altogether a ligitant's right to access to the court'". id. (quoting Loya 721 F.2d at 280); also Fed. R. Civ. P. Rule 83(a).

On November 30, 2017, Petitioner completed and forwarded to the Eighth Circuit District Court for the Eastern District of

Missouri, a Fed. R. Civ. P. Rule 60(b)(4) motion, "solely" pointing to a defect in the integrity of the §2255 proceeding. Where the court acting in a manner inconsistent with due process under the fifth amendment of the United States Constitution deprived Petitioner of "notice", "an opportunity to correct the defect", "an opportunity to be heard" and a "full and fair" substantive review of his traverse/reply submission, and therefore the entire record presented by Petitioner before passing judgment in this case. See Gonzalez, 545 U.S. at 530, 532; United Students Aid Fund, Inc. v. Espinosa, 599 U.S. 260, 270-71, 130 S.Ct. 1367, 1377, L.Ed. 2d 158 (2010); United States v. Boch Oldsmobile, Inc., 909 F.2d 657, 661 (1st cir. 1990); Moore's §60.44 [1][a]; 11 C.Wright, A. Miller, M.Kane, Federal Practice and Procedure §2862, p. 331 (2d ed. 1995 and Supp. 2009); Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371, 376, 60 S.Ct. 317, 84 L.Ed. 329 (1940); Stoll v. Gottlieb, 305 U.S. 165, 171-72, 59 S.Ct. 134, 83 L.Ed. 104 (1938).

In said 60(b)(4) petition, Petitioner cited a Eighth Circuit case. United States v. Longs, 2014 U.S. Dist. LEXIS 94938, wherein Honorable Judge John R. Tunheim, Chief District Judge (Minn.) found Longs petition, "solely" pointing to a defect in the integrity of the habeas proceeding, in failing to consider his reply brief was the type of defect that can properly be brought pursuant a Rule 60 (b)(4) petition, id. To support his findings Judge Tunheim cited Peach v. United States, 468 F.3d 1269, 1271 (10th cir. 2006); Cobble v. Kemp, Civ. No. 92-1268, 2008 U.S. Dist LEXIS 78058, 2008 WL4527563, at *4 (N.D.GA Oct. 2008) cf.

Williams v. Chatman, 510 F.3d 1290, 1295 (11th cir. 2007).

Petitioner clearly and "solely" pointed to a procedural irregularity in the §2255 proceeding that deprived him of "notice" an opportunity to correct the defect [see, Erenhaus v. Reynolds 965 F.2d 921 (10th cir. 1992); Christian v. Colt Indus. Operating Corp., 486 U.S. 800, 816-17, 100 L.Ed. 2d 811 (1988); In re Guidant Corp. Implantable Defibrillators Products Liability Litigation, 496 F.3d 863, 868 (8th cir. 2007); Murphy v. Missouri Dept. Of Corrections, 506 F.3d 1111, 1117 (8th cir 2007) cf. United States v. Celio 2010 U.S. App LEXIS 14615 (10th cir.)], "an opportunity to be heard" and a "full and fair" substantive review on the entire record. see Baldwin v. Credit Based Asset Servicing Securitization, 516 F.3d 734, 737 (8th cir. 2008) (quoting United Students Aid Funds v. Espinosa).

A procedural irregularity which resulted in...(a) A violation of Petitioner's due process rights under the fifth amendment of the United States Constitution and (b) Petitioner being prejudiced where he could not adequately prepare for appeal. see Juliano v. The Health Maint. Org. Of New Jersey, Inc., 221 F.3d 279, 287 (2d cir. 2000). Rendering the judgment in this case void. see Kemper v. Bowersox No. 4:05-CV-350 FRB, 2012 U.S. Dist LEXIS 2150 2012 WL46778, at *1 (E.D. Mo. Jan 9, 2012), also Harley v. Zoesch, 413 F.3d 866, 871 (8th cir. 2005).

On January 4, 2018, whereas the district court had no discretion, but to vacate, the judgment in this case, see

11 Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Civ. §2682 (3 ed 2012) (collecting cases) also e.g., Jordan v. Gilligan, 500 F.2d 701, 704 (6th cir. 1974)("A void judgment is a legal nullity and a court considering a motion to vacate has no discretion in determining whether it should be set aside). The district court characterized Petitioner's "instant" petition as a Second or Successive attempt at reasserting claims in the §2255, and the petition was denied.

On January 22, 2018, Petitioner filed a motion for reconsideration, clearly showing the court, his "instant" motion "solely" pointed to a defect in the integrity of the §2255 proceeding.

On February 7, 2018, the district court denied Petitioner's motion for reconsideration.

On February 12, 2018, Petitioner timely filed a Notice Of Appeal.

On May 22, 2018, the circuit court summarily affirmed the district court's order.

On June 1, 2018, Petitioner filed a Motion for reconsideration with suggestions for rehearing en banc.

On July 11, 2018, the Eighth Circuit Court of Appeals issued an order denying both the petition for rehearing en banc and the petition for rehearing by the panel.

footnote

In multiple attempts at seeking correction of due process violation when the district court deprived him of a full and fair substantive review of the entire recored submitted, Petitioner unwittingly raised claims that inextricably led back to a merits determination on the court's previous resolution on the claims presented in the original §2255 proceeding. That error was not repeated in the "instant" petition, Petitioner submit to the district court pursuant Rule 60(b)(4)

REASONS FOR GRANTING THE PETITION

1. 28 U.S.C. §2255 was enacted to supersede habeas corpus practice for federal prisoners, Davis v. United States, 417 U.S. 333, 343-44, 94 S.Ct. 2298, 41 L.Ed. 2d 109 (1974). Section §2255 allows a federal prisoner to petition the sentencing court to "vacate, set aside or correct" a federal sentence on the ground that "the sentence was imposed in violation of the Constitution or Laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." See 28 U.S.C. §2255.

Whereas, Appellant's Courts generally refuse to review claims of ineffective assistance of counsel on direct appeal, such claims are, therefore, properly addressed in a §2255 motion. See Campbell, 764 F.3d at 892-93: United States v. Lee, 374 F.3d 637, 654 (8th cir. 2004) also Massaro v. United States, 538 U.S. 500, 504, 123 S.Ct. 1690, 155 L.Ed. 2d 714 (2003) holding, "ineffective assistance of counsel claims may be raised for the first time in a §2255 motion even if they could have been raised on direct appeal, this exception is in place to prevent Petitioner's from being forced 'to raise the issue before there has been an opportunity fully to develop the factual predicate of the claim'". id. Additionally, a petitioner's attorney may serve as counsel for both trial and appellate case and it is unlikely that the attorney would raise a claim of his own ineffective assistance at appeal. See United States v. Rashad, 331 F.3d 908, 911, 356 U.S. App. D.C. 323 (D.C. cir 2003).

The Petition should be GRANTED, in this case, where, the district court arbitrarily denied Petitioner's 60(b)(4) petition, wherein, Petitioner respectfully prayed the court vacate the judgment, that was passed, in opposition to established federal law. When the district court deprived Petitioner of review of his traverse/reply brief, which was the only submission of fact and law Petitioner presented to the court to support and argue his constitutional claims raised. Thereby, depriving Petitioner of his due process right under the fifth amendment of the United States Constitution to challenge the government's contention that Petitioner's original §2255 [which the government garnered and "Responded" to (doc #21)] were (a) meritless, (b) procedurally defaulted and (c) non cognizable. Which the district court adopted and reiterated in its Memorandum and ORDER [Appendix - G]. See Washington v. Glucksberg, 138 L.Ed 2d 773 (1997) holding, "The substantive component of the 'Due Process Clause' specifically protects those fundamental rights and liberties which are objectively deeply rooted in this nations history, tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificied.

2. The district court acted in a manner inconsistent with due process, when the court fail to review Petitiner's traverse/ reply brief, United States v. Longs, 2014 U.S. Dist. LEXIS 94938 (8th cir.), depriving Petitioner of notice and a opportunity to be heard, United Students Aid, Inc. v. Espinosa, supra. When Petitioner present his "instant" petition, pursuant Rule 60(b)(4), pointing to exactly where in the §2255 proceeding the district

court had acted in a manner inconsistent with due process. See United States v. Buenrostro, 638 F.3d 720, 722-23 (9th cir 2011). The court had no discretion but to vacate and set aside the judgment, See 11 Charles Alan Wright & Arthur R. Miller Fed. Prac. and Proc. Civ. §2682 (3d ed. 2012)(collecting cases) also e.g., Jordan v. Gilligan, 500 F.2d 701-704 (6th cir. 1974)("a void judgment is a legal nullity and a court considering a motion to vacate has no discretion in determining whether it should be set aside").

The district court denied Petitioner's "instant" Rule 60(b)(4) petition, by finding Petitioner was "merely reasserting a '2009' previously raised claim.", which Petitioner had incorrectly filed, pursuant Rule 60(b)(6) motion[s] see Appendix "B", and denied Petitioner's Motion for Reconsideration, by finding Petitioner failed to make a "substantial showing" of a denial of a federal constitutional right. See Appendix "D".

The Petition shoud be GRANTED, in this case, where the district court is continually depriving Petitioner of his due process right for recieving a fair and accurate review of his "instant" Rule 60(b)(4) purport. Wherein, Petitioner "solely" pointed to the defect in the integrity of the §2255 proceeding. When the district court acting in a manner inconsistent with due process failed to review Petitioner's traverse/reply brief, before passing judgment in this case.

Petitioner, did not, in this instance, list the claims he had [unwittingly] raised in his earlier petitions, in a manner of making the substantial showing, the court now find he should have

made, in this "instant" 60(b)(4) petition. When in fact, it was because Petitioner [repeatedly] made a substantial showing of constitutional violations in his previous filings, the court rightly denied each filing for inextricably raising claims leading back to the court's original resolution on the merits determination.

Petitioner, did not, make this correction, in his "instant" Rule 60(b)(4) petition, because the court made him aware of his error Instead, it was because of Petitioner's persistent and diligent research, that he discovered Longs. A Eighth Circuit case. Wherein, the Chief Judge clearly articulated the law regarding how a Rule 60(b)(4) petition, "solely" pointing to a defect in the integrity in the proceeding, where the Longs court failed to review his reply brief, was to be resolved. id Footnote #4.

Where, Petitioner's case is factually and lawfully similar to Longs, and Prayed equal protection of the law be accorded to him, in like manner. The district court's denial of Petitioner's "instant" Rule 60(b)(4) petition, by finding he (a) was reasserting earlier claims, and (b) requiring Petitioner to make a substantial showing of the denial of a federal constitutional right, was a blatant disregard for Supreme Court holdings, Federal law, sister circuit and intra-circuit findings. Which now call for this Honorable Court to assert its Supervisory Powers and remand this case back to the Eighth Circuit Court of Appeals to correct its oversight, because Petitioner has filed a "True" Rule 60(b)(4) petition entitling him to remand, in this case, with instructions to the district court to provide Petitioner with a meaningful

opportunity to amend the [court identified] defect regarding the over-length traverse/reply submission.

3. Petitioner challenged the denial of his Rule 60(b)(4) petition, by appealing to the Eighth Circuit Court of Appeals. Clearly showing the circuit court, the district court had erroneously conflated his "instant" petition, wherein, he "solely" pointed to a defect in the integrity of the §2255 proceeding, with previous motions Petitioner had filed, wherein, he raised claims that inextricably led back to a merits determination. Rather than the circuit court reviewing Petitioner's "instant" petition [de novo] for what its contents individually purport, the circuit court summarily affirmed the district court's ORDER. See Appendix "A".

Invoking Federal Rules Appellate Procedure 27(d), Petitioner respectfully pray the panel of judges, in the circuit court, assigned to review his case, remand this case back to the district court with instructions to provide Petitioner the equal protection accorded to Longs. By having his "instant" Rule 60(b)(4) motion adjudicated for the petition's actual purport, and a on-the-record determination made, whether it is a "true" 60(b)(4) petition. Which would require the district court to vacate the judgment as being VOID. Or in the alternative, pursuant Fed. R. App. Pro. 40(a)(2) suggesting this case is "RIPE" for a en banc hearing to establish circuit precedent. Where, the Eighth Circuit Eastern Division, district court and circuit court findings, in this case, drastically departed from Supreme Court holdings, federal law, sister circuits and intra-circuit findings, regarding the very same Rule 60(b)(4) subject matter, presented to those other courts,

with the Petitioner being GRANTED the relief sought, of relieving the party from the void judgment. The motion was denied.

Wherefore, absolutely nothing exist in the record...(a) showing the law and argument Petitioner submit to support his claims that counsel's representtation was deficient and fell below the level of professional assistance, at "critical stages", of the proceedings. See United States v. Wade, 388 U.S. 218, 222 (1967) holding "critical stages" are defined as steps in the proceedings in which the accused is confronted by the procedural system or the prosecutor or both where available defenses may be irretrieveably lost."; (b) showing the district court conducted an appealable "two-prong" Strickland analysis of Petitioner's multiple claims of counsel's ineffective representation. See Williams v. Taylor, reasserting that the Strickland standard "must" be applied when determining whether a defendant recieved effective assistantance; (c) showing Petitioner's challenge to the government having committ misconduct and violating Petitioner's due process right to a fair trial, when the prosecutor prejudically inflamed the juror's passion against Petitioner, with its OPENING STATEMENT... "Lady's and Gentlemen of the jury. This case is about an escapee from federal custody who shot and killed Ricky Forehand. See United States v. Bradley, 5 F.3d 1317, 1321 (9th cir. 1993), evidence of uncharged homicide was "highly and unfairly prejudicial" as our society reserves its severest condemnation for murderers. Restatement (Second) of Torts §571 (1977). also United States v. Pirovolos, 844 F.2d 415, 426 (7th cir. 1988),

"The prosecutor's unforseen claim of murder was prejudicial because it came at a point when it could not be countered with a factual defense", when throughout the trial the prosecutor made repeated comments, to the jurors, that a death had occurred in relation to this case, and during it CLOSING, argued to the jury Petitioner was "The" killer. Petitioner was not on trial for murder; (d) however, the record do show, Petitioner repeatedly attempt to present a Apprendi argument to the court during the sentencing hearing to nullify the anticipated cross-referenced life sentence and to present documents to the court clearly showing two(2) of the prior convictions the government relied on to enhance the sentence pursuant §924(e) did not qualify, only to be rebuffed by the court. With the admonition "Petitioner could only advance legal arguments or objections through counsel" which counsel would not do, and remaining one and same counsel on appeal, would not raise this "Dead-Bang" issue on appeal. See Green v.United States, 365 U.S. 301, 81 S.Ct. 653, 5 L.Ed. 2d 670 (1967) and F.R.Crim.P. 32(c)(3)(D). Yet, the district court continually reference Petitioner has not identified any constitutional violations and the circuit court summarily affirm any and all of the district court's denials by erroneously claiming to have reviewed the original record.

In the United States of America "the rule of law" prevail, irregardless of the alleged severity of the charges a criminal defendant is entitled to his constitutional right to due process and a fair trial...

Petitioner pray this Honorable Court assert its Supervisory Power under Supreme Court Rule 10, in this case, to correct the manifest miscarriage of justice that has permeated this case from the time the district court, in the first instance, passed judgment on the §2255 proceeding without reviewing Petitioner's traverse/reply submission, up to, the circuit court summarily affirming the district court's egregious actions, of conflating Petitioner's "instant" petition with his previous filings. Depriving Petitioner of his due process right to a "full and fair" substantive review on his filings actual purport, as is required under the fifth amendment of the United States Constitution. See Washington v. Glucksberg, supra.

Thus, allowing this petition to be GRANTED, where the district court, in effect, suspended the Writ, in this case, severely restricting the sanctity of the §2255 process, which is constitutional as a "jurisdictional bill" being exactly commensurate with those available by habeas corpus. See Article 1 Section 9. cl.2 Enacted with the approval of the Judicial Conference of Senior Circuit Judges; The Congress of The United States and The United States District Courts. see Wong v. Vogel, 80 F.Supp. 723 (Ky), and the circuit court affirmatively sanctioning the district court's arbitrary actions, in a manner that is drastically departed from Supreme Court holdings [Gonzalez, 545 U.S. at 530, 532]; federal law [Fed.R.Civ.P. 8(d), 83(a) and 60(b)(4)]; sister circuit findings [Williams v. Chatman, supra] and intra-circuit findings [Longs, supra].

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Larry Klemick

Date: August 15, 2018