

18-6856

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

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GEARY MOHAMMED MILLS - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Geary Mills #16878-078
Federal Prison Camp/Montgomery
Maxwell Air Force Base
Montgomery, AL 36112

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QUESTIONS PRESENTED

Did Petitioner receive equal protection of the laws, i.e., due process in his criminal procedures?

Is Petitioner entitled to relief from judgment that is void under Fed.R.Civ.P. 60(b)(4)?

Did Petitioner timely raise his habeas claims within the statutory period?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix B to the petition and is unpublished.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided Petitioner's case was July 5, 2018.

A timely petition for [Panel] rehearing was denied by the United States Court of Appeals on the following date: August 20, 2018, and a copy of the order denying rehearing at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and/or 28 U.S.C. § 1331.

TABLE OF AUTHORITIES CITED

<u>Busby v. Davis</u> No. 15-70008 (5th Cir. 2017)	25
<u>Castro v. U.S.</u> 540 U.S. 375 (2003)	17, 25
<u>U.S. v. Causey</u> 818 F.2d 354 (5th Cir. 1987)	19
<u>Cohens v. Virginia</u> 19 U.S. 264 (1821)	22
<u>Coleman v. Goodwin</u> No. 14-30785 (5th Cir. 2016)	25
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<u>Franks</u>	19
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<u>Gonzalez v. U.S.</u> U.S. 310 Fed.Appx 655. (5th Cir. 2009)	25
<u>Haines v. Kerner</u> 404 U.S. 519 (1972)	23
<u>Hernandez v. Thaler</u> 630 F.3d 420 (5th Cir. 2010)	25
<u>U.S. v. Hope</u> 545 F.3d 293 (5th Cir. 2008)	21
<u>Irwin v. Dept. of Veteran Affairs</u> 498 U.S. 89 (1990)	
<u>U.S. v. Jefferson</u> 95 Fed.Appx (5th Cir. 2004)	25
<u>Johnson v. U.S.</u> 333 U.S. 10 (1948)	22
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<u>U.S. v. Jordan</u> 915 F.2d 622 (11th Cir. 1990)	20

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<u>Lonchar</u>	18
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<u>Manuel v. City of Juliet</u> 580 U.S. ____ (2017)	9
<u>Martinez v. Ryan</u> 566 U.S. 1 (2012)	20
<u>Melton v. U.S.</u> 359 F.3d 855 (7th Cir. 2004)	25
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<u>U.S. v. Mills</u> 555 Fed.Appx 381 (5th Cir. 2014)	
<u>Miranda v. P.D. of Atl. City</u> 2008 U.S. Dist. LEXIS 122087 (D.N.J. May 29, 2008)	25
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<u>U.S. v. Saenz</u> 282 F.3d 885 (5th Cir. 2000)	25
<u>U.S. v Terrell</u>	25
<u>Trevino v. Thaler</u> 133 S.Ct 1911 (2013)	20
<u>U.S. v. Will</u> 449 U.S. 200 (1980)	22
<u>Wilson v U.S.</u>	25
<u>Zerilli-Edelglass v. NYC Transit Auth.</u> 333 F.3d 74 (2d Cir. 2003)	
	20, 25

STATUTES AND RULES

- 28 U.S.C. § 1254(1)
- 28 U.S.C. § 1331
- 28 U.S.C. § 2255

Federal Rule Civil Procedure 60(b)(4)

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

1. Equal Protection Clause of Section 1 Fourteenth Amendment provides that no state shall "deny to any person within its Jurisdiction the equal protections of the Laws". (DUE PROCESS)
2. Under 28 U.S.C. § 547(1) the Government's Lack of Standing to bring charges within the Eastern District of Texas.

STATEMENT OF THE CASE

(1) Search and Seizure

In November 2009, officers with the Plano Police Department began investigating a drug-trafficking organization connected with consumers of MDMA (ecstasy) in Collin County, Texas. Collin County and the City of Plano are located within the Eastern District of Texas.

On March 12, 2010, United States Magistrate Judge Amos Mazzant issued arrest warrants for six individuals within the Eastern District of Texas pursuant to a federal complaint authored by DEA Special Agent Paul Maurizio: Brown, Donnell, Duffy, Khan, Sala, and Wall. Brown was arrested pursuant thereto on March 15, 2010.

Brown rolled on an individual named Josh Willsie, with whom Brown arranged a controlled pickup of monies owed to Donnell for MDMA tablets. Agent Maurizio was able to corroborate this information pursuant to his investigation to date. Willsie was thus arrested, approximately two hours after Brown, based on the circumstances of his observed transaction with Brown and his personal possession of a quantity of MDMA.

Willsie further corroborated Brown's information and agreed to

call Donnell to pick up additional tablets of MDMA at a location in Dallas (i.e., in the Northern District of Texas). Donnell was thus arrested, less than three hours after Willsie, pursuant to the arrest warrant. A search of Donnell's vehicle yielded approximately 372 gross grams of MDMA and currency.

Donnell told Agent Maurizio that someone named Geary acquired about 10,000 tablets per week from Donnell and that he was supposed to meet this person to deliver 6,000 tablets to him. Donnell further agreed to place a call to advise Geary that MDMA was available. See Doc. 2 in Case No. 4:10-cr-65 (Affidavit, see also Case No. 4:10-mj-53); Doc. 207 (Transcript of September 22, 2010 suppression hearing), at 19-20, 403.

Although Donnell was in the self-serving position of a recent arrestee and no prior or corroborative information about the next target existed, barely one hour after his arrest, Petitioner was seized, without a warrant, by Plano officers upon his arrival at a public place in Dallas. Petitioner had not conducted himself suspiciously; did not appear engaged in criminal activity; and had not arrived in response to a drug-related summons, as later conceded by the Government Agent Maurizio's sworn description of Donnell's call to Petitioner (see Affidavit) as materially misleading. See Doc. 207, at 33-34; Doc. 468, at 310-312. Petitioner's search and seizure turned up a legally-carried

handgun.

After Petitioner was arrested in the Northern District of Texas, he was transported to the Eastern District of Texas where Agent Maurizio's affidavit served as the foundation for a federal criminal complaint charging Petitioner with violations of 21 U.S.C. Sec. 846 (conspiracy to possess with intent to distribute MDMA). The next day, on March 16, 2010, Agent Maurizo sought and obtained a warrant from Judge Mazzant and on April 7, 2010, an indictment was returned naming Petitioner as the eighth of nine co-conspirators and charging him, in addition, with possession of a firearm in furtherance of a drug-trafficking offense. Doc. 50. The indictment was superseded to add two more codefendants on May 5, 2010. Doc. 97.

(2) Criminal Proceedings

On August 12, 2010, counsel for Petitioner moved to suppress evidence flowing from the warrantless arrest based on lack of probable cause (see Doc. 170). Magistrate Judge Bush conducted a suppression hearing on September 22, 2010 (Doc. 199) at which he appeared to be grossly misinformed (see Doc. 207, Transcript, at 27). Counsel filed objections (Doc. 206) to the resultant recommendation (Doc. 203). The district court denied the Suppression Motion on February 18, 2011 (Doc. 257).

Before any objections were tendered, however, a Motion to Substitute Counsel (Doc. 205) was filed. A hearing thereupon was held on November 4, 2010 (Doc. 212), and on November 5, 2010 (see Doc. 215) Attorney Arrambide replaced Attorney Conover. He was then himself replaced in turn by Attorney Hoover (see Doc. 216-219).

Significantly, although the order granting the motion to substitute counsel (Doc. 215) expressly stipulated to the filing of supplemental objections in the suppression proceedings, in the ensuing havoc of rotating defense counsel, none were ever filed, contrary to Petitioner's express directive and interest. Attorney Hoover was succeeded by Attorney Udashen on April 26, 2012.

A jury trial was held before District Judge Schell in January of 2012 and a guilty verdict returned against Petitioner as to both counts of the superseding indictment (see Doc. 357 et seq.). Petitioner was sentenced to 188 months imprisonment on the conspiracy count to be followed by a consecutive 60 months on the firearm count. Judgment was entered on April 30, 2013 (Doc. 502).

(3) Post-Conviction Efforts

Petitioner did not rest. Pro se, he filed more than a dozen post-conviction challenges to the criminal judgment and the constitutionality of the proceedings, alleging, *inter alia*, that:

the warrantless search and seizure violated his rights; that Plano officers were without jurisdiction to arrest him;

that Agent Maurizio had fabricated evidence in support of probable cause;

that the Eastern District judicial proceedings could not attach to his unsuspicious conduct in the Northern District;

that his arrival to meet Donnell could not support an "in furtherance of" charge under Section 924(c);

that the proceedings violated his substantial rights under the due-process clause; and

that counsel was ineffective, particularly in failing to properly attend to the suppression proceedings. See Doc. 535 (April 28, 2014), 536 (April 29, 2014), 545 (September 22, 2014), 546 (September 30, 2014), 550 (October 2, 2014), 551 (October 2, 2014), 552 (October 3, 2014), 556 (October 15, 2014), 558 (October 19, 2014), 561 (November 13, 2014), 567 (January 26, 2015), 579 (April 9, 2015).

Indeed, prior even to the denial of his petition for a writ of

certiorari on October 14, 2014, concluding his direct criminal appeal (see Doc. 555), Petitioner filed a notice of appeal (Doc. 552) seeking review of the district court's denial of his post-conviction requests for relief from the criminal judgment. By omnibus order (Doc. 566) dated January 1, 2015, the district court denied most of these motions en masse -- Petitioner's appeal, taken on October 3, 2014, and, notably, his "Motion for Leave to File Motion for Reconsideration of Supression Out of Time" (Doc. 579), filed on April 9, 2015, remained pending while the one-year limitations period under the ADEPA continued to run, ostensibly expiring on or about October 14, 2015.

(4) Section 2255 Proceeding

On March 21, 2016, the district court opened Case No. 4:16-cv-197 based on yet another pleading filed by Petitioner (Doc. 593). In response to this unexpected action, Petitioner submitted a motion for reconsideration, prompting a March 29, 2016 letter from the district clerk:

On the case listed above [No. 4:10cr65], document #593 hasn't been ruled upon. When a 2255 motion is filed in a criminal case, a civil case is opened. The civil number for that case is 4:16cv197....

Your motion for reconsideration is being returned.

Petitioner's filing (Doc. 593 in the criminal case) -- which purported to call for reconsideration of the finding of probable cause to arrest, and contained supplemental objections which he asserted should have been filed by counsel in the suppression proceedings - became Document 1 in this new civil case.

On March 24, 2016, Judge Bush ordered that Petitioner complete a standard form supplied with the Order (Doc. 3 in the civil case), and on April 26, 2016, Recommendation described Petitioner's original pleading (Doc. 1) as "a motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. Sec. 2255, challenging constitutional violations concerning his Eastern District of Texas, Sherman Division conviction," Doc. 6 at 1.

The resultant completed form (Doc. 7) repeated Petitioner's claims as to the denial of a full and fair suppression proceeding, fundamental lack of jurisdiction, invalid judgment, prosecutorial misconduct, and ineffective assistance of counsel. In the form, Petitioner explained that his continuous post-conviction litigation effectively tolled the AEDPA statute of limitations, see Doc. 7 at 13.

On May 2, 2016, Judge Bush ordered that Petitioner address the district court's position that the motion "should arguably be dismissed as time-barred," Doc. 8 at 1. In response, Petitioner

recited his post-conviction efforts in detail and specifically pointed out that Doc. 579, for example, timely raised the same grounds but apparently had been "administratively terminated" without notice or opportunity for alternative construction. See Doc. 595 at 1, fn. 1.

Effectively, Petitioner argued that failure to afford equitable consideration under such circumstances would violate basic tenets of due process. He submitted that, given his active pursuit of legal remedies and his actual filing of a "defective pleading during the statutory period," he was entitled to one bite at the post-conviction apple. See Doc. 9 at 2-3.

The district court dismissed the 2255 action on December 6, 2016 (Doc. 17, 18). Petitioner moved for findings of fact and conclusions of law pursuant to F.R.Civ.P. Rule 52(a) (Doc. 19) and then for reconsideration under Rule 60(b) (Doc. 20, 23), again explaining that any one of his post-conviction filings raised these constitutional claims and filed between April 28, 2014 and January 26, 2015 should have been construed under Sec. 2255, or at least serve under a form of the relation-back doctrine.

The district court's April 20, 2017 postjudgment order (Doc. 21) referenced the Recommendation (Doc. 13), at 2-4, to support the

determination that the 2255 motion was untimely, Doc. 21 at 1. The district court explained that its "judicial authority" over Petitioner's criminal prosecution derived from 18 U.S.C. Sec. 3231, Id., finding Petitioner's objections as to timeliness "without merit". The district court went so far as to declare that Petitioner had "had a full and fair opportunity to litigate" his constitutional claims, Id. at 2-3, despite his specific and undeveloped pro se claims as to the mess made at his pretrial motions in limine.

The district court also held that Petitioner's arrest claims were incomparable to this Court's decision in Manuel v. City of Joliet, 580 U.S. ___, 137 S.Ct. ___, 197 L.Ed.2d 312 (2017) (in which "untrue statements from a police officer were used as probable cause to arrest and hold a defendant") -- without affording a hearing under Sec. 2255(b) -- despite acknowledging that Petitioner had indeed been arrested without a warrant, and in spite of Petitioner's attempted collateral attack on the veracity of officer's statements in support of probable cause. Id. at 3.

The district court quoted the appellate opinion affirming his conviction, which conceded that officers "did not have any prior information on Mills" and that "officer's arrested him solely based on Donnell's ability to predict Petitioner's arrival at a

public location," Id. at 3-4. See U.S. v. Mills, No. 13-40510, 555 Fed. Appx. 381, 383-84 (5th Cir. 2014). All this, despite the indisputable fact that conclusions forming the basis of the affirmation of his conviction are founded upon a record uninformed by Petitioner's would-be collateral attack -- and so are not properly invoked to refute his claims in this context.

In this manner, the district court effectively granted Petitioner's motion for findings and conclusions, basing its determination that Petitioner had "failed to show [that] his Sec. 2255 motion was timely filed or that he was entitled to equitable tolling," Id. at 4-5, on the foregoing presumptions. The district court's September 1, 2017 post-judgment order (Doc. 26) regarding Petitioner's motion for reconsideration further addressed Petitioner's arguments as to his earlier timely filings, Id. at 2 -- on the one hand noting that courts must determine "the true nature of a pleading" -- but on the other, holding that Petitioner could not demonstrate "that denying his motion for reconsideration will result in a manifest injustice," Id. at 4.

(5) Application for COA

Petitioner applied to the Fifth Circuit Court of Appeals for a Certificate of Appealability (COA), filing a motion and a

supplemental brief in support, asserting that the warrantless arrest based only upon the suggestion of an unreliable informant, and not in circumstances descriptive of criminal activity, in a public location outside the territorial jurisdiction of arresting officers, as well as the district court -- in conjunction with fraudulent averments in the post-hoc arrest-warrant affidavit -- rendered the criminal judgment subject to collateral attack. He repeated that officers lacked probably cause to arrest and that counsel should have filed certain objections in association with the suppression proceedings, and that the failure to do so was not strategic, but a result of confusion where several lawyers were assigned and dismissed in rapid succession at the time that the matter was pending.

Petitioner maintained that the findings and conclusions of the district court were erroneous in that his timely filings raising the same grounds should have been construed under Sec. 2255. He asserted that it was manifestly unjust that the district court construed only an untimely pleading under 2255 and refused to consider the earlier pleadings in support of Petitioner's equitable tolling arguments.

Most obvious was the district court's previous characterization of Petitioner's earlier filings, on November 19, 2014 -- i.e., itself within the AEDPA statute of limitations -- as challenges

to Petitioner's conviction: "he is trying to challenge his conviction in this proceeding as well as the four other proceedings," Doc. 31 in Case No. 4:12-cv-378, U.S. District Court, Eastern District of Texas. Thus the Court expressly identified Petitioner's defective pleadings as would-be Sec. 2255 filings during the statutory period -- but failed to open a 2255 action based thereon, instead waiting until Petitioner filed a similar defective pleading after the period expired to convert that filing, and only that filing, into a 2255 action and call it untimely.

Petitioner argued that this failure to properly cast his pro se pleadings was a manifest injustice, especially where the same court was able to so cast the later filings, and that equity demanded that his action be allowed to "relate back" to those earlier documents. Since his pleading below set forth allegations sufficient to state a prima facie claim of the denial of a constitutional right, he requested that the Fifth Circuit issue a COA and remand the case for further proceedings.

Petitioner's diligent pursuit of available remedies was strongly corroborated by the fact of his raising these claims consistently in "defective pleadings" below. In his supplemental brief seeking a COA, Petitioner explained that the docket below further supported his entitlement to judicial process where defense

counsel had failed to render adequate representation of his interests with respect to Petitioner's suppression motion, and pointed to parts of the record refuting the district court's minimization of the merit of his warrantless-arrest claims. In particular, Petitioner showed that counsel had misfiled certain supporting exhibits -- including affidavits by Agent Maurizio and Petitioner tending to reveal official perjury in the search-warrant affidavit -- which, properly developed, would have affected the outcome of the suppression proceedings, and so, Petitioner argued, demonstrated per se ineffective assistance of counsel.

The Fifth Circuit denied a COA by order dated July 5, 2018, stating that, where the district court had denied relief on procedural grounds, Petitioner had failed to show "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." The Fifth Circuit also declined to issue a COA as to Petitioner's post-conviction motion under Rule 60(b) of the Fed.R.Civ.P., stating that Petitioner could not "show that reasonable jurists could debate whether the ruling was an abuse of discretion." See Appendix G

Petitioner, believing the COA standard to have easily been met as

to the debateability of the district' court's procedural disposition of his 2255 filings, timely petitioned for rehearing. That petition was denied on August 20, 2018. This petition for a writ of certiorari timely follows.

SUMMARY OF THE ARGUMENT

Petitioner, a pro se incarcerated litigant, filed pleadings which the district court characterized as "challenging his conviction" during the AEDPA statutory period for filing a 2255 motion. But the district court did not allow any of those pleadings to proceed under Sec. 2255.

Instead, only after the statute of limitations passed, did the district court sua sponte convert one of these "defective pleadings" into a 2255 action. The district court held that this filing was untimely and refused to consider the equitable implications of Petitioner's earlier timely-filed pleadings of the same nature.

The district court refused to afford the process of law with respect to Petitioner's 2255 motion on the basis that it was untimely filed. But the district court erroneously applied the standards of equitable tolling in ignoring Petitioner's previous filings of the same nature, any of which should have served as a

timely Sec. 2255 motion.

This manner of judicial administration represents a plain miscarriage of justice and conflicts with this court's decisions in Castro ... and its progeny, as well as the decisions of other Circuit Courts of Appeal.

This court should grant certiorari and summarily reverse the denial of a COA on procedural grounds because the process below was plainly erroneous and manifestly unjust.

REASONS FOR CERTIFICATE OF ERROR

As detailed supra, Petitioner raised claims respecting his Fourth, Fifth, and Sixth Amendment rights under the United States Constitution. Petitioner alleged, inter alia, that arresting officers lacked probable cause to execute his warrantless arrest outside of territorial jurisdiction; that a properly-prosecuted suppression motion would have been effective; and that the proceedings violated his right to due process of law.

The issue then is not whether Petitioner filed claims cognizable under Sec. 2255. The issue is solely whether the procedural rejection of his filings on timeliness grounds was proper and just. Petitioner submits that it is easy to see that because Petitioner did timely raise his claims within the statutory period -- as recognized in as many words by the district court -- the proceedings and outcome below were plainly "debatable by jurists of reason," and thus that at the very least, a COA should have issued.

Petitioner would direct this court to Doc. 1 and Doc. 7 for a detailed recitation of his constitutional claims under § 2255. To the extent that such involve substantive issues not technically reached by the lower court, the primary error before this court would appear to be the procedural one.

The district court's sua sponte procedural bar is manifestly

unjust. Why did the district court choose this filing -- Doc. 593 -- out of the dozen pleadings of like character (themselves timely under the AEDPA), all raising constitutional attacks on the criminal judgment? Why was Petitioner's earlier filing -- Doc. 579 -- "administratively terminated", with no notice to Petitioner, no opportunity to contest the district court's adverse treatment which was, on April 9, 2015, timely filed within the one-year statutory period prescribed by § 2255? Indeed, Petitioner was never given the appropriate Castro warning¹ in spite of univerally-observed principles.²

Though the district court cited Irwin, see fn. 8, *supra*, with approval, it afforded Petitioner no such consideration of his timely-filed but "defective" pleadings, ignoring Petitioner's obvious (in light of the district court's January 15, 2015 omnibus denial, Doc. 566) exercise of due diligence. In fact, while the AEDPA clock was still running,³ the district court acknowledged Petitioner's collateral efforts in a way that leaves no room for doubt as to the filings' amenability⁴ to casting under § 2255. In addition to the dozen aforementioned pleadings on the criminal docket, Petitioner's submissions had spawned several ancillary proceedings:

No. 3:12-cv-1912 (N.D.Tex.)	No. 14-41128 (CA5)
No. 4:12-cv-378 (E.D.Tex.)	No. 14-41364 (CA5)
No. 13-40510 (CA5)	No. 15-40404 (CA5)
No. 3:16-cv-53 (N.D.Tex.)	No. 16-40617 (CA5)

In an order striking Petitioner's "Emergency Motion for Immediate Release or in the Alternative for Expedited Evidentiary Hearing on the Pending Rule 60(b) Motions to Void Judgment" -- a convoluted caption that boils down to "2255" -- the U.S. District Court for the Eastern District of Texas explicitly noted⁵ that "he is trying to challenge his conviction in this proceeding as well as the four other proceedings," Doc. 31 in No. 4:12-cv-378, dated November 19, 2014. (Emphasis Added)

At this point (or any other), the district court could have construed Petitioner's claims under § 2255, that is to say, while they were *per se* timely. Instead, utterly arbitrarily and to Petitioner's substantial prejudice, the district court construed as a § 2255 motion only his later "untimely" filing, and then -- salt in the wound -- refused to fairly apply long-standing equitable considerations to the facts of Petitioner's case. As a result, Petitioner today submits, is a manifest injustice blocking Petitioner from the basic process to which Petitioner is duly entitled, to wit, the "great writ" of habeas corpus. See Lonchar, *supra*; see also U.S. v. Feliz, 537 Fed.Appx. 406, 407

(5th Cir. 2013) (vacating and remanding failure to characterize pro se filing under Castro).

Petitioner has set forth allegations sufficient to state a prima facie claim of the denial of a constitutional right. See Doc. 1, Doc. 7, *passim*; see also the afore-cited pleadings all filed prior to the expiration of the statutory period. Even within the instant application Petitioner has set forth facts demonstrating that the conclusions underpinning the affirmation of Petitioner's conviction -- e.g., the finding of probable cause vis-a-vis the denial of Petitioner's suppression motion (following which, without an inch's concession, Petitioner exercised Petitioner's right to put the Government to its burden at trial) -- are open to collateral attack under theories of prosecutorial misconduct, ineffective assistance of counsel, and constitutional violations, particularly where Petitioner was prevented from a full and fair airing of Petitioner's arguments in relation to the probable cause issue (e.g., through the conduct of a Franks hearing and/or specifically-requested handling of the suppression proceedings) by counsel's prejudicial withdrawal. An unlawful arrest can never be purified by deliberate fabrication of probable cause. See, e.g., King v. Harwood, No. 16-5949, 2017 BL 95527 (6th Cir. 2017); U.S. v Causey, 818 F.2d 354, 361 (5th Cir. 1987); U.S. v. Miller, 146 F.3d 274, 280 (5th Cir. 1998).

This ground in particular was central to Petitioner's "Motion for Reconsideration of Finding of Probable Cause and Formal Supplemental Objections in Support of Previously-Filed Motion for Suppression," Doc. 1.

Under the circumstances herein presented, the district court's determination as to the applicability of the law governing equitable tolling⁶ was plainly debatable, if not outright wrong. See, e.g., U.S. v. McDade, 699 F.3d 499 (D.C. Cir. 2012).

Petitioner was entitled to liberal construction of his pleadings, see, e.g., Zerilli-Edelglass v. NYC transit Auth., 333 F.Ed 74, 80-81 (2d Cir. 2003); U.S. v. Jordan, 915 F.2d 622, 624-25 (11th Cir. 1990) (courts obliged to determine cognizability of prisoner filings under any available remedial framework). Moreover, he is entitled to one bite at the post-conviction apple under a criminal justice system that shunts collateral attacks on criminal judgments to non-direct appellate processes. See Martinez v. Ryan, 566 U.S. 1, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012); Trevino v. Thaler, 133 S.Ct. 1911, 185 L.Ed.2d 1044 (2013), No. 11-10189 in the Supreme Court of the United States, Doc. 1007 at 6 (equitable consideration is necessary to allow "one unimpeded chance at having his otherwise procedurally defaulted ... claims presented and resolved on their merits").

Petitioner's constitutional claims have never been exposed to a merits review, cf. U.S. v. Hope, 545 F.3d 293, 295 (5th Cir. 2008), due to what amounts to administrative intolerance of a layman's inability to achieve seamless correspondence between his practical contentions and the district court's legal semantics.

The record clearly reflects Petitioner's diligent pursuit of his post-conviction remedies within the pertinent limitations period by raising claims of violations of his constitutional rights with respect to his 2010 arrest and subsequent proceedings culminating in the 2012 conviction and 2013 judgment.

While AUSA Gonzalez sought to explain away procedural irregularities by telling jurors: "What you've seen presented to you here in this courtroom is what happens in the real world," Doc. 470 at 956, Petitioner should be allowed to mount his collateral challenge to the propriety of the process by which his liberty and property were taken by the Government, see Doc. 23 at 4, thereby triggering the due process encompassed by habeas proceedings under § 2255.

If "government ... [is] always [to] be accountable to the judiciary for a man's imprisonment," Fay v. Noia, 372 U.S. 391, 402 (1963), then "conventional notions of finality of litigation have no place where life or liberty is at stake and infringement

of constitutional rights alleged," Sanders v. U.S., 373 U.S. 1, 8 (1963). Thus, Petitioner submits, equitable consideration is warranted and the determination of the district court below is per se debatable.

Chief Justice John Marshall, in Cohens v. Virginia, 19 U.S. 264, 5 L.Ed. 257 (1821), addressed the plain fact that a court "must take jurisdiction if it should": "We cannot pass it by because it is doubtful.... We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution." See U.S. v. Will, 449 U.S. 200, 216 n.19 101 S.Ct. 471, 66 L.Ed.2d 392 (1980) (quoting Cohens for this "Rule of Necessity").

Serious questions of jurisdiction were raised by Petitioner's 2255 Motion which the district court averted by misconstruction of the procedural record. At the time that Petitioner filed a "defective" 2255 pleading in the district court, within the statute of limitations, Petitioner was entitled to litigate the question of whether his Fourth Amendment claims, per se or with respect to the process vis-a-vis his suppression motion, would have affected the outcome of the original proceedings. See Johnson v. U.S., 333 U.S. 10, 13-14, 68 S.Ct., 367, 92 L.Ed. 436 (1948) (Jackson, J) ("the point of the Fourth Amendment...").

It was inappropriate to block consideration of Petitioner's claims which he timely raised without affording the "liberal construction" due a pro se litigant. See U.S. v. Flores, 380 Fed. Appx. 371, 372 (5th Cir. 2010) (citing Haines v. Kerner, 404 U.S. 519, 520 (1972)) (courts must determine "the true nature of a pleading" based on "the relief sought, that to be granted, or [that] within the power of the court to grant"). See Motion for COA at 13-14.

Indeed Petitioner did state cognizable claims and did file them within the AEDPA statute of limitations, as the district court acknowledged. He is entitled to a merits review under Section 2255. The dispositions below are incorrect, inconsistent with this Court's dictates, and result in manifest injustice.

Because the decision was manifestly unjust, and because Petitioner is entitled to equitable consideration of his timely-filed Sec. 2255 claims, this Court should grant certiorari and summarily reverse.

CONCLUSION

The petition for a writ of certiorari should be granted; or, in the alternative, execute the wholesale nullification of the criminal judgment forthwith.

Respectfully submitted.

Geary Mills
GEARY MILLS

FOOTNOTES

1. Castro v. U.S., 540 U.S. 375, 383, 124 S.Ct. 786, 157 L.Ed.2d 778 (2003); see also Gonzalez v. U.S., 310 Fed.Appx. 655, 656 (5th Cir. 2009).
2. "Any motion filed in the district court that imposed the sentence, and substantively within the scope of § 2255 ¶1, is a motion under § 2255," Melton v. U.S., 359 F.3d 855, 857 (7th Cir. 2004) (emphasis in original); see also U.S. v. Terrell, 141 Fed.Appx. 849, 851-52 (11th Cir. 2005).
3. The AEDPA statute of limitations, sans consideration of equitable tolling, ran through October 5, 2015.
4. See, e.g., U.S. v. Zapata-Rodriguez, 2010 U.S. Dist. LEXIS 106694 (N.D.Tex. October 5, 2010); Wilson v. U.S., 2006 U.S. Dist. LEXIS 442 (N.D.Tex. January 9, 2006) (citing U.S. Jefferson, 95 Fed.Appx. 544 (5th Cir. 2004)); Hernandez v. Thaler, 630 F.3d 420, 426-27 (5th Cir. 2010) (explaining that a pleading challenging errors that occurred in connection with criminal proceedings should be construed as a § 2255 motion). See also Busby v. Davis, No. 15-70008 (5th Cir. 2017); Jones v. Davis, No. 16-70003 (5th Cir. 2016); Coleman v. Goodwin, No. 14-30785 (5th Cir. 2016); Gonzalez v. Crosby, 545 U.S. 524, 532 (2005); Edwards v. U.S., 755 F.2d 1155 (5th Cir. 1985).
5. Petitioner respectfully requests that the Court take judicial notice, in addition to the record of the civil and criminal dockets below, of this acknowledgement of the district court -- itself within the statutory period -- as well as of the several enumerated cases.
6. Petitioner also believes that he should be afforded an opportunity to effectively amend his earlier timely-filed pleadings under the "relation-back doctrine," U.S. v Saenz, 282 F.3d 885, 889 (5th Cir. 2000), and that his continual appellate activities should have tolled the applicable clock, Miranda v. P.D. of Atl. City, 2008 U.S. Dist. LEXIS 122087 (D.N.J. May 29, 2008). See Doc. 20 at 1-2.

APPENDIX A
FIFTH CIRCUIT OPINION