

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

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IN THE  
SUPREME COURT OF THE UNITED STATES

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IN RE: ERASMO AGUINAGA  
[Incarcerated]

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On Petition for a Writ of  
HABEAS CORPUS  
[From a Manifest Miscarriage of Justice]

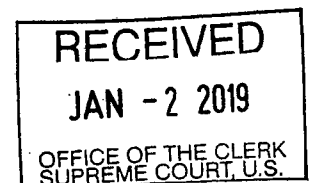
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PETITION FOR WRIT OF HABEAS CORPUS

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Prepared by and/or for  
ERASMO AGUINAGA  
Pro Se  
Reg. No. 48387-018  
FCC Coleman Low  
P.O. Box 1031  
Coleman, FL 33521-1031



### QUESTIONS PRESENTED FOR REVIEW

QUESTION ONE: Has the Eleventh Circuit of the United States Court of Appeals effectively suspended the Writ of Habeas Corpus, without authorization, where the Court has overruled its entire line of Saving Clause precedents to narrow the circumstances under which a federal prisoner can proceed under 28 U.S.C. §2241?

QUESTION TWO: Does the difference between the Fourth and Eleventh Circuit decisions, concerning the Saving Clause interpretations, call for the exercise of this Court's Supervisory power, to the end that it may secure the equal protection under law?

QUESTION THREE: Has the Eleventh Circuit established a procedural framework, by reason of its design and operation, that made it highly unlikely in a typical case that a prisoner, with an actual innocence claim, would have a meaningful opportunity to challenge his conviction as a manifest miscarriage of justice?

### LIST OF PARTIES

All parties appear on the caption to the case on the cover page. The Petitioner, Mr. Erasmo Aguinaga, is filing in a pro se capacity.

### DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

Pursuant to United States Supreme Court Rule 29.6, Mr. Aguinaga makes the following disclosures:

(1). Mr. Aguinaga is not a subsidiary or affiliate of a publicly owned corporation; and

(2). Mr. Aguinaga declares that there is not a public owned corporation, nor a party to the proceedings, that has a financial interest in the outcome.

Signature: Erasmo Aguinaga  
Erasmo Aguinaga, pro se

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## PETITION FOR A WRIT OF HABEAS CORPUS

Erasmus Aguinaga ("Mr. Aguinaga") respectfully petitions for a Writ of Habeas Corpus so that he may be relieved of his un-constitutionally obtained sentence.

### JURISDICTION

The United States Supreme Court has exclusive jurisdiction over this case for two reasons: (1) only this Court has the authority to resolve a conflict in Circuit Court's interpretation of the Saving Clause which has effectively suspended the Writ of Habeas Corpus; and (2) the Eleventh Circuit Court of Appeals has determined that 28 U.S.C. §2241 is unavailable to prisoners serving sentencing that are un-constitutional regardless of their ability to satisfy the Second Successive Clause of 28 U.S.C. §2255.

Thus, the United States Supreme Court is the only court in which a prisoner so situated may seek relief. This Court's jurisdiction is established in the Rules of the Supreme Court of the United States under its Rule 20 for 28 U.S.C. §§1651, 2241, and 2242 claims.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Mr. Aguinaga's Constitutional challenges are premised upon violations of the Fifth and Sixth Amendments to the Constitution of the United States. The Fifth Amendment provides that no criminal defendant maybe "[d]eprived of life, liberty, or property, without due process of law." The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to ... trial ... by an impartial jury."

Mr. Aguinaga seeks relief from his detention because his conviction represents a manifest miscarriage of justice, that is not now cognizable under 28 U.S.C. §2255.

Mr. Aguinaga shows that he is challenging the Eleventh Circuit's McCarthan decision under 28 U.S.C. §2241, as a clearly un-authorized suspension of the Writ. (See; U.S. Const. Art. 1, Sec. 9, Cl 2). Where "[t]he 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 March 23, 2013, Mr. Aguinaga entered a social media website's chat room titled Badoo. He answered an advertisement from an alleged 22 year old female.

The female (Dede) would later claim to be only 14 instead of the age of 22 she had posted in her profile page on the website. Mr. Aguinaga proceeded to meet Dede at the address provided after clearly indicating that "it was cool to talk."

Law enforcement arrested Mr. Aguinaga and others as a direct result of its sting operation. Mr. Aguinaga was the only one that was charged with a "federal" crime.

Mr. Aguinaga was found guilty by a jury on September 19, 2014. (United States v. Aguinaga, 8:13-cr-215-T-17 AEP (M.D. FL. September 19, 2014)).

An appeal was affirmed by the Court of Appeals for the Eleventh Circuit. (Aguinaga v. United States, 643 Fed. Appx. 858 (11th Cir. 2016)).

A 28 U.S.C. §2255 petition was filed claiming entrapment and actual innocence. Relief was denied in Case No. 8:18-cv-635-EAK-AED (M.C. Fl 2018).

Mr. Aguinang now approaches this Court.



### REASONS FOR GRANTING THE WRIT

This High Court should exercise its supervisory authority in Mr. Aguinaga's case to establish a national standard concerning the application of the Saving Clause interpretation. Mr Aguinaga is currently serving a sentence for conduct he did not have the intent to commit, in violation of the Thirteenth Amendment.

Mr. Aguinaga previously filed for relief under 28 U.S.C. §2255. This claim is not now cognizable under 28 U.S.C. §2255, thus has now be left unresolved, due to the fact, that he is barred from filing for Habeas relief in Florida because of recent changes in Eleventh Circuit's Saving Clause interpretation.

This Court has previously stressed, "[j]udges must be vigilant and independent in reviewing petitions for the Writ, a commitment that entails substantial judicial resources." (see; Harrington v. Richter, 562 U.S. 86, 91 (2011)).

Reviewing capital cases which are matters of life and death, this court has repeatedly demonstrated what a vigilant and independent review details. (See; e.g., Buck v. Davis, 137 U.S. 759 (2017)(quoting Trevino v. Thaler, 569 U.S. \_\_\_\_, 133 S.Ct. 1911)).

This Court should grant the Writ for two reasons: (1) it would set a national standard for Saving Clause interpretation. Thus, settling the Circuit Court's split between the Eleventh and the Fourth Circuit, and (2) correct the manifest of miscarriage of justice that imprisons an innocent man in violation of the Thirteenth Amendment.

## REASONS FOR FILING IN THE SUPREME COURT

Whether federal law enforcement can exlude the intent element of an alleged crime from a person with diminished mental capacity in order to proceed in obtaining a conviction is allowable under the provisions of the U.S. Constitution? Mr. Aguinaga is that person.

As a initial matter, Mr. Aguinaga only went to the eighth grade. For years, he was under the care of mental health experts. He was used by a drug cartel to carry out the cartel's distribution of illegal drug only to be arrested, convicted, and sent off to Federal prison.

While on supervised release and without adequate social skills due to his diminished mental capacity, he went to a website for "adults only" called Badoo.com. It was not disputed that he saw an advertisement from a 22 year old female with a chatroom name of "Dede," and that he did make contact based on her stated profile. In other words, he was seeks a relationship for a person who was of legal age.

During the chat on March 23, 2013, Dede indicated "I am 14." Mr. Aguinaga replied "[u] put that ur 22, lol" and "[u] look older then [sic] 14 sweety." Dede responded with "[s]oory,.. yea, I get that a lot that I look older but yup ... 14, is that [sic] ok with you?" Mr. Aguinaga replied, "[I]ts ok, cool to chat," with Dede stating "[O]k."

It is also undisputed the conversation involved sexual content and text messages via telephone. The fact also establish

that "[t]he agent, posing as Dede, and Defendant discuss "[c]hillling for a little bit" and "getting to know [Dede] and talk.: (see Doc. 54-3).

Mr. Aguinaga proceeded to travel to the physical address provided by Dede. The evidence also showed, or the lack thereof, that Mr. Aguinaga arrived without any drugs, alcohol, condoms, or sexual toys, etc. in his possession.

In laying an evidentiary foundation for entrapment, Mr. Aguinaga bears the initial burden of production as to government's inducement. Mr. Aguinaga met that burden where it was the government's own advertisement on an adult only social media website that provided the foundation for its evidence against Aguinaga.

The government must then prove beyond a reasonable doubt that Mr. Aguinaga was clearly predisposed to commit or attempt to commit the alleged offense, i.e., enticement of a child under 18 U.S.C. §2422(b).

A defendant generally is entitled to put a recognized defense such as diminished mental capacity or the government's own failure to explain the elements of an attempted offense versus a completed one to the jury of where sufficient evidence existed for a reasonable jury to find in his favor. (United States v. Ryan, 289 F. 3d. 1339, 1343 (11th Cir. 2002)(citation omitted)).

Trial counsel failed to provide the jury with evidence of Mr. Aguinaga's state of mind or adequate instructions for attempted offense versus a completed one to support Mr. Aguinaga's diminished mental capacity be included for deliberation.

Therefore, does this failure allow law enforcement to reach a conviction without a proper evidentiary foundation supported by the rights to due process of the Constitution?

Mr. Aguinaga is detained in violation of the Fifth, Sixth, and Thirteenth Amendment of the United States Constitution. This Court determined that "[a] prisoner otherwise subject to defenses of abusive or successive use of the Writ [of Habeas Corpus] may have his federal constitutional claims considered on the merits if he makes a proper showing of actual innocence." (See; McQuiggin v. Perkins, 569 U.S. 383. 133 S.Ct. 1924, 185 L Ed 2d 1019 (2013).

Mr. Aguinaga's detention stems from a conviction that is the result of a miscarriage of justice, that is not now cognizable under 28 U.S.C. §2255.

Therefore, Mr. AGuinaga's only opportunity for relief is under 28 U.S.C. §2241 via the Saving Clause of §2255(e).

Under the Saving Clause of §2255(e), a prisoner may bring a habeas petition under §2241 if "[t]he remedy of [§2255] is inadequate or ineffective to test the legality of his detention." (28 U.S.C. §2255(e)). In McCarthan v. Director of Goodwill Industries - Suncoast, Inc., 851 F. 3d 1076 (11th Cir. 2017)(en banc), the Eleventh Circuit of the United States Court of Appeals overruled its entire line of Saving Clause precedent to hold that Federal prisoners can proceed under §2244 only when:

- (1) "[c]hallenging the execution of a sentence, such as deprivation of good time credits or parole determinations;"
- (2) "[t]he sentencing court was unavailable;" or

(3) "[p]ractical considerations (such as multiple sentencing courts) might prevent a petitioner from filing a a Motion to Vacate."

(Id., at 1092-93).

Mr. Aguinaga was incarcerated in the Eleventh Circuit. However, in the Fourth Circuit, under United States v. Wheeler, 2018 WL 107086 (4th Cir. 3/28-2018), the Court held that a prisoner may seek relief under a provision that applies when normal habeas law is "[in]adequate or ineffective to test the legality" of a conviction or sentence.

Notwithstanding, this Court's authority over matters of law that put the Fourth Circuit at odds with the Eleventh Circuit, the decision to narrow the reach of Federal Habeas statute in the Eleventh Circuit leaves this Court as the only court which Mr. Aguinaga may seek relief from his [un]constitutional detention.

### CONCLUSION

Mr. Aguinaga moves this Honorable Court to issue the Writ in the interest of justice. This Court's decision in this case will provide all courts around the nation a uniform standard by which the Saving Clause should be interpreted. It is because Mr. Aguinaga is being detained for a crime for which he is actually innocent of based on the law and he is due relief thereof. Had the Federal Bureau of Prisons allowed Mr. Aguinaga to be incarcerated in another region outside the Eleventh Circuit, he would be eligible for relief under 28 U.S.C. §2241. This is a Circuit split that this High Court should review and resolve.

Submitted on this the 14th day of December, 2018 by and  
for

ERASMO AGUINAGA,

Signatruue: *Erasm Aguinaga*  
Erasm Aguinaga, pro se  
Reg. No. 48387-018  
FCC Coleman Low  
P.O. Box 1031  
Coleman, FL 33521-1031