

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Alan W. Golder *pro se* PETITIONER
(Your Name)

Carol Chappelaine, et al
Warden, State of Connecticut vs.

Attorney General, State of New York — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Alan W. Golder
(Your Name)

Cheshire Correctional Institution
(Address)

900 Highland Avenue Cheshire CT 06410
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

Did the United States Court of Appeals for the Second Circuit err in its October 11, 2018, order, denying the Petitioner's request for a certificate of appealability and dismissing the habeas appeal, when the district court had denied the habeas petition on procedural grounds without reaching the Petitioner's constitutional claims that he believes have constitutional dimension.

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:

Attorney For the Respondents: Lisa Ellen Fleischmann,
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York, NY 10005 Direct 212-416-8862 COR LD
NTC Government.

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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 _____; 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 is unpublished.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 A to the petition and is

reported at _____; 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 is unpublished.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 is unpublished.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 October 11, 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: _____, 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 July 17, 2018
A copy of that decision appears at Appendix not available

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

(1.) Appendix Exhibit 2 pages A7 to A14, February 19, 2009, Belgian Supreme Court Council of State of Belgium ruling on Petitioner's illegal extradition, in violation of Article I, Article II, and Article III of the extradition treaty with Belgium, and a violation of The Convention of Extradition, Section 18 U.S.C.S. 3184 and the Supremacy Clause Article VI, Section[2] of the United States Constitution. Also see (Statement of the case pages 5, 6,) and (Reasons for Granting the Petition, page 15)

(2) Appendix Exhibit 6 pages A20 to A24 August 31, 2016, United States District Court Eastern District of New York, Order (Case no. 15-cv-2258) ruling on illegal extradition, and dismissing habeas petition. Also see (Statement of the case, pages 9 and 10.)

(3) Appendix Exhibit 11 page A32, October 11, 2018, United States Court of Appeals for the Second Circuit (Case no. 18-1695) denying COA, and dismissing appeal, for failure to make a substantial showing of the denial of a constitution right 28 USC, 2253 (c). See Statement of Case, page 13.

STATEMENT OF THE CASE

(1) On December 15, 2006, the Petitioner was arrested in the country of Belgium on two warrants from the United States. Connecticut, for kidnapping, larceny and burglary; New York State Division of Parole, for a parole violation. The Petitioner's extradition was requested, the Petitioner contested the extradition due to the Connecticut warrant being fabricated. Further, on humanitarian grounds, due to a broken written plea agreement by the state of New York, and the Federal government's failure to place the Petitioner in the Federal Witness Protection Program for his safety as promised, for his cooperation against organized crime figures. (see Appendix E1 pages A1 to A6)

(2) The Petitioner had an appeal pending in the Belgian Supreme Court contesting the extradition on humanitarian grounds, that his life would be in danger if extradited to the United States.

(3) November 21, 2007, before the Belgian Supreme Court had made a ruling on the Petitioner's appeal he was handed over to the American Consulate where he was seized by United States Federal Marshals. The Petitioner protested that he still had an appeal pending in the Belgian Supreme Court, and refused to sign the American Consul's extradition

waiver. Nevertheless, the Petitioner was taken against his will, transported to the United States, handed over to the State of Connecticut, where he was tried, convicted and sentenced to a prison term of fifteen years. New York State Division of Parole lodged a detainer for a parole violation for future punishment.

(4) February 19, 2009, the Belgian Supreme Court Council of State of Belgium ruled the Petitioner's extradition illegal in violation of the extradition treaty Article I, Article II, and Article III. The Court ruled that the Petitioner had been illegally detained, tried and punished in the State of Connecticut, and New York, on offenses that were non-extraditable and not within valid and enforceable to the extradition treaty. Further, the Court ruled that the extradition proceedings were not finished, that the Petitioner's argument that his life would be in danger if extradited to the United States due to the broken written plea agreement to place him in the Federal Witness Protection Program for his safety as promised, was still being investigated by the Belgian government.

The Petitioner contends that the illegal

extradition violated the (Convention on Extradition) Section 18 U.S.C. S. 3184, the Supremacy Clause Article VI, Section [2] of the United States Constitution.

(5) The Belgian Council of State of Belgium had forwarded the ruling to the American consulate of Belgium in a document in the Dutch language, where under Section 18 U.S.C.A. 3190, the Consular seeking extradition that resides in the country of Belgium, was to authenticate the document, translate, certify, and forward the document through the proper channels. (See In re David 1975 Ed 111 395 F Supp. 803) To the best of the Petitioner's knowledge the United States Consular officer had not done this. (See Appendix Ex 2 pages A7 to A14, copy of the Belgian document in Dutch language)

(6) On March 19, 2009, the Petitioner's Connecticut court-appointed counsel had sent him a letter, along with a copy of the Belgian document in the Dutch language, and a copy was sent to his court appointed appellate counsel, informing the Petitioner that the extradition was illegal and they were in the process of having the document transcribed

in English. The Petitioner says that the court appointed trial counsel and the appellate counsel never had given him a copy of the Belgian document transcribed in English, nor did the counsels file the needed motions or petitions to challenge the illegal extradition. (See Appendix Ex 3 page A15, March 19, 2009, letter from Counsel Howard Ehring)

(7) July 6, 2010, the Petitioner Filed a habeas petition pursuant to 28 U.S.C. 2254, in the United States District Court in Connecticut, challenging the illegal extradition. (Case no. 3:10-cv-1085) The petition was denied on August 13, 2010, (Chatigny J.) for failure to exhaust state court remedies. (See Appendix Ex 4 A16 - A17)

(8) On September 6, 2010, the Petitioner Filed an appeal requesting a COA, in the United States Court of Appeals for the Second Circuit, (Case no. 12-287) On July 5, 2012, the Court of Appeals denied COA and dismissed the appeal, for failure to exhaust state remedies. (See Appendix Ex 5 pages A18 to A19)

(9) April 1, 2013, the Petitioner Filed a habeas petition in the Connecticut State Superior Court in Rockville, challenging illegal extradition (case no.

(V-134005344-S) August 23, 2013, the Petitioner filed a motion in the Superior Court requesting to have the Belgian document transcribed in English, in order to develop the facts to be able to perfect and pursue the habeas petition. October 2, 2013, the court denied the motion. (Newson J.) October 23, 2013, the Petitioner filed a motion to leave on appeal from the October 2, 2013, order. November 14, 2013, the court denied the motion to leave on appeal. January 8, 2016, the Superior Court held a hearing on the extradition matter. The Court denied the habeas petition with prejudice without a hearing because the Petitioner was unable to proceed without the Belgian document transcribed in English (Oliver J.)

(10) May 6, 2013, the Petitioner pro se filed a habeas petition in the New York State Supreme Court in Nassau County, challenging illegal extradition (Case no. 505-1980) June 18, 2013, the Supreme Court denied the habeas petition, without transcribing the Belgian document, ruling that the court lacked jurisdiction to hear the petition. June 28, 2013, the Petitioner Filed an appeal in the New York State Appellate Court (Case no. 2013-07495) The Appellate Court would not entertain the appeal because the Petitioner did not have the funds to pay the \$375 Filing Fee, in forma pauperis was denied.

The Petitioner filed an appeal in the New York State Court of Appeals. February 17, 2015, the Court dismissed the appeal, ruling that the appeal was without meaning of the Constitution. June 10, 2015, the New York State Appellate Court dismissed the Petitioner's appeal without entertaining it.

(11) April 16, 2015, the Petitioner pro se filed a petition for writ of habeas corpus pursuant to 28 U.S.C. 2241, in the United States District Court Eastern District of New York, challenging illegal extradition. (Case no. 15-CV-2258) September 1, 2015, the district court granted to proceed in forma pauperis; September 15, 2015, the Court issued an order to show cause (Mauskopf J.) The Court had construed the petition pursuant to 28 U.S.C. 2241 as one under 28 U.S.C. 2254.

(12) On August 23, 2016, the district court had the Belgian document translated in English, and on August 31, 2016, the court dismissed the habeas petition (Korman J.) ruling that there was no basis for habeas relief, from the fact that the Council of State of Belgium found that Petitioner was improperly extradited under the laws of Belgium, and that the government's power to

prosecute a defendant is not impaired by the illegality of the method by which it acquires control over him. (Citing United States v. Bout, 731 F.3d 233, 240 (2d Cir. 2013) [Under the so-called Ker-Frisbie doctrine]; also United States ex rel. Lujan v. Gengler, 510 F.2d 62, 68 (2d Cir. 1975))

In the district courts order, the Court had failed to include the entire seven pages of the Belgian document transcribed in English, only included in the order were a few paragraphs of the Belgian Supreme Court ruling. The court had failed to rule on the non-extraditable offenses that the Petitioner had been punished for in the state of Connecticut, and New York, that were not within valid and enforceable to the extradition treaty. (See Appendix Ex.6. pages A20 to A24 of the August 31, 2016, district court order)

(13) September 12, 2016, the Petitioner sent a letter to the district court, requesting a copy of the entire translation of the Belgian document, to be able to perfect and pursue an appeal to the U.S. Court of Appeals for the Second Circuit, the request was denied by the court. The Petitioner's attempt to obtain a copy of the Belgian document transcribed

- in English, from Euro Net Language Services in Fort Lee, NJ, where the district court had the Belgian document transcribed. Euro Net had informed the petitioner that the district court would not allow them to send a copy of the transcribed document to him.

(14) January 9, 2017, the United States Court of Appeals for the Second Circuit, granted COA (case no. 16-3231) ordering for the purpose of vacating the district courts August 31, 2016, order, (case no. 15-cv-2258) and remanding the case to the district court for further proceedings. (Citing Castro v. United States, 540 U.S. 375, 383 (2003); and Cook v. N.Y. State Division of Parole, 321 F.3d 274, 282 (2nd Cir. 2003))

- holding that, prior to construing a motion for some other post-conviction relief as one brought under 28 U.S.C. 2254, a district court must (1) inform a pro se litigant of its intent to recharacterize the submission; (2) warn the litigant of the restrictions on filing successive petitions; and (3) offer an opportunity to withdraw or amend the submission so that it contains all the 2254 claims the pro se litigant believes he has. (See Appendix Ex 7 page A 25 U.S. Court of Appeals January 9, 2017, order)

(15) March 15, 2017, the district court dismissed the habeas petition on remand, without recognizing (Castro v. United States, 540 U.S. 375, 383 (2003) and (Cook v. N.Y. State Division of Parole, 321 F.3d 274, 282 (2nd Cir. 2003) offering an opportunity to withdraw or amend the submission so that it contains all the 2254 claims the pro se litigant believes he has. (See Appendix Ex 8 pages A 26 to A 28 district courts March 15, 2017, order) (The Petitioner appealed)

(16) September 13, 2017, the United States Court of Appeals for the Second Circuit, granted COA, (Case no. 17-954) and remanded the case back to the district court, citing (Castro v. United States, 540 U.S. 375, 383 (2003); Cook v. N.Y. State Division of Parole, 321 F.3d 274, 282 (2nd Cir. 2003) (See Appendix Ex 9 page A 29) U.S. Court of Appeals September 13, 2017, order)

(17) May 2, 2018, the district court dismissed the habeas petition for a second time on remand (case no. 15-CV-2258) without recognizing (Castro v. United States and (Cook v. N.Y. State Division of Parole) offering the Petitioner an opportunity to withdraw or amend the submission so that it contains all the 2254 claims the pro se litigant believes he has. (See Appendix Ex 10 pages A 30 to A 31 district court May 2, 2018, order)

(18) On October 11, 2018, the United States Court of Appeals for the Second Circuit, (case no. 18-1695), a new circuit panel, denied the Petitioner's COA and dismissed the appeal, ruling that the Petitioner had not "made a substantial showing of the denial of a constitutional right (citing 28 U.S.C. 2253(c); Miller-EL v. Cockrell, 537 U.S. 322, 327 (2003)) (See Appendix Ex 11 page A32, U.S. Court of Appeals October 11, 2018, order)

REASONS FOR GRANTING THE PETITION

The Petitioner contends that the United States Court of Appeals For the Second Circuit had abused its discretion in its October 11, 2018, order, by denying the Petitioner's request for a certificate of appealability, and dismissing the habeas appeal (case no. 18-1695), when the district court had dismissed the Petitioner's habeas petition on procedural grounds without reaching the Petitioner's underlying constitutional claims that he believes have constitution dimension.

The district court had abused its discretion by dismissing the Petitioner's habeas petition three consecutive times, twice on remand, on procedural grounds without reaching the Petitioner's underlying constitutional claims, that have constitutional dimension, and the Court has failed to recognize (Castro v. United States, 540 U.S. 375, 383 (2003) also Cook v. N.Y. State Division of Parole, 321 F.3d 274, 282 (2nd Cir. 2003)), without holding that, prior to construing a motion for some other post-conviction relief as one brought under 28 U.S.C. 2254, a district court must (1) inform the pro se litigant of its

intent to recharacterize the submission; (2) warn the litigant on the restrictions on filing successive petitions; and (3) offer an opportunity to withdraw or amend the submission so that it contains all the 2254 claims the pro se litigant believes he has.

The district court has continued to deny the Petitioner an opportunity to withdraw or amend the submission, to refile the submission as one pursuant to 28 U.S.C. 2254, to raise the claim that the Belgian Supreme Court ruled that the Petitioner had been illegally extradited in violation of the extradition treaty Articles I, II, III, and had been illegally detained, tried and punished in the State of Connecticut, and New York, on offenses that were non-extraditable and not within valid and enforceable to the extradition treaty, and further, the (Convention on Extradition) Section 18 U.S.C. 3184, and the Supremacy Clause VI, section [2] of the United States Constitution.

The Supreme Court of the United States has addressed the appealability of Section 2253 (c) to non-constitutional procedural issues, In Slack v. McDaniel, supra, the Court held that "when the district court denies a

habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claims, u(COA) should issue (and an appeal of the district court's order may be taken) if the prisoner shows, at least, that jurist of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurist of reason would find it debatable whether the district court in its procedural ruling was correct.

WHEREFORE, in view of the foregoing the Petitioner contends that the October 11, 2018, Order, (Case no 18-1695) of the United States Court of Appeals For the Second Circuit should be vacated, because the district court (Case no 18-cv-2258) had dismissed the Petitioner's habeas petition on procedural grounds without reaching all of the Petitioner's constitutional claims.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Eric Holder

Date: January 11, 2018