

18-8353

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

Supreme Court, U.S.  
FILED

DEC 22 2017

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
DAVID A. HICKS — PETITIONER  
(Your Name)

vs.

\_\_\_\_\_  
UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

\_\_\_\_\_  
FOURTH CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_  
DAVID A. HICKS  
(Your Name)

\_\_\_\_\_  
P.O. BOX 10  
(Address)

\_\_\_\_\_  
Lisbon, OH 44402  
(City, State, Zip Code)

\_\_\_\_\_  
N/A  
(Phone Number)

ORIGINAL

## QUESTIONS PRESENTED

1: WHETHER the Government can destroy evidence a defendant has sufficient reason to believe is necessary to prove innocence in an anticipated § 2241 Motion.

2: WHETHER the Government can destroy evidence they know, or should have known, is exculpatory in nature and failed to release when ordered by the U.S. District Court during hte criminal triål.

3: WHETHER the Government can destroy evidence that could show a serious crime had been committed by one of their chief witnesses. .

## LIST OF PARTIES

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

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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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 B 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☒ is unpublished.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 B 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☒ is unpublished.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☐ is unpublished.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 9/26/2017.

☐ 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: 9/26/2017, and a copy of the order denying rehearing appears at Appendix B.

☐ 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).

## REASONS FOR ALLOWING THE WRIT

1. Fed. Rules of Evid., Fed. Rules of Civ. Proc 37: "Parties must preserve potentially relevant evidence under their control that's relevant to specific, predictable and identifiable litigation.

"A party does not have license to destroy evidence based solely on its subjective view of its potential relevance" The defendant has spelled out how the evidence is relevant to his case. The doctrine of spoliation clearly puts the duty to preserve evidence on both parties when litigation is filed or become reasonably anticipated. That is the case as spelled out below. In this case, however, the defendant has also asked, as a convenience that an image be made, minus the contraband materials for the purpose of Mr. Coombs to adequately complete his professional analysis of the system and corresponding files. This action is a simple matter for the FBI to accomplish and will benefit both parties as well as the overlying duty to justice with no risk to either party or the public or court. A reference copy of the original must be maintained for proof of validity, of course. Furthermore, the government should have reason to want the evidence preserved if they feel it vadiates them when a reasonable fact finder could conclude from Mr. Coombs' statements that the evidence proved the defendant innocent of the crime. Asserted herein clearly is that the government failed to reasonably "review" the evidence in its possession. The bar has been met here for the Fourth Circuit in that the party responsible for the evidence should reasonably know that the evidence may be relevant to anticipated litigation.

2. Brady, 373 U.S. 87; Suppression of evidence by prosecution in criminal cases violated Constitution irrespective of good of bad faith. Conviction on testimony known to be perjured is denial of due process. Coombs' following statements shows evidence was found to confirm defendant's claims of innocence that should have been known to the prosecution that their expert witness lied, or should have known he was lying about or misled the jury at the very least. This evidence has been requested by defendant in previous litigation and even ordered by the court but much of the evidence was never released to defendant as noted in argument.

3. Although it doesn't appear to be a novel case on its face, no legal precedent is within my reach to attribute to whether or not the prosecution has a duty to preserve evidence based on the fact that it shows a serious crime has been committed by one of its chief witnesses as spelled out below. It seems to follow legal principles that the government, knowing of several other pieces of evidence and testimony provided to it showed one of their witnesses and the person central to the original claims initiated by the government had, indeed, planted the evidence on the defendant, should be responsible for knowing of the aforementioned claims of evidence that she had been involved in raping and molesting children when accused of planting child pornography on the defendant's computer. Not only did the government have a list of four witnesses she had advised she had planted the material, but they had her own admissions reportedly in an email as well as on the hard drives in question as stated below. One of the children who came forward claiming to have been molested by her even stated she had advised



of her plan to plant the evidence on the defendant in order to frighten him of her power to destroy men's lives.

All of the above reasons should be clear reason to allow the writ of certiorari sought below.

## STATEMENT OF CASE

COMES NOW the defendant, David A. Hicks, pro se, and hereby moves this Court in the above-styled case, to order either A: Storage of evidence (Exhibits 2-5) indefinitely, with release of all exhibits (minus those considered contraband) to his home address of: c/o Shirley Hicks, 38 Jericho Dr., Charleston, WV 25311; or B: ORDER storage of same indefinitely. As for Exhibit 25, defendant only wishes the record to show the display on the device was damaged, which contradicts the prosecutor's claims during trial; otherwise, defendant is not opposed to its destruction.

When the Fourth Circuit Court judge presiding during defendant's § 2255 motion stated unequivocally that he agreed the evidence presented by defendant proved he could not have planted nearly 500 of the 900 files on the computer, he went on to falsely posit that it was "still possible" that he had planted the other 400. With all due respect the files in question were all part of one large dump, each sequentially numbered and each containing unique contents. The probability that any one person could have somehow injected 400 files into this "collection" without any duplicates and somehow guessing the naming scheme used by the perpetrators to complete the entire collection they had planted on his computer is a matter of probability in excess of a 1 in 1 to the power of a number exceeding a billion digits (possibly exponentially more). The defendant not only provided evidence that this was the case, but he also proffered a highly-regarded expert opinion from one of the leading authorities on computer intrusion in the United States at the time, a Mr. Jason Coombs, Founder of

a company called HomelandForensics and CEO of a software company called Pivx which dealt specifically with such issues of compromised data and security of data. See exhibit A for E-mails and correspondences with Mr. Coombs as well as the opinion by the US District Court judge. In these correspondences, Mr. Coombs explained what he found on Mr. Hicks' computer which proved undoubtedly that Mr. Hicks had been telling the truth about the intrusion and that all the evidence Mr. Hicks had been proffering matched perfectly with the conclusion that the evidence had no way of appearing by any means other than a third party, evidence which, frustratingly for him as well as Mr. Hicks, as well documented, was never used at trial due to gross negligence by defense council and completely incredible reasoning by the court. The evidence in question contained on the hard drives held by the FBI at this time contain all these proofs as well as others, and also show, and may show more of, the government's refusal to comply with a court order to provide said evidence to the defendant in the first place. There are also several other personal items contained on the drives which were requested which may show more evidence of the same in the form of pictures taken while the defendant was out of state (it is unsure whether the pictures which were taken in North Carolina at an arena football game were of a date and time that corroborated more alibis of the 900 files or not, but it is suspected, since the government refused to release them) and several other personal pictures showing times and dates that also could be exculpatory in nature. Further, the drive contains the remains of photos which were in the file labeled AP.A, which contained the two innocent pictures charged in counts

4 and 5 of the superseding indictment, which were ordered to be released by the District Court at the same time, as they were not considered contraband in any way and could also show evidence of alibis. It is unclear why the government did not release the pictures or, at the very least, the metadata or dates/times of these files. In addition, the drive contains evidence of crimes committed by the perpetrator of the planting of the evidence on the drives in the form of a file called "BBS.ZIP" which is an online gaming system the defendant had been running at the time of the marriage between him and the perpetrator of the planting of the evidence. In this software were many recorded messages and emails between the defendant's ex-wife and several minor children she had been engaging in sexual affairs with (the reason for defendant's leaving of his wife, as well as her threats to plant child pornography on his computer). There is no excusable reason for the government to cover up the involvement in such crimes by the defendant's ex-wife other than to keep from tarnishing her image. The defendant repeatedly explained her conversations on that system to the government, mistakenly thinking they were out for justice, not for his head at all costs, as it not only contained evidence of her crimes against children, but her connection with another pedophile like herself who she discussed planting child pornography on his gaming system, as well as his home computer with.

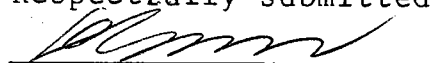
Mr. Hicks has proposed not only paying for and providing the storage media for the government, but offered a solution mutually beneficial to both parties to enable that the important files contained on the media be preserved, but that no contraband

would be in jeopardy. The government is easily capable of removing the contraband from the media before copying and, being in charge of said process, can ensure as to its safety as well as provide the defendant with the evidence needed to prove his actual innocence claims in the near future. Mr. Coombs has offered any help in this process and maintains that he had and has all the tools necessary to prove Mr. Hicks' contention beyond any doubt. He clearly states in an Email to the attorneys of record that this evidence clearly shows infiltration took place and that the defendant had never even accessed, opened or viewed any of the files in question. This has never been disputed and has also never been presented for any review or litigation due to a complete, and acknowledged, lack of understanding by the attorneys involved. Due to the fact that the Court did not allow this evidence of a third party which was KNOWN to them to have ADMITTED to the crime, defendant begs that the only evidence remaining (the computer hard drives themselves) of this innocence be preserved until the time he can acquire the funds to procure these services to prove this intrusion has been committed. The FBI already has the technology to easily carry out this order, copying only the evidence needed and risking no contraband to a new device which the expert can then still analyze in a completely secure way, benefitting both parties involved. Defendant also has several other personal files and photos which have immeasurable personal value to him and his family which he asks be released to the above-mentioned party for safe-keeping regardless of the decision.

## CONCLUSION

For the reasons listed above, defendant prays this Court ORDER the evidence in the above case be stored indefinitely, with all exhibits and non-contraband files copied to another medium and sent to the above address, or, in the alternative, all be stored indefinitely until the defendant can pursue his actions in Court. These files are necessary to the pursuit of justice and the storage of them will not hinder the Government in any way that could be considered obstructive. The Defendant agrees to pay the cost for the storage and any reasonable costs involved in the storage process itself requiring the custodians of the data to remove all contraband, then copy all remaining files, including the critical system files and above-mentioned data files at the very minimum, and have them shipped to the above-mentioned party. Mr. Hicks can see no reasonable argument the Government could provide in a lawful manner to oppose this request other than the simple fact that they may wish to cover-up their prior knowledge (or that they SHOULD have known) that the defendant was innocent all along, or protect their key witness' image of credibility, neither of which he considers a reasonable argument, and this Court shouldn't either. Any argument possible claiming the evidence doesn't show what has been proffered can easily be proven or disproven simply by releasing said evidence. For these reasons, as well as any other this Court deems, this petition should be granted and the government ORDERED to release the requested data.

Respectfully submitted,

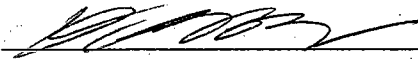
  
DAVID D. HICKS, pro se

Date: 12/20/17

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_

Date: 12/20/17