

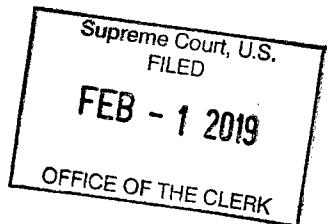
18-8667

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Donald Anson — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
U.S. COURT OF APPEALS FOR 2ND CIRCUIT

U.S. DISTRICT COURT (ROCHESTER, N.Y.)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

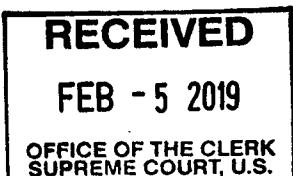
PETITION FOR WRIT OF CERTIORARI

Donald Anson
(Your Name)

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(City, State, Zip Code)

(585) 319-9616
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QUESTION(S) PRESENTED

- 1) DOES AN APPELLATE COURT ERR WHEN IT DISMISSES AN APPEAL, BECAUSE "IT LACKS AN ARGUBLE BASIS IN LAW OR FACT", WITHOUT FIRST PROVIDING THE PETITIONER AN OPPORTUNITY TO PRESENT THE BASIS UNDER WHICH THEY SEEK TO APPEAL AND TO PRESENT THE FACTS THAT SUPPORT THEIR CLAIM?
- 2) DID THE APPELLATE COURT COMMIT FURTHER ERROR BY DENYING A MOTION FOR 'RECONSIDERATION' DESPITE BEING PROVIDED WITH PROOF THAT ALL OF THE PHYSICAL EVIDENCE PRESENT AT TRIAL NOT ONLY DIRECTLY CONTRADICTED THE DISTRICT COURT'S 'CREDIBILITY DETERMINATION', BUT ALSO SHOWED THAT THE 'VERSION' OF EVENTS ACCEPTED BY THE DISTRICT COURT WAS NOT JUST IMPLAUSIBLE BUT IMPOSSIBLE, THERE-BY ESTABLISHING NOT JUST A FACTUAL BASIS FOR APPELLATE REVIEW BUT ALSO A LEGAL BASIS, THAT OF 'CLEAR OR PLAIN ERROR REVIEW'?
- 3) DOES THE APPELLATE COURT'S DISMISSAL OF AN APPEAL THAT INVOLVES THE UNITED STATES GOVERNMENT, WITHOUT FIRST PROVIDING THE PETITIONER A CHANCE TO STATE THE BASIS FOR, OR TO PRESENT THE FACTS WHICH SUPPORT, THE APPEAL INDICATE, OR GIVE THE APPEARANCE OF, BIAS BY THE UNITED STATES COURTS?

11

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	4-5
REASONS FOR GRANTING THE WRIT	6-9
CONCLUSION.....	10

INDEX TO APPENDICES

APPENDIX A DECISION OF THE U.S. COURT OF APPEALS

APPENDIX B DECISION OF THE U.S. COURT OF APPEALS
DENYING REHEARING

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

11

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
FUJITSU LTD v FEDERAL EXPRESS CORP 247 F.3d 423 (2 nd Cir 423)	6
ANDERSON v BESSEMER CITY, 470 U.S. 564, 105 S.Ct 1506, 84 L.Ed.2d 578 (1985)	6
LUCURTO v GIULINI, 447 F.3d 159 (2 nd Cir 2006)	8
DOE v MENESEE 319 F.3d 142 (2 nd Cir 2004)	8

STATUTES AND RULES

OTHER

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 _____ 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 _____ 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 9/10/18.

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: 11/2/18, 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).

3

STATEMENT OF THE CASE

ON SEPTEMBER 10TH 2018, THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT DISMISSED MY APPEAL IN THE CASE - DONALD ANSON -V- UNITED STATES (1:08-cv-0035) BEFORE THE APPEAL WAS EVEN FILED.

THE COURT DECIDED THAT THE APPEAL "LACKS AN ARGUABLE BASIS RATHER IN LAW OR FACT" (APPENDIX A).

THE COURT DID THIS IN RESPONSE TO A MOTION TO PROCEED IN 'FORMA PAUPERIS' NOT IN RESPONSE TO ANY ACTUAL APPEAL, BECAUSE I WAS AWAITING A RULING ON MY 'FORMA PAUPERIS' MOTION BEFORE ACTUALLY FILING THE APPEAL AND BRIEF.

SHOCKED THAT THEY COULD DISMISS AN APPEAL, EVEN ONE AGAINST THE UNITED STATES, WITHOUT FIRST HEARING THE GROUNDS FOR THE APPEAL, OR ALLOWING ME TO PROVIDE ANY ARGUMENT OR REFERENCE TO THE TRIAL EVIDENCE TO SUPPORT THE APPEAL, I FILED A TIMELY MOTION FOR 'RECONSIDERATION'.

IN THE MOTION FOR 'RECONSIDERATION' I POINTED OUT THAT ALL OF THE PHYSICAL EVIDENCE PRESENTED AT TRIAL, BY THE GOVERNMENT ITSELF, SHOWED THAT THE 'CREDIBILITY' JUDGEMENT THE DISTRICT COURT MADE WAS NOT JUST IMPLAUSIBLE - BUT IMPOSSIBLE. I POINTED OUT THAT DURING CRUCIAL CROSS-EXAMINATION OF THE KEY WITNESS THE JUDGE WAS OUT OF HER CHAIR AND USING A FAX/PRINTER. I ALSO POINTED OUT THAT THERE WERE MULTIPLE CONTRADICTIONS IN THE SO CALLED CREDIBLE VERSION OF EVENTS, AND THAT THERE WOULD HAVE BEEN A LOT MORE EVIDENCE TO DISCREDIT THE VERSION THE COURT ACCEPTED AS CREDIBLE HAD THE GOVERNMENT NOT

STATEMENT OF THE CASE

RECORDED OVER THE PRISON'S SECURITY TAPES, (AFTER BEING INFORMED OF THE INJURY) OR SOLD-OFF IMPORTANT EVIDENCE DURING THE COURSE OF THE LITIGATION.

IN POINTING THESE FACTS OUT TO THE APPELLATE COURT IN THE MOTION FOR REHEARING I CHALLENGED THE DISTRICT COURT'S CREDITING A "VERSION" OF EVENTS THAT ALL OF THE PHYSICAL EVIDENCE AT TRIAL NOT ONLY CONTRADICTED, BUT MADE IT IMPOSSIBLE (THERE WAS NOT ONE SHRED OF EVIDENCE TO SUPPORT IT), I QUESTIONED WHY NOT ONE SINGLE PIECE OF THAT EVIDENCE WAS MENTIONED IN THE JUDGE'S DECISION AND OFFERED THE FACT THAT THE JUDGE WAS USING THE FAX/PRINTER WHEN IT WAS DISCUSSED.

STILL THE APPELLATE COURT REFUSED TO "RECONSIDER" IT DECISION DESPITE ALL THE EVIDENCE THAT THE DISTRICT COURT'S CREDIBILITY DETERMINATION, WHICH HER HOLE DISMISSAL WAS BASED ON, WAS IN FACT "CLEAR ERROR". (SEE APPX. B)

REASONS FOR GRANTING THE PETITION

This petition should be granted, and the case remanded back to the Court of Appeals, in the interest of justice and fairness and to demonstrate that the Federal Court System still cares about, and wants to maintain, it's credibility and integrity.

I am no lawyer, but even I can see that it is a huge injustice for the Court of Appeals to dismiss an appeal BEFORE the petitioner even has a chance to state the reason he is appealing and BEFORE the petitioner can present the facts and reasoning that he feels supports that appeal.

The Court of appeals dismissed the appeal -site unseen- stating "it lacks an arguable basis either in law or in fact" (order of the appellate court, appx. A). How could it make such a ruling when it never allowed the petitioner to file it? Was the Court of Appeals formed just to rubber-stamp the District Court's rulings without any review or was it formed to provide a 'meaningful' review of those rulings.

BASIS UNDER LAW

The petitioner was attempting to appeal a dismissal of his law suit which the District Court based on a 'credibility determination' regarding to two versions of events that led to the underlying injury. The first, which the District Court ruled to be the 'credible' one, consisted of events occurring when the plaintiff was the ONLY inmate being transported at around NOON on 4/13/05. The second version, which the District Court found not to be credible consisted of events occurring when the plaintiff was transported WITH OTHER INMATES at around EIGHT O'CLOCK on 4/13/05'

The petitioner fully understands that credibility determinations are the province of the trial judge, see Fujitsu Ltd. -V- Federal Express Corp., 247 F.3d 423 (2nd Cir. 2001), however he also understands that this Court, Anderson -V- Bessemer City, 470 us 564, 105 s.ct 1504, 84 L.ed 2d 518 (1985) said:

"This is not to suggest that the trial judge may insulate his [her] findings from review by denominating them as credibility determinations, for factors factors other than demeanor and inflection go into the decision whether or not to believe a witness. Documents or other objective evidence may contradict the witness' story. Where such factors are present the Court of appeals may well find clear error even in a finding based on a credibility determination. See eg. US -v- US Gypsum Co., *supra* at 396" Anderson, 470 us at 575-576

The instant case falls squarely under Anderson. The "logs" from the prison which the petitioner was being transported format the time of the injury clearly show that he left Receiving and Discharge (R+D) at 7:55am which supports the plaintiffs version of an EIGHT O'CLOCK departure and not the NOON departure the District Court accepted as more credible. In addition the R+D log was supported by the prison's Population Control log which also showed an 8:05am departure of the plaintiff in the US Marshal's custody. Both of these prison "log book" entries were submitted as trial evidence by the Government itself. Not only did both of the independent "logs" show that the plaintiff left the facility 7:55am as his version claimed but they clearly showed that NO inmates at all left the facility between 8:05am and midnight on the day in question which shows that the "around NOON" departure is highly implausible, if not impossible. If there is one thing prisons are very careful about its keeping track of inmates especially when they leave the facility. There were also records of prisoner 'counts' and 'meal counts' to support the "log" entries and contradict the version of events the District Court found to be the "credible" one.

In addition there was a third "log" entered as evidence, again by the defense itself, that showed the plaintiff was placed on an early wake-up list, and escorted from his cell block to R+D at 6:55am, which supports the other two log entries. Not only that, but in the version of events the District Court found to be the "credible" one, the defense claimed that the whole reason that the plaintiff was transported ALONE at @ NOON was that the Marshals did not place the plaintiff on the 'transport list' until after the transport team reached the courthouse around 9:00 – 9:30am on 4/13/05. This casts even more doubt on that version of events because it was testified to that it is the Marshals who notify the prison (at least a day ahead) of who the prison needs to have ready for transport and when. So in the version accepted by the District Court the Marshals would have to of notified the prison at least a day ahead of 4/13/05, (that's the only way plaintiff would be put on 'early wake-up' or be taken to R+D) but would have to have forgotten to notify the transporting Marshals. That is unlikely, at best, and goes against the "presumption of regularity" the Government so often relies on in so many criminal cases.

It should also be noted that the "Logs" also show that there were multiple inmates that left in the Marshal's custody that morning which also directly contradicts the 'ONLY' inmate version the District Court found to be "credible".

There are several other problems with the version the District Court found to be 'credible'. They include contradictory statements in other documents submitted to the court (different judge) and conflicting statements in interrogatories among others. Not to mention things like the lies made by the Defense in its "Findings of Fact" such as "Anson [petitioner] was found guilty of perjury" (doc 224, page ii) or claims during the trial that the petitioner had a history/ habit of filing law suits.(I never filed a law suit prior to this injury, which is in the record (doc 128-1 page 22-24)

Oddly the District Court Judge made no mention of the "logs" in her findings which also raises a different reason for appellate review. In Locurto -v- Giuliani, 447 F.3d 159,181 (2nd cir.2000) the Court said:

"Similarly, we have found clear error where, for example, 'the trial court incorrectly assessed the Probative value of the various pieces of evidence leading it to rely on speculation, and where the Court failed to weigh all the relevant evidence before making its factual findings' id (citing United States -v- Rizzo, 349 F.3d 94, 100-02 (2nd Cir.2003); Ortega -v- Duncan, 333

F.3d

102, 107 (2nd Cir. 2003))"

The Courts have previously said :

"Thus, reviewing for clear error allows an appellate court to examine the District Court's Credibility determination in light of the evidence in the record as a whole, in order to determine whether the credibility assessment can be reconciled with the evidence." Doe -v- Menefee, 391 F.3d 147 (2nd Cir. 2004).

The Court of Appeals never even afforded the petitioner a chance to the present the "evidence in the record" so that a clear error review could be made.

This Court has gone on the record as saying:

"For these reasons review of factual findings under the clearly erroneous standard -with deference to the trier of fact- IS THE RULE, NOT THE 'EXCEPTION' Anderson -v- Bessemer, 470 us 564 at 575

How can that statement be reconciled with the Court of Appeals dismissing an appeal before it is even made? And then refusing to 'reconsider' that decision when confronted with the conflicting evidence and facts.

There would have been a lot more evidence to support my claim and version of the events leading to my injury. However the defendants failed to preserve the prison security camera footage that they agreed would have shown the incident at issue, but it was recorded over despite the prison having been informed that there had been an accident. Or the fact that the government denied the existence of the prison "logs" for many years, and once they were produced the defendants claimed they could not locate the other inmates because they were released or deported and the prison staff at issue had retired and could not be located. This would not have been a problem had the defense (US Government) not delayed, despite discovery orders, providing the requested information, and really no inmates were on parole or in custody and the retired staff was not getting a government pension or Social Security?