No. 18-8889



In The

SUPREME COURT OF THE UNITED STATES

In re Lavont Flanders Jr,

Petitioner

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Petition for Writ of Certiorari To The

United States Court of Appeals

For The Eleventh Circuit

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# PETITION FOR WRIT OF CERTIORARI

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I

## QUESTIONS PRESENTED

The question of whether an initial appearance can be a critical stage is a case of first impression on this Court. Criminal defendants from every State, and from every Circuit within the United States are appearing before County, State, and Federal Judges without the aid of counsel during their initial appearances. During these initial appearances criminal defendant's are being subjected to crafty Public Prosecutors, and Judges who violate the lone criminal defendant's rights because counsel is not present to protect the rights of the criminal defendant. In some cases, like the case at bar, the criminal defendant is appearing before the court for an initial appearance on a sealed criminal indictment, with no counsel present, and no federal public defender present to protect the rights of the criminal defendant. In many federal districts around the country, this is normal procedure in courtrooms around the United States.

Without counsel at a criminal defendant's initial appearance, errors of constitutional magnitude can occur, and go undetected throughout the criminal defendant's trial, and for years to come. Criminal defendant's with felony cases should never appear before any judge, the public prosecutor along with the FBI, US Marshal Agents, and Police Officers who are all involved in the criminal case and who are present, without the aid of counsel during his initial appearance.

The Petitioner in this sealed matter required aid in

coping with legal problems, and help in meeting his expert adversary. The Petitioner in this case was facing death by incarceration, and he received 13 consecutive life sentences as a result of counsel being completely absent during his initial appearance because no counsel was present to detect the constitutional errors that occurred during his initial appearance while uncounseled.

The constitutional errors went undetected throughout the trial, and for 8 years afterwards. The Supreme Court has no precedent acknowledging, and identifying that an initial appearance can be a critical stage within the framework set out in the United States v. Cronic. 466 U.S. 648, 658-59, 104 S. Ct. 2039, 2046-47, 80 L. Ed. 2d 657 (1984), if counsel is completely denied during a initial appearance in which criminal defendant's rights maybe violated, or are violated. A criminal defendant who is appearing before any federal or state court on a sealed criminal indictment should never appear before any court without the guiding hand of counsel. And the sealed criminal indictment should not be unsealed until counsel for the criminal defendant is present in order to protect the rights of the criminal defendant. If the criminal defendant can not afford counsel, then counsel must be appointed for the limited purposes of unsealing the criminal indictment. It's time that this Honorable Court include "Initial Appearances" as being a critical stage of the proceedings as it has done with preliminary hearings, the entry of a plea, arraignment, etc...

The petitioner was convicted and sentenced to 13 Consecutive Life terms of imprisonment after a jury trial.

During the pretrial stage of the initial appearance, Petitioner was indicted and arrested on a sealed indictment on August 17, 2011. Upon being arrested, Petitioner was processed by the FBI, the United States Marshals Service, and the Miramar Police Department. During processing which included being fingerprinted and photographed, Petitioner asked the arresting agents and officers why he was being arrested. They all responded and said for multiple sex crimes against minors.

Petitioner was then transported to Miami-FDC were he asked again what the charges were against him. The FBI agent Regino E. Chavez advised him for multiple sex crimes against including child pornography, the sex trafficking of children, and the enticement of minors. Petitioner was then escorted to the United States Marshals holding cell to be interviewed by Pretrial Services Officer Maria Monge. She advised the same charges as The FBI, and the United States Marshals Service who were part of the arrest team.

Petitioner was then taken before Magistrate Judge Ted E. Bandstra for his initial appearance. Judge Bandstra announced that this is a sealed case, and he was going to now unseal the indictment. Petitioner had no counsel present, but the AUSA was present, the Pretrial Services Officer was present, the Arresting FBI Agents were present, the arresting United States Marshals Service Agents were present, and the arresting Miramar Police Detectives were present at the initial appearance. After Judge Bandstra unsealed the indictment, and began to read the indictment, he read the counts to the unsealed indictment as the sexual exploitation

of minors, and the sex trafficking of children before being interrupted by AUSA Roy K Altman. The AUSA advised the Judge that their were no allegations of minors. The Judge and the AUSA exchanged documents while counsel was not present, and the Judge read one drug count pertaining to Petitioner and his co-defendant. The purported indictment contained 22 counts, and it contained a forfeiture count as well. The initial appearance on August 17, 2011 was a critical stage of the proceedings, and Petitioner's conviction was in violation of the Sixth Amendment and the Supreme Court's holding in United States v. Cronic, 466 U.S. 648, 659 (1984). A violation of Cronic creates a presumption of prejudice and requires a new trial when counsel was absent during a critical stage of trial.

The Questions presented for the Supreme Court are as follows: (1) In reference to obtaining a certificate of appealability, is it at least debatable that trial counsel was ineffective under the Sixth Amendment for his failure to dismiss the indictment, and superseding indictment based on Cronic error regarding Petitioner's initial appearance, because it was a critical stage within the framework set out in United States v. Cronic, 466 U.S. 648, 659 (1984), and the United States v. Roy, 855 F.3d 1133, 1144 (11th Cir. 2017)(en banc); (2)If the indictment is amended directly after it's unsealed by the Assistant United States Attorney, and the District Court while defense counsel is absent during the entirety of the initial appearance proceeding, does that constitute a critical stage of the proceedings, and is that a structural error which requires reversal of the conviction?

(3) Is an initial appearance a critical stage under the framework set out in the United States v. Cronic, and Rothgery v. Gillespie County if the District Court fails to fully advise the criminal defendant of the nature and cause of an indictment pertaining to multiple alleged victims, with a forfeiture count included, all while counsel has been completely denied during the initial appearance? Does the initial appearance qualify as a critical stage, and does the Sixth Amendment violation that occurred while counsel was completely absent, require reversal of the conviction? (4) Was counsel required under the Sixth Amendment to be present with the criminal defendant during the unsealing of a sealed indictment at his initial appearance, to ensure that the criminal defendant's rights are not violated? (5) Based on the facts listed above regarding the constitutional violations that occurred while counsel was absent at Petitioner's initial appearance, was it a critical stage within the framework set out in United States v. Cronic, 466 U.S. 648, 659 (1984), and in the United States v. Roy, 855 F.3d 1133, 1144 (11th Cir. 2017)(en banc), does this Sixth Amendment violation require automatic reversal of the conviction? (6) In the context of a certificate of appealability, is it at least debatable that appellant counsel was ineffective under the Fifth Amendment for failing to argue Cronic error when the record clearly demonstrates that the District Court violated the criminal defendant's Sixth Amendment rights when it aided in constructively amending his indictment after unsealing the indictment, while defense counsel was completely absent? When the District Court violated the criminal defendant's Sixth

Amendment Right to be fully informed as to the nature and cause of the accusations of the indictment to which he was indicted while defense counsel was completely absent? And when the record clearly demonstrates that the criminal defendant required the aid of counsel in coping with legal problems or help in meeting his adversary, did these events constitute a critical stage, and did counsel's absence require reversal of the conviction"?

TABLE OF CONTENTS

QUESTION PRESENTED..... I

LIST OF PARTIES AND..... 1

CORPORATE DISCLOSURE..... 1

TABLE OF AUTHORITIES..... 1

PETITION FOR A WRIT OF CERTIORARI..... 1

JURISDICTION..... 1

CONSTITUTIONAL PROVISION
INVOLVED..... 2

STATEMENT OF THE CASE..... 3

REASONS FOR GRANTING THE WRIT..... 20

I. IS DEFENSE COUNSEL'S COMPLETE ABSENCE DURING A INITIAL APPEARANCE, IN WHICH THE DEFENDANT APPEARED BEFORE THE COURT ON A SEALED INDICTMENT A CRITICAL STAGE WITHIN THE FRAMEWORK SET OUT IN CRONIC. ADDITIONALLY, WAS COUNSEL'S PRESENCE REQUIRED IN ORDER TO PROTECT THE CRIMINAL DEFENDANT'S CONSTITUTIONAL RIGHTS?

II. REASONABLE JURIST COULD DEBATE THAT DEFENSE

COUNSEL'S COMPLETE ABSENCE DURING THE AUGUST 17, 2011 INITIAL APPEARANCE QUALIFIES FOR THE APPLICATION OF CRONIC'S AUTOMATIC REVERSAL RULE.

III. PETITIONER'S CASE PROVIDES THE IDEAL VEHICLE TO RESOLVE THE AGE OLD QUESTION OF WHETHER AN INITIAL APPEARANCE CAN BE A CRITICAL STAGE.....

V. INEFFECTIVE APPELLANT COUNSEL..... 27

CONCLUSION..... 32, 33

TABLE OF AUTHORITIES

CASES

ARIZONA V. FULMINANTE, 499 U.S. 279 (1991)..... 23

ASAN V. DUGGER, 835 F.3d 1337, 1338 (11TH CIR. 1987)..... 21

ASH v. UNITED STATES, 413 US 300, 37 L.Ed. 2d 619 S.Ct. 2568 (1973)..... 20

BELL v. CONE, 535 U.S. 685, 694-95, 122 S. Ct. 1843, 152 L. Ed. 2d 914 (2002)..... 20

BEITEL v. UNITED STATES, 306 F.2d 665 (5th Cir. 1962).....

COLEMAN V. ALABAMA, 399 U.S. 1 (1970)..... 22

GEDERS V. UNITED STATES, 425 U.S. 80 (1976).....

GIDEON V. WAINWRIGHT, 372 U.S. 335 (1963)..... 21

DOLAN v. UNITED STATES, 571 U.S. 1022 (2010).....

EX PARTE UNITED STATES, 287 U.S. 241 (1932).....

FLANDERS v. UNITED STATES 2017 U.S. DIST. LEXIS 199852, n.1 (S.D. FL 2017)..... 1

FROHWERK v. UNITED STATES, 249 U.S. 204, 63 L. Ed. 2d 39 S. Ct. 249 (1919)..... 

HAMILTON V. ALABAMA, 368 U.S. 52 (1962)..... 22

PENSON V. OHIO, 488 U.S. 75, 88, 109 S. CT. 346, 102 L. ED. 2D 300 (1988)..... 32

ROE V. FLORES-ORTEGA, 528 U.S. 470, 483, 120 S. CT. 1029, 145 L. ED. 2D 985 (2000)..... 32

ROTHGERY v. GILLESPIE COUNTY, 554 U.S. 191, 211-212 128 S. CT. 2578 171 L. Ed. 2d 366 (2008)..... 8

STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984)..... 27

TANNENBAUM V. UNITED STATES, 148 F.3d 1262, 1263 (11TH CIR. 1998)..... 32

UNITED STATES v. CRONIC, 466 U.S. 648, S. CT. 2039 (1984)..... 21

UNITED STATES V. GLASSER, 315 U.S. 60 (1942)..... 24

UNITED STATES v. GARCIA, 906 F. 3D 1255 (11th CIR. 2018)..... 31

UNITED STATES v. ROY, 855 F.3d 1133, 1144, (11th CIR. 2017)(En BANC)..... 32

UNITED STATES v. SANCHEZ, 508 F.2d 388 (5th CIR. 1975).....

UNITED STATES v. STRAUSS, 285 F.2d. 953 (5th CIR. 1960).....

WHITE V. MARYLAND, 373 U.S. 59 (1963)(PER CURIAM)..... 22

WRIGHT V. VAN PATTEN, 552 U.S. 120, 125, 128 S. CT. 743, 169 L. ED. 2D 583 (2008)..... 32

## LIST OF PARTIES AND CORPORATE DISCLOSURE

The parties in the Eleventh Circuit proceedings are Lavont Flanders Jr, as petitioner, and the United States of America as respondent. There are no other parties or to the proceedings, or corporate entities, other than those named in the caption of the case.

## PETITION FOR WRIT OF CERTIORARI

Petitioner, Lavont Flanders Jr, petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered in case number 18-14149-A in that court on February 28, 2019, Lavont Flanders Jr v. United States of America case no. 16-cv-20296-MOORE/McAliley, which affirmed the judgment of the United States District Court for the Southern District of Florida, see Appendix I.

## OPINIONS BELOW

The Judgment of the Original Denial of the COA and the Judgement from the Denial of Reconsideration of the COA is set fourth in the Appendices J and K.

## JURISDICTION

The Jurisdiction of this Court is invoked pursuant to

28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The decision of the Court of Appeals was entered on February 28, 2018. This petition is timely filed pursuant to Sup. Ct. R. 13.1. The United States District Court for the Southern District of Florida had jurisdiction has jurisdiction over the federal criminal laws which petitioner was charged under, even though he committed no federal crime. The alleged crimes are actually state crimes of a local sexual assault. This Court should first examine the jurisdiction of the federal courts as it pertains to this case at hand. Moving forward, The United States Court of Appeals for the Eleventh Circuit had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that Courts of Appeals shall have appellate jurisdiction of all final decisions of United States district courts.

## STATUTES INVOLVED

18 U.S.C. §2

18 U.S.C. §2252

18 U.S.C. §2251

18 U.S.C. §2422

18 U.S.C. §1591(a)(1) and (b)(1)

18 U.S.C. §1591(a)(2) and (b)(1)

18 U.S.C. §1594(a) and (d)

21 U.S.C. §841(b)(2)

21 U.S.C. §853

Title 28 U.S.C. §1254 provides:

Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1)By writ of certiorari granted upon the petition of any party to any civil action or criminal case, before or after rendition of judgement or decree.

## STATEMENT OF THE CASE

Lavont Flanders Jr was arrested in 2006 on state charges of sexual assault F.S. 794.011(4)(d) on a incapacitated person, please see Appendix A. As the case progressed, evidence surfaced that Lavont Flanders Jr hadn't had sex with any of the female actresses on the set of a adult pornography film, and Mr. Flanders did not provide any drugs to any of the female actresses, there were no drugs or alcohol provided to any of the female actresses. The female actresses were not prostitutes, they were all actresses. The female actresses were filmed willfully consenting to participate in the adult performance with another adult film star, Mr. Callum. All of the female actresses also willingly agreed on film that they had not drank and alcohol prior to filming the adult movie, and that no one on the set of the film had given them any alcohol, or anything to eat or drink prior to filming, or during the filming of the adult movie. All of the female actresses completed a adult model release under 18 U.S.C. 2257 prior to filming the adult movie as well.

One of the female actresses alleged that they were under the influence of drugs during the time they filmed the

adult movie when the parent's of one of the actresses found her video while in a adult store shopping. Video evidence proved that the women all denied being on any drugs, and they all denied that anyone at the movie set had given them any drugs, alcohol, or anything to eat prior to filming, or while filming the adult movie. The state charges were dismissed, and Mr. Flanders was cleared of the sexual assault allegations in August of 2011.

THE FEDERAL CASE AGAINST MR. FLANDERS

Mr, Flanders then filed a state lawsuit claiming false arrest. Two weeks later, Mr. Flanders was indicted by the federal grand jury on federal sex crimes that involved minors, 18 U.S.C. 2, 18 U.S.C. 2251, 18 U.S.C. 2252, 18 U.S.C. 1591, 18 U.S.C. 2422, 18 U.S.C. 1594, 21 U.S.C. 841, and a forfeiture count under 21 U.S.C. 853. Mr. Flanders was arrested on August 17, 2011 on an sealed indictment. Because Mr. Flanders state case revolved around the legitimate filming of adult pornography, the federal government decided to change the facts of the case to include crimes against minors in order to gain federal jurisdiction. It worked, if they only lied that minors were being filmed instead of adults, they'd gain instant federal jurisdiction. Please see document (3), which is attached as Appendix B. This is not the indictment returned by the federal grand jury, it's a product of the unlawful amendment to the indictment that took place during Mr. Flanders uncounseled initial appearance, a critical stage of the proceedings. Just a plain reading of the fraudulent

document shows the reader with 100% accuracy that it is not the indictment unsealed, and read into the record during the initial appearance on August 17, 2011 by Judge Ted E. Bandstra.

Mr. Flanders was taken before Magistrate Judge Ted E. Bandstra after he was processed by the FBI, the United States Marshals Service, FDC-Miami, and pretrial services. All of this occurred before Mr. Flanders was taken before Magistrate Judge Ted E. Bandstra. It's important to know, all officers involved in the federal arrest and indictment advised Mr. Flanders that he was in federal custody for various sex crimes against minors. In other words, the sealed indictment had not been unsealed in open court yet. Mr. Flanders hadn't appeared before the District Court to have the indictment unsealed and apprised as to the nature and cause of the accusations yet.

When he was taken before the Honorable Ted E. Bandstra at 1:30PM on August 17, 2011. The Court advised him that the indictment was sealed, and the following exchange was transcribed from the initial appearance.

The Clerk: United States of America versus Lavont Flanders, Jr and Emerson Callum, case number 11-20557-Criminal-Moore, and this is a sealed matter.

Mr. Altman: Good afternoon, Your Honor. Roy Altman on behalf of the United States States.

The Court: Mr. Altman. We will unseal the indictment at this time, and I will ask each of these defendants to state their name. Mr. Flanders, would you step to the microphone and state your name.

The Defendant Flanders: Lavont Flanders.

The Court: And, Mr. Callum, would you do the same.

The Defendant Callum: Emerson Callum.

The Court: Mr. Flanders, you are charged in a, both of you are charged in an indictment which names you both as defendants, and it is the only defendants in this case. The charges are summarized as sexual exploitation of a minor and sex trafficking of children by force, fraud or coercion.

Mr. Altman: Your Honor, as a correction, there is no allegation that there were any minors involved.

The Court: All right. Then it will be sexual exploitation, sex trafficking by force, fraud or coercion. The indictment that I have before me charges that these offenses occurred beginning at least as early as May of 2006 and continuing through on or about July 18th of 2007. That's Count I in this county and in Broward County. That is the conspiracy charge.

There are further charges in this indictment. Count II from on or about May 2006 through May 17th of 2006 that you together did recruit, entice, harbor transport, provide and obtain a person identified by initials knowing that fraud would be used to cause such person to engage in a commercial sex act. There is a Count III which charges you both with the distribution of a controlled substance; that being Alprazolam. Do you know how to say that"

Mr. Altman: Alprazolam.

The Court: Alprazolam, commonly referred as to Xanax, and further counts, relating similar counts in this indictment. You each have the right to remain silent in court. Anything that you say can and might be used against you at a

later time. You each have the right to have attorneys present with you in court. Do we have attorneys? No. We don't have attorneys.

After this, Mr. Flanders requested bond.

Defendant Flanders: Why can't I be out on bond?

The Court: Because the government is requesting pretrial detention. Is it on the basis of risk of flight or danger to the community, or both?

Mr. Altman: Both, Your Honor.

The Court: There are two bases or two grounds that the government cause to request that a defendant be held in pretrial detention, and they are requesting, or the government is requesting on both grounds, a risk of flight and danger to the community. That's the answer to your question, but do you understand the hearing will be on Monday?

During this uncounseled initial appearance, critical events occurred while defense counsel was not present, petitioner never waived the presence of counsel. The following events occurred while counsel was completely absent: (1).The AUSA and the District Court Amended the indictment from crimes against minors, to crimes against adults while no counsel for the defendants were present, please see amended indictment at Appendix B. (2).The District Court failed to fully inform Mr. Flanders of the nature and cause if the accusations against him, the court technically only read one count from the indictment, because the two other counts the AUSA advised that there were no allegations of any minors being involved, the purported indictment contained 23 separate counts on multiple alleged victims. (3). Mr. Flanders then asked for bond, had

counsel been present, s/he would have advocated for Mr. Flanders pretrial release, and advocated against the AUSA motion for pretrial detention. (4). The AUSA's motion was supported by the pretrial services report, counsel's presence was necessary to advocate against the recommendations of the pretrial services report, and the public prosecutor. (5). The pretrial services report recommended to the Judge that; "The following factors indicate the defendant poses a danger to the community because of the Nature of Offenses Charged, and an Ongoing pattern of criminal activity". The initial appearance on August 17, 2011 was in fact a critical stage of the proceedings, because the proceedings held significant consequences for the accused, and the event's that occurred during the initial appearance showed a need for counsel's presence. Please see United States v. Conic, 466 U.S. 648, S. Ct. 2039 (1984), United States v. Roy, 855 F.3d. 1133, 1144 (11th Cir. 2017), Bell v. Cone, 535 U.S. 685, 695-96, 122 S. Ct. 1834, 1851, 152 L.Ed. 2d 914 (2002), and Ash v. United States, 413 US 300, 37 L. Ed. 2d 619, 93 S.Ct. 2568 (1973). See also Rothgery v. Gillespie County, 544 U.S. 191, 211-212 128 S. Ct. 2578 171 L. Ed. 2d 366 (2008). Also, for proof that the indictment was amended, compare the official transcript of the initial appearance, to the purported indictment attached, and compare the indictment he unsealed in open court, to the purported indictment attached, DE-(3). The official court transcript does not match the purported indictment, "DE-(3)". Please see the August 17, 2011 transcript attached as Appendix C. Again, document (3) is a product of the amendment to the indictment during the initial appearance when counsel was

completely denied. Had counsel been present s/he would have objected to the amendment of the indictment, and filed a motion to dismiss based on Cronic error which would have been granted, because of Cronic's presumption of prejudice rule. The District Court and the AUSA took advantage of the defendants, and amended the indictment while counsel was completely denied. This was a critical stage of the proceedings.

The Supreme Court should also examine document (7) which is attached as Appendix D as well. This document records what time the initial appearance started, and what some of the charges were that were read from the indictment, it also records the fact that no defense counsel, or any other appointed counsel for the defendants were present. The initial appearance didn't began until 1:30PM, that was 32 minutes before Mr. Flanders was interviewed by pretrial services officer Maria Monge. She however, along with member's of the FBI, the United States Marshals Service, and the Miramar Police advised Mr. Flanders that the charges in the indictment contained multiple crimes against minors, please see attached pretrial services report at Appendix E. How could the pretrial services officer know the exact charges of the sealed indictment unless it was common knowledge among all federal law enforcement that were involved in the case that the real charges in the indictment consisted of crimes against minors. Also, this Court should see the attached Prisoner Remand Report filed by one of the FBI arresting agent's Regino E. Chavez at 8:00am on August 17, 2011. The Prisoner Remand was filed 5 hours prior to petitioner being taken before Judge

Bandstra to have the indictment unsealed in open court, how did the FBI know that the indictment charged crimes against minors, unless it was common knowledge among the investigating agents of the true knowledge of the crimes in the sealed indictment. They were all involved in hijacking jurisdiction in order to have my state case go federal. This report is attached as Appendix F. All documents attached are already on the district court's record under docket entry (291), moving forward.

The District Court denied Mr. Flanders Cronic claim on the merits citing: "The Court is not persuaded by the argument in Petitioner's Objection (and conclusorily echoed in Petitioner's unauthorized Reply (ECF No. 38)) that these hearings were critical because they lead to the "loss of additional rights." Petitioner makes no meritorious argument that these hearings were a "critical stage" under the framework set out in United States v. Cronic, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984) and further expounded in United States v. Roy, 855 F.3d 1133, 1144 (11th Cir. 2017). The District Court did not issue a COA because the Court erroneously found that the initial appearance was not a critical stage. It should be common knowledge for the Supreme Court to know, it's a common practice in the Southern District of Florida to bring criminal defendant's before a judge after he or she is indicted without counsel, or the assistance of the Federal Public Defenders Office present to protect the right of the criminal defendant. This same practice is ongoing in every federal circuit in America.

Petitioner then petitioned the Court of Appeals for a

COA. Petitioner filed the original COA in October of 2018 in which he sent in two copies, he then amended the COA on November 14, of 2018 in which he sent in another two copies to ensure that the Court of Appeals received his filings. In the Amended COA claims pertaining to Cronic error during a critical stage of the proceedings, Petitioner's claims meet the "substantial showing" standard needed in order to obtain a certificate of appealability. The Court of Appeals denied to issue a COA without any opinion.

Petitioner's counsel rendered ineffective assistance of counsel under the United States v. Strickland, 466 U.S. 688, 685 (1984) and the United States v. Cronic, 466 US 648, 653, 80 L.Ed. 2d 657, 104 S.Ct. 2039 (1984). The District Court advised that the initial appearance was not a critical stage under the framework set out in the United States v. Cronic, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984), and further expounded in the United States v. Roy, 855 F.3d 1133, 1144 (11th Cir. 2017); And because the Court scrupulously protected Petitioner's Sixth Amendment right to counsel, trial counsel was not ineffective for failing to bring a meritless motion based on a non-existent Sixth Amendment violation.

Reasonable jurist could debate the district court's assessment of this constitutional claim, take each in turn. A critical stage as defined in the United States v. Roy, 855 F.3d 1133, 1144 (11th Cir. 2017) means a step of a criminal proceeding, such as an [initial appearance], that holds significant consequences for the accused. Trial Counsel was per se ineffective for not arguing that the August 17, 2011

initial appearance was a critical stage because it held significant consequences for the Petitioner under the framework set out in the United States v. Cronic, Bell v. Cone, 535 U.S. 584, 122 S. Ct. 1843, 152 L. Ed. 2d (2002), and the United States v. Roy. Petitioner will now address why the initial appearance on 8/17/2011 was a critical stage.

IS DEFENSE COUNSEL'S COMPLETE ABSENCE DURING THE INITIAL APPEARANCE, IN WHICH THE DEFENDANT APPEARED BEFORE THE COURT ON A SEALED INDICTMENT A CRITICAL STAGE WITHIN THE FRAMEWORK SET OUT IN CRONIC. ADDITIONALLY, WAS COUNSEL'S PRESENCE REQUIRED IN ORDER TO PROTECT THE CRIMINAL DEFENDANT'S RIGHTS?

During the initial appearance, defense counsel was completely denied for the entire proceeding. Also, the Petitioner's indictment was constructively amended by the District Court, and the AUSA. Counsel's presence was required in order to protect the criminal defendant's rights during the initial appearance. Please see (DE-103), which proves that (DE-3) is the product of the unlawful amendment that occurred in August 17, 2011 while counsel was completely absent, all in violation of Petitioner's constitutional rights. Had counsel been present, instead of completely denied, s/he would have objected to the unlawful constructive amendment to the indictment. Since the District Court opened the door to the Pretrial Services Report, that report will be included in the critical stage analysis. Please see DE-27 footnote 9. in her Report and Recommendation and Order dated

June 13, 2017.

For example, Petitioner's arrest history in the Pretrial Services Report was inaccurate, it contained inaccurate information about Petitioner failing to appear in court, and being a fugitive from Broward County. This prejudiced petitioner before Judge Bandstra, he assumed that Petitioner would be a flight risk, and a danger to the community. This inaccurate information was one of the reasons why Judge Bandstra denied Petitioner's bond/bail. Please see Pretrial Services Report on page 3. Also, see that this false information helped to guide Judge Bandstra in his decision to deny bond by reading page 4 of the Pretrial Services Report. "There are no conditions or combinations of conditions to reasonably assure either defendant's appearance in court or the safety of the community. Therefore, I respectfully recommend the defendant be detained", counsel was necessary to advocate against the recommendations of the pretrial services report that Mr. Flanders be detained. The pretrial services report is objected to, and was properly raised in the Amended COA.

Had counsel been present instead of completely denied, s/he would have objected to this inaccurate information contained in the pretrial services report, and advocated against the recommendation of the pretrial services report, for the Petitioner's release. It's a fact that the Pretrial Services Report contained inaccurate information, even the district court acknowledges this fact in her June 13, 2017 Report and Recommendation and Order, please see App.G. "The Pretrial Services Report also incorrectly states that Flanders

was charged under 18 U.S.C. 2252, rather than 1591.[DE-23-1 p.1]". Footnote 9.

Had counsel been present, s/he would have objected to the Pretrial Services Report as a whole because it was riddled with incorrect information. The title of the Pretrial Services Report also prejudiced Petitioner because it showed that he was charged with multiple crimes against minors, and it falsely showed that petitioner had a history of not appearing for court, counsel was necessary to advocate against this false information. Also, at the initial appearance Petitioner was denied his Sixth Amendment Constitutional Right to be fully informed as to the nature and cause of the accusations. The Judge only advised Petitioner that he was charged with the distribution of drugs. The first two counts that the Judge read, the Judge was advised in open court, and on the record that the counts were inaccurate by AUSA Roy K. Altman. So in effect, Petitioner was only advised as to one count against him, even though the alleged indictment contained 23 separate counts pertaining to several alleged victims, as well as a forfeiture count. Also, the purported indictment has counts that were never mentioned, for example, 18 U.S.C. §2 aiding and abetting, and 21 U.S.C. 853 which is a criminal forfeiture was never mentioned during the reading of the indictment, nor were any of alleged "alias names". The indictment that was read into the court record does not reflect the purported indictment docketed as DE-(3). Had counsel been present, s/he would have objected, and demanded a full reading of the indictment, and a copy of the 23 count indictment. Trial counsel was ineffective for not filing a motion to dismiss the

indictment based on Cronic error.

Moving forward, here are other reasons why the initial appearance was a critical stage.

The initial appearance did in fact hold significant consequences for the accused, because Petitioner was ultimately denied bond due to the recommendations of the pretrial services report, and the AUSA motion to detain the petitioner, his indictment was amended, and he was only advised as to one drug count against him out of a 23 count indictment, which included a forfeiture count as well by the District Court. It was impossible for Petitioner to mount a proper defense to defend himself because he didn't know all the charges against him.

"What makes a stage critical is what shows the need for counsel's presence". Rothgery v. Gillespie County, Texas, 544 U.S. 191, 211-212 128 S.Ct. 2578, 171 L.Ed. 2d 366 (2008). Please also see Patterson v. Illinois, 487 U.S. 285, 298, 108 S.Ct. 2389, 101 L.Ed. 2d 261 (1988), and the United States v. Ash, 413 US 300, 37 L.Ed. 2d 619, 93 S.Ct. 2568 (1973). Petitioner was confronted with both the intricacies of the law and the advocacy of the public prosecutor, because AUSA Roy K. Altman was present, and advocating for the Petitioner's detention pending trial. "The test of the extent of the Sixth Amendment counsel guarantee is whether the accused requires the aid of counsel, in a particular event, in coping with legal problems or in meeting his adversary". United States v. Ash 413 US 300.

Petitioner required the aid of counsel to assist him in coping with legal problems, and meeting his adversary.

Petitioner required the aid of counsel to advocate against the public prosecutors recommendation that he remain in detention pending trial. A reasonable jurist could debate that the initial appearance was a critical stage because the petitioner showed a need for counsel's presence as required by Cronic, Rothgery, and Ash. Therefore, trial counsel was per se ineffective under Cronic for his failure to raise the claim.

Also, in-light of the holdings in the United States v. Roy, 855 F.3d 1133, 1144 (11th Cir. 2017), the United States v. Cronic, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984), Rothgery v. Gillespie County, Texas, 554 U.S. 191, 211-212, 128 S.Ct. 2578, 171 L.Ed. 2d 366 (2008), Patterson v. Illinois, 487 U.S. 285, 298 108 S.Ct. 2389, 101 L.Ed. 2d 261 (1988), Bell v. Cone, 535 U.S. 684, 122 S. Ct. 1843, 152 L. Ed. 2d (2002), and in the United States v. Ash, 413 US 300, 37 L.Ed. 2d 619, 93 S.Ct. 2568 (1973). A reasonable jurist could debate that the initial appearance was a critical stage within the framework of the above authority because Petitioner has shown a need for counsel's presence during the initial appearance.

Although the District Court denied relief on this ground because he said that the initial appearance was not a critical stage, and counsel was not ineffective for failing to bring a meritless motion to dismiss the indictments based on a non-existent Sixth Amendment violation. Petitioner has demonstrated that reasonable jurist would find the district court's assessment of the constitutional claims debatable or wrong. Next, the District Court advised in it's Order the final reason for denying the ground. "The rescheduling was due

to the absence of Petitioner's chosen counsel". Please see the August 22, 2011 transcript page 3, lines 22-25 App.H. This is an absolute untrue statement and reasoning by the District Court. Petitioner had no retained or chosen counsel for his federal case, or any other kind of counsel.

Here's what the official court record of the detention hearing for August 22, 2011 really says. "Since Mr. Flanders arrest I have received phone calls from a number of different lawyers all saying that they were representing or in negotiations to represent Mr. Flanders. Very late Friday afternoon I received a call from a law firm in California saying that they were in the final stages of completing a contract with Mr. Flanders family. They said that they would be in touch with the Public Defenders Office today to see if the Public Defenders Office could request, on behalf of Mr. Flanders, to push the detention date back as far as possible to allow that firm and their Miami branch to be ready for the detention hearing, but I didn't hear back from them either Saturday, Sunday, or today. So that is the extant of my knowledge of that situation. I did get an e-mail from Mr. Fisher and he told me that he had not been retained by Mr. Flanders to represent him". See the attached 8/22/2011 transcript of the detention hearing. The District Court mislead this reviewing court that Petitioner's chosen counsel was the reason for his own absence, when in fact Petitioner had no chosen or retained counsel for his federal case, this stands as the same reason why counsel was not at the initial appearance during the critical stage.

Please also see the attached August 22, 2011

transcript on page 4, lines 2-4). Mr. Fisher advised AUSA Roy K. Altman in a e-mail that he had not been retained to represent Petitioner. The District Court cites a mislead this court by advising that the transcript at 22-25 of the August 22, 2011 detention hearing said something that it really didn't say once the transcript is read in context. The District Court aids the AUSA in his efforts to keep Petitioner in custody pending trial. Had counsel been present, or appoint ed, s/he would have objected to AUSA Roy K. Altman providing false information to the court in hopes of keeping Petitioner detained by advising the court that a ghost law firm in California advised him to push the detention hearing back as far as possible. Petitioner had no attorney, and the government advised the Court of this fact, it's on the official court record, please see attached Appendix H for these facts.

The District Court was incorrect for denying the constitutional claim because of it's wrong assessment that Petitioner had chosen counsel who was absent at the hearing, making the absence of counsel during the initial appearance petitioners problem, or the fault of his alleged chosen counsel. Petitioner never had chosen counsel, or retained counsel. The district court was required to appoint counsel because petitioner never waived counsel. Reasonable jurist could debate that the Petitioner did not have chosen counsel, or any counsel retained on behalf of Petitioner for the initial appearance on 8/17/2011, a critical stage of the proceedings. Reasonable jurist could also debate in-light of the official record whether the district court's assessment of

the constitutional claim was debatable or wrong under Cronic. Counsel's absence during the initial appearance was a denial of the Petitioner's constitutional right, and counsel was ineffective for not raising Cronic error. Petitioner has satisfied the substantial showing of the denial of a constitutional right as required by 28 U.S.C. 2253.

It is impossible for the District Court to say that it scrupulously protected Petitioner's Sixth Amendment Right to Counsel when he had no counsel at all, the District Court only denied counsel under the Sixth Amendment, not protected the rights of the Petitioner. The District Court should have appointed counsel as required by Rule 5(d)(1)(B) because petitioner never waived counsel. The record supports Petitioner's position that he had no chosen counsel, or appointed counsel for the initial appearance on 8/17/2011. Reasonable jurist could debate the district court's assessment of the constitutional claims in light of the official court record at page 4, lines 2-4) of the August 22, 2011 transcript. It shows that Petitioner had no chosen counsel or retained counsel on 8/17/2011, because petitioner never hired Mr. Fisher to represent him in his federal case. This ground was not meritless as the district court suggests in his Order. Trial counsel was per se ineffective under Cronic because had he raised the argument in ground one, paragraph one, he would have prevailed because the official court records revealed, (1)that the indictment was amended from counts against minors/children, to count against adults. See (DE-103). (DE-3) is a product of the unlawful constructive amendment that occurred on August 17, 2011 while counsel was completely

denied, the document is a complete and total fraud. (2) The official court record proves that the Petitioner did not waive counsel, and he had no retained counsel for his federal case. The 8/22/2011 official transcript proves this fact, and it speaks for Petitioner's status of counsel at the uncounseled initial appearance on 8/17/2011. And (3), prejudice would have been presumed because the proceedings were a critical stage within the framework of the United States v. Cronic, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984), the United States v. Roy, 855 F.3d 1133, 1144, (11th Cir. 2017), Bell v. Cone, 535 U.S. 684, 122 S. Ct. 1843, 152 L. Ed. 2d (2002), and the United States v. Ash, 413 US 300, 37 L.Ed. 2d 619, 93 S.Ct. 2568 (1973). Accordingly, for all of the foregoing reasons and those stated in Mr. Flanders Amended Certificate of Appealability, Petitioner was deprived of his Sixth Amendment right to effective assistance of counsel, defense counsel therefore rendered per se ineffective assistance of counsel within the framework of the United States v. Cronic, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984).

Petitioner makes a substantial showing of the denial of a constitutional right, and he has demonstrated that reasonable jurist would find the district court's assessment of the constitutional claims debatable or wrong. Cronic error under the Sixth Amendment of the Untied States Constitution applies. This Court should therefore grant certiorari on this claim.

REASONS FOR GRANTING THE WRIT

I. REASONABLE JURIST COULD DEBATE THAT DEFENSE COUNSEL'S ABSENCE DURING THE AUGUST 17, 2011 INITIAL APPEARANCE QUALIFIES FOR THE APPLICATION OF CRONIC'S AUTOMATIC REVERSAL RULE.

The court on review "must accept all of Petitioner's alleged facts as true and determine whether the petitioner has set forth a valid claim". Asan v. Dugger, 835 F.2d 1337, 1338 (11th Cir. 1987). Petitioner has alleged that during his initial appearance that trial counsel was per se ineffective under Cronic for not filing a motion to dismiss his indictment and superseding indictment based upon Petitioner being without counsel, and not waiving counsel's presence at his initial appearance, in which the allegations in the indictment were amended by the AUSA, and the District Court from allegations against minors to allegations against adults, and that the initial appearance was in fact a critical stage.

1. In the United States v. Cronic, 466 U.S. 648 (1984), the Court drew on the fundamental principle of Gideon v. Wainwright, 372 U.S. 335 (1963), to establish a categorical rule for review of a criminal trial from which counsel was absent: "The presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial." Cronic, U.S. 466 at 658-59. In declaring its rule of presumptive unfairness, the Court reasoned that "[t]here are...circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." 466 U.S. at 658-659 & n.25.

These include is "the accused is denied counsel at a critical stage of his trial." Id. It's important for this Court to know that, Mr. Flanders was completely denied counsel during his initial appearance.

Moving forward, Cronic explains that the automatic reversal rule derived from a long line of Court precedent: "The Court has uniformly found constitutional error without any showing of prejudice when counsel was either totally absent, or prevented from assisting the accused during a critical stage of the proceedings." 466 U.S. at 649, n.25(alternate citations omitted)(citing Geders v. United States, 425 U.S. 80 (1976); Herring v. New York, 422 U.S. 853 (1975); Brooks v. Tennessee, 406 U.S. 605, 612-613 (1972); Hamilton v. Alabama, 368 U.S. 52 (1961); White v. Maryland, 373 U.S. 59, 60 (1963)(per curiam); Ferguson v. Georgia, 365 U.S. 570 (1961); Williams v. Kaiser, 323 U.S. 471, 475-476 (1945)).

Cronic's categorical rule about the absence of counsel fortifies the Sixth Amendment's expectations about the role of defense counsel. Thus, a critical stage arises whenever "[a]vailable defenses may be...irretrievably lost, if not then and there asserted," Hamilton v. Alabama, 368 U.S. at 54, "where rights are preserved or lost,' White v. Maryland, 373 U.S. at 60, "whenever necessary to ensure a meaningful 'defence,"' United States v. Wade, 388 U.S. 218, 225 (1967), where "potential substantial prejudice to defendant's rights adheres in the ...confrontation and the ability of counsel to help avoid that prejudice," Coleman v. Alabama, 399 U.S. 1, 9 (1970)(alteration in Coleman)(quoting Wade, 388 U.S. at 227),

and when the stage holds "significant consequences for the accused," Bell v. Cone, 535 U.S. 685, 696 (2002). The initial appearance on August 17, 2011 held significant consequences for Mr. Flanders because that was one of the stages that determined whether he could be out pending trial. It held significant consequences because at that stage Mr. Flanders was to be fully apprised as to the nature and cause of the accusations he would need to defend himself against. Because the complete denial of counsel occurred during a critical stage of the proceedings, prejudice is presumed. In support of this "structural error", Mr. Flanders relies on Arizona v. Fulminante, 499 U.S. 279 (1991), wherein this Court noted five structural errors that mandate automatic reversal of a conviction. The complete denial of counsel was the first on the list of five. The constitutional errors that occurred during Mr. Flanders initial appearance while counsel was completely absent, amounted to structural error, and his conviction must be reversed. This question of whether Mr. Flanders should have been granted a COA on this claim is not merely "debatable." It is now clear that Mr. Flanders will prevail on this issue in the Supreme Court. Obviously, a certificate of appealability must issue under such circumstances. Because Mr. Flanders is now before the Supreme Court, for judicial economy, this Court has the power to forgo the appeal process for Mr. Flanders, and grant the relief he is requesting which will be a reversal of the conviction. There is no need in remanding this case back to the Court of Appeals, it's a waste of judicial resources.

Unlike the temporary denial of counsel in United

States v. Roy, 855 F.3d 1133, 1144 (11th Cir. 2017)(en banc). Mr. Flanders suffered a complete denial of counsel under Cronic. Cronic's categorical rule of presumed prejudice mirrors this Court's declaration 75 years ago that "[t]he right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice resulting from a denial of counsel." United States v. Glasser, 315 U.S. 60, 76 (1942).

For this is a structural error, which is "marked different" from other trial errors (which can be "quantitatively assessed"). Cronic's rule governing the absence of counsel from a critical stage of trial is different from the analytical rule for claims of ineffective of counsel by lawyers present in the courtroom. On the day Cronic was decided, the Court also decided Strickland v. Washington, 466 U.S. 668 (1984), which sets fourth the formulation for addressing ineffective assistance of counsel claims.

Although Strickland claims require a showing of prejudice, Cronic dispenses with the prejudice component in cases in which counsel is completely absent from a critical stage like the initial appearance on August 17, 2011. Cronic appears to provide a straightforward categorical rule: A defendant's conviction should be reversed if the defense attorney was absent from a critical stage of his trial, such as the initial appearance in Flanders' case. The district court's official court reporter actually notes that no counsel was present during the initial appearance on August 17, 2011. So, the only steps that need to be determined is was the stage critical, and that question has been answered in the

affirmative in the framework set out in United States v. Cronic, 466 U.S. 648 (1984), and later expounded in United States v. Roy, 855 F.3d 1133, 1144 (11th Cir. 2017)(en banc). The Cronic rule has been reiterated by this Court, as in Bell v. Cone, 535 U.S. 685, 695-96 (2002): "A trial would be presumptively unfair, we said [in Cronic], where the accused is denied the presence of counsel at a 'critical stage,'...a phase we used in Hamilton v. Alabama,...and White v. Maryland... to denote a step of a criminal proceeding...that held significant consequences for the accused." (citing and quoting Cronic)(citations omitted). The Cronic Rule applies.

PETITIONER'S CASE PROVIDES THE IDEAL VEHICLE TO RESOLVE THE AGE OLD QUESTION OF WHETHER AN INITIAL APPEARANCE CAN BE A CRITICAL STAGE.

The Petitioner's case provides an ideal vehicle needed to resolve the age old question of whether an initial appearance can be a critical stage. Petitioner's case also provides an ideal vehicle as to whether it's structural error when counsel is completely denied to a criminal defendant during his initial appearance on a sealed criminal indictment. A criminal defendant requires the aid of counsel to protect his rights during the unsealing of a criminal indictment against him. If an defendant's counsel is absent during the unsealing of a criminal indictment, errors of constitutional magnitude can occur, such as the errors that occurred in this case. If the Public Prosecutor notices an error in the freshly unsealed indictment, he can and will unlawfully amend the

indictment because defense counsel is not present to object.

The initial appearance held significant consequences for the accused because Mr. Flanders freshly unsealed indictment was amended directly after it was unsealed while counsel was completely denied. The cost of litigating the effect of the amended indictment in this particular case is unjustified because that amended indictment was later superseded. Cronic recognizes that there are "circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." Id. 466 U.S. at 658. Cronic teaches that prejudice will be presumed at a critical stage of trial if: (1) counsel is completely denied; (2) counsel is denied at a critical stage of trial; or (3) counsel fails to subject the prosecutions case to meaningful adversarial testing. Id. at 659. This presumption of prejudice is seemingly irrebuttable since "the cost of litigating [its] effect...is unjustified." Id at 658. Mr. Flanders initial appearance falls in the first and second prongs of Cronic. Reasonable jurist could debate that a COA should issue on Mr. Flanders constitutional claims. It is also evident that Mr. Flanders constitutional claims under Cronic are not merely "debatable". It is now clear that Mr. Flanders will prevail on this issue under Supreme Court precedent. Obviously, a certificate of appealability must issue under such circumstances. However, this Court has the power to settle this claim now, and save precious judicial resources. Mr. Flanders is pleading with this Honorable Court to grant the requested relief of a reversal of his conviction. The only question regarding the initial appearance on August 17, 2011

is simply this: Whether the initial appearance on a sealed indictment proceeded with no lawyer standing between the accused and the government. This Court has told the Eleventh Circuit what to do when the answer to that question is yes, reverse the conviction. See Cronic, 466 U.S. at 659 & n.25. The facts and procedural posture of the present case permit the Court to set fourth a clearly defined interpretation of Cronic's rule governing the presence of counsel. A trial judge has a duty to ensure the Sixth Amendment right to counsel at each critical stage of proceedings. See Gideon and Cronic. The trial judge had a duty at the initial appearance, and he violated that duty. The District Court tries to distract this reviewing Court by saying that the judge was protecting my right to counsel, this is false, because if he was, he would not have participated in the amendment of the indictment, and the constitutional violation of failing to fully apprise Mr. Flanders as to the cause and nature of the accusations against him. The District Court, along with the AUSA took advantage of Mr. Flanders during this critical stage because counsel was completely absent.

INEFFECTIVE APPELLANT COUNSEL

Reasons for granting the writ as it pertains to appellant counsel are as follows:

("[A]ppellant review is limited to the issues specified in the COA.") Under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), defendants have a right to effective appellate counsel. Overstreet v.

Warden, 811 F.3d 1283, 1287 (11th Cir. 2016). A reasonable jurist could reach a different result regarding the District Court's assessment of petitioners ineffective of counsel on appeal claim. The District Court advised in it's December 1, 2017 Order that the Petitioner's ineffective of appellant counsel fails because the Cronic claim fails on the merits. Petitioner will demonstrate why the district court's assessment of his constitutional claim is debatable or wrong. Petitioner's Cronic claim is valid, therefore entitling him to a COA on this claim.

As before, the petitioner must make a "substantial showing" of the denial of a constitutional right. 28 U.S.C.S. § 2253. The certificate of appealability must specify which claim of claims meet the "substantial showing" standard. Petitioner's ineffective of counsel on appeal claim meets the "substantial showing" standard.

Petitioner was deprived of his right to effective assistance of counsel on appeal because appellant counsel failed to raise Cronic error during his direct appeal, thus denying Petitioner's constitutional rights under the Fifth and Sixth Amendments of the U.S. Constitution. Petitioner will now demonstrate why he is entitled to a COA on this constitutional claim.

It has already been established in this Amended COA that trial counsel's absence at the initial appearance amounted to a Sixth Amendment violation. Petitioner has already shown that he required the aid of counsel to assist him during the initial appearance. Also, petitioner has proved that the initial appearance was a critical stage, take each

instance in turn.

"What makes a stage critical is what shows the need for counsel's presence". Rothgery v. Gillespie County, Texas, 544 U.S. 191, 211-212 128 S.Ct. 2578, 171 L.Ed. 2d 366 (2008). Please also see Patterson v. Illinois, 487 U.S. 285, 298, 108 S.Ct. 2389, 101 L.Ed. 2d 261 (1988), and the United States v. Ash, 413 US 300, 37 L.Ed. 2d 619, 93 S.Ct. 2568 (1973). Petitioner was confronted with both the intricacies of the law and the advocacy of the public prosecutor, because AUSA Roy K. Altman was present, and advocating for the Petitioner's detention pending trial. "The test of the extent of the Sixth Amendment counsel guarantee is whether the accused requires the aid of counsel, in a particular event, in coping with legal problems or in meeting his adversary". United States v. Ash 413 US 300. Skilled counsel was necessary to help the Petitioner understand why he was considered a flight risk, and a danger to the community by the government. Skilled counsel was needed to advocate against the recommendations of the pretrial services report that also recommended that the Petitioner be detained pending trial based on the charges in his federal case, the report advised Judge Bandstra, that petitioner was a flight risk, and a danger to the community, please see pretrial services report for these facts.

Petitioner also required the aid of counsel to assist him in coping with legal problems, and meeting his adversary, AUSA Roy K. Altman. Petitioner required the aid of counsel to advocate against the public prosecutors recommendation that he remain in detention pending trial, counsel for the defendant was required during the initial appearance. A reasonable

jurist could debate that the initial appearance was a critical stage because the petitioner showed a need for counsel's presence as required by Rothgery, 554 U.S. at 199 (citation omitted), and United States v. Ash, 413 U.S. 300. Therefore, appellant counsel was ineffective under Cronic for his failure to raise Cronic on Appeal.

Also, in-light of the holdings in the United States v. Roy, 855 F.3d 1133, 1144 (11th Cir. 2017), the United States v. Cronic, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984), Rothgery v. Gillespie County, Texas, 554 U.S. 191, 211-212, 128 S.Ct. 2578, 171 L.Ed. 2d 366 (2008), Patterson v. Illinois, 487 U.S. 285, 298 108 S.Ct. 2389, 101 L.Ed. 2d 261 ( 1988), Bell v. Cone, 535 U.S. 684, 122 S. Ct. 1843, 152 L. Ed. 2d (2002), and in the United States v. Ash, 413 US 300, 37 L.Ed. 2d 619, 93 S.Ct. 2568 (1973); A reasonable jurist could debate that the initial appearance was a critical stage within the framework of the above authority because Petitioner has shown a need for counsel's presence during the initial appearance.

Therefore, the District Court did not scrupulously protect Petitioner's Sixth Amendment right to counsel as announced, and Petitioner's appellant counsel, like his trial counsel, was per se ineffective for failing to raise Cronic error. "Where appellant counsel fails to raise a claim on appeal that is so obviously valid that any competent lawyer would have raised it, no further evidence is needed to determine whether counsel was ineffective for not having done so. [H]is failure to raise it, standing alone, establishes [h]is ineffectiveness." Overstreet v. Warder, 811 F.3d 1283,

1287 (11th Cir. 2016).

Had appellant counsel raised Cronic error, he would have obtained a reversal of a conviction because the Court records which consisted of the transcripts from the initial appearance on 8/17/2011, and the transcript of the detention hearing on 8/2/2011 revealed the following facts. There were numerous events and errors that transpired in during the initial appearance while counsel was completely denied.

For example, the initial appearance transcript revealed that the indictment had been amended by the government attorney, and the District Court. Had counsel been present s/he would have objected to the unlawful amendment to the indictment. DE-3 is a product of that amendment to the indictment while counsel was not present. The 8/22/2011 transcript revealed that Petitioner had no chosen or retained counsel during the time of his initial appearance, nor did he have counsel for his federal case to which he was indicted.

So, the District Court mislead this reviewing Court as to why counsel was not present during the initial appearance, which turned out to be a critical stage of the proceedings. "The fundamental purpose of an appellant lawyer representing a defendant on direct appeal is to identify and argue bases for reversal of a conviction.". Overstreet v. Warden, 811 F.3d 1283, 1287 (11th Cir. 2016). Counsel on direct appeal failed to identify and argue proper bases for reversal of the conviction, even though Cronic error was plain on the record. The complete denial of counsel during a critical stage was obvious, and counsel should have known about Cronic's impact on appellate review, the presumption of prejudice, and the

application of the automatic reversal rule. "At all rates, Cronic and later decisions emphasize that the denial must be "complete" to warrant the presumption of prejudice. Cronic, 466 U.S. at 659; Wright v. Van Patten, 552 U.S. 120, 125, 128 S. Ct. 743, 169 L. Ed. 2d 583 (2008); Roe v. Flores-Ortega, 528 U.S. 470, 483, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000); see also Penson v. Ohio, 488 U.S. 75, 88, 109 S. Ct. 346, 102 L. Ed. 2d 300 (1988).

A reasonable jurist could debate whether petitioner was deprived of his constitutional right to effective assistance of counsel on appeal. In-light of the facts and legal authority concerning the complete denial of counsel during a critical stage in this case, and the holdings in the United States v. Cronic, 466 US 648, 653, 80 L. Ed. 2d 657, 104 S. Ct. 2039 (1984), the United States v. Roy, 855 F.3d 1133, 1144 (11th Cir. 2017), Bell v. Cone, 535 U.S. 685, 694, 122 S. Ct. 1843, 152 L. Ed. 2d 914 (2002), and Overstreet v. Warden, 811 F.3d 1283, 1287 (11th Cir. 2016), this claim is not just merely "debatable". It is now clear that Petitioner will prevail on this issue in the Eleventh Circuit, as well as in the Supreme Court. Obviously, a certificate of appealability must issue under such circumstances. "Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed". Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998).

## CONCLUSION

Based upon the forgoing petition, this Court should

grant a writ of certiorari to review the denial of the COA decision of the Court of Appeals for the Eleventh Circuit.

Respectfully Submitted,

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