

18-9118
No. _____

Supreme Court, U.S.
FILED

JAN 03 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C. 20543

EMANUEL BELEON FIELDS — PETITIONER
(Your Name)

vs.

LORIE DAVIS, DTR, TDCJ-CO — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS 5TH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EMANUEL FIELDS
(Your Name)

MICHAEL UNIT 26004 FM 2054
(Address)

TENN. COLONY, TX 75886
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

IN THIS CASE FIELDS' QUESTIONED PRESENTED WITHIN THIS CASE. WAS HIS U.S. CONSTITUTIONAL RIGHTS WERE DENIED IN TRIAL COURT WHEN PROSECUTION DENIED HIS U.S. CONSTITUTIONAL RIGHTS UNDER BAYTON AND HIS 14TH AMENDMENT EQUAL PROTECTION CLAUSE. DUE TO THE PROSECUTION WHO STRUCK THREE POTENTIAL BLACK JURORS WHO HAD CLOSE RELATIVES FROM SERVING ON FIELDS' JURY. BUT, ALLOWED THREE WHITE JURORS SERVE ON JURY WHEN WHITE JURORS WENT "UNCHALLENGED" THEREFORE, WHITE JURORS WHO ARE ~~IN~~ COMMON WITH BLACK JURORS DUE TO THE FACT BLACK/WHITE JURORS BOTH HAD CLOSE RELATIVES WITH "CONVICTIONS". WHEN WHITE JURORS WERE TREATED DIFFERENTLY?

LIST OF PARTIES

PURSUANT TO RULE 12.6 STATES THAT ALL PARTIES TO PROCEEDING WHERE JUDGEMENT IS SOUGHT TO BE REVIEWED SHALL BE DEEMED PARTIES IN THIS COURT, AND THAT ALL PARTIES OTHER THAN PETITIONER SHALL BE RESPONDENT. THE FOLLOWING PERSONS ARE INTERESTED PARTIES:

PETITIONER

EMANUEL D. FIELDS
TDCJ # 0127671
MICHAEL UNIT
2604 FM 2054
TENN. COLONY, TX 75886

RESPONDENT

LORIE DAVES, DE.
TEXAS DEPARTMENT OF
CRIMINAL JUSTICE
INSTITUTIONAL DIVISION

DISTRICT COURT JUDGE

HON. N/A
U.S. MAGISTRATE JUDGE

HON. N/A
U.S. DISTRICT JUDGE

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
1100 COMMERCE - RM 1452
DALLAS, TX 75242-1495

U.S. COURT OF APPEALS 5TH CIRCUIT JUSTICES

JUSTICES HON. SMITH, HON.
HIGGINSON, AND HON. DUCAN
U.S. COURT OF APPEALS 5TH
CIRCUIT
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

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.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5, 5A, 5B
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A *FIELD'S FILED 60(b)(6) IN DISTRICT COURT. MOTION AS A ~~W~~ UN-AUTHORIZED SUCCESSIVE § 2254 APP. AND TRANSFERRED TO 5TH CIR COURT. AFFIRMED. MOTION FOR LEAVE TO PROCEED FORMA PAUPERIS ON APPEAL DENIED. MOTION TO FILE SUCCESSIVE § 2254 DENIED. U.S. COURT OF APPEALS 5TH CIR COA DENIED / REMARKING ENCORE DENIED.*
APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>BASTON V. KENTUCKY</u> , 476 U.S. 79 (1969)	(54)
<u>RHODES V. DAVIS</u> , 852 F.3d 422 UNDER U.S.C.A. § 2283	
(C) COA GRANTED	(58)
<u>MILLER - EL II</u> , 125 S.Ct. at 2319-20	(58)
<u>U.S. V. LANE</u> , 866 F.2d 103, 105 C.C.A. 4 (1989)	(58)
<u>U.S. V. DAVIS</u> , 803 F.2d 1567, 1571 C.C.A. 11 (1986)	(58)
<u>MILLER - EL V. COCKLE</u> , 537 U.S. 322, 320-29, 123 S.Ct. 1029 (2003)	(5A)

STATUTES AND RULES

BASTON DISCRIMINATION PURPOSE IN VIOLATION OF EQUAL PROTECTION GUARANTEE OF THE U.S. CONSTITUTION.

THE FOURTEENTH AMENDMENT GUARANTEES EVERY DEFENDANT IN A CRIMINAL CASE EQUAL PROTECTION UNDER LAW.

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 A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

☐ reported at Ex parte Fields, Nos. 66-187-02, 66-187-03 & 66-187-04, Tex. Crim. App. Jan. 11, 2000.; 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 NOV 5, 2018.

[] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 12-4-18, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was Jan. 11, 2006.
A copy of that decision appears at Appendix B.

[] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

PETITIONER FILED MOTION IN DISTRICT COURT INVOKING FEDERAL RULE OF CIVIL PROCEDURE 60(b)(6). DISTRICT COURT CONSTRUED PETITIONERS' MOTION AS UN AUTHORIZED SUCCESSIVE § 2254 APPLICATION AND TRANSFERRED THE MATTER TO THE U.S. COURT OF APPEAL 5TH CIRCUIT. PETITIONER APPEARS THE DISTRICT COURTS' TRANSFER ORDER AND MOVES FOR AUTHORIZATION TO FILE A SUCCESSIVE § 2254 APPLICATION.

PETITIONER PREVIOUSLY RAISED HER BARTON CLAIM IN INITIAL § 2254 APPLICATION, AND THE CLAIM IS BASED ON FACTS KNOWN AT TRIAL. THEREFORE, DISTRICT COURT PROPERLY DETERMINED THAT THE MOTION WAS AN UNAUTHORIZED SUCCESSIVE § 2254 APPLICATION.

PETITIONERS' THE TRANSFER ORDER OF DISTRICT COURT AFFIRMED. MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL DENIED. MOTION FOR AUTHORIZATION TO FILE SUCCESSIVE § 2254 APPLICATION DENIED. PETITIONER FILED COA HER U.S. CONSTITUTIONAL RIGHTS WERE DENIED UNDER BARTON AND 14TH AMENDMENT EQUAL PROTECTION CLAUSE. ARGUMENT THAT COURT GRANT OF A COA IN RHOANES V. DAVIS, 852 F.3d 422 (8TH Cir. 2017), SUPPORTS HER BARTON CLAIM. COA WAS DENIED FILED TIMELY WITHIN 5TH CIRCUIT PETITION FOR REHEARING EN BANC WHICH WAS DENIED. THE U.S. COURT OF APPEALS HAS ENTERED A DECISION THATS IN CONFLICT WITH DECISIONS OF THE COURT ON BARTON AND 14TH AMENDMENT EQUAL PROTECTION CLAUSE.

STATEMENT OF THE CASE

THIS WRIT OF HABEAS CORPUS LIES FROM THE DENIAL OF FIELDS' 602(b)(6) WITHIN THE U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS DALLAS DIVISION. FURTHERMORE, THE DENIAL OF FIELDS' COA WITHIN THE U.S. COURT OF APPEALS FIFTH CIRCUIT ALL BASED ON FIELDS' U.S. CONSTITUTIONAL RIGHTS UNDER BASTON AND HIS 14TH AMENDMENT EQUAL PROTECTION CLAUSE DENIED. FIELDS' TIMELY FILED HIS PETITION FOR ~~REHAB~~ HABEAS CORPUS WITHIN THE U.S. COURT OF APPEALS FIFTH CIRCUIT. WHICH WAS DENIED BY U.S. CIRCUIT JUDGE STEPHEN A. HIGGINSON. FIELDS IS HERE WITHIN THIS COURT WITH MOTIONS OF HER U.S. CONSTITUTIONAL RIGHTS UNDER BASTON WAS DENIED SEEKING RELIEF.

REASONS FOR GRANTING THE PETITION

FIELDS CONTENDS WITHIN THIS CASE THE PROSECUTION VIOLATED HIS U.S. CONSTITUTIONAL RIGHTS UNDER BARTON AND HIS 14TH AMENDMENT EQUAL PROTECTION CLAUSE DENIED.

PROSECUTION USED FIVE OF HIS 10 PEREMPTORY CHALLENGES TO EXCLUDE ALL ELIGIBLE AFRICAN-AMERICANS FROM JURY SERVICE IN VIOLATION OF FIELDS' U.S. CONSTITUTIONAL RIGHTS UNDER BARTON AND HIS 14TH AMENDMENT EQUAL PROTECTION CLAUSE DENIED. DUE TO THE RECORD THAT THREE WHITE JURORS WHO HAD CLOSE RELATIVES CONVICTED OF CRIMINAL HISTORY WENT UN-CHALLENGED TREATED DIFFERENTLY THAN THE THREE BLACK JURORS THAT WERE IN COMMON WITH WHITE JURORS THEY ALSO, HAD CLOSE RELATIVES CONVICTED OF CRIMINAL HISTORY WERE NOT ALLOWED TO SERVE. THE WHITE JURORS THAT WENT UN-CHALLENGED, TREATED DIFFERENTLY ALLOWED TO SERVE ON FIELDS' JURY WERE (a) LISA HOLDMSTER HAD A BROTHER WHO HAD BEEN CONVICTED OF A CRIMINAL CASE (SEE R. II, P. 86-87); (b) ADRIAN CUNNINGHAM HAD A SISTER CONVICTED OF DWI AND A BROTHER WHO HAD BEEN CONVICTED OF A ROBBERY. (SEE R. II, PP. 96-97); and (c) SUATTEN GUS, WHO HAD A NEPHEW WHO HAD JUST GOT TEN OUT OF PRISON (SEE R. II, PP. 97-98). HER NEPHEW HAD A CONVICTION.

THE BLACK JURORS WHO WERE CHALLENGED NOT ALLOWED TO SERVE ON FIELDS' JURY WERE IN COMMON WITH WHITE JURORS DUE TO THEY HAD CLOSE RELATIVES WITH CONVICTED OF CRIMINAL HISTORY. WERE JURORS #15 CATHY GREEN, JUROR #40 DARRELL McALPIN, JUROR #49 WANDA BRIGHAM.

REASON FOR GRANTING THE
PETITION

PROSECUTION STRUCK POTENTIAL JUROR #15, CATHY GREEN DUE TO THE RECORD SHE HAD A SON IN DALLAS COUNTY, TX CONVICTED OF ASSAULT IS ONE OF PROSECUTION'S REASON (SEE RII P.133).

PROSECUTION STRUCK POTENTIAL JUROR #40, DARRELL MCALEPIN DUE TO ~~HAD~~ HE HAD A BROTHER THAT WAS CONVICTED OF A ROBBERY (SEE RII, P.137).

PROSECUTION STRUCK POTENTIAL JUROR #49, WANDA BRIGHAM, WHO WAS THE LAST AFRICAN AMERICAN JUROR THAT COULD OF HAD AN OPPORTUNITY TO SERVE AS A MEMBER OF THE JURY, DUE SHE HAS A BROTHER IN PRISON CONVICTED OF A ROBBERY.

DEFENSE COUNSEL MADE A RACIAL OBJECTION (SEE RII, P.132). FIELDS' CONTENDS RACIAL PROVIDES A THREE-STEP PROCESS -- FOR A TRIAL COURT TO USE IN ADJUDICATING A CLAIM THAT PEREMPTORY CHALLENGE WAS BASED ON RACE:

"FIRST, A DEFENDANT MUST MAKE A PRIMA FACIE SHOWING -- THAT A PEREMPTORY CHALLENGE HAS BEEN EXERCISED ON THE BASIS OF RACE; [S]ECOND, IF THAT SHOWING HAS BEEN MADE, THE PROSECUTION MUST OFFER A RACE-NEUTRAL BASIS FOR STRIKING THE JUROR IN QUESTION; AND [T]HIRD, IN LIGHT OF THE PARTIES SUBMISSIONS, THE TRIAL COURT MUST DETERMINE WHETHER THE DEFENDANT HAS SHOWN PURPOSEFUL DISCRIMINATION." (QUOTING MILLER-D. V. COCKRELL, 537 U.S. 322, 320-29, 123 S.Ct. 1029 (2003)).

FIELDS' CONTENDS THE U.S. DISTRICT COURT, 5TH CIRCUIT FAILED TO (SEE) THE (STATE) PROSECUTION SOLE REASON WITHIN THIS CASE STRIKING THE THREE BLACK JURORS FROM SERVING ON FIELDS' JURY IS THEY HAD CLOSE RELATIVES WITH CRIMINAL HISTORY.

REASON FOR GRANTING THE
PETITION

FIELDS' CONTENDS THE WHITE JURORS WHO SERVED ON FIELDS' JURY ARE IN COMMON WITH BLACK JURORS DUE TO THE FACT THEY BOTH SHARED IDENTICAL CHARACTERISTICS BOTH WHITE/BLACK JURORS HAD CLOSE RELATIVES WITH CONVICTIONS. HOWEVER, THE WHITE JURORS WENT UNCHALLENGED AND TREATED DIFFERENTLY DUE WHITE JURORS ALLOWED TO SERVE ON FIELDS' JURY BLACK JURORS STRUCK (SEE MILLER-EL II, 125 S.Ct. at 2319-20). (SEE RHODES V. DAVIS, 852 F.3d 422 UNDER U.S.C.A. § 2253(C) 2017 COA -- GRANTED.

FIELDS CONTENDS "THE CONSTITUTION FORBIDS STRIKING EVEN A SINGLE PROSPECTIVE JUROR FOR DISCRIMINATORY PURPOSE." (SEE UNITED STATES V. LANE, 880 F.2d 103, 105 CC.A.4 1989); ALSO (SEE; UNITED STATES V. DAVIS, 803 F.2d 1567, 1571 CC.A.11 1986).

THE SUPREMACY CLAUSE STATES "SINCE STATE COURTS ARE BOUND BY THE SUPREMACY CLAUSE TO OBEY FEDERAL CONSTITUTION LAW. THE STATE COURTS DISOBEYED THE SUPREMACY CLAUSE WHEN THEY DENIED FIELDS' U.S. CONSTITUTIONAL RIGHTS UNDER BASTON AND HIS 14TH AMENDMENT EQUAL PROTECTION CLAUSE. FIELDS CONTENDS THE U.S. DISTRICT COURT AND U.S. COURT OF APPEAL 5TH CIRCUIT FAILED TO (SEE) HIS U.S. CONSTITUTION RIGHTS DENIED.

FIELDS HAS PROVED THIS BURDEN IN THIS CASE, AND REQUEST THIS COURT TO GRANT HIM RELIEF.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Emmanuel Fields

Date: 1-3-19