

19-5679

ORIGINAL

NO.:

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IN THE SUPREME COURT OF THE UNITED STATES

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EX-PARTE MARIA AIDE DELGADO  
Petitioner,

Supreme Court, U.S.  
FILED

FEB 28 2018

OFFICE OF THE CLERK

VS.

UNITED STATES OF AMERICA  
Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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Respectfully submitted,  
Maria Aide Delgado  
Fed. Reg. No.: 68452-179  
Federal Prison Camp  
1100 Ursuline Avenue  
P.O. Box 2149  
Bryan, Texas 77805  
(Petitioner, Pro Se)

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[REDACTED] VS. [REDACTED]

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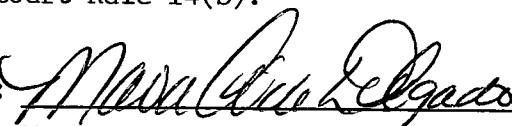
QUESTION(S) PRESENTED

- I.. Whether there is a sufficient likelihood that rational jurors would have credited the post conviction evidence and, as a result, would have voted to convict notwithstanding the petitioner's new supplemented evidence of innocence, pursuant to this Court's holdings in Schlup v. Delo, 513 US 298, 329-330 (1995); House v. Bell, 547 U.S. 518; Murray v. Carrier, 477 U.S. 478, 496 (1986); McQuiggin v. Perkins, 569 U.S. 383 (2013).
- II. Whether the Fifth Circuit Court of Appeals deny a Certificate of Probable Cause ("C.O.A."), for review of Ineffective Assistance of Trial Counsel by placing too heavy a burden on the Petitioner at the C.O.A. stage conflicting with this Court's holding in Buck v. Davis, 580 U.S. \_\_, 137 S Ct 759, 197 L Ed 2d 1 (2017).

PARTIES TO THE PROCEEDINGS

All parties to Petitioner's Fifth Circuit proceedings are named in the caption of the case before this court. See Supreme Court Rule 14(b).

BY:



Maria Aide Delgado

Fed. Reg. No.: 68452-179

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**PRAYER**

Petitioner, Ex-Parte Maria Aide Delgado, Pro Se, respectfully prays that an Extraordinary Writ be Granted to review the Orders entered by the Fifth Circuit's Court of Appeals in this respective case.

**OPINIONS BELOW**

The Fifth Circuit's Court of Appeals opinions for this Petition is attached herein as Appendices A, B, & C. The United States District Court's opinion is reported at Delgado v. United States, 2016 U.S. Dist. LEXIS 185511 and Delgado v. United States, 2017 U.S. Dist. LEXIS 49552. The en banc's opinion of the Fifth Circuit Court of Appeals in the original criminal proceeding is reported at United States v. Delgado ("Delgado II"), 672 F.3d 320 (2012). See also, U.S. v. Delgado, 646 F.3d 222 (5th.cir. 2011); United States v. Delgado ("Delgado I"), 631 F.3d 685 (2011).

**JURISDICTION**

The Judgment Order of the Court of Appeals was entered October 03, 2018 (See Appx. A). The Judgment Order per curiam of the Court of Appeals for a Petition for Rehearing was entered November 30, 2018 (See Appx. B). The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL, STATUTORY, & GUIDELINES PROVISIONS

The Constitutional, Statutory, and Guidelines Provisions involved in this case are lengthy and their pertinent text are set out in appendix 1(i) in accordance to Supreme Court Rule 14(1)(f).

### STATEMENT OF THE CASE

On November 8, 2006, a federal grand jury in McAllen, Texas, returned a Two-Count indictment charging the Petitioner, Maria Aide Delgado ("Delgado"), with (1) Conspiracy to possess with intent to distribute more than 100 Kilograms but less than 1000 Kilograms of Marijuana (Count One) and (2) Possession with intent to distribute more than 100 Kilograms but less than 1000 Kilograms of Marijuana (Count Two), in Violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B), 846, and 18 U.S.C. § 2. R.29-30.

After a Two-day trial, the jury found Ms. Delgado guilty as charged in the indictment. R.828. The case proceeded to trial before a jury beginning February 12, 2007 (USCA5-9). The district court accepted the jury's verdict, ordered the preparation of a pre-sentence investigation report ("PSR") and set the case for sentencing (USCA5-209).

On May 2, 2007, the district judge remanded into the custody of the Bureau of Prisons to serve concurrent 100 month terms of imprisonment which were to be followed by a concurrent 4-year term of supervised release. The district court imposed a fine of \$ 15,000.00 and mandatory assessments totaling \$ 200.00 (USCA5-10).

Ms. Delgado appealed. On January 19, 2011, a divided panel of the Fifth Circuit reversed Ms. Delgado's convictions holding (1) the evidence was insufficient to support Ms. Delgado's conspiracy conviction, and (2) Ms. Delgado's trial was rendered fundamentally unfair by the cumulative effects of several putative errors, pursuant the Federal Rules of Criminal Procedures Rule 52(b). United States v. Delgado, ("Delgado 1"), 631 F.3d 685, 686 (5th cir. 2011).

On March 4, 2011, the government filed a Petition for Panel Rehearing. On July 7, 2011, the Fifth Circuit sua sponte filed an order setting the case for Rehearing

En Banc. United States v. Delgado, 646 F.3d 222 (5th cir. 2011).

The Fifth Circuit sitting en banc reversed the panel in pertinent part emphasizing that "even if [it] found merit" in Delgado's argument that the Jackson<sup>1</sup> standard of proof beyond a reasonable doubt was constitutionally required, it read this Court's decision in Puckett v. United States,<sup>2</sup> as "[not] allowing for any exceptions to the application of the plain-error test for forfeited claims."<sup>3</sup> See Delgado II, 672 F.3d at 331. The en banc held in pertinent part that none of the trial errors, either singly or cumulatively, warranted a new trial. *Id.* at 334-44. This Court thereafter, denied Certiorari on October 29, 2012. Delgado v. United States, 133 S. Ct. 525 (2012).

Ms. Delgado, filed a timely Motion 28 U.S.C. § 2255 (Rec. Doc. # 96) followed by a Memorandum in Support on March 27, 2014. (Rec. Doc. # 107). Delgado raised Five (5) grounds and several claims,<sup>4</sup> contending that trial counsel's performance fell below the Strickland's<sup>5</sup> standard of reasonableness which lead to a break down of the adversarial process and failed to subject the prosecution's case to a meaning adversarial testing. *Id.* Strickland, 466 U.S. at 662.

The District Court then denied the Motin § 2255 on March 31, 2017. A Notice to Appeal was filed. Subsequently, a Brief for a Certificate of Appealability ("COA"), (See Appx. A). The Fifth Circuit Court of Appeals denied the COA, Pursuant to 28 U.S.C. § 2253(c)(2), citing Miller v. Cockrell,<sup>6</sup> (See Appx. A). A petition for Rehearing was filed on November 19, 2018. (See Appx. A). However, the brief was treated as a Motion (See Appx. B) and was denied on November 30, 2018. (See Appx. C).

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1. See Jackson v. Virginia, 443 U.S. 307 (1979).

2. 556 U.S. 129 (2009).

3. This Court settled the Circuit Split over the application of the plain error analysis Five months thereafter, Ms. Delgado's case came up to this Court in Henderson v. United States, 568 U.S. 266, 133 S. Ct. 1121, 185 L.Ed.2d 2185 (Feb. 20, 2013) holding that "plain" under Rule 52(b) of Federal Rules of Criminal Procedure regardless of whether legal question was settled at time of trial, so long as error was plain at the time of appellate review." Ms. Delgado has yet to benefit from this Rule.

4. See Appendix D of Ms. Delgado's memorandum in support of her habeas corpus § 2255.

5. Strickland v. Washington, 466 U.S. 668 (1984).

6. 537 U.S. 332, 337 (2003).

BASIS OF FEDERAL JURISDICTION  
IN THE UNITED STATES DISTRICT COURT

This case was originally brought as a Federal Criminal Prosecution under 21 U.S.C. §§ 841(a)(1), (b)(1)(B), 846 and 18 U.S.C. § 2. The District Court therefore, had Jurisdiction, Pursuant to 18 U.S.C. § 3231.

REASONS FOR GRANTING THE WRIT

This Court held in Massaro v. United States,<sup>7</sup> that a "convicted federal criminal defendant is able to bring ineffective assistance of counsel claim[s] in collateral proceedings under 28 U.S.C. § 2255 ...." In addition, this Court emphasized that because evidence introduced at trial would be devoted to guilt or innocence issues and the resulting record would not disclose the facts necessary to decide either prongs of the Strickland<sup>8</sup> analysis, where the record reflects the action by counsel but not the reasons for it,<sup>9</sup> the forum best suited to develop facts necessary to determine the adequacy of representation during an entire trial are litigated first in the district court. Whereby, "In a § 2255 proceeding, the defendant 'has a full opportunity to prove facts establishing ineffectiveness of counsel, [and] the government has a full opportunity to present evidence to the contrary.'"<sup>10</sup>

In *Strickland v. Washington*, *Id.* this Court held that the Sixth Amendment right to counsel is needed in order to protect the fundamental right to a fair trial, through the Due Process Clause, provisions of the Sixth Amendment, including the Counsel Clause: "In all criminal prosecutions, ...; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." Thus, this Court determined that a "fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding."

This Court thus, ascertained that "The right to counsel plays a crucial role embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendant's the "ample opportunity to meet the case of the prosecution" to which they are entitled." *Id.* 466 U.S. at 685.

7. 538 U.S. 500, 123 S Ct 1690, 155 L Ed 2d 714 (2003).

8. 466 U.S. 668, 687, 104 S Ct 2052, 80 L Ed 2d 674 (1984).

9. *Id.* 538 U.S. at 505.

10. *Id.* 538 U.S. 506.

11. *Id.* 466 U.S. at 685.

Whereas, in order to ensure a fair trial, "the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on having produced a just result."

This Court should therefore, Grant Certiorari to address the denial of Petitioner's request for a Certificate of Appealability ("C.O.A.") based on claims of ineffective assistance of counsel, where (1) the evidence trial counsel failed to present to the jury was presented at the post conviction stage, and effectively calls into question the credibility of the government witnesses presented at trial to the extent that no rational juror would have voted to convict, applying the "actual innocence" test. Where (2) the introduction of weapons not named in the indictment; presented to the jury without a jury instruction, contributed to the guilty verdict of Conspiracy with intent to possess and distribute Marijuana (Count One) and Possession to do the same (Count Two).

Where (3) the lack of jurisdiction to present evidence to the jury and trial counsel's failure to file a Motion to Suppress this evidence contributed to the jury's verdict of guilt. Where (4) trial counsel's ~~re~~urged Motion to Suppress the Evidence, during the trial was denied, thereafter, new facts and new light of the credibility of the government witnesses testimonies cast doubt to the Pre-Trial Ruling. And (5) where the standard of appellate review must follow legal standards set forth by this Court and may reverse if the appellate court deviates from those standards because "[I]t is a paradigmatic abuse of discretion for a [lower] Court[s] to base its judgment on an erroneous view of the law. Schlup v. Delo, 513 U.S. at 333 (O' Conner, J., concurring). The (majority opinion) (suggesting that Court has held manifest miscarriage doctrine to be mandatory, not discretionary. Id. Whereas, trial counsel's representation fell below the objective standard of reasonableness with regard to the investigation, functioning and presentation of evidence based on the standards of

professionalism prevailing at the time. <sup>12</sup>

I. Whether there is a sufficient likelihood that rational jurors would have credited the post-conviction evidence and, as a result, would have voted to convict notwithstanding the Petitioner's new supplemented evidence of innocence, Pursuant to this Court's holdings in Schlup v. Delo, 513 U.S. 298, 329-330 (1995); House v. Bell, 547 U.S. 518 (2006); Murray v. Carrier, 477 U.S. 478, 496 (1986); McQuiggin v. Perkins, 569 U.S. 383 (2013).

In denying a Certificate of Probable Cause in this case, the Fifth Circuit's decision does not reconcile with the "actual innocence" miscarriage of justice exception, and conflicts with this Court's holdings in Schlup v. Delo, <sup>13</sup> House v. Bell, <sup>14</sup> Murray v. Carrier, <sup>15</sup> and McQuiggin v. Perkins. <sup>16</sup> Where a petitioner may be excused from the default and obtain federal review of his constitutional claims only by showing "cause" and "prejudice." <sup>17</sup> Thus, the Fifth Circuit's failure to consider Delgado's claims will result in a fundamental miscarriage of justice. Where this Court explained, "the principles of comity and finality that inform the concepts of cause and prejudice 'must yield to the imperative of correcting a fundamentally unjust incarceration.'" <sup>18</sup>

This court has made clear that the "miscarriage of justice" exception extends, at the least, to cases of "actual innocence," which the court has defined as situations such as a constitutional violation that "has probably resulted in the conviction of one who is actually innocent [of the offense of which he has been convicted]." Murray v. Carrier. <sup>19</sup>

13. 513 U.S. 298, 329-30 (1995).

14. 547 U.S. 518 (2006).

15. 477 U.S. 478 (1986).

16. 569 U.S. 383 (2013).

17. United States v. Frady, 456 U.S. 152, 71 L Ed 2d 816, 102 S. Ct. 1584 (1982).

18. Murray v. Carrier, 477 U.S. at 496 (quoting Engle v. Isaac, 466 U.S. at 135). Accord House v. Bell, 547 U.S. 518, 536 (2006).

19. 477 U.S. at 496. Accord Schlup v. Delo, 513 U.S. at 325, 327-28.

Under the terms of the Murray/Schlup standard, a habeas court cannot reject a petitioner's newly presented evidence claim solely because there remains sufficient evidence to support the jury's verdict. Instead, the court must consider what reasonable triers of fact are likely to do. A reasonable juror is one who fairly considers all of the evidence presented and conscientiously obeys the instructions of the trial court requiring proof beyond a reasonable doubt.<sup>20</sup> After articulating the appropriate standard, this Court remanded for an evidentiary hearing to determine "the probative force" and reliability "of the newly presented evidence in connection with the evidence of guilt adduced at trial."<sup>21</sup> Schlup, makes clear that the habeas court must consider "all the evidence," 'old and new' incriminating and exculpatory, without regard to whether it would necessarily be admitted under rules of admissibility that would govern at trial.<sup>21</sup> Schlup, thus, ensures that the fundamental miscarriage of justice exception applies to 'extraordinary cases' explicitly tying it to the Petitioner's innocence. Such as in this case.

This Court emphasized; that in order to establish actual innocence under the Schlup standard, a petitioner has to demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted. District Courts were directed not to substitute their own judgments as to whether there is a reasonable doubt; the standard requires the lower courts to make a probabilistic determination about what reasonable, properly instructed jurors would do. Because the legal system has no means of defining innocence independently of the finding of reasonable doubt, the analysis must incorporate the understanding that proof beyond a reasonable doubt marks the legal boundary between guilt and innocence.

The Schlup standard does not merely require a showing that a reasonable doubt exists in light of the new evidence, but rather that no reasonable juror would have

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20. Schlup v. Delo, 513 U.S. at 331.

21. Id. 513 U.S. at 332.

found the defendant guilty.

In Murray v. Carrier, this court emphasized that in order for a Petitioner to show that he is "actually innocent" the Petitioner must satisfy the Carrier gate way standard, that it is more likely than not that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt. This court assessed the adequacy of Petitioner's showing, where the lower court[s] were not bound by the rules of admissibility that would govern at trial. Instead, the emphasis on "actual innocence" allows the reviewing tribunal also to consider the probative force of relevant evidence that was either excluded or unavailable at trial. With respect to the Carrier standard, this court believed that Judge Friendly's <sup>22</sup> description of the Carrier standard inquiry was appropriate: "The habeas court must make its determination concerning the petitioner's innocence "in light of all the evidence, including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial." The Carrier standard thus, reflects the proposition, established in the legal system, that the line between innocence and guilt is drawn with reference to a reasonable doubt. See In re Winship. <sup>23</sup> This court thus, concluded in the Carrier standard, that the word "reasonable" in that "no reasonable juror" would have convicted. It must be presumed that a reasonable juror consider fairly all of the evidence presented, and also that such a juror would conscientiously obey the instructions of the trial court requiring proof beyond a reasonable doubt. This court thus, held that the Carrier standard requires the habeas petitioner to show that a constitutional violation has probably resulted in the conviction of one who is actually innocent <sup>24</sup> and is by no means equivalent to the standard of Jackson v. Virginia, <sup>25</sup>, which governs review of the insufficiency of evidence.

22. Is Innocence Relevant? Collateral Attack on Criminal Judgments, 38 U. Chi. L. Rev. 142, 160 (1970).

23. 397 U.S. 358, 25 L Ed 2d 368, 90 S. Ct. 1068 (1970).

24. 477 U.S. at 496, 106 S. Ct. at 2649-2650.

25. 443 U.S. 307, 61 L Ed 2d 560, 99 S. Ct. 2781 (1979).

Thus, "it is not the [reviewing] court's independant judgment to whether reasonable doubt exists that the standard addresses; rather the standard requires the [reviewing court] to make a probabilistic determination about what reasonable, properly instructed jurors would do." Schlup, at 329.

Moreover, this Court decided in House v. Bell,<sup>26</sup> a habeas case in which "House, protesting his innocence, [sought] access to court to pursue habeas corpus relief based on constitutional claims that are procedurally barred under state law," Id. at 2068; and as a stand-alone claim for such relief, Id. at 2086. This Court concluded that House provided substantial evidence suggesting he might not have committed the murder for which he was convicted; and thus held he satisfied the Schlup standard, enabling him to see his actual-innocence claim to raise an otherwise procedurally barred habeas claim. Id. at 2087.

Thus, for the requirement that actual-innocence claims be supported by "new reliable evidence,"<sup>27</sup> the [reviewing court's] negligence that petitioner's state court's transcript and other evidence, filed by Ms. Delgado, distorts the clear meaning of the Schlup standard. Id. at 332-33, 339-40. Although the witness and the other evidence could have been presented at the time of the federal trial, the testimony and the other evidence was not presented, due to counsel's failure to submit any evidence on behalf of the defendant. Thus, this evidence was withheld from the prosecution, the defense, the jury and the trial judge, and could not therefore, have affected the jury's analysis of Ms. Delgado's guilt. Accordingly, because this testimony and other evidence was not presented at trial, and remained unknown to the afore mentioned through out the trial, it is then considered "new" evidence according to the Schlup standard. Id. at 339.

Along this line, this court, in McQuiggin v. Perkins,<sup>28</sup> held no threshold

26. 547 U.S. 518, 126 S. Ct. 2064, 165 L Ed 2d 1 (2006).

27. Schlup v. Delo, 513 U.S. at 324.

28. McQuiggin v. Perkins, 569 U.S. 383, at 399 (2013).

diligence requirement applies to actual-innocence claims; the delay of this crucial testimony and other evidence is simply factors in the Court's reliability evaluation.

The new evidence therefore, rebuts the prosecution's closing argument and the material evidence presented at trial. For Example: Accusing Ms. Delgado of having picked up the tractor-trailer from the Diesel Shop, which now calls into question as to who actually picked up the tractor-trailer, pointing to another suspect and therefore, is appropriately considered substantive and reliable evidence despite the time lapse. See *Id.* Schlup, 513 U.S. at 324.

Regarding the requirement that evidence presented at trial must be considered in light of the newly-discovered evidence, House v. Bell, 547 U.S. at 538, any evidence exculpating Ms. Delgado, of the prosecution's accusations undermining his closing argument to the jury and all other evidence, supports Ms. Delgado's asserted claim that she did not have access to the tractor-trailer, where the only one set of keys to the cab of the tractor were needed in order to place the marijuana inside the cab. Ms. Delgado, therefore, could not have known about the marijuana inside the cab.

Whereas, because the prosecution lacked the mens rea requirement for the offense Ms. Delgado is "actually innocent" of the prosecution's conjectured theory that Ms. Delgado was the only individual that had access to the tractor-trailer, and was the person who placed the marijuana inside teh cab of teh tractor-trailer.

The credibility of the prosecution's closing argument, has been called into question and must be evaluated in light of the new evidence, thus, excluding the possibility that Ms. Delgado committed the crimes to which she was sentenced.

McQuiggin, 569 U.S. at 386 (citing Schlup, 513 U.S. at 329).

Whereas, in light of the newly discovered contradictory testimonial and material evidence, it is more likely a reasonable, informed juror would reasonably doubt Ms. Delgado's guilt of the charged crimes. See e.g., Floyd v. Vannoy, 894 F.3d 143 (5th cir. 2018).

II. Whether the Fifth Circuit Court of Appeal deny a Certificate of Probable Cause ("C.O.A."), for review of Ineffective Assistance of Counsel by placing too heavy a burden on a Petitioner at the C.O.A. stage conflicting with this Court's holding in Buck v. Davis, 580 U.S. \_\_\_, 137 S. Ct. 759, 197 L Ed 2d 1 (2017).

The Court of Appeals in this case determined that in order to show "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000). One "satisfies this standard by demonstrating that jurist of reason could disagree with the district court's resolution of his constitutional claim in that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Miller-El, 537 U.S. at 327. Because Ms. Delgado did not meet these standards, her COA motion was denied.

This Court decided in Buck v. Davis, *supra*, that the court of appeals should limit its examination [at the COA stage] to a threshold inquiry into the underlying merit of [the] claims," and ask "only if the district court's decision was debatable." *Id.* 197 L Ed 2d 171, (citing Miller-El, 537 U.S. at 327, 348, 123 S. Ct. 1029, 154 L Ed 2d 931.

Ineffective Assistance of Counsel is a violation of a defendant's Sixth Amendment right and, as a result, is a claim of constitutional violation. See Strickland v. Washington, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 2063-64, 80 L Ed 2d 674 (1984).

The District Court unreasonably applied clearly established federal law, Strickland, because the court failed to consider the prejudicial effect of trial counsel's deficient performance base on the totality of available mitigating evidence."

The omitted evidence did not give the jury the true and entire picture of the facts needed to make a conclusive and substantive verdict of guilt. Trial counsel was in part deficient for failing to investigate the details as to how the tractor-trailer

appeared on Ms. Delgado's property. Which the prosecution relied on to prove the actual and constructive possession of the marijuana and the knowledge for the Conspiracy with intent to possess and distribute the marijuana. See Appx. F, Pg. 75.

Therefore, counsel's failure to present at least one shred of mitigating evidence for his client's defense, subsequently, such evidence appearing during the habeas corpus stage, contradicting the prosecution's evidence to gain Ms. Delgado's conviction at the time of the trial, reasonable jurists would debate the district court's disposition. This court determined that the statute [§ 2253(c)(2)] sets forth a Two step process: An initial determination whether a claim is reasonably debatable, and then if it is an appeal in the normal course, whatever procedures are employed at the COA stage should be consonant with the limited nature of inquiry.

This Court emphasized that "when a court of appeals side steps [the COA] process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction. *Id. Buck*, 197 L Ed 2d at 16 (quoting Miller-El, 537 U.S. at 336

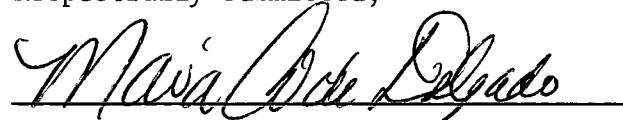
Thus, "when a reviewing court [like the Fifth Circuit here] inverts the statutory order of operations and "first decid[es] the merits of an appeal ... then justif[ies] its denial of a COA based on its adjudication of the actual merits," it has placed too heavy a burden on the prisoner at the COA stage." *Id.* 197 L Ed 2d at 15.

Whereas, neglecting evidence that trial counsel failed to present during the trial stage, where the defendant has a right to present evidence for her defense to be afforded a fair trial. Counsel's performance fell below the standard of reasonableness to produce just results. The Sixth Amendment guarantees the effective assistance of counsel and ineffective assistance of counsel is a constitutional violation. The Court of Appeals has thus, erroneously applied the clearly established federal law established by this Court.

CONCLUSION

Petitioner, Ms. Delgado, prays that this Court grants her Writ of Certiorari because Ms. Delgado, ascertains her innocence for the crime that she was convicted to. Accordingly, in applying the "actual innocence" test, "the habeas court may have to make some credibility assessments," and if "the newly presented evidence ... [calls] into question the credibility of the [prosecution's evidence] presented at trial" to the extent that no rational juror would have voted to convict, "actual innocence" has been proved." Id. Schlup, 513 U.S. at 341.

Respectfully submitted,



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Executed on this 28th, Day  
of February, 2019.