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19-5687 ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S. FILED AUG 08 2019 OFFICE OF THE CLERK
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is E. Morales — PETITIONER  
(Your Name)

vs.

ted States of America — RESPONDENT(S)

PETITION FOR A WRIT OF MANDAMUS TO

s Court of Appeals for the Eleventh Circuit  
COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

is E. Morales # 56810-018  
(Your Name)

ed States Penitentiary Tucson, P.O.Box 24550  
(Address)

*Luiz E Morales*  
*8/13/2019*

CASE MANAGER  
AUTHORIZED BY THE ACT OF JULY 7, 1955  
AS AMENDED, TO ADMINISTER OATHS  
18 U.S.C. 4004

RECEIVED JUL - 9 2019 OFFICE OF THE CLERK SUPREME COURT, U.S.
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QUESTION(S) PRESENTED

- 1) Did the 11th Circuit Court of Appeals "create" a rebuttable presumption when they entered their ORDER concerning the instant Petitioner's request to file a second/successive §2255 Motion?
- 2) As a matter of Due Process, does a pro se prisoner have a procedural or inherent RIGHT to file a rebuttal to an inaccurate presumption made by the Court of Appeals?
- 3) Is rebutting the presumption created in an ORDER denying the Petitioner's Permission to file a Second/Successive §2255 the same as "reviewing" the same decision, when the "denial" was based upon this "rebuttable statement" made by the Court of Appeals was the reason the Petitioner was not granted said permission?
- 4) Did the Eleventh Circuit "open the proverbial door" to allow the Petitioner to answer the "rebuttable statement" concerning the date in which the newly discovered evidence was found?
- 5) Did the Clerk of Court for the 11th Circuit Obstruct Justice when it REFUSED to enter on record the Petitioner's Motion to have the USCA11 take notice of the answer to the "rebuttable fact" that the Petitioner had submitted?
- 6) Did the Clerk of Court abuse their discretion when the Clerk refused to file document as requested to the Chief Judge when the document was a complaint against the Clerk for Obstructing Justice?
- 7) Is a Mandamus to have the USCA11 take notice of their decision when the USCA itself created a rebuttable fact left to be answered, the proper vehicle under which to cause this action?

## LIST OF PARTIES

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

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

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## TABLE OF AUTHORITIES CITED

### CASES

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N/A

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N/A

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N/A

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.

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

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

☐ For cases from **state courts**:

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

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

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

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

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 7, 2019.

☐ 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: February 21, 2019, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

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



## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

- First Amendment Right to have grievances addressed by the Government;  
Right to Access to the Courts
- Obstruction of Justice-- Clerk of Court denying access to Court
- Abuse of Discretion in Obstructing Pro Se Litigant's argument on false grounds (although evidence was dated by State Court, USCA11 claims not to know when evidence was obtained).

## STATEMENT OF THE CASE

The Petitioner was convicted by a jury trial of violations of 18 U.S.C. §'s 2423, 1591 & 2. In order to "find the defendant guilty", the United States Government entered evidence (over defense objection) of an alleged prior bad act utilizing Federal Rules of Evidence Rule 413/414. The source of evidence of this alleged prior was the State of Florida. Petitioner's counsel never obtained a copy of the Court Documents related to this alleged prior. This is uncontested ineffectiveness of Counsel. Due to being a Federal Prisoner and an indigent inmate, the Petitioner sent multiples of requests to the State to obtain said documents. After multiple delays, the State Court finally provided a copy to the Petitioner after his wife paid the necessary fees with the Clerk of Court for the State. As is CLEARLY reflected by the State Court Stamp on the document, the State Clerk did NOT provide this copy until July 2018. As pro se documents are to be "liberally construed", the Petitioner believed that the Court, being staffed with highly educated members, would automatically understand that the date that the State Court Clerk "officially" marked as providing the copy to the Petitioner, would be understood to be the date of discovery. (The Petitioner did not know the written details of the copy, only that the case had been dismissed for some reason). Instead of actually reading the document, the USCA11 claimed that the Petitioner had not identified the date of discovery, and therefore was denied this argument. This is an abuse of discretion. The USCA11, in acknowledging that if it had the information of when discovery was made that the Petitioner had cause to file a Second/Successive §2255 Motion, shows that the Petitioner was clearly prejudiced by the USCA11 overlooking the

date marked by the State Court Clerk. Instead of liberal construction of the pro se complaint, the USCA11 held the pro se litigant to a much stricter scrutiny than allowed by precedent and law. This Newly Discovered Evidence clearly proves the Petitioner innocent of the charges against him. To wit, the U.S. Attorney generated over 40-50% of the testimony (transcript pages of testimony) that was used as evidence of intent against the Petitioner from this dismissed prior State Case. Absent the use of this prior, there would NOT have been enough evidence of intent, as there was no intent. The Government concedes this fact by its over-reliance upon this prior State Case. Had counsel obtained this document newly discovered by the Petitioner, counsel would have discovered, as the Petitioner did, that the State Case was dismissed for lack of evidence of the alleged crime. Had the trial Court been aware of this document and the lack of evidence, the defendant's objections to the use of this evidence would have been sustained and the evidence would have NOT been presented to the jury. Again, the U.S. Government, by their actions of relying on this evidence for 40-50% of the evidence against the Petitioner and his co-defendant, has conceded that absent this State Case, the Government would not have been able to prove intent for the underlying crimes. When the USCA11 responded to the Petitioner's application to file a Second/Successive §2255 motion that the instant Petitioner had NOT identified the date of discovery, when the actual document clearly indicated such date, the USCA11 created a rebuttable presumption. Because the Petitioner had to NOT rely on anything not already submitted, the Petitioner filed a Motion requesting the Court re-review its findings as such findings were in obvious error when relying on the actual exhibits provided. (See Appendix C). As

the attached letter from the Clerk of Court USCA11 indicates, the Clerk, not the Court, returned the Petitioner's document as unfiled. This act by the Clerk of Court USCA11 is a clear and obvious attempt by the Clerk to obstruct justice by denying the Petitioner access to the USCA11 to have his grievance redressed. A pro se prisoner has literally zero options when the Clerk of Court will not file their motion with the court in question. It is the responsibility of the USCA11 to govern the activities of their Clerks of Court. This case suggests that the USCA11 is negligent in its duties. When the Petitioner received this now 'unfiled' motion in the mail, the instant Petitioner filed a Complaint to the Chief Judge of the USCA11 concerning the actions of the Clerk. (See Appendix D). In a further act of Obstruction of Justice, the Clerk of Court USCA11, returned the "Motion to Chief Judge for review of clerk actions" was also returned unfiled by the same Clerk of Court USCA11. When the instant Petitioner has been so clearly denied access to the USCA11 by the Clerk of that Circuit, the Petitioner has zero ability to obtain any justice. This is why this case had to be filed with the SCOTUS.

## REASONS FOR GRANTING THE PETITION

The Supreme Court of the United States is the Court of Last Resort. In its Appellate Jurisdiction, its function is to prevent the lower Federal Courts from causing a manifest injustice against litigants merely because they have limited access to courts due to their status of being imprisoned, indigent, and pro se. This is an extraordinary circumstance! The USCA11 being represented by its Clerk of Court is denying access to the USCA11 through its Clerk of Court. The ONLY way an incarcerated person has to access the courts is through the Clerk of Court. Even this Esteemed Court must be accessed through its Clerk(s). (The Petitioner shudders to think what he would do if this Supreme Court Clerk of Court were to refuse to file a complaint to the Court concerning actions by the Clerk. This would be the ultimate denial of justice). When a prisoner is fighting for his life and liberty, and he is reliant upon a Clerk to stage this "fight", said Clerk(s) must be accountable. When a person is only accountable to themselves, (i.e. a grievance filed against that person must be submitted to that person to be filed), there is a major failure in the system of checks and balances. When this failure rises to Constitutional Levels, it is incumbent upon the Federal Courts to proscribe such an action. When the Federal Court which a Petitioner is being denied access to is the USCA11, the ONLY recourse the Petitioner has is to address the SCOTUS...The law is supposed to "guard" against injustices caused by its own procedures and staff. When the Clerk of Court misprisons its own errors, even when the parties file such error to the Courts, there can be no greater denial of justice. The "right to be heard" is one of the

most essential of rights. By the Clerk failing to file the Complaint of the Clerk's on actions to the Chief Judge, the Clerk itself was acting as one who obstructs justice. Imagine if the Petitioner could have avoided a trial by failing to file some document. A Clerk is required to be impartial and detached in its duties. Even if those duties might cause a reprimand of its own actions. Because this Clerk did not file the document to the Chief Judge, and the Court of Appeals has no method of remedy, such remedy must be created by the Supreme Court.

#### CONCLUSION

Wherefore, the Petitioner prays this Court GRANT this petition and ORDER the Government to Respond as to why the Clerk should be authorized to prevent a complaint of that clerk's actions from being reviewed by the Chief Judge of that court. or The Petitioner prays this Court, sua sponte, REMAND this back to the Eleventh Circuit Court of Appeals with instructions that the Clerk of that court be required to file the Complaint to the Chief Judge as is required by the First Amendment's "right" to redress grievances.

Respectfully Submitted,