19-6561

No. _____

IN THE

Supreme Court of the United States

MAURICE D. JOSEPH,
Petitioner – Appellant
v.

SECRETARY, Department of Corrections,
Attorney General, State of Florida,
Respondents – Appellees

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh
Circuit

PETITION FOR WRIT OF CERTIORARI

Maurice D. Joseph, *pro se*
1150 S.W. Allapattah Road
Indiantown, Florida 34956

Questions Presented

The Appellant alleged that defense counsel was ineffective for failing to investigate illegal acts by Detective Burkett, which violated the Appellant's 4th, 5th, 6th, and 14th Amendment of the United States Constitution, and Article I, Section 9, 12, 23 of the Florida Constitutional rights.

1. Is it unlawful for a detective to interrogate a suspect while at his house and secretly record the suspect without consent from the suspect, authorization from the courts, nor a warrant?
2. If a suspect is being interrogated while at his house and is secretly being recorded, does the 5th Amendment self-incrimination also apply to the 4th Amendment right to privacy?

THE ELEVENTH CIRCUIT COURT OF APPEALS

The Appellant, Maurice Joseph, respectfully asks that a writ of certiorari issue to review the judgment and opinion of the 11th Circuit Court of Appeals, rendered in this proceedings on July 5th, 2019.

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 as follows:

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STATUTES AND RULES

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 n/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[√] is unpublished.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 ___ 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[√] is unpublished.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 United States Court of Appeals appears at Appendix ___ to the petition and is

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[ ] is unpublished.

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

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[ ] is unpublished.

JURISDICTION

[√] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was July 5, 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: _____, 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. _____.

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. _____.

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

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The following statutory and constitutional provisions involved in this case, U.S. Constitution Amendment IV, V, VI, XIV, Fla. Stat. Chapter 934, Title III, Omnibus Crime Control and Safe Streets Act (1968), Title 18 United States Code § 2510 to 2520, 28 U.S.C. § 2254.

(a) The Supreme Court, a justice thereof, a circuit judge, or a district court shall entertain an application for an amended writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State Court only as the ground that he is in custody in violation of the Constitution or laws and treaties of the U.S.

(b)(1) An application for an amended writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that

(A) The applicant has exhausted the remedies available in the courts of the state; or

(B)(i) There is an absence of available State corrective process, or

(ii) Circumstances exist that render such process ineffective to promote the rights of the Appellant.

(2) An application for writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A state shall not be deemed to have waived the exhaustion requirement or be stopped form reliance upon the requirements unless the State, through counsel, expressly waives the agreement.

(C) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(D) An applicant for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits of the State court proceedings unless the adjudication of the claim.

(1) Resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established law, as determined by the Supreme Court of the United States; or

(2) Resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(E)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of relating the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings,

the Court shall not hold an evidentiary hearing on the claim unless the show that

(A) The claim relies on –

(i) A new rule or constitutional law, made retroactive to cases in collateral review by the Supreme Court, that was previously unavailable, or

(ii) A factual predicate that could not have been previously discovered through the exercise of due diligence

And

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for the constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense.

(F) If the applicant challenges the sufficiency of the evidence adduced as such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record in the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what had weight shall be given to the State court's factual determination.

STATEMENT OF FACTS

On September 22, 2012 witness in this case Kamiliah Williams reported allegations against the Appellant that he had been involved in consensual sex with a minor. Kamiliah Williams told police she never witnessed the act. She stated that she saw the Appellant and the victim Jazzmund Carter clothed in bed together sleep. The victim reported to officer Alicia Brooks that her and the Appellant had consensual sex. The police report was filed as a delayed report for the witness and victim said that the offense happened between the dates of 9.14.2012 and 9.16.2012. No evidence was collected. Detective Burkett received the case at a later date. He tried to get in contact with the victim in which he got no answer. On December 12, 2012 Detective Burkett went to the Appellant's house to interview him about what happened. Upon arrival at the Appellant house Detective Burkett started recording a tape recorder and concealed it on himself. He approached the front door and knocked. The appellant opened the door and Detective Burkett asked if he could speak with him about allegations filed against him. Detective Burkett asked incriminating questions based off the police report. Detective Burkett never advised the Appellant that their conversation was being recorded after the interview Detective Burkett turned the case over to the State along with the recorded statements as evidence. The Appellant was charged with lewd or lascivious battery (engage). On June 19, 2013 the Appellant counsel filed a motion to suppress (no

Miranda warnings). A hearing was held in which Detective Burkett informed the court that the Appellant was not under arrest for he had no physical evidence no eyewitness to prove Appellant did commit this act, See Appendix #7, page 5, line 15-24, page 10, line 25, page 11, line 1-13, page 12, line 22-25, and page 13, line 1-10. Nor did Appellant know he was being recorded. See Appendix #8 page 212, line 3-11. The motion was denied ruling it was not a custodial interrogation. A jury trial was held where the Appellant was found guilty and the Appellant had exhausted all his remedies in the State and federal court.

REASONS FOR GRANTING RELIEF

COMES NOW, the Appellant, informing this Honorable Court why he should be granted relief from the violations of his constitutional rights. The Appellant understands that this Court only accepts cases that can be helped around in the nation. Well, interrogations take place all over the nation. Some held at people's houses, some at precincts, some in jail, etc.

The first claim the Appellant addresses is the 4th Amendment violation by Detective Burkett. As the Appellant stated before Detective Burkett was following up on a case where a minor alleged she had consensual sex with a 22 year old. At the time of the investigation status there were no eyewitnesses to testify that they actually witnessed the sex act itself. Nor was there any physical evidence to prove the Appellant committed this crime. So Detective Burkett went to the Appellant's house to interrogate him. Before exiting his vehicle, Detective Burkett started recording a tape recorder and concealed it on himself.

Detective Burkett approached the Appellant's house and knocked on the front door and came into contact with the Appellant. He asked to speak with the Appellant, so the Appellant closed the door and they had engaged into their conversation in front of the front door (Appendix #7, page 7, line 19-25; Appendix #8, page 209, line 3-10) about the allegation in the police report.

Now this is where the Appellant's question comes in at.

1. Is it unlawful for a detective to interrogate a suspect while at his house and secretly record

the suspect without consent from the suspect, authorization from the courts, nor a warrant?

The Appellant had explained in previous motions that Detective Burkett violated the Appellant's 4th Amendment right. The Appellant explained the curtilage area because once a law enforcement officer steps within those parts of an individual's dwelling and conducts an illegal search and seizure it's a violation upon the individual's 4th Amendment rights. Stated in *Collins v. Virginia*, 138 S.Ct. 1663, 1669, 201 L.Ed.2d 9 (2018):

> "The 4th Amendment's protection of curtilage has long been black letter law. When it comes to the 4th Amendment, the home is the first among equals...to give full practical effect to that right, curtilage – the area immediately surrounding and associated with the home is considered to be part of the home itself for 4th Amendment purpose."
>
> "The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most highlighted when law enforcement officers physically intrudes on the curtilage to gather evidence, a search within

> the meaning of the 4th Amendment has occurred."

The Appellant addresses this Honorable Court stating that he understands what the Respondents were saying in the denial of his Amended Writ of Habeas Corpus. That once the Appellant came in to contact with Detective Burkett and was advised he had allegation against him, and the Appellant still proceeded in conversation with Detective Burkett. That all his rights and expectation to privacy is abolished. But, what the Appellant is saying by law Detective Burkett has the right to go to the Appellant's house, and inform him that there's a police report with allegation against him, and Detective Burkett suppose to ask consent from the Appellant to record their conversation for he has no warrant nor authorization to secretly record an individual while on their property. For the Appellant has the right to choose if he wants to be recorded or not while on his property.

In *Jones v. United States*, 362 U.S. 257, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960), it was ruled under Fed.R.Crim.P. 41(e) "property rights," quoted in *United States v. Jones*, 565 U.S. 400, 132 S.Ct. 7, 945, L.Ed.2d 911 (2012):

> "Our law holds the property of every man so sacred, that no man can set his foot upon his neighbor's close without his leave; if he does he is a trespasser, though he does no damage at all, if he will tread upon his

> neighbor's ground, he must justify it by law."

So by lawful right the Appellant should have the right to know he is being recorded while on his property. The Appellant should have the decision to decide if he wants to be recorded while on his property or law enforcement should have a warrant/authorization.

Stated in *Florida v. Jardines*, 569 U.S. 1, 133 S.Ct. 1409, 185 L.Ed.2d 495 (2013)

> "Thus, a police officer not armed with a warrant may approach a home and knock, precisely because that is no more than any private citizen might do. But, ... in hopes of discovering incriminating evidence is something else. There is no customary invitation to do that."

This is what took place in the Appellant's case. This is why the Appellant seeks relief from this Honorable Court for a violation of his 4th and 14th U.S. Constitutional Amendment rights.

As stated before the previous courts said that the Appellant had no reasonable expectation for he was talking to a detective about a case where he is a suspect, but numerous times before in *Katz v. United States*, 389 U.S. 347, 19 L.Ed.2d 576, 88 S.Ct. 507 (1967); *Berger v. New York*, 388 U.S. 41, 18 L.Ed.2d 1040, 87 S.Ct. 1873 (1967); *Alderman v. United*

States, 394 U.S. 165, 22 L.Ed.2d 176, 89 S.Ct. 961 (1969):

> "It is now beyond question that the overhearing of conversation by means of electronic surveillance invades the expectation of privacy protected by the 4th Amendment and constitutes a "seizure" within the meaning of the amendment."

To the Appellant's understanding once Detective Burkett started recording that tape recorder concealed in on himself and step foot on the Appellant's house in an attempt to get incriminating evidence it was an invasion which the Appellant clarified before in his traverse on page 26 (See Appendix #10, page 26) that that act was a "fruit of the poisonous tree," and the Appellant has been seeking relief asking the courts to grant his claim under *Mapp v. Ohio*, 367 U.S. 643, 6 L.Ed.2d 1081, 818 S.Ct. 1684, 84 ALR 2d 933.

In the U.S. District Court Middle District of Florida the Appellant 4th Amendment claims was partially denied stating it was not a violation of the Appellant's right that the Appellant had no "reasonable expectation of privacy" in the conversation itself, and that the Appellant should know when talking to an officer and you are a suspect it is not private. They had also stated the Appellant did not argue the physical intrusion only argued the privacy of the conversation itself.

Both the United States District Court, Middle District of Florida and State courts denied this ground which involved an unreasonable application of clearly established Federal law for *Williams v. Taylor*, 529 U.S. 362 (2000). In the Appellant's 3.850 the Appellant stated in this ground, he argued that Detective Burkett's act was an illegal search and seizure by "fruit of the poisonous tree," and asks for relief and the trial court never ruled on this claim. (See Appendix #6 page 9, 10, 11.) The 2nd District Court of Appeals in Florida *per curiam* affirmed the Appellant's Initial Brief. The United States District Court for the Middle District of Florida denied the 4th Amendment claim ruling it was no 'reasonable expectation of privacy.' Yet even thought this was conducted at the Appellant's house. The United States District Court for the Middle District of Florida confirmed that recording a conversation is a search, citing *Berger v. New York*, 388 U.S. 41, 51 (1967). Middle District of Florida then cites old case law that does not pertain to the Appellant's case. The cases they cited goes against recently established law pertaining to the Appellant's case. In the Appellant's motion to alter or amend, the Appellant informed the United States District Court for the Middle District of Florida that those cases did not pertain to the Appellant's case. (See Appendix #11, page 15, 16.)

First the 4th Amendment.

AMENDMENT IV

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and not warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

From the outset the Appellant claimed Detective Burkett's act was "fruit of the poisonous tree." See Appendix #10, page 26.

AMENDMENT V

> "...nor shall private property be taken for public use, without just compensation."

Detective Burkett violated the Appellant's 5th Amendment for recording the Appellant while on his property without consent, and violating due process of law.

AMENDMENT XIV

> "...nor deny to any person within its jurisdiction the equal protection of the laws."

By Detective Burkett violating the Appellant's 4th, 5th, Amendment also violated the Appellant's 14th Amendment.

Recently established law asserts:

Cited in *Grady v. North Carolina*, 135 S.Ct. 1368, 191 L.Ed.2d 459 (2015).

> "It is well settled, however, 'that the 4th Amendment extends beyond the sphere of criminal investigations.'" *Ontario v. Quon*, 560 U.S. 746, 755, 130 S.Ct. 2619, 177 L.Ed.2d 216 (2010), "and the governments purpose in collecting information does not control whether the method of collection constitutes a search."

These are recently established case laws that the Appellant meets and asks this Honorable Court to consider this case under these case laws.

In the Appellant's certificate of appealability the Appellant meets the *Slack* test. *Slack v. McDaniel*, 529 U.S. 473, 483-484 (2000), but the 11th Circuit denied the "COA" as moot.

So the Appellant asks this Honorable Court:

1. Is it unlawful for a detective to interrogate a suspect while at his house and secretly record the suspect without consent from the suspect, authorization from the courts, nor a warrant?

In the Appellant's traverse the Appellant presented a new claim under the 4th Amendment

which Detective Burkett had violated which was Title III Omnibus Crime Control and Safe Streets Act of 1968 and Title XVIII United States Code 2510-2520, Florida Statute Chapter 934 Security of Communication Act. The United States District Court for the Middle District of Florida ruled these claims procedural default. In the Appellant's motion to alter or amend the Appellant argued case law.

Martinez v. Ryan, 566 U.S. 1, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012),

> "The doctrine barring procedurally defaulted claims from being heard is not without exceptions. A prisoner may obtain federal review of a defaulted claim by showing cause for the default and prejudice from violation of federal law. See *Coleman*, 501 U.S. 111 S.Ct. 2546, 115 L.Ed.2d 640. Thus, a federal court can hear Martinez's ineffective assistance claim only if he can establish cause to excuse the procedural default."
>
> "To overcome the default, a prisoner must also demonstrate that the underlying ineffective assistance of trial counsel is a substantial one, which is to say that the prisoner must demonstrate that the claim has some merit."

Also in *Martinez v. Ryan.*

The Appellant argued Martinez, the requirements and exceptions to obtain federal review of a defaulted claim. Appendix #11, page 5, 6, 9. The United States District Court for the Middle District of Florida still denied the Appellant even though *Martinez v. Ryan* overruled *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). For this claim is a violation of federal statutes because by law the 4th Amendment require you to have to have probable cause to conduct a search and a warrant must issue, "upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized," before the interrogation Detective Burkett stated he had no probable cause nor eyewitness to prove the Appellant committed this offense. Appendix #8, page 214 and 215. Appendix #7, page 5, line 15-24, page 10, line 25, page 11, line 1-13, page 12, line 22-25, page 13, line 1-10.

United States District Court of the Middle District of Florida denied the Appellant 4th Amendment right claim by quoting Fla. Statute Chapter 934.03(2)(1).

> Fla. Stat. provides that "it is lawful under this section...for an investigate or law enforcement officer...to intercept a wire, oral, or electric communication when such person is a party to the communication...and the purpose of

> such interception is to obtain evidence of a criminal act."

Ruling Detective Burkett's actions were authorized. But still law enforcement still has to get authorization under Title XVIII United States Code 2511. See Fla. Stat. Ch. 934.09(1)(c):

> 934.09(1)(c): a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be to be too dangerous.

See *Ontario v. Quon.*

> "The 4th Amendment applies as well when the government acts in its capacity as an employee."

By that ruling the United States District Court for the Middle District of Florida goes against established case law.

See *Ontario v. Quon*, 560 U.S. 746, 755, 130 S.Ct. 2619, 177 L.Ed.2d 216 (2010).

> The 4th Amendment guarantees that privacy, dignity, and security of persons against certain arbitrary and invasive by officers of the government, without regard to whether the government actor is investigating crime or performing

> another function. *Sullivan v. Rallway Labor Executives Assn.*, 489 U.S. 602, 109 S.Ct. 1402, 103 L.Ed.2d 639 (1989).

The United States District Court for the Middle District of Florida still ruled this claim procedural default because the Appellant did not bring this claim up in State court.

The Appellant argued this claim in the United States Courts of Appeal for the 11th Circuit on his certificate of appealability which the 11th Cir. Denied the Appellant even after the Appellant show a substantial violation of his Constitutional rights. By denying the Appellant "COA was a violation of the Appellant's 5th and 14th Amendment 'due process' of law. For the Appellant meets the criteria in *Slack v. McDaniel* meets the Appellant's *Slack* test." See *Slack v. McDaniel* (2003).

Since the Appellant's 3.850 courts been denying the Appellant 5th ground claim of self-incrimination ruling you have to be in custody for Miranda warning purposes. The Appellant has been arguing self-incrimination under privacy rights, (Appendix #9, page 13) it was suppose to say 5th Amendment of the United States Constitution but a typing error brought out Article 5 of United States Constitution but Appellant asserted by an unreasonable search and seizure "fruit of the poisonous tree" by obtaining the defendant's statements without authorization from Defendant nor probable cause or warrant to record these statements

at the Applicant's house without just compensation violation of Article 5 of the United States Constitution and Article I Section 9 and 23 of the Florida Constitution." Yet, the Appellant was denied for he was not in custody. The 2nd District of Appeals per curiam affirmed the Appellant initial brief, and the United States District Court for the Middle District of Florida also denied the Appellant self-incrimination claim ruling the Appellant was not in custody. In the denial of the Appellant's amended writ for habeas corpus, it was stated in a footnote on Appendix #4, page 12, that "Joseph may argue that counsel should have more expressly framed the Fifth Amendment question as one involving hearsay," which the Appellant have been explaining.

The Appellant understand the court viewpoint on why they denied this claim, but a person should have the right to know he is being recorded for self-incrimination purposes while at his house even though he is not under arrest. For if a person have the right to privacy at his house he should have the right to be advise everything he say will be used against him in a court of law. Law enforcement officer question people all the time and in *Yarborough v. Alvarado*, 541 U.S. 652, 158 L.Ed.2d 938, 124 S.Ct. 2140 (2003), in that case Yarborough was a person of interest who knew about a murder, Yarborough was questioned at a police situation he was not a suspect and during the interrogation his statements were being recorded with his knowledge of it. Yet, in the Appellant's case a detective from Tampa Police Department shows up unannounced at

the Appellant's door with a recording hidden tape recorder, so every word is being recorded between the Appellant Detective Burkett. The Appellant's view this as a 4th Amendment violation so the Appellant asks this Court:

2. If a suspect is being interrogated while at his house and is secretly being recorded, does the 5th Amendment self-incrimination also apply to the 4th Amendment right to privacy?

Under these circumstances the Appellant asserts that his 14th Amendment due process right has been violated due to these previous court's misinterpreting the law.

The Appellant asserts under these circumstances that his 14th Amendment due process right of the United States Constitution has been violated due to the 11th Circuit Court of Appeals denying the Appellant's Certificate of Appealability. For the Appellant meets *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983); and their ruling was an unreasonable determination of the facts. *Miller El v. Corkrell*, 537 U.S. 322, 338 (2003); *Miller El v. Dretke*, 525 U.S. 251 (2005); and *Slack v. McDaniel*, 529 U.S. 473, 483-484 (2000). The Appellant states the court's ruling was an unreasonable application of clearly established law. *Williams v. Taylor*, 529 U.S. 362 (2000). Also an unreasonable application of *Strickland*. The Appellant met and explained the 2 prongs of *Strickland* that consist of an ineffective assistance of counsel claim. The motion after the proper investigation the Appellant's counsel could

have filed was a motion to suppress an unlawful search and seizure pursuant to Fla.R.Crim.P. 3.190(g). See Appendix #11, page 18 and 19, and Appendix #10, page 41, 42, and 45.

The Appellant seeks relief from the violation of his Constitutional rights and asks this Court to accept all the Appellant's procedural default claims due to *Martinez v. Ryan*, 566 U.S. 1, 132 S.Ct. 1309 (2012). Had the Appellant's assistance counsel would have filed a motion to suppress an unlawful search and seizure pursuant to Fla.R.Crim.P. 3.190(g), the Appellant would have never got convicted for this was a violation of the Appellant's 4th Amendment right of the U.S. Constitution. Indeed, these statements were harmful upon the Appellant for it brought him a guilty verdict from the jury. Previous courts confirm due to these statements the Appellant got convicted. See Appendix #6, page 5, 7, and 9.

The writ must issue and relief is required.

Respectfully submitted,

/s/ Maurice Joseph

Maurice Joseph T66156

Date: October 31, 2019