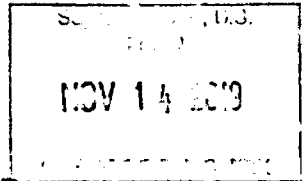


No. 19-6854

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



In Re, Alexander Palomarez — PETITIONER
(Your Name)

vs.

Darin Young, (Warden) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

No Court has ever ruled on merits (Procedural Default)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI Habeas Corpus

Alexander Palomarez
(Your Name)

P.O. Box 5911
(Address)

Sioux Falls, South Dakota 57117-5911
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Can the "Prison Mailbox Rule" announced in *Houston v. Lack*, 487 U.S. 266, 101 L. Ed. 2d 245, 108 S. Ct. 2379 (1988), be applied to this case to excuse his Procedural Default?
2. Whether the South Dakota Supreme Court erred when it rejected Mr. Palomarez's motion for a Certificate of Probable Cause?
3. Whether the officers used coercive tactics and took unlawful advantage of my intoxication to obtain an invalid waiver of my Miranda Rights?

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.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	
<i>Howston v. Lack</i> , 487 U.S. 266 (1988)	
<i>R.J. v. Innis</i> , 446 U.S. 291	
<i>Missouri v. Seibert</i> , 542 U.S. 600	
<i>Michigan v. Mosley</i> , 423 U.S. 96	
<i>Moran v. Burbine</i> , 475 U.S. 412	
<i>Dickerson v. United States</i> , 530 U.S. 428	
<i>Stansbury v. Cal.</i> 511 U.S. 318	

STATUTES AND RULES 18 U.S.C. sec. 3501

U.S. Const. Amendment Amend. 5
U.S. Const. Amendment 6
U.S. Const. Amendment 14
F.R.A.P. 4(c), and Supreme Court Rule 29.2

OTHER "Prison Mailbox Rule"
"Miranda Rule"
"Jackson-Denno hearing"

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 _____ to the petition and is

- ☐ reported at See: Attach; 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 See: Attach; 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 See: Attach; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the See: Attach 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 21st 2017 No. 16-7441

☒ 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. ____ 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 Dec 29th 2014
A copy of that decision appears at Appendix _____.
State v. Palomarez, 857 N.W.2d 614

☐ 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 PROVISION

The fifth Amendment to the United States Constitution provides, in part, that the accused in a criminal proceeding may not be compelled to be a witness against himself. This provision is applicable to state criminal prosecutions through the Due Process Clause of the fourteenth Amendment.

Pursuant to 28 U.S.C. 1746, I Alexander Palomarez, declare under penalty of perjury that the following is true and correct.

According to the State, on December 29th, 2014, I filed an untimely request for discretionary appeal with the South Dakota Supreme Court. On December 31st, 2014, the South Dakota Supreme Court issued an Order dismissing my motion because it was untimely.

However, as you can see from the enclosed affidavit of service. This motion was delivered to prison authorities for mailing well within the limitations period.

In *Houston v. Lack*, 487 U.S. 266 (1988), the United States Supreme Court articulated the "prison mailbox rule", holding that a pro se prisoner's legal papers are deemed filed upon "delivery to prison authorities, not receipt by the clerk."

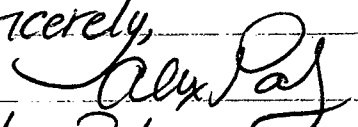
Timely filing may be shown by a declaration in compliance with 28 U.S.C. 1746 or by a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.

See: Affidavit of Service, this notarized document clearly shows that it was delivered to prison authorities for mailing on December 10th, 2014, first-class mail, postage has been prepaid.

In closing, the South Dakota Supreme Court erred in dismissing my motion as untimely. Had this not occurred, I would have never been procedurally defaulted. My entire appeal process might have been different, and I may have been able to present my claim of actual innocence.

WHEREFORE, I pray that this Court exercises its jurisdiction, and allows me a reasonable opportunity to present my claims.

Respectfully Submitted this 1st day of August, 2019

Sincerely,

Alexander Palomarez

The issue raised is fundamental to attaining the first stated purpose for ordaining the Constitution of the United States:

To Establish Justice. It is essential that accused persons be allowed an ample opportunity to defend, else the very purpose and essence of the Constitution is defeated.

The lower courts now routinely engage in the practice of refusing to allow the accused to address the courts by themselves for any reason or for any purpose. The lower courts have abrogated the right of the accused to be heard in defense of the allegations against them or to lawfully attempt to enforce any rights or present any grievance, evidence, or objection, which deprives all proceedings of fundamental fairness.

This violates the "Law of the Land" and renders Obtaining Justice impossible. The issue is the courts depriving accused persons of due process of law. The practice renders the Judicial System to be nothing but a mockery of Justice by converting the courts of the United States into the "fit and fitting Instrument for subjecting the People under Absolute Despotism."

It is such an affront to the Principles of Justice and this nation as to be utterly

intolerable. This Court has the duty to exercise the judicial power of the United States to require the lower courts to comply with the established practice and the law.

The peremptory writ of mandamus has traditionally been used to confine an inferior court to a lawful exercise of its prescribed jurisdiction... *Witt v. United States*, 389 U.S. 90, 95, 108, 88 S.Ct. 269, 19 L.Ed. 2d 305 (1967). [it] "may be used to review an interlocutory order."

Cooper & Lybrand v. Livezey, 437 U.S. 463, 466, n.6, 98 S.Ct. 2454, 57 L.Ed. 2d 351 (1978).

"[E]xceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy... [T]he issuance of the writ of mandamus is proper where a court finds exceptional circumstances to support such an order." *Witt v. United States*, 389 U.S. 90, 95, 108, 88 S.Ct. 269, 19 L.Ed. 2d 305 (1967).

"In this case, the right sought to be enforced is 'fundamental to the further conduct of the case.'"

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Alex P. [Signature]

Date: 1st day of August, 2019