

No. 19-7043

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN A. TOTAH, - PETITIONER, v

VS.

MARK S. INCH, SEC'Y. FLA. DEPT. OF
CORRECTIONS, ET AL. -
RESPONDENT.

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

REPLY IN OPPOSITION

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**PETITIONER'S
QUESTION(S) PRESENTED**

Issue #1: Whether police custodial interrogation on less than probable cause for arrest held violative of 18 U.S.C. §§ 241-242 and Petitioner's 4th Amendment rights, are directly linked to improper police conduct; and evidence obtained as a result to be held as insufficiently attenuated as to permit use of the evidence to substantiate Petitioner's conviction?

Issue #2: Whether the cumulative 14th Amendment Due Process rights violations culminated in 18 U.S.C. §§ 241-242 by all State Agents and Actors involved in Petitioner's case via 18 U.S.C. § 1505, 18 U.S.C. § 1512, and the Cause and Prejudice Rule; contributing to Petitioner entering a negotiated plea unknowingly and unintelligently?

Issue #3: Whether the U.S. District Courts foreclosing the office of 28 U.S.C. § 2254 by design with incomplete and unofficial documents and records violative of 18 U.S.C. § 1505, and Petitioner's 14th Amendment rights; to conceal and perpetuate the misdeeds of State Agents and Actors acting under color of law 18 U.S.C. § 242.

Issue #4: Whether the 11th Circuit Court of Appeals' denial of counsel was violative of the Petitioner's 6th Amendment right to Counsel, to equitably and effectively address the questions granted to be heard by the 11th Circuit, as well as the Constitutional and Procedural Due Process Violations & Merits observed by Judge Martin within Petitioner's case?

**RESPONDENT'S
QUESTIONS PRESENTED**

I. Whether—assuming Petitioner did not abandon the issue by failing to properly litigate it in the court of appeals—the district court erred in taking judicial notice of certain state-court electronic dockets and records that established that Petitioner's 28 U.S.C. § 2254 petition was time-barred, without reviewing the complete, official state-court record.

II. Whether the Eleventh Circuit violated Petitioner's right to counsel under the Sixth Amendment when it declined to appoint an attorney to represent him on appeal from the denial of his § 2254 petition.

III. Whether the district court erred in finding that Petitioner had not shown that the state courts unreasonably applied clearly established federal law when they rejected his Fourth, Sixth, and Fourteenth Amendment claims.

TABLE OF CONTENTS

QUESTIONS PRESENTED BY PETITIONER	i
QUESTIONS PRESENTED BY RESPONDENT	ii
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
REPLY TO STATE'S INTERPRETATION OF QUESTIONS PRESENTED	2
REPLY TO RESPONSE INTRODUCTION	4
REPLY TO RESPONSE STATEMENT OF THE CASE	5
REPLY TO RESPONSE REASONS FOR DENYING PETITIONS	9
REPLY TO RESPONSE "NO SPLIT AUTHORITY"	12
REPLY TO RESPONSE "JUDICIAL NOTICE OF CERTAIN STATE RECORDS"	12
UNADDRESSED RESPONSE ISSUES / CONCLUSION	13
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

Page No.

<u>Anadeo v. Zant</u> , 486 U.S. 152 (1988)	6
<u>Baldwin v. Jones</u> , 1995 U.S. Dist. LEXIS 6100 (11 th Cir.)	6, 8
<u>Barefoot v. Estelle</u> , 463 U.S. 880 (1983)	1
<u>Bounds v. Smith</u> , 430 U.S. 817 (1977)	18, 9
<u>Bousley v. United States</u> , 523 U.S. 614 (1998)	2
<u>Brown v. Illinois</u> , 422 U.S. 510 (1975)	3, 6
<u>Bumper v. North Carolina</u> , 391 U.S. 543 (1968)	4
<u>Caldwell v. Mississippi</u> , 472 U.S. 320 (1985)	2
<u>Coleman v. Thompson</u> , 501 U.S. 722 (1991)	8
<u>Donaway v. New York</u> , 442 U.S. 200 (1979)	6
<u>Duncan v. Walker</u> , 533 U.S. 167 (2001)	10
<u>Engle v. Isaac</u> , 456 U.S. 107 (1982)	10
<u>Gates v. Crowe</u> , 2019 U.S. Dist. LEXIS 3504 (2019)	4
<u>Griffin v. Illinois</u> , 351 U.S. 12 (1956)	6
<u>Harvey v. Prosser</u> , 462 U.S. 302 (1983)	9
<u>Harris v. Reed</u> , 489 U.S. 255 (1989)	9
<u>Holland v. Florida</u> , 560 U.S. 631 (2010)	1, 8
<u>Jackson v. Mosley</u> , 1999 U.S. Dist. LEXIS 11730 (11 th Cir.)	12, 9
<u>Johnson v. Nagle</u> , 58 F. Supp. 2d 1303 (1999)	8, 10
<u>Jones v. United States</u> , 153 F.3d 1305 (11 th Cir. 1998)	2
<u>Lewis v. Oubre</u> , 2010 U.S. Dist. LEXIS 144995 (11 th Cir.)	10
<u>Michigan v. Long</u> , 463 U.S. 1032 (1983)	2
<u>Middleton v. Culliver</u> , 2011 U.S. Dist. LEXIS 17290 (11 th Cir.)	1, 8
<u>Miller-El v. Cockrell</u> , 537 U.S. 322 (2003)	1
<u>Evans v. United States</u> , 353 U.S. 53 (1957)	12, 13
<u>Schlup v. Delo</u> , 513 U.S. 298 (1995)	3, 11, 12
<u>Slack v. McDaniel</u> , 529 U.S. 573 (2000)	1, 4
<u>Spencer v. United States</u> , 773 F.3d. 1132 (11 th Cir. 2014)	11
<u>Spinelli v. United States</u> , 393 U.S. 410 (1969)	3, 6
<u>Trevano v. State</u> , 194 So. 2d 250 (Fla 1967)	13

TABLE OF AUTHORITIES (CONT'D.)

Page No.

<u>United States v. Brady</u> , 456 U.S. 152 (1982)	. 8
<u>United States v. Patino</u> , 830 F.3d 1413 (7 th Cir. 1987)	. 6
<u>Utah v. Strief</u> , — U.S. —, 136 S.Ct. 2086 (2016)	. 6
<u>Wainwright v. Sykes</u> , 433 U.S. 72 (1977)	. 9, 10
<u>Wilson v. Sellers</u> , — U.S. —, 138 S.Ct. 1188 (2018)	. 13
<u>Zacchini v. Scripps-Howard Broadcasting Co.</u> , 433 U.S. 562 (1977)	. 2

STATUTES

28 U.S.C. § 2244(d)	. 1
28 U.S.C. § 2244(d)(1)(B)	. 1, 8
28 U.S.C. § 2244(d)(1)(D)	. 2, 3, 4, 7, 9, 11

I. INTRODUCTION

The State Solicitor General ("StateSG") Brief in Opposition is primarily on the timeliness of the Petitioner's 28 U.S.C. § 2254 Petition. The State has now waived their right to oral and written argument regarding the Petitioner's constitutional deprivation claims related to the Petitioner's Questions Presented and 18 U.S.C. § 241, § 242, § 1505, and § 1512. These violations by State of Florida Agents and Actors being violations of clearly established State and Federal Constitutions and Laws.

The StateSG has also waived argument on the factual Claims of Equitable Tolling and Cause and Prejudice Standard. Mr. Totu was denied "meaningful access" to the courts by Florida State Prison Administration for more than one year after his initial incarceration. Florida Administrative Code, Chapter 33-501.301(B) - Inmate Legal Deadlines, denies ~~inmates~~ access to the prison's main compound Law Library from a Work Camp unless the legal deadline is in its last twenty (20) days of the deadline date. Bounds v. Smith, 430 U.S. 817 (1977) and § 2244(d)(1)(B) support legal assertions of Equitable Tolling and Cause and Prejudice Standard. See also, Holland v. Florida, 560 U.S. 631, 130 S. Ct. 2549, 2562, 2564 (2010). (Consideration of § 2244(d) is subject to Equitable Tolling in appropriate cases and this Court held that the 11th Circuit Standard is too rigid).

Mr. Totu, then, can assert that the Statute of limitations began when he discovered the constitutional violations in his case in June 2015 (§ 2244(d)(1)(D) - Appendix-L, CSI Report, pp. 94-98). See also, Jackson v. Mosley, 1999 U.S. Dist. LEXIS 11730 (11th Cir.); and Middleton v. Polliver, 2011 U.S. Dist. LEXIS 17290 (11th Cir.) (actual innocence, and exculpatory scientific evidence; inadmissible non-eyewitness hearsay; unreasonable application of clearly established federal law).

The Petitioner has relied on Slack v. McDaniel, 529 U.S. 473, 484 (2000); Miller-El v. Cockrell, 537 U.S. 322, 338 (2003); and Barefoot v. Estelle, 463 U.S. 880, 884 n.4 (1983) to advance his § 2254 Petition for appellate review to overcome both State and federal procedural bars.

Police were not authorized to detain the Petitioner State constitutional

law (Article I, §12) and construed federal constitutional considerations to construe their (Shenff) own law in the manner they did (Issue #1, Petition for Writ of Certiorari) (Zacchini v. Scripps Howard Broadcasting Co., 433 U.S. 562, 568 (1977)).

Additionally, it would be prejudicial and a miscarriage of justice to the Petitioner to procedurally bar him. On the face of the record and by testimony of the State Attorney General's Office (Appendix-D - Attorney General Response, p. 23), states that Mr. Toth's plea bargain and subsequent acceptance of a guilty plea resulted from a concealed Fourth Amendment violation. The cause and prejudice that resulted from a violation of State and Federal Law, was not attributed to an independent State procedural default or adequate and independent State ground. Jackson v. Mosley, *supra*; Michigan v. Long, 463 U.S. 1032, 1044 (1983); Caldwell v. Mississippi, 472 U.S. 320, 327 (1985) (The mere existence of a basis for state procedural bar does not deprive this Court of jurisdiction)

~~With~~ the Petitioner showing through clear and convincing evidence (Appendices; court record) that the actual and known identity of the non-witness hearsay declarant (Mary Fryer) that was concealed by Police and Prosecution, would make Mr. Toth's confession and any evidence against him inadmissible, an Actual Innocence claim would then be viable to supportively address the timeliness issue under 28 U.S.C. § 2244(d)(1)(B). Jones v. United States, 153 F.3d. 1305 (11th Cir.); Bousley v. United States, 523 U.S. 614, 624 (1998)

See; Petition for Writ of Certiorari, Case No. 19-7709, p. 16, Item #42; and, Appendix-D, Pegge Fowler Deposition, pp. 106-107, lines 18-25.

II. REPLY TO STATES INTERPRETATION OF QUESTIONS PRESENTED

The Petitioner has provided a copy of the Petition original questions and a copy of the Respondents Interpretation of those questions. Mr. Toth has cited four (4) specific questions uniquely tailored to address and communicate the issues of the violations of

clearly established federal constitutional and statutory law first addressed and preserved for appellate review in the original 28 U.S.C. § 2254 Petition. Mr. Toth has not strayed in his assertions. What has changed is that Mr. Toth has been able to reveal the identity of the hearsay source that instigated police to commit a Fourth and Fifth Constitutional Amendment violation under Brown v. Illinois, 422 U.S. 510, 603-605 (1975) and, Spivey v. United States, 393 U.S. 410, 412-419 (1969), and preserving the timeliness issue under § 2244(d)(1)(b).

The Respondent's Questions are subjective interpretations and opinions that do not get down to the issues the Petitioner presented in this Petition and the original § 2254:

Respondent Question - I, appears to relate to Petitioner's Question #3, but the key here: "certain state-court... records."

Respondent Question - II, is obviously straightforward and almost matches the Petitioner's Question #4. It is obvious that Mr. Toth cannot be appointed counsel unless an evidentiary hearing is necessary; the Respondent does not have to mislead the Court on this question.

Respondent Question - III, which seeks to combine the Petitioner's Questions #1 and #2, appear to attempt to mislead this Court. Petitioner's Questions #1 and #2 are two totally different issues and occurrences / transactions and get to the heart of the constitutionality of Mr. Toth's conviction.

Fundamental miscarriage of justice must show a constitutional violation resulted in the conviction of an actually innocent, or, there is evidence that would lead the court to believe the petitioner was wrongly convicted of these crimes. Schlup v. Delo, 513 U.S. 298 (1995)

The Respondent's sole argument is to focus this Court's attention on the timeliness issue, which has changed with the revealing of a prejudicial witness, and to deflect attention to an unconstitutional conviction.

III. REPLY TO STATE RESPONSE INTRODUCTION

Immediately, in the first sentence, the StateS₆ seeks to persuade this Court from its primary purpose and from reviewing the constitutional violations of the Petitioner's case. (Bumper v. North Carolina, 391 U.S. 543, 550, 552 (1968)).

The Respondent attempts to lay the foundation for two (not three) reasons to deny Mr. Toth's petition: (1) timeliness; and, (2) Judicial notice of electronic state-court records. The StateS₆ waives argument on the specific Federal constitutional and statutory violations cited by the Petitioner, or rebut/deny the validity of their own office admitting constitutional violations on the face of the record in Appendix-E, p. 23, lines 10-12.

Mr. Toth was able to overcome the timeliness reason (Respondent Reasons First and Third) via Slack v. McDaniel, 529 U.S. 473, 484 (2000). In the 11th Circuit Court of Appeals, Judge Martin granted Certificate of Appealability ("COA") (Appendix-D, p. 18) "we have not addressed the depth of the record they (U.S. District Court) must develop before doing so (dismissing a time-barred § 2254 petition) particularly before the State has appeared in the case."

When the office the Respondent is employed by gave answer to Mr. Toth's 11th Circuit Brief (Appendix-E, p. 23, lines 10-12), they admitted "colorable claims" of 4th and 5th Amendment violations on the face of the record. The Petitioner entered into a plea agreement unknowingly and unintelligently and Equitable Tolling and the Cause and Prejudice Standard (§ 2244(d)(1)(D)) allowed Mr. Toth to be timely in his § 2254 petition until he discovered the error. Gates v. Crowe, 2019 U.S. Dist. LEXIS 3504 (2019) (reasonable jurists would find claims were not procedurally defaulted; or, that petitioner stated a substantial denial of a constitutional right.)

The Respondent's second reason of allowing judicial notice of electronic state-court documents criticizes Judge Martin's intellect and integrity while condoning prejudicial review by the Courts. "Picking and choosing" "select records" violates the

fundamental fairness of our judicial system. Especially, the rights of a pro se litigant, such as the petitioner, under the 6th and 14th Amendments to be informed and equal protection of the laws. It is obvious that the U.S. District Court had no intention to review the unconstitutional acts of State Agents and Actors. The Respondent's use of Paez, (2020), then is moot and of no relevance without a Supreme Court precedent.

Additionally, the Respondent's side-bar on the appointment of counsel issue overlooks Rules Governing §2254 cases in U.S. District Courts, Rule 8(c).

IV. REPLY TO RESPONSE STATEMENT OF THE CASE

Reply to: (1) The Respondent embarks on incorrectly judicially notating the court records of police reports and depositions. Mr. Tott has painstakingly been consistent in the true facts of the case, even to the point of providing the transcripts of his own unlawfully obtained confession that police procured.

Moreover, the State's contradicts what has already been admitted by their office. (Appendix-E, p. 23, lines 10-12). See also; original §2254 Petition (Appendix-H, pp. 55-58); 11th Circuit Brief, case no. 18-11087-BD, pp. 13-29; 42 USC, §1983 Complaint (case no. 19-7709, pp. 14-18), and this Petition, pp. 4-10.

Appendix-O, Peggy Fowler Deposition, p. 104, lines 18-25, tells the truth. Ms. Fowler ("Peggy") was not an eye-witness, was asleep at another location than the fire, and police spoke to her cousin, Mary Friery, who also was not an eye-witness. It was Ms. Friery's testimony and identity, that was concealed by police, but instigated officers (Sheriff deputies) to commit a Fourth Amendment seizure upon Mr. Tott. Police had to get information (telephone number) to contact Mr. Tott, and according to Ms. Fowler who was sleeping; in her deposition, police spoke to her cousin. (See; page 3, lines 10-11, State Brief in Opposition).

The Petitioner asserts here the significance of this Petitioner's Questions #1-#3 and the rulings of this Court that set precedence in this case: Brown v. Illinois, 422 U.S. 570, 603-605 (1975); Smellie v. United States, 393 U.S. 410, 412-419 (1969); Utah v. Strief, - U.S. -, 136 S.Ct. 2056 (2016); United States v. Fatico, 830 F.2d 1413, 1419 (2nd Cir. 1987); and, Dunaway v. New York, 442 U.S. 200 (1979). In Mr. Totus's case, it was prejudicial hearsay by an unidentified informant, unknown to, ~~un~~ documented via affidavit, that instigated police to commit a Fourth Amendment seizure without probable cause or a valid search warrant.

The Attenuation Doctrine is inapplicable, as the issuance of Miranda Rights given and understood is not conclusive of a finding of "voluntariness", which, for the 5th Amendment is the threshold requirement for 4th Amendment analysis. Other factors to consider are: temporal proximity of the seizure confession; presence of intervening circumstances; and particularly, the purpose and flagrancy of police conduct.

The State Solicitor General not only contradicts the findings of his own office (Attorney General), but clearly undermines his own and the U.S. District Court's arguments on justifying "judicial notice of state-court records." This assessment is purely prejudicial, as demonstrated by the Petitioner's case.

Reply to (2) - To appropriately rebut this segment of this Brief in Opposition the Petitioner reiterates the applications of Equitable Tolling and Cause and Prejudice Standard. The Petitioner requested that the federal courts acknowledge these within the original 32254 Petition (Appendix-H, pp 68-69, Item #12). The Petitioner has provided the State Court Docket History Report (Appendix-P, pp 108-118, docket entries #152, #159, #162, #179, #186, #224, and #230) to demonstrate the State Court propensity to deny due process rights. Griffin v. Illinois, 351 U.S. 12 (1956) (right to have government supply documents and records); Acadeo v. Zart, 486 U.S. 152, 170 (1988), and, Baldwin v. Jones, 1995 U.S.

Dist. Lexis 6100 (11th Cir.) (Procedural Default Rule cannot bar habeas corpus review where default is attributable to some interference by state officials rather than tactical considerations)

Reply to (3)(a) - In this section we see the Respondent's critical analysis and belittling in relation to Mr. Toth's lack of knowledge and experience in law. However, the Petitioner followed the instructions of the Petition, cited the Constitutional Deprivations preserved in the State Courts, and relied heavily on the Federal District Court to protect his U.S. Constitutional Rights as a U.S. Citizen.

Mr. Toth had even gone to painstaking lengths to provide record and specificity of reference to that record; to assist the U.S. District Court in their assessment. Without being allowed to enjoy even an evidentiary hearing in a state court forum, especially to argue the forensics (CSI) and Kire Marshal being missing from the file; as well as Sworn Affidavit of Hearsay Declarant, Search Warrant and identity of the Hearsay Declarant, that remain missing from all records to justify police conduct; the Petitioner had anticipated the federal courts to assess the integrity of state courts. Mr. Toth trusted the Federal Courts to protect the tenets of the United States.

Reply to (3)(b) - Here, we review the issue of judicial notice of "online state court criminal docket" and "certain documents" located therein. Petitioner's Questions #2 and #3 became valid, as the U.S. District Court take the "certain documents" literally and reveals prejudicial review regarding the Fourth Amendment illegal seizure without a warrant or questioning how police arrived at contacting Petitioner in the first place. According to Ms. Fowler ("Peggy") (Appendix D, p. 107, lines 18-25) she was sleeping until 3 hours after Mr. Toth was accosted by the Sheriff's deputies. Deputies spoke to Mary Friery, "Peggy's" cousin (Hearsay declarant) and concealed her identity as a witness.

Therefore, § 2244(d)(1)(b) and one of the prejudicial "certain documents"

Judicial review by the U.S. District Court. Mr. Toth was also prejudiced, as noted in the Introduction of this Reply, when he was denied "meaningful access" to the prison Law Library while being housed at Madison C.T. - Work Camp (Bonds v. Smith, *supra*) (32244(d)(1)(b)). As explained and expressed above, Mr. Toth relied on the U.S. District Courts astuteness to assist him in resolving the deprivations of his constitutional rights. Middleton v. Culliver, *supra*; Holland v. Florida, *supra*. Accordingly, United States v. Brady, 456 U.S. 152, 170 (1982), and Baldwin v. Jones, *supra*, support that the errors of court created prejudice and that they worked to the Petitioner's disadvantage, infecting his court proceedings with error of constitutional dimensions. This "error" was purposely overlooked by the U.S. District court by reviewing "certain documents".

Reply to (3)(c) - With the District Judge supporting the Magistrate's Report and Recommendation ("R&R") and disregarding the constitutional merits via judicial notice of "certain documents", an indication to cause prejudice to inflict a miscarriage of justice exists. Johnson v. Nagle, 58 F. Supp. 2d 1303, 1328 (1999).

Reply to (4)(a) - The Petitioner was granted COA and addressed the timeliness related one of the 11th Circuits Questions in Issue #1, 11th Circuit Initial Brief, case no. 18-11087-BB, pp. 8-12. Coleman v. Thompson, 501 U.S. 722 (1991) states, that where a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review is barred unless the petitioner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice. This was demonstrated by the 11th Circuit Initial Brief Issues Two through Six and verified by the Attorney General's Office in Appendix - E, p. 23, lines 10-12, of Constitutional violations.

Reply to (4)(b) - The Respondents use of Pennsylvania is inappropriate which addresses appointment of counsel after direct appellate review. Mr. Toth specified conflicting testimony and forensics in his § 2254

Petition and warranted appointment of counsel according to § 3006A and Rules governing § 2254 cases, Rule 8(c). (*Griffin v. Portwood*, 506 F.3d 105 (2d Cir. 2007))

Reply to (4)(c) - The Petitioner did not specifically state that the U.S. District Court failed to "judicially notice" official and complete court record, but argued the causes and prejudices ~~and~~ how ~~their~~ affecting Equitable Tolling in the case and § 2244(d)(1)(D). Overall, Mr. Tott did not know how the 11th Circuit expected him to present the issues other than through the merits of why he was time-barred.

Reply to (4)(d) - As stated above in (4)(c), Mr. Tott did not know how else to present the arguments, let alone know that the two issues presented by the 11th Circuit, were the only issues he could argue.

V. IN REPLY TO REASONS FOR DENYING THE PETITION

In Reply to (I) - The Petitioner objects ~~and~~ rejects ~~the~~ the State's opening argument. It is the purpose of this Court to review cases such as the Petitioners where the tenets of the U.S. Constitution have been neglected by State officials acting under color of law (18 U.S.C. § 242), *Harris v. Reed*, 489 U.S. 255, 263 (1989); *Jackson v. Mosley*, supra, (A procedural default does not bar consideration).

In Reply to I(A)(1) - The Petitioner has continually attempted to demonstrate how he has overcome the timebar issue. (*Wainwright v. Sykes*, 433 U.S. 72, 84, 90-91 (1977) (Applying the Cause and Prejudice Standard to constitutional claims). These constitutional claims challenge the very power of the State of Florida to bring the Petitioner into Court to answer the charges against him. (*Haring v. Prose*, 462 U.S. 302, 320-322 (1983)). The Petitioner was additionally prejudiced by being denied "meaningful access" to the Prison Law Library after he immediately was incarcerated in prison (*Florida Administration Code*, chapter 33-501.301(5)) (*Bounds v. Smith*, supra);

The Respondent inappropriately applies Huarez-Sanchez and Taylor. Mr. Tott's claims have not changed since first preserved in the State trial court.

In Reply to I(A)(2) - The Respondent's argument on this point is moot, as Petitioner was granted COA, and Mr. Toth's assertion, though conclusory, of "Equitable Tolling and 28 U.S.C. § 2254(d)(1)(b)" lent latitude to the U.S. District Court's denial of the § 2254 Petition. Cause and Prejudice prevented the Petitioner to be timely by the AEDPA Standard. Engle v. Isaac, 456 U.S. 107, 135 (1982); Lewis v. Oubre, 2010 U.S. Dist. 144995 (11th Cir. 2010) (demonstrating Cause and Prejudice and Equitable Tolling).

In Reply to I(B) - The Petitioner has disputed that his § 2254 Petition was time-barred and disagrees with the Respondent's averments on this issue. Mr. Toth has specifically and painstakingly made the federal courts aware, with exhibits and step-by-step dissection of court records, of the discrepancies that his trained lawyer failed to observe. Mr. Toth being granted COA demonstrates the questionable judgment of the U.S. District Court. See also; Wainwright v. Sykes, *supra*; and, Johnson v. Nagle, *supra*.

On page 15 of the Brief in opposition the Respondent closes this section with unsubstantiated opinion without citing any United States Supreme Court precedent.

In Reply to I(C) - The Petitioner asserts that he would be entitled to counsel under Rules Governing § 2254 cases in the United States District Court if an evidentiary hearing is required. (Rule 8(c)). Judge Martin "judicially noticed" the complexities of Mr. Toth's case, and evidentiary hearing was required (Appendix-C, 11th Cir. Denial, pp. 10-12). Mr. Toth had demonstrated his being unfamiliar with Appellate Rules of Court as well as dealing with the complexities of law. Duncan v. Walker, 533 U.S. 167, 184 n.2 (2001).

In Reply to I(D) - The Petitioner adamantly opposes the Respondent's assertion that Mr. Toth's constitutional claims are not properly before this Court. It is the sole purpose of this Court to resolve issues of constitutional dimensions against U.S. Citizens.

Spencer v. United States, 773 F.3d 1132, 1138 (11th Cir. 2014) ("[A] Certificate of Appealability, whether issued by this Court or a district court, must specify what issue jurists of reason would find debatable. Even when a prisoner seeks to appeal a procedural error, the certificate must specify the underlying constitutional issue.") The Respondents completely avoid, thus waiving argument via affirmation, Appendix-E, States Response to Initial Brief, p. 23, line 10-12, where the Office of the Attorney General admits that Mr. Toth had "colorable claims" of grounds 1 and 2 of the §2254 petition, prior to accepting a plea. The Petitioner entered into that plea unknowingly and unintelligently, and the Petitioner's AEDPA time was tolled until the discovery of that claim (§2244(d)(1)(B)).

The Respondents improperly apply Yarlin and NCAA. Yarlin's citing is absent the end key phrase of "...but such rule is not inflexible." Likewise with NCAA, as it is addressing that the Court will not hear two alternative theories not preserved in the lower courts, or review fact findings on any alternative theory urged by the individual.

Mr. Toth has argued same constitutional deprivation issues (4th, 5th, 6th, 14th Amendments) and looks to this Court to apply the proper legal principles that resolve them. There are many principles and complex legal issues related to the facts of Mr. Toth's case, especially without evidentiary record. This Court, though, in not considering the evidence Petitioner has presented of court record to show an unconstitutional conviction, would invoke a fundamental miscarriage of justice upon the Petitioner, (Schlup v. Delo, 513 U.S. 298, 324 (1995)).

Contrary to the Respondents use of Woods, which makes a determination between Habeas Corpus cases, the Petitioner has cited numerous rulings, State and Federal, applicable to his case. See also; 11th Circuit Initial Brief, case no. 18-11087-DD; and,

Petitioners 42 U.S.C. § 1983, case no. 19-7709, tentatively before this Court currently.

With Mr. Toth having recently discovered the Hearsay Declarant's identity of the individual who instigated police to commit constitutional deprivation injury, Mr. Toth's Petition is properly before this Court. (Appendix D; Peggy Fowler Deposition, p. 107, lines 18-25). Prejudice has been caused by State Agents and Actors acting under color of law (18 U.S.C. §§ 241-242), withholding evidence of a key witness' testimony (18 U.S.C. § 1505), and withholding her identity (18 U.S.C. § 1512; and Florida Statute § 914.22(a)(b)(d)). See; Rovano v. United States, 353 U.S. 53 (1957). Schlup v. Delo, supra is applicable.

VII REPLY TO SECTION II AND "NO SPLIT AUTHORITY"

The Petitioner rebuts the Respondents opening sentence in this section to assert that the State has not cited Supreme Court precedence to not justify a writ of certiorari. The problem with the 11th Circuit precedent is two-fold: (a) it is a Circuit precedent, not applicable anywhere else; and (b) it does not rest on Supreme Court precedence. Further "percolation" of this precedence has the appearance of further prejudicing pro se litigants; especially State prisoners who are not allowed access to Courts via computers. Specific and understandable directions as to the records and their contents will be needed to discern what the Court is reviewing. As it is, with the Petitioner's case, the U.S. District Court proved discriminatory and prejudicial in reviewing the contents of Mr. Toth's case; even with Mr. Toth's specific citings and truthful explanations. Therefore, the Respondents "Split Authority" argument is moot.

VII-IN REPLY TO SECTION III "JUDICIAL NOTICE OF CERTAIN STATE RECORDS"

In this section, it can be noted the Respondents unnecessary redundancy of the timeliness issue, addressed in I(A) and I(B) above.

The Respondent asserts Paez, an 11th Circuit precedent on electronic state-court record judicial notice. This precedent is not retroactive to Mr. Toti's case (2018).

What is retroactive; are: ⁽¹⁾ the admittance of the Respondents Office (Appendix - E, State Response to Initial Brief, p 23, lines 10-12) stating constitutional violations on the face of the record and known by Police and Court officials; and, ⁽²⁾ the revealing of a concealed key witness identity that instigated Police to commit a Fourth Amendment violation based on an unsworn statement and executed without Probable Cause or Search Warrant, Povano v. United States, *supra*; and, Trenshaw v. State, 194 So. 2d 250 (Fla. 1967).

VIII- UNADDRESSED RESPONSE ISSUES/CONCLUSION

Habeas Corpus is a civil action and the facts painstakingly specified by the Petitioner in the §2254 Petition are to be construed in a light most favorable to the Petitioner. Slack v. McDaniel, *supra*, states that "joints of reason would find debatable, or wrong, the District Court's assessment of the Appellant/Petitioner's constitutional claims." Likewise, the ruling by this Court in the 11th Circuit case, Wilson v. Sellers, — U.S. —, 138 S. Ct 1188 (2018), requires the 11th Circuit to complete a "Look Through" of state court proceedings of the appeals that came before it. The Respondents "Judicial Notice" assertions are given to a higher authority; to rest upon the precedents and super precedence of Supreme Court rulings as applied by the 11th Circuit.

The Respondents, therefore have failed to properly address Mr. Toti's Questions, thereby waiving any right to argue the specific Federal Statutory provision violations asserted. Certiorari must issue to correct a fundamental miscarriage of Justice.