19-7327

No. 19A397

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Antonio Macli — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Antonio Macli, Reg. No. 97278-004
(Your Name)

FCI Butner Low
Federal Correctional Institution
(Address)

P.O. Box 999
Butner, NC 27509
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

Question One

Does a federal habeas court have to determine the need for an evidentiary hearing on a claim by claim basis?

Question Two

When one court grants a certificate of appealability on a particular question, does that inherently make the question debatable among reasonable jurists for any subsequent courts?

LIST OF PARTIES

[X] 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:

RELATED CASES

- **Macli v. United States,** Appeal No. 19-11174 (11th Cir. July 19, 2019)
- **Macli v. United States,** Dist. No. 1:16-cv-23544-RNS (S.D. Fla. 2018)
- **United States v. Macli,** Appeal No. 13-16056 (11th Cir. 2015)
- **United States v. Macli,** Dist. No. 1:11-cr-20587-SCOLA (S.D. Fla. 2013)

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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

[X] 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,
[X] is unpublished.

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

[X] reported at 2019 U.S. App. LEXIS 14687; 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[ ] is unpublished.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[ ] is unpublished.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

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

The date on which the United States Court of Appeals decided my case was Feb. 5, 2019.

[x] 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 _____.

[x] An extension of time to file the petition for a writ of certiorari was granted to and including Dec. 16, 2019 (date) on Oct. 11, 2019 (date) in Application No. 19 A 397.

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

28 U.S.C. § 2255(b): Unless the motion and the files and the records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.

28 U.S.C. § 2253(c)(2): A certificate of appealability may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

On April 5, 2013, after a trial by jury, Antonio Macli was sentenced to 360 months for health care fraud related charges. Mr. Macli timely appealed his conviction and sentence. In his appeal, Mr. Macli raised grounds of sufficiency of the evidence and whether Mr. Macli's sentence was reasonable. On February 7, 2015, the Eleventh Circuit affirmed the conviction and sentence.

On August 12, 2016, Mr. Macli filed his § 2255 motion. In the motion, Mr. Macli alleged that his counsel was ineffective, the government violated due process, and the federal fraud statutes are unconstitutionally vague. Around September 2018, the district court denied Mr. Macli's § 2255 and COA. Mr. Macli timely appealed.

On July 19, 2019, the Eleventh Circuit denied Mr. Macli's application for COA. This petition ensued.

REASONS FOR GRANTING THE WRIT

This Court holds that a certificate of appealability should issue when jurists of reason could disagree on how a district court resolves a habeas claim. See **Buck v. Davis**, 137 S.Ct. 759 (2017); **Miller-El v. Cockrell**, 537 U.S. 322 (2003); **Slack v. McDaniel**, 529 U.S. 473 (2000).

In conduction that analysis, the reviewing court should apply the law at the time of review rather than the law at the time of the district court's challenged order, especially when the review-stage law is retroactively applicable to cases on collateral review. Cf. **Henderson v. United States**, 133 S.Ct. 1121 (2013).

Reason One: In Pace v. DeGugliemo, 544 U.S. 408 (2005), this Court indicated that habeas claims should be analyzed on a claim by claim basis for statute of limitations purposes. Logically, that rule also applies to whether an evidentiary hearing should be conducted. The Eleventh Circuit, however, permits selective evidentiary hearings. This Court should grant the writ in order to bring certainty and uniformity to the law.

The district court failed to permit Mr. Macli to introduce evidence to support the allegations of four of his six grounds. Three of which involved events that were outside the courtroom and off the record:

> **Ground One: Trial counsel misapprehended the governing law and how it applied to the evidence. Consequently, trial counsel's strategy was futile; which in turn rendered counsel's assistance constitutionally ineffective.**
>
> **Ground Two: The government violated due process of law and its duty to ensure a fair trial when it engaged in pretrial discovery tactics designed to surreptitiously discover the defense's strategy, including attorney work product.**
>
> **Ground Three: During the trial the government knowingly presented unreliable and false testimony; an action that violates due process of law.**

Nevertheless, the district court refused to appoint counsel to assist with presentation and development of the grounds; and for these grounds refused to accept the presentation of evidence at the evidentiary hearing on Ground Five. By denying a certificate of appealability, the Eleventh Circuit approved of the district court's departure from the ordinary course of § 2255 proceedings, implicitly adopting rules of law contrary to statute (28 U.S.C. § 2255(b)), and this Court's decisions and the legal rules of other federal circuits.

The governing rule is that a habeas petitioner's—including a § 2255 movant's—allegations are presumptively true. See **28 U.S.C. § 2255(b); Schriro v. Landrigan**, 550 U.S. 465, 473-75 (2007); **Townsend v. Sain**, 372 U.S. 293 (1963). Hence, if a § 2255 movant pleads a cognizable claim, that if true, entitles him to relief, then the court must either grant relief or grant an evidentiary hearing at which the movant may present evidence to prove a claim. **Id.**; **Conaway v. Polk**, 453 F.3d 567, 587 (4th Cir. 2005).

Significantly, this evidentiary-hearing analysis applies on a claim by claim basis. See **Fielder v. Varner**, 379 F.3d 113, 118 (3d Cir. 2004)(Alito, J.); **Zack v. Tucker**, 704 F.3d 917 (11th Cir. 2013)(en banc); **Prendergast v. Clements**, 699 F.3d 1182 (10th Cir. 2012); **Mardesick v. Cate**, 668 F.3d 1164, 1170 (9th Cir. 2012).

Here, jurists of reason would find debatable the district court's decisions to restrict Mr. Macli's production of evidence to one ground and refuse to conduct an evidentiary hearing on the other valid grounds and claims.

Reason 2: A circuit split exists on what constitutes a debate among reasonable jurists. When a court of appeals panel grants a COA, does that constitute per se debatability on the issues? Not in the Eleventh Circuit, where one panel may disregard the opinion of another panel or even another circuit when determine whether a COA should issue. This Court should grant the writ and resolve the substantial question dividing the circuits.

A certificate of appealability should issue whenever objective circumstances reveal that some jurists could reasonably disagree over a particular outcome. A classic example of such a scenario is when one appellate court grants a COA on the same or a similar issue. See, e.g. **Barefoot v. Estelle**, 463 U.S. 880 (1983). In essence, when one court deems an issue worthy of further development all courts should grant COAs and allow briefing. Otherwise, an individual's opportunity to be heard is the result of randomly selected judges. We emphasize that this does not involve judges differing over the merits, that difference in discretion and judgment is part of life and the system. Instead this involves a complete denial of an opportunity for appellate review of the habeas court. See **Lonchar v. Thomas**, 517 U.S. 314 (1996)(noting significance of habeas corpus review and necessity of avoiding dismissal for technicalities); cf. generally **Roe v. Flores-Ortega**, 528 U.S. 470 (2000).

The circuit debate materializes most prominently in the context of a circuit conflict. The Eleventh Circuit does not consider a circuit split on an issue per se debatable, more to the point the Eleventh Circuit implicitly finds it unreasonable for a district court to agree with the opinions of judges in other circuits.

In a trilogy of cases, the Eleventh Circuit has held that "if a habeas petitioner's contention is foreclosed by a binding decision——one from this Court that is on point——the attempted appeal does not present a substantial question, because reasonable jurists will follow controlling law." **Tompkins v.**

Sec'y DOC., 557 F.3d 1257, 1261 (11th Cir. 2009); **Gordon v. Sec'y DOC**, 479 F.3d 1299, 1300 (11th Cir. 2007); **Lawrence v. Florida**, 421 F.3d 1221, 1225 (11th Cir. 2005). The upshot of this principle and rule is that the Eleventh Circuit courts do not give the proper weight to the opinion of other courts. See, e.g., **Lynce v. Mathis**, 519 U.S. 436 (1997)(Supreme Court grants certiorari because of a circuit split, although appellate circuit below denied a COA); cf., e.g., **Barefoot**, 463 U.S. at 893 (recognizing an intracircuit split is worthy of a COA and certiorari).

In his § 2255 motion and in his application for COA, Mr. Macli alleged that the discovery practices used by the Southern District of Florida United States Attorney's Office violated the Constitution's fair trial and due process provisions. (Appx. D). Obviously, neither the district court nor the appellate panel accepted Mr. Macli's contention that reasonable jurists would find denial of his due process claim debatable. (Appx. A); (Appx. B).

But after the district court ruling and before the appellate court denial of a COA, another panel of the Eleventh Circuit reached the opposite conclusion. In a different case, that panel examined the same USAO and the same discovery practice.

> "In Claim 4, Coloma claimed that the government violated his Fifth and Six Amendment rights in the pretrial and trial process when it intentionally monitored, obtained, and used counsel's trial preparation and attorney work product. Here, a COA should be issued because Coloma made a substantial showing of the denial of his Fifth and Sixth Amendment rights. See **§ 2253(c)(2).**
>
> Accordingly, Coloma's motion for a COA is GRANTED on the following issue:
>
> > Whether the government violated Coloma's Fifth and Sixth Amendment rights when it obtained duplicate copies of the defense team's work product from a government contracted copying service."

Coloma v. United States, 2019 U.S. App. LEXIS 3679, *4 (11th Cir. Feb. 5, 2019).

This Court should grant the writ, vacate the court of appeals' order, and remand the cause to the district court with instructions to grant a certificate of appealability on a question similar to that issued for the **Coloma** case. See **Id.**

CONCLUSION

This court should grant the writ to resolve the question of whether the right to an evidentiary hearing is made on a claim by claim basis; and to settle the circuit dispute of whether a decision by one appellate judge in a manner different than the district court creates a per se question worthy of a certificate of appealability.

Respectfully submitted by Antonio Macli on this 9th day of December, 2019.

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VERIFICATION

Under penalty of perjury as authorized by 28 U.S.C. § 1746, I declare that the factual allegations and factual statements contained in this document are true and correct to the best of my knowledge.

Antonio Macli