

20-5319

Case No. \_\_\_\_\_

USCA 5 No. 19-10431

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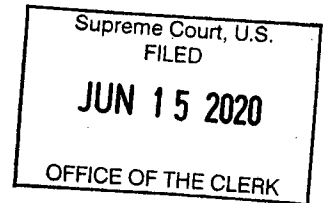
IN THE  
SUPREME COURT OF THE UNITED STATES

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JUAN CARLOS AVILA GONZALEZ,  
Petitioner,

vs.

UNITED STATES OF AMERICA,  
Respondent.



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

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Juan Carlos Avila Gonzalez  
Reg No. 46958-177  
USP Terre Haute  
P.O Box. 33  
Terre Haute, IN 47808

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QUESTION PRESENTED

WHETHER THE FIFTH CIRCUIT APPLIED  
THE CORRECT LEGAL STANDARD WHEN  
DENIED AVILA'S COA IN THE CLAIM  
THAT HE RECEIVED INEFFECTIVE  
ASSISTANCE OF COUNSEL BASED ON  
FAILURE TO INVESTIGATE HIS MEDICAL  
HISTORY AND TO MOVE FOR AN  
EXAMINATION OF HIS COMPETENCE TO  
WAIVE COUNSEL.

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Petitioner, Juan Carlos Avila Gonzalez respectfully prays that a writ of issue to review the opinion of the United States Court of Appeals for the Fifth Circuit issued on March 20, 2020, denying his Certificate of Appealability.

I. OPINION BELOW

The order of the United States Court of Appeals for the Fifth Circuit issued on March 20, 2020 denying motion for reconsideration for the denial of a COA, appears in Appendix 3-4 to this petition.

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Troughout this petition, Avila will make the following reference  
A= Appendix.

## II. JURISDICCION

Petitioner seeks review in this Court of the judgment or order of the United States Court of Appeals for the Fifth Circuit pursuant to 28 USCS § 1254(1).

## III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 28 USCS § 2253(C)(2)
- Fifth Amendment of the United States Constitution
- Sixth Amendment of the United States Constitution

## IV. STATEMENT OF THE CASE

Following the first denial of Avila's motion to vacate, set aside or correct sentence, the Fifth Circuit Court of Appeals remand the case to the district court for an evidentiary hearing to address the ineffective assistance claim relating to counsel's alleged failure to investigate Avila's competency to waive counsel. See, United States v. Avila-Gonzalez, 757 F. App'x 353 356, 57 (5th Cir 2018). At the conclusion of the evidentiary hearing the district court denied again Avila's 2255 motion. See Appendix 25. On February 10, 2020, the Fifth Circuit court denied the Certificate of Appealability. See Appendix 1. Avila moves for reconsideration and the court denied on March 20, 2020, See Appendix 3-4.

## V. BACKGROUND

This case involves Juan Carlos Avila Gonzalez, who has a long history of mental problems and substance abuse. He has been repeatedly diagnosed as suffering from paranoia, schizophrenia and

other mental problems. Appendix 6-7. He is also known to suffer from delirium and hallucinations which make it hard for him to separate reality from fiction. His mental defects have lead him to attempt to suicide numerous times in his past, which has resulted in his hospitalizations in psychiatric institutions: On January 28, 1993, Avila was committed to a psychiatric hospital in Parral, Chihuahua, Mexico, after having falling from a second story floor. As a result of the said fall, Avila skull was fractured. After evaluating Avila a psychiatric wrote up a report indicating that Avila was demonstrating symptoms of delirium, it was also reported that Avila also has hallucinations and say he see all sort of things: skeletons that call him by his name, dinosaurs that try to stomp on him to squash him, and giant spiders that try to strangle him. Id. On March 31, 1998, Avila was again admitted into a psychiatric hospital after attempting to commit suicide by slitting the veins of his right arm. Avila displays mental problems related with schizophrenia, paranoia and desillusion. Id. On April 17, 2009, Avila was committed to a psychiatric hospital, following a suicide attempt while under the influence of methamphetamine, he attempted suicide by sliting the inferior vein of his right testicle. During this time, Avila displays symptoms of mental amnesia, does not speak and his gaze was fixed in vertical position. Id. In 2013, Avila was indicted for narcotic violations. Being that he is mentally unstable he cannot defend himself against such allegations. These are all facts that his attorneys were aware of, but failed to investigate his past medical history or bring it to the court's attention. As a result, Avila went to incompetently plea of not guilty waiving

his right to counsel without of competency examination, which sadly ended in his receiving a devastating "Life Sentences".

## VI. RELEVANT FACTS

Avila informed Christopher Curtis and William Hermesmeier of his prior medical history, suicide attempts and substance abuse. See Appendix 7. Avila explodes in an irrational behavior and attempted suicide in the presence of counsel, his family and several court spectators. See Appendix 7-8. During his arraignment hearing Avila requested the reading of the indictment as he did not understand the nature of the charges nor the proceedings against him. See Appendix 8. Counsel Hermesmeier suggested that Avila should ask the judge to let him represent himself. Id. Avila was hallucinating and he saw his grandma, the lady who die several years ago come and told him that he can do better than these public defenders and with the assistance of another prisoner, Avila filed a pro se motion to revoke the public defender. Appendix 9. Avila's irrational behavior, statements and conduct during pretrial hearings, trial, sentencing and evidentiary hearing reveals an ample and uncontroverted evidence of his incompetency to understand the proceedings against him. See Appendix 9-21. Finally, despite the overwhelming evidence of Avila incompetency in the record, the district court denied his § 2255 motion in its enterity without psychiatric evaluation.



# VII. ARGUMENT IN SUPPORT OF GRANTING THE WRIT OF CERTIORARI

A document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers. See Erickson v. Pardus, 167 LED 2d 1081, 551 U.S (2007).

## a). Question Presented.

WHETHER THE FIFTH CIRCUIT APPLIED  
THE CORRECT LEGAL STANDARD WHEN  
DENIED AVILA'S COA IN THE CLAIM  
THAT HE RECEIVED INEFFECTIVE  
ASSISTANCE OF COUNSEL BASED ON  
FAILURE TO INVESTIGATE HIS MEDICAL  
HISTORY AND TO MOVE FOR AN  
EXAMINATION OF HIS COMPETENCE TO  
WAIVE COUNSEL.

## b). Standard of Review.

The United States Supreme Court may review the denial of a Certificate of Appealability ("COA") by lower courts. When lower courts deny a COA and the court concludes that their reason for doing so was flawed, the court may reverse and remand so that the correct legal standard may be applied. See Ayestas v. Davis, Dir. Tex. Dep't of Crim. Justice, 584 US 138 SCt 200 (2018).

In order to obtain a COA, Avila must make a "substantial showing of the denial of a constitutional right." 28 USC § 2253 (C)(2), and also demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. Slack v. McDaniel, 529 US 473 484 120 SCt. 1595 LEd 2d 542 (2000). In generally assessing the claims for relief in a COA application, "[T]he question is the debatability

of the underlying constitutional claim, not the resolution of the debate." "A petitioner satisfies this standard by demonstrating that jurist of reason could disagree with the district court's resolution of his constitutional claims or the jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. Miller-El v. Cockrell, 537 US 322 336 123 S.Ct 1029 (2003); Buck v. Davis, 137 S.Ct 759 753 (2017)(Internal quotation marks and citation omitted).

**c). Importance of the Legal argument in support of this question.**

Here, Avila argue that the Fifth Circuit Court of Appeals did not applied the correct legal standard when denied his COA. He contends that, in his application for COA he has maked a substantial showing of the denial of constitutional right asserting that he received ineffective assistance of counsel because his attorneys failed to conduct a competency investigation. Avila alleges also that he told his lawyers after his arrest that he had previously attempted suicide and that he was suffering from paranoia and schizophrenia. In the past these conditions had forced him to spend time in a mexican mental hospital, twice before being charged in this case his mental condition lead him to attempt suicide, not including a suspicious fall from a second story that left his skull cracked. Avila also attempted suicide in the courthouse with counsel present after his preliminary hearing, see Appendix 7-8, the prison put him on suicide watch and Avila asked counsel to notify the court, his counsel knew about all this and failed to investigate.

Avila testimony was corroborated by records from hospital de Jesus showing that he was hospitalized three times over a period of several years (from 1993 up to 2009) for schizophrenia, paranoia and delusions. See Appendix 6-7. He included with his motion a clinical file or "psychiatric hospitalization evidence" that was readily available to his attorneys upon investigation, but which he argued his attorneys never presented to the district court. Id. Also, Avila submitted several affidavits from his family in support of his claim. See Appendix 25. In his affidavits, Avila's family declares how they witnesses Avila psychotic episode when he attempted suicide at the conclusion of the preliminary hearing. On remand, following an evidentiary hearing, the district court rejected Avila's IAC claim by accepting the testimony of counsel Curtis and Hermesmyer expressing that each of them provided constitutionally effective assistance of counsel to Avila in the respects related to his competency or anything having to do with his mental health. Finding that either of them had any reason to move for a court-ordered psychiatric evaluation of Avila or his competency to enter a plea or to waive his right to counsel or to stand trial. Stating that even if each of them had informed the court of all of the things they have testified to that would bear on Avila's mental state, the court nevertheless would have authorized the Avila represent himself.

In his previous application for COA, see Appendix 5-31, Avila maintains that reasonable jurists would debate the district court's rejection of his IAC claim because he has presented an ample and

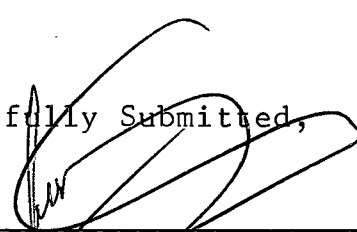
uncontroverted evidence supporting his claim and because he has established that his counsel's performance was deficient by failing to perform a competency investigation and therefore failed to move for a court appointed psychiatric examination causing him prejudice. In light of the foregoing, Avila maintains that the Fifth Circuit applied the wrong legal standard when denied his COA.

#### VIII. CONCLUSION

The denial for a COA should be reversed.

Dated on June 15, 2020

Respectfully Submitted,



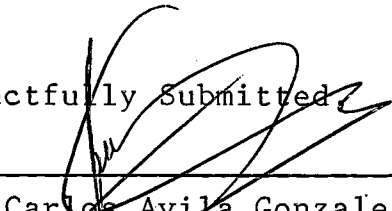
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## CERTIFICATE OF SERVICE

I Certify that, pursuant to 28 USCS § 1746 a true and correct copy of the foregoing petition for writ of certiorari was mailed to the Supreme Court of the United States, 1 First Street NE, Washington DC 20543, and at that same time the petition is served on opposing counsel, via first class prepaid mail postage, from the United States Penitentiary Terre Haute by depositing in the Mailbox (Via certified Legal Mail).

Dated On June 15, 2020

Respectfully Submitted 

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