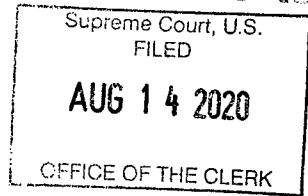


20-5624 ORIGINAL
Case No.: _____



IN THE
SUPREME COURT OF THE UNITED STATES

JUAN FRANCISCO VEGA,
PETITIONER / APPELLANT,

V.

CHAD POPPELL,
SECRETARY OF FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES,
RESPONDENT / APPELLEE.

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

PETITION FOR WRIT OF CERTIORARI

JUAN FRANCISCO VEGA

RESIDENT # 991353

FLORIDA CIVIL COMMITMENT CENTER

13619 S.E. HIGHWAY 70

ARCADIA, FLORIDA 34266

PROPER PERSON

QUESTION PRESENTED

WHETHER JURISTS OF REASON COULD DEBATE THAT THE CIRCUIT COURT OF APPEALS ABUSED ITS DISCRETION BY NOT GRANTING A COA WHERE THE UNDERLYING CLAIM OF THE SECOND §2254 PETITION IS NOT DUPLICATIVE OF THE FIRST AND IT'S PREDICTED ON LACK OF SUBJECT-MATTER-JURISDICTION WHICH RESULTED IN FALSE IMPRISONMENT, WHICH IS AN EXTRAORDINARY CIRCUMSTANCE WARRANTING RELIEF, EXPLICITLY SINCE SUCCESSIVE §2254 PETITIONS ARE AUTHORIZED IN SEXUALLY VIOLENT PREDATOR CASES THAT ARE EXEMPT FROM THE BAR OF 28 U.S.C. §2244 (B).

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:_____.

RELATED CASES

Frank James v. Chad Poppell, Secretary of Florida Department of Children and Families, Case No.: 19-21836-cv-WILLIAMS, is pending final judgment on the application of the *Younger* abstention doctrine and the **20-year statute of limitations** on involuntary civil commitments at the U.S. District Court for the Southern District of Florida, Miami Division.

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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

☒ For cases from federal courts;

The opinion of the U.S. court of appeals appears at Appendix A-D 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☒ is unpublished.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 highest state 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 U.S. court of appeals decided my case was 05/28/2020 and 02/13/2020.

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the U.S. court of appeals on the following date: 06/26/2020 and 04/12/2020 and a copy of the order denying rehearing appears at Appendix A and C.

[] An extension of time to file the petition for writ of certiorari was granted to include _____ (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 _____.

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 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 INVOLVED

Fourteenth Amendment of the United States Constitution.

Title 28 U.S.C. § 2253 and 28 U.S.C. §2254.

1. A certificate of appealability should have been granted by the 11th circuit court of appeals under the 14th Amendment of the U.S. Const. and 28 U.S.C. §2253 because a ruling on the merits of the second § 2254 petition wasn't entered by the U.S. Middle District Court nor by the U.S. Southern District Court and the second petition wasn't duplicative of the first petition.
2. *Martin v. Bartow*, 628 F.3d 871 (7th Cir. 2010), abrogating 28 U.S.C. § 2244 (b) and authorizing successive § 2254 petitions required the U.S. Southern District Court to accept jurisdiction of the second § 2254 petition and to rule on its merits because it wasn't duplicative of the first § 2254 petition.
3. Finally, Rule 60 (b) relief should have been granted because the U.S. Middle District Court erroneously converted the second § 2254 petition to a §2241 and transferred same to the U.S. Southern District Court without requiring the State to respond.

STATEMENT OF THE CASE

1. On May 5, 1986, the Petitioner entered a plea of guilty at the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida, and was sentenced in case numbers F86-4671, F85-32539, F85-32540, and F85-32541 to a total of 30 years in Florida State Prison.

2. On January 18, 2008, prior to the expiration of the 30 years state prison sentence, the Florida Department of Corrections initiated the procedure required under the Involuntary Civil Commitment of Sexually Violent Predator Act (formerly known as the Jimmy Ryce Act) by sending a letter to the Florida Department of Children and Families (FDCF) notifying FDCF that Petitioner was about to be released and met criteria for civil commitment.

3. On July 8, 2009, more than 20 years after Petitioner's sexual battery convictions, a petition to have him civil committed as a sexually violent predator was filed by the State Attorney of Miami-Dade County, Florida, under the Jimmy Ryce Act.

4. At said time, case number F08-34057 was pending trial, but the Petitioner was still a sentenced prisoner in the above mentioned cases, F86-4671, F85-32539, F85-32540, and F85-32541.

5. The Information in case number F08-34057 was filed on November 13, 2008, charging the Petitioner with sexual battery and kidnapping (**based on a DNA hit**) and an Amended Information was filed on March 24, 2009, dropping the sexual battery and raising the original charge to armed kidnapping.

6. In case number F08-34057, the Petitioner plead guilty on March 1, 2011, AFTER expiration of the sentences of case numbers F86-4671, F85-32539, F85-32540, and F 85-32541 and was sentenced to 42 months in Florida State Prison with credit for time served.

7. At the time of the conviction in case number F08-34057, the Petitioner was out of lawful custody within the definition of Fla. Stat. § 394.912, meaning that the involuntary civil commitment petition couldn't be amended because the Jimmy Ryce Act required that he be in lawful custody (**serving an active prison sentence**) to amend the petition, and the State **failed to file a new petition** during the 42-months state prison sentence to include the conviction of case number F08-34057, as the new index offense, to qualify the Petitioner for civil commitment.

8. On March 13, 2011, following the expiration of the 42 months state prison sentence of case number F08-34057, the Petitioner was detained at the Florida Civil Commitment Center in Arcadia, Florida, where he remains in custody. ¹

9. On February 4, 2013, the Petitioner exercised his statutory and constitutional rights to a jury trial and the State failed to meet its burden of proving

¹ The State **did not** amend the petition **prior to the expiration of sentence date of case numbers** F86-4671, F85-32539, F85-32540, and F85-32541, to include the conviction of Cold Case F08-34057 as the new qualifying index offense for civil commitment, and the State realistically couldn't accomplished that task because the conviction of case number F08-34057 **did not occur prior to the expiration of sentence date of case numbers** F86-4671, F85-32539, F85-32540, and F85-32541.

to the jury that he was a sexually violent predator, and on February 22, 2013, the jury rendered an evenly-split verdict of 3-3.

10. Because the majority of the jurors did not find that Petitioner was a sexually violent predator the State was barred by statute from re-filing the petition so on February 22, 2013, the presiding judge granted the State's motion to set aside the verdict and entered an order of commitment notwithstanding the verdict.

11. As a result of the above, the Petitioner filed a Direct Appeal and after lingering on appeal for a period of 4 years — the trial court's judgment was affirmed.

12. Therefore, the Petitioner sought a writ of certiorari from the U.S. Supreme Court and same was denied, so he proceeded to the U.S. Southern District Court on a § 2254 petition to avoid a time bar under §2244 (d).

13. At the U.S. Southern District Court the Petitioner was designated case number **1:18-cv-20729-CMA** and he submitted the following issues in his § 2254 petition, for review:

ISSUE NUMBER ONE

THE TRIAL COURT'S ACTION IN DISCARDING A JURY VERDICT FOR THE PETITIONER AND ENTERING ITS OWN VERDICT FOR THE STATE AND THEN CIVILLY COMMITNG HIM, WAS UNAUTHORIZED AND, IN DEROGATION OF THE CONSTITUTION, STATE STATUTE, AND RULE.

ISSUE NUMBER TWO

HAD PETITIONER'S COUNSEL ARGUED ON DIRECT APPEAL THAT THE STATE DID NOT ADEQUATELY PRESERVE ITS CLAIM TO HAVE THE VERDICT REDIRECTED AND THAT CONFLICTING TESTIMONY OF EXPERT WITNESSES PRECLUDED A DIRECTED VERDICT, THE OUTCOME OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT.

ISSUE NUMBER THREE

THE INVOLUNTARY CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATOR ACT IS UNCONSTITUTIONAL FOR HAVING UTILIZED THE CONJUNCTION "OR" IN FLA. STAT. §394.912 (10) (B); *FOUCHA V. LOUISIANA*, 504 U.S. 71, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992) HOLDS THAT FOR THERE TO BE AN INVOLUNTARY CIVIL COMMITMENT THE ELEMENTS OF A MENTAL ABNORMALITY "AND" PERSONALITY DISORDER MUST EXIST AND BE PROVEN.

14. In petition number 1:18-cv-20729-CMA the Petitioner informed the U.S. Southern District Court that the following issue was pending judicial review at the Twelfth Judicial Circuit Court of DeSoto County Florida, where he is physically detained:

ISSUE PRESENTED AT THE 12TH CIRCUIT

PETITIONER'S CRIMINAL JUDGEMENTS AND CONVICTIONS OF CASE NUMBERS F86-4671, F85-32539, F85-32540, AND F85-32541 THAT WERE UTILIZED AS THE QUALIFYING INDEX OFFENSES FOR INVOLUNTARY CIVIL COMMITMENT ARE OVER 20 YEARS OLD AND BARRED BY THE CIVIL ACTION STATUTE OF LIMITATIONS. (THIS ISSUE WAS NEVER PRESENTED TO THE U.S. SOUTHERN DISTRICT COURT IN PETITION NUMBER 1:18-CV-20729-CMA. SEE, APPENDIX-K.)

15. The above issue on the statute of limitations that was pending review at the 12th Circuit was denied; therefore, the Petitioner appealed to the Second District Court of Appeals and the judgment of the 12th Circuit was affirmed.

16. The Petitioner then filed a § 2254 petition at the U.S. Middle District Court which is located in the geographical area where he is physically detained and was designated case number **2:19-cv-497-FtM-38MRM**.

17. The U.S. Middle District Court then converted the § 2254 petition to § 2241 and transferred same to the U.S. Southern District Court. APPENDIX-J

18. The U.S. Southern District Court (upon receipt of the transferred petition) dismissed the petition as duplicative of case number **1:18-cv-20729-CMA** (which is the first petition) and closed the case. APPENDIX-I&G

19. The Petitioner then returned to the U.S. Middle District Court and requested reinstatement of case number **2:19-cv-497-FtM-38MRM** (which is the second and

successive petition) and his request was construed as a motion for relief from judgment under Rule 60 (b) and same was denied. APPENDIX-H

20. Afterwards, the Petitioner filed a consolidated Notice of Appeal, Motion to Proceed in Forma Pauperis, and Application for Certificate of Appealability at the U.S. District Court for the Southern and Middle Districts of Florida, **informing** the court(s) that he was appealing their judgment to the U.S. Court of Appeals for the Eleventh Circuit.

21. Both of the U.S. District Courts denied issuance of a certificate of appealability and same occurred at the U.S. Court of Appeals, leaving this Petitioner no other recourse than the filing of the instant petition for a writ of certiorari. APPENDIX-A-F

REASONS FOR GRANTING THE WRIT

A MISCARRIAGE OF JUSTICE HAS OCCURRED BECAUSE PETITIONER'S CIVIL COMMITMENT WAS IMPOSED WITHOUT JURISDICTION AND HIS §2254 PETITION SHOULD HAVE BEEN REVIEWED, ON ITS MERITS, OR THE COA GRANTED, BECAUSE THE PETITION WAS NOT DUPLICATIVE OF THE FIRST PETITION AND SUCCESSIVE §2254 PETITIONS ARE AUTHORIZED IN SEXUALLY VIOLENT PREDATOR CASES.

1. The Petitioner avers that the 12th Judicial Circuit's written order denying his petition for habeas corpus was "on the merits," and that the 2nd District's affirmance of that denial constitutes an adjudication on the merits.

2. Therefore, he exhausted his claim that the 20 year statute of limitations in Fla. Stat. § 95.11 (1) applies to bar the Involuntary Civil Commitment of Sexually Violent Predator Act proceeding against him and it's ripe for federal review.

3. The U.S. District Court **overlooked** that Petitioner's Petition is founded on the fact that the 11th Judicial Circuit Court of Miami-Dade **did not have jurisdiction** to civilly commit him nor to civilly recommit him, because the 20 year statute of limitations expired prior the commencement of his initial civil commitment and that lack of subject-matter-jurisdiction is an issue that can't ever be waived, thus rendering his initial judgment of commitment along with the annual judgments of recommitment **null and void** and requiring his emergency release.

4. A litigant generally may raise a court's lack of subject-matter-jurisdiction **at any time** in the same civil action, even initially at the highest appellate instance. *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382, 4 S.Ct. 510, 28 L.Ed. 462 (1884).

5. The Petitioner's Petition challenges the constitutionality of his involuntary civil commitment petition and the annual judgments of recommitment on grounds of lack of jurisdiction; therefore, the unlawful deprivation of his liberty is becoming more severe each day and this loss cannot be fully vindicated so it must be addressed at this point. Absent such relief, an extreme hardship will result which is an exceptional circumstance. See, *Doe v. Drummond Co.*, 782 F3d 567, 612 (11th Cir. 2015) and *Page v. King*, 932 F3d 898 (9th Cir. 2019).

6. The Involuntary Civil Commitment of Sexually Violent Predator Act (formerly known as the Jimmy Ryce Act) lacks a statute-of- limitations; therefore, the Florida "**civil action**" statute-of-limitations applies to those proceedings under the Act.

7. See Fla. Stat. § 95.011. "A **civil action** or proceeding, called 'action' in this chapter, including one brought by the state, a public officer, a political subdivision of the state, a municipality, a public corporation or body corporate, or any agency or officer of any of them, or any other government authority, shall be barred unless begun within the time prescribed in this chapter or, if a different time is prescribed elsewhere in these statutes, within the time prescribed elsewhere."

8. See also Fla. Stat. § 95.11. **Actions other than for recovery of real property shall be commenced as follows:**

(a) **Within twenty years:** An action on a judgment or decree of a court of record in this state. (Fla. Stat. § 95.11 (1).)

(b) **Within five years:** An action on a judgment or decree of any court, not of record of this state.... (Fla. Stat. § 95.11 (2).)

(c) For actions that are not specifically provided elsewhere in the statute the time limitation is four years. (Fla. Stat. § 95.11 (3) (a) (p).)

(d) After expiration, laches shall bar any action concerning the same subject matter. (Fla. Stat. § 95.11 (6).) and;

(e) In relation to a sexual battery offense on victims under age 16: An action relating to an act constituting a violation of section 794.011 involving a victim who

was under the age of 16 (**at the time of the act**) may be commenced at any time. This subsection applies to any such action other than one which would have been time barred **on or before July 1, 2010**. (Fla. Stat. § 95.11 (9).)

9. The civil action statute of limitations applies to the Involuntary Civil Commitment of Sexually Violent Predator Act proceedings and the evidence exist by cross referencing sections §§ 394.912, 95.011, and 95.11 of the Florida Statutes, and reading them in pari materia, as applied to the utilization of sexual battery convictions in civil commitment proceedings.

10. Fla. Stat. 394.912 (2) (a)-(c) states:

(a) **Conviction** of a sexually violent offense means a person who has been adjudicated guilty of a sexually violent offense after a trial, guilty plea, or plea of nolo contendere;

(b) Adjudicated not guilty by reason of insanity of a sexually violent offense; or

(c) Adjudicated delinquent of a sexually violent offense after a trial, guilty plea, or plea of nolo contendere.

11. Fla. Stat. § 394.912 (9) (a)-(h) states that **a sexually violent offense means:**

(a) Murder of a human being while engaged in sexual battery in violation of section 782.04 (1) (a) 2;

(b) Kidnapping of a child under the age of 13 and, in the course of that offense, committing sexual battery or lewd, lascivious, or indecent assault or act upon or in the presence of the child;

- (c) Committing the offense of false imprisonment upon a child under the age of 13 and, in the course of that offense, committing sexual battery or lewd, lascivious, or indecent assault or act upon or in the presence of the child;
- (d) Sexual battery in violation of section 794.011;
- (e) Lewd, lascivious, or indecent assault or act upon or in the presence of the child in violation of section 800.04 or section 847.0135 (5);
- (f) An attempt, criminal solicitation, or conspiracy, in violation of section 777.04, of a sexually violent offense;
- (g) Any conviction for a felony offense in effect at any time before October 1, 1998, which is comparable to a sexually violent offense under paragraphs (a)-(f) or any federal conviction or conviction in another state for a felony offense that in this state would be a sexually violent offense; and
- (h) Any criminal act that, either at the time of sentencing for the offense or subsequently during civil commitment proceedings under this part, has been determined beyond a reasonable doubt to have been sexually motivated.

12. Pursuant to Fla. Stat § 394.9125 (1) (b), the State Attorney has the authority to refer a person to the department for civil commitment proceedings, **only if the person has been convicted** of a sexually violent offense as defined in section 394.912 (9) (a)-(h) above.

13. In case numbers F85-32539, F85-32540, F85-32541, and F86-4671 the Petitioner was adjudicated guilty after entering a guilty plea to sexual battery and

kidnapping of victims ranging from ages 15-28 so he falls within the time limitations of Fla. Stat. §§ 95.011, 95.11 (1), (6), and (9).

14. Meaning that the State Attorney of Miami-Dade couldn't utilize the 1980's convictions for bringing a civil commitment petition against him on July 8, 2009.

15. On the other hand, the State Attorney had 20 years to file a petition for civil commitment utilizing the conviction of case number F08-34057, **(DNA hit)** as a qualifying sexually motivated offense pursuant to Fla. Stat. § 394.912 (8), (9) (h), but the State Attorney failed to do so while the Petitioner was serving the 42 months state prison sentence and now it may not do so.

16. In *Larimore v. State*, 2 So. 3d 101, 117 (Fla. 2008), the Supreme Court held that the state must initiate involuntary civil commitment proceedings while the person to be committed is in lawful custody "in order for the circuit court to have jurisdiction to adjudicate the commitment petition." *Id.*

17. In *State v. Philips*, 119 So. 3d 1233, 1242 (Fla. 2013), the Supreme Court determined that the "lawful custody" requirement explained in *Larimore* requires the state to initiate commitment proceedings under Fla. Stat. §394.9135 (1), PRIOR to the expiration of sentence date.

18. In *Taylor v. State*, 65 So.3d 531, (Fla. 1st DCA 2011) (the court found that after the initial petition to involuntarily commit sex offender as a sexually violent predator was dismissed, State filed amended petition. Offender brought petition for prohibition to prevent the trial court from taking judicial action on the amended

petition and District Judge Padovano, held that offender was not in lawful custody when state brought amended petition.)

19.. The State, in the instant case, DID NOT amend the initial petition PRIOR to the expiration of sentences date of case numbers F85-32539, F85-32540, F85-32541, and F86-4671 to include the conviction of Cold Case F08-34057 as the new qualifying index offense for civil commitment, and realistically speaking the State couldn't accomplish that task because the conviction of Cold Case F08-34057 occurred AFTER the expiration of sentence date of case numbers F85-32539, F85-32540, F85-32541, and F86-4671.

20. Had the conviction of Cold Case F08-34057 occurred while the Petitioner was in commission of the sentences of case numbers F85-32539, F85-32540, F85-32541, and F86-4671 then the State Attorney could have amended the petition because the Petitioner would have been in lawful custody. *Philips, supra*.

21. If truth be told this Petitioner has escaped by error of the State Attorney but the law is the law and it must be honored pursuant to the 14th Amendment of the United States Constitution.

22. Accordingly, the statute of limitations for Respondent's involuntary civil commitment petition, a civil action predicated on Petitioner's 1986 judgments of conviction, expired no later than 2006. After 2006, any civil action predicated on those judgments — including Respondent's petition for civil commitment — were barred. See, *Witt v. Metropolitan Life Ins. Co.*, 772 F.3d 1269 (11th Cir. 2014) (Because Congress did not specify a limitations period for a claim-of-benefits ERISA

action, district courts must apply the forum state's statute of limitations for the most closely analogous action.) In the instant case, the forum State's statute of limitations for the most closely analogous action is Fla. Stat. §§ 95.011, 95.11 (1), (6), and (9).

23. The constitutional import of the instant case rises and falls with the merits of its claim. Should this Court find that the involuntary civil commitment petition was filed AFTER expiration of the applicable statute of limitations, Petitioner's continued detention, pursuant to that petition, is a deprivation of his liberty in denial of fundamental due process. *J.R. v. Hansen*, 736 F.3d 959, 956 (11th Cir. 2013), certified question answered sub nom. *J.R. v. Palmer*, 175 So. 3d 710 (Fla. 2015) (listing elements of procedural due process violation as deprivation of a constitutionally protected liberty or property interest, state action, and constitutionally inadequate process).

JURISDICTION OF THE DISTRICT COURTS

1. Pursuant to *Medberry v. Crosby*, 351 F.3d 1049 (11th Cir. 2003), a person that is a pre-trial detainee must file a §2241 petition if they seek federal release from their pre-trial detention but a person that is convicted and sentenced must file a § 2254 petition if they seek federal release from their judgment of conviction.

2. Pursuant to *Rumsfield v. Padilla*, 124 S.Ct. 2711, 542 U.S. 426, 159 L.Ed. 2d 513 (2004), a person that is a pre-trial detainee must file a § 2241 petition in the location where they are physically detained if they seek federal release from their pre-trial detention.

3. However, the problem with the instant case is that Petitioner is in the same legal posture of *Martin v. Bartow*, 628 F.3d 871 (7th Cir. 2010), thus requiring the United States Supreme Court to take a new approach with SVP cases.

4. Pursuant to *Martin* a Sexual Predator may challenge his initial commitment and annual judgments of recommitment by way of successive § 2254 petitions in the geographical area where the judgment of conviction and sentence originated because, unlike a conviction for a discrete criminal offense, a person's current status as a sexually violent person is a determination that is constantly and forever disputable as a matter of constitutional law.

5. Moreover, akin is Wisconsin's civil commitment scheme to Florida's which requires annual judgments of recommitment and those new judgments are challengeable by way of successive § 2254 petitions. See *Martin* and e.g. *Dagwood v. Patterson*, 561 U.S. 320, 130 S.Ct. 2788, 177 L.Ed. 2d 592 (2010) (A petitioner may challenge a later judgment on grounds that applied to an earlier judgment under some circumstances.)

6. This Petitioner submitted a § 2254 petition at the U.S. Middle District Court challenging his initial judgment of commitment and annual judgments' of recommitment on the premise that he is civilly committed in violation of the statute of limitations.

7. The U.S. Middle District Court then found that his § 2254 petition should be treated as a §2241 and transferred same to the U.S. Southern District Court where

he had a § 2254 petition pending that challenged his initial judgment of commitment based on a violation of his constitutional rights to a trial by jury.

8. The U.S. Southern District Court erroneously found that the transferred petition was duplicative of the first § 2254 petition and dismissed the transferred petition and closed the case.

9. The Petitioner then sought reinstatement at the U.S. Middle District Court because the petition should have never been treated as a §2241 petition but agreed with that court that said petition belonged at the U.S. Southern District Court which is the geographical area where the judgment of commitment was entered.

DISTRICT COURT WAS REQUIRED TO ORDER STATE TO RESPOND

1. It was an abuse of judicial discretion and deprivation of due process for the District Court to dismiss Petitioner's §2241 petition without requiring a response from the State which prevented the record from being fully developed, and a fully developed record is necessary to ensure a fair adjudication of Petitioner's petition, and to enable appellate review. *Finrock v. Crist*, 367 Fed. App'x3 (11th Cir. 2010) (unpublished) (finding district court abused discretion by dismissing §2241 application challenging Florida's involuntary civil commitment pursuant to the *Younger* doctrine, without requiring response.)

A RESPONSE WAS ALSO STATUTORILY REQUIRED

1. Title 28 U.S.C. § § 2243 directs that a court reviewing an application for writ of habeas corpus shall forthwith award the writ or issue an order directing the

respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto. See cf. *Lake v. Cameron*, 331 F.2d 771, 771-72 (DC Cir. 1964) (per curiam) (remanding summary dismissal of §2241 petition challenging unlawful civil commitment where district court failed to issue rule to show cause to respondent, or to conduct hearing, as required pursuant to § 2243 .)

THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT IS UNCONSTITUTIONAL

1. The instant case is a case of first impression and distinguishable from all existing state and federal Supreme Court precedents.
2. In relation to the issue that Florida has a statute of limitations on civil actions that applies to civil commitment there is no clearly established federal law which prevents the trial and intermediate appellate courts from reaching a conclusion opposite to the Supreme Court on the issue being debated.
3. Thus Petitioner contends that 28 U.S.C. § 2254 (d) (1) is unconstitutional in that it prevents him from establishing a landmark and from acquiring federal relief absent a state court decision in opposition to a Supreme Court precedent (which is an impossible task) when a Supreme Court precedent doesn't exist.
4. Moreover, how could a state court reach a conclusion in opposition to a nonexistent Supreme Court precedent? And absent of a Supreme Court precedent, how could the Petitioner establish a departure from clearly established federal law?

5. This Petitioner is the case of first impression on the Constitutional and the Statutory right to an application of the statute of limitations on civil commitments and the right of successive § 2254 petitions in SVP cases; therefore, it's impossible for there to be an existing Supreme Court precedent on these issue.

6. As shown herein, 28 U.S.C. § 2254 (d) (1) creates an impediment to acquire federal relief in a case of first impression (**absent an existing Supreme Court precedent**) which makes the code unconstitutional because it deprives the Petitioner of redress of a grievance and access to the courts in violation of the 1st and 14th Amendments to the United States Constitution. ²

CONCLUSION

1. The decision of the U.S. Middle District Court of Florida to convert the §2254 petition to a §2241 and transfer same to the U.S. Southern District Court that dismissed petition as duplicative of the first (when it actually wasn't) and Court of Appeals decision not to grant COA, resulted in a miscarriage of justice because the


² Reviewing courts will consider an issue not raised in district court if it involves a pure question of law and if refusal to consider it would result in miscarriage of justice. *Bliss v. Equitable Life Assurance Society*, 620 F. 2d 65, 70 (5th Cir.1980). The decision whether to consider an argument first made on appeal, however, is "left primarily to the discretion of the courts of appeals, to be exercised on the facts of individual cases". *Singleton v. Wulff*, 428 U.S. 106, 121 S.Ct. 2868, 2877, 49 L. Ed. 2d 826, 837. In the exercise of that discretion, this court may rule on issues not raised below if "the ends of justice will best be served by doing so." *Empire Life Insurance Co. of America v. Valdak Corp.*, 468 F.2d 330, 334 (5th Cir.1976). This court may consider an issue not raised in the district court if it involves a pure question of law, and refusal to consider it would result in a miscarriage of justice. *Martinez v. Mathews*, 544 F.2d 1233, 1237 (5th Cir. 1976).

underlying claim that was absconded is that the civil commitment was founded on a statute of limitations violation resulting in false imprisonment. Therefore, a writ of certiorari should be granted because jurist of reason could debate the issue since successive §2254 petitions are authorized in SVP cases. *Martin*, 628 F.3d 871.

OATH

I HEREBY DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on 08/12/2020



(Signature)