

No. _____

20-7346

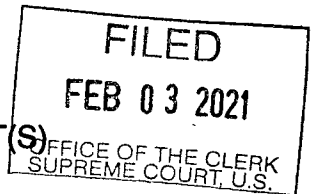
IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

David Andrew Dichtl — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)



ON PETITION FOR A WRIT OF ~~HABEAS CORPUS~~ TO
Mandamus

Amended Fifth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF ~~REPLEVIN~~ Mandamus
Rule 20.3.A

Refiling

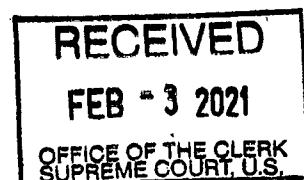
2-19-21

David Andrew Dichtl
(Your Name)

David A. Dichtl, 532 14018
Federal Correctional Complex
(Address)

USP Coleman IL
PO BOX 1034, Coleman FL 33521
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

Concerning the denial of Petitioner's en banc Petition to the Fifth Circuit — should it have been considered late, and were there grounds not to have accepted it given it was mailed on the due date.

And,
in the alternate, should the Petition for rehearing been circulated to the full Court since Petitioner requested the Petition for rehearing be treated as a petition for rehearing with suggestion for en banc prior to it being considered?

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:

1. United States Court of Appeals Fifth Circuit
F Edward Hebert Building
600 S. Main Street
New Orleans, Louisiana 70130 - 3408
2. Solicitor General of the United States
Room 5614 DOJ
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530 - 0001

RELATED CASES

- NO 19-50165 (5th Cir 2020) Petition For
Certificate of Appealability

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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 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,
☒ is unpublished.

The opinion of the United States district 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.

☐ 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 6, 2020.

☐ 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: Sept 11, 2020, and a copy of the order denying rehearing appears at Appendix B.

☐ 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 _____.
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).

STATEMENT OF THE CASE

In relevant part, on February 4, 2019 Petitioner appealed the denial of a certificate of appealability to the Fifth Circuit Court of Appeals. On May 6, 2020 that court refused to grant the certificate. On May 25, 2020 Petitioner filed a motion for rehearing (Exhibit B), which was denied on Sept 11, 2020.

Also within the allotted time, Petitioner requested an extension of time to file a separate petition for en-banc hearing. The Fifth Circuit granted an extension until June 29, 2020. Due to the operational effects on the prison caused by COVID-19, on June 26, 2020 Petitioner submitted a second time extension which was denied on July 2, 2020. Petitioner had however went ahead and mailed the en banc petition on June 29. Because it didn't arrive by the 29th it was found late. See (Exhibit C.)

REASONS FOR GRANTING THE PETITION

The Petition for a writ of Mandamus is appropriate here because the Fifth Circuit has repeatedly refused to accept the petition for en banc as on time, and in the alternate to treat the on time petition for rehearing as a rehearing with suggestion for en banc.

Adequate relief can only be granted by the Supreme Court.

Argument

- 1) Petitioner's right to have his Petition for Rehearing considered as a suggestion for en banc is clear, but the Fifth Circuit denied that without comment.
- 2) The actual separate en banc filing which was mailed on the June 29th dead line should also be considered on-time per the mail box rule.
- 3) The second request for a time extension should have been granted for the en banc petition given the prison operational effects of Court 19. Petitioner was requesting a couple weeks.

Given the manifest ^{5.}injustice that has occurred
in Petitioner's case, as demonstrated by
Petitioner's Pending Petition for Certiorari with
this court (mailed on 11-13-2020 USPS 9114
9999; 4431, 4368, 6943, 11) It would
be proper to consider this writ of Mandamus.

Alternatively, Petitioner requests the Supreme
Court hear Petitioner's Pending Certiorari
concerning the Certificate of appealability
denial, and other ^{related} but separate
Certiorari regarding the interference with
Petitioner's Client-Attorney Protected Rights.

The petition for a writ of ^{Mandamus} ~~certiorari~~ should be granted.

Respectfully submitted,

David A. Deed

Date: Jan 24 2021