

No. _____

20-7346

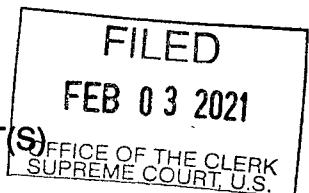
IN THE
SUPREME COURT OF THE UNITED STATES

CRIMINAL

David Andrew Dichi — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)



ON PETITION FOR A WRIT OF ~~REHEARING~~ TO
Mandamus

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

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

Refiling

2-19-21

David Andrew Dichi
(Your Name)

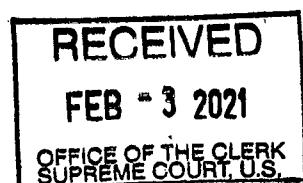
David A. Dichi, 532 14018

Federal Correctional Complex
(Address)

USP Coleman II

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 those grounds not to have accepted
it given it was mailed on the due
date.

And,
in the alternate, should the Petition
for Rehearing be 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. Maestri Place
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

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE WRIT	4
CONCLUSION.....	5

INDEX TO APPENDICES

APPENDIX A Fifth Circuit Certificate of Appealability denial

APPENDIX B CoA Rehearing Denial

APPENDIX C CoA En banc Rehearing Denial

APPENDIX D

APPENDIX E

APPENDIX F

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, Petition 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 fight 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 deadline should also be considered on-time per the mailbox 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) ¹¹⁻¹³⁻²⁰²⁰ 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} CONCLUSION ^{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. Diehl

Date: Jan 24 2021