No. 20-7821

IN THE

SUPREME COURT OF THE UNITED STATES

In re JOHN A. TOTH — PETITIONER

VS.

MARK S. INCH, SEC'Y., FLA. DEPT. OF CORRECTIONS, ET. AL. — RESPONDENT

ON PETITION FOR A WRIT OF HABEAS CORPUS

TO THE

UNITED STATES SUPREME COURT

John A. Toth
DC#: B12440
Sago Palm Re-Entry Center
500 Bay Bottom Road
Pahokee, Florida 33476

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STATUTES AND RULES

COMES, the Petitioner, JOHN A. TOTH, pro se and in proper person, pursuant to 28 U.S.C. § 2254(A), 28 U.S.C. § 2242, and petitions this Honorable Court for the issuance of this Writ of Habeas Corpus petition and the relief requested. The Petitioner states the following in support thereof:

JURISDICTIONAL STATEMENT

This Court has jurisdiction to issue a Writ of Habeas Corpus under Article III and Amendment XI under the United States Constitution and pursuant to Supreme Court Rules 17 and 20, and 28 U.S.C. § 1251, 28 U.S.C. § 1651(A) and 28 U.S.C. § 2241(a)(b)(c)(3). Felker v. Turpin, 518 U.S. 651, 135 L. Ed. 2d 827, 116 S. Ct. 2333 (1996) (Federal statute restrictions on successive habeas corpus petitions held not unconstitutional, but not to preclude the U.S. Supreme Court from entertaining original petition):

(A). Power To Grant Writ - 28 U.S.C. § 2241(a)(b)(c)(3)

The Petitioner is in custody of the State of Florida in violation of the Constitutions, Laws and or Treaties of the United States and the State of Florida under the Fourth Amendment rights to privacy and freedom from unreasonable government searches and seizures but upon Probable Cause, and the Fourteenth Amendment to due process of law. Writs of Habeas Corpus may be granted or declined by any justice of the U.S. Supreme Court, or may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(B). Considerations Governing Review on Certiorari - Supreme Court Rule 10(a)(c)

The case at issue, In re Toth, involves a fundamental miscarriage of justice with incorporated issues of great public importance. The State of Florida has convicted the Petitioner in conflict with the Fourth and Fourteenth Amendments to the United States Constitution; thus, federal court jurisdiction under the supervisory authority of the United States Supreme Court.

The Petitioner sought Habeas Corpus review in the U.S. District Court Southern District of Florida in 2018, and subsequently the 11th Circuit Court of Appeals ending in 2020, for the protection of his Federal Constitutional rights. These federal courts have entered decisions regarding In re Toth that are in conflict with other U.S. Federal Circuits on the same important matters, having so far departed from the accepted and usual course of judicial proceedings as prescribed by Congress and this Honorable Court, that these important matters should be resolved by this Court. The decisions rendered in In re Toth by the 11th Circuit federal courts were in a way that conflict with relevant decisions, procedures and standards of review prescribed by this Honorable Court and Congress.

Additionally, the U.S. District Court Southern District of Florida and the 11th Circuit Court of Appeals have decided important questions of federal law in In re Toth in a way that conflict with other circuits and with relevant decisions of the U.S. Supreme Court that should be settled by this Honorable Court. (See: Appendix Exhibit - X; Petitioner's Petition for Writ of Certiorari on 11th Circuit Conflicting Decisions).

(C). Procedure On A Petition For An Extraordinary Writ - Supreme Court Rule 20(4)(a)

Having exhausted all available remedies of the State of Florida and the 11th Circuit federal courts, exceptional circumstances of a miscarriage of justice have occurred. The miscarriage of justice evolved from the decisions within the jurisdiction of the 11th Circuit federal courts of a fundamental miscarriage of justice of the Petitioner's State of Florida conviction in violation of the Fourth and Fourteenth Amendments to the U.S. Constitution.

The miscarriage of justice invoked by the 11th Circuit federal courts in In re Toth encompasses the 11th Circuit federal courts having implemented their own jurisdictional standards and procedure, conflicting with relevant existing decisions regarding similar matters of law and the accepted and usual proceedings and review as prescribed by Congress and this Honorable Court.

(1). <u>Reasons For Not Making Application To The District Court - 28 U.S.C. §2242</u>

The Petitioner first approached the U.S. District Court Southern District of Florida with the initial 28 U.S.C. §2254 petition in 2018. The petition consisted of constitutional violation claims and merits, cited federal statutory violations, but lacked a memorandum of law in support of the claims. The U.S. District Court deemed the Petitioner time-barred based upon incomplete and unofficial state court record and did not order the State Attorney General to show cause to refute the Petitioner's claims, exhibits and record, or declare with record proof that the Petitioner was time-barred. The Petitioner was denied a fair and full opportunity to adequately review for the first time the unofficial and incomplete state court file provided to the Petitioner with the U.S. District Court Magistrate's Report and Recommendation. Without the fair opportunity, the Petitioner was unable to give explanation as to the application of equitable tolling preserving the Petitioner's AEDPA time limitation. Therefore, the U.S. District Court in conflict with statutory rule, procedural fact-finding processes (show cause) and adherence to relevant decisions of this Honorable Court (<u>Day v. McDonough</u>, 547 U.S. 198, 210, 126 S.Ct. 1675 (2006)(giving petitioner full and fair opportunity to amend his petition to protect the constitutional right to the Writ of Habeas Corpus)), never adjudicated the Petitioner's §2254 petition on the merits.

(2). <u>Exceptional Circumstances Necessitate This Court's Review</u>

The pinnacle of the exceptional circumstances requiring this Courts review and jurisdiction encompasses the 11th Circuit Court of Appeals' miscarriage of justice in <u>In re Toth</u>, September 18, 2020. The 11th Circuit Court of Appeals; rendered decisions in <u>In re Toth</u>: in conflict with other circuits on the same matters of law; established standards and procedures of review in conflict with accepted and usual practices by this Honorable Court; rendered decisions in conflict with this Court on the same important matters and questions of federal law; established none existent standards of review ("actual innocence plus") that conflict with other circuits and relevant decisions of this Honorable Court; and, rendering decisions outside the 11^{th} Circuit Court of Appeals jurisdictional authority under 28 U.S.C. §2244(b)(3)(4) and 11^{th} Circuit Local Rule 22.1 (Habeas Corpus; Successive Petitions) by ruling on In re Toth's Second-Successive Habeas Corpus and not requiring the State to file a response; without determining the petition having prima facie value then relinquishing jurisdiction to the U.S. District Court, to order the State of Florida to show cause and or dismiss the claims as having merit or already adjudicated. The 11^{th} Circuit Court of Appeals has exercised res judicata and mixed §2244 with §2255(h)(1), rendering an improper standard of review as prescribed by Congress and this Honorable Court. (see: Appendix Exhibit-X; Petitioner's Petition For Writ of Certiorari on 11^{th} Circuit Conflicting Decisions).

Therefore, the Exceptional Circumstances requiring this Honorable Court's jurisdictional review of In re Toth, of a fundamental miscarriage of justice. The Petitioner is unable to petition any other court, including the U.S. District Court Southern District of Florida, to render a fair and judicious review and decision that pertains to the fundamental miscarriage of justice of In re Toth's unlawful conviction at the hands of the State of Florida.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Within In re Toth the issues presented for review involve a mixture of law and fact. A fundamental miscarriage of justice has occurred, and the lower 11^{th} Circuit federal courts (U.S. District Court Southern District of Florida; 11^{th} Circuit Court of Appeals) through a miscarriage of justice have foreclosed the office of habeas corpus without full and fair adjudication of the constitutional violation merits within In re Toth.

The facts, law and record in In re Toth, clearly demonstrate that the State of Florida lacked Probable Cause to detain, arrest, and convict the Petitioner. The Petitioner's federally protected rights under the Fourth and Fourteenth Amendments to the U.S. Constitution were violated, and the State of Florida was to observe the Petitioner's rights to privacy and due process of law, according to the Florida Constitution; Article-I, §12, and §9, respectively.

Despite the State of Florida admitting to violating the Petitioner's Constitutional rights, both the U.S. District Court Southern District of Florida and the 11th Circuit Court of Appeals have denied In re Toth equitable review of the merits of the claims. (See: Appendix Exhibit P; State's 11th Circuit Answer Brief, p. 212, lines 10-12).

The Petitioner can demonstrate due diligence, equitable tolling, overcoming statutory AEDPA and State procedural bars, and the State of Florida lacking Probable Cause; violating the Petitioner's Constitutional rights against illegal search and seizure and right to due process of law.

Most importantly, the 11th Circuit Court of Appeals has prevented the Petitioner having access to the Great Writ. In In re Toth, the 11th Circuit Court of Appeals has ruled outside of their jurisdictional authority and contrary to 28 U.S.C. § 2244 (b)(3)(4) and 11th Circuit Local Rule 22.1(d) regarding the Petitioner's Second-Successive Habeas Corpus. Not only did this overstep the U.S. District Court's jurisdictional authority and fact-finding duties, the 11th Circuit Court of Appeals has defied prescribed procedure of Congress and this Honorable Court's decisions and authority.

The Writ of Habeas Corpus is not jurisdictional to a circuit court of appeal. After a U.S. District Court has determined and adjudicated the Petitioner's claims as adequately resolved, then a circuit court of appeals will inherit jurisdiction through appeal. By the 11th Circuit Court of Appeals having ruled on In re Toth, the Petitioner has been unduly prejudiced of the protection of the constitutionally protected rights against unreasonable searches and seizure and the right to due process of law. An important issue of great public importance has resulted as a fundamental miscarriage of justice due to unreasonable government intrusion and invasion of privacy.

STATEMENT OF THE CASE

On 10/17/2012 at 10:30pm., Palm Beach County, Florida Sheriff Deputy, Paul Cunningham arrived on the scene of a structure fire at 305 Cypress Drive, Lake Park, Florida. (See: Appendix Exhibit-A; Sgt. Cunningham Report, p. 5, lines 1-2).

Palm Beach County, Florida, Fire Investigator, Paul Matthews, also at the scene, to conduct an origin and cause investigation. Both Cunningham's and Matthews' initial investigations reveal: No eyewitnesses of a perpatrator, suspect, or evidence that would establish either officer having first-hand knowledge or eyewitness Probable Cause. (See: Appendix Exhibit-B; Inv. Matthews Probable Cause Affidavit, p. 9).

According to Sgt. Cunningham, there were no witnesses to the fire, other than tenant Niki Line. However, Ms. Line states she observed a female either entering or exiting the apartment of the victim thirty (30) minutes prior to witnessing the victim's apartment on fire. (See: Appendix Exhibit-A; Sgt. Cunningham Report, p. 6, lines 5-6).

Sgt. Cunningham's and Inv. Matthews' reports show initially that the Petitioner was not a suspect. CSI and Fire Marshal forensics additionally indicate and confirm, Petitioner was not involved in the crime. (See: Appendix Exhibit-C; Palm Beach County CSI Report, pp. 12-16; Appendix Exhibit-D; State of Florida Fire Marshal Report, pp. 17-21).

Sgt. Cunningham's Report (Appendix Exhibit-A) does not disclose that he spoke to a, then unidentified, informant. The informant, the victim's cousin, Mary Frievy, spoke an opinion (heersay) to Sgt. Cunningham that she believed the Petitioner could have committed the crime. The statement by Ms. Frievy was without supporting articulable eyewitness first-hand fact or knowledge or having been handwritten, sworn and presented to an objective Magistrate judge to establish Probable Cause.

The identity of this informant (Mary Friery) was concealed until the Petitioner discovered its existence prior to filing a Petition for Writ of Certiorari, Case No: 19-7043, in this Honorable Court in 2019.

The victim (Peggy Fowler) confirms in her deposition that Sgt. Cunningham spoke with the unidentified informant, Mary Friery, Ms. Fowler's cousin. It was impossible for Sgt. Cunningham to have spoke to Ms. Fowler about the Petitioner prior to Sgt. Cunningham telephoning the Petitioner. Likewise, a sworn complaint affidavit presented to a Magistrate judge to determine Probable Cause was never completed by Ms. Fowler. (see: Appendix Exhibit-F; Peggy Fowler (victim) Deposition, p. 26, lines 2-25).

It was also from the informant, Mary Friery, that Sgt. Cunningham seized cell phone number information to invade the Petitioner's privacy, creating the Fourth Amendment violation. Sgt. Cunningham seized the Petitioner's private cell phone number from the informant, Mary Friery, while acting in the official capacity of a Law Enforcement Officer conducting an official investigative search, absent Probable Cause and/or a valid search warrant based on Probable Cause (Third Party Information).

Sgt. Cunningham exerted further effort to deliberately conceal his Fourth Amendment invasion of privacy and unlawful seizure of Third Party Information absent Probable Cause and/or a search warrant. Cunningham reverses, thus falsifying, the chronological order of case events to falsify exigency Probable Cause in his report. See: Appendix Exhibit-A; Sgt. Cunningham Report, p. 6, switch lines 16-20 with lines 21-23 to get the right order of events.

Appendix Exhibit-A; Sgt. Cunningham Report, p. 6, lines 21-23, indicate Cunningham attempting to call the Petitioner for an unspecified amount of time (10:30pm 10/17/2012-____) and then making contact with the Petitioner at 3:00am. on 10/18/2012, within 4½ hours after arriving at the crime scene. Cunningham gives no plausible explanation as to how, why, under what authority, or of having a warrant established upon Probable Cause, to contact the Petitioner on the Petitioner's personal, and private, cell phone number.

Appendix Exhibit-A; Sgt. Cunningham Report, p. 6, lines 16-20, describe that Cunningham finally established contact with the victim, Ms. Fowler 14 hours after (1745 hours - 10/18/2012) Cunningham had unlawfully contacted the Petitioner earlier the same day.

Absent Probable Cause, exigent circumstances, and or a search warrant for the Petitioner's cellphone number, Sgt. Cunningham telephoned the Petitioner at 3:00a.m 10/18/2012. Cunningham expressed to the Petitioner of having "an emergency" to speak personally to him about to manipulate the Petitioner to forfeit his home address.

Sgt. Cunningham then instigated Sheriff Deputies Turpin and Sgt. Johnson to proceed to the Petitioner's home to detain and interrogate the Petitioner absent Probable Cause and a valid court authorized search warrant. (See: Appendix Exhibit-E; Officer Turpin's Report, p. 23, line 1).

Deputies Turpin and Johnson arrive at the Petitioner's home at 3:11am on 10/18/2012, at 738 Ilex Court, Lake Park, Florida. The Petitioner exited his home onto the residence's curtilege and is immediately surrounded by the Deputies and several other officers that have accompanied them. The barrage of an intimidating un-Mirandized interrogation commences.

After eighteen (18) minutes of the Petitioner's acquiesance to the unauthorized police intimidating presence and interrogation, Sgt. Johnson produces a digital recording device. Johnson insists on making a recording repeating the previous eighteen (18) minute interrogation. (See: Appendix Exhibit-G; Toth Interrogation Transcripts, pp. 27-41).

The interrogation transcripts, beginning at 3:29 a.m., 10/18/2012, do not reveal the purpose of why police are interrogating the Petitioner.

The recording lacks the constituents of an "official confession", as the Petitioner does not complete a handwritten replica of the recording and is not sworn before a Magistrate as to the statement authenticity and voluntariness. Moreover, the Petitioner's answer to Sgt. Johnson's question of whether the Petitioner started the fire cannot be deemed as an admittance or "confession". (See: Appendix Exhibit-G; Toth Interrogation Transcripts, p.37, lines 1-2).

The Petitioner is released from police custody and Deputies Turpin, Johnson and the other officers leave the Petitioner's home at 4:00am. 10/18/2012. (See: Appendix Exhibit-G; Toth Interrogation Transcripts, p. 41, lines 30-31). Sgt. Johnson transfers the digitally recorded interrogation to Inv. Matthews who did not accompany the officers. (See: Appendix Exhibit-A; Sgt. Cunningham Report, p. 6, lines 30-31; Appendix Exhibit-B; Investigator Matthews Probable Cause Complaint, pp. 10, line 1).

Fifteen (15) hours later on the same day police return to arrest the Petitioner without an official Probable Cause Complaint and without a Court Ordered Arrest Warrant (Caplas). (See: Appendix Exhibit-H; Docket History Report, pp 43-44, Docket Entries #1-36; Appendix Exhibit-B; Inv. Matthews Probable Cause Complaint, p. 10, absent Magistrate stamp and signature).

The Petitioner is subsequently convicted by negotiated plea agreement on November 27, 2013. The Petitioner accepts ten (10) years imprisonment for Arson, Burglary and Obstructing the Extinguishment of Fire in lieu of going to trial.

Post-conviction proceedings were commenced by the Petitioner and a Motion To Compel State Court Records was filed on May 21, 2014. (See: Appendix Exhibit-H, State Docket History Report, p. 48, DE#152). The motion for records from the Fifteenth Judicial Circuit Court In And For Palm Beach County, Florida was to prepare for filing the federal Habeas Corpus. This Motion has never been disposed of by the State trial court and has tolled the Petitioner's AEDPA time limitation.

Despite awaiting the state trial court response and disposition on the Motion To Compel state court records, the Petitioner continued due diligence to request court records in preparation of state court post-conviction proceedings.

On December 28, 2015, the Petitioner filed a Florida Rules of Criminal Procedure Rule 3.850 Motion for post-conviction relief. The Rule 3.850 Motion is to contest that the Petitioner is in state custody in violation of the Constitution, Laws or Treaties of the United States and State of Florida. The Petitioner preserved constitutional violations of the Fourth, Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution.

The State Attorney responded to the Rule 3.850 Motion emphasizing that the Petitioner had accepted a plea bargain. The State Trial Court denied the Petitioners Fla. R. Crim. P. 3.850 Motion on April 5, 2017, with rehearing denied on July 18, 2017. (<u>See</u>: Appendix Exhibit - I; State Trial Court Order Denying Post-Conviction Relief, pp. 53-55).

The Petitioner immediately filed a timely Notice of Appeal and appellate brief in the Fourth District Court of Appeals. The Petitioner raised Federal Constitutional and Statutory Claims, but the Fourth DCA did not require the State Attorney General to respond. The Petitioner's Fla. R. App. P. 9.141(b)(2) Brief was denied Per Curiam Affirmed on August 17, 2017, with rehearing denied September 25, 2017. (<u>See</u>: Appendix Exhibit - J; Florida Fourth District Court of Appeal Denial, pp. 56-58).

The Petitioner attempted to appeal to the Florida Supreme Court on October 24, 2017, with an issue of great public importance per Fla. R. App. P. 9.210. The Petitioner was denied appeal as the Fourth DCA did not issue an opinion, preventing invoking the Florida Supreme Courts jurisdiction.

It should be noted here that the Petitioner exercised due diligence and requested the official state court record seven (7) times from the state trial court between May 2014 and January of 2018, when

Petitioner filed the Original §2254 Habeas Corpus petition (See: Appendix Exhibit-H, pp. 42-52, Docket Entries #152, #159, #162, #179, #186, #189, #230). Additionally, the Petitioner in Docket Entries #154, #160, #180, #190, submitted inquiry and correspondence to the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida, as to the status of each request or motion for records that were ignored.

Having exhausted all state court remedies, the Petitioner filed the original Habeas Corpus petition on January 16, 2018 accompanied by an Appendix of unofficial record referenced in the Petition in the U.S. District Court Southern District of Florida. (See: Appendix Exhibit-K; Original §2254 Petition, pp. 59-78).

On January 24, 2018, the U.S. District Court ordered the U.S. District Court Clerk to download the incomplete and unofficial state court record file from the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida, website.

On January 25, 2018 the U.S. District Court issued the Magistrate's Report and Recommendation accompanied by the unofficial and incomplete state court case file to the Petitioner. Though the file is unofficial and incomplete and does not contain the Motion To Compel state court records that tolls the AEDPA time, it is the first compilation of the case record that the Petitioner received in the four (4) years that it was requested (See: Case No.: 9:18-cv-80067-WPB, Doc#4). (See: Appendix Exhibit-L; U.S. District Court Magistrate Report And Recommendation, pp. 79-100).

The Petitioner filed a timely objection to preserve the Habeas Corpus claims for appellate review. The U.S. District Court did not give the Petitioner fair notice or opportunity to review the casefile for the first time and give adequate explanation as to how equitable tolling had preserved the Petitioner's claims from being AEDPA time-barred.

The U.S. District Court issued the Final Order on February 14, 2018, adopting the Magistrate's Report and Recommendation (See: Appendix Exhibit-M; U.S. District Court Final Order, pp. 101-104).

The Petitioner filed a timely Notice of Appeal and submitted an Application For Certificate of Appealability in the 11th Circuit Court of Appeals.

On July 2, 2018, the 11th Circuit Court of Appeals granted COA on two (2) issues: (1) Whether the District Court erred in determining sua sponte that Mr. Toth's 28 U.S.C. § 2254 petition was time-barred without reviewing the complete, official state court record; and, (2) Whether the District Court erred in alternatively determining sua sponte that Mr. Toth's Claims failed on the merits without reviewing the complete, official state court record. (See: Appendix Exhibit-N; 11th Circuit Court of Appeals Order Granting COA, pp. 105-112).

The Petitioner filed a timely 11th Circuit Appellate Brief and was denied appointment of counsel, despite Petitioner's unfamiliarity with federal appellate procedures and brief content requirements. (see: Appendix Exhibit-O; Petitioner's 11th Circuit Appellate Brief, pp. 113-178).

The Florida Attorney General filed a timely response to the Petitioner's Appellate Brief. (See: Appendix-Exhibit-P; State's 11th Circuit Answer Brief, pp. 179-217). Within the state's response the State Attorney General's Office admits that they were aware of the known Fourth and Fifth U.S. Constitutional Amendment Violations within the Petitioner's case. (See: Appendix Exhibit-P; pp. 212, lines 10-12). The constitutional violations were known by the State prior to the State convincing the Petitioner to enter the plea bargain unknowingly and unintelligently about that knowledge.

The Petitioner filed a timely Reply to the State's Answer Brief. (See: Appendix Exhibit-Q; Petitioner's Reply Brief to State's Answer Brief, pp. 218-250).

The 11th Circuit Court of Appeals issued it's denial of Habeas

Corpus relief to the Petitioner on June 13, 2019. (See: Appendix Exhibit-R; 11th Circuit Court of Appeal Order Denying Petitioner Habeas Corpus Relief, pp. 251-257).

The Petitioner filed a Petition For Writ of Certiorari in this Honorable Court on December 12, 2019, Case No.: 19-7043.

The State Attorney General was ordered to respond and filed a Brief in Opposition. (See: Appendix Exhibit-S; State Brief In Opposition to Petitioner's Petition For Writ of Certiorari, pp. 258-286).

The Petitioner filed a timely Reply in Opposition. (See: Appendix Exhibit-T; Petitioner's Reply Brief in Opposition, pp. 287-306).

The Petitioner was denied a Writ of Certiorari on June 1, 2020. (See: Appendix Exhibit-U; U.S. Supreme Court denial of Petition For Writ of Certiorari, pp. 307-308).

The Petitioner filed a Second-Successive Habeas Corpus on September 2, 2020 in the 11th Circuit Court of Appeals per 28 U.S.C. §2244 and Rule 9, Rules Governing §2254 Cases. (See: Appendix Exhibit-V; Petitioner's Second-Successive Habeas Corpus With Attached Memorandum of Law, pp. 309-334).

The 11th Circuit Court of Appeals denied the Petitioner's Second-Successive Habeas Corpus on September 18, 2020. This is in conflict with decisions of other circuits and this Honorable Court on the same issues and matters of law, constitutional rights violations, and Statutory review procedure jurisdiction required and as prescribed by Congress and this Honorable Court according to 28 U.S.C. §2244 (b)(3)(4). (See: Appendix Exhibit-W; 11th Circuit Denial of Second-Successive Habeas Corpus, pp. 335-339).

The Petitioner attempted to file a Petition For Writ of Certiorari on November 30, 2020 specifically on the 11th Circuit Court of Appeals rendering decisions on Second-Successive Habeas Corpus petitions that conflict with Rules Governing §2254 cases; review procedure under 28 U.S.C. §2244(b)(3)(4); decisions of other circuits and this Honorable Court on the same important matters and questions of law; and, have established non-existent standards of review ("actual innocence plus"); mixing 28 U.S.C. §2244 and §2255(h)(1), requiring this Court's exercise of it's discretionary supervisory power. (See: Appendix Exhibit-X; Petition For Writ of Certiorari Regarding 11th Circuit Conflicting Decisions, pp. 340-363).

The Petitioner served a copy of the petition regarding conflicting decisions upon the 11th Circuit Court of Appeals. The 11th Circuit construed it as a Second-Successive Habeas Corpus and rendered an almost identical ruling as the Petitioner's previous Successive Habeas Corpus. (See: Appendix Exhibit-Y; 11th Circuit Decision Misconstruing Petition For Writ of Certiorari, pp. 364-369).

The Petitioner brings this Petition to the U.S. Supreme Court, as no other court, state or federal, can rule on the fundamental miscarriage of justice and constitutional issues of great public importance; 28 U.S.C. § 2241(a)(b)(c)(3), 28 U.S.C. § 2242.

SUMMARY OF THE ARGUMENT

The following is a synopsis of the arguments within this petition:

Claim One: Statutory Time-Bar - The one-year time limitation in 28 U.S.C. § 2244(d) is not jurisdictional and subject to equitable tolling. The Petitioner, having recently discovered through the state court case file, finally being supplied by the U.S. District Court Southern District of Florida, that he preserved his federal time with a Motion To Compel Records that remains pending. The Petitioner, then, was denied by the U.S. District Court the opportunity to correct and refute the U.S. District Court's determination of being untimely through exhibiting due diligence. The Petitioner's right to 14th Amendment due process of law was violated.

CLAIM TWO: Procedural Default - The state procedural default of accepting a negotiated plea cannot prevent the review of a federal question unless the last state court to render judgment on the case "clearly and expressly" states it's judgment rests on specific state procedural bars. Likewise, Mr. Toth's conviction is based upon evidence obtained in an unlawful search in violation of the U.S. Constitution's Amendment Four. Therefore, the federal question, having been fairly presented and exhausted in the state courts, can now be presented to a Federal court of jurisdiction to hear it.

CLAIM THREE: Warrantless Unlawful Request For Third Party Information In Violation Of The Fourth Amendment - Sgt. Cunningham's conduct of requesting the Petitioner's private cell phone number through a third party informant constituted a warrantless search and seizure without Mr. Toth's consent and or authorization and invasion of privacy. Sgt. Cunningham's subsequent conduct of acting on an allegation without any articulable facts, secured the Petitioner's cell phone number illegally outside the judicial processes as governed by the United States Constitution and statutes and the U.S. Supreme Court. Sgt. Cunningham additionally failed to reveal the true identity of the actual source that he illegally obtained Mr. Toth's cell phone information from to justify Probable Cause for a warrantless seizure of Mr. Toth.

CLAIM FOUR: Deputies Turpin And Sgt. Johnson's Illegal Detention Of The Petitioner Was Without Probable Cause For Interrogation Within His Home As Instigated By Sgt. Cunningham In Violation Of The Fourth Amendment - Sgt. Cunningham instigated Deputies Turpin and Sgt Johnson to conduct an unlawful detention and interrogation of the Petitioner, of which Deputies Turpin and Sgt. Johnson proceeded to illegally detain and interrogate Mr. Toth without Probable Cause within the Petitioner's home, which produced an illegally obtained unsworn confession, without Probable Cause being established beforehand to authorize Deputy Turpin's and Sgt. Johnson's conduct.

CLAIM FIVE: Fire Investigator Matthews' Probable Cause Affidavit

Failed To Establish Probable Cause - Fire Investigator Paul Matthews' conduct of making his own Probable Cause determination based upon information he received from other officers and outside of his personal and actual knowledge as a basis for Probable Cause was insufficient to arrest the Petitioner and outside the judicial processes as governed by the U.S. Constitution and statutes and the U.S. Supreme Court.

CLAIM SIX: The 11th Circuit Court of Appeals Has Entered Decisions In In re Toth Denying The Petitioner His Fourteenth Amendment Rights To Due Process In Second-Successive Habeas Corpus Petitions - The 11th Circuit Court of Appeals has rendered decisions in conflict with other circuits and the U.S. Supreme Court, having established their own jurisdictional standards of review of res judicata and non-existent standards ("actual innocence plus"), mixing the standards of 28 U.S.C. § 2244 and 28 U.S.C. § 2255(h)(1), denying the Petitioner's Fourteenth Amendment right to due process under 28 U.S.C. § 2244(b)(3)(4) and access to Habeas Corpus relief.

CLAIM SEVEN: Whether the 11th Circuit Court of Appeals Denial of Fourth Amendment Retroactive Application of Right To Privacy in Carpenter v. U.S., 585 U.S. ___, 138 S. Ct. 2206 (2018) Deprived The Petitioner of Fourteenth Amendment Due Process Rights - Carpenter is predicated on the existing and ever-expanding tenets pertaining to Fourth Amendment rights to privacy and police being required, while acting in an official capacity, to establish Probable Cause and obtain a valid search warrant to obtain private information from Third Party Sources.

CLAIM EIGHT: The U.S. District Court Erred In Determining Sua Sponte That Mr. Toth's 28 U.S.C. § 2254 Petition Was Time-Barred Without Reviewing The Complete Official State Court Record, Denying The Petitioner's Fourteenth Amendment Due Process Rights - The 11th Circuit Court of Appeals has not made retroactive their recent decision that taking judicial notice of facts is a highly limited process and bypasses critical safeguards for protecting the rights of Habeas Corpus petitioners from a fundamental miscarriage of justice, as has occurred in In re Toth.

ARGUMENT

CLAIM ONE
STATUTORY TIME-BAR

POINT-I: 28 U.S.C. § 2244(d)(1)(B)-(D)

The one-year limitation in 28 U.S.C. § 2244(d) is not jurisdictional and may be subject to equitable tolling. The time limitation period begins to run in accordance with individual circumstances that could reasonably affect availability of remedy. Miller v. Marr, 141 F.3d 976, 978 (10th Cir. 1998); citing, Lonchar v. Thomas, 517 U.S. 314, 116 S. Ct. 1293, 1298-1299, 1303, 134 L. Ed 2d 440 (1996), the U.S. Supreme Court stated it disapproved of the statutory rule concerning delayed petitions, Rule 9(a) of the Rules Governing § 2254 cases in the United States District Courts. The U.S. Supreme Court distinguished between successive petitions and first petitions. Additionally, the Court held that the dismissal of a first federal habeas petition is regarded as a serious matter, for the dismissal denies the petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty. As in the Petitioner's case, there were circumstances where the limitation period at least raises serious constitutional questions and possibly renders the habeas remedy inadequate and ineffective.

POINT-II: EQUITABLE TOLLING

The Petitioner can demonstrate, as has been recently discovered within the record, that the § 2254 petition is timely under Equitable Tolling. In order to qualify, the Petitioner must meet the following prongs established by the U.S. Supreme Court:

1). Petitioner must show that he has been pursuing his rights diligently. Lawrence v. Florida, 549 U.S. 327, 336 (2009); Holland v. Florida, 560 U.S. 631, 649 (2010).

The Petitioner filed a Motion To Compel State Court records (Appendix Exhibit-H; State Court Docket History Report, DE# 152) during the time period before the conviction became final as of June 9, 2014. The records requested were for filing the § 2254 petition and the trial court never rendered disposition on the Motion To Compel.

Properly filed state court petitions must be pending in order to toll the limitations period. Webster v. Moore, 199 F.3d 1256, 1258-1260 (11th Cir. 2000). This Court will note in Appendix Exhibit H; State Court Docket History Report, that Petitioner's Motion To Compel State Court Records has neither been granted nor denied, even to this day. Thus, Petitioner's §2254 one-year time limitation is still tolled, as there was no gap in time for the federal time clock to proceed. See, Burnett v. New York Central Railroad Company, 380 U.S. 424, 85 S. Ct. 1050, 13 L. Ed 2d 941 (1965), and Docket Entries #153, #159, #162, #179, #186, #187, #230 (motions for records), Docket Entries #154, #160, #180, #190 (inquiry or correspondence regarding disposition of records motions); demonstrating continued diligence despite expired time limitation.

2). Some extraordinary circumstances stood in his way and prevented timely filing. Lawrence, and Holland, supra.

The Petitioner was entitled to rely upon the state court's constitutional correctiveness of granting the Petitioner's request for records to facilitate the §2254 petition. The state court timeliness in disposition of the Motion To Compel was beyond the Petitioner's control, even with repeated inquiries to the state Court. King v. Bell, 378 F.3d 550, 553 (6th Cir. 2004).

3). Extraordinary circumstances that are both beyond his control and unavoidable with diligence. Howell v. Crosby, 415 F.3d 1250 (11th Cir. 2005); Wade v. Battle, 379 F.3d 1254, 1260 (11th Cir. 2004).

The Petitioner waited for the state court to make a decision to the Motion To Compel State Court Records, even with repeated inquiries. The question here in Petitioner's case is what "due diligence" the Petitioner had to demonstrate when the state court fails to grant the requested records through the Motion To Compel, which caused the Petitioner to repeatedly request for the records, and only finally receiving the records through the U.S. District Court four (4) years later. King v. Bell, supra. The Petitioner had no indication as to what extent the delay of the state court not granting the requested critical records through the Motion To Compel in a timely manner, would affect his time limitation of the §2254 petition. King v. Bell, supra.

4). The Petitioner must show a causal connection between the alleged extraordinary circumstances and the late filing of the petition.

Lawrence and Holland, supra.

Appendix Exhibit-H; State Docket History Report, Docket Entries #153, #159, #162, #179, #186, #187, #230 of motions for court record, with Docket Entries #154, #160, #180, #190 of correspondence and or inquiry regarding record requests being ignored or denied by the state court, indicate the Petitioner's due diligence to obtain the state court record. When the U.S. District Court obtained the incomplete and unofficial state court records for the §2254 proceedings, the U.S. District Court provided the Petitioner with his first ever state court record. Burnett v. New York Central Railroad Company, 380 U.S. 424 at 424-437.

5). The U.S. District Court failed to afford the Petitioner an opportunity to show why he should not be time-barred and or amend the Petition.

In Day v. McDonough, 547 U.S. 198, 209-210, 126 S. Ct. 1675, 164 L. Ed 2d 376 (2006), the U.S. Supreme Court held that "[B]efore acting on its own initiative, a court must accord the parties fair notice and an opportunity to present their positions. Further, the court must assure itself that the petitioner is not significantly prejudiced by the delayed focus on the limitations issue, and determine whether the interests of justice would be better served by addressing the merits or by dismissing the petition as time-barred." Therefore, the U.S. District Court erred by sua sponte denying the Petitioner's §2254 petition without giving notice to the state to Show Cause, or for the Petitioner to demonstrate why he was untimely due to equitable tolling. See: Appendix Exhibit-L; U.S. District Court Magistrate Report and Recommendation, Section IV- Timeliness, pp. 88-97. Wherefore, when the U.S. District Court rejected Petitioner's §2254 on procedural grounds, the Petitioner has now shown that jurists of reason would find it debateable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debateable whether the U.S. District Court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000).

Therefore, a miscarriage of justice has occurred, as the Petitioner's Fourteenth Amendment right to due process was violated by being time-barred. This Honorable must reverse and remand In re Toth to the U.S. District Court with instructions consistent with this Honorable Court's determinations related to the legal precedents within CLAIM ONE.

CLAIM TWO
PROCEDURAL DEFAULT

The Petitioner is not barred from Federal Habeas review, as the State of Florida has previously contended, by the Petitioner having accepted a negotiated plea. In Henry v. Mississippi, 379 U.S. 443, 447 (1965); citing Lovell v. City of Griffin, 303 U.S. 444, 450, the U.S. Supreme Court held the question of how state procedural default rules can prevent the U.S. Supreme Court of the consideration of a federal question. The state procedural rule ought not be permitted to bar vindication of important federal rights. Henry v. Mississippi, 379 U.S. 443 at 448.

The Petitioner's plea of guilty does not bar review in Habeas Corpus proceedings of all constitutional claims prior to his guilty plea. A defendant who pleads guilty may challenge "the very power of the state to bring the defendant into court to answer the charge brought against him." Haring v. Prosise, 462 U.S. 306, 320 (1983); citing, Blackledge v. Perry, 417 U.S. 21, 30 (1974).

Likewise, a procedural default does not bar consideration of a federal claim on either direct or habeas review unless the last state court rendering a judgment in the case "clearly and expressly" states that its judgment rests on a state procedural bar. Harris v. Reed, 489 U.S. 255, 263 (1989). Appendix Exhibit-M; U.S. District Final Order, pp. 101-104, the District Judge notes the Petitioner's right to appeal his conviction. Compare to Stahl v. State, 972 So 2d 1013 (Fla. 2nd DCA 2008), where Stahl waived his rights to specific state remedies.

Furthermore, the state procedural bar relied upon by the state in the Petitioner's case does not deny this Court's review of the case. The Petitioner's conviction is based upon evidence obtained in an unlawful search in violation of the U.S. Constitution, thereby a federal question. Henry v. Mississippi, 379 U.S. at 454-455. Once a federal question has been fairly presented in the state courts, the exhaustion requirement is satisfied. Castille v. Peoples, 489 U.S. 346, 351 (1989); citing Picard v. Connor, 404 U.S. 270, 275 (1971); Brown v. Allen, 344 U.S. 443, 448-449 (1953).

Therefore, a miscarriage of justice has occurred as the Petitioner's Fourteenth Amendment right to due process of law has been violated and cannot be denied upon a state procedural bar. The Petitioner has the right to a full and fair opportunity to have the federal questions of Imre Toth's constitutional violation merits reviewed by the U.S. District Court, requiring the state to Show Cause and give answer. This Honorable Court ~~must~~ reverse and remand to the U.S. District Court with instructions consistent with the legal precedent within CLAIM TWO.

CLAIM THREE
Warrantless Unlawful Request For Third Party Information In Violation Of The Fourth Amendment

The Petitioner through recently received records obtained by the U.S. District Court, discovered the identity of the Informant that made an allegation to Sgt. Cunningham that they believed the Petitioner started the fire. Upon Sgt. Cunningham's request, the Informant provided the Petitioner's cell phone number to Cunningham without the Petitioner's consent or the Sheriff Deputy having Probable Cause and a court ordered search warrant. This constitutes as a Fourth Amendment violation of illegal search and seizure and invasion of privacy without Probable Cause by Sgt. Cunningham, as he was acting in the official capacity of a Law Enforcement Officer conducting an investigative search via Third Party Information.

See; Original §2254 Petition and Ground One at Appendix Exhibit-K, p. 63, at 4(A)-4(E), as it specifically outlines the chronological order of events. Also, reference Appendix Exhibit-F; Peggy Fowler (Victim) Deposition, p. 26, lines 2-25, as Ms. Fowler specifically states that her cousin, Mary Friery, informed Sgt. Cunningham that Mary Friery believed the Petitioner started the fire. Ms. Friery was not an eyewitness to the crime, and Ms. Friery provided without the Petitioner's express consent, the Petitioner's cell phone number to Sgt. Cunningham.

Peggy Fowler continued to state by sworn deposition testimony that she was allegedly asleep at another location other than the crime and was incapable of answering calls from police.

Sgt. Cunningham's Report (Appendix Exhibit-A; pp. 4-7) never states who he spoke to prior to unlawfully violating the Petitioner's Fourth Amendment privacy rights. It is the victim, Ms. Fowler, who confesses in her deposition that Sgt. Cunningham spoke to her cousin, Mary Friery.

POINT-I

Deputy Cunningham's conduct of unlawfully, and without Probable Cause, requesting for third party information of the Petitioner's cell phone number while acting in the official capacity of a Law Enforcement Officer conducting a warrantless search and seizure absent the Petitioner's consent, resulted in a state court's decision that was contrary to clearly established law as determined by the U.S. Supreme Court; FBI v. Abramson, 456 U.S. 615, 617-632, 102 S.Ct. 2054 (1982); Held: Therefore, deputies acquiring the Petitioner's cell phone number from the Informant and or Victim became an unwarranted invasion of the Petitioner's privacy and illegal search and seizure within the meaning of the Fourth Amendment. Dept. of Justice v. Reporters Comm., 482 U.S. 749, 109 S.Ct. 1468 (1989); Carpenter v. U.S, 585 U.S. ___, 201 L.Ed 2d 507, 525 (2018)

POINT-II

Deputy Sgt. Cunningham's conduct of acting on unsubstantiated, unsworn testimony resulted in a state court's decision that was contrary to clearly established federal law as determined by the U.S. Supreme Court. Beck v. Ohio, 379 U.S. 89, 91-97, 85 S.Ct. 223 (1964); Spinelli v. U.S., 393 U.S. 410, 412-419, 89 S.Ct. 584 (1969); Held: While recognizing that the constitutional requirements of Probable Cause can be satisfied by hearsay information, the Deputies first failed to demonstrate with valid documented proof the underlying circumstances to substantiate the validity and reliability of Ms. Friery's (Informant) information. Secondly, the Deputies could not demonstrate that Ms. Friery was "credible" or the information she gave Deputies was "reliable" articulable fact. Neither the Informant (Ms. Friery) nor the Victim (Ms. Fowler) were given express authority or permission by the Petitioner to share the Petitioner's cell phone number with Sheriff Deputy Sgt. Cunningham, unless Cunningham produced a search warrant based on Probable Cause specifically for the Petitioner's cell phone number.

POINT-III

Deputy Sgt. Cunningham's conduct of a warrantless search and Seizure of the Petitioner's cell phone number outside of the judicial processes, resulted in a state court's decision that was contrary to clearly established federal law as determined by the U.S. Supreme Court; Katz v. U.S., 389 U.S. 347, 350-359, 88 S. Ct. 507 (1967); Held: The U.S. Supreme Court has emphasized that the mandate of the Fourth Amendment requires adherence to the judicial process; citing, U.S. v. Jeffers, 342 U.S. 48, 51, 72 S. Ct. 93 (1957); Held: Searches conducted outside the judicial process without prior approval by judges or Magistrates, are per se unreasonable under the Fourth Amendment and are subject only to a few specifically established and well delineated exceptions. The warrantless search and seizure of the Petitioner's cell phone number contemporaneous with the Petitioner's arrest could hardly be deemed an "incident" of the arrest, nor could the warrantless search and seizure of the Petitioner's cell phone number obtained without prior authorization be justified on grounds of "hot pursuit", and of course, the very nature of this particular type of warrantless search and seizure of the Petitioner's cell phone number precludes seizure of it's use pursuant to the Petitioner's Consent.

POINT-IV

Deputy Sgt. Cunningham's conduct in failing to reveal the identity of the Informant in his Affidavit resulted in a state court's decision that was contrary to clearly established federal law as determined by the U.S. Supreme Court; Rovario v. U.S., 353 U.S. 53, 77 S. Ct. 623 (1957); Held: The importance of police and prosecutors revealing the Informant's Identity (Mary Frievy) has two (2) significant reasons:

(1). It may be necessary in order to establish "Probable Cause" for the lawful issuance of a search warrant; and,

(2). It may be relevant and helpful to the defendant in preparing his defense.

Also see; State v. Hassberger, 350 So. 2d 1 (Fla. 1977).

In the Petitioner's case, it was necessary, and required, for Sgt. Cunningham to reveal the identity of the Informant for the lawful issuance, by a Magistrate based upon probable cause, of a search warrant to obtain the Petitioner's cell phone number from the Informant. Also, it would have been relevant, and helpful to the

Petitioner to know the identity of the Informant in preparation of his defense under the Sixth and Fourteenth Amendments. Pointer v. Texas, 380 U.S. 400, 403, 85 S. Ct. 1065, 1067-1068 (1965). See; Appendix Exhibit-F; Peggy Fowler (Victim) Deposition, p. 26, lines 18-25.

Sgt. Cunningham telephoned the Petitioner at 3:00am. (Appendix Exhibit-A; Sgt. Cunningham's Report, p. 6, line 23) and it is impossible that Sgt. Cunningham procured the Petitioner's cell phone number from Ms. Fowler (Appendix Exhibit-F; Peggy Fowler (Victim) Deposition, p. 26, lines 2-25). Cunningham actually states that he finally made contact with Ms. Fowler (Victim) in the lines previous to when he states that he spoke to the Petitioner (Appendix Exhibit-A; Sgt. Cunningham Report, p. 6, line 16). This insinuates that he spoke to Ms. Fowler prior to the Petitioner and the cover-up by Cunningham is disclosed by Ms. Fowler. Cunningham was correct in stating the time and date of contacting Ms. Fowler as fifteen (15) hours after he called the Petitioner on the unlawfully seized cell phone number. Ms. Fowler's Deposition (Appendix Exhibit-F, p. 26, lines 2-25) reveals that Cunningham should have revealed the key witness, Mary Friery, per Rovario v. U.S. supra.

Therefore, a fundamental miscarriage of justice has occurred related to the violation of the Petitioner's Fourth Amendment rights to privacy and freedom from unreasonable government intrusion except but upon a warrant issued on Probable Cause, and the Fourteenth Amendment right to due process of law. This Honorable Court must reverse and remand In re Toth to the U.S. District Court with instructions consistent with this Honorable Court's determination related to the legal precedents within CLAIM THREE.

CLAIM FOUR

Deputies Turpin And Sgt. Johnson's Illegal Detention Of The Petitioner Was Without Probable Cause For Interrogation Within His Home As Instigated By Sgt. Cunningham In Violation Of The Fourth Amendment

After Sgt. Cunningham illegally obtained the Petitioner's cell phone number from the Informant, Mary Friery (Appendix Exhibit-F; Peggy Fowler (Victim) Deposition, p. 26, lines 18-25), Sgt. Cunningham telephoned the Petitioner at 3:00 am on 10/18/2012. (Appendix Exhibit-A; Sgt. Cunningham Report, p.6, line 23). Ms. Fowler, the victim, is officially contacted by Sgt. Cunningham fifteen (15) hours later at 1745 Hours on 10/18/2012, the same day. (Appendix Exhibit-A; Sgt. Cunningham Report, p. 6, line 16). It is impossible for Sgt. Cunningham to truthfully imply in his report that he obtained the Petitioner's cell phone number from the victim, Ms. Fowler, to fraudulently assert a non-existent exigency to telephone the Petitioner with the illegally seized cell phone number.

Sgt. Cunningham never informs the Petitioner from whom, how, or why he obtained the Petitioner's private cell phone number, or that he was actually conducting an official investigation, of which the Petitioner was a suspect to a crime. Instead, Sgt. Cunningham stated in his telephone conversation with the Petitioner that there was an "emergency" that he needed to speak to the Petitioner about personally. Sgt. Cunningham then prompted the Petitioner for the Petitioner's home address to conduct the personal visit, simultaneously instigating Deputies Turpin and Sgt. Johnson to proceed to the Petitioner's address to detain and custodially interrogate the Petitioner. Deputies Turpin and Sgt. Johnson knowingly did this without established Probable Cause or a court ordered search warrant to do so. (See: Appendix Exhibit-E; Officer Turpin's Report, p. 23, lines 1-5).

Custodial questioning on less than probable cause for arrest held violative of the Fourth Amendment link between improper police conduct and evidence obtained as a result, held insufficiently attenuated to permit use of evidence. Dunaway v. New York, 442 U.S. 200, 99 S.Ct 2248 (1979). To argue that the Fourth Amendment does not apply to the investigatory stage is fundamentally to misconceive the purposes of the Fourth Amendment. Davis v. Mississippi, 394 U.S. 721, 726, 89 S.Ct. 1394, 1397 (1969).

POINT-I

Sgt. Cunningham's conduct of instigating the unlawful interrogation of the Petitioner performed by Deputies Turpin and Johnson without Probable Cause, resulted in a decision by the state court that was contrary to clearly established federal law as determined by the U.S. Supreme Court. Johnson v. Campbell, 332 F.3d 199, 210 (3rd Cir. 2003), "one citizens subjective feelings are not enough to justify the seizure of another where the objective facts do not point to any articulable basis for suspicion." See: Appendix Exhibit-A; Sgt. Cunningham Report, p.6, line 16, where Cunningham did not speak to Peggy Fowler (Victim) until 5:45 pm (1745 Hours) and fifteen (15) after contacting the Petitioner at 3:00 a.m. on the same day (Appendix Exhibit-A; Sgt. Cunningham Report, p.6, line 23). Sgt. Cunningham acted unlawfully while in the official capacity of a Law Enforcement Officer, based on Informant, Mary Friery's, subjective allegations, and the unlawful seizure and invasion of privacy of the Petitioner's private cell phone number. The availability of objective facts justifying a [interrogative investigation] is of paramount importance. The demand for specificity in the information upon which police action is predicated is the central teaching of the Fourth Amendment Jurisprudence. For when a [interrogative investigation] is not based on specific, objective criteria, the risk of arbitrary and abusive police practices exceeds tolerable limits.

Sgt. Cunningham used Ms. Friery's (Informant) subjective allegations of the Petitioner starting the fire to justify Probable Cause to unlawfully interrogate the Petitioner without any articulable facts. U.S. v. Cortez, 449 U.S. 411, 418, 101 S.Ct. 690, 695 (1980); Davis v. Washington, 547 U.S. 813, 126 S.Ct. 2266 (2006).

What is notable here, is that Sgt. Cunningham documents that Ms. Fowler's neighbor, Niki Line, observed a female either entering or exiting Ms. Fowler's apartment (Appendix Exhibit-A: Sgt. Cunningham Report, p.6, lines 5-6). This may have been Mary Friery, the Informant and Ms. Fowler's cousin. Ms. Fowler (Victim) clearly states in her deposition that she had not been in her apartment for the week prior to the fire. (Appendix Exhibit-F; Peggy Fowler (Victim) Deposition, 26, lines 2-25). In order for the Fire Investigator and Sgt. Cunningham to obtain Ms. Fowler's phone number they would have had to have spoke in person to the Informant (Mary Friery) at the scene of the crime. This additionally brings into question why the Informant (Mary Friery) would be twenty (20) miles from her home residence, at the scene of the crime, and why Crime Scene Investigation Technicians/, Deputies, Bain and Oetinger, are ordered by Investigator Matthews to not test for fingerprints/DNA, a red gas can found at the scene of an assumed crime of Arson. (Appendix Exhibit-C; Palm Beach County CSI Report, pp. 12-16).

POINT-II

Deputies Turpin and Sgt. Johnson's conduct of illegally detaining and interrogating the Petitioner without Probable Cause as instigated by Sgt. Cunningham, resulted in a state court's decision that was contrary to clearly established Federal law as determined by the U.S. Supreme Court; Schneckloth v. Bustamonte, 412 U.S. 218, 228-233, 93 S.Ct. 2041 (1973); Held: That account must be taken of subtly coercive police questions as well as the possibly vulnerable subjective state of the person who consents: Knowledge of the right to refuse consent is [not] a necessary prerequisite to demonstrating a "voluntary consent." When a Fourth Amendment violation precedes the consent to search, the purported consent is believed tainted and prosecution has the burden of demonstrating clear and convincing proof taint of the violation was dissipated by the time consent was given.

POINT-III

Deputies Turpin and Sgt. Johnson's conduct of detaining the Petitioner in his home without Probable Cause, as instigated by Sgt. Cunningham, resulted in a state court decision that was contrary to clearly established federal law as determined by the U.S. Supreme Court; Florida v. Royer, 460 U.S. 491, 499, 105 S.Ct. 1643 (1985); Held: Detentions may be "investigative" yet violative of the Fourth Amendment, absent Probable Cause. The police may [not] seek to verify [mere] suspicions by means that approach the conditions of arrest. Reasonable suspicion of a crime is insufficient to justify custodial interrogation, even though the interrogation is investigative; citing, Dunaway v. New York, 442 U.S. 200, supra; Davis v. Mississippi, 394 U.S. 721, supra; Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254 (1975).

POINT-IV

Deputies Turpin and Sgt. Johnson's conduct of illegally obtaining a confession from the Petitioner without Probable Cause, as instigated by Sgt. Cunningham resulted in a state court's decision that was contrary to clearly established federal law as determined by the U.S. Supreme Court; Brown v. Illinois, 422 U.S. 590, 605, 95 S.Ct. 2254 (1975); Held: "We could hold Brown's first statement admissible only if we overrule Wong Sun. We decline to do so. And the second statement was clearly the result and the fruit of the first." See also; Wong Sun v. U.S., 371 U.S. 471, 488, 83 S. Ct. 407 (1963); Coolidge v. New Hampshire, 403 U.S. 443, 468-470, 91 S. Ct. 2022 (1971).

Nowhere in the transcribed recording did the Deputies state the purpose of the unwarranted and illegal interrogation without Probable Cause. (See: Appendix Exhibit-G; Toth Interrogation Transcripts, pp. 27-41) The digitally recorded portion of interrogation and transcripts are based solely on the pre-Miranda coerced statements made by the Petitioner in the eighteen (18) minutes between police arrival at the Petitioner's home at 3:11 a.m. (Appendix Exhibit-E; Officer Turpin's Report, p. 23, line 1), and the reading of Miranda Rights at 3:29 a.m. (Appendix Exhibit-G; Toth Interrogation Transcripts, p. 29, line 4). Rhode Island v. Innis, 446 U.S. 291, 322, 100 S. Ct. 1682 (1980) ("words or actions on the part of police officers that they [sheriff deputies] should have known were reasonably likely to elicit an incriminating response."); Missouri v. Seibert, 542 U.S. 600, 124 S. Ct. 2601 (2004) (Police withheld issuing Miranda Rights as part of a "two-step interrogation process," coercing the suspect to believe they had already admitted guilt admissible in court accompanied by promises of leniency for admitting, a second time, to being guilty of the alleged crimes).

Regarding the argument that the attenuation doctrine applies only to circumstances involving an independent act of a defendant's free will in confessing to a crime or consenting to a search, the U.S. Supreme Court disagrees with this argument. The attenuation doctrine evaluates the causal link between the governments unlawful act and the discovery of evidence, which often has nothing to do with a defendant's actions. And the logic of the U.S. Supreme Court's prior attenuation cases is not limited to independent acts by the defendant. Utah v. Strieff, __ U.S. __, 136 S. Ct. 2056, 195 L. Ed 2d 400 (2016).

In the Petitioner's case, Sgt. Cunningham immediately instigated an investigative interrogation without Probable Cause, absent articulable facts given by a subjective Informant (Mary Friery) that the Petitioner committed the crime of Arson, without any corroborating evidence of observations or considerations of modes or patterns of operations pertaining to Arson. Then, Deputies Turpin and Sgt. Johnson's actions, as instigated by Sgt. Cunningham, to illegally detain and interrogate the Petitioner without Probable Cause, were a continuation of, and inclusive to, the Petitioner's Violated Fourth Amendment rights. The resulting illegally obtained self-incriminating statements were first <u>not</u> digitally recorded (pre-Miranda), then, reasserted (post-Miranda) in an electronically recorded session (Appendix Exhibit-G; Toth Interrogation Transcripts, pp. 27-41).

Therefore, a fundamental miscarriage of justice has occurred related to the violation of the Petitioner's Fourth Amendment rights to privacy and freedom from unreasonable government intrusion, except ~~but for~~ upon a warrant issued on Probable Cause; and, the Fourteenth Amendment right to due process of law. This Honorable Court must reverse and remand <u>In re Toth</u> to the U.S. District Court with instructions consistent with this Honorable Court's determination related to the legal precedents within **CLAIM** FOUR.

<u>CLAIM FIVE</u>

<u>Fire Investigator Matthews' Probable Cause Affidavit Failed To Establish Probable Cause</u>

Fire Investigator Paul Matthews' conduct of making his own Probable Cause determination based upon information received from other officers, and outside of his personal knowledge, as a basis for Probable Cause; was insufficient to arrest the Petitioner and outside the judicial processes, as determined by the U.S. Supreme Court to obtain a valid arrest warrant, was contrary to clearly established federal law as determined by the U.S. Supreme Court; <u>U.S. v. Lefkowitz</u>, 285 U.S. 252, 464, 52 S. Ct. 420, 423 (1932); <u>Held:</u> The informed and deliberate determinations of Magistrates empowered to issue warrants as to what searches and seizures are permissible under the constitution are to be preferred over the hurried action of officers and others who may happen to make arrests. Security against unlawful [arrests] is more likely to be obtained by resort to search warrants than by reliance upon the caution and sagacity of petty officers while acting under the excitement that attends the capture of persons accused of crime. Also, <u>Johnson v. U.S.</u>, 333 U.S. 10, 13-17, 68 S. Ct. 367 (1948); <u>Held:</u> When the right to remain at liberty without any governmental or law enforcement intrusion must reasonably yield to the right to arrest is, as a rule, to be decided by a judicial official, not by a policeman, or any other law enforcement agency, which often is not grasped by law enforcement, as in this case as demonstrated above. In this instant case, Investigator Matthews' Probable Cause Affidavit was based upon the information obtained from Sgt. Johnson of an illegal detention and interrogation as instigated by Sgt. Cunningham, after Cunningham had illegally obtained the Petitioner's cell phone number from an unnamed source, Informant Mary Frieny. (See: Appendix Exhibit-E; Officer Turpin's Report, p. 23, lines 1-5; and, Appendix Exhibit-F; Peggy Fowler (victim) Deposition, p. 26, lines 18-25). The Probable Cause Affidavit was drafted by Fire Investigator Matthews (Appendix Exhibit-B; Investigator Matthews Probable Cause Complaint, p. 10) and this Court should note that there is no Magistrate stamp or signature giving lawful Probable Cause; therefore, Investigator Matthews made his own Probable Cause determination outside of the judicial processes as prescribed by the U.S. Constitution and U.S. Supreme Court.

The statements relied upon by Investigator Matthews as to the Petitioner making a sworn confession are inaccurate and unreasonably untrue. (See: Appendix Exhibit-G; Toth Interrogation Transcripts, pp. 27-41). Specifically, page 37, lines 1-2, where Sgt. Johnson specifically asked the Petitioner the one and only time and place during the illegal detention and interrogation if the Petitioner started the fire, and the Petitioner's response cannot be deemed a confession.

The analogous question in this case, as stated in Mallory v. U.S., 345 U.S. 449, 454-456, 77 S.Ct. 1356 (1957), is whether a reasonably well-trained Fire Investigator, such as Fire Investigator Paul Matthews, was actually cognizant that his Affidavit failed to establish Probable Cause and that he could not have applied for an arrest warrant, as the Petitioner has demonstrated above with the arguments and claims with supporting record of the unlawful acts of Cunningham, Turpin and Johnson.

Investigator Matthews' pre-arrest Probable Cause Affidavit alone could not support an independent judgment of a disinterested Magistrate. First, Matthews would have to explain to the Magistrate how Sgt. Johnson procured his information and the acts by police that led to Sgt. Johnson's information, which would indicate that probable cause and a search or arrest warrant was already in place. Second, to avoid the scrutiny of the Court concerning the lack of Probable Cause issues and Fourth Amendment Violation tactics Deputies employed, Deputies (Matthews) did not attempt to procure an arrest warrant and waited fifteen (15) hours until they had returned to work their shift to arrest the Petitioner. The court, then, would not scrutinize a Probable Cause Affidavit submitted upon the Petitioner's arrest for actual and legal Probable Cause, Capias, or the existence of an actual search or arrest warrant, because of the Probable Cause Affidavit's **pro forma** nature accompanying an individuals arrest. Note that the Probable Cause Affidavit was not even sworn to or signed and/or stamped by a Magistrate _after_ the Petitioner's arrest.

Therefore, based on all the procedural rule violations of Federal Rules of Criminal Procedure, Rules 3 and 4; the constitutional violations of the Fourth and Fourteenth Amendments to the U.S. Constitution; and, the fact that Investigator Matthews' conduct led to the arrest and conviction of the Petitioner, this Court must reverse and order the Petitioner's release.

The principle function of the pre-arrest Probable Cause Affidavit is as a basis for an application for an arrest warrant. See, _Gaither v. U.S._, 413 F.2d 1061, 1076, 134 U.S. App. DC (DC Cir. 1969), where an arrest is made without a warrant, and the Complaint is therefore sworn _after_ the arrest, it serves no such important function, since the Complaint at that stage (post-arrest) serves no practical purpose, its preparation and filing is usually a matter of pro-forma routine. Rule 3 does not, by its terms, allow post-arrest Complaints to be sworn to other than before a judicial officer. The Probable Cause Affidavit in _In re Toth_ was _never sworn to_. Thus, it must be taken that the rule was not literally complied with by the procedures followed by Matthews. Furthermore, the statements relied upon which Matthews determined Probable Cause were not sworn to (Appendix Exhibit-G; Toth Interrogation Transcripts, pp. 27-41) and his own forensics reports further exonerate the Petitioner. _See_: Appendix Exhibit-C; Palm Beach County CSI Report, pp. 12-16; Appendix Exhibit-D; State of Florida Fire Marshal Report, pp. 17-21.

The facts underlying CLAIM FIVE of a fundamental miscarriage of justice related to the Petitioner's Fourth Amendment right to freedom from unreasonable seizure but upon a warrant issued on Probable Cause, and the Fourteenth Amendment right to due process, requires this Honorable Court to reverse and remand _In re Toth_ to the U.S. District Court with instructions consistent with this Honorable Court's determination related to the legal precedents within CLAIM FIVE.

CLAIM SIX

The 11th Circuit Court Of Appeals Has Entered Decisions In Inre Toth Denying The Petitioner His Fourteenth Amendment Rights To Due Process In Second-Successive Habeas Corpus Petitions

POINT-I

11th Circuit Conflicting Jurisdictional Standards of Review

The 11th Circuit Court of Appeals' conflicting decision under the provisions of 28 U.S.C. §2244 (b)(1) in Inre Toth (Appendix Exhibit-W; 11th Circuit Denial of Second-Successive Habeas Corpus, pp. 345-349), case no. 20-13402-K, p. 347, paragraph 1, citing its own standards in its decisions in In re Hill, 777 F.3d 1214 at 1222 (11th Cir. 2015), and Inre Bradford, 830 F.3d 1273 at 1276-1278 (11th Cir. 2016), as its basis for its determination in Inre Toth, (Appendix Exhibit-V; Petitioner's Second-Successive Habeas Corpus With Attached Memorandum of Law, pp. 309-344), of providing the proper safeguards of its review of second or successive habeas corpus petitions as prescribed by this Honorable Supreme Court and other United States Courts of Appeal. The Petitioner states the following decisions by the 11th Circuit Court of Appeals that are in conflict with other U.S. Courts of Appeal that are consistent with this Honorable Supreme Court in its decision-making authority and standards for the accepted and usual course of the judicial proceeding for all courts, state and federal, of the United States of America:

(A) Conflicting Decisions Of The 11th Circuit

Appendix Exhibit-W; 11th Circuit Denial of Second-Successive Habeas Corpus, at page 347, paragraph 1, Inre Toth the case at issue; Inre Hill, 777 F.3d 1214 at 1222-1223 (11th Cir. 2015), and Inre Bradford, 830 F.3d 1273 at 1277-1278 (11th Cir. 2016); the 11th Circuit's decision not to consider the presentation of prior claims in a previous habeas corpus petition in a second or successive habeas corpus petition without establishing the essential elements of res judicata, except only as a bar, and as being a lack of jurisdiction for the 11th Circuit to extend to prior claims under 28 U.S.C. § 2244(b)(1) which conflicts irregardless of the previous claims not being adjudicated on the merits, with other U.S. Circuit Courts of Appeal.

—VS.—

Muniz v. U.S., 236 F.3d 122, 125-129 (2nd Cir. 2001); Post v. Bradshaw, 442 F.3d 419, 425 (6th Cir. 2005); Hobbs v. Peppersack, 301 F.2d 875, 879-880 (4th Cir. 1962); U.S. v. Jones, 194 F. Supp. 421, 422-423 (Kansas Dist. 1961); Smith v. U.S., 270 F.2d 921, 922-931, fn. 4 (D.C. Cir. 1959); Motley v. U.S., 230 F.2d 110, 112 (5th Cir. 1956); Hollowell v. U.S., 197 F.2d 926, 928 (5th Cir. 1952); Brown v. Peyton, 435 F.2d 1352, 1354 (4th Cir. 1970); Gains v. Allgood, 391 F.2d 692, 693-700 (5th Cir. 1968); Dixon v. Jacobs, 427 F.2d 589, 595-596 (D.C. Cir. 1970); Hutchinson v. Craven, 415 F.2d 278, 279-280 (9th Cir. 1969); Johnson v. Copinger, 420 F.2d 395, 397-400 (4th Cir. 1969);

All these United States Circuit Courts of Appeal decisions are consistent with this Honorable Court's decisions, and that the 11th Circuit Court of Appeals conflict in reference to 28 U.S.C. § 2244(b)(1) and the Honorable Supreme Court's decision in Sanders v. U.S., 373 U.S. 1, 7-17, 83 S.Ct. 1068 (1968) governs this question on the proper standard in the review of 28 U.S.C. § 2244(b)(1) as applied to second or successive habeas corpus petitions, and that the 11th Circuit Court of Appeals application of res judicata is improper in reference to In re Toth and deemed the 11th Circuit Court of Appeals conduct in this case as a miscarriage of justice in violation of In re Toth's Fourteenth Amendment rights of due process. Furthermore, this Honorable Court established in Price v. Johnson, 334 U.S. 266, 286-294, 92 L.Ed 1356 (1948) stating federal appellate courts cannot make factual determinations which may be decisive to vital rights where crucial facts have not been developed, 28 U.S.C. § 2244(b)(2)(B)(i)(ii), in which the 11th Circuit Court of Appeals have determined in In re Toth (Appendix Exhibit-W; 11th Circuit Denial of Second-Successive Habeas Corpus, pp. 345-349), p. 347, paragraph 1. (See: Appendix Exhibit-V; Petitioner's Second-Successive Habeas Corpus With Attached Memorandum Of Law; Appendix Exhibit-K; Petitioner's Original 28 U.S.C. § 2254 Petition).

POINT-II

11th Circuit Applies Non-Existent Federal Standards of Review

The 11th Circuit Court of Appeals conflicting decision in In re Toth (Appendix Exhibit-W; 11th Circuit Denial of Second-Successive Habeas Corpus, pp. 345-349) at p. 348, paragraph 1, In re Toth the case at issue, citing in its decision In re Jordan, 455 F.3d 1351, 1356-1357 (11th Cir. 2007); In re Everett, 797 F.3d 1282, 1287-1290 (11th Cir. 2015); In re Davis, 565 F.3d 810, 816-826 (11th Cir. 2009); of a standard that does not exist under its cited reference of 28 U.S.C. §2244(b)(2)(A), stating first a part of 28 U.S.C. §2244(b)(2)(A) of not identifying any new, retroactively applicable decisions of this Honorable Court which ends in "; or", then, the 11th Circuit Court of Appeals states a standard that does not exist in 28 U.S.C. §2244(b)(2)(A) of nor identify any new potential evidence that would demonstrate the Petitioner's, In re Toth, actual factual innocence, but this is referenced in 28 U.S.C. §2255(h)(1), which the 11th Circuit stated standard in In re Toth ends in a mixture of two (2) different standards which is in conflict with other United States Courts of Appeal and the standards and safeguards established in this Honorable Court's decisions on this same important matter of the standards of review and safeguards of 28 U.S.C. §2244 second or successive claims in which this Petitioner, In re Toth, has never made a claim of actual innocence in order to apply the 11th Circuit Court of Appeals unapproved standard of "actual innocence plus" that conflicts with Schlup v. Delo, 513 U.S. 219, 327, 115 S.Ct. 851 (1995). (See: Appendix Exhibit-V; Petitioner's Second-Successive Habeas Corpus With Attached Memorandum of Law; Appendix Exhibit-K, Petitioner's Original 28 U.S.C. §2254 Petition).

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Bennett v. U.S., 119 F.3d 468 (7th Cir. 1997), which states that only a prima facie showing of the Petitioner's adequacy is required; by "prima facie showing" meaning - simply a showing of possible merit to warrant a further exploration by the district court; In re Johnson, 322 F.3d 881, 883 (5th Cir. 2003), courts of appeals grant of permission to file second or successive petition is only tentative and the district court must dismiss the petition if it finds that the statutory requirements for filing one have not been met.

28 U.S.C. § 2244(b)(2) Actual Innocence Standard

Schlup v. Delo, 513 U.S. 298, 327, 115 S.Ct. 851 (1995); Gonzales v. Crosby, 545 U.S. 524, 530, 125 S.Ct. 2641 (2005); McCleskey v. Zant, 499 U.S. 467, 494, 111 S.Ct. 1454 (1991); Khulmann v. Wilson, 477 U.S. 436, 454-455, 106 S.Ct. 2616 (1986); Murray v. Carrier, 477 U.S. 478, 485, 106 S.Ct. 2639 (1986); Sawyer v. Whitely, 505 U.S. 333, 346, 112 S.Ct. 2514 (1992); and, Felker v. Turpin, 518 U.S. 651, 664, 116 S.Ct. 2333 (1996); Held: Second or successive applications require only a screening process by the Circuit Court of Appeals. The Court of Appeals first-hand look at whether the 28 U.S.C. § 2244(b) requirements actually have been met will come, if at all, on appeal from the district court's decision. Also see; Price v. Johnson, 334 U.S. 266, 286-294, 68 S.Ct. 1049 (1948). Therefore, Jordan v. Sec'y. Dept. of Corrections, 485 F.3d 1351, 1358 (11th Cir. 2007) as cited in Appendix Exhibit-W; 11th Circuit Denial of Second-Successive Habeas Corpus, pp. 346-347, paragraph 2, In re Toth the case at issue, has never been reviewed by the U.S. District Court, and the 11th Circuit Court of Appeals lacks jurisdiction to make the determination of meeting 28 U.S.C. § 2244(b)(2) requirements.

This miscarriage of justice of the fundamental miscarriage of justice which fails to serve the ends of justice violated the Petitioner's Fourteenth Amendment right to due process, and this Honorable Court must reverse and remand In re Toth to the District Court with instructions consistent with this Honorable Court's determination of the conflicts and legal precedents as applied to CLAIM SIX.

CLAIM SEVEN

Whether The 11th Circuit Court Of Appeals Denial Of Fourth Amendment Retroactive Application Of Right To Privacy In Carpenter v. U.S., 585 U.S. ___, 138 S.Ct. 2206 (2018) Deprived The Petitioner of Fourteenth Amendment Due Process Rights

The 11th Circuit Court of Appeals has rendered a decision on an important question of federal law that has not, but should be, settled by this Honorable Court. This has denied the Petitioner his Fourteenth Amendment right to due process of law regarding being unlawfully convicted based upon a Fourth Amendment violation of invasion of privacy and unreasonable seizure absent Probable Cause and a valid search/~~arrest~~ warrant. See Claims Three, Four and Five of this petition.

The question is, if the 11th Circuit Court of Appeals improperly denied the Petitioner Habeas Corpus relief related to the unlawful acts of Deputies to have procured the Petitioner's cell phone number through a Third Party (Informant-Mary Emery) without a valid search warrant based upon Probable Cause, as addressed in Carpenter v. U.S., 585 U.S. ___, 138 S.Ct. 2206, 201 L.Ed 2d 507 (2018).

Based solely on definition alone, Carpenter, supra, would seem to be a declatory precedent. Declatory Precedent (Black's Law Dictionary, Abridged 9th edition) (1980): A precedent that is merely the application of an already existing legal rule. The Petitioner's conviction began in 2012, prior to Carpenter, but not prior to the already existing legal rules within this Honorable Court's precedent, and the Carpenter case originated in 2011.

The applications used by this Honorable Court in Carpenter Headnotes of already existing legal rules are as follows:

Headnote #1: Camara v. Municipal Court of City and County of San Francisco, 387 U.S. 523, 528, 87 S.Ct. 1727, 18 L.Ed 2d 938 (1967); Riley v. California, 573 U.S. ___, ___, 134 S.Ct. 2473, 189 L.Ed 2d 430 (2014) (Safeguard privacy and security against arbitrary invasions by government officials).

Headnote #2: Soldal v. Cook County, 506 U.S. 56, 64, 113 S.Ct. 538, 121 L.Ed 2d 450 (1992); Katz v. United States, 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed 2d 576 (1967) (The Fourth Amendment protects people, not places, and expanded our concept of the Amendment to protect certain expectations of privacy).

Headnote #3: Carrol v. United States, 267 U.S. 132, 149, 45 S.Ct. 280, 69 L.Ed 543 (1925) (No single rubric definitively resolves which expectations of privacy are entitled to protection, but informed by historical understandings; Boyd v. United States, 116 U.S. 616, 630, 6 S.Ct. 524, 29 L.Ed 746 (1886) (First the Amendment seeks to secure "the privacies of life" against "arbitrary power"); Olmstead v. United States, 277 U.S. 438, 463-464, 48 S.Ct. 564, 72 L.Ed 944 (1928); and, United States v. Di Re, 332 U.S. 581, 595, 68 S.Ct. 222, 92 L.Ed 210 (1948) (Secondly, to place obstacles in the way of a too permeating police surveillance).

Headnote #5, #6, #7: The U.S. Supreme Court declining to extend Smith v. Maryland, 442 U.S. 735, 99 S.Ct. 2577 (1979), and, U.S. v. Miller, 425 U.S. 435, 96 S.Ct. 1619(1976), and applies the already existing legal rule in Katz, supra; United States v. Jones, 565 U.S. 400, 405-406, 430, 132 S.Ct. 945, 181 L.Ed 2d 911 (2012); Riley, supra; Kyllo v. U.S., 533 U.S. 27, 36, 121 S.Ct. 2038, 150 L.Ed 2d 94 (2001).

Headnote #16: Olmstead v. U.S., 277 U.S. 438 at 473-474; and, U.S. v. Di Re, 332 U.S. 581 at 595; the [U.S. Supreme] Court is obligated - as "[s]ubtler and more far-reaching means of invading privacy have become available to the Government" - to ensure that the "progress of science" does not erode Fourth Amendment protections.

These legal rules existed before or at the time In re Toth was convicted by and or after Carpenter was convicted; so does a declatory precedent, such as Carpenter, need to be deemed retroactive by this Honorable Court to apply to cases such as In re Toth, or should Carpenter be applied simply because it was decided based on this Honorable Court's already existing legal rules.

A miscarriage of justice which fails to serve the ends of justice has violated the Petitioner's Fourteenth Amendment right to due process and Habeas Corpus relief related to the Fourth Amendment right to privacy and freedom from unreasonable government intrusion through unwarranted seizure of private Third Party Information per Carpenter, supra. This Honorable Court must reverse and remand In re Toth to the U.S. District Court with instructions consistent with this Honorable Court's determinations of the legal precedents needing to be settled and applied ~~to~~ CLAIM SEVEN and In re Toth, the case at issue.

CLAIM EIGHT

The U.S. District Court Erred In Determining Sua Sponte That Mr. Toth's 28 U.S.C. §2254 Petition Was Time-Barred Without Reviewing The Complete Official State Court Record, Denying The Petitioner's Fourteenth Amendment Due Process Rights

The Petitioner's original 28 U.S.C. §2254 petition (Appendix Exhibit-K; Petitioner's Original 28 U.S.C §2254 Petition pp. 59-78) was denied on February 14, 2018 and the 11th Circuit Court of Appeals made a decision on the taking of judicial notice of facts as a highly limited process of providing facts by competent evidence in the district courts on January 7, 2020, in Paez v. Sec'y., Fla. Dept. of Corrections, 947 F.3d 649 (11^{th} Cir. 2020), almost two (2) years after In re Toth's denial of Writ of Habeas Corpus relief.

The Magistrate's Report and Recommendation (Appendix Exhibit-L, pp. 79-100) and the downloaded, incomplete and unofficial state court case file were issued by the U.S. District Court on January 25, 2018 and sent to the Petitioner via U.S. Mail service. The Petitioner, prior to having access to the state case file paper legal record, did not have ready access to the case record, nor did the Petitioner have access to an internet service or connection. Having fourteen days per rule to object/respond and not having ready access to this legal record, as per prison storage protocols, the Petitioner was extremely hindered and unable to dispute the accuracy and disposition of any docket entry. This is a violation of the Petitioner's Fourteenth Amendment right to due process and is deemed a miscarriage of justice.

The Petitioner was never given adequate notice or a fair opportunity to respond to, or challenge, that the U.S. District Court invoked in finding the Petitioner's original §2254 Habeas Corpus Petition untimely. Day v. McDonough, 547 U.S. 198, 209, 126 S. Ct. 1675, 164 L. Ed 2d 376 (2006). See also, **CLAIM ONE** - Statutory Time-Bar, this Petition.

The most current 11^{th} Circuit Court of Appeals precedent on Federal Rules of Evidence, Rule 201 - Judicial Notice of Adjudicative Facts of state court documents found on the state court websites by a U.S. District Court to determine the timeliness of a 28 U.S.C. §2254 petition as decided in Paez v. Sec'y., Fla. Dept of Corrections, 947 F. 3d at 652, is not retroactive to In re Toth, the case at issue. However, both Paez, supra, and the 11^{th} Circuit precedent on a District Court's sua sponte determination on the timeliness of a 28 U.S.C. §2254 petition in Jackson v. Sec'y. For Dept. of Corrections, 292 F. 3d 1347, 1349 (11^{th} Cir. 2002) (District Court may review sua sponte the timeliness of the section 2254 petition), are purely jurisdictional only to the 11^{th} Circuit, denying fundamental due process rights and in conflict with this Honorable Court's determinations in Burnett v. New York Central Railroad Co., 380 U.S. 424, 95 S. Ct. 1050, 13 L. Ed 2d 941 (1965).

The U.S. District Court is to request and review the complete and official state court record related to the Petitioner's claims of constitutional rights violations through a court order; asking the state to show cause and to deny or confirm the Petitioner's claims. The U.S. District Court is to also give a fair, full and adequate opportunity to the Petitioner to explain or correct prima facie non-compliance and or untimeliness issues. Additionally, the U.S District Court is to review and assess a habeas petitioner's due diligence in their preparation of a timely §2254 petition, as to meet the ends of justice and safeguard a petitioner's constitutional right to access to the Great Writ of Habeas Corpus.

A miscarriage of justice of a fundamental miscarriage of justice by both the U.S. District Court Southern District of Florida and the 11th Circuit Court of Appeals has occurred; failing to serve the ends of justice by violating the Petitioner's Fourteenth Amendment right to due process of law in their sua sponte denial of the Petitioner's Petition for Writ of Habeas Corpus and Second-Successive Habeas Corpus Petition with incomplete and unofficial state court record and not ordering the State of Florida to answer for the unconstitutional conviction of the Petitioner.

This Honorable Court must reverse and remand In re Toth to the U.S. District Court with specific instructions consistent with this Honorable Court's determinations of the legal precedents related to CLAIM EIGHT and In re Toth, the case at issue.

CONCLUSION

The Petitioner humbly prays and requests that this Honorable Court, having the supervisory power and authority as indicated by the legal decisions shown within In re Toth's Petition For Writ of Habeas Corpus, to grant the issuance of this Writ of Habeas Corpus and any relief this Honorable Court deems equitable for the relief of a fundamental miscarriage of justice and issues of great public importance, as have occurred. They are a direct result of a violation of a Fourth Amendment unlawful seizure and conviction of the Petitioner absent Probable Cause, and a Fourteenth Amendment violation of the right to due process of law. The Petitioner has been unable to obtain such relief from any other court, State or Federal, whom have been given opportunity, jurisdiction, and authority to do so, and denied In re Toth Fourteenth Amendment rights to have the constitutional violation claims properly adjudicated according to U.S. Supreme Court precedence.