

20-8447

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

Supreme Court, U.S.  
FILED

APR 09 2021

OFFICE OF THE CLERK

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

VINICIO J GARCIA 1828198 — PETITIONER  
(Your Name)

VS.

Bobby Lumpkin Director — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FIFTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

VINICIO J. GARCIA 1828198  
(Your Name)  
MARK MICHAEL  
2664 FM 2054  
(Address)

TENNESSEE COLONY, TX 75886  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

ORIGINAL

RECEIVED

JUN - 8 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

RECEIVED

APR 15 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

### QUESTION(S) PRESENTED

CAN A GOVERNMENT AGENCY CIRCUMVENT THE AUTHORITY OF THE SUPREME COURT OF THE UNITED STATES TO CREATE AN IMPEDIMENT LEADING TO A PROCEDURAL BAR OF A § 2254 HABEAS CORPUS?

HAVE THE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION AND THE U.S. COURT OF APPEALS FIFTH CIRCUIT DENIED EQUITABLE TOLLING CONTRADICTING AND MISAPPLYING THEIR OWN RULINGS?

HAS THE UNITED STATES SUPREME COURT MADE A DISTINCTION BETWEEN WHAT TYPES OF ACTIONS DEMONSTRATE DILIGENCE AND WHICH DO NOT?

DOES AN 'INQUIRY' TO A COURT DEMONSTRATE DILIGENCE WHILE A MOTION TO A COURT DOES NOT?

## 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:

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NO 19-10685 USDC NO 3:18-CV-262 Filed 9-08-2020

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IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

? [ ] reported at I do not know; 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 [ ] is unpublished.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 B to the petition and is

[ ] reported at I do not know; 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[ ] is unpublished.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 SEPT 8, 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: NOV 16, 2020, and a copy of the order denying rehearing appears at Appendix D.

☒ 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.

ORDER LIST 589 THURSDAY MAR 19, 2020 150 DAYS  
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).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SECTION 2244(b)(1)(B) A 1-Year Period of limitation SHALL APPLY to an APPLICATION FOR A WRIT OF HABEAS CORPUS by a PERSON IN CUSTODY PURSUANT TO THE JUDGMENT OF a STATE COURT. THE PERIOD SHALL run FROM THE LATEST OF—

(B) THE DATE on which the impediment to filing an APPLICATION created by STATE ACTION in violation of the Constitution or laws of the UNITED STATES is Removed, IF the APPLICANT WAS PREVENTED FILING BY such STATE ACTION.

### FIRST AMENDMENT OF THE UNITED STATES

CONSTITUTION: [T]he right to Petition THE GOVERNMENT FOR A REDRESS OF GRIEVANCES

FIFTH Amendment: NO PERSON SHALL...be deprived OF LIFE, LIBERTY or due Process without due Process OF LAW

Fourteenth Amendment: NOR shall ANY STATE deprive ANY Person of Life LIBERTY or Property, without due Process OF LAW

## STATEMENT OF THE CASE

PETITIONER SEEKS EQUITABLE TOLLING DUE TO STATE CREATED IMPEDIMENTS. THROUGH A VERY SIMPLE 'SHELL GAME' THE LAW LIBRARY HAS CIRCUMVENTED THE U.S. SUPREME COURT RULING IN BOUNDS 430 US AT 824-825 WHICH STATES

"[I]NDIGENT INMATES MUST BE PROVIDED AT STATE EXPENSE WITH PAPER AND PEN TO DRAFT LEGAL DOCUMENTS...AND WITH STAMPS TO MAIL THEM".

AFTER APRIL 3, 2017 AND FOR THE NEXT (3) YEARS I DO NOT RECEIVE ANY SUPPLIES FROM THE LAW LIBRARY EVEN THOUGH I AM INDIGENT. I AM ONLY ABLE TO COMMUNICATE WITH THE COURT WHEN INMATES PROVIDE SUPPLIES.

I SEEK EQUITABLE TOLLING FROM APRIL 3, 2017 TO JAN 25, 2018 WHEN I FILE MY § 2254.

THE SECOND IMPEDIMENT IS MORE SUBTLE.

NOTIFICATION OF THE DENIAL OF MY 11.07 ON JULY 13, 2016 IS SENT TO THE MAILROOM. I NEVER RECEIVE NOTIFICATION. THERE IS NO PROCEDURE IN PLACE FOR AN INMATE TO ACKNOWLEDGE RECEIPT OF LEGAL MAIL UNLESS IT IS CERTIFIED.

ON MARCH 22, 2017 I FILE A MOTION TO AMEND MY 11.07 I REQUEST A STAY. ON MARCH 31, 2017 I RECEIVE NOTICE THAT MY 11.07 WAS DENIED ON JULY 13, 2016.

ON MAY 1, 2017 30 DAYS AFTER LEARNING OF DENIAL OF 11.07 I ATTEMPT TO FILE MY § 2254 BUT I AM DENIED A WRIT ENVELOPE BY DEANNA MCBROOM

THE PERIOD FROM JULY 13, 2016 WHEN MY 11.07 IS DENIED TO WHEN I FILE THE STAY ON MARCH 22, 2017 IS EIGHT(8) MONTHS AND 21 DAYS.

I HAVE INCLUDED A TIME-LINE GRAPH WITH BOXED NOTATIONS REFERENCED BY CIRCLED CAPITAL LETTERS IT IS NOT THE INTENTION OF PETITIONER TO CLUTTER THE COURT WITH EXTRA DATA BUT TO DEMONSTRATE I HAVE BEEN DULY DILIGENT IN PURSUIT OF MY APPEAL.

US. DISTRICT JUDGE S. LINDSAY STATES I HAVE NOT BEEN DILIGENT BECAUSE I DID NOT 'INQUIRE' ABOUT MY CASE.

I SHOW THE FOLLOWING: ON APRIL 28, 2016 MY STAY EXPIRES OF THE 11.07. THE PERIOD FROM APRIL 28, 2016 TO MARCH 22, 2017 WHEN I FILE A STAY IS LESS THAN (11) MONTHS. SO I HAVE CONTACTED THE COURT (8) MONTHS AFTER DENIAL OR AT THE OUTSIDE LESS THAN (11) MONTHS AFTER THE LAST DIRECT CONTACT.

THE JUDGE THEN LISTS (3) CASES IN WHICH THE US COURT OF APPEALS FIFTH CIRCUIT RULED THAT AN 'IN-QUIRY' AFTER ABOUT (8)(11) OR (12) MONTHS SHOWED DILIGENCE

THE MOTION IS NOT AN 'INQUIRY' IT IS MORE EFFORT AND THE RESULTANT EFFECT IS EQUIVALENT TO AN 'INQUIRY'-I LEARN OF THE DENIAL. THE FIFTH CIRCUIT IS CONTRADICTING ITS OWN RULING AND CREATING A PROCEDURAL TIME BAR. I SEEK EQUITABLE TOLLING FROM JULY 13, 2016 TO MARCH 31, 2017 8 MONTH 21 DAYS. I BEG THE COURTS INDULGENCE IN THE FORM OF THIS

AMATEURISH STATEMENT OF THE CASE. I AM UNTRAINED  
IN SUCH MATTERS AND HAVE NO GUIDELINES TO  
FOR REFERENCE. I EXPLAIN THE RUSE OF THE  
'SHELL GAME' IN THE REASONS FOR GRANTING THE  
PETITION.

I SEEK TOLLING FROM:

JULY 13, 2016 TO MARCH 31, 2017

8 MONTHS 21 DAYS BECAUSE I DO NOT LEARN OF  
DENIAL DUE PROCEEDURAL FAULTS IN THE  
DISTRIBUTION OF UNCERTIFIED LEGAL MAIL.

APRIL 3, 2017 TO JAN 25, 2018 DUE TO ABUSES BY  
TDCJ EMPLOYEES AND PROCEDURAL FAULTS IN THE  
DISTRIBUTION OF SUPPLIES TO INDIGENT INMATES

NO SUPPLIES ARE PROVIDED BY THE STATE  
AND AM ONLY ABLE TO CONTACT THE COURT WHEN  
INMATES PROVIDE SUPPLIES.

## REASONS FOR GRANTING THE PETITION

THE SUPREME COURT OF THE UNITED STATES HAS ENDEAVORED TO EXTEND THE HANDS OF JUSTICE TO ALL CITIZENS GUARANTEED BY THE US CONSTITUTION INCLUDING THE POOREST OF THE POOR, INDIGENT INMATES. THE BOUNDS RULING EXEMPLIFIES THIS. "[I]NDIGENT INMATES MUST BE PROVIDED AT STATE EXPENSE WITH PAPER AND PEN TO DRAFT LEGAL DOCUMENTS ... AND WITH STAMPS TO MAIL THEM." BOUNDS, 430 US at 824-25. A SIMPLE RUSE A 'SHELL GAME' HAS BEEN EMPLOYED TO CIRCUMVENT THE AUTHORITY OF THE US SUPREME COURT. ON AUG-22, 2019 THE U.S. COURT OF APPEALS FIFTH CIRCUIT DENIED MY MOTION TO INCLUDE § 183 USDC 2:17-CV-164 Detailing this ruse. IT INCLUDES GRIEVANCES, OTHER DOCUMENTATION AND VIDEO EVIDENCE TO CORROBORATE THIS RUSE. I WILL VERY BRIEFLY DESCRIBE THE SHELL GAME. YOUR REQUEST FOR SUPPLIES IS RETURNED IN AN EMPTY INDIGENT SUPPLY ENVELOPE. BUT IT IS RECORDED IN THE LAW LIBRARY LOG AS SUPPLIES HAVING BEEN GIVEN. THERE IS NO PROCEDURE FOR AN INMATE TO SIGN A RECEIPT TO ACKNOWLEDGE SUPPLIES WERE RECEIVED. IN ORDER TO RECEIVE MORE SUPPLIES ONE MUST 'EXHAUST' THE SUPPLIES RECEIVED. THE ENVELOPES MUST BE SENT OUT TO GET NEW ONES. BUT YOU NO ENVELOPES

TO SEND OUT. YOU ARE NOW CUT OFF FROM THE COURTS  
MINE IS NOT AN ISOLATED SITUATION. MANY INMATES  
SIMPLY GIVE UP TRYING.

"THE UNITED STATES COURT OF APPEALS FOR THE FIFTH  
CIRCUIT HAS HELD THAT IN ORDER TO INVOKE STATUTORY  
TOLLING BASED ON ALLEGED GOVERNMENT IMPEDIMENT  
"THE PRISONER MUST SHOW THAT: (1) HE WAS PREVENTED  
FROM FILING A PETITION (2) BY STATE ACTION (3) IN VIOLATION OF THE CONSTITUTION OR FEDERAL LAW" EVERTON  
V. COCKRELL 334 F3d 433, 436 (5th Cir 2003). THE  
IMPEDIMENT AFTER APRIL 3, 2017 PREVENTS  
ME FROM PROCEEDING.

"THE PETITIONER IN HARDY WAITED LESS THAN  
APPROXIMATELY ELEVEN MONTHS BEFORE, CONTACTING  
THE TRIAL COURT. AND THIS TIME PERIOD  
WAS ALSO DETERMINED TO BE REASONABLE  
AND DILIGENT. HARDY 577 F3d at 599-600

EQUITABLE TOLLING HOWEVER ONLY APPLIES  
WHEN A HABAEES PETITIONER DILIGENTLY PURSUES  
HABAEES CORPUS RELIEF "BEFORE AND AFTER RECEIVING  
NOTIFICATION" OF A DECISION ON A STATE  
HABAEES PETITION. HARDY 577 F3d at 598 (citations omitted)

BEFORE RECEIVING NOTIFICATION ON MARCH 31,  
2017 I HAD FILED A STAY WHICH EXPIRED ON APRIL  
28, 2016. THIS PERIOD IS APPROXIMATELY (11)  
MONTHS. AND AFTER RECEIVING NOTIFICATION  
I BEGIN IMMEDIATELY TRY TO FILE THE \$2254

THE US DISTRICT JUDGE REFERS TO A LACK OF  
'INQUIRY' AS A LACK OF DILIGENCE.

THE MOTION REQUESTING A STAY AND ABEYANCE  
REQUIRES MORE EFFORT THAN AN INQUIRY. BOTH  
INVOLVE CONTACTING THE COURT.

IS THE JUDGE RULING THAT AN 'INQUIRY' DEMON-  
STRATES DILIGENCE WHILE A MOTION DOES NOT?

I ASK THE COURT TO RESOLVE THIS ISSUE

THE US DISTRICT JUDGE AND FIFTH CIRCUIT  
IGNORED THE IMPEDIMENTS CREATED BY THE  
STATE.

MY FIRST FIFTH and FOURTEENTH AMENDMENT  
RIGHTS OF THE U.S. CONSTITUTION HAVE BEEN  
VIOLATED BY THE STATE CREATED IMPEDIMENTS.

BOTH COURTS HAVE CONTRADICTED THE FIFTH  
CIRCUITS OWN RULINGS.

AN UNJUSTLY CREATED PROCEDURAL TIME BAR  
HAS BEEN ERECTED TO DENY MY COA.

# WRIT OF CERTIORARI

COA 19-10685 USDC 3:18-CV-262

TIME  
LINE →

DEC 6  
2012

CONVICTED OF  
MURDER

(A)

APRIL 12  
2013

MARCH 13  
2014

CONVICTION  
AFFIRMED

(C)

APRIL 9  
2014

10  
APPEAL ATTORNEY AFTER REPEATED REQUESTS TO REVIEW THE TRANSCRIPTS STATES "DUE TO YOUR STATUS AS AN INDIGENT THE RECORD I OBTAINED IS ESSENTIALLY THE COURTS COPY. WHEN I FINISHED THE BRIEF IN YOUR CASE IT WAS RETURNED TO THE DISTRICT CLERK'S OFFICE. I NEVER RECEIVE A COPY OF THE TRANSCRIPT

(B)

COURT REPORTER OF TRIAL STATES "I AM IN RECEIPT OF YOUR LETTER DATED APRIL 9, 2014 RECEIVED BY ME THIS DATE IN WHICH YOU ARE REQUESTING THE COURT RECORDS. YOU ARE NOT ENTITLED TO ANOTHER FREE COPY OF THE RECORDS YOUR FREE COPY WAS SUPPLIED TO YOUR APPELLATE ATTORNEY WITH THE PUBLIC DEFENDER'S OFFICE OF DALLAS COUNTY."

(D)

# WRIT OF CERTIORARI

COX 19-10685 USDC 3:18-cv-262

TIME  
LINE →

NOV 6  
2014

PDR  
Refused

(E)

DEC 22  
2014

BEGIN Process with  
STATE BAR OF  
TEXAS to force  
TRIAL ATTORNEY  
TO provide  
Client file

(F)

OCT 24  
2015

Receive Client file  
during Lockdown then  
during shake down  
contrary to TDCJ  
Policy and U.S.  
SUPREME COURT  
all Paperwork is  
scattered and thrown  
on floor. There are  
no cameras at this  
time to confirm  
violation. Subsequently  
some Paper work is  
missing.

(G)

NOV 16  
2015

File 11.07 Habeas  
CORPUS in 282<sup>nd</sup>  
Judicial District  
COURT in Dallas

(H)

# WRIT OF CERTIORARI

COA 19-10685 USDC 3:18-LV-262

TIME  
LINE →

FEB 25  
2016

WRIT Received  
by COURT of  
CRIMINAL  
APPEALS of  
TEXAS

(I)

MARCH 28  
2016

GRANTED A  
30 day STAY  
11.07 HABEAS  
CORPUS

(J)

APRIL 11  
2016

MISC document  
Filed in COURT  
of CRIMINAL  
APPEALS under  
11.07

(K)

JULY 13  
2016

11.07 is denied without  
a written order. I  
do not receive white  
card informing of  
denial.

NOTE: EXCEPT FOR  
CERTIFIED MAIL, There  
is NO Procedure in Place  
For Acknowledgment by  
INMATE TO confirm  
document was received

(L)

12

WRIT OF CERTIORARI \_\_\_\_\_  
COA 19-10685 USDC 3:18-CV-262

TIME  
LINE →

MARCH 6  
2017

I receive an  
empty indigent  
SUPPLY ENVELOPE  
I subsequently  
am informed  
that the supplies  
were included.  
I am denied  
further Personal  
supplies for 3  
years.

(M)

MARCH 22  
2017

File STAY TO  
File an Amended  
11.07 Habeas  
CORPUS

(N)

MARCH 31  
2017

RECEIVE NOTICE  
that 11.07 was  
denied on July 13  
2016 without  
A written order  
This is a Friday

(O)

WRIT OF CERTIORARI

COA 19-10685 USDC 3:18-cv-262

TIME  
LINE →

APRIL 4 2017 AFTER THIS DATE SUPPLIES ARE PROVIDED BY INMATES WHEN I CAN GET THEM MAY 1 2017

I DO NOT RECEIVE ANY LEGAL ENVELOPES. I OPENED THE INDIGENT SUPPLY ENVELOPE with the Guard Next to me IN FRONT OF THE CAMERA. I have video evidence to corroborate MY statement. I now do not have any envelopes I am INCOMMUNICADO with the outside world. It is a shell Game. In order to obtain supplies I must exhaust my supplies But I do not have supplies to exhaust.

(P)

I am denied a writ envelope by Deanna McBroom (formerly DAVIS) TO MAIL MY 2254 I have a LAY-IN (Permission slip) to go to LAW Library The video at the desk will show I have my Paperwork in hand. I File Grievances AGAINST The LAW Library and Deanna McBroom, FOR THE THREE YEARS I do not receive ANY SUPPLIES from TDCJ

(Q)

WRIT of CERTIORARI

COA 19-10685 USDC 3:18-CV-262

TIME  
LINE →

JUNE 29  
2017

I obtain a stamp and envelope and write us District COURT Northern District Dallas and tell them of my 2254 situation. I receive 1983 Forms.

(R)

AUG 30, 2017

I obtain enough SUPPLIES TO File 1983 asking For a writ envelope and SUPPLIES TO File 2254

(S)

SEPT 7  
2017

DEANNA McBroom refuses to send INMATE TRUST FUND Account STATEMENT TO Proceed in Forma PAUPERIS in § 1983

(T)

# WRIT OF CERTIORARI

COA 19-10688

USDC 3:18-CV-262

TIME  
LINE →

OCT 16, 2017

File Motion with  
US DISTRICT COURT  
NORTHERN DISTRICT  
AMARILLO TO ORDER  
LAW LIBRARY TO  
SEND INMATE TRUST  
FUND ACCOUNT STATEMENT  
SO \$1983 can Proceed

NOTE MOTION IS Denied  
MARCH 2018

U

NOV 28, 2017

Begin Requesting  
LAY-IN TO weigh  
2254 to see  
how MANY stamps  
it will take to  
mail

✓

JAN 25, 2018

OBTAIN enough stamps  
to send \$2254 Habeas  
CORPUS to US District  
Court in Dallas.  
Filed by court Feb 1  
2018

NOTE: AGAIN the  
INMATE TRUST FUND  
Account statement  
is NOT Provided until  
MARCH 2018

W

**CONCLUSION**  
THAT IN THE INTEREST OF JUSTICE, EQUITABLE TOLLING,  
TO REMOVE PROCEDURAL TIME BAR, IS INVOKED AND  
COA IS GRANTED THAT THE MERITS OF THE CASE BE HEARD  
The petition for a writ of certiorari should be granted.

Respectfully submitted,

Vincent J. D'Amico

Date: APRIL 8, 2021