No. 21-127

IN THE

SUPREME COURT OF THE UNITED STATES

Adolfo Gutierrez Avila Jr.-PETITIONER

VS.

Vicky Janssen-RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For The Eighth Circuit

PETITIONER FOR WRIT OF CERTIORARI

Adolfo Gutierrez Avila Jr.
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QUESTION(S) PRESENTED

1. Where judicial misconduct targeted Petitioner, a person of color, violate his Fundamental Federal Rights guaranteed him by the Due Process Clause in the 14 Amendment?
2. Why are people of color **Still** being denied their Fundamental Federal Rights guaranteed them by the Due Process Clause in the 14 Amendment?
3. How is **systemic racism** going to be abolished in judicial systems if judicial misconduct targeting people of color is not corrected when found?

All parties appear in the caption of the case on the cover page.

- State of Minnesota v. Avila, No. 42-CR-14-600, District Court Fifth Judicial District. Judgement entered on December 29,2015.
- State of Minnesota v. Avila, NO. A18-1567. Court of Appeals of Minnesota. Reversed and Remanded Filed May 22,2017.
- State of Minnesota v. Avila, No. A18-1567, Court of Appeals of Minnesota. Affirmed Filed August 5,2019.
- State of Minnesota v. Avila, No. A18-1567, State of Minnesota In Supreme Court. Review Denied dated: October 15,2019.
- Avila v. Vicky Janssen, No. 19-cv-3112-PJS-ECW, District Court District of Minnesota. Judgement entered January 13,2021.
- Avila v. Vicky Janssen, No. 19-cv-3112-PJS-ECW, District Court District of Minnesota. Judgement entered January 26,2021.
- Avila v. Vicky Janssen, No. 21-1520, U.S. Court of Appeals For the Eighth Circuit. Judgement entered April 22,2021.
- Avila v. Vicky Janssen, No. 21-1520, U.S. Court of Appeals For the Eighth Circuit. Rehearing En Banc denied May 27.2021.

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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 judgement below.

[X] For cases from **federal courts:**

The orders of the United States court of appeals appears at Appendix E to the petition and is no opinion given.

The orders of the United States district court appears at Appendix D to the petition and is no opinion given.

[X] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix B to the petition is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The dates on which the United States Court of Appeals decided my case Was April 22,2021.

[X] A timely petition for rehearing en banc was denied by the United States Court of Appeals on the following date: May 27,2021, and a copy of the order denying rehearing en banc appears at Appendix F.

The jurisdiction of this court is invoked under 28 U.S.C.&1254(1).

[X] For cases from **state courts:**

The date on which the highest state court Supreme Court of Minnesota denied review of my case was October 15,2019. A copy of that decision appears at Appendix C.

The opinion of the highest state court to review the merits appears at Appendix B to the petition is unpublished.

The jurisdiction of this court is invoked under 28 U.S.C. & 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 14 Sec.1[citizens of the U.S.];nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law. U.S.C.S.Amend.14,Part 1 of 14.

STATEMENT OF THE CASE

The statute of limitations claim was raised in all related cases listed in this petition. By quoting and citing the governing legal principle set forth by this court in Toussie v. U.S., 397 U.S. 112,25 L. Ed. 2d 156(1970). Through briefs, motions and in court hearings. The federal question of when the statute of limitations starts to run in Toussie v. U.S., was timely and properly raised. The statute of limitations claim is not procedurally barred. But it is the claim Judge Bush prejudiced with fraud. Judge Bush's decision of when the statute of limitations starts to run is both **"contrary to"** an involved an **"unreasonable application"** of clearly established federal law as determined by this court. Constituting judicial misconduct and a violation Federal Rights guaranteed to Petitioner by the Due Process Clause in the 14th Amendment.

Rights guaranteed to Petitioner by the Due Process Clause in the 14th Amendment of the United States Federal Constitution have been violated for the following reason(s):

1. **"unreasonable application"** of clearly established state law pertaining to the statute of limitations defense. In violation of State v. Soukup, 746 N.W. 2d 918,922(Minn.App.2008). See memorandum of law in Appendix D
2. **"unreasonable application"** of clearly established federal law pertaining to the statute of limitations defense. In violation of Toussie v. U.S., 397 U.S. 112,25 L. Ed. 2d 156(1970). See memorandum of law in Appendix D
3. **"unreasonable application"** of clearly established federal law pertaining to perjury. In violation of U.S. v. Dunnigan, No.91-1300. February 23,1993. (see memorandum of law in Appendix D)
4. **"unreasonable application"** of clearly established federal law pertaining to Prosecutor Misconduct (Brady Violation). In violation of Brady v. Maryland, 373 U.S. 83(1963). See memorandum of law in Appendix B
5. **"unreasonable application"** of clearly established federal law pertaining to sentencing. In violation of North Carolina v. Pearce,395 U.S. 711, 725-26(1969) and State v. Carver,390 N.W.2d 431, 434(Minn.App.1986). (See memorandum of law in Appendix D)
6. Judicial Misconduct targeting a person of color with vindictiveness contributing to **systemic racism**. In violation of In re Anderson, 312 Minn. 442, 252 N.W.2d 592(1977). See memorandum of law in Appendix D

Judge Bush's decision of when the statute of limitations begins to run is both "contrary to" and involves an "unreasonable application" of clearly established federal law as determined by the Supreme Court of the U.S. See Toussie v. U.S., 397 U.S. 112,25 L. Ed. 2d 156(1970).

In Toussie v. United States, the Supreme Court answered the question of when the statute of limitations starts to run by considering the purpose served by the limitation, the nature of the crime and the legislative intent. The following general principles were discussed: Three main rationales animate statute of limitations: 1) protecting defendants from delayed prosecution where the facts "may have become obscured by the passage of time," 2) minimizing "the danger of official punishment [for] acts in the far-distant past." And 3) encouraging law enforcement to promptly investigate suspected criminal activity.

1) That criminal limitations statutes are to be liberally interpreted in favor of repose.
2) The statute of limitations normally begins to run when the crime is complete.
3) And congress has declared a policy that the statute of limitations should not be extended "except as otherwise expressly provided by law."

By permitting the time-barred charges to proceed, Judge Bush subjected Petitioner to prosecution even though the delay obscured many facts (the 2006 Lyon County Sheriff report) and subjected him to punishment for distant acts and allowed the state to avoid "properly investigat[ing] suspected criminal activity."

The record established that the reporting of the act that constitutes the crime charged in the July 3,2014 criminal complaint was reported to Officer Rolling in 2001 constituted official involvement. Which triggered the statute of limitations 3-year period in section 628.26(e) (2009). Quoting Officer Rolling from the July 25,2011 interview of M.H.: See Exhibit 2 (pg.9)

Officer Rolling: But did you find out you were pregnant in Marshall or Tracy?

Maria: Tracy, when I was in school in Tracy." (pg. 9 lines 3 and 4.)

Officer Rolling: Okay. Living at the trailer court because I knew you guys lived in the trailer court sometime.

Maria: mhmm

Officer Rolling: Was it the trailer house right when you come off Greenwood?

Maria: Yeah.

Officer Rolling: You come in and it is right there?

Maria: Yeah.

Officer Rolling: Okay was it blue or something?

Maria: Yeah.

Officer Rolling: Yup. And that is where you guys were living when I first heard about it. You guys were living in the trailer court. Were your other sisters pregnant at that time or? See Exhibit 2(pg.9 lines 3,4 and 16 to 25)

In this interview M.H. made a statement that the family moved from the trailer court to the farm around March 2002:

Maria: "I was 16, she was probably, I don't know a month or so old or something. **When we moved out there**. Because I had her in **March**."

Officer Rolling discovered the offense(s) between July 5,2001 and **March 2002**. See Exhibit 2 (pg.6 lines 9 and 10) and Exhibit 4.

Another important purpose of the statute of limitations is to protect a defendant from having to defense himself against stale charges. In this case the local law enforcement authorities (Officer Rolling) was notified of the particular conduct constituting the offense(s) (sexual-penetration/pregnancy of M.H.) any were from July, 5 2001 and March 2002. The same conduct constituting the offense(s) charged in the July 3,2014 criminal complaint drafted and signed by Officer Rolling. See Exhibit 7. It took Officer Rolling 13 years to draft and sign the Offense(s) reported to him in 2001. Which Officer Rolling has made a career out of law enforcement since 1997 and continues to be a law enforcement officer today. Which this case is based on the statute of limitations 3-year period. Which it was triggered around March 2002. In applying the principles in Toussie v. U.S. to this case. The strict application of the statute of limitations 3-year period in section 628.26(e) (2009) does apply for Officer Rolling discovered the offense(s) between July 5,2001 and March 2002 constituting official involvement. But did not draft and bring the criminal complaint until July 3,2014 to the prosecuting authorities. Officer Rolling's actions were the direct cause for the 13-year delay in prosecuting the offense(s). Which congress has declared a policy that the statute of limitations should not be extended "except as otherwise **expressly provided by law**." Judge Bush's labeling the report of sexual abuse of M.H. a "rumor" does not equal to "**expressly provided by law**."

Judge Bush's ruling to label the report of sexual abuse of M.H. a "rumor" resulted in a decision that was both "contrary to" and involved an "unreasonable application" of clearly established governing law set forth in the Supreme Court case Toussie v. U.S., pertaining to when the statute of limitations begins to run.

Under the "unreasonable application" clause, the statute is clear that habeas may issue under 28 U.S.C.S. & 2254(d)(1). If a state court "decision" is contrary to clearly established federal law. See Williams v. Taylor, 529 U.S. 362 Supreme Court of the U.S. (April 18,2000) "under 2254(d)(1)'s "unreasonable application" clause, a federal court may grant a writ of habeas corpus if a state court identifies the correct governing legal principle from the Supreme Court's decisions but unreasonably applies that principle to the facts of the prisoner's case."

This case falls under section 2254(d)(1) resulted in a decision that was **contrary to**, or involved an **unreasonable application** of clearly established Federal law, as determined by the Supreme Court of the United States; or

A. STANDARD OF REVIEW

Reasonableness Standard

APPOSITE AUTHORITY

Lindh v. Murphy, 96 F.3 856 (7th Cir.1996).

STANDARD OF CORRECTNESS

The law in effect at the time the decision became final.

APPOSITE AUTHORITY

Teague v. Lane, 489 U.S. 288,310(1989)

This case also falls under section 2254(b)(1)(B)(ii) circumstances exist that render such a process ineffective to protect the rights of the applicant. See, Panetti v. David,863 F.3d 366, 373-74(5th Cir. 2017).

Judge Bush's decision to deny Petitioner's motion to dismiss pertaining to Officer Rolling's perjury that prejudiced the statute of limitations defense is both "contrary to" and involved an "unreasonable application" of clearly established federal law as determined by the Supreme Court of the U.S. See U.S. v. Dunnigan, No 91-1300. (February 23, 1993). In U.S. v. Dunnigan, the Supreme Court set out the parameter of perjury within the U.S. law. The court uses the Dunnigan -based legal standard: a defendant (a) knowingly made a (b) false (c) material statement (d) under oath (e) in a legal proceeding.

The Dunnigan distinction manifests its importance with regard to the relation between two components parts of perjury's definition: in willfully giving a false statement, a person must understand that he is giving a false statement to be considered a perjurer under the Dunnigan framework. Deliberation on the part of the defendant is required for a statement to constitute perjury.

It is clearly documented by Officer Rolling himself that he knew of the offense(s) charged since 2001. Which he acknowledged to M.H. in the July 25,2011 interview and documented it also in his July 26,2011 Lyon County Sheriff's report. Which these statements must be true because as a police officer just doing his job documented everything to initiate the case. And he was not under oath when he made the first statements material to the statute of limitations defense. Plus, the statute of limitations defense had not been brought up yet.

First material statements made to the statute of limitations defense:

In July 25,2011, Quoting Officer Rolling from July 25,2011 interview of M.H.:

Officer Rolling:" but did you find out you were pregnant in Marshall or Tracy?"

Maria:" Tracy, when I was in school in Tracy."

Officer Rolling:" Yup. And that is where you guys were living when I first heard about it. You guys were living in the trailer court." See Exhibit 2(pg.9)

In the July 26,2011 Lyon County Sheriff Report (**Introduction statement**)

"On July 25, 2011 I conducted an interview with Maria Herrera at the Lyon County Sheriff's Office. I began speaking with Maria and introduced myself. I explained that, prior to working at the Lyon County Sheriff's Office, I had been a police officer with the City of Tracy. I explained that while working there I had heard a rumor that Adolfo Avila had gotten his daughters pregnant but I was never able to substantiate that. I explained that I was somewhat familiar with the situation, and if she could tell me what had all occurred." See Exhibit 3.

Once the statute of limitations defense was raised at the June 30,2015 omnibus hearing Officer Rolling made his first false material statement to the statute of limitations defense. Completely contradicting his statements made in 2011, 4 years earlier. Which he was under oath this time: Quoting Officer Rolling from the June 30,2015 omnibus hearing: See Exhibit 5

Prosecutor Rick Maes:" Now, Officer, can you tell us when this matter was first reported to the Law Enforcement Agency?"

Officer Rolling:" **I received the report in July 2011."**

Prosecutor Rick Maes:" Was that the first time you were notified of any alleged misconduct involving Mr. Avila and the alleged victim?"

Officer Rolling:" **That was the first time it was reported to me."**

Officer Rolling (a) knowingly made a (b) false (c) material statement (d) under oath (e) in a legal proceeding directly affecting the statute of limitations defense outcome constituting perjury.

Under the "unreasonable application" clause, the statute is clear that habeas may issue under 28 U.S.C.S. & 2254(d)(1). If a state court "decision" is contrary to clearly established federal law. See Williams v. Taylor, 529 U.S. 362 Supreme Court of the U.S. (April 18,2000).

This case falls under section 2254(d)(1) resulted in a decision that was contrary to, or involved an "unreasonable application" of clearly established Federal law, as determined by the Supreme Court of the United States; or

A. STANDARD OF REVIEW

Reasonableness Standard

APPOSITE AUTHORITY

Lindh v. Murphy, 96 F.3 856 (7th Cir.1996).

STANDARD OF CORRECTNESS

The law in effect at the time the decision became final.

APPOSITE AUTHORITY

Teague v. Lane, 489 U.S. 288,310(1989)

This case also falls under section 2254(b)(1)(B)(ii) circumstances exist that render such a process ineffective to protect the rights of the applicant. See, Panetti v. David,863 F.3d 366, 373-74(5th Cir. 2017).

REASONS FOR GRANTING THE PETITION

The Petition should be granted for the following compelling reasons: as to call for an exercise of this court's Supervisory power to correct the systemic racism found in our judicial system in the state of Minnesota. Which it is prejudicing people of color in civil and criminal matters. Petitioner suffered prejudiced due to systemic racism. But this case is extremely important beyond Petitioner and the particular facts in this case. It is of extreme national importance for the Supreme Court of the U.S. to lead by example in the continuation of the struggle to eradicate systemic racism. Especially in these times of nationwide civil unrest following the murder of a colored man named George Floyd by law enforcement in the state of Minnesota. The abolishing of systemic racism especially in our judicial system is as important as our current nation-wide police reform that is underway due to the murder of George Floyd. If systemic racism is not corrected when found it harms all people of color when it comes to Equal Protection under the law in civil and criminal matters. Which this case is a perfect example of how systemic racism unfairly prejudices people of color. In ~~the~~ (this) case judicial misconduct targeted a person of color resulting in an illegal conviction by law enforcement and once again in the state of Minnesota. The very fact that this case with complete disregard for the rule of law constituting judicial misconduct. That targeted a person of color made it to

the doorsteps of the Supreme Court of the U.S. proves the systemic racism in our judicial system. Minnesota caselaw proves whitementwith the same type of crime like in this case were granted equal protection under the law and their statute of limitations defense was upheld See State v. Keller, unpublished Lexis 780(Minn.App.2018)and State v. French, Court of Appeals,No.CX-86-326(Minn.App.August 19,1986). Judge Bush a white Judge allowed Officer Rolling another white person, to commit perjury under oath,to convict Petitioner a person of color. Which Prosecutor Rick Maes, another white person, endorsed the perjury misconduct. The evidence that proves the perjury is clearly documented in the record for the world to see. But the problem is not the over-whelming evidence proving the perjury. It is the systemic racism in the Minnesota Judicial system, that did not want to correct Judge Bush's judicial misconduct, targeting a person of color. How is systemic racism going to be abolished in judicial systems, if judicial misconduct targeting people of color, is not corrected when found?

The Supreme Court of the U.S. has the power in the quest for true justice, to heal this great nation of its history of racism, and its current nation wide civil unrest. Specifically due to the systemic racism in the State of Minnesota. Thus, has the power to bring together this divided nation on the subject of systemic racism by upholding equal justice for all.

Petitioner respectfully requests for the relief that this illegal Lyon County conviction contrary to well settled state and federal laws be overturned and Petitioner be released from custody to correct the infringement by Judge Bush on Petitioner's Fundamental Federal Rights guaranteed to him by the Due Process Clause in the 14th Amendment of the U.S. Federal Constitution. Which I declare under penalty of perjury that everything I stated in this writ of certiorari petition to the Supreme Court of the United States is true and correct.28 U.S.C.S. & 1746.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Addo Z Ash

Date: 7-15-2021

ISAIAH 56:1
Thus says the Lord:
"Keep Justice, and do righteousness,"