No. 21-5133

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL SKILLERN
Petitioner

ORIGINAL

v

UNITED STATES OF AMERICA
Respondent



On Petition for Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit

# PETITION FOR WRIT OF CERTIORARI

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## CERTIFICATE OF INTERESTED PERSONS

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3. Petition for Writ of Certiorari

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| | |
|---|---|
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| 5. Application for Certificate of Appealability: | For the Government:<br>None<br>For Michael Skillern, Pro Se; |

## QUESTION PRESENTED FOR REVIEW

### QUESTION I

**DOES THE ELEVENTH CIRCUIT'S RULE ENUNCIATED IN *CRUTCHFIELD v WAINWRIGHT*, 803 F3d1103 (11th Cir. 1986) ABROGATE OR MODIFY THE SUPREME COURT DECISION AS STATED IN *GEDERS v UNITED STATES*, 425 U.S. 80 (1976), AND IF NOT IS PETITIONER ENTITLED TO HAVE THIS COURT ISSUE AN ORDER FROM THIS COURT GRANTING CERTIORARI, VACATING JUDGMENT AND REMANDING TO THE ELEVENTH CIRCUIT'S UNITED STATES CIRCUIT JUDGE BARBARA LAGOA, TO REVERSE HER DECISION DENYING PETITIONER'S APPLICATION FOR COA, AND GRANT THE COA FOR THE QUESTION OF WHETHER ON NOT DID *CRUTCHFIELD* HOLDING VIOLATE THE RULE IN GEDERS BY IMPERMISSIBLY REQUIRING A TESTIFYING CRIMINAL DEFENDANT DEMONSTRATE NEED OR CAUSE TO SPEAK TO COUNSEL OVER A LONG OVERNIGHT TRIAL RECESS.**

## TABLE OF CONTENTS

**page no.**

CERTIFICATE OF INTERESTED PERSONS.....i-ii
QUESTION PRESENTED FOR REVIEW.....iii
TABLE OF CONTENTS.....iv
TABLE OF AUTHORITIES.....v-vi
CONSTITUTIONAL AND STATUTORY PROVISIONS.....vi-vii
OPINIONS BELOW.....vii
JURISDICTIONAL STATEMENT.....viii
STATEMENT OF THE CASE.....1-4
REASONS FOR GRANTING THE WRIT..... 4-6
ARGUMENT AND AUTHORITIES..... 6-12
CONCLUSION.....12-13
CERTIFICATE OF FILING AND SERVICE.....14
CERTIFICATE OF COMPLIANCE.....15
APPENDIX COVER SHEET/INDEX.....16

## TABLE OF AUTHORITIES

### Supreme Court Cases

*Berger v United States,* 295 U. S. 78, 88 (1935)----------4

*Bradshaw v Estelle*, 463 U.S. 880, 893 n.4 (1983)----------4

*Geders v United States*, 425 U.S. 80 (1975) ---------- *passim*

*Miller-El v Cockrell*, 537 U.S. 336 (2003) ----------4

*Nebraska Press Ass'n v Stuart*, 427 U.S. 539; 96 S.Ct. 2791; 49L.Ed.2d 683 (1976)----------9-10

*Perry v Leeke*, 488 U.S. 272 (1986) ---------- *passim*

*Slack v McDaniel, 529 U.S. 472 (2000)* ----------4,5

### Federal Circuit Court Cases

*Crutchfield v Wainwright*, 803 F.2d 1103 (11th Cir. 1986)----------*passim*

*Mudd v United States*, 798 F.2d 1509 (DC Cir. 1986)----------7

Murphy v United States, 634 F.3d 1303, 1306----------5

*Sanders v. Lane*, 861 F.2d (7th Cir. 1988)----------9

*United States v Dilapi,* 651 F.2d 648 (2d Cir. 1981)----------9

*United States v Johnson*, 267 F.3d376, 379 (5th Cir. 2001)----------8

*United States v Noriega,* 752 F. Supp. 1045 (S.D. Fla. 1990)----------10

*United States v Torres,* No. 20-50092 (5th Cir. 2021)----------8,9

*United States v Triumph Capital Group, Inc.* et al, 487 F.3d 124 (2d Cir. 2007)----------11

### Constitutional Provisions

U.S. Const. Amend. VI----------*passim*

### Statues

28 U.S.C. Section 1254(1)----------vi-vii

28 U.S.C. Section 1746----------15

28 U.S.C. Section 2106----------vi-vii
28 U.S.C. Section 2253----------*passim*
28 U.S.C. Section 2255----------*passim*

**Supreme Court of the United States Rules**

Supreme Court Rule 12.2----------vii
Supreme Court Rule 13.1----------vii
Supreme Court Rule 13.3----------vii
Supreme Court Rule 33(d)----------15

## PRIOR RELATED APPEALS

United States v Nelson, Skillern, et al, 884F.3d 1103 (11th Cir. 2018); Skillern v United States, Petition for Writ of Certiorari- Denied 2019.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

Sixth Amendment to the Constitution of the United States provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the States and district wherein the crimes have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

28 U.S.C. Section 1254 provides in part:

Cases in the courts of appeals maybe reviewed by the Supreme Court by the following methods:
(1). By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
(2). ...

28 U.S.C. Section 2106 provides in part:

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of appropriate judgment, decree, or order, or require such further proceeding to be had as may be just under the circumstances.

28 U.S.C. Section 2253 provides in part:

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
(b) ...

28 U.S.C. Section 2255 provides in part:

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.
(b) ...

## OPINIONS BELOW

The United States Court of Appeals for the Eleventh Circuit opinion Affirming Petitioner's convictions and sentence, is provided herewith in *Appendix A*. The United States Court of Appeals for the Eleventh Circuit opinion denying Petitioner's Application for COA is provided herewith in *Appendix B*.

## JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to 28 USC Section 1254(1) and 28 USC Section 2106 and Supreme Court Rules 12.2, 13.1 and 13.1, and is subject to this Court's Order of March 19, 2020, (No. 589, U. S. Lexis 1643) extending the time in which a petition for writ of certiorari may be filed. The date that this petition for writ of certiorari is due under Supreme Court Rule 13.1 excluding the additional time under this Court's Order (No. 589, U. S. Lexis 1643), is July 15, 2021; alternatively should the extended time frame continue to be applicable this petition for writ of certiorari will be due on September 13, 2021.

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## STATEMENT OF THE CASE

1. During the course of a jury trial in late January 2016-February 3, 2016, at the conclusion of the first day of Michael Skillern's (hereinafter Petitioner) testimony, the presiding judge, United States District Court Judge, Hon. Mary S. Scriven issued a sequestration order that limited Petitioner's full access to Petitioner's counsel during the first overnight recess, after that day of trial, that is, numerical day 10 of the trial. (See *Appendix C*, at page 208 line 22-25; page 209 lines 1-9; Excerpt from Trial regarding Judge Scriven's impermissible sequestration order). There is no dispute as to the effect of the sequestration order, nor the language used by Judge Scriven, that is, the order denied Petitioner the opportunity to engage in an overnight discussion regarding his testimony given at trial and his impending testimony, with his lead trial counsel, Stanley G. Schneider, (Atty. Schneider) or any other of the two addition lawyers representing Petitioner, in his criminal trial, thereby denying Petitioner's Sixth Amendment right of, access to counsel during that overnight (more than 16-17 hours), recess. The record shows and is clear that after the first day of Petitioner's testimony, counsel (Stanley G. Schneider) asked Judge Scriven whether he could speak to Petitioner about matters other than his testimony that evening or any other matters that may come up. Further the record is clear that Judge Scriven responded by granting Atty. Schneider's request with the following restriction: " *anything about the proceeding is fine, who is coming, that's fine, but* ***just not his testimony or his impending testimony***". (emphasis added). (See *Appendix A*; page 4, last grammatical paragraph - page 5; and ***fn 1,*** at bottom of page 5) There is no dispute that Petitioner was denied his fundamental, Sixth Amendment right, of

unrestricted access to counsel during an overnight recess of 16-17 hours or more by Judge Scriven's sequestration order, which establishes a constitutional question. Further the record is clear that at the conclusion of Petitioner's second day of trial, while Petitioner was still testifying, Judge Scriven reversed her order and instructed Petitioner that he was free to talk to his attorney during the overnight break on day 11 of the trial (end of second day of Petitioner's testimony), without the previous restriction regarding Petitioner's testimony. (See *Appendix A*-Eleventh Circuit opinion; page 5, at ***fn 1***).

On direct appeal the Eleventh Circuit panel, explained the following as a basis to deny Petitioner's Sixth Amendment argument that the sequestration order constituted "structural error" and not cognizable under harmless error analysis, and is automatically reversible error, holding that:

1. "Although no existing precedent resolves that precise question, even the Government seems to concede that answer, at least is as a general matter, is probably yes. See Br. of Appellee at 52 ("[T]he district court's limitation here impermissibly constrained Skillern's ability to consult with his attorney during the first overnight recess"). But there is a wrinkle here--it was Skillern's lawyer who actually proposed the limitation that Skillern now challenges. ..." (See *Appendix A*; page 7)

2. "As explained below, because the trial record doesn't indicate that either Skillern or his lawyer had any intention or desire to discuss his testimony during the recess, Skillern can't show that he was actually deprived of his right to counsel, as required by our en banc decision in *Crutchfield*." (See *Appendix A*; page 8)

As stated by the Eleventh Circuit Panel, there is no Eleventh Circuit precedent which controls the precise question presented by Petitioner, but there is Supreme Court precedent that controls the precise issue, that is, *Geders v United States*, 425 U.S. 80 (1976) with regard to overnight trial

recesses, and *Perry v Leeke*, 488 U.S. 472 (1986) with regard to trial recesses longer than 15 minutes.

2. Petitioner was convicted, (four (4) counts of mail fraud(18 USC Sec.1341), four (4) counts of wire fraud(18 USC Sec. 1343), one (1) count of conspiracy to commit mail and wire fraud(18 USC Sec. 371), one (1) count of conspiracy of conspiracy to commit money laundering 18 USC Sec. 1956(h), and (acquitted of three substantive money laundering charges), after a (2-3 week duration) jury trial in the United States District Court for the Middle District of Florida, (Tampa Division), the Honorable Mary S. Scriven, United States District Judge, presiding. Petitioner, a first time offender, was sentenced to a term of imprisonment of 120 months, three (3) years supervised release, restitution in the amount of $6,862,579.16 and a special assessment of $1000.00. Petitioner who is currently incarcerated, was represented at trial by Attorney Stanley G. Schneider, (hereinafter Atty. Schneider). Atty. Schneider also represented Petitioner on direct appeal to this Court. Petitioner testified for approximately 2 and 1/2 days over 3 calendar days of trial. On the first day of Petitioner's trial testimony, it is undisputed that the trial judge issued a sequestration order that, restrained Petitioner's access to counsel in violation of Petitioner's fundament Sixth Amendment rights and in conflict with Supreme Court jurisprudence.

3. Subsequent to trial, and exhaustion his appeal rights, Petitioner filed a post conviction habeas corpus motion pursuant to 28 USC Section 2255 identifying multiple constitutional issues, not limited to but including ineffective assistance of counsel issues. Petitioner's 28 USC Section 2255 Motion (hereinafter 2255 Motion), was denied by the District Court on August 25, 2020, notice of appeal was timely filed and the appeal fee paid and this Application for Certificate of Appealability followed.

3.1 The Petitioner on the first day, of his testimony during trial, was ordered by the District Court to not discuss anything in regard to his testimony, with his lawyer, Atty. Schneider, during the overnight recess and a long lunch recess, as well as any other recess that may have occurred during day one of Petitioner's trial testimony.

3.2 The District Court apparently realized the constitutional error and withdrew her sequestration order on day two of Petitioner's testimony. (See finding by this Court's Panel during oral argument of the direct appeal of Petitioner's case).

3.3 Petitioner was denied access to counsel overnight between day one of his trial testimony and day two of his trial testimony. Atty. Schneider for fear of being perceived to have violated the District Court's sequestration Order refused to dine with Petitioner or discuss any subject with Petitioner during the overnight recess.

**REASONS FOR GRANTING THE WRIT**

4. To show that a Certificate of Appealability (COA) should issue under 28 USC Sec. 2253(c), a defendant need only to make a substantial showing that jurists of reason could disagree with the district court's resolution of his constitutional claims. (See *Miller-El v Cockrell*, 537 U.S. 336 (2003). Courts of Appeals ask only if the district court's decision was debatable. Id. see also *Bradshaw v Estelle*, 463 U.S. 880, 893 n.4 (1983). Further the inquiry for a COA is a threshold inquiry and a separate proceeding, one distinct from the underlying merits determination. (Miller-El citing *Slack v McDaniel, 529 U.S. 472 (2000)*.

Further, this Court holds:

"In an appeal challenging a [Section] 2255 ruling, we review the legal issues de novo and the factual findings for clear error". (See *Murphy v United States,* 634 F.3d 1303, 1306 (11th Cir. 2011).

5. Petitioner is a federal prisoner serving a sentence of 120 months imprisonment and is currently imprisoned at the Federal Prison Camp located in Beaumont, Texas. Petitioner's Application for Certificate of Appealability (COA) was denied by United States Circuit Judge, Honorable Barbara Lagoa, conclusion holding :

*"As such, Skillern's motions for a COA are DENIED because he has failed to make a substantial showing of a constitutional right."* 28 USC Section 2253(c)(2). (See *Appendix B* at page 39); (See also *Appendix B* at pages 25-27; Judge Lagoa's general discussion of denying the COA because Petitioner has **failed to demonstrate prejudice** from being denied access to counsel during the first over night recess and the lunch recesses, that all exceed 15 minutes in duration during the Petitioner's testimony in his criminal trial).

Such basis for denial is squarely contrary to this Court's rule in *Geders* and *Perry*, and is a constitutional error, that is, denial of Petitioner's Sixth Amendment right of access to counsel, at a critical stage of the proceeding.

Pursuant to the Supreme Court of the United States' (hereinafter referred to as Supreme Court) opinion in, *Slack v McDaniel,* 529 U.S. 472 (2000), which held the following:

> "Second, when the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue (and an appeal of the district court's order may be taken) if the prisoner shows at least, that jurist of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district was correct in its procedural ruling."

Petitioner respectfully requests that this Court grant this Petition for Writ of Certiorari because denial of access to counsel during an overnight recess is a violation of Petitioner's fundamental Sixth Amendment rights to access of counsel, is a constitutional issue and under *Geders,* is automatically reversible error. As demonstrated below, jurists of reason have found this issue debatable and the circuits have split in regard to the Eleventh Circuit's analysis under their "common sense rule" (see *Crutchfield v Wainwright, 803 F.2d 1103 (11th Cir. 1986)*), requiring a defendant or counsel to request in some, (still not succinctly defined), dialog for permission to confer over long recesses and overnight during a testifying defendant's trial.

6. Petitioner's Application for Certificate of Appealability (COA) sought review of the constitutional issue setout herein and there is a deep and mature circuit split as to whether or not a sequestration order issued against a testifying criminal defendant that in any way restricts access to counsel on an overnight trial recess is subject to harmless error review, or such other conditions as is the Eleventh Circuit's "common sense" rule (See *Crutchfield*; (plurality opinion)), of having to demonstrate to the trial judge's satisfaction that a defendant or his lawyer desire to confer overnight without restrictions. The Eleventh Circuit's *Crutchfield* decision is in the minority of circuits on this issue, and is contrary to this Court's holding in *Geders* and to dicta in *Perry.*

## ARGUMENT AND AUTHORITIES

7. The Circuit Judge's opinion addressed the first COA issue and found as follows:

*"As to his argument that he had been denied counsel by the district Court's recess instructions, we held that, under our en banc decision in Crutchfield v Wainwright, 803 F.2d 1103 (11th Cir. 1986), Skillern had not shown that he was actually deprived of his Sixth Amendment right to counsel because, notwithstanding the district court's recess instruction, the record was "entirely devoid of any indication---in any form---that Skillern or his attorney planned or wanted to confer about his testimony during the recess."* (See *Appendix B* hereto; Circuit Judge Barbara Lagoa's opinion at page 11).

such holding is in accord with the Eleventh Circuit rule announced in a plurality opinion, decided by the *Crutchfield* Court, holding:

"The defendant must show that the prohibition actually prevented the opportunity to confer with counsel". (citations omitted). "Once the defendant makes the requisite showing, a new trial is warranted." (citations omitted).

7.1 Problematic with the decision denying Petitioner's application for a COA, is that it addresses only the ineffective assistance of counsel question and does not consider that even if there was no conduct that would support a claim of ineffective assistance of counsel, the Sixth Amendment deprivation wrought by the District Court's sequestration order preventing Petitioner and counsel from conferring regarding Petitioner's testimony over more than a 16-17 hour overnight recess, is a constitutional question that was disposed of, without careful analysis and consideration, of this Court's *Geders* rule and its application to the issue established by the uncontroverted facts of this case, that is, Petitioner was denied by the district court's sequestration order unrestricted access to counsel at a critical stage of the proceeding that being an overnight trial recess. (See *Mudd v United States*, 798 F.2d 1509 (DC Cir. 1986); holding:

"We hold that an order that denies a criminal defendant the right to consult with counsel during a substantial trial recess, even thought limited to

a discussion of testimony, is inconsistent with the sixth amendment of the Constitution. We also find that the harm caused by this violation is such that reversal is required without a showing of actual prejudice."

Clearly had Petitioner's case been in the DC Circuit it would have been reversed and remanded without delay. Other circuits that have encountered this issue of a restrictive sequestration order which deprived a testifying criminal defendant of his/her Sixth Amendment right of access to counsel during longer than 15 minute trial recesses have found that the impermissible order is a constitutional violation and is not subject to a prejudice analysis, just as the *Geders* opinion instructed. (See United States v Torres, No. 20-50092 (5th Cir. May 19, 2021) holding:

"Here the district court prohibited Torres from speaking with his counsel during a 13 hour overnight recess declared in the middle... . The facts of this case fall squarely within the *Geders* rule; that is, a trial court may not bar a testifying criminal defendant from all communication with his attorney during an overnight recess. See *United States v Johnson*, 267 F.3d 376, 379 (5th Cir. 2001) (concluding that sequestration orders prohibiting communications between defendant and counsel during an overnight recess and a weekend recess were indistinguishable from *Geders* 425 U.S. 88). As the Supreme court recognized, such a long interruption implicates "the defendant's right to unrestricted access to his lawyer for advice on a variety of trial-related matter, that is controlling in the context of a long recess" Perry, 488 U.S. at 284 (citing Geders, 425 U.S. at 88). Though discussions during an overnight recess "will inevitably include some consideration of the defendant's ongoing testimony", they will encompass matters that the defendant does have a constitutional right to discuss with his lawyer, such as...".

"Having found a violation, we next consider whether reversal is required, or whether we should conduct plain error analysis. The Government argues that we should review the violation for plain error because defense counsel did not expressly object to the sequestration order at trial. However, we need not decide whether the objection was preserved.

**Even under plain error review, the Geders, violation requires reversal here".** (emphasis added); (*Torres .id*)

7.2 *Sanders v Lane*, 861 F.2d 1033(1988) states in dicta the following:

"In subsequent cases, every circuit that has considered the question has found that a bar on attorney-client consultation during even a brief recess can offend the sixth amendment. However courts are split concerning (1) the prerequisites for establishing a violation; and (2) whether a violation requires *per se* reversal or permits a harmless error analysis. See *United States v Dilapi,* 651 F.2d 140 (2nd Cir. 1981) cert denied 455 U.S. 938, 102 S. Ct. 1428, 71 L.Ed.2d 648 (1982) (...), *Perry v Leeke*, 832 F.2d 837 (4th Cir. 1987) (en banc) *cert granted* ...; ***Crutchfield v Wainwright***, 803 F.2d 1103 (11th Cir. 1986), (en banc) (plurality), cert denied ___U.S.____, 107 S. Ct. 3235, 97 L.Ed.2d 740 (1987) **(short recess; sixth amendment violation only if defendant objects or indicates desire to consult with counsel, if not per se reversal); see also *Crutchfield* 803 F.2d 1111 (Tioflat, J)".** (emphasis added).

From the *Sander's* court it seems that the *Crutchfield* case may have been considered in the context of a short break not an overnight break. However in the Petitioner's direct appeal, post conviction 2255 Motion, and appeal of the denial of a COA for the denial of his 2255 Motion, the district court and the Eleventh Circuit both disregarded the length of the recess and applied a rebranded 'harmless error' analysis as a "common sense rule" to justify their refusal to reverse Petitioner convictions and sentence, and sent Petitioner to prison without having insured Petitioner a fair trial. (See *United States v Noriega*, 752 F. Supp. 1045 (S.D. Fla. 1990) wherein the district court acknowledged that the Eleventh Circuit noted that **it is the district court's obligation to insure a fair trial and not the defendant's obligation**). In Petitioner's case, only this Court is in a position to correct the Sixth Amendment violation that resulted in an unfair trial, conviction and ten (10) year prison sentence that are unreliable and unconstitutional. (See *Nebraska*

*Press Ass'n v Stuart,* 427 U.S. 539, 96 S. Ct. 2791, 49 L.Ed.2d 683 (1976) and *United States v Noriega,* 917 F.2d 1543 (11th Cir. 1990)(*per curiam*).

7.3 The record demonstrates that both Petitioner and counsel sought clarification to the District Court's sequestration order, although inartfully articulated, for demonstrating that there was a desire to confer over the night recess. (See *Appendix C*; Excerpt from Petitioner's Trial Transcript; page 208, lines 20-25 and page 209 lines 1-9). There can be no question as the record is complete and demonstrates that there was an impermissible sequestration order that prevented Petitioner's unrestricted, access to and assistance from counsel, during one overnight trial recess and at least one lunch long recess, occurring during and after Petitioner's first day of testimony and the next upcoming day of testimony.

8. Petitioner's claim that his Sixth Amendment constitutional rights were violated by a court order, restricting communication between Petitioner and his trial counsel, as referenced above, is governed by two Supreme Court precedents, *Geders v United States*, 425 U.S. 80 (1976), and *Perry v Leeke*, 488 U.S. 272 (1989). In *Geders*, the Court held that:

> "an order preventing petitioner from consulting with his counsel 'about anything' during a 17 - hour overnight recess between his direct-and cross-examination impinged upon his right to the assistance of counsel guaranteed by the Sixth Amendment". (425 U.S. at 91, 96 S. Ct. 1330).

Further the Court recognized that district courts have broad discretion to limit witnesses' communications while they are testifying in order to prevent improper influence and coaching, but concluded that when the witness is also the defendant, the Sixth Amendment significantly curtails this discretion, *Id,* at 88, 96S. Ct. 1330. In addition the Court concluded and held that:

> "...a defendant's right to counsel was violated, requiring automatic reversal, when the trial court prevented him from consulting with his attorney during an overnight recess." *Id.* at 88, 96 S. Ct. at 1335.

In the case before this Court it is undisputed that for the first overnight recess (during Petitioner's testimony), Petitioner's access to counsel was restricted in regard to discussing his first day of testimony, and his upcoming testimony the next day of trial. The Supreme Court and every other circuit court that have addressed the issue of denial of a defendant's right to access of counsel, recognize such issue is a fundamental constitutional right of criminal defendants. (*Id.* Perry).

**District Court's Sequestration Order Prohibited Petitioner's Access to Counsel Over-Night Recess, And During Lunch Recesses On The First and Second Day of Petitioner's Testimony**

9. In the most fundamental terms, Petitioner's Sixth Amendment right to access of counsel was prohibited by the District Court's sequestration order, imposed, on the first day of Petitioner's testimony, which included lunch breaks and the first (approximately 16-17 hour) overnight recess, while Petitioner was testifying. The Supreme Court and many circuit courts recognize this error as a "Constitutional error" and when present requires automatic reversal, because prejudice is presumed and the error is not cognizable under harmless analysis. In the case of *United States v Triumph Capital Group, Inc.* et al, 487 F.3d 124 (2d Cir. 2007), in regard to a ban on communications between a testifying defendant and trial counsel, stated:

> "But as we have seen under *Geders* and *Perry* this interest will not justify a substantial interference with constitutionally protected communications. Geders, 425 U.S. at 91, 96S.Court 1330. **And since banning discussion of testimony over an overnight recess substantially albeit indirectly, interferes with communication of constitutional quality, and overnight ban on discussion of testimony falls squarely**

**within the rule of Geders. Nor can the fact that the ban was later rescinded provide post-hoc justification for the initially unjustified order."** (emphasis added).

10. As demonstrated above, multiple circuit courts of appeal that have opined in similar cases involving Petitioner's Sixth Amendment issue of access to counsel being abrogated by a court order restricting unfretted access to counsel, have split on the appropriate remedy and few if any have the Eleventh Circuit's "common sense rule" which essentially operates as a rebranding of harmless error analysis, that modifies the rule in *Geders*. (See *United States v Bryant*, 545 F.2d 1035 (6th Cir. 1976), extending *Geders* to cover one-hour recesses; see also *Mudd*, holding:

"We find that a *per se* rule best vindicates the right to the effective assistance of counsel. To require a showing of prejudice would not only burden one of the fundamental rights enjoyed by the accused, see *Powell,* 287 US at 68-69, 53 S. Ct. at 64, but would also create an unacceptable risk of infringing on the attorney - client privilege."

It is the fact that different courts have held different tests analysis and methodology for utilizing the rule in *Geders'* or the rule in *Perry,* that demonstrates beyond speculation, that jurist of reason do and could find it debatable whether Petitioner's petition states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. The circuits are split on this constitutional question, irrespective of the fact that this Court has clearly settled the law of the land in *Geders* and *Perry*.

## CONCLUSION

The District Court and the Eleventh Circuit, erred in denying Petitioner a Certificate of Appealability on his claims presented in his habeas petition.

As held in *Slack*, an applicant for a certificate of appealability need not show the appeal will succeed on the merits. Based upon the record, and upon consideration of the foregoing, Petitioner respectfully requests that this Court issue it's Order Granting Certiorari, Vacating Judgment and Remanding for consideration in light of *Geders* and *Perry* to consider the merits of Michael Skillern's claims. Petitioner seeks this Court to insure that the Eleventh Circuit Judges follow, the rule in Geders, without the requirement of a harmless error analysis established in *Crutchfield* that is labeled their "common sense rule" which requires the defendant to demonstrate entitlement to the guarantees afforded under the Sixth Amendment, either Petitioner in this case is cloaked with the fundamental Sixth Amendment guarantee of access to counsel or such right was abrogated by the Eleventh Circuit's *Crutchfield* opinion.

Respectfully submitted,

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