

No. _____

PROVIDED TO
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JUN 11 2021

FOR MAILING BY
C.R.

IN THE

SUPREME COURT OF THE UNITED STATES

COURTNEY ROBINSON — PETITIONER
(Your Name)

vs.

VICTORIA R. BRENNAN, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

COURTNEY ROBINSON
(Your Name)

5850 EAST MILTON ROAD
(Address)

MILTON, FLORIDA 32583
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) IF PETITIONER'S "OBJECTION" TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION, CLEARLY DEMONSTRATED THAT HE WAS DENIED THE [SAME] BENEFIT OF THE [SAME] LAW THAT WAS RENDERED TO A SIMILAR-SITUATED DEFENDANT BY THE [SAME] STATE DISTRICT COURT OF APPEALS, (SEE: APPENDIX I AT 12-16), THEN HAS THAT PETITIONER MADE A SHOWING OF A "MANIFEST INJUSTICE"?...AND [IS] THEREFORE ENTITLED TO FEDERAL HABEAS RELIEF?
- 2) LIKEWISE, IF PETITIONER'S "OBJECTION" HAS DEMONSTRATED THAT: (1) THERE WAS ERROR, (2) THAT ERROR IS PLAIN, (3) THAT IT AFFECTED HIS SUBSTANTIAL RIGHTS, AND (4) THAT IT AFFECTED THE FUNDAMENTAL FAIRNESS OF THE PROCEEDING, (SEE: APPENDIX I AT 12-16), HAS THE PETITIONER DEMONSTRATED A "MANIFEST INJUSTICE"?...AND IS THEREFORE ENTITLED TO HABEAS CORPUS RELIEF?
- 3) IF PETITIONER'S "OBJECTION" HAS CLEARLY DEMONSTRATED ERROR(S) THAT WAS COMMITTED BY HIS [STATE-APPOINTED] ATTORNEY DURING HIS DIRECT APPELLATE REVIEW, (SEE: APPENDIX I AT 9-11), HAS THE PETITIONER BEEN DENIED A FAIR PROCESS AND THE OPPORTUNITY TO COMPLY WITH THE STATE'S PROCEDURES AND OBTAIN AN ADJUDICATION ON THE MERITS OF HIS CLAIM? LIKEWISE, MAY THE PETITIONER USE THE ABOVE-SAID ERROR(S) TO ESTABLISH "CAUSE" FOR HIS PROCEDURAL DEFAULT IN FAILING TO RAISE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIM?
- 4) IF PETITIONER'S "OBJECTION" THOROUGHLY DEMONSTRATED THAT (1) MANIFEST INJUSTICE DO EXIST IN HIS CASE, (2) THAT A CONSTITUTIONAL VIOLATION HAS OCCURRED, AND (3) THAT IT RESULTED IN THE CONVICTION OF PETITIONER WHO IS ACTUALLY INNOCENT, (SEE: APPENDIX I AT 12-16), IS THE PETITIONER ENTITLED TO OBTAIN FEDERAL HABEAS REVIEW OF HIS PROCEDURALLY DEFAULTED CLAIM, [WITHOUT] A SHOWING OF "CAUSE" OR "PREJUDICE"?
- 5) IF PETITIONER'S "OBJECTION" CLEARLY DEMONSTRATED THAT (1) HE HAS BEEN PURSUING HIS RIGHTS DILIGENTLY; AND (2) THAT SOME EXTRAORDINARY CIRCUMSTANCE STOOD IN HIS WAY AND PREVENTED TIMELY FILING, PURSUANT TO LAWRENCE V. FLORIDA, 549 U.S. 327, 336 (2007) AND PACE V. DIGUGLIELMO, 544 U.S. 408, 418 (2005), (SEE: APPENDIX I AT 7-8), THEN HAS THE PETITIONER MADE A SHOWING OF ENTITLEMENT TO "EQUITABLE TOLLING," AND IS THEREBY ENTITLED TO FEDERAL HABEAS REVIEW?
- 6) WERE THE STATE COURT OF APPEALS CORRECT IN PER CURIAM AFFIRMING THE DENIAL OF A TRIAL COURT THAT (1) DID NOT ATTACH PORTIONS OF THE RECORD TO REFUTE PETITIONER'S CLAIM AND (2) THAT REFUSED TO SUBMIT AN ANSWER BRIEF TO REFUTE THE MERITS OF PETITIONER'S INITIAL BRIEF, EVEN AFTER BEING ORDERED TO DO SO [T]WICE? (SEE: APPENDIX F).
- 7) WERE THE STATE COURT OF APPEAL CORRECT TO DENY A 'MOTION FOR REHEARING EN BANC' WHERE: (1) A MANIFEST INJUSTICE WAS ALLEGED, AND (2) WHERE THE DECISION REQUESTED TO BE HEARD EN BANC, EXPRESSLY AND DIRECTLY, CONFLICTS WITH THE PREVIOUS DECISION(S) OF OTHER SENIOR AND CHIEF JUDGES OF THE [SAME] STATE DISTRICT COURT OF APPEALS? (SEE: APPENDIX G).

LIST OF PARTIES

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

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. BARBARA LAGOA, JUDGE, THIRD DISTRICT COURT OF APPEAL, MIAMI, FLORIDA.
2. LESLIE ROTHENBERG, JUDGE, THIRD DISTRICT COURT OF APPEAL, MIAMI, FLORIDA.
3. LINDA WELLS, JUDGE, THIRD DISTRICT COURT OF APPEAL, MIAMI, FLORIDA.
4. FRANK A. SHEPHERD, CHIEF JUDGE, THIRD DISTRICT COURT OF APPEAL, MIAMI, FLORIDA.
5. VANCE SALTER, JUDGE, THIRD DISTRICT COURT OF APPEAL, MIAMI, FLORIDA.
6. LIZETTE M. REID, MAGISTRATE JUDGE, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA.
7. FEDERICO A. MORENO, JUDGE, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA.
8. ADALBERTO JORDAN, CIRCUIT JUDGE, UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT.
9. BRANCH, CIRCUIT JUDGE, UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT.

RELATED CASES

- ROBINSON V. STATE, No. 3D08-2129, DISTRICT COURT OF APPEALS OF FLORIDA, THIRD DISTRICT. JUDGMENT ENTERED JAN. 20, 2010.
- ROBINSON V. STATE, No. 3D10-791, DISTRICT COURT OF APPEALS OF FLORIDA, THIRD DISTRICT. JUDGMENT ENTERED OCT. 6, 2010.
- ROBINSON V. STATE, No. 3D14-2526, DISTRICT COURT OF APPEALS OF FLORIDA, THIRD DISTRICT. JUDGMENT ENTERED FEB. 11, 2015.

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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 INFORMATION NOT KNOWN; 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 _____; 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 JANUARY 31, 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: AUGUST 19, 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.

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

§ 810.02, FLA. STAT.:

1. (PETITIONER) ENTERED A [STRUCTURE] [CONVEYANCE] OWNED BY OR IN THE POSSESSION OF [PERSON ALLEGED].
2. (PETITIONER) DID NOT HAVE PERMISSION OR CONSENT OF (PERSON ALLEGED) OR ANYONE AUTHORIZED TO ACT FOR [HIM] [HER] TO ENTER THE [STRUCTURE] [CONVEYANCE] AT THE TIME.
3. AT THE TIME OF ENTERING THE [STRUCTURE] [CONVEYANCE] DEFENDANT HAD A FULLY-FORMED CONSCIOUS INTENT TO COMMIT THE OFFENSE OF (CRIME ALLEGED) IN THAT [STRUCTURE] [CONVEYANCE].

§ 843.02, FLA. STAT.:

1. (PETITIONER) [RESISTED] [OBSTRUCTED] [OPPOSED] (VICTIM);
2. AT THE TIME, VICTIM WAS ENGAGED IN THE [EXECUTION OF LEGAL PROCESS] OR [LAWFULLY EXECUTION OF LEGAL DUTY];
3. AT THE TIME, VICTIM WAS [AN OFFICER] [A PERSON LEGALLY AUTHORIZED TO EXECUTE]; AND
4. AT THE TIME (PETITIONER) KNEW [VICTIM WAS [AN OFFICER] [A PERSON LEGALLY AUTHORIZED TO EXECUTE PROCESS]].

6TH AMEND., U.S. CONST.:

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT...
...TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

14TH AMEND., U.S. CONST.:

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL... 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 PROTECTIONS OF THE LAWS.

STATEMENT OF THE CASE

1. ON APRIL 23, 2008, THE PETITIONER WAS FOUND GUILTY BY JURY ON CHARGES, COUNT ONE: FLEEING/ELUDING A POLICE OFFICER, § 316.1935(1), FELONY 3d; COUNT TWO: BURGLARY OF AN OCCUPIED DWELLING, § 810.02(3)(a), FELONY 2d; AND COUNT THREE: RESISTING AN OFFICER WITHOUT VIOLENCE, § 843.02, MISD. 1; AND ANOTHER MISDEMEANOR.
2. ON JULY 14, 2008, PETITIONER WAS SENTENCED TO COUNT ONE: 10 YEARS (F.S.P.), 5 YEAR MINIMUM/MANDATORY (PRR); AND COUNT TWO: 30 YEARS (F.S.P.), 15 YEAR MINIMUM/MANDATORY AS (HVFO), BUT TO [E]RRONEOUSLY RUN CONSECUTIVE.
3. ON AUGUST 12, 2008, A DIRECT APPEAL WAS FILED BY PETITIONER'S [STATE-APPOINTED] ATTORNEY, WHO FAILED TO RAISE *CLASHEN v. STATE*, 869 So.2d 646 (2004) AS A SIMILAR-SITUATED DEFENDANT (SAME-CLAIM-ISSUE), OF WHICH WAS PROPERLY [RESERVED] ON THE FACE OF THE RECORD BY PETITIONER'S TRIAL COUNSEL DURING TRIAL, (SEE: TRIAL TRANSCRIPTS AT 431-435), AND ALSO REQUESTED TO BE RAISED BY PETITIONER. THIS FACT IS ALSO SUPPORTED BY *BELL v. STATE*, 876 So.2d 712, 714 (4TH DCA 2004); *CARSWELL v. STATE*, 23 So.3d 195 (4TH DCA 2009); *HAAGER v. STATE*, 36 So.3d 883 (2ND DCA 2010); *ROSS v. STATE*, 901 So.2d 252 (4TH DCA 2005); *STEPHEN v. STATE*, 974 So.2d 455 (2ND DCA 2008)... AND IN SUPPORT OF QUESTIONS PRESENTED No.1.
4. ON JANUARY 5, 2010, PETITIONER'S CONVICTION WAS PER CURIAM AFFIRMED BY THE STATE COURT OF APPEALS, THIRD DISTRICT, BUT REVERSED FOR RESENTENCING.
5. ON MARCH 5, 2010, PETITIONER WAS RESENTENCED AS TO COUNTS ONE AND TWO, THE SAME SUPRA, BUT THE CONSECUTIVE PART OF THE SENTENCE WAS CHANGE TO CONCURRENT.
6. ON NOVEMBER 12, 2010, THE RESENTENCE WAS MADE FINAL ON STATE COURT DOCKET. PETITIONER'S NINETY DAYS TO APPEAL TO THE U.S. SUPREME COURT WOULD HAVE BECOME FINAL ON FEBRUARY 7, 2011. THEREFORE, PETITIONER'S ONE YEAR TO FILE A FEDERAL HABEAS PETITION IN PROPER TIMING WOULD HAVE STARTED ON FEBRUARY 8, 2011, AND ENDED ON FEBRUARY 8, 2012. HOWEVER, IN MARCH OF 2011, JUST ONE MONTH AFTER PETITIONER'S 90-DAYS TO APPEAL TO THE U.S. SUPREME COURT BECAME FINAL, [ALL] OF PETITIONER'S PERSONAL [AND] LEGAL PROPERTY WAS LOST BY FLORIDA DEPARTMENT OF CORRECTIONS OFFICIALS AS A RESULT FROM A PRISON TRANSFER. PETITIONER THEN EXHAUSTED HIS ADMINISTRATIVE REMEDIES TO OBTAIN THE LOST TO

NO AVAIL. FOLLOWING, ON JANUARY 17, 2012, PETITIONER APPEALED THE MATTER THE SECOND JUDICIAL CIRCUIT, AND LATER TO THE FIRST DCA OF FLORIDA. THIS PROCESS BEGAN FROM MARCH OF 2011, THROUGHOUT DECEMBER 2, 2014, CONSUMING ELEVEN (11) OF THE TWELVE (12) MONTHS THAT PETITIONER HAD TO FILE HIS FEDERAL HABEAS PETITION PURSUANT TO THE (AEDPA), AND THEREFORE, STOOD IN THE WAY AND PREVENTED TIMELY FILING. (SEE: APPENDIX I AT 7-8). (THESE FACTS SUPPORTS QUESTION(S) PRESENTED No. 5).

7. ON AUGUST 20, 2014, PETITIONER FILED A PETITION FOR WRIT OF HABEAS CORPUS IN THE STATE TRIAL COURT, ALLEGING A MANIFEST INJUSTICE TO HAS OCCURE

8. ON SEPTEMBER 10, 2014, PETITIONER'S PETITION WAS DENIED FOR INSUFFICIENT REASONS, [CLEARLY] AND [SIMPLY] IGNORING THE MANIFEST INJUSTICE. (SEE: APPENDIX E).

9. ON NOVEMBER 6, 2014, PETITIONER PROCEEDED TO THE STATE COURT OF APPEAL VIA INITIAL BRIEF. THEREAFTER, THE COURT ISSUED THE TRIAL COURT TWO (2) CONSECUTIVE "ORDERS" TO [ANSWER] THE [MERITS] OF PETITIONER'S CLAIMS, BUT THE TRIAL COURT REFUSED TO COMPLY [E]NTIRELY, (SEE: APPENDIX I AT 6-7), INSINUATING THAT PETITIONER'S CLAIMS WERE TRUE AND CORRECT.

10. HOWEVER, STRANGELY ON FEBRUARY 11, 2015, THE STATE COURT OF APPEAL ISSUED ITS DECISION AS PER CURIAM AFFIRMED, AND WITHOUT REASON. (SEE: APPENDIX F). (THIS IS IN RELATION TO QUESTION(S) PRESENTED No. 6).

11. ON FEBRUARY 26, 2015, PETITIONER FILED A 'MOTION FOR REHEARING EN BANC'.

12. ON MARCH 13, 2015, PETITIONER'S 'MOTION FOR REHEARING EN BANC' WAS WRONGFULLY TREATED AS A 'MOTION FOR REHEARING,' THEN DENIED. (SEE: APPENDIX G). (THIS IS IN RELATION TO QUESTION(S) PRESENTED No. 7).

13. ON MAY 19, 2017, PETITIONER FILED A 'MOTION TO CORRECT MANIFEST INJUSTICE.'

14. ON MAY 24, 2017, (FIVE (5) DAYS LATER), PETITIONER'S MOTION TO CORRECT MANIFEST INJUSTICE WAS SIMPLY DENIED WITHOUT REASON.

15. ON JUNE 26, 2017, PETITIONER FILED A 'NOTICE TO INVOKE DISCRETIONARY JURISDICTION' IN THE STATE SUPREME COURT.

16. ON JULY 6, 2017, PETITIONER FILED HIS 'JURISDICTIONAL BRIEF' IN THE STATE SUPREME COURT, BUT ON THE SAME DAY (JULY 6, 2017) THE STATE SUPREME COURT BIASLY DENIED REVIEW. (SEE: APPENDIX H).

17. ON SEPTEMBER 14, 2018, PETITIONER FILED A REQUEST TO CORRECT

MANIFEST INJUSTICE, THAT WAS TREATED AS A 'PETITION FOR WRIT OF HABEAS CORPUS' IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT.

18. ON JULY 26, 2019, THE MAGISTRATE JUDGE FILED HER 'REPORT AND RECOMMENDATION' TO DENY PETITIONER'S PETITION, RECOMMEND THAT NO CERTIFICATE OF APPEALABILITY BE ISSUED, AND THAT THE CASE BE CLOSED.

19. ON AUGUST 15, 2019, PETITIONER FILED HIS 'OBJECTION' TO THE 'REPORT AND RECOMMENDATION.'

20. ON AUGUST 20, 2019, THE MAGISTRATE JUDGE VACATED HER REPORT AND RECOMMENDATION, AND ISSUED THE STATE AN 'ORDER TO SHOW CAUSE' REGARDING THE TIMELINESS OF PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS.

21. ON SEPTEMBER 10, 2019, THE STATE FILED A "RESPONSE" TO THE COURT'S ORDER.

22. ON OCTOBER 29, 2019, PETITIONER FILED HIS "REPLY" TO THE STATE'S RESPONSE, AND LISTING THE MISSING AND ESSENTIAL DOCUMENTS THAT STATE FAILED TO INCLUDE IN ITS APPENDIX, AS ORDERED. (SEE: APPENDIX I AT 6-7).

23. ON DECEMBER 23, 2019, THE MAGISTRATE JUDGE RE-FILED HER 'REPORT AND RECOMMENDATION,' RECOMMENDING THAT PETITIONER'S PETITION BE DISMISSED AS TIME-BARRED, THAT NO CERTIFICATE OF APPEALABILITY BE ISSUED, AND THAT THE CASE BE CLOSED.

24. ON FEBRUARY 2, 2020, PETITIONER FILED HIS "OBJECTION" TO THE REPORT AND RECOMMENDATION. HOWEVER, UNBEKNOWNST, ON JANUARY 31, 2020, THE U.S. DISTRICT COURT JUDGE FILED AN EARLY DECISION ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION, AND A JUDGMENT IN FAVOR OF THE FLORIDA ATTORNEY GENERAL, IGNORING PETITIONER'S 'MOTION FOR EXTENSION OF TIME' VIA DOCKETING IT LATE ON FEBRUARY 14, 2020, WHEN IT WAS ACTUALLY TIMELY FILED.

25. ON FEBRUARY 22, 2020, PETITIONER FILED HIS CERTIFICATE OF APPEALABILITY IN THE UNITED STATES COURT OF APPEALS, ELEVENTH CIRCUIT.

26. ON APRIL 9, 2020, PETITIONER WAS GRANTED LEAVE TO APPEAL IN FORMA PAUPERIS.

27. ON JUNE 30, 2020, THE U.S. COURT OF APPEALS DENIED PETITIONER'S CERTIFICATE OF APPEALABILITY.

28. ON JULY 20, 2020, PETITIONER FILED HIS 'MOTION FOR RECONSIDERATION.'

29. ON AUGUST 19, 2020, THE U.S. COURT OF APPEALS DENIED PETITIONER'S

'MOTION FOR RECONSIDERATION.'

30. ON OCTOBER 20, 2020, PETITIONER APPEALED TO THE SUPREME COURT OF THE UNITED STATES.

REASONS FOR GRANTING THE PETITION

1) Initially, the State Trial Court erroneously declined to correct a clear Manifest Injustice, that was properly presented with other fundamental errors. Likewise, the State Court of Appeals also erroneously declined to correct the same Manifest Injustice, by denying a similar-situated Defendant the benefit of the same law that it previously gave to another Defendant, thereby directly conflicting with the decisions of other State Court of Appeals that held: "Manifest Injustice is where a similar-situated Defendant is denied the benefit of the same law." (See: *Hager v. State*, 36 So.3d 883 (Fla. 1st DCA 2010)... Also, that: "It created a Manifest Injustice for one Defendant to be denied the benefit of the same law as a similar-situated Defendant." (Ross v. State, 901 So.2d 252 (Fla. 4th DCA 2005); *Stephens v. State*, 974 So.2d 455 (Fla. 1st DCA 2008))... And that: "Applying Procedural Bar to deny relief would work Manifest Injustice where two cases, presenting identical issues, were decided differently by the same court with days of each other." (Bell v. State, 876 So.2d 712, 714 (Fla. 4th DCA 2004)). The Petitioner argued that he was a similar-situated Defendant as Gashin, and that he [is] entitled to the benefit of the same law in Gashin by the same court. However, the State Court of Appeals also created an intra-district conflict via deciding against its own ruling in *Gashin v. State*, 869 So.2d 646 (Fla. 3rd DCA 2000). (See also: *Robinson v. State*, 160 So.3d 443 (Fla. 3rd DCA 2015)). Then afterwards, declining to rehear the matter en banc. (See: Appendix G). The above-said violation is that of the U.S. Constitution, 14th Amendment, concerning the Due Process and Equal Protection Clause. Therefore, it is necessary for this Honorable Court to decide the question(s) presented in this case, i.e. question No. 1.

2) The Supreme Court and the U.S. Court of Appeals (11th Cir.), held that: "A Petitioner may obtain Federal Habeas Review of a procedurally defaulted claim, without a showing of 'cause' or 'prejudice'. If such review is necessary to correct a fundamental miscarriage of justice." (See: Appendix C at 15; see also: *Edwards v. Carpenter*, 529 U.S. 446, 451 (2000); *Jones v. U.S.*, 153 F.3d 1305 (11th Cir. 1998); *Henderson v. Campbell*, 353 F.3d 880, 892 (11th Cir. 2003))... Also, "this exception is only available in an extraordinary case, where a constitutional violation has resulted in the conviction of someone who is actually innocent." (Id. at 892)... And that: "Actual Innocence means factual innocence." (See: *Hight v. Head*, 209 F.3d 1257 (11th Cir. 2000)). The Supreme Court also ruled that: "The Due

PROCESS CLAUSE REQUIRES THE PROSECUTION TO PROVE BEYOND A REASONABLE DOUBT [A]LL OF THE ELEMENTS INCLUDED IN THE DEFINITION OF THE OFFENSE OF WHICH THE DEFENDANT IS CHARGED." (SEE: McMILLAN V. PENNSYLVANIA, 106 S. CT. 2411 (1986); PATTERSON V. NEW YORK, 97 S. CT. 2319 (1977))... AND THAT: "FAILURE TO FIND THAT THE STATE HAD TO PROVE [A]LL ELEMENTS OF A CRIME BEYOND A REASONABLE DOUBT WOULD BE CONTRARY TO FEDERAL LAW." (SEE: LOCKYER V. ANDRADE, 123 S. CT. 1166 (2003); WILLIAMS V. TAYLOR, 120 S. CT. 495 (2000)). IT IS CLEAR THAT A "FEDERAL LAW" IS A "CONSTITUTIONAL LAW," AND THE ABOVE-SAID VIOLATION(S) IS THAT OF THE 6TH AND 14TH AMENDMENT OF THE U.S. CONSTITUTION.

IN PETITIONER'S "OBJECTION," THE PETITIONER MADE A SHOWING OF SUCH VIOLATION(S), AND A [C]LEAR DEMONSTRATION OF ENTITLEMENT TO FEDERAL HABEAS REVIEW OF HIS PROCEDURALLY DEFAULTED CLAIM [W]ITHOUT A SHOWING OF "CAUSE" OR "PREJUDICE." (SEE: APPENDIX I AT 12-16). HOWEVER, THE U.S. COURT OF APPEALS, FOLLOWING THE DECISION OF THE U.S. DISTRICT COURT, ERRONEOUSLY DECIDED AGAINST ITS OWN RULINGS, AS WELL AS THE SUPREME COURT RULINGS, BY DENYING PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS ON A TIMELINESS ISSUE. (SEE: APPENDIX A, AND B).

THEREFORE, THE ABOVE-SAID COURTS CREATED AN INTRA-DISTRICT CONFLICT VIA DECIDING AGAINST ITS OWN DECISIONS SUPRA, MAKING IT NECESSARY FOR THIS HONORABLE COURT TO DECIDE THE QUESTION(S) PRESENTED IN THIS CASE, I.E. QUESTION NO. 4.

3) THE SUPREME COURT HAS ESTABLISHED A TWO-PART TEST FOR EQUITABLE TOLLING, STATING THAT A PETITIONER MUST SHOW (1) THAT HE HAS BEEN PURSUING HIS RIGHTS DILIGENTLY, AND (2) THAT SOME EXTRAORDINARY CIRCUMSTANCE STOOD IN HIS WAY AND PREVENTED TIMELY FILING. (SEE: LAWRENCE V. FLORIDA, 549 U.S. 327, 336 (2007); PACE V. DIAGUGLIELMO, 544 U.S. 408, 418 (2005)). IN PETITIONER'S 'OBJECTION,' PETITIONER CLEARLY SATISFIED BOTH ABOVE-SAID PRONES. (SEE: APPENDIX I AT 7-8, AND INSTANT PETITION AT 4-5, #6). ALSO, IN MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION, SHE EVEN ADMITTED THAT 'THE RECORD REVEALS THAT PETITIONER WAS A PROACTIVE LITIGANT DURING HIS POST-CONVICTION PROCEEDING,' AND THAT PETITIONER PURSUED COLLATERAL RELIEF IN THE STATE FORUM.' (SEE: APPENDIX C AT 14). HOWEVER, THE FEDERAL COURTS WAS IN DIRECT CONFLICT WITH THE SUPREME COURT'S ESTABLISHED RULE VIA ERRONEOUSLY DENYING PETITIONER EQUITABLE TOLLING, STATING THAT PETITIONER FAILED TO PROPERLY AND DILIGENTLY PURSUE HIS RIGHTS. (SEE: APPENDIX A; B; AND C AT 14-15). THEREFORE, IT IS GREATLY NECESSARY FOR THIS HONORABLE COURT TO DECIDE QUESTION NO. 5 OF THIS PETITION FOR WRIT OF CERTIORARI.

4) THE SUPREME COURT BEGAN WITH MARTINEZ, 'RECOGNIZING THE HISTORIC IMPORTANCE OF FEDERAL HABEAS CORPUS PROCEEDINGS AS A METHOD FOR PREVENTING INDIVIDUALS FROM BEING HELD IN CUSTODY IN VIOLATION OF FEDERAL LAW'...AND THAT 'IN GENERAL, IF A CONVICTED STATE CRIMINAL DEFENDANT CAN SHOW A FEDERAL HABEAS COURT THAT HIS CONVICTION RESTS UPON A VIOLATION OF THE FEDERAL CONSTITUTION, HE MAY WELL OBTAIN A WRIT OF HABEAS CORPUS THAT [REQUIRES] A NEW TRIAL, A NEW SENTENCE, OR [RELEASE]'. (SEE: TREVINO V. THALER, 569 U.S. 413, 421; 133 S.Ct. 1911, 1916-1917 (2013)). THE PETITIONER CONTENDS THAT HE HAS DEMONSTRATED THE REQUIRED SHOWING SUPRA. (SEE: APPENDIX I AT 12-16). THE PETITIONER ALSO RELIED ON THE SUPREME COURT'S RULING IN MARTINEZ THAT: "AN ATTORNEY'S ERRORS DURING AN APPEAL ON DIRECT REVIEW MAY PROVIDE CAUSE TO EXCUSE A PROCEDURAL DEFAULT; FOR IF THE ATTORNEY APPOINTED BY THE STATE TO PURSUE THE DIRECT APPEAL IS INEFFECTIVE, THE PRISONER HAS BEEN DENIED FAIR PROCESS AND THE OPPORTUNITY TO COMPLY WITH THE STATE'S PROCEDURES AND OBTAIN AN ADJUDICATION ON THE MERITS OF HIS CLAIMS." (SEE: MARTINEZ V. RYAN, 132 S.Ct. 1309, 1315, 1321 (2012) (QUOTING) COLEMAN V. THOMPSON, 501 U.S. 732, 754; 111 S.Ct. 2546 (1991); SEE ALSO: APPENDIX I AT 9-11)...AND THE RULING IN TREVINO, HOLDING THAT: "INEFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPELLATE REVIEW COULD AMOUNT TO "CAUSE," EXCUSING A DEFENDANT'S FAILURE TO RAISE (AND THUS PROCEDURALLY DEFAULTING) A CONSTITUTIONAL CLAIM." (SEE: TREVINO V. THALER, 569 U.S. 413, 422; 133 S.Ct. 1911, 1917 (2013)), ESPECIALLY CONSIDERING THAT THE SUPREME COURT HAS DEEMED IT "AN [OBVIOUS TRUTH] THAT ANY PERSON HALED INTO COURT, WHO IS TOO POOR TO HIRE A LAWYER, CANNOT BE ASSURED A FAIR TRIAL UNLESS COUNSEL IS PROVIDED FOR HIM." (SEE: MARTINEZ AT 1321).

HOWEVER, THE U.S. MAGISTRATE JUDGE, THE U.S. DISTRICT COURT, AND THE U.S. COURT OF APPEALS, HAS RULED THAT 'PETITIONER'S RELIANCE ON MARTINEZ IS MISPLACED,' AND THEREFORE DENIED PETITIONER'S CLAIM/GROUND FOR HIS "CAUSE" TO EXCUSE A PROCEDURAL DEFAULT FOR THE INEFFECTIVENESS OF HIS APPELLATE COUNSEL ON DIRECT REVIEW.' (SEE: APPENDIX A, B, C AT 11-13), AN EXCUSABLE CAUSE THAT THE SUPREME COURT HAS [C]LEARLY RECOGNIZED AND ESTABLISHED IN TREVINO, HOLDING THAT: "WHERE, AS IN TREVINO, A STATE'S PROCEDURAL FRAMEWORK, BY REASON OF ITS DESIGN AND OPERATION, MAKES IT HEAVILY UNLIKELY IN A TYPICAL CASE THAT A DEFENDANT WILL HAVE A MEANINGFUL OPPORTUNITY TO RAISE AN INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL CLAIM ON DIRECT APPEAL, THE EXCEPTION IN MARTINEZ APPLIES." (SEE: TREVINO V. THALER,

569 U.S. 413, 414, 429; 133 S.Ct. 1911, 1912 (2013)... AND THAT: "THE DIFFERENCE BETWEEN THE TEXAS LAW—WHICH IN THEORY GRANTS PERMISSION TO BRING AN IATC CLAIM ON DIRECT APPEAL BUT IN PRACTICE DENIES A MEANINGFUL OPPORTUNITY TO DO SO—AND THE ARIZONA LAW AT ISSUE IN MARTINEZ—WHICH REQUIRED THE CLAIM TO BE RAISED IN AN INITIAL COLLATERAL REVIEW PROCEEDING—DOES NOT MATTER IN RESPECT TO THE APPLICATION IN MARTINEZ." (Id at 414). SAID ANOTHER WAY, THE SUPREME COURT EXPLAINED THAT: "A DISTINCTION BETWEEN (1) A STATE THAT DENIES PERMISSION TO RAISE THE CLAIM ON DIRECT APPEAL AND (2) A STATE THAT IN THEORY GRANTS PERMISSION BUT, AS A MATTER OF PROCEDURAL DESIGN AND SYSTEMIC OPERATION, DENIES A MEANINGFUL OPPORTUNITY TO DO SO IS A DISTINCTION WITHOUT A DIFFERENCE." (Id at 429).

IT IS [C]LEAR THAT [FLORIDA'S] PROCEDURAL FRAMEWORK, BY REASON OF ITS DESIGN AND OPERATION, IS IDENTICAL TO THAT OF [TEXAS'S] PROCEDURAL FRAMEWORK, IN WHICH THE SUPREME COURT HAS HELD THAT THE EXCEPTION IN MARTINEZ APPLIES. (Id at 414).

THUS, THE U.S. COURT OF APPEALS DENIAL OF PETITIONER'S ABOVE-SAID CLAIM IS ERRONEOUS, AND IS IN DIRECT CONFLICT WITH THE SUPREME COURT'S RULING, AND THEREFORE, IT IS IMPORTANTLY NECESSARY FOR THIS HONORABLE COURT TO DECIDE THE QUESTION(S) PRESENTED IN THIS CASE, I.E. QUESTION NO. 3.

THROUGHOUT THE PROCEEDING OF THIS CASE, PETITIONER'S CLAIMS HAS YET TO BE ADDRESSED ON ITS MERITS (SINCE SEPTEMBER 10, 2014; SEE: APPENDIX E, F, G, H, B, A, D). THIS IS A CASE WITH ISSUES OF GREAT IMPORTANCE, NOT ONLY TO THE PETITIONER, BUT TO OTHER SIMILAR-SITUATED PRISONERS. THE PETITIONER HAS DEMONSTRATED EVERYTHING THAT IS REQUIRED BY SUPREME COURT LAW TO BE ENTITLED TO "EQUITABLE TOLLING," TO PROVE THAT A "MANIFEST INJUSTICE" [DO] EXIST IN HIS CASE; TO ESTABLISH "CAUSE" FOR HIS PROCEDURALLY DEFAULTED CLAIM; TO BE ENTITLED TO FEDERAL HABEAS CORPUS REVIEW, AND FEDERAL HABEAS RELIEF VIA OBTAINING A WRIT OF HABEAS CORPUS THAT [REQUIRES] [RELEASE].

THEREFORE, PETITIONER PRAYS THAT THIS HONORABLE COURT GRANT THIS 'PETITIONER FOR A WRIT OF CERTIORARI' CONSIDERING THE FACTS HEREIN...

... PLEASE AND THANK YOU.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

COURTNEY ROBINSON

Date: JUNE 10TH, 2021