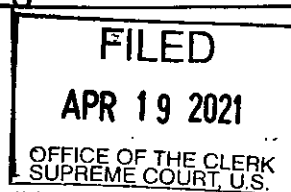


No. 21-5454

IN THE  
SUPREME COURT OF THE UNITED STATES



IN RE QUINN — PETITIONER  
(Your Name)

vs.

GREG MORGENTHAUER — RESPONDENT(S)

**ORIGINAL**

ON PETITION FOR A WRIT OF PROHIBITION, MANDAMUS EXTRAORDINARY

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

PETITION FOR WRIT OF PROHIBITION/MANDAMUS EXTRAORDINARY

SAMUEL LEE QUINN  
(Your Name)

251 N. IL. HIGHWAY 37  
(Address)

INA, ILLINOIS 62846  
(City, State, Zip Code)

NONE  
(Phone Number)

## QUESTION(S) PRESENTED

1. DO THE COURT OF APPEALS ABUSE ITS DISCRETION BY REFUSING TO RECALL ITS MANDATE FOR MISCARRIAGE OF JUSTICE NOT ACKNOWLEDGING THE GUIDED GENERAL PRINCIPLES UNDERLYING THE SUPREME COURT'S HABEAS CORPUS JURISPRUDENCE FOR ACTUAL INNOCENCE.

2. DO THE COURT OF APPEALS HAVE AN OBLIGATION TO ADDRESS A HABEAS PETITION WHERE THE DISTRICT COURT HAS ABUSED ITS DISCRETION.

3. IS THE CONVICTION OF AN INNOCENT PERSON; THE REFUSAL TO ADDRESS THE MERITS OF ONE PETITION BUT OTHER (AS THE STATUTES AND LAWS REQUIRE). DUE PROCESS AND EQUAL PROTECTION FIFTH, SEVENTH AND FOURTEEN SUBSTANTIAL CONSTITUTIONAL VIOLATIONS,

4. IS THE UNITED STATES SUPREME COURT'S PRECEDENT HOLDINGS FOR ACTUAL INNOCENCE OVERCOMING AEDPA'S ONE-YEAR STATUTE OF LIMITATIONS IN *McQuinn v. Perkins* 133 S. Ct. 1924 (2013) BINDING ON THE LOWER COURTS;

5. DO THE DISTRICT COURTS HAVE TO ADDRESS THE MERITS IN AN ACTUAL INNOCENCE HABEAS PETITION TO DETERMINE IF THE NEW EVIDENCE SHOWS PETITIONER IS ACTUALLY INNOCENT AND NO REASONABLE JUROR WOULD HAVE CONVICTED.

## 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:

## RELATED CASES

ARNOLD V. DITTMANN NO. 163392 U.S. COURT OF APPEALS, SEVENTH CIRCUIT  
JUDGMENT ENTERED AUG. 24, 2018

JONES V. CALLOWAY NO. 15-1174 U.S. COURT OF APPEALS, SEVENTH CIRCUIT  
JUDGMENT ENTERED NOV. 15, 2016

McQUIGG V. PERKINS, NO. 12-126 SUPREME COURT OF THE UNITED STATES  
JUDGMENT ENTERED MAY 28, 2013

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	8
CONCLUSION.....	9

## INDEX TO APPENDICES

- APPENDIX A UNITED STATES COURT OF APPEALS / DENIAL CERTIFICATE APPEALABILITY
- APPENDIX B UNITED STATES DISTRICT COURT / FINDINGS AND RECOMMENDATIONS
- APPENDIX C UNITED STATES COURT OF APPEALS / DENIAL FOR REHEARING
- APPENDIX D UNITED STATES COURT OF APPEALS / DENIAL OF RECALL MANDATE
- APPENDIX E UNITED STATES COURT OF APPEALS / ORDER GRANTING JURISDICTIONAL MEMORANDUMS
- APPENDIX F PETITIONER'S PETITION FOR C.O.A. / EXHIBITS "A-I"

## INDEX TO APPENDICES

APPENDIX G PETITIONER'S PETITION FOR RECONSIDERATION

APPENDIX H PETITIONER'S PETITION FOR REHEARING ENBANC

APPENDIX I UNITED STATES DISTRICT COURT'S ORDER

APPENDIX J PETITIONER'S PETITION TO RECALL MANDATE

APPENDIX K IN FORMA PAUPERIS ORDERS

APPENDIX L IN FORMA PAUPERIS ORDER

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
McQUIGGIN V. PERKINS, 133 S.Ct 1924-36 (2013)	6, 8
GLADNEY V. POLLARD 799 F.3d 839, 845 (7th Cir. 2015)	6
SCHLUP V. DELO, 513 U.S. 298, 1153 Ct. 851	7

## STATUTES AND RULES

28 U.S.C. § 2244 (d) (1)	16
28 U.S.C. § 2253 (c) (2)	6
28 U.S.C. § 2254 (E) (2) (A) (ii), (B)	4

## OTHER

FOURTH, FIFTH, SEVENTH AND FOURTHTEEN AMENDMENTS  
CONSTITUTIONAL VIOLATIONS.

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF EXTRAORDINARY

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 \_\_\_\_\_; 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 28, 2021.

☒ 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: \_\_\_\_\_, 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. § 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**

DUE PROCESS, EQUAL PROTECTION FIFTH, SEVENTH  
AND FOURTHTEEN AMENDMENTS

FUNDAMENTAL MISCARriage OF JUSTICE

28 U.S.C. § 2244 (d)(1)

28 U.S.C. § 2253 (c)(2)

28 U.S.C. § 2254 (E)(2)(A)(ii), (B)

## STATEMENT OF THE CASE

THE COURT OF APPEALS ABUSED ITS DISCRETION BY REFUSING TO RECALL ITS MANDATE AS REQUIRED BY LAWS AND CONSTITUTION TO REVIEW THE MERITS OF PETITIONER'S ACTUAL INNOCENT AND ABUSES THAT DISCRETION UNLESS IT ACTS TO AVOID A MISGARRING OF JUSTICE AS DEFINED BY THE SUPREME COURTS HABEAS JURISPRUDENCE. CALDERON V. THOMPSON, 523 U.S. 538, 558, 118 S. Ct. 1489, 140 L. Ed. 2d 728 (1998). THE COURT OF APPEALS HAS AN INHERENT POWER TO RECALL ITS MANDATES SUBJECT TO REVIEW FOR AN ABUSE OF DISCRETION WHERE THE DISTRICT COURT COMPLETELY ERRONEOUSLY DISMISSES A PETITION CONTRARY TO SUPREME COURTS HABEAS JURISPRUDENCE. PETITIONER ESTABLISHES ACTUAL INNOCENCE BY CLEAR AND CONVINCING NEW EVIDENCE AND SHOULD HAVE BEEN GRANTED AN EVIDENTIARY HEARING EVEN UNDER 2254 (E)(2)(A)(ii), (B) TO AEDPA TIME LIMIT. CLEARLY IN ALL FOUR OF PETITIONER'S PETITIONS (APPENDIX F, G, H, J) THE COURT OF APPEALS HAD AN OBLIGATION UNDER THE CONSTITUTION, LAWS AND TREATIES TO REVIEW PETITIONER'S PETITIONS FOR

A MISARRANGE OF WHERE FACTS UNDER-  
LYING THE CLAIMS WOULD BE SUFFICIENT TO ESTABLISH  
CLEAR AND CONVINCING NEW EVIDENCE THAT BUT FOR CONSTITU-  
TION ERROR, NO REASONABLE FACT FINDER WOULD HAVE FOUND  
PETITIONER GUILTY OF THE UNDERLYING OFFENSE, AWARE OF  
THE FACTS FOR THE DISTRICT COURT'S REFUSAL TO ADDRESS THE  
MERITS IN PETITIONER'S ACTUAL INNOCENCE PETITION BECAUSE  
OF AEDPA' ONE-YEAR TIME LIMITATIONS, WHICH IS CONTRARY  
TO MANY AEDPA' ONE-YEAR TIME LIMIT FOR ACTUAL INNOCENCE  
DECISION RECENTLY BY THE SEVENTH CIRCUIT THAT SHOWS THE  
EQUITABLE EXCEPTION FOR ACTUAL INNOCENCE COULD OVERCOME THE  
ONE-YEAR TIME LIMITATIONS OF AEDPA. REGARDLESS OF THIS  
KNOWLEDGE, AS THE DISTRICT SO DID THE SEVENTH CIRCUIT COURT  
OF APPEALS, ABUSED ITS DISCRETION BY DENYING PETITIONER'S  
DUE PROCESS, EQUAL PROTECTION AND CONSTITUTIONAL FUNDAMENTAL  
MISARRANGE OF JUSTICE BY REFUSING TO ADDRESS THE MERITS IN  
PETITIONER'S PETITION OR REMANDING IT BACK TO THE DISTRICT COURT FOR  
THE SAME.

THE DISTRICT COURT ABUSED ITS DISCRETION BY DISMISSING PETITIONER'S HABEAS PETITION COMPLETELY ERRONEOUSLY, STATING, "BECAUSE HIS HABEAS PETITION IS UNTIMELY UNDER 28 U.S.C. § 2244(d)(1), THE COURT DOES NOT REACH THE MERITS OF HIS CLAIMS, BUT INSTEAD DISMISSES THIS ACTION IN ITS ENTIRETY AND DECLINES TO CERTIFY ANY ISSUES FOR APPEAL UNDER 28 U.S.C. § 2253(c)(2)." ALSO, "GUINN ARGUES THAT HIS ACTUAL INNOCENCE EXCUSES THE LATE FILING OF HIS HABEAS PETITION." SEE *McQUIGGIN V. PERKINS*, 569 U.S. AT 392-93. (APP. B, PGS. 1, 4). THERE IS NO DISPUTE THAT PETITIONER FILED HIS HABEAS PETITION BEYOND SECTION 2244(d)(1)'S ONE-YEAR TIME LIMIT. SO PETITIONER'S PETITION IS BARRED AS UNTIMELY UNLESS PETITIONER CAN ESTABLISH THAT PETITIONER QUALIFIES FOR AN EXCEPTION TO THE LIMIT. PETITIONER IS RELYING ON PETITIONER'S ACTUAL INNOCENCE TO OVERCOME THE TIME BARRIER, ACTUAL INNOCENCE IS AN EQUITABLE EXCEPTION THAT RENDERS THE TIME LIMIT SET FORTH IN SECTION 2244(d)(1) INAPPLICABLE, *McQUIGGIN V. PERKINS*, SUPRA, 569 U.S. AT 386, 133 S. CT. AT 1925; SEE ALSO *GLADNEY V. POTIARD*, 799 F.3d 889, 895 (7th Cir. 2015).

ACTUAL INNOCENCE HABEAS CASES MUST BE  
GUIDED BY THE GENERAL PRINCIPLES UNDERLYING THE SUPREME  
COURT'S HABEAS JURISPRUDENCE, AS SUCH, AEDPA'S ONE-YEAR  
STATUTE OF LIMITATIONS IS NOT A REMEDY IN ORDER TO AVOID  
A FUNDAMENTAL MISARRIAGE OF JUSTICE AND CONSTITUTIONAL  
VIOLATIONS THAT RESULTED IN THE CONVICTION OF ONE WHO IS  
ACTUALLY INNOCENT. THE COURT MUST ADDRESS THE MERITS OF  
PETITIONER'S CLAIMS TO DETERMINE IF PETITIONER HAS SHOWN  
IT IS MORE LIKELY THAN NOT THAT NO REASONABLE JURY WOULD  
HAVE CONVICTED PETITIONER IN THE LIGHT OF THE NEW EVIDENCE.  
SEE SCHUP, 513 U.S. AT 327, 115 S.Ct. 851.

## REASONS FOR GRANTING THE PETITION

BECAUSE PETITIONER IS BEING HELD IN CARCERATION IN VIOLATION OF CONSTITUTION, LAWS AND TREATIES AS AN INNOCENT PERSON, PETITIONER HAS PRESENTED BY CLEAR AND CONVINCING NEW EVIDENCE THAT PETITIONER IS ACTUALLY INNOCENT AND NO REASONABLE JUROR WOULD HAVE CONVICTED PETITIONER NOT FOR THE CONSTITUTION ERROR. PETITIONER HAS BEEN DENIED DUE PROCESS AND EQUAL PROTECTION UNDER THE LAWS AND CONSTITUTION FOR A FUNDAMENTAL MISCARRIAGE OF JUSTICE, VIOLATING PETITIONER'S DUE PROCESS AS REQUIRED BY LAW.

PETITIONER SIMPLY ASKS FOR NO MORE BUT SHOULD RECEIVE NO LESS THAN THIS HONORABLE COURT PROVIDES FOR ALL PETITIONERS ACCORDING TO ITS PRECEDENT HOLDINGS FOR ACTUAL INNOCENCE HABEAS PETITIONERS IN *MCGUIRE V. PERKINS*, 133 S. CT. 1924 (2013).

PETITIONER SINCERELY PRAY, THIS HONORABLE COURT TO GRANT RELIEF BY REMANDING PETITIONER'S PETITION BACK TO THE COURT OF APPEALS WITH INSTRUCTION TO RECALL IT'S MANDATE ACCORDING TO SUPREME COURT' JURISPRUDENCE, ORDERING THE PETITION BACK TO THE DISTRICT COURT TO HOLD AN EVIDENTIARY HEARING ON THE MERITS ACCORDING TO THE SUPREME COURT' HOLDINGS FOR ACTUAL INNOCENCE TO AEDPA' TIME LIMITATIONS IN MCQUIGGIN V. PERKIN, 133 S.Ct. 1924-34 (2013) WITH THE APPOINTMENT OF COUNSEL.

### CONCLUSION

The petition for a writ of ~~EXTRAORDINARY~~ should be granted.

Respectfully submitted,

*Samuel Quinn*

Date: Aug. 13 2021