21-5580
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

MARION TAYLOR

Plaintiff

VERSUS

DARREL VANNOY, WARDEN
LOUISIANA STATE PENITENTIARY

Respondent(s)

On Petition For A Writ Of Certiorari
To The
U.S. Court Of Appeals, Fifth Circuit Court No. 20-30274
Before: Clement, Elrod and Haynes, Circuit Judge.

The U.S. District Court, Eastern District Of Louisiana
Before: Martin L. C. Feldman, District Judge

Pro Se
Marion Taylor #558611
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U.S. Solicitor General
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QUESTION PRESENTED

Whether the United States Fifth Circuit Court of Appeals has decided an important federal question in a way that conflicts with the relevant decisions of this court and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's supervisory power. Cf. *Miller El v. Cockrell*, 123 S.Ct. 1029, 1042, 537 U.S. 322 342, (2003)

LIST OF PARTIES

U.S. Solicitor General, Washington, D.C. 20530-0001

Mr. Gershon Benjamin Cohen (ADA), Orleans Parish, La. 70119

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JURISDICTION

On June 11, 2021, the United States Fifth Circuit Court of Appeals enter judgment in my case. See Appx (A). Moreover, a timely petition for rehearing en banc was filed, which the court denied on July 12, 2021. See Appx (A)(1) . . .

This court has jurisdiction under § 1254(1) to review denials of application for certificate of appealability by a circuit judge or a panel of a Court of Appeals. *See*, *Hohn v. U.S.*, 118 S.Ct. 1969, 1978, 524 U.S. 236, 253 (1998).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Article III § 2 of the Constitution

28 U.S.C.A. § 1254(1)

28 U.S.C.A. § 2253(c)(1)(A)

28 U.S.C.A. § 2241(c)(3)

28 U.S.C.A. §§ 2254(a),(d)(1) and § (e)(1)

28 U.S.C.A. § § 2403(a) and (b)

La. R.S. 15:283

STATEMENT OF THE CASE

On June 24, 2008, the grand jury for the parish of Orleans returned an indictment which changed Plaintiff, and co-defendant Justin Collins with Second degree murder of Jerome Sparkmen on April 7, 2008. On the morning of trial, the State filed a motion to take the testimony for one of the two witnesses by closed circuit television, which the court denied. The State, however, applied for supervisory writs, which the State Fourth Circuit Court of Appeals granted. The Court of Appeals directed the trial court to conduct a hearing on the motion pursuant to **La. R.S. 15:283**. After the hearing, the judge ordered that the testimony of ten year-old Desmond Tillman would be taken through a one-way closed-circuit television. The jury found both defendants guilty as charged and they appealed. The Louisiana Fourth Circuit, in a consolidated proceeding, affirmed Collins and Plaintiff's conviction by published decision issued on May 11, 2011. See, Appx(D) (No. 2010-KA-0757). The Louisiana Supreme Court denied discretionary review on January 20, 2012. See Appx(C) (No. 2011-K-1719). No application for post-conviction relief was filed.

On March 12, 2013, Plaintiff, pro-se, filed an application for federal habeas relief, **28 U.S.C.A. §§ 2254(d)(1)(2)** in the Eastern District of Louisiana. (*Taylor v. Cain, 13-CV-0462)*...On July 23, 2015, the district court adopted the magistrate's report and recommendation and denied relief. **2254 §(e)(1)**. The court also declined to issue a certificate of appealability. Plaintiff filed a notice of appeal, July 31, 2015, ... However, on December 4, 2017, the court denied Plaintiff's motion for **Rule 60(b)(3)**. On April 9, 2020, the court denied Plaintiff's motion for **Rule 60(b)(6)**. The court also declined to issue a certificate of appealability in both matters.

On August 29, 2015, Plaintiff pro-se filed an application for a certificate of appealability with the United States Fifth Circuit Court of Appeals appealing the district **court's denial of**

habeas relief 28 U.S.C.A. 2253(C)(1)(A). (*Taylor v. Vannoy*, 15-30689). A three judge panel declined to issue certificate of appealability, ruling that Plaintiff did not satisfy § 2253(c)(2)... Subsequently, on October 3, 2018, the court denied Plaintiff's motion for COA. (*Taylor v. Vannoy*, **17-30993**). On June 6, 2021, the court again denied Plaintiff's motion for COA. (*Taylor v. Vannoy*, **20-30274**)

On February 9, 2017, Plaintiff, pro-se, petition this court for a writ of certiorari which was denied as untimely. (*Taylor v. Vannoy*, **USCA5 No. 15-30689**)... Moreover, on January 17, 2019, Plaintiff again petition this court which was denied on February 25, 2019. However, on May 20, 2019, Plaintiff petition for rehearing was denied. (*Taylor v. Vannoy*, **No. 18-7667**)...

Thus, this petition is timely and properly filed before this Honorable Court within the 90 days proscribed.

REASON FOR GRANTING THE WRIT

The United States Fifth Circuit Court of Appeals has decided an important federal question in a way that conflicts with the relevant decisions of this court and has so far departed from the accepted and usual course of judicial proceeding as to call for an exercise of this court's supervisory power. Cf. *Miller El v. Cockrell*, 123 S.Ct. 1029, 1042, 537 U.S. 322,342, (2003)...

Now comes, Plaintiff, who respectfully moved before this Honorable Court under the **Federal Rule of Civil Procedure 60(b)(6)**...

Reasonable jurists could debate whether (or, for that matter, agree that) the motion should have been resolved in a different manner. *See U.S. v. Beggerly*, 118 S.Ct. 1862, 524 U.S. 38 (1998) Independent action must, if **Rule 60(b)** is to be interpreted as a coherent whole, be reserved for those cases of 'injustice' which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the doctrine of res judicata. *supra*, at 46-47, 118 S.Ct. at 1867 - 1868; *Hazel-Atlas Glass v Hartford Empire*, 323 US. 238, 64 S.Ct. 997, (1944). However, a judgment finally entered has ever been regarded as completely immune from impeachment after the term. *supra* at 244 64, S.Ct. at 1000; *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 110 S.Ct. 2447 (1990). Generally, a district court abuses its discretion when it base its decision on an erroneous view of the law or a clearly erroneous assessment of the facts. *supra*, at 405, 110 S.Ct. at 2460 - 2461, (legal error is "mistake" warranting relief under **Federal R. Civ. Proc., 60(b)(1)**...see also, *Gonzalez v. Crosby*, 125 S.Ct. 2641, 545 U.S. 524, (2005). When a **Rule 60(b)** motion attacks, not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings, id., at 532. n. 5; 'there is no "claim" presented, and there is no basis for contending that the Rule 60(b) motion should be treated like a habeas corpus application, id., at 533; the motion confines itself not only to the first

federal habeas petition, but to a non-merits aspect of the first habeas proceeding, id., at 534; Rule 60(b)(4) also preserves parties opportunity to obtain vacatur of a judgment that is void, for lack of subject matter jurisdiction altogether deprives a federal court the power to adjudicate the rights of parties.

A three judge panel in the United States Fifth Circuit Court of Appeals was incorrect for a fundamental reason mandated by this court. *See*, Appx (A),(A)(1); ***Miller El v. Cockrell***, 123 S.Ct. 1029, 1042, 537 U.S. 322 342, (2003). "Before the issuance of a COA, the Court of Appeals had no jurisdiction to resolve the merits of Petitioner's constitutional claims."

Jurist of reason could conclude that the district court abused its discretion. See, ***Cooter & Gell v. Hartmarx Corp.***, 496 U.S. at 405, at 2460-2461. Plaintiff contends that the U.S. district court judge, Martin L. C. Feldman § "F", has failed to exercise his federal - question jurisdiction under the "judicial power", consonant with the statutory texts of **28 U.S.C. 2241(c)(3)**; **28 U.S.C. 2254(a)**; The underlying grant of jurisdiction. See, Appx (B); (B)(1) (***Taylor v. Cain***, **13-CV-0462, 2015, (E.D.** (La.) **7/23/15)** (adopting the magistrate's recommendation **2254(e)(1)**)... The United States Supreme Court has explain in light of, ***Steel Co. v. Citizens for Better Environment***, 118 S.Ct. 1003, 523 U.S. 83, (1998). Hypothetical jurisdiction produces nothing more than a hypothetical judgment which comes to the same thing as an advisory opinion, disapproved by this court from the beginning citing ***Muskrat v. U.S.***, 219 U.S. 346, 362, 31 S.Ct. 250, 256 (1911); **Hayburn's case**, 2 Dall. 409 (1792). "Much more than legal niceties are at stake here. The statutory and (especially) constitutional elements of jurisdiction are an essential ingredient of separation and equilibration of powers, restraining the court from acting at certain times, and even restraining them from acting permanently regarding certain subjects." See ***U.S. v. Richardson***, 418 U.S. 166, 179, 94 S.Ct. 2940, 2947-48 (1974); ***Schlesinger v. Reservists***

Comm. to Stop the War, 418 U.S. 208, 227, 94 S.Ct. 2925, 2935 (1974). For a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires ... *Steel Co.*, *supra*, at 101 - 102, 118 S.Ct. at 1016.

Plaintiff addresses the threshold jurisdictional question: whether he has standing to sue. **Article III, § 2** of the Constitution extends the: "judicial power" of the United States only to "cases" and "controversies" ... of the sort traditionally amendable to, and resolved by the judicial process. *Muskrat*, *supra*, at 356-357 ... (etc) ... citing *Lujan v. Defender of Wildlife*, 504 U.S. 553, 559-560, 112 S.Ct. 2130, 2136 (1992). Standing to sue is part of the common understanding of what it takes to make a justifiable case. *Whitmore v. Arkansas*, 495 U.S. 149, 110 S.Ct. 1717, 1723 (1990).

The "irreducible constitutional minimum of standing" contains three requirements. *Lujan v. Defender of Wildlife*, *supra* ... first and foremost, there must be alleged (and ultimately proved) an "injury in fact" - a harm suffered by the Plaintiff that is "concrete" and "actual" or imminent, not 'conjectural' or 'hypothetical' ... *Whitmore v. Arkansas*, *supra*, at 155, 110 S.Ct. at 1723 ... Second, there must be causation — a fairly traceable connection between the plaintiff's injury and the complained of conduct of the defendant. *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 41-42, 96 S. Ct. 1917, 1925-1926 (1976) . . .And third, there must be redress - ability - a likelihood that the requested relief will redress the alleged injury. *Simon*, *supra*, at 45 - 46, 96 S. Ct. at 1927 - 1928 . . .This triad of injury in fact, causation and redress ability constitutes the core of Article III's case or controversy requirements and the party invoking Federal jurisdictions bear the burden of establishing its existence. See, **FW/PBS, Inc. v. Dallas**, 493 U. S. 215, 231, 110 S. Ct. 596, 607 - 609 (1990) . . . .

INJURY IN FACT

Plaintiff alleged that he suffered an "actual injury in fact", a harm that is "concrete" and not 'conjectural' or 'hypothetical'. Plaintiff asserts that his motion for **Federal R. Civ. Proc., 60 (b) (6)** applies to a defect in the integrity of the habeas proceeding under 2254 § (a) . . . see, *Williams v. Taylor*, 20 S. Ct. 1495, 1503, n. 7, 529 U. S. 362, 375, n. 7 (2000) . . . When Federal judges exercise their Federal question jurisdiction under the 'judicial power' of Article III of the Constitution, it is "emphatically the province and duty" of those judges to say what the law is." *Marbury v. Madison*, 1 Cranch 137, 177 (1803). "At the core of this power is the Federal court's independent responsibility -- independent from its coequal branches in the Federal government, and independent from the separate authority of the several states — to interpret Federal law. *supra*, at 1505, 529 U. S. at 378 - 379.

CAUSATION

There must be 'second' a causation - a fairly traceable connection between the Plaintiff's injury and the conduct of the defendant. The defective inquiry, *supra*, which is mandated by the amendment, relates to the way in which a Federal court exercise its duty to decide constitutional question, the underlying grant of jurisdiction in § 2254 (a), *Williams*, *supra*, 'at the core of this power was the Federal District Court's independent responsibility from the separate authority of the state to interpret Federal law. See (*Taylor v. Cain*, *supra*, at 18 - 19 (E. D. (La.) 7/23/15) . . . "A construction of the AEDPA that would require the Federal courts to cede this authority to the states would be inconsistent with the practice that Federal judges have traditionally followed in discharging their duties under Article III of the Constitution." *Williams*, *supra*, at 379 . . . .

REDRESS - ABILITY

There must be "third" redress ability a likelihood that the requested relief will redress the injury . . . In *Muskrat*, *supra*, at 357 - 359, 313 S. Ct. 254 - 255 (quoting The Chief Justice Marshall), who

demonstrate in a manner which has been regarded as settling the question, that with the choice, thus given between a constitutional requirement and a conflicting statutory enactment, the plain duty of the court was to follow and enforce the Constitution as the supreme law established by the people . . . 'citing *Osborn v. Bank of United States*, 9 Wheat. 819, 'speaking of the third article of the constitution, conferring judicial power' . . . (etc) . . . *Cohen v. Virginia*, 6 Wheat. 264 (Chief Justice Marshall) amplifying and reasserting the doctrine of *Marbury v. Madison*, *supra*, recognized the limitations upon the right of this court to declare an act of congress unconstitutional . . . .

The 60 (b) motion at issues is a case of (injustice), resulting from fraud upon the court; neglect, misrepresentation and misconduct calling into question the very legitimacy of the district court judgment. See, *Hazel-Atlas Glass v. Hartford Empire*, 322 U. S. 238, 64 S. Ct. 997 (1944). "Equitable relief against fraudulent judgments is not statutory creation." *supra*, at 248, 64 S.Ct. at 1002 . . . Likewise, Plaintiff motion applies to a defect in the integrity of the habeas proceedings under 2254 § (d) (1), in reference to the clearly established law requirement, "federal law", as determined by this court, which extends the principle of *Teague v. Lane*, 489 U. S. 288, 109 S.Ct. 1060 (1989). See: *Williams*, *supra*, at 1507, 529 U. S. at 381 - 382, by limiting the source of doctrine on which a federal court may rely in addressing the application for a writ. *Teague* had demonstrated, rules of law maybe sufficiently clear for habeas purpose even when they are expressed in terms of a generalized standard rather than as a bright line rule." As Justice Kennedy has explained:

> If the rule in question is one of which of necessity require a case-by-case examination of the evidence, then we can tolerate a number of specific applications without saying that those applications themselves create a new rule." See, *Snyder v. Com. Massachusetts*, 54 S. Ct. 330, 291 U. S. 97 (1934), We assume in aid of the petitioner that in a prosecution for a felony the defendant has the privilege under the Fourteenth Amendment to be present in his own person whenever his presence has a relation reasonable substantial to the fullness of his opportunity to defend against the charge. *supra*, at 105 - 106; *Johnson v. Zerbst*, 58 S. Ct. 1019, 1024 - 1025, 306

> U. S. 458, 466 - 469 (1938); *Yarborough v. Alvarado*, 514 U. S. 652, 124 S. Ct. 2140 (2004). Certain principle are fundamental enough that new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt:...supra, at 666. "If a rule designed for specific purpose of evaluating a myriad of factual contexts, it will be the infrequent case that yield a result so novel that forges a new rule, one not dictate by precedent. *Wright v. West*, 505 U. S. 277, 308 - 309, 112 S. Ct. 2482 (1992) (opinion concurring in judgment). *Williams*, *supra*; *Osborn v. Bank of United States*, *supra*. (internal citation omitted)...

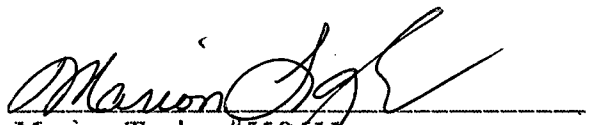
Finally, Plaintiff motion rest on a defect in the integrity of the habeas proceedings under 2254 § (e) (1), factual determination by the state court's that only pertains to particular factual issues and are presumed correct absent clear and convincing evidence to the contrary.[1] See, *Miller-El*, *supra*, at 1033, 537 U. S. at 324, "Where 28 U. S. C. § 2254 applies, the courts habeas jurisprudence embodies this deference." "Even in the context of federal habeas, deference does not imply abandonment or abdication of judicial review"... "Such a meaning is fairly implied by text, since otherwise the purported restriction upon the judicial power would scarcely be a restriction at all ... *Steel Co.*, *supra* at 356 - 357. *Cohen v. Virginia*, *supra* (internal citation omitted). Thus, jurist of reason could concluded that the issues presented were 'adequate to deserve encouragement to proceed further.' *Miller-El supra*, at 336, 123 S. Ct. at 1039.

1 See also, ***State v. Wright*** (La. App. 3rd Cir. 1997) at [96-786] 690 So. So.2d 850 (noting the omission of LSA-La. R. S. 15:283 after Craig, which the constitutionally clearly requires legislative consideration, id., 853 - 854, 855; ***State v. Murphy***, 542 So. So.2d 1373 (La. 1978) 'addressing the defendant's rights to effective cross examination as a constitutional dimension on the basis of the record of appeal. Id.,. at 1375. n., 4 ...

CONCLUSION

For the foregoing reasons, this court should review this case through certiorari.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that the foregoing facts, herein, are true and accurate setforth in this petition and thereby, serve a copy on this 25 day of August, 2021, on the Orleans Parish Assistant District Attorney's Office, Mr. Gershon Benjamin Cohen (ADA).

Respectfully submitted,

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I certify that the foregoing facts, herein, are true and accurate setforth in this petition and thereby, serve a copy on this 25 day of August, 2021, on the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530-0001, in which an employee of the United States is a party.

Respectfully submitted,

Marion Taylor

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