

Supreme Court, U.S.  
FILED

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No. \_\_\_\_\_

**21-5959**

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**IN THE SUPREME COURT OF THE UNITED STATES**

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**DARWIN FIFIELD,**  
*Petitioner,*

vs.

**MARK INCH, Sec'y FDC**  
*Respondent(s),*

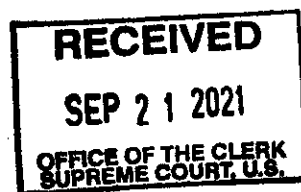
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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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**PETITION FOR WRIT OF CERTIORARI**

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(City, State, Zip Code)

**ORIGINAL**

## QUESTION(S) PRESENTED

The United States Constitution proscribes the use of excessive force during an arrest when the Petitioner is not actively resisting and requires the appointment for indigent citizens a counsel that provides effective assistance in the legal arena. In so doing, the Constitution at least implicitly requires the principal's agent to actively act on his principal's behalf. The court system has held that an attorney is the client's agent and as such the client is liable for all actions or inactions taken by his agent. See *Coleman v. Thompson*, 501 U.S. 722 (1991). See also *Gonzalez v. United States*, 553 U.S. 242 (2008).

Throughout the entire proceedings in the district court and the Eleventh Circuit Court of Appeals, Petitioner argued that he was forced to represent himself because his agents/ counsels refused to do any investigation in reference to Petitioner's charges, interview witnesses, suppress statements, or anything else that Petitioner requested his agent to do.

Petitioner also argued throughout the district court and Eleventh Circuit Court of Appeals proceedings that he was viciously attacked by Marion County Sheriff's Office deputies and significantly injured, resulting in a broken right collar bone and dislocated right shoulder. Marion County deputies were refusing him medical care until after he spoke with them. As a result of their vicious attack of Petitioner and Petitioner's constant need for medical care, Petitioner waived his rights to not talk to deputies, resulting in an admission that Petitioner wrote the letter to the victim's mother.

The Eleventh Circuit Court of Appeals granted Certificate of Appealability in this case regarding *Martinez's* application to this case. Whereas the Eleventh Circuit rejected the State's argument that *Martinez* does not apply since Petitioner represented himself at trial, the Eleventh Circuit Court of Appeals also rejected Petitioner's arguments, finding that he failed to sufficiently allege any *substantial* claims.

The questions presented are:

- I. Whether law enforcement's unprovoked excessive use of force during an arrest should invalidate as coerced by threat or force a Petitioner's later statement and all evidence secured from the questioning when they occur in a single continuous episode?
- II. Whether a Petitioner's Sixth Amendment Right to represent himself during trial was involuntary when his appointed counsel refused to perform the reasonable actions Petitioner wanted him to complete prior to trial?
- III. Whether counsel's failure to abide by his principal's interim instructions regarding pretrial investigations terminates his agent status

## 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

*State v. FiField*, Case Number: 2013 FC 002406 Marion County, Florida Sentence impose July 9, 2015.

*FiField v. State*, 190 So.3d 643; Case No: 5D15-2764 (Fla. 5<sup>th</sup> DCA 2016)

*FiField v. State*, 2016 Fla. LEXIS 2171 (Fla. 2016)

*FiField v. Secretary, Fla. Dep't of Corrections*, 2019 U.S. Dist. LEXIS 117409; Case No: 5:18-cv-309-BJD-PRL, U.S. District Court for the Middle District of Florida. Judgment entered March 15, 2019.

*FiField v. Secretary, Fla. Dep't of Corrections*, 2020 U.S. Dist. LEXIS 9924; No: 19-13096-BB, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered March 10, 2021; Reconsideration denied July 13, 2021.

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## PETITION FOR WRIT OF CERTIORARI

Petitioner Darwin FiField respectfully petitions for a writ of certiorari to review the opinion of the United States Court of Appeals for the Eleventh Circuit entered in this matter on July 13, 2021, denying the Petitioner's Certificate of Appealability and affirming the judgment of the United States District Court for the Middle District of Florida.

### 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 **2021 U.S. App. LEXIS 6934**; 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 **2019 U.S. Dist. LEXIS 117409** 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 **F** to the petition and is

- ☒ reported at **190 So.3d 643**; or,
- ☐ has been designated for publication but is not yet reported; or,
- ☐ is unpublished.

The opinion of the Fifth District court appears at Appendix **F** to the petition and is

- ☒ reported at **190 So.3d 643**; 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 **March 10, 2021**. A copy of that decision appears at Appendix **A**.

☐ 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: **July 13, 2021**, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.

☒ For cases from **state courts**:

The date on which the highest state court decided my case was **April 12, 2016**, and appears in Appendix F.

☒ 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. \_\_\_\_\_.

On March 15, 2019, the United States District Court denied Petitioner's Petition for Writ of Habeas Corpus. Petitioner timely sought Certificate of Appealability in this case which the district court denied on April 15, 2019. But, after applying to the Eleventh Circuit Court of Appeals, that court granted COA on March 30, 2020 on the specific issue on whether the district court erred when it failed to consider if *Martinez v. Ryan* applied to forgive the procedural default of Petitioner's habeas corpus claims before denying the petition. Petitioner was appointed counsel for the COA on March 30, 2020. COA was subsequently denied on March 10, 2021, with reconsideration being denied on July 13, 2021. Petitioner's Petition for Writ of Certiorari is timely filed if date stamped on or before October 11, 2021. This Court has Certiorari jurisdiction to review the United States Court of Appeals decision. See 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### **FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall 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.

### **FOURTEENTH AMENDMENT, Section 1, OF THE UNITED STATES CONSTITUTION**

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 make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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 laws.

## STATEMENT OF THE CASE

Petitioner was arrested on July 24, 2013, on two counts of lewd and lascivious molestation.

Law enforcement officers searched Petitioner's home with a search warrant that was premised on the complainant's statement. The complainant claimed the Petitioner had guns, bomb making material, nude photographs of the complainant, computer with child porn on it, and a tablet that contained nude photographs of complainant with her consent.

During the search, law enforcement sought evidence of the criminal offenses that the complainant said occurred at the home. No evidence of any criminal activity was discovered despite the home being searched by multiple law enforcement officers from 8 a.m. until 3:30 p.m. Petitioner was not present when the home was searched. Law enforcement officers broke his dishes, tore up his clothing, and stole a flat screen television, well over a hundred store bought DVDs, CD player and several hundred CDs, two high tech DVD players, a VCR player and hundreds of VCR store bought tapes, and took more than \$5,200.00 in cash, and dumped food all over the floor. Law enforcement did not write out or supply Petitioner with a list of the items or cash taken. All four of the Petitioner's attorneys refused to make the police turn over a list of what was taken from the Petitioner's home by the police.

After searching Petitioner's rental home, law enforcement came to Petitioner's place of employment. Again no evidence of any criminal activities were discovered. Law enforcement entered Petitioner's place of work that was posted as private property with no warrant to arrest Petitioner. Still law enforcement entered the posted private property of Petitioner's employer and located Petitioner. Law enforcement then began questioning Petitioner. Petitioner inquired of law

enforcement whether they had an arrest or search warrant of the private property where Petitioner worked. They responded that they did not and was only asking Petitioner to come with them to answer a few questions at the station. Petitioner refused to accompany them and told law enforcement officers to exit the property.

Once Petitioner refused to accompany law enforcement officers to the station for questioning, law enforcement brutally assaulted Petitioner; even though, Petitioner never did anything to threaten them.<sup>1</sup> Law enforcement officers grabbed Petitioner from behind and slammed Petitioner face first into the grill of a Mack Semi Truck. Law enforcement officers began twisting and lifting Petitioner's left arm up behind his back with Petitioner's face smashed into the front grill of the Mack Semi Truck. Law enforcement's twisting and lifting of Petitioner's left arm caused the dislocation of Petitioner's left shoulder and the breaking of Petitioner's left collar bone.

Petitioner was in excruciating pain once his collar bone broke and his shoulder dislocated, causing Petitioner to fall down. Law enforcement *assisted* with Petitioner's fall by slamming Petitioner to the ground face first and one law enforcement officer placed his knee onto Petitioner's spine at the base of his neck. Another law enforcement officer then kicked Petitioner on the side of Petitioner's head, causing Petitioner to vomit. Petitioner was then placed into the back of a police SUV and locked in. The SUV's windows were not rolled down and no air conditioning was turned on. Petitioner was handcuffed tightly behind his back with a dislocated shoulder and broken collar bone. The sun was bright and shining on the SUV that had no ventilation with the temperatures in the high 90s to be baked alive in the vehicles as the

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<sup>1</sup> These are some of the same officers that brutally beat Derrick Price shortly after they assaulted and beat Petitioner. Four out of the five were convicted in Ocala Federal District Court on falsely making police report to hide what they did beating of Derrick Price. (See Appendix J)

temperature went beyond a 100 degrees for well over an hour. Law enforcement then illegally entered three different owners' vehicles and stole two of those vehicles with thousands of dollars worth of the Petitioner's personal property inside one of them without having or finding probable cause that a criminal offense had been committed by the owners of the vehicles. Then forced the owner of the stolen vehicles to buy their vehicles back for a large sum of money or they would be sold at public auction on September 11, 2013.

Petitioner asked law enforcement officers repeatedly to be taken to the hospital for treatment of his injuries that was causing severe overwhelming physical pain to the Petitioner. Law enforcement officers repeatedly denied Petitioner's request for medical assistance. Law enforcement officers subsequently informed Petitioner that he would not receive any medical care no matter how much physical pain he was suffering until he answered all of the questions the detective had for him to their satisfaction. Only after the questions were answered by Petitioner and the detective approved of the answers would Petitioner receive medical care. After speaking with law enforcement officers, Petitioner still never received medical attention for his collar bone or shoulder and continues to suffer from the broken collar bone. Which no medical care was ever given even after being made to go to the police station and answer all their question; leaving Petitioner now physically crippled.

Ultimately, Petitioner waived his *Miranda* rights and spoke with detectives under fear of his life and the very badly needed medical attention. At this time, Petitioner was 53 years old and already in bad health. The assault merely exacerbated Petitioner's health concerns and effects.

Petitioner was appointed four separate counsels during the pretrial proceedings, with Attorney Hamburg being the last, before ending up representing himself. Ultimately, each

attorney informed Petitioner that they were not going to investigate his case and refused to file numerous motions that Petitioner asked them to file. (See Composite Appendix I, p. 495). Since these attorneys refused to do any investigation and refused to file motions for Petitioner, Petitioner was forced to move for a Nelson hearing. After the third Nelson hearing and his attorneys still refused to prepare his case for trial despite being ordered by the judge to do the investigation and Petitioner's continued complaints, he was given the choice of either retaining counsel for himself, continuing with Attorney Hamburg as appointed counsel, or represent himself at trial. Since these attorneys already informed Petitioner that they were not going to do anything for him and clearly showed him they were not going to prepare his case for trial even after the judge ordered them to twice to investigate the case, that he should just take a plea, and Petitioner did not have the money available to hire private counsel, Petitioner was forced to take the only option available that would merit some form of defense against the alleged offenses. Petitioner, therefore, under duress and because the judge would not appoint a conflict free attorney that would defend him against the unsupported accusations against him, moved the lower court to permit Petitioner to represent himself. (See Composite Appendix I, p. 495).

The lower court granted the motion after inquiry and appointed Attorney Hamburg as back up counsel. The lower court stressed that back up counsel could not take any actions or advise Petitioner in any capacity on his own accord; Petitioner must specifically request back up counsel's advice or inform him of the action that he wants back up counsel to take. Back up counsel could not act on his own.

#### PROCEEDINGS IN THE DISTRICT COURT

On July 9, 2018, Petitioner filed in the Middle District of Florida his 28 U.S.C. § 2254

wherein he attacked the judgment and sentence of the Marion County, Florida court. Petitioner was convicted after trial an unconstitutional trial of six jurors of lewd and lascivious molestation of a victim under the age of 12 that occurred on July 9, 2015. Petitioner was sentenced to 35 years incarceration. Petitioner argued that counsel was ineffective for numerous reasons particularly dealing with violations of Petitioner's Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution.

The State responded that the petition was timely filed but argued that the claims as argued were procedurally defaulted. Specifically, the State argued that the lower court's summary denial of his rule 3.850 motion for facial and legal insufficiency procedurally defaulted those claims.

The Middle District of Florida dismissed Petitioner's Petition for Writ of Habeas Corpus on July 15, 2019, as being procedurally defaulted and unexhausted.

#### PROCEEDINGS IN THE ELEVENTH CIRCUIT COURT OF APPEALS ON COA

On March 30, 2020, this Court granted a Certificate of Appealability on whether the District Court erred in failing to conduct a *Martinez* analysis of the claims of ineffective assistance of counsel.

In response, the State argued that *Martinez* does not apply to Petitioner's claims because *Martinez* only applies to ineffective assistance of trial counsel claims when the rule 3.850 requires Petitioner to file ineffective assistance of trial counsel claims in postconviction relief. The State argued that since Petitioner failed to appeal the lower court's denial of the rule 3.850, that *Martinez* does not apply. Further, the State argued that the denial was on the merits under the Eleventh Circuit's precedents.

In addition, the State argued that the ineffective assistance of trial counsel claims were



waived when Petitioner chose to represent himself during trial. Petitioner cannot now claim to have been ineffective in representing himself.

The Eleventh Circuit Court of Appeals affirmed the District Court's denial of Petitioner's Petition for Writ of Habeas Corpus on March 10, 2021, and denied Petitioner's timely motion for reconsideration on July 13, 2021. While the court held that Petitioner could still challenge prior counsel's pretrial representation, effectively denying the State's contrary argument, even though Petitioner represented himself at trial, the court also held that Petitioner did not prove a substantial claim sufficient to warrant *Martinez* application on any of the claims.

## REASONS FOR GRANTING THE PETITION

- I. This Court has held that it constitutes cruel and unusual punishment under the Fourth and Eighth Amendment when law enforcement use excessive force when arresting petitioners. This Court has not, however, addressed if after using such unprovoked excessive force any subsequent evidence obtained during an interrogation should be suppressed as being coerced, compelled, involuntary.**

### (A) Excessive Use of Force During Arrest

Since before 1985, this Court has held that the infliction of more force than necessary or called for in a given situation is excessive if it is done maliciously and with ill intent to cause harm, when such force is analyzed under an objective standard. See *Tennessee v. Garner*, 471 U.S. 1, 85 L.Ed.2d 1, 105 S. Ct. 1694 (1985). Specifically, the use of force is reasonable only if it was necessary in the situation at hand. “We evaluate whether force was constitutionally necessary by examining several factors, including: “[1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officers or others, and [3] whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.” *Brand v. Casal*, 877 F. 3d 1253, 1263 (11<sup>th</sup> Cir. 2017) (quoting *Graham*, 490 U.S. at 396, 109 S. Ct. at 1872).

### (B) Involuntariness of Statement After Law Enforcement's Unprovoked Use of Force Against Petitioner.

“The Fifth Amendment, made applicable to the States by the Fourteenth Amendment, requires that “[n]o person ... shall be compelled in any criminal case to be a witness against himself.” See *Chavez v. Martinez*, 538 U.S. 760, 766, 155 L.Ed.2d 984, 993, 123 S. Ct. 1994 (2003). This Court has even held that confessions or statements made sometime after an assault and beating was unconstitutionally coerced. See *Brown v. Mississippi*, 297 U.S. 278, 283 (1936).

(C) Petitioner's Statement after being beaten by Law Enforcement was therefore obtained and introduced into Petitioner's trial in violation of Petitioner's Fifth Amendment Right

In this case, Petitioner was assaulted and badly beaten by Marion County Law Enforcement officers while Petitioner was at his place of work. Petitioner was grabbed by police when he told police to leave the property because they did not have a warrant and was slammed face first into the grill of a Mack Semi-Truck. Law enforcement then proceeded to pull Petitioner's left arm up behind Petitioner's back while forcing Petitioner face into the grill of the semi. After screaming from the pain and hearing a tearing and feeling a cracking sensation in Petitioner's left shoulder, Petitioner's legs sagged from under him and law enforcement slammed Petitioner onto the ground face first. This action further dislocated Petitioner's shoulder and broke Petitioner's left collar bone in half. The police then placed their knee onto the base of Petitioner's neck, almost causing him to pass out because of the pain. Law enforcement officers also kicked Petitioner in the side of his head while he lay on the ground causing him to vomit.

Petitioner never did anything, any act – verbal or otherwise, to warrant the Marion County law enforcement officers use force against him. Other than Petitioner telling them to leave the posted property since they did not have a warrant for either him or the place he was at, Petitioner never made any moves or actions that hinted at his resistance, intent to assault the officers, or to run. Petitioner was 53 - year old male, and already not in good health.

Based upon the foregoing, this Court should accept jurisdiction in this case to consider and determine whether after the police assault and beat a Petitioner any statement obtained from that point forward can be considered voluntarily provided even where the Petitioner signs a Miranda waiver form while under overwhelming physical pain from his injuries he received by law officers just hours before and was denied all medical care for these injuries when he



requested medical call many times overs. The police used physical pain to get the Petitioner to sign his rights away to remain silent.

**II. This Court has determined that a Petitioner has the right to represent himself at trial. This Court has not determined, however, whether a Petitioner's representation of himself at trial was the result of an unconstitutional waiver of counsel when his counsel refused to conduct the pretrial investigation of the case as directed by Petitioner and the Court – his principal, forcing Petitioner to represent himself in an attempt to present a defense to the alleged crimes.**

**(A) Petitioner has a Sixth Amendment Right to Represent Himself**

Since 1975, this Court has held that petitioners have the Sixth Amendment Right to represent themselves. See *Faretta v. California*, 422 U.S. 806, 821, 95 S. Ct. 2525, 45 L.Ed.2d 562, 574 (1975). However, the caveat was provided that a Petitioner who represents themselves also accepts the obligations and restrictions that accompany the representation of themselves. *Id.* at 835. The waiver of counsel or request to represent himself, however, must be voluntary.

**(B) Confirmed Principal-Agent Relationship and Assignment of Liability**

Since 1962, this Court has held that a lawyer is the agent of the client. See *Link v. Wabash R. Co.*, 370 U.S. 626, 634, 82 S. Ct. 1386, 8 L.Ed.2d 734 (1962). Almost 30 years later, this Court elaborated that “because the attorney is the prisoner's agent, and under 'well-settled principles of agency law,' the principal bears the risk of negligent conduct on the part of his agent.” *Maples v. Thomas*, 565 U.S. 266, 132 S. Ct. 912, 181 L.Ed.2d 807, 821 (2012) (quoting *Coleman v. Thompson*, 501 U.S. 722, 753, 111 S. Ct. 2546, 115 L.Ed.2d 640 (1991)).

**(C) Well-Settled Principal-Agent Law**

This Court also historically considers the Restatement legal treatise “and its included comments when making its decisions on pertinent aspects of the law. See *Maples*, 181 L.Ed.2d at 822. See *Burlington Indus. v. Ellerth*, 524 U.S. 742, 755, 118 S. Ct. 2257, 141 L.Ed.2d 633



(1998) (“the Restatement (Second) of Agency ... is a useful beginning point for a discussion of general agency principles.”)

Under this well-settled law, the principal exercises full control over the agent's actions. “An essential element of agency is the principal's right to control the agent's actions. Control is a concept that embraces a wide spectrum of meanings, but within any relationship of agency the principal initially states what the agent shall and shall not do, in specific or general terms. Additionally, a principal has the right to give interim instructions or directions to the agent once the relationship is established.” Restatement (Third) of Agency § 1.01 cmt. f(1).

In furtherance therefore, a “principal” is defined as “one who has authorized another to act on his account and subject to his control.” *Langfitt v. Federal Marine Terminals, Inc.*, 647 F. 3d 1116, 1120 (11<sup>th</sup> Cir. 2011) (citing Restatement (Second) of Agency § 1(1), (2), cmt. d (1958). An “agent” is defined as “one authorized by another (i.e., the principal) to act on the other's account and *under the other's control*.” *Ibid.* (citing Restatement (Second) of Agency § 1(1), (2), cmt. e (1958) (Emphasis added)).

(D) Petitioner's Involuntary Waiver of his Constitutional Right to Competent Representation by Counsel.<sup>2</sup>

This Court has held that while a Petitioner has the constitutional right to represent himself, the waiver of counsel's effective assistance must be voluntary. In addition, this Court has determined that principal-agent law governs the interaction between a client and his lawyer. Because of this previous determination, Petitioner is in control over his agent's actions. Unless Petitioner can control his agent's actions, he cannot be held accountable for the errors his agent

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<sup>2</sup> The Court also has a duty to make sure the Petitioner's attorney will defend his client not just be a warm body in a suit. See *Voh Moltke v. Gillies*, 332 U.S. 708, 725-26, 68 S. Ct. 316, 324. See also *Merits Evitts*, 469 U.S. at 395, 105 S. Ct. 835, and *Herrign v. New York*, 422 U.S. 853, 862, 95 S. Ct. 2550, 2555 (1975).

makes.

This Court has held that the client is liable for his agent's negligent acts or omissions. For that to be so, the principal must be able to inform his agent as to what acts that he must do and have full expectations that his interim instructions will be followed. This is the core of the principal-agent relationship.

In this case, Petitioner provided his agent with interim instructions consisting of interviewing and securing death bed testimony from a witness, filing motions to suppress statements based upon a warrantless arrest, interviewing numerous witnesses regarding Petitioner's assault and battery by officers, the filing of a motion for a twelve person jury, and the securing of other witnesses' testimony. Petitioner's agent then informed the principal that he would not do any research or investigate these witnesses for him, and would not file the requested/ directed motion.<sup>3</sup> Petitioner then sought a court order while represented by counsels directing his attorneys to investigate and deposition numerous witnesses that they had previously informed Petitioner that they would not interview or deposition the witnesses requested. The lower court held a *Nelson* hearing – the first and second such hearings in this case – and ordered his attorneys to conduct the investigation and to deposition the witnesses.<sup>4</sup> After each of his former attorneys informed Petitioner that they will not do what he asked them to do and did not provide further explanation as to why they refused to assist him in his defense, Petitioner felt that he was forced to represent himself. (See Composite Exhibit I). In fact, Petitioner's April 17, 2015

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3 Petitioner also informed counsels to file a motion to challenge the constitutionality of Florida's law permitting a six member jury rather than the twelve required by the constitution that Petitioner filed on his own after counsels refused. (See Appendix K)

4 Petitioner avers that he would attach copies of the *Nelson* hearing transcripts that he has referenced to substantiate his claims herein, Petitioner has been denied by the lower court all access to the *Nelson* hearing transcripts. Therefore, Petitioner is unable to attach them as an appendix or cite to the page number therein. Had Petitioner not been indigent, Petitioner would have sought their transcription and reproduction to include herein.



Motion to Take Judicial Notice references him being forced to defend himself because the appointed counsel refused to defend him or even prepare for trial (See Composite Appendix I). Petitioner has mentioned being forced to proceed *pro se* numerous times (See Composite Appendix I). Petitioner's attorneys still refused to conduct the requisite investigation and depositions, despite the court ordering them to do so. *Se.* <sup>5</sup>

Once Petitioner proceeded *pro se*, Petitioner filed the motion demanding a 12 person jury. The lower court denied the motion without being able to inform Petitioner where the authority came from that permitted the seating of a six-person jury. *Se.* <sup>5</sup>

Further, had any of Petitioner's former appointed attorneys conducted any investigation or read Petitioner's letters to Attorney Scott Bishop, motive and reputation as to veracity evidence was present that would have and should have been adduced through interviewing and deposition the alleged victim, victim's mother, and victim's mother's boyfriend (See Composite Appendix I). In addition, Petitioner was forced to represent himself while in extreme overwhelming physical pain because he was never treated for the broken collar bone and dislocated shoulder. Even his pain medication was deliberately taken from him after he went *pro se*.<sup>5</sup> Because of this, Petitioner's waiver of his representation by counsel was not voluntary. See *Iowa v. Tovar*, 541 U.S. 77, 81, 158 L.Ed.2d 209, 124 S. Ct. 1379 (2004).

This Court should therefore accept Certiorari Jurisdiction to answer this most important, universally applicable question.

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<sup>5</sup> *Thompson v. Utah*, 42 L.Ed. 1061, 170 U.S. 343 (April 1898); *Patton v. United States*, 74 L.Ed. 854, 281 U.S. 276 (April 1930); *Ramos v. Louisiana*, 140 S. Ct. 1390, 206 L.Ed.2d 583, 2020 U.S. LEXIS 240; 8 Fla. L. Weekly Fed. S 144 N. 18-5924.

**III. This Court has held that when a petitioner is represented by counsel that the petitioner is liable for the actions and inactions of his counsel because counsel is the principal's agent. This Court has not, however, considered whether counsel's failure to abide by their principal's interim instructions regarding pretrial investigations terminates their agent status.**

**(A) Confirmed Principal-Agent Relationship and Assignment of Liability**

Since 1962, this Court has held that a lawyer is the agent of the Client. See *Link v. Wabash R. Co.*, 370 U.S. 626, 634, 82 S. Ct. 1386, 8 L.Ed.2d 734 (1962). Almost 30 years later, this Court elaborated that “because the attorney is the prisoner's agent, and under 'well-settled principles of agency law,' the principal bears the risk of negligent conduct on the part of his agent.” *Maples v. Thomas*, 565 U.S. 266, 132 S. Ct. 912, 181 L.Ed.2d 807, 821 (2012) (quoting *Coleman v. Thompson*, 501 U.S. 722, 753, 111 S. Ct. 2546, 115 L.Ed.2d 640 (1991)).

**(B) Well-Settled Principal-Agent Law**

This Court also historically considers the Restatement legal treatise “and its included comments when making its decisions on pertinent aspects of the law. See *Maples*, 181 L.Ed.2d at 822. See *Burlington Indus. v. Ellerth*, 524 U.S. 742, 755, 118 S. Ct. 2257, 141 L.Ed.2d 633 (1998) (“the Restatement (Second) of Agency ... is a useful beginning point for a discussion of general agency principles.”)

Under this well-settled law, the principal exercises full control over the agent's actions. “An essential element of agency is the principal's right to control the agent's actions. Control is a concept that embraces a wide spectrum of meanings, but within any relationship of agency the principal initially states what the agent shall and shall not do, in specific or general terms. Additionally, a principal has the right to give interim instructions or directions to the agent once the relationship is established.” Restatement (Third) of Agency § 1.01 cmt. f(1).

In furtherance therefore, a “principal” is defined as “one who has authorized another to act on his account and subject to his control.” *Langfitt v. Federal Marine Terminals, Inc.*, 647 F. 3d 1116, 1120 (11<sup>th</sup> Cir. 2011) (citing Restatement (Second) of Agency § 1(1), (2), cmt. d (1958). An “agent” is defined as “one authorized by another (i.e., the principal) to act on the other's account and *under the other's control*.” *Ibid.* (citing Restatement (Second) of Agency § 1(1), (2), cmt. e (1958)(Emphasis added)).

(C) The Agent's Breach of Loyalty (Duty) and Termination of Agency

“[T]he authority of an agent terminates if, without knowledge of the principal, he acquires adverse interests or if he is otherwise guilty of a serious breach of loyalty to the principal.” *Maples*, 565 U.S. at 284, 132 S. Ct. at 924. Referencing the Restatement for an explanation of what constitutes a breach of loyalty sufficient to terminate the agency, the Eleventh Circuit Court of Appeal explained “the agent commits a breach of duty [of loyalty] to his principal by acting for another in an undertaking which has a substantial tendency to cause him to disregard his duty to serve his principal with only his principal's purposes in mind.” *Cadet v. Fla. Dep't of Corr.*, 853 F. 3d 1216, 1230 (11<sup>th</sup> Cir. 2017) (quoting *Maples*, 565 U.S. at 284, 132 S. Ct. at 924)). This definition of breach of loyalty, however, is far too limiting. The “acting for another” language requires a showing of conflict between two people, not including the principal. Here, we have a conflict but not between two people, but of control – an essential element of agency.

(D) An Agent's Refusal to Act Based on their Principal's Interim Instructions Terminates the Agent's Status.

In this case, Petitioner's appointed counsels refused to abide by their principal's interim instructions as to the conduct of the pre-trial investigation and presentation during trial, without informing the principal why they refused to do as Petitioner directed.

The primary factor governing the principal-agent relationship is the ability of the principal to control the agent's actions. Only through this explicitly-required control can a principal be held liable for the negligent acts of his agent. Without this control, no agency would exist. The same is true when this Court considers the instant case.

Petitioner informed his agents after appointment that they were to interview numerous witnesses. Allegedly, these witnesses would provide evidence of the alleged victim's veracity and reputation for veracity, motive testimony for the victim to fabricate the charges against Petitioner, testimonial evidence that Petitioner was not the one sexually abusing the victim, that the victim also stole several thousands of dollars from Petitioner's bank and credit card accounts, *inter alia*.<sup>6</sup> Petitioner's counsels/agents refused to conduct the interviews as requested. Subsequently, the one witness that was already sick with cancer and was known to be dieing died along with her testimony that she observed the mother's boyfriend sexually abusing the victim in her own house and overheard the victim's mother and grandmother making plans to get the Petitioner falsely arrested the very night before the police was given the false statement to get his home searched.

Importantly, this case involves an agent who explicitly refused to abide by interim instructions provided by his principal. Such an express refusal to abide by his principal's interim instruction does constitute abandonment of the principal-agent relationship. This shows that the principal does not have the integral requirement over his agent that should exist: control. As such, without that requirement, no principal-agent relationship exists. Restatement (Third) of Agency § 1.01 cmt. f(1). Furthermore, when the agent refuses to abide by the interim instructions

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<sup>6</sup> Also that there were nine highly trained professionals that believed the deliberate lies the victim told to get her own mother arrested on fake accusations. They refused to interview to get evidence to impeach the state witness.

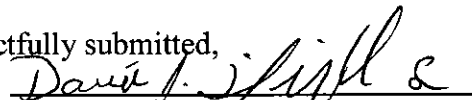
provided by the principal without explanation, the agent has abdicated his position as the principal's agent. In no State or Federal Court has an evidentiary hearing ever been allowed to get at the root of why four court appointed attorneys deliberately refused to prepare the Petitioner's case for trial. Even the Chief Justice of the Eleventh Circuit Court of Appeal states that an evidentiary hearing should be held prior to any ruling being given on the merits of the case before it. See *Chandler v. United States*, 218 F. 3d 1305, 1314 n. 15 (11<sup>th</sup> Cir. 2000) (en banc)

This Court should therefore exercise its Certiorari Jurisdiction to consider and determine whether the agent's actions abdicated his position as an agent when the agent refuses to abide by the principal's interim instructions without explanation.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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