No. 21-6036

In The
Supreme Court Of The United States

BRIAN DAVID HILL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent,

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

PETITION FOR A WRIT OF CERTIORARI

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Dated: October 12, 2021

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I. Questions Presented

Where the U.S. Court of Appeals didn't properly grant a Certificate of Appealability to an improperly dismissed § 2255 Motion/Case asserting Actual Innocence and later on asserted the ground of Fraud on the Court in the case while pending disposition. Both grounds of fraud on the Court and actual innocence, which are not subject to a one-year statute of limitations?

Where the U.S. District Court improperly and unlawfully dismissed § 2255 Motion/Case without an opportunity to conduct discovery, without an evidentiary hearing to address the actual innocence ground and without addressing the uncontested fraud on the court Hazel Atlas motions?

Where the U.S. Court of Appeals completely ignored and avoided the Supreme Court authoritative case law rulings regarding exceptions to the one-year statute of limitations under the Anti-Terrorism and Effective Death Penalty Act ("AEDPA") and improperly denied the Certificate of Appealability?

Where the U.S. District Court had erred on not allowing any expert witnesses to examine the seized

computer of Brian David Hill, formerly of USWGO Alternative News and examine Brian's false confession made on August 29, 2012 in the Town of Mayodan, Rockingham County, North Carolina?

Where the U.S. District Court had erred on not allowing any expert witnesses to examine why supposed files of interest which the prosecutor proclaimed was alleged child pornography was downloading between July 20, 2012, and July 28, 2013? Even after the seized computer of Brian David Hill, formerly of USWGO Alternative News was seized by, the Town of Mayodan Police Department on August 28, 2012 according to a copy of the Search Warrant filed pro se by Brian Hill?

Where case law precedent in this very Court and other appellate Courts all held that Actual Innocence and cause of showing prejudice can overcome a one-year statute of limitations. That the U.S. Court of Appeals had bucked this Court with autonomous case law Whiteside v. United States and acted in disregard for SCOTUS by ruling that there are no exceptions to the one year of limitations including no Actual Innocence Exception?

Where the "due process of law" clause of the U.S. Constitution, Amendment V, is being deprived and ignored by the U.S. District Court in the Middle district of North Carolina and the supervisory Court known as the U.S. Court of Appeals. That is by denying the Certificate of Appealability knowing that there were two Constitutional grounds which would be an exception to the AEDPA one year statute of limitations for Federal Writ of Habeas Corpus Petitioners aka § 2255 Motions?

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U.S. Court of Appeals for the Fourth Circuit; case no. #20-6034 and #19-7755; Petition for Rehearing denied on August 17, 2021, Appeal dismissed on December 18, 2020.

IV. Petition for Writ Of Certiorari

Brian David Hill ("Petitioner"), a criminal defendant and civil case 2255 Petitioner respectfully petitions this court for a writ of certiorari to review over the judgment of the U.S. Court of Appeals ("Appeals Court"), wrongfully denying the Certificate of Appealability (JA 5) for the judgment (JA 38, 40) of the United States District Court ("Trial Court"). That wrongful judgment of the Trial Court denying and dismissing the § 2255 civil case which that decision was favorable to the Respondent: United States of America, and to its officer Anand Prakash Ramaswamy, Assistant United States Attorney for the Middle District of North Carolina.

The U.S. Court of Appeals for the Fourth Circuit ("Appeals Court") under consolidated case nos. #19-7755 and #20-6034, are of the originating case(s) where the timely filed consolidated appeal(s), were originally filed and the very case(s), which are being appealed to the United States Supreme Court. This appeal is to undo a miscarriage of justice of the Appeals Court refusing to fix the miscarriage of justice of the Trial Court. The miscarriage of justice by denying Petitioner's § 2255 Motion and dismissing Petitioner's § 2255 case while pending uncontested Motions were still pending upon its record. Petitioner's contentions in all of those uncontested motions were undisputed. Undisputed contentions that Petitioner is

factually innocent of his original federal charge of possession of child pornography under Title 18, United States Code, Section 2256(8)(A). He was indicted on November 25, 2013. Wrongfully convicted on November 12, 2014. Uncontested and undisputed Motions concerning prime facie facts of the Prosecution consistently perpetuating frauds upon the Trial Court by the corrupt Assistant United States Attorney, an officer of the Court. That would be Anand Prakash Ramaswamy not contesting the fraud claims made by Petitioner on the record. Frauds concerning guilt of a criminal defendant points towards factual innocence. That is true, as a Prosecutor of a criminal case need not to commit a fraud whenever they feel that they have credible evidence against the guilty suspect. If a suspect is truly guilty then why does the Government need to commit any fraud at all against a criminal suspect? Committing the offenses of multiple frauds upon any Court is usually subject to vacatur and/or any other sanctions against the offending Officer of the Court. As a matter of law, those Motions should have been granted prior to disposing of the § 2255 case. One of those uncontested Motions such as Document #222 was about asking the Court for default judgment in Petitioner's favor in the pending § 2255 case. However, the U.S. Attorney in 21-days, even 30-days for Summary Judgment motions, did not contest that Motion.

The Appeals Court had failed and refused to hold that the Trial Court should have held an evidentiary hearing over all of the issues, evidence, and controlling case law brought to the Court's attention throughout the § 2255 case. The Appeals Court had failed and refused to hold that the Trial Court should have appointed counsel to assist the Petitioner and allow expert witnesses to examine the conflicting contradictory evidence of the corrupt U.S. Attorney Office.

The Appeals Court had failed and refused to hold that the Trial Court should have granted all uncontested Motions in the § 2255 case pursuant to Local Rule 7.3 paragraphs (f) and (k) MOTION PRACTICE. The law required the § 2255 Motion to succeed. The Local Rule required it. The SCOTUS law required it.

The Appeals Court had failed and refused to hold that the Trial Court should have considered all facts and prima facie evidence of those uncontested motions in the § 2255 case.

The Appeals Court had failed and refused to hold that the U.S. Supreme Court already had ruled for countless times that there is an "Actual Innocence" exception to the one-year statute of limitations under the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"). The Appeals Court had claimed in their opinion that there are only four commencement dates enumerated in 28 U.S.C. § 2255(f), and that there is no Actual Innocence exception for Federal

Writ of Habeas Corpus petition filers. There is an exception. Actual Innocence is the exception.

The Appeals Court had used contradictory case law under Whiteside v. United States, 775 F.3d 180, 182-83 (4th Cir. 2014) (en banc); and that very case contradicts with the following Supreme Court cases dealing with the one-year statute of limitations for those claiming the ground of **Actual Innocence**:

1. Bousley v. United States, 523 U.S. 614 (1998);
2. Murray v. Carrier, 477 U.S. 478 (1986);
3. McQuiggin v. Perkins, 569 U.S. 383 (2013);
4. Schlup v. Delo, 513 U. S. 298 (1995);
5. House v. Bell, 547 U. S. 518 (2006);
6. and Herrera v. Collins, 506 U. S. 390 –405 (1993).

The Fourth Circuit has no right to buck the existing precedential laws of this Supreme Court and make its own autonomous case law contradicting the Supreme Court's multiple established case laws. There is no purpose or reason for the U.S. Supreme Court to even exist if the inferior Courts do not wish to follow its verdicts and do not have to follow its verdicts. It is a waste of taxpayers' money to have a Supreme Court if the District Courts and Appellate Courts can simply ignore the Supreme Court and make counter case laws to directly contradict the laws of the Supreme

Court. The SCOTUS has a responsibility to ensure that the inferior Courts follow all past Supreme Court verdicts to resolve disputes between Circuit Courts when those verdicts have not been overturned at a later time. Appeals Courts cannot just say or act like they do not have to follow the Supreme Court rulings. That is treason. Dereliction of duty. SCOTUS must enforce its case law by making an example out of these rebellious Appeals Courts, otherwise SCOTUS case laws are deteriorating, and have no legal effect anymore. By not fixing these rebellious inferior Courts, the Supreme Court has no authoritative laws or rules in real effect anymore, they are now meaningless to the Trial Courts and Appeals Courts. They are the ones rebelling here. They are rebelling against your Court. They do not care.

V. Opinions Below

The decision by the U.S. Court of Appeals to deny the Certificate of Appealability (JA 5) was due to Whiteside v. United States, 775 F.3d 180, 182-83 (4th Cir. 2014) (en banc) which is erroneous in itself. That case law itself is contradictory to six or more case law authorities set by this Supreme Court. Actual Innocence is supposed to overcome the procedural hurdles and defects, this Court had said so multiple times.

Anyways, the judgment at issue is regarding the Appeals Court denying the Certificate of Appealability (JA 5), was reported in an unpublished opinion of UNITED STATES OF AMERICA v. BRIAN DAVID HILL, case Nos. 19-7755 and 20-6034 (December 18, 2020) by the panel of Chief Judge Gregory, Circuit Judge Diaz, and Circuit Judge Harris. Mr. Hill filed a petition for rehearing on the date of January 5, 2021. The U.S. Court of Appeals denied Mr. Hill's petition for rehearing or rehearing en banc on August 17, 2021 (JA 41). That order was unpublished and stated that:

"Brian David Hill seeks to appeal the district court's order accepting the recommendation of the magistrate judge and dismissing as untimely Hill's 28 U.S.C. § 2255 motion. See Whiteside v. United States, 775 F.3d 180, 182-83 (4th Cir. 2014) (en banc) (explaining that § 2255 motions are subject to one-year statute of limitations, running from latest of four commencement dates enumerated in 28 U.S.C. § 2255(f)). The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When, as here, the district court denies relief on procedural grounds, the movant must demonstrate both that the dispositive procedural ruling is debatable and that the motion states a debatable claim of the denial of a constitutional right. Gonzalez v. Thaler, 565 U.S. 134, 140-41 (2012) (citing Slack v. McDaniel, 529 U.S. 473, 484 (2000)). We have independently reviewed the record and conclude that Hill has not made the requisite showing... Accordingly, we deny a certificate of appealability and dismiss the consolidated appeals. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process." (Citations omitted)

In addition, the opinion denying the petition for rehearing had said: "The court denies the petition for rehearing and rehearing en

banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc. Entered at the direction of the panel: Chief Judge Gregory, Judge Diaz, and Judge Harris."

VI. Jurisdiction

Mr. Hill's petition for hearing to the U.S. Court of Appeals was denied on August 17, 2021 (JA 41). Mr. Hill invokes this Court's jurisdiction under 28 U.S.C. § 1254(1), having timely filed this petition for a writ of certiorari within sixty days of the United States Court of Appeal's final judgment under 28 U.S.C. § 2101.

VII. Constitutional Provisions Involved

United States Constitution, Amendment V:

> "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 offense to be put twice 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."

United States Constitution, Amendment VIII:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

VIII. Statement of the Case

This case is regarding an Actually Innocent man, Brian David Hill, the above named Petitioner, who'd been given a miscarriage of

justice in the above referenced appeal consolidated case numbers. In violation of the Eighth Amendment of the U.S. Constitution in prohibition of cruel and unusual punishments inflicted. Not just the Eighth Amendment but also the Fifth Amendment requiring that nobody at law or equity be "be deprived of life, liberty, or property, without due process of law".

He had proven his innocence and this Petition will explain why the Appeals Court should have granted the Certificate of Appealability as a matter of right and as a matter of law.

This case presents very important questions of exceptional circumstances as to whether or not the Appeals Court of the United States should have refused to render any appellate review by denying the Certificate of Appealability. These miscarriages of justice cannot be resolved in the lower courts anymore; they are ignoring the precedent set by this Court. They are ignoring all evidence, even the Prosecutor's evidence when it contradicts the Prosecutor's factual basis of the Guilt proclaimed against Petitioner. The whole criminal case against Petitioner was a farce, a contradiction; it is a fraud, a big fat fraud. This is just like with President Trump and the stolen elections. Petitioner is a victim of fraud after fraud after fraud. Due process violation after due process violation after another.

Here are the facts for the Justices to consider:

1. The 2255 Motion, Brief, Evidence Exhibits, Additional Evidence

On November 14, 2017, Brian Hill filed under Document #125 a "MOTION to Vacate, Set Aside or Correct Sentence (pursuant to 28 U.S.C. 2255)". That same day, Petitioner filed Documents #128, #128-1, and #128-2; which is the brief and memorandum of law as it was split into pieces in attached documents of #128: "MEMORANDUM by BRIAN DAVID HILL re [125] Motion to Vacate/Set Aside/Correct Sentence (2255) filed by BRIAN DAVID HILL. Civil Case 1:17CV1036." Then Documents #129 and #130 contain evidence Affidavits by Petitioner. The Exhibits in attachment to the brief were filed as Documents #131, #132, #133, and #134. All were filed on the same day.

On Document #135, the U.S. Attorney was directed to file a response within 60 days of the date of the U.S. Magistrate Judge's order on November 16, 2017.

On December 4, 2017, Petitioner had filed Documents #136, #137, #138, and #139 Declarations with attached evidence proof documents. Document #137 was the first initial pleading with evidence proving that the U.S. Attorney Office for the Middle District of North Carolina had defrauded the Court in regards to its witness Kristy L. Burton of the U.S. Probation Office, Danville division. U.S. Probation Officer Kristy L. Burton of the Western District of Virginia had committed perjury before that Court. Kristy L. Burton was never punished for her crime despite the factual evidence of her perjury because charging her with perjury

would force the Corrupt Prosecutor Anand Prakash Ramaswamy to admit perjury fraud upon the Court so he will never prosecute his perjurer witness before the Court. Even a good FBI Agent would push to prosecute her. She has been protected by the Corrupt Prosecutor, to never face any charges, which is corruption and criminal activity by being allowed to commit perjury against Petitioner without ever facing criminal consequences for her actions. For example, in 2019, Roger Jason Stone had been SWAT team raided by the U.S. FBI and had faced multiple criminal charges of lying to Congress.

So why has USPO Kristy L. Burton not faced charges for lying under Oath in the Trial Court but yet the U.S. District Court in Washington, DC convicted Roger Stone of lying to Congress? A two tiered justice system maybe?

2. The Motion to Dismiss and attempting to bar Petitioner from filing; and cover up filings

On January 10, 2018, the corrupt U.S. Attorney Office for the Respondent: United States of America had filed under Document #141 a "MOTION to Dismiss Motion to Vacate, Set Aside, or Correct Sentence by USA". A Roseboro letter was issued under Document #142 by the Clerk, that same day. That motion was contested by the Petitioner and a timely response was filed on January 26, 2018 under Document #143. The Respondent had never filed a reply to the opposition brief when "Replies due by 2/9/2018."

On March 7, 2018, Petitioner had filed "Petitioner's Motion and Brief for Leave to File Additional Evidence" and the additional evidence that Petitioner was requesting permission for the Court to file in the § 2255 case under Documents #144, and #145.

On March 23, 2018, the Respondent had filed the "RESPONSE to Motion AND BRIEF FOR LEAVE TO FILE ADDITIONAL EVIDENCE AND GOVERNMENTS MOTION FOR PRE-FILING INJUNCTION" and brief / memorandum of law under Documents #148, and #149.

On April 6, 2018, the Petitioner had filed a timely response against the corrupt Respondent for filing this erroneous request for a pre-filing injunction under Document #150. Petitioner had contested that motion timely.

Out of fear of the U.S. Attorney Office completely disregarding Petitioner's long-term health condition of Autism Spectrum Disorder and demanding a pre-filing injunction, Document #151 Motion was filed with "Petitioner's Motion for requesting Psychological/Psychiatric Evaluation to Determine actual Innocence factor under False Confession element and to resolve the controversy/conflict between Government and Petitioner..." That motion was uncontested when: "Response to Motion due by 7/17/2018." Government never responded to that motion. That motion was never contested by Respondent(s).

The uncontested Motions showing Fraud on the Court and Actual Innocence forevermore:

On January 30, 2019, The Petitioner had filed his second uncontested motion under Document #169 in his § 2255 case such as "MOTION for Hearing and for Appointment for Counsel filed by BRIAN DAVID HILL. **Responses due by 2/20/2019**." That motion made claims, uncontested claims and I quote that:

Doc. #169 Citation: "I won't let a guy in a hoodie...stop me from proving my factual innocence in this case...The fraud upon the Court is caused by both ineffective assistance of Counsel forcing me to falsely plead guilty under Oath, and a fraud upon the Court by a false factual basis of guilt in this criminal case...The fraud in the fact that I never got to review over the entire discovery evidence with Attorney Eric David Placke, before he persuaded me to falsely plead guilty under Oath means I had plead guilty without understanding the full weight of the very evidence that the prosecution had used against me in my case...The "Factual Basis" of my guilt provided by the Government prior to sentencing was Fraudulent. My confession statements were proven to be inaccurate and false, a false confession caused by my Autism because of the way I was interrogated... The SBI, that is the State Bureau of Investigation and through their Case File (forensic report) reported files/images/videos of interest but there was NO affidavit verifying/confirming whether each such file could have been actual child pornography. In addition to that, the SBI case file said that 454 files had been downloaded with the eMule program between July 20, 2012, and July 28, 2013, while my computer was seized on August 28, 2012. The criminal Judgment of guilty on November 12, 2014, was a fraudulent Judgment based upon fraud on the Court. Letter respectfully filed with both the Hon. Magistrate Judge of the Court and the AUSA Ramaswamy on this the 24th day of January, 2019." (Citations omitted)

Again, "Responses due by 2/20/2019" but the U.S. Attorney Office who had defrauded the Court had not contested those exact

claims; Petitioner's contentions were undisputed. Petitioner is innocent. Brian David Hill = Innocence.

3. The Additional Motions for Sanctions

Petitioner was angry that the Government demanded a pre-filing injunction whenever they had defrauded the Court in many different ways, the way the Federal Prosecutor had lied about Petitioner in his case. Petitioner felt that justice needed to be done against the Prosecutor. He wanted sanctions against this bully.

On October 4, 2019, Brian Hill filed under Document #199 a Hazel Atlas "MOTION entitled "Motion for Sanctions and to Vacate Judgment in Plaintiff's/Respondent's Favor" "Motion and Brief/Memorandum of Law in Support of Requesting the Honorable Court in this case Vacate Fraudulent Begotten Judgment or Judgments" filed by BRIAN DAVID HILL. Response to Motion due by 10/25/2019. (Attachments: # 1 Supplement 1, # 2 Supplement 2, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Envelope - Front and Back) (Civil Case number: 17CV1036) (Garland, Leah) (Entered: 10/04/2019)". That motion was uncontested by the United States Attorney and no response was ever filed by October 25, 2019 or any future date. 21-day response deadline.

On October 16, 2019, Brian Hill filed under Document #206 a Hazel Atlas "MOTION entitled "Petitioner's Second Motion for Sanctions and to Vacate Judgment that was in Plaintiff's/Respondent's Favor; Motion and

Brief/Memorandum of Law in support of Requesting the Honorable Court in this case Vacate Fraudulent begotten Judgment or Judgments" filed by BRIAN DAVID HILL. Response to Motion due by 11/5/2019. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Supplement 1, # 4 Supplement 2, # 5 Supplement 3, # 6 Supplement 4, # 7 Envelope - Front and Back) (Garland, Leah) (Entered: 10/16/2019)". That motion was uncontested by the United States Attorney and no response was ever filed by November 5, 2019 or any future date. 21-day response deadline.

On November 8, 2019, Brian Hill filed under Document #217 a "MOTION entitled "Request that the U.S. District Court Vacate Fraudulent Begotten Judgment, Vacate the Frauds upon the Court against Brian David Hill", filed by BRIAN DAVID HILL re: 199 Motion. Response to Motion due by 12/2/2019 (Attachments: # 1 Envelope - Front and Back) (Garland, Leah) Modified on 11/12/2019 to correctly link document. (Garland, Leah) (Entered: 11/08/2019)". That motion was uncontested by the United States Attorney and no response was ever filed by December 2, 2019 or any future date. 21-day response deadline.

On November 21, 2019, Brian Hill filed under Document #222 a "MOTION entitled "Petitioner's third Motion for Sanctions, Motion for Default Judgment in 2255 case and to Vacate Judgment that was in Plaintiff/Respondent's favor" filed by BRIAN DAVID HILL. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6

Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Supplement 1, # 12 Envelope - Front and Back) (Garland, Leah) (Entered: 11/21/2019)". That motion was uncontested by the United States Attorney on the U.S. District Court record as no response was ever filed addressing the allegations on the record of the U.S. District Court. Even if the Local Rules construe that this pro se Motion be treated as a Motion for Summary Judgment, the Respondent would have had 30-days to respond to that Motion after it was served upon them but never was responded to. There were other motions or pleadings with fraud claims, which were never contested. However, the Supreme Court will have the ability to review over those as well upon granting Certiorari and determine that the Trial court's record is riddled with fraud and jurisdictional defects/errors upon its judicial machinery. That would be enough to contaminate the entire case as fraudulent, out of bounds, outside of jurisdiction, Constitutional deprivations, Deprivations of Due Process of Law in excess of jurisdiction, and even prejudices of the Trial Court. All directly caused as a result of the Respondent's repeated pattern of fraud as outlined in Documents #169, #199, #206, #217, and #222, maybe even more Documents.

4. The U.S. Magistrate's recommendation that the § 2255 Motion case be dismissed, then case dismissal despite the uncontested Motion asking for Default Judgment in Petitioner's favor

On October 21, 2019, the U.S. Magistrate Judge had entered a Document #210: "ORDER AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE signed by MAG/JUDGE JOE L. WEBSTER on 10/21/2019, ORDERED that Petitioner's motion to file additional evidence (Docket Entry [144]) is granted. RECOMMENDED that the Government's motion to dismiss (Docket Entry [141]) be granted, that Petitioner's motion to vacate, set aside or correct sentence (Docket Entry [125]) be dismissed, or in the alternative denied, and that this action be dismissed." (Citation omitted). See JA 11-37.

On November 1, 2019, the Petitioner had timely filed his objections with the Court under Document #213 to the U.S. Magistrate Judge's ORDER and RECCOMMENDATION. Petitioner had contested the recommendations.

However, according to Document #211:

"Notice of Mailing Recommendation", it had said that: "A party may respond to another party's objections within 14 days after being served with a copy."

The Respondent aka the U.S. Attorney Office did not file a response to Petitioner's objections either. Petitioner's objections were not contested by the Government when given a written notice that the Respondent clearly could have filed a response within the allotted two-week deadline.

On December 31, 2019, on New Year's Eve, the Judgment and Order was entered dismissing the § 2255 case (JA 38-41). See order under Documents #236 and #237. That order was entered while pending Hazel

Atlas motions filed inside the § 2255 case were uncontested by the Government. One of those motions was asking for Default Judgment aka Summary Judgment in Petitioner's favor. That motion was uncontested and therefore the Government had waived their right to respond. Petitioner's § 2255 Motion and case had been illegitimately denied. Petitioner had been deprived of victory, deprived of due process of law. Petitioner had won his case, and he had proven his innocence. His uncontested motions had proven this.

Brian David Hill = Innocence. See why.

Local Rule 7.3 (f) and (k) said and I quote that:

LR 7.3 MOTION PRACTICE (k) "Failure to File and Serve Motion Papers. The **failure to file a brief or response within the time specified in this rule shall constitute a waiver of the right thereafter** to file such brief or response, **except upon a showing of excusable neglect**. A motion unaccompanied by a required brief may, in the discretion of the Court, be summarily denied. A response unaccompanied by a required brief may, in the discretion of the Court, be disregarded and the pending motion may be considered and decided as an uncontested motion. **If a respondent fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion, and ordinarily will be granted** without further notice."

LR 7.3 MOTION PRACTICE (f) "Response to Motion and Brief. The respondent, if opposing a motion, **shall file a response, including brief, within 21 days after service of the motion (30 days if the motion is for summary judgment**; see LR 56.1(d)) **(14 days if the motion relates to discovery**; see LR 26.2 and LR 37.1). If supporting documents are not then available, the respondent may move for an extension of time in accordance with section (g) of this rule. For good cause appearing therefor, a respondent may be required to file any response and supporting documents, including brief, within such shorter period of time as the Court may specify."

The rule said again, that: "**failure to file a brief or response within the time specified in this rule shall constitute a waiver of the right thereafter**". The U.S. Attorney Office had waived the right to respond to all claims made by Petitioner in each and every uncontested motion. Petitioner's contentions are true. Innocent!

In fact, the Clerk had tried to enforce that same Local Rule 7.3 on Petitioner for any Motion the Government had filed against Petitioner. There is a reason why this Roseboro letter was entered after the Government's motion to Dismiss was filed when the Government did not receive a Roseboro letter for every pro se motion, which Petitioner had filed against the Government. That was because the Government lawyer is an officer of the Court while Petitioner is not an officer of the Court. The officers' of the Court know the rules; and have understood them. So that they have to follow all of the rules of the Court without a written reminder such as a Roseboro letter. Anyways, the Clerk had enforced that same rule on Petitioner in the Trial Court's Roseboro Letter under Document #142.

Under Document #142 partial citation and reformatted of the Roseboro Letter:

CITATION: Roseboro Letter, Re: Case: 17CV1036/13CR435; HILL v. USA "**Ordinarily, uncontested motions are granted**. Therefore, your **failure to respond or, if appropriate, to file counter affidavits or evidence in rebuttal within the allowed time may cause the court to conclude** that the **respondent's contentions are undisputed. As a result, the court may dismiss your suit or render judgment against you.** Therefore, unless you file a response in opposition to the respondent's motion, it is likely your case will be dismissed or summary judgment will be

granted in favor of the respondent. Any response or counter affidavits or other responsive material to a Motion to Dismiss **must be filed within 21 days from the date of service of the respondent's motion** upon you."

Again, Document #222 a "MOTION entitled "Petitioner's third Motion for Sanctions, **Motion for Default Judgment in 2255 case** and to **Vacate Judgment that was in Plaintiff/Respondent's favor**" was uncontested. The Respondent had waived their right to challenge and respond to Petitioner's contentions that he had won his case because Petitioner did not defraud the Court unlike Anand Prakash Ramaswamy, the Officer of the Court who had originally prosecuted the entire criminal case and was Respondent in the § 2255 case. Petitioner was entitled to his § 2255 Motion being granted as a matter of law on two grounds, which were not subject to a procedural time bar. Those two grounds are Ground #1, which is Actual Innocence, and Ground #2 is proving Fraud on the Court.

See this Court's decision under Chambers v. Nasco, Inc., 501 U.S. 32 (1991) (citation partially omitted) ("...Id. Chambers, 501 U.S. 32, 33 (1991) ("(a) Federal courts have the inherent power to manage their own proceedings and to control the conduct of those who appear before them. In invoking the inherent power to punish conduct which abuses the judicial process, a court must exercise discretion in fashioning an appropriate sanction, which may range from dismissal of a lawsuit to an assessment of attorney's fees.") Id. Chambers, 501 U.S. 32, 44 (1991) ("Of particular relevance here, **the inherent power also allows a federal court to vacate**

its own judgment upon proof that a fraud has been perpetrated upon the court. See Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944); Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 580 (1946). This "historic power of equity to set aside fraudulently begotten judgments," Hazel-Atlas, 322 U.S., at 245, is necessary to the integrity of the courts, for "tampering with the administration of justice in [this] manner . . . involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." Id., at 246. Moreover, a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud. Universal Oil, supra, at 580.")

Again, as to the Order dismissing the case, the Trial Court had ruled that: "Finding neither a substantial issue for appeal concerning the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, a certificate of appealability is not issued." That decision was a mistake as it is not true. The substantial issues are of actual innocence and prosecutorial fraud on the Court.

Note: It should be noted that no evidentiary hearing was ever conducted prior to dismissal of the entire § 2255 action despite the uncontested claims of Petitioner and the Government's motion to dismiss being contested by Petitioner. No discovery was ever conducted, and neither was it allowed. Discovery would have shown the alleged

download dates of being 11 months and 8 days after Petitioner's computer was seized by Mayodan Police Department, and only one month while in Petitioner's custody. That right there smells of a set up operation or forensics gone wrong or both.

On January 3, 2020, Petitioner had filed a timely "NOTICE OF APPEAL without payment of fees by BRIAN DAVID HILL re: [236] Order and [237] Judgment 2255."

On September 11, 2020, the U.S. Court of Appeals had consolidated case Nos. 19-7755 and 20-6034 (JA 3).

On December 18, 2020, the U.S. Court of Appeals had denied the Certificate of Appealability and Dismissed the appeal of the Trial Court's decision with its docket entry entitled "JUDGMENT ORDER filed. Decision: Dismissed. Originating case number: 1:13-cr-00435-TDS-1,1:17-cv-01036-TDS-JLW. Entered on Docket Date: 12/18/2020. [1000867795] Copies to all parties and the district court/agency. Mailed to: Brian Hill. [19-7755, 20-6034] JSN [Entered: 12/18/2020 08:58 AM]". They also entered their "UNPUBLISHED PER CURIAM OPINION filed." See JA 5 and JA 9.

On January 5, 2021, the Petitioner had filed a timely "PETITION for rehearing and rehearing en banc by Brian David Hill in 19-7755, 20-6034. [19-7755, 20-6034] JSN [Entered: 01/06/2021 09:07 AM]".

On August 17, 2021, the U.S. Court of Appeals had denied the petition for rehearing with its docket entry entitled "COURT ORDER filed denying

Motion for rehearing and rehearing en banc [10] in 19-7755. Copies to all parties. Mailed to: Brian Hill. [1001005318] [19-7755, 20-6034] JSN [Entered: 08/17/2021 02:17 PM]". See JA 41-42.

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IX. REASONS FOR GRANTING THE WRIT

A. This case presents an opportunity to ensure uniformity among the circuits and respect for the core principle of this Court that Actual Innocence overcomes the one-year statute of limitations to prevent a grave miscarriage of justice against an Innocent Man or Woman

This Court has the ability to use its authority to grant the Petition for Writ of Certiorari, then order and remand to keep the uniformity of the Circuits after the Supreme Court had created controlling case law over all Circuits. That is to resolve the issues with a resolution that Actual Innocence may overcome the procedural defects of a one-year statute of limitations.

Again, see the case law that this very Court had set:

1. Bousley v. United States, 523 U.S. 614 (1998);
2. Murray v. Carrier, 477 U.S. 478 (1986);
3. McQuiggin v. Perkins, 569 U.S. 383 (2013);
4. Schlup v. Delo, 513 U. S. 298 (1995);
5. House v. Bell, 547 U. S. 518 (2006);
6. and Herrera v. Collins, 506 U. S. 390 –405 (1993).

The Appeals Court had wrongfully used contradictory case law under Whiteside v. United States, 775 F.3d 180, 182-83 (4th Cir. 2014) (en banc). That Appeals Court's holding contradicts this Supreme Court's holdings on exceptions to the one-year statute of limitations under AEDPA. Whiteside was created after those Supreme Court authoritative cases as a rebellious backlash out of disagreement with the Supreme Court's earlier decisions and verdicts. It disrespects the authority of this Supreme Court and takes away from the Constitutional authority vested in this Supreme Court. The Appeals Court is rebelling against this Court for no good reason at all. They are rolling back six case laws by this Supreme Court with newer case law. They are rolling back the Actual Innocence exception with their own autonomous case law.

They are using defective case law that goes back to after the multiple rulings of this Supreme Court. The multiple rulings that proving Actual Innocence warrants an exception to the one-year statute of limitations under the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"). That single case of Whiteside v. United States in 2014 from the Appeals Court contradicts with the foregoing Supreme Court cases dealing with the one-year statute of limitations for those claiming the ground of Actual Innocence. Whiteside v. US is bad law and must be overwritten or modified by this Supreme Court

to maintain the uniformity of the Circuits so that things do not go into disarray. Whiteside case brings disarray and hopelessness.

Petitioner requests that this Court should hold that Whiteside v. United States, 775 F.3d 180, 182-83 (4th Cir. 2014) (en banc) conflicts with the SCOTUS's holdings of exceptions to the one-year statute of limitations, running from latest of four commencement dates enumerated in 28 U.S.C. § 2255(f). Petitioner requests with this Court to hold that Whiteside v. United States is bad law. Petitioner requests with this Court to hold that Whiteside v. United States should be modified by this Court to keep the uniformity with all Circuit Courts who comply with the controlling case laws of Bousley v. United States, 523 U.S. 614 (1998); McQuiggin v. Perkins, 569 U.S. 383 (2013); and House v. Bell, 547 U. S. 518 (2006).

Bousley v. United States, 523 U.S. 614, 615 (1998) ("To pursue the defaulted claim in habeas, he must first demonstrate either "cause and actual prejudice," e.g., Murray v. Carrier, 477 U.S. 478, 489, or that he is "actually innocent," id., at 496."). That is the law, your case law. Not, Whiteside.

McQuiggin v. Perkins, 569 U.S. 383, (2013) ("To overcome AEDPA's time limitations, he asserted newly discovered evidence of actual innocence, relying on three affidavits, the most recent dated July 16, 2002, each pointing to Jones as the murderer."). However, in

Petitioner's case the newly discovered evidence of Petitioner's actual innocence is the uncontested fraud on the court motions filed in the § 2255 case. Particularly Document #169 and Document #222. Uncontested claims of fraud by Petitioner is newly discovered evidence right from the record of the Trial Court. The claims made here does not relitigate what is already on the record, the truth and facts are there if the judges would simply review over it all. A certificate of appealability should have clearly been issued here.

McQuiggin v. Perkins, 569 U.S. 383, (2013) ("Actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in Schlup v. Delo, 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d 808, and House v. Bell, 547 U.S. 518, 126 S. Ct. 2064, 165 L. Ed. 2d 1, or expiration of the AEDPA statute of limitations, as in this case. Pp. 391-398, 185 L. Ed. 2d, at 1030-1034.")

McQuiggin v. Perkins, 569 U.S. 383, (2013) ("(a) Perkins, who waited nearly six years from the date of the 2002 affidavit to file his petition, maintains that an actual-innocence plea can overcome AEDPA's one-year limitations period. This Court's decisions support his view. The Court has not resolved whether a prisoner may be entitled to habeas relief based on a freestanding actual-innocence claim, Herrera v. Collins, 506 U.S. 390, 404-405, 113 S. Ct. 853, 122 L.

Ed. 2d 203, but it has recognized that a prisoner "otherwise subject to defenses of abusive or successive use of the writ may have his federal constitutional claim considered on the merits if he makes a proper showing of actual innocence," id., at 404, 113 S. Ct. 853, 122 L. Ed. 2d 203.").

McQuiggin v. Perkins, 569 U.S. 383, (2013) ("The Court has applied this "fundamental miscarriage of justice exception" to overcome various procedural defaults, including, as most relevant here, failure to observe state procedural rules, such as filing deadlines. See Coleman v. Thompson, 501 U.S. 722, 750, 111 S. Ct. 2546, 115 L. Ed. 2d 640. The exception, the Court's decisions bear out, survived AEDPA's passage. See , e.g., Calderon v. Thompson, 523 U.S. 538, 558, 118 S. Ct. 1489, 140 L. Ed. 2d 728; House, 547 U.S., at 537-538, 126 S. Ct. 2064, 165 L. Ed. 2d 1. These decisions "see[k] to balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary case." Schlup, 513 U.S., at 324, 115 S. Ct. 851, 130 L. Ed. 2d 808. Sensitivity to the injustice of incarcerating an innocent individual should not abate when the impediment is AEDPA's statute of limitations. Pp. 391-394, 185 L. Ed. 2d, at 1030-1031.")

The decision by the U.S. Court of Appeals is plainly incorrect, erroneous, contrary to, and contradictory to the very law set by this Court. **It is this Court's discretionary duty to grant Certiorari.**

B. To Correct an Injustice and to compel a Court to comply with its own Rules and the Laws set by this Supreme Court. To prevent a miscarriage of justice, misapplication of law. To protect an Innocent man.

This Court has the ability to use its authority to grant the Petition for Writ of Certiorari, then order and remand to correct an injustice and to prevent a permanent miscarriage of justice. To be able to compel the Appeals Court to comply with the Rules of this Court, and to compel the Trial Court to comply with its own rules and controlling case law of this Supreme Court.

It clearly is an injustice whenever Petitioner was compelled by the Local Rule 7.3 to answer the Government's motion to Dismiss the Petitioner's § 2255 case, but the Government does not have to be compelled to answer Petitioner's motions under Documents #169, #199, #206, and #222. However, the Government lawyer who is an officer of the Court is bound by the rules of the Court, bound by principles, and bound by his/her Oath of Office. The Government did not respond to any of Petitioner's pro se motions in the § 2255 case with exception to the § 2255 Motion under Document #125 and the Petitioner's request for leave of Court to file additional evidence under

Documents #144 and #145. The Respondent did not file any objection or opposition brief to any other Motion filed throughout the Petitioner's § 2255 case.

The same rules they had enforced on Petitioner in his 2255 case are not being enforced against the counsel of the Government aka the Respondent: United States of America. This is selective enforcement of the law. It makes the law virtually unenforceable or selectively enforced in violation of the Equal Protection Clause and Fifth Amendment under the U.S. Constitution.

Even though the Equal Protection Clause itself applies only to state and local governments, this Supreme Court held in Bolling v. Sharpe, 347 U.S. 497 (1954), that the Due Process Clause of the Fifth Amendment or Fourteenth Amendment nonetheless imposes various **equal protection requirements on the federal government via reverse incorporation. All laws must be enforced and be equally enforced, that is why we even have laws.** If an officer fails or refuses to fulfil his duty, then he has become essentially a useless official, wasting the resources, time, and legitimacy of his respective office. When a rule of each respective Court establishes that when a motion is not responded to by a certain time period deadline aka a statute of limitations or rule of limitations, that party of a case had waived their right to respond to that motion and had waived their right to challenge the facts presented in that motion. Without a response in opposition thereto, there is nothing challenging the validity of the claims said in a particular motion when not disputed by the parties affected by that filed motion.

It is clear that Petitioner had made uncontested factual claims of FACTUAL INNOCENCE. Again, let us review over part of Document #169 once again.

DOCUMENT #169, MOTION for Hearing and for Appointment for Counsel filed by BRIAN DAVID HILL. Responses due by 2/20/2019. (Attachments: # (1) Envelope - Front and Back) (Garland, Leah). That was never responded to either. As somebody who had read the State Bureau of Investigation forensic report from the discovery materials in 2015 and saw the download dates. Those download dates of being 11 months and 8 days after the computer was seized by law enforcement. That itself is evidence tampering, evidence planting, and breaks away any notion of any possibility of credible compliance with the strict forensic standards in computer forensics investigations. It is all a fraudulent prosecution. It is all entirely a fraud on the court and the Trial Court's duty was to throw out the entire case and grant those four uncontested motions as a matter of law. They did not.

> Citation: Document #169 said ""...a false confession caused by my Autism because of the way I was interrogated. The SBI, that is the State Bureau of Investigation and through their Case file (forensic report) reported files/images/videos of interest but there was NO affidavit verifying/confirming whether each such file could have been actual child pornography. In addition to that, the SBI case file said that 454 files had been downloaded with the eMule program between July 20, 2012, and July 28, 2013, while my computer was seized on August 28, 2012. The criminal Judgment of guilty on November 12, 2014 was a fraudulent Judgment based upon fraud on the Court..."

It is on the record on appeal that the fraud had been proven. The fact that Document #169 made bombshell claims against the reviewed discovery materials of the Federal Prosecution and they did not respond to it by the date of February 20, 2019, adds more credibility to Petitioner's claims that he had proven fraud on the court, multiple times; the entire criminal prosecution was grounded in fraud. Petitioner had proven his actual innocence; there is no doubt about that on the record. Discovery materials was entirely reviewed in 2015. Wrongfully convicted in 2014.

The Certificate of Appealability clearly should have been issued by the Court of Appeals. There is plenty of convincing proof.

The Trial Court had no jurisdiction to deny those uncontested motions under Local Rule 7.3; they were supposed to be granted as a matter of law. Criminal Case should have been dismissed and final conviction should have been vacated by default judgment through the inherit powers of the Court. The Appeals Court should have observed the exceptions to the AEDPA statute of limitations for the § 2255 Motions and that Petitioner's Motion should have been granted on Actual Innocence and Fraud as legitimate grounds as asked in the Document #222 Motion for Default Judgment. Default judgment was warranted.

Case laws: "Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action." Melo v. US, 505 F2d 1026 (8th Cir. 1974). "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." Hagans v. Lavine, 415 U. S. 533 (1974). "Once challenged, jurisdiction cannot be assumed, it must be proved to exist." Stuck v. Medical Examiners, 94 Ca 2d 751. 211 P2d 389 (Cal. Ct. App. 1949). "The burden shifts to the court to prove jurisdiction." Rosemound Sand Gravel Co. v. Lambert Sand, 469 F.2d 416 (5th Cir. 1972). "The law provides that once State and Federal Jurisdiction has been challenged, it must be proven." Main v. Thiboutot, 100 S. Ct. 2502 (1980). "A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court". OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8, 27 S. Ct. 236 (1907).

This case presents this Court with an opportunity to clarify that the Appeals Court, which had inappropriately denied the Certificate of Appealability. They had wrongfully allowed the wrongful judgment of the Trial Court dismissing the § 2255 Motion. That is a miscarriage of justice. It is a miscarriage of justice whenever inferior Courts refuse to

protect its integrity and judicial machinery by allowing factual fraud upon its record, allowing lies and misinformation upon its record. It is a miscarriage of justice whenever inferior Courts even refuse to grant uncontested motions of a factual prima facie nature when those very uncontested motions defaulted the credibility of the U.S. Attorney's entire prosecution as FRAUDULENT. Thus, it had brought forth a challenge to its jurisdiction to have ever entered such an order. The jurisdiction has been forfeited by the Government for what they have done. They are all null and void judgments. Absent intervention by this Court, the U.S. Court of Appeals and the U.S. District Court will work to undermine the duty of their respective offices by ignoring the Supreme Court laws and by denying any factual uncontested motions of proven fraud by any party or even by any attorney. They will ignore their own local rules but yet enforce those same local rules, but then refuse to enforce those very rules on the Government counsel.

This undoes carefully crafted procedural safeguards set by the Due Process of Law under the Fifth Amendment of the United States Constitution, and unifying case law across the country. Unifying case law that this Court and other Courts of this great country have spent for the past hundred or more of years developing the opinions regarding the inherit or implied powers of every Courthouse in the United States. Its own ability to undo fraudulent begotten judgments. It will create a

nationwide disconnect from the factual matter, facts will no longer matter as lies contaminate the Federal Court records, deception permitted in the records of the Federal Courts. That will contradict case law precedent across the country and will show all Courts of Appeals' and Trial Courts' that they do not have to follow the law and that the requirement for valid legal jurisdiction does not matter anymore. It will allow Courts to ignore the factual evidence of uncontested motions with proven claims that they want at their discretion when past case law ruled that judges are in excess of jurisdiction by not fulfilling their ministerial duties to correct any fraudulent begotten judgments upon any proof or undisputed claims of defrauding the Court which contaminates the Judicial Machinery. Petitioner had won his case, default judgment should have been granted in his favor. The Certificate of Appealability should have been issued as the record is well grounded in law and merit.

Speaking of merit, the Appeals Court erred when they overlooked a very serious issue of merit. The Trial Court admitted in its own OPINION from the Magistrate Judge that merits do not matter. The Trial Court held that even if Petitioner had proven his actual innocence aka even if Petitioner had proven he had merit, the Trial Court would have denied it as untimely filed. Deemed it as untimely filed under the Anti-Terrorism and Effective Death Penalty Act ("AEDPA") in complete

contradiction with this Court's holding that Actual Innocence may overcome a procedural defect. See the Trial Court's opinion below.

Citing Page 19 of Magistrate's Recommendation, JA 29: "g. The Merits; As explained above, all of Petitioner's grounds are time-barred. However, if the Court were to reach the merits of Petitioner's grounds for relief, it would deny them."

There you have it. The Magistrate had basically stated on the record that it does not matter if Petitioner had proven his merits, even if those merits are not subject to time bar. Saying that the Court would deny them even if Petitioner had proven his innocence. Like they ignored the uncontested motions and uncontested contentions of Petitioner. The Trial Court never wanted to believe in Petitioner's innocence and they never will; unless the Supreme Court demands that the Appeals Court reverse its erroneous decision, Order and Demand, and compel the Appeals Court to grant Petitioner's petition for a Certificate of Appealability. It is a due process violation and a due process deprivation to say that even if Petitioner had merit, the Court would deny it knowing that SCOTUS made multiple rulings regarding Actual Innocence exception must be afforded to Federal Writ of Habeas Corpus petitioners. The inferior Courts are completely ignoring due process of law. They are ignoring Actual Innocence as if the exception does not exist to the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"). This Court had ruled otherwise. There is an exception. That

exception is being ignored by the Appeals Court. SCOTUS needs to correct this. S.O.S. Help!

X. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment of the U.S. Court of Appeals wrongfully denying the Certificate of Appealability, Order and Remand for further proceedings. Petitioner respectfully requests that this Court hold that the U.S. Court of Appeals issue a Certificate of Appealability for the issues of Actual Innocence, Fraud on the Court, and Constitutional issues.

II

DATED this 12th day of October, 2021.

Respectfully submitted,

Brian D. Hill
Signed
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U.S.W.G.O.

WHERE WE GO ONE, WE GO ALL!