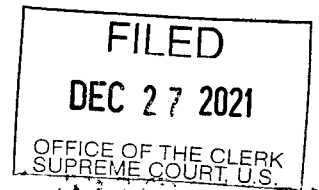


21-6789

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

SINGH, GURPREET — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeal for Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SINGH, GURPREET
(Your Name)

110 Wells Farm Road
(Address)

GOSHEN, NY 10924
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether United States Court of Appeals for Second Circuit was required to consider the "clear and convincing" evidence standards for applying an "actual Innocence" exception to avoid a procedural bar to the one year statutory filing deadline expiration of the AEDPA's 1996 statute of limitations?
2. If the petitioner presents evidence of "Innocence" so strong that the Tumor Court cannot have confidence in the outcome of the trial, unless the Court also satisfied that the trial was free of non harmless Constitution error, then the petitioner should be allowed to pass through the gateway and to argue the merits of his underlying claims?
3. Fifth Circuit Entitled Alien to "equitable tolling" of Statute of Limitations, Second Circuit should also grant petitioner's Habeas petition to reconsider his Constitutional claims in instant case? Reasoning for filing Circumstances?

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

SINGH Vs. U. States of America, 20-CV-572

SINGH Vs. U. States of America, 21-1649

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	Decision of U.S. Court of Appeal For Second Circuit
APPENDIX B	Decision of U.S. District Court of Northern District of New York.
APPENDIX C	Table of Authorities Cited
APPENDIX D	Statement of The Case
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

[See "Appendix C" Please]

STATUTES AND RULES

28 U.S.C. § 2255

OTHER

N/A

<u>CASES:</u>	<u>PAGE #:</u>
<u>Arizona Vs. Fulminante</u> , 499 U.S. 279 (1991)	#3
Berger Court, 1977 S.ct. Rev. 99, 101-102	#3
Bousley Vs. U.S. 614, 620 (1998)	#8
Coleman Vs. Thompson, 501 U.S. 722, 750, 111 S.ct 2546, 115 L.ed. 2d 640	#2
Evitts Vs. Lucey, 469 U.S. 387 (1985)	#9
Gideon Vs. Wainwright, 372 U.S. 335, 372 U.S. 344 (1963)	#10
Herman Vs. Cloudy, 350 U.S. 116, 118, 100 L.ed 126, 129, 76 S.ct 223 (1956)	#10
Haines Vs. Kerner, 404 U.S. 519, 520 (1971)	#3
Herrera, 506 U.S. at 404, 113 S.ct. 853	#3
Hill Vs. A.L.lockhart, 474 U.S. 52, 59, 106 S.ct. 366, 88 L.ed. 2d 203 (1985)	#6
Murray Vs. Carrier, 477 U.S. 478, 496, 91 L.ed 2d 397, 106 S.ct 2639 (1986)	#1
Michigan Vs. Tucker, supra at 448. n. 23	#4
Mcmann Vs. Richardson, 397 U.S. 759, 397 U.S. 771, n.14 (1970)	#5
Machibroda Vs. U.S. 368, U.S. 487, 495, 7 L.ed. 2d 473, 479, 82 S.ct 510 (1962)	#8
Porter Vs. Mccollumn, 558, U.S. 30, 39, 130 S.ct 447 (2009)	#9
Powell Vs. Alabama, 287 U.S. 45 (1932)	#9
Regis Vs. U.s., 665 F.Supp. 2d 370, 371 (S.D.N.Y)	#5
Schlup Vs. Delo, 513 U.S. 298, 115 S.ct. 851 L.ed. 2d 808	# 1
Shreder Vs. CSX Transp.Inc, 70 F.3d 255, 257 (2 nd Cir. 1995)	#4

Appendix C

Sears Vs. Upton, 561 U.S. 945, 956, 130 S.ct. 3259, 177 L.ed 2d 1025 (2010)	#6
SotoBelton Vs. U.S. 946 F.Supp. 2d 319, 317 (S.D.N.Y. 2013)	#7
Stankowitz Vs. Wing, 698 F.3d 1163 (9 th Cir. 2012)	#7
Sanders Vs Sullivan, 863 F.2d 218, 224 (2 nd cir. 1988)	#10
Sanders Vs. U.S., 373 U.S. 1, 10 L.ed 2d 148, 83 S.ct 1068(1963)	#11
Town Vs. Smith, 395 F.3d 251, 258 (6 th Cir. 2005)	#7
U.S. Vs. Barron, 172 F.3d, 1153, 1161 (9 th Cir. 1999)(en-banc)	#8
U.S. Vs. Mayo, 14 F.3d 128, 132 (2 nd Cir. 1994)	#2
U.S. Vs. Alessi, 638 F.2d 466, 479 (2nd Cir. 1980)	#2
U.S. Vs. Sasso, 59 F.3d 341, 350 (2 nd Cir 1995)	#2
U.S. Vs. Lap Sang, 934 F.3d 110, 130 (2 nd Cir. 2019)	#4
U.S. Vs. Gray, 878 F. 2d, 702, (3rd Cir. (1989)	#6

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; 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 _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 17th November, 2021.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was May 17th, 2021
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment VI

"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."

STATEMENT OF THE CASE

[See "Appendix D", Please]

STATEMENT OF THE CASE

I Singh, Gurpreet, Pro-se petitioner maintain that an actual-innocence plea can overcome AEDPA's one year limitations period. Actual-innocence, if proved, serves as a gateway through which petitioner may pass whether the impediment is a procedural bar, as it was in Schlup Vs. Delo, U.S. 298, 115 S.Ct. 851, 130 L.Ed. 2d 808, or expiration of the AEDPA statute of limitations, as in this case. Petitioner has no knowledge of AEDPA limitations of one year, when he filled petition in Northern District of New York. Murray Vs. Carrier, 477 US 478, 496, 91 LEd 2d 397, 106 Sct 2639 (1986). "Where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of showing of cause for the procedural default".

Fifth Circuit stated that an alien is entitled to equitable tolling of statute of limitations only if he establishes two elements: 1). that he has been pursuing his rights diligently and, 2). that some extraordinary circumstance stood in his way and prevented timely filing. The first element requires the alien to establish that he pursued his rights with "reasonable diligence" not

“maximum feasible diligence”. The second element requires the alien to establish that an extra ordinary circumstance “beyond his control” prevented him from complying with the applicable deadline. Petitioner had no one in his family, has attended Law school or become an attorney, he was unable to follow legal developments in the Courts in United States, and neither he nor his family could afford to regularly consult with an attorney regarding complicated legal system decisions.

The court has not resolved whether a prisoner may be entitled to Habeas relief based on a freestanding actual-innocence claim but Supreme Court 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. The Court has applied this “fundamental miscarriage of justice exception” to overcome various procedural defaults, including, as most relevant here, failure to observe procedural rule, such as filing deadlines. See Coleman Vs. Thompson, 501 U.S. 722,750, 111 S.ct.2546, 115 L.Ed.2d 640.

These decisions “seek to balance the societal interests in finality, comity, and conservation of scarce judicial resources with the individual interests in justice that arises in the extraordinary case”. Sensitivity to the injustice of incarcerating an innocent individual should not abate when the impediment is AEDPA’s statue of limitations. Federal Habeas Court, faced with an actual-innocence gateway claim, should count unjustifiable delay on habeas petitioner’s part, not as an absolute barrier to relief, but as a factor in determining whether actual-innocence has been reliably shown. A petitioner invoking the miscarriage of justice exception “must show that it is more likely than not that no reasonable juror would have convicted him in the light of new evidence”. Schlup, 513 U.S. at 327, 115 S.ct.851. the court should not grant a motion for a new trial based on a newly discovered evidence unless it is persuaded, inter alia, that the evidence is indeed “new”, See U.S. Vs. Mayo, 14 F.3d 128, 132(2nd Cir. 1994), and the defendant’s failure to discover the evidence cannot be attributed to a lack of due diligence, See U.S. Vs. Alessi, 638 F.2d 466, 479 (2nd Cir. 1980). The denial of a new trial motion is reviewed for abuse of discretion, See U.S. Vs. Sasso, 59 F.3d 341, 350 (2nd Cir. 1995).

“Taking account of the delay in the context of the merits of a petitioner’s actual-innocence claim, rather than treating timeliness as a

threshold inquiry, is tuned to the exception's underlying rationale of ensuring "that federal constitutional errors do not result in the incarceration of innocent persons". Herrera, 506 U.S. at 404, 113 S.ct. 853.

Haines Vs. Kerner, 404 U.S. 519, 520(1971) "stating that 'the allegations of the pro-se complaint' are held to less stringent standards than formal pleadings drafted by lawyers". Petitioner requesting this Honorable Court to forgive-excuse his mistake for filing late his petition and permitting him to go for evidentiary hearing in federal court if the "facts underlying the claim would be sufficient to establish by 'clear and convincing' evidence that but for Constitutional error, no reasonable factfinder would have found the petitioner guilty of the underlying offense". Petitioner requesting this Honorable court to allow him to pass the gateway of AEDPA's time limitation bar to relief because due to the limited understanding of legal language and system, petitioner thought "the factual predicate for claim could not have been discovered previously through the exercise of due diligence" until court made the final decision regarding petitioner's previous vacated conviction and was waiting for final disposition of those charges to provide evidence of his innocent. In Schlup, Supreme Court stated, 'a court may consider how the timing of the submission and the likely credibility of a petitioner's affiant bear on the probable reliability of the evidence of actual innocence'. 513 U.S. at 332, 115 S.ct. 851.

See Coleman, supra, at 750, 111 S.ct 2546 'expressed a willingness to excuse a petitioner's default, even absent a showing of cause, "where a constitutional violation has probably resulted in the conviction of one who is actually innocent". Petitioner claiming in his habeas motion as a "Due Process claim" and violation of his "Constitutional Right" to effective assistance of counsel, that the particular conviction rested on an 'coerced confession' which was mentally beaten out of his mind and poor decisions made by his defense attorney. In the Burger Court, 1977 S.ct. Rev. 99, 101-102. "Under this approach Court examined the 'totality of circumstances' to determine whether a confession had been made freely, voluntarily and without compulsion or inducement of any sort" See also Arizona Vs. Fulminante, 499 U.S. 279 (1991) 'court continue to employ the "totality of circumstances" approach when addressing a claim that the introduction of an involuntary confession has violated due process'.

"A system of criminal law enforcement which comes to depend on the 'confession' will, in the long run, be less reliable and more subject to

abuses' than a system relying on independent investigation". Michigan Vs. Tucker, supra, at 448, n.23. The only evidence which was submitted by the Government in Northern District of New York federal court trial was confession made by the petitioner, which were illegally obtained by the county law enforcement officials. After petitioner's underlying conviction and charges had been dismissed in whole in 2019, when Honorable Grand jury did not find Petitioner Guilty of those charges, that evidence is inadmissible after the conviction was dismissed and sealed pursuant to New York Criminal Law & 160.50(1){sealed and Accordance with CPL & 160.50(c), sealing of all official records and papers shall be sealed and not made available to any person or public or private agency} .Any evidence like charges, plea, police report regarding this case should be inadmissible in any civil or criminal court proceedings. In any civil and criminal proceedings in federal court, evidence of withdrawn or guilty plea or of any statement made in the course of plea proceedings and negotiations would not be admissible Fed. R. Evidence 410. Petitioner is innocent; the reviewing court must somehow predict the effect that this new evidence would have had on deliberations of reasonable juror. It must necessarily weigh this new evidence in some manner, and may need to make credibility determinations as to witnesses who did not appear before original jury. Shrader Vs. CSX Transp., Inc, 70 F.3d 255, 257 (2nd Cir. 1995) "Reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked matters, in other words, that might reasonably be expected to alter the conclusion reached by the court". U.S. Vs. Lap Sang, 934 F.3d 110, 130 (2nd Cir. 2019) "A court may reverse a guilty verdict only if evidence that the defendant committed the crime is non existent or so meager that no reasonable jury could find guilt beyond a reasonable doubt".

In Holland, Supreme Court observed, "AEDPA seeks to eliminate delays in the federal habeas review process. But AEDPA seeks to do so without undermining basic habeas corpus principles and while seeking to harmonize the new statute with prior Law, when Congress codified new rules governing this previously judicially managed area of Law, it did so without losing sight of the fact that the writ of habeas corpus plays a vital role in protecting "Constitutional Rights". An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.

McMann V. Richardson, 397 U.S. 759, 397 U.S. 771, n.14(1970)

“ because lateral review will frequently be the only means through which an accused can effectuate the right to counsel, restricting the litigation of some Sixth Amendment claims to trial and direct review would seriously interfere with an accused’s right to effective representation. A layman indigent will ordinarily be unable to recognize counsel’s errors and to evaluate counsel’s professional performance; consequently a criminal defendant will rarely know that he has not been represented competently until after trial or appeal, usually when he consults another lawyer about his case. Indeed, an accused will often not realize that he has a meritorious ineffectiveness claim until he begins collateral review proceedings.

In Strickland V. Washington, the U.S. Supreme Court articulated a highly ‘demanding’ and ‘rigorous’ standard for ineffective assistance of counsel claims. The petitioner must establish both (1) “that his lawyer’s performance ‘fell below an objective standard of reasonableness” (the Performance prong) and (2) “that ‘there is reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different”. (The Prejudice prong).

For ineffective assistance of counsel’ claims, the Supreme Court explained in Strickland V. Washington, “the bench mark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial proceed that the trial cannot be relied on as having produce a just result”. Representation is deficient, under Strickland test, when counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. To prevail on an ineffective assistance of counsel claim, a petitioner must demonstrate that counsel’s representation fell below an objective standard of reasonableness and that the petitioner was prejudiced by the ineffective assistance of counsel.” The errors in the counsel judgment must therefore be “so serious that counsel was not functioning as the counsel guaranteed by the Sixth Amendment”. Regis V. U.S., 665 F.Supp. 2d 370, 371(S.D.N.Y 2009). In assessing whether the defendant had made that showing, the reviewing court must consider the totality of the available mitigation evidence, both that adduced at trial and the evidence adduced in Habeas proceeding, and reweigh it against the evidence in obtaining that conviction. Record makes clear petitioner has demonstrated counsel’s deficient performance under his Strickland Claims.

In evaluating whether counsel's errors prejudiced the outcome of the proceeding, the court must consider the totality of the evidence before the jury. Strickland, 466 U.S. at 693. To satisfy the prejudice prong Strickland, a petitioner need not show that counsel's deficient conduct more likely than not altered the outcome in the case, rather, only that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. "A proper analysis of prejudice under Strickland would have taken into account the newly uncovered mitigation evidence, along with the mitigation evidence introduced during the defendants penalty phase trial, to assess whether there is a reasonable probability that the defendant would have received a different sentence after constitutionally sufficient mitigation investigation" Sears V. Upton, 561 U.S. 945, 956, 130 S.ct. 3259, 177 L.Ed 2d 1025(2010) prejudice here requires only a 'reasonable probability that at least one juror would have struck a different balance regarding petitioner's moral culpability'. Prejudice inquiry necessarily requires a court to speculate as to effect of the new evidence on the trial evidence, regardless of how much or little mitigation evidence was presented during the initial penalty phase. A "reasonable probability" does not mean a certainty, or even a preponderant likelihood, id. at 694, 104 S.ct. 2052, of a different outcome, nor, even more, that no rational juror could constitutionally find petitioners guilty. The actual resolution of the conflicting evidence, the credibility of witnesses is exactly that task should be performed by a rational jury, considering a case presented by competent counsel on both sides.

Petitioner argued in his Habeas Petition that "Ineffective assistance of Counsel when counsel was aware of the petitioner's Alibi defense but failed to present it to the Jury. Had counsel presented the alibi defense witnesses at trial, there is a reasonable probability that no juror would have found the petitioner guilty of the crime charged and counsel would have argued about the illegally obtained inadmissible evidence of petitioner's coerced confession in the trial court". United States V. Gray, 878 F.2d 702 (3rd Cir. 1989) "counsel prejudicially failed to hire investigator or conduct any pretrial investigation, including contacting potential witnesses".

Hill V. A.L.Lockhart, 474 U.S., 52, 59, 106 S.ct. 366, 88 L.Ed. 2d 203(1985) "stating that the determination whether the error prejudiced the defendant will depend in large part on a prediction whether the evidence likely would have changed the outcome of trial". The standard of proof for

prejudice prong is less than a preponderance of the evidence. Soto-Beltran V. U.S., 946 F. Supp. 2d 312, 317 (S.D.N.Y. 2013)

Petitioner provided counsel with names and written affidavit, addresses and phone numbers of the alibi defense witnesses. Counsel was aware of Alibi witnesses but failed to present it. Based on the unmitigated negligence of petitioner's trial counsel in failing to conduct any discovery, combined with the likelihood of success of a Motion &440 had it been timely made in Jefferson County Court in 2016, deprived petitioner of effective representation. Such failure in instant case was not, as required under Strickland, reasonable and in accord with prevailing professional norms. Such a complete lack of pretrial preparation puts at risk both the defendants right to an ample opportunity to meet the case of the prosecution and a reliability of the adversarial testing process. In this case total failure to conduct pretrial discovery, suggests no better explanation for this apparent and pervasive failure to make reasonable investigations or to make reasonable decisions that makes particular investigation unnecessary. Stankewitz V. Wong, 698 F.3d 1163 (9th Cir. 2012) "counsel failed to investigate and present readily available mitigation evidence".

The most important phase of the case was direct testimony from the victim herself, as well as from alibi witnesses which were never considered by trial counsel to testify in critical situation. "The duty to investigate derives from counsel's basic function, which is to make adversarial testing process work in the particular case". Towns V. Smith, 395 F.3d 251, 258 (6th Cir. 2005) "this duty includes the obligation to investigate all witnesses who may have information concerning his or her client's guilt or innocence". The counsel did nothing to explore these options in this case. The requirement that trial counsel investigate a possible defense is clearly established.

Transcripts evidence also shows that trial counsel did not properly investigate petitioner's alibi defense. In that light, there is a reasonable probability that, had defense counsel further investigated and called witnesses or other people with them, the jury would have found petitioner not guilty. Petitioner did not plead guilty and asked for grand jury trial. Defense counsel knew that, his client is innocent. Petitioner told his defense counsel that he did not want to plead guilty to something he did not do. Counsel even advised him that the probability of prosecution's case is too strong being permitted to the use of confession only as evidence is sufficient to convince him that government case is too strong to contest. Whether that

advice was within range of competence demanded of attorney's in criminal cases because petitioner was facing felony charges are entitled to the effective assistance of competent counsel. Where the unconstitutional factor was coerced confession, it was not necessarily true that counsel's role was so limited. It was counsel's competent decision to provide an opportunity to challenge the admissibility of allegedly coerced confession but counsel was so ineffective to produce any defense or legal argument against inadmissible evidence.

Petitioner requesting this Honorable Court to provide him hearing for the coerced confession claims presented in his Habeas petition. Supreme Court held that a post-conviction hearing must be afforded to defendants whole allegations of constitutional deprivation raise factual issues and are neither "vague" "conclusory" or "palpably incredible" Machibroda V. U.S. 368, U.S. 487, 495 7Led 2d 473, 479, 82 Sct 510 (1962) not "patently frivolous or false".

In **Justice Holmes** words: "what we have to deal with is not the petitioner's innocence or guilt but solely the question whether their constitutional rights have been preserved". Supreme Court accordingly has not hesitated to grant Habeas Corpus relief when there was little question that the constitutionally wronged, petitioner was guilty. Bousley V. U.S. 523 U.S. 614, 620 (1998) "one of the principle functions of habeas corpus is to assure that no man has been incarcerated under a procedure which creates an impermissibly large risk that the innocent will be convicted". U.S. V. Barron, 172 f.3d 1153, 1161(9th Cir. 1999)(enbanc) "28 U.S.C. 2255 incorporates the fundamental principle that it is never just to punish a man or woman for an innocent act".

Defense counsel kept saying that, he believes his client but it's hard to prove his innocence because of those statements which were made by petitioner even though they were coerced and illegally obtained and submitted by the government. Defense counsel filed motion to suppress those statements which were obtained by the Violation of petitioner's Fifth Amendment but never tried to produce any defense and expert opinion to litigate against that evidence. It is both practical and desirable that a proper determination of volunteriness of a confession be made prior to the admission of the confession to the Jury which is adjudicating guilt. If in no circumstances could the confession be deemed voluntary, if an issue of coercion is presented, the District Judge may not resolve conflicting

evidence or arrive at his independent appraisal of the voluntariness of the confession, one way or other. These matters he must leave to the jury.

Petitioner objecting to the admission of a confession is entitled to a fair hearing in which both the underlying factual issues and the voluntariness of the confession are actually and reliably determined. Petitioner in some details explained how that confession was procured, at every stage of his trial proceedings but counsels failed to raise no material objections to that evidence and cross examined the government's witnesses only briefly. It is unquestioned that under prevailing professional norms at time of the petitioner trial, counsel had an obligation to conduct a thorough investigation of the defendant's background." Porter V. Mccollum, 558 U.S. 30, 39, 130 S.ct 447(2009). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all circumstances, applying a heavy measure of deference to counsel's judgments". Wiggins, 539 U.S., at 521-522

"The right to effective assistance of counsel is not confined to trial, but extends to the first appeal as of rights". Evitts V. Lucey, 469 U.S. 387(1985). Defense Counsel appealed as petitioner asked him to do so, but later Counsel advised him to withdraw his appeal because he have no defense strategy to win an appeal and we are going to loose it and then District Court will sentence him the 'Maximum Sentence' rendered in violation of 1425(a) which is 5 year's incarceration. Because of that incompetent advice in last step of the trial, petitioner prejudiced with his counsels performance again. In Powell V. Alabama, 287 U.S. 45(1932), the layman defendant 'requires the guiding hand of counsel at every step in proceedings against him'. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issues or other wise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he has the perfect one".

Counsel ignored pertinent avenues for investigation of which he should have been aware, and indeed was aware and known evidence would have led a reasonable attorney to investigate further. Counsel disregarded investigation at all rather than explored, the multiple red flags. Calling alibi witnesses during the trial in mitigation phase that could have served as

powerful mitigating evidence. Failure to investigate thoroughly resulted from inattention, not reasoned strategic judgment. Petitioner told counsel that detective Romano was being untruthful on the stand, but counsel made no real attempt to probe the accuracy of his testimony. Counsel did not rebut the whole critical evidence presented by the government at trial. Petitioner stressed to counsel his innocence of the offense but counsel did not attempt to rebut the government's evidence that counsel concededly failed to investigate. Herman V. Claudy, 350 U.S. 116, 118, 100 L.ed 126, 129 76 S.ct 223 (1956) "A conviction following a trial is or a plea of guilty based on confession extorted by violence or by mental coercion is invalid under the federal due process clause".

Petitioner must also prove that his 6th amendment claim is meritorious and there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice. "The right to counsel is a fundamental right of criminal defendants; it assures the fairness and thus the legitimacy, of our adversary process" See Gideon V. Wainwright, 372 U.S. 335, 372 U.S. 344 (1963). The essence of an effective assistance claim is that counsel's unprofessional errors so upset the adversarial balance between defense and prosecution that the trial was rendered unfair and the verdict rendered suspect. See Strickland V. Washington, 466 U.S. 686.

The factual finding by the district court 'is clearly erroneous' when there is a evidence to support petitioner's innocence and affirmed that conviction without providing any evidential hearing regarding the reliability of 'new evidence' a mistake has been committed by the court. Habeas petition may also be granted if the district's court decision was based on an unreasonable determination of the facts in light of the 'new evidence' presented in petitioner's Habeas petition. The **Second Circuit** has explained that "it simply intolerable if state allows innocent person to incarcerated on the basis of lies". Sanders V. Sullivan, 863 F.2d 218, 224 (2nd Cir. 1988). Petitioner's claim of innocence does not by itself provide a basis of relief. Instead petitioner's claim for relief depends critically on the validity of his Strickland claims. Claim of innocence is thus "not itself a constitutional claim but instead, a gateway through which a Habeas petitioner must pass to have his otherwise barred Constitutional claims considered on the merits". Petitioner presenting evidence so strong to Honorable district Court and this Honorable Court of appeals, that a court cannot have confidence in the

outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error, the petitioner should be allowed to pass through the gateway and argue the merits of his underlying claims.

In Sanders V. U.S., 373 US 1, 10 L Ed 2d 148, Set 1068 (1963), Supreme Court held that a Habeas court must adjudicate even a successive habeas claim when required to do so by the "ends of justice".

REASONS FOR GRANTING THE PETITION

- Petitioner received Constitutionally deficient assistance of Counsel and there is not sufficient evidence to sustain a Unlawful Inurement of Citizenship Conviction.
- The District Court erred in denying Petitioner a 'COA' on any of his claim presented in his habeas petition. As held in Slack, an applicant for a 'COA' need not show the appeal will succeed on the merits and the Court of Appeals for Second Circuit should not have denied the issuance of Certificate of Appealability "COA" "merely" because it believes the applicant will not demonstrate an entitlement to relief. Based upon the record, and upon consideration of the foregoing, this Honorable Supreme Court should issue petition to consider the merits of Petitioner's claims.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

G. Singh

Date: December 16th, 2021