CASE NO: 21-7364

IN THE
SUPREME COURT OF THE
UNITED STATES

In Re: David Lopez
PETITIONER
-V-
United States of America
RESPONDENT

PETITION FOR REHEARING PURSUANT TO DENIAL OF APPLICATION FOR WRIT OF PROHIBITION FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT UNDER 28 U.S.C. 165(a).

DAVID LOPEZ
FED. REG. # 17702-180
FEDERAL CORRECTIONAL
INSTITUTION - LA TUNA
P.O. BOX 3000
ANTHONY, NM/TX 88021

DECLARATION OF AFFIANT OR PARTY WITHOUT COUNSELOR OR REPRESENTATION.

THE UNDERLYING DECLARATION IN SUPPORT OF A PETITION FOR REHEARING IS HEREBY MADE UNDER PENALTY OF PERJURY.

PETITIONER FURTHER DECLARES THE DECLARATION IS MADE NOT TO FURTHER THESE PROCEEDINGS OR FOR OTHER NEFARIOUS PURPOSES.

This is to certify that Petitioner David Lopez, pursuant to Rule 39 of the Supreme Court Rules, is proceeding in this Petition informa pauperis.

Petitioner further certifies that his application for Rehearing is presented in good faith and not for delay. Petitioner understands that the filing of this Petition is predicated on either intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented.

DATE: May 9, 2022.

RESPECTFULLY SUBMITTED,

DAVID LOPEZ
AFFIANT PETITIONER

CONSTITUTION ISSUE RAISES IN THIS PETITION

WHETHER THE 8TH AMENDMENT BAN ON THE IMPOSITIONS OF "EXCESSIVE FINES" OR PUNISHMENT IS IMPLICATED IN DAVID LOPEZ'S PROSECUTION AND THE SUBSEQUENT FORFEITURE OF HIS SPOUSE'S WELL DOCUMENTED HOME, FROM AN INHERITANCE, IMPERMISSIBLY IGNORING THE " INNOCENT OWNER" DOCTRINE.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE EIGHT AMENDMENT VIOLATION IN WHICH MANY STATE AND LOCAL LAW ENFORCEMENT GENERATE REVENUE.

As threshold matter, Petitioner AVERT that his case constitutes " an imprimatur, not only for a miscarriage of Justice, but a clear case that Violates the Supreme Court holding in Timbs V. Indiana (citations omitted)

In Timbs V. Indiana, the Court February 20, 2018 unanimously ruled that the 8th Amendment's ban on the imposition of "excessive fines" applied to States as well as to the federal government. The ruling was expected to increase scrutiny on the widespread but controversial practice of civil asset forfeiture, by which many State and Federal law enforcement agencies generated income. Exhibit 1-APPENDIX A. Terry Lopez V. Martinez at al- filed U. S. District Court, Southern District of Texas, Terry Lopez V. Martinez et al – Case NO. 21-50317 U.S. Court of Appeals for the Fifth Circuit.

Further, in the landmark decision of the Supreme Court, Dred Scott V. Sanford, the Court declared on unconstitutional the already repeated Missouri compromise of 1820 because it deprived a person of property --- Although Dred Scott V. Sanford involved a slave, the overarching principle applies in this case because Terry Lopez's home of more than thirty years constitutes property in the Dred Scott context, where Terry Lopez was deprived of her property without due process of law.

QUESTIONS PRESENTED IN GOOD FAITH AND NOT FOR DELAY

ISSUE 1

WHETHER THE SUPREME COURT'S FAILURE TO ADHERE TO ITS OWN RULES, CREATES A DANGEROUS PRECEDENT IN THE ADMINISTRATION OF JUSTICE, WHEN IT SET ASIDE, SUPREME COURT RULE 22-1. THE RULE IN PERTINENT PART STATES, AND DAVID LOPEZ PARAPHRASES;

> ... A PETITION CAN BE DIRECTED TO THE ASSOCIATE JUSTICE IN CHARGE OF THE CIRCUIT WITH SUPERVISORY AND JURISDICTIONAL CONTROL OVER THE PETITIONER". FURTHER, IF THE PETITION IS DENIED BY THAT PARTICULAR ASSOCIATE JUSTICE, THE PETITIONER CAN RE-SUBMIT HIS CLAIMS TO ANOTHER JUSTICE OF THE SUPREME COURT, INCLUDING THE CHIEF JUSTICE..."

ISSUE 2

BY FAILING TO FOLLOW ITS OWN RULES, THE SUPREME COURT, THE HIGHEST COURT OF THE LAND, CREATED AN "IMPRIMATUR FOR A MISCARRIAGE OF JUSTICE." IT ALSO CONSTITUTES A COUNTER FRICTION TO ITS TIME HONORED HOLDING THAT

> "...AS LONG AS THERE IS EVIDENCE OF THE VIOLATION OF A FEDERALLY PROTECTED RIGHT, COURTS MUST DO JUSTICE BY GRANTING RELIEF".

ISSUE 3

DAVID LOPEZ'S PETITION FOR A WRIT OF PROHIBITION WAS NOT TRANSFERRED, PURSUANT TO RULE 22-2 OF THE SUPREME COURT RULES, TO THE ASSOCIATE JUSTICE IN CHARGE OF THE FIFTH CIRCUIT, TO EXAMINE AND DETERMINE WHY THE LOWER COURTS IN THE FIFTH CIRCUIT FLAGRANTLY AND LITERALLY BROKE EVERY RULE IN THE BOOK. NEITHER DID THIS HONORABLE COURT, SEND LOPEZ, ANY DENIAL OF HIS CLAIMS, ACCORDING TO SUPREME COURT RULE 22-1. THE VIOLATION OF THESE FUNDAMENTAL SUPREME COURT RULES DEPRIVED DAVID LOPEZ THE OPPORTUNITY TO RE-SUBMIT THESE CLAIMS FOR CONSIDERATION, TO ANOTHER ASSOCIATE JUSTICE OF THE SUPREME COURT, INCLUDING THE CHIEF JUSTICE OF THE SUPREME COURT.

IN MARBURY V. MADISON (CITATIONS OMITTED) THIS HONORABLE COURT UNEQUIVOCABLY STATED 'IT IS THE EXCLUSIVE PROVINCE OF THE JUDICIARY TO INTERPRET THE LAW." IN THIS PARTICULAR CASE, A PANEL OF THE FIFTH CIRCUIT DID NOT INTERPRET THE LAW. WHAT IT DID WAS PUTTING TOGETHER A SUPREME COURT CASE, INVOKED OUT OF CONTEXT, a decision of this Honorable Court, Felker v. Turpin (citations omitted) .... which in view of he Supreme Court's position in United States v. Sanders, that there is no res judicata on habeas. Herewith, an excerpt from the Panel of the Fifth Circuit Court of Appeals that is a thinly veiled res judicata; (SEE, APPENDIX A -DENIAL OF PETITION FOR REHEARING)

> "...it is unclear even if, pursuant to 28 U.S.C. Section 2241, which is unclear in light of the Anti-terrorism and Effective Death Penalty Act of 1996, See Felker v. Turpin, 518 U.S. 660-61 & N.3 (1006). Any such authority lies in the hands of the individual circuit judges, not the court of appeals itself. See, Zimmerman v. Spears, 565 F.2d 310, 316 (5th Cir. 1977).

Petitioner David Lopez avers that, serious constitutional questions would arise, if in a case such as his, the government charged him with heinous crimes but the only commonality between him with the David Lopez in the indictment, was the first and last name. If one is looking for a prime example of constitutional issue avoidance, this will be a prime candidate for it. This David Lopez's date of birth, place and country of origin were markedly different. Petitioner David Lopez as EXHIBIT 1000A would demonstrate, was born in Mexico and did not hail from Mexico. He s a full blooded American, stripped, as it were, of one of the most fundamental tenets of the Rule of Law, for which even America's most hated enemies have come to respect. *David Lopez deserves his day in court, but this Honorable court inadvertently by its ruling appears to be in* complicity with the lower courts. Indeed, justice delayed, is justice denied.

DATE: May 9, 2022

RESPECTFULLY SUBMITTED,

DAVID LOPEZ

MEMORANDUM OF POINTS AND AUTHORITIES TO SUPPORT
DAVID LOPEZ'S CLAIM OF CONSTRUCTIVE DENIAL OF TRIAL AND APPELLATE COUNSEL, AND WHY IT IS IN AID OF HIS PETITION FOR REHEARING UNDER RULE 39 OF THE SUPREME COURT RULES

The Sixth Amendment right to counsel is the right to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 n.14 (1970). The benchmark for judging any claim of ineffective assistance of counsel, however, is whether counsel's conduct so undermined the proper functioning of the adversarial process the trial cannot be relied on as having produced a just result. Strickland v. Washington, 466 U.S,. 668, 688 (1984)., also Boykin v. Wainwright, 737 F.2d 1539, 1542 (11th Cir. 1984).

Because a lawyer is presumed to be competent to assist a defendant, the burden is not on the accused to demonstrate the denial of the effective assistance of counsel. United States v. Cronic, 466 U.S. 648, 658 (1984). Ineffectiveness of counsel may be grounds for vacating conviction if;

(1) Counsel's performance fell below an objective standard of reasonableness and;

(2) the defendant was prejudiced by the deficient performance. Strickland, 466 U.S. at 687, 684. "there is no reason for a court deciding an ineffective assistance of counsel claim, to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697.

Thus, if the defendant fails to show that his is prejudiced by the alleged error of counsel, this court may reject the defendant's claim without determining counsel was deficient. See Coulter v. Herring, 60 F.3d 1499, 1504 n.8 (11th Cir. 1995). for performance to be deficient, it must be established that in light of all the circumstances, counsel's performance was outside the wide range of professional competence. 'Strickland, 466 U.S. at 6907.

In other words, when reviewing counsel's decisions, "the issue is not what is possible or "what is prudent or appropriate, but only what is constitutionally compelled." Chandler v. United States, 218 F.3d 1305, 131 (11th Cir. 2000)en banc)quoting Burger v. Kemp. 483 U.S. 776 (2987), cert denied, 531 U.S. 1204 (2001).

Furthermore, "(t)he burden of persuasion is on a petitioner to prove, by a preponderance of the evidence, that counsel's performance was unreasonable." Id. (citing Strickland, 466 U.S. at 688). The burden of persuasion, though not insurmountable, is a heavy one. See Id. at 1314 (citing Kimmelman v. Morrison, 477 U.S. 365 (1986).

"Judicial scrutiny of counsel's performance must be highly deferential," and courts "must indulge (the) strong presumption["that counsel's performance was reasonable and the counsel made all the significant decisions in the exercise of reasonable professional judgment." Id. (quoting Strickland, 466 U.S. at 689-90). therefore, "Counsel cannot be adjudged incompetent for performing in a particular way in a case as long s the approach taken "might be considered sound trial strategy." Id. Darden v. Wainwright, 477 U.S. 168 (1986).

If the record is incomplete or unclear about counsel's actions, then it is presumed that counsel exercised reasonable judgment." Id. at 1314-15 n. 15. Thus, the presumption afforded counsel's performance "on no...that the particular defense lawyer in reality focused on and then deliberately decided to do or not to do a specific act," Id., Rather, the presumption is "that what the particular defense lawyer did at trial ...were acts that some reasonable lawyer might do." Id.

Moreover, "the reasonableness of a counsel's performance is an objective inquiry. "Id. at 1315. For a petitioner to show deficient performance, he "must establish that no competent counsel would have taken the action that his counsel did take." Id. To uphold a lawyer's strategy, a court "need not attempt to divine the lawyer's mental process underlying the strategy." Id. at 1315 n.16. Finally, "(n)o absolute rules dictate what is reasonable performance for lawyers." Id. at 1317. Further counsel dies not provide ineffective assistance when frivolous arguments are not raised on appeal. Jones v. Barnes, 463 U.S. 745 (1983) , see also United States v. Winfield, 960 F.2d 970, 974 (11th Cir. 1992)(attorney not ineffective for acting to argue a meritless issue).

American Bar Association standards are to be used only as "guides" in reviewing whether an attorney's performance is reasonable, reversing a finding of deficient performance where the lower court treated the ABA standards as "inexorable commands that attorneys must "fully comply with." United States v. Mooney, 497 F.3d 397, 404 (4th Cir. 2007)(counsel in criminal cases are charged with the responsibility of conducting *appropriate investigations, both factual and legal, to determine if matters of defense can be developed.)*

The critical issue is whether, applying prevailing professional norms, trial counsel conducted an objectively reasonable investigation to mitigating evidence. Porter v. McCallum, 558 U.S. 30, 40, 130 S.Ct. 447, 452-53, 175 L.Ed.2d 398 (2009); Kramer v. Kemna, 21 F.3d 305, 309 (8th Cir.., 1994)(failure to interview witnesses or discovering mitigating evidence may be a basis for finding ineffective assistance of counsel). "Hart v. Gomez,

174 F.3d 1067, 1070 (9th Cir.. 1996)(a lawyer who fails adequately to investigate, and to introduce new evidence, records that demonstrate his client's factual innocence, or that raises sufficient doubt as to that question to undermine confidence in the verdict, renders deficient performance)."

AN ABUNDANCE OF INVESTIGATIVE AND TRIAL RELATED PREJUDICE WITH RESPECT TO DAVID LOPEZ'S REPRESENTATION

The Third Circuit in A United States v. Kaufman, 109 F.3d 186, 191 (3d. Cir. 1997), also held that in the context of a claim that counsel failed to conduct an adequate investigation prior to the entry of a guilty plea, prejudice is demonstrated by showing that the defendant would have insisted on going to trial instead of pleasing guilty).

APPLICABLE LAW TO DAVID LOPEZ

Generally, claims of ineffective assistance of counsel are analyzed pursuant to Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to prevail on such a claim, Movant must show;

Deficient Performance - But for Counsel(s) unprofessional errors, the result of the proceedings would have been different. Errors such as leaving on the record, and not filing a pre-trial motion fo dismissal by trial counsel, and appellate not raising this jurisdictional issue on Direct Appeal. The defective indictment in which the alleged perpetrator of the crime, another individual with the same name, David Lopez, whose biographical information was markedly different from petitioner David Lopez. Both trial and appellate counsel should have filed a motion to Dismiss the case under Rule 12 of the Federal Rules of Criminal Procedure.

WHAT CONSTITUTES A "REASONABLE PROBABILITY" IN THE CONTEXT OF DAVID LOPEZ'S CLAIMS

The circuits have all been very vocal on this issue. In Ward v. Dretke, 420 F.3d 479, 487 (5th Cir. 205), the court held (prejudice inquiry where the defendant claims that he would have not pled guilty and insisted on going to trial but for counsel's deficient performance partially depends on a precision of what that outcome of the trial might have been); See also, Trottie v. Stephens, 720 F.3d 231, 251 (5th Cir. 2013)(materiality exists if there

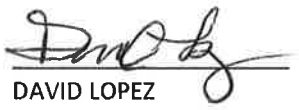
is "a reasonable probability that , had the evidence been disclosed to the defense, the result of the proceeding would have been different.")

CONCLUSION

WHEREFORE, DAVID LOPEZ, moves this Honorable Court, based on the irremediable constitutional violations, that are so basic that their infraction without regard, rendered his trial fundamentally unfair, that they are not susceptible to harmless error analysis. The only fair outcome right now is to set petitioner David Lopez free in the interest of justice.

Date: May 9, 2022

Respectfully Submitted,



DAVID LOPEZ