No. 21-7708

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

AMIT PATEL (Pro-Se) — PETITIONER
(Your Name)

vs.

MARK ROCKWOOD — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

AMIT PATEL
(Your Name)
GOUVERNEUR CORRECTIONAL FACILITY
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(Address)

Gouverneur, New York 13642-0370
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

When the District Court sua sponte "closed the 'Courthouse doors' " upon "Garden-Variety" reasons, dismissing writ of Habeas corpus for 1) statute of limitations, 2) as procedurally time-barred, 3) lacking jurisdiction, 4) not "in-custody". 5) because the petition makes no substantial showing of a denial of a Constitutional Right, and 6) regardless of whether the challenged conviction enhanced a subsequant sentence, but in light of petitioner's pro se status, the court grants petitioner 30 days' leave to file a 'Declaration' alleging facts showing that the Court has jurisdiction (when the court already recognized/acknowledged: petitioner alleges that there is "newly discovered evidence," and refers to a) other habeas corpus actions he has brought in this court that were dismissed without prejudice...) and that the petition is timely to consider, a Certificate of Appealability will not issue. . .

Was petitioner's freedom of speech abridged, and to petition the government for a redress of grievances prohibiting the free exercise thereof, as well as Due Process and Equal Protection of the laws violated, 1st, 5th, and 14th Amendments of the U.S. Constitution?

When the habeas corpus plays a vital role in protecting Constitutional Rights, how can the lower courts ignore a "substantial showing" in "Any attached exhibits..." as per Rule 4 governing § 2254 of habeas corpus cases?

Is the petitioner "in-custody" pursuant to the statutory phrase "in-custody" in 28 U.S.C. § 2241?

Whether there was jurisdiction to issue a Certificate of Appealability under 28 U.S.C. § 2253(c) and to adjudicate petitioner's appeal?

Whether "extraordinary/exceptional circumstances" existed where resort to State Court remedies has failed to afford a full and fair adjudication of the Federal contentions raised, either because the

State affords no remedy, or because in the particular unavailable or seriously inadequate case the remedy afforded by State law proves in practice unavailable or seriously inadequate, should the Federal Court's have entertained petition for habeas corpus without leaving petitioner remediless?

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LIST OF PARTIES

[X] 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

- PATEL v. ROCKWOOD, No. 21-CV-01501, U.S. District Court for the Southern District of New York. Judgment entered June 23, 2021.

- PATEL v. ROCKWOOD, No. 21-CV-01423, U.S. Court of Appeals for the Second Circuit. Judgment entered January 26, 2022.

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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

[X] For cases from **federal courts:**

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

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

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

[X] reported at 2021 WL 2588831; and 2021 WL 1890505 ; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ 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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was December 1st, 2021.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 26th, 2022, 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 _____. A copy of that decision appears at Appendix _____.

[ ] 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

The pertinent statutory provisions involved in this case are 28 U.S.C. §§ 1254, 1291, 1651, 2241, 2242, 2243, 2244, 2253, and 2254, along with 4th, 5th, 6th, 8th, and 14th Amendments of the United States Constitution.

As advised and instructed by Mr. Redmond Barns - (202)-479-3022, Clerk, U.S. Supreme Court, as petitioner is a Pro-Se litigant, only cite the case(s), DO NOT send anything but the petition for Writ of Certiorari, no attachments.

CERTIFICATE OF COMPLIANCE

No.

AMIT PATEL (Pro-Se)

Petitioner(s)

v.

MARK ROCKWOOD

Respondent(s)

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 8,923 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 17th, 2022

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STATEMENT OF THE CASE

Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") to "further the principles of comity, finality, and federalism," Miller-El v. Cockrell, 537 U.S. 322, 337 (2003), "without undermining basic habeas corpus principles," Holland v. Florida, 130 S.Ct. 2549, 2562 (2010). Accordingly, Congress crafted AEDPA's provisions in a manner that preserved the historic "importance of the Great Writ," id., in ensuring that the federal courthouse "doors" remain open to "habeas petitioners seeking" in a timely manner their one opportunity for federal review of their constitutional claims, Panetti v. Quarterman, 551 U.S. 930, 946 (2007). See also H.R. Rep. No. 23, 104th Cong., 1st Sess. 9 (Feb. 9, 1995)("This reform will curb the lengthy delays in filings that now often occur in federal habeas corpus litigation, while preserving the availability of review when a prisoner diligently pursues state remedies and applies for federal habeas review in a timely manner.") Intended to limit the scope of federal habeas review, AEDPA prohibits habeas relief to a person in custody pursuant to the judgment of a State-Court of a defendant's constitutional claim unless it appears that § 2254 (b)(1)(B)(i) there is an absence of available State corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant. (3)(d)(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal Law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence

presented in the State Court proceeding. 28 U.S.C. § 2254.

Several features in the text of AEDPA's statute of limitations demonstrate that, as with its civil statute of limitation counterparts, § 2244(d)'s purpose was to promote multiple goals, including not just finality, but other policies such as comprehensive adjudication and equity. First, the statute does not simply provide that the limitations period shall run from the date on which the relevant state judgment becomes final, but provides three additional trigger dates for later-accruing challenges, and instructs that "[t]he limitation period shall run from the latest of the four" (A) the date the conviction became final, (B) the date a state-created filing impediment was removed, (C) the date this Court created a new constitutional right deemed retroactive on collateral review, or, the focus here, (D) "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence," relevant possible dates. 28 U.S.C. § 2244(d)(1)(A)-(D).

Section 2244(d)(1)(D) allows constitutional claims based on "new evidence" (a previously undiscovered factual predicate that supports a claim of constitutional error) to be brought long after conviction. But by requiring a filing within one year after discovery, § 2244(d)(1)(D) promotes the public's interest in the prompt assertion of habeas claims, a state's interest in litigating issues while still fresh, and the convicted defendant's interest in securing release.

Second, AEDPA provides that the clock shall be tolled while "a properly filed application for State post-conviction or other

collateral review with respect to the pertinent judgment or claim is pending." 28 U.S.C. § 2244(d)(2). The provision "provides a powerful incentive for litigants to exhaust all available state remedies before proceeding in the lower federal courts," Duncan v. Walker, 533 U.S. 167, 180 (2001), thus minimizing the risk that federal review will even be required and helping to ensure that petitioners' applications can be promptly adjudicated if and when they are filed in federal court. Cf. Rose, 455 U.S. at 510 (requiring the dismissal of "mixed petitions" containing both exhausted and unexhausted claims to permit the petitioner to return to state court). Except, in citing Rose v. Lundy, 455 U.S. 509, 102 S.Ct. 1198, 71 L.Ed.2d 379, the exhaustion doctrine existed long before its codification by Congress in 1948. In Ex parte Royall, 117 U.S. 241, 251, 6 S.Ct. 734, 740, 29 L.Ed. 868 (1886), this court wrote that as a matter of comity, federal courts should not consider a claim in a habeas corpus petition until after the State Courts have had an opportunity to act: "The injunction to hear the case summarily, and there upon 'to dispose of the party as law and justice require' DOES NOT DEPRIVE THE COURT OF DISCRETION as to the time and mode in which it will exert the powers conferred upon it. That discretion should be exercised in the light of the relations existing, under our system of government, between the judicial tribunals of the union and of the States, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the Constitution."

Subsequant cases refined the principle that State remedies

must be exhausted except in unusual circumstances. See, e.g., United States ex rel. Kennedy v. Tyler, 269 U.S. 13, 17-19, 46 S.Ct. 1, 2-3, 70 L.Ed. 138 (1925)(Holding that the lower court should have dismissed the petition because none of the questions had been raised in the State Courts. "In the regular and ordinary course of such questions should first be exhausted"). In Ex parte Hawk, 321 U.S. 114, 117, 64 S.Ct. 448, 450, 88 L.Ed. 572 (1944), this Court reiterated that comity was the basis for the exhaustion doctrine. "It is a principle controlling all habeas corpus petitions to the Federal Courts, that those Courts will interfere with the administration of justice in the State Courts only 'in rare cases where exceptional circumstances of peculiar urgency are shown to exist.' "(The Court also made clear, however, that the exhaustion doctrine does not bar relief where the State remedies are inadequate or fail to "afford a full and fair adjudication of the Federal contentions raised." 321 U.S., at 118, 64 S.Ct., at 450)

In Strickler v. Greene, 527 U.S. 263, 119 S.Ct. 1936, 144 L.Ed. 2d 286 (1999), This Court recognized, "when a State provides no corrective process, the exhaustion rule does not apply."§ 2254(b)(1)(B)(i). Absent a grave deficiency in the State process, see § 2254 (b)(1)(B)(ii), the "secondary and limited" proceedings in Federal Habeas Corpus should be limited to the issues raised in the State Courts. Limiting the issues in this way would restore Federal Habeas to the summary proceeding Congress has always directed it should be. See 28 U.S.C. § 2243, last para. (The "summary" requirement has been in the statute since Congress first authorized broad Federal habeas for State prisoners in 1867. See Act of Feb. 5, 1867, ch. 28,

§ 1, 14 Stat. 385.) Congress also created an exception to the exhaustion condition before seeking Federal habeas review where "circumstances exist that render such [State] process ineffective to protect the rights of the applicant." 28 U.S.C. § 2254(b)(1)(B)(ii) "Exhaustion would have been futile." Lynce v. Mathis, 519 U.S. 433, 436 n. 4 (1997); see also Smith v. Blackburn, 632 F.2d 1194, 1195 (5th Cir. 1980).

Third, Congress provided that the "1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State Court," not to each individual claim. 28 U.S.C. § 2244(d)(1) (emphasis added); cf. Artuz v. Bennett, 531 U.S. 4, 9-10 (2000)(unanimously holding that the "only permissible interpretation" of § 2244(d)(2)'s tolling provision was to construe "application for State post-conviction or other collateral review" as referring to a petitioner's state filing as a whole, not to each claim individually). A habeas application is a request for relief from an allegedly unconstitutional or unlawful confinement imposed under a particular state court judgment. See, e.g., 28 U.S.C. § 2254(a)("[A]n application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court [shall be entertained] only on a ground that he is in custody in violation of the Constitution or laws or treaties of the United States."). The statute of limitation's focus on the timeliness of the initial "application" thus parallels - and is entirely consistent with - Rule 15(c)'s focus not on each individual claim but on the underlying "transaction," namely, the State court judgment of conviction or sentence that has resulted in the challenged confinement and

ultimately animates every claim in the habeas petitioner's application. Such an approach makes sense, given that the filing of an initial timely application places the State on full notice that the validity of its underlying judgment is under challenge. Regardless of how many claims an application contains, the simple fact that it has been filed serves to extend the overall litigation and raise questions about the validity of the sentence under execution. Despite these effects, however, Congress nonetheless chose to preserve prisoners' initial access to the writ and to make their first review comprehensive, while sharply curtailing opportunities for filing successive or second petitions. Accord, e.g., 142 Cong. Rec. H2259 (daily ed. Mar. 14, 1996)(remarks of Rep. McCollum)("[W]e are going to provide for limited opportunity to go into Federal Court after you have exhausted all of your regular appeals ... and provide in one bite at the apple[-t]he chance to raise all your procedural concerns over the case"); id. at S7657 (daily ed. June 5, 1995)(remarks of Sen. Dole); id. at H2143 (daily ed. Mar. 13, 1996)(remarks of Rep. McCollum); id. at H2184 (daily ed. Mar. 13, 1996)(remarks of Rep. Hyde). Thus, the language, structure, and legislative history of AEDPA's statute of limitations demonstrate that Congress intended to bring habeas practice in line with the rules governing other civil actions by ensuring petitioners submit initial filings promptly so that States may have fair notice that the legality - and thus finality - of the underlying criminal judgment is in doubt. Applying the relation-back doctrine in accordance with Tiller provides an internally consistent and clear rule that furthers Congressional intent by permitting petitioners a single opportunity to obtain

comprehensive adjudication of all claims relating to the same "transaction" (judgment of sentence or conviction) challenged by the initial pleading.

As even the most seasoned of lawyers knows, AEDPA is a confusing, at times impenetrable statute. It imposes stringent procedural rules on habeas petitioners, with often harsh results. To alleviate the burden on pro se litigants, the Ninth Circuit has followed this Court and the Second and Third Circuits in requiring district courts to provide mandatory prophylactic "notice" measures to advise pro se petitioners of the consequences of certain AEDPA procedural provisions that may foreclose consideration of their claims on the merits. See Castro, 124 S.Ct. 791-92; Adams, 155 F.3d at 584 (per curiam) (mandatory warning regarding consequences of "second or successive petition" rule when recharacterizing motions under § 2255); United States v. Miller, 197 F.3d 644, 646, 652 (3d Cir. 1999)(same); Mason v. Meyers, 208 F.3d 414, 418 (3d Cir. 2000)(same, under § 2254). Rose already requires a prisoner to be apprised of his options. The decision reached by the Ninth Circuit does nothing more than insure that those options and their consequences are accurately explained. (Id. at 29, n.8)

Other circuits have noted the deceptive nature of a dismissal without prejudice when the claims dismissed are time-barred, and require similar advisements. In Rodriguez v. Bennett, 303 F.3d 435 (2nd Cir. 2002), the Second Circuit explained that for a petitioner dismissed "without prejudice" after a year in federal habeas proceedings, the "without prejudice" provision was an illusion; petitioner could never succeed in timely refiling the petition

because he would already be time-barred. (Id. at 439.) In Valerio v. Crawford, 306 F.3d 742 (9th Cir. 2002), the en banc court instructed the district court to inform a petitioner when claims to be dismissed "without prejudice" would actually be time-barred. "This simple step helps avoid the unnecessary forfeiture of petitioners' constitutional rights." Id. at 28.

This Court has ordered relief in cases under circumstances where a party has been misled by another party. Cf. Irwin v. Department of Veterans Affairs, 498 U.S. 89, 96 (1990)(equitable tolling was available where a complainant had been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass). Here, the misleading nature of the advisements were even more egregious than those committed in Irwin. It was the district court, the very party chargeable with protecting petitioner's rights, not an adversary who misled petitioner about the current status of his claims under the AEDPA one-year statute of limitations and thus deprived him of the opportunity to make a "meaningful" choice among his options. Id. at 27-28. "[T]he district court's failure fairly or fully to explain the consequences of the options it presented to petitioner deprived him of the opportunity to make a meaningful choice...." Id. at 29. Rose requires that a prisoner be given "the choice of returning to State court to exhaust his claims or amending or resubmitting the habeas petition to present only exhausted claims to the district court." Rose, 455 U.S. at 510. As this Court necessarily concluded in Rose, to avoid unwarranted unfairness, dismissals for want of exhaustion must be accomplished in a manner that "does not unreasonably impair the prisoner's right to relief."

Rose, 455 U.S. at 522. Forcing pro se prisoner litigants to make a choice, without any corresponding information relative to that choice, impairs their ability to competently represent themselves, is unfair, and virtually guarantees a forfeiture of the very right to federal habeas review which Rose and Castro sought to protect. Cognizant that the rights of pro se prisoner litigants require careful protection where highly technical requirements are involved, especially when enforcing those requirements might result in the loss of the opportunity to prosecute or defend a lawsuit on the merits. See Conley v. Gibson, 355 U.S. 41, 48 (1957); Foman v. Davis, 371 U.S. 178, 181 (1962).

It is possible that courts, understanding dismissal for nonexhaustion could bar the prisoner from ever obtaining federal habeas review where the refiled petition is time-barred. In two recent cases, this Court assumed that Congress did not want to deprive State prisoners of first federal habeas corpus review, and this Court has interpreted statutory ambiguities accordingly. In Stewart, 523 U.S. 637, this Court held that a federal habeas petition filed after the initial filing was dismissed as premature should not be deemed a "second or successive" petition barred by § 2244, lest "dismissal ... for technical procedural reasons ... bar the prisoner from ever obtaining federal habeas review." Id. at 645. And in Slack v. McDaniel, this Court held that a federal habeas petition filed after dismissal of an initial filing for nonexhaustion should not be deemed a "second or successive petition," lest "the complete exhaustion rule" become a " 'trap' " for " 'the unwary pro se prisoner.' " 529 U.S. at 487 (quoting Rose, 455 U.S. at 520). Where a federal court

had yet to review a single constitutional claim, this would result contrary to this Court's admonition that the complete exhaustion rule is not to "trap the unwary pro se prisoner." Ibid., internal quotation marks omitted. Slack, 529 U.S. at 487.

Abrogation of a court's equitable power to stay as advocated by petitioner would totally undermine this Court's decision in Rose and Slack and create precisely the same trap for petitioner, the "unwary pro se prisoner" which this Court has condemned. Such a result would not further the interests the AEDPA was designed to address and would create a situation in which "a dismissal of a first habeas petition for technical procedural reasons would bar the prisoner from ever obtaining federal habeas review," something this Court has sought to avoid. Stewart, 523 U.S. at 645. Acting with due diligence, filing timely habeas petitions, following the only procedure of which petitioner was aware, petitioner relied on the district court's assurances that dismissal would be "without prejudice," expeditiously pursued his State post-conviction remedies, and expeditiously returned to federal court after fully exhausting his state claims, only to find he was time-barred. Most assuredly, this is a classic case of "damned if you do, damned if you don't."

The importance of the writ of habeas corpus also counsels in favor of interpreting the statute of limitations narrowly. The right of habeas corpus, as a facet of American Law, is as old as our Constitution: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. The right to petition for a writ of habeas corpus has been a federal

statutory right for nearly as long. See Judiciary Act of 1789, ch. 20 § 14, 1 Stat. 81 (1845); 28 U.S.C. § 2254(a). Because of the significance of the writ, this Court has recognized the importance of allowing a defendant the opportunity for one round of federal review: "Dismissal of a first federal habeas petition is a particularly serious matter, for that dismissal denies the petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty." Lonchar v. Thomas, 517 U.S. 314, 324 (1996)(citing Ex parte Yerger, 75 U.S. (8 Wall.) 85, 95 (1869)(the writ "has been for centuries esteemed the best and only sufficient defence of personal freedom")). Thus rules that operate to limit a petitioner's right to initial habeas review should be examined with HEIGHTENED SCRUTINY. AEDPA's requirement that a certificate of appealability issue, 28 U.S.C. § 2253(c)(1), is a jurisdictional prerequisite to appellate review. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). In, Slack v. McDaniel, 529 U.S. 473 (2000), this Court addressed how the certificate of appealability requirement should apply when, as here, a district court denies a habeas petition solely on procedural grounds, without addressing the underlying constitutional claims. This Court held that, in those circumstances, a certificate "should issue (and an appeal of the district court's order may be taken) if the prisoner shows *** that jurists of reason" both (i) "would find it debatable whether the petition states a valid claim of the denial of a constitutional right," and (ii) "would find it debatable whether the district court was correct in its procedural ruling." Id. at 478.

The Writ of habeas corpus has been "aptly described as 'the highest safeguard of liberty,' " Lonchar v. Thomas, 517 U.S. 314, 322

(1996)(quoting Smith v. Bennett, 365 U.S. 708, 712 (1961)), and rules regulating judicial consideration of a prisoner's right to the writ should be construed in ways that maintain access to the federal courts. The petitioner asks that this Court recognize these principles and protect the constitutional rights of individuals by deciding that there was jurisdiction both to issue the certificate of appealability and to decide the petitioner's appeal, as well as expeditiously grant the Great Writ of Habeas Corpus so that no further irreparable and irreversible harm/injury continues.

On January 28, 2016, more than three years after the "supposed" arrest (on October 7, 2012), the State-Court found petitioner not guilty of 'Driving While Intoxicated' and guilty of a count for 'Driving While Ability Impaired By Alcohol'.(This count was never on the indictment nor was there any proof of alcohol.) The court then imposed the maximum sentence for a misdemeanor charge: 'Driving While Ability Impaired By Alcohol', to a 180 days (6 months) in New York City Jail ('NYC DOC')(According to the record(s) and disposition, Uniform Sentence & Committment/Certificate of Conviction/ also known as a "Warrant", the court never stipulated this time is to run either concurrently or consecutively (but according to the New York State Department of Corrections and Community Supervision ('DOCCS') time computation, the 180 days (6 months) was subtracted) with two prior sentences already being served consecutively (Dkt. No.# 21-CV-00993(KAM) - 2 - 6 years; Dkt. No.# 21-CV-00992(KAM) - 2 1/3 - 7 years, for a total of 4 1/3 - 13 years of which almost 9 years have been served)), in violation of the Sixth Amendment, U.S. Const. of Speedy Trial. To reiterate, this time of 180 days (6 months),

which was satisfied, was subtracted (according to NYS time computation) from the sentence(s) and time already being served for the two prior unlawful convictions/sentences of 4 1/3 - 13 years, subjecting further restraint by enhancing the two prior sentences, where, instead of being conditionally released on July 27, 2022, I should have been conditionally released 180 days/6 months earlier, on January/2022, regardless, I would still be subjected to Parole until 2026 (where exactly the same grounds were raised in petitions for habeas corpus, except the Double Jeopardy ground). After obtaining two seperate versions/variations of "Criminal History Record Information" ('CHRI') (a.k.a. - RAP-SHEET)(which the New York State Central Repository - Division of Criminal Justice Services ('DCJS') has had, and has been keeping for well over twenty years according to my records (leads one to speculate how many other individuals are subjected to multiple variations/versions of 'CHRI's'), which is inconsistent and contradictory), I also obtained what was/is being shared with the F.B.I. through NCIC/I.I.I./FIRS, Criminal History Record Information (Biometrics), where, I learned that the State-Court, upon realizing the unlawful sentence and conviction, changed and shared fraudulant/falsified information to reflect, "Convicted Upon a Plea of Guilty" to a 'Driving While Ability Impaired By Alcohol' to an "Infraction" in "Full Satisfaction of Two Felonies," which were "supposedly" dismissed. The truth is, after a "Bench Trial", a verdict was reached, which was in violation of the Sixth Amendment, U.S. Const. of a Speedy Trial, along with all of the grounds raised in the petition for writ of habeas corpus, constitutional grounds which are elaborated upon, and meticulously articulated below.

As I am currently "in-custody" for the two prior sentence(s) enhanced by this challenged conviction. Where an inquiry was made pursuant to 28 U.S.C. § 2243, twice, back in August 11, 2021, and again in October 25, 2021, regarding both an evidentiary hearing and a decision on the petitions, on November 10, 2021, the last response received was, "district court has discretion in holding an evidentiary hearing, and the petition(s) are under consideration, and the Court will render a decision in due time," (As continued confinement is endured, without any justice in site) where an "Answer and Reply" to an Order To Show Cause was given back in June/2021, as I am deprived of Liberty, and Freedom from continued irreparable and irreversible harm/injury and restraints by my government, who has not only unlawfully seized my U.S. Passport, N.Y.S. Drivers License, but also trampled on all of my fundamental Bill of Rights, as well as my human rights, and Civil Rights. The fact is that this entire farce prosecution in all three cases mentioned above, was a cover-up of the actual fraudulant crimes under Federal Law and in violation of The Supremacy Clause, that were being committed and transpiring. See all the grounds raised in the petitions for Writ of Habeas Corpus, as I have been "in-custody", restrained unlawfully/wrongfully by my government, all under fraudulant/falsified basis. Incorporate by reference, Dkt. No.# 18-CV-07416(KAM), where all levels of law enforcement (both N.Y. State and Federal) was provided with copies of inconsistent and contradictory State and Federal 'CHRI', to no avail. Furthermore, just two weeks ago, I came to learn, that records/documents I had sent over four years ago (under Dkt. No.# 18-CV-07416(KAM)) to the Chief Prosecutor in the Southern District

of New York, were not all uploaded and scanned into PACER.gov, essentially missing (which is why this 1983 was denied, stating, "no claim was stated."). All cases and 'CHRI' must be reviewed!

On October 7, 2012, at approximately 3:40 A.M., petitioner was stopped, given a Portable Breathelyzer Test ('PBT'), searched, and seized, at approximately 3:49 A.M. (arrested swiftly all within 9 minutes). Petitioner was arrested for 'Operating A Motor Vehicle While Under The Influence of Alcohol,' and also charged with 'Aggravated Unlicensed Operation Of A Motor Vehicle' in the first degree (but this count was "supposedly" twice dismissed), after petitioner was called in the middle of the night to aid two stranded female friends, whose previous driver had also been arrested earlier in the night at a D.W.I. checkpoint, at approximately 1:00 A.M., by the same arresting officer, Daniel Burke.

On October 8, 2012, the prosecution filed a Misdemeanor Complaint against petitioner in Criminal Court, and petitioner was "supposedly" indicted on November 5, 2012, accused of both charges mentioned above, (VTL § 1192.3(03)) and (VTL § 511.3(3)).

Over four months later, on March 20, 2013, the trial court (Part 42: Before Judge Maxwell Wiley, whom this case was originally calendared to) dismissed the latter count with leave to re-present, (dismissed both times due to lack of sufficient evidence before the Grand Jury (January 21, 2016, Bench Trial Transcript at 2)) because the prosecution had failed to present any evidence that petitioner had been given a "Notice Of A Suspension Pending Prosecution" (because in a prior arrest Dkt. No.# 21-CV-00993(KAM), license was

suspended unlawfully)).

On April 16, 2013, prosecution re-presented the count and indicted petitioner in a seperate indictment (See Indictment # 01483/2013, which was sealed on January 22, 2016).

On October 23, 2013, over a year after petitioner's arrest, prosecution stated for the first time, "They were ready for Trial."

On February 6, 2014, prosecution filed its first Certificate of Readiness.

On June 18, 2014, newly retained counsel (Freddie G. Berg) made an appearance, as initial counsel (Todd D. Greenberg - ADDABBO & GREENBERG (President of a company called "Queens County Assistant District Attorney's Association, LLC. INC.")) never showed, and/or loyally advocated/represented petitioner, instead, acted as a friend of the court.

On December 20, 2014, defense counsel filed a motion to dismiss on various grounds, including that the prosecution had failed to timely prosecute petitioner as required under C.P.L. § 30.30. Counsel noted that petitioner had been incarcerated on this case since 2013, and that "the six months statutory time of C.P.L. § 30.30(1)(a) ha[d] long passed." In fact, defense counsel noted that the entire period from October 7, 2012, to June 17, 2014, was time during which the prosecution was not ready to go to trial. In a Decision dated June 17, 2015, the court denied petitioner's motion without a hearing. U.S. Const. 5th and 14th Amendments. Of the entire time and days considered in its Order, the court found that only the 103 days conceded by prosecution were chargeable, since "the people are required to be ready for trial within six

months of the commencement of Criminal Action in which defendant has been charged with a Felony, which in this case, is 180 days, defendant's motion to dismiss on statutory speedy-trial grounds is denied as fewer than 181 days has elapsed.

At approximately 3:40 A.M., on October 7, 2012, officer Daniel Burke, was working the latter half of a double shift with his partner/friend, Lieutenant Christopher Smith. Instead of processing the "arrest" of roughly 100 or more individuals they had in custody already, (males and females packed in two seperate cells like Sardines) from their quota entrapment excursion (which is how Officer Daniel Burke, promoted to Detective (because in New York City, to become Detective no test is required, it all depends on number of arrests), by the time petitioner went to trial more than three years later), an illegal/unlawful checkpoint under the pretense of "Detering D.W.I.," (wherein, the record reflects changing Breathelyzer Alcohol Content ('BAC') readings to obtain and solidify D.W.I. arrests/convictions) the partners/friends, were still out "fishing," assisting fellow officers, when both officers each testified to seeing petitioner drive past a road, then reverse and turn left onto a road.

On direct, Detective Burke, stated, "he saw petitioner, who was going the speed limit, drive past a turn by approximately three car lengths, and then reverse two car lengths in order to make a left. On cross, defense counsel (Alex Spiro - BRAFMAN ASSOCIATES, (by this time he was the sixth counsel retained, as all prior counsels tried to coerse into pleading guilty, instead of loyally representing petitioner)) pointed out that Det. Burke, had originally

testified before the Grand Jury that petitioner had driven "only one car length" forward before reversing, and Det. Burke, admitted that it was possibly "only one car length." Det. Burke, also stated that when petitioner reversed, "the light had changed from green to red" and that when petitioner reversed he was "disobeying a steady red light." When petitioner reversed, "there were other cars that had to switch lanes to avoid hitting [petitioner's] vehicle," because petitioner was "reversing southbound on a northbound only lane." However, when on cross, the court remarked that it was "not quite sure how [] that would happen if a signal was red," Det. Burke, amended that the light "had turned red" but he "couldn't recall the exact moment when the light turned green." (The court had a similar interaction with the prosecution when, in its opening statement, it stated that cars driving north had to divert their vehicles to avoid hitting petitioner's car. The prosecution stated, in contradiction to later testimony, that the light was red when petitioner backed up through it.)

According to Lt. Schmidt, petitioner's car drove "several car lengths through the intersection" before going in reverse and turning left in the middle of the intersection. Lt. Schmidt, conceded that this type of maneuver happens "all the time" in NYC by those who are not under the influence of alcohol, but then tried to state that it was still "unusual." Lt. Schmidt, testified, petitioner "basically backed up the wrong way through the red light," but stated the cars affected were those going through a green light from east to west — not cars driving from south to north behind petitioner as Det. Burke, had testified. These cars did not have

to "swerve out of the way" according to Lt. Schmidt, but they did have to "stop so he could continue driving."

After the two officers saw petitioner make the turn, they "looked at each other, [and] said let's stop that vehicle." They drove up to where petitioner was, put on their turrets/lights, affectuating petitioner to stop. They approached the car, Det. Burke, saw a female passenger in the front seat, and another female in the back seat. On cross, Det. Burke, acknowledged that he had seen the two women earlier that night during a D.W.I. stop in which he had arrested the person driving them. Det. Burke, asked petitioner to step out of the car, both officers reported no other signs of intoxication at the site; his speach was perfectly fine and he did not become sick. At Pre-Trial hearing, Det. Burke, claimed that he witnessed Lt. Schmidt, give petitioner a 'PBT' with a result of .088 (November 30, 2015, Transcript at 67-8, 42-3). However, because the police waited only eight minutes in administering the 'PBT', although an at least 20-minute wait is required by law, before which, as admitted by Det. Burke, the machine loses its reliability, this result was "supposedly" thrown-out by the court.

At 3:49 A.M., Det. Burke, arrested petitioner, and escorted him to the police precinct without Lt. Schmidt. Upon reading the petitioner his miranda warnings, the court acknowledged, petitioner invoked his right to speak to an attorney, but Det. Burke, continued questioning and interrogating on video. (November 30, 2015, Pre-Trial hearing Tr. Vol. II at 29). The court goes on to state, "when you play the tape if defense requests it, you'll have to edit out the indication of the right, the attorney right. The Jury should not

hear that the defendant asked for an attorney unless the defense wants it in." Prosecution replied, "I am not necessarily going to introduce the statement during People's direct case. If that is the case "I will edit out the entire statement." The court replied, "you'll talk to Mr. Spiro, and he will say strategically whether he wants the Jury to know his client invoked his right to counsel. (December 1, 2015, Pre-Trial Hearing Tr. 139) Miranda v. Arizona, 384 U.S. 436 (1966). Over three hours later, at 6:59 A.M., Det. Burke, offered a chemical test, which was declined. Det. Burke, later acknowledged that it was NYPD procedure to complete a Chemical exam within two hours. Although three hours had passed between arrest and the offering of the chemical test, Det. Burke, failed to indicate this on his paperwork — despite the fact that it contained a box to be checked anytime a chemical test is offered more than two hours after arrest. Det. Burke, also indicated on the same form that there were no civilian witnesses despite the presence of two female civilians in the car.

Det. Burke, later admitted on cross, that he was himself swaying in the video. Det. Burke, dropped the same thing multiple times, and at times his own speech was stuttered. Also admitted, according to protocol, a seperate officer should have done the I.D.T.U. testing, as Det. Burke, was the arresting officer.

On cross, Det. Burke, testified seeing female passengers earlier in the night when the woman who had been driving them was pulled over and arrested at a D.W.I. checkpoint. He admitted he had previously sworn in a deposition the original driver, Ms. Vij, had blown a .08 — the minimum legal limit required to charge the

misdemeanor of Driving While Intoxicated — when he tested her for alcohol. Lt. Schmidt, signed off on the arrest report which reported Ms. Vij's, Blood Alcohol Content as .08, but later stated, "he never reviewed the report before he signed off on it because of all the paperwork from other arrests." This arrest report was untrue, as Det. Burke, admitted on cross, Ms. Vij, had in actuality blown .07. Det. Burke, failed to provide any reason for the discrepency, stating, "only that he did not remember the arrest of Ms. Vij," although it took place around 1:00 A.M. the same night/morning. Ms. Vij, was pulled over at a spot check in which every car was being pulled over.

Ms. Amberene Vaswani, who was in the passenger's seat next to the petitioner, did not smell any alcohol on his breath, nor did she witness any other signs of intoxication such as stumbling or slurred speech. She saw his eyes and did not think they appeared to be bloodshot or watery. Ms. Vaswani, had only seen petitioner two or three times in the three years since the incident.

The court agreed to defense counsel's request that the court charge itself regarding the lesser included offense of Driving While Ability Impaired, which would require proof of impairment rather than intoxication? Defense counsel also asked for a missing witness instruction regarding an officer who was present at the precinct and another who was present for the drive from the scene to the precinct, but this request was denied. The Court also confirmed that it would grant the prosecution's previous request to issue an instruction regarding petitioner's refusal to take a chemical test. Meanwhile, the court denied defense counsel's Trial Order of Dismissal, once at the close of the prosecution's case,

on the ground that the prosecution had not put forth sufficient evidence of intoxication, and then renewed motion after the close of defense's case. On November 30, 2015, during a Pre-Trial proceeding, defense counsel stated, "in reviewing the notations regarding the checkpoint made in the memo-books that have been turned over to me of the officers that were involved -- whether or not they testify, they were involved, they were listed on the D.A. data sheet, they're memo-books have been provided to me, they indicated a series of stops at or around the location, at or around the time that my client was stopped. In those notations sometimes they get it right, as I will put it, meaning that they'll say someone has the odor of alcohol, whatever, arrest them, bring them back to the precinct and they'll blow over the legal limit. In one specific case they claim that the person was over the legal limit, and the person blew .04. So it strikes me that if the officers are going to come in, any of the officers related to this case and say it's my expert opinion ..., I was out there that night, at that night at or around the same time they stopped another individual, believed him to be intoxicated, arrested him, processed him, brought him back and he blew .04, seems to me to be Giglio in its strickest form. So I think that they're relevant based on the checkpoint cases, and it's just related issue and so it should be turned over for Rosario, but there's a specific Giglio, Brady demand because that information to me exculpates potentially. And it certainly impeaches that officer's ability to make these conclusions that Judges typically allow officers to make." Prosecution responded, "but he's not testifying here. He has nothing to do with this case."

"No, I will not have this officer offer an opinion that the defendant was intoxicated. He had nothing to do with this case, nothing to do with this stop, nothing to do with the refusal." Defense counsel, then stated, "it's not as if I just found this officer and found his memo-book. He's on the D.A.'s data sheet. I don't know how he was not involved." The court stated, "but he's not a witness to the case. You can't call him to impeach him." Defense counsel replied, "No, but just because they decide not to call an officer who would tend to exculpate my client doesn't that make the material not Giglio or Brady? I just want the paperwork related to the arrest in which they all got it wrong, Perbendes (Ph) Morales, and Fallon, that are in his memo-book. Because here's the problem, right, if these officers were all working together it may very well be that paperwork or in that Criminal Court Complaint, that he's informed by the officer that will testify, or the officer that will testify informs him of something, otherwise, I'm blind to what could or could not have been in that paperwork. That's why the Giglio and Brady Rules are so designed. Because if not -- they can't just not call him and then say well, it doesn't matter. To me that related arrest where they're arresting someone potentially incorrectly on "They," meaning this team, if I had the checkpoint paperwork I'm sure it would all show that they all were working as part of the team and they're both probably listed on every data sheet that night, that to me becomes relevant and exculpatory, and I believe I'm entitled it." The court stated, "It's not exculpatory as to your client, so, no, it's not Brady. I'm not directing them to give it over to you."(November 30, 2015, Pre-Trial hearing Tr. 16-20). On

direct, Det. Burke, stated, "After the arrest at 0349, I transported the defendant with officer Melendez, to the 28th Precinct for IDTU Testing." At which point Prosecution asked, "was anyone else with you in the vehicle?" To which Det. Burke, stated, "Officer Melendez." (November 30, 2015, Pre-Trial hearing Tr. 24). On re-direct, prosecution asked, "Besides 8:45 P.M. and backing up Officer Melendez, did you have any other interaction with him?" Det. Burke, "With Officer Melendez?" Prosecution, "And did Officer Melendez, have any interaction with petitioner?" Det. Burke, "Outside of the arrest?" Prosecution, "Correct." Det. Burke, "No." The court, "Which Arrest?" Prosecution, "The arrest of the peteitioner." The court, "So he had interaction with petitioner?" Det. Burke, "Yes. We transported the petitioner from the arrest location to the 2-8 Precinct, and he was on the scene when the Portable Breath Test was given." The court, "Okay, so he's a fact witness." Yet when the court asked prosecution in the beginning of the Pre-Trial hearing proceedings on November 30, 2015, "Where are you on Rosario?" Prosecution replied, "I turned over all Rosario material as well as the petitioner's Rikers calls to defense counsel (at 3).

The court also asked the prosecution if it wanted to respond to "The fact that Det. Burke clearly swore to something with the complaint against Ms. Vij, which wasn't accurate."(at 259) The prosecution responded, "The Detective was honest about the incident when confronted with the police report at trial and stated it did not ask Det. Burke, why he made this false statement because he allegedly "had no memory of Ms. Vij," who he had arrested the same night as petitioner (259). Prosecution argued that the "only rational

explanation for this is that "it's a mistake" (261). U.S. Const. 4th, 5th, 6th, 8th, and 14th Amendments.

On April 17, 2018, The New York Supreme Court, Appellate Div., First Dep't., affirmed petitioner's judgment of conviction to an appeal which was made by Appellate Counsel, against protest and objection (Counsel's firm is employed by New York City, see error coram nobis). People v. Patel, 160 A.D.3d 530 (1st Dep't. 2018). On June 28, 2018, The New York Court of Appeals denied leave to appeal. People v. Patel, 31 N.Y.3d 1120 (2018). On April 18, 2019, an application/petition for a Writ of Error Corum Nobis was filed. Appellate Div., denied petition/ application on January 2, 2020. People v. Patel, M-2691(Not Published)? New York Court of Appeals denied leave to appeal the denial of Error Coram Nobis on April 28, 2020. People v. Patel, 35 N.Y.3d 972 (2020).

On May 8, 2017, four petitions for Writ of Habeas Corpus were filed in the Northern District of New York. All four petitions went before four different Judges. All four Judges noted twenty grounds raised and transferred two petitions to the Eastern District (on May 19, 2017, 17-CV-00496 / 17-CV-03034; on May 17, 2017, 17-CV-00495 / 17-CV-02981), and two petitions to the Southern District (on May 22, 2017, 17-CV-00494 / 17-CV-03837; on May 19, 2017, 17-CV-00493 / 17-CV-03796) respectively. On June 7 & 22, 2017, District Chief Judge, Colleen McMahon, dismissed both petition's "without prejudice." "Because the petition makes no substantial showing of a denial of a Constitutional Right, A Certificate of Appealability will not issue. 28 U.S.C. § 2253. On June 21, 2017, (17-CV-03837), and July 6, 2017, (17-CV-03796), respectively, a 'Notice of Appeal' was filed. In both petition's, United States Court of Appeals for the Second Circuit ('USCA'),

case # 17-1978 dated March 30, 2018, and case # 17-2099 dated April 13, 2018, Ordered the Motions are denied and the Appeal dismissed because appellant has not shown that "jurists of reason would find it debatable whether the District Court was correct in its procedural ruling," as to appellant's failure to exhaust his State Court remedies before filing his 28 U.S.C. § 2254 petition(s). Slack v. McDaniel, 529 U.S. 473, 478 (2000). It was argued that 'Extraordinary Circumstances'existed pursuant to28 U.S.C. § 2254(b)(1)(B)(i)(ii)(d)(1)(2)&(2)(A)(ii), along with Rules governing § 2254 cases, Rule 4: The Clerk must promptly forward the petition to a Judge under the Court's assignment procedure, and the Judge must promptly examine it. If it plainly appears from the petition AND ANY ATTACHED EXHIBITS .....(two office size boxes of evidentiary exhibits were attached, and based on the dismissal/response, it is obviously apparent that the exhibits were completely ignored, as a prima facie showing of fraud and an unconstitutional conviction and sentence transpired).

Petitioner submitted his 423-page (Writ of Habeas Corpus, and Writ of Error Coram Nobis) petitions to his prison's mail system for its delivery to the Court on February 9, 2021. On February 18, 2021, petition was again filed for a Writ of Habeas Corpus, (this time with eighty-two grounds) with fifteen grounds reflective of United States Constitution violations, upon exhaustion of State remedies. (Dkt. No.# 21-CV-01501(CM)) which relates-back pursuant to F.R.C.P. 15(c) to (Dkt. No.# 17-CV-03837(CM))(April 1, 2021, Order, District Court stated among other untrue statements: "But he did not file his § 2254 petition in this Court until more than five years later...").

On April 1, 2021, District Court Order, "The Court alternatively denies the petition for lack of jurisdiction and as time-barred. But the Court grants petitioner 30 days' leave to file a 'Declaration' in which he alleges facts showing that the Court has jurisdiction to consider this petition and that the petition is timely. Because the petition makes no substantial showing of a denial of a Constitutional Right, A Certificate of Appealability will not issue. See 28 U.S.C. § 2253. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore IN FORMA PAUPERIS status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962). On April 21, 2021, a 'Declaration' was filed.

On April 28, 2021, District Court issued both an Order and a Civil Judgment (Not Published), which states, "On April 21, 2021, the Court received petitioner's 'Declaration.' But it fails to show that the Court has jurisdiction to consider the petition and that the petition is timely. Accordingly, for the reasons discussed in the Court's April 1, 2021, Order, the Court alternatively denies the petition for lack of jurisdiction and as time-barred. Because the petition makes no substantial showing of a denial of a Constitutional Right, A Certificate of Appealability will not issue. See 28 U.S.C. § 2253. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith and therefore IN FORMA PAUPERIS status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

On June 1, 2021, A Notice of Appeal, and a Motion for Reconsideration

were both filed. On June 11, 2021, 'USCA' case # 21-01423, pursuant to F.R.A.P. 4(a)(4) issued an initial notice of stay of appeal. On June 23, 2021, District Court issued Order denying Motion For Reconsideration. The Court construes petitioner's motion as one to alter or amend a Judgment under Rule 59(e) of the Federal Rules of Civil Procedure, and for reconsideration under Local Civil Rule 6.3. The Court denies the motion. The Court therefore directs the Clerk of Court to terminate ECF 13. The Court further directs the Clerk of Court to accept no further submissions from petitioner under this docket number, except for papers directed to the 'USCA'.

On August 11, 2021, petitioner mailed Affidavit Accompanying Motion For Permission To Appeal IN FORMA PAUPERIS With Move For Certificate of Appealability and related paperwork.

On December 1, 2021, a panel of three Circuit Judges, issued Order denying Motion and dismissing Appeal, because appellant has not shown that "jurists of reason would find it debatable whether the District Court was correct in its procedural ruling" that appellant was not "In-Custody" on the challenged conviction for Federal Habeas purposes. Slack v. McDaniel, 529 U.S. 473, 478 (2000). On February 2, 2022, 'USCA' issued a Mandate.

On December 8, 2021, petitioner mailed a Motion for Reconsideration, en banc. On January 26, 2022, an Order denying Motion for Reconsideration was issued by the panel that determined the appeal, along with active members of the Court (as per the Order).

The Court has the power to notice a plain error though it is not assigned or specified. (internal quotation marks omitted); United States v. Atkinson, 297 U.S. 157, 160 (1936). Preserving

the power of courts to correct plain errors sua sponte is especially important in cases (such as this one), the authority of courts to notice and correct plain errors takes on heightened importance. See Young, 315 U.S. at 258-59 ("[O]ur judicial obligations compel us to examine independently the errors confessed ... [T]he proper administration of the criminal law cannot be left merely to the stipulation of parties." (citation omitted)). Thus, the Eighth Circuit appropriately exercised its authority to correct a plainly illegal sentence that contravened the considered judgment of Congress and this Court's binding precedent. "...Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release. Thus there is nothing novel in the fact that today habeas corpus in the federal courts provides a mode for the redress of denials of due process of law. Vindication of due process is precisely its historic office."(At least its suppose to be so long as the federal courthouse "doors" remain open.) Fay v. Noia, supra at 402.

The language and legislative history of AEDPA lend further support to the conclusion that sua sponte dismissals on statute of limitations grounds are improper. If Congress intended to protect the State from waiving the statute of limitations defense in habeas cases, it would have expressly said so. See, e.g., Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628 (1985) ("The short answer is that Congress did not write the statute that way.").

The two prior sentences (Dkt. No.# 21-CV-00993(KAM) & Dkt. No.# 21-CV-00992(KAM)), both cases in Eastern District, where Habeas petitions are filed since January 18, 2021, to no avail) enhanced by this challenged conviction serves a purpose here. First, it was learned through the proceedings of these two cases, the amount of fraud and deception that was endured and transpired. Asides from not being provided all of the Brady/Rosario/Giglio/etc... upon attempting to purchase transcripts, it was learned that the shorthand transcription by the stenographer, was not transcribed in it's entirety. An example was provided in the filing of 2017 petitions, where more than substantial showing of a Constitutional Right was denied (two office size boxes of evidentiary exhibits were attached/submitted), wherein, transcripts were provided which in one instance in a December 10 or 11th, 2013, trial proceeding, during closing arguments, an additional 19 pages which were not initially provided (when purchased), were obtained by third counsel retained, Richard Levitt, who inadvertantly turned them over to my father. In these two prior cases, Pre-Sentence Investigation('PSI') reports were ordered. This evidence showed that the New York City Department of Probation's investigation stated, "The records were obtained from Court case file and A.D.A. file that the charge/count which was apparently dismissed on March 20, 2013, by Judge Maxwell Wiley, for 'Aggravated Unlicensed Operation of a Motor Vehicle' (VTL § 511.3(3)) in this challenged conviction was still pending a hearing on two different dates (2/5/2014 & 4/29/15), where, both reports were created on January 10, 2014 and April 14, 2015, respectively. The Double Jeopardy Clause of the fifth Amendment

protects a criminal defendant from repeated prosecutions for the same offense. Could this be why petitioner was being forcefully coersed into pleading guilty? Is this why the records which were changed and shared fraudulantly with the F.B.I., falsifying the out-come/sentence, stating, "Convicted Upon A Plea of Guilty" to a 'Driving While Ability Impaired By Alcohol' to an "Infraction" "In Full Satisfaction of Two Felonies"? To legally arrest and detain, the government must assert probable cause to believe the arrestee has committed a crime (here, it has been shown that the jurisdiction was lacking by a subornated perjury 'narrative', as all the alleged charges were eventually dismissed, making the entire farce proceedings void and illegal). Arrest is a Public Act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends. These considerations were substantial underpinnings for the decision in Klopfer v. North Carolina, supra; See also Smith v. Hooey, 393 U.S. 374, 377-378, 89 S.Ct. 575, 576-577, 21 L.Ed.2d 607 (1969). 'If the petition discloses facts that amount to a loss of jurisdiction in the trial court, jurisdiction could not be restored by any decision....' It is of the historical essence of habeas corpus that it lies to test proceedings so fundamentally lawless that imprisonment pursuant to them is not merely erroneous but void. Hence, the familiar principle that res judicata is inapplicable in habeas proceedings. See, e.g., Darr v. Burford, 339 U.S. 200, 70 S.Ct. 587, 94 L.Ed. 761 (1950).

So viewed, it is readily understandable that it is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the Speedy-Trial provision of the Sixth Amendment. Invocation of the Speedy-Trial provision thus need not await indictment, information, or other formal charge. United States v. Marion, 404 U.S. 307, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971). Mr. Justice Douglas, with whom Mr. Justice Brennan, and Mr. Justice Marshall join, concurring in the result.....I assume that if the three-year delay in this case had occurred after the indictment had been returned, the right to a Speedy-Trial would have been impaired and the indictment would have to be dismissed. id., 404 U.S. 307 (1971).

In New York State, 15 NYCRR 132.1, 2, 3, legislative objectives: to remove dangerous repeat alcohol or drug offenders from our highways, and to suspend and revoke driver's license indefinetly. Pursuant to Public Law 97-364 (HR 6170) "National Driver Register Act of 1982", the Chief Driver licensing official pursuant to 49 U.S.C. § 30304, shall submit to the Secretary of Transportation a report for each individual-- who is convicted under the laws of that State of any of the following motor vehicle-related offenses or comparable offenses: (A) operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance. As this lawless fraud has been exposed through the two seperate versions/variations of 'CHRI' (a.k.a. - RAP-SHEETS)(as well as the Driving Life-Time Abstract obtained from the Department of Motor Vehicle ('DMV'), where for over twenty years of petitioner's life,

through fraudulant and falsified illegal convictions, the records reflect that while convictions transpired, illegal as they may be, there is no record of any moving violation (citation/summons), nor did petitioner ever get any points on his Driver's License)? These obvious gross discrepencies in violation of 34 U.S.C. § 10231; 34 U.S.C. § 40302; 28 C.F.R. § 20.21; 28 C.F.R. § 20.22; 28 C.F.R. § 20.33; 28 C.F.R. § 20.36; 28 C.F.R. § 20.37, along with all the grounds raised in the petition(s), is a very clear restraint on liberties, which petitioner only learned of through due diligence in his quest for freedom, and restraint from erosion and oppression by his government without any checks and balances. 34 U.S.C. § 40316 - National Crime Prevention and Privacy Compact, states, (a) This Compact organizes an electronic information sharing system among the Federal Government and the States to exchange criminal history records... (b) the F.B.I. and the Party States agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the Federal Government and to Party States for authorized purposes. 28 C.F.R. § 901.4 - Audits ...(a) Audits of authorized State agenies that access the III System shall be conducted. . . (d) ...the FBI CJIS Audit Staff shall also conduct routine systematic compliance reviews of State repositories, Federal agencies, and as necessary other authorized III System user agencies. 34 U.S.C. § 40302 - Funding for improvement of criminal records ... (1) Grants for the improvement of criminal records. . .(2) Authorization of appropriations. . .(1) a total of $200,000,000 for fiscal year 1994 and all fiscal years thereafter. Abuse of taxpayer dollars by

dereliction of duties, and fraud! All of this was presented and sent to all levels of Law Enforcement (i.e. - Local, State, and Federal), to no avail (under Dkt. No.# 18-CV-07416(KAM)). The discovery of the second version/variation of the 'CHRI' came from Court/A.D.A. file from this challenged conviction case, which in turn exposes why in the first case Dkt. No.# 21-CV-00993(KAM), the Judge never charged the jury with certain charges for deliberation, hence, transcripts not transcribed in full according to law, deliberately excluding/omitting portions of the stenographers shorthand notes. In citing Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." "[D]etailed factual allegations" are not required, Twombley, 550 U.S., at 555, 127 S.Ct. 1955, but the rule does call for sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face," id., at 570, 127 S.Ct. 1955. (Incorporate by reference: Dkt. No.# 18-CV-07416; 21-CV-00993; 21-CV-00992(KAM)).

Federal Rules of Civil Procedure 9(b) - Pleading Special Matters: Fraud or Mistake; Condition of Mind. . .In alleging Fraud or Mistake, a party must state with particularity the circumstances constituting Fraud or Mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally. All of these steps were taken in compliance.

Federal Rules of Civil Procedure 8 - Evidentiary Hearing. . . Federal Court must grant evidentiary hearing to habeas corpus

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Rules Governing § 2254 Cases. . . .8 - Evidentiary Hearing. . . Federal Court must grant evidentiary hearing to habeas corpus

applicant if (1) merits of factual dispute were not resolved in State Court hearings; (2) State factual determination is not fairly supported by record as a whole; (3) fact finding procedure in State Court was not adequate to afford full and fair hearing; (4) there is substantial allegation of newly discovered evidence; (5) material facts were not adequately developed at State Court hearing; or (6) for any reason it appears that State trier of fact did not afford applicant full and fair fact hearing. Townsend v. Sain, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963).

Where resort to State Court remedies has failed to afford a full and fair adjudication of the Federal contentions raised, either because the State affords no remedy, See Mooney v. Holohan, supra, 294 U.S. 115, 55 S.Ct. 343, 79 L.Ed. 791, 98 A.L.R. 406, or because in the particular case the remedy afforded by State law proves in practice unavailable or seriously inadequate, Cf. Moore v. Dempsey, 261 U.S. 86, 43 S.Ct 265, 67 L.Ed. 543; Ex parte Davis, 318 U.S. 412, 63 S.Ct. 679, a Federal Court should entertain his petition for habeas corpus, else he would be remediless.

28 U.S.C. § 2242 - A petition for habeas corpus in Federal Court, whether filed before or after effective date of new rules, should allege facts supporting grounds for relief; It need not contain evidentiary material. U.S. ex rel. Bonner v. Warden, Stateville Correctional Center, N.D. 111, 1976, 422 F.Sup. 11, affirmed 553 F.2d 1091, certiorari denied 97 S.Ct. 2662, 431 U.S. 943, 53 L.Ed. 2d 263. See proposed rules governing section 2254 cases, Rule 2(c).

The language of Rule 4 of the habeas Rules ('Rule 4') is sequential and expressly allows a court to dismiss sua sponte a

habeas petition prior to ordering a responsive pleading. But not ignoring "AND ANY ATTACHED EXHIBITS..." To read absent word into the Rule "would result 'not [in] a construction' " of the Rule, " 'but, in effect, an enlargement of it by the Court.' " Lamie v. United States Tr., 540 U.S. 526, 538 (2004)(citation omitted). Thus, under the rules of statutory construction, Rule 4 should be interpreted as allowing only that which it expressly authorizes. See United States v. Goldenberg, 168 U.S. 95, 102-03 (1897) (legislative intent is found in the legislature's chosen language; "[n]o mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute"); see also Lamie, 540 U.S. at 534 (when a statute's language is plain, it is the court's duty to " 'enforce it according to its terms' "(citations omitted)); Lewis v. Barnhart, 285 F.3d 1329, 1331-32 (11th Cir. 2002)(" ' '[W]here the language Congress chose to express its intent is clear and unambiguous, that is as far as we go to ascertain its intent because we must presume that Congress said what it meant and meant what it said.' ' "(citations omitted)). This is what happened in the two prior convictions, but here as well, because obviously when a prima facie showing of unconstitutionality was made, it was deliberately and blatantly ignored and not acknowledged, due to extremely rare circumstances which was exposed.

Verbal camouflage of the meaning or content of law, cannot conceal the underlying realities. Constitutional error, at times grievous, occurs in the Trials of State Criminal cases. Sometimes the State Trial Courts or Appellate Courts refuse to afford a remedy

because of a procedural defect in the way the case is presented to them. (Obligation of the Oath taken to uphold and protect Constitution.)

A judicial complaint was filed against the District Judge in the Eastern District (under Dkt. No.# 21-90041-jm), in a Order, dated January 10, 2022, the Chief Judge of the Circuit Court stated, "The allegations that the Judge misread the Complaint's previous habeas petitions and misapplied the rules governing habeas proceedings are claims that the Judge got it wrong..." This flagrant cover-up is what petitioner has been dealing with all along.

In Rowe v. Peyton, 383 F.2d 709, 717-18 (4th Cir. 1967), indeed, the arbitrary nature of a refusal to permit a man in jail to attack any part of his sentence at any time is pointed up by the variant ways in which the chronology of multiple sentences is computed. In some jurisdictions, sentences are considered to be served in the order in which they were imposed. See, e.g., Ex parte Hull, 312 U.S. 546 (1941). In a technical sense. . .The order in which a State chooses to list the sentences which a prisoner has to serve is not the sort of substantial consideration which should be allowed to affect the quality of adjudication available in a Federal Court upon a claim of deprivation of Constitutional Right. Whether a State chooses to list a man's sentence chronologically or in reverse chronological order, a prisoner with a number of sentences to serve has precisely the same interest in being allowed to attack his sentence at the earliest possible moment. To the prisoner, members of his family, and fellow prisoners it matters little how the order of sentence service is listed by the clerk in the Superintendent's office. The one significant, substantive thing is the aggregate

length of his successive sentences to be served, for they govern entirely his hope for ultimate release whether by parole or by complete sentence service. The administrative computation of the sequence of sentence service is a flimsy basis to determine the right of access to the courts for a determination of substantial Constitutional claims. . .When the one important, substantive fact is the aggregate of all of the successive sentences a prisoner is required to serve, his right of access to the court should not be conditioned upon the sequence in which the State chooses to list consecutive or successive sentences for service. Rowe v. Peyton, 383 F.2d 709, 717-18 (4th Cir. 1967). McNally, ... alleged that an unconstitutional sentence was being taken into account in computing his eligibility for consideration by the parole board for conditional release from the penitentiary (as is the case here).

This Court considered what those restraints on liberty were which would cause the writ to issue and unanimously held it to be the function of Federal Courts to give meaningful content to the statutory phrase "in custody" in 28 U.S.C. § 2241;

> The habeas corpus jurisdictional statute implements the constitutional command that the writ of habeas corpus be made available. While limiting its availability to those "in custody," the statute does not attempt to mark the boundaries of "custody". . . .

Jones v. Cunningham, 371 U.S. 236, 238 (1963)(footnote omitted). Whether a particular restraint constitutes "custody" is, this Court said, to be determined by looking to "common-law usages and the history of habeas corpus both in England and in this country." Ibid. The Fourth Circuit has done just this.

REASONS FOR GRANTING THE PETITION

I. THE COURT OF APPEALS HAD JURISDICTION TO ISSUE THE CERTIFICATE OF APPEALABILITY AND TO ADJUDICATE THE APPEAL

AEDPA's requirement that a certificate of appealability issue, 28 U.S.C. § 2253(c)(1), is a jurisdictional prerequisite to appellate review. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). In Slack v. McDaniel, 529 U.S. 473 (2000), this Court addressed how the certificate of appealability requirement should apply when, as here, a district court denies habeas petition solely on procedural grounds, without addressing the underlying constitutional claims. This Court held that, in those circumstances, a certificate "should issue (and an appeal of the district court's order may be taken) if prisoner shows *** that jurists of reason" both (i)"would find it debatable whether the petition states a valid claim of the denial of a constitutional right," and (ii)"would find it debatable whether the district court was correct in its procedural ruling." Id. at 478.

A. THE COURT OF APPEALS HAD JURISDICTION TO ISSUE THE CERTIFICATE OF APPEALABILITY

1. All Jurisdictional Prerequisites Were Satisfied

When Congress so "clearly states that a threshold limitation on a statute's scope shall count as jurisdictional," this Court will give it the intended jurisdictional effect. Arbaugh v. Y & H Corp., 546 U.S. 500, 515 (2006). In addition, petitioner properly invoked the appellate court's jurisdiction. He filed a timely notice of appeal, within thirty days of the district court's order dismissing his habeas petition. 28 U.S.C. §§ 1291, 2253(a); Fed. R. App. P. 4(a); Habeas Rule 11(b).

2. Petitioner Satisfied Section 2253(c)(2)'s "Substantial Showing" Requirement

a. Petitioner made a substantial showing of a Sixth Amendment Speedy-Trial violation

In Doggett v. United States, 505 U.S. 647 (1992), this Court identified four factors to be weighed in evaluating a speedy trial claim under the Sixth Amendment. id. at 651 (citing Barker v. Wingo, 407 U.S. 514,

530 (1972)(Fourteenth Amendment Speedy-Trial claim)). Petitioner "state[d]" a reasonably debatable claim that satisfied the Doggett Test or that "at least" deserve[d] encouragement to proceed further." Slack, 529 U.S. at 484. First, petitioner showed that three-years passed between his indictment and trial, an "extraordinary" length of time that far surpasses this Court's one-year threshold for "presumptively prejudicial" delay. Doggett, 505 U.S. at 652 & n.1; id. at 658 (delay of more than one-year "generally sufficient to trigger judicial review"); Barker, 407 U.S. at 533 (three-years was "extraordinary" delay). Because "the presumption that pretrial delay has prejudiced the accused intensifies over time," Doggett, 505 U.S. at 652, petitioner's showing of a three-year delay - which appears to be longer than this Court has encountered in a constitutional Speedy Trial claim - by itself states a substantial showing of a Constitutional violation. Second, petitioner showed that it is reasonably debatable whether the State bears the greater responsibility for the delay.

This Court has also consistently recognized "The fundamental nature of a citizen's right to be free from involuntary confinement by his own government without Due Process and Equal Protection of the laws." Geren v. Omar, 552 U.S. 1074, 128 S.Ct. 741, 169 L.Ed. 2d 578 (2007).

SUPREME COURT RULE 20.4(a) - The Direct Writ has historically been treated as "Extraordinary," "Limited," "Sparingly Used," and "Rarely Granted." Supreme Court Rule 20.4(a); D. Oakes, The "Original" Writ of Habeas Corpus in the Supreme Court, 1962 Sup. Ct. Rev. 153, 154 n. 4. Rarely has this Court even allowed such writs to proceed. Instead, this Court has customarily transferred such writs to the appropriate District Court, as suggested in 28 U.S.C. § 2241(b). Even more rarely has this Court granted relief under this statute. "This Court does not, absent exceptional circumstances, exercise its jurisdiction to issue writs of habeas corpus when an adequate remedy may be had in a lower court." Dixon v. Thompson, 429 U.S. 1080 (1977)(citing Ex parte Abernathy, 320 U.S. 219 (1943) and Ex parte Tracy, 249 U.S. 551 (1919)).

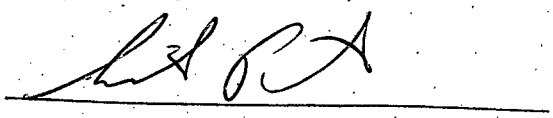
As advised and instructed by Mr. Redmond Barns - (202)-479-3022, Clerk, U.S. Supreme Court, as petitioner is a Pro-Se litigant, only cite the case(s), DO NOT send anything but the petition for Certiorari, the Court will order documents from the lower courts. (No Exhibits.)

CONCLUSION

This Court has the jurisdiction under 28 U.S.C. §§ 1254(1); 1651, ALL WRITS ACT, to issue Writ of Certiorari, Certificate of Appealability, and to grant a speedy Writ of Habeas Corpus.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: APRIL 17TH, 2022