ORIGINAL

No. 21-7728

IN THE

SUPREME COURT OF THE UNITED STATES



Antonio M. Branco — PETITIONER
(Your Name)

vs.

Commonwealth of Massachusetts — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The First Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Antonio M. Branco
(Your Name) W110611
Old Colony Correctional Center- Minimum
One Administration Road
(Address)

Bridgewater, Ma. 02324
(City, State, Zip Code)

No number available-nor email
(Phone Number)

# QUESTIONS PRESENTED

Please note that, both the United States District Court (hereinafter "District Court"), and the United States Court of Appeals for the First Circuit (hereinafter "First Circuit") never ruled on the Merits of Claims (including Constitutional ones) raised by the Petitioner's 28 USCS § 2254 WRIT For Habeas Corpus (hereinafter "Section 2254"), but rather ruled only on the requirement to exhaust state direct appeal remedies "procedural issue"; thus this Petition for Certiorari presents before this Most Honorable Court only "Questions" as to those rulings "conflicts" with a. other Circuits, b. previous binding First Circuit rulings on same relevant matter, and c. conflicts with this Court's rulings on same matter.

Question 1. May a dismissal of a Section 2254 Petition, based on failure to exhaust state remedies, be overturned, given that the judgement conflicts with other Federal Circuits rulings holding that unjustifiable excessive state system appellate delay (on direct appeal from a criminal conviction) exempts the nonjurisdictional (comity only based) exhaustion of state remedies requirement?

Question 2. May a dismissal of a Section 2254 Petition, based on failure to exhaust state remedies, be overturned, given that the

judgement conflicts with other Federal Circuits rulings holding that, unjustifiable excessive state system appellate delay violates the Appellant-Petitioner's Constitutional Rights, and constitutes a deprivation of Due Process, sufficient grounds to justify the exercise of Federal Habeas Jurisdiction?

Question 3. May a dismissal of a Section 2254 Petition, based on failure to exhaust state remedies, be overturned, given that the judgement conflicts with that same Circuit's "Binding Precedent" (on same important matter) holding that unjustifiable excessive state system appellate delay constitutes existence of circumstances present in state appeals process that render that process ineffective to protect the Rights of the prisoner and is grounds to exempt exhaustion of state remedies?

Question 4. May a dismissal of a Section 2254 Petition, based on failure to exhaust state remedies, be overturned, given that the judgement conflicts with that same Circuit's Binding Precedent (on same important matter), holding that unjustifiable excessive state system appellate delay Violates the Appellant-Petitioner's Constitutional Rights, and constitutes a deprivation of Due Process cognizable in Federal Court?

Question 5. May a dismissal of a Section 2254 Petition, based on failure to exhaust state remedies, be overturned, given that the judgement so far departed from and conflicts with this Most Honorable Courts relevant decisions on same important matter, holding that exhaustion requirement is not jurisdictional or binding on the Federal Court (but merely comity based), and that thus "failure to exhaust" is not an absolute bar to Federal Habeas Claims?

Question 6. May a dismissal of a Section 2254 Petition, based on failure to exhaust state remedies, be overturned, given that the judgement so far departs from and conflicts with this Court's relevant decisions on same important matter, holding that unjustifiable excessive state system appellate delay violates the Appellant-Petitioner's Constitutional Rights, AND that where a state system grants the right to an appeals process from conviction, that process must be Constitutionally comporting, and be conducted subject to the demands of Due Process, which this Court has defined as an Appeal processed at a Meaningful Time, and in a Meaningful Manner?

## QUESTION(S) PRESENTED

(Use as many pages as necessary to present your question(s) to the Court)

Please See Attached

## 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:

## TABLE OF CONTENTS



## INDEX TO APPENDICES

Branco V. Commonweath of Massachusetts

# TABLE OF AUTHORITIES CITED

# TABLE OF AUTHORITIES CITED

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit, denying the Petitioners Motion for a Certificate of Appealability (hereinafter "COA") on procedural grounds (exhaustion of state remedies), is not reported, but is set forth at pp "N – A" of the Appendix.

The decision of the United States District Court for the district of Massachusetts, dismissing the Petitioners Section 2254 Writ of Habeas Corpus solely on procedural grounds, is not reported, but is set forth at pp "N – A" of the Appendix.

## JURISDICTION

The opinion of the First Circuit was entered on 11-22-21 and a copy appears at Appendix pp "N – A"

As a Petition for rehearing is not applicable on COA, rehearing could not be sought.

An application to extend time (in which to file Certiorari Petition) to 4-21-22 (necessary to acquire required Certiorari Appendix Documents) was sought on 2-7-22 and returned by this Court for incompleteness (missing copy of 11-22-21 order of First Circuit). As that Court has yet to respond

to Petitioners multiple requests (January-February and March 2022) for copy of 11-22-21 order (misplaced by agents of this MCI Norfolk Institution on 12-31-21), the extension (together with copy of this Court's 2-15-22 letter confirming having timely received the extension) is hereby resubmitted as is with the Petition for Certiorari.

As the Constitutionality of an Act of Congress is drawn into question, and the United States or any of its agencies-agents not being a party here, notification pursuant to U.S. Supreme Court Rule 29.4(b) is hereby given that 28 USC § 2403(a) may apply and notice served on the Solicitor General at Dept of Justice 950 Pennsylvania Ave, N.W. Washington DC 20530-0001. It's not believed that either the District Court or First Circuit certified to Attorney General pursuant to Rule 29.4(b) of Constitutionality issue.

The jurisdiction of this Most Honorable Court is invoked under 28 USC § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The 5th Amendment, United States Constitution provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury..., nor shall any person be subject for the same offense..., nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation."

2. Likewise the 14th Amendment, United States Constitution provides:

"All persons born.... No state... shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

3. The statute under which Petitioner seeks relief from oppressive incarceration and unjustifiable state system appellate delay that effectively denied that Appeal is 28 USC § 2254 which provides:

"An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement of a state court shall not be granted unless it appears that (A) an applicant has exhausted.... or (B)(i) there is an absense of available state corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant."

above 28 U.S.C. § 2254 (b)(1)(A) and (B)(i) and (ii)

## STATEMENT OF THE CASE

The facts necessary to place in their setting the questions now raised are stated as follows:

### I. Course of Proceedings In Section 2254 Case Now Before This Court

Not at issue here but pertinent to showing Merit of underlying matters giving rise to Section 2254 case as well as from which the state direct appeal was filed on 12-19-17, are the Violations by state system of Petitioners Constitutional Rights. The prosecution (state) knowingly intentionally indicted for

first degree murder (starvation theory) with willfully false testimony (perjury) that the victim weighed 75 LBS (34 LBS - 30% less than her actual weight) to indict for murder, using false weight from a bogus document that state at same time never showed (withholding exculpatory evidence) to that Grand Jury, to with ulterior motive unlawfully increase their odds of at the very least backing into a lesser included charge of involuntary manslaughter. The state then repetitively further lied at successive Pre Trial Conferences upon questions as to nature of perjured testimony (to Grand Jury), telling trial court that other documents existed (listing 75 LB weight used to indict) when such was also false (no such documents provided or existed), the state court jurist (indifferent to the Fraud upon both the Court and future Petit Jury) ignoring and covering up for prosecutions misconduct going as far as to demand that the Petit Jury not be told of the deception upon them that had carried over from the deception of the Grand Jury proceeding them. The petit jury deceived found for the least they could find for, handing Petitioner verdict for involuntary manslaughter on 12-6-17. On 12-15-17 the sentence of 6-8 years (nearly 200% upward departure from 3-5 year per guidelines) issued which Petitioner (without bail) began serving on 4-9-2016.

The Federal Courts have consistently held that Perjury to Grand Jury Violates

the 4th and 5th Amendments and is grounds for dismissing Indictments.
See United States V Basurto 497 F2d 781, 785-86
also United States V Roth 777 F2d 1200, 1203-04
The Due Process clause of the 5th Amendment is violated when a defendant has to stand trial on an indictment which the government knows is based partially on perjured testimony. To permit a defendant to stand trial when the prosecutor knows of the perjury before the grand jury only allows cancer to grow

"Where prosecutor has knowledge that testimony before the grand jury was perjured, the consequences of a violation or abuse of this prosecutorial duty must be applied according to the following rulings"
Mooney V Holohan 294 US 103 Alcorta V Texas 355 US 28
Giles V Maryland 386 US 66 Hysler V Florida 315 US 411
Napue V Illinois 360 US 264 Pyle V Kansas 317 US 213
United States 497 F2d states "In Napue a conviction obtained through the use of false evidence, known to be such by representatives of the state, must fall under the fourteenth Amendment. The same result obtains when the state, although not soliciting false evidence, allows it to go uncorrected when it appears". They held in Napue that the prosecutions use of known false testimony at trial required a reversal of the petitioners conviction. The same result must obtain when the government allows a defendant to stand trial on an indictment which it knows to be based in part upon perjured testimony. The consequences to the defendant of perjured testimony given before the grand jury are no less severe than those of perjured testimony given at trial, and in fact may be more severe. The defendant has no effective means of cross examination or rebutting perjured testimony given before the grand jury as he might in Court". In Giles the Court stated "a state may not knowingly use false evidence, including false testimony to obtain a tainted conviction, implicit in any concept of ordered liberty".

On December 19, 2017 the Petitioner filed for direct state appeal from

the unlawful 12-6-17 conviction. The state appeal consists of challenge of various errors and prosecutorial misconduct largely grounded on the preceeding deliberating perjury to grand jury that poisened that grand jury and compromized the integrity of both that Grand Jury process and the entire process from that point forward, particularly as the Petit Jury was never told that they were hearing a matter that was handed down to them by a Grand Jury and process deceived and compromized, secrecy perpetuating the Fraud upon the Court. The Fraud has been further perpetuated by the unjustiable excessive Appeals process (state appeal) Delay (giving rise to Section 2254 Habeas Corpus Petition) which this Most Honorable Court in Matheus V. Eldridge 424 US 319 citing this Courts Armstrong V Manzo 380 US 545 ruled is clearly Unconstitutional as the (state caused) excessive delay amounts to over 70% of the Petitioners maximum sentence (at the time the state on 8-4-20 at long last got around to docketing the direct appeal); unjustifiable excessive state appeal delay that various Federal Circuits (including the 2nd and 5th) conclude (though in conflict with 1st Circuit) violates an Appellants Constitutional Rights (particularly Due Process). Peculiarly the

First Circuit has (in prior binding precedent) concluded that Delay such as that suffered by this Petitioner constituted an exception to the exhaustion of state remedy requirement. In matter at bar the First Circuit ignored their own precedent (as to exhaustion exemption), which in addition to their conflict with other Circuits on issue of whether excessive Appellate Delay Violates Due Process is also before this Most Honorable Court in this present Petition for Certiorari. And so, the "state caused" unjustifiable excessive appellate delay constitutes clear convincing evidence of existence of circumstances in state direct appeals process rendering that process ineffective to protect the Rights of the prisoner that does trigger the exemption to exhaustion requirement (pursuant to Section 2254(b)(1)(B)(i) and (ii)); said delay amounting to 51 of Petitioners 59 month minimum and 51 of 75 month maximum sentences respectively (sentences falsely procured to begin with), merely to begin a state direct appeal process that some Federal Circuits (2nd and 5th among them) require be fully completed (through highest state court) within a "Meaningful Time" (definition of Due Process - see Mathews V. Eldridge 424 US 319; 96 S.Ct. 893 quoting Armstrong V. Manzo 380 US 545 at 550) which Harris V. Kuhlman 601 FSupp 987 (2nd Circ.)

citing Shelton V. Heard 696 F2d 1127 at 1128-29 held to be within one half (50%) of a prisoners minimum sentence. With those parameters, there is no doubt that in matter at bar the state delay rose to Violation of the Petitioners Constitutionally protected Rights (particularly Due Process), and provides the foundation upon which his Great Writ for Habeas Corpus pursuant to 28 USC §2254 stands. The obstruction, snarls, and delay suffered by Appellant in state direct appeal is tantamount to state claiming that the Appellant is welcome to cut the cheese (prosecute his "appeal"), but they have sole control and withhold the only knife and cheese available from the Appellant; a hollow platitude.

As for the Merits of Petitioners underlying state direct appeal claims, if the prosecution had any case, why did they knowingly lie to the Grand Jury? No other proof of Merit is needed beyond fact that prosecution by their own choice chose the need to resort to crime of perjury before the Grand Jury to illicitly procure indictment.

On January 2020, the Petitioner (having for almost two and one half years futilely pursued his state direct appeal via dozens of letters, Motions, and petitions to both state court appointed appellate counsel and the state courts including the state SJC, and having already been oppressively incarcerated

for forty-six month of his 59 and 75 month minimum-maximum sentence respectively 78% and 61% of those sentences to that point) filed his Federal Writ of Habeas Corpus pursuant to 28 USC §2254.

In March 2021 the U.S. District Court for Massachusetts adopted the Report and Reccomendation of the Court and dismissed the Petition on sole procedural grounds of "failure to exhaust" state remedies (effectively non-existent. "R and R"

In March 2021 the Petitioner filed his Objections to the R and R.

On May 2021 the Petitioner applied to the United States Court of Appeals for the First Circuit for a Certificate of Appealability - "COA" on grounds that were made on Petition for Habeas Corpus, that being that the effectively non-existent state remedies constituted existence of circumstances in state direct appeal process rendering that process ineffective to protect the prisoner Petitioners Rights and constituted evidence of violation of Petitioners Constitutional Rights including Due Process; the COA showing the 1st Circuit how District Court had overlooked those grounds and misapplied incorrect facts and law.

On November 22, 2021 the First Circuit affirmed the District Courts dismissal, in a 11-22-21 order that sanctioned the lower courts full departure from "binding precedent" and itself departed from the

"binding precedent" of both itsself and this Court on same relevant matters of both "exhaustion" and Due Process.

In December 2021 the Petitioner (a Rehearing not applicable) filed Motion for Reconsideration with the First Circuit. As of this writing, that Motion is still pending before the First Circuit. This Petition is presented as that Motion has no tolling effect on time for Certiorari.

Also on 11-29-21 (upon receiving 1st circuit order), the Petitioner filed Motion with state Appeals Court to reinstate his state direct appeal (which that court had dismissed after having finally docketed it six months after the Petitioner had filed Section 2254 due to state failure to process appeal that Court in February 2020, in letter on file with US Distr. Court, stated they had no record of any appeal). On 12-29-21 the Petitioner Motioned for state appeals court reconsideration of their 12-9-21 denial of Petitioners Motion to Reinstate. In January 2022 the state court denied the reconsideration leaving the Petitioner, who by state system sloth and obstruction was forced to resort to Federal Courts in January 2020, and was, by time state got around to docketing the state direct appeal, already waiting in deference to the Federal Courts for Federal decision, with no remedy.

Copies of Petitioners 12-29-21 Motion and states court January 2022 denial appear at Appendix I pp 1 - 7, App'x K - 1.

Before the lower courts (Federal) was the issue of post-conviction Violations of Petitioners Rights to a prompt unobstructed review on state direct appeal never timely provided, specificly Violations of Petitioners Constitutional Rights by state system, particularly the Right to a direct appeal that needed to but failed to comport to the demands of Due Process guaranteed under the 5th and 14th Amendments to the Constitution of the United States of America; violations that make up just one of the Grounds to Petitioners Section 2254 case.

The direct issues before this Most Honorable Court are that the U.S. District Court, in a misapplication of law, dismissed the Petitioners Great Writ of Habeas Corpus (2254), and failed to consider the clear certain existence of circumstances in state appeals process that rendered that process ineffective to protect the Rights of Appellant, thus granting the Petitioner exemption from state remedy exhaustion per Section 2254(b)(1)(B)(i) and (ii) most specifically (ii); AND issue that First Circuit failed to adhere to the binding precedent of its own decisions on the same underlying matter and facts by in fact sanctioning the lower courts

full departure from First Circuit precedent; as well as issue that First Circuit failed to abide by rulings of this Most Honorable Court particularly in Matheus, Armstrong, Griffin V Illinois 351 US 12, Douglas V. California 372 US 353, Rinaldi V. Yeager 384 US 305, Burtone V. United States 375 US 52 and Barker V. Wingo 407 US 514, that all clearly establish the requirements of Due Process upon state appeals processes. Finally also before this Court is the issue of conflict among Federal Circuits as to the definition of what constitutes a Violation of the "Meaningful Time" portion of Due Process, which per this Courts rulings in each of the above cases, state system direct appeals must comport to.

## II. Relevant Facts to Section 2254 and Underlying State direct Appeal

The relevant facts are contained in Petitioners Motion under 28 USC 2254 (App. I p. 1-7 — AND in U.S. Distr. Court Record —). The Petitioner suffered nearly three years of unjustifiable excessive state system direct appeal delay from his 12-19-17 file Notice of Appeal to the mere docketing of that appeal in August 2020, after a nearly one year long attempts by state to limit the scope of review on appeal by habitually misrepresenting mere parts of Transcript to be the entire Transcript. (U.S Distr. Court

"R and R" - App "N pp A" ). The Petitioner pursued his direct appeal to no avail via dozens of Motions and letters to state court appointed appellate counsel and to state courts in futile attempts to pursue-prosecute his Appeal, all attempts to exhaust state remedies (U.S. Distr. Court R and R - App "N pp A")

In June 2019 and July 2019 the Petitioner filed Pleadings pursuant to M.G.L C. 211 seeking to invoke the Superintendency Powers of state Supreme Court (SJC) to instruct lower courts to prompt appellate process, this also to no avail (Copies of Petitions to SJC are on U.S. Distr. Court Record). Appointed appellate counsel made no effort to Move the state courts to prompt process or even compel production-provision of Transcript required for review on Appeal, AND never filed or even perfected any Appeal Brief after two years of being appointed upon which he was discharged.

Twenty-Six months after receiving Petitioners Notice of Appeal from conviction, a letter from the state appeals court stated that no record even existed (as of 2-4-20) of Petitioners state Appeal (letter from Mass. Appeals Court 2-4-20 letter on U.S. Distr. Court Record)

Four important points need noting here. First, the U.S. Distr.

Court in their R and R in oversight of actual facts noted that Petitioner, as part of process to exhaust state remedies, never sought to Petition the state SJC per MGL c. 211, when the actual facts shown to and making up the U.S. Distr. Courts record show such Petitions made in June and July 2019 (to no response from SJC) (U.S. Distr. Court R and R - App "N pp. A"). Second, the U.S. Distr. Court in their R and R both acknowledges the "extensive" state system appellate delay (that amounted to over half of Petitioners maximum sentence and nearly all of his minimum sentence, and acknowledges that delay was both caused by state and unjustifiable as R and R notes that state admitted to both a "LAG" in providing the trial Transcript as well as admitting to "attempting to locate" - find apparently lost Transcript, AND the R and R acknowledges that the Petitioner, as shown on record on file with U.S. Distr. Court, made dozens of exhaustive efforts (to no avail) to speed up the direct appeal process via dozens of Motions and letters to both the state court appointed appellate counsel as well as to the state courts (U.S. Distr. Court Record and R and R - App "N pp. A"). Third, the dismissal misapplied case law in which that Petitioner was cause of appellate delay (Rolls case) to this

Petitioners matter where all delay is attributable to the state system (U.S. Distr. Ct R and R-App "N pp. A"). Fourth point necessary is, that the dismissal order of District Court acknowledged but overlooked the fact that, in this matter the unjustifiable excessive appellate delay by state has Violated the Petitioners Constitutional Rights including to Due Process under the 5th and 14th Amendments to the U.S. Constitution, and overlooked the applicable exemption to comity based (nonjurisdictional) exhaustion of state remedy requirement, as well as overlooking the certain Violations (as confirmed by the Barker Four Factor Test employed by this Court) of Petitioners Right to Due Process of Law. (U.S. Distr. Court R and R-App "N pp. A").

## III. Existence of Jurisdiction Below

The Petitioners substantial Constitutional Rights including under the 5th and 14th Amendments to the Constitution of the United States have been Violated by the state system. A Section 2254 Petition Writ for Habeas Corpus was appropriately made in the United States District Court for Massachusetts, and, its dismissal Appealed (for Certificate of Appealability "COA") to the United States Court of Appeals for the First Circuit that, as Court of First Instance

had basis for Federal Jurisdiction.

## IV. The Court of Appeals has Decided a Federal Question in a way In Conflict With The Applicable Decisions of The Court

This is a case grounded on Constitutionally protected Right to Due Process of Law (Mathews quoting Armstrong "Due Process is the opportunity to be heard at a meaningful time and in a meaningful manner"), as well as a case with facts present that fall within and make applicable the exemption clause in 2254 (b)(1)(B)(ii) to nonjurisdictional exhaustion of state remedy requirement. Per 2254, a Section 2254 may NOT be filed unless Petitioner has exhausted state remedies unless; circumstances exist in the state direct appeals process that render that process ineffective to protect the rights of prisoner (Section 2254 (b)(1)(B)(ii). The record before the District Court shows that Petitioner appealed his 12-6-17 conviction and 6-8 year sentence (exacerbated by fact that guidelines called for 3-5 years - further exacerbated by false to begin with conviction) on 12-19-17; and futilely attempted, for nearly three years, to spur both the state court appointed counsel and the courts to action via dozens of letters and Motions as well as C.211 Superintendency Petitions to state SJC for their intervention all to no avail.

In fact, state appointed appellate attorney both one year and again nearly two years into being appointed counsel, excused his failure to Brief and failure to even identify one single issue to pursue on Appeal, on his still waiting for trial Transcript that he both apparently was in no hurry to obtain, and that he in tandem with state courts had first attempted to limit scope of review by misrepresenting mere parts of that Transcript to be the entire Transcript; blaming and excusing his failure to any advocacy on waiting for Transcript that he simultaneously accused the Petitioner of being in hurry to acquire.

The state system has conceded unjustifiable ("lag" in providing Appeal blamed on trying to "locate" trial Transcript for nearly three years) excessive appeal process Delay (amounting to 86% and 68% of Petitioners minimum/maximum sentence respectively - sentences already near double guidelines) State concessions on U.S. Distri Court Record.

Thus in view of the fact that the excessive Delay constitutes nearly all of the Petitioners sentence, such Delay cannot be anything but and fall within the Violative of Due Process Protections guaranteed by the United States Constitution under the 5th and 14th Amendments.

It is also settled that the state system (state appeals court) on 2-4-20

admitted the fact that at 46 months into the Petitioners minimum and maximum sentence (78% and 61% respectively) they still had no record of any Appeal for the Petitioner, who did file his Notice of Appeal (from False conviction 12-6-17) on December 19, 2017; the state courts not docketing the direct appeal until 8-4-20 (attempting to overcome their Violations of Constitution by caught in their act belated facade attempts at due diligence) amounting to unjustifiable delay of 88% and 70% of Petitioners minimum/maximum sentence respectively merely to begin their purported appeal process that the Constitution (as interpreted by the 2nd and 5th Circuits interpretation of this Most Honorable Courts rulings in Mathews and Armstrong) requires have been completed (not started on 8-4-20) by 4-8-2019.

In reaching its decision to affirm, the court below decided that the long ago settled principles of Due Process and relative to exemptions to the non jurisdictional requirement to exhaust state direct appeal remedys (including First Circuits own binding precedent on those principles), were not to be applied to the case at bar, instead ruling (contrary to the facts presented on lower courts (US Distr. Court) record) that:

1. The Petitioner had not exhausted state remedies; AND that

2. The Petitioner (contrary to records provided by Petitioner to the District Court) had not Petitioned the state SJC per MGL C. 211 for intervention with his direct appeal.

The Petitioner respectfully urges that all aspects of this decision is not just, is contrary to the facts, and most crucially is at variance with this Most Honorable Courts decisions as explained in the argument below.

## REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

The essence of the entirety of this Petition for Writ of Certiorari can be summed as:

Whether a state prisoner Appellant-Petitioner, seeking Federal Habeas relief under Section 2254, who having shown evidence of having suffered state system caused unjustifiable excessive Delay and obstruction to record - trial Transcript in state proceeding to any process in his state direct appeal, and who thereby having shown evidence (on lower U.S. Courts records) that the Delay amounting to nearly all and well over fifty percent of Petitioners minimum/maximum sentences respectively, constitutes the existence of circumstances

in the state direct appeal process that render that process ineffective to protect the Rights of prisoner-Petitioner (Section 2254(b)(1)(B)(ii), should be excused (as prescribed by 2254(b)(1)(B)(ii)) from having to "exhaust" those ineffective state remedies; AND

Whether a Petitioner having (in his Section 2254 Petition) shown and raised Constitutional and Due Process claims including those arising from the state systems Violation of his Rights because of that system's caused obstruction and unjustifiable Delay, has in fact shown evidence of Constitutional and Due Process claims cognizable in the Federal Courts.

The Petition through the precedent-decisions of numerous Federal Courts across all Circuits, on same relevant matter of unjustifiable excessive state system caused direct appeal from conviction Delay, as both grounds for exemption from exhaustion of state remedies per Section 2254(b)(1)(B)(ii) as well as for giving rise to independent Constitutional Claims independent of any trial claims, respectfully pleads to this Most Honorable Court that in the following six section argument of reasons for Granting Certiorari the case is made in support of the two preceeding paragraphs points and support of Petitioners Writs.

The arguments - reasons existing for the exercise of this Most

Honorable Court's discretionary jurisdiction are:

I. The Court of Appeals ERRED In Affirming the Dismissal Based on Reasons In Conflict with Rulings of Other Federal Circuits on Same Important Matter Of Unjustified Excessive State System Appellate Delay AS Grounds for Exemption from comity only - Non Jurisdictional Section 2254 Exhaustion Requirement

The fact that the Petitioner actually never got to have his state direct appeal heard at even one level of state court systems direct appeals process is no valid reason for affirming. The Doctrine of exhaustion turns on availability of state remedies, and the 52 month delay (32 months from conviction - Notice of Appeal) in not even final disposition but rather merely to begin (8-4-20 docketing) this Petitioner's state direct appeal process is sufficient to raise doubt as to adequacy of state remedies. citing United States ex rel Hankins v. Wicker 582 F. Supp 180 (3rd Circ. 1984)

"It is legal issues' that are to be exhausted not Petitioner, therefore Inordinate Delay by state may render state remedies ineffective to protect Rights of prisoner; excusing lack of exhaustion. Where Petitioner has demonstrated inordinate delay, burden is on respondents."
Burkett v. Cunningham 826 F2d 1208 (3rd Circ 1987)

"The Supreme Court has not yet directly addressed the issue of whether the Constitution guarantees a speedy criminal appeal, once an opportunity for an appeal is provided. The lower Federal Courts, however, have grappled with the question, and it is now clear in this Circuit that

substantial delay in the state criminal appeal process is sufficient grounds to justify the exercise of federal Habeas Jurisdiction". Cody V. Henderson 936 F2d 715 at 718 (2nd Circ. 1991) See Also Brooks V Jones 875 F2d 30, 31 (2nd Circ 1989); Elcock V Henderson 902 F2d 219, 220 (2nd Circ. 1990); Simmons V. Reynolds 898 F2d 865, 870 (2nd Circ. 1990); Harris V. Kuhlman 601 FSupp 987 (2nd Circ.); Hawkins V Fulcomer 941 F2d 246 (3rd Circ 1991); Wojtczak V. Fulcomer 800 F2d 353 (3rd Circ. 1986) Moore V. Deputy Comm'rs of SCI 946 F2d 236, 242 (3rd Circ); Shelton V. Heard 696 F2d 1127, 1128-29 (5th Circ, 1983); Rhewark V. Shaw 628 F 2d 297, 302-03 (5th Circ, 1980); Dixon V. Florida 388 F2d 424, 426 (5th Circ, 1968); Rhewark V. Wade 540 F2d 1282, 1283 (5th Circ. 1976); Breazeale V Bradley 582 F2d 5, 6 (5th Circ. 1978); Jules V Beto 462 F2d 1365, 1366-67 (5th Circ 1972); Dozie V. Cady 430 F2d 637, 638 (7th Circ. 1970); Pool V. Wyrick 703 F2d 1064, 1066 (8th Circ 1983); Seemiller V. Wyrick 663 F2d 805, 807-08 (8th Circ. 1981); Coe V Thurman 922 F2d 528, 531 (9th Circ 1990); O Kot V Callahan 788 F 2d 631, 633 (9th Circ. 1986); Harris V. Champion 938 F2d 1062 (10th Circ 1991); Jones V. Crouse 360 F2d 158 (10th Circ 1966); Way V Crouse 421 F2d 145, 146 (10th Circ 1970); Smith V Kansas 356 F2d 654, 655 and 657 (10th Circ. 1966); Cook V. Florida Parole 749 F2d 678, 680 (11th Circ. 1985) AND
Smith V Kansas 389 US 871 (1967)

While this Most Honorable Court has yet to directly rule on the matter of what constitutes a speedy appeal, the Court has nevertheless long held (Matheus 424 US and Armstrong 380 US) that Due Process is the "opportunity to be heard at a meaningful time and in a meaningful manner". If that is to be meant to be anything other than a meaningless plutitude, a state direct appeal that is unjustifiably

inordinately delayed by state system to excessive points of over 88 (eighty-eight) percent and over 69 (sixty-nine) percent of Petitioner's minimum and maximum sentence(s) respectively does indeed Violate his Constitutional Rights particularly Due Process. This very fact various Circuits including the 2nd and 5th have so ruled.

The Federal Habeas Corpus which is rightfully given the title "The Great Writ" is still to provide remedy from wrongful incarceration, and when applied to unjustifiable excessive state system appeal process delay that works to deny state remedy from unlawful or even potentially unlawful incarceration within a meaningful time (eg half - 50 percent of a prisoners minimum sentence), there can be no doubt or question to the Great Writ's Granting as being within the context of the 2254(b)(1)(B)(ii) exemption clause.

II. The Court of Appeals ERRED In Affirming Dismissal Based On Reasons that Conflict With The Rulings of Other Federal Circuits On Same Important Matter That Unjustified Excessive State System Appellate Delay Violates The Appellant-Petitioner's Constitutional Rights Including To Due Process

The Petitioner, the record before the lower Courts does reveal, does show the District Court evidence of unjustifiable state system

caused excessive delay in prosecuting his state direct appeal from conviction (U.S. Distr. Court Record, R and R, Petitioners Opposition to Dismissal, Objections to R and R), that gives rise to and constitutes Violation of Petitioner's Constitutional Rights including his Right to Due Process of Law. The fact that the First Circuit overlooked the facts, in conflict with other Circuits who hold that Appellate Delay like that suffered by the Petitioner in the case at bar gives rise to Violation of Due Process cognizable in Federal Court, and thus the First Circuits oversight invalidates their affirming.

The Petitioner in fairness notes that "there is no Supreme Court Decision holding that excessive delay in a state direct appeal is in Violation of the Due Process Clause of the United States Constitution" quoting Reed V. Quarterman 504 F3d 465 (11th Cir.) However Reed 504 3d continues "...a majority of Circuit Courts have held that the principle that excessive appellate delay may violate the Due Process Clause is a logical application of Supreme Court precedent". For instance the 10th Circuit in Delancy V. Caldwell 741 F2d 1246, 1247 stated "excessive delay in furnishing a ..trial transcript to be used on appeal...

can amount to a deprivation of Due Process"

The Third Circuit in Burkett V. Cunningham goes further in holding that "Due Process Clause guarantees a reasonably speedy appeal if state has chosen to give defendants the right to appeal" Burkett V. Cunningham 826 F2d 1208 (3rd Circ)
See Also Simmons V. Beyer 44 F3d 1160 (3rd Circ);
United States V. Johnson 732 F2d 379, 381 (4th Circ);
Rhevark V Shaw 628 F 2d 297 (5th Circ.); AND
United States V. Turner 8 F3d 673, 676 (9th Circ)

In summation the United States Court of Appeals for First Circuit has, given the Delay on state direct appeal clearly on the record in the case at bar, entered a decision in conflict with the decisions of the majority (2nd, 3rd, 4th, 5th, 9th, 10th, and 11th) of Federal Circuits who have all held inordinate appellate delay by the state to Violate Due Process. The 2nd Circuit in Harris 601 FSupp citing the 5th Circuit in Shelton 696 F 2d held that a state direct appeal does not comport to the demands of Due Process unless it is processed completed within one-half of prisoner-Appellants minimum sentence. Likewise the 10th Circuit in Harris V. Champion 15 F3d 1538 citing this Most Honorable Court held that "an appeal that is inordinately delayed is as much of a meaningless ritual as an appeal that is adjudicated

without the benefit of effective counsel or a Transcript of the trial court proceedings." (Barker V. Wingo 407 US 514) Here in the case at bar, the Petitioner can rightfully claim all three Violations; Violation of Right to Effective Assistance on grounds state court appointed counse failed to even identify any issue to proceed on appeal much less perfect any Appellate Brief despite two years of supposed work on appeal; Violation of Indigent Petitioners Right to Equal Protection on grounds the state obstructed (after initially, in tandem with appointed counsel, attempting to limit scope-parts of Transcript to be reviewed) Petitioners access to timely Transcript (also implicative of meaningful manner part of Due Process); and Violation of Right to Due Process on grounds of state caused excessive Appeal process Delay. Excessive state direct appeal violates Due Process precisely because any appeal from criminal conviction held toward latter part of prisoners sentence (in case at bar the state merely docketed appeal at point when Petitioner had already served approximately 90% and 70% of his minimum-maximum sentences respectively) becomes effectively meaningless. For this reason the bold courageous pioneering rulings of the 2nd and

5th Circuits make just sense as they set a fair and legitimate parameter, that gives substance to the "meaningful time" part of Due Process (gaurranteed by this Court in Mathews and Armstrong), that a state direct appeal be completed (not merely begun) within one half of a prisoner Petitioners minimum sentence (Harris 601 F Supp and Shelton 696 F 2d). The decision of the First Circuit is in conflict with those most sensible and prudent decisions of the the Harris and Shelton Courts on the same crucially important matter of the Constitutional Right to Due Process under the 5th and 14th Amendments to the U.S. Constitution.

## III. The Court of Appeals Erred in Affirming A Dismissal Based on Reasons that Conflicts with Its Own Binding Precedent on Same Important Matter of Unjustified Excessive State System Appellate Delay as Grounds for Exemption From Non Jurisdictional Section 2254 Exhaustion of State Remedy Requirement

The fact that Petitioner did not proceed to every stage of his states direct appeal process is no valid reason for affirming. It is believed that this is the heart of the First Circuit decision (App p. "N/A"). This argument while appearing sound on surface ultimately fails as it fails to consider the reasons for not having proceeded through all stages of direct appeal process. True, it is the Petitioner never proceeded thru the state appeals court

nor to the states highest court ("SJC"). But it was circumstances in the state appellate system that impeded the Petitioner from doing so. After all is it not the state system that is in control of their appeal systems process both as to venue hosting - scheduling docketing etc. as well as to having control over providing to Appellants the tools (Transcript etc) paramount to any effective prosecution of state direct appeals process? To say that the Petitioner was by his doing the reason for not prosecuting (exhausting) that appeal is simply unreal.

And as affirmed by the very First Circuit in Odsen V. Moore 445 F.2d 806 (1st Circ. 1971) where a three year delay excused exhaustion at 807 "We confess to a sense of the absurd in saying to one who without success has for nearly three years tried to spur both his court appointed counsel, and apparently the courts to action, that he must persevere in perpetuity before he can complain of failure to a Federal Court"; and in Rivera V Conception 469 F 2d 17 at 18 "It must be self evident that a defendant who appeals.. does not wish to stay in jail, and at the least desires his Transcript as quickly as possible.. two years of total inaction, however occasioned, while they remain incarcerated seems more than enough. Nor is it to be overcome by a present exercise of diligence and treated as if it had not occurred... Any such rule would mean that a defendant may be freely given improper consideration until the system, or parties at fault are caught out.. At this stage the Commonwealth is entitled to no more".

the Petitioner, in case at bar, having exhausted himself for almost 3 years to obtain from state (to no avail) his Transcript, thus showing unjustifiable excessive state caused Delay, excuses exhaustion; because that delay is evidence of circumstances in state process rendering that process ineffective

to protect Appellants Rights, exempting need to exhaust those remedies per Section 2254(b)(1)(B)(ii). What is decisive is that in the case at bar the state impeded the Petitioner, thus any failure to exhaust (non jurisdictional) to no fault of Petitioner is not absolute bar to Federal Habeas Claims "state snarls" see Bartone 375 US. The First Circuits order contradicts its own binding precedent (horizontal stare decisis). The First Circuits decision has so far departed from its own accepted usual course of proceedings and binding precedent, AND sanctioned the District Courts departure from First Circuit precedent as to call for granting Certiorari and exercise of this Courts supervisory power.

IV The Court of Appeals Erred in Affirming Dismissal Based on Reasons that Conflict with Its Own Binding Precedent on Same Important Matter That Unjustified Excessive State System Appellate Delay Violates Appellant Petioners Constitutional Rights Including Right to Due Process

In the case at bar the Petitioner, for nearly three year, seeking action on his Appeal from state courts to no avail, via dozens of letters and Motions for Transcript (whose scope the state courts, in tandem with appellate counsel they appointed, habitually attempted to limit by misrepresenting mere parts of Transcript to be entire trial Court proceedings) as well as to proceed to prompt process, attempted to prosecute his direct appeal. On this set of facts and relevant matter of state caused Appellate Delay (that in case at bar surpassed 90 percent and 70 percent of Petitioners minimum/maximum sentence(s) respectively) Violations of Petitioners

Constitutional Rights including to Due Process ("Right to be heard in a meaningful manner and at a meaningful time") that are claimed in Section 2254 in case at bar, the First Circuit contrary to their affirming held that "The finding of guilt, however so far is only provisional. Petitioners, having appealed are entitled to have that finding reviewed and their guilt finally passed upon by the full process of law.. Petitioners.. in their Motion.. stated.. transcript of their trial had not been prepared.. lengthy incarceration without.. opportunity to press their appeal was a denial of Due Process.. holding a case under advisement for an unconscionable period.. deprived defendant of Due Process (citing Odsen 445 F 2d at 807) Rivera 469 F 2d at 18. and held in Odsen 445 F 2d at 807 "Petitioner here alleges that he repeatedly attempted by letter to seek action from the state court. From Petitioners point of view, the impasse is as complete as when a case is held under advisement.. We remind ourselves that exhaustion refers to remedies NOT Petitioners. If the facts are as Petitioner alleges, requiring him to further seek state relief.. thereby countenancing further delay, would deprive him of Due Process of Law. The District Court on remand will therefore hold an evidenciary hearing to determine the substance of Petitioners allegations." On issue of prospect of not granting Writ if state at long last promptly prosecuted the delayed Appeal Judge Aldrich states:

"to condition its non-issuance on prompt prosecution of the state appeal.. would be to assign a premium to sloth.. It may be that the District Court will have no choice but to issue the Writ (Habeas Corpus - 2254).. The Certificate of Probable Cause (Appealability) is granted.. the judgement is vacated and the cause remanded to the District Court for further proceedings."

The First Circuit, in conflict with itself, as to its departure (in present matter) from its own binding precedent, on same important facts and matter relevant to Due Process, that state caused Appellate Delay is grounds for both Due Process

Violations Claims independent of trial errors, and evidence of ineffective state process; AND as to its departure from its own binding precedent, ruling that delay as in the case at bar is not to be overcome by state systems present (after fact) acts of diligence, Violates its own law. For the foregoing the First Circuit had no valid reason for affirming.

## V. The Court of Appeals Erred in Affirming Dismissal Based on Reasons that Have So Far Departed and Conflict with This Courts Relevant Decisions on Same Important Matter of Unjustified Excessive State Appellate Delay as Grounds for Exemption From Non Jurisdictional Section 2254 Exhaustion Requirement

The First Circuit in affirming did not abide by binding vertical stare Decisis by failing to adhere to the rulings of this Most Honorable Court in Bartone 375 US, Mathews 424 US, Armstrong 380 US, Barker 407 US, Griffin 351 US, and Douglas 372 US. Thus it has no valid reason for affirming.

It is unnecessary to outline in this Petition the entire thrust of this Courts decisions concerning exhaustion requirement of Section 2254. It is sufficient to say that this case is not a case involving Petitioner who being afforded an opportunity to exhaust failed to do so. It is a case in which Federal Constitutional protections on state direct appeals have been violated thus also giving evidence of existence of circumstances, in state direct appeal process, rendering process

ineffective and exempting (Section 2254(b)(1)(B)(ii)) exhaustion of state remedy requirement. Harris 601 FSupp citing Griffin 351 US and Douglas 372 US states at 991 "There is no Constitutional Right to an appeal. Having made the Right of Appeal available, however, the state is obligated by the United States Constitution to avoid impeding effective access to the Appellate Process." Impediments in the state system such as Appellate Delay run contrary to Constitutional obligations, thus Congress promulgated 2254(b)(1)(B)(ii) exemptions to remedy exhaustion requirement. Thus in Bartone 375 US this Court was careful to markout state remedy exhaustion requirement as nonjurisdictional and thus not an absolute bar to Federal Habeas claims See Bartone at 54 also stating "Where state procedural snarls or obstacles preclude an effective state remedy against unconstitutional convictions, Federal Courts have no other choice but to grant relief in the collateral proceeding" citing Fay V. Noia 372 US 391 (1963)

The criteria relied on by the Court below (App "N pp. A"), affirming the District Courts dismissal on failure to exhaust procedural grounds, in light of fact evidence of existence of impediments in state system that the lower Courts overlooked, renders the First Circuits order a misapplication of law and the affirming not sound.

## VI. The Court of Appeals Erred in Affirming Dismissal Based on Reasons that Conflict with This Courts Relevant Decisions on Same Important Matter that Unjustifiable Excessive State Appellate Delay Violates Petitioners Constitutional Rights Including to Due Process

The First Circuit has decided an important Federal Question in a way that conflicts with relevant decisions of this Most Honorable Court, particularly

those guaranteeing Petitioners Rights to Due Process under the 5th and 14th Amendments. See Griffin 351 US, Douglas 372 US, Barker 407 US, Bartone 375 US, Matheus 424 US, Armstrong 380 US, Douglas 372 US and Evitts v Lucey In its opinion (App "N pp A") the Court of Appeals seems to hold that the failure of Petitioner to exhaust state remedies would be sufficient ground on which to affirm. This is clearly erroneous in light of this Most Honorable Courts decision in Matheus 424 US quoting Armstrong 380 US

> "The fundamental requirement of Due Process is the opportunity to be heard at a Meaningful Time and in a Meaningfull Manner" Matheus at 333, Armstrong at 552 further stating "Due Process is an opportunity which must be granted at a Meaningful Time.."
> In Evitts this Court guarantees a Petitioner the Right to Due Process in state appeal processes of states that offer direct appeals.

As this Court has stated "Delay in the final judgement of conviction, including its appellate review, unquestionably erodes the efficacy of law enforcement". In essence, state caused excessive Appellate Delay constitutes effective denial of the Appeal. In Douglas 372 US this Court held that the "denial of Appeal is insidious discrimination". In Armstrong where this Court granted Certiorari the Court ruled "The Words Due Process at a minimum they require that deprivation of life, liberty, or property by adjudication be preceeded by notice and opportunity for hearing appropriate to the nature of the case."

> In Barker 407 US cited by Harris 15 F3d the Court states "An appeal that is inordinately delayed is as much of a meaningless ritual as an appeal that is adjudicated without the benefit of effective counsel or a transcript of the trial court proceedings."

The First Circuit has entered decision in conflict with this Courts

relevant decisions, on the same crucially important Right to guarantee Petitioners Due Process, as a Constitutional Right under the 5th and 14th Amendments. The First Circuits affirming is on no valid reason.

## VII. The First Circuits Sanctioning of Dismissal of Section 2254 is Based on Irrelevant precedent and Leaves Prejudiced Petitioner With No Remedy for Violations of His Constitutional Rights

The First Circuit affirmed dismissal based on irrelevant precedent in which that Petitioner, "Ralls" was the cause of excessive delay (See District Court R and R App "N pp. A"). In the case at bar, the state caused all delay, and the state remedies inadequate and ineffective to test the legality of Petitioners hereto merely provisional convilction (given the process meant to adjudicate the finality of conviction has been unjustly excessively delayed (attributable to state) and the appeal effectively denied the Petitioner). The delay (not attributable to Petioner) caused failure to exhaust, which should be excused.

The Petitioner raised the Section 2254 at bar on Federal Court Precedent, that among other proscriptions ruled that, present state acts of diligence can not overcome past delay. Long after Petitioner filed 2254, only then did state courts (on 8-4-20 with 90% of sentence already served) merely begin (docket) the direct appeal, only to dismiss that appeal (for alleged non prosecution) on Petitioner who was by that point respectfully waiting on Order of Federal Courts. That

Order on 11-22-21, ordered Petitioner to first exhaust state remedies. On that order, the Petitioner on 11-29-21 filed a Motion to Reinstate his state appeal with state Appeals Court, and on 12-29-21 filed for Reconsideration of that same courts denial of 11-29-21 Motion. That Courts 1-9-22 denial of 12-29-21 Reconsideration leaves Petitioner, fallen through cracks, and [grave Injustice], with NO remedy, unless this Most Honorable Court grants this Meritorious Certiorari that presents Question Matter with both significance to Petition's across all Circuits, and for which unresolved conflict remain questions that this Most Honorable Court should finally resolve.

There is a need for uniform rule on point of whether state system can require exhaustion of its criminal direct appeal remedies while simultaneously Violating the essence of this Courts rulings (on requirements of Due Process), when state unjustifiably excessively delays (to points exceeding most or nearly all of prisoner's sentences). The settlement of that point-principle is critically important to protecting the Constitutional Rights of all prisoners, and, Petitioner argues, the whole of Public, as, Violation of any Constitutional Right has the effect of Violating the Aggregate of Rights.

> "Criminal Appellants often languish in prison or jail, vegetating while they await the outcome of their Appeals.. Moreover, if an appeal is not frivolous, a person convicted of a crime may be receiving punishment the effects of which can never be completely reversed, or living under the opprobrium of guilt when he or she has not been properly proven guilty and may indeed be innocent under the Law. In our judgement, such results can not be tolerated. The cancerous malady of decay which haunts

our judicial system by postponing the rectification of wrong and the vindication of those unjustly convicted must be excised from the judicial process at every stage." Rhemark V. Shaw 628 F 2d at 303

"The Petition now at bar before this Court" involves questions of gravity and general importance, of which there also exists conflict between decisions of Federal Courts of different Circuits." (See Fields V. United States 205 US 292 51 L Ed 807 ~~[illegible]~~ 27 S. Ct 543 ; 1907)

"... clash of opinions in Courts of Appeal requires settlement of question by Supreme Court of United States."
Universal Camera Corp V. NLRB 340 US 474
95 L Ed 456 71 S. Ct 456 ; 1951

"Partly because of different conclusions by Court of Appeals, Writs of Certiorari will be Granted."
Shapiro V. United States 235 US 412
59 L Ed 291 35 S. Ct. 122 1914

Aside from the Merits (chief of which is Constitutionally transgressing false prosecution) upon which state direct appeal and Petitioners Section 2254 Writ are Grounded on, in and of themselves compelling reasons for granting the Great Writ (Habeas Corpus); the Section 2254 Petition is further raised on independent Constitutional claims (state caused excessive direct appeal delay) that state direct appeal delay Violates Petitioners Constitutionally Protected Right to Due Process.

Frankly, the Petitioner humbly acknowledges (and begs pardon for) his lack of credentials or expertise to argue before this Most Honorable Court, as he has hereby attempted; nonetheless letting the egregiousness of the full extent of the Due Process Violations (resulting from state systems excessive Delay

and impediments) make the necessary arguments, that show to both the reasonably prudent person as well as to the most expert jurist (this Court), that the substantial Constitutional Rights of countless imprisoned are being Violated, and Merit this Most Honorable Court's intervention, relief, and Granting of this Writ of Certiorari.

## VIII. THE QUESTIONS RAISED IN THIS PETITION ARE IMPORTANT AND UNRESOLVED

The First Circuit has decided important questions of Federal Law that have not been, but should be, settled by this Court and are a firm basis for Granting Certiorari in this case.

1. The First Circuit, in conflict with other circuits, made a highly questionable ruling by affirming District Courts dismissal of Habeas Petition on procedural grounds (exhaustion state remedies), ignoring Due Process Violations resulting from state caused appellate delay amounting to nearly all and over half Petitioner's minimum-maximum sentences. The question of Violation of Due Process guaranteed by 5th and 14th to U.S. Constitution resulting from state caused delay on direct appeal as similar to that suffered in case at bar has yet to be answered by U.S. Supreme Court. However it's worth noting that both 2nd and 5th (Harris 601 F Supp at 1128-1129 and Shelton 696 F 2d) have ruled conclusively that "Right to Due Process can be presumed Violated when a state systems direct appeal from conviction is not completed within one half of Appellants minimum sentence"; removing arbitrariness in those Circuits.

There remains a need for Uniform interpretation of Federal Law that justifies a Grant of Certiorari in case at bar. Going hand in hand, the elimination of, always subject to abuse, arbitrariness in the Interpretation of Important Matters of Federal Law such as those presented to this Most Honorable Court in the case before ye, also justifies a Grant of Certiorari.

2. This Petition presents to this Court a more fundamental question for review — May a state system, that unjustifiably excessively delays the state direct appeals of Appellants, thereby effectively denying Appellants of their Appeals (at least within the Meaningful Time component of Due Process as defined by this Court in Armstrong and Mathews), as if holding those Appeals under advisement for unconscionable periods, require exhaustion of those state remedies, which have been (by the unjustified Delay) rendered ineffective (at least as regards to Meaningful Time required by Due Process) to Protect the Constitutional Rights (including Right to Due Process) of Appellant prisoner, before the prisoner-Appellant can resort to Federal Court by way of Writ of Habeas Corpus relief under 28 U.S.C. § 2254?



also its own (1st Circ) prior decisions on same issue. The First Circuits

This Court has consistently held in the majority ruling that Due Process as a Right demands that the process (in this matter, a state disciplinary process) be held to conform to and take place at a Meaningful Time and that where state courts exist in state procedural process the only proclamation or effective state remedy requires constitutional jurisdiction. Federal Courts have no other choice but to grant Relief if appropriately the Courts failure in fail conformity with the language of Congress when invoking the Law relevant to some important matter occurred here.

See 28 U.S.C. § 2254(b)(1)(B)(ii), Unpublished Examination

The decision to affirm by the First Circuit is sufficiently contrary to this Court's ruling that it is important that this Court vindicate its principles by upholding the writ of Mandamus. Mandamus and Prohibition to this case. The 1st Supreme Court is large enough for time to resolve disagreement among lower courts about specific legal questions or issues important to state or parties to the criminal matter or and existence of conflict between Circuits such as 1st Circuit decision to require exhaustion of Administrative state remedies, which conflicts with decisions of other Circuits etc. but

conflicting decision poses ramifications of paramount importance to the Nationwide Application of Law to Constitutionally Protected Rights including the Right to Due Process. The Questions raised in this case are important, effect people across all Circuits, AND are unresolved.

## CONCLUSION

The judgement below is a unique departure from the decisions of this Most Honorable Court that require that Appeals offered by state systems comport to the requirements of Due Process and to the Constitution of the United States. As such it represents a breach in the wall erected by the Fifth and Fourteenth Amendments to the Constitution, and breaches the decisions of this Most Honorable Court that were designed to Protect a Citizen from being deprived of Life, Liberty, or Property without Due Process of Law.

The Petition for a Writ of Certiorari should therefore be Granted.

Dated: April 18, 2022

Respectfully submitted,

by Pro Se Petitioner,

Antonio M. Branco
Old Colony Correctional Center-Minimum
One Administration Road
Bridgewater, Ma. 02324