

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Antonio M. Branco Petitioner

VS.

Commonwealth of Massachusetts Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
United States Court of Appeals For The First Circuit

PETITION FOR WRIT OF CERTIORARI

APPENDIX

United States Court of Appeals For the First Circuit

No. 21-1310

ANTONIO M. BRANCO,

Petitioner - Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS,

Respondent - Appellee.

Before

Kayatta, Barron and Gelpí,
Circuit Judges.

JUDGMENT

Entered: November 22, 2021

After carefully considering Petitioner's arguments and the record, we deny a certificate of appealability and terminate the appeal.

The district court dismissed Petitioner's 28 U.S.C. § 2254 petition without prejudice for the procedural reason that he failed to exhaust state court remedies. Petitioner does not make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Petitioner fails to show any error in the district court's procedural ruling, and he also fails to show a viable constitutional ground. See Slack v. McDaniel, 529 U.S. 473, 484 (2000) (COA standard). Among other difficulties, Petitioner does not address the problem that, while his § 2254 petition was pending, the state court dismissed his direct appeal for non-prosecution. Petitioner does not explain how, in the circumstances, his failure to exhaust was excusable, or how, in the circumstances, he was denied due process. See Layne v. Gunter, 559 F.2d 850, 851 (1st Cir. 1977) (exhaustion); United States v. DeLeon, 444 F.3d 41, 57-58 (1st Cir. 2006) (due process). Petitioner thus waives the dispositive issues. See United States v. Zaninno, 895 F.2d 1, 17 (1st Cir. 1990) (arguments not developed are deemed waived).

The request for a certificate of appealability is denied, and the appeal is terminated.

By the Court:

Maria R. Hamilton, Clerk

cc:

Antonio M. Branco

Eva Marie Badway

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANTONIO M. BRANCO,)	
)	
Petitioner,)	Civil Action
)	No. 1:20-10225-PBS
v.)	
)	
COMMONWEALTH OF MASSACHUSETTS,)	
)	
Respondent.)	
)	

ORDER OF DISMISSAL

Saris, D.J.

In accordance with the Court's Order dated March 18, 2021,
adopting Report and Recommendation(Dkt. No. 47), it is hereby ORDERED,
that the above-entitled action is dismissed.

03/18/2021

Date

By the Court,

/s/ Miguel A. Lara
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANTONIO M. BRANCO,)	
)	
Petitioner,)	CIVIL ACTION
)	NO. 20-10225-PBS
v.)	
)	
COMMONWEALTH OF MASSACHUSETTS,)	
)	
Respondent.)	

**REPORT AND RECOMMENDATION ON RESPONDENT'S MOTION TO DISMISS
PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254**

March 2, 2021

DEIN, U.S.M.J.

I. INTRODUCTION

On December 6, 2017 the petitioner, Antonio M. Branco, ("Branco" or the "Petitioner"), was convicted by a Bristol County Superior Court jury of involuntary manslaughter and permitting elder abuse. (Docket No. 36, Ex. 1 at 16).¹ On February 5, 2020, while in the midst of attempting to obtain transcripts of the trial and various hearings for his appeal, Branco filed the instant *pro se* petition for habeas relief pursuant to 28 U.S.C. § 2254 alleging (1) an inordinate delay in producing transcripts; (2) a compromised and incomplete record; (3) prosecutorial misconduct "at every stage"; and (4) a prosecutorial and judicial cover-up of prosecutorial misconduct. (Docket No. 1 at 5-10). This matter is presently before this court on the "Respondent's Motion to Dismiss" (Docket No. 22). Therein, the Respondent contends that the

¹ Portions of the record from the state court proceedings have been submitted by the parties as attachments to various pleadings. For convenience, citations will be to the docket number of the filing, the exhibit number where appropriate, and the ECF page number.

habeas petition should be dismissed because Branco has failed to exhaust his state court remedies. Branco argues that the motion to dismiss should be denied as untimely, and that he should be excused from any exhaustion requirement for various reasons, including that he has “effectively consummated the requirements of exhaustion[.]” (Docket No. 26 at 3).

For the reasons detailed herein, this court finds that Branco has not established that it would be futile for him to pursue his claims in state court. Since Branco must first exhaust his state court remedies before he can seek federal habeas relief, this court recommends to the District Judge to whom this case is assigned that Respondent’s Motion to Dismiss be allowed, and that the habeas petition be dismissed without prejudice.

II. STATEMENT OF FACTS

Procedural Background

Branco was indicted by a Bristol County grand jury on June 30, 2016 for one count of murder in the first degree in violation of Mass. Gen. Laws ch. 265, § 1; two counts of permitting elder abuse in violation of Mass. Gen. Laws ch. 265, §13K(d1/2); and one count of assault and battery on a disabled person over 60 with injury in violation of Mass. Gen. Laws ch. 265, §13K(b). (Docket No. 36, Ex. 1 at 2-3). Branco entered a plea of not guilty on all counts on July 6, 2016. (*Id.* at 5). On December 6, 2017, following a jury trial in Bristol Superior Court, Branco was convicted of involuntary manslaughter and one count of permitting elder abuse, and was acquitted of one count of permitting elder abuse. (*Id.* at 16). At a sentencing hearing on December 15, 2017, the trial judge sentenced Branco to serve not less than eight years and no more than ten years for the manslaughter charge at MCI Cedar Junction. (*Id.*). The trial judge further ordered that Branco serve ten years of probation for his conviction for permitting elder

abuse, which was to be served consecutively following his manslaughter sentence. (Id. at 17). The trial judge subsequently revised Branco's prison sentence to a minimum of six years and a maximum of eight years. (Id. at 17, 19).

Delay in Securing Complete Transcripts

Branco filed a timely notice of appeal of his conviction on December 19, 2017. (Id.). On December 21, 2017, the state trial court issued notices to the court reporters to produce transcripts of various pre-trial evidentiary and motion hearings, the trial and the sentencing hearing. (Id. at 18). On January 25, 2018, the Commonwealth nolle prossed petitioner's indictment for assault and battery on a disabled person over 60 with injury. (Id.). On the same day, private counsel withdrew and the court appointed appellate counsel. (Id.). There was a subsequent change of counsel in February/March 2020, and again in May 2020. (Id. at 22). It appears from the state court record that Branco has been proceeding *pro se* in the trial court since July 31, 2020. (Id. at 23).² He is proceeding *pro se* in his state court appeal. (Docket No. 36, Ex. 2).

After the Superior Court ordered the preparation of transcripts on December 21, 2017, the petitioner filed a series of motions in that court seeking to obtain a free transcript of all proceedings. (See, e.g., Docket No. 36, Ex. 1 at 19-21). For example, on May 14, 2018, petitioner submitted a Motion for a Free Transcript, on which the court took no action because the "transcripts have already been ordered by appellate counsel." (Id. at 19). The petitioner submitted another Motion for a Free Transcript on June 11, 2018, on which the court again

² While the Respondent contends that Branco waived his right to counsel, Branco denies this and alleges that he had no choice but to proceed *pro se* in light of counsel's poor performance. (See Docket No. 36 at 2; Docket No. 40 at 1-3).

took no action for the same reason. (Id.). Petitioner submitted two additional Motions for a Free Transcript in July 2018. (Id. at 19-20). On August 8, 2018, petitioner again submitted a Request for Transcripts, after which the trial court again instructed the court reporters to prepare various transcripts of several outstanding proceedings. (Id. at 20). On August 31, 2018, Branco filed a request for “a full transcript of the entire proceedings,” which was denied by the court on the grounds that transcripts had already been ordered. (Id.). Branco renewed his request on September 20, 2018, which was denied for the same reason. (Id. at 21). Nevertheless, Branco filed another motion on December 6, 2018. (Id.). While transcripts were obtained in a piecemeal fashion over time (see, e.g., id.), the state court record was not assembled and sent to the Massachusetts Appeals Court (“Appeals Court” or “MAC”) until August 4, 2020. (Id. at 23; see Docket No. 36, Ex. 2 at 1-2 (transcripts docketed in Appeals Court on August 6, 2020)).³

Habeas Petition

Meanwhile, on February 5, 2020, Branco filed the instant petition for writ of habeas corpus pursuant to 28 U.S.C. §2254. (Docket No. 1). The petition raised the following four grounds: (1) an inordinate delay in producing the transcripts; (2) a compromised and incomplete record; (3) prosecutorial misconduct “at every stage”; and (4) a prosecutorial and judicial cover-up of prosecutorial misconduct. (Id. at 5-10). Branco contends that the delay in production of transcripts violates his constitutional rights, including his rights to due process,

³ On September 11, 2020 Branco filed an affidavit with the MAC regarding his “absolute rejection of court’s unconstitutional Assembly of Record.” (Docket No. 36, Ex. 2 at 2). In response the MAC ordered that “[t]he defendant may renew his request to overturn his conviction and his arguments therefore in a substantially conforming appellate brief and record appendix which shall be due on or before 11/16/2020.” (Id.).

equal protection and effective assistance of counsel. (Id. at 5). As described below, none of these claims have yet been presented to, much less addressed by, the state appellate courts. The Petitioner claims that all efforts to exhaust his state remedies "have been ignored[.]" (Id. at 7).

The Respondent moved to dismiss the petition on June 1, 2020 and filed a supporting memorandum. (Dockets No. 22, 23). As of that date most, but not all, of the transcripts from the state court proceedings had been provided to Branco, and the Respondent's attorney had been assisting in securing the transcripts. (Docket No. 23 at 2-3).

Petitioner filed an Opposition to the Motion to Dismiss on June 17, 2020. (Docket No. 26).⁴ After a number of filings by the Petitioner concerning the scope of the federal docket, on November 20, 2020 this Court ordered the parties to provide status reports concerning the status of the transcript production and the state court proceedings. (Docket No. 35). Based on the parties' responses (Docket Nos. 36, 37 & 40) it appears that the record has been assembled in the Massachusetts Appeals Court, to which Branco objects, and that Branco was due to file his appellate brief and record appendix by November 16, 2020, which he failed to do. (Docket No. 36, Ex. 2). On November 19, 2020 the Appeals Court was beginning to take steps to dismiss the appeal for lack of prosecution. (Id.). The current status of the state appeal is unknown.

Additional facts will be provided below where necessary.

⁴ In addition to opposing the Motion to Dismiss, Branco moved to strike the Motion as being untimely. (Docket No. 41). The Motion to Strike has been denied. On April 27, 2020 this Court allowed the Respondent until June 1, 2020 to respond to the habeas petition, (Docket Nos. 15, 16), and the court's docket reflects that the Motion to Dismiss was timely filed with the court on that date. Branco had opposed the extension. (Docket No. 20).

III. DISCUSSION

A. Standard of Review

“Before seeking a federal writ of habeas corpus, a state prisoner must exhaust available state remedies, 28 U.S.C. § 2254(b)(1), thus giving the state the first ‘opportunity to pass upon and correct alleged violations of its prisoners’ federal rights.’” Josselyn v. Dennehy, 475 F.3d 1, 2 (1st Cir. 2007) (quoting Duncan v. Henry, 513 U.S. 364, 365, 115 S. Ct. 887, 888, 130 L. Ed. 2d 865 (1995) (per curiam) (internal citations omitted)). Thus, absent “exceptional circumstances,” “a habeas petitioner in state custody may not advance his or her constitutional claims in a federal forum unless and until the substance of those claims has been fairly presented to the state’s highest court.” Barresi v. Maloney, 296 F.3d 48, 51 (1st Cir. 2002); see also 18 U.S.C. § 2254(c) (for purposes of 28 U.S.C. § 2254, a claim will not be deemed exhausted if the petitioner “has the right under the law of the State to raise, by any available procedure, the question presented.”). To exhaust a claim, a petitioner “must ‘fairly present’ his claim in each appropriate state court including a state supreme court with powers of discretionary review[.]” Baldwin v. Reese, 541 U.S. 27, 29, 124 S. Ct. 1347, 1349, 158 L. Ed. 2d 64 (2004) (citing Duncan, 513 U.S. at 365-66, 115 S. Ct. at 888). In Massachusetts, the Supreme Judicial Court (“SJC”) holds “the power of discretionary review over decisions of the Appellate Court.” Josselyn, 475 F.3d at 3. Consequently, in order to present a claim to the highest court in Massachusetts, a party must first appeal to the Appeals Court, and upon an unsuccessful appeal, “seek[]

discretionary review from the SJC” by filing an application for leave to file for further appellate review (“ALOFAR”). Id. (citing Mass R. App. Proc. 27.1(b)).

In pursuing federal relief, a habeas petitioner bears the “heavy burden to show that he fairly and recognizably presented to the state courts the factual and legal bases of [his] federal claim.” Adelson v. DiPaola, 131 F.3d 259, 262 (1st Cir. 1997). “To carry this burden, the petitioner must demonstrate that he tendered each claim ‘in such a way as to make it probable that a reasonable jurist would have been alerted to the existence of the federal question.’” Id. (quoting Scarpa v. Dubois, 38 F.3d 1, 6 (1st Cir. 1994)). Applying these principles to the instant case compels the conclusion that the Respondent’s Motion to Dismiss should be allowed.

B. Failure to Exhaust

In the instant case, Branco has failed to carry his burden because he has not presented his claims either to the Massachusetts Appeals Court or to the SJC, and thus has not “fairly and recognizably presented” his claims to the state courts. See Adelson, 131 F.3d at 262. Though Branco filed a notice of appeal to the Massachusetts Appeals Court on December 19, 2017, the appeal itself has not been concluded. (See Docket No. 36, Ex. 2). Thus, his claims relating to the conduct of his trial clearly are not ripe for review by a habeas court.

Branco’s claims relating to the delay in producing the transcripts are similarly not appropriately before the habeas court. Branco argues that he should be excused from the exhaustion requirement under 28 U.S.C. § 2254(b)(1)(B)⁵ due to his numerous efforts to obtain the transcripts and because the state made filing petitions with the state courts impossible

⁵ Pursuant to 28 U.S.C. § 2254(b)(1)(B) habeas relief may be afforded in the absence of exhaustion if “(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.”

because of the delay. (See Docket No. 26 at 44-85). In limited circumstances, federal courts have permitted “exceptions to the exhaustion requirement.” Englehart v. Raikey, No. C.A. 90-12604, 1993 WL 207773, at *6 (D. Mass. May 24, 1993), aff’d 19 F.3d 7 (1st Cir. 1994) (table). No such exception is warranted here.

“A petitioner is not required to have exhausted state remedies if: 1) there is an absence of a corrective process available in the state, or 2) circumstances are such that the state process is ineffective to protect the petitioner’s rights.” Wells v. Marshall, 885 F. Supp. 314, 317 (D. Mass. 1995), aff’d 81 F.3d 147 (1st Cir. 1996) (citing 28 U.S.C. §§ 2254(b) and (c)). Admittedly, “delays in obtaining a transcript needed to pursue a state court appeal may, in extreme circumstances, constitute a due process violation.” Lopes v. MacEachern, No. 10-10766, 2010 WL 5313730, at *3 (D. Mass. Oct. 20, 2010)⁶ (citing United States v. Pratt, 645 F.2d 89, 91 (1st Cir. 1981) and cases cited). “Not all delays, however, excuse a petitioner from pursuing state court remedies. Rather, ‘the exhaustion doctrine will not be applied only where the state system inordinately and unjustifiably delays review of a petitioner’s claim.’” Id. (citing Wells, 885 F. Supp. at 317) (internal punctuation omitted). This is not such a situation.

As an initial matter, Branco has always had “the right to petition the SJC pursuant to Mass. Gen. Laws ch. 211, § 3 to compel the production of [any] remaining transcript[s], as well as to determine whether the delay in providing the transcripts violated his constitutional rights.” Id. at *4 (citing Kartell v. Commonwealth, 437 Mass. 1027, 77 N.E.2d 451 (2002) (ruling that petition was appropriately presented to single justice of the SJC arising out of delay in

⁶ Report and Recommendation adopted by Lopes v. MacEachern, No. 10-CV-10766, 2010 WL 5325614, at *1 (D. Mass. Nov. 22, 2010).

preparing transcript of criminal trial, and that petition was moot as transcripts had been provided by the time of the hearing); Zatsky v. Zatsky, 36 Mass. App. Ct. 7, 12, 627 N.E.2d 474, 477 (1994) (explaining that in the event of undue delay in assembling record for an appeal, a litigant may file a petition pursuant to Mass. Gen. Laws ch. 211, § 3 with the SJC)). Similarly, the issue may be raised at the Appeals Court where Branco's appeal is presently pending. See note 3, supra. These avenues, coupled with the fact that the Superior Court was responsive to Branco's motions relating to the production of the transcripts, defeats the conclusion that it would be futile for Branco to pursue his state court remedies.

Moreover, while the delay in production of Branco's transcripts was extensive, the delay does not "so clearly establish a constitutional violation, as opposed to a severely over-extended court system, that the issue should not be addressed at the state court level." Lopes, 2010 WL 5313730, at *5. The transcripts were substantially, if not entirely completed by August 2020, less than 3 years after they were first requested in December 2017. Whether such a delay constitutes a constitutional violation should be left to the state court in the first instance. See Vaskanyan v. Marshall, No. 06-10975-RWZ, 2007 WL 906623, at *1 (D. Mass. March 23, 2007) (dismissing habeas petition without prejudice after untimely transcripts were produced; court held that "Petitioner's claim is now properly presented to the state appellate courts, as is any objection to the adequacy of the transcripts produced."). See also Wells, 885 F. Supp at 317 (finding that 4-year delay by trial court in deciding a motion for a new trial did not amount to inordinate delay); Petition of Williams, 378 Mass. 623, 627, 393 N.E.2d 353, 355 (1979) (noting that state courts may determine whether "inordinate delay in the appellate process may rise to the level of constitutional error.").

Since proceeding in the state court would not be futile, Branco's failure to exhaust his state court remedies was not excused. Consequently, this court recommends that his habeas petition be dismissed without prejudice.

IV. CONCLUSION

For the reasons detailed herein, this Court recommends to the District Judge to whom this case is assigned that Respondent's Motion to Dismiss (Docket No. 22) be ALLOWED and that the habeas petition be dismissed without prejudice.⁷

/s/ Judith Gail Dein
Judith Gail Dein
United States Magistrate Judge

⁷ The parties are hereby advised that under the provisions of Fed. R. Civ. P. 72 any party who objects to these proposed findings and recommendations must file a written objection thereto with the Clerk of this Court within 14 days of the party's receipt of this Report and Recommendation. The written objections must specifically identify the portion of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The parties are further advised that the United States Court of Appeals for this Circuit has repeatedly indicated that failure to comply with this Rule shall preclude further appellate review. See Keating v. Sec'y of Health & Human Servs., 848 F.2d 271, 275 (1st Cir. 1988); United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 604-05 (1st Cir. 1980); United States v. Vega, 678 F.2d 376, 378-79 (1st Cir. 1982); Scott v. Schweiker, 702 F.2d 13, 14 (1st Cir. 1983); see also Thomas v. Arn, 474 U.S. 140, 153-54, 106 S. Ct. 466, 474, 88 L. Ed. 2d 435 (1985). Accord Phinney v. Wentworth Douglas Hosp., 199 F.3d 1, 3-4 (1st Cir. 1999); Henley Drilling Co. v. McGee, 36 F.3d 143, 150-51 (1st Cir. 1994); Santiago v. Canon U.S.A., Inc., 138 F.3d 1, 4 (1st Cir. 1998).

APPENDIX TABLE OF CONTENTS

	<u>Pages</u>
(A) Petition For Certificate of Appealability	N/A
(B) First Circuit Order dated 11-22-21	N/A
(C) Section 2254 Petition dated 1-31-20	C 1-15
(D) June 2020 Opposition to Respondent motion to dismiss	N/A
(E) Distr. Court Magistrates Report and Recommendation 3-2-21	N/A
(F) Distr. Court Dismissal Order dated 3-18-21	N/A
(G) Petitioners 3-22-21 Objections to R and R	N/A
(H) District Court Docket	H 1-6
(I) Petitioners Motion to State Appeals Court seeking Reconsideration	I 1-7
(J) of Courts denial of Petitioners Motion to Reinstate direct Appeal	
(K) Notice of State Appeals Court denying Reconsideration	K 1
(L) Letter to U.S. Supreme Court of 2-6-22	L 1
(M) Letter from U.S. Supreme Court dated 2-15-22	M 1
(N) Letter to First Circuit dated 3-11-22	N 1
(O) Letter to First Circuit dated 2-8-22	O 1
(P) Letter to First Circuit dated 1-2-22	P 1
(Q) Letter Request to Distr. Court dated 2-8-22	Q 1
(R) Distr. Court Order Request Form	R 1
(S)	
(S) Fifth Amendment	Denied copy
(T) Fourteenth Amendment	Denied copy
(U) 28 USC § 2254	Denied copy
(V) 28 USC § 2403	Denied copy
(W) 28 USC § 1254	Denied copy
(X) M.G.L.C. 211	Denied copy

⊗ Petitioners copies of all Appendix sections marked "N/A" have been misplaced by agents of this Institution (Norfolk) on 12-31-21. Requests for copies from lower Courts have not been yet answered.

⊗⊗ Arrived at Old Colony on 4-15-22 - haven't seen or been able to request copy of Statutes from librarian at this location yet.

⊗⊗⊗⊗ Petitioner requested copy or printout of Applicable Statutes but was denied copies by Norfolk location librarian and having just arrived at Old Colony on 4-15-22 has not had opportunity to request them at this location.

Please Note: N/A signifies Not currently available.

Appendix-C

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AO 241 (Rev. 09/17)

FILED
IN CLERKS OFFICE

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District: <u>Massachusetts</u>
Name (under which you were convicted): <u>Antonio M. Branco</u>		U.S. DISTRICT COURT DISTRICT OF MASS. Docket or Case No.: <u>1673CR00225</u> <u>Mass Superior Court</u>
Place of Confinement: <u>Massachusetts DOC</u> <u>MCI - Norfolk</u>		Prisoner No.: <u>W110611</u>
Petitioner (include the name under which you were convicted) <u>Antonio M. Branco</u>		Respondent (authorized person having custody of petitioner) <u>v. Commonwealth of Massachusetts</u>
The Attorney General of the State of: <u>Massachusetts</u>		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Commonwealth of Massachusetts
Bristol County Superior Court

(b) Criminal docket or case number (if you know): 1673CR0225

2. (a) Date of the judgment of conviction (if you know): December 6, 2017

(b) Date of sentencing: December 15, 2017

3. Length of sentence: 6 to 8 years

4. In this case, were you convicted on more than one count or of more than one crime? ☐ Yes ☒ No

5. Identify all crimes of which you were convicted and sentenced in this case:

Involuntary Manslaughter

6. (a) What was your plea? (Check one)

☒ (1) Not guilty ☐ (3) Nolo contendere (no contest)
☐ (2) Guilty ☐ (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

Plead not guilty to 1st degree murder
Plead not guilty to 2nd degree murder
Manslaughter was not an original charge
Jury found for the least offense they could Invol: Manslaughter

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Massachusetts Appeals Court

(b) Docket or case number (if you know): Dont know if its docketed - but believe NOT

(c) Result: nothing done yet - Court ignores petitioner efforts

(d) Date of result (if you know): none

(e) Citation to the case (if you know): none

(f) Grounds raised: Appellate Counsel appointed on January 25, 2018 by Court and still does not know any of grounds or claims to raise because he hasn't seen the Transcript that this Petitioner has exhausted himself of trying to acquire for nearly 24 months now and been effectively denied all supporting the need for timely Transcript, which is now impossible 2 years after trial and counting, and is per the government already missing a whole date (1-6-17)

(g) Did you seek further review by a higher state court? ☒ Yes ☐ No

If yes, answer the following:

(1) Name of court: Massachusetts Supreme Court

(2) Docket or case number (if you know): Never accepted

(3) Result: None - Ignored by Court

Invoked Superintendency Powers of SJC but Court never responded

see Petitioners June 28, 2019 and July 2, 2019 Petitions to the SJC

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(4) Date of result (if you know): None(5) Citation to the case (if you know): None(6) Grounds raised: ① Missing record, ② Inordinate Delay
③ Denial of right to Transcript of Entire Proceedings
④ Withholding of Transcript
⑤ Prosecutorial Misconduct ⑥ Other claims can't be substantiated without Transcript(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Massachusetts Trial and Appeals Courts(2) Docket or case number (if you know): Never Docketed(3) Date of filing (if you know): Numerous beginning in March 2018(4) Nature of the proceeding: Motion for Transcript(5) Grounds raised: Same as in 9 & above① Missing Record② Denial of Petitioner's right to Transcript of Entire Proceedings③ Withholding of Transcript - Not provided to petitioner④ Inordinate Delay⑤ Prosecutorial Misconduct including: willful intentional false presentation to Grand Jury, then covering up with lies to Trial Judge that false representation which Judge eventually also covered up coverup continuing with hindering all access to Record and Transcript and Delay

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No(7) Result: None - Ignored by Court

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(8) Date of result (if you know): None

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: See 9 G above - Massachusetts Appeals Court

(2) Docket or case number (if you know): None

(3) Date of filing (if you know): March 29, 2019
NO response from Court

(4) Nature of the proceeding: MANDAMUS
Invoke Superintendency Powers of SJC

(5) Grounds raised: Same as 9 G(6) above

Requests for Intervention of Appeals Court
to compel lower court to provide Transcript
were ignored in FULL by the Appeals Court

- ① Missing Record
- ② Denial of Rights to Transcript of Entire Proceeding
- ③ Withholding of Transcript - Not provided to Petitioner
- ④ Inordinate Delay
- ⑤ Prosecutorial Misconduct
- ⑥ Other claims which cannot be substantiated without Transcript

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: None

(8) Date of result (if you know): None - Ignored

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: Massachusetts Supreme Judicial Court-SJC

(2) Docket or case number (if you know): None

(3) Date of filing (if you know): April 23, 2019, June 28, 2019, July 2, 2019

(4) Nature of the proceeding: Invoke Superintendency Powers of SJC

(5) Grounds raised: Same as 9 G(6) above

- ① Missing Record
- ② Denial of Petitioner's right to Transcript of Entire Proceedings
- ③ Withholding of Transcript - Not provided to Petitioner
- ④ Inordinate Delay
- ⑤ Prosecutorial Misconduct incl. willful and intentionally
false presentation to Grand Jury
and COVERTURE of false presentation
- ⑥ Other claims which cannot be substantiated without the Transcript

AO 241 (Rev. 09/17)

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No(7) Result: None - Ignored(8) Date of result (if you know): None

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

☒ Intervention(1) First petition: ☒ Yes ☐ No2) Mandamus(2) Second petition: ☒ Yes ☐ No3) Invoke Superintendency(3) Third petition: ☒ Yes ☐ Nopower of SJC

All 3 (three) regarding SJC and requests SJC intervene in removing road blocks and obstruction to Petitioner's efforts to file his Appellate Brief and perfect his Appeal none of which has occurred.

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

* All 3 (three) steps and attempts seeking remedies of SJC and Appeals Court of Massachusetts were ignored and failed.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Inordinate Delay of more than half (almost 2/3) of minimum sentence with no Appeal even docketed is violation of Constitutional Rights including Due Process Equal Protection and Effective Assistance

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner was incarcerated in April 2006, and convicted in December 2017
Petitioner began his numerous exhaustive requests for Transcript needed to raise and substantiate Appeal on or about May 2018 after Appellate Counsel made no effort to do so and stated (November 2018) that he can't tell me (identify) any claims or file Appellate Brief because he doesn't have the Transcript. Despite
Petitioner's exhaustive requests and steps NO Transcript has been provided

(b) If you did not exhaust your state remedies on Ground One, explain why:

obstructed from pursuing the 1st remedy (Direct Appeal)
by governments stalling and obstruction which has wilfully impeded every effort by Petitioner. All other remedies that would logically follow have likewise been obstructed from Petitioner's options

* The Delay and frustrative obstruction of the Petitioner's efforts to review the record and Transcript of the Entire Proceedings and proceed with his Appeal has plainly crossed the threshold of ordinary and to the presumptively prejudicial delay

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(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No(2) If you did not raise this issue in your direct appeal, explain why: It wasn't an issue at that point (December 2017) and only became an issue in April 2018 when delay became egregious - inordinate

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/AName and location of the court where the motion or petition was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

All efforts to remedy issue have been ignored by State Courts

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No N/A

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

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(e) Other Remedies: Describe any other procedures (such as habeas corpus; administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: Requests to Chief Justices of

State Courts, Mandamus, and Invoking Superintendency
Powers of SJC of Massachusetts have all been ignored

GROUND TWO: Compromized File - Record - Transcript missing substantial
Parts violates Court Reporter Act, Federal Rules and Petitioners Constitutional
rights including rights to Due Process, Equal Protection and Effective Assistance
 (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

File not provided to petitioner until eighteen (18) months after trial is unverifiable
record and Transcript will be per government and Counsel statements missing substantial
parts-in fact 1-6-2017 proceeding is entirely missing and contains prejudicial (prejudice need
not even be shown when record is missing) evidence of Prosecutors lies and Judges belittling
indifference and denials of Petitioners Oral Motions demanding dismissal of Bogus Indictment
and Petitioners objection to Judicial Coverup of continual false statements, misrepresentations
and false promises and plays by prosecution regarding substantiation of Prosecutorial misconduct
by Prosecution before grand jury and pre-trial. Petitioner numerous requests for file, record
and Transcript of the Entire Proceedings have been ignored and denied
 (b) If you did not exhaust your state remedies on Ground Two, explain why:

The petitioner has been obstructed from pursuing the 1st remedy (Direct Appeal)
by governments stalling and intentional obstruction effectively impeding every effort
by the petitioner who has not even been able to file an Appeal Brief. In fact
the petitioner doesn't even know if his appeal has been docketed as the Appeals Court
 (c) Direct Appeal of Ground Two: has never responded to the petitioner

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: Have not been afforded
any opportunity to raise this issue as Court has impeded the
petitioner from doing so by its intentional obstruction and ignoring

(d) Post-Conviction Proceedings: Petitioner

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

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Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

All efforts to remedy issue have been willfully hindered and obstructed by the state.

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you

have used to exhaust your state remedies on Ground Two:

Requests to Chief Justices of State Courts, Mandamus, and Invoking Superintendency Powers of the Massachusetts SJC have all been ignored

GROUND THREE: Prosecutorial Misconduct at every stage pre indictment, indictment, pre trial, trial, closing argument, sentencing, post conviction. Malicious lies, misrepresentations concealing obstruction are violations of Petitioner's Constitutional rights including 4th, 5th, 6th, 14th Amendments as well as Due Process and Equal Protection.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Prosecution collaborated with government witnesses to present incriminating evidence (bogus) from a bogus document never shown to grand jury while concealing bogus exculpatory part from same document, with knowing and malicious intent of securing an indictment and also knowingly and maliciously presenting that false evidence in oral testimony with full knowledge that the facts did not support the charge but unilaterally over charging with bogus oral testimony with full intent of having bogus charge stick to wall or backing into a lesser included at trial that would probably not occurred had they presented a truthful set of facts to grand jury. Prosecution then continued the lies to both Defense and Judge at pre trial conferences then changed their theory when those lies became exposed at the end of trial and only after their initial theory had been disproved and well after the integrity of the whole process had been thoroughly compromised. Prosecution continuously lied about availability of FBI files between prosecution and their medical expert.

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(b) If you did not exhaust your state remedies on Ground Three, explain why: Obstructed from pursuing remedy by Prosecutions concealing of evidence e.g communications between Prosecutor and their chief medical expert regarding decision and tactics to be used in presenting false evidence from bogus document and by governments Obstruction, destruction of evidence and inordinate delay

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes ☒ No(2) If you did not raise this issue in your direct appeal, explain why: Have not been affordedany opportunity this issue. Have not been afforded any opportunity to proceed on Appeal

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/AName and location of the court where the motion or petition was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/AAll efforts to remedy this issue have been wilfully Impeded by the State

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/ADocket or case number (if you know): N/ADate of the court's decision: N/AResult (attach a copy of the court's opinion or order, if available): N/A

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you

have used to exhaust your state remedies on Ground Three: Requests to Chief Justices of State Courts, Mandamus, and Invoking Superintendency Powers of the Massachusetts SJC have all been ignored

GROUND FOUR: Prosecutorial and Judicial Coverup of Prosecutorial Misconduct perpetuating falsities instead of bringing them to attention of court and curing them, violating the Petitioner's Constitutional rights and violations of Petitioner's rights to Due Process and Equal Protection

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The prosecution presented knowingly false evidence compromising the integrity of the whole process from that point onward as it changed the dynamics of the process, then perpetrated and perpetuated those falsities by covering up with lies about availability of non-existent documents, concealing records and communications between Prosecutor and his chief medical expert, then presenting false testimony at trial and closing arguments in addition to sentencing. The Judge allowed the lies and false presentation to continue and admonished and denied Defense Motions including Oral Motion and objections made by Defense including Petitioner's Oral Motion on 1-6-2017 then destroyed recording of such date, then ordered Defense not to reveal to jury that grand jury had been tricked, and allowed a BOBUS trial built on lies to continue to the end, even stating day before trial ended 11-30-17 "Does the Commonwealth have anything to show 1st or 2nd Degree, because so far I haven't seen anything?"

(b) If you did not exhaust your state remedies on Ground Four, explain why:

Obstructed by State Delay and concealing Record

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

Have not been able to file Appellate Brief due to States Obstruction

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: State Obstruction and Delay

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Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available):

The Petitioner has been bound-imposed by the States willfull plays to intentionally frustrate, hinder, and obstruct the Petitioner's every effort to proceed on Appeal, who has been wrongfully incarcerated and taken HOSTAGE

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

It is prejudice when the Court fails in its inherent interest to prevent oppressive incarceration especially when unjust, and its interest to minimize and limit the possibility that Appeal will be impaired

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you

have used to exhaust your state remedies on Ground Four:

The Petitioner has no remedy in the State Courts

Each ground mandates reversal

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☒ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

Grounds raised in this Petition have not been presented because state has obstructed petitioner every effort
State has effectively denied all remedies

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

State has effectively denied all remedies
* All other claims, issues, and grounds not in this Petition have not been able to be substantiated due to State obstruction/delay

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

Direct Appeal has been obstructed and delayed in effect denied petitioner

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Jerald Gunner

(b) At arraignment and plea: Jerald Gunner

(c) At trial: Jerald Gunner

(d) At sentencing: Jerald Gunner

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: 14/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☒ No N/A

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

Not final

No Direct Appeal - Delay Obstructed

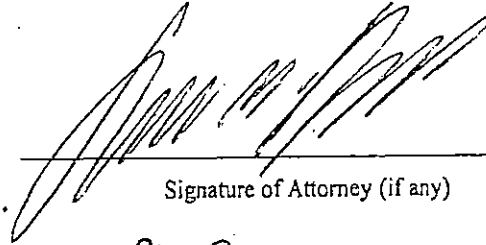
(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: Reversal of Conviction
on all grounds stated and unsubstantiated due
to states w/ full delay and obstruction
or any other relief to which petitioner may be entitled.

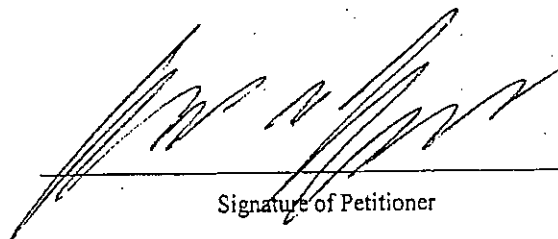


Signature of Attorney (if any)

Pro Se

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on January 31, 2020 (month, date, year).

Executed (signed) on January 31, 2020 (date).



Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

Appendix - H

HABEAS, ProSe, VICTIM

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:20-cv-10225-PBS**

Branco v. Commonwealth of Massachusetts
Assigned to: Judge Patti B. Saris
Case in other court: Bristol Superior Court, 1673CR0225
USCA - First Circuit, 21-01310
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 02/05/2020
Date Terminated: 03/18/2021
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner**Antonio M. Branco**represented by **Antonio M. Branco**

ID#W110611
MCI - Norfolk
PO Box 43
2 Clark Street
Norfolk, MA 02056
508-660-5900
PRO SE

V.

Respondent**Commonwealth of Massachusetts**represented by **Eva M. Badway**

Attorney General's Office
Room 2019
One Ashburton Place
Boston, MA 02108-1698
617-727-2200 x2824
Fax: 671-727-5755
Email: eva.badway@state.ma.us
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Email All Attorneys

Email All Attorneys and Additional Recipients

Date Filed	#	Docket Text
02/05/2020	<u>1</u>	PETITION for Writ of Habeas Corpus pursuant to 28:2254, filed by Antonio M. Branco.(Castilla, Francis) (Entered: 02/05/2020)
02/05/2020	<u>2</u>	MOTION for Leave to Proceed in forma pauperis by Antonio M. Branco. (Attachments: # <u>1</u> Supplement)(Castilla, Francis) (Attachment 1 replaced on 2/5/2020) (Castilla, Francis). (Entered: 02/05/2020)
02/06/2020	<u>3</u>	ELECTRONIC NOTICE of Case Assignment. Judge Patti B. Saris assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a

		Magistrate Judge, the matter will be transmitted to Magistrate Judge Judith G. Dein. (Finn, Mary) (Entered: 02/06/2020)
02/06/2020	4	Judge Patti B. Saris: ELECTRONIC ORDER entered granting <u>2</u> Motion for Leave to Proceed in forma pauperis. [Copy of this electronic order mailed to petitioner @ MCI Norfolk on 2/7/2020.] (PSSA, 3) (Entered: 02/07/2020)
02/14/2020	<u>5</u>	MOTION to Amend Pleading Pursuant to Fed. Rule Civ. P. 15 by Antonio M. Branco. (Attachments: # <u>1</u> Exhibit)(McDonagh, Christina) (Additional attachment(s) added on 2/18/2020: # <u>2</u> Exhibit) (McDonagh, Christina). (Entered: 02/18/2020)
03/06/2020	6	Judge Patti B. Saris: ELECTRONIC ORDER entered. REFERRING CASE to Magistrate Judge Judith G. Dein Referred for: Full Pretrial, R&R on Dispositive Motions (ptd). Motions referred: <u>5</u> MOTION to Amend <u>1</u> Petition for Writ of Habeas Corpus (28:2254). (Lara, Miguel) Motions referred to Judith G. Dein. (Entered: 03/06/2020)
03/09/2020	7	Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered Allowed <u>5</u> Motion to Amend Pleading Pursuant to Fed. Rule Civ. P. 15. (Geraldino-Karasek, Clarilde) (Entered: 03/09/2020)
03/09/2020	<u>8</u>	Magistrate Judge Judith G. Dein: ORDER entered. SERVICE ORDER re 2254 Petition. Order entered pursuant to R.4 of the Rules governing Section 2254 cases for service on respondents. Answer/responsive pleading due w/in 21 days of receipt of this order. (Geraldino-Karasek, Clarilde) (Entered: 03/09/2020)
03/26/2020	<u>9</u>	NOTICE of Appearance by Eva M. Badway on behalf of COMMONWEALTH OF MASSACHUSETTS (Badway, Eva) (Entered: 03/26/2020)
03/26/2020	<u>10</u>	MOTION for Extension of Time to April 30, 2020 to Answer Petition for a Writ of Habeas Corpus by COMMONWEALTH OF MASSACHUSETTS.(Badway, Eva) (Entered: 03/26/2020)
03/26/2020	<u>11</u>	NOTICE by COMMONWEALTH OF MASSACHUSETTS <i>Regarding Existence of Victim</i> (Badway, Eva) (Entered: 03/26/2020)
03/27/2020	12	Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered Allowed <u>10</u> Motion for Extension of Time to Answer <u>1</u> Petition for a Writ of Habeas Corpus. (Geraldino-Karasek, Clarilde) (Entered: 03/27/2020)
03/27/2020	13	RESET DEADLINES AS TO: Respondent's Answer due by 4/30/2020. (Geraldino-Karasek, Clarilde) (Entered: 03/27/2020)
03/27/2020	14	COPY of Orders #12, #13 and DOCKET SHEET sent to Antonio M. Branco ID#W110611 MCI - Norfolk PO Box 43 2 Clark Street Norfolk, MA 02056 this date. (Geraldino-Karasek, Clarilde) (Entered: 03/27/2020)
04/21/2020	<u>15</u>	Second MOTION for Extension of Time to June 1, 2020 to Answer Petition for a Writ of Habeas Corpus by Commonwealth of Massachusetts.(Badway, Eva) (Entered: 04/21/2020)
04/27/2020	16	Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered Allowed <u>15</u> Second Motion for Extension of Time to Answer <u>1</u> Petition for a Writ of Habeas Corpus. (Geraldino-Karasek, Clarilde) (Entered: 04/27/2020)
04/27/2020	17	RESET DEADLINES AS TO: Respondent's Answer due by 6/1/2020. (Geraldino-Karasek, Clarilde) (Entered: 04/27/2020)
04/27/2020	18	COPY of Orders #16, #17 and DOCKET SHEET sent to Antonio M. Branco ID#W110611 MCI - Norfolk PO Box 43 2 Clark Street Norfolk, MA 02056 this date

		4/27/2020. (Geraldino-Karasek, Clarilde) (Entered: 04/27/2020)
04/28/2020	<u>19</u>	Opposition re <u>15</u> Second MOTION for Extension of Time to June 1, 2020 to Answer Petition for a Writ of Habeas Corpus filed by Antonio M. Branco. (Attachments: # <u>1</u> Cover Letter)(Lara, Miguel) (Entered: 04/28/2020)
05/08/2020	<u>20</u>	MOTION objecting to and for reconsideration of court order 16 allowing Respondent's enlargement by Antonio M. Branco. (Attachments: # <u>1</u> Cover Letter) (Geraldino-Karasek, Clarilde) (Entered: 05/11/2020)
05/29/2020	<u>21</u>	Letter/request (non-motion) regarding requested paper copies from Antonio Branco. (Lara, Miguel) (Entered: 05/29/2020)
06/01/2020	<u>22</u>	MOTION to Dismiss by Commonwealth of Massachusetts. (Attachments: # <u>1</u> Exhibit State Court docket, # <u>2</u> Exhibit State court document, # <u>3</u> Exhibit Massachusetts state court search)(Badway, Eva) (Entered: 06/01/2020)
06/01/2020	<u>23</u>	MEMORANDUM in Support re <u>22</u> MOTION to Dismiss filed by Commonwealth of Massachusetts. (Badway, Eva) (Entered: 06/01/2020)
06/01/2020	<u>24</u>	MOTION for Entry of Default by Antonio M. Branco. (Attachments: # <u>1</u> Cover Letter)(Lara, Miguel) (Entered: 06/08/2020)
06/17/2020	<u>25</u>	DOCKET SHEET sent to Antonio M. Branco ID#W110611 MCI - Norfolk PO Box 43 2 Clark Street Norfolk, MA 02056 this date. (Geraldino-Karasek, Clarilde) (Entered: 06/17/2020)
06/17/2020	<u>26</u>	Opposition re <u>22</u> MOTION to Dismiss filed by Antonio M. Branco. (Attachments: # <u>1</u> Cover Letter, # <u>2</u> Index of Cases)(Lara, Miguel) (Entered: 06/26/2020)
06/25/2020	<u>27</u>	Letter/request (non-motion) regarding missing requested copies from Antonio Branco. (Lara, Miguel) (Entered: 06/26/2020)
08/05/2020	<u>28</u>	COPIES re <u>27</u> Letter regarding missing requested copies, Mailed to: Antonio M. Branco ID#W110611 MCI - Norfolk PO Box 43 2 Clark Street Norfolk, MA 02056 on 8/5/2020. (Geraldino-Karasek, Clarilde) (Entered: 08/05/2020)
08/13/2020	<u>29</u>	Request (non-motion) for Copies from Antonio Branco. (Baker, Casey) (Entered: 08/13/2020)
08/19/2020	<u>30</u>	DOCKET SHEET sent to Antonio M. Branco ID#W110611 MCI - Norfolk PO Box 43 2 Clark Street Norfolk, MA 02056 re <u>29</u> Letter request for copies received 8/13/20. (Geraldino-Karasek, Clarilde) (Entered: 08/19/2020)
08/31/2020	<u>31</u>	MOTION to Correct the Docket by Antonio M. Branco. (Geraldino-Karasek, Clarilde) (Entered: 09/01/2020)
11/18/2020	<u>32</u>	Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered. By December 1, 2020 each party shall file a status report with the court addressing the status of Petitioner's appeal to the Massachusetts Appeals Court and whether the Petitioner is represented by counsel in the state court proceedings.(Geraldino-Karasek, Clarilde) (Entered: 11/18/2020)
11/18/2020	<u>33</u>	Copy re 32 Order, mailed to Antonio M. Branco ID#W110611 MCI - Norfolk PO Box 43 2 Clark Street Norfolk, MA 02056 on 11/18/2020. (Geraldino-Karasek, Clarilde) (Entered: 11/18/2020)
11/19/2020	<u>34</u>	Letter (non-motion) notifying the Court of State Court filing from Antonio Branco. (Baker, Casey) (Entered: 11/19/2020)
11/20/2020	<u>35</u>	Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered on <u>31</u> Motion to

		Correct (Docket No. <u>31</u>). Denied, the reference pleadings were not filed with the court. (Geraldino-Karasek, Clarilde) (Entered: 11/20/2020)
11/23/2020	<u>36</u>	STATUS REPORT by Commonwealth of Massachusetts. (Attachments: # <u>1</u> Exhibit Updated state trial court docket, # <u>2</u> Exhibit Massachusetts Appeals Court docket) (Badway, Eva) (Entered: 11/23/2020)
11/30/2020	<u>37</u>	STATUS AFFIDAVIT OF PETITIONER filed by Antonio M. Branco. (Attachments: # <u>1</u> Cover Letter)(Lara, Miguel) (Entered: 11/30/2020)
12/02/2020	<u>38</u>	Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered. In light of Respondent's response filed, (Docket No. <u>22</u>), Motion for Entry of Default (Docket No. <u>24</u>) is denied. (Geraldino-Karasek, Clarilde) (Entered: 12/02/2020)
12/02/2020	<u>39</u>	Copy re 38 Order on Motion for Entry of Default, 35 Order on Motion to Correct, MAILED TO: Antonio M. Branco ID#W110611 MCI - Norfolk PO Box 43 2 Clark Street Norfolk, MA 02056 on 12/3/2020. (Geraldino-Karasek, Clarilde) (Entered: 12/02/2020)
12/14/2020	<u>40</u>	AFFIDAVIT in Response to <u>36</u> Status Report by Antonio M. Branco. (Attachments: # <u>1</u> Cover Letter) (Baker, Casey) (Entered: 12/14/2020)
01/05/2021	<u>41</u>	MOTION to Strike <u>22</u> MOTION to Dismiss by Antonio M. Branco. (Attachments: # <u>1</u> Affidavit, # <u>2</u> Affidavit) (Baker, Casey) (Entered: 01/06/2021)
03/01/2021	<u>42</u>	Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered Denied <u>20</u> Motion objecting to and for reconsideration of court order 16 allowing Respondent's enlargement filed by Antonio M. Branco. (Geraldino-Karasek, Clarilde) (Entered: 03/01/2021)
03/01/2021	<u>43</u>	Magistrate Judge Judith G. Dein: ELECTRONIC ORDER entered on Motion to Strike <u>22</u> Motion to Dismiss filed by Antonio M. Branco (Docket No. <u>41</u>). Denied. On April 27, 2020 the court allowed the Respondent until June 1, 2020 to respond to the habeas petition (Docket Nos. <u>15</u> , <u>16</u>) and the court's docket reflects that the Motion to Dismiss was timely filed on that date.(Geraldino-Karasek, Clarilde) (Entered: 03/01/2021)
03/01/2021	<u>44</u>	Copy re 43 Order on Motion to Strike, 42 Order on Motion for Reconsideration-Mailed to: Antonio M. Branco ID#W110611 MCI - Norfolk PO Box 43 2 Clark Street Norfolk, MA 02056 on 3/1/2021. (Geraldino-Karasek, Clarilde) (Entered: 03/01/2021)
03/02/2021	<u>45</u>	Magistrate Judge Judith G. Dein: ORDER entered. REPORT AND RECOMMENDATIONS re <u>22</u> MOTION to Dismiss filed by Commonwealth of Massachusetts. Recommendation: Respondent's Motion to Dismiss (Docket No. <u>22</u>) be ALLOWED and that the habeas petition be dismissed without prejudice. Objections to R&R due by 3/16/2021. (Geraldino-Karasek, Clarilde) (Entered: 03/02/2021)
03/02/2021	<u>46</u>	Copy re <u>45</u> REPORT AND RECOMMENDATIONS re <u>22</u> MOTION to Dismiss filed by Commonwealth of Massachusetts. Recommendation: Respondent's Motion to Dismiss (Docket No. <u>22</u>) be ALLOWED and that the habeas petition be dismissed without prejudice. MAILED TO: Antonio M. Branco ID#W110611 MCI - Norfolk PO Box 43 2 Clark Street Norfolk, MA 02056 on 3/2/2021. (Geraldino-Karasek, Clarilde) (Entered: 03/02/2021)
03/18/2021	<u>47</u>	Judge Patti B. Saris: ELECTRONIC ORDER ON REPORT AND RECOMMENDATIONS entered. "I adopt the report and recommendation and allow

		the motion to dismiss the habeas petition without prejudice."(Lara, Miguel) (Entered: 03/18/2021)
03/18/2021	<u>48</u>	Judge Patti B. Saris: ORDER DISMISSING CASE entered. (Lara, Miguel) (Entered: 03/18/2021)
03/18/2021	49	Copy re 47 Order on Report and Recommendations,, Order on Motion to Dismiss, <u>48</u> Order Dismissing Case, and updated docket sheet mailed to Antonio Branco on 3/18/21. (Lara, Miguel) (Entered: 03/18/2021)
03/18/2021	50	Case no longer referred to Magistrate Judge Judith G. Dein. (Geraldino-Karasek, Clarilde) (Entered: 03/18/2021)
03/22/2021	<u>51</u>	OBJECTION to <u>45</u> Report and Recommendations filed by Antonio M. Branco. (Attachments: # <u>1</u> Index of Cases, # <u>2</u> Table - Case Law, # <u>3</u> Exhibits, # <u>4</u> Cover Letter) (Baker, Casey) (Entered: 03/22/2021)
03/29/2021	<u>52</u>	AFFIDAVIT Attesting to Timely Mailing of <u>51</u> Objection to Report and Recommendations by Antonio M. Branco. (Baker, Casey) (Entered: 03/29/2021)
04/19/2021	<u>53</u>	MOTION for Certificate of Appealability by Antonio M. Branco. (Attachments: # <u>1</u> Cover Letter) (Baker, Casey) (Entered: 04/20/2021)
04/19/2021	<u>54</u>	NOTICE OF APPEAL as to 47 Order on Report and Recommendations,, Order on Motion to Dismiss, <u>48</u> Order Dismissing Case by Antonio M. Branco NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 5/10/2021. (Baker, Casey) (Entered: 04/20/2021)
04/20/2021	<u>55</u>	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re <u>54</u> Notice of Appeal. (Paine, Matthew) (Entered: 04/20/2021)
04/20/2021	56	USCA Case Number 21-1310 for <u>54</u> Notice of Appeal, filed by Antonio M. Branco. (Paine, Matthew) (Entered: 04/20/2021)
04/20/2021	57	Judge Patti B. Saris: ELECTRONIC ORDER entered re <u>53</u> Motion for Certificate of Appealability. "Denied. The Court denies the certificate of appealability." (Baker, Casey) (Entered: 04/20/2021)
04/20/2021	58	Copy re 57 Order on Motion for Certificate of Appealability mailed to Antonio Branco on 4/20/2021. (Baker, Casey) (Entered: 04/20/2021)
04/22/2021	<u>59</u>	NOTICE OF APPEAL as to 47 Order on Report and Recommendations,, Order on Motion to Dismiss, <u>48</u> Order Dismissing Case by Antonio M. Branco NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 5/12/2021. (Baker, Casey) (Main Document 59 replaced on 4/22/2021) (Baker, Casey). (Entered: 04/22/2021)

04/22/2021	<u>60</u>	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re <u>59</u> Notice of Appeal. (Paine, Matthew) (Entered: 04/22/2021)
11/22/2021	<u>61</u>	USCA Judgment as to <u>54</u> Notice of Appeal, filed by Antonio M. Branco. Appeal Terminated... (Paine, Matthew) (Entered: 11/23/2021)
12/13/2021	<u>62</u>	MANDATE of USCA as to <u>54</u> Notice of Appeal, filed by Antonio M. Branco. Appeal <u>54</u> Terminated (Paine, Matthew) (Entered: 12/14/2021)

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Appendix - I

COMMONWEALTH OF MASSACHUSETTS
Suffolk County, SS Massachusetts Appeals Court

Commonwealth

v.

Antonio M. Branco

Appeals Court

No. 2020-P-0881

PETITION - MOTION ^{PER MAGIST} FOR REHEARING - RECONSIDERATION

Pursuant to Mass. R. App. P. Rule 27, the
Appellant Antonio M. Branco, hereinafter Appellant
Petitions this Court for rehearing-reconsideration
of the above captioned case. The Appellant respectfully
suggests that this Court in denying Appellants Motion to
reinstate his state direct appeal, has ^(A) misapprehended
the Appellants intentions and motives which are and
have been guided by the statutes, court rules and
legal precedent, AND ^(B) Footnote ⁽¹⁾ overlooked the fact that
Appellants case was pre-pending in the Federal
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Footnote ①

The Appellant avers that this courts ^{mis-} apprehension and oversight leaves the Appellant with no current avenue for adjudicating his Meritorious case.

Courts prior to the docketing of the above captioned.

In the present matter before us the Bristol County District Attorneys Office (Prosecution) commenced action 1673CR00225 (Bristol Superior Court) after unlawfully procuring illicit indictments by poisoning the Grand Jury and that process with knowingly intentionally perjured testimony to gain an unlawful advantage and increase their odds of at very least backing into a lesser included; thus compromising the integrity of the entire process from that point forward, a knowingly Unlawful process.

The Petit Jury were NOT told the truth including how the charges-indictments being tried were falsely procured, thereby also compromising the integrity of the Petit Jury and that process resulting in the illicit procurement of

False convictions and False imprisonment.

The Appellant filed for state direct Appeal on December 19, 2017, and diligently pursued that Appeal for thirty-two months (to no avail); filing numerous Motions for the Transcript of the Entire Proceedings and writing dozens of letters to the state Courts and court appointed Appellate counsel, but the state system failed to provide the record (including the Transcript) during that time, AND failed to even begin any appeal process before this Court. In February 2020 this very Court notified the Appellant that it had no record of any Appeal before it for the Appellant.

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The Appellant, faced with act of futility in pursuit of his direct Appeal, and having already served

70 (seventy) percent and over 50 (fifty) percent of his

already falsely procured to begin with minimum and maximum

sentences ~~respectfully~~ respectively to that point, was forced

to in good faith pursue the great WRIT of Habeas Corpus

pursuant to 28 USC § 2254 based on identical issue
(citation omitted SJC)

legal precedent in Commonwealth v Swenson as well

445 F2d 806 (1st Cir)

469 F2d 17 (1st Cir)

as Olsen v. Moore and Rivera v. Conception.

In February 2020, when Appellant resorted to Federal

Court assistance, the state system hadn't yet provided any

record or Transcript needed to pursue any Appeal, nor had

they assembled any record or docketed any Appeal (Please

see this very court's 2-4-20 letter to Appellant). In

fact the state system appeal process, with circumstances

rendering that process ineffective to protect the Appellant's

Rights did cause the Appellant to Petition the Federal Courts pursuant to § 2254.

Had the state system assembled the record, docketed the Appeal, and set a briefing schedule before (Appellant having no resort) Appellant petitioned the Federal Court, the Appellant would have openly and vigorously then pursued this Courts Direct Appeal Process. But that is not what happened.

The state system did not assemble a record and docket the Appeal until August 2020 (six months after 28 USC Appellant had filed for § 2254), thirty-two months after the falsely procured convictions and Notice of Appeal

was filed, AND fifty-two months after Appellant had begun serving his False Imprisonment.

By that point the Appellant was honestly and faithfully
relying on the legal precedent of the Commonwealth
[Commonwealth V. Swenson]
Supreme Judicial Court who cited legal precedent
of Odsen V Moore and Rivera V Conceptos with
regard to Excessive and Inordinate Appellate Delay,
legal precedent perfectly aligned with present matter.

In Rivera at 19-20 (cited by Swenson) Judge Aldrich
stated Petitioners imprisoned at the very least deserve his
Transcript as quickly as possible. The courts cannot but be aware
of their practice with respect to Transcript provision. The findings
of guilt are thus far only provisional. Two years of total inaction
however occasioned while Petitioners 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."

And in *Olsen* at 807 (also cited by Swenson-SJC)

Justice Aldrich stated ¹¹ But an Inordinate Excessive and Inexcusable Delay may very well amount to a denial of Due Process cognizable in Federal Court. Petitioner here alleges that he repeatedly attempted by letter to seek action from the state court and 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. From the Petitioner's point of view the Impasse is as complete as when a case is held under advisement for an unconscionable period.

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On the aforementioned legal precedent the Appellant respectfully relied, filing for § 2254 in February 2020.

While the matter remained pending in Federal District Court from February 2020 to November 2021 (11-22-21), this Court dismissed the Appellant's direct appeal for alleged lack of prosecution. But that, in reality, is NOT what happened - occurred.

After the Appellant Petitioned the Federal Court in February 2020, only six months later did the state system proceed to begin the direct appeal process by finally clocking this Appeal on 8-4-20. Thus, when the state appeals Court then began to run through its procedural course, the Appellant was by then already under and waiting on the Federal Courts for judgement and order on how to proceed.

The Federal Courts judgement (a copy is hereto attached)

came on November 22, 2021, crossing in the mail with the same date as this Court's deadline for any Motion to Reinstate the direct appeal that this Court had already dismissed (during pendency before Federal Courts).

Upon receiving the Court's judgment on or about 11-25-21 (the judgment of Federal Court instructing me to pursue my state direct appeal before ruling on the merits of Appellants 28 USC § 2254 Petition), the Appellant immediately sought (on or about 11-29-21) via Motion with this Court to Reinstate his direct appeal, which this Court on 12-9-21 (copy is hereto attached)

denied leaving the Appellant without recourse and the grave injustice of unjust conviction and sentence.

The Appellant respectfully avers that this Court

should understand that once Appellant had Petitioned the Federal Courts for relief (in February 2020), well over two years after conviction and nearly four years after beginning wrongful imprisonment, the Appellant was, by reasons including respect for the Federal Courts (under whom the Appellant's cause now resided), then unable to at that point proceed at the state direct appeal without guidance and in deference to the Federal Courts, or at the very least receiving status on his Federal Petition without offending and or interfering with the Federal Courts and process.

The present matter presents an extraordinary situation where the matter had been pending in Federal District Court (from February 2020 to March 2021) and U.S. First Circuit Court of Appeals (From March 2021 to November 27, 2021).

The Appellant diligently pursued prosecuting his state direct appeal and having no success (for over two years) filed for USCS § 2254, and at most by total inadvertence missed informing this Court by direct words (though Bristol Superior and various Judges had previously been notified), of his having filed 28 USCS § 2254, which had by time this Court docketed (8-4-20) this Appeal been pending for many months before U.S. District Court.

The Merits of the Appellant's case are grounded on multiple issues and Violations of Appellant's Rights under the 4th, 5th, 6th, 8th, and 14th Amendments, among

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them False prosecution of the Appellant by various prosecutorial misconduct including lies to and

presenting perjurious testimony to Grand Jury while simultaneously withholding the exculpatory document (from where the perjured data came from) from the Grand Jury thereby poisoning that Grand Jury and compromising the entire process from that point forward in Violation of the Appellants Rights including under the 4th Amendment to the Constitution of the United States; the lies continuing pretrial conference after another and to trial where the Petit Jury was not told that the indictments being tried were handed down by a Grand Jury that had been presented with perjured testimony and had not been shown exculpatory evidence AND had been deceived, thereby the Petit Jury also deceived (in not hearing something they should have heard) into

proceeding on that compromised process.

This Court having on 12-9-21 denied the Appellant's Motion to Reinstatement leaves the Appellant with no remedy for unjust convictions and imprisonment.

For the reasons put forth above, the Appellant respectfully requests an opportunity to fully Brief this matter before this Court.

The Appellant hereby certifies filing this by depositing this Motion for Reconsideration-Relieving into this MCI Norfolk Institutional Internal Mail System on the 29th day of December 2021.

Sworn to and signed under the pains and penalties of perjury this 29th day December 2021.

Respectfully submitted,
by Appellant,

Antonio M. Branco

Certificate of Service

I Antonio M. Branco hereby certify that on this 29th day of December 2021 I have caused this Document to be served on all parties to this matter - the Bristol Superior Court and Office of Bristol County District Attorney by USPS First Class Mail


Antonio M. Branco

Appendix - K

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE

John Adams Courthouse
One Pemberton Square, Suite 1200
Boston, Massachusetts 02108-1705
(617) 725-8106

Dated: January 6, 2022

Antonio M. Branco, Pro Se
MCI Norfolk W110611
2 Clark Street PO. Box 43
Norfolk, MA 02056

RE: No. 2020-P-0881
Lower Court No: 1673CR00225

COMMONWEALTH vs. ANTONIO M. BRANCO

NOTICE OF DOCKET ENTRY

Please take note that on January 6, 2022, the following entry was made on the docket of the above-referenced case:

ORDER (RE#19): Denied. On 9/14/20, 11/03/20, 12/02/20, and 10/22/21, this court informed the defendant that he needed to file a brief and record appendix by a date certain. As late as 11/22/21, 433 days after the defendant's brief and record appendix were due, this court would have accepted the defendant's brief and record appendix. That the defendant incorrectly believed that he had cause to ignore the court's repeated instructions is no ground for relief. (Ditkoff, J.). *Notice

IMPORTANT INFORMATION ABOUT ELECTRONICALLY FILING IN THE APPEALS COURT

- Every attorney with an appeal pending in the Appeals Court must have an account with eFileMA.com. Registration with eFileMA.com constitutes consent to receive electronic notification from the Appeals Court and e-service of documents. Self-represented litigants are encouraged, but not required, to register for electronic filing.
- All documents may, and some must, be electronically filed with the Appeals Court using eFileMA.com. No paper original or copy of any e-filed document is required.
- E-filing impounded documents or e-filing by self-represented litigants is voluntary.
- Additional information is located on our Electronic Filing webpage: <http://www.mass.gov/courts/court-info/appealscourt/efiling-appeals-faq-gen.html>

Very truly yours,
Joseph F. Stanton, Clerk

To: David B. Mark, A.D.A., Antonio M. Branco

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Appendix-L

February 6, 2022

Mr. Scott S. Harris, Clerk
Office of the Clerk
Supreme Court of the
United States of America
Washington DC 20543-0001

RE: Extension Application to Individual Justice

Docket: None yet

Antonio M. Bruno v. Commonwealth of Massachusetts

Dear Mr. Harris:

I hope this letter finds you well and in good health.
Thank you for your prompt response to my 12-30-21 request
for Forms and assistance needed for filing my WRIT
of Certiorari with this Most Honorable Court. I pray
that by the Almighty's Guidance and this Honorable Court's
patience my Petition WRIT may Merit the Courts
Time and serve the Common Good and pursuit of Justice.

The package the Court sent me postmarked 1-20-22
was just received (handed to me by C/O at this Institution)
yesterday (2-5-22).

My Petition is due on 2-22-22 and I'm missing
documents necessary for inclusion as part of Petitioner's
Appendix, which I'm requesting from their sources
immediately.

Therefore I'm requesting extension of time for filing

the Petition.

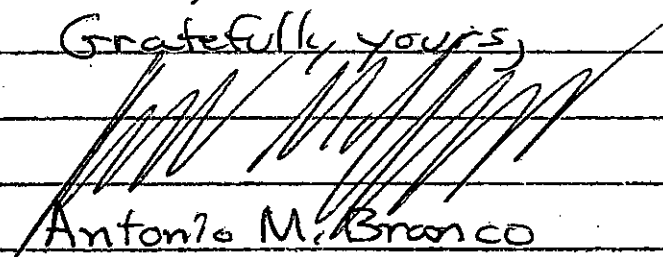
Enclosed please find my Application to Individual Justice for Extension.

While I'm not sure if I'm correct, I believe the allotted Justice is Honorable Stephen G. Breyer.

Please bring it to this Honorable Court's attention in your customary manner.

Thank you for your time and assistance. May Almighty G-D Bless you and yours.

Gratefully yours,

A stylized, cursive handwritten signature in dark ink, appearing to read 'Antonio M. Branco'.

encl/as stated

Antonio Branco

W110611

McI Norfolk-2 Clark Street

PO BOX 43

Norfolk, Ma. 02056

Appendix - M

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

February 15, 2022

Antonio Branco
#W110611
MCI Norfolk -2 Clark Street
P.O. Box 43
Norfolk, MA 02056

RE: Branco v. Massachusetts
USCA1 No. (?)

Dear Mr. Branco:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was postmarked February 9, 2022 and received February 15, 2022. The application is returned for the following reason(s):

The lower court opinion must be appended from the United States Court of Appeals for the First Circuit. Rule 13.5.

It is impossible to determine the timeliness of your application for an extension of time without the lower court opinions.

The application does not specify the amount of additional time requested. Rule 13.5.

A copy of the corrected application must be served on opposing counsel.

Sincerely,
Scott S. Harris, Clerk
By:

Susan Frimpong
(202) 479-3039

Enclosures

Appendix - N

March 11, 2022

Maria R. Hamilton, Clerk
United States Court of Appeals
for the First Circuit

John Joseph Moakley U.S. Courthouse
1 Courthouse Way - Suite 2500
Boston, Ma. 02210

RE: Request copy of Docket and Papers - Pleadings
No° 21-1310 / Branco V. Commonwealth of Massachusetts

Dear Ms. Hamilton,

I sincerely hope this letter finds everyone at the Court as well as your loved ones well and in good health.

This matter came before this Honorable Court for a Certificate of Appealability "COA" in May 2021. I respectfully believe the 11-22-21 Order to deny COA has overlooked controlling precedent including that of this very First Circuit in *United States V. Pratt*, *Olson V. Moore*, and *Rivera V. Conception*. My December 2021 Motion to Reconsider-Alter Judgement is currently awaiting the Courts ruling.

On 12-31-21, agents at this institution misplaced various files and records, among those are files - papers pertaining to this matter. So, on 1-2-22 and again on February 8, 2022, I requested from the Court these papers: ① Petition for "COA" with Memoranda of Law; ② the Courts 11-22-21 order; ③ Petitioners Motion to Reconsider-Alter Judgement - Grant "COA"; ④ copy of Docket Sheet. Please note

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that these may be needed for inclusion to any addendum-appendix
any needed Writ of Certiorari would require. (Copies of 1-2-22 and
2-8-22 Request letters are attached). Please know that I've still
not received copies of the requested papers.

I remain Hopeful, and Pray that this Honorable Court sees
its oversight on 11-22-21, reverses its 11-22-21 order, and
grants Certificate of Appealability.

In meantime, the U.S. Supreme Court requires, at a minimum, a
copy of the 11-22-21 order as prerequisite to granting extension of
time to file Certiorari. The rest of requested papers would of course
be required for any Appendix necessary as part of any, if
need be, Petition for Writ of Certiorari. And so I again
kindly request the Court to please send me copies of the
four papers (a - d on reverse) requested.

Though I will if need be give a Petition for Certiorari my
all and go forth with Hope, I remain fully cognizant that,
first and foremost, I am in need of Justice from this
Honorable Court. And thus remind the Court that I and
my Motion to Alter Judgement respectfully humbly stand
before you praying for the Courts grant of COA in
this matter that shares same parallels with Odsen, Rivera,
and U.S. v. Pratt, cases where COA was consistently granted.

Thank you for your time and aid. And may Almighty G-D
Bless us, our loved ones, and always guide our every step.

Gratefully yours,

Antonio M. Branco

Antonio Branco
W110611
MCJ Norfolk-2 Clark St
PO BOX 43
Norfolk Ma 02056

Appendix - O

February 8, 2022

Maria R. Hamilton, Clerk
United States Court of Appeals
for The First Circuit
John Joseph Moakley U.S. Courthouse
1 Courthouse Way - Suite 2500
Boston, Ma. 02210

RE: Request Copy of Docket and Papers - Pleadings
No. 21-1310 / Branco V. Commonwealth of Massachusetts

Dear Ms. Hamilton,

It's my Hope that this letter finds everyone at the Court, as well as your loved ones well, and in good health.

This matter was presented to this Honorable Court for a Certificate of Appealability "COA" in May 2021. I respectfully believe the 11-22-21 Order denying "COA" to have overlooked controlling precedent of various Circuits, including this First Circuit, as applies to Inordinate state system Appellate Delay Violating the Due Process Clause to the U.S. Constitution, AND giving evidence to existence of circumstances, pursuant to § 2254 (b)(1)(B)(i) and (ii), in state system process that invokes the "CLAUSE" exemption to exhaustion of state remedy non-jurisdictional (comity only) requirements.

Thus I have respectfully Petitioned this Honorable Court for Reconsideration (and to grant COA), a Petition that as you conveyed to me in December 2021 is now before this Court for reconsideration, or rather consideration, as the Court deems just.

As the state system has, while Petitioner awaited the guidance and direction of these Honorable Federal Courts, shut all windows and closed all doors to my state direct appeal, leaving me with no remedy for my very Meritorious state direct appeal on the Merits; I PRAY that this Honorable Court at the very least sees how its own precedent (that also controls in present matter), in United States V. Pratt as well as in its Rivera V. Conception and Odson V. Moore cases, has been overlooked in this present matter, that presents same Issues and Set of Facts (as to unjustifiable state system appellate delay) as were presented in those matters.

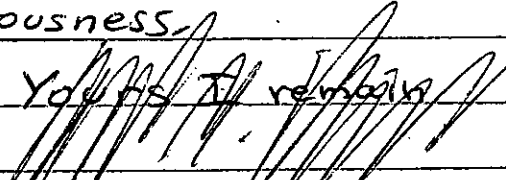
Shortly after you responded with Status on my Petition to Reconsider, agents at this Institution misplaced (on or about 12-31-21) numerous files (including for above matter) that I may need for Appendixes (future).

In the event that a Writ of Certiorari to U.S. Supreme Court becomes necessary, and I PRAY that it is not, I will need some of those records and Papers for inclusion in Record Appendix as follows:

- ① Appellants Petition for Certificate of Appealability with Memoranda of Law and attachments.
- ② Copy of this Honorable Courts 11-22-21 Order denying COA
- ③ Copy of Appellants Motion for Reconsideration dated December 2021
- ④ Copy of Docket Sheet.

Please accept my sincerest gratitude for your time, understanding, and assistance, AND for mailing these four requests to me.

May Almighty G-D Bless us, our Loved ones and forever lead us in the path of Righteousness.

Yours Truly,

Antonio M. Branco

Antonio Branco
W110611
MC1 Norfolk
PO BOX 43
Norfolk Ma 02056

Appendix - P

January 2, 2022

Maria R. Hamilton, Clerk
United States Court of Appeals
for the First Circuit

John Joseph Moakley U.S. Courthouse
1 Courthouse Way - Suite 2500
Boston, Ma. 02210

RE: Appeal 21-1310

Brunco V. Commonwealth of Massachusetts

Dear Ms. Hamilton,

Please accept my sincerest wishes that this short note finds everyone at the Court and your loved ones well and in good health as we exit from midst of the Festive days that so many of us from different Faiths have been celebrating.

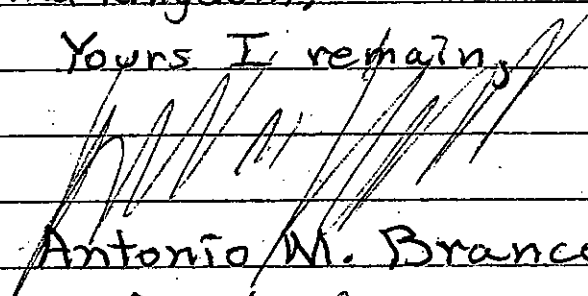
Thank you for your prompt letter providing me with Status on my Motion to Alter Judgement, and for the information on (if need be) Filing a Writ of Certiorari with the United States Supreme Court.

Please know that your time and help throughout this process has been most appreciated.

May Almighty G-D Bless us, our Families, and with His all Knowing Hands always guide us

in this our Earthly Pilgrimages. Until we meet
our Hope in His Eternal Kingdom.

Yours I remain,


Antonio M. Branco
Appellant

P.S Ms. Hamilton,

The copy of the above captioned docket that
you sent with your correspondence has been
misplaced by agents here at this institution, as has my
copy of the Motion to Alter & Reconsider (my last Pleading).
So I ask if you can, please make a copy of each
and send to me at your earliest opportunity, and I'm
most obliged and grateful. A.M.B

Antonio Branco

WJ10611

MCI Norfolk - 2 Clarke Street

PO BOX 43

Norfolk, Va 02056

Appendix - Q

February 8, 2022

Clerk of Court

United States District Court

for the District of Massachusetts

John Joseph Moakley U.S. Courthouse

1 Courthouse Way

Boston, Ma 02210

RE: Request Copy of Docket Sheet and Papers-Pleadings

Docket - "No: lost" Antonio M. Branco V. Commonwealth of Massachusetts
- 2020 -

Dear Clerk:

I hope this short letter request for copies finds everyone at this Court well and in good health.

On January 2020 I filed Petition Writ of Habeas Corpus pursuant to 28 USCS § 2254 with this Court and an Amended Petition with enclosures on either February 4, 2020 or February 7, 2020.

Various files including copy of above referenced Docket have been very recently misplaced by agents at this Institution. I'm therefore in need of your assistance in getting copies of certain papers filed in the matter. I'm the Petitioner.

Therefore, I respectfully request that you please promptly send me copies of the following:

1. Copy of the Docket Sheet
2. Copy of my January 2020 Habeas Corpus 2254 Petition.

3. Copy of Amended Petition dated on or about 2-7-20 with attachments,

4. Copy of Petitioner's June 2020 Opposition to respondent's motion to dismiss.

5. March 2021 Report and Recommendation of Judge Dein (Magistrate J.G.D.).

6. Copy of Petitioner's Objections - Opposition to "R & R".

7. Judge Att. B. Saris Order adopting "R & R".

Please send-mail the above referenced to me at your earliest opportunity.

Thank you for your time, attention, and assistance.

May the Almighty guide always our actions and lead us to righteousness.

Gratefully yours,

Antonio M. Branco

Antonio Branco

Petitioner

W110611

MCI Norfolk - 2 Clark Street

PO BOX 43

Norfolk, Ma. 02056



Appendix - R

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
OFFICE OF THE CLERK
1 COURTHOUSE WAY
BOSTON, MASSACHUSETTS 02210

Robert M. Farrell
CLERK OF COURT

To: Antonio Branco
MCI Norfolk
2 Clark Street
P.O. Box 43 Norfolk MA 02056

Date: 02/14/2022

RE: REQUEST FOR COPIES

This office is in receipt of your request, dated 02/08/2022, for the following copies:
Copy of Habeas, Copy of Amended Petition, Copy of Opposition in June, March Report and Rec, Objection
Opposition to R&R, Order adopting R&R,

I have reviewed the court's records and calculated the cost of your request.

Please remit payment with a copy of this letter within 5 days after receipt to the address above, to the attention of the cashier. Make checks payable to "Clerk, United States District Court." Upon receipt of your payment, this request will be processed promptly and the documents sent to you at the address above.

Copies of record or document <u>not</u> accessible electronically at a public terminal (\$0.50 per page)	Number of pages: _____	\$0.00
Copies of rules, guides or other non-case material from court website (\$0.50 per page)	Number of pages: _____	\$0.00
Copies of CM/ECF documents accessible electronically at a public terminal (\$0.10 per page)	Number of pages: 131	\$13.10
Searches (\$31.00 per name searched)	Number of searches: _____	\$0.00
Certification of documents (\$11.00 per document certified)	Number of documents certified: _____	\$0.00
Retrieval of files from the archive (\$64.00 for 1 st box) (\$39.00 for each additional box)	Number of boxes retrieved: _____	\$0.00
Apostilles or exemplification of documents (\$47.00 per document)	Number of apostilles or exemplifications: _____	\$0.00
For reproducing and transmitting a copy of an electronic record stored outside of the court's electronic case management system (\$31.00 per document)	Number of documents: _____	\$0.00
SmartScan electronic record retrieval from NARA-FRC facility (fee is for one document; only documents 100 pages or less are eligible) \$19.90 + \$0.65 per page	Number of pages: _____	\$0.00
TOTAL DUE PAID IN FULL <input type="checkbox"/>		\$13.10

If you have any questions I may be reached at _____ or by email at _____

Sincerely,

Customer Service/SP
Deputy Clerk

cc: copy file, cashier

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