

21-8131

No. 21A683

FILED  
MAY 19 2022

OFFICE OF THE CLERK  
SUPREME COURT U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

**ORIGINAL**

Danny Angel Rodriguez — PETITIONER  
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Danny Angel Rodriguez

(Your Name)

USP LEE, P.O. BOX 305  
Reg's # 48128 - 004

(Address)

Jonesville Virg. 24263

(City, State, Zip Code)

786 374 5258

(Phone Number)

Fernando Rodriguez

(Dad)

QUESTION(S) PRESENTED

Does a Silent Plea Foreclose a defendant from filing a Motion for Newly Discovered Evidence, Pursuant to Rule 33.

Where:

- a) the statute is ambiguous. As it does not directly prohibit a defendant that his trial was in form of a Plea;
- b) his Plea was sans waivers;
- c) the Newly discovered evidence, admittedly, was discovered Post-Sentencing Plea: APPX C
- d) the Newly discovered evidence holds pg 48, 58-62, 49 of 16 Constitutional ramifications under Due Process;
- e) the Newly discovered evidence would have altered the outcome of the case;
- f) And where, no other remedy exists.,
- g) Also where neither the Government or the District Court object to Rule 33 as wrong vehicle.

STATUTORY PROVISION INVOLVED

- Rule 33
- Section 455 of Title 28 of U.S Code
- Rule 41

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## **RELATED CASES**

Matter of First impression  
\* Believed

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### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

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

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

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[✓] is unpublished.

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

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[ ] is unpublished.

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

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

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

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

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

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 23, 2021 8-23-2021

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 2/3/2022, and a copy of the order denying rehearing appears at Appendix D.

An extension of time to file the petition for a writ of certiorari was granted to and including June 3, 2022 (date) on May 4, 2022 (date) in Application No. 21A683.

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

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

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

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. 21A\_\_\_\_\_.

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Prose Appellant holds that the participation of an Arrest Warrant Judge who was directly recused from presiding against Appellant due to an actual and extra-judicial conflict and bias, was a Due Process violation. That should not be immuned from review under Rule 33, regardless if the case was resolved by Plea or trial.

Title 28, Section 455

Rule 41

Rule 33

Rule 41 requires Magistrate to be Neutral and Detached:  
Here the 11th Circuit indefinitely recused the warrant signing magistrate.

#### STATEMENT OF THE CASE

In 1994 Magistrate Judge William L. Turnoff was assigned to Appellant case (94-402-PROPST). Soon after, due to an extra judicial conflict and personal bias against Appellant, the entire Southern District of Florida was recused.

Following the Chief Judge for the Eleventh Circuit Court of Appeal designated judges from other Districts to preside.

Fast forward to 2017 while Appellant was on Supervise release for his 1994 §922(g)(1) conviction Case Dist. No 94-402-PROPST; Magistrate Judge Turnoff knowingly signed an Arrest Warrant that violated the Supervise Release of a cause he was directly recused from.

It wasn't until Post-Sentencing Forfeiture Proceedings that Appellant, now PROSE, uncovered recused Judge Turnoff unlawful and unconstitutional participation.

The Government admitted that Appellant and nor, his then Counsel, were privy to the Magistrate Judge who authorized Appellant's arrest warrant. DIST. CT. DE 579 pg 17 and 58-62  
See Appendix C pg 61 at 9

## REASONS FOR GRANTING THE PETITION

This will clarify to the lower Courts the availability of Rule 33 Newly Discovered Evidence. Create fairness and uniformity among defendants that resolve their case by Judge, Jury or Plea.

As a majority of criminal cases are resolved by way of Plea. It's unfathomable to imagine that congress would create a RULE that would serve one defendant and not another.

Rule 33 Should not prevent a defendant that Plead Guilty from Presenting Newly Discovered Evidence

1. that was intentionally withheld by the Government to coerce defendant / Appellant into Pleading;
2. that presents a Constitutional violation under Due Process;
3. that where the Plea does not contain waivers;
4. where the Newly Discovered Evidence would have wholly produced a different result / outcome;
5. that was "in fact" discovered after Plea;
6. that was not merely cumulative or impeaching;
7. that was material;
8. and, where the defendant / Appellant exercised due care to discover the evidence.

Lastly, it would redress a Constitutional miscarriage of Justice, against an American, where there is no other path for relief available.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: May 12, 2022

ProSe Appellant

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