No. 21-8257

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Edwin Oland Andrus - Petitioner

Vs.

United States of America - Respondent

On Petition for

a Writ of Certiorary to

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Petition for Writ of Certiorari

Edwin Oland Andrus,
Pro-Se.
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QUESTION TO THE COURT

Can the Court omit exculpatory facts to deny a citizen his one year guaranteed by 28 U.S.C. §2255(f)(1) when the government by locking down the defendant into their cell for COVID-19 and denying access to any form of law library caused their delay bringing into effect the (f)(2) of the statute ?

LIST OF PARTIES

[X] All parties appear in the caption of the case on Cover Page.

RELATED CASES

*** NONE ***

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement/case below due to Appellate Court's refusal to address the Constitutional issues presented.

O P I N I O N S B E L O W

[X] For cases from Federal Courts

The opinion of the United States Court of Appeals for the Fifth Circuit Appears at Appendix **A** to the petition. Omitting exculpatory facts as to deny, leaving my only option to the Supreme Court.

[X] Is unpublished.

J U R I S D I C T I O N

[X] For Cases from **Federal Courts:**

The date on which the United States Court of Appeals decided the case I seek review, was **Oct 25, 2021.**

[X] The date on which the United States Court of Appeals decided my "Petition for Rehearing en Banc" was **April 19, 2022;** See Appendix J

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

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Art. I, Sec. 9, par 2

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion the public safety may require it.

28 U.S.C. §2255 - Federal custody; remedies on motion attacking sentence.

(a) A prisoner in custody under sentence of a court established by act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the Court which imposed the sentence to vacate, set aside, or correct the sentence.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the lastest of -

(1). The day on which the judgement of conviction becomes final.

(2). The date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3). The date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4). The date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

STATEMENT OF THE CASE

On **April 14, 2019** the Supreme Court denied Cert. on an Appeal from an ineffective assistance of Counsel because he built the brief coping an argument that had already been answered in favor of the government.

Realizing that I, myself, needed to fight my case and show the Court of my actual innocence [See: Appendix **G**]. I started by trying to learn the basics of the law and how the Constitution is applied. Being required by the prison to maintain a job at the facility, I worked at UNICOR filter factory. This limited my time at the law library, which was the [only] place with computers that could access LexisNexis digital law library.

The last week of February or first week of March this facility did a Flash lock-down to attempt to prevent a COVID-19 outbreak. There was 9 to 10 weeks with [NO] access to any form of law library [See: Appendix **B**;B1-B8]. Then after 9 to 10 weeks [without] acces to any form of law library, the staff made one computer in each unit a portal to the digital law library. At this point I was able to finish my research and draft my motion then placing in the mailbox on **June 5, 2020.**

The prosecutor made a motion to dismiss on time limitation knowing that the prisons had experienced this complete lock-down. The District Court accepted and dismissed on time bar. Both, the Prosecutor and the Court operated on the claim tht COVID-19 was causing delays for them [See: Appendix **C**]. Yet they used this delay, it caused me, to DISMISS my **28 U.S.C. §2255** in disregard of the **(f)(2)** Clause. They are suppose to know and follow the

law, not use my lack of good pleading against me to avoid my meritable claims of a denial of Constitutional rights.

On **Dec 29, 2020** I appealed the Dismissal of my **§2255** on time bar to the FiFth Circuit Court of Appeals [See: Appendix **D**]. In that initial Appeal, I informed the Court **[3]** times that I was denied access to [any] form of law library for well over two months or around 9 to 10 weeks. The Court instructed me to create a "Motion for COA" with separate "Brief in Support of COA" [See: Appendix **E**].

Honoring the Court wishes, I made a "Motion for COA" with separate brief in support of. The supporting brief also included what I labeled as "Wrongful Dismissal" [See: Appendix **F**]. In fact this is what the Court calls "Equitable Tolling". Every issue raised had been raised in my **§2255** and each and every one was Constitutional with multiple Supreme Court case laws to support it, yet the Appellate Court ruled that each issue was not jurist of debatable. They also said that "I claimed we only had a poor law library in our housing unit" [See: Appendix **A**].

What I actually said, and the Court omitted, was we had **[NO] access** to **[ANY] form** of law library **for 9** to **10 weeks** [See: Appendix **D**, and "Wrongful Dismissal" of Appendix **F**], at which point the staff made available one computer with a portal to the digital law library. The omission of this fact was to avoid the **(f)(2)** Clause of **28 U.S.C. §2255** and ruling my "Motion to VACATE" under **28 U.S.C. §2255** as timely.

On **Nov 4, 2021** I mailed my "Petition for Rehearing en banc" [See: Appendix **H**]. See the action and effort it took just to get this petition to the Court and for them to file [See: Appendix **I**]. See how the Court stripped 6 **Affidavits showing the impediment** from the "Petition for Rehearing en banc" then construed it as a "Motion for reconsideration..." without putting the 6

Affidavits back to it because they show a disputable fact that the government impeded me from making a Motion for 9 to 10 weeks. This fact is restarted by those available to create all new original affidavits for this Supreme Court [See: Appendix **B; B1-B8**].

When the Appellate Court willfully and knowingly omits relevant exculpatory information, it is utterly and completely abusing it discretionary power and furthermore it is violating my Rights to fair Due process. It becomes necessary for this Honorable Supreme Court to correct this by granting this Writ of Certiorari. Then, honoring the whole statute of **28 U.S.C. §2255,** including it's **(f)(2)** Clause, by Ruling my **§2255** "Motion to VACATE" as timely or by REMANDING with instructions to do so.

REASON FOR GRANTING THE PETITION

I, **Edwin Oland Andrus,** Pro-Se Defendant, come at this Court for Writ of Certiorari **of** the Case No. 21-20011 It appears that the Court has misunderstood my previous pleading and as such I ask to not be held to a lawyers standard "to less stringent standard than formal pleadings by lawyers" **Haines Vs. Kerner,** 404 U.S. 519, 30 L. Ed 2d 652 (1972). I will present **Two** substantial causes as to why my petition should be GRANTED a Certiorari and then my **28 U.S.C. §2255** Ruled timely. **1).** The equitable tolling assertion is based on the COVIT-19 lock-down with a complete loss of access to the Courts. **2).** The second substantial cause to GRANT Certiorari is my claim of **actual innocence.**

1). Equitable Tolling

In **December, 2019** COVID-19 was sweeping through China. It's effects were so horrible that in China they were welding the doors closed on people and families that contracted it. The United States seeing it's danger, enacted travel restrictions. By **January, 2020** it wasin the United States. By **February,** it was all over the Country and it was taking the lives of Americans. At the end of February the B.O.P. in a preemptive effort to protect the almost 200,000 inmates under their care locked all facilities down, knowing the Courts would account for this impediment.

Here at Texarkana F.C.I. when this lock-down occurred we were confined to our cells. This lock-down to our cells was not limited to Texarkana F.C.I. [See: Appendix **K**]. This flash lock-down also caused a complete block to access the Courts [See: Appendix **B; B1-B8**] by **[NOT] having [ANY] access** to **[ANY] form** of **Law Library...** "the inmate was unconstitutionally denied access to the Courts when she she was prevented from accessing a law library" **Nolley vs. County of Erie,** 776 Supp 715 (WA, NY 1991); **United States vs. Georgia,** 126 S.Ct. 877, 163 L. Ed 2d 650, 546 U.S. 151 (2005).

It is well established "that this right is [one of the fundamental Rights protected by the Constitution] **Willson vs. Thompson,** as we stated" **Jackson vs. Procunier.** 789 F. 2d 307, 311 (5th Cir. 1986).

After I received notice of denial of Certiorary from my lawyer, who was ineffective in trial and in my Direct Appeal, I started going to education. The computers in education were the only ones with a portal to law library, to learn law and do research on my case. I was working at UNICOR due to the B.O.P.'s requirement to maintain a job in prison. This gave me a hour or so in evenings and Saturdays to research and prepare my **§2255.** So my intent was to do as much research as possible to find applicable cases and draft and

complete my §2255 by the end of March, and to mail off by the first of April.

My arguments shows a substantial denial of Constitutional Right by the prosecutor, redefining the statute so unconstitutionally broad as to cause two other substantial Constitutional issue also presented in my **28 U.S.C. §2255** and allowed by the District Court.

My Equitable tolling is simple. The government caused a impediment which blocked my access to the Courts, for at least 9 to 10 weeks at no fault of my own, by the flash lock-down in an attempt to protect us from COVID-19. I was suppose to have 12 Months to research, draft and file my **§2255.** It would only be fair and Equitable for my §2255 to be considered timely. To support this logic, is the wording of **28 U.S.C. §2255(f)(2)** which, if is interpreted in the light most favorable to the government, as opposed in the light favorable to the defendant, my §2255 should be considered TIMELY due to the impediment the government caused, was the reason it was delayed in the first place.

Because the flash lock-down with absolutely **[NO]** access to law library, or computer with portal to law library, cause a complete block to the Courts for 9 to 10 weeks, and the substantial loss of Constitutional Rights are support by applicable case law, the Writ of Certiorari should be GRANTED.

It shall be considered timely due to the statute plain reading of **28 U.S.C. §2255(f)(2)** "[the] legislature say in a statute what it means and means in a statute what it says there" **Conn. Nat. Bank v. Germain,** 503 U.S. 249, 253-254 (1992). If interpreted in light most favorable to government, the 9 to 10 weeks of blocked Court access **[does not]** count toward my year, 365 days, not a day shorter, and thus the §2255 should be considered TIMELY.

2). ACTUAL INNOCENT

I have been claiming since the beginning till now that I am actually innocent. I will present facts that were not presented in trial and should have been. Or they were perverted to help the government, not given in their true context and meaning.

1). Single dad, raising Courtney Ann Andrus, **my daughter**, from when she was 8yr till my arrest when she was 15.

2). Due to past long term relationships, where the woman would be jealous of Courtney and they became verbally abusive, it became necessary I only date short term, just seeking adult female companionship.

3). Working and living in rural Texas, I found it necessary to find adult companionship online. [(2) & (3)] show I was a vulnerable victim for the agent's manipulation.

4). In all those years raising my daughter Courtney, she routinely had friends stay over. And there was **NEVER [any]** inappropriate behavior because [I] was [not] and [am not] sexually interested in children.

5). The agent answered a sexually natured add I place in Craig's list personals, **[Where you must be 18 years old to enter...]**. (The agent targeted a lonely single male vulnerable victim).

6). Agent, presented herself as "Allison", a 30's single mom of a teenage daughter, answered add by sending pictures of herself, showing her body and beauty, then very quickly turned the text sexual.

7). Agent went into graphic details of her sexual growth starting in her early teens, over and over.

8). The agent started describing in great detail how she was performing various sexual acts on her daughter and letting her daughter return the act on her.

9). She also went on to explain how she wanted to have her teenage daughter grow sexually like her but with her.

10). Due to my strong interest in "Allison", and the level of effort she use, I felt to have any chance with her I must express willingness in what she was pushing. She used my interest in her to induce me to express interest in what she said "her and her daughter wanted".

11). In all my text to "Allison" I never once directed any comments to the "minor", nor even a "tell 'Abby' -The fictitious daughter- I say... Hi !".

12). During the course of our communications I attempted, on multiple occasions, to get "Allison" to come up to me, or meet in San Antonio by herself, without her daughter.

13). On the 3rd or 4th such attempt she flipped my request to meet in San Antonio alone by saying "why don't you come down here" **so I agreed to her request.**

Of all these relevant facts, only **5, 10,** and **13** were given to jury and the government piecemealed or twisted those by omitting exculpatory evidence.

*** 1, 4, and 5 shows **[NO]** PREDISPOSITION...

*** 6, 7, 8, 9, and 10 establishes where agent implanted and induced the expression of a criminal act.

*** Where items 11, 12, and 13 shows by my attempt to just meet "Allison", I was interested in "Allison", **[NOT]** "her minor daughter".

If a rational fact-finding jury would have been given conscious instruction to the element of enticement and all exculpatory facts, the outcome would have been different. This lack of presented information was due mostly to the Constitutionally deficient assistance of Counsel compounded by the prosecutor corrupting minds of the jury with misinformation. Counsel did not present entrapment defense, or put me on stand, so I could tell my side and what I was thinking, **as I instructed him to do.**

The jury mind was prejudiced when the prosecutor told the jury that by me agreeing to meet "Allison" -the adult "Mom"- that I meet the element of "Enticement". Then at the end of the trial, the jury's mind was further prejudiced against me when my Counsel, in open Court room, jumped at close of the trial, and verbally called out to "Dismiss under Rule 29 for lack of evidence..." And Judge Ellison responded with "There is more than enough evidence..." Essentially telling the jury that I was guilty in the judge's eyes.

The **28 U.S.C. §2255** I presented Pro-Se, **becomes MY FIRST CHANCE TO SHOW** the Court that **I AM ACTUALLY INNOCENT!** The ineffective assistance of Counsel was so Constitutionally deficient as to result in an innocent person being

found guilty, resulting in a MISCARRIAGE OF JUSTICE were **Herrera v. Collins,** 506 U.S. 390, 404, 113 S.Ct. 853, 122 L. Ed. 2d 203 (1993). Should carry weight in my case.

For a more complete listing of exculpatory facts of ACTUAL INNOCENCE [See: Appendix G -Affidavit of Omitted Facts-].

Wherefore I respectfully request this Honorable Court to **GRANT** me this Writ of Certiorary because the duration of time that **the B.O.P.** caused a governmental impediment by [completely] [denying me access] [to the law library] between the last week of **February 2020** through the end of **May 2020,** and/or Rule that my **§2255** petition was TIMELY, or GRANT any other relief that this Honorable Court it deems necessary and appropriate, due to MY ACTUAL INNOCENCE.

C O N C L U S I O N

The petition for a Writ of Certiorari should be GRANTED.

Respectfully Submitted,

Edwin Oland Andrus, Pro-Se

Date: 21 June , 2022[1].

1. Pursuant to the Prison mailbox rule, a Pro-Se Prisoner's pleadings are deemed to have been file on the date that the prisoner submits the pleading to the prison authorities for mailing. (Casuy v. Cain, 450 F.3d 601, 604 (5th Cir. 2006)(citing Houston v. Lack, 487 U.S. 266 (1988).