NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

JAMES MICHAEL FORNEY,

***Petitioner*,**

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

***Respondent*.**

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether Rule 4 of the Rules Governing Section 2254 Cases, 28 U.S.C. foll. § 2254, which prohibits a district court from dismissing a habeas corpus petition without calling for a response from the State unless "it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief," allows the district court itself to research online electronic dockets from the petitioner's state court proceedings, take judicial notice of those dockets, and dismiss the petition as untimely, without ever calling for a response?

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

RELATED PROCEEDINGS

United States Supreme Court:

James Michael Forney v. Florida,
No. 10-7608 (Jan. 18, 2011)

United States Court of Appeals (11th Cir.):

United States v. James Michael Forney, No. 19-10913
(March 29, 2022)

United States District Court (S.D. Fla.):

United States v. James Michael Forney, No. 18-cv-62794-WPD
(Jan. 8, 2019)

Florida Supreme Court:

James Forney v. State of Florida,
No. SC08-2446 (Apr. 28, 2009)

James Forney v. State of Florida,
No. SC09-354 (June 25, 2009)

James Forney v. Public Defender of the Fifteenth Judicial Circuit,
No. SC10-233 (June 22, 2010)

James Forney v. State of Florida,
Nos. SC10-1178, SC10-648 (Sept. 10, 2010)

James Forney v. State of Florida,
No. SC10-2240 (Nov. 22, 2010)

James Forney v. State of Florida,
No. SC12-432 (Mar. 12, 2012)

James Forney v. State of Florida,
No. SC16-1098 (June 23, 2016)

James Forney v. State of Florida,
No. SC17-937 (May 22, 2017)

James Forney v. State of Florida,
No. SC18-750 (June 26, 2018) and (Aug. 15, 2018)

Florida District Court of Appeal (4th Dist.):

James Forney v. State of Florida,
No. 4D08-3086 (Oct. 6, 2010)

James Forney v. State of Florida,
No. 4D14-1001 (June 26, 2014)

James Forney v. State of Florida,
No. 4D15-4110 (Mar. 17, 2016)

James Forney v. State of Florida,
No. 4D16-4050 (Feb. 23, 2017)

James Forney v. State of Florida,
No. 4D17-3854 (Feb. 28, 2018)

Florida Judicial Circuit Court (17th Cir.):

State of Florida v. James Michael Forney,
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PETITION FOR WRIT OF CERTIORARI

James Michael Forney respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 19-10913 in that court.

OPINIONS BELOW

The Eleventh Circuit's opinion affirming the district court's dismissal of Petitioner's 28 U.S.C. § 2254 petition is unreported but may be found at 2022 WL

909171, and is reproduced in Appendix A-1. The district court's decision, as well as its order denying rehearing, are both unreported and reproduced in Appendices A-3 and A-2, respectively. The magistrate judge's report is unreported and reproduced in Appendix A-4.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The jurisdiction of the district court was invoked under 28 U.S.C. § 2254. The court of appeals had jurisdiction under 28 U.S.C. §§ 1291 and 2253. On March 29, 2022, the court of appeals affirmed the district court's grant of Petitioner's habeas corpus petition. This petition is timely filed under Supreme Court Rule 13.1.

STATUTORY PROVISIONS INVOLVED

Petitioner intends to rely on the following statutory provisions:

28 U.S.C. § 2244(d)

Title 28, U.S.C. § 2244(d) provides:

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

28 U.S.C. § 2244(d).

Rule 4, Rules Governing Section 2254 cases

Rule 4 of the Rules Governing Section 2254 Cases, 28 U.S.C. foll. § 2254, provides, in pertinent part,

> [i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner. If the petition is not dismissed, the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

STATEMENT OF THE CASE

1. On June 25, 2008, a Florida jury sitting in Broward County, Florida convicted Mr. Forney of first degree murder and sentenced him to life without possibility of parole.

2. In 2018, Mr. Forney filed in the United States District Court for the Middle District of Florida a *pro se* 28 U.S.C. § 2254 habeas corpus petition and an appendix. The petition presented twenty-three claims for relief. Relevant here, Ground One alleged that the trial judge "tamper[ed] with the jury, and alter[ed] the record on appeal to hide it," and "fraudulently" denied Mr. Forney's state postconviction motions raising the claim "as 'successive' and 'untimely'" when she should have "self-recus[ed]" due to her "own criminality." The petition alleged that Mr. Forney discovered the "altered record on appeal" that formed the basis for Ground One "sometime between 18 Sept. and 8 Oct. 2014." One of the four triggering dates for the statute of limitations applicable to § 2254 habeas petitions is "the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence." *See* 28 U.S.C. § 2244(d)(1)(D).

The proposed *pro se* petition also contained detailed allegations relating to the timeliness of the other twenty-two claims in the petition. Another of the triggering dates for the habeas limitations period is "the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such

review." 28 U.S.C. § 2244(d)(1)(A). The petition alleged that in case number 4D08-3086, the Florida Fourth District Court of Appeal denied Mr. Forney's direct appeal in a *per curiam* decision on October 6, 2010. It alleged further that this Court in case number 10-10755 denied his petition for writ of certiorari, which occurred on October 3, 2011, *see Forney v. State*, 565 U.S. 848 (2011).

3. The statute of limitations in § 2244(d)(1) is tolled "during the time a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending." 28 U.S.C. § 2244(d)(2). The *pro se* petition alleged that Mr. Forney filed several state postconviction motions. It alleged that on March 11, 2011, Mr. Forney filed, in case number 2011-ca-000710, "a 'collateral criminal proceeding' attacking the [life] sentence's cruel and unusual punishment nature," due to "injuries incurred" and the Florida Department of Correction's "deliberate indifference to the probable need of surgery." The petition alleged that he appealed the denial of this motion to the Florida First District Court of Appeal in appeal number 1D12-1046, and this "proceeding continued into Florida Supreme Court (#SC13-1600) until 28 Jan 2014."

The *pro se* petition further alleged that only 13 days later, on February 10, 2014, another "'collateral criminal proceeding' was commenced for additionally caused 'cruel and unusual punishment'" because Mr. Forney is "forced now to function as 'legally blind' in the prison system." A chart of Mr. Forney's postconviction proceedings in the appendix to the petition indicates that this

proceeding, case number 2013-CA-0034323, was appealed to the Florida First District Court of Appeal in case number 1D14-485, and proceedings on it were concluded when the mandate issued on April 28, 2015. The *pro se* petition further alleged that on October 9, 2014, Mr. Forney filed his first motion for postconviction relief under Florida Rule of Criminal Procedure 3.850 raising twenty-three claims. The petition stated that the motion was dismissed on August 11, 2015 as "[t]ime-barred" but asserted that "the court caused the delay." A copy of the court's order, provided in the appendix to the petition, confirms that the motion was denied as "time-barred." The petition alleged that Mr. Forney appealed the trial court's denial, and that appellate proceedings on this first postconviction motion were completed on June 10, 2016, when the Florida Fourth District Court of Appeal issued its mandate in case number 4D15-4110.

The petition alleged that Mr. Forney filed a second Rule 3.850 motion in the trial court on September 6, 2016, where the only ground for relief was a claim of newly discovered evidence premised on his discovery that the "trial judge had criminally altered the record on appeal (. . . to hide her criminal tampering of the jury . . .)." The appendix to the petition included a copy of the order denying and dismissing this second postconviction motion. The trial court concluded that the motion was successive, and noted that "[e]ven if this motion were not successive," it "would not grant the requested relief." The trial court determined that Mr. Forney's claim, "relie[d] on excerpts from the record of his case, which he has had in

his possession for years, to attack the jurisdiction of the Court to enter its judgment and sentence," and was in fact a claim of ineffective assistance of counsel "for failing to request an instruction on self-defense," and not a claim of newly discovered evidence. The petition alleged that Mr. Forney appealed the trial court's denial of his second Rule 3.850 motion, and that appellate proceedings were completed when the Florida Fourth District Court of Appeal issued its mandate on May 5, 2017, in case number 4D16-4050.

The petition further alleged that on July 28, 2017, Mr. Forney "[a]ttempt[ed] to REINSTATE" the newly discovered evidence claim raised in his second postconviction motion "due to the subject judge's fraudulent postconviction denial." A copy of this motion, entitled "Motion to Set Aside Fraudulent Postconviction Order, and Reinstatement of the Raised Merits," is included in the appendix to the petition. This motion sought reversal by an "impartial judge" of the trial court's "prior postconviction order . . . for reasons that it contained fraud, committed by Judge Holmes," who presided over Mr. Forney's trial and postconviction proceedings and committed "misconduct." The motion described the trial court's prior postconviction order as "fraudulent" and "intended to avoid public awareness and suppress the discovered facts of her own culpability of prior felonies" committed against Mr. Forney. It stated the request was made pursuant to *inter alia*, the Fifth and Fourteenth Amendments, and asked for relief under Florida Rule of Civil

Procedure 1.540(b)(3), pursuant to which a party made obtain relief from a final judgment obtained through fraud.

According to the petition, the trial court rejected this motion on September 19, 2017, "still fraudulently claiming 'successive' [and] 'untimely'." The petition included a "Special Note" as to this claim which states that the order was "issued in excess of the judge's lawful jurisdiction over the merits, because [] a second motion for disqualification was timely 'filed,' invoking statutory right of protection from a prejudicial judge."

Mr. Forney provided a copy of the trial court's order denying this motion in the appendix to the petition. In its order, the trial court called it Mr. Forney's "'Second Motion" for Post-Conviction Relief" but "note[d] that this is actually the third motion for post-conviction relief filed by this defendant." The trial court deemed the motion "successive," and stated that it presented the claim "that the Court in some way altered the jury instructions in the case." The trial court noted that the attachments to Mr. Forney's motion "are 'bate' stamped with the same page numbers as were filed in the original appeal, thus making them copies of what the appellate court reviewed affirming his convictions." The trial court concluded, "This does not constitute newly discovered evidence," and denied the motion. The petition states that Mr. Forney appealed the trial court's decision, and that appellate proceedings on this motion concluded when the Florida Supreme Court denied jurisdiction on June 26, 2018, in case number SC18-750.

Finally, in the "Timeliness" section of the *pro se* petition, Mr. Forney asserted that his petition was timely due "impediment" caused by the criminal misconduct of the judge who oversaw his trial and denied his postconviction motions:

> all time should be tolled in this case, as an impediment to proper filing still remains: a felonious judge. From the point of trial, and being required to seek postconviction relief from the same judge, who only committed more felonies; excessive delays; deprived documentation; and required extra proceedings, before being allowed to seek federal relief, is such an "impediment" that still exists and should be exempt from any "timeliness" imposition or argument.

On November 15, 2018, the Middle District noted that the petition sought relief from a judgment of conviction entered in Broward County, Florida, and transferred Mr. Forney's *pro se* petition to the Southern District of Florida pursuant to 28 U.S.C. § 2241(d).

4. Once in the Southern District, Mr. Forney's case was assigned to a magistrate judge. On November 29, 2018, the magistrate judge issued an order noting that he had "taken judicial notice of online Florida court dockets, the U.S. Supreme Court docket, and certain documents contained therein," and directed the clerk "to make the attached documents a part of the record." Pursuant to this order, the clerk made part of the record the dockets and documents of which the magistrate judge had taken judicial notice.

Without calling for a response from the State or ordering Mr. Forney to show cause why his petition should not be dismissed as untimely, the magistrate judge relied on the dockets and documents of which he had taken judicial notice to

recommend that the district court *sua sponte* dismiss Mr. Forney's petition as untimely under Rule 4 of the Rules Governing Section 2254 Cases. App. A-4.

Specifically, the magistrate judge determined that Mr. Forney could not demonstrate the timeliness of his federal petition under 28 U.S.C. § 2244(d)(1)(D), which provides that a one-year period of limitation shall run from "the date on which the factual predicate of the claim or claims presented could have been discovered in the exercise of due diligence." *Id.* at 6-7. The magistrate judge noted that Mr. Forney "alleged that between September 18, 2014 and October 8, 2014, he discovered 'new evidence' that the trial judge altered the record of his direct criminal appeal." *Id.* at 7. The magistrate judge assumed that this assertion triggered the one-year limitations period under § 2244(d)(1)(D), but concluded that Mr. Forney "still would have had to file his § 2254 petition by October 8, 2015 (i.e., within a year of the discovery of the new evidence), absent any statutory tolling." *Id.* But, the magistrate judge determined, Mr. Forney "did not file the instant petition until November 2, 2018." *Id.*

The magistrate judge also rejected Mr. Forney's allegations that he was entitled to statutory tolling of the limitations period under 28 U.S.C. § 2254(d)(2) in light of his state postconviction proceedings. *Id.* Specifically, the magistrate judge determined no statutory tolling was warranted because "the trial court dismissed [Mr. Forney's] first and second postconviction motions as untimely," and "he did not file his third postconviction motion until July 28, 2017," or "659 days after October 8,

2015." *Id.* Therefore, the magistrate judge concluded, "even if petitioner's documents constituted new evidence under § 2244(d)(1)(D), his § 2254 petition would be untimely." *Id.* at 7-8.

In a footnote, the magistrate judge did not find "persuasive" an argument made by Mr. Forney in his petition "that the trial court altered the record on appeal." *Id.* at 8 n.5. In rejecting this argument, the magistrate judge found it "notabl[e]" that "the trial court rejected the same argument," and "[t]here is no indication in the record that the trial court's finding was unreasonable" under 28 U.S.C. § 2254(d).

In a second footnote, the magistrate judge found that Mr. Forney "does not request equitable tolling. Nor does he allege that he is actually innocent." *Id.* at 8 n.6. Nonetheless, the magistrate judge rejected those very arguments, finding, "Nothing in the record supports any inference that petitioner could establish either of those claims." *Id.*

5. Mr. Forney objected to the magistrate judge's report. He challenged the magistrate judge's analysis and also the accuracy of the judicially noticed state records, and asked to be heard on the taking of judicial notice. *See id.* He alleged that all the "postconviction orders and rulings" in his state court proceedings were "quite suspect of impropriety, especially in the absence of a recusal" by the trial judge who procured his conviction by "felonious" conduct, committed another felony by altering the record on direct appeal, and denied his postconviction motions by "fraud." *Id.* at 2-3. He argued that an "evidentiary hearing and/or at least further

briefing is necessary toward the matters of 'due diligence' and 'timeliness,' as records exist that show [the trial judge] impeded 'proper filing' of contents and time, by excessive delays that were also harmful to federal timeliness." *Id*. at 3.

Specifically, Mr. Forney alleged that although his first Rule 3.850 motion was filed on October 9, 2014, "there is much more state 'court caused delay' that harmed the timeliness of this motion's filing," and asserted that "separate (additional) briefing would be prudent." *Id*. at 6-7. As to the second Rule 3.850 motion, he contended that "[t]he trial judge's order was clearly fraudulent," and his newly discovered evidence claim was timely raised and therefore was "neither 'successive' nor 'untimely.'" *Id*. at 7. Mr. Forney also objected to the report's failure to "find petitioner's argument that the trial court altered the record on appeal to be persuasive." DE 16: 10. He noted that the petition's allegations "only need to be 'legally sufficient' (prima facie) to show error occurred and warrant further factual hearings." *Id*. at 11. Finally, Mr. Forney objected to the report's conclusion that he did not request equitable tolling. *Id*. at 12. He argued that his assertion in the petition – that "all time should be tolled in this case, as an impediment to proper filing still remains: a felonious judge" – should be understood to be an argument for equitable tolling, "even if the talismanic word 'equitable' was not used." *Id*.

Mr. Forney's objections also indicated that he was unable to present his position fully because he had been separated from his legal files and would offer more proof to support his position once he was "reunited with his legal files." *Id*. at

13. Specifically, Mr. Forney alleged that "after being serviced a notice in this case, on 23 Oct[ober, 2018], " he was "transferred . . . out on the next bus" three days later, and his "legal files are still not forwarded even after three written request[s] at the new camp." *Id*. at 13-14. He therefore asked the district court "to issue an order affording briefing." *Id*.

6. On January 8, 2019, over Mr. Forney's objections, the district court "[a]pproved" the magistrate judge's report and recommendation, and dismissed the petition as time-barred. App. A-3. Relying on the state court records judicially noticed by the magistrate judge, the district court concluded that Mr. Forney's petition was timebarred, although based on different reasoning than recommended by the magistrate judge.

Specifically, the district court found that the statute of limitations began to run on October 3, 2011, when the United States Supreme Court denied certiorari. *Id*. at 7. "Therefore," the district court concluded, "the AEDPA statute of limitations ran on October 2, 2012" because "[n]o properly filed activity" – none of the documents filed by Mr. Forney in state court after his direct appeal became final – "tolled the statute." *Id*.

The district court determined further that "Forney's claim that Judge Holmes fabricated evidence would not be properly viewed as newly discovered to re-start the statute of limitations" because [a]ny perception that parts of the jury instructions were typed differently would have been known, if true, before October 2, 2012," when

Mr. Forney's direct appeal concluded. *Id.* at 8. The district court also rejected Mr. Forney's assertion of judicial misconduct. *Id.* It chastised Mr. Forney for "assum[ing] that judges prepare transcripts and/or court records." *Id.* Relying on facts not in the record and without officially taking judicial notice of them under Rule 201 of the Federal Rule of Evidence, the district court found that "[c]ourt reporters prepare transcripts and forward them to the clerk who forwards them, plus court documents, to the appellate court." *Id.* Therefore, the district court determined, Mr. Forney's allegation, "even if newly discovered, does not warrant any relief." *Id.*

The district court held also that equitable tolling was not warranted, deeming "conclusory" Mr. Forney's "complaints about felonious actions by a judge, excessive delays and deprived documents." *Id.* The district court noted that "a review of Florida Supreme Court online docket reveals no less than thirteen (13) petitions that have either been denied or dismissed," and concluded that Mr. Forney "decided to pursue any and all possible perceived imperfections in the state court system," and thereby "squandered his opportunity" to file a federal petition. *Id.*

Having concluded that no basis for equitable tolling had been shown, the district court approved the magistrate judge's report, and dismissed the petition as time-barred. *Id.* at 9.

7. On February 4, 2019, Mr. Forney moved for relief from judgment under Federal Rule of Civil Procedure 60(b). He argued once again that "the state trial

court itself has been the unlawful 'impediment,' knowingly, from 24 June 2008 (night before the jury was instructed, when the first provable felony was committed by the trial judge) onward until when the trial judge retired, sometime recently in 2018." And he described at length all of the actions taken by the state trial judge and other state court officials and how those actions delayed the filing of his state postconviction motions as well as his federal petition. Mr. Forney also asserted that the district court had "depriv[ed] petitioner an expressly requested opportunity" made in his objections "to provide a proper rebuttal once reunited with his legal files that were separated away from" him. *Id*. at 21.

8. The district court denied the Rule 60(b) motion on February 11, 2019. App. A-2. The district court first concluded that Mr. Forney's "request for clerk's ministerial assistance did not toll the statute of limitations," and that "[e]ven if Forney's September 21, 2012 Motion to Enlarge time would somehow be viewed as tolling the statute of limitations, only eleven (11) days of non-tolled time would have been left." *Id*. at 8. It determined further that "even if" the statute of limitation was tolled until September 5, 2014, when the mandate issued following the appeal of those motions, "over eleven (11) days of non-tolled time elapsed before Forney filed his . . . time-barred, not properly filed, post-conviction motion on October 9, 2014." *Id*. The district court further determined that "no extraordinary circumstances have prevented Forney's timely filing his petition," and found him diligent only "in

filing irrelevant complaints, sometimes encompassing wild complaints of official fraud and criminal actions." *Id*. It therefore denied relief from judgment.

9. The Eleventh Circuit affirmed in an unpublished disposition. App. A-1.

REASONS FOR GRANTING THE WRIT

I. The decision below is contrary to the express language of Rule 4 of the Rules Governing Section 2254 Cases.

A district court may dismiss a 28 U.S.C. § 2254 petition without first calling for a response only "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." Rule 4 of the Rules Governing Section 2254 Cases, 28 U.S.C. foll. § 2254, (hereinafter "Habeas Rule 4"), If the lack of entitlement to relief is not plain from the face of the petition and its exhibits, "the judge must order the respondent to file an answer, motion, or other response within a fixed time, or to take other action the judge may order." *Id*.

Here, although Petitioner attached some documents from his state court proceedings as exhibits to his petition, it did *not* "plainly appear from the petition" itself that Petitioner "was not entitled to relief" because the petition was time-barred. And because the lack of entitlement to relief did not "plainly appear from the petition and any attached exhibits," Habeas Rule 4 mandated that the district court call for a response from the state. This it did not do. Rather, the district court undertook to insert itself into the litigation process, conducted its own research into the on-line state court dockets and documents, and then deemed the dockets and documents it found to be "the petition and . . . attached exhibits" for purposes of Habeas Rule 4 Those actions were contrary to the plain text of the rule.

In *Day v. McDonough*, 547 U.S. 198, 209 (2006), this Court declared that "district courts are permitted, but not obliged, to consider, *sua sponte*, the timeliness

of a state prisoner's habeas petition." But *Day* did not allow a district court to rummage through state court dockets as part of its *sua sponte* consideration. This Court predicated its decision in *Day* on the fact that "[i]nformation essential to the time calculation is often absent. . . until the State has filed, along with its answer, copies of documents from the state-court proceedings." *Id.* at 207 n.6. Indeed, it was this pre-answer lack of information that caused the Court to reject Day's argument that that the *only* procedural posture in which a court could raise the statute of limitations defense *sua sponte* was *before* the State responded to the petition. *Id*. at 207. The Court reasoned, "[w]ere we to accept Day's position, courts would never (or at least hardly ever) be positioned to raise AEDPA's time bar *sua sponte*" due to the absence of "essential" information before the State's response is filed. *Id*. at 207 n.6**.**

The decisions below, however, turns *Day*'s considerations on their head, creating a scenario whereby a district court may review state court online dockets *sua sponte* to determine the timeliness of a petition, and do so even in those cases where the timeliness of the petition is unclear based on the facts alleged on the face of the petition. The decision below is therefore contrary to the express language of Habeas Rule 4, and this Court's intervention is required.

II. The question presented is important.

Since January 7, 2020, when the Eleventh Circuit decided *Paez v. Sec'y, Fla. Dep't of Corr.*, 947 F.3d 649 (11th Cir.), *cert. denied sub nom. Paez v. Inch*, ___ U.S. ___, 141 S. Ct. 309 (2020) (No. 16-15705), that court has affirmed the summary dismissal of a habeas petition as untimely in fourteen cases where the district court took judicial notice of online dockets. *See Armstrong v. U.S. Att'y Gen.*, 2021 WL 4946923 (11th Cir. Oct. 25, 2021); *Dake v. Sheriff*, 860 F. App'x 698 (11th Cir. July 14, 2021); *Rush v. Sec'y, Fla. Dep't of Corr.*, 2021 WL 3134763 (11th Cir. June 22, 2021); *Turner v. Sec'y, Dep't of Corr.*, 991 F.3d 1208 (11th Cir. 2021); *Fast v. Sec'y, Dep't of Corr.*, 826 F. App'x 764 (11th Cir. 2020); *Sanders v. Comm., Ga. Dep't of Corr.*, 826 F. App'x 757 (11th Cir. 2020); *Williams v. Dep't of Corr.*, 824 F. App'x 914 (11th Cir. 2020); *Copeland v. Sec'y, Dep't of Corr.*, 812 F. App'x 967 (11th Cir. 2020); *Silva-Martinez v. Fla. Dep't of Corr.*, 808 F. App'x 846 (11th Cir. 2020); *Guisao v. Sec'y, Fla. Dep't of Corr.*, 806 F. App'x 682 (11th Cir. 2020); *Oliver v. Florida*, 803 F. App'x 305 (11th Cir. 2020); *Ates v. Florida*, 794 F. App'x 929 (11th Cir. 2020); *Montero v. Sec'y, Fla. Dep't of Corr.*, 794 F. App'x 928 (11th Cir. 2020); *Kavantzas v. Fla.*, 793 F. App'x 999 (11th Cir. 2020). The only inference is that in the Eleventh Circuit, it is not an aberration for district courts themselves to research state online dockets to ascertain the timeliness of habeas petitions. Rather, this large number of decisions in so short a period of time reflects the importance of the issue, and the need for it to be addressed by this Court.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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