SUPREME COURT OF THE UNITED STATES

JORGE NIEVES,

Petitioner

v. Case No.: _____

RICKY DIXON,

_____ Respondent./

MOTION TO DIRECT THE CLERK TO FILE

PETITION FOR WRIT OF CERTIORARI OUT OF TIME

Comes Now the pro se Petitioner Jorge Nieves, pursuant to Supreme Court Rules and moves this Court to direct the clerk to file the petition for writ of certiorari out of time due to extraordinary circumstances beyond Petitioner's control.

1. The United States Court of Appeals for the Eleventh Circuit entered a decision in case number 19-14302-DD on April 12, 2021, affirming the district court's judgment denying a petition for writ of habeas corpus filed in case number 6:16-cv-01258-PGB-TBS. See attached Exhibit A.

2. A timely petition for panel rehearing and rehearing en banc was filed on June 15, 2021. That petition was denied in June 29, 2021. See attached Exhibit B. The petition for writ of certiorari was due October 27, 2021.

3. On October 13, 2021, Petitioner filed in this court a motion for extension of time asking the court to grant a 60-day extension of time to file a petition for writ of certiorari to review the record in case number 19-14302-DD, of

the United States Court of Appeals for the Eleventh Circuit. The motion bears a date stamp by prison authorities as proof of when it was relinquished for mailing. See attached Exhibit C.

4. On December 22, 2021, Petitioner wrote the clerk of this court and explained: "I have not heard anything on my motion for extension of time. The petition for writ of certiorari is complete and ready to file in this court; however, I am unsure of what to do because I have not received an order granting the requested extension of time. Please advise." The letter also bears a date stamp by prison authorities as proof of when it was relinquished for mailing. See attached Exhibit D.

5. Having not received a response to his December 22, 2021 letter, on March 21, 2022, Petitioner filed a petition for writ of certiorari to review the record in case number 19-14302-DD, of the United States Court of Appeals for the Eleventh Circuit. He submitted a letter to the clerk of this court which acknowledged that the petition was untimely, but explained why it was untimely filed. The petition and letter also bear date stamps by prison authorities as proof of when they were relinquished for mailing. See attached Exhibit E.

6. The clerk responded that the petition was untimely and advised Petitioner that he could resubmit the petition along with a motion to direct the clerk to file out-of-time. See attached Exhibit F. As such, this motion follows.

7. Petitioner requests the court to direct the clerk to file the petition for writ of certiorari out-of-time based on the decision in Houston v. Lack, 487 U.S. 266 (1988). Prior to the deadline for filing the peititon for writ of certiorari, October 27, 2022, Petitioner timely filed his motion for extension of time. He did not receive a response. Prior to the expiration of the period in which the 60 days would have expired had the motion for extension of time been granted, December, 26, 2021, he submitted a letter to the clerk inquiring of the statuts of his motion for an extension of time. He did not receive a resopnse.

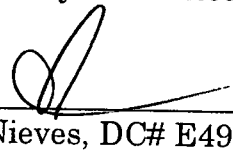
8. Unfortunately, once Petitioner relinquished his docuemnts to prison authorities for mailing he had no control over the delivery process. However, this court has held that a prisoner's document is timely filed when it is relinquished to prison authorities for mailing. Houston v. Lack, 487 U.S. 266 (1988). Petitioner's motion for an extension of time was timely filed and Petitioner was not dilitory in his efforts to communicate with the clerk of this court. Because the motion for extension of time would likely have been granted, the petition for writ of certiorari would have been timely filed had Petitioner received an order granting the requested extension. As, his petition was fully prepared at the time he submitted his inquiry to the clerk of this court. See attached Exhibit D.

9. For these reasons, Petitioner requests this Court direct the clerk to file the petition for writ of certiorari to review the record in case number 19-14302-DD, of the United States Court of Appeals for the Eleventh Circuit.

10. I HEREBY DECLARE UNDER THE PENALTIES OF PERJURY that I have read the foregoing and the facts stated herein are true and correct.

WHEREFORE, Petitioner prays the Court will this Court direct the clerk to file, out-of-time, the accompanying petition for writ of certiorari to review the record in case number 19-14302-DD, of the United States Court of Appeals for the Eleventh Circuit.

Respectfully Submitted,



Jorge Nieves, DC# E49280
Cross City Correctional Inst.
568 N.E. 255th Street
Cross City, Florida 32628

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-14302
Non-Argument Calendar

D.C. Docket No. 6:16-cv-01258-PGB-TBS

JORGE NIEVES, JR.,

Petitioner-Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(April 12, 2021)

Before BRANCH, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Exhibit A

Jorge Nieves, Jr., a Florida prisoner proceeding *pro se*, appeals the district court's denial of his 28 U.S.C. § 2254 habeas petition. We granted a certificate of appealability ("COA") on the issue of whether Nieves's "trial counsel was ineffective for failing to set an evidentiary hearing on Mr. Nieves's stand-your-ground motion." After careful review, we affirm the district court's denial of Nieves's § 2254 petition.

I. Background

In 2012, Florida law enforcement responded to Nieves's apartment and found Karla Pagan, Nieves's girlfriend and the mother of his child, stabbed to death. Nieves was found unconscious a few feet away with a laceration across his neck and a knife lying next to his body. Nieves was ultimately arrested and charged with the second-degree murder of Pagan, in violation of Florida Statute §§ 782.04(2), 775.087(1)(A). Thereafter, Nieves, through retained counsel, filed a "motion for declaration of immunity and dismissal," pursuant to Florida's "stand-your-ground law," Florida Statute §§ 776.012, 776.032(1) (2012).[1] Nieves alleged that he was immune from prosecution because (1) Pagan physically attacked and

[1] At the time of Nieves's trial, Florida law provided that "a person is justified in the use of deadly force and does not have a duty to retreat if . . . [h]e or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony." Fla. Stat. § 776.012 (2012). Section 776.032 further provided that "[a] person who uses force as permitted in s. 776.012 . . . is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer . . . ." *Id.* § 776.032(1) (2012).

injured him in his home; (2) he "used defensive force to repel [her] physical aggression against him"; and (3) he "reasonably believed that such deadly force was necessary to prevent imminent death or further great bodily harm to himself."

Several months later, Nieves's retained counsel moved to withdraw from representation, citing "irreconcilable differences" and Nieves's failure to fulfill the agreed-upon contractual obligations. The trial court granted counsel's motion following a hearing and appointed new counsel. Thereafter, a few days prior to trial, two new attorneys from the Public Defender's Officer were substituted for Nieves's appointed counsel. It is undisputed that none of the attorneys requested an evidentiary hearing on the previously filed stand-your-ground motion, and the trial court never ruled on the motion. Following a trial, the jury convicted Nieves as charged, and he was sentenced to 40 years' imprisonment. Nieves appealed his conviction, and the Florida Fifth District Court of Appeal ("DCA") summarily affirmed. *Nieves v. State*, 162 So. 3d 1037 (Fla. 5th DCA 2014) (unpublished table decision).

Subsequently, Nieves filed a *pro se* motion for postconviction relief, pursuant to Florida Rule of Criminal Procedure 3.850, arguing in relevant part that his trial counsel rendered ineffective assistance by failing to file a stand-your-ground motion based on the "undisputed evidence of defense wounds justifying a use of force." Nieves requested an evidentiary hearing on this claim,

noting that "the determination [of] whether defense counsel['s] action(s) were tactical is a conclusion best made by the trial judge following [an] evidentiary hearing."

Because a stand-your-ground motion had been filed, the state postconviction court reframed the issue as alleging ineffective assistance for failure to set a hearing on the motion. The state court then denied the claim on the merits without an evidentiary hearing, noting that this was "not a case" of "undisputed evidence of self-defense" because Nieves did not testify at trial and there were no other eyewitnesses, and Nieves lacked any recollection of the incident when interviewed by police. The state court noted that the only evidence Nieves cited in support of his claim was that he had a defensive wound on his hand and a neighbor's testimony that he heard a male voice say "stop!" during what sounded like a "heated argument." However, based on testimony at trial, there was some question about whether the wound on Nieves's hand was in fact defensive, and the neighbor testified she was "not sure whether [s]he actually heard the male saying to stop." Further, "[a]s the State pointed out during cross-examination [of the neighbor], in the context of a domestic argument, there are other reasons that a person would say to stop beyond physical self-defense." Thus, given the limited and ambiguous evidence concerning self-defense, the state post-conviction court concluded that, even if counsel had set a hearing on the stand-your-ground motion, there was "no

possibility" that Nieves could have met his burden of proving that the use of force was justified. Nieves appealed, arguing that he should have been granted an evidentiary hearing on the issue of his counsel's ineffective assistance with regard to the stand-your-ground motion, and the Fifth DCA summarily affirmed without a written opinion. *See Nieves v. State*, 189 So. 3d 796 (Fla. 5th DCA 2016) (unpublished table decision).

Nieves then filed a *pro se* § 2254 petition in the United States District Court for the Middle District of Florida, arguing that his trial counsel was ineffective for failing to request an evidentiary hearing on the stand-your-ground motion. Initially, the district court denied the claim as unexhausted and procedurally defaulted, concluding that Nieves failed to properly raise the substantive claim in his appeal from the denial of his Rule 3.850 motion. We granted a COA on the issue of whether the district court erred in concluding the claim was unexhausted and procedurally defaulted, and we reversed and remanded for the district court to consider the issue on the merits, holding that the claim "was fairly presented and exhausted in state court." *Nieves v. Sec'y, Fla. Dep't of Corr.*, 770 F. App'x 520, 522 (11th Cir. 2019).

On remand, the district court denied the claim on the merits, concluding that the state court's decision was not contrary to, or an unreasonable application of, federal law or based on an unreasonable determination of the facts because, as the

state postconviction court found, Nieves could not demonstrate prejudice because of the insufficient evidence of self-defense. The district court denied a COA and Nieves moved for a COA in this Court. We granted a COA on the issue of "[w]hether trial counsel was ineffective for failing to set an evidentiary hearing on Mr. Nieves's stand-your-ground motion." This *pro se* appeal followed.[2]

II. Discussion

On appeal, Nieves argues that had his trial counsel moved for an evidentiary hearing on his stand-your-ground motion, the motion would have been granted and the criminal prosecution terminated. Nieves contends that the state postconviction court's decision is not entitled to deference because it misstated the allegations in his Rule 3.850 motion, disregarded key facts in determining that he could not meet his burden of proof with regard to the stand-your-ground motion, and unreasonably applied clearly established federal law. Specifically, Nieves argues that he never conceded in his state postconviction proceedings that the only evidence of self-

[2] In a footnote of his *pro se* initial brief, Nieves requests that counsel be appointed to represent him in this appeal and be permitted to file supplemental briefing. There is no constitutional right to counsel in federal habeas proceedings. *See Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). However, counsel may be appointed for a financially eligible person in a habeas proceeding if "the interests of justice so require." *See* 18 U.S.C. § 3006A(a)(2). Here, appointment of counsel is not required in the interests of justice. Nieves's appeal involves one issue, and the facts in the record appear to be fully developed and straightforward. The appeal does not appear to present novel legal issues, and Nieves has demonstrated in his *pro se* briefs that he is capable of adequately presenting the essential merits of his position. *See Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993) (explaining that the key consideration in determining whether to appoint counsel in a civil case "is whether the pro se litigant needs help in presenting the essential merits of his . . . position to the court"). Accordingly, we deny Nieves's request for appointment of counsel.

defense was an alleged defensive wound and a neighbor hearing a male voice saying "stop"; rather, he requested an evidentiary hearing in the state postconviction court on his claim so that he could further demonstrate the basis of his claim. Nieves further maintains that, in denying his claim, the state postconviction court disregarded: (1) the fact that he was admitted to the hospital with a life-threatening injury and that his statement to police, in which he lacked memory of the victim attacking him, was taken shortly after he underwent surgery and general anesthesia; (2) his potential testimony which could have supported his claim of self-defense; and (3) the specific allegations in his stand-your-ground motion which supported his claim. Because he maintains that the state court's decision is not entitled to deference, he argues that we should remand the case so that the district court may conduct an evidentiary hearing and consider his claim *de novo*.[3]

We review the district court's denial of a § 2254 habeas petition *de novo*. *Morrow v. Warden, Ga. Diagnostic Prison*, 886 F.3d 1138, 1146 (11th Cir. 2018). Yet the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) also

[3] Pursuant to *Cullen v. Pinholster*, 563 U.S. 170, 185 (2011), a § 2254 petitioner is precluded from receiving an evidentiary hearing in the district court on a claim that was adjudicated on the merits by a state court, unless he *first* demonstrates an entitlement to relief under § 2254(d)—meaning that the petitioner must demonstrate the state court's decision was (1) contrary to, or an unreasonable application of, clearly established federal law, or (2) based on an unreasonable determination of fact on the part of the state court.

governs this appeal, which establishes a "highly deferential standard for evaluating state-court rulings, [and] demands that state-court decisions be given the benefit of the doubt." *Cullen*, 563 U.S. at 181 (quoting *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (*per curiam*)). Thus, under AEDPA, our review of a final state habeas decision is greatly circumscribed, and where a state court has adjudicated a claim on the merits,[4] a federal court may grant habeas relief only if the decision of the state court:

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d)(1)–(2).

"[C]learly established law" under § 2254(d) refers to the holdings of the Supreme Court at the time of the relevant state court decision. *Yarborough v. Alvarado*, 541 U.S. 652, 660–61 (2004). "A state court acts contrary to clearly established federal law if it confronts a set of facts that are materially

[4] Because the Fifth DCA affirmed the postconviction court's decision denying Nieves's ineffective-assistance claim without explaining its reasoning, we "look through" to the last reasoned decision and assume that the Fifth DCA adopted that reasoning. *See Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018) (holding that when the final state court to adjudicate the merits of a petitioner's claim simply affirms or denies a lower court's decision without explaining its reasoning, the federal habeas court should "look through" to the last reasoned state court decision and assume that the unexplained decision adopted that reasoning).

indistinguishable from a decision of the Supreme Court of the United States and nevertheless arrives at a result different from its precedent." *Reese v. Sec'y, Fla. Dep't of Corr.*, 675 F.3d 1277, 1286 (11th Cir. 2012) (quotation omitted). A state court's decision is based on an unreasonable application of clearly established federal law if it "identifies the correct governing legal rule but unreasonably applies it to the facts of the particular state prisoner's case, or when it unreasonably extends, or unreasonably declines to extend, a legal principle from Supreme Court case law to a new context." *Id.* (quotation omitted). To be clear, the state court's application of federal law "must be 'objectively unreasonable.' This distinction creates 'a substantially higher threshold' for obtaining relief than *de novo* review." *Renico v. Lett*, 559 U.S. 766, 773 (2010) (quotation omitted); *White v. Woodall*, 572 U.S. 415, 419 (2014) (explaining that, for purposes of § 2254(d)(1), the state court's application of clearly established federal law must be "'objectively unreasonable,' not merely wrong; even 'clear error' will not suffice" (quoting *Lockyer v. Andrade*, 538 U.S. 63, 75–76 (2003))). "A state court's application of federal law is not unreasonable so long as fairminded jurists could disagree on the correctness of the state court's decision." *Kilgore v. Sec'y, Fla. Dep't of Corr.*, 805 F.3d 1301, 1312 (11th Cir. 2015) (quotation omitted).

To make a successful claim of ineffective assistance of counsel, a defendant must show both that (1) his counsel's performance was deficient; and (2) the

deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Prejudice occurs when there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. Failure to establish either the deficient performance prong or the prejudice prong is fatal and makes it unnecessary to consider the other. *Id.* at 697. Further, "[t]he standards created by *Strickland* and § 2254(d) are both highly deferential, and when the two apply in tandem, review is doubly so." *Harrington v. Richter*, 562 U.S. 86, 105 (2011) (quotations omitted).

To be clear, "whether defense counsel's performance fell below *Strickland*'s standard" is not the question before a federal habeas court reviewing a state court's decision under § 2254. *Id.* at 101. Accordingly, where, as here, "§ 2254(d) applies, the question is not whether counsel's actions were reasonable. The question is whether *there is any reasonable argument that counsel satisfied Strickland's deferential standard.*" *Id.* at 105 (emphasis added). With these principles in mind, we turn to Nieves's claim.

At the time of Nieves's trial in 2013, when a defendant raised a question of immunity from criminal prosecution under Florida's stand-your-ground law, the defendant bore the burden of proving at a pretrial evidentiary hearing entitlement

to immunity under the statute by a preponderance of the evidence.[5] *Bretherick v. State*, 170 So. 3d 766, 775 (Fla. 2015). Thus, had Nieves's counsel pursued such a hearing, Nieves would have borne the burden of establishing by a preponderance of the evidence that he was entitled to immunity under the statute. *Id.*; *see also* Fla. Stat. §§ 776.012, 776.032(1) (2012).

The state court concluded that Nieves could not meet this burden given the facts of this case, and, therefore, he did not suffer any prejudice from his counsel's failure to pursue an evidentiary hearing. Nieves has failed to establish that the state court's denial of his claim was contrary to, or an unreasonable application of, *Strickland* or based on an unreasonable determination of the facts.[6] Specifically, in his Rule 3.850 motion for postconviction relief, Nieves referred to only two pieces of evidence in support of his claim—the "undisputed" evidence that he suffered defensive wounds and the testimony from his neighbor that, around the time of the incident, she heard a male voice yell stop. As the state postconviction court found,

[5] In 2017, Florida Statute § 776.032 was amended to provide that "[i]n a criminal prosecution, once a prima facie claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial immunity hearing, the burden of proof *by clear and convincing evidence* is on the party seeking to overcome the immunity from criminal prosecution provided in subsection (1)." Fla. Stat. § 776.032(4) (2017) (emphasis added).

[6] To the extent that Nieves argues that the state postconviction court erred in failing to address the deficient performance prong, his argument fails because *Strickland* makes clear that a court need not address both prongs. *Strickland*, 466 U.S. at 687.

this evidence was far from "undisputed" and was insufficient to establish by a preponderance of the evidence his entitlement to immunity under the statute.

First, as the state court noted, it was not "undisputed" that Nieves's wounds were defensive. Rather, when presented with pictures of a cut on Nieves's finger during cross-examination, the medical examiner gave no definitive testimony concerning the cause of the cut on Nieves's finger, noting only that he could not tell from the pictures provided to him which hand or finger was cut. The medical examiner explained that if the cut was on Nieves's pinkie it would be more consistent with a defensive wound, but if the cut was on Nieves's forefinger, it would be more consistent with his hand slipping on the knife handle as he stabbed the victim. Additionally, there was no evidence presented that the wound to Nieves's neck was defensive, and testimony established that the police responded to Nieves's home after his brother called 911 to report that Nieves had called him and had stated that he was going to commit suicide. Likewise, the small puncture wounds on Nieves's chest were insufficient to establish by a preponderance of the evidence that he acted in self-defense, particularly in light of the medical examiner's trial testimony that there are instances in which a suicidal person inflicts stab wounds to his chest as he "builds up the courage" to increase the depth of the wound and inflict a fatal blow. Accordingly, although Nieves argues that the evidence that his wounds were defensive was "undisputed," his contention is

undermined by the record, and he has not indicated that he had any additional evidence that he would have presented at an evidentiary hearing on his stand-your-ground motion that tended to show by a preponderance of the evidence that the wounds were in fact defensive as opposed to possibly self-inflicted.

Second, with regard to the neighbor's testimony, as the state court noted, while perhaps slightly probative of self-defense, it was insufficient to meet Nieves's burden. Nieves's neighbor testified that her apartment was next door to Nieves's and Pagan's apartment. In the early morning hours of the day of the incident, she heard loud voices coming from Nieves's apartment. At one point she thought she head the male voice say what "sounded like stop, but it was incomplete." She confirmed that she did not hear anything else "immediately after that." On cross-examination, she admitted that she had no idea why the male voice was saying stop, and acknowledged that during a domestic argument, a person could say stop for any number of reasons. Thus, as the state court found, the neighbor's testimony was ambiguous and was insufficient, even when combined with the evidence concerning Nieves's wounds, to establish his entitlement to immunity under the statute.

Third, as the state court noted, Nieves told the officers that he had no recollection of the incident, did not remember Pagan hitting him or attacking him, and that there was no history of physical violence between them. Although Nieves

now suggests on appeal that his statement should be given less weight because he made that statement shortly after undergoing surgery and general anesthesia, he has not indicated that he would have presented any evidence at an evidentiary hearing on his stand-your-ground motion that would have contradicted his statement that he did not recall the incident.[7]

Finally, to the extent that Nieves argues that the cursory factual allegations in his stand-your-ground motion—that he was physically attacked and injured by Pagan—would have entitled him to pretrial immunity along with his potential testimony, he provided no evidence to corroborate those allegations, nor has he alleged what his potential testimony at a stand-your-ground hearing would have revealed.

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[7] Moreover, we note that, prior to the trial, Nieves unsuccessfully moved to suppress his statement to the police, arguing in part that it was not voluntary because he was under the influence of post-surgical medications. The trial court denied the motion, noting that Nieves was questioned several hours after surgery, had not received any medications in at least four hours, and appeared lucid, "coherent, forthcoming and responsive during questioning." Thus, Nieves's statement was properly before the court, and the state postconviction court did not err in considering it when assessing whether Nieves could establish that he was prejudiced by his counsel's failure to pursue an evidentiary hearing on Nieves's stand-your-ground motion.

To the extent that Nieves argues that his statement that he had no recollection of the incident is refuted by the cursory allegations in the stand-your-ground motion itself and his potential testimony, Nieves provided no other evidence to corroborate those allegations. It was Nieves's burden to establish that he was prejudiced by counsel's failure to pursue an evidentiary hearing on the stand-your-ground motion, and it would have been Nieves's burden to establish his entitlement to immunity under the statute had his counsel pursued a hearing. Nieves has not shown that the state court's determination in this case—that he suffered no prejudice from his counsel's failure to pursue an evidentiary hearing on his motion because he would not have been able to meet his burden of proving entitlement to immunity—was based on an unreasonable determination of the facts or was contrary to, or an unreasonable application of, *Strickland.*

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-14302-DD

JORGE NIEVES, JR.,

Petitioner - Appellant,

versus

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA,

Respondents - Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before BRANCH, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ORD-46

Exhibit B

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JORGE NIEVES – Petitioner

vs.

MARK INCH – Respondent

PROOF OF SERVICE

I Jorge Nieves, do swear or declare that on this date, October 12, 2021, as required by Supreme Court Rule 29 I have served the MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows: Attorney General of Florida Office of the Attorney General at 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, Florida 32118

I declare under penalty of perjury that the following is true and correct.

Executed on October 12 2021.

Jorge Nieves, DC# E49280
Taylor Annex Correctional Institution
8629 Hampton Springs Rd.
Perry, Florida 32348

Exhibit C

SUPREME COURT OF THE UNITED STATES

JORGE NIEVES,

Petitioner

v. Case No.: _____

MARK INCH,

Respondent./

MOTION FOR EXTENSION OF TIME

TO FILE PETITION FOR WRIT OF CERTIORARI

Comes Now the pro se Petitioner Jorge Nieves, pursuant to Supreme Court Rule 13.5, and moves this Court to grant a 60 day extension of time to file a petition for writ of certiorari due to extraordinary circumstances beyond Petitioner's control.

1. The United States Court of Appeals for the Eleventh Circuit entered a decision in case number 19-14302-DD on April 12, 2021, affirming the district court's judgment denying a petition for writ of habeas corpus filed in case number 6:16-cv-01258-PGB-TBS. See attached.

2. A timely petition for panel rehearing and rehearing en banc was filed on June 15, 2021. That petition was denied in June 29, 2021. See attached. The petition is due October 27, 2021.

3. At the time of the decision denying panel rehearing, Petitioner was housed at Cross City Correctional Institution. On August 5, 2021, all inmates housed at Cross City Correctional Institution were emergency evacuated for safety reasons. During this evacuation process, staff advised all inmates that they were only to take with them their bedding linen in a pillowcase. Inmates were specifically

advised to leave their legal documents. Staff instructed all inmates that they would be returning to Cross City Correctional Institution within 5 to 10 days. However, upon arriving at Taylor Annex Correctional Institution, the circumstances changed. Staff is now advising inmates that they are expected to remain temporarily housed at Taylor Annex Correctional Institution for approximately 90 days.

4. Because Taylor Annex Correctional Institution has been temporarily reopened to house the inmates that were emergency evacuated from Cross City Correctional Institution, the institution is unable to provide essential library services. At this time, the law library does not contain the standard law library collection and lacks the provisions to provide other basic law library services.

5. After reviewing the decision of the Eleventh Circuit and Supreme Court Rule 10, petitioner is of the belief that there is a good faith basis to seek review in this court. However, Petitioner is unable to comply with the 90 day deadline imposed by Supreme Court Rule 13 due to circumstances beyond his ability to control.

6. Petitioner is unable to review the existing habeas record, the appellate record, or the briefs filed below because he does not have access to any of his legal documents. This also renders him unable to assemble the documents required by Supreme Court Rule 14.1(i)(i)-(vi).

7. Moreover, Petitioner has to make arrangement's with the institution's security to schedule time to visit the prison's law library to obtain assistance from an inmate law clerk for the preparation of a petition for writ of certioriari. Despite

all of this, he is unable to conduct adequate research at this time because the existing law library collection is outdated.

8. For these reasons, Petitioner requests this Court grant a 60-day extension of time to file a petition for writ of certiorari to review the record in case number 19-14302-DD, of the United States Court of Appeals for the Eleventh Circuit.

9. I HEREBY DECLARE UNDER THE PENALTIES OF PERJURY that I have read the foregoing and the facts stated herein are true and correct.

WHEREFORE, Petitioner moves the court to grant a 60-day extension of time to file a petition for writ of certiorari to review the records in case number 19-14302-DD, of the United States Court of Appeals for the Eleventh Circuit.

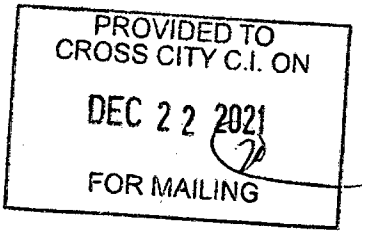
Respectfully Submitted,

Jorge Nieves, DC# E49280
Taylor Annex Correctional Institution
8629 Hampton Springs Rd.
Perry, Florida 32348

Jorge Nieves, DC# E49280
Cross City Correctional Inst.
568 N.E. 255th Street
Cross City, Florida 32628

December 22, 2021

Clerk of Court, Supreme Court of
The United States
One First St. N.E.
Washington, DC 20543



Re: Status of Motion for Extension of Time

Dear Clerk,

On October 13, 2021, I filed a motion for extension of time asking the court to grant a 60-day extension of time to file a petition for writ of certiorari to review the record in case number 19-14302-DD, of the United States Court of Appeals for the Eleventh Circuit. That motion is attached and it does bear a date stamp as proof of when I gave it to prison authorities.

Because a timely petition for panel rehearing and rehearing en banc was and denied in Eleventh Circuit case number 19-14302-DD on June 29, 2021, the petition for writ of certiorari was due in this court on October 27, 2021.

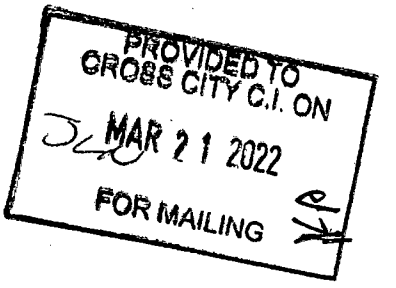
I have not heard anything on my motion for extension of time. The petition for writ of certiorari is complete and ready to file in this court; however, I am unsure of what to do because I have not received an order granting the requested extension of time. Please advise.

Sincerely

Jorge Nieves

Exhibit D

Jorge Nieves, DC# E49280
Cross City Correctional Inst.
568 N.E. 255th Street
Cross City, Florida 32628



March 16, 2022

Clerk of Court, Supreme Court of
The United States
One First St. N.E.
Washington, DC 20543

Re: Untimely Petition

Dear Clerk,

I know that this petition is untimely and that Supreme Court Rule 13.2 states that the clerk will not file any petition for writ of certiorari that is jurisdictionally out of time. However, I do believe this case presents extraordinary circumstances that should be considered.

I did file a timely motion for extension of time, as confirmed by the prison date stamp. See Appendix M of the petition. I did not receive an Order on that motion, which can be confirmed by the prison incoming mail log. I followed up with a letter to your office. See Appendix N of the petition. I did not receive a response to that letter, which can also be confirmed by the prison incoming mail log.

My research does not reveal a proceeding to belatedly seek certiorari review. If such a proceeding does exist, please construe this letter as a request for belated certiorari review, as I did everything that was expected of me to have my case reviewed. However, having not received any correspondence from the court frustrated my ability to have my case reviewed.

Sincerely,

Jorge Nieves

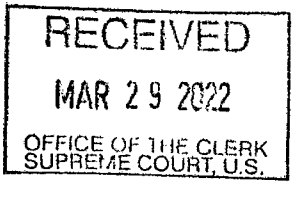


Exhibit E