No. 22-5293

IN THE SUPREME COURT OF THE UNITED STATES

RAFAEL HUMBERTO CELAYA VALENZUELA,
Petitioner

v.

UNITED STATES,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RAFAEL HUMBERTO CELAYA VALENZUELA, in pro se.
Federal Inmate Number: 12758-049
FEDERAL CORRECTIONAL INSTITUTION
HERLONG, CA. 96113-0800

July, 27, 2022.

QUESTIONS PRESENTED

1.- Did the Court of Appeals for the first Circuit err when it denied request for certificate of appealability(C.O.A.), where petitioner sought review of the District Courts failure to resolve all claims (I.A.C.) raised in his §2255 motion as ruled (en banc) in the 11th. Circuit's CLISBY V. JONES (a requirement of district courts to resolve all claims raised in a § 2255) ? If so, should this H. Court exercise its supervisory powers to bring uniformity to circuit courts, regardless of whether those claims are granted or denied.?

2.- Has the Supreme Court of the United States overturned its own precedent in BUCK V. DAVIS , 137 S.Ct. 759 (2017)(Holding that appellate courts limit its examination at the Certificate of appealability (C.O.A.) stage to a threshold inquiry into the underlying merit of the claims, and ask only if the district courts decision was debatable).? If so, did the court of appeals for the first circuit err by exceeding the limited scope of a C.O.A. analysis, when it denied petitioner's request for C.O.A.?

TABLE OF AUTHORITIES CITED

STATUTES AND RULES

OTHER

TABLE OF CONTENTS

INDEX TO APPENDICES

PETITION

Rafael Humberto Celaya Valenzuela, in pro se, respectfully petitions for a Writ of Certiorari to review the judgement of The United States Court of Appeals for the First Circuit denying petitioner's request for Certificate of Appealability from the United States District Court for the District of New Hampshire order, denying his Motion for Habeas Corpus §2255.

OPINION BELOW

The judgement/order from the United States Court of Appeals for the Firts Circuit is attached hereto as Appendix A. The Court of Appeals for the First Circuit denied petitioner's request for Certificate of Appealability from the United States District Court for the District of New Hampshire denial of petitioner's motion for Habeas Corpus §2255.

JURISDICTION

After the order from the United States District Court for the District of New Hampshire denying petitioner motion for Habeas Corpus § 2255, petitioner filed a request for Certificate of appealability in the United States Court of Appeals for the Firts Circuit, the judgement of this Court denying the issuance of C.O.A. was entered on April 7, 2022, petition for Rehearing and/or Rehearing en banc was filed on 5/13/ 2022 after an extention of time request for this matter was granted. The First Circuit panel and a majority of the active judges of this court not having voted that the case should be heard en banc; this petition was denied on June 06 2022. Now this petition is being filed within the ninety (90) days required by USSC rule 13.3. Jurisdiction in this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **Nor be deprived of life, liberty,** or property, **without due process of law;** nor shall private property be taken for public use, without just compensation.

SIXTH AMENDMENT:

In all criminal prosecutions, the accused shall enjoy the right to a speedy trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be **Informed of the nature and cause of the accusation;** to be confronted with the witnesses against him; to have compulsory process for obtain witnesses in his favor, and to **have the Assistance of Counsel for his defence.**

STATEMENT OF THE CASE

On or about 9/25/2018 Mr. Celaya Valenzuela submitted an instant motion seeking post conviction relief pursuant to 28 U.S.C. § 2255, He raised four (4) claims of Ineffective Assistance of Counsel (IAC). Only claimsone and claim two are at issue here, very briefly put:

1) **Claim One-- For "Counsels failure to file a motion to dismiss the indictment for 'Outrageous government conduct';" and**

2) **Claim two - For "Counsels failure to file a motion to dismiss the indictment on the basis of 'VAGUE STATUTE 21 U.S.C. § 846.'" See § 2255 motion which is part of the record.**

On or about 12/12/2018 (one week after their response was due) the government filed its "Objection to defendant's § 2255 motion."

On or about 1/11/2019, petitioner filed his reply to government's response (relevant to this issues), that the government failed to respond specifically to claims one and two.

On or about 3/25/2020, petitioner filed a motion for Judicial notice and request for judgement on the pleadings.

On or about 9/10/2021 (35 and one half months later) the United States District court denied petitioner request for relief under § 2255, based on TWO of Mr. Celaya-valenzuela's Four (IAC) claims for relief, and also denying C.O.A. See Order denying motion for judgement on the pleadings attached.

On or about 9/21/2021, Mr. Celaya Valenzuela filed a notice of Appeal from the district court's denial of C.O.A.

On or about 11/9/2021, Mr. Celaya Valenzuela filed his request for issuance of certificate of appealability in the First Circuit Court of appeals, within his request Mr. Celaya Valenzuela informed the Court of appeals that the government failed to respond those two claims (one and two) the district court in its denial allowed this **error** to occur. see order denying § 2255 appended.

On or about 4/07/2022, The court of Appeals for the first circuit denied C.O.A., concluding "That the district court's **Resolution** of petitioner's claim[s] was neither **debatable** nor wrong..."

On or about 5/09/2022, Mr. Celaya Valenzuela filed for "Panel Rehearing and/or rehearing en banc." within this motion/request to the court of appeals for the first circuit, Mr. Celaya Valenzuela request that the court upon making its ruling, consider 1) The 11th Circuit's **Clisby v. Jones,** 960 F.2d 925 (1992)(en banc), directing district court's to **Resolve all claims** for relief raised in a petition for Habeas Corpus prior to granting or denying relief; and Supreme Court's **Buck v. Davis** (No.15-8049)(5th circ. feb. 22,2017). where the C.O.A. statute set for a two step process: An initial determination whether a **Claim** is reasonably **Debatable,** and then **if it is,** an appeal in the normal course.

On or about 6/6/2022, the court of appeals for the first circuit denied panel Rehearing and Rehearing en banc.

REASONS FOR GRANTING THE PETITION

THIS HONORABLE COURT SHOULD GRANT CERTIORARI TO CLARIFY THE FOLLOWING ISSUES OF LAW.

Question No. 1

Did the Court of Appeals for the First Circuit **err** when it denied request for Certificate of appealability (COA), where petitioner sought review of the district courts failure to **Resolve** all claims (IAC) raised in his §2255 motion as ruled (en banc) in the 11th. Circuit's **Clisby v. Jones** (a requirement of district courts to **Resolve** all claims raised in a §2255)? If so, should this Honorable Court excercise its Supervisory powers to bring uniformity to circuit courts regardless of whether those claims are granted or denied.?

Appellate Court's order's.

The Court of appeals for the first circuit concluded that "The district courts **Resolution** of petitioner's claims was neither debatable nor wrong and that petitioner therefore has failed to make a substantial showing of a Constitutional Right..."The application for C.O.A. is denied, and the appeal is terminated;" followed by a denial of petition for rehearing and/or rehearing en banc. See order appended.

FACTS IN SUPPORT OF ARGUMENT.

Petitioner, in his last recourse for remedy, pleads before this H. Court, expressing with sound reasoning "Why the court of appeals for the first circuit is wrong."

Petitioner's first issue focuses on "The'**Resolution** of all claims' for relief in a petition for Habeas Corpus, regardless of whether relief is granted or denied;" emphasis on**"Resolution"**

Petitioner raised four(4) separate cognizable claims of Ineffective assistance of counsel (IAC) and requested liberal construction under **Haines v. Kerner**, 484 U.S. 519 (1972),(see §2255 motion part of record).the district court after reviewing the motion (as set forth in §2255 rules) **Ordered** the government to answer within (60) days, see order appended, the government, however, answered to only two of the four IAC claims raised by petitioner, specifically claim ONE and claim TWO. See government response, part of the record.

Petitioner in his reply to government response, once again, requested liberal construction of his pleadings and informed the district court that the government **Failed** to answer claim one and claim two. See petitioner's reply to government response appended. Aproximately 14 months after petitioner's reply brief, with **NO** decision from the district court, petitioner filed on 3/25/2020 a motion for Judicial Notice of Judicial opinions and request for judgement on the pleadings, reinforcing those TWO unanswered claims (One and Two). See motion for judicial notice and request for judgement on the pleadings, part of the record.

Aproximately 17 months later the government filed a response to petitioner's motion for judicial notice and request for judgement on the pleadings, where they argued that petitioner "raises some aditional claims that did not appear in the §2255 motion..." This is NOT true, See §2255 motion claims one and two, in conjunction with Judicial notice and judgement on the pleadings, part of the record.

The district court on 9/10/2021, without an opinion, in a single page text order denied petitioner's relief under §2255. In relevant part of the issue of "the **Resolution** of all claims" the district court acknowledge the "Movant has requested that the court **Resolve** the case on the written filings..." **which-never-happend;** because, the final order from the district court denying petitioner's motion under §2255 relied "In the prosecutions responsive filings..." See district court's order denying §2255 and declining to issue a C.O.A., appended.

Petitioner, on 11/09/2021 filed a request for issuance of C.O.A. in the United States Court of Appeals for the first circuit, requesting once again liberal construction of pleadings.

Within this request for C.O.A. petitioner informed the appellate court that the district court in its order denying relief based his decision on the prosecution's responsive filings, which allowed petitioner's IAC claims (one and two) to go **unresolved.**

On April/07/2022, the court of appeals for the first circuit denied request for C.O.A., with **NO** opinion, in a one page judgement, concluding "That the district courts **Resolution** of petitioner's claims was neither debatable nor wrong..."

The-**Resolution**-of petitioner's-claims, is the issue here.

Based on "The ordinary meaning of the word," See **Bailey v U.S.**, 516 U.S. 137 (1995) "Merriam-Webster's dictionary":

Resolve: To find an answer to: Solve; To reach a firm decision about: decide.

Resolution: The act of process of resolving; The action of solving, also solution The quality of being resolute: Determination.

The words **Resolve & Resolution** (Synonimous with one another) were used by both the district court and the appellate court in their conclusion, when they denied petitioner's request for relief. see both denial's appended.

Petitioner in a compelling argument cite's the 11th. Circuit's **Clisby v Jones**, 960 F.2d 925 (1992)(en banc) Holding that:

> "until [federal habeas] proceedings have been concluded, they cast doubt on a petitioner's conviction and interfere with the state's administration of its correction program. Our procedures for handling habeas petitions are designed, in part to minimaze such disruption... and we emphasize the importance of litigating all petitioner's claims in one Habeas proceeding, both at the trial and - appellate levels.

> We are disturbed by the growing number of cases in which we are forced to remand for consideration of issues the district court chose Not to resolve, see e.g. Alderman v Zant, no. 90-8981 (11 cir.1990); Smith v Zant, 887 F.2d 1407 (11th cir. 1989)(en banc) Lindsey v.Smith, 820 F.2d 1137 (11th cir. 1987) cert. denied,489 U.S. 1059, 109 S.Ct.1327, 103 L. Ed. 2d 595 (1989); Wilson v kemp 777 F. 2d 621 (11th Cir. 1985), cert, denied 4/6 U.S. 1153, 106 S.Ct. 2258, 90 L.Ed. 2d 703 (1986), etc."

In a recent appeal in the 11th. circuit the court held:

> "'Under well settled principles in this circuit, pro se applications for post-conviction relief are to be liberally construed.' United States v Brown, 117 F. 3d 471, 475 (11th Cir.1997). And under Clisby, district courts are to resolve all claims for relief raised in a petiton for writ of habeas corpus,'regardless [of] whether habeas relief is granted or denied.' 960 F.2d at 936; see Rhode v United States, 583 F. 3d 1289, 1291 (11th Cir. 2009)(per Curiam)(holding that Clisby applies to motions to Vacate under 28 U.S.C. §2255). When district court has Overlooked a claim, our practice is to Vacate the judgement without prejudice and remand the case for consideration of that claims, Clisby, 960 F.2d at 938." See Heffield v United States, case no. 17-14480 (11th cir. 2019.

" A Substantial Showing of the denial of a Conatitutional Right "

According to the federal criminal procedure, the indictment may contain flaws warranting dismissal or further clarification; such challenges requires through knowledge of the pertinent law and may be lost if not timely raised (as what occured here). upon receipt of the charged document, each count should be carefully examinated to determine whether it is subject to dismissal or, in the alternative, may be subject to the filing of a bill of particulars in order to learn in greater detail the nature of the prosecution's allegations; petitioner states that after carefull review of his docket there were NO filings of any pre-trial challenges to the indictment nor filing of a bill of particulars.

Pre-trial challenges to the indictment include but not limited to **Notice of the charges**, prevention of double jeopardy, in felony cases- assurance that the accused is tried on such charges as the Grand Jury has return, **Inadequacy of the essential elements**, and **governmental misconduct** violating **Due process**- where the conduct of law enforcement officials may be so **Outrageous** that Due process principles would bar the government from invoking Judicial process to obtain conviction. see **United-**

States v. Russell, 411 U.S. 423,432 (1973); **U.S. v Twigg**, 588 F.2d 373, 380-81 (3rd Cir. 1978); and **U.S. v Luisi**, 482 F.3d 43,59 (1St. Cir. 2007).

Claim one: "Counsels failure to file a motion to dismiss the indictment on the basis of 'Outrageous government conduct.'"

Petitioner,in preparation of this claim, came across of the most Telling statements made by one of the undercover agents (UCE) during a recorded meeting... **"We organize everything."** see U.S. DOJ FBI investigation " Verbatim translation of meeting on 5/31/2012 18:20 hrs.(defendants exhibit (H)) Appended.

The time and place for all the meetings were conceived and contrived by the government from the beginning, including the initial introduction by Paid government informant Alejandro Mourino (CHS); and after years of investigation, the end result, Not a scintilla of evidence that petitioner engaged to commit the crime as charged in the indictment, and the proof was established at Trial when the lead FBI agent Tucker J. Heap testifies that petitioner had NO involvement with the drugs related to this case as charged in the indictment. See Trial transcript- day two FBI agent Tucker J Heap Testimony, pg. 42. appended.

Parallel to **Russel,Twigg,** and **Luisi,** the government here, involved itself so directly and continuosly over such a long period of time in the **Creation** and mantanance of criminal operations, adding insult to injury, the undercover agent in **Luisi,** (Michael McGowan), is the same agent in the instant case.

This is a clear showing of "Police overinvolvement in the crime reaching a demostrable level of **"Outrageousness"** that should have barred the conviction."

Defense counsel had all the transcripts of these "recorded meetings in their possession well before the trial started (24 months window). Yet, it appears there was no investigation into the Grand jury transcripts **"Which confirms"** that the government did in fact **Organize/plan** this entire criminal operation from start to-

finish. See Transcript of Federal grand jury proceedings pgs. 8-9. appended.

Counsel failed here at the pre-trial stage to move the court for a dismissal based on this governmental misconduct, as illustrated above, pursuant to Federal Criminal procedure.

CLAIM TWO: "COUNSEL FAILURE TO FILE A MOTION TO DISMISS THE INDICTMENT ON THE BASIS OF "VAGUE STATUTE' 21 U.S.C. § 846

> **§ 846 ATTEMPTS AND CONSPIRACY: Any person who attempts to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.**

Under the plain reading of 21 U.S.C. §846; the statute is VAGUE on its face because: 1) Fail to provide "Fair Notice"; and 2) Lacks the means rea element; and when a statute is unclear deprives ordinary people Fair warning about what the law demands of them. "[N]o intelligible definition of **Conspiracy** has yet been established" **Krulewitch**, 69 S.Ct. at 720 n.3

> Vagueness doctrine-base on the due process clause.-Requiring that under a criminal statute states explicity and definitely what act are prohibited or restricted, so as to provide Fair warning and - preclude arbitrary enforcement.(Black's Law)

Both of this claims that went **Unresolved** (one and two) in petitioner's § 2255, are cognizable (IAC) claims that deserve consideration because they are the most fundamental challenges that any "Effective attorney" should undertake on behalf of defendant not just at trial, but at the pre-trial-stage-where defense counsels **Investigation** of the case initially begins, in preparation for pre-trial challenges: Fourth amendment, discovery, custodial, identifications, preliminary challenges, grand jury, and indictments etc. The sixth amendment guarantees the Right to "Effective assistance of counsel" in a criminal prosecution..to obtain a reversal of conviction the defendant must prove that 1) Counsel's performance "fell below an objective standard of reasonableness"(There was nothing strategic in not making these fundamental pre-

As the Supreme Court held on **Miller-El**, the threshold nature of C.O.A. inquiry "would mean very little if appellate review were denied because the prisoner did not convince a Judge, or, for that matter, three Judges, that he or she would prevail." **Miller-El**, 537 U.S. 322 at 337. In Mr. Celaya Valenzuela's case however, that is exactly what the panel did. See order's denying C.O.A. and rehearing and/or rehearing en banc appended.

Mr. Celaya Valenzuela filed a motion in the first circuit seeking a certificate of appealability, so that may appeal the district court's denial of his § 2255 motion. The panel however, determined that Mr. Celaya Valenzuela had indeed, provided effective assistance of counsel because they were Bar members in good standing. Thus, the panel concluded that Mr. Celaya Valenzuela should be denied a C.O.A. because the appeal was meritless.

The panel impermissibly sidestepped the C.O.A. inquiry in this manner by denying relief because the subsequent appeal would be meritless. The panel assessment of the merits is patently wrong. The panel could not possibly resolve the merits of an appeal based solely on a motion seeking a certificate of appealability. Moreover, without the issuance of C.O.A. and the D. Court's record before the panel, the panel was without Jurisdiction to determine the merits of the appeal.

CONCLUSION.

Therefore, for all this well pleaded facts, reasons and issues of law in support of this petition, petitioner prays that a Writ of Certiorari should be granted.

Respectfully submitted,

DATE: July,27,2022.

RAFAEL HUMBERTO CELAYA VALENZUELA