

MAY 21 2022

OFFICE OF THE CLERK

No. 22-5395*Original*

IN THE

## SUPREME COURT OF THE UNITED STATES

MICHAEL GORRIO — PETITIONER  
(Your Name)

vs.

CORRECTIONAL OFFICER FRANCIS — RESPONDENT(S)  
ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

## PETITION FOR WRIT OF CERTIORARI

MICHAEL GORRIO # 102854  
(Your Name)501 MAIL ROAD, HARRISBURG, PA 17111-1299  
(Address)HARRISBURG, PA 17111-1299  
(City, State, Zip Code)(724) 612-0322  
(Phone Number)

QUESTION(S) PRESENTED

1. DID THE APPELLANT'S AMENDED COMPLAINT ECF 43 PRESENT SUBSTANTIAL "WELL PLEADED FACTS," AS TO PLAINLY STATE A CLAIM AND SUPPORT THE CLAIM TO OVERCOME MOTION TO DISMISS PROCEEDINGS, WITH REVERENCE TO ALL ALLEGED CLAIMS?
2. IN THE (PLAINTIFF'S) APPELLANT'S AMENDED COMPLAINT PROVIDED AT DOCKET ENTRY ECF 43, DID THE CONCATENATION OF WORDS, ACTS, AND FACTS ESTABLISH THE EMBODIMENT OF CIVIL RICO CLAIMS AND CIVIL RICO CONSPIRACY CLAIMS?
3. IN EFFECT DID THE DISTRICT COURT AND U.S. COURT OF APPEALS DEPRIVE THE PLAINTIFF THE CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW BY VIEWING THE FACTS, STATEMENTS, AND ALLEGATIONS IN THE LIGHT MOST FAVORABLE TO THE DEFENDANT/APPELLEES?
4. IN EFFECT DID THE U.S. COURT OF APPEALS UPHOLD THE DECISION OF THE DISTRICT COURT AS A MATTER OF RECOURSE IN THE CERTIFIED ORDER ISSUED IN LIEU OF MANDATE, THEREBY DEPRIVING THE PLAINTIFF THE CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW?
5. IN EFFECT DID THE UNITED STATES COURT OF APPEALS EFFECTUALLY BAR ALL REMEDIES OF LAW IN THIS ACTION, BY ADMINISTRATIVELY CLOSING THE CASE WITHOUT THE ALLOWANCE FOR PROPER APPEAL?
6. DID THE (DEFENDANT'S) APPELLEE'S FAILURE TO DELIVER MOTION TO DISMISS PETITION DEPRIVE THE (PLAINTIFF) APPELLANT OF THE OPPORTUNITY TO FILE TIMELY OBJECTIONS?
7. IN EFFECT DID THE DISTRICT COURT AND THE UNITED STATES COURT OF APPEALS APPLY A "HIGHER STANDARD" OF SCRUTINY TO THE PLAINTIFF'S COMPLAINT THAN THAT PERMISSIBLE UNDER THE FEDERAL RULES OF APPELLATE PROCEDURE?

QUESTION(S) PRESENTED  
(CONTINUED)

8. DID THE PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS AND SUPPLEMENTAL MEMORANDUM IN SUPPORT PROVIDE SUBSTANTIAL "WELL-PLEADED FACTS" TO OVERCOME THE MOTION TO DISMISS STAGE OF THE PLEADINGS IN THE DISTRICT COURT?
9. DID THE APPELLANT PRESENT ISSUES AS A 'MATTER OF LAW' WHICH REQUIRE DE NOVO REVIEW ON APPEAL?
10. LIKEWISE, DID THE APPELLANT PRESENT ISSUES AT THE THRESHOLD OF THE "FACT-LAW" DIVIDE WHICH REQUIRE DE NOVO REVIEW ON APPEAL?

## LIST OF PARTIES

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

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

CORRECTIONAL OFFICER FRANCIS, EDWARD BOHNA, BURRIE, MARK V. CAPOZZA, CARASELLY, COX, DAILEY, DICKS, EMMINGER, EVALUS, FETCHCO, HAILEY, HAINES, HENRY, BRITTANY KIMMEL, MCKILEEN, MINOR, OHRMAN, PARKER, POLAND, REGINA, RHODES, ROCKRIDGE, RUSNAK, SAXION, SCOLE, TERRAVECHIA, TWARDZIK, WALSHAN, WILES, ALBERT WOOD, RHONDA HOUSE, LOIS ALLEN, BETH RUDZIENSKI, JOHN DOE OFFICERS, SERGEANTS AND LIEUTENANTS, AND DEPARTMENT OF CORRECTIONS, IN ADDITION TO, MAGISTRATE JUDGE PATRICIA L. DODGE, DISTRICT JUDGE NICHOLAS FRANCIS, DISTRICT JUDGE J. NICHOLAS RANTAN, AND CLERK PATRICIA S. DODZUWEIT

## RELATED CASES

- MORRIS V. FLAG, NO. 02-CV-5988, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK. JUDGEMENT ENTERED JUNE 6, 2007.
- S.E.C. V. CREDIT BANCORP, LTD., 99 CIV. 11395 (RWS), UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. JUDGEMENT ENTERED JUNE 13, 2000.
- WILLIAMS V. MEHRA, NO. 97-1118, UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, JUDGEMENT ENTERED AUGUST 4, 1999.
- GORRIO V. FRANCIS, NO. 21-2945, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT. JUDGEMENT ENTERED OCTOBER 26, 2021.
- JOHNSON V. JONES, NO. 94-455, SUPREME COURT OF THE UNITED STATES. JUDGEMENT ENTERED JUNE 12, 1995.
- ALLIS-CHALMER CORP. V. PHILADELPHIA ELEC. CO., NO. 74-1936, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT. JUDGEMENT ENTERED ~~07-10-1975~~ JULY 10, 1975.
- HARLOW V. FITZGERALD, NO. 80-945, SUPREME COURT OF THE UNITED STATES. JUDGEMENT ENTERED JUNE 24, 1982.
- MITCHELL V. FORSYNTH, NO. 84-335, SUPREME COURT OF THE UNITED STATES. JUDGEMENT ENTERED JUNE 19, 1985.

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DEFENDANT'S BRIEF

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- 28 U.S.C.S. § 1292 (B)
- 18 U.S.C.S. §§ 1961-1968

### OTHER

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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 judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

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

reported at GORRIO V. FRANCIS, 2021 U.S. APP. LEXIS 40009; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

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

reported at GORRIO V. FRANCIS, 2021 U.S. DIST. LEXIS 87570; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

[ ] For cases from **state courts**: N/A

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was OCTOBER 26, 2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: APRIL 18, 2022, and a copy of the order denying rehearing appears at Appendix C.

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

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

For cases from **state courts**:

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

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

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

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 42 U.S.C.S. § 1983, PART 1 OF 16 - "EVERY PERSON WHO UNDER COLOR OF ANY, STATUTE, ORDINANCE, REGULATION, CUSTOM, OR USAGE, OF ANY STATE OR TERRITORY OR THE DISTRICT OF COLUMBIA, SUBJECTS, OR CAUSES TO BE SUBJECTED, ANY CITIZEN OF THE UNITED STATES OR OTHER PERSON WITHIN THE JURISDICTION THEREOF TO THE DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAW, SHALL BE LIABLE TO THE PARTY INSURED IN ANY ACTION AT LAW..."
- 28 U.S.C.S. § 1292, PART 1 OF 2 - "(B) WHEN A DISTRICT JUDGE, IN MAKING IN A CIVIL ACTION AN ORDER NOT OTHERWISE APPEALABLE UNDER THIS SECTION, SHALL BE THE OPINION THAT SUCH ORDER INVOLVES A CONTROLLING QUESTION OF LAW AS TO WHICH THERE IS SUBSTANTIAL GROUND FOR DIFFERENCE OF OPINION AND THAT AN IMMEDIATE APPEAL FROM THE ORDER MAY MATERIALLY ADVANCE THE ULTIMATE TERMINATION OF THE LITIGATION, HE SHALL SO STATE IN WRITING, IN SUCH ORDER."
- 18 U.S.C.S. § 1964 - "(C) ANY PERSON INJURED IN HIS BUSINESS OR PROPERTY BY REASON OF A VIOLATION OF SECTION 1962 OF THIS CHAPTER MAY SUE THEREFOR IN ANY APPROPRIATE UNITED STATES DISTRICT COURT AND SHALL RECOVER THREEFOLD THE DAMAGES HE SUSTAINS AND THE COST OF THE SUIT, INCLUDING A REASONABLE ATTORNEY'S FEE..."
- U.S.C.S. CONST. AMEND. 14, PART 1 OF 15 - "NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF LAWS."

### STATEMENT OF THE CASE

GORRIO IS A PRISON CIVIL RIGHTS ADVOCATE WHO RESIDES IN HARRISBURG, PENNSYLVANIA. GORRIO IS CURRENTLY INCARCERATED FOR FABRICATED ROBBERY CHARGES AND CONTINUES TO CONTEND THE CRIMINAL AND CIVIL JUSTICE SYSTEM IN THE BETTER INTEREST OF JUSTICE. GORRIO SERVED THE BALANCE OF HIS MAXIMUM SENTENCE IN THE SCI AT STATE CORRECTIONAL INSTITUTION AT PHOENIX IN COLLEGEVILLE, PA.

ON OCTOBER 30TH, 2020, SENIOR DEPUTY ATTORNEY GENERAL SCOTT A. BRADLEY FILED MOTION TO DISMISS UNDER RULE 12 (B)(2) FED. R. CIV. P. ACCORDINGLY, ON MAY 7TH, 2021, MAGISTRATE JUDGE PATRICIA L. DODGE ISSUED REPORT AND RECOMMENDATION RECOMMENDING THAT THE COURT GRANT IN PART AND DENY IN PART DEFENDANT'S MOTION TO DISMISS. CONSECUTIVELY, DISTRICT JUDGE J. NICHOLAS RANTAN ADOPTED REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE ON JULY 16TH, 2021.

SUCCESSIVELY, PLAINTIFF FILED NOTICE OF APPEAL TO REPORT AND RECOMMENDATION ON OCTOBER 20TH, 2021 AND THUS THE CLERK'S OFFICE CERTIFIED THE RECORD AND DOCKET SHEET TO THE UNITED STATES COURT OF APPEALS. THE FOLLOWING DAY, THE COURT OF APPEALS ASSIGNED CASE NUMBER 21-2945 TO THE CASE, AND ON OCTOBER 26TH, 2021, THE CASE WAS ADMINISTRATIVELY CLOSED REDIRECTING ALL THE PROCEEDINGS TO THE DISTRICT COURT. THE PLAINTIFF/APPELLANT FILED PETITION FOR PANEL REHEARING WHICH THE THIRD CIRCUIT OF APPEALS CONSTRUED AS PETITION TO RECONSIDER THE 10/26/21 ORDER. THE INSTANT PETITION FOR WRIT OF CERTIORARI SUPERVIVES.

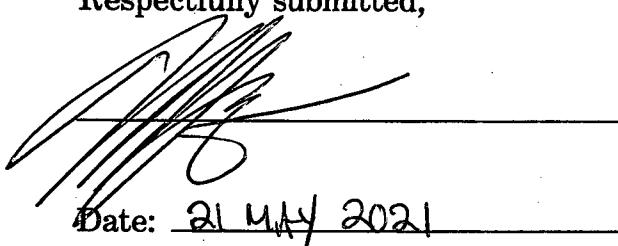
## REASONS FOR GRANTING THE PETITION

1. THE PANEL MATERIALLY MISREAD THE FACTUAL RECORD THE UNITED STATES COURT OF APPEALS FAILED TO ENTERTAIN THE CONTENTS OF THE PLAINTIFF/APPELLANT'S ORIGINAL NOTICE OF APPEAL, AND MERELY ADMINISTRATIVELY CLOSED THE PROCEEDINGS AS A MATTER OF COURSE, CONCURRENTLY THEREAFTER THE UNITED STATES COURT OF APPEALS DENIED APPELLANT'S PETITION TO RECONSIDER THE COURT'S 10/26/21 ORDER, THEREBY DENYING ALL PROCEDURAL DUE PROCESS OF LAW AND APPELLATE RIGHTS.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Doe", is written over a horizontal line. Below the signature, the date is written in a cursive style.

Date: 21 MAY 2021