

OCT 25 2022

No. _____

22-6206

IN THE
SUPREME COURT OF THE UNITED STATES

Albert Holland, Jr. — PETITIONER
(Your Name)

vs.

State of Florida — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, 11th Cir.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Albert Holland, Jr.
(Your Name)

U.C.I. P.O. Box 1000,
(Address)

Rainford, Florida 32083
(City, State, Zip Code)

(Phone Number)

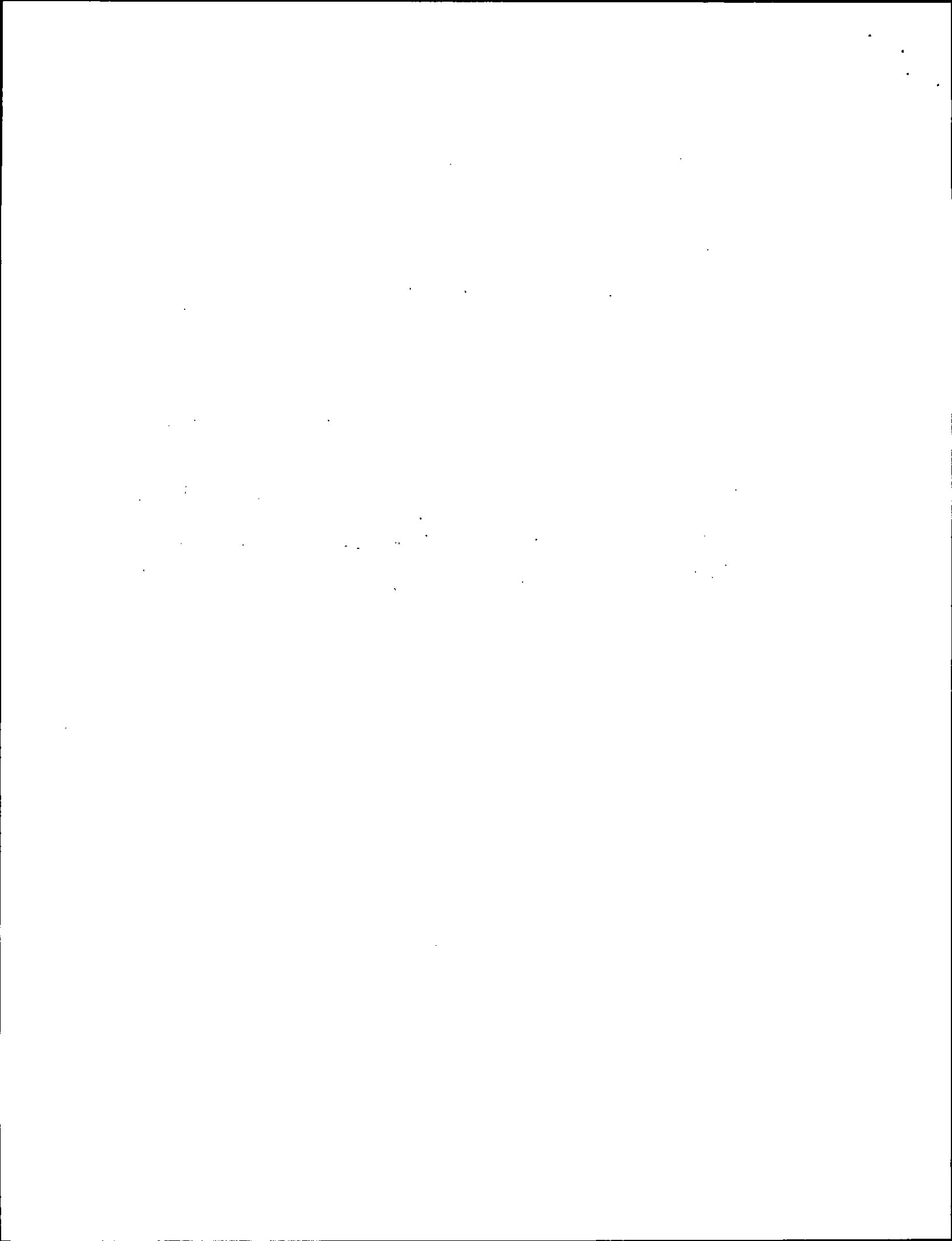
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OFFICE OF THE CLERK
OCT 2 2025
FILED
SOUTHERN DISTRICT OF NEW YORK

"CAPITAL CASE"

QUESTION(S) PRESENTED

1. Whether when the Lower Courts Lacked jurisdiction the SCOTUS will Notice the defect.
2. Whether a COA is required to Appeal a District Court's DENIAL OF A MOTION FOR RELIEF FROM JUDGMENT.
3. Whether there was a defect in the integrity of the 11th Circuit Court's Appellate proceedings.



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:

1. *Secretary, Florida Department of Corrections.*
2. *LISA-MARIE Lerner, Assistant Attorney General, 1515 N. FLAGLER Drive, #900 West Palm Beach, Florida 33401*

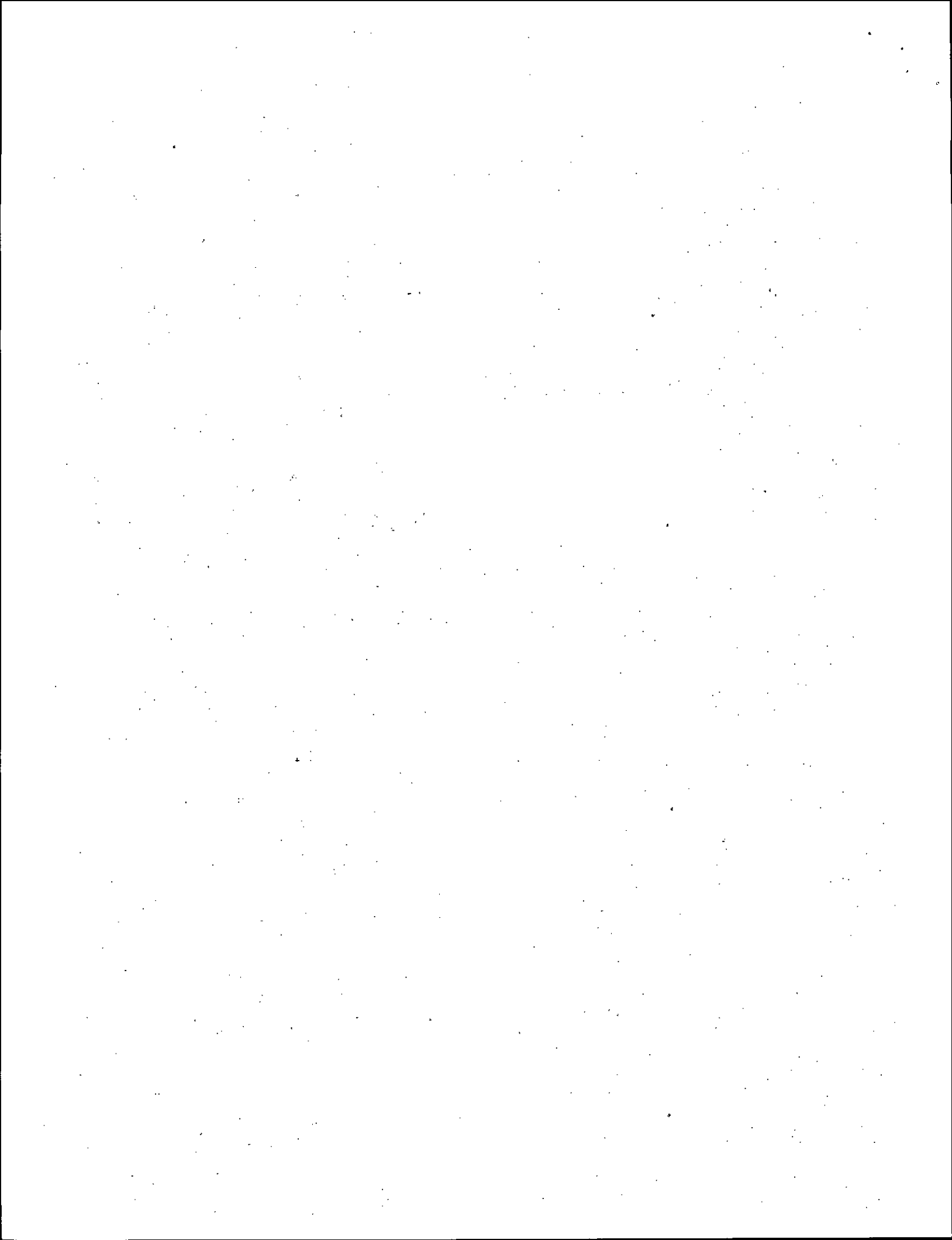


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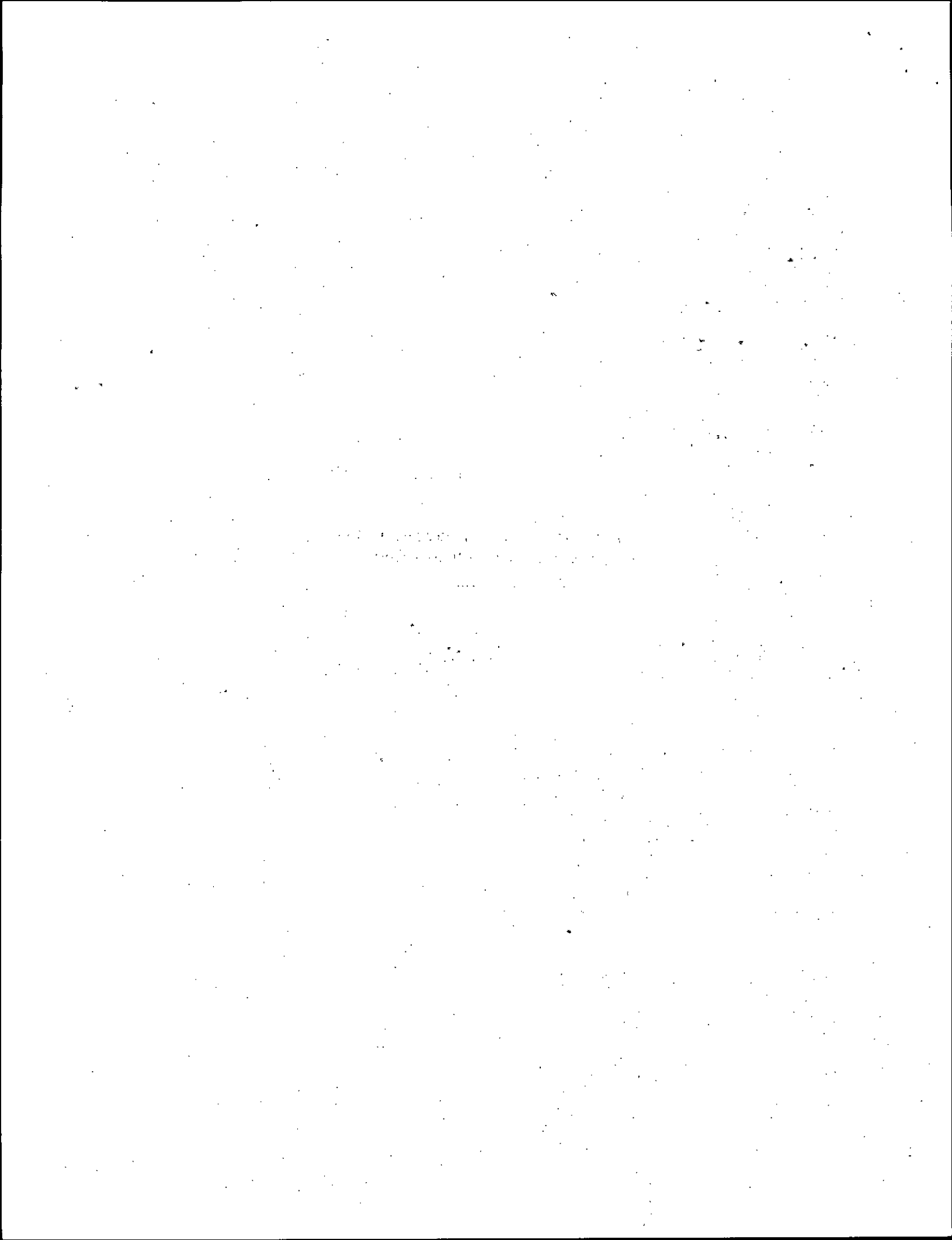


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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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 A to the petition and is

reported at _____; 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 is unpublished.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 C to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

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

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; 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 June 8, 2022.

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: July 28, 2022, and a copy of the order denying rehearing appears at Appendix B.

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

3.

STATEMENT OF THE CASE

On August 16, 1990 a Florida Grand jury indicted Holland on (1) one count of first - degree murder of officer Scott Winters with a firearm in violation of Fla.Stat. Ann. 782.04 (1) (a) 775.0823 (1) (count one) (2) One count of armed robbery of officer winters in violation of 812.13(1),(2)(a) and(3)(a)(count two) (3) one count of sexual battery of TSJ in violation of 794.011(3)(count three) and(4) one count of attempted first - degree murder of Johnson with a deadly weapon in violation of 777.04,782.04(1) (a)(count four).

At his first trial Holland was convicted and sentenced to death in 1991.Holland VI,775 F.3d at 1299.Later in April 1992 the Florida legislature amended the first sentence of subsection(1) of the Florida armed robbery statute 812.13 by inserting the phrase " With intent to either permanently or temporarily deprive the person or owner of the money or other property " which became effective on October 1, 1992.See United States v.Seabrook's,839 F.3d 1326,1329(11th cir.2016)(Noting the 1992 statutory revision to 812.13).

Holland appealed his convictions and sentences and the Florida Supreme Court reversed and remanded for a new trial because admission of testimony about a psychiatric examination violated his right to counsel and his right against Self - Incrimination.

Holland v.State,636 so.2d1289,1293(Fla.1994)(" Holland 1 ").
Holland's retrial began in September, 1996. See Holland VI 775 F.3d at 1302.
Numerous witnesses testified on behalf of the State.See Holland v. State 773 so.2d 1065,1075 Flat.2000)(" Holland II ").

Holland also testified on his on behalf.After closing arguments and jury instructions the jury ultimately convicted Holland of first - degree murder,armed robbery,attempted sexual battery, and attempted first - degree murder.Holland VI,775 F.3d at 1303.

At the penalty stage the jury recommended the death penalty by a vote of eight to four.The trial judge found three statutory aggravating circumstances and found no statutory mitigating circumstances but found two non- statutory mitigators – A history of drug and alcohol abuse and a history of mental illness – both of which received little weight.After weighing the aggravating and mitigating factors the court sentenced Holland to death.
Holland appealed to the Florida Supreme Court which affirmed his convictions and sentences.See Holland II 773 so.2d at 1079.The U.S. Supreme Court denied certiorari. See Holland v. Florida, 534 U.S. 834 (2001).

State and Federal Post – Conviction Proceedings

Holland filed his initial motion for post conviction relief pursuant to Rules 3.850 and 3.851 Fla. Criminal. P. raising claims of ineffective assistance of counsel and prosecutorial misconduct as well as challenging the constitutionality of his death sentence.The State post conviction court denied the motion.See Holland v. State,916 so.2d 750,754 –55(Fla. 2005).(" Holland III "). Holland appealed, he also filed in the Florida Supreme Court a State Habeas Corpus Petition which raised claims of ineffective assistance of appellate counsel.The Florida Supreme Court denied all relief.The U.S. Supreme Court denied Certiorari.Holland v. Florida,547 U.S.1078 (2006).

Holland then filed his initial pro se 2254 petition in the U.S.District Court for the Southern District of Florida in January(2006).The court dismissed it as untimely .On appeal the 11th circuit affirmed the dismissal of the petition.See Holland v. Florida,539 F.3d 1334,1340(11th Cir.2008)(" Holland IV ").

The U.S.Supreme Court reversed and remanded for further proceedings,concluding the 2244(d) one - year statute of limitations was subject to equitable tolling.See Holland v. Florida,560 U.S.631,634-35(2010)(" Holland V ").
On June 10,2009 Holland filed a 28 U.S.C.2241 petition pro se,in the U.S.District Court Middle District of Florida(Jacksonville Division)which the district court dismissed without prejudice for lack of Subject - matter jurisdiction after finding that the petition had raised a successive challenge to the validity of Holland's conviction and therefore required the 11th circuit's authorization before filing.See District Court number : 09 – 00522 – CV – J –

32JRK. Thereafter, Holland was denied a Certificate of Appealability ("COA"). See *Holland v. Sec'y, Dept. of Corr.*, Appeal number : 09 – 13497 – P(11th Cir. November 24, 2010).

On remand from the appellate courts the District Court(Miami Division) found that equitable tolling was appropriate and granted Holland leave to file an amended Counselled 2254 petition.

In his amended petition Holland raised eight claims alleging a *Faretta v. California*, 422 U.S.806,832(1975)(Holding that criminal defendants have a constitutional right to Self - representation)violation, State court errors, insufficiency of the evidence, ineffective assistance of counsel and other constitutional violations. The District Court granted relief on Holland's *Faretta* claim, denied relief on all other claims and granted a COA on one claim regarding the Florida Supreme Court's Harmless - error analysis as to the admission of improper opinion testimony from a doctor.

The 11th circuit expanded the COA to include two more claims : (1) Whether the trial court erred in refusing to suppress Holland's custodial statement, and (2) Whether guilt - phase counsel rendered ineffective assistance by failing to object to the prosecutor's remarks during closing arguments. The 11th circuit then issued a public opinion reversing the district court's grant of habeas relief on the *Faretta* claim and affirming the denial of Holland's three other appellate claims. See *Holland VI*, 775 F.3d at 1306 – 22(11th Cir.2014).

In 2017 Holland filed another 2254 petition without obtaining authorization from the Eleventh circuit. See *Holland VII*, 941 F.3d at 1286 . The district court dismissed the petition without prejudice for lack of Subject - Matter Jurisdiction and denied Holland a COA. The 11th circuit affirmed the dismissal at 1287 - 88.

On February 13, 2020 Holland filed an application for leave to file a Second - Successive Habeas Corpus petition 28 U.S.C. 2244(b). Case No : 20 - 10330. In denying Holland's application the Eleventh circuit stated " Because Holland has failed to make a prima facie showing of the existence of either of the grounds set forth in 2244(b)(2) his application for leave to file a Second - Successive petition is hereby denied. "

The Course of Proceedings and Dispositions In The District Court Below :

Holland is a Florida death row prisoner proceeding pro se.

Holland filed a motion for relief from judgment pursuant to Fed.R.CIV.P. 60(b)(4) which the district court entered / filed on January 20, 2021.

On March 16, 2021 the court ordered a response from counsel, regarding Holland's motion.

On May 6, 2021 the State of Florida filed a motion to strike Holland's Motion for relief from judgment.

On June 14, 2021 Holland's attorney Todd Scher filed a Reply to the State's Response.

On July 26, 2021 Holland filed a Motion to Discharge Counsel and Motion to allow Holland to proceed Pro Se.

On August 3, 2021 the district court granted Holland's Motion to Discharge Counsel and Motion to Proceed Pro Se and also allowed Holland to file a Reply to the State's Response.

On August 27, 2021 the district court entered Holland's Reply to the State's Response.

On September 28, 2021 the district court denied Holland's Motion for Relief from Judgment without prejudice.

On October 8, 2021 Holland handed prison officials for filing a Motion for Reconsideration.

On October 11, 2021 Holland handed prison officials for filing a Motion to Amend and Supplement the Motion for Reconsideration.

On December 14, 2021 the district court denied Holland's Motion for Reconsideration but granted Holland's Motion to Amend and Supplement Motion for Reconsideration.

On January 5, 2022 Holland handed prison officials for filing a Notice of Appeal.

The Notice of Appeal was filed by the district court on January 7, 2022.

*ON MARCH 1, 2022 HOLLAND FILED A MOTION FOR A COA.
THE MOTION FOR A COA WAS DENIED JUNE 8, 2022.*

*HOLLAND FILED A MOTION FOR RECONSIDERATION ON 6-27-22.
THE MOTION FOR RECONSIDERATION WAS DENIED 7-28-22.*

6.

REASONS FOR GRANTING THE WRIT

1. The lower courts lacked jurisdiction in the case at bar and as the SCOTUS stated in *Steele Co.*, 523 U.S. 83 (1998) and cases cited therein "IF the record discloses that the lower courts were without jurisdiction the SCOTUS will notice the defect. And when the lower courts lacked jurisdiction the SCOTUS has jurisdiction on appeal NOT OF THE MERITS, but merely for the purpose of correcting the error of the lower courts in entertaining this suit.
2. ON August 16, 1990 Holland was indicted for First-degree Murder, Armed Robbery, Sexual battery (Found guilty of Attempted Sexual battery at a 1996 Retrial) and Attempted Murder.
3. At a Retrial in the year 1996 the trial court allowed prosecution under a repealed Armed Robbery statute which became effective October 1, 1992 and under an amended Attempted Murder statute which became effective on May 4, 1995.
4. Pursuant to *Ex parte Bain*, 121 U.S. 1, (1887) neither of those statutes could be applied to this case. Either statute took away the jurisdiction of the court.

5. "When an act conferring jurisdiction having been repealed (amended) the jurisdiction ceased and the courts thereafter had no authority to pronounce any opinion or render any judgment in the case at bar. It can make no difference at what period in the progress of the cause the jurisdiction ceases. After it has ceased no judicial act formed. See *McCordle*, 19 L. ed. 264 (1869); 7 Wall 506.

6. Thus the lower courts had no authority to pronounce any opinion or render any judgment in this matter.

7. A COA is not required to appeal a District Court's denial of a motion for relief from judgment because 28 U.S.C. § 2253 requires a COA to appeal only one final order in a habeas proceeding, not all orders. See 28 U.S.C. § 2253 (c)(1) (providing that the COA requirement applies to "The final orders in proceedings attacking state or federal convictions and sentences.")

8. The District Court's judgment on Holland's § 2254 petition is seemingly the only "final decision" that could deny Holland's constitutional challenge to his convictions and sentences. Therefore, that judgment is the only decision that § 2253 (c)(2) seems to address. It is the

only Final order that could serve as the basis for Holland's "substantial showing of the denial of a constitutional right," the showing that he must make to obtain a COA.

9. In contrast to judgments denying habeas relief, Final orders denying a rule 60(b)(4) motion do not adjudicate a constitutional challenge to Holland's convictions or sentences. They simply state that the District Court will not exercise its discretion to set aside the Final judgment it entered.

10. On appeal of a district court's dismissal of a second-successive habeas petition (clothed as a rule 60(b)(4) motion for lack of § 2244 leave to proceed) requires no COA because it involves only a preliminary jurisdictional inquiry: whether the district court was correct in concluding that it did not have a true rule 60(b)(4) motion, which it should entertain before it.

11. Thus, interpreting § 2253(c)(2) must apply to one Final order: The district court's Final judgment on Holland's § 2254 habeas petition.

12. Holland's Rule 60(b)(4) motion did not contain a constitutional challenge to his state convictions or sentences.

13. There's a defect in the integrity of the 11th circuit court appellate proceedings. Holland filed a 28 U.S.C. § 2241 habeas petition invoking *Indiana v. Edwards*, 554 U.S. 164 as a ground for relief in the middle district of Florida which was denied along with the denial of a COA. Holland's appeal to the 11th circuit was denied along with the denial of a COA on 11-24-10. That was the law of the case, binding on the 11th circuit court's 2014 decision.

On December 14, 2014 the 11th circuit reversed the Southern District court's granting Holland a new trial on his right to self-representation applying *Indiana v. Edwards*, supra retroactively which could not be applied to Holland's case which became final on October 1, 2006.

On one occasion the court decides *Indiana v. Edwards*, supra was not retroactive to deny Holland relief, but after the district court's granting Holland the new trial the 11th circuit took that new trial away relying on *Indiana v. Edwards*, supra being retroactively applied to Holland's case. This defect seriously affects the fairness, integrity and public reputation of these judicial proceedings. The 11th circuit court's decisions were erroneous and there's a national importance of the SCOTUS to resolve this matter because this could happen to others similarly situated.

14. In February of the year 2020 the 11th Circuit court denied Holland's application for leave to file a second-successive petition. See case no. 20-10330.

on page #5 of that denial the court also overruled Holland's *Ex parte Bain*, 121 U.S. 1, 13-14 (1887) argument that an "amendment to the indictment without resubmission of the case to the Grand Jury is a jurisdictional defect."

That is the law of this case!

The 11th Circuit relied on *United States v. Cotton*, 535 U.S. 625, 629-31 (2002) "holding that defects in an indictment are not jurisdictional and do not deprive a court of power to adjudicate the case."

But *Teague v. Lane*, 489 U.S. 288 (1989) held "new constitutional rules of criminal procedure are not applicable to cases that have become final before the new rules were announced." *Cotton*, supra was decided May 20, 2002. Holland's appeal became final in October of 2001, when the SCOTUS denied certiorari.

The 11th Circuit court's order was a "ruling on the merits" and Holland's *Ex parte Bain*, supra argument was—is meritorious and demonstrates the lower court's refusal to obey the law and refusal to admit that Holland has already won this case. This is a compelling reason the SCOTUS should grant this writ of certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Albert Holland, Jr.

Date: October 24, 2022