

22-6262-       ORIGINAL

IN THE  
**SUPREME COURT OF THE UNITED STATES**

FILED  
SEP 12 2022  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

## **BABUBHAI PATEL- PETITIONER**

vs.

**T.J. WATSON, WARDEN-RESPONDENT(S)**

**ON PETITION FOR A WRIT OF CERTIORARI TO  
SEVENTH CIRCUIT COURT OF APPEALS**

**PETITION FOR WRIT OF CERTIORARI**

Mr. Babubhai Patel

2223 Cameo Court

Canton, MI. 48187

(734) 756-1627 (BOP Custody CARES ACT Inmate)

**QUESTION(S) PRESENTED**

**QUESTION NUMBER ONE:**

Whether the Seventh Circuit Court of Appeals abused its discretion by Summarily Affirmance of Petitioner Patel's 2241 Writ of Habeas Corpus Petition without conducting a de novo review, thus, did this violate Mr. Patel's Procedural Due Process of Law Rights ?

**QUESTION NUMBER TWO:**

Whether the Seventh Circuit Court of Appeals abused its discretion by affirming the district court's procedural denial decision in regard to Ground I and Ground VII in which relies upon "newly discovered evidence," thus, are these claims cognizable under the savings clause of 28 U.S.C. 2255 (e) ?

**QUESTION NUMBER THREE:**

Whether the Seventh Circuit Court of Appeals abused its discretion by affirming the district court's procedural denial decision regarding Grounds II, III, IV, VI, VIII, IX, X, XI, and XII, thus, are those claims cognizable under the savings clause of 28 U.S.C. 2255 (e), relying upon Martinez v. Ryan, 566 U.S. 1 (2012); and Trevino v. Thaler, 569 U.S. 413 (2013) to excuse Patel's procedural default ?

**QUESTION NUMBER FOUR:**

Whether the Seventh Circuit Court of Appeals abused its discretion by affirming the district court's procedural denial decision

regarding Ground Five in which relies upon an “statutory interpretation” in *Rosemond v. United States*, 572 U.S. 65 (2014), thus, he stands “actually innocent” of Cts. 2-14, Health Care Fraud, Aiding & Abetting and Cts. 16-34, Distribution of Controlled Substances, Aiding & Abetting, therefore, is such claim cognizable via the savings clause of 28 U.S.C. 2255 (e) ?

## 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:

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	5
STATEMENT OF THE CASE.....	6
REASONS FOR GRANTING THE WRIT.....	7
CONCLUSION.....	17

## INDEX OF APPENDICES

APPENDIX A- Opinion of the U.S. Court of Appeals

APPENDIX B- Opinion of the District Court

APPENDIX C-Opinion of the U.S. Court of Appeals on Rehearing  
or Rehearing En Banc

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Martinez v. Ryan, 566 U.S. 1 (2012).....	7,11,12,13
Trevino v. Thaler, 569 U.S. 413 (2013).....	7,11,12
Rosemond v. U.S., 572 U.S. 65 (2014).....	8,14,15
Poe v. Larvia, 834 F.3d 770, 772-73 (7 <sup>th</sup> Cir. 2016).....	8
Berghuis v. Thompkins, 560 U.S. 370, 390-91 (2010).....	9
Friedrich v. Sec'y Health & Human Servs., 894 F.2d 829, 837 (6 <sup>th</sup> Cir. 1990).....	9
McQuiggin v. Perkins, 133 S. Ct. 1924, 185 L. Ed. 2d 1019 (2013).....	10
Purkey v. U.S., 964 F.3d 603, 617-18 (7 <sup>th</sup> Cir. 2020).....	12
Hill v. U.S., 368 U.S. 424, 427 (1962).....	13
Goldman v. Winn, 565 F. Supp. 2d 200, 213-14 (D. Mass., 2008).....	13
Montana v. Cross, 829 F.3d 775 (7 <sup>th</sup> Cir. 2016).....	15
U.S. v. Lopez, 794 F.3d 106, 117 (1 <sup>st</sup> Cir. 2015).....	15
U.S. v. Anderson, 988 F.3d 420, 425 (7 <sup>th</sup> Cir. 2021).....	16

STATUTES AND RULES	PAGE NUMBER
28 U.S.C. 2255 Motion to Vacate.....	7,8,10,11,12,13,15
18 U.S.C. Section 924 (c).....	15

18 U.S.C. 1028.....	15
Federal Rule of Criminal Procedure-52 (b).....	16
21 U.S.C. 841 (a) (1).....	16

OTHER

PAGE NUMBER

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 B 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

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 09, 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: June 17, 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) in Application No. \_\_\_\_ A \_\_\_\_\_.  
The jurisdiction of the Court is invoked under 28 U.S.C.

1254 (1).

For cases from **state courts**:

The date in 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**

	<b>PAGE NUMBER</b>
28 U.S.C. 2255 (e).....	8,10,11,12,13,14
First Amendment.....	8
Fifth Amendment.....	8
28 U.S.C. 2255 (h).....	10
28 U.S.C. 2241.....	10,12

## STATEMENT OF THE CASE

On March 31, 2020, Petitioner Patel filed his 2241 petition, with retained counsel. After full briefing commenced on November 02, 2021, the district court issued an Order Denying Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. 2241 and Directing Entry of Final Judgment. On November 08, 2021, Mr. Patel filed a timely Notice of Appeal. On January 10, 2022, the Seventh Circuit Court of Appeals issued an ORDER in which directs Babubhai Patel to file a Memorandum within 30 days explaining why the court should not Summarily Affirm the district court's judgment, thus, in February of 2022, Mr. Patel filed his Brief Memorandum Explaining As To Why The Seventh Circuit Should Not Summarily Affirm The District Court's Judgment. On May 05, 2022, the Seventh Circuit Court of Appeals did not issue a full Briefing Schedule, however, Summarily Affirmed the district court's judgment. A timely Motion for Panel Rehearing or Rehearing En Banc was filed and on June 17, 2022, the Seventh Circuit Court of Appeals denied petition for rehearing and rehearing en banc.

Petitioner Patel, asserts that he now petitions this Honorable U.S. Supreme Court to GRANT his Pro Se Petition for a Writ of Certiorari and potentially holding abeyance pending the outcome of the Supreme Court's Ruling in Jones v. Hendrix, Case No. 21-857.

## REASONS FOR GRANTING THE PETITION

Petitioner Patel, acknowledges that a review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted by this court only for compelling reasons, see Supreme Court Rule 10.

In the instant case, Petitioner Patel, respectfully request that this Court **GRANT his pro se Petition for a Writ of Certiorari as to Questions Number One, Two, Three, and Four, as relevant to question # 1, Babubhai Patel has the absolute Right to de novo review under controlling Supreme Court precedents and consistent with Seventh Circuit precedents, however, he deprived of such a de novo review by the Seventh Circuit in which constitutes a clear abuse of discretion in the case herein. In reference to Question # 2, Petitioner Patel presented “newly discovered evidence” as to Grounds I and VII as raised within his habeas petition, however the Seventh Circuit abused its discretion by holding that such claims were not cognizable under the savings clause even though the evidence were previously unavailable during the initial 2255 Motion. In reference to Question # 3, Petitioner Patel argued that in light of the Supreme Court’s Rulings in Martinez v. Ryan, 566 U.S. 1 (2012), and Trevino v. Thaler, 569 U.S. 413 (2013), that as the result of Patel proceeding with no counsel as to his first 2255**

Motion to Vacate that Martinez and Trevino excused his procedural default of the claims and Grounds II, III, IV, VI, VIII, IX, X, XI, and XII, were cognizable under the savings clause of 28 U.S.C. 2255 (e), thus, the Seventh Circuit Court of Appeals abused its discretion by affirming the district court's procedural denial decision. In reference to Question # 4, Petitioner Patel argued within Ground Five that in light of the U.S. Supreme Court's Ruling in *Rosemond v. United States*, 572 U.S. 65 (2014), that he stood "actually innocent" of Counts 2-14, Health Care Fraud, Aiding & Abetting and Counts 16-34, Distribution of Controlled Substances, Aiding & Abetting, thus, the Seventh Circuit Court of Appeals abused their discretion by affirming the district court's procedural denial decision in the matter herein.

**QUESTION NUMBER ONE:**

Whether the Seventh Circuit Court of Appeals abused its discretion by Summarily Affirmance of Petitioner Patel's 2241 Writ of Habeas Corpus Petition without conducting a de novo review, thus, did this violate Mr. Patel's Procedural Due Process of Law Rights ?

Consistent with Seventh Circuit and Supreme Court precedents Babubhai Patel has the absolute Right to de novo review by the Seventh Circuit Court of Appeals regarding the denial of his 2241 Habeas Corpus Petition. *Poe v. Lariva*, 834 F.3d 770, 772-73 (7<sup>th</sup> Cir. 2016) (The Seventh Circuit reviews the denial of a Section

2241 petition de novo); and Berghuis v. Thompkins, 560 U.S. 370, 390-91 (2010) (de novo review for habeas corpus). De novo means: “from the beginning anew.” It is hard to envision how a panel of the Seventh Circuit may conduct a de novo review without first fully briefing the 2241 appeal as Mr. Patel possess a constitutional right to access to the courts under the First Amendment of the U.S. Constitution and a right under the Fifth Amendment of the U.S. Constitution to have an opportunity to be heard in a meaningful manner. See Friedrich v. Sec'y Health & Human Servs., 894 F.2d 829, 837 (6<sup>th</sup> Cir. 1990) (finding that the touchstone of procedural due process is the fundamental requirement that an individual be given the opportunity to be heard in a meaningful manner.).

Because no briefing schedule was conducted by the Seventh Circuit Court of Appeals and all that was allowed were for Mr. Patel to file a Brief Memorandum Explaining As To Why The Seventh Circuit Should Not Summarily Affirm The District Court’s Judgment and thereafter on May 09, 2022, the Seventh Circuit Summarily Affirmed the district court’s procedural denial decision, thus, Babubhai Patel was deprived of his Right to an de novo review it follows that he was deprived of access to the courts and procedural due process of law rights to be heard in meaningful manner, thus, the Seventh Circuit abused its discretion in the

case herein.

**Question Number Two:**

Whether the Seventh Circuit Court of Appeals abused its discretion by affirming the district court's procedural denial decision in regard to Ground I and Ground VII in which relies upon "newly discovered evidence," thus, are those claims cognizable under the savings clause of 28 U.S.C. 2255 (e) ?

In the instant case, Petitioner Patel, asserts that the district court denied Ground I and Ground VII, on procedural grounds without addressing the merits thereto holding that: "Section 2255 (h) allows a petitioner to present claims based on newly discovered evidence. Accordingly, Section 2255 is not structurally inadequate or ineffective to bring such claims and the savings clause does not apply to allow Mr. Patel to pursue them in a Section 2241 petition." The Seventh Circuit affirmed the district court's judgment in regard to Ground I and VII, by holding that: "But Section 2255 (h) (1), not Section 2255 (e), provides the mechanism to argue that newly discovered evidence proves him actually innocent. Any argument along those lines would have to be raised in the circuit of Patel's conviction (the Sixth), not here."

Petitioner Patel, argues firmly that consistent with the U.S. Supreme Court's Ruling in *McQuiggin v. Perkins*, 133 S. Ct. 1924,

185 L. Ed. 2d 1019 (2013), his actual-innocence claims in which relies upon “newly discovered evidence” should have been decided upon the merits, however, it was denied on procedural decision by the district court and affirmed by the Seventh Circuit Court of Appeals, thus, this Honorable Supreme Court should VACATE and REMAND in light of Supreme Court precedents in the matter herein.

**QUESTION NUMBER THREE:**

Whether the Seventh Circuit Court of Appeals abused its discretion by affirming the district court’s procedural denial decision in regard to Grounds II, III, IV, VI, VIII, IX, X, XI, and XII, thus, are those claims cognizable under the savings clause of 28 U.S.C. 2255 (e), relying upon Martinez v. Ryan, 566 U.S. 1 (2012), and Trevino v. Thaler, 569 U.S. 413 (2013), to excuse Patel’s procedural default ?

In the instant case, Petitioner Patel, asserts that the district court held that: “Mr. Patel contends that the Court should excuse his failure to raise these ineffective assistance of counsel claims in his Section 2255 because he proceeded pro se in the Section 2255 proceeding. See, e.g., dkt. 1 at 10-11. He relies on two Supreme Court cases, Martinez v. Ryan, 566 U.S. 1 (2012), and Trevino v. Thaler, 569 U.S. 413 (2013), to support his argument.”

“The Seventh Circuit recently considered and rejected Mr. Patel’s argument. It concluded that “further relief for someone

in [Mr. Patel's] position is...governed by statutes," and Section 2255 (e) does not allow additional claims of ineffective assistance of counsel to be brought in an action under Section 2241 on the basis that the petitioner received ineffective assistance of counsel during federal habeas proceedings. Purkey, 964 F.3d at 617-18. Mr. Patel's ineffective assistance of counsel claims must be dismissed because Mr. Patel's cannot assert such claims in a Section 2241 petition."

The Seventh Circuit affirmed the district court's judgment by holding that: "Indeed, Patel raised several theories of ineffective assistance of trial counsel in his Section 2255 motion, and they were rejected. To be sure, he characterizes some theories of ineffective assistance as new today and points out that he, like most movants, represented himself in the Section 2255 proceedings. But the absence or ineffectiveness of Section 2255 counsel does not render the statutory remedy offered by Section 2255 inadequate. See Purkey v. United States, 944 F.3d 603, 615-17 (7<sup>th</sup> Cir. 2020). The proper place to claim ineffective assistance of trial or direct-appeal counsel is in a Section 2255 motion—even if those claims must be pursued pro se."

Petitioner Patel, contends that consistent with U.S. Supreme Court precedents in Martinez v. Ryan, 566 U.S. 1 (2012); and Trevino v. Thaler, 569 U.S. 413 (2013), that Babubhai Patel may cure his

procedural default because he presents a substantial claim and there was no counsel on his initial 2255 collateral-review, thus, on his 2241 Writ of Habeas Corpus Petition, he was represented by a licensed lawyer Attorney Mario Garcia. See Martinez v. Ryan, 566 U.S. 1, 17 (2012).

Mr. Patel, asserts that the U.S. Supreme Court's holdings in Martinez and Trevino as the Seventh Circuit has declined to permit federal inmates to utilize the Supreme Court Rulings via the savings clause of 28 U.S.C. 2255 (e), thus, consistent with the statutory limitations under the AEDPA restrictions, thus, is simply no available legal remedy to raise a claim as Babubhai Patel raised within the district court, however, it appears that such a situation as Petitioner Patel brought before the lower courts rendered his remedy via 28 U.S.C. 2255, inadequate or ineffective to test the legality of his detention. Moreover, the U.S. Supreme Court has long held that: "noting that Section 2255 provides a remedy in the sentencing court that "exactly commensurate" with the pre-existing federal habeas corpus remedy," see Hill v. United States, 368 U.S 424, 427 (1962); and Goldman v. Winn, 565 F. Supp. 2d 200, 213-14 (D. Mass., July 1, 2008) (When 28 U.S.C. 2241 is available, it operates to provide relief in the same circumstances as 28 U.S.C. 2255 if it were available) (emphasis added).

This Honorable U.S. Supreme Court should VACATE and REMAND to the lower court to permits Patel's claims to be decided upon the merits thereto in the matter herein.

**Question Number Four:**

Whether the Seventh Circuit Court of Appeals abused its discretion by affirming the district court's procedural denial decision in regard to Ground Five in which relies upon an "statutory interpretation" in Rosemond v. United States, 572 U.S. 65 (2014), thus, he stands "actually innocent" of Cts. 2-14, Health Care Fraud, Aiding & Abetting and Cts. 16-34, Distribution of Controlled Substances, Aiding & Abetting, therefore, is such claim cognizable via the savings clause of 28 U.S.C. 2255 (e) ?

In the instant case, Petitioner Patel, asserts that it is unclear whether the district court understood Ground Five to rely upon an statutory interpretation Supreme Court Ruling in Rosemond v. United States, 572 U.S. 65 (2014), as it may not be discerned when it was adjudicated upon the merits, however, in any event the Seventh Circuit addressed this claim by holding: "First, Patel notes that one of his ineffective-assistance claims is based on direct-appeal counsel's failure to raise a challenge to the jury instructions under Rosemond v. United States, 572 U.S. 65 (2014). Rosemond, which was decided while Patel's direct appeal was pending, holds

that a person is guilty of aiding and abetting the use of a firearm during a drug crime, 18 U.S.C. Section 924 (c), only if he had advance knowledge that a gun would be used. A stand-alone claim based on Rosemond may constitute a new and retroactive change in statutory law under this court's savings clause jurisprudence. See, e.g., *Montana v. Cross*, 829 F.3d 775 (7<sup>th</sup> Cir. 2016). Yet Patel has not raised a stand-alone claim under Rosemond. More important, he was not convicted under Section 924 (c), so we do not see how Rosemond affects his case. In any event, as Patel acknowledges, Rosemond was available to him on direct appeal and during his Section 2255 proceedings. His failure to raise an argument based on Rosemond does not make Section 2255 inadequate or ineffective."

Petitioner Patel, asserts that the First Circuit Court of Appeals has applied the reasoning of Rosemond to Aggravated Identity Theft in violation of 18 U.S.C. 1028, see *United States v. Lopez-Diaz*, 794 F.3d 106, 117 (1<sup>st</sup> Cir. 2015) (Appellant Lopez argued on appeal that in order to convict him of Aiding and Abetting Aggravated Identity Theft, the jury had to find that Jose had "prior knowledge" of one purported element of aggravated identity theft relying upon the U.S. Supreme Court's Ruling in Rosemond, 134 S. Ct. 1240, 188 L. Ed. 2d 248 (2014), however,

the First Circuit held that under Rule 52 (b) plain error analysis even if an instructional error had occurred, it could not have affected Jose's substantial rights); and United States v. Anderson, 988 F.3d 420, 425 (7<sup>th</sup> Cir. 2021) (The Seventh Circuit applied the U.S. Supreme Court's Ruling in Rosemond, to a drug distribution of heroin in violation of 21 U.S.C. 841 (a) (1), under the aiding and abetting theory, thus, VACATED and REMANDED as to Count Two.) (emphasis added).

Petitioner Patel, argues that the U.S. Supreme Court Ruling should apply to his Counts 2-14, Health Care Fraud, Aiding and Abetting and Counts 16-34, Distribution of Controlled Substances, Aiding and Abetting, thus, this Honorable U.S. Supreme Court should VACATE and REMAND so the lower court may address the Ground Five upon the merits thereto in the situation herein.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Babubhai Patel

Date: 09/12/2022