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CASE NUMBER

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

JIMMY RAY DAVIS

Petitioner,

Vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ of Certiorari
To the Fifth Circuit Court of Appeals

PETITIONER'S PROSE PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether it is inconsistent with Slack v. McDaniel, 529 U.S. 473 (2000) for a Court of Appeals to have declined to issue a Certificate of appealability on a colorable claim of first impression concerning whether a district court's denial of equitable tolling of a Habeas Petitioner's statute of limitations who has demonstrated *prima facie* extraordinary circumstances is in tension with Holland v. Florida, 560 U.S. 631 (2010) and several district and circuit court decisions that have decided similar claims differently?
2. Whether Courts of Appeal lack jurisdiction over an appeal of a Rule 59(e) Motion where a Pro se Prisoner appellant does not file a separate or amended notice of appeal following the denial of that Motion; but instead proceeds under the presumption that a Precautionary Notice of Appeal filed before a decision on the Rule 59(e) Motion is rendered preserves all combined issues for appeal?

LIST OF PARTIES

Petitioner

Jimmy Ray Davis

Respondent

United States of America

Other Parties to the Proceedings Below

United States Court of Appeals for the Fifth Circuit

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1. It is inconsistent with Slack v. McDaniel, 529 U.S. 473 (2000) for a Court of Appeals to have declined to issue a certificate of appealability on a colorable claim of first impression concerning whether a district court's denial of equitable tolling of a habeas petitioner's statute of limitations who has demonstrated *prima facie* extraordinary circumstances is in tension with Holland v. Florida, 560 U.S. 631 (2010) and several district and circuit court decisions that have decided similar claims differently. 8-9

A. Mr. Davis has made a substantial showing of the denial of a Constitutional right sufficient to have been granted a COA to explore whether he was entitled to equitable tolling because the district court failed to maintain a flexible cumulative effect approach to Davis's grounds for such equitable tolling pursuant to Holland v. Florida, 560 U.S. 631 (2010). . . . 10-13

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Jimmy Ray Davis, by and through this Pro Se Petition respectfully requests of this Honorable Court to grant a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Fifth Circuit in this case denying a Certificate of Appealability.

ORDER AND JUDGMENT BELOW

The case below was styled as United States v. Davis, No. 21-30569 (5th Cir. (June 13, 2022) (rehearing denied September 06, 2022). The Fifth Circuit Court of Appeals' Order denying a Certificate of Appealability is attached hereto. (Exhibit A). The Fifth Circuit's Order denying a Petition for Rehearing is also attached hereto. (Exhibit B).

JURISDICTION

The Fifth Circuit Court of Appeals entered its Order denying a Certificate of Appealability on June 13, 2022 and denied a Petition for Rehearing on September 06, 2022. Therefore, the Jurisdiction of this Court is invoked Pursuant to 28 U.S.C. §§ 1254(1) and Supreme Court Rule 10(a) & (c).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The Present case involves the application of fundamental Due Process under the Fifth Amendment and the Sixth Amendment right to the effectiveness of Counsel. In Particular, this Petition involves important questions concerning a Section 2255 Movant's right to a full and fair opportunity to address Substantial Sixth Amendment claims of ineffective assistance of Counsel where invocation of the equitable tolling doctrine to the applicable statute of limitations is necessary to

Circumvent a governmental impediment to the timely filing of the Motion -- and the extent to which the district courts must maintain a flexible cumulative effect approach to analyzing such grounds that support equitable tolling consistent with this Court's Holland v. Florida, 560 U.S. 631 (2010) decision.

In addition, this Petition involves important questions concerning the Certificate of Appealability standard under 28 U.S.C. ss 2253(c)(2) as applied to the summary dismissal of Section 2255 Motions on timeliness grounds and the processing of such applications consistent with this Court's Slack v. McDaniel, 529 U.S. 473 (2000) decision.

Lastly, there are important questions in this Petition concerning whether a Notice of Appeal filed prior to a Ruling on a Rule 59(e) Motion underlying a Section 2255 Motion provides Courts of Appeals jurisdiction over the denial of the Rule 59(e) Motion without the filing of a second or amended Notice of appeal when the original Notice reasonably provides notice of intent to appeal both rulings.

Accordingly, there are important Constitutional claims present in this case that justify this Court's intervention to achieve definitive, uniform interpretation of the equitable tolling doctrine, certificate of appealability standard and appellate jurisdiction of Rule 59(e) motions that will have a direct causal effect on habeas litigants seeking to file slightly out-of-time Petitions who have experienced various impediments to compliance with AEDPA's general one-year

statute of limitations to filing their Petitions. Exercise of this Court's
Certiorari jurisdiction is therefore warranted and appropriate in this
case.

STATEMENT OF THE CASE

On September 14, 2016, on advice of counsel, Mr. Davis Pled guilty Pursuant to a Plea agreement to two charges contained in a two-count federal indictment; count one charging Distribution of Child Pornography in violation of 18 U.S.C. ss 2252(a)(2); and count two charging the transferring obscene matter to a minor in violation of 18 U.S.C. ss 1470. (CR DOC No. 27). The District Court accepted the Plea, but Postponed acceptance of the Plea Agreement until after reviewing the Presentence Investigation Report. (PSI) (CR DOC. No. 52).

On May 25, 2017, Mr. Davis Was Sentenced to 240 months imprisonment on Count one and 120 months imprisonment on Count two. The Counts were imposed consecutively for a total Sentence of 360 months imprisonment; the combined statutory maximum. Judgment was entered on June 15, 2017. Mr. Davis did not file a Notice of Appeal within 14 days of the Judgment, thereby making said Judgment final on June 29, 2017.

Mr. Davis filed his Section 2255 Motion in the United States District Court for the Middle District of Louisiana on July 30, 2018. (CR DOC 42). In so doing, Mr. Davis was 31 days outside the otherwise applicable statute of limitations referenced in 28 U.S.C. ss 2255(f)(1). Mr. Davis invoked Holland v. Florida, 560 U.S. 631 (2010) requesting a modest tolling of the 28 U.S.C. ss 2255(f) statute of limitations. (DOC 42:1-5). Mr. Davis Submitted competent admissible evidence in Support of his Motion requesting 31-days of tolling to make his Motion timely, Id.

Mr. Davis sought equitable tolling on the grounds that he had no access to any of his legal materials, law library, or outside contact resources -- and that he was actively impeded from obtaining and accessing these resources by Bureau of Prisons officials from the time he was sentenced until such time that he was able to safely assimilate into the general prison population at FCI Edgefield, and find someone to help him. Mr. Davis further requested an additional 23 days of equitable tolling for time in which Edgefield Prison's mailroom staff and security service confiscated his legal documentation from his lawyer because it contained a compact disc. (DOC. 42:64, 900 11-13).

The United States filed an Opposition and Supplemental Memorandum on June 10, 2019 and July 8, 2019 respectively. (DOC. 51, 59). Davis filed Verified Objections and a Reply to the United States' Response. (DOC 64). On July 13, 2021, the district court entered a Ruling and Ordered Davis's Section 2255 Motion denied on statute of limitations grounds. (DOC 65). In its Ruling, the district court did not address the issue of whether a Certificate of Appealability would issue pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings and failed to construe Davis's factual allegations in a supporting Declaration in a light most favorable to Davis pursuant to Fed.R. Civ.P. 12(b)(6).

Mr. Davis prepared and filed a Rule 59(e) Motion to Alter, Amend, or Reconsider the district court's July 13, 2021 Ruling. (DOC 66). Shortly after, Davis filed a Consolidated Notice of Appeal and Request for Certificate of Appealability,

(September 3, 2021), and a Motion for Leave to Appeal In Forma Pauperis on (October 1, 2021). Liberally construed, those two documents preserve for appeal purposes the district court's July 13, 2021 Ruling and Order denying Mr. Davis's ss 2255 Motion -- and -- the district court's September 30, 2021 Ruling and Order on Davis's Rule 59(e) Motion. See Motion for In Forma Pauperis status on Appeal: ("[R]espectfully moving the Honorable Court for an Order Permitting [Davis] to Prosecute an appeal from the Judgment/Ruling entered by the Court on July 13, 2021 (Section 2255 Motion) and September 30, 2021 (Rule 59(e) Motion)"). (Emphasis added).

On January 25, 2022, Mr. Davis filed an Informal Brief requesting the Fifth Circuit Court of Appeals to issue a Certificate of Appealability outlining four points in support of his position that the district court's decision to deny equitable tolling of the Section 2255 statute of limitations was debatable or wrong and that his Motion contained substantial Sixth Amendment concerns regarding defense counsel's effectiveness.

On June 13, 2022 in an unreasoned summary opinion, a Panel of the Fifth Circuit Court of Appeals denied Mr. Davis's request for a Certificate of Appealability. In so doing, the Panel substantially erred in its analysis by omitting facts from its opinion central to Mr. Davis's claims for equitable tolling including the fact that he was deprived of his legal materials during multiple prison transfers and segregation and was actively impeded from acquiring those materials, accessing a law library, and information he

needed to contact his lawyer to obtain his legal casefile.

The Panel further erred when it stated that it lacked Jurisdiction over the appeal of the denial of the Rule 59(e) Motion because Davis failed to file a Separate or amended notice of appeal following the denial of that Motion.

A Petition for Rehearing Was Denied on September 6, 2022 (Exhibit B).

STATEMENT OF FACTS NECESSARY TO ARGUE THE ISSUES

Subsequent to the May 25, 2017 Sentencing Hearing, Davis was Placed into 24/7 Protective Custody Segregation at the West Baton Rouge Jail. (DOC 64:45). The only documents Davis retained in his Possession at that time was a copy of his restitution Order and Conditions of Supervised release. (Id.).

For the following ten months, Mr. Davis Was transferred between Several Jails, holdover facilities and FBOP institutions: West Baton Rouge -- to -- Oklahoma City -- to -- Forest City, Arkansas -- back to -- Oklahoma City -- to -- Three Rivers, Texas -- back again to Oklahoma City -- to -- Atlanta DCU holdover -- and eventually to FCI Edgefield, South Carolina. At the start of this ten month long ordeal, the U.S. Marshal Service Confiscated Davis's Restitution Order and Conditions of Supervised Release. (DOC 64: 5, 9, 10). His documents were never returned. (Id.). Those were the only legal documents Davis Possessed.

while being housed in the Special Housing Unit ("SHU") in 24/7 Segregation at both Forest City, Arkansas and Three Rivers, Texas, Mr. Davis attempted to gain access to a law library, obtain his legal materials, and acquire his lawyer's

Contact information. See (Pro Se Brief of Appellant at 2-5). Ultimately, Prison officials at these institutions refused to help Davis obtain his legal materials, impeded his access to a law library and refused to assist him in contacting his attorney or providing his lawyer's contact information to him. (Id.).

When Davis arrived at FCI Edsefield, he was placed into a housing unit with a group of white Supremacist type inmates who demanded he show them his Paperwork or they would "check him in"; meaning: make him go to the SHU because he was a Sex offender. (Id. at 5). Within three days the Prison's chief Psychologist had Davis moved to another housing unit. (Id.). Approximately one week later Davis introduced himself to his current inmate legal assistant.

By the end of March, 2018, with the help of his legal assistant (now friend), Davis obtained his lawyer's contact information necessary to obtain his legal casefile through the Education Department's Secretary. (Brief at 5-USCAOS No. 21-38569). With that information in hand, Davis, through his assistant, began writing letters to his former attorney, Thomas Damico, requesting him to send casefile documents. In this context, it cannot be overstated that it is unrealistic to expect a Pro Se habeas Petitioner to prepare and file a meaningful Petition on his own within the limitations period without access to his legal file.

After receiving no response to his third written communication effort to Damico, Mr. Davis contacted the Louisiana Bar Association and filed a Complaint against Damico for abandonment, failure to communicate and failure to provide case file documents. (Brief at 6). That got Damico's attention, who then sent Davis his

casefile which apparently included a compact disc containing image files of a questionable nature. This caught the eye of mailroom staff and Special Investigation Services staff who then retained all of Davis's legal materials without notice for 23-days before releasing the legal materials and returning the compact disc to attorney Dawico. (Brief at 6). Because of this, compounded by the factors raised above regarding Davis's multiple prison transfers and other troubles, Mr. Davis did not receive any of his legal materials until July 6, 2018 -- after the one year ss 2255(f)(1) statute of limitations had passed. (Id.). Nevertheless, with the continued assistance of his legal assistant, Mr. Davis filed his Section 2255 Motion on July 30, 2018.

As part and parcel to Davis's Section 2255 Motion, he requested the district court to toll the limitations period for 31-days based on this court's decision in Holland v. Florida, 560 U.S. 631 (2010) and the extraordinary circumstances he described in his Motion and supporting sworn Declaration. (DOC 64). In terms of the substantive grounds for relief underlying Mr. Davis's Section 2255 Motion, he raised colorable claims of ineffective assistance of counsel in violation of his Sixth Amendment rights because counsel failed to: (1) fully advise Mr. Davis of his pleading options, including the option to enter an "Open Plea" -- and accurately explain the maximum possible sentence permitted by statute in this case; (2) counsel failed to advise and consult with Davis regarding filing a notice of appeal and merits brief in support thereof; (3) counsel failed to

investigate and present mitigating evidence and expert testimony concerning the effects and side effects of synthetic drug use on the human brain, the organic brain damage Davis suffered from overdosing on such drugs; and (4) Counsel's failure to obtain a forensic psychological evaluation in support of a downward departure or sentence variance based on diminished mental capacity. (Brief at 11).

REASONS FOR GRANTING THE WRIT

1. It is inconsistent with Slack v. McDaniel, 529 U.S. 473 (2000) for a Court of Appeals to have declined to issue a Certificate of appealability on a colorable claim of first impression concerning whether a district court's denial of equitable tolling of a Habeas Petitioner's statute of limitations who has demonstrated Prima facie extraordinary circumstances is in tension with Holland v. Florida, 560 U.S. 631 (2010) and several district and circuit court decisions that have decided similar claims differently?

Petitioner Jimmy Ray Davis, ("Davis"), respectfully requests of this Honorable Court to grant a writ of Certiorari, vacate the Fifth Circuit Court of Appeals Panel decision denying him a COA and Remand for further consideration of the Constitutionality of the District court's Summary dismissal of his 28 U.S.C. " 2255 Motion as untimely. (Exhibit C - Doc 65).

The Fifth Circuit Court of Appeals' decision to deny Mr. Davis a COA on the ground that Davis failed to make "a substantial showing of the denial of a Constitutional right," is inconsistent with the facts and record of proceedings below as well as the Prebailing threshold standard for obtaining a COA as announced by this Court in Slack v. McDaniel, 529 U.S. 473 (2000). A COA should have issued in this case because Davis Presented a substantial question in which the Parties agreed is one of first impression in the Fifth Circuit, as well as this Court concerning the type of onerous conditions in Prison that warrant the application of equitable

tolling of the 28 U.S.C. ss 2255(f) Statute of limitations and the extent to which such conditions rise to the level of extraordinary circumstances.

A Writ of Certiorari should issue in this case because Davis has raised several substantial questions concerning his Sixth Amendment right to the effective assistance of counsel and Fifth Amendment right under the Due Process Clause to a full and fair opportunity to exercise habeas corpus via 28 U.S.C. ss 2255. The issues underlying Davis's 2255 and request for COA to the Fifth Circuit are adequate to deserve further review because this case presents important questions of first impression in this Court regarding equitable tolling of the statute of limitations in habeas cases that have been decided inconsistently throughout federal jurisdictions on similar facts that have created a split of authority.

Those questions include whether: the District Court erred in failing to maintain a case specific and flexible cumulative effect approach to Davis's grounds for equitable tolling consistent with Holland v. Florida, 560 U.S. 631 (2010). Specifically, whether back-to-back prison transfers and extended administrative 24/7 segregation compounded by the complete denial of access to one's case file legal documents, a law library, and the information needed to contact counsel who retained such legal materials necessary to prepare a Section 2255 motion during the majority of the one year statute of limitations are sufficient grounds to exercise equitable tolling principles.

A. Mr. Davis has made a Substantial showing of the denial of a Constitutional right sufficient to have been granted a COA to explore whether he was entitled to equitable tolling because the district Court failed to maintain a flexible cumulative effect approach to Davis's grounds for such equitable tolling Pursuant to Holland v. Florida, 560 U.S. 631 (2010).

In Holland, this Court instructed lower Courts in considering whether to employ equitable tolling to a habeas statute of limitations, "a Person's case is to be considered using a flexible standard that encompasses all of the Circumstances that he faced and the cumulative effect of those Circumstances." 560 U.S. at 649. In fact, the Holland Court disapproved exactly what the district Court did in this case -- the use of a Single minded 'Pick-off' of each of the Circumstances that Mr. Davis identified in his verified Section 2255 Motion, Declaration in Support thereof, and Reply Justifying equitable tolling. Instead, the Holland Court instructs the diligence standard established for equitable tolling is reasonable diligence -- not Maximum, extreme, or exceptional diligence. Id. at 653.

Moreover, "when a district Court denies ss 2255 relief without an evidentiary hearing, the nature of the Court's ruling is akin to a ruling on a Motion for Summary Judgment. See United States v. Poindexter, 492 F.3d 263, 267 (4th Cir. 2007). Thus, Courts are not to weigh the evidence, but review the facts in the light most favorable to the Petitioner and determine the existence of genuine issues of material fact. This, the district Court did not do.

Instead, a review of the District Court's Ruling (DOC 65), on Davis's request for equitable tolling demonstrates not only that the District Court mischaracterized the facts in his sworn Declaration, Motion, and Reply in contravention of Fed.R.Cv.P. 12(b)(6), but the Court ultimately failed to maintain a flexible cumulative effect analysis of the facts Davis has presented to which the Holland Court requires. These erroneous factual findings constitute clear error and the District Court's refusal to hold an evidentiary hearing to permit Davis a full and fair opportunity to develop the record is an abuse of discretion. See United States v. Elias, 984 F.3d 516, 518-19 (6th Cir. 2021) ("An abuse of discretion occurs when the district court relies on clearly erroneous findings of fact, uses an erroneous legal standard, or improperly applies the law.").

Importantly, Davis's factual assertions were neither contested nor patently false, incredible, nor so vague and illusory so as to justify summary dismissal without the District Court, in the spirit and command of liberal construction, further exploring these issues and allowing Davis to develop them at an evidentiary hearing with the assistance of competent counsel. See Dipilato v. 7-Eleven, Inc., 662 F.Supp. 2d 333, 340 (S.D.N.Y. 2009) (noting that prose pleadings should be "accorded leniency" and "construed to raise the strongest arguments they suggest"). See also Hart v. Hairston, 343 F.3d 762, 764 n.1 (5th Cir. 2003) (a declaration made under penalty of perjury is competent evidence).

In this context, Davis's Principle Point of contention with the district Court's Ruling is the characterization of his factual averments underlying his consecutive Prison transfers as "routine" and therefore insufficiently rare or extraordinary to warrant equitable tolling. (DOC 65 at 9). To the contrary, Mr. Davis Submits that his Post Sentencing transference experience entering the Federal Prison system was far from routine and instead constituted a series of unfair, if not unlawful circumstances that warranted equitable tolling. Distilled to its essence, Mr. Davis was placed into 24/7 lockdown from one institution to another from May 25, 2017 through March 07, 2018. (DOC 42:11-14; DOC 64:4-6). During this period of transference, Davis had no legal materials in his possession and no access to them. For one, he never had any of his legal materials to start with. But more to the point underlying his request for equitable tolling, he was denied access to a law library and contact information to his attorney in which to request and obtain his legal materials during the entire time he was in transit. Id. The district court's characterization of those facts underlying Davis's claims as routine is simply not accurate.

Notwithstanding Davis's difficulties during transit, he continued to encounter tollable circumstances once he arrived at FCI Edgefield and obtained Damico's address. In fact, after finally obtaining contact information for attorney Damico and writing several letters to him asking for his case file, (all of which were ignored), Davis had to file

a Louisiana Bar Complaint against attorney Damico for abandonment, refusing to answer his calls or respond to Davis's Several letters and failing to Provide casefile documents in a timely Manner.

In this context, it has been recognized in other Circuits that "it is unrealistic to expect a [prose] habeas Petitioner to Prepare and file a meaningful Petition on his own within the limitations Period without access to his legal file", Spitsyn v. Moore, 345 F.3d 796, 801 (9th Cir. 2003), and that "Confinement in administrative Segregation without legal materials can Support equitable tolling." Espinoza-Matthews v. People of the State of Calif., 432 F.3d 1024, 1027-28 (9th Cir. 2005).

B. There is a deep and abiding Split of authority as to whether and to what extent multiple Prison transfers and deprivation of legal materials and law library constitutes extraordinary Circumstances to warrant equitable tolling of a habeas Petitioner's statute of limitations that Justifies this Court's exercise of Certiorari Jurisdiction.

The sole consensus in this case between the Parties; the Government, District Court and Davis agree that the Fifth Circuit Court of appeals has not squarely addressed the extent to which multiple consecutive Prison transfers, extended Placement in 24/7 situ Segregation, and the deprivation of a Prisoner's legal materials can constitute grounds for equitable tolling of the non-Jurisdictional one year statute of limitations for 28 U.S.C. § 2255. (see DOC 64:6, DOC 47:8, DOC 65:9). Other Courts are divided and this Court has not addressed the issue before. As such, this case Presents the Court an opportunity to establish a definitive and uniform road-map for Courts across the nation to follow. The importance of establishing a

uniform precedent on this issue of first impression cannot be overstated in light of this Court's earlier decision in Holland v. Florida and the widely divergent lower courts decisions interpreting and applying it to highly fact driven circumstances.

For example, in United States v. Moore, 2001 U.S. Dist. LEXIS 5557 (E.D. Pa. Mar 6, 2001), the defendant sought equitable tolling based on multiple transfers and holdover in various correctional facilities in which he was denied access to a law library, legal materials, and his personal property as well as his legal papers. In deciding the Petitioner's request for equitable tolling, the District Court in Moore assumed for purposes of the motion that Petitioner's factual allegations were essentially true, since they had not been opposed by the Government. Therefore, the Moore Court concluded that equitable tolling principles weighed in favor of granting Moore's application.

Similarly, the Ninth Circuit in United States v. Carlsen, 441 Fed. Appx. 531 (9th Cir. 2011) also held that a Petitioner's repeated efforts to contact his attorney both by mail and phone to resolve issues related to his ss 2255 combined with the fact that he was in transit for the first six months of his federal sentence without access to legal resources warranted equitable tolling. In the Ninth Circuit's view, "Deprivation of legal materials is the type of external impediment for which we have granted equitable tolling," quoting Lott v. Mueller, 304 F.3d 918, 924-25 (9th Cir. 2003); see also Chaffee v. Prospect, 592 F.3d 1042, 1049 (9th Cir. 2010) ("Denial of access

files may in some cases constitute the type of external impediment for which [courts] grant equitable tolling"). See also United States v. Gabaldon, 522 F.3d 1121, 1123 (10th Cir. 2008) (Prisoner who was placed in Segregation and saw his legal materials confiscated two months prior to limitations deadline; and made numerous requests for his legal materials while in Segregation was entitled to equitable tolling).

The Sixth Circuit in Jones v. United States, 689 F.3d 621 (6th Cir. 2012) also granted equitable tolling based on a series of transfers, illiteracy and medical problems including seizures. In so doing, the Jones Court observed that because the prose inmate had been transferred without his legal materials to a new facility and missed the one year deadline for a Begay-based claim by less than three months--he was entitled to equitable tolling. Jones was partially illiterate, with a variety of medical conditions including seizures. Within two months of learning of Begay, he was able to obtain sufficient assistance to file his motion. Equitable tolling thus applied.

On the other side of the fence on this issue, the district court highlighted several cases that have held Prison transfers do not constitute extraordinary circumstances warranting equitable tolling; albeit the majority of those cases were decided before Holland and described as "routine". Mr. Davis's experience was far from a "routine" transfer experienced by the majority of federal prisoners. (Doc 65:9-10). See e.g., Lucero v. Suthers, 16 F.App'x 964, 965 (10th Cir. 2001) (noting that Prison "transfers

have become commonplace"); Allen v. Johnson, 602 F. Supp. 2d 724, 727 (E.D. Va. 2009) ("routine prison transfers do not warrant equitable tolling"); Lindo v. Lefever, 193 F. Supp. 2d 659, 663 (E.D. N.Y. 2002) (transfers between prison facilities, solitary confinement, lockdowns, and restricted access to law library do not qualify as extraordinary circumstances warranting equitable tolling); Mathison v. United States, 648 F. Supp. 2d 106, 112 (D.D.C. 2009) ("Neither Plaintiff's transfer from one prison to another nor his placement in a housing unit without legal materials is an extraordinary circumstance to warrant tolling of the limitations period").

Accordingly, with this clear split of authority and lack of consensus on the extent to which equitable tolling applies to back-to-back prison transfers, repeated segregation and deprivation of legal materials, law library facilities and contact information to counsel in this post Holland era of pro se prisoner representation -- this Honorable Court must give serious pause to consider exercising certiorari jurisdiction to provide the lower courts a clear path moving forward.

2. Courts of Appeal do not lack Jurisdiction Over an Appeal of a Rule 59(e) Motion where a Pro Se Appellant does not file a Separate or Amended notice of appeal following the denial of that Motion, but instead Proceeds under the Presumption that a Precautionary Notice of Appeal filed before a decision on the Rule 59(e) Motion is rendered Preserves all combined issues for appeal.

In declining Mr. Davis's request of the Fifth Circuit Court of Appeals' for a certificate of appealability to appeal the dismissal, as time-barred, his 28 U.S.C. ss 2255 motion, the Court Ruled, as an initial matter, that they lacked jurisdiction over the appeal of the denial of the Rule 59(e) Motion he had filed in the District Court because Davis failed to file a Separate or amended notice of appeal following the denial of that motion, Citing Fed.R.App.P. 4(a)(4)(B)(ii); and Funk v. Stryker Corp., 631 F.3d 777, 780-81 (5th Cir. 2011).

Davis submits that the Panel of the Fifth Circuit made a Clear error of law by not Construing his Pleadings liberally as required by this Court's Seminal Decision in Haines v. Kerner, 404 U.S. 519 (1972) and Warrants this Court in Granting the Writ of Certiorari, Vacating the Court's Mandate and Remanding the Case for further Proceedings.

Simply stated, a GVR Order is Warranted because Haines v. Kerner, requires liberal Construction of Pro Se Pleadings. In this context, Shortly (Days) after the district Court denied Mr. Davis's Rule 59(e) Motion on both timeliness and substantive grounds, the record reflects that he filed a Motion

for Leave to Appeal in forma Pauperis. In the very introductory statement of this Motion, Davis Placed the Court on Notice that he intended to appeal the denial of the Rule 59(e) Motion by Specifically requesting an "Order permitting him to Prosecute an appeal from the Judgment / Ruling entered by this Court on July 13, 2021 (Section 2255 Motion) and September 30, 2021 (Rule 59(e) Motion) in forma Pauperis." Page two of this Motion makes Mr. Davis's intent unequivocal: "Mr. Davis intends to further appeal on the grounds that the District court erred in its disposition of his Rule 59(e) Motion where he Submitted prima facie evidence of a Government impediment to his timely filing due to 2017 COVID-19 Quarantine Procedures during the relevant 28 day time limitation." (See Motion for Leave to Appeal in forma Pauperis at 2). This Motion was forwarded to the District Court on October 3, 2021 and a copy was forwarded to the Clerk of Court for the Fifth Circuit.

Most importantly in this context, following the liberal construction mandate of Haines v. Kerner, this Motion in the lower courts should have been construed as an attempt to amend the Notice of Appeal sufficient to establish cause for the Panel of the Fifth Circuit to accept the Motion as an Amended Notice of Appeal. Thus, the Fifth Circuit Panel clearly erred as a matter of clearly established Supreme Court law in overlooking this record evidence of Davis's attempt to Notice the Court of his intent to appeal the denial of his Rule 59(e) Motion. Thus, when viewed through a

liberal construction lens; Mr. Davis clearly attempted to file an amended notice of appeal in an effort to maintain compliance with an overly complex web of Procedural rules attendant to the Prosecution of an appeal of the denial of a 28 U.S.C. ss 2255 Motion, and Rule 59(e) Motion for reconsideration.

In Summation, and most important to the Court's consideration of whether to Grant Certiorari is that the ultimate issues underlying this case involve exceptional questions of first impression in this Court and of great importance to our system of justice; namely: Whether a Prisoner's non-routine back-to-back institutional transfers compounded by successive administrative segregation during which BOP officials actively impede the freshly sentenced Prisoner's access to his legal files, a law library and outside contact information to acquire assistance from counsel constitutes extraordinary circumstances that justifies the application of equitable tolling of the one year statute of limitations under 28 U.S.C. ss 2255(f) Pursuant to Holland v. Florida, 560 U.S. 631 (2010) to allow the Prisoner a full and fair opportunity to present Post conviction challenges to trial counsel's effectiveness under Sixth Amendment standards; and (2) whether the appellate courts lack jurisdiction over an appeal of a Rule 59(e) Motion when a Pro se appellant does not file a second, separate or amended notice of appeal following the denial of that

motion, but instead articulates his intent to appeal the district court's decisions in the Precautionary Notice of appeal and Motion for in forma Pauperis filed after the Rule 59(e) Motion is denied.

Accordingly, a Certificate of Appealability should have been issued by the Fifth Circuit Court of Appeals Panel Pursuant to Slack v. McDaniel, because Mr. Davis has made the substantial showing of the denial of a Constitutional right that his Section 2255 Motion states a valid Sixth Amendment claim of ineffectiveness of counsel during and in connection with the Plea negotiation process and the district court violated Mr. Davis's right to a full and fair opportunity to present such claims by denying equitable tolling of the 28 U.S.C. ss 2255(f) statute of limitations without an evidentiary hearing and in violation of his fundamental Fifth Amendment right to Due Process of law.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Petitioner Jimmy Ray Davis hereby respectfully requests of the Honorable Supreme Court to GRANT a Writ of Certiorari, Vacate the Fifth Circuit Court of Appeals' Judgment filed June 13, 2022 and Remand this case with instructions to Grant a Certificate of Appealability so Mr. Davis may proceed on appeal to present his habeas claims to the Fifth Circuit Court of Appeals.

Dated on this 2nd day of December, 2022.

Respectfully Submitted,

Jimmy Davis
Jimmy Ray Davis

CERTIFICATE OF SERVICE

I, Jimmy Ray Davis, do hereby Declare under Penalty of Perjury that Pursuant to 28 U.S.C. § 1746 I have Served upon the Court and Counsel for the United States a Petition for a Writ of Certiorari by placing a copy of said Petition in the hands of mailroom staff Pursuant to Houston v. Lack, 487 U.S. 266 (1988) and the Prisoner mailbox rule at the Federal Correctional Institution in Edgefield, South Carolina for forwarding in the United States Postal mail, service first class, Pre Paid Postage attached addressed to:

Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

Office of the Solicitor General
Room 5614 Dept. of Justice
950 Pennsylvania Ave. N.W.
Washington, D.C. 20530-0001

Dated on this 2nd day of December, 2022.

Jimmy Davis
Jimmy Ray Davis