No. 22-7371 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Ryan William Buchheim —PETITIONER

(Your Name)

VS.

United States of America—RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals, Case No.: 22-2933

(NAME OF COURT THAT LAST RULE ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ryan William Buchheim, 08853-089

(Your Name)

FCI Sandstone, P.O. Box 1000

(Address)

Sandstone, MN 55072

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

In the context of a motion under 28 U.S.C. § 2255 and a subsequent Application for Certificate of Appealability (COA) under 28 U.S.C. § 2253 Petitioner presents the following two questions:

I. After following Buchheim for over 8 minutes, undercover officers initiated a traffic stop, called for a narcotics canine, and then waited for a computer equipped squad car to issue a speeding citation. Evidence discovered during post conviction proceedings established the officers had the means to issue a manual citation and no delay was necessary, despite what the suppression court found and held as the reason to deny suppression.

> Did the district court abuse its discretion when it refused to order an evidentiary hearing on: (1) Was Counsel Constitutionally ineffective for not discovering the readily available facts that one of the stop's officers had been issued a manual citation book and was permitted by policy to issue manual citations?; and (2) Whether the traffic stop was impermissibly delayed under Rodriguez v United States, 575 U.S. 348 (2015) [1] ?

II. This Court has consistently construed AEDPA's COA clause to ensure habeas corpus petitioners, who were denied relief in the district court, have a meaningful opportunity for review. Buchheim's application for COA raised substantial questions of law, novel Rodriguez questions, and factual record conflicts. In a one sentence judgement the Eighth Circuit denied the application in its entirety.

> Did the Eighth Circuit fail in its statutory and Constitutional obligation to provide Buchheim with a meaningful review of his habeas denial? Additionally: Does the paucity of the panel's opinion unreasonably interfere with meaningful review of its decision?

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1 - Please note Fourth Amendment challenges are cognizable in post conviction proceedings in the Eighth Circuit. See Baranski v United States, 515 F.3d 857, 860 (8th Cir. 2008)

LIST OF PARTIES

[X] 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:

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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.

I. OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Eighth Circuit which appears at Appendix A to this petition.

II. JURISDICTION

The date on which the United States Courts of Appeals decided my case was November 7, 2022. After which I filed a timely petition for rehearing, which was denied by the United States Court of Appeals on January 10th, 2023. A copy of the order denying rehearing appears at Appendix B.

III. Constitution of the United States
(S.C. Rule 14.1(f))

U.S. Constitution

Art.I Sec. 9, Cl 2.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Saftey may require it.

Amendment 4

The right of the people to be secure in their persons, houses papers, and effects, against unreasonable searches and seizures, shall not be violated.

Amendment 5

No person shall . . . be deprived of life, liberty or property, without due process of law.

Amendment 6

In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence.

Statute

28 U.S.C. §2253(c)

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of constitutional right.

28 U.S.C. §2255

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief the court shall . . . grant a prompt hearing thereon.

Please note the above text is the relivent portion of the Constitution or Statute. Full text of the cited provisions appears at Appendix D attached to this writ.

IV. Statement of the Case

A. Summary of Case

The primary issue throughout Buchheim's criminal and post conviction proceeding has always been the legality of the traffic stop at the heart of the Government's case. All parties, and the court, agreed the outcome of his two suppression hearings was dispositive to the case (R. Doc.[2]1, Initial §2255 Motion, "Pet."

2 - R. Doc.: refers to documents on the habeas proceedings docket in the district court, ND IA case 1:19-CV-00085-LRR/MAR, as well as the record on appeal, CA8 Appeal No. 18-2258, automatically generated pursuant to Local Rule 30A(a)(2). Cr. Doc.: refers to documents on the underlying criminal docket, ND IA Case No. 1:17-CR-00084-LRR/MAR

at ¶ 122, pg. 9(m)). Buchheim's counsel contended the officers "prolonged the traffic stop -beyond the time reasonably required to complete the mission of issuing a traffic citation- for the purpose of conducting the open air dog sniff", Cr. Doc. No. 16-3 at 2. The Government contended otherwise, and the District Court narrowed the issue to: "Whether law enforcement extended the traffic stop for the purposes of conducting a free air dog sniff." Cr. Doc. No. 65 at 5-6.

The lower court found "there [was] nothing in the record to suggest . . . Investigator Magill [officer who conducted the traffic stop and testified at both suppression hearings] slowed the processing of the ticket to allow more time for the free air sniff." /Id. at 8-9.

The heartland of Buchheim's timely 28 U.S.C. §2255 Motion was the suppression court's incorrect factual finding. (Pet., Grounds Four to Nine). Buchheim discovered numerous ways the Cedar Rapids Police Department (CRPD) investigators (Magill and Garringer) impermissibly delayed Buchheim's stop to wait on a K-9 unit. (e.g. officers did not utilize the available, and faster (per Magill's testimony), method of issuing manual citation (R. Doc. No. 37, Amended Ground Nine "Amd. Pet." at ¶205); patrol car arrived and observed initiating officers' complete lack of activity (/Id. at ¶196); radio traffic established a three minute gap between completion of ticket and arrival of K-9 unit (R. Doc. No. 3, Exhibit 4)). All of which was overlooked by the lower court --and Panel-- without even the benefit of a required evidentiary hearing. Buchheim even provided Exhibit 11 a timeline of the traffic stop which colorably established multiple points of delay of the traffic

mission by the officers. None of which was submitted at the suppression hearing for consideration. Exhibit 11 appears at Appendix D attached to this Petition.

Relevant here, Buchheim's Amended Petition colorably raised two fundamental Constitutional errors: First that his Fourth Amendment Right to be free from unlawful search and seizure was violated by a dispositive traffic stop which was unconstitutionally initiated (Amd. Pet. at 11-15, ¶¶'s 226-239) and impermissibly delayed (/Id. at 10-13, ¶¶'s 204-225) giving CRPD officers an illegal basis to pry open the trunk in Buchheim's car. Second, these facts were not presented at either of the suppression hearings due to the failures in the adversarial system. Pet. at 9(a)-9(n), ¶¶'s 90-123 (Trial counsel's nonexistent investigation); /Id. at 12(a)-12(d), ¶¶'s 150-162 (Appellate counsel's failures).

B. Criminal Proceedings

In late 2017, Buchheim was charged with possession with the intent to distribute methamphetamine in violation of 21 U.S.C. §841(a)(1), 841 (b)(1)(A) and 851, Cr. Doc. No. 2. He filed a timely Motion to Suppress Evidence. Cr. Doc. No. 16. Which the magistrate juudge recommended denying. Cr. Doc. No. 28. Seven days before the suppression ruling, based solely on the insistence of counsel, Buchheim filed a Notice of Intent to plead guilty. Cr. Doc. No. 24. The day after the first denial, Buchheim appeared before the magistrate judge and entered a conditional plea of guilty to Count 1 of the Indictment. Cr. Doc. No. 32.

Buchheim requested the suppression hearing be reopened (Cr. Doc. No. 44) and on February 9, 2018, the magistrate heard additional

evidence and testimony regarding the traffic stop (Cr. Doc. No. 53). Which the magistrate considered and still recommended the suppression motion be denied. Cr. Doc. No. 65.

Investigator Magill testified at both hearings admitting that: he delayed the traffic stop (Amd. Pet., ¶ 212) because of "needing to wait for an equipped patrol unit to issue a ticket" (Cr. Doc. No. 59, 2nd Suppression Hearing "2ndSH", 39:1-8), that manual citations for single infraction stops were faster than computer generated tickets and normally took less than 8 minutes to write, a fact Officer Carton supported (Amd. Pet. ¶ 205; 2ndSH 9:12-18; 10:5-10; and 71:8-11).

The district court, after objections to the magistrate report, denied the suppression motion because it found the officers credible (Cr. Doc. No. 65 at 14-15; 17-18) and that the stop was not impermissibly delayed because the officers had to wait for a computer equipped squad car before they could issue the ticket. /Id. at 13-14.

Buchheim was sentenced on May 23, 2018 to 240 months' imprisonment and 10 years supervised release (Cr. Doc. No. 70).

C. Post-Conviction Court Proceedings

Buchheim filed a timely and cognizable motion under 28 U.S.C. §2255 on August 2, 2018. In which he raised nine grounds colorably claiming his Constitutional Rights under the Fifth Amendment (judicial interference with his plea process) and Sixth Amendment (ineffective assistance of: pretrial, suppression hearing, and appellate counsel) were violated. Additionally, three skeletal grounds raising, but reserved for later amendment, violations of his Fourth (traffic stop irregularities) and Fifth (Brady and Napue errors) Amendment

Rights. Along with his 2255, Buchheim also filed: a Motion to Recuse district court Judge Linda Reade (R. Doc. No. 2), because she was named in Ground One through Three of his 2255 (R. Doc. No. 2); a sworn affidavit (Declaration) marked as Exhibit 1 attesting to the events, discussions, and facts raised in his 2255 motion; and various documents (Exhibits 2 through 6) supporting the sworn allegations in his habeas petition. R. Doc. No. 3.

Per the district court's Order (R. Doc. No. 7) prior counsel filed an affidavit responding to Buchheim's 2255 allegations in which they did not refute or disclaim a single substantive allegation Buchheim raised. R. Doc. No. 17. Buchheim responded to the affidavit showing counsel did not challenge his allegations, therefore under controlling law and rules they admitted key factual allegations in the 2255 motion. R. Doc. No. 20.

The Government responded to Buchheim's Petition and his Response to Prior Counsel's Affidavit by resisting in general both the 2255 and Recusal Motion but staying silent on prior counsel's affidavit, R. Doc. No. 21. The Government failed to refute Buchheim's allegations -or- challenge his position on counsel admitting key allegations that if true would warrant §2255 relief. R. Doc. 20 at 6-8.

In reply, Buchheim filed: a separate but timely "Reply to Government's Resistance to Petitioner's Motion to Recuse" (R. Doc. No. 33), which the lower court improperly treated as Buchheim's 2255 Reply (R. Doc. No. 43, "2255 Denial", at 2); various supporting motions and an amended Ground Nine, "fleshing out" his Fourth Amendment claim which appended allegations 170 through 243 to his petition (See Motion R. Doc. No. 24); Buchheim's "Reply and

Traverse" (R. Doc. No. 35 at pgs. 37-53, "Traverse"); and various exhibits supporting the amended petition (R. Doc. 36) which were the fruits of Buchheim's post conviction investigation.

The District Court denied Buchheim's 2255 without an evidentiary hearing (Appendix B) because it believed --incorrectly-- that "there was absolutely nothing in the [amended] record that would change the outcome of the [dispositive] suppression hearing." /Id. at 23; despite the fact that Buchheim alleged, based on newly discovered evidence, that Magill's credibility was tarnished due to inconsistencies with his testimony and the Cedar Rapids P.D.'s dispatch reports (Cr. Doc. No. 55-2; Defense Exhibit C, R. Doc. No. 37 at pgs. 6-7, ¶¶'s 191-200) and newly discovered evidence establishing that during the operative time frame Officer Garringer was issued a manual citation book (/Id. at pg. 6, ¶ 187), which Buchheim supported the allegation with CRPD's citation book issue log. R. Doc. 36 at 47, Exhibit 10 at 16, appearing at Appendix F, attached to this Petition.

Additionally, the lower court procedurally barred Buchheim's colorable Fourth Amendment claim by erroneously determining it was 'double defaulted', a conclusion based on circular logic that Buchheim's Fourth Amendment[3] Ground was procedurally defaulted because it was not raised on direct appeal (2255 Denial, Appendix B at 22-23) ignoring the very facts Buchheim was basing his claim on were not discovered until two years after the direct appeal, making any appeal on the issue premature and unfounded.

Buchheim claimed the failure to discover the facts in time for the appeal was due to Constitutionally deficient representation

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3 - Fourth Amendment grounds cognizable on §2255 motions in Eighth Circuit. See Note 1, supra

of trial and appellate counsel; excusing any potential procedural defaults. Pet. at 9(a)-9(n), ¶¶'s 90-122.

Buchheim timely filed a motion for reconsideration under Civil Rule 52(b) and 59(e) (R. Doc. No. 46) establishing the court manifestly erred by: failing to abide by controlling precedent to conduct a habeas evidentiary process when uncontested material allegations were presented by Buchheim. Which was denied in a single paragraph on July 18, 2022, R. Doc. 47.

D. Appellate Habeas Proceedings

Petitioner specifically raised the failure to abide by controlling precedence in his timely application of COA where he asked "Did the lower court procedurally err when it refused to order an evidentiary process on, at minimum, Buchheim's Ground Four and Nine claims, allegations, and evidence?" (CA8 Case. No. 22-2933, Doc. 5210579, "COA App." at 14) and recapped the factual situation with references to Summary Exhibit 11 and numerous citations to both the Habeas Record and the Criminal Record. /Id. at 5-8; 15-19.

The Panel denied Buchheim's application with a single sentence, without explaining, or mentioning his Application for COA. Order appearing at Appendix A, attached to this Petition. Nor did the Panel address the complex procedural missteps, clear factual errors, and fundamental Constitutional flaws surfaced by Buchheim's amended 2255, Civil Rule 59(e) Motion.

On December 13, 2022 Buchheim filed a Petition for panel, or en banc, rehearing as the Panel's one sentence denial did not take into consideration that: Buchheim's Rodriguez claim and Strickland claims would be debatable among jurists of reason; the district

court, and panel, overlooked colorable allegations that would have changed the outcome of Buchheim's case and; the District Court, and Panel, failed to abide by controlling Supreme Court precedence regarding conducting an evidentiary hearing, necessitating a correction of the error(s) to maintain conformity in the law. The appellate court denied Buchheim's request on January 10, 2023. Order appears at Appendix C, attached to this Petition.

This timely petition for writ of Certiorari from the Eighth Circuit Court of Appeals follows.

V. Reasons to Grant the Writ

A. The historic purpose and power of the Great Writ as a bulwark of our civil liberties has been impermissibly undermined by district and circuit courts emphasizing process and procedure over the interests of justice and liberty interests.

Considered the most important of all writs, the Habeas Corpus Ad Subjiciendum --The Great Writ-- is established upon the goal of protecting individual liberty interests from government oppression. See Fay v. Noia, 372 U.S. 391, 400-01 (1963). The writ is rooted in "immemorial antiquity" predating to the Magna Carta and has preserved human liberty in the face of illegitimate government restraint upon our most precious freedoms. /Id. "Its function has been to provide a prompt and efficacious remedy of whatever society deems to be intolerable restraints." /Id. at 401-02. For federal courts, Justice Brennan reaffirmed "There is no higher duty than to maintain it unimpaired." /Id.

The writ "holds a fundamental place in our republic" to secure "personal liberty from unlawful government action." Farkas v.

Warden FCI Butner II, 972 F.3d 548, 559 (4th Cir. 2020). "The very essence of the writ in our criminal justice system [is its] commitment to suspending conventional notions of finality of litigation where life and liberty is at stake and infringement of constitutional rights is alleged." McCleskey v. Zant, 499 U.S. 467, 518-19 (1991) (J. Marshall Dissenting) (Citing to Sanders v. United States, 373 U.S. 118 (1963) (internal quotation marks omitted).

The presence and power of the Great Writ was recognized first by our founding generation when they included it in our Constitution at Art. I, Sec. 9, Cl. 2, and again at the founding of our Federal Judiciary (Federal Judiciary Act of 1789, Chapter 20, §14.1, Stat. 81,82). Cementing the Writ's purpose, power, and prestige Chief John Marshall called it a "great Constitutional privilege." (Ex Parte Bollman and Ex Parte Swartwout 4 Cranch 75, 95 (1807).

To enforce and preserve the reach of the Great Writ, courts and Congress have been "loath to impose procedural rules that might impede a prisoner's effect to seek that remedy." United States v. Quin, 836 F.2d 654, 658 (1st Cir. 1988) (Aldrich, Senior Circuit Judge dissenting). Justice O'Conner recognized "the historical office of the Great Writ as the ultimate protection against fundamental unfairness" that its mission was to be a "bulwark against convictions that violate fundamental fairness." Smith v. Murray, 477 U.S. 527, 541-42 (1986). That the Writ's mission was recognized by Congress and "reflected in the statutory requirement that the federal court 'dispose of the matter as law and justice require.'" /Id. (Citing 28 U.S.C. §2243).

The Writ's "root principle is that in a civilized society government must always be accountable to the judiciary for a man's

[or woman's] imprisonment." (Noia at 402). Therefore, "there is nothing novel," in federal courts providing a mode for prisoners to vindicate their due process rights as that "is precisely the historic office" of the Writ. /Id.

Justice Fortias, in Harris v. Nelson, best summarized the power, scope, authority, and responsibilities of federal courts in administering the Great Writ although the case was decided in the context of a state habeas corpus motion under 28 U.S.C. §2254, its principles and bases are applied equally to federal prisoners bringing a motion under 28 U.S.C. §2255.

> The Writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. The scope and flexibility of the Writ -its capacity to reach all manner of illegal detention- its ability to cut through barriers of form and procedural mazes- have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the Writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected. . . . [F]ederal courts not only may grant evidentiary hearings to applicants, but must do so upon an appropriate showing. Townsend v. Sain, 372 U.S. 293, 313 (1963). . . . And this Court has emphasized taking into account the office of the Writ and the fact that the petitioner, being in custody, is usually handicapped in developing the evidence needed to support in necessary detail the facts alleged in his petition, that a habeas corpus proceeding must not be allowed to founder in a "procedural morass." Price v. Johnston, 334 U.S. 266, 269 (1948). . . . This Court has insistently said that the power of the federal courts to conduct inquiry in habeas corpus is equal to the responsibility which the Writ involves: "The language of Congress, the history of the Writ, the decisions of this Court, all make clear that the power of the inquiry on federal habeas corpus is plenary." Townsend, surpa, at 312.

Harris v Nelson, 394 U.S. 286, 290-92 (1969) (per Fortias, J.)

In more recent decades these lofty principles taught in our schools, enshrined in our Constitution, and "jealously guarded

by courts and lawmakers" (/Id.) has been slowly shifted to the very "procedural morass" spoke of in Price.

Pro se litigants often ask exactly what are the "fundamental rights" the Great Writ is supposed to protect? The primary right, the one that ensures all the rest are protected is the Sixth Amendment Right to have an effective counselor at one's side. Strickland v. Washington, 466 U.S. 668, 686 (1984). This is true because representation by counsel is "critical to the ability of the adversarial system to produce just results" United States v. Gonzalez-Lopez, 548 U.S. 140 (2006). The "Sixth Amendment's purpose is to ensure fairness in the adversarial process" (United States v. Cronic, 466 U.S. 648, 655-56 (1984)) which in turn assumes "the legitimacy of our adversary process." Kimmelman v. Morrison, 477 U.S. 365, 374 (1986); Gideon v. Wainwright, 372 U.S. 335, 344 (1963). That legitimacy is in question because trial and appellate courts are not conforming to this Court's precedents.

In our plea dominated criminal justice system (Padilla v. Kentucky, 559 U.S. 356, 372 N. 13 (2010)), one where the Government's case is rarely subjected to the crucible of adversarial testing, the only real opportunity to test the process by which a citizen is convicted, is a post conviction challenge to the legitimacy of counsel's representation. But when such post conviction challenges are smothered by a generalized all-encompassing blanket of procedural process, Price's "procedural morass" looms large, unbalancing the scale in favor of "oppression and tyranny of rules" and sidelining the critical role of the jury to federal criminal justice system. Apprendi v. New Jersey, 530 U.S. 466, 477 (2000).

In Noia, Justice Brennan noted "orderly criminal procedure is a desideratum, and of course, there must be sanctions for the flouting of such procedure. But that state interest competes . . . against an ideal . . . the ideal of fair procedure." Noia at 431. Justice Stevens in his separate opinion to Murray expressed his concern: "I fear that the court has lost its way in a procedural maze of its own creation and that it has grossly miscalculated the requirements of 'law and justice' that are the federal court's statutory mission under the federal habeas corpus statute." Murray at 541.

In a dissent, Judge Gregory spoke of the tendency of courts to protect the Great Writ itself, over the actual rights the Writ is supposed to protect. He expressed great concern over the majority opinion guarding the Great Writ "so closely that Surratt must spend the rest of his life in prison -against the will of the government and the district court. Our abdication of this responsibility begs the question: quis custodict ipsos custodies? Who will guard the guards themselves?" United States v. Surratt, 797 F.3d 240, 276 (4th Cir. 2015) (Vacated by en banc order but later mooted due to presidential communication because it was two years and counting with no action by the appellate court).

Courts agree with Judge Reinhardt when he boiled the purpose of the Great Writ down to: Whether a criminal defendant required a fair trial and sentencing proceeding that received his rights under the federal constitution? Leavitt v. Arave, 682 F.3d 1138, 1142 (9th Cir. 2012) (Judge Reinhardt dissenting). Judge Reinholdt goes on to discuss the disturbing trend in habeas cases where uncontroversial premises have been "transformed into a set of

strictures that prevents all but the most unusual of petitions -those whose [habeas[counsel have managed to comply at every turn with the ceaselessly changing, and ever expanding series of rules - from presenting the merits of their constitutional claims to any federal court. This harsh and mechanical process undermines the protection of the Great Writ." /Id.

In Justice Marshall's dissent from the Denial of a Stay of Execution and Writ of Certiorari he expressed his worry that the focus of habeas jurisprudence was drifting from "the character of the alleged Constitutional violation" to an improper focus on "the procedural history underlying the claim," Witt v. Wainwright, 470 U.S. 1039 (1985) (Marshall, J. dissenting) (Citing to Rose v. Lundy, 455 U.S. 509, 547-48 (1982) (Stevens, J. dissenting)). Justice Marshall went on to warn that if courts "apply the procedural bar in advance of consideration" of the Constitutional matter(s) raised it would "turn the Great Writ on its head." /Id.

This warning has proven to be true, especially as applied to the uneducated prisoner litigant who like Clarence Gideon before them, felt something was wrong, because the justice he received was not what his school taught him it should be. Unlike Gideon, today's litigant faces so many procedural hurdles as to even confuse and frustrate the professionals with decades of experience in the law, many who have filed dissents in denials of habeas relief:

> "I believe that the Court is creating a Byzantine morass of arbitrary, unnecessary, and unjustifiable impediments to the vindication of federal rights." Coleman v. Thompson, 501 U.S. 722, 759 (1991) (Blackman, J dissenting); "The current status of . . . judicial interpretation of the Great Writ during the past three decades has seen a cascading web of confounding and labyrinthine procedural obstacles." Lee v. Kemna, 213 F.3d 1037, 1048 (8th Cir. 2000) (Bennett,

> Chief District Judge, dissenting); and "Today's decision sacrific[es] on the alter of spurious and specious science of efficiency the Constitutional guarantees which we profess to hold most dear. For the sake of ritualized obeisance to the supposed demands of comity, today's decision defers the vindication of constitutional rights." Galtieri v. Wainwright, 582 F.2d 348, 375 (5th Cir. 1978) (en banc) (Goldberg and Tuttles, Circuit Judges, dissenting).

Because petitioners, especially lay litigants, have to overcome significant procedural barriers --some arcane, some well intentioned-- to even be heard, Petitioner here seeks adherence to the requirement that courts hold an evidentiary hearing if a post conviction claim meets one of the seven factors enumerated in Townsend, supra.

Why is Petitioner seeking this Court's assistance? Because shockingly, 22 years later, Chief District Judge Bennett's observations are still true. Based on a review of the latest caseload reports for the Federal Judiciary[4], it appears that less than 5% of Federal Motions to Vacate (§ 2255 Motions) received an evidentiary hearing in 2022. This means of the 3,830 § 2255 petitions disposed of in 2022, less than 200[5] were given a merits review of their claims.

The effects of these sobering statistics on society's view of the Federal Judiciary are described in Circuit Judge Hills's dissent to the Eleventh Circuit's denial, for finality reasons, of Mr. Gilbert's motion for 2255 relief, where Judge Hill decried:

> A judicial system that values finality over justice is morally bankrupt. That is why the Congress provided in §2255 an avenue to relief in circumstances just such as these. For this Court to hold that it is without the power to provide relief to a citizen that the Sovereign seeks to confine illegally for eight and one-half years is to adopt a posture of judicial impotency that is shocking in a country that has enshrined the Great Writ in its Constitution. Surely, the Great Writ cannot be

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4 - See Federal Judicial Caseload Statistics Tables 2022, part of the Director's of the Administrative Office of the U.S. Court's Annual report for 2022. HTTPS://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables/, last visited on March 10, 2023.

5 - COMPARE Table C-2, Civil Cases Commenced in 2022 WITH Table C-4, Civil Cases Terminated by March 31, 2022.

> so moribund, so shackled by the procedural requirements of rigid gatekeeping, that it does not afford review of Gilbert's claim. Much is made of the "floodgates" that will open should the Court exercise its' authority to remedy the mistake made by us in Gilbert's sentence. The government hints that there are so many others in Gilbert's position - sitting in prison serving sentences that were illegally imposed. We used to call such systems "gulags." Now apparently, we call them the United States.

Gilbert v United States, 640 F.3d 1293, 1337 (11th Cir. 2011) (Circuit Judge Hill dissenting).

Today with so few cases reaching hearings for actual consideration of the merits, Justice Black's caution that the "Writ [should] not [become a] static, narrow formalistic remedy," Jones v. Cunningham, 317 U.S. 236, 243 (1963) (per Black, J.) is falling on deaf ears.

As Buchheim's case exemplifies these deaf ears populate the trial and appellate benches, who are so used to finding procedural bars to hearing cases, that many times they find there is nothing to change the outcome of the underlying criminal case, so denial of the 2255 is appropriate. See 2255 Denial at 19 (Where the trial court below denied Petitioner's Failure to Investigate Claim because "movant also cannot show prejudice" as the court found "there is no evidence that further investigation would have changed the outcome of the motion to suppress").

But the outcome of the suppression hearing, and thus Buchheim's case, would have been different if the magistrate had known about the post conviction discovery of a manual citation book being available to officers negating any delay. An allegation before the district court, but "not seen," by it because it failed to adhere to this Court's precedence in Townsend.

B. This case provides an ideal vehicle to correct the drift of jurisprudence toward Price's procedural morass and bring it back towards a focus on the Constitutional concerns the Great Writ was meant to surface.

(1) The District Court abused its discretion when it declined to use its plenary inquiry power to determine if: (a) Counsel was ineffective for failing to discover officers had a quicker method to issue a citation and (b) the "extra mission" delay impermissibly extended the stop under Roderiquez.

Buchheim's amended petition made several "facially adequate allegations" (Blackledge v Allison, 431 U.S. 63, 80 (1977)) which if proven true would warrant vacating his sentence and conviction. Because any one would change the outcome of his suppression motion with the new evidence Buchheim unearthed. Sanders, 373 U.S. at 22.

It is undisputed that the investigators waited for a patrol car with the citation software (TraCS) and printer to arrive. Supra, at page 3. A fact Patrolman Briley supported observing when arriving on scene he saw Investigators Magill and Garringer just "standing at their squad car." Supplemental Narrative, R. Doc. 36 at 25, Exhibit 9. Appearing at Appendix G attached to this petition.

Via numerous State of Iowa Open Records Requests Buchheim was able, post conviction, to discover: (1) CRPD policy requires officers to either (a) have a TraCS equipped squad car; or (b) have a paper citation book issued by the Records section before initiating a stop; Amd. Pet. ¶184; and (2) Investigator Garringer (Magill's partner) was issued a manual citation book. See CRPD "CITATIONS AND COMPLAINT TICKET BOOKS ISSUED" Log, Appendix F; Amd. Pet. ¶187. None of which was presented at the suppression hearings. Supra, at page 3.

Citing to Rodriguez (575 U.S. at 355-56) the suppression court found the "critical issue is whether conducting the free air sniff prolonged the stop." Cr. Doc. 65, District Court Denial of Suppression Motion, "Suppr. Denial" at 5. Appearing at Appendix H attached to this Petition. The district court found that to effectuate the purpose of the stop, Magill had to "use Officer Briley's police car" because it "was equipped with TraCS" and Magill's vehicle was not. Suppr. Denial at 4. Without knowledge of the paper citations or applicable policy the lower court had no reason to question Magill's credibility, or that there was a faster and readily available way to issue the citation. Facts that if known by the suppression court would have entirely altered "the evidentiary picture." Strickland, 466 U.S. at 695-96.

With his amended petition Buchheim clearly alleged these newly discovered facts; set the foundation for their admittance; and provided the district court with certified copies of the documents. Documents which would have a reasonable likelihood of changing the outcome of Buchheim's case if they had been discovered and proffered by defense counsel.

In Townsend this Court made it clear that when a habeas petitioner presents substantial allegations of newly discovered evidence, which bear directly on the Constitutionality of his detention, and none of the enumerated exceptions apply, an evidentiary hearing is required. 372 U.S. at 313-17. In this case this mandate was not followed by the district court, nor enforced by the appellate court.

As established above Counsel was ineffective for failing to properly investigate material facts that were eventually uncovered by an incarcerated lay litigant. Such representation failed

Strickland's requirement that counsel make a "reasonable investigation." 466 U.S. at 691. And prejudiced Buchheim with a pervasive error that affected "the inferences" the suppression court drew from the evidence before it. Strickland at 695-96. A finding that the habeas court failed to consider because it did not hold the required evidentiary hearing.

(2) The sparse appellate opinion prevents proper review, necessitating the conclusion that the Eighth Circuit denied Buchheim a meaningful opportunity for review on the district court's readily apparent procedural errors.

Recently the Eleventh Circuit, properly applied this Court's precedence granting a COA on a Sixth Amendment failure at suppression where the the District Court erred in summarily denying, without evidentiary hearing the claim. See Maxi v United States, 2023 U.S. App. Lexis 6673 (11th Cir. March 20, 2023) The Eighth Circuit here did not. Instead they allowed Buchheim's claims to get caught up in Judge Bennett's "cascading web" of "procedural barriers" and failed in their duty to "cut through [the] barriers of form and procedure" (Harris at 291) and enforce this Court's mandates regarding evidentiary hearings, or explain why it was not appropriate to do so. Especially when a petitioner's burden to receive a COA is a light one. See Miller-El v Cockrell, 537 U.S. 322, 336-37 (2004).

The Townsend court mandated, albeit in a state habeas context, a hearing (or reversal) to try "facts anew," if a petitioner's fundamental rights were reliably at issue. Townsend at 317-18. This should be especially true in federal prisoner's motions to vacate as it is their one, and only, opportunity to be heard on concerns regarding the propriety of their convictions.

The Eighth Circuit failed to provide, or show that Buchheim, had a meaningful opportunity for review of his substantial questions. This Court should step in and nudge the jurisprudence back on the right track. Especially with many pro se incarcerated litigants find the courthouse doors closed because they did not use the right form or phrase.

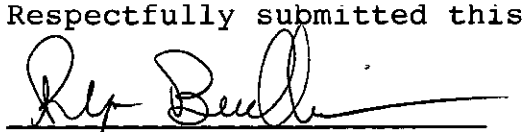
VI. Conclusion

It would be appropriate to simply Grant, Vacate, and Remand (GVR) this case because "[n]either the Federal Government nor federal courts are immune from making mistakes," (Grzegorczyk v United States, 142 S. Ct. 2580 (2022) (JJ. Sotomayor, Breyer, Kagan, and Gorsuch dissenting)) such mistakes when made "are often of enormous consequence to the nongovernmental party." /Id. Buchheim's case falls comfortably within the Court's long standing GVR practice serving to: prevent "unequal treatment" while preserving the Court's mandates and resources.

A GVR would be the most efficient way to signal that this Court finds it unacceptable for a lower court to plainly ignore this Court's precedence, and for an appellate court to abdicate its supervisory responsibilities.

The petition for a writ of certiorari should be granted.

Respectfully submitted this 31 day of March, 2023,



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