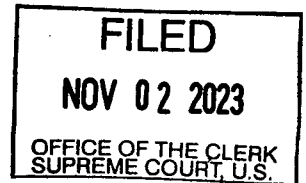


No. **23 - 6693**



CASE 4:22-CV-04124

IN THE

SUPREME COURT OF THE UNITED STATES

In Re John Paul Waldon <sup>#1602011</sup>  
(Your Name) PETITIONER

ON PETITION FOR A WRIT OF MANDAMUS to  
the United States District Court for  
the Southern District of Texas in No.  
4:22-CV-04124 ADA, Judge Charles  
Eskridge.

PETITION FOR WRIT OF MANDAMUS

John Paul Waldon  
(Your Name)

3350 Rosedale unit #2  
(Address)

Houston, Texas 77004  
(City, State, Zip Code)

346-279-8936  
(Phone Number)

### QUESTION(S) PRESENTED

1. Do the United States District Court/House have Jurisdiction to Answer a meritorious constitutional violation, in a Habeas Corpus petition under the Anti Terrorism and Effective Death Penalty Act (AEDPA)?
2. Does the above Act Allow the Courts discretion to violate the Constitution, by Refusal to Address a Constitutional Claim on its merits.
3. What is the remedy to have the merit of a claim when you're denied COA, Appeal and Writ of certiorari.

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Sanders v United States , 373 U.S. (1963)  
McCleskey , 111 S.Ct At pg 1470  
Neal v Wainwright , 512 F.Supp 92

### STATUTES AND RULES

18 USC § 2244, And  
Subdivision (b)  
Antiterrorism and Effective Death Penalty  
Act  
Rule 9 of Subdivision (b)  
Rule 9(a) Governing Section 2254 Cases  
An Lewellyn v Wainwright 593 F.2d 15  
OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of mandamus issue.

OPINIONS BELOW

☐ For cases from **federal courts**:

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

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix A, 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☒ is unpublished.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 15 to the petition and is~~

~~☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.~~

~~The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is~~

~~☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.~~

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 17, 2023

☐ 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: 4-17-23, and a copy of the order denying rehearing appears at Appendix E.

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

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

☐ For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Kimmelman v Morrison 106 S.Ct 2574 (1986).
2. Fallon v. United States
3. Sanders v United States 373 U.S. 1
4. McCleskey 111 S.Ct. At 1470
5. Price v Johnson, 334 U.S. 266
6. Anti Terrorism And Effective Death Penalt Act (1996).
7. 18 U.S.C. 2244, And Subdivision (b). Rule 9.
8. Neal v Wainwright 501 F.2d 92.
9. Lewellyn v Wainwright 593 F.2d 15,
- 9(b) Rules Governing Section 2254 Case

## STATEMENT OF THE CASE

On JANUARY 20, 2009, I the petitioner WAS STOPPED, BASED ON AN ANONYMOUS TIP. When the tipster WAS QUESTIONED in the call by the dispatcher. The tipster ANSWERED 1. NO to what I WAS DOING 2. NO to A description, AND 3. NO to HAVING A LICENSE, PLATE NUMBER. (TEXAS STATE COURT UPHOLD the CONVICTION ON 11.07, USING A 2012 decision, WHERE A CRIME WAS COMMITTED AGAINST A VICTIM UNDER NAVARRETTA V CALIFORNIA ON 2754 UNITED STATES DISTRICT COURT ACCEPTED the MAGISTRATE'S PROPOSED FINDINGS AND DENIED the petition WITH PREJUDICE. I then FILED ANOTHER petition ON THE SAME GROUND ON THE MERITS, AND WAS DENIED BY THE UNITED STATES DISTRICT COURTS WITHOUT PREJUDICE AS BEING SUCCESSIVE, WITH NO WRITTEN FINDINGS OF FACT AND LAW. APPEAL WAS FILED AND I WAS ORDERED TO FILE COA AND DENIED. THEN I REQUESTED REHEARING ENBANC, THE CLERK DENIED. AN THIS COURT DECIDED, I WILL NOW FILE A WRIT OF HABEAS CORPUS. 4.

#### REASONS FOR GRANTING THE PETITION

There is clearly no other remedy At Law, to settle the conflict in the Statute and or of The United States District Court For the Southern District of Texas, Houston Division. The Statute being the Antiterrorism and Effective Death Penalty Act. An Also the Conflict of, The United States District Courts For the Southern District of Texas, Houston Division, Judge Charles Eskridge, And the decision of the United States Supreme Court, set out in Sanders v United States, 373 U.S. 1 (1963) citing 18 U.S.C 2244, And Subdivision (b). For These reasons set in law and the Constitutional Statutes giving the District Court Jurisdiction to Answer, is clearly An Abuse of Discretion, and For this reason alone, its the duty of this Court order the district court Adhere to the Statutes and the Precedence. 5.

4:22-CV-04124

John Paul Waldon

Petitioner

Pro Se.

TDCJ ID # 1602011

v

State of Texas,  
Bobby Lumpkin

, Respondents

In The United States Supreme Court  
To The Honorable Judges of The  
Said Court.

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Memorandum In Support of  
Petition For Writ of Mandamus

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From the Order of The United  
States District Court For The Southern  
District of Texas Houston Division

Comes now John Paul Waldon, Petitioner  
TDCS ID # 1602011, Under Rule 60 of the  
Federal Rules of Civil Procedure, and  
files this Application for writ of  
mandamus directing The United States  
Supreme Court, to order The United  
States District Court for The Southern  
District of Texas, Houston Division to  
Answer the 2254 Writ of Habeas  
Corpus, and dismiss and vacate the  
order of Dec. 19, 2022, that dismissed  
the writ as being successive, in the  
Civil Action No. 4:22-CV-04124.

### Procedural History

1. On February 14, 2013 Petitioner Filed  
State Writ 11.07 (No. 1199792-A Court  
of Criminal Appeals.

2. On October 31, 2012 Ex Parte Waldon, 2012 Texas Court of Criminal Appeals No. WR. 78,308-01.

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3. Waldon v Stephens Civil Action No. H-13-3752 United States District Court for the Southern District of Texas, Houston Division. (Subsequent to this Filing the State of Texas Files a Summary Judgment, converting the 2254 Habeas Proceeding). Magistrate Judge Francis Stacey then grants the Summary Dismissal and Recommend the Habeas Petition be denied. Jan 26, 2015 denied.

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4. Waldon v Lumpkin Civil Action No. 4:22-CV-04124, United States District Court for the Southern District of Texas, Houston Division, dismiss 2254 as successive, while stating the background to be questionable, and failing to entertain the writ. Dec, 19, 2022

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5. Waldon v Lumpkin No. 23-20015 United States Court of Appeals, Appeal denied, COA denied, 5th Circuit. March 2, 2023

6. WALDON V LUMPKIN No. 23-20015 United States Court of Appeals For The Fifth Circuit deny Petition For Rehearing.

7. On October 2, 2023 the Highest Court of The Land, The United States Supreme Court denied writ of Certiorari.

### Summary of The Arguement

I Am clearly Asserting to the Honorable Judges of this said Court, that I Petitioner of this writ have exhausted All of my legal remedies, and I have no other means to Attain relief, from this cause. Further the records of fact and law have shown my conviction to be of unconstitutional magnitude.

I wish to show the reviewing Court that I have a Constitutional Right to the issuance of this writ, that is clear and indisputable.

Furthermore, as a general matter, a court's exercise of its discretion is not unbounded; that is, a court must exercise its discretion within the bounds set by relevant statutes and relevant, binding precedents. A district court abuses its discretion if it; (1) relies on clearly erroneous factual findings; (2) relies on erroneous conclusions of law; (3) misapplies the law to the facts.

### ERROR

1. Abuse of Discretion of The United States District Court of Texas, Houston Division, for its decision, and order to deny my petition of writ of Habeas Corpus 2254, as being successive on procedural grounds, in violation of (AEDPA) Antiterrorism and Effective Death Penalty Act;

For violation of, 18 USC § 2244, and Subdivision (b). This decision violates the 14th Amendment, and perpetrates a fraud upon the court and its judicial body.

## Argument In Support of mandamus

The Supreme Court in Sanders noted, in reference to a successive application asserting a new ground or one not previously decided on the merits.

In either case, full consideration of the new application can be avoided only if there has been an abuse of the writ. And this the government has the burden of pleading.

Sanders 18 USC § 2244, and Subdivision (b) made it clear that the court had discretion to entertain a successive petition. Sanders v United States, 373 U.S. 1 (1963).

Furthermore the government bears the burden of pleading abuse of the writ. *McCleskey*, 111 S.Ct. At 1470, Woods 933 F.2d. At 323. The government satisfies this burden "IF with clarity and particularity, it notes petitioner's prior writ history, identifies the claims that appear for the first time, and alleges that petitioner has abused the writ." *McCleskey* 111 S.Ct. At 1470.

District Court decision to dismiss the subsequent federal habeas petition was clearly based on an erroneous legal conclusion. Subdivision (b) is consistent with the important and well established purpose of habeas corpus. It does not eliminate a remedy to which the petitioner is rightfully entitled.

IF it appears to the court after examining the petition and answer that there is a high probability that the petition will be barred under

either subdivision of rule (9), the court ought to afford petitioner an opportunity to explain his apparent abuse.

Petitioner now ask the reviewing court to take judicial notice the post conviction records reflect, that he was denied an evidentiary hearing and further assert the denial of my 14th Amendment, under Due Process Clause of the United States Constitution

Furthermore to no avail, had the District Court Judge not abused his discretion in his decision to deny the 2254 petition, and had looked upon either subdivision of Rule 9.

The Equitable doctrine of laches is invalid defense only where delay operates to prejudice respondent's defense and under Rule 9, it can not be said that respondent is prejudiced where discussion that constitutes vocal point of dispute has been

fully and accurately recorded and preserved and where all parties concerned testified at evidentiary hearing. Neal v Wainwright, 512 F. Supp. 92 (1981), U.S. Lexis 11558 (M.D. Fla 1981), Lewellyn v Wainwright 593 F.2d, 15. 9(a) Rules Governing Section 2254 Cases.

### Conclusion

Due to the aforementioned facts and law, and record evidence. The United States District Court of Texas, Houston Division, has made a erroneous legal ruling in violation of the Antiterrorism Effective Death Penalty Act, 2244 subdivision (b), and the Supreme Court Precedence of Sanders v United States, An Rule 9.

### Finally

The Petitioner has no adequate remedy at law to pursue the requested relief other than this motion.

## Requested Relief

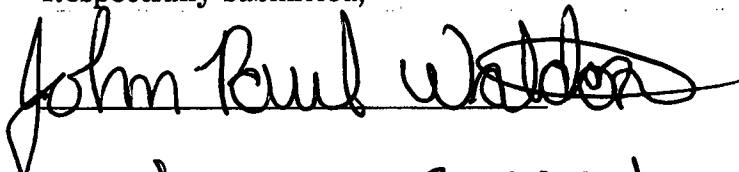
Petitioner prays for the mercy of this court and respectfully ask all members of the judicial body to reach an arbitrary and binding ruling in law and vacate the order of denial of the above cause writ for being successive, and order the United State District Court of Texas, Houston Division answer the writ as required by law.

Jurisdiction of this Court is invoked under 28 U.S.C. § 1651(a), 28 U.S.C. § 1254(1)

### CONCLUSION

The petition for a writ of mandamus should be granted.

Respectfully submitted,

  
Date: JANUARY 3, 2024