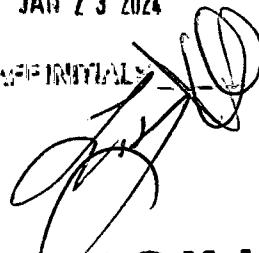


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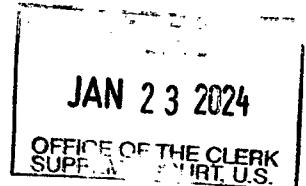
STAFF INITIALS

  
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IN THE

**SUPREME COURT OF THE UNITED STATES**



LUNICK JANVIER,  
Petitioner

VS.

SECRETARY, FDOC,  
Respondent

---

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

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**PETITION FOR WRIT OF CERTIORARI**

Submitted by:

Lunick Janvier  
Petitioner  
DC# L82089  
Everglades Corr. Inst.  
1599 SW 187th Avenue  
Miami, Florida, 33194

## **QUESTION(S) PRESENTED**

- 1) Whether the Eleventh Circuit Court of Appeals' decision on equitable tolling is in direct conflict with the Ninth Circuit Court of Appeals based on similar facts and circumstances.

## 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:

## RELATED CASES

1. *Lunick Janvier v. Sec., FDOC*, Case No.: 23-10427, Eleventh Circuit Court of Appeals.
2. *Lunick Janvier v. Sec., FDOC*, Case No.: 0:22-cv-60787-RLR, U.S. Southern District, State of Florida.

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## INDEX TO APPENDICES

APPENDIX-A: §2254 Petition, Judgments from U.S. District Court, Southern District of Florida, etc., under review

APPENDIX-B: Certificate of Appealability to Eleventh Circuit Court of Appeals

APPENDIX-C: Judgment Order entered on November 6, 2023, by the Eleventh Circuit Court of Appeals

## TABLE OF AUTHORITIES CITED

*Espinosa-Matthews v. California*, 432 F. 3d 1021 (9<sup>th</sup> Cir. 2005)

*Lott v. Mueller*, 304 F. 3d 918 (9<sup>th</sup> Cir. 2002)

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**

**[X] 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 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 B 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 highest State Court to review the merits 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.

## **JURISDICTION**

**[X] For cases from **federal courts**:**

The date on which the United States Court of Appeals decided my case was November 6, 2023.

No petition for rehearing was timely filed in my case.

A timely petition rehearing was denied by the United States Court of Appeals 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. \_\_\_\_\_.

The deadline to file the Petition for Writ of Certiorari in this case is on February 4, 2024.

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 \_\_\_\_\_.

That Court ordered \_\_\_\_\_.

The deadline to file the Petition for Writ of Certiorari in this case is \_\_\_\_\_.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

- 1) Sixth, Eighth and Fourteenth Amendment rights to due process, equal protection and cruel and unusual punishment as guaranteed under the U.S. Constitution
- 2) Equitable Tolling

## **STATEMENT OF THE CASE**

The case under review began when Petitioner filed his 2254 petition in the U.S. District Court for the Southern District of Florida. Appendix-A. The district court denied relief as untimely filed. Appendix-A. Both in reply to the State's Response and in motion for rehearing Petitioner pointing out his dilemma, specifically, how he should be afforded equitable tolling based on being separated from his legal documents through transferring from one prison to another, and how other similarly situated inmates were afforded equitable tolling under the same basis. Appendix-A.

Nonetheless, the district court denied relief and Petitioner sought COA through the Eleventh Circuit Court of Appeals where he relied heavily on decisions from the Ninth Circuit Court of Appeals in pointing out where jurists of reason have decided the issue under review differently. Appendix-B. The Eleventh Circuit denied COA, finding in pertinent part that Petitioner was unable to establish grounds for equitable tolling. Appendix-C.

Petitioner contends that the Eleventh Circuit's decision is in direct conflict on this material issue and the conflict should be resolved in agreement with the Ninth Circuit's holding. More precisely, the State's Response to the initial 2254 petition argues that Petitioner is time barred based on his failure to file within the one-year and 90 day limitations period.

(Resp. at pgs. 4-5). The State's computation of time suggests that the instant petition was filed more than four months late. (Resp. at pg. 5). Petitioner disagrees with the State's computation of being four months late when considering Petitioner's judgment and sentence became final on direct appeal when his Motion for Rehearing was denied on November 9, 2012. Prior to the Motion for Rehearing being denied, Petitioner had properly filed a 3.800 Motion to Correct Illegal Sentence. That motion kept the one year and 90 day time period tolled until the 3.800 Motion was denied and affirmed on appeal with Mandate issuing on November 1, 2013.

#### Appendix-A.

From there approximately 104 days of federal time expired before Petitioner properly filed a petition in the Fourth District Court of Appeal alleging ineffective assistance of appellate counsel on February 13, 2014. That petition effectively tolled the federal time until the Fourth District denied Rehearing on May 14, 2014. Appendix-A.

Meanwhile Petitioner began the process of preparing his Rule 3.850 Motion for Postconviction Relief, of which did not *technically* toll the federal time until it was actually filed on June 5, 2015. The 3.850 Motion was pending until the Fourth District affirmed the denial of relief with Mandate issued on April 14, 2022. Appendix-A.

From there Petitioner filed the petition under review just four days later on April 18, 2022. With that in mind the instant petition was technically filed late, but only by 39 days instead of the four months the State computed. Appendix-A.

Nonetheless, Petitioner requested the district court to afford him equitable tolling where the untimely filing was based on circumstances outside of his control. Specifically, Petitioner had exercised due diligence by gaining law clerk assistance to help him in preparing his 3.850 Motion at the prison he was being housed at, but before he was provided the finished 3.850 Motion, he was transferred to another prison without any of his legal documents. From there Petitioner exercised due diligence by going to his new prison law library and asking for Institutional Staff assistance in getting his legal storage boxes sent to him in an expedient manner. While waiting, Petitioner requested an extension of time for filing his 3.850 Motion in the State trial court. The Motion explained his predicament and the State court granted that extension, along with another based on the same reasoning.<sup>1</sup>

Appendix-A.

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<sup>1</sup> Notably, the State's Exhibits in support of their Response to the instant petition failed to include the request for extensions and orders granting such, despite this Court's Order requiring them to include the entire record.

In sum Petitioner did everything in his power to try to timely file his 3.850 Motion in effort to toll the federal time by requesting extensions of time in the State court based on him having been transferred from one institution to another and waiting on his legal storage boxes to follow him at a later date. The first request was filed on December 22, 2014, and is documented. Appendix-A.

### **REASONS FOR GRANTING THE PETITION**

In *Lott v. Mueller*, 304 F. 3d 918 (9<sup>th</sup> Cir. 2002), the court held that a habeas petitioner's deprivation of his legal materials for 82 days would constitute "extraordinary circumstances" sufficient to warrant equitable tolling. Like Petitioner in the instant case, *Lott* was denied access to his legal materials during two temporary transfers from one prison to another and only returned shortly before AEDPA's statute of limitations was set to expire. *Id.* at 921-22.

Similarly, in *Espinosa-Matthews v. California*, 432 F. 3d 1021 (9<sup>th</sup> Cir. 2005), the court held the prisoner was entitled to equitable tolling based on him having been deprived his legal materials for a period of 11 months and not receiving them until he had only one month of his federal time remaining.

In the instant case, the Court can reasonably conclude that Petitioner was using due diligence in trying to timely file his motions, dating all the way back to December 22, 2014, when he filed for an extension of time to file the 3.850 Motion. Taking that date into consideration, had Petitioner been provided his legal materials in a timely manner, he would have been able to file the 3.850 prior to December 22, 2014, leaving months of federal time remaining.

Based on these extraordinary circumstances, coupled with Petitioner's use of due diligence, this Court should find conflict in the Ninth Circuit Court's decisions above and the Eleventh Circuit Court's decision under review and decide the case in favor of the Ninth Circuit's holding, ultimately finding that the instant §2254 petition was timely filed when applying equitable tolling.

## CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,



Lunick Janvier  
Petitioner  
DC# L82089  
Everglades Corr. Inst.  
1599 SW 187th Avenue  
Miami, Florida, 33194

Date: January 22, 2024