

No.:

~~23-6765~~ORIGIN
ORIGINALIN THE
SUPREME COURT OF THE UNITED STATES

Ethan Andrew Hannold,

Petitioner

VS.

Commonwealth of Pennsylvania

Respondent

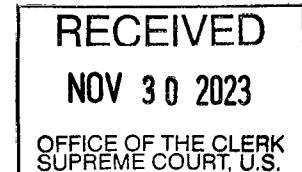
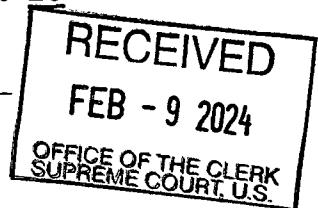
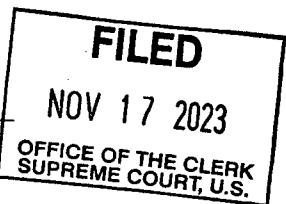
PETITION FOR WRIT OF CERTIORARI

Petition for Writ of Certiorari from the Order of the United States Court of Appeals for the Third Circuit affirming the Order of the Honorable J. Nicholas Ranjan, District Judge for the United States District Court of the Western District of Pennsylvania at Docket Number: 2:19-cv-744-NR-LPL denying a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254

Ethan Andrew Hannold, # ND-7966

Pro Se, Petitioner

State Correctional Institution at Albion
10745 Rt. 18
Albion, PA 16475-0001



QUESTION(S) RELIED UPON FOR ALLOWANCE OF THE WRIT OF
CERTIORARI

Ground I. Did the U.S. Court of Appeals of the Third Circuit fail to consider the effect the combination of the relevant attributes of Mr. Hannold's diagnoses of Impulse Control Disorder, Conduct Disorder, and Antisocial Personality Disorder along with the absence of Mr. Hannold's acting "custodian", his father and the egregious breach of duty from Attorney Lopresti had on Mr. Hannold's ability to file a timely 28 U.S.C. § 2254 petition which culminated in an unreasonable application of the equitable tolling doctrine thereby denying Due Process of Law as a matter of first impression?

PARTIES

The Petitioner in the above captioned matter is Mr. Ethan Andrew Hannold, (Mr. Hannold), *Pro Se*, who is currently incarcerated within the State Correctional Institution at Albion, at 10745 Rt. 18, Albion, PA 16475-0001.

Respondent in the above captioned matter is the Commonwealth of Pennsylvania who is represented by Drew Welsh, Esq., District Attorney for the Clarion County Court of Common Pleas whose office is located at 502 Liberty Street, Clarion, PA 16214-1113.

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REASONS RELIED ON FOR ALLOWANCE
OF THE WRIT OF CERTIORARI

Ground I. Did the U.S. Court of Appeals of the Third Circuit fail to consider the effect the combination of the relevant attributes of Mr. Hannold's diagnoses of Impulse Control Disorder, Conduct Disorder and Antisocial Personality Disorder along with the absence of Mr. Hannold's acting "custodian," his father, and the egregious breach of duty from Attorney Lopresti had on Mr. Hannold's ability to file a timely 28 U.S.C. § 2254 petition which culminated in an unreasonable application of the equitable tolling doctrine thereby denying Due Process of Law as a matter of first impression?

CONCISE STATEMENT OF THE CASE

The case is before the Court on the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 of Ethan Andrew Hannold, (Mr. Hannold). Mr. Hannold presents this Honorable Court with the following relevant procedural history:

On or about April 13, 2013, Mr. Hannold was arrested and charged at information number **CP-16-CR-000170-2013** with Aggravated Assault, 18 Pa.C.S.A. § 2702(a)(1); Criminal Attempt - Kidnapping to facilitate a felony, 18 Pa.C.S.A. §§ 901(a), 2901(a)(2); Criminal Attempt - Kidnapping to inflict injury of terror, 18 Pa.C.S.A. §§ 901(a), 2901(a)(3); Robbery by threat of immediate serious injury in violation of 18 Pa.C.S.A. § 3701(a)(iii); Criminal Attempt - Aggravated Indecent Assault by Forcible Compulsion, 18 Pa.C.S.A. §§ 901(a), 2901(a)(2); Theft by Unlawful Taking, 18 Pa.C.S.A. § 3921(a); Simple Assault, 18 Pa.C.S.A. § 2701(a)(1); Recklessly Endangering Another Person, (REAP), 18 Pa.C.S.A. § 2705; Indecent Assault by Forcible Compulsion, 18 Pa.C.S.A. § 3126(a); and Harrassment, 18 Pa.C.S.A. § 2709(a)(1).

On August 28, 2013, Mr. Hannold appeared in Court represented by his Trial Counsel, Mr. Lackatos. Mr. Hannold entered a negotiated guilty plea to

Aggravated Assault, Robbery, REAP, and Indecent Assault. In exchange for the guilty plea, the Commonwealth *nolle prossed* the remaining charges. Additionally, the trial Court ordered Mr. Hannold to have an Sexual Offenders Board, (S.O.A.B.) assessment.

On or about December 11, 2013, Mr. Hannold was arrested and charged at Aggravated Assault, 18 Pa.C.S.A. § 2702(a)(1); Simple Assault, 18 Pa.C.S.A. § 2701(a)(1); REAP, 18 Pa.C.S.A. § 2705; Failure to Stop and Give Information or Render Aid, 75 Pa.C.S.A. § 3736(a); and two counts of Failure to Notify Police of Accident, Injury or Death, 75 Pa.C.S.A. § 3746(a)(1).

On June 18, 2014, Mr. Hannold entered a negotiated guilty at information: CP-16-CR-0000041-2014 to Aggravated Assault. In exchange for the plea, the Commonwealth *nolle prossed* the remaining charges on the complaint. That same day, the trial court imposed sentence on both cases. At information number: CP-16-CR-0000170-2013, Mr. Hannold was sentenced at the Aggravated Assault to an aggregate sentence of sixteen and one half (16 ½) to thirty-three (33) years. At information number: CP-16-CR-00000041-2014, the Honorable James G. Arner imposed a sentence of twenty-five (25) to fifty (50) years.

Mr. Hannold filed a Direct Appeal with the Superior Court of Pennsylvania Western District on February 5, 2016. The Superior Court upon review affirmed the appeal. The P.C.R.A. Court entered an opinion on December 12, 2017 denying the P.C.R.A. Petition filed in the matter at No(s): **CP-16-CR-0000170-2013**; and **CP-16-CR-0000041-2014**. Mr. Hannold filed an appeal of the P.C.R.A. Order with the Superior Court of Pennsylvania Western District on Collateral Review which was affirmed on August 7, 2018. Mr. Hannold filed a Petition for Allowance of Appeal in the Supreme Court of Pennsylvania Western District. The Allocative Petition was denied on February 26, 2019. Petition for Writ of Habeas Corpus was filed in the United States District Court of the Western District of Pennsylvania at No(s): **2:19 cv-744-NR-LPL** at which was denied in an Order adopting Report and Recommendation on April 19, 2022.

Mr. Hannold filed a Certificate of Appealability with the U.S. Court of Appeals of the Third Circuit which was subsequently denied in a Per Curiam Order. Mr. Hannold then filed a Petition for ReArgument on the Certificate of Appealability to the U.S. Court of Appeals of the Third Circuit which was denied in a Per Curiam Order giving rise to the instant Petition for Writ of Certiorari.

OPINIONS BELOW

Initial Information entered on June 18, 2014 in the Court of Common Pleas of Clarion County Criminal Division at No(s): **CP-16-CR-0000170-2013**; and **CP-16-CR-0000041-2014**. Unpublished Memorandum of the Superior Court of Pennsylvania Western District in direct review on February 5, 2016 at **141 A.3d 588** encompassing No(s): **1088 WDA 2014** and **1089 WDA 2014**.

The P.C.R.A. Court opinion entered on December 12, 2017 in the matter at No(s): **CP-16-CR-0000170-2013**; and **CP-16-CR-0000041-2014**. Unpublished Memorandum of the Superior Court of Pennsylvania Western District on Collateral Review on August 7, 2018 in the matter at No(s): **195 A.3d 980**. Allocatur in the Supreme Court of Pennsylvania Western District denied on February 26, 2019. Petition for Writ of Habeas Corpus Magistrate Lisa Pupo Lenihan Report and Recommendation on July 20, 2021, at No(s): **2:19 cv-744-NR-LPL** at **2021 U.S. Dist LEXIS 256984**. Order adopting Report and Recommendation on April 19, 2022 at No(s): **2:19 cv-744-NR-LPL** at **2022 U.S. Dist. LEXIS 71304**.

U.S. Court of Appeals of the Third Circuit Certificate of Appealability unpublished. U.S. Court of Appeals of the Third Circuit Certificate of Appealability ReArgument unpublished.

CONCISE STATEMENT OF JURISDICTION

The jurisdiction of this Honorable Court applies to Mr. Hannold's instant appeal based on the Constitutional jurisdiction granted to the United States Supreme Court by the founding fathers in Article III § 2 of the United States Constitution which states in relevant part:

"The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

In the *sub judice*, this Honorable Court retains appellate jurisdiction upon the collateral review challenge to the United States Court of Appeals of the Third Circuit failure to consider the mental health aspects of Mr. Hannold's diagnoses along with the absence of Mr. Hannold's father and the egregious breach of duty from Attorney Lopresti had on Mr. Hannold's ability to file a timely 28 U.S.C. §

2254 petition which culminated in unreasonable application of the equitable tolling doctrine which violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

LEGAL ARGUMENT

Ground I. Did the U.S. Court of Appeals of the Third Circuit fail to consider the effect the combination of the relevant attributes of Mr. Hannold's diagnoses of *Impulse Control Disorder*, *Conduct Disorder* and *Antisocial Personality Disorder* along with the absence of Mr. Hannold's acting "custodian," his father, and the egregious breach of duty from Attorney Lopresti had on Mr. Hannold's ability to file a timely 28 U.S.C. § 2254 petition which culminated in an unreasonable application of the equitable tolling doctrine thereby denying Due Process of Law as a matter of first impression?

It is well understood that this Honorable Court "has held that AEDPA's limitations period 'is subject to equitable tolling in appropriate cases."¹ A petitioner is entitled to equitable tolling only if he shows both that: (1) he has been pursuing his rights diligently, and (2) some extraordinary circumstance stood in his way and prevented timely filing.² "This conjunctive standard requires showing both elements before we will permit tolling."³ It has been determined that "[t]here are no bright lines in determining whether equitable tolling is warranted in a given case."⁴ Nevertheless, "courts must be sparing in their use of equitable tolling,"⁵ and should do so "only when the principles of equity would make the right application of a limitation period unfair."⁶

¹ Holland v. Florida, 560 U.S. 631, 645 (2010).

² Id at 645; (*Accord also Wallace v. Mahanoy*, 2 F.4th 133, 143-44 (3rd Cir. 2021); *Ross v. Varano*, 712 F.3d 784, 798-804 (3rd Cir. 2013)).

³ Sistrunk v. Rozum, 674 F.3d 181, 190 (3rd Cir. 2012).

⁴ Pabon v. Mahanoy, 654 F.3d 385, 399 (3rd Cir. 2011).

⁵ Seitzinger v. Reading Hosp. & Medical Ctr., 165 F.3d 236, 239 (3rd Cir. 1999).

⁶ Miller v. New Jersey State Dept. of Corr., 145 F.3d 616, 618 (3rd Cir. 1998).

This concept has been strictly adhered to since its inception, and it has further been determined that "mental incapacity alone is not sufficient to justify equitable tolling."⁷ It has been a custom of the federal courts to apply equitable tolling extremely narrowly, "[i]n fact, the United States Court of Appeals for the Third Circuit has held that equitable tolling is proper "only in the rare situation where [it] is demanded by sound legal principles as well as the interests of justice."⁸

This principle is weakened by the fact that "[a Court] should not reject an application as untimely if the habeas petition could be rescued by equitable tolling."⁹ "[S]tatutory or equitable tolling may save a petition. Tolling decisions are often hard and fact bound, best left to district courts in the first instance."¹⁰ "[A Court] should not deny leave on timeliness unless there is no basis for further factual development and there is no potential basis for tolling."¹¹

Within Nara,¹² the court alludes to the fact that the actions of an attorney

⁷ Lake v. Arnold, 232 F.3d 360, 371 (3rd Cir. 2000).

⁸ United States v. Midgley, 142 F.3d 174, 179 (3rd Cir. 1998).

⁹ In re: Rosado, 7 F.4th 152 (3rd Cir. 2021).

¹⁰ In Re: Campbell, 750 F.3d 523, 533-34 (5th Cir. 2014); (*Accord also In re Jackson*, 826 F.3d 1343, 1348-49 (11th Cir. 2016)).

¹¹ Rosado, 7 F.4th at 154.

¹² Nara v. Frank, 264 F.3d 310 (3rd Cir. 2001).

who failed to inform him when the Pennsylvania Supreme Court denied review of his Petition for Allowance of Appeal, (Allocatur), are serious accusations when his attorney led him to believe that she was going to file the federal habeas petition on his behalf; and that his attorney told him that there were no time constraints for filing a petition.¹³

Here, with the tenet that Mr. Hannold must show more than just mental incapacity, Mr. Hannold's request for equitable tolling is based upon a cumulative set of facts along with errors that led to Mr. Hannold's delayed filing of his Petition for Writ of Habeas Corpus. Mr. Hannold had a set of extraordinary circumstances beyond his control leading up to the tardy filing of his Petition for Writ of Habeas Corpus. These events culminate into a suitable and viable reason for equitable tolling of his Petition for Writ of Habeas Corpus.

Specifically, Mr. Hannold had been diagnosed by Dr. Allan D. Pass, Ph.D. from the National Behavioral Science Consultants of *Antisocial Personality Disorder*, ICD-9-CM¹⁴ 301.7, ICD-10-CM¹⁵ F60.2; and *Impulse Control*

¹³ Nara, 264 F.3d at 320.

¹⁴ The World Health Organization, (WHO), utilizes the International Classification of Diseases, (ICD) codes to classify all diseases and disorders; Specifically ICD-9-CM codes are utilized through September 30, 2014.

¹⁵ ICD-10-CM codes are utilized starting October 1, 2014.

Disorder, Conduct Disorder, ICD-9-CM 312.89, ICD-10-CM F91.9.

The **DSM-5**¹⁶ defines *Antisocial Personality Disorder* as:

"a pervasive pattern of disregard for and violation of the rights of others, occurring since age [fifteen] [(15)] years, as indicated by three [(3)] or more of the following:

1. Failure to conform to social norms with respect to lawful behaviors, as indicated by repeatedly performing acts are grounds for arrest.
2. Deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure.
3. Impulsivity or failure to plan ahead.
4. Irritability and aggressiveness, as indicated by repeated physical fights or assaults.
5. Reckless disregard for safety of self or others.
6. Consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations.
7. Lack of remorse, as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another."¹⁷

The **DSM-5** defines *Impulse Control Disorder, Conduct Disorder* as:

"A repetitive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms or rules are violated, as manifested by the presence of at least three [(3)] of the following [fifteen] [(15)] criteria in the past [twelve] [(12)] months from any of the categories below, with at least one criterion present in the past [six] months:

Aggression to People and Animals:

1. Often bullies, threatens, or intimidates others.

¹⁶ **The Diagnostic and Statistical Manual of Mental Disorders, (5th Ed., 2013).**

¹⁷ **DSM-5, at 659.**

2. Often initiates physical fights.
3. Has used a weapon that can cause serious physical harm to others, (e.g. bat, brick, broken bottle, knife, gun).
4. Has been physically cruel to people.
5. Has been physically cruel to animals.
6. Has stolen while confronting a victim, (e.g. mugging, purse snatching, extortion, armed robbery).
7. Has forced someone into sexual activity.

Destruction of Property:

8. Has deliberately engaged in fire setting with the intention of causing serious damage.
9. Has deliberately destroyed others' property, (other than fire setting).

Deceitfulness or Theft:

10. Has broken into someone else's house, building or car.
11. Often lies to obtain goods or favors or to obligations, (e.g. 'cons' others).
12. Has stolen items of non-trivial value without confronting a victim, (e.g. shoplifting, but without breaking and entering; forgery).

Serious Violation of Rules:

13. Often stays out at night despite parental prohibitions, beginning before age [thirteen] [(13)] years.
14. Has run away from home overnight at least twice while living in the parental or parental surrogate home, or once without returning for a lengthy period.
15. Is often truant from school, beginning before age [thirteen] [(13)] years."¹⁸

With both diagnoses, Mr. Hannold was compelled to rely upon his

¹⁸ DSM-5, at 469.

father, John Hannold, (Mr. J. Hannold), as his custodian,²⁰ who assists Mr. Hannold not only with the everyday menial tasks, but also with the more serious and arduous requirements of life. Mr. Hannold requires this assistance because, as per these diagnoses, he is extremely impulsive, fails to plan ahead, cannot sustain consistent work behavior or honor financial obligations and has pervasive issue handling matters of significant importance. *Ergo*, Mr. Hannold relies upon Mr. J. Hannold to complete these tasks.

In the matter *sub judice*, Mr. J. Hannold was acting in the capacity of "caretaker" in respect to Mr. Hannold's dealings with Charles R. Lopresti, Esq., (Mr. Lopresti), throughout the appellate process of Mr. Hannold's criminal proceedings. Poignant to the matter at hand, when the Supreme Court of Pennsylvania issued the denial of Allocatur on February 26, 2019, Mr. Lopresti neither bothered to call Mr. Hannold or Mr. J. Hannold nor tried to contact either through mailings, instead, Mr. Lopresti sent only one (1) email notification to Mr. J. Hannold.

²⁰ **Balentine's Law Dictionary** defines "a custodian" as: "A person whose duty it is to watch, guard, and account for that which is committed to his custody."

Mr. J. Hannold underwent a double-lung transplant at the Cleveland Clinic, located in Cleveland, Ohio, several hours away from his home in Clarion County, Pennsylvania. The procedure was scheduled for March 10, 2019, and as a part of that procedure, he was required to be within one (1) hour drive from the Clinic immediately preceding his determined place in queue. Prior to the procedure, Mr. J. Hannold was admitted to the Transplant House upon the notification of the impending arrival of the required organs. While at the Transplant House, access to outside resources were extremely limited, including access to internet or other communications.²¹ Mr. J. Hannold remained within the Transplant House until his discharge on April 29, 2019, and he continued to receive aftercare at the Cleveland Clinic until sometime in mid-May. This timeframe prevented Mr. J. Hannold from receiving, forwarding, and informing Mr. Hannold of the contents therein until June 6, 2019, when he regained access to his email account. At that time, he checked his email and promptly informed Mr. Hannold of the information sent by Mr. Lopresti. Upon learning of the denial, Mr. Hannold, through despiration, the assistance of a Legal Reference Aide²² at the State Correctional Institution

²¹ Mr. J. Hannold's email is through an independent Internet Service Provider, (I.S.P.), who utilizes a Simple Mail Transfer Protocol, (S.M.T.P.), server which distributes his email to a single computer through Outlook Express. As such, this email would have been impossible to access through remote means, such as a cellular phone or otherwise.

²² DC-ADM 007 § 2(A) - (Inmate Access to Legal Services), (A Legal Reference Aide is responsible for assisting inmates assigned to their caseload prepare legal documents, including grievances, etc. throughout the legal process for those who qualify.)(*Accord also Wisniewski v. Fisher, 857 F.3d 152, 156-57 (3rd Cir. 2017)*).

(S.C.I.) at Rockview Law Library to assist in the filing of the Petition for Writ of Habeas Corpus and accompanying Memorandum of Law submitted therein.

Mr. Lopresti had a legal duty to Mr. Hannold that encompassed the requirements of keeping his client informed. Specifically, within the Pennsylvania Rules of Professional Conduct Rule (Pa.R.C.P.), Rule 1.4 it states in relevant part:

"Rule 1.4. Communication

(a) A lawyer shall:

- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information;
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."²³

Mr. Lopresti carelessly and callously disregarded one of the most basic duties a lawyer has to a client, by failing to convey the Pennsylvania Supreme Court's denial of Allocatur thereby laying the groundwork for an untimely 28 U.S.C. § 2254 filing. Even Mr. Lopresti's notification of the denial to Mr. J.

Hannold does not satisfy this duty or requirement as Mr. Hannold, not Mr. J. Hannold is the client. Mr. Lopresti's deriliction of duty is further illustrated by the lack of knowledge shown and misleading information given during the final phone conversation between Mr. Lopresti and Mr. Hannold where he advised Mr. Hannold that he should "immediately file a Petition with the Federal Court requesting *Nunc Pro Tunc* reinstatement of his appellate rights." The concept of this has already been explored within decisional law and denied by district courts.²⁴

"Under AEDPA²⁵, Congress prescribed a one-year period of limitation for the filing of federal habeas corpus petitions by state prisoners,"²⁶ there are only three (3) enumerated exceptions to this found within 28 U.S.C. § 2244(d)(1) and Mr. Hannold could not satisfy any of those, yet the situation outlined *supra*, constitute the extraordinary circumstances which would warrant equitable tolling.

²³ U.S. v. The Schooner Winspirit, 161 F.R.D. 321, 323 (1995)"[I]t is the duty of counsel to check their boxes sufficiently often to ensure that they receive timely notice of... orders... In this era of instant communication via telephone, facsimile, and electronic mail, there is no excuse [for the inaction of counsel causing] the untimely filing of [28 U.S.C. § 2254 Petitions].").

²⁴ Accord Nosay v. Florida, 2021 U.S. Dist. LEXIS 83259 (FL. ND 2021).

²⁵ Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

²⁶ Stone v. Author, 2017 U.S. Dist. LEXIS 11782 (N.J. 2017).

CONCLUSION

Impulsivity is, by nature, the antithesis of responsibility, Mr. Hannold suffers from not one (1) mental health condition with an impulsivity component, but two (2) of them. What would be considered "reasonable diligence" for someone not suffering from such afflictions cannot possibly be the same to one who is predisposed to knee-jerk reactions to events. Yet, despite the quagmire created by his afflictions, the stress and feeling of powerlessness he suffered as a result of being incarcerated while his father endured an extreme medical event, the absence of his father's assistance and the egregious deriliction of duty on the part of Mr. Lopresti; Mr. Hannold had immediately secured the assistance of a Rockview Legal Reference Aide upon being informed of the Pennsylvania Supreme Court's denial of Allocatur and assembled a 28 U.S.C. § 2254 petition which was filed within twelve (12) days of the notification from his father. This fact clearly indicates that had Mr. Lopresti properly notified his client as was his duty, there is no doubt that Mr. Hannold's 28 U.S.C. § 2254 petition would have been timely.

WHEREFORE, for the foregoing reasons, Mr. Ethan Andrew Hannold, Petitioner in the above captioned matter hereby prays this Honorable Court **VACATE** the Order Adopting Report & Recommendation of Magistrate Judge

Lisa Pupo Lenihan by the Honorable J. Nicholas Ranjan, **REMAND** to the District Court for proper adjudication of Mr. Hannold's originally filed Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, and/or any other applicable remedy this Honorable Court deems prudently appropriate.

Respectfully Submitted,

Date: 11/15, 2023


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