

23-7064

No. 24-

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

OMAR S. FOLK

Petitioner,

v.

WARDEN ALLENWOOD FCI

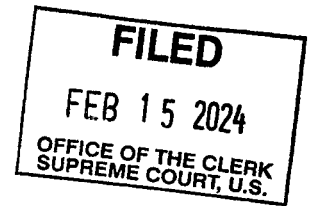
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR WRIT CERTIORARI

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## QUESTION PRESENTED

1. Whether Lower Court Misapplied Inadequate or Ineffective for purposes of § 2255 only when a Petitioner (1) Makes A Claim of Actual Innocence and (2) Has not had an Unobstructed Procedural Shot At Presenting That Claim. A Petitioner "must satisfy both of those requirements" to get through § 2255's: "Escape Hatch" and be allowed to file a § 2241 Petition in custodial court. As Direct Cert. Denial Had Not Been Sent By Disposition Under Supreme Court Rule 16.

## PARTIES TO PROCEEDING

The parties to the proceeding in the Court whose judgment is sought to be **reviewed** are as follow:

1. Omar S. Folk

2. Wardah Allenwood FCI

## RELATED CASES

Jones v. Hendrix, 143 S.Ct. at 1866(2023)

Allen v. Ives, 950 F.3d 1184,188(9th Cir. 2020)

Muth v. Fondren, 676 F.3d 815,819(9th Cir. 2012)

Marquez-Huazo v. Warden FCI-Herlong, No. 22-15787, 2023 WL 2203560, at \*1(9th Cir. Feb. 24, 2023)

Hogsett v. Lillard, 72 F.4th 819; 2023 U.S. App. Lexis 17127 No. 22-2182 7th Cir. July 7, 2023)

Ocampo v. Hemingway, Warden, 2023 U.S. App. Lexis 30225 No. 22-1994 6th Cir. Nov. 13, 2023)

Voneida v. Johnson, U.S. Probation Officer, 2023 U.S. App. Lexis 32353 No. 22-1264 3d Cir. Dec. 7, 2023)

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IN THE

SUPREME COURT OF THE UNITED STATES

FEB. TERM, 2024

OMAR S. FOLK

Petitioner,

v.

WARDEN ALLENWOOD FCI,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Omar S. Folk respectfully petitions for a writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

DECISION BELOW

The United States Court of Appeals for the Third Circuit affirmed Petitioner's District Court Denial MD PA Doc. 26 On Nov. 28, 2023. Petitioner's Appendix("Pet. Appx. A").

JURISDICTION

The United States District Court For the Middle of Pennsylvania (MD. PA. Civ. No. 3:22-cv-00591) exercised jurisdiction over the federal civil case pursuant to 18 U.S.C. § 3231. The Third Circuit of Appeals (No. 23-2527) had jurisdiction pursuant to 28 U.S.C. § 1291 and § 3742(a). The United States Court of Appeals for the Third Circuit entered judgment on Nov. 28, 2023 Pet. Appx. A. This Court has Jurisdiction pursuant to 28 U.S.C. § 1254(1).



## RELEVANT STATUTORY PROVISIONS

The Sixth Amendment to the Constitution of the United States provides:

In all criminal prosecutions, the accused shall enjoy the right impartial jury of the State and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

## STATEMENT OF THE CASE

### A. Background

On or about Aug. 7, 2023, Folk dismiss petition by the Court MDPA Doc. 26. See(Exhibit A).

### B. Appeal

On Nov. 28, 2023, a panel of the United States Court of Appeals For the Third Cicuit(Jordan, Porter, and Phipps,J.). issued a opinion affirming district court ruling by Circuit judge's Per Curiam. Pet. Appx. A.

## REASON FOR GRANTING THE WRIT

Petitioner's follow in his reason why it has been long time coming when directing the Supreme Court back to MDPA Doc. 26 decision. See(Exhibit A).

### QUESTION PRESENTED I.

Whether Lower Court Misapplied Inadequate or Ineffective for purposes of § 2255 only  
(1) Makes A Claim of Actual Innocence and  
(2) Has not had an Unobstructed Procedural Shot At Presenting That Claim. A Petitioner "must satisfy both of those requirements" to get through § 2255's "Escape Hatch" and be allowed to file a § 2241 Petition in custodial court. As Direct Cert. Denial Had Not Been Sent By Disposition Under Supreme Court 16.

Petitioner direction today is long time struggle with up and down trying to get his point across. That reflect back to his Direct Appeal final judgment in this court back in Oct. 5, 2015. See(Exhibit A). Upon this reason Petitioner rely on the recent Supreme Court decision Jones v. Hendrix, 143 S.Ct. at 1866(2023)(The "sole purpose" of this innovation, as this Court acknowledged a few years later, "was to minimize the difficulties encountered in habeas corpus hearings by affording the same rights in another and more convenient forum." United States v. Hayman, 342 U.S. 205, 219, 72 S.Ct. 263, 96 L.Ed. 232(1952); See also Davis v. United States, 417 U.S. 333, 343, 94 S.Ct. 2298, 41 L.Ed. 2d 109(1974) ("[Section] 2255 was intended to afford federal prisoners a remedy identical in scope to federal habeas corpus"); accord, United States v. Addonizio, 442 U.S. 178, 185, 99 S.Ct. 2235, 60 L.Ed. 2d 805(1979); Hill v. United States, 368 U.S. 424, 427, 82 S.Ct. 468, 7 L.Ed. 2d 417(1962). Petitioner direction today follows under "Escape hatch" theory as (1) makes a claim of actual innocence, and (2) has not had an unobstructed procedural shot at presenting that

claim. Allen v. Ives, 950 F.3d 1184, 1188(9th Cir. 2020). A Petitioner "must satisfy both of those requirements" to get through § 2255's "escape hatch" and be allowed to file a § 2241 petition in the custodial court. Muth v. Fondren, 676 F.3d 815, 819(9th Cir. 2012); accord Marquez-Huazo v. Warden FCI-Herlong, No. 22-15787, 2023 U.S. App. Lexis 4467, 2023 WL 2203560, at \*1(9th Cir. Feb. 24, 2023).

Furthermore Petitioner contentions are very clear and mark back at his recent Cert. petition No. 23-6639 place on docket Feb. 1, 2024. Then government hereby waive its right to file a response to the petition on Feb. 9, 2024 by Elizabeth B. Prelogar Solicitor General. See(Folk v. Warden Allenwood FCI, 2023 U.S. App. Lexis 31385 No. 23-2527 3d Cir. Nov. 28, 2023); See(US v. Folk, No. 23-4042(3d Cir. Oct. 18, 2023); See(US v. Folk, 954 F.3d 597, 601, 609-10(3d Cir. 2020); See(US v. Folk, 2023 U.S. Dist. Lexis 86004(M.D. PA. May 16, 2023).

Now under these ruling Petitioner claims were not address in one year toll upon the MDPA Doc. 139 at 3 Filed 6-5-16 by Federal Public Defender who belief Petitioner direct appeal was final 9/17/14 instead of 10/5/15 after Supreme Court denied the writ of certiorari. See(Folk v. United States, 136 S.Ct. 161; No. 14-10453(Oct. 5, 2015). This clear led to Petitioner filing a petition for 60(b)(1) or alter An Amend under 59(e) MDPA Doc. 180 at 1-11 to correct previous ruling in MDPA Doc. 177 that further led to Honorable Judge Jones III addressing claims on the merit in MDPA Doc. 192 at 7-22. Thereafter Petitioner filed notice of appeal that further led to wrong standard of law in precedent ruling. See(US v. Folk, 954 F.3d 597, 601(3d Cir. Apr. 3, 2020). As the court failed to rely on final disposition by Supreme Court Clerk Rule 16. That has now led to Petitioner actual innocence and cause him to suffer

unobstructed procedural shot at presenting his claim. Therefore Petitioner has met the "Escape Hatch" to have this petition reverse back to Third Circuit Court of Appeals Judge's. See(Jones, 143 S.Ct. at 1866(2023). During this ruling there has been challenges by other circuit's court. See(Hogsett v. Lillard, 72 F.4th 819; 2023 U.S. App. Lexis 17127 No. 22-2182 7th Cir. July 7, 2023); See(Ocampo v. Hemingway, Warden, 2023 U.S. App. Lexis 30225 No. 22-1994 6th Cir. Nov. 13, 2023); Voneida v. Johnson, U.S. Probation Officer, 2023 U.S. App. Lexis 32353 No. 22-1264 3d Cir. Dec. 7, 2023). Additionally, Petitioner do point to unusual circumstance that constitutes a procedural obstruction in presenting his claim during his initial original Direct Appeal and § 2255 pleading motions. CF. Jones, 216 L.Ed. 2d 471, 2023 WL 4110233, at \*6(giving examples including the dissolution of the sentencing court). Accordingly, Petitioner do qualify under § 2255's escape hatch clause.

Wherefore the Court should Grant Reverse and Remand or Grant Writ of Certiorari under Escape Hatch theory as Petitioner Final Disposition on Direct Appeal was not filed under Supreme Court Rule 16 that cause Obstructed Procedural Shot At Presenting his claims.

#### CONCLUSION

Based on the foregoing, Petitioner Omar S. Folk respectfully request this Court to issue a writ of certiorari to the United States of Appeals For the Third Circuit. See(Folk v. Warden Allenwood FCI, 2023 U.S. App. Lexis 31385 No. 23-2527 3d Cir. Nov. 28, 2023).

Date: Feb. 15, 2024

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Omar S. Folk', is written over a horizontal line.

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