

24-5922

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

OCT 29 2024

OFFICE OF THE CLERK

Christopher Gabriel Allen-Shinn — PETITIONER  
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Gabriel Allen-Shinn  
(Your Name)

41480-509 FCI Texarkana, P.O. Box 7000  
(Address)

Texarkana, Texas 75505  
(City, State, Zip Code)

(Phone Number)

## **QUESTION(S) PRESENTED**

Whether the seven-factor test for withdrawing a guilty plea mandated in United States v. Carr, 740 F.2d 339, 343-44 (5th Cir. 1984) complies with this Court's holding in Kercheval v. United States, 274 U.S. 220, 224, 47 S.Ct. 582 583, 71 L.Ed. 1009, 1012 (1927)?

## **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**

There are no related cases to this action.

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### OTHER

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**

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

The opinion of the United States court of appeals 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[ ] is unpublished.

The opinion of the United States district 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[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ 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[ ] is unpublished.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[ ] is unpublished.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 August 2, 2024.

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: \_\_\_\_\_, 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. § 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**

### **Amendment 5**

Criminal actions - Provisions concerning - Due process of law and just compensation clause.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **Amendment 6**

Right of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an 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 witnesses 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

The following statements were taken from the opening brief of the Appellant in Appeal No. 23-30841.

Appellant Christopher Allen-Shinn, a United States Marine Corps veteran and civilian government employee living on Barksdale Air Force Base, pled guilty to receiving child pornography and was sentenced to serve 210 months imprisonment. Prior to his sentencing, however, Allen-Shinn repeatedly complained to the district court judge, in pro se letters, about his retained counsel's failure to adequately represent Allen-Shinn's interest, namely in failing to seek suppression of the evidence found during the warrantless search of Allen-Shinn's residence on Barksdale and failing to suppress Allen-Shinn's confession to investigators. In the end, the district court did not consider or rule on Allen-Shinn's suppression claims and did not allow him to withdraw his guilty plea. That decision by the district court is the subject of this petition.

### I. The investigation, original criminal complaint, and indictment

Allen-Shinn was originally charged via criminal complaint, on April 22, 2021, with possession of child pornography in violation of 18 U.S.C. § 2252(a)(5)(B). ROA.20.<sup>1</sup> The affidavit in support of the complaint detailed the

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1. Although Mr. Allen-Shinn requested a copy of his casefile, including the Record on Appeal from his attorney, the documents were not provided to him. References to the Record on Appeal, therefore, are cited as "ROA.#" and will reflect the page number assigned on appeal.

investigation, which began when investigators received reports from the National Center for Missing and Exploited Children (NCMEC) that a Dropbox<sup>2</sup> account was being used to upload and store thirty seven (per original indictment/statement of facts) images of child pornography. Investigators determined that the Dropbox account belonged to Allen-Shinn and connected an internet protocol (IP) address that was registered to Allen-Shinn's wife Amelia Barrett Knight with services at Allen-Shinn's residence on Barksdale Air Force Base. ROA.688-89.

The affidavit further provided that Allen-Shinn was interviewed and made post-Miranda statements admitting to paying a user on Tumblr<sup>3</sup> for access to child pornography and paying two 15 year old females he met on Tumblr for sexually explicit images and videos. ROA.689. A subsequent warrant to Dropbox resulted in discovery of images of child pornography on the Dropbox account. ROA.690.

Allen-Shinn, who was 41 years old at the time of his arrest, is an Eagle Scout and decorated veteran of the United States Marine Corps (USMC). ROA.758. Since receiving an honorable discharge from the USMC on August 1, 2002, Allen-Shinn worked for over a decade as a civil servant historian<sup>4</sup> for various government agencies and was employed as an aerospace historian civil servant for

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2. Dropbox is a cloud-based storage service, which enables users to remotely store files via the internet. ROA.688.

3. Tumblr is a social networking website which allows users to post multimedia and other content to a short form blog. ROA.689.

4. Historians research and document the past, focusing on military conflicts and their effects. Historians in the Military may teach, write books, serve in military history detachments, or act as advisors. They research, analyze, record, and interpret the past as recorded in a myriad of sources.

the United States Air Force at Barksdale Air Force Base at the time of his arrest. ROA.680-81. Allen-Shinn had never been arrested and had no previous criminal history. ROA.676-77.

Allen-Shinn retained private counsel, Eric G. Johnson and Verity Gentry, to represent him throughout the district court proceedings. Despite his lack of a criminal record and decorated past, Allen-Shinn, through counsel, waived his right to a preliminary hearing and detention hearing. ROA.28-29. Magistrate Judge Mark Hornsby refused to consider bail/pre-trial release "due to the seriousness of the charge." On May 12, 2021, Allen-Shinn was charged in an indictment with one count of possession of child pornography in violation of 18 U.S.C. § 2252A(a)(5)(b), the same charge that was in the criminal complaint. ROA.33.

## II. The first plea hearing - December 7, 2021

On December 7, 2021, Allen-Shinn appeared before the district court to enter a plea to a bill of information charging one count of receipt of child pornography in violation of 18 U.S.C. § 2252(a)(2). ROA.55. The charge in the bill of information was a more serious charge than the charge in the original complaint and indictment, because this was the "middle ground" between possession and manufacturing (threatened by the Government).<sup>5</sup>

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5. Receipt of child pornography under 18 U.S.C. § 2252(a)(2) contains a statutory penalty of five to twenty years, whereas possession of child pornography under 18 U.S.C. § 2252A(a)(5)(B) contains a statutory penalty of zero to twenty years. Additionally, the base offense level for possession is 18 under U.S.S.G. § 2G2.2(a)(1) whereas the base offense level for receipt is 22 under § 2G2.2(a)(2).

In response to the court's questioning, counsel for the government and counsel for Allen-Shinn explained that the charge in the bill of information was more serious than the indicted charge but less serious than the charge of production of child pornography which would carry a minimum penalty of 15 years. ROA.173-74. The government indicated that the plea to the bill of information avoided a superseding indictment with the more serious production of child pornography charge. ROA.174-75, 195-96. Under questioning by the court, Allen-Shinn agreed that he "fully discussed" with his attorneys the charges in the bill of information. ROA.176. He indicated that he did not have any questions about the charges. ROA.177. When asked if he was satisfied with his retained counsel, Allen-Shinn replied, "Yes, ma'am." ROA.191. The court accepted Allen-Shinn's plea. ROA.210.

### III. Allen-Shinn's first complaint about his attorneys and the February 17, 2022 hearing to address those complaints

Unbeknownst to the court during the December 7, 2021 plea hearing, Allen-Shinn had sent a pro se letter addressed to the district judge two days prior on December 5, 2021, in which he lodged numerous complaints about his retained attorneys. ROA.701-04. Allen-Shinn complained that his attorneys did not move to secure his Pretrial release despite his lack of criminal history and previous evidence of good character and failed to file various motions including a motion to suppress the warrantless search of his residence based on the verbal authority of the base commander and his statements made to investigators. ROA.702. Allen-Shinn concluded the letter by telling the judge that he felt compelled to write the letter because his attorneys had let him down. ROA.704.

On February 17, 2022, the court held a hearing on Allen-Shinn's pro se letter. ROA.74. The court addressed Allen-Shinn who told the court that he was feeling a deep sense of dissatisfaction and frustration when he wrote the letter and honestly felt all of the things he wrote in the letter. ROA.220. Allen-Shinn further explained that after writing the letter but before the plea hearing his attorneys convinced him to move forward with the plea by explaining that it was in his best interest. ROA.221. Then the following exchange occurred:

The Court: Did you believe it was in your best interest to go forward?

The Defendant: That is the legal advice I have been given, so that is the legal advice I followed.

The Court: All right. Mr. Shinn, that is not the question. Mr. Allen-Shinn, do -- did you believe that it was in your best interest to go forward with the guilty plea?

The Defendant: Ma 'am I was deeply conflicted, but I followed the advice I was given, so that is where I stand.

ROA.221.

Upon further examination by the court, Allen-Shinn again expressed concern that the search and seizure was not addressed by his attorneys or the court saying that "that is the thing that I still fell very unclear on myself is why that was not addressed. But I don't know how to address it at this point where we stand today." ROA.222. The court responded that Allen-Shinn could

"undo that guilty plea and we'll just set the matter for trial and you can go to trial." ROA.222. Allen-Shinn responded that "I have been advised that is not in my best interest so I don't think I should do that." ROA.222.

In conclusion, the court asked Mr. Allen-Shinn, "Is it your decision, your decision without any coercion from anyone to persist in the guilty plea?" ROA.222. Allen-Shinn first responded "Yes, ma'am" then asked to speak with his attorneys. ROA.222-23

Allen-Shinn then confirmed that he was making the decision to continue with his guilty plea. ROA.223-24. He also confirmed that he was satisfied with his attorney's representation of him and that they had addressed the concerns he raised in the letter. ROA.227. The court concluded the hearing by informing Allen-Shinn that:

The Court: All right. And you -- to be clear, you understand that you had the right today to simply say that you did not want to go forward with your guilty plea but wanted to go to trial on this matter and you understood that?

The Defendant: I fully understand, Your Honor.

ROA.238.

#### IV. Allen-Shinn's second complaint about his attorneys

After the second plea hearing, a preliminary presentence report was issued

(PSR). ROA.461. For reasons not relevant to this appeal, the PSR was amended nine times. ROA.485, 509, 535, 561.

On August 20, 2023, prior to sentencing, Allen-Shinn wrote another pro se letter to the district court judge. ROA.120-29. The letter was received by the court and filed into the record on August 24, 2023. ROA.120.

In this letter, Allen-Shinn argued again inter alia on the failure of his attorneys to move to suppress evidence seized from his residence at Barksdale Air Force Base because the search was unconstitutional. He argued that there was no search warrant and the Air Force officials who granted verbal consent to search his residence lack authority to do so since Allen-Shinn was a civilian and not a member of the Air Force. ROA.120-21. In addition to arguing that the Air Force officials lacked authority to authorized a search of Allen-Shinn's personal residence, he disputed that verbal consent was properly given by the officials given Allen-Shinn's close relationship with those officials. ROA.121-22. He questioned the fact the documentation of the supposed verbal consent was dated two days after the actual search. ROA.123.

He argued that counsel's refusal to raise his concerns violated his right to mount a legal defense and violated his Sixth Amendment right to counsel. ROA.126. Allen-Shinn concluded:

I respectfully request that the Court give careful consideration to the very important concerns that I have raised in this letter. Although it is not formatted as a formal motion, I hope that the Court will agree that the concerns communicated in this letter are

far too significant to ignore.

ROA.127-28.

The court ordered both parties to respond to Allen-Shinn's letter. ROA.130.

The government responded that the search of Allen-Shinn's residence was lawful under Military Rules of Evidence 314-316 which allows a base commander, upon a showing of probable cause, to grant oral or written authority to search a residence on a military base for evidence related to a crime. ROA.751. The government asserted that both oral and written authority were granted by the base commander for the search of Allen-Shinn's residence. ROA.751. The government also asserted that Allen-Shinn's decision to plea was not based upon any coercion and that his plea was knowing and voluntary. ROA.752. The government also asserted that Allen-Shinn was fully capable of terminating the services of his retained counsel. ROA.752.

Counsel for Allen-Shinn, Eric D. Johnson, also responded to the court with a letter dated October 11, 2023. ROA.753-56. Johnson first faulted his own client for failing to air these grievances at the first guilty plea hearing on December 7, 2021. ROA.753. Johnson then asserted directly to the court that his position was that search of Allen-Shinn's residence was legal and his confession free and voluntary and that this opinion was based upon "significant" research. ROA.754. Johnson argued that the plea was in the best interest of Allen-Shinn given the government threat of a superseding indictment. ROA.754.

Even after Johnson asserted to the court that he had met with Allen-Shinn and that Allen-Shinn wanted Johnson to continue his representation, Allen-Shinn wrote another pro se letter to the court. ROA.131. On October 19, 2023, Allen-Shinn wrote the court to provide a legal response to the government's argument that the search of his residence was lawful. Allen-Shinn asserted that the rules cited by the government, Military Rules of Evidence 314-316 do not apply to the search of his residence because he was not a member of the Armed Forces of the United States. ROA.131. He argued that the Military Rules of Evidence, themselves, stated that the rules apply only to Armed Forces of the United States. ROA.132-33. According to Allen-Shinn, the Military Rules allowing military officials to grant permission to search a residence on a military base do not extend to the residences of civilians like himself. ROA.132-34. Allen-Shinn then clearly told the court he was seeking suppression of evidence seized from his residence and his statements made as fruit of the poisonous tree:

I respectfully request that the Court carefully consider this matter and issue a ruling that directly addresses the legality (or illegality) of the search of my residence and seizure of my property as soon as possible.

ROA.136.

#### V. Allen-Shinn's attempt to withdraw his guilty plea and sentencing

In preparation for the sentencing hearing, the court issued a minute entry directing counsel to be prepared to address the legality of the search based upon Allen-Shinn's pro se letters to the court. ROA.142.

The sentencing hearing was held on November 1, 2023. ROA.143. The Court first confirmed with defense counsel that Allen-Shinn wished to continue his

representation, which both counsel and Allen-Shinn confirmed. ROA.289. The court then addressed the search issue asking Johnson if he could "assure the court that you have discussed with Mr. Allen-Shinn the merits of a motion to suppress the search and seizure." ROA.307.

Johnson first answered the court's question stating that he and his staff had discussed the motion to suppress with Allen-Shinn. ROA.307. Johnson then, however, went beyond the court's question and proceeded to give a long detailed statement against the interest of his client. Johnson explained that he did not see a good faith basis to file the motion to suppress because Allen-Shinn was cooperative with agents when he gave his statement and because it was his opinion that his client forfeited his Fourth Amendment protections when he entered Barksdale Air Force base. ROA.307-08. Johnson went further and asserted that Allen-Shinn signed a lease when he lived on the Air Force base and that in the lease he agreed that his residence was under military control and subject to the installation commander's authority. ROA.308-10. Johnson did not introduce a copy of the lease into evidence. Finally, Johnson asserted that even if the motion to suppress was successful, the government would have the images from the Dropbox account to use at trial. ROA.311-13.

The court then made clear that it "expresses no opinion on the Fourth Amendment issues" because the court had "never been presented with those issues." ROA.313. The court ruled that because Allen-Shinn had pled guilty the court could not hear the motion to suppress. ROA.313-14.

The court, instead, interpreted Allen-Shinn's letters as a motion to withdraw his guilty plea. ROA.314. The court indicated that Allen-Shinn's counsel did not join in the motion. ROA.314. Despite acknowledging that Allen-Shinn was pro se on the motion, the court never asked Allen-Shinn whether he wanted to represent himself or wanted to retain or request appointment of another conflict-free counsel to represent him on the motion. Then, without allowing Allen-Shinn to be heard or respond, the court proceeded to rule that Allen-Shinn could not withdraw his guilty plea under the Carr factors focusing on the fact that Allen-Shinn was not asserting his innocence and the withdrawal would prejudice the government, inconvenience the court, and waste judicial resources. ROA.316-17. The court also determined that Allen-Shinn had received close assistance of counsel. ROA.318-19.

The court then proceeded to sentence Allen-Shinn, with Johnson remaining as his counsel, to 210 months imprisonment and five years of supervised release, and \$92,600 FRP. ROA.148. Allen-Shinn timely filed a notice of appeal on November 28, 2023. ROA.155.

## REASONS FOR GRANTING THE PETITION

Mr. Christopher Gabriel Allen-Shinn respectfully submits that granting the instant Petition for Writ of Certiorari is warranted in this instance whereas binding precedence in the Fifth Circuit and others have placed additional burdens on defendants who, without the assistance of their counsel, seek to withdraw a guilty plea prior to the imposition of sentence, contrary to this Court's decisions in Kercheval v. United States, 274 U.S. 220, 224 (1927) and Lee v. United States, 582 U.S. 357, 364 (2017).

In the case at bar, Mr. Allen-Shinn informed the district court on three separate occasions, one of those prior to his plea of guilty, that he requested counsel repeatedly to file a motion to suppress the evidence obtained from an illegal search of his home. The Petitioner advised the court that defense counsel refused to file the requested motion, stating that counsel instead presented him with a plea agreement and threatened him with much stiffer penalties if he did not accept it.

The hearing on this first pro se letter set the stage for each occasion the court addressed Mr. Allen-Shinn's concerns. Instead of addressing the Petitioner's complaint about counsel's refusal to file a motion to suppress the evidence, the Court merely offered Mr. Allen-Shinn the choice to "undo that guilty plea and we'll just set the matter for trial and you can go to trial" without a hearing on the evidence, or he could move forward with his guilty plea. ROA.222. Mr. Allen-Shinn's response likewise stated his position that remained constant throughout the proceedings until sentencing.

"[T]he thing that I still feel very unclear on myself is why [the search and seizure] was not addressed. But I don't know how to address it at this point where we stand today." Id.

Simply put, Mr. Allen-Shinn was deprived the opportunity to present a claim that the evidence was obtained in violation of statute and the Constitution. He Filed three pro se letters seeking to have his plea agreement withdrawn and a hearing held on the suppression of evidence. What he received in turn was a refusal to have the suppression motion filed and heard, and the option to be convicted by plea or at trial without it of a more severe charge.

On direct review of this issue, the Fifth Circuit Court of Appeals applied the seven-factor test as outlined in United States v. Carr, 740 F.2d 339, 343-44 (5th Cir. 1984):

- (1) whether or not the defendant has asserted his innocence;
- (2) whether or not the government would suffer prejudice if the withdrawal motion were granted;
- (3) whether or not the defendant has delayed in filing his withdrawal motion;
- (4) whether or not the withdrawal would substantially inconvenience the district court;
- (5) whether or not close assistance of counsel was available;
- (6) whether or not the original plea was knowing and voluntary; and
- (7) whether or not the withdrawal would waste judicial resources; and, as applicable, the reason why defenses advanced later were not proffered at the time of the original pleading, or the reasons why a defendant delayed in making his withdrawal motion.

Slip. Op.\*2

strictly speaking, relevant to the decision of whether the Defendant was denied ineffective assistance under the Carr analysis." United States v. Urias-Marrufo, 744 F.3d 361, 365 (5th Cir. 2014). Stated differently, Carr requires only that the record demonstrate that counsel was present throughout the proceedings. This holding has no support from any Supreme Court ruling since Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80L. Ed. 2d 674 (1984) established the requirement that counsel render constitutionally effective assistance throughout the process.

2. "Knowing and voluntary"

In review of this factor, the appellate court determined that Mr. Allen-Shinn was aware of the nature of the charges, the consequences of his plea, and the constitutional protections he was waiving. The court did not, however, discuss the voluntariness of the plea - the subject of the entire appeal.

Mr. Allen-Shinn made his intentions perfectly clear to the court at each stage of the process: if counsel would file a motion to suppress the evidence, he wished to abandon the plea agreement and begin the process anew. The fact that he was denied the opportunity to have his Fourth Amendment claim heard rendered the plea itself involuntary.

### 3. Timeliness and Judicial Resources

"[O]n timely application, the court will vacate a plea of guilty..." Kercheval, 274 U.S. at 224. Mr. Allen-Shinn's attempt to withdraw the guilty plea was first submitted two days before the plea itself was actually entered. A year later, the Petitioner was still attempting to have his complaint heard by the court.

The concept that vacatur of an invalid plea would "waste judicial resources and inconvenience the court" is unsupported by Supreme Court precedence at any point throughout history.

### 4. Actual innocence.

The ultimate conclusion by the appellate court, and the factor that appeared to carry the most weight under consideration was the appellate court's observation that "as Allen-Shinn concedes, he has not asserted his innocence." This, however, is not the deciding factor when a court considers the validity of a guilty plea in context of an ineffective assistance claim.

In the case at bar, Mr. Allen-Shinn argued from the beginning that his plea was involuntary because counsel had deprived him of the opportunity to present the constitutionally prohibited manner that the evidence was gathered. This Court considered a similar instance in the matter of Lee v. United States, 582 U.S. 357, 137 S.Ct. 1958, 198 L. Ed. 2d 476 (2017). Therein, as

with the case at bar, this Court reiterated that the question did not turn on the likelihood of success at trial.

"When a defendant alleges his counsel's deficient performance led him to accept a guilty plea rather than go to trial, we do not ask whether, had he gone to trial, the result of the trial would have been different than the result of the plea bargain. ... We instead consider whether the defendant was prejudiced by the denial of the entire judicial proceeding [ ] to which he had a right." Lee, 582 U.S. at 364 (internal citations and quotation marks omitted, alterations added).

In this case, the outcome of the proceedings would have been different absent counsel's failings. Mr. Allen-Shinn did not wish to enter into or consider any plea negotiations before a motion to suppress was filed. For better or worse, he would have rejected a premature plea offer and insisted on filing the motion.

As noted Supra, Carr and the decisions that preceded it were derived from this Court's ruling in Kercheval. And as this Court noted in its precedential ruling, "Such an application does not involve any guilt or innocence." 274 U.S. at 224.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10/26/24