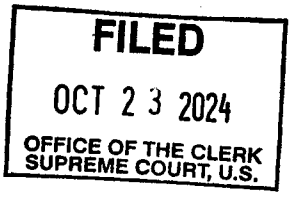
No. 24A246

ORIGINAL

24-5936

IN THE

SUPREME COURT OF THE UNITED STATES



SAM JONES/PETITIONER

vs.

MICHAEL WHEELER/RESPONDENT

On Petition for Writ of Certiorari

To the United States Court of Appeals

For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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Huntsville, Texas 77343

Phone No. N/A

QUESTION(S) PRESENTED

FIRST QUESTION PRESENTED: DOES THE DISTRICT COURT AND FIFTH CIRCUIT'S RULING CONFLICT WITH **Casey v. Lewis**, 518 U.S. 343 n.3 (1996), WHEN HOLDING THAT PETITIONER COULD NOT PRESENT A NONFRIVOLOUS ARGUABLE CLAIM TO THE STATE HABEAS COURT TO APPOINT HIM COUNSEL PER **Trevino v. Thaler**, 569 U.S. 413 (2013), TO PROPERLY PRESENT HIS SUBSTANTIAL INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL (IATC) CLAIM(S) OR EXCUSE HIS PROCEDURAL ERROR?

SECOND QUESTION PRESENTED: DOES THE DISTRICT COURT AND FIFTH CIRCUIT'S RULING CONFLICT WITH **Trevino**, WHEN HOLDING THAT TREVINO IS INAPPLICABLE TO PETITIONER'S CASE?

THIRD QUESTION PRESENTED: DOES THE DISTRICT COURT AND FIFTH CIRCUIT'S RULING CONFLICT WITH **Buck v. Davis**, 580 U.S. 100 (2017), WHEN HOLDING THAT THE RULE 60(b)(6) COURT DID NOT HAVE TO REVIEW THE MERITS OF PETITIONER'S SUBSTANTIAL IATC CLAIMS BECAUSE **Buck** IS INAPPLICABLE TO PETITIONER'S CASE?

FOURTH QUESTION PRESENTED: DOES THE DISTRICT COURT AND FIFTH CIRCUIT'S RULING CONFLICT WITH **Bounds v. Smith**, 430 U.S. 817 (1977); and **Lewis**, 518 U.S. 342 (1996), WHEN HOLDING THAT NOTWITHSTANDING THE UNCONSTITUTIONAL PRISON LAW LIBRARY RULES AND POLICIES WHICH PROHIBITS PRISONERS TO TALK AND HELP EACH OTHER PREPARE HABEAS PETITIONS AND THERE BEING NO PERSON TRAINED IN LAW WORKING IN THE LAW LIBRARY, SUCH DEFICIENCIES DID NOT DENY PETITIONER ACCESS TO THE COURTS?

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

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INDEX TO APPENDICES

TABLE OF AUTHORITIES

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 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 _____ 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 July 12, 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 November 9, 2024 (date) on September 9, 2024 (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

The Fourteenth Amendment Of The United States Constitution provides:

"The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law."

The Sixth Amendment Of The United States Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right to... be informed of the nature and cause of the accusation... and to have the assistance of counsel for defense."

STATEMENT OF THE CASE

Petitioner/Appellant (hereinafter referred to as "Jones") is a prisoner incarcerated in the Texas Department Of Criminal Justice (TDCJ), on December 15, 2022 he filed a civil action suit pursuant to 42 U.S.C. §1983 in the United States Court Southern District Of Texas, Houston Division. Jones sued two (2) TDCJ officials, the Director Bobby Lumpkins and the Access To Courts Supervisor Michael Wheeler. Jones alleged that TDCJ law libraries does not meet the constitutional standards established by the Supreme Court in Bounds v. Smith, 430 U.S. 817,92 S.Ct. 1491,52 L.Ed.2d 71 (1977); Casey v. Lewis, 518 U.S. 343,116 S.Ct. 2174 (1996), thus denies thousands of Texas prisoners' meaningful access to the courts.

Jones presented a preponderance of evidence which conclusively shows that the prison law library is constitutionally deficient due to its outdated legal books, its outdated legal research material and/or lack thereof; its flawed Lexis shepard system; its flawed Lexis case law request system; there being no person(s) trained in the law working in the law library to assist prisoners to conduct legal research to prepare and file habeas petitions; and the law library's rules and policy which prohibits prisoners to talk and help each other conduct legal research and prepare habeas petitions. Jones contended that the totality of such deficiencies of the law library prevented him to discover vital Supreme Court case law in Trevino, 560 U.S. 413 (2013); and Buck, 580 U.S. 100 (2017), thus obstructed Jones to cite Trevino in his state habeas proceeding to present a "nonfrivolous" arguable claim that the state habeas court should appoint him counsel to properly present his substantial IATC claim per Trevino or excuse his procedural error; as well as cite

Trevino in his timely filed §2254 federal habeas (timely filed in accordance with the AEDPA) to present a "nonfrivolous" arguable claim that the federal habeas court could find "cause" per Trevino to excuse his procedural default of his substantial IATC claim. Moreover, Jones contended that he was obstructed to discover Buck which would have enabled him to present a "nonfrivolous" arguable claim in his Rule 60(b)(6) proceeding that the Rule 60(b)(6) court should address the merits of his IATC claim per Buck. On January 5, 2024 the district court entered summary judgment in favor of defendant Wheeler. The Fifth Circuit affirmed the district court's ruling on July, 12, 2024.

REASON FOR GRANTING THE PETITION

THE DISTRICT COURT AND THE FIFTH CIRCUIT HAS DECIDED A FEDERAL QUESTION THAT BLANTANTLY CONFLICTS WITH LEWIS, 518 U.S. 343; TREVINO, 560 U.S. 413; and BUCK, 580 U.S. 100.

From the outset Jones "fearfully" and respectfully states that the district court and the Fifth Circuit simply disregarded the precedents stated above. Jones respectfully request that the Supreme Court issue a writ of certiorario to review the judgment because this is not a case of erroneous factual finding nor the misapplication of properly stated state rule of law, this is a case of the district court and the Fifth Circuit refusing to follow the said precedents in apply to the facts of the case.[1] The facts were absolutely

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1 Jones can only conclude that the reason why the said courts refused to follow and apply the said Supreme Court's precedents to the facts of his case is because he is a pro-se petitioner.

clear that the unconstitutional prison law library denied Jones access to the courts by-way of the outdated legal books obstructed him to discover Trevino thus preventing him from presenting a "non-frivolous" arguable claim in his state habeas proceeding that the state habeas court should appoint him counsel to properly present his IATC claim or excuse his procedural error per Trevino; as well as to cite Trevino in his federal habeas proceeding to present a nonfrivolous arguable claim that the federal habeas court could find "cause" to excuse Jones' procedural default of his IATC claim per Trevino.

Jones was also prevented to discover Buck to cite in his Rule 60(b)(6) proceedings to present a nonfrivolous arguable claim that the rule 60(b)(6) court should address the merits of Jones' IATC claim since the merits had yet to be reviewd by a federal court per Buck. In short, the District Court and the Fifth Circuit just disregarded the facts in the record, the evidence and the said Supreme Court precedents.

ARGUMENT AMPLIFYING REASONS FOR GRANTING WRIT

I. THE FIFTH CIRCUIT ERRED IN AFFIRMING THE DISTRICT COURT'S SUMMARY JUDGMENT DISMISSAL OF JONES' DENIAL OF ACCESS TO THE COURTS SUIT NOTWITHSTANDING THE UNCONSTITUTIONAL PRISON LAW LIBRARY ON THE BASIS THAT Trevino, 569 U.S. 413 (2013); AND Buck, 580 U.S. 100 (2017), ARE INAPPLICABLE TO JONES' CASE.

Jones presented a preponderence of evidence to the district court which conclusively shows that the Wynne unit law library is unconstitutional due to its outdated legal books, its outdated legal research material and/or lack thereof; its flawed Lexis shepard system; its flawed Lexis case law request system; the law library's

rules and policy which prohibits prisoners to talk and help each other prepare habeas petitions; and there being no person(s) trained in the law working in the law library to assist prisoners, the totality of such deficiencies of the law library prevented him to discover vital Supreme Court case law in **Trevino**, 560 U.S. 413 (2013); and **Buck**, 580 U.S. 100 (2017).

On pg.13 and pg.16-17 of the district court's summary judgment order the court stated: "In his complaint, Jones alleges that Wheeler has violated his constitutional right of access to the courts both by failing to ensure that the library provides up-to-date legal materials in its holding and by imposing unreasonable rules that restrict the inmates' use of the libraries. Jones alleges that he suffer an actual injury because he was prevented from learning of decisions in Trevino v. Thaler, 569 U.S. 413,133 S.Ct. 1911 (2013) and Buck v. Davis, 580 U.S. 100,137 S.Ct. 759 (2017) and presenting them in support of his state and federal habeas petitions. **Id.** at 13 ...The Supreme Court has held that prisons may provide access to courts by providing either adequate law libraries or adequate legal assistance to inmates. See Lewis 518 U.S. at 351. The summary judgment evidence in this case raises genuine issues of material facts as to whether the Wynne Unit law library is meeting this standard. A law library subscribing to electronic legal research material that inmates are unable to access, either directly or through properly trained library staff, is not adequate. And the summary judgment evidence raises genuine issue of fact as to whether recent legal material are actually available to inmates. These fact questions are sufficient to preclude a finding that, as a matter of law, the Wynne Unit law library meets constitutional standard. Even through

disputed issues of fact exist concerning whether the Wynne unit law library is constitutionally adequate, Wheeler is nevertheless entitled to summary judgment because the evidence does not show that Jones suffered an actual injury due to Wheeler's action." Id. at 16-17. (Appendix B pg.13 & pg.16-17)

THE FIFTH CIRCUIT ERRED BY DETERMINING THAT PETITIONER COULD NOT PRESENT A NONFRIVOLOUS ARGUABLE CLAIM IN THE STATE'S INITIAL REVIEW-COLLATERAL PROCEEDING TO APPOINT HIM COUNSEL PER TREVINO OR EXCUSE HIS PROCEDURAL ERROR.

Jones contended that the district court's analysis of the facts were wholly flawed, the court misstated and disregarded Jones' argument and position as well as mixed up facts in the record with facts that are not in the record. On pg.19-20 of the district court's erroneous summary judgment order the court stated:

> Jones argues that had he been aware of the Trevino decision he could have cited it during his state habeas proceedings. He contends that had he cited Trevino, the state habeas court would have been required to overlook his procedural default and appoint him counsel to assist him in the state postconviction proceedings. Alternatively, Jones contends that if he had cited Trevino in his first federal habeas petition, the district court would have been "required" to excuse his state procedural default.
>
> Neither contention is correct. The Trevino decision does not require a state to appoint counsel for a prisoner in State-court postconviction proceeding, nor does it require a state court to overlook or excuse procedural default in state-court postconviction proceedings. And while the Trevino decesion permits-but does not require-a federal court to excuse a state procedural default if the petitioner can show that he was impeded in or obstructed from complying with state procedural rules by circumstances outside of his control. Jones does not allege facts showing that he was impeded in or obstructed from complying with Texas's procedural rules. Instead, he alleges only that he was initially unaware of the rule on page limitations. But the record shows that once Jones learned of the rule, he made no effort to comply with it.

Id. pg.19-20. The district court misconstrued Jones' position and

argument and mixed up facts in the record with facts that are not in the record. Jones contends that the record clearly shows (as well as he will show herein this brief) that he was well aware of the rule on page limitations prior to him filing his state habeas and that he attempted to comply with such rule by filing a motion to exceed the page limit along with his state habeas therefore, the district court's above analysis was "flawed" and the statement that "[Jones] alleges only that he was initially unaware of the rule on page limitations. But the record shows that once Jones learned of the rule he made no effort to comply with it." Such statement is absolutely frivolous yet the Fifth Circuit adopted the district court's erroneous findings, the Fifth Circuit stated these flawed findings in its order affirming the district court's erroneous summary judgment, the Fifth Circuit stated in its order:

> Contrary, to Jones's assertion, the decision in Trevino v. Thaler, 569 U.S. 418,428-29 (2013), does not require a state habeas court to appoint counsel in state habeas proceedings.

Id. at pg.2 (See Appendix A pg.2). The correct contention which Jones presented to the district court in his Memorandum Of Law In Support Of Access To Courts suit, is as follows:

> Had Jones' presentation of his state and federal habeas petitions not been stymied by the defendants' inadequate law library from discoverying the said two Supreme Court ruling he would have cited Trevino in his state and federal habeas petitions in the result of either proceeding would have been different and resolved favorably by-way of the the state habeas court appointing Jones counsel per Trevino and/or by-way of the district court excusing Jones' procedural default per Trevino and rendered a ruling on the merits of his substantial ineffective assistance of trial counsel claim... had Jones been able to cite Trevino to the state habeas court he would have been able to bring to the court's attention the need to appoint him counsel per Trevino to adequately present his substantial IATC claim, thus alerting the court per Trevino failure to appoint Jones habeas counsel would result in the state waiving their right to raise the issue of his procedural default [in federal court].

Id. at pg.5-7 of Jones' Memorandum Of Law In Support Of Denial Of Access To Courts suit. See also, Jones' Verified Complaint pg.5-6 (stating same); See also Jones' Memorandum Of Law In Support Of §1983 Civil Action Complaint pg.7-8 (stating same). As shown above the district court's finding which the Fifth Circuit adopted are flawed and disregarded Jones' position and arguments, Jones' argument and position which he presented to the district court and Fifth Circuit was that had he been able to cite Trevino in his state habeas proceeding he could have presented a "nonfrivolous" plausible argument to the state habeas court that the court "should" appoint him counsel per Trevino [not that the court was required to appoint him counsel] to adequately present his substantial IATC claim and/or excuse his procedural error because failure to do so would result in the state waiving its right to raise the issue of Jones' procedural default error in federal habeas court if the state habeas court dismissed (as it eventually did) Jones' state habeas. In **Lewis**, 518 U.S. 353 n.3 the Supreme Court held:

> Depriving someone of an arguable (though not yet established) claim inflicts actual injury because it deprives him of something of value-arguable claims are settled, bought, and sold.

Id. Jones contended that the argument and position which he was prevented from presenting to the state habeas court was a nonfrivolous plausible argument which is supported by the language in **Martinez v. Ryan**, 566 U.S. 1 (2013), the holdings of which were extended to Texas prisoners in **Trevino**, wherein the Supreme Court stated:

> The holding here ought not to put a significant strain on state resources. When faced with the question whether there is cause for an apparent default, a state may answer that the ineffective-assistance-of-trial-counsel claim is insubstantial, i.e. it does not have any merits... This is but one of the differences between a constitutional ruling and the equitable ruling of this case. A constitutional ruling

> would provide defendants a freestanding constitutional claim to raise, it would require the appointment of counsel in initial-review collateral proceedings; it would impose the same system of appointing counsel in every State; and it would require a reversal in all State collateral cases on direct review from state courts if the State's system of appointing counsel did not conform to the constitutional rule. An equitable ruling by contrast, permits State's a variety of system for appointing counsel in initial-review collateral proceedings. And it permits a State to elect between appointing counsel in initial-review collateral proceeding or not asserting a procedural default and raising a defense on the merits in federal habeas proceedings.

Id. at pg.16 In short, clearly the language above in Martinez, i.e. "it permits a State to elect between appointing counsel in initial-review collateral proceeding or not asserting a procedural default and raising a defense on the merits in federal habeas proceedings," supports Jones' said nonfrivolous plausible argument that the state habeas court should appoint him counsel or excuse his procedural error, which Jones could have presented to the State habeas court had he not been obstructed to discover Trevino and had cited Trevino in his state habeas proceeding. In Nasby v. Nevada, 79 F4th 1052, 1058 (9th Cir.2023), the Ninth Circuit said: "Depriving someone of an arguable (though not yet established) claim inflicts actual injury because it deprives him of something of value-arguable claims are settled, bought, and sold." (citing Lewis 518 U.S. at 353 n.3) Id. The Seventh Circuit elaborated on this guidence stating: "In other words, even if the claim, had it been pressed to judgment, would have failed, there is always a chance, provided the claim is not frivolous, that would have been settled before then." Walters v. Eger, 163 F3d 430,434 (7th Cir.1998).

THE FIFTH CIRCUIT ERRED BY DETERMINING THAT JONES' IATC CLAIM DID NOT MEET THE STANDARDS FOR THE PROCEDURAL DEFULT EXCEPTION SET FORTH BY THIS COURT IN TREVINO THUS TREVINO IS INAPPLICABLE TO JONES' CASE

Jones presented a substantial IATC claim(s) in his state initial-review collateral proceeding which was dismissed due to Jones' procedural error. In the district court's summary judgment dismissal of Jones' access to courts suit, the court said:

> Jones alleges that he suffered an actual injury because he was unable to learn of the Supreme Court cases of Trevino v. Thaler, 569 U.S. 413 (2013), and Buck v. Davis, 580 U.S. 100 (2017), in time to cite them in his state habeas proceedings and prior federal habeas proceedings. He alleges that had he been able to cite these cases, the outcome of his state and federal habeas proceedings would have been different. However, neither Trevino nor Buck is applicable to Jones's case, and therefore he has not shown that Wheeler hindered his ability to pursue a nonfrivolous, or at least arguable legal claim so as to demonstrate an actual injury.

Id. at pg.17 (Appendix B Pg.17). Jones contends and as previously shown he could have "at least" presented an nonfrivolous arguable claim to the state habeas court that it should appoint him counsel per Trevino or excuse his procedural error. In Martinez, 566 U.S.11 the holdings of which were extended to Trevino, the Supreme Court held:

> Federal habeas courts can find "cause" thereby excusing a defendant's procedural default, when (1) the claim of "ineffective assistance of trial counsel" was a substantial claim; (2) the cause consisted of there being "no counsel" or only "ineffective" counsel during the state collateral review proceeding; (3) the state collateral review proceeding was the "initial" review proceeding in respect to the ineffective-assistance-of-trial-counsel claim; and (4) state law requires that an "ineffective assistance of trial counsel [claim]...be raised in an initial-review collateral proceeding."

Id. It should be noted by the Court, that the defendant in this suit did not raise as a defense that Trevino was inapplicable to Jones' case, the district court manufactured such defense. Initially the district court said that Trevino was inapplicable to Jones' case because Trevino required Jones to allege that he was impeded in and obstructed from complying with Texas procedural rule (which Trevino does not require), the district court said:

> [P]rocedural default may be excuse 'only when the prisoner is impeded in or obstructed from complying with State's established procedures.'

Id.pg.19 (Appendix B pg.19). The district court simply ignored the facts that conclusively shows that Jones was impeded in and obstructed from complying with Texas 50-page limit memorandum procedural rule. In affirming the district court's summary judgment dismissal the Fifth Circuit said:

> Furthermore, Jones's failure to exhaust his ineffective assistance of counsel claims in his state habeas proceedings was not due to lack of habeas counsel or inadequate habeas counsel, but rather because Jones failed to follow a page-limit requirement.

Id. at pg.2 (Appendix A pg.2) Here the Fifth Circuit ignored the facts of the case and refused to properly apply Trevino to those facts. The facts in the record show that Jones did not comply with the page-limit requirement, not because he failed to followa page-limit requirement, as the Fifth Circuit incorrectly concluded, but rather because Jones was "obstructed" from complying with the 50-page limit procedural rule. Jones contended to the Fifth Circuit that there is "ample evidence" in the record which conclusively shows that he was impeded in and obstructed from complying with Texas's 50-page limit memorandum procedural rule, which resulted in his state habeas being dismissed thus resulted in his failure to (fully) exhaust his IATC claims. See Jones' Opposition To Defendant's Wheeler's Motion For Summary Judgment pg.10-13 wherein Jones stated:

"Jones conviction became final on Feburary 25, 2014, he filed his first application for state habeas relief on April 28, 2024 wherein he presented a "substantial" IATC claim and a Trial Court Abuse Of Discretion claim. When Jones filed his original [first]

state habeas application he also similtaneously filed along with it a "Motion To Exceed The 50-page Limit Memorandum" and he attached to the motion the proposed memorandum for the trial/habeas judge to view, which Jones were seeking leave from the court to file. Thus, Jones attempted to comply with Texas's 50-page limit procedural rule but he only failed to comply because the trial/habeas judge ignored the motion, the judge knew very well that it wasn't Jones' intentions to file the memorandum without him (the judge) ruling on the motion to exceed the page limit, either granting or denying it, if denying it then Jones was prepared to resubmit a 50-page memorandum. See In re Henry, 525 S.W. 2d. 351 [14th Dist.App-Tex] (2017) (stating that a trial court has a ministerial duty to consider and rule on motions properly filed and pending before it). Id. But due to the trial/habeas court failing to do its ministerial duty to consider and rule on Jones' properly filed motion to exceed the 50-page limit memorandum, which was due to the trial/habeas judge bias towards Jones' so he deliberately filed the memorandum without ruling on or even ackonwledging Jones' properly filed motion thus the trial/habeas judge obstructed Jones from complying with the page-limit procedural rule thus Trevino is in fact applicable to Jones' case. Jones attempted to comply with the court's procedurral rule but the tiral/habeas court intentionally obstructed him from doing so. See also, Jones' original [first] §2254 habeas filed July 21, 2014 (stating same facts stated herein); See also, Jones' First Certificate Of Appealibilty No. 15-10972 (stating same facts); See Jones' objections to the trial/habeas court's recommendation of dismissal No. W11--14842-H(A) (stating same facts). On pg.4 Of Defendant Wheeler's Reply In Support Of Summary Judgment he states: "Jones

again argues in his Response that the trial/habeas judge [were] bias towards him, that the habeas judge improperly failed to rule on motions he made, and the same judge deliberately took action to get Jones' petition(s) dismissed." Id. pg.4.

Moreover, the Fifth Circuit did not correctly state Trevino's procedural default requirement, the fact that Jones' procedural error wasn't due to lack of habeas counsel or inadequate habeas counsel is absolutely irrelevant. For the federal habeas court to have excused Jones' procedural default per Trevino, Jones needed not show that he had inadequate habeas counsel the lack of habeas counsel in-and-of-itself constituted "cause" for the federal habeas court to have excused his procedural error of his "substantial" IATC claim. The Trevino court held that a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding there was "no counsel" or counsel in that proceeding was ineffective. The Trevino Court held that the "lack of counsel" constituted cause to excuse a procedural default if the IATC claim is "substantial" thus, the Fifth Circuit simply refused to properly apply Trevino to the facts of Jones' case thus "**circumvented**" the remedy which the Supreme Court sought to provide prisoners to overcome a procedural default of a substantial IATC claim, established when the Supreme Court revisted the procedural default rules that were established in **McClesky v. Zant**, 499 U.S. 467,490 (1991); **Coleman v. Thompson**, 501 U.S. 722 (1991). In **Martinez v. Ryan**, 566 U.S. 1 (2013), the Supreme Court expressed concern that an uneducated pro-se prisoner may not comply with the State's procedural rules to present a substantial IATC claim in the initital-review collateral

proceedings. The Supreme Court stated:

> A prisoner's inability to present an ineffective assistance claim is of particular concern because the right to effective trial counsel is a bedrock principle in this Nation's justice system...to present a claim of ineffective assistance at trial in accordance with State's procedures, then a prisoner likely needs an effective attorney.

Id. 566 U.S. at 8. The Trevino Court stated in pertinent part:

> When the issue cannot be raised on direct-review, a prisoner asserting an ineffective assistance of trial counsel claim in an initial-review collateral proceeding the prisoner cannot rely on a court opinion or the prior work of an attorney addressing the claim. Without the help of an adequate attorney, a prisoner will have difficulties vindicating a substantial ineffective-assistance-of-trial-counsel claim in accordance with State procedures, then a prisoner likely needs an effective attorney. The prisoner, unlearned in the law may not comply with State's procedural rules.

Id. 569 U.S. 4111. As shown the Supreme Court was very concerned that an uneducated prisoner without the assistance of an effective attorney may not comply with "all of the State's procedural rules" when presenting a substantial IATC claim thus, the Fifth Circuit's decision directly conflicts with Trevino by holding that Trevino is not applicable to Jones' case concluding that Jones' failure to exhaust was due to his failure to follow a page-limit requirement. However, as shown herein Jones was obstructed from complying with the page-limit requirement, furthermore, an uneducated prisoner unlearned and untrained in the law failure to follow all of the State's procedures falls under Trevino's procedural default exception thus, even absent Jones being obstructed to comply with the page-limit requirement his failure to follow the page-limit requirement would still come under Trevino's procedural default exception.

THE FIFTH CIRCUIT ERRED BY DETERMINING THAT THE RULE 60(b)(6) COURT DID NOT HAVE TO REVIEW THE MERITS OF JONES' IATC CLAIM BECAUSE BUCK v. DAVIS 580 U.S. 100 (2017) IS INAPPLICABLE TO JONES' CASE.

The Fifth Circuit's decision herein conflicts with this Court's decision in Buck as well as conflicts with the decision of other Circuit Courts on this same issue. Jones contended to the Fifth Circuit that the district court erred by not addressing the merits of his substantial IATC claim during the Rule 60(b)(6) proceeding. Jones contended that he was obstructed by the unconstitutional prison law library to discover Buck to cite in his Rule 60(b)(6) motion proceeding to show the district court that the facts which Jones presented in his motion were remarkably similar and constitutionally indistinguishable from the facts in Buck. In Buck this Court stated:

> Our Rule 60(b)(6) analysis has thus omitted one significant element... Today, however, a claim of ineffective assistance of trial counsel defaulted in a Texas postconviction proceeding may be reviewed in federal court if state habeas counsel was constitutionally ineffective in failing to raise it, and the claim has "some merit."

Id. pg.127. The district court held that Buck was inapplicable to Jones' case thus refused to address the merits of Jones' IATC claim. The Fifth Circuit agreed stating in its order affirming the ruling;

> ...Jones fails to demonstrate that he suffered an actual injury due to his inability to discover the decisions in Trevino and Buck...

See Appendix A pg.2. The Fifth Circuit's decision not only conflict with this Court's decision in Buck but it also conflicts with the Third Circuit on this same issue. In Cox v. Horn, 757 F3d 113 (3rd Cir.2014), the Third Circuit held:

> We also hasten to point out that the merits of a petitioner's underlying ineffective assistance of counsel claim can effect whether relief based on Martinez is warranted. It is appropriate for a district court. When ruling on a Rule 60(b)(6) motion where the merits of the ineffective assistance claim were never considered prior to judgment, to assess the merits of that claim.

Id. See also Haynes v. Davis, 733 Fed.Appx. 766,772 (5th Cir.2015)

Jones contended that the Rule 60(b)(6) court simply erred by not addressing the merits of his IATC claim prior to denying his motion, but if he had not been obstructed to discover Buck he would have cited it in the Rule 60(b)(6) proceeding to bring to that court's attention that per Buck the court should address the merits of Jones' IATC claim prior to denying the motion.

Extraordinary Circumstances:

Jones contended in his Rule 60(b)(6) motion that his trial counsel's woeful representation constituted "extraordinary circumstances." Jones presented a serious claim of "disloyality" and "unethical conduct" by his trial counsel who repeatedly lied to Jones both prior to trial and during trial as well as counsel refused to follow any of Jones' lawful instructions in regards to trial preparation, trial tactics, and trial strategy and counsel outright refused to follow Jones' repeated demands to "impeach" the complainant with prejured testimony thus counsel refused to subject the state's case to any meaningful adversarial testing, all of which rendered counsel's entire representation a complete "sham" resulting the complete and constructive denial of trial counsel thus rendered Jones' trial a "mockery of justice!" A defendant is completely denied counsel if (1) the accused is denied counsel at a critical stage of trial or if (2) counsel fails to subject the prosecutor's case to meaningful adversarial testing. Woodard v. Collins, 898 F2d 1027 (5th Cir.1997). Jones' trial counsel woeful representation was in fact an extraordinary circumstance which warranted the review of the merits of Jones' substantial IATC claim under Buck.

THE FIFTH CIRCUIT ERRED IN AFFIRMING THE DISTRICT COURT'S ERRONEOUS FINDING THAT NOTWITHSTANDING THE UNCONSTITUTIONAL PRISON LAW LIBRARY AND ITS RULES WHICH PROHIBITS PRISONERS TO TALK AND HELP EACH OTHER PREPARE HABEAS PETITIONS AND THERE BEING NO PERSON(S) TRAINED IN LAW WORKING IN THE LAW LIBRARY TO ASSIST PRISONERS, SUCH DID NOT VIOLATE BOUNDS v. SMITH, 430 U.S. 817 (1977); AND CASEY v. LEWIS, 518 U.S. 343

Jones showed that there is no person(s) working in the law library who is trained in the law to assist prisoners to conduct legal research and/or to assist them to prepare habeas petitions. Neither the Law Librarian nor the inmate law library clerk(s) are trianed in the law thus they are of NO ASSISTANCE to prisoners. In dismissing this claim the district court stated:

> Because Jones's allegations concerning the Wynne unit's rules concerning talking or consultations between inmates in the law library do not allege facts that establish a constitutional violation, he has not alleged a viable §1983 claim.

See Appendix B pg.14. Such erroneous ruling clearly violates this Court's ruling in Shaw v. Murphy, 532 U.S. 223 (2001), wherein this Court held:

> Under our right to access precedents inmates have a right to receive legal advise from other inmates only when it is a neccessary means for assuring a reasonable adequate opportunity to present claimed violation of fundamental constitutional rights to the courts.

Id. In affirming the district court's erroneous ruling the Ffith Circuit stated:

> Likewise, Jones fails to explain how he has been prejudiced by the prison rules and policies preventing inmates from talking and assisting each other with legal matters while in the law library.

See Appendix A pg.2. Jones contended that he was denied access to

the courts by-way of there being no person trained in the law working in the law library to assist him conduct legal research and prepare his habeas petitions as well as being prohibited to seek out the help and assistance of other inmates due to the no talking policy. This Court has held that prison authorities cannot prohibit prisoners from helping each other with legal matters unless they provide reasonable alternative form of assistance thus striking down a prison regulation which forbade incarcerated people from providing each other with any sort of legal help or advise. See Johnson v. Avery, 393 U.S. 433,490 (1969). The Fifth Circuit's ruling conflicts with it own ruling in Corpus v. Estelle, 551 F2d 69 (5th Cir. 1997) (wherein the Fifth Circuit struck down these same appellee's policy prohibiting inmates to talk and help each other conduct legal research and file pleadings). "The prison policy banning prisoners communication with other prisoners who serve as jailhouse lawyers unconstitutionally restricts their right of access to courts when prisoners establish that they had no satisfactory alternative way of obtaining legal assistance." Bear v. Kautsky, 305 F2d 802 (8th Cir.2002).

As it relates to there being no person trained in the law working in the law library to assist prisoners to conduct legal research and to prepare habeas petitions, such deficiencies denied him access to the courts by way him being obstructed to discover Trevino and Buck. In fact, in Curz v. Hauck, 627 F2d 710 (5th Cir.1980), the Fifth Circuit said:

> Inmates often do not have the legal sophistication, much less the basic litaracy skills, to conduct through legal research, even if they have access to the law library. In fact, some courts have held that even when a law library is adequate the state must provide additional assistance to inmates in order to ensure that their research efforts will not be thwarted by illiteracy or inexperience.

Id. at 721-22. See also, Canter v. Wilson, 562 Fed.Supp. 106,108-112 (W.D.Ky.1983) (finding unlimited physical access to sufficiently stocked law library is unavailing to inmates lacking sufficient opportunity or intellectual ability to utlize the facility,adequate library under Bounds includes assistance by law-trained advisor so that all inmates have actual access). "The Federal Supplement, the Federal Reporter and the Supreme Court Reporter today consist of a total of approximately fifteen hundred volumes. Even a quick research project by a trained lawyer may require reference and cross reference to numerous volumes, such a task would be impossible to complete with no legal assistance and only the limited library program in place." Morrow v. Harwell, 763 F2d 619,623-24 (5th Cir.1980); See also, Wade v. Kane, 448 F.Supp. 678,684 (E.D. Pa.1978) (stating prisons are require under Bounds to provide assistance to inmates who are unable to perform effective research even through prison maintained sufficiently stocked law library). Id.

CONCLUSION:

The district court correctly found that the totality of the evidence presented by Jones raised a genuine issue of material fact as to whether the Wynne Unit law library meets the constitutional standards established in Bounds, 430 U.S. 817 (1977), thus precluded summary judgment as a matter of law. But the district court was incorrect when also finding that notwithstanding the unconstitutional law library the State was still entitled to summary judgment because Trevino and Buck were both inapplicable to Jones' case thus he couldn't establish an actual injury based on either case. The Fifth Circuit erred in affirming the district court's erroneous summary judgment dismissal thus the Fifth Circuit's decision directly conflicts with

this Court's decisions in **Lewis**, 518 U.S.343; **Trevino**, 569 U.S. 413; and **Buck**, 580 U.S. 100.

VERIFICATION:

I. Sam Jones declare under penalty of perjury that the facts stated herein this Writ Of Certiorari are true and correct. And that a copy of the foregoing was served on the Attorney representing the Defendant by placing same in the Ellis unit U.S. mailbox postage prepaid addressed to: **Jordan Ninh** P.O. Box 12548 Capitol Station Austin, Texas 78711. I, attest to this by my signature below executed at Walker county Huntsville. Texas on this the 30th day of October 2024.

Sam Jones

Petitioner Sam Jones pro-se

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

SAM JONES

Date: October 30th 2024