24-6716

No. _____

ORIGINAL

IN THE

SUPREME COURT OF UNITED STATES

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Deepak Deshpande,

(Petitioner).

Vs.

United States of America,

(Respondent).

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE ELEVENTH CIRCUIT.

# PETITION FOR WRIT OF CERTIORARI

Deepak Deshpande (#70487-018).
United States Penitentiary.
P.O. BOX 24550.
Tucson, AZ. 85734.

## QUESTIONS PRESENTED

The decision in Jones v. Hendrix 559 U.S. 465, 143 S.Ct. 1857 (2023) has heralded that the Motion to Vacate ... under 28 U.S.C. §2255 shall remain the one and only remedy for Federal Prisoners to adequately and effectively test the legality of their detention. Even though, it has achieved the intended result in 28 U.S.C. §2241 litigations, its effects on §2255 practice has been negative.

Instead of fortifying the adequacy and efficacy of the remedy by motion, the §2255 and its COA appellate practice have drifted to **shrink** the remedy. Adding to these woes, are the six circuits who's interpretations of the referenced statute §2244 conflicts with the §2255(h), denying the remedy, the Congress, executive, and this Court makes it available in the due course. In this paradigm, the question presented are as follows :

(1). What is the proper manner of ensuring that the remedy offered in the name of section 2255 has been adequate and effective to test the legality of the Federal Prisoner's detention?

(2). What source should the court of appeals review in determining whether or not to grant the COA and simultaneously protect the party presentation principles of our adversarial system?

(3). May a court of appeals reach the merits of appeal without the jurisdiction of the COA?

Federal Habeas law divides Prisoners seeking post-conviction relief into two groups. Those in **state** custody file "habeas corpus application" under 28 U.S.C. §2254. Those in the **Federal** custody file "Motion to Vacate" under 28 U.S.C. §2255. A separate statutory provision instructs the district courts to dismiss any claim presented in a second or successive habeas corpus application under Section 2254 that was presented in a prior application, 28 U.S.C. §2244(b)(1). The question presented under this paradigm is :

(4). Whether the bar in 28 U.S.C. §2244(b)(1) applies to claims presented by Federal Prisoners in a second or successive motion to vacate under 28 U.S.C. §2255?

## CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT.

The following Persons have an interest in the outcome of the case :

1. Andrejko, Nicole M., Assistant U.S. Attorney ;
2. Bodnar, Roberta Josephina, Assistant U.S. Attorney, Deputy Chief, Appellate Division ;
3. Chang, Emily C.L., Assistant U.S. Attorney, Appellate Division ;
4. Cream, Anita M., Assistant U.S. Attorney ;
5. Deshpande, Deepak. Petitioner ;
6. Grandy, Todd B., Assistant U.S. Attorney ;
7. Handberg, Roger B., U.S. Attorney ;
8. Hatfield, Victoria E., ESQ ;
9. Hoppman, Karin, Former Acting U.S. Attorney ;
10. Irick, Hon. Daniel C., United States Magistrate Judge ;
11. Joffe, David Jonathan, ESQ ;
12. Kelly, Hon. Gregory J., United States Magistrate Judge (retired);
13. Laurie, Shannon R., Assistant U.S. Attorney ;
14. Lopez, Maria Chapa, Former U.S. Attorney ;
15. Mendoza, Hon. Carlos E., United States District Judge ;
16. Minor Victim whose identity is protected ;
17. Muench, James A., Assistant U.S. Attorney ;
18. O'Brien, Mark J., ESQ ;
19. Price, Hon. Leslie Hoffman, United States Magistrate Judge ;
20. Rhodes, David P., Assistant U.S. Attorney, Chief, Appellate Division ;
21. Spaulding, Hon. Karla B., United States Magistrate Judge (retired) ;
22. Sweeney, Sara C., Assistant U.S. Attorney ; and,
23. No other publicly traded entity or corporation has an interest in the outcome of this Appeal.

## RELATED PROCEEDINGS

As required by the Rule 14.1(b)(iii), the proceedings below are related :

1.) The Petitioner's original conviction in the United States District Court for the Middle District of Florida was unreported.

2.) The Petitioner's original conviction was appealed to the United States Court of Appeals for the Eleventh Circuit, which affirmed the conviction in all respects. The opinion is reported at United States v. Deshpande 808 Fed. App'x 834 (11th Cir 2020); No. 19-11523.

3.) A timely petition for Writ of Certiorari was made to this Court. The Certiorari was denied. It was reported at Deshpande v. United States 141 S.Ct. 831 (2020); No. 20-5880.

4.) A timely motion for judgment of acquittal or in the alternate for new trial, based on prospective evidence was advanced in the Sentencing Court. The order denying it is unreported.

5.) The denial of judgment of acquittal or in the alternate for new trial, was appealed. A three judge's panel affirmed. The opinion was unpublished and is reported at United States v. Deshpande 2022 U.S. App LEXIS 12017 (May 3, 2022) (11th Cir 2022); No. 21-14166-J.

6.) The decision of the United States District Court for the Middle District of Florida as to the Petitioner's Section 2255 motion is reported at Deshpande v. United States 2023 U.S. DIST. LEXIS 140858 (July .. 2023) : Case No. 6:21-CV-671-CEM-LHP.

7.) The decision of the United States District Court for the Middle District of Florida as to the Petitioner's Rule 52(b) motion was unreported. But it is set forth at PP ___ of the Appendix.

8.) The decision of the United States District Court for the Middle District of Florida as to the Petitioner's Rule 59 motion was unreported. But it is set forth at PP _____ of the Appendix.

9.) The decision of the United States Court of Appeals for the Eleventh Circuit to deny the Petitioner's Certificate of Appealability was unpublished. It is reported at Deshpande v. United States 2024 U.S. App. LEXIS 17646 (July 17, 2024)(11th Cir 2024). Appeal No. 23-13671. It is set forth at PP ____ of the Appendix.

10.) The decision of the United States Court of Appeals for the Eleventh Circuit denying the Petitioner's Motion for rehearing and rehearing en banc was unpublished and unreported. It is set forth at PP ____ of the Appendix.

11.) The adoption of the Magistrate Judge's Report and Recommendation by the United States District Court for the Middle District of Florida as to Petitioner's Rule 41(g) motions are unpublished but reported at United States v. Deshpande 2024 U.S. DIST LEXIS 203667 (Nov. 8, 2024 Md. FL, Orl. Div.).

12.) The Magistrate Judge's Report and Recommendation denying the Petitioner's Rule 41(g) motions remain unpublished but reported at United States v. Deshpande 2024 U.S. DIST. LEXIS 205343 (June 3, 2024, Md. Fl. Orl. Div.)

13.) The denial of Petitioner's Rule 41(g) motions in N.D. California Jurisdiction is being

appealed to the Court of Appeals for the Ninth Circuit. Deshpande v. United States. Appeal No. 24-6039.

14.) The denial of Petitioner's Rule 41(g) motions in the N.D. of California Jurisdiction remains unpublished and unreported. Case No. 3:18-MJ-70663-JCS; (N.D. CAL. SF. Div). IN RE SEARCH WARRANT OF A RESIDENCE.

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IN THE

SUPREME COURT OF THE UNITED STATES

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DEEPAK DESHPANDE V UNITED STATES OF AMERICA

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PETITION FOR A WRIT OF CERTIORARI

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Deepak Deshpande (Deshpande) is a Federal Prisoner in custody at United States Penitentiary located in Tucson, AZ. He respectfully petitions the Honorable Court for a writ of certiorari.

Opinions below.

The Eleventh Circuit Court of Appeal's Order dated July 17, 2024 that denied the Petitioner's motions -- for in-forma-pauperis, motion to expand the record, -- and ultimately the Certificate of Appealability as to the issues raised in his Motion to Vacate ... under 28 U.S.C. §2255 is unpublished. It is reported at Deshpande v. United States 2024 U.S. APP LEXIS 17646, July 17, 2024 (11th Cir 2024). Appeal No. 23-13671. It is reproduced as Appendix ("App") D, D1 - D6. Eleventh Circuit's Order dated October 16, 2024 that denied the Petitioner's motions -- rehearing and rehearing en banc, and suggestion to certify the questions of law to this Court under Rule 19, -- is unpublished and unreported. It is reproduced as App.A The district court's order denying Petitioner's Motion to Vacate ... as authorized by 28 U.S.C. §2255 is unpublished. It is reported at Deshpande v. United States 2023 U.S. DIST. LEXIS 140858, July 5, 2023 (Md. Fl. Orl. Div.). It is reproduced as App.E. The district court's Order denying Petitioner's Rule 59 and Rule 52 motions are similarly unpublished and unreported.

## Jurisdiction.

In an Order dated July 17 2024, the Court of Appeals for the Eleventh Circuit denied : (a) The Certificate of Appealability ; (b) Motion for Leave to proceed in forma pauperis ; and (c) Motion to expand the record. A timely petition for Rehearing, combined with suggestion to hear it en banc, and a suggestion to certify a question of controlling law to this Court under Rule 19, were filed. On October 16 2024, the Court below entered an Order denying the Petition. The district court had the jurisdiction over the action under 28 U.S.C. §2255. The court of appeals had the jurisdiction over the decision under 28 U.S.C. §2253 and Fed. R. App. Proc. Rule 22(b). Therefore, this Court has jurisdiction to review the judgment of the Eleventh Circuit on Petition for Writ of Certiorari by the virtue of 28 U.S.C. §1254(1).

## Timeliness of the Petition.

The original petition for the writ of certiorari was timely filed within the 90-day period, as indicated in the proof of service, under the Prison Mailbox Rule. However, in a latter dated 02/04/2025, the Clerk's Office identified defects in the Appendix and Motion to dispense with Printing it. It "advised that the Rules of this Court make no provision for filing a motion to dispense with printing of Appendix". That as a courtesy, it "will append the orders and opinions as required by Rule 14.1(i)(i-iv) on Petitioner's behalf." But the remaining materials were Petitioner's responsibility under Rule 14.1(i)(vi). A 60 day extension was given from January 30, 2025" to correct and re-submit the Petition. As indicated mailed on the date referenced in the Certificate of Service, this Petition is timely filed as authorized by the Prison Mailbox Rule.

## Constitutional and statutory provisions involved.

Section 2255(e) of Title 28 of the U.S. Code provides :

> "An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."

Section 2255(h) of Title 28 of the U.S. Code provides :

> A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain —
>
> (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
>
> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

Section 2244(b) of Title 28 of the U.S. Code provides :

> (1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

United States Constitution Art I, §9 provides :

> The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

United States Constitution Amendment V provides :

> 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 offense 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.

United States Constitution Amendment VI provides :

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 accusations; 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.

Rules

Federal Rules of Appellate Procedure Rule 28(a)(5) provides :
a statement of issues presented for review ;

Federal Rules of Appellate Procedure Rule 28(a)(6) provides :
a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record (see Rule 28(e));

Federal Rules of Appellate Procedure Rule 28(a)(8) provides :
the argument, which must contain :

(A) appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(B) for each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues);

## Statement of the case.

### I. Course of the proceedings in the section 2255 case now before this Court.

Relying on the advice of his retained counsel, Petitioner Deepak Deshpande (Deshpande), on 10/18/2018 pleaded guilty to count-two -- production of child pornography in violation of 18 U.S.C. §2251(a) -- and count-three -- enticement of a minor in violation of 18 U.S.C. §2422(b). Immediately thereafter, the government sprang opened a murder-for-hire plot that it was investigating in parallel, which resulted in the retained counsel moving the court for withdrawing from representation.

While Deshpande was awaiting for the court's decision and was without counsel, the Probation Office and the Counsel for United States jointly drafted an initial PSIR arguing for life and filed it under seal without serving or noticing the defense. Due to Deshpande's indigence, the court appointed a CJA counsel for the remaining proceedings. Four months later, the court appointed counsel moved the district court for withdrawal of Deshpande's guilty plea(s). In opposition, the government agreed that there were no real evidences to support the charges, but expressly relied on potential evidence not in the record to fortify their position [4]. The district court denied the motion to withdraw and expressly relied on the government's potential evidence not in the record. Eventually, Deshpande was sentenced to life in prison for count-three and 30-years on count-two, to run concurrently. An appeal followed. The court of appeals affirmed the judgment in all respect. See United States v. Deshpande 808 Fed. App'x 834 (11th Cir 2020). A Petition to this Court for a Writ of Certiorari was denied. See, Deshpande v. United States 141 S.Ct. 831 (2020), No. 20-5880.

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[4]. See Crim-Doc-77 at 10 - 11 (Criminal Case No. 6:18-CR-131 Md. Fla).

Around April of 2021, the Petitioner filed the Verified motions as authorized by 28 U.S.C. §2255, to vacate and set aside the judgment of conviction. See Doc-1 . The petition set-forth eight main claims and several sub claims under them, including actual i.e. factual innocence. As authorized by 28 U.S.C. §2250, additional motion were filed requesting such records that were in government's possession, which could demonstrate in clear and convincing manner that Petitioner was actually or factually innocent of the crimes. See Doc-3 . In anticipation of those records and in order to remain timely, a motion for judgment of acquittal, or in the alternate for new trial were also filed. See Doc- 9 .

In an order, the district court denied the records and documents that were requested under §2250 and the motion for judgment of acquittal or for new trial. See Doc- 11. The order was final. It was appealed to the Eleventh Circuit court of appeals in an interlocutory jurisdiction. The Eleventh Circuit Court of appeals made a jurisdictional inquiry to which both the parties answered. The court of appeals affirmed the district court's order stating, "[a]lthough Deshpande argued that he was entitled to relief based on newly discovered evidence, he only speculated that the potential new evidence would nullify the factual basis for his guilty plea." See. Deshpande v. United States 2022 U.S. App. LEXIS 12017 *2 (11th Cir 2022, May 3, 2022); Appeal No. 21-14166-J.

The evidence requested in the motions under §2250 were once again requested in the motions for discovery and the court was moved to resolve those disputes using an evidentiary hearing which could demonstrate in clear and convincing manner that the Petitioner was actually or factually innocent of the crimes. See Doc-26 . Based on the Respondent's failure to defend all of the facts asserted and claims raised, a motion for "Default" and for "summary judgment" as authorized by Rule 55 and 56 were also filed. See Doc- 39 . Additionally, the

district court was moved to sanction the Respondent's conduct for violations under Fed. R. Civ. P. Rule 11(b) -- applicable to motions under §2255. See Doc - 40.

In an order, the district court denied those motions. See Doc- 44. The court then denied the relief requested under the eight substantial claims. In a "catch-all" provision, it denied the remaining and dismissed the §2255 action. See Doc- 46. In doing so, the district court once again relied on the Respondent's proffered potential evidence dehors the record, simultaneously declining to resolve facts dehors the record. Id at _____. In deciding the motions under §2255, the court solely relied on events occurring before it, where as the claims were based on facts, events, and circumstances, occurring outside the court. A Rule 52 and 59 motions were timely filed to resolve the facts dehors the record and amend the judgment on the basis of the findings. It was summarily denied. See Doc- 53, 54.

A timely notice of appeal was filed with the Eleventh Circuit court of appeals. See Appeal No. 23-13671. A brief in support of granting the Certificate of Appealability (COA) on five specific issues was timely filed. See App:E at ii The brief argued that the district court had rendered Deshpande's remedy under §2255 "inadequate or ineffective to test the legality of his detention" as defined by §2255(e) by failing to resolve the facts dehors the record in the claims, and expressly relying on potential evidence dehors the record, which cannot be admitted without the benefit of cross-examination. A motion to expand the record and include all such evidences, -- both as authorized by 28 U.S.C. §2250, and under discovery under Rule 6 of the rules governing 28 U.S.C. §2255, -- were made arguing that : (a) a proper and undisputed resolution of acts should be made to satisfy "inadequate or ineffective" test under §2255(e); (b) which could conserve judicial resources ; and (c) most importantly, prevent implicating the

concerns of §2244(b)(1), §2255(h) due to its conflicting decision in In re Baptiste 828 F.3d 1337, 1339-40 (11th Cir 2016). See App:D.

Under the authority of a single Circuit Judge, and without the jurisdiction of the COA, the order reached the merits and dismissed the appeal. See App:C. A timely petition for rehearing and rehearing en banc were filed to reconsider the errors and implications of departing from the accepted appellate practice, viz :

(i). Reaching the merits without the jurisdiction of the COA, and drawing conflict with the applicable decisions of this Court in Buck v. Davis ;

(ii). Inconsistent with the party presentation principles of our adversarial system. Instead of determining whether jurist of reason could debate the issues set-forth, and as required by the Fed. R. App. Proc. Rule 28(a)(5), (a)(8)(A), the Order has denied the COA based entirely on issues not even advanced on appeal or argued in favor of ;

(iii). Departs from, or sanctions departures from satisfying the needs of Art. I, §9 Suspension Clause ;

(iv). Adversely affects the adequacy or efficacy of the remedy offered in motions under §2255 ;

(v). Unreasonably burdens Deshpande, first by forking his remedy under §2255(h) and then denying it under In re Baptiste's interpretation of §2244(b)(1).

Inspired by Justice Sotomayor's suggestion in In re Bowe 144 S.Ct. 1170 (2024), No. 22-7871, Deshpande moved the court below to certify the relevant question of the law "whether §2244(b)(1)'s plain language covers only challenge by state Prisoners under §2254" Id, *2. It explained that, if and when Deshpande were to successfully acquire such newly discovered evidences, that government has so far suppressed, which were sought in the first round of §2255, he would then be barred by its interpretation in In re Baptiste. See App: C . The court below denied it all.

## II. Relevant facts concerning the underlying conviction

All the relevant facts are set forth in adequate detail in the Rule 52 motion. See Doc- 54 ; App: at 5 - 19. The district court has declined to make those findings and conclusions. For the benefit of the Court, a condensed version is compiled and attached hereto in App: 6 . The factual basis supporting the guilty plea(s) are set forth in the plea-agreement. See Doc-38 at 27-32. (Criminal Case 6:13-CR-131, MD. FL.)

In brief, Deshpande's retained counsel and hired forensic expert fraudulently misrepresented and coerced him to plead guilty, based on promises not reflected on the record. The record stands devoid of retained counsel's performance. A Constitutionally required competence expected from a criminal defense attorney, in advising to plead guilty. Where, there was not an iota of independent, reliable, and competent proof existed to support a commission of crime. The claims and evidences that are in the record are appropriately summarized in the Rule 55 and 56 motions. See Doc-39 . App:

When the district court accepted Deshpande's guilty plea(s), it did not have the benefit of such otherwise independent evidence [1], from which it could reasonably and independently find his guilt. Neither the prosecutor proffered to the record as to which evidences could prove, which elements of the crime, nor the defense counsel consented on the record, the prosecutions ability to do so. Thus, the court could not have discharged its duties under the Fed. R. Crim. Proc. Rule 11(b)(3).

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1. Such as (i) which tangible or real visual depictions were produced in violation of §2251(a). Or other information such as their metadata, related hashstrings, or descriptions of the visuals ; (ii) What if any, social media platforms were used, and which of its account identifiers, to wit : phone numbers, text messages, or wireless cellular calls were used in enticement crimes in violation of §2242(b).

A conviction under 18 U.S.C. §2251(a) requires a defendant to have actually produced, real or tangible visuals depicting an identifiable minor, who was engaged i a sexually explicit conduct as defied in §2256(2)(A). The record has ZERO and the Respondent concede as much. Similarly, a conviction under 18 U.S.C. §2242(b) requires a defendant to entice, -- cause an ascent on the part of a real minor -- to engage in sexual activity that is prohibited. The record has ZERO references to any phone numbers, cellular text messages, internet based instant messages, or wireless cellular calls that had caused it. These assertions are not in factual dispute. The Respondent has repeatedly conceded that it was unable to find any independent, reliable, or otherwise competent evidence to support the factual basis. For example, See Doc-17 at 16, n.7.

Except, the Respondent argues that if and when called upon, the Accusing Minor (AM) could testify to the veracity and sufficiency of the factual basis. It relies on prospective evidence not in the record and one, that cannot be admitted without a notice, satisfying relevance, laying foundation, and benefit of a cross-examination. Relying on this potential evidence not in the record, the district court has denied the motion to withdraw guilty plea(s).

During the section 2255 action, when actual i.e., factual innocence claims were asserted, the claim required the district court to resolve all the facts dehors the record on independent, reliable, and competent evidence in an evidentiary setting. This Court has repeatedly advised weighing evidence or determining credibility should not be made when deciding motions under summary judgment [2]. Based on the resolution, the court was required to determine whether, "in light of all the evidence, it is more likely than not, that no reasonable juror would have convicted him" [3].

2. "A Judges function in evaluating a motion for summary judgment is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Salazar-Limon v. City of Houston 581 U.S. 946, 961 (2017)(citing Anderson v. Liberty Lobby Inc., 477 U.S. 242, 249 (1980)).

3. Bousley v. United States 523 U.S. 614, 621-22 (1998)(internal citations omitted).

To demonstrate actual innocence of producing child pornography in violation of 18 U.S.C. §2251(a), Deshpande would have to show, no reasonable juror would have concluded that he produced visuals of the AM that depicted her in one of the conducts defined in §2256(2)(A), using the instruments of interstate or foreign commerce. There are ZERO visuals for the jurors to review and make that findings, as none were produced. A witness testimony -- as the Respondent intends to offer, -- cannot bring real tangible visual depictions from the past into existence for the jury to review and determine whether it depicts the AM in a conduct defined in §2256(2)(A). A visual depiction is an element of the charge.

To determine actual innocence of enticement crimes in violation of 18 U.S.C §2422(b), Deshpande would have to show that no reasonable jurors would find that he engaged in such exchange of communication, to wit : sent or received messages, made calls using the facility of interstate or foreign commerce, knowing that the AM is a minor, which caused an ascent on the part of the AM to engage in the forbidden activity. There are ZERO such conversations in the record for the jury to review and make their findings, which satisfy the elements of the crime. As the Respondent intends to offer, a witness testimony cannot in the same vain, bring such real or tangible communications occurring on the interstate or foreign commerce from the past into existence, such that the jury could make their findings.

On the other hand, a reasonable instructed jury could find it thoroughly disturbing that :

(i). The Whisper App, where the AM is alleged to have posted several classifieds expressing her desire to become a model, — each of which defied the mathematical algorithms and allegedly landed on Deshpande's screen, — was not even downloaded on any of her devices or his devices; Whisper platform itself did not have any records to show that such accounts were either created or classifieds were posted on its service ;

(ii). Similarly, the Kik Interactive Inc.'s messaging platform, where the AM is alleged to have captured the screenshots, has no records to even show that her own account existed on its platform ;

(iii). The phone calls the AM is alleged to have placed, or received from the enticing individuals in the year 2017 and 2018, were deactivated by the provider prior to that ;

(iv). Similarly suspect is the FedEx transaction. On or about in the year 2017, when the AM's phone broke down, a Google Nexus 6P Android Smartphone was sent to her, so that she could continue to record abusing herself on it. It is this device on which the screenshots were allegedly captured. The FedEx envelope listed Deshpande's address and resulted in solving the WHODONEIT. However, the FedEx has no records to show that this transaction ever occurred on its service ;

(v). Suspect is the Google Nexus 6P Smartphone itself. The AM used this phone to coordinate the encounters exchanged messages, captured the screenshots etc., from the year 2017 onwards. However, the Respondent's own Cellebrite forensic analysis found that the device was activated, created a Gmail Account, associated it with the phone to set-it-up, a few days prior to registering the complaint on NCMEC.

Combining these with the absence of any visual depiction Deshpande is accused of producing or possessing, -- which depicts the AM in conduct defined in §2256(2)(A), -- it is not hard to envision a scenario where a properly instructed rational tier of jury could find Deshpande's acquittal. What should be even more of a concern to this Court is, how was it that the Respondent were able to proceed to the trial without a prima facie evidence to acquire an indictment. It demonstrates the current administrations concern of the alarming and unreasonable expansion of Federal power.

In order to adequately and effectively resolve the claims asserted in Deshpande's motions under §2255, a full development of factual records -- especially those that dehors the record -- was necessary. Otherwise, it risked triggering the **'saving clause'** of the §2255(e) or suspending his §2255 in

violation of Art. I, §9. Neither of them could be satisfied by :

(i). Solely relying on the events occurring before the court and declining to resolve, such facts, events, circumstances dehors the record, the claims expressly relied on ; or,

(ii). by relying on potential evidence dehors the record, one that is constitutionally inadmissible without a notiice, laying foundation, satisfying other such rules of evidences, or without the benefit of cross-examination sufficient to satisfy confrontation clause.

Both, the district court and the Respondent equally share the burden to ensure that the section 2255 remains adequate and effective at all times pertinent. Irrespective of whether or not relief is granted. That did not happen in the instant case at bar.

III. The court of appeals has departed, sanctioned such a departure, decided a federal question in a way that conflicts with the applicable decisions of this Court. And in the course widened the conflict that should be now addressed by this Court.

The court of appeals has the duty to ensure that the Respondent has not introduced such impediments or that the district court has not departed from the acceptable practice in a manner that affects the remedy under §2255 to become "inadequate or ineffective to test the legality of his detention". See §2255(e). It does so, by determining whether the issues set forth and advanced in the application for the COA -- as authorized by Rule 22(b), and if one is filed by the applicant, as required by FRAP. 28(a)(5), (a)(8)(A), -- are debatable amongst jurist of reason.

That duty is not discharged by (i) either reaching the merits of the appeal, without the required jurisdiction of the COA; (ii) determine whether or not the court below has properly decided the claims ; or, (iii) determining

whether or not the Petitioner has met his burden by offering evidence to the district court.

The court of appeals such as the Eleventh, should be excessively vigilant in their determination whether or not to grant the COA, where the Appellant's are Federal Prisoners. A denial without a complete factual development at the district court level, or Respondent introduced impediments, -- such as in case at bar, -- could implicate its interpretation of 28 U.S.C. §2244(b)(1), decided in In re Baptiste. Under the circumstances that evolved, the appropriate course of action for the Eleventh Circuit court was to invite the entire court; revisit the §2244(b)(1) as interpreted by the In re Baptiste' panel ; decide the issues set forth in the COA; and if there were lack of consensus among Jurist, certify the questions, as suggested by the Justices of this Court.

In failing to do so, not only the court of appeals for the Eleventh circuit has sanctioned the district court's departure from the acceptable section 2255 practices, but in every other aspect, has itself departed from the acceptable appellate practices. It is respectfully urged that all respects of this decision are erroneous. Not only are they at variance with applicable decisions of this Court, as explained in the arguments below, in the due course, it has widened the brewing conflict amongst the circuits. One that the Justices of this Court have repeatedly expressed the desire to settle it.

## IV. Jurisdiction of the courts below.

The Petitioner was convicted in the U.S. district court of the Middle District of Florida in violation of Title 18 of the United States Code. The district court had jurisdiction as a section 2255 motion was appropriately made in that court. It was duly appealed to the Eleventh Circuit court of appeals which had jurisdiction under 28 U.S.C. §1291, 28 U.S.C. §2253, and Fed. R. App. P. Rule 22(b). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Argument for allowance of writ.

I. The court of appeals erred in sanctioning district court's departure from acceptable §2255 practices.

A claim arises from the relationship between a set of facts and a legal right asserted by the movant. It then falls to the court to 'adjudicate' -- meaning, rule upon -- that claim. An adjudication 'on the merit' of the claim is a ruling based on the court's evaluation of whether those facts pled or proven entitle the movant to relief under the prevailing standard. If a court fails to conduct this evaluation, there can be no adjudication on the merits. Having settled this principle, the Court's attention is drawn to three decisions, where it were held, no guilty plea, which has been induced by an unkept plea bargain can be permitted to stand [4]. The Fontaine Court made it clear beyond cavil that under some circumstances a hearing must be granted to consider post-conviction attack on guilty-plea, notwithstanding a full compliance with Rule 11. Of course, there could be factual difference between Fontaine and the case at bar. However, in terms of the central proposition there established -- that a Rule 11 transcript is not always conclusive for the purpose of determining the propriety of resolving claims on post-conviction proceeding., they are identical.

There are three key similarities in the two cases. Unlike Fontaine, here, the record reflected partial compliance with the Rule 11. There, as here, the subsequent attack on the guilty plea necessarily incorporated allegations that directly conflicted with representations made during the change of plea hearing. And there, as here, the subsequent attack focused on alleged incident, events, facts, occurring dehors the record. Moreover, nothing in Fontaine suggested that its central premise is to be limited to precise facts of that case. This principle has been repeatedly upheld.

4. Fontaine v. United States 411 U.S. 213 (1973), Santobello v. N.Y. 404 U.S. 257 (1971), and Marchibodo v. United States 368 U.S. 487 (1962).

Since the enactment of the Judiciary Act on the Feb 5th of 1867, C.28 §1, 14 Stat 285, Congress has vested plenary power in the Federal courts, "for taking testimony and trying the facts anew in habeas hearings." Nonetheless, motions under Fed. R. Civ. P. Rule 52 and 59 that are applicable to 2255 procedings, allow for error corrections and amending judgments. When the errors of failing to determine facts dehors the record and reliance on constitutionally defective potential evidence dehors the record were assigned in those motions, there too, the district court exceeded its discretion to decline making the findings and considering them in the judgment.

It is always the duty of the judge -- both trial and appellate -- to see to it that fundamental rights touching any persons right to life, liberty, and freedoms, are protected and preserved. When serious errors such as one's assigned in the brief supporting the application for the COA were assigned, the court of appeals should have heightened its scrutiny of the decisions below. As will be discussed further, and even the government concedes, the Eleventh Circuit's interpretation of the 28 U.S.C. §2244(b)(1) is incongruent to the plain text of the statute, which is implicated in here. Under such circumstances, it could "not pass upon the Constitutionality of a Statute at the instance of one who has availed himself of its benefit" [5]. As was held in the Hayman's Court, the court of appeals should have ensured that the "Section 2255 authorizes a remedy in the sentencing court which, in cases presenting factual issues as in other cases is fully adequate and effective to afford any relief to which the Prisoner is entitled" [6]. However, it did not. By completely overlooking the adequacy and efficacy of the remedy which declined to resolve facts dehors the record and in the course relied on potential evidence dehors the record, it sanctioned the departures from the Constitutionally acceptable

5. United States v. Hayman 342 U.S. 205, 223 (1952).

6. Held in Hayman 342 at 205.

The reasons Deshpande travelled to Orlando, FL., items he dropped at Orlando International Airport, the threats issued by the law-enforcement against cooperating with them, dehors the record. The facts, events, circumstances where his retained counsel and hired forensic expert made fraudulent misrepresentations, promises, and coercions, dehors the record. So do, the plea negotiations during which the government promised the audience of Special counsel, an assistance to whom, could result in non-incarceration sentence, similarly dehors the record. It is these inducements that resulted in guilty pleas. The trial court was not party to any of these occurrences. There are such evidences the government has so far suppressed, which could prevent the district court from accepting the guilty plea(s), are not in the record. What is also not in the record are the AM's testimony which could satisfy the factual basis, once appropriate foundation is laid, rules of evidence are met, and Deshpande's confrontation rights are satisfied with the benefit of cross-examination. All of these were asserted in the Verified Complaint filed during the §2255 proceeding.

The Marchiboda Court observed that the factual issues developed by the detailed petition and the affidavits related to purported conferences dehors the record, and specifically pointed out that they were not such as the Judge could recall by drawing on his personal knowledge or recollection. So are the potential evidence that are not in the record. A prosecutors reliance on evidence dehors the record constitute misconduct. Here, the counsel for Respondent's solely relies on potential evidence of the AM's testimony, not once but twice.

The files and records in Deshpande's case could not amount to a conclusive showing that he was not entitled to relief, also because, he asserted that, his part of the plea agreement required him not only to confess his guilt, even though he was **not guilty**, but also join his attorney in falsely making assertions to deceive the judge that no other promises or bargains existed. That

his attorney would take over, if judge raises such concerns that Deshpande was not coached to answer, which he dutifully did during those instances.

The district courts task was to apply judicially the teachings of Marchiboda and Fontaine, and determine whether in the allegations versus the record setting of Deshpande's §2255 motions, files, and records of the prior plea and sentencing procedure conclusively show that he is or not entitled to relief. No per se rules could have been applied, the resolution of the claims entirely rested on the resolving the facts dehors the record. The district court did not have the discretion to decline deciding them. Or else it risked unconstitutionally suspending Deshpande's Writ of Habeas Corpus in violation of Article I, §9. Simultaneously triggering the 'Saving Clause' of §2255(e), rendering the remedy by motion inadequate or ineffective to test the legality of his detention.

In considering that the proceeding in the district court were proper under the terms of §2255, the court did not proceed in conformity with §2255 when it declined to make findings of controverted issues of fact dehors the record, and instead resolved the claims relying on events occurring before it and on the Respondent's offering of potential evidence not in the record, that cannot be admitted either without satisfying rules of evidence or the benefit of cross examination. The issues here required trial of those facts dehors, the record of trial on which he was convicted. Obviously in practice, almost any claim could be cognizably raised on motions under §2255. The ability to raise or their availability, the so called 'procedural shot' does not make the remedy under §2255 adequate or effective to test the legality of one's detention. The remedy requires a determination of such facts dehors the record in an evidentiary hearing on reliable proof. A lack of such process, due inherently in the proceedings provided by section 2255, makes the remedy fatally defective.

Section 2255 practices. In the due course, itself departed from the acceptable appellate practices. See App:B at 7-12 for additional discussion on this topic.

Considering that an excess of 97% of the cases in the Federal courts are resolved by guilty pleas, the court of appeals had a duty to ensure that the process involved is fortified; that innocent persons do not get caught up in the mix; and issues of actual i.e. factual innocence are dealt with at the outset. Whether the district court abused or exceeded its discretion in accepting guilty pleas were a right step in that direction. In light of this Court's decision in Jones v. Hendrix [7], the court of appeals decision is highly questionable and deeply dents the "remedy by motion" landscape. It now requires this Court to settle the Federal question, "what is the proper test to ensure §2255 remains adequate and effective to test the legality of one's detention? "

II. The court of appeals erred by departing from the acceptable practices of the 'party presentation principles' and denied the COA based on issues neither assigned nor briefed in the application.

The 'threshold' question during the COA stage is whether jurist of reason could debate any of the 'statement of issues' as set forth and argued by the applicant. The Federal Rules of Appellate Procedure (FRAP) plainly requires that an Appellant's brief "contain, under appropriate headings and in the order indicated ... a statement of issues presented for review." See FRAP 28(a)(5). This rule applies in equal force to the Application briefs filed in support of granting the COA as well. They are authorized under Rule 22(b)(2) of the Appellate procedures. Therefore, for every "issue[] presented for review" the Appellant should advance "the arguments, which must contain ... contentions and the reasons for them, with citations to the authorities and part of the record on which the appellant relies." See FRAP 28(a)(5), (a)(6), and (a)(8).

7. 599 U.S. 465 2023.

The Principle, an idea of party presentation, is codified in the appellate rules to satisfy one of the fundamental commitments to our adversarial system of justice. This Court has recently and unanimously reiterated the elemental truth that "[i]n our adversarial system, we follow the principle of party presentation," accordingly, "we rely on the parties to frame the issues for decisions and assign to Court the role of neutral arbiter of matters the party presents." [8].

In those cases where the appellant is a prisoner, proceeding pro se, and did not file an application brief, advancing arguments in support of granting the COA, the appellate panel is justified to have sua sponte perused the judgment below and record, to determine whether there are such issues that jurist of reason could debate. Otherwise, the Application brief filed under Fed. R. App. Proc. 22(b) controls. The very purpose of issues-not-briefed-are-waived, and one expressly formulated in the appellate rules 28(a)(5), (a)(6), and (a)(8), so as to both, conserve judicial resources and clearly advise the opposing party of the obligations to be met should be preserved.

In the instant appeal, Deshpande filed an application brief in support of granting the COA on specific set of issues and waived the rest. The resolution of the appeal, i.e., to determine whether or not the issues Deshpande has set forth such "statement of the issues" required by FRAP 28(a)(5), concised them as required by 28(a)(6), and advanced in support of as required by (a)(8), such issues, which show "reasonable jurist could find the district courts assessment of the Constitutional claims debatable or wrong" [9].

The court of appeals erred in undertaking that determination. Instead, the order has strayed beyond the confines of the issues set forth and into merits

8. United States v. Sineneng Smith 140 S.Ct. 1575, 1579 (2020) (Quoting Greenlaw v. United States 554 U.S. 237, 243 (2008); See also Vidal v. Elster 602 U.S. 286, 328 (2024) (Sotomayor J., concurring in judgment) (citing Meselenjak V. United States 562 U.S. 335, 354 (2017) (Gorsuch J., joined by Thomas J., concurring in part and concurring in judgment)).

9. Slack V. McDaniel 529 U.S. 473, 484 (2000)(citations omitted).

land. Here, the court of appeals has reviewed whether the district court's judgment to determine if the constitutional claims were debatable or wrong. That is respectfully submitted as completely erroneous. The order violates the due process, if anything contravenes the fundamental commitment to our adversarial system. The constructs of party presentation principle. Not only it obscures the critical distinction between issues advanced versus waived, but it fails to meaningfully review the district court's decisions or departures alike. A check to ensure that the remedy under section 2255 remains adequate and effective at all times pertinent. The court of appeals has tried to address a federal question of law based on its reading incorrect source material. The critical and federal question of law should now be addressed by this Court. What is the role of Application brief filed in support of granting COA? Put in other words, what document, motions, should the court of appeals review when it is requested to determine whether or not a COA should issue ?

## III. The court of appeals erred by reaching the merits, without the required jurisdiction of the COA.

The 'threshold question' analysis during the COA phase does not entail reaching the merits analysis or correctness of the district court's judgement below. Even though the COA requirements erect an important but not insurmountable barrier to an appeal, "[a]t the COA stage, the only question is whether 'the claim is reasonably debatable'" [10]. "This threshold inquiry is more limited and forgiving than adjudication of the actual merits." [11]. Put differently, a "court of appeals should limit its examination at the COA stage to a threshold inquiry into the underlying merits of the claims and ask only if the district court's decision was debatable." [12]. The order/decision of the court below is in direct conflict with the applicable authority of this Court. See App:D at 3-5, . ; See also, App:B at 3-6.

10. Buck v. Davis 137 S.Ct 759 (2017).
11. Id.
12. Buck 137 S.Ct at 774 (citations omitted).

Foremost of all, the court of appeals should have reviewed whether (i) the district court unconstitutionally suspended Deshpande's habeas corpus in violation of Art. I, §9, in any manner ; or undermined the remedy under §2255 to become inadequate or ineffective to test the legality of his detention in violation of §2255(e) in any manner. See App:D at 5. Reaching the merits was at odds with this Court's authority [13] where it was held "a COA ruling is not the occasion for a ruling on the merits of a petitioner claim" [14], including principles of party presentation, and appellate practice. To nevertheless dwell on correctness of the district court's decision, noting the lack of evidence to show both, that the government suppressed the evidence, and that false or fabricated evidences were presented, without reviewing the actual source, and maintain that the issues are not debatable departs from the acceptable practices. It departs from the earlier decision it reached in the interlocutory appeal. See discussion at Page 6 .

The only issue before the court of appeals was threshold jurisdictional inquiry as to whether to issue the COA or not. When the order departed from the limited inquiry, without full briefing or oral arguments, "it is in essence deciding an appeal without jurisdiction" [15]. In light of this decision which implicates prior authority of this Court, and the departure discussed in §II above, it falls to this Court to re-iterate its commitment to remedy under section 2255 remains adequate and effective at all times. Just as if found and remanded back to Fifth Circuit in Buck, here too, it should do so, once all the intertwined issues are resolved.

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13. Miller-El v. Cockrel 537 U.S. 322 (2003).
14. Id at 331.
15. Buck v. Davis 530 U.S. 100, 115 (2017) (quoting Miller-El 537 U.S. at 336-37).

IV. The court of appeals erred in affirming the district court's judgment and implicated an important question of federal law that should, as the Justices of this Court have repeatedly desired, be settled by this Court.

To address this, we should begin by recaping the procedural history. The district court denied Deshpande's request to specific records, -- which were in Respondent's possession, -- not in the record, which could : (i) nullify the factual basis ; (ii) prevented it from accepting the guilty pleas ; (iii) demonstrated the Respondent's knowing use of false evidence and perjured testimony; and (iv) finally, in clear and convincing manner demonstrated Deshpande's factual, i.e. actual innocence. Based on the recovery of these records, a motion for new trial or for judgment of acquittal was filed. The district court denied the motions prematurely without adequate making adequate record for review. The order was final, and was appealed in the interlocutory judgment. The Eleventh Circuit court of appeals recognized in affirming that Deshpande has not offered, but speculated that the recovered evidence would justify his acquittal.

During the time, the Respondent's were well in advance noticed of their errors. Among them were (i) relying on potential evidence not in the record, which cannot be constitutionally admissible; plead in violation of Fed. R. Civ. P. Rule 5, 7, 10, and 11(b); and refrain from misleading the court. Undeterred, they brazenly took shelter, ocne again on the prospective evidence not in the record to defend actual innocence claims, including relying on very evidences, which violated Rules of evidences, such as lack of foundation, authentication, identification, and authorship.

Instead, of reprimanding and sanctioning their misconduct as requested, the district court below declined and followed suit. It too, relied on the very evidences which were sought, not in the record, and constitutionally inadmissible to deny the claims. It even applied incorrect standard to resolve the claims. Those determinations were assigned as erroneous and one that caused the remedy under section 2255 in this instance to become inadequate and ineffective to test the legality of his detention. At the same time, it implicated the Eleventh Circuit court of appeals decision in In re Baptiste , where it reads the plain language of §2244(b)(1) to apply equally to both Federal and State Prisoners, proceeding under §2254, and remedies under §2255(h).

There is no argument and everyone agree's that only state Prisoners file habeas corpus applications under section 2254. Federal Prisoners file "Motion to Vacate" as authorized by 28 U.S.C. §2255. Although, the §2244(b)(1) text plainly states that it applies only to State prisoners proceeding under §2254, six circuit courts have held otherwise. Including the Eleventh Circuit, where the Petition for Writ is requested. They read the plain text of §2244(b)(1) applies equally to Federal Prisoners proceeding under §2255. The government agrees with the minority view, that the majority six circuits are contravening the plain textual interpretation of an important provision in AEDPA. That justifies this Court's intervention and exercise of supervisory power to settle the dispute.

**i.) The reasons order implicates those issues here.**

The district court limited its analysis to events occurring before it, where as the claims asserted facts, events, and circumstances dehors the record. The district court's order denying access to records in Respondent's custody, which could demonstrate his innocence, fraud, deceit, misrepresentation, and knowing use of fabricated evidence, are similarly dehors the record. If the Respondent were to subsequently release these records through other methods of

litigations, Deshpande is barred to proceed under the Eleventh Circuit's decision in Baptiste to relitigate any of the claims. Even under the §2255(h)'s newly discovered evidence clause. Thus, even though, the circumstances here are not within the meaning of authorization to file second or successive §2255 petition, Deshpande is forced to confront the In re Baptiste decision, once he acquires the records from the Respondent. In the meanwhile, his Habeas Corpus is unconstitutionally suspended in violation of Art. I, §9.

The Eleventh Circuit's holding in In re Baptiste, both, increases Deshpande's burden and simultaneously bars him from availing remedy that not only Constitution, but Congress expressly carved out. The holding and the specific interpretation is capable of usurping the whole class of claims within its wing. Deshpande will not be able to litigate fabrication of evidence, or fraud, misrepresentations, use of perjured testimony, factual i.e. actual innocence, claims using the newly recovered clear and convincing evidence. As argued in the Petition for rehearing, and rehearing en banc, and suggested in the request to certify, See App:B at 12, and App:C at 3-4, it allows the Respondent to simply withhold the material evidence, until a Prisoner exhausts his first round of remedies.

**ii.) The majority view is clearly wrong.**

They interpret §2244(b)(1) to bar successive claims presented by Federal Prisoners in a §2255 motion. The six circuits interpretion contravenes the plain text of the statute. The statute itself is unambiguous [16]. A "habeas corpus under section 2254" can only be filed by "a prisoner in custody pursuant to the judgment of a state custody". See 28 U.S.C. §2254(a), (b)(1). In the past, this

16. It states : "A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed". (emphasis added). See 28 U.S.C. §2244(b)(1).

Court has expressly recognized the distinction between the two statutes. "The requirement of custody pursuant to a state-court judgment distinguishes §2255 from other statutory provisions authorizing relief from constitutional violations — such as §2255, which allows challenges to the judgment of federal courts" [17]. Thus, any ambiguities that the court of appeals below perceive to exist between the statutes is simply unavailing.

Their reading clearly invalidates the text of the statute. Congress knows how to write sweeping prohibitions. "If no magic words are required for abrogation, then each statute must be evaluated on its own terms, not defeated by reference to another statute that uses more specific language" [18]. Instead, assuming the legislative authority, the six majority circuits have impermissibly rewritten the statute, barring whole sleuth of claims in the blurred lines. Their complicated reading comes from the §2244's reference in §2255(h). That complicated reading does not explain, how §2244(b)(1) could affect §2255(h)(1).

In circumstances where only a part of evidence was available during a Federal Prisoner's first §2255 and he asserts a Constitutional violation. If the district court concluded that the evidence he intends to admit is insufficient to overcome the jury verdict, and in a later litigation, if the Prisoner were to recover the remaining, which showed all of the evidence admitted during the trial were fabricated, the Prisoner has no remedy vehicle to test his detention anymore. In the six majority circuits view, he must continue to suffer the Constitutional violation and remain imprisoned even though he is innocent. Such an interpretation would turn the legislature over the head.

Some of the majority circuit disagree that §2255 does not incorporate all of the §2244 into it, which would be illogical to create absurd results. The Eleventh Circuit, however, incorporates §2244(b)(1) into §2255(h) [19]. Its

17. Maqwood V. Patterson 561 U.S. 320 (2010).
18. Pennsylvania v. Union Gas Co. 491 U.S. 1, 13, n.4 (1989).
19. In re Bradford 830 F.3d 1337 (11th Cir 2016).

attempt to salvage it using policy considerations such as "it would be odd indeed if Congress had intended to allow federal Prisoners to refile previously the same non-meritorious motions over and over again while denying that right to state Prisoners" [20] fails in two aspects. Here, second and successives are under gate keeping missions under §2255(h). And two, it fails to acknowledge the serious ramifications, where Respondent could be laying the impediments to cause those relitigations. As the Fourth Circuit has correctly acknowledged, "such a purposive argument simply cannot overcome the force of the plain text" [21].

**iii.) Exceptional circumstances warrants this Court's intervention and exercise of supervisory authority.**

This Court's decision in Jones v Hendrix [22] has failed to alter the section 2255 and its appellate practice, the way it should have. It has, however, altered the remedy under §2241 and diminished it. The six majority circuit's use of 'basic gravamen' standard guts the section 2255 landscape. Even if the legislature, the executive, and this Court itself have come to conclusion that, the conduct for which the Prisoner is serving the sentence for, is not a crime anymore, the six major circuits rely on the 'basic gravamen' standard and deny the entire remedial structure. If the reasons underlying those decisions were to ensure reliability, adequcy, efficacy of §2255, integrity and finality to prior proceedings, conserve judicial resources, or as the Eleventh Circuit likes to believe in adherence to Congressional policy and prevent relitigation, it is respectfully assigned as heavy blow to the overall §2255 litigation writ large. Instead, it allows for undermining the adequacy and efficacy of §2255 remedial vehicle. The case presented here is one such example.

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20. Baptiste 828 F.3d at 1339.
21. See In re Graham 61 F.4th 433, 441 (4th Cir 2023) (citations omitted).
22. 599 U.S. 465 (2023).

This case provides an extraordinary and unique opportunity to perform two things. One, to reaffirm this Court's commitment to secure that the motions under §2255 remains adequate and effective, both in scope and substance to test the legality of a Federal Prisoner's detention. And two, to resolve the circuit split that Justices' themselves have expressed desire to resolve. A non-resolution of the split in turn, directly implicates the remedial scope and substance of remedy under §2255.

**The issues presented in here are critically important and of Federal law.** They have recurred in the past and are bound to regress in a downward spiral in several directions if not resolved. Apart from that, there is a substantial issue of abuses by Federal prosecutors that militates in favor of curbing it. These issues have affected equally cases that proceed on trial or on guilty pleas. More frequently and enduring effects are seen in cases of prosecution's Brady/Giglio/Kyle/Jencks violations, when this Court announces new rule of Constitutional law that invalidates the serving conviction and goes through the efforts of even making them retroactively applicable under §2255(h)(2). The prevailing decisions in the six of circuits, such as Baptiste, trumps and invalidates it all. Just because the Prisoner exercised his rights and due diligence by assigning the claims during the first §2255 motions. In the event the Prisoner did not present such an issue, there are other penalties that prevent the access to remedy. This circumstance justifies the Court's intervention.

**The case is an appropriate fit for the Court to settle the split.** In order not to land in this precarious situation, Deshpande has reasonably utilized every available device in the Habeas Practice. As discussed in the § Course of Proceedings .... at 5 - 8 above, the court of appeals was appraised of the issues in the Application Brief and Motion to Expand the Record filed under FRAP 10. When the Order of a single jurist denied the COA and the motion to expand the

record, in the Petition to rehear, hear it sitting en banc, it was emphasized that the denial will unreasonably implicate multitude of issues including Baptiste. See App:B at 8 .

Most recently, the Petitioner in In re Bowe invoked this Court's original jurisdiction under §2241, so that the Court can address the split that prevented his remedy. In considering the demanding standard applicable in the Original Habeas Petition, it declined the Writ. Taking suggestion from Sotomayor J., joined by Jackson J. concurring statement in the denial, Deshpande moved the court of appeals to certify the relevant questions of law, which were impermissibly implicated. See App:C. It did not persuade the court of appeals to verify the correctness of its decision in Baptiste. As it was noted by the Justices in Bowe, a case will not reach this Court from any of the Circuits who interpret the §2244(b)(1) one way or another. Those decisions are not appealable. In comparison to the demanding standards of Original Habeas Petition, the petition here under the Writ of Certiorari presents an ideal avenue for the Court to resolve the announce the correct Federal law. Waiting by idly for another case, while serious Constitutional violations, its Supervisory authority to interpret the Statutes, and resolve circuit splits have manifested such as here, is as good as never deciding.

**The time to exercise supervisory authority is now.** The six majority court of appeals below are content with their interpretations of §2244(b)(1). As requested, the Eleventh Circuit, which is part of the six, declined to certify the question. They are collectively depriving this Court of its Supervisory authority to correctly interpret the law of the land. This Court has a compelling interest in ensuring a compliance with proper interpretation of Statutes, of judicial administration, and acutely in particular, when it relates to the integrity of §2255 proceedings. The distortions in the divergent interpretations affects the integrity of §2255.

Standing by, while the courts of appeal below continue to adopt divergent interpretations in their gate keeping standards, which disturbs the sanctity and integrity of the remedial vehicle, this Court envisioned in Jones v. Hendrix is not an option. As the Petitioner in Bowe correctly noted, the non-resolution would revive serious Constitutional concerns, including the one identified by the Fuller [23] Court. Thus Court here is fully authorized, should not wait any longer, and should exercise its Supervisory powers it retains to harmonize the Habeas and Appellate practice landscape.

Conclusion.

In Jones v. Hendrix, this Court stated that as far as "saving clause is concerned with adequacy or effectiveness of the remedial vehicle. ('the remedy by motion')". And "not the court asserted error of law" [24]. Then the question becomes, what happens if the district court did assert an error of law that the court of appeals declined to review by granting COA, and this Court declined the certiorari? Did the Petitioner have the benefit of adequate and effective 'remedy by motion' during his or her one and only shot at liberty? For Federal Prisoners, Congress shelved the answer to that question, in the gate keeping sections. See §2255(h). However, the six majority courts of appeal, interpret that subsection incongruent to its plain text. This petition comes seeking for an answer, on how to proceed?

As requested in the motion to show cause, accompanying this Petition, Deshpande respectfully PRAYS the Court GRANT this petition and schedule the briefings to follow.

Respectfully Submitted,

Date Executed : January 10th, 2025.

By: Deepak Deshpande.

23. Fuller v. Turpin 518 U.S. 651, 667 (1996) (Souter J., concurring).

24. 599 U.S. at 480, 137 S.Ct at 1870.

## PETITIONER'S CERTIFICATE OF COMPLIANCE.

As required by Supreme court Rule 33.1(h), I certify that the document complies with Rule 33.2(b). In that, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d), it is less than 40 pages in length. Due to lack of resources, discerning the word count as required by Supreme Court Rule 33.1(h) was not possible.

As authorized by 28 U.S.C. §1746, I declare under the penalty of perjury that the foregoing is true and correct.

Executed on February 23rd, 2025.

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