

No. 24-7456

IN THE
SUPREME COURT OF THE UNITED STATES

DANIEL JONES — PETITIONER
(Your Name)

vs.

DANIELLE TOPE, PSY DR. RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES OF COURT OF APPEALS SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Daniel Jones

(Your Name)

9005 River Road, P.O. Box 300

(Address)

Marcy. New York 13403-0300

(City, State, Zip Code)

N/A

(Phone Number)

ORIGINAL

FILED

MAY 17 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. WHETHER THE LOWER COURTS ERRED IN ADJUDICATING CLAIMS IN HABEAS CORPUS PETITIONS TO DETERMINE A VIOLATION OF THE UNITED STATES CONSTITUTION WHEN THERE IS NO CLEARLY ESTABLISHED LAW RELATING TO CIVIL MANAGEMENT PROCEEDINGS
2. WHETHER THE LOWER COURTS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS TO REVIEW DISPOSITIVE MATTERS DE NOVO, THAT AMOUNT TO A VIOLATION OF THE MAGISTRATE ACT, HABEAS RULE 8(b), ARTICLE III, AND THE DUE PROCESS CLAUSE OF THE FIFTH AMEND. TO UNITED STATES CONSTITUTION

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:

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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☒ is unpublished.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 2024 U.S. Dist. LEXIS 112987; 2024 WL 3202430; 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☐ is unpublished.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 C 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☒ is unpublished.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 State of N.Y. v. Daniel J. court appears at Appendix D to the petition and is

☒ reported at 180 AD3d 1347; 180 AD3d 1350; 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 February 20, 2025.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C. Const. Art. III, § 1

The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish

U.S.C. Const. Amendment IV
Due Process Clause

In relevant part: Due Process of Law

No person shall be held nor be deprived of life, liberty, or property, without due process of law

United State Magistrate Act
28 U.S.C. Pt. III, Chap. 43

28 U.S.C. § 636(b)(1)(B) in relevant part

(b)(1)(B) a judge may also designate a magistrate (magistrate judge) to conduct hearings, including evidentiary hearing, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court of any motion excepted in paragraph (A), of applications for post-trial [post-trial] relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

28 U.S.C. § 2254, Rule 8(b)

Reference to a magistrate judge. A judge may, under

28 U.S.C. § 636(b), refer the petition to a magistrate judge to conduct hearings and to file proposed findings of fact and recommendations for disposition. When they are filed, the clerk must promptly serve copies of the proposed findings and recommendations on all parties. Within 14 days after being served, a party may file objections as provided by local court rules. The judge must determine de novo any proposed finding or recommendation to which objection is made. The judge may accept, reject, or modify any proposed finding or recommendation.

28 U.S.C. § 2254, Rule 10

A magistrate judge may perform the duties of a district judge under these rules as authorized under 28 USC § 636

28 U.S.C. § 2254 (a)(d)

- (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(d) An application for a writ of habeas corpus on behalf a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) result in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;

(2) resulted in a decision that was contrary to, or involved an unreasonable determination of the facts in light of the evidence presented in the State court proceeding;

Federal Rules of Civil Procedure 12(b)(3) in relevant part

(3) Resolving Objections. The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instruction.

STATEMENT OF THE CASE

Petitioner, pro se, sought habeas corpus relief pursuant to 2B U.S.C. § 2254 relating to the underlying civil commitment as a dangerous sex offender under Article 10 of the New York Mental Hygiene Law ("MHL").

In 1985, Petitioner pleaded guilty in Erie County Supreme Court to two felonies arising from sexual acts against his stepdaughter and depson and was sentenced to five years' probation. He was released from probation after four years.

Subsequently, petitioner was convicted after a jury trial of attempted rape and two counts of sexual abuse and other related offenses. On May 12, 1992, Petitioner was sentenced on these convictions to an aggregated indeterminate term of imprisonment from ten to twenty years. Petitioner appealed his conviction to the Appellate Division Fourth Department and in 1997 unanimously affirmed the order of the Supreme Court, Erie County.

A few days before the expiration of his prison sentence, N.Y. State petitioned under N.Y. Mental Hyg. Law § 10 for petitioner's civil management. On March 2, 2012 N.Y.S. Attorney General filed a petition to retain petitioner past his release date in Dutchess County, until a probable cause hearing can be held.

On June 27, 2012, the Erie County Supreme Court found probable cause requiring civil management of petitioner pursuant to MHL § 10.06. On August 8, 2016, Petitioner waived a jury trial and consented to a mental abnormality based on pedophilia, even though there was no testimony that he had serious difficulty controlling his conduct. Petitioner then moved to vacate his waiver and consent on September 7, 2016, that his waiver was involuntary and sought reassignment of counsel. On May 19, 2017, petitioner was reassigned another attorney who filed a motion to withdraw his trial waiver, that petitioner had been coerced into waiving because trial counsel was unprepared and ineffective.

Oral argument were held on June 15, 2017 on petitioner's motion. Afterward the court denied petitioner's motion for his ineffective assistance of counsel and that he had knowingly, intelligently, and voluntarily waived his right to a trial. No testimony was given. The court then affirmatively ruled that counsel at the time of the trial waiver was not ineffective.

On July 13, 2017, Petitioner filed a state habeas corpus petition. Erie County Supreme Court on September 14, 2017, denied Petitioner's state habeas corpus. Petitioner appealed this order.

The court held a dispositional hearing on October 18, 2017 to make a finding whether Petitioner should be committed to a secure treatment facility or released to SIST. On November 21, 2017 the court concluded Petitioner was a dangerous sex offender requiring confinement to a secure treatment facility.

A motion was filed by Petitioner on November 29, 2017, pursuant to N.Y. C.P.L.R. §§ 4404(b), and 5015 seeking reconsideration and to vacate the order of commitment. Erie County Supreme Court denied Petitioner's motion on April 17, 2018. Petitioner appealed the denial.

Petitioner through counsel filed a motion to consolidate his appeals on October 25, 2018. Appellate counsel filed a brief on direct appeal in the Appellate Division, Fourth Department, challenging the trial court's final order of commitment. The State filed an opposition brief, and counsel filed a reply.

On November 30, 2018 the Appellate Division Fourth Department dismissed the state habeas corpus based on a filed stipulation to withdraw.

On February 7, 2020 the Appellate Division unanimously affirmed the commitment order, and on June 23, 2020, the New York Court of Appeals denied leave to appeal. Appendix C

Petitioner on September 13, 2021 commenced the filing of a verified Petition for writ of habeas corpus. Petitioner presented

ten grounds for habeas relief. The petition asserted that (1) due process rights violated regarding delay in conducting the probable cause hearing, (2) probable cause hearing based on insufficient evidence, (3) right violated by untimely mental abnormality hearing, (4) due process right violated admission of mental abnormality was not knowingly, voluntarily, and intelligently, (5) due process violated court failure to conduct a proper allocution during trial waiver, (6) due process right to present evidence by court's refusal to grant an adjournment, (7) deprived of effective assistance of counsel, (8) due process violated court considered unsubstantiated hearsay allegations at dispositional hearing, (9) due process right violated, State did not meet its burden of proving by clear and convincing evidence, petitioner a dangerous sex offender requiring civil confinement, and (10) deprived of due process because his procedural rights were violated.

Respondent submitted an Answer and Memorandum of Law, dated March 17, 2022. Respondent made six arguments in support of their answer.

Petitioner submitted on June 7, 2022 a Traverse Reply Memorandum of Law in response to Respondent's Answer and Memorandum of Law.

United States Magistrate Judge Miroslav Lovric issued his Report and Recommendation on February 16, 2024. The report-recommendation the petition be denied and dismissed, and that a certificate of appealability not be issued.

Petitioner filed a motion for appointment of counsel on January 3, 2022. He argued that he was entitled to counsel because he's unable to afford retained counsel, he suffers from a mental abnormality, pursuant to 18 U.S.C. § 3006A(a)(2)(B) and 28 U.S.C. § 1915(e). Denied motion on January 3, 2022 without prejudice.

Petitioner renewed request for appointment of counsel on April 14, 2022. The court denied on April 19, 2022.

Based on the magistrate judge's report and recommendation, that the Petition be dismissed, filed objections to the report and recommendation on March 2024. Respondent submitted a response on April 18, 2024.

The Hon. Anne M. Nardacci, United States District Judge issued her Memorandum-Decision and Order dated June 26, 2024. The court adopted the magistrate judge's report and recommendation in its entirety, denied the Petition for a writ of habeas corpus and that no certificate of appealability would be issued to any of Petitioner's claims.

Petitioner timely filed a Notice of Appeal on July 17, 2024, to the United States Court of Appeals for the Second Circuit.

On August 2, 2024, Petitioner submitted an Application for Issuance of a Certificate of Appealability. The application raised ten issues related to his claims in the district court.

Petitioner on October 3, 2024 filed with the Court of Appeals a motion seeking a temporary injunction, restraining order pursuant to Rule 65 of Fed. R. Civ. P. for relief mandating respondents desist from continuing to censor and withholding his legal mail.

The Court of Appeal on February 20, 2025, denied Petitioner's motion for a COA and dismissed the appeal because he had not made a substantial showing of the denial of a constitutional right. It further ordered that the motion for an injunction be denied as moot.

REASONS FOR GRANTING THE PETITION

1. WHETHER THE LOWER COURTS ERRED IN ADJUDICATING CLAIMS IN HABEAS CORPUS PETITIONS TO DETERMINE A VIOLATION OF THE UNITED STATES CONSTITUTION WHEN THERE IS NO CLEARLY ESTABLISHED FEDERAL LAW RELATIVE TO CIVIL MANAGEMENT PROCEEDINGS

A. Statutory Scheme

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2254(d) provides

(a) The Supreme Court, a Justice thereof, a circuit, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court unless the adjudication of the claim (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding

2.

Under the AEDPA, Petitioner bears the burden of proving by a preponderance of the evidence that he is "in custody in violation of the Constitution or laws of the United States" 28 U.S.C. § 2254(a). A federal court may not grant habeas relief to a state prisoner on a claim unless the state court adjudicated the merits of the claim and such adjudication clearly established Supreme Court precedent, but unreasonably applies or unreasonably refuses to extend that principle to the facts of a particular case. See, Williams v. Taylor, 529 U.S. 362, 413 (2000).

The Second Circuit has under AEDPA ask three questions to determine whether a federal court may grant habeas relief:

- 1) Was the principle of Supreme Court case law relied upon in the habeas petition "clearly established" when the state court ruled?
- 2) If so, was the state court's decision "contrary to" that established Supreme Court precedent?
- 3) If not, did the state court's decision constitute an "unreasonable application" of that principle?

Williams v. Artuz, 237 F.3d 147, 152 (2d Cir. 2001). The phrase "clearly established Federal law" refers to "the holdings, as opposed to the dicta, of the Court's decisions as of the time of the relevant state-court decision." William v. Taylor, 529 U.S. 362, at 412.

The federal habeas corpus statute, 28 U.S.C. § 2254(a), established two jurisdictional prerequisites for habeas corpus review. The first, focuses on the status of the petitioner, who must be "in custody". The second prerequisite focuses on the substance of the claim being asserted, which must challenge the legality of custody on the grounds that it is, or was imposed "in violation of the Constitution or laws or treaties of the United States".

With respects to the first prerequisite "in custody" the Supreme Court held in Duncan v. Walker, 533 U.S. 167, 176 (2001), that a state court order of civil commitment satisfies § 2254 "in custody" requirement. As petitioner is challenging the outcome of his

3.
civil commitment order, a habeas corpus petition is appropriate.

Where Petitioner differs is the second prerequisite, which the Duncan Court left unresolved. The adjudication of civil commitment orders when there has been no ruling from the Court that clearly established federal law as determined by the Supreme Court of the United States.

Although the Supreme Court has recognized that an involuntary civil commitment proceeding "constitutes a significant deprivation of liberty that requires due process protection," Addington v. Texas, 441 U.S. 418, 425 (1979), the Supreme Court has not clearly established constitutional protections that are afforded to criminal defendants are provided to civil litigants, such as those in involuntary civil commitment proceedings.

Where a state court adjudication of petitioner's federal claim on the merits, based on the above, a federal court has no authority to issue the writ of habeas corpus unless the state court's decision was "contrary to, or involved an unreasonable application of clearly established federal law, as determined by the Supreme Court of the United States". The Supreme Court has held that circuit and district court decisions do not constitute "clearly established Federal Law, as determined by the Supreme Court." Parker v. Matthews, 567 U.S. 37, 40 (2012). Clearly established law for the purposes of § 2254(d)(1) includes only the holdings, as opposed to the dicta, of the Supreme Court decisions. White v. Woodall, 134 S.Ct. 1697, 1702 (2014).

Presently, in the case at bar, there exists no clearly established right under federal law or the Constitution at relating to claims proffered in Petitioner's habeas petition pursuant to § 2254(d)(1), thereby rendering relief sought meaningless, constitutional protections afforded to criminal defendants not available to civil commitment litigants exist. Thereby denying meaningful access to the federal court, via, writ of habeas corpus pursuant to 28 U.S.C. 2254(d)(1).

4.

A writ of Certiorari should be granted under Supreme Court Rules 10(c) as this issue presented a genuine and substantial question of constitutional law, and the question has yet been considered by the Court.

Moreover, review should be granted as Petitioner has two pending habeas corpus petitions relating to his civil commitment proceeding that involve similar issues present in the habeas petition before this Court. See, Jones v. Tope, 9:23-cv-000415-AJB/ML (NYND 2023); Jones v. Tope, 9:25-cv-00294-AJB/ML (NYND 2025)

With respect to the matter before this Court, Petitioner presented several claims relating to his Constitutional rights being violated in his civil commitment proceedings. Claims presented and considered that were not cognizable in a federal habeas corpus relief as the Supreme Court has never addressed whether:

1. whether due process could be violated by a delay in holding a civil commitment probable cause hearing,
2. the Constitution does not guarantee a right to a probable hearing in a civil commitment proceeding,
3. the Supreme Court has never opined that a delay in a civil commitment proceeding can violate either the Sixth Amendment or due process,
4. challenging his mental abnormality trial waiver, there is no clearly established Supreme Court law providing the standard for reviewing claims as to the voluntariness of the waiver, no standard for reviewing denial of an adjournment request,
5. ineffective assistance of counsel there is no clearly established Supreme Court law governing civil commitment proceedings,
6. no clearly established Supreme Court law that a trial court has a duty to inquire into a claim of dissatisfaction with assigned counsel in a civil commitment proceeding,

7. no clearly established Supreme Court law on the standard for reviewing the admission of hearsay in civil commitment proceedings.

8. no established Supreme Court law relating to unexhausted and default claims in civil proceedings as New York State Court of Claims, on appeal lack jurisdiction on questions of fact, on leave applications Appendix "B"

The fact that Petitioner is challenging his civil commitment pursuant to Article 10 of Mental Hygiene Law of New York State, rather than his underlying criminal conviction changes the outcome as under AEDPA. By filing a petition under 28 U.S.C. § 2254(d), Petitioner is hindered from obtaining relief and meaningful access to courts, as this Court has not rendered a decision clearly established federal law challenging civil commitment proceedings.

A writ of Certiorari should be granted to decide this important question of federal law.

2. Whether THE LOWER COURTS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS TO REVIEW DISPOSITIVE MATTER DE NOVO, THAT AMOUNTED TO A VIOLATION OF THE MAGISTRATE ACT, HABEAS RULE 8(b), ARTICLE III, AND THE DUE PROCESS CLAUSE OF THE FIFTH AMEND. TO UNITED STATE CONSTITUTION

The lower courts erred as a matter of law when they departed from the accepted and usual course of Judicial proceedings to review dispositive matters, De Novo, that amounted to a violation of the Magistrate Act, Habeas Rule 8(b), Article III, and the Due Process Clause of the Fifth Amendment to the United States Constitution.

Based on the aforementioned and the issue presented herein, the lower court conducted a perfunctory review of Petitioner's habeas corpus petition by simply relying on Respondent's Answer and Memorandum of law.

Petitioner on September 13, 2021, filed pro se a petition for habeas corpus relief pursuant to 28 U.S.C. § 2254. In the petition he asserted ten (10) grounds as the bases for release from custody of the New York State Office of Mental Health, for civil confinement. Respondent submitted records from the state court, an Answer, and a memorandum of law, for dismissal of the Petition as improper and meritless. Petitioner subsequently filed a Traverse with attached exhibits in support of his Petition.

A Judge for the Northern District of New York, referred the matter to United States Magistrate Judge Miroslav Lovric, who, on February 16, 2024, issued a Report and Recommendation for the Petition to be dismissed and no certificate of appealability be issued. Based on

28 U.S.C. § 636(b)(1) the Magistrate Judge advised the parties to file written objections within fourteen days and failure to object to the Report-Recommendation would preclude appellate review. Petitioner submitted objections to the Report-Recommendation on March 4, 2024. On April 18, 2024, Respondent submitted a response to petitioner's objections.

The U.S. District Judge Anne M. Nardacci, on June 26, 2024, Adopted the Report-Recommendation in its entirety, the Petition for a writ of habeas corpus was denied and dismissed, and no certificate of appealability issued, pursuant to Memorandum - Decision and Order. Appendix 'B' (1-21)

In accordance with 28 U.S.C. § 636(b)(1)(B) a judge may designate a magistrate judge to conduct hearings, and to submit to a judge of the court their proposed findings of fact and recommendations for the disposition by a judge of the court. The magistrate judge may perform the duties of a district judge under U.S.C.S. Section 2254 Rule 10 which is authorized under 28 U.S.C. § 636.

Under U.S.C.S. Section 2254 Rule 8, once a judge refers the matter to a magistrate judge if the petition has not been dismissed, is required to review the answer, any transcripts and records of the state court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted. After which, the magistrate judge is to file his proposed findings of fact and recommendations for disposition. 28 U.S.C. § 636(b)(1)(C). When filed, the clerk promptly serve copies of the proposed findings and recommendation on all parties. Within 14 days after being served, a party may file objections. The district judge must determine de novo any proposed findings and recommendation to which objections are made. The judge may accept, reject or modify any proposed finding or recommendation.

8.
U.S.C.S. Section 2254 Rule 8(b). See also, U.S.C.S. Federal Rules Civil Procedure Rule 72 (b)(3).

Once Petitioner made objections to the magistrate judge's report, the district judge must determine those matters de novo. A de novo review as of right applies to all factual and legal matters. U.S. Const. Article III requires de novo review of a magistrate judge's report and recommendation when objects to specific parts of the proposed magistrate findings. Rule 8(b) of Rules Governing Section 2254.

Legislative history and case law makes clear that the district judge in making the ultimate determination, would give fresh consideration to those issues to which specific objections has been made by a party. The use of the words "de novo determination" requires the judge to consider the record which had been developed before the magistrate and make its own determination on the basis of that record, without being bound to adopt the findings and recommendations of the magistrate. Thus, the district judge must "give fresh consideration" to the disputed portions, and make a de novo determination of those issues. United States v. Radlatz, 447 U.S. 667, 675 (1980); Thomas v. Arn, 474 U.S. 140, 150 (1985); and Schmidt v. Johnston, 263 F. Supp 2d 1219 (2003).

In Petitioner's case, upon review of the record it is difficult to discern how any meaningful review, much less a de novo determination, could have been made by the lower courts.

First, a review of the magistrate judge's report and recommendation does not reflect an independent consideration of any transcripts and records of the state court proceedings and petitioner's traverse. The magistrate judge's analysis simply relied upon the reasons set forth in Respondent's memorandum of law. For each of the grounds raised by petitioner the report of the magistrate judge denied them "for the reasons set forth in

9. 9.

in Respondent's memorandum of law." For the ten issues presented to the habeas court by petitioner, the magistrate judge simply extrapolated from Respondent's memorandum of law, one sided view of facts and law and no consideration of those presented in Petitioner's traverse to deny the issues. Appendix "B" at pgs.

Petitioner timely made objections to the magistrate judge's report and recommendation on each ground raised in his habeas petition. For each ground objected to, he brought to the district court's attention, that the report made no finding of fact or conclusion of law by simply relying upon Respondent's memorandum of law. There was no review of petitioner's traverse or any transcripts and records of the state court records. With specificity, Petitioner directed the district court to the alleged errors. Bringing his specific objections to the court's attention by reciting the portions of the report to which he objected and set forth what he believed to be the correct facts or rulings. Petitioner's objections prose were certainly definite enough to require meaningful de novo review.

The district judge in its Memorandum-Decision and Order rather than perform a de novo review, simply reheated the magistrate judge's report and recommendation and expanded on Respondent's memorandum of law, without conducting an independent review anew of the facts and law articulated in Petitioner's points of objections. Appendix "B" at pgs. 1-21

Petitioner, in his application for issuance of a certificate of appealability to the United States Court of Appeals for the Second Circuit from the district court's denial of his habeas petition and no certificate of appealability, brought to the Court the same issues and concerns he encountered in the lower courts. Specifically how the district court completely disregarded a review of the record including his 1983 civil complaint (Jones v. Cuomo, 16-cv-771 (2007)).

That the district court neglected to do a de novo review - or conduct an evidentiary hearing as to issues involved one of law and a mixed question of law and facts. Also that the court failed to conduct an independent review of the state record and just relied upon Respondent's memorandum of law. That a certificate of appealability should be issued as the matter required further consideration as he has made a substantial showing of a denial of a constitutional right, and demonstrated a reasonable jurist could find the district court's decision is debatable or wrong.

The Court of Appeals for the Second Circuit on February 20, 2025 denied a COA and dismissed the appeal for not making a substantial showing of the denial of a constitutional right. Appendix "A"

Once petitioner made specific objections the district judge must determine those matters de novo, to all factual and legal matters. Doing more than simply agreeing with the magistrate judge's report, but rather provide independent reasoning tailored to the objection. The district court did not review portions of trial record which was relevant to the particular findings being challenged. Did not refer to any trial transcripts reviewed. Thus, petitioner's case did not receive the judicial attention which Article III of the Constitution requires.

In Dawson v. Marshall, 561 F.3d 930 (9th Cir 2009) outlined the a de novo review by an Article III district judge. In accordance with 28 U.S.C. § 636(b)(1)(C) the district judge "shall" make a de novo determination. The statute utilizing the word "shall" indicated that district courts are required to make a de novo determination of portions of the magistrate judge's report to which a party objects. A de novo review means the reviewing court "do[es] not defer to the lower court's ruling but freely consider[s] the matter anew, as if no decision had been rendered below." *Id.* at 933, See, Thomas v. Arn, 474 U.S. 140, 152 (1985)

Federal Rules of Civil Procedure 72(b)(3) provides that when a magistrate judge give a recommendation "the district judge

11.
must determine de novo any part of the magistrate judge's disposition that has been properly objected to." The Second Circuit Court of Appeals have interpreted that language to mean that "Entirely referring the court to previously filed papers or arguments does not constitute an adequate objection under ... Fed. R. Civ. P. 72(b)" Mario v. P.G.C. Food Mkts, 313 F.3d 758, 766 (2002)

While the magistrate's findings may be persuasive and documented, in petitioner's, such was not the case, the statutory obligation of the district court is to arrive at its own, independent conclusion about those portions of the magistrate's report to which objections were made. A de novo review is not satisfied by a mere review of the magistrate report itself. In petitioner's case nothing in the district judge's review process acknowledged a careful review of the record aside from the magistrate judge's report and recommendation.

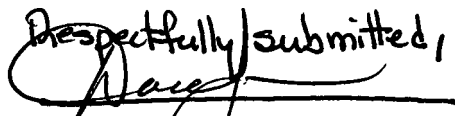
Petitioner fared no better in the Circuit Court when he informed the Court of the district court failure to accord a de novo review to the magistrate judge's factual findings and conclusion of law which were objected to. An appellate court must be satisfied that a district court judge has exercised its authority with a de novo, and not merely by reviewing the magistrate's report and recommendations. Stokes v. Singletary, 952 F.2d 1567, 1576 (11th Cir. 1992). See, United States v. Elsasser, 644 F.2d 357, 358-359 citing Matthews v. Weber, 423 U.S. 261, 270-71 (1976) The constitutional safeguards, as established by Congress and interpreted by the courts, an appellate court must be satisfied that a district court judge has exercised his non-delegable authority, and not merely by reviewing the magistrate's report and recommendations, Elsasser, supra at 359.

Based on the aforementioned an issue to be resolved whether the lower courts departed from the accepted and usual course of judicial proceedings relating to review by lower courts de novo magistrate judge's report and recommendations deprived

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ones' of the Due Process Clause of the Fifth Amendment,
Article III, the Magistrate Acts and 2254 Habeas Corpus
Rule 8(b).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Daniel Jones

Dated: May 14, 2025