

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BRIAN SHREEVES, -- PETITIONER

vs.

UNITED STATES OF AMERICA, -- RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE FOURTH U.S. CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

BRIAN SHREEVES
57554-037 M03-405L
MCRAE CORRECTIONAL FACILITY
P. O. DRAWER 55030
MCRAE HELENA, GA
31055

QUESTIONS PRESENTED

- **Whether the government violated Petitioner's Sixth Amendment right to counsel when agents forcibly separated Petitioner from his attorney immediately prior to taking his statement?**
- **Whether the forcible separation of Petitioner from his attorney rendered the subsequent alleged waiver of his Miranda rights involuntary?**

LIST OF PARTIES

[X] 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:

Baida, Esq., Andrew Howard

Bardos, Esq., Richard B.

Clark, Esq., Kenneth Sutherland

Curlett, Jr., Esq., Charles Neilson

Ganja, Esq., Mushtaq

Kramer, Esq., Paul R.

Motz, Hon. J. Frederick

Mittal, Esq., Seema

Purpura, Esq., Christopher John

Rosenstein, Esq., Rod J.

Shreeves, Brian

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direct appeal

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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 of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The October 4, 2017 opinion of the Fourth U.S. Circuit Court of Appeals denying Petitioner's appeal is unpublished and attached as Appendix A.

JURISDICTION

The Court of Appeals entered its judgment on October 4, 2017. This court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves a federal criminal defendant's constitutional rights under the Fifth and Sixth Amendments which provide in relevant part:

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

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." U.S. Const. Am. VI.

STATEMENT OF THE CASE

PROCEDURAL BACKGROUND

A grand jury sitting in the District of Maryland returned an indictment against Petitioner on December 12, 2013, charging him with one count of conspiracy to distribute, and possession with intent to distribute, 100 kilos or more of marijuana, in violation of 21 U.S.C. § 841(a)(1) and 21 U.S.C. § 846. On May 1, 2014, Petitioner filed a Motion to Suppress Statements concerning statements allegedly made during a custodial interrogation that took place in Baltimore, Maryland, on December 13, 2013. Petitioner alleges that any statements made by him were involuntary and in violation of his Fifth and Sixth Amendment rights. A hearing was held before the Honorable J. Frederick Motz on May 19, 2014, where the court denied the motion.

PETITIONER'S STATEMENT PRIOR TO TRIAL

Prior to the start of trial, Petitioner requested and was allowed to address the court. Petitioner objected to the third successive day of the presentation of a box of marijuana in open court, where, in contrast, in grand jury testimony, the agent had testified that there had been no interception of marijuana in this case. Petitioner also denied ever making any inculpatory statements and denied signing a Waiver of Rights form:

“PETITIONER: Yes, sir. Good morning, Your Honor. I just have a few concerns, objections in this case. On December 12th, 2013, Agent Horn testified to the grand jury that there was no interception of marijuana in my case. And today is the third day of presentation of the marijuana.

Also, at the airport it was, according to the government, they found three phones and the laptop. There's no mention of the laptop, of the content of the laptop. The government presented it to the jury.

The waiver, Waiver of Rights signature and name and signature is clearly not mine. I presented several documents that I've signed over the years from 2007 that I want to present as an exhibit to the jury. I've hired my own expert. Doing the report right now, is supposedly coming to trial. So I don't know if the court could give me one or two additional days for them to come to give our report.

I would also ask for my immigration attorney, who was present at the time of my arrest on December 13th, 2013, to be present. It is very important information. He still hasn't been subpoenaed.

The government has accused me of making confessions, which it has no recording. My name and signature have been forged on the Waiver of Rights.

My attorney has done a report already, but I decided to do my own in order to get a fair trial.

I also like to present a Waiver of Rights to the jury and all the other documents with my signature that I've signed over the years from 2007, that I presented to the Court, showing that that's not my name and signature on the Waiver of Rights, and I've been incriminated.

I've also said in court a few motions where they violate my speedy trial rights. The Court doesn't make any decisions as it's concerning whether they denied or, I don't know. Thank you, sir.

THE COURT: Thank you. Anybody want to say anything?

MR. PURPURA: No, Your Honor." T.T. Vol 3, Pages 113-114

Petitioner was attempting to demonstrate for the record that this entire case had been fabricated against him, as shown by the following facts:

- First and foremost, Petitioner had been indicted without any codefendants;
- Petitioner's arrest had occurred under highly unusual circumstances: he had been arrested in a federal building where he had been attending an immigration interview with his immigration attorney, who, instead of being allowed to assist Petitioner, had been ignored and Petitioner was forcibly removed;
- Petitioner is emphatic that he did not sign a Waiver of Rights form and that his name and signature had been forged upon the Waiver of Rights form. In an effort to prove his point, Petitioner had filed a motion requesting a handwriting expert which went unaddressed, which led Petitioner to hire his own hand-writing expert. However, several days before trial, Petitioner's hand-writing expert declined to assist Petitioner and returned Petitioner's money;
- Petitioner had not been informed of his rights; and
- Most importantly, Petitioner had not made any alleged "inculpatory statements" wherein he had allegedly named persons with whom he had allegedly been involved with in a conspiracy to traffic in marijuana.

PETITIONER'S NUMEROUS PRO SE PRE-TRIAL MOTIONS

Petitioner had also filed numerous motions, pro se, which were never considered or decided by the court. They included a "Motion for Handwriting

Expert/Foreign Linguistics," a "Motion for computer forensics expert," a "Motion for Return of Personal Property," a "Motion to exercise sixth amendment right to subpoena witness for trial," a "Motion to prevent receipt of evidence from the prosecution relating hearsay testimony of unavailable witness," a "Motion to Dismiss Indictment with prejudice," a "Motion to Dismiss Indictment for Government outrageous misconduct," and a "Motion to introduce documents with the defendant's name and signature as evidence, to be introduced at trial and for inspection by the jury, before and during deliberation." See Docket Entries 134, 136, 137, 138, 139, 141, 144 and 145.

As stated previously, none of these motions were acted upon by the court.

STATEMENT OF THE FACTS

Special Agent Mary Horn ("SA Horn") with Homeland Security Investigations in Baltimore, Maryland, was the agent in charge of arresting Petitioner on December 13, 2013, one day after his indictment by a grand jury. SA Horn knew that Petitioner was scheduled to appear for an immigration interview at the Fallon Federal Building in Baltimore on that day. She planned to arrest and question him there. And in fact, Petitioner was attending the immigration interview with his wife as scheduled. Also present, and representing Petitioner at the hearing, was his attorney, Steve Kreiss.

According to SA Horn, immediately following the immigration interview, she, another special agent, and a Task Force Officer apprehended Petitioner. Asked whether Petitioner's immigration lawyer stayed in the room during the arrest, SA Horn testified that she "showed him the warrant and he immediately left the room."

Testifying for the defense at trial, however, Mr. Kreiss gave a very different account of the actions of law enforcement during Petitioner's arrest. Mr. Kreiss testified that he was with Petitioner at the immigration interview on December 13, 2013. Also present in the room were Petitioner's wife and the immigration officer. Mr. Kreiss testified that SA Horn and her fellow officers *did not wait for the interview to end before arresting Petitioner.* "Towards the end, but not at the conclusion of the interview, a couple of DHS officers came in and arrested [Petitioner] ... I was right there and representing him in my legal capacity." Mr. Kreiss described how Petitioner was immediately handcuffed and divested of the contents of his pockets. The agents did not ask Mr. Kreiss to accompany them, nor did they show him an arrest warrant, even though "they knew I was an attorney, and I was his attorney." Asked whether he was permitted to speak with Petitioner, Mr. Kreiss testified:

"I was not. I was not permitted to do that. One of the other officers, I believe, put his hand on my arm, as well as his wife's arm, and we were escorted from the room after the immigration officer left. We were escorted down a separate corridor from which Petitioner was then escorted."

After forcibly separating Petitioner from his wife and attorney, the officers patted down Petitioner. They "very quickly" escorted Petitioner to their vehicle, which was parked on the basement level of the federal building. Once Petitioner had been placed in the vehicle, SA Horn had Petitioner sign a Statement of Rights form, in which he allegedly waived his Miranda rights. SA Horn testified it is her practice to read each of the rights aloud to whomever she interrogates. At trial, SA Horn testified that she did so for Petitioner. Petitioner initialed the form in the

space provided next to each enumerated right. Asked by government counsel whether "Petitioner want[ed] to talk to you," SA Horn responded, "Yes. I mean, he signed the form. He agreed to talk to me."

SA Horn then interrogated Petitioner for approximately 30-45 minutes. Petitioner remained handcuffed throughout. When the interrogation began, SA Horn asked Petitioner about a seizure of money that had occurred in October 2010. SA Horn asked about other co-conspirators who may have been involved in a marijuana smuggling operation. Petitioner's statements primarily concerned third parties who were co-conspirators to the marijuana conspiracy. The interrogation "ended abruptly when [SA Horn's] counterpart asked [Petitioner] about [] himself dealing in narcotics." As soon as that happened, Petitioner asked for his lawyer and the interview ended.

Petitioner's statements to SA Horn were used against him at trial. Specifically, SA Horn testified that he made the following inculpatory statements:

- The \$279,000 that was seized from him at BWI airport in August of 2010 derived from several sources and he was bringing it to California for the purchase of marijuana;
- Petitioner identified at least four co-conspirators, including "Mark," Delroy (a.k.a. "Blanco"), Cesar Miranda, and Nicole Wallace (a.k.a. "Nikki"), who were involved in the marijuana conspiracy;
- Petitioner admitted distributing marijuana for "Mark"; and
- Petitioner identified other people involved in the illegal drug trade, including "Ricardo," and "Siddique".

AN EXCERPT OF SA HORN'S TESTIMONY AT PETITIONER'S SUPPRESSION HEARING SHOWING THAT IT WAS SHE WHO MENTIONED THE NAMES OF PETITIONER'S ALLEGED "COCONSPIRATORS" IN THE ALLEGED CONSPIRACY

Q: You said that at some point – Mr. Gunja asked you at some point Mr. Shreeves mentioned Mark McFarland?

A: Yes.

Q: But actually you mentioned Mark McFarland first right?

A: I may have.

Q: The other people you asked him about, you mentioned the names?

A: I believe I mentioned Cesar Miranda and Mark McFarland. Those are the two people that I recall that I mentioned in the first few minutes –

Q: Okay.

A: When I was talking to him. Supp. Hrng. Transcript, Page 59

At the suppression hearing, as outlined above, it was SA Horn who admitted that it was she who had initially mentioned the names of Cesar Miranda and Mark McFarland to Petitioner. SA Horn allegedly wanted to know if Petitioner knew these persons, to which Petitioner replied in the negative. It is clear that SA Horn deliberately provided these names to Petitioner in order to create a conspiracy which never did exist and to implicate Petitioner in that conspiracy. Petitioner did not give these names to SA Horn as she falsely testified.

AN EXCERPT OF SA HORN'S TRIAL TESTIMONY
REGARDING PETITIONER'S ALLEGED SIGNING OF THE WAIVER OF RIGHTS FORM

"Q: And then it looks like you wrote the date?

A: I did.

Q: And then your signature, and then you wrote the date again?

A: I did.

Q: And then the bottom portion, it's your testimony that you wrote the times, 12:15?

A: I did.

Q: 12/13/13, 12:28?

A: Correct.

Q: And then you printed his name. How come you printed his name?

A: I just did.

Q: It wasn't for him to sign – print, I mean?

A: He signed. He doesn't have to print it.

Q: Okay. And then it's your testimony today that that's Mr. Shreeves's signature?

A: I am 100% sure that is Brian Shreeves's signature.

Q: You testified that back in 2013 you weren't required to record interviews, correct?

A: We were not.

Q: Were you prohibited from recording interviews?

A: No.

Q: So you could have brought a, you could still use a tape recorder, correct?

A: I could have.

Q: Or you could probably record it on your phone?

A: I wouldn't have. I would have, if I was going to, I would have used the tape recorder.

Q: But you didn't do either of those?

A: No, I did not.

Q: And you didn't have, have him make a written statement, correct?

A: No.

Q: Why not?

A: Wasn't necessary.

Q: So we have to rely on your recollection of what he said, correct?

A: Yes.

Q: Your Honor, I have nothing further. T.T. Vol. 3, Pages 243-244

AN EXCERPT OF PETITIONER'S TRIAL TESTIMONY
THAT HE DID NOT SIGN THE WAIVER OF RIGHTS FORM
AND THAT HE DID NOT MAKE ANY "INCULPATORY STATEMENTS"

Petitioner has emphatically testified that he did not sign the Waiver of Rights form and that he did not make any "inculpatory statements" as alleged by SA Horn. The pertinent part of his trial testimony was as follows:

Q: Mr. Shreeves, there came a time that – let me ask you;

Are you familiar with Ricardo Lawson?

A: No, sir.

Q: Ramon Welds?

A: No.

Q: Cesar Miranda?

A: Cesar Miranda, first time I hear that name was December 13, 2013, when I was arrested, when the agent forged my name and signature on the waiver of rights and incriminate me saying I made confessions, I've known him. If you look at the document, you can see the two different signatures on the document. She confessed yesterday of forging my name, but wouldn't confess to forging my signature.

So, if you look at the document, you can see clearly two different signatures. I've submitted several documents to the Court dating back to '07 with my signature that I haven't changed, which hasn't presented as an exhibit to the jury. I had it yesterday if the jury was looking, trying to present it to the Court, and it wasn't presented.

Q: Mr. Shreeves, you jumped ahead on me a little bit, but, now that you're there, I'm going to show you what's been marked as Government Exhibit 38. Is this the waiver of rights, statements of rights you're talking about?

A: Yes.

Q: In December of 2013, did there come a time that you were arrested?

A: Yes, sir.

Q: Okay. And where did that arrest take place?

A: It was after my Immigration interview in the Immigration building.

Q: Who were you at the Immigration meeting with?

A: It was my Immigration lawyer, Steven Kreiss, my wife that died two months after I was arrested –

Q: What's your wife's –

A: -- after being there.

Q: What's your wife's name?

A: Courtney Shreeves.

Q: And what happened during that hearing?

A: Well, the interview was – during the interview, I mean, the officer asked a few questions, and then, during the interview, we were interrupted by the agent and two other officers, whoever they are.

Q: And what was your attorney's name?

A: Steven Kreiss.

Q: And did there come a time that they took you away from Mrs. Shreeves and Mr. Kreiss?

A: Repeat that question.

Q: Were you eventually separated from your attorney and your wife?

A: Yes, sir.

Q: Okay. What happened?

A: Well, they took me down to the basement of a building where it looked like a parking lot or somewhere, placed me in a car – placed me in the back of a car, and –

Q: How many – you say them. How many law enforcement agents were there?

A: Another two – two guys and Ms. Horn.

Q: At some point, did Special Agent Horn show you this Exhibit 38, which is a United States Immigration & Customs Enforcement form?

A: Yes.

Q: And are those your initials on the top?

A: I believe so.

Q: So –

A: She gave me – she gave me this form saying: Sign this form if I had nothing to do with the crime. So me signing the top part of it, then stop – once I realized what it was, I stopped, and I read it, gave it back to her, because – I gave it back to her like two months after my attorney came to see me and presented the documents, and I look, and I said, “That’s not my handwriting. I don’t write like that. That’s not my signature. That’s two different signatures.”

Q: Let’s talk about the signatures. Do you see the line that cuts the paper in half?

A: Yes.

Q: Okay. There is a signature line above that. It says “Signature.” Can you point to that for the ladies and gentlemen of the jury. You can touch the screen.

A: Top one?

Q: Above the line, yes.

(Witness complying.)

Q: Now, is that your signature?

A: Yes, sir.

Q: Did you write the date there?

A: No, sir.

Q: And then there is the waiver line below. Did you enter any of that information in the first paragraph with the dates?

A: No, I didn't – none of the bottom. Once I realized what it was, I gave it back to her, so I only signed the top.

Q: There is a line that says "Print Name." Did you print your name there?

A: No, sir.

Q: Okay. And then, next to that, there is a signature line.

Is that your signature?

A: No, sir.

Q: On that day, did you make a statement?

A: No, sir.

T.T. Vol. 3, Pages 314-318

Petitioner reiterates that he did not sign the Waiver of Rights form and did not make any inculpatory statements as falsely testified by SA Horn.

**THERE WAS NO DOCUMENTATION OF PETITIONER'S ALLEGED
"INCULPATORY STATEMENTS" DURING THE CUSTODIAL INTERVIEW**

A custodial interview, where it is reasonably anticipated that a defendant in a federal criminal case may make self-incriminating statements or possibly divulge evidence of criminal wrongdoing that could be later used in court, is a very serious undertaking and should be treated as such. Therefore, the foregoing excerpt of the trial testimony of SA Horn is striking in that it is readily apparent

that Petitioner's alleged "admissions" and "inculpatory statements" bear none of the traditional hallmarks expected of a custodial interview. There were no recordings made of any kind, there were no written or oral statements made by Petitioner and there was no corroboration of Petitioner's alleged "admissions" or "inculpatory statements" by a second law enforcement officer as a witness.

Without these basic law enforcement protocols and documentation in place to ensure the integrity of a custodial interview, combined with the fact that the "witnesses" against Petitioner were both federal inmates testifying with the expectation of a sentence reduction, it is reasonable to conclude that SA Horn's trial testimony was totally self-serving, designed to justify an indictment and prosecution that should have never been initiated against Petitioner.

SUMMARY OF THE ARGUMENT

Petitioner's Sixth Amendment right to counsel attached after the first formal charging proceeding, which in this case was the return of the grand jury indictment on December 12, 2013. When law enforcement officers arrested Petitioner on December 13, 2013, during an immigration interview, Petitioner was accompanied – and represented – by his attorney, Mr. Kreiss. Prior to taking a statement from Petitioner, the arresting officers forcibly separated Petitioner from Mr. Kreiss. They did not give Petitioner an opportunity to confer with Mr. Kreiss or to receive any legal advice. As officers led Petitioner to a waiting police car, another officer took hold of Petitioner's arm and steered him and Petitioner's wife out of the building through a separate corridor, thereby preventing Mr. Kreiss from rendering any legal assistance to Petitioner during the ensuing custodial interview. The officers' forcible separation of Mr. Kreiss from Petitioner

prevented Mr. Kreiss from serving as the medium between Petitioner and law enforcement during Petitioner's interrogation and violated his Sixth Amendment rights.

In addition, the forcible separation of Petitioner from his attorney by law enforcement rendered any subsequent waiver of his Miranda rights involuntary. The alleged waiver was the product of the intimidation and coercion attendant in the forcible separation of a client from his attorney immediately prior to questioning. Accordingly, the district court erred when it declined to grant Petitioner's motion to suppress.

ARGUMENT

PETITIONER'S FIFTH AND SIXTH AMENDMENT RIGHTS WERE VIOLATED WHEN OFFICERS FORCIBLY SEPARATED PETITIONER FROM HIS ATTORNEY BEFORE TAKING HIS STATEMENT; THE DISTRICT COURT ERRED IN ADMITTING PETITIONER'S STATEMENTS

Petitioner's right to counsel had already attached prior to his questioning by law enforcement. "It is clear, of course, that, absent a valid waiver, the defendant has the right to the presence of an attorney during any interrogation occurring after the first formal charging proceeding, the point at which the Sixth Amendment right to counsel initially attaches." United States v. Gouveia, 467 U.S. 180, 187 (1984); Kirby v. Illinois, 406 U.S. 682, 689 (1972) (Opinion of Stewart, J.). See Brewer v. Williams, 430 U.S. 387, 400-401 (1977). A grand jury indictment qualifies as a "first formal charging proceeding." Texas v. Cobb, 532 U.S. 162, 167 (2001) (citing McNeil v. Wisconsin, 501 U.S. 171, 176 (1991) (The right to counsel attaches when "a prosecution is commenced, that is, at or after the initial of

adversary judicial criminal proceedings – whether by way of a formal charge, preliminary hearing, indictment, information, or arraignment.”)

Once the right to counsel has attached, the government has an affirmative obligation not to interfere with a defendant’s exercise of that right. “The Sixth Amendment guarantees the accused [...] the right to rely on counsel as a ‘medium’ between him and the State.” Maine v. Moulton, 474 U.S. 159, 176 (1985); see Brewer v. Williams, 430 U.S. 387 (1977); Moran v. Burbine, 475 U.S. 412 (1986). “[T]his guarantee includes the State’s affirmative obligation not to act in a manner that circumvents the protections accorded the accused by invoking this right ... [K]nowing exploitation by the State of an opportunity to confront the accused without counsel being present is as much a breach of the State’s obligation not to circumvent the right to the assistance of counsel as is the intentional creation of such an opportunity.” Moulton, 474 U.S., 176. “Accordingly, the Sixth Amendment is violated when the State obtains incriminating statements by knowingly circumventing the accused’s right to have counsel present in a confrontation between the accused and a state agent.” Id.

In Williams, the defendant Robert Williams (“Williams”) had been prosecuted for the murder of a 10-year-old girl in Des Moines, Iowa, on Christmas Eve in 1968. Two days after the murder, Henry McKnight, Williams’ attorney, contacted the police to negotiate his surrender. Williams surrendered that morning, December 26, 1968, to police in Davenport, Iowa, approximately 160 miles east of Des Moines. “It was agreed between McKnight and the Des Moines police officials that Detective Leaming and a fellow officer would drive to Davenport to pick up Williams, that they would bring him directly back to Des Moines, and that they would not question him during the trip.” Williams, 430 U.S.

at 391. Meanwhile, in Davenport, Williams was arraigned on an outstanding arrest warrant. “Before leaving the courtroom, Williams conferred with a lawyer named Kelly, who advised him not to make any statements until consulting with McKnight back in Des Moines.” *Id.* When Detective Leaming and his fellow officer arrived in Davenport to pick up Williams, “Kelly firmly stated that the agreement with McKnight was to be carried out that there was to be no interrogation of Williams during the automobile journey to Des Moines. *Kelly was denied permission to ride in the police car back to Des Moines with Williams and the two officers.*” *Id.* at 392 (emphasis added). While en route to Des Moines, Detective Leaming induce Williams to disclose the location of the murdered girl’s body. *Id.* at 392-393. Williams’s statements were introduced against him at trial. *Id.* at 394. The jury found Williams guilty of murder, and the judgment of conviction was affirmed by the Iowa Supreme Court. *Id.*

Williams then petitioned for a writ of habeas corpus in the United States District Court for the Southern District of Iowa. *Id.* The District Court concluded, inter alia, that Williams had been denied his constitutional right to the assistance of counsel. The Court of Appeals for the Eighth Circuit affirmed. *Id.* at 395. In reviewing the constitutional issues, the Supreme Court noted that “whatever else it may mean, the right to counsel guaranteed by the Sixth and Fourteenth Amendments means at least that a person is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him whether by way of a formal charge, preliminary hearing, indictment, information, or arraignment.” *Id.* at 398 (internal citations omitted). The Court stated:

“There can be no doubt [] that judicial proceedings had been initiated against Williams before the start of the automobile ride

from Davenport to Des Moines. There can be no serious doubt, either, that Detective Leaming deliberately and designedly set out to elicit information from Williams just as surely as and perhaps more effectively than if he had formally interrogated him. Detective Leaming was fully aware before departing for Des Moines that Williams was being represented in Davenport by Kelly and in Des Moines by McKnight. Yet he purposely sought during Williams' isolation from his lawyers to obtain as much incriminating information as possible." Id. at 399.

This, the Supreme Court held, violated Williams' right to the assistance of counsel guaranteed by the Sixth and Fourteenth Amendments. Id.

The parallels between Petitioner and Williams are significant:

- The right to counsel had already attached both to Williams and to Petitioner at the time they made their statements to police;
- Williams was represented by counsel when he surrendered to police;
- Petitioner was actively being represented by counsel at the time and place the police made contact with him;
- Williams' counsel, Kelly, was not permitted to ride in the car with him from Davenport to Des Moines to be present for questioning;
- Petitioner's counsel, Mr. Kreiss, was forcibly separated from his client when an agent led Mr. Kreiss away by the arm, preventing him from being present with Petitioner during questioning;
- Williams made incriminating statements to police;
- Petitioner made incriminating statements to the agents; and
- The incriminating statements were used against both Williams and Petitioner, and both were convicted.

It is beyond question that Petitioner's right to counsel had attached at the time he gave his statement, and that he was deprived of the benefit of counsel

during questioning. This isolation of Petitioner's constitutional right to the assistance of counsel afforded by the Sixth Amendment requires reversal of his conviction.

**THE FORCIBLE SEPARATION OF PETITIONER FROM HIS ATTORNEY
RENDERED PETITIONER'S SUBSEQUENT WAIVER OF HIS RIGHT TO
COUNSEL INVOLUNTARY**

For an incriminating statement by a defendant obtained as the result of a custodial interrogation to be admissible in court, the defendant must have been given Miranda warnings prior to making the statement. Dickerson v. United States, 530 U.S. 428, 431-33 (2000); Miranda v. Arizona, 384 U.S. 436 (1966). A defendant may waive his constitutional rights to remain silent and to have counsel if he does so "voluntarily, knowingly and intelligently." Miranda, 384 U.S. at 444.

In United States v. Cristobal, 293 F.3d 134, 140 (4th Cir. 2002), the Fourth Circuit explained that the inquiry into whether an individual waived effectuation of the rights conveyed in the Miranda warnings has two distinct dimensions. Edwards v. Arizona, 451 U.S. 477, 482 (1981). First, the relinquishment of the right "must have been voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception." Moran v. Burbine, 475 U.S. 412, 421 (1986). Second, "the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Id. The Court must examine the totality of the circumstances in making its determination. "Only if the 'totality of the circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude

that the Miranda rights have been waived.” Id. In assessing waiver, the Fourth Circuit has followed the Supreme Court’s instruction to “indulge in every reasonable presumption against waiver” of the right to counsel. Fields v. Murray, 49 F.3d 1024 (4th Cir. 1995) (citing Williams, 430 U.S., 404).

“The question of waiver [is] not a question of historical fact, but one which, in the words of Mr. Justice Frankfurter, requires ‘application of constitutional principles to the facts as found ...’” Williams, 430 U.S. at 403 (citing Brown v. Allen, 344 U.S. 443, 507.) As a matter of federal constitutional law, it is incumbent upon the government to prove “an intentional relinquishment or abandonment of a known right or privilege.” Id. at 404 (citing Johnson v. Zerbst, 304 U.S. 458, 464 (1938)).

In Williams, the Supreme Court found that Williams had not voluntarily relinquished his right to counsel, despite the fact that “Williams had been informed of and appeared to understand his right to counsel.” Williams, 430 U.S. at 404. Waiver requires not merely comprehension, but relinquishment, and Williams’ consistent reliance upon the advice of counsel in dealing with the authorities refutes any suggestion that he had waived that right.” Id.

PETITIONER WAS SUBJECTED TO A COERCIVE ATMOSPHERE

Here, the circumstances in which Petitioner’s statement was taken were coercive. Petitioner was arrested and handcuffed, and then physically cut off from his attorney. Spirited away to an underground parking garage, he remained handcuffed as he sat in the confines of a vehicle with three law enforcement officers. It is clear the agents read petitioner his Miranda rights, but it is not at all clear he voluntarily relinquished those rights. The government did not meet the

“strict standard” required by the Constitution for a valid waiver. Id. While law enforcement may well have read Petitioner his Miranda rights, and, like Williams, he may have understood their literal meaning, Petitioner was questioned only minutes after having been forcibly separated from his attorney by the very agents who read him his Miranda warnings and proceeded to take his statement. Put another way, the agents’ actions spoke louder than their words. Under such circumstances, the record fails to establish that Petitioner voluntarily relinquished the right to have his lawyer, who had just been led away by the agents, present for questioning.

On the contrary, the coercive nature of the arrest and the forcible separation of Petitioner from his lawyer impermissibly tainted the voluntariness of the waiver.

The voluntariness of the waiver is further undermined by SA Horn’s own testimony concerning the circumstances of the arrest and the manner in which Petitioner allegedly waived his rights. First, SA Horn’s testimony that Petitioner’s lawyer simply walked away when shown the warrant was directly contradicted by the lawyer’s testimony at trial. Second, SA Horn’s testimony concerning Petitioner’s waiver was ambiguous. Asked if Petitioner knowingly and voluntarily relinquished his rights, she equivocated, stating only, “Yes, I mean, he signed the form.” SA Horn’s testimony demonstrates that Petitioner did not otherwise clearly – verbally – indicate his intention to relinquish his rights. Rather, SA Horn drew the inference from the mere fact that Petitioner “signed the form.” SA Horn’s testimony is insufficient to establish the voluntariness of Petitioner’s alleged waiver. Thus, the government has failed to meet its burden.

THE ERROR WAS NOT HARMLESS

This Court has “made clear that ‘before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt.’” Arizona v. Fulminante, 499 U.S. 279, 295 (1991) (citing Chapman v. California, 386 U.S. 18, 24 (1967)). “The Court has the power to review the record *de novo* in order to determine an error’s harmlessness.’ Id. “In so doing, it must be determined whether the State has met its burden of demonstrating that the admission of the confession [] did not contribute to [the defendant’s] conviction. Id. at 296.

Often in criminal cases where there is a significant amount of evidence which inculpatates a defendant independent of the erroneous testimony, the error is considered harmless. See United States v. Banks, 482 F.3d 733, 741-42 (4th Cir. 2007). But where, as here, the evidence improperly admitted is the defendant’s confession, “a reviewing court [must] exercise extreme caution before determining that its admission ... at trial was harmless.” Fulminante, 499 U.S. 296.

“A confession is like no other evidence. Indeed, “the defendant’s own confession is probably the most probative and damaging evidence that can be admitted against him... [T]he admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so.” While some statements by a defendant may concern isolated aspects of the crime or may be incriminating only when linked to other evidence, a full confession in which the defendant discloses the motive for and means of the crime may tempt the jury to rely upon that evidence alone in reaching its decision.”

As noted above, SA Horn testified at trial that Petitioner made a series of incriminating statements in which he admitted to purchasing and distributing marijuana, and identified others involved in the conspiracy. These statements inculpated Petitioner in the charged marijuana conspiracy to such a degree that the jury may well have relied on these statements alone in determining Petitioner's guilt. Therefore, their admission into evidence was not harmless error.

**RECENT CASES THAT HAVE PRESENTED THE SAME ISSUE
AND WHICH HAVE RECEIVED FAVORABLE RULINGS**

A variety of recent cases that have presented this same issue have received favorable results, demonstrating the significant nature of Petitioner's claim. United States v. Giddins, 858 F.3d 870 (4th Cir. 2017) (reversed where defendant's Miranda waiver and statements were coerced and involuntary and was not harmless error); Moore v. Czerniak, 574 F.3d 1092 (9th Cir. 2009)(reversed and remanded with instructions where counsel's failure to file motion to suppress petitioner's taped confessions were constitutionally deficient and prejudicial under Strickland); United States v. Stein, 541 F.3d 130 (2nd Cir. 2008)(affirming the dismissal of the indictment where defendants were deprived of their Sixth Amendment right to counsel); United States v. Bird, 287 F.3d 709 (8th Cir. 2002)(affirming the district court's order granting defendant's motion the suppress a statement obtained in violation of the Sixth Amendment).

CONCLUSION

The government violated Petitioner's Sixth Amendment right to the assistance of counsel when its agents forcibly separated him from his attorney immediately prior to questioning. The district court's denial of the motion on this ground should be reversed and Petitioner's conviction vacated. In addition, the coercive nature of the agents' actions rendered petitioner's subsequent waiver of the right to counsel meaningless. The ensuing confession was admitted into evidence at trial, an error which is not harmless due to the significant weight that could have been afforded to those statements by a jury. Accordingly, Petitioner's conviction should be set aside and a new trial ordered.

REASONS FOR GRANTING THE PETITION

Petitioner has no legal training but has endeavored to present the facts and relevant case law to the very best of his ability. Petitioner, a foreign national, went to trial, principally because of his unfamiliarity with the United States criminal justice system and his hope that justice would prevail. Nevertheless, for all of the foregoing reasons - especially this Court's recent precedents regarding this very issue - Petitioner respectfully submits that his case is significant and extraordinary. This court's review is warranted in order to maintain public confidence in the federal criminal justice system and that courts will not permit a conviction to stand and an inmate to languish in prison under the foregoing constitutional violations. The Petition for Writ of Certiorari should be granted.