

No. _____

**In The
Supreme Court of The United States**

ROGERIO CHAVES SCOTTON,

Petitioner,

versus

THE UNITED STATES OF AMERICA,

Respondent.



**On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit**



PETITION FOR WRIT OF CERTIORARI



ROGERIO CHAVES SCOTTON
REG NO: 99370-004
D. Ray James Correctional Facility
P.O. Box 2000
Folkston, GA 31537

QUESTION(S) PRESENTED

- I. WHETHER THE APPEAL COURT VIOLATED SCOTTON'S DUE PROCESS RIGHT BY APPLYING THE WRONG JUDICIAL LAWS.
- II. WHETHER THE PETITIONER WAS DENIED A NEW TRIAL PURSUANT TO RULE 33 BECAUSE OF THE COURT'S ABUSE OF DISCRETION AND ERRORS.
- III. WHETHER THE PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED PURSUANT TO CASTRO v. UNITED STATES.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[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:

- 1) FERRER, WILFREDO A., UNITED STATES ATTORNEY
- 2) MATTEWMAN, HON. WILLIAM, UNITED STATES MAGISTRATE JUDGE
- 3) MITRANI, BERTHA, ASSISTANCE UNITED STATES ATTORNEY
- 4) MORENO, HON. FEDERICO, UNITED STATES DISTRICT JUDGE
- 5) SCOTTON, ROGERIO, DEFENDANT

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
OPINION BELOW.....	1
JURISDICTION.....	2
REASON FOR GRANTING THE PETITION.....	4
CONCLUSION.....	12

APPENDICES

APPENDIX A: MOTION TO REQUESTING NEW TRIAL AND PARTIAL EVIDENCE

APPENDIX B: DISTRICT COURT ORDER DENIAL NEW TRIAL

APPENDIX C: APPEAL COURT ORDER DENIAL DATE JUNE 30, 2017

APPENDIX D: APPEAL COURT DENIAL MOTION FOR RECONSIDERATION

APPENDIX E: APPEAL COURT DISMISS FOR WANT TO PROSECUTER

TABLE OF AUTHORITIES

BROADWATER v. UNITED STATES, 292 F.3d 1302, 1303 (11th cir. 2002).....	6
CANTER v. STANTON, 405 US 669, 672, 92 S. Ct. 1232, 1234, 31 L. ed. 569 (1972), ...	4,5,6
CLAY v. EQUIFAX, 762 F.2d 952, 957-58 (11th cir. 1985).....	6
CONLEY v. UNITED STATES, US 415 F.3d 183, 192 (1st cir. 2005).....	9
DANLEY v. ALLEN, 480 F.3d 1090, 1091 (11th cir. 2007).....	6
GRAY v. MAYVIEW STATE HOSP., 293 F.3d 103, 114 (3rd cir. 2002).....	5
MILLER v. DONALD, 541 F.3d 1091, 1100-01 (11th cir. 2008).....	5
MULLANE v. ~~CENTRAL HAND-VER~~ ^{HANOVER} BANK & TRUST CO., 339 US 306, 314, 70 S. Ct. 652 (1950).....	6
NAPIER v. PRESLICKA, 314 F.3d 528, 531 (11th cir. 2002).....	9
SERRAR CHEVROLET v. GENERAL MOTOR CORP., 466 F.3d 1137, 1157 (11th cir. 2006).....	6
TAYLOR v. JONSON, 257 F.3d 470, 474 (5th cir. 2001).....	5
UNITED STATES v. CARNER, 507 F.3d 399, 404-09 (6th cir. 2007).....	8
UNITED STATES v. CARPENTER, 495, F.3d 13, 20-24 (1st cir. 2007).....	8
UNITED STATES v. CURLEY, 639 F.3d 50, 59-63 (2nd cir. 2011).....	8
UNITED STATES v. DELGADO, 672 F.3d 320, 344 (5th cir. 2012).....	7
UNITED STATES v. FIEDS, 488 F.3d 313, 362 (5th cir. 2007).....	7

UNITED STATES v. FULCHER, 250 F.3d 244, 249 (4th cir. 2001).....	8
UNITED STATES v. KATT WHITE, 627 F.3d 1383, 1384-85 (11th cir. 2010).....	8
UNITED STATES v. SCREW, 325 US 91, 89 L. Ed. 1495, 65 S. Ct. 1031 (1945).....	8
UNITED STATES v. STODDARD, 875 F.2d 1233, 1238 (6th cir. 1989).....	9
UNITED STATES v. PIAZZA, 647 F.3d 559, 556-69 (5th cir. 2010).....	8
UNITED STATES v. VALENCIA-TRUJILLO, 462 Fed. Appx. 894, 897 (11th cir. 2012).....	6
CASTRO v. UNITED STATES, 540 US 375, 383, 124 S. Ct. 786 157 L. ed. 2d 778 (2003), ...	10,11,12

STATUTES

18 U.S.C. § 1341.....	2
18 U.S.C. § 1001(c)(2).....	2

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 case no: 1260049, doc. 653, 654.; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 6, 2017.

☒ 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).

STATEMENT OF THE CASE

On March 8, 2012, an indictment was lodged against Petitioner Rogerio Chaves Scotton, a Boca Raton businessman and professional international race car driver, charging him with the alleged offense of mail fraud pursuant to 18 U.S.C. § 1341.

On June 18, 2013, a superseding criminal information was filed by the government, dismissing the original indictment.

On July 18, 2013, Mr. Scotton was charged by a second superseding indictment with twenty-seven counts of mail fraud pursuant to 18 U.S.C. § 1341 and two counts of making false statements to a government agency pursuant to 18 U.S.C. § 1001(c)(2). See, Doc. 94.

On January 26, 2014 trial began. Despite numerous times Mr. Scotton requested a lawyer representation, he was denied, after one public defendant and two court-appointed attorneys along with eleven changes composed by two district judges and nine magistrate judges.

In February 2014, Mr. Scotton was convicted as charged after trial on a second superseding indictment, solely based on manufactured unverified and unaudited spreadsheets accompanied by false and contradictory testimony.

Scotton appealed his conviction. However, due to conflict and ineffectiveness cause by the court appointed attorney, he was prevented from submitting all claims and evidence to the appeal court. Consequently, the appeal was affirmed on April 2, 2016, after an unprecedented seven (7) extensions requested solely by the Court appointed attorney without informing Mr. Scotton.

Consequently to the affirmed order by the Eleventh Circuit, Mr. Scotton

submitted his petition for writ of certiorari on October 20, 2016. The Supreme Court denied this on December 12, 2016.

Since the Supreme Court decision was entered, Mr. Scotton has exercised his due process rights to attack his conviction under the different provisions which he is entitled to. However, every single motion filed to District Court was denied without stating a reason, did not identify materially disputed facts and gave no hint of its conclusion of law. Among those motions, Mr. Scotton filed a motion requesting a new trial pursuant to 33(b) on January 17, 2017 which the Court denied on January 23, 2017. See Doc. 654.

Mr. Scotton appeal the decision. However, the Appeal Court denied on June 30, 2017. See appeal case 17-10974-A.

Even though the District Court did not give any explanation for the denial, the Appeal Court suggested that the appeal was frivolous and denied Mr. Scotton to proceed in forma pauperis.

Mr. Scotton requested Appeal Court consideration on the issue which the Appeal Court denied on September 13, 2017.

On October 6, 2017, the Court of Appeals denied Mr. Scotton's appeal and suggested that he failed to prosecute his case. Hence, the Appeals Court decision denied the Petitioner to proceed in forma pauperis as well as claim the appeal as frivolous where the District Court gave no explanation or asked the government to respond to the Petitioner's allegations.

Therefore, the Petitioner prays for justice in front of this Honorable Supreme Court of the United States and reverse the errors that have clearly violated his due process rights.

REASONS FOR GRATING THE PETITION

I. WHETHER THE APEAL COURT VIOLATED SCOTTON'S DUE PROCESS RIGHTS BY APPLYING THE WRONG JUDICIAL LAWS.

The Petitioner contends that the denial of the Court of Appeals in this case controvened CARTER v. STANTON, 405 US 669, 672, 92 S. Ct. 1232, 1234 31 L. ed. 2d 569 (1972).

On February 16, 2017, the District Court denied the Petitioner's motion requesting a new trial which was timely filed and based on newly discovered evidence. See doc. 653 and 654. See also appendix A.

The District Court gave no hint of its conclusion or any explanation of relevant laws or facts. The District Court denial merely recites that no genuine issue of material or facts remains. The Court had never asked the government to respond and made no statement on record, other than the denial.

Consequurnly to the District Court denial order, the Petitioner submitted a timely notice of appeal.

On June 30, 2017, the Court of Appeals denied the Petitioner's request to proceed in forma pauperis by stating that the appeal was frivolous.. See appendix B.

The Petitioner contends that the appeals Court have applied the wrong judicial laws by denying Mr. Scotton forma pauperis because the Appeal Court not make any meaningful determination or judicial rule where the District Court did not give any explanation for the denial. CARTER v. STANTON, 405 US 669, 672 92 S. Ct. 1232, 1234, 31 L. ed. 2d 569 (1972).

The Appeal Court has never given the Petitioner opportunity to make his claim of innocence which is based in law, facts and evidence. Had the Petitioner been given the opportunity to develop factual basis, his claims

would be proven non-frivolous. MILLER v. DONALD, 541 F.3d 1091, 1100-01 (11 cir. 2008)(reversing dismissal for frivolity, despite complaints, because inmates has "at least a plausible chance of success... [and claim is] not so fantastical as-to-be clearly baseless"); TAYLOR v. JOHNSON, 257 F.3d 470 474(5th cir. 2001); GRAY v. MAYVIEW STATE HOP., 293 F.3d 103, 114 (3rd cir. 2002)).

The Appeal Court made no attempt to review the Petitioner's claims or newly discovered evidence. There is no legal basis to deny his forma pauperis motion or prevent him from due process when no determination could be reasonably obtained from the lower Courts unknown reason for denial. There was more than 500 hundred pages of evidence and two affidavits from witnesses that could clearly demonstrate the Petitioner's innocence.

The Petitioner asserts that his due process rights were violated because the lower Court decision conflicts not only with the Eleventh Circuit, but also, conflicts with the authorities decision of other United States Court of Appeals that have addressed the underlying issue. See, Fed. R. App. P. 35(b)(1)(A) & (B).

On many occasions, Appeal Court have urged District Courts to state the reason for their decisions and underlying predicate. UNITED STATES v. HARDEMAN, 320 F.2d 952 1960 N.5 (11th cir. 19850. The same must apply for the Petitioner motions. UNITED STATES v. VALENCIA-TRUJILLO, 462 Fed. Appx. 894, 897 (11th cir. 2012); BROADWATER v. UNITED STATES, 292 F.3d 1302, 1303 (11th cir. 2002)).

It is clear that the District Court's ruling was not based on review of the motion or evidence; nor could be based in part upon its own recollection of the events where the presiding judge did not participate during the pretrial, trial and sentencing. The District Court was "opaque and unilluminating" as to either relevant facts of law. CANTER v. STANTON, 405

US 669, 672, 92 S. Ct. 1232, 1234, 31 L. ed. 2d 569 (1972).

District Court orders must contain sufficient explanation of their ruling as to provide the Court of appeals with the opportunity to engage in a meaningful appellate review. SERRA CHEVROLET v. GENERAL MOTOR CORP, 466 F.3d 1137, 1157 (11th cir. 2006); CLAY v. EQUIFAX INC., 762 F.2d 952, 957-58 (11th cir. 1985). However, here in this case, the District Court failed to use such protocol, and consequently, the Petitioner's due process rights were violated. There is no incorporated argument made by the District Court to serve as explanation for its ruling in the Petitioner's motion requesting a new trial. There is no opportunity even given to the Appeals Court or Supreme Court for a meaningful review of the claims. DANLEY v. AALEN, 480 F.3d 1090, 1091 (11th cir. 2007).

Mr. Scotton is entitled to fundamental due process in any proceeding which is to be accorded, final notice reasonably calculated and under all circumstances, to appraise interested parties of the pending action and afford him the opportunity to present his claims and objections. The notice must be of such nature as to reasonably convey the required information. MULLANE v. CENTRAL HANOVER BANK & TRUST CO., 339 US 306, 314, 70 S. Ct. 652 (1950).

Therefore, the Court should reverse the lower Court denial because Mr. Scotton is entitled to due process.

II. WHETHER PETITIONER WAS DENIED A NEW TRIAL PURSUANT RULE 33 BECAUSE OF THE COURT'S ABUSE OF DISCRETION AND ERRORS.

The Case before the Court, and inquiry of the full discovery, will affirm on many fronts that errors were committed and the errors were systemic, fatal, and cumulative, requiring only a reversal. UNITED STATES v.

FIEDS, 488 F.3d 313, 362 (5th cir. 2007); UNITED STATES v. DELGADO, 672 F.3d 320, 344 (5th cir. 2012). Thus, the Petitioner hereby and respectfully requests the Honorable Supreme Court to clear the path for truth and transparent justice.

The Petitioner, Rogerio Chaves Scotton has filed a motion to request a new trial with the 3 years limitation allowed pursuant to rule 33 as he has obtained new evidence that proves numerous errors on the government spreadsheets which were presented as evidence during the trial without the original record having been provided to the Petitioner. However, the District Court abused its discretion and denied the motion without giving any explanation or without review of the 300 plus pages of evidence.

The Appeal Court denied the Petitioner his rights to appeal without any basis since the District Court did not give any statement or explanation for the denial. Consequently to this abuse of discretion and errors, the Petitioner asserts that his due process rights were violated.

The system of the administration of justice is anchored in the sound judicial philosophy; that a person's legal rights will not be violated, ignored, or run over to rectify the claimed violations of another person's legal rights. UNITED STATES v. SCREW, 325 US 91, 89 L. Ed. 1495, 65 S. Ct. 1031 (1945).

The Petitioner contends that his newly discovered evidence and witnesses should be sufficient grounds for this Supreme Court to reverse the lower Court decision and grant a new trial in the interest of justice. UNITED STATES v. CARPENTER, 495 F.3d 13, 20-24 (1st cir. 2007); UNITED STATE v. CARNER, 507 F.3d 399, 404-09 (6th cir. 2007); UNITED STATES v..CURLEY, 639 F.3d 50, 59-63 (2nd cir. 2011); UNITED STATES v. KATT WITE, 627 F.3d

1383, 1384-85 (11th cir. 2010).

The Petitioner is entitled to obtain a new trial based on the newly discovered evidence which included the B&H Photo Fedex account that was alleged by the government to have been fraudulently created by the Petitioner, the B&H Photo records and history of shipping packages to they own clients in Brazil, two crucial witnesses that provided affidavits and have declared they were intimidated by FBI agent agent Vanbrunt who also made remarks and personal comments that he would send the Petitioner to prison and later deport him from the United States. As well as the thousand repeat invoices in the government spreadsheets ised during trial. Thus, evidence from the B&H Photo compay who also shipped packages daily to Brazil and had a similar website to the Petitioner, could also prove his innocence. Those anaudited also increased the alleged loss amount in this case.

The Petitioner contends that is entitled to a new trial because (1) those evidences were discovered after trial; UNITED STATES v. FULCHER, 250 F.3d 244, 249 94th cir. 2001); (2) the evidence was not known at time of trial forlack of Petitioner diligence, UNITED STATES v. PIAZZA, 647 F.3d 559, 556-69 (5th cir. 2010); (3) the evidence is material to the case; UNITED STATES v. STODDARD, 875 F.2d 1233, 1238 (6th cir. 1989), (4) the evidence isnot merely commulative to impeaching; CONLEY v. UNITED STATES, US 415 F.3d 183, 192 (1st cir. 2005) and (5) the evidence would probably produce a different result in a new trial.

Rule 33 of Federal of Criminal Procedure provides that a Court may grant a new trial "if interest of justice so require". Thus, the District Court abused its discretion for denying the Petitioner's motion requesting a new trial without review or any explanation. There is no explanation given

by the District Court of relevant laws and facts and thus, the Appeal Court has no judicial basis to deny the Petitioner to proceed with his appeal in forma pauperis because the District Court denial merely recites that no genuine issue of material or facts remains, and no other statement is to be found on record.

The Correct legal standard or law was not applied to this case. Therefore, the Appeal Court could not make the conclusion that the appeal was frivolous.

On June 30, 2017, Circuit Judge William H. Pryor Jr. denied the Petitioner's motion to proceed in forma pauperis stating that the appeal was frivolous and quoting as reference NAPIER v. PRESLICKA, 314 F.3d 528, 531 (11th cir. 2002). However, NAPIER has no relation to the Petitioner's criminal case in which claims are based on innocence, due process violation and newly discovered evidence.

There is no judicial basis for the Appeal Court to deny the Petitioner's forma pauperis application to prevent him from requesting a new trial. The District Court order denial merely cites no genuine issue of material or fact remains and had no explanation relevant to the correct legal standard of the law.

Therefore, the Appeals Court could not have any conclusion based on the unknown reason for the District Court to deny. Whether the Appeals assumed the denial was based on the District Court's recharacterization and restriction from filing another § 2255, the recharacterization is not considered, as such was not done by the required protocol.

The Supreme Court Should vacate and remand this case.

III. WHETHER THE PETITIONER'S DUE PROCESS RIGHTS WERE VIOLATED PURSUANT TO CASTRO v. UNITED STATES.

The Petitioner contends that his due process rights were violated because the District Court construed his motion rule 33 as a motion § 2255 without first notify the Petitioner of the intention of recharacterization and its consequences as well as the opportunity to withdraw or amend his motion. CASTRO v. UNITED STATES, 540 U.S. 375, 383, 124 S. Ct. 786 157 L. Ed. 2d 778 (2003).

On October 1, 2014, the Petitioner attacked his federal mail fraud conviction by filing, in a federal District Court of Southern District of Florida, a pro se motion that he called motion to dismiss indictment. See doc. 519. The District Court denied on December 4, 2014 the motion without any explanation, thus, this motion was construed as a § 2255 under case no: CV-14-62268. See doc. 647.

However, the Petitioner was not informed of the District Court's intention of construing his motion to dismiss indictment as § 2255, nor the Court advised the Petitioner that due to the restriction he would have to file a second successive motion under § 2255.

On January 17, 2017, the Petitioner filed a motion pursuant rule 33(b)(1) and 60(d)(1) which the District Court denied on without any explanation. Consequently to the Court denial, the Petitioner filed a timely notice of appeal and submitted a motion to proceed in forma pauperis.

Recently, the Appeals Court for the Eleventh Circuit denied the Petitioner forma pauperis by stating that the appeal was frivolous, and later denied by claiming that the Petitioner failed to prosecute.

The Petitioner is currently preparing his motion pursuant to § 2255 which must be filed on December 12, 2017 since his Writ of Certiorari was denied by the Supreme Court on December 12, 2016. Thus, this conflict and error is a clearly violation pursuant to CASTRO v. UNITED STATES, could seriously prejudice the Petitioner because consequently to the errors, he will endure more time in prison to (1) filing a motion to correct the error as well as the time frame for the Court to ruled and (2) the restriction placed in violation of the safeguard in CASTRO will prevent the Petitioner from proceeding with his due process rights to file a § 2255.

Therefore, the Petitioner hereby requests he is granted this relief because (1) the District Court never notified the Petitioner that the Court had any intention to recharacterize his motion as a motion § 2255, (2) the District Court gave no warning to the Petitioner that such recharacterization meant that any subsequent § 2255 motion would be subject to § 2255 restrictions on "second or successive" motions and (3) the District Court did not provide the Petitioner an opportunity to withdraw the motion or amend, so that it contained all the § 2255 claims that the Petitioner believe that he had.

Therefore, because of the absence of the required warnings, the Petitioner's motion filed in 2014, could not be considered as a first § 2255. Thus, the Petitioner's motion rule 33(b) filed on 2017, could not be considered a "second or successive" § 2255 for the purpose of applying the restriction.

Given the United States Supreme Court's holding on CASTRO v. UNITED STATES, in which the Supreme Court, through the exercise of its supervisory power over the federal judiciary, the Petitioner respectfully

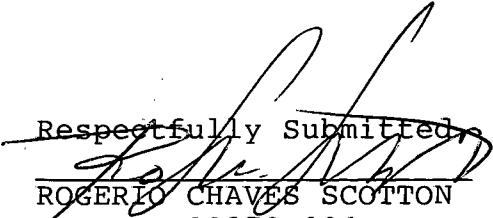
requests this Honorable Court re-characterization of the Petitioner's motion rule 33 as a § 2255 because the Petitioner was not permitted the safeguard in CASTRO, thus, those motions should not be considered as a first § 2255 motion or considered as a second successive § 2255 motion.

Therefore, in the interest of justice, the Honorable Supreme Court should vacate and remand this case.

CONCLUSION.

Therefore, in the interest of justice, the Petitioner Writ of Certiorari should be granted.

Respectfully Submitted,


ROGERIO CHAVES SCOTTON
REG NO: 99370-004
D. RAY JAMES C.F.
P.O. BOX 2000