

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID DELGADO
Petitioner

v.

SALVADOR GODINEZ, et al.,
Respondents

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NO. 17-7832

PETITION FOR REHEARING

Now comes Petitioner, David Delgado, Pro Se, and in Forma Pauperis, requesting that this Honorable Court GRANT his Petition for Rehearing in the above entitled case.

1. GROUNDS FOR CONSIDERATION

1. Petitioner, David Delgado, is a foreign prisoner confined in a state prison in the state of Illinois.
2. Petitioner's first language is Spanish. He has difficulty understanding English words, and he has not experience preparing Petitions for Rehearing before this Honorable Court.
3. Petitioner respectfully requests that this Honorable Court waives Petitioner's failure to comply with the rules of this court if the Petition is not in compliance with the rules.
4. Petitioner contends that he should not be taken advantage due to his lack of legal skills, and he prays that this Honorable Court GRANT his motion for Rehearing because the decision of the Seventh Circuit Court of Appeals is in conflict with its early decisions in the same issue, and in conflict with the decisions of other Federal Courts of Appeals in the same issue which clearly state that prisoners have constitutional rights under the First, Sixth, and Fourteenth Amendments to the United States Constitution to have contact visits with criminal defense attorneys.

5. Petitioner contends that if this Honorable Court fails to correct the unprecedented decision of the Seventh Circuit Court of Appeals in this issue, the constitutional rights of prisoners as well as the legal profession of criminal and civil defense attorneys will be affected.

6. This is a case where Petitioner, David Delgado, was denied contact visitation with his criminal attorney Ralph E. Guderian by a warden of a state facility. Attorney Guderian is a Pro Bono criminal attorney who is currently representing Petitioner on a post conviction petition.

7. Petitioner contends that he understands that in order for his petition for rehearing to be GRANTED, he must prove to this Court that the decision of the Seventh Circuit Court of Appeals is in conflict with its early precedents in the same issue, and in conflict with other circuit courts of appeals' precedents in the same issue. Therefore, Petitioner cites the following cases, statutes, and administrative directives to prove his claim before this Honorable Court.

II. STATUTES

8. 28 C.F.R. §543.13 (a). The warden shall, under the conditions of this section, permit visits by the retained, appointed, or prospective attorney of an inmate or by an attorney who wishes to interview an inmate as a witness. (b) The warden generally may not limit the frequency of attorney visits since the number of visits necessary is dependent upon the nature and urgency of the legal problems involved. The warden shall set the time and place for visits which ordinarily take place during regular visiting hours. Attorney visits shall take place in a private conference room, if available, or in a regular visiting room in an area and at a time designed to allow a degree of privacy.

9. 725 ILCS 5/103-4. Rights to consult with an attorney. Any person committed, imprisoned or retained of his liberty for any cause whatever and whether or not such person is charged with an offence

shall, except in cases of imminent danger or escape, be allowed to consult with any licensed attorney at law of this state whom such person may desire to see or consult, alone and in private at the place of custody, as many times and for such period each time as is reasonable.

10. The Illinois Department of Corrections mandates contact legal visits between inmates and their attorneys, and it also mandates contact visits between inmates and their family members. See 730 ILCS 5/3-7-2 (FC). This Criminal Code applies to all the state prisons in the state of Illinois.

III. ADMINISTRATIVE DIRECTIVE

11. The Illinois Department of Corrections mandates contact legal visits between inmates and their attorneys. See 20 Illinois Administrative Code CH. I. 524.40 - Attorney visitation - Adult Division (C)

IV. PRECEDENTS STATING THAT PRISONERS HAVE A CONSTITUTIONAL RIGHT TO HAVE CONTACT VISITS WITH THEIR ATTORNEYS

12. In Dreher v. Sielaff, 636 F.2d 1141 (7th Cir. 1980), the Seventh Circuit Court of Appeals clearly stated that the opportunity to communicate privately with an attorney is an important part of the Fourteenth Amendment guarantee of meaningful access to courts, and that an inmate's opportunity to confer with counsel is a particular important constitutional right which courts will not permit to be unnecessarily abridged.

13. In Adams v. Carlson, 488 F.2d 619 (7th Cir. 1973), the Court stated that where there was no evidence to support warden's belief that attorneys were involved in smuggling contraband to inmates and where prison inmates' attorney evidenced willingness to undergo a search before meeting with their clients, requiring attorneys and inmates to confer in visiting room divided by a soundproof glass barrier, to communicate by phone and to transmit papers through jail guard violated inmates' rights to access to counsel and to the courts.

14. In Ching v. Lewis, 895 F.2d 608 (9th Cir. 1990), the Court stated, "Plaintiff was not allowed contact visits with his attorney and instead had to yell through a hole in the window to communicate. The Ninth Circuit Court of Appeals stated, 'we adopt the rules recognized by the Seventh Circuit in Dreher v. Sieloff, 636 F.2d 1141, and hold that a prisoner's rights of access to the Courts include contact visitation with counsel.'"
15. In Barnett v. Centoni, 31 F.3d 813 (9th Cir. 1994), the Court held that the Constitution guarantees prisoners meaningful access to the courts. Citing Boundy v. Smith, 430 U.S. 817, 822 (1977). A prisoner's right of access to the courts include contact visitation with his counsel. Citing Ching v. Lewis, 895 F.2d 608.
16. In Mann v. Reynolds, 46 F.3d 1055 (10th Cir. 1995), the Court stated that prison policy prohibiting contact visitation between death row inmates and their attorneys violate the Sixth Amendment.
17. In Jones v. Wittenberg, 440 F. Supp. 60, the Court stated, "the Court ordered the Lucas County Correctional Center that the wall be removed from the attorney booth and that a soundproof security door be installed between the attorney's booth and the outside lobby area. The Court requested the defendant sheriff to post the following notice in all the attorney and client booths.
'Attorneys visiting clients in the Lucas County Correctional Center are entitled to meet privately with their clients in multipurpose rooms designed to permit contact visits. You and your client will be escorted to such room unless you state a wish to meet with your client in a divided non-contact visiting area. In order to preserve necessary records, you will be asked to sign a form indicating that you have requested non-contact visits.'"
18. In Collins v. Schoonfield, 344 F. Supp. 257, the Court stated, "Four attorneys testified that the attorney and client visiting booths were inadequate. The Court further stated that the lack of justification for such a situation only emphasized the constitutional defect, namely, the denial of effective assistance of counsel to insure a fair trial to all persons convicted at trial who

have cases on appeal, and those represented by counsel in Post Conviction Proceedings." *Id.* at 280.

19. In Souza v. Travisono, 368 F. Supp. 959, the Court stated, "a custodian may not impair the access to the Courts of one committed to his custody, whatever the nature of the legal proceedings involve." *Id.* at 966.

20. In Denius v. Dunlap, 209 F.3d 944, the Seventh Circuit Court of Appeals stated, "where the Sixth Amendment right of effective assistance of counsel attaches, this right includes the ability to speak candidly and confidentially with counsel free from unreasonable governmental interference." *Id.* at 953-54.

21. Weatherford v. Bursey, 429 U.S. 545, 552 (1977). Recognizing that the state interference with confidential attorney-client communication implicate a defendant's Sixth Amendment right to effective assistance of counsel and in some circumstances require the reversal of conviction.

22. In Trainman v. Virginia, 377 U.S. 1, at 7, the Court stated, "a State could not infringe in any way the right of individuals and the public to be fairly represented in lawsuits --- furthermore, the right to obtain legal advice does not depend on the purpose for which the advice is sought. This right applies equally to legal representation intended to advocate a political or social belief."

23. In Martin v. Laver, 686 F.2d 24, 32 (D.C. Cir. 1982), the Court stated, "it has long been recognized that the First Amendment prohibits the state from interfering with collective actions by individuals to seek legal advice and retain legal counsel."

24. Bach v. Illinois, 504 F.2d 1100, 1102 (7th Cir. 1974), the Court stated, "an inmate's need for confidentiality in his communications with his attorney through whom he is attempting to redress his grievances is particularly important. We think that contact with an attorney and the opportunity to communicate privately is a vital ingredient to the effective

assistance of counsel and access to the courts."

25. In Adams v. Carlson, 488 F.2d 619, 631 (7th Cir. 1973), the Court recognized that the effective protection of access to counsel requires that the traditional privacy of the lawyer-client relationship be implemented in the prison context.

26. In Hunt v. Blackburn, 128 U.S. 464, 470 (1888), the United States Supreme Court held that the rule which places the seal of secrecy upon communication between client and attorney is founded upon the necessity, in the interest and administration of justice, of the aid of persons having knowledge of the law and skilled in its practice, which assistance can only be safely and readily availed of when free from the consequences or the apprehension of disclosure. The attorney-client privilege is one of the oldest recognized privileges for confidential communication. Swidler and Berlin v. United States, 524 U.S. 399, 403 (2005). The generally acknowledged purpose of the privilege is to "encourage" full and frank communication between attorneys and their clients and thereby promote broader public interest in the observance of law and the administration of justice." Id. at 403. (quoting Upjohn v. United States, 449 U.S. 383, 389 (1981); see also In re John Doe Inc., 13 F.3d 633, 635-636 (2d Cir. 1994) ("The purpose of the attorney-client privilege is to promote open communication between attorneys and their clients, so that fully informed legal advice may be given.") See also Restatement (Third) of the Law Governing Lawyers-Client Privilege is that confidentiality enhances the value of client-lawyer communication and enhance the efficacy of legal services.")

V. RECORDING, MONITORING, HEARING OR EAVESDROPPING ATTORNEY-CLIENT CONVERSATIONS

27. In the State Police Litigation Case, 888 F. Supp. at 1256, the Court explicitly endorsed the right of a prisoner under the Fourth Amendment, to have conversations with his or her attorney free of governmental eavesdropping and the corresponding

right of an attorney, under the Fourth Amendment, to have conversations with an incarcerated client free of governmental eavesdropping. The Court further held that "where no consent exists, and where conversations consists of privileged communications between clients and their attorneys, an expectation of privacy is reasonable."

28. In Katz v. United States, 389 U.S. 347 (1967), the United States Supreme Court held that government's activities in electronically listening to and recording defendant's words spoken in to telephone receiver in in public telephone booth violated the privacy upon which defendant justifiably relied while using the telephone booth and thus constituted a "search and seizure" within the meaning of the Fourth Amendment.

VI. CONCLUSION

29. Petitioner contends that this Honorable Court should GRANT his Petition for Rehearing and reverse and remand this case to the Seventh Circuit for further proceedings.

VII. PRAYER FOR RELIEF

1. TO GRANT PETITION, AND

2. REVERSE AND REMAND TO SEVENTH CIRCUIT FOR FURTHER PROCEEDINGS

Executed on May 22, 2018

Respectfully,

David Delgado

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Hill Correctional Center
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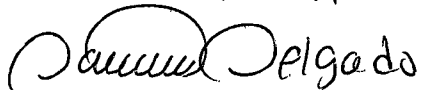
CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 44, I certify
that the Petition for Rehearing contains less than
3,000 words.

I declare under penalty of perjury that the
foregoing is true and correct.

Executed on May 22, 2018

Respectfully,

 Delgado

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