

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

COLLINS O. NYABWA

v.

UNKNOWN JAILERS AT CORRECTIONS CORPORATION OF AMERICA (CCA)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE 5TH CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTIONS PRESENTED

1. Can a federal appellate Court (5th Circuit) conclude that a case is foreclosed by U.S. Supreme Court precedent, when the U.S. Supreme Court has never addressed the said legal question on the merits?
2. Is someone convicted based on an unconstitutional criminal statute “actually innocent”?
3. Did U.S. Supreme Court decision in Nelson v. Colorado upend Texas False Imprisonment standard?

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit appears at APPENDIX A to the petition and is unpublished.

The opinion of the United States District Court appears at APPENDIX B to the petition and is unpublished

JURISDICTION

The United States Court of Appeals for the Fifth Circuit decided my case on November 7, 2017.

A timely petition for re-hearing was denied by the United States Court of Appeals for the Fifth Circuit on January 5, 2018

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Texas Improper Photography Law (invalidated September 2014)

§21.15 provides in relevant part;

(b) A person commits an offense if the person:

(1) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another at a location that is not a bathroom or private dressing room:

(A) without the other person's consent; and

(B) with intent to arouse or gratify the sexual desire of any person;

STATEMENT OF THE CASE

PROCEDURAL HISTORY

1. Petitioner was convicted of Improper Photography[§ 21.15(b)(1)] in Harris County Texas in 2011 and sentenced to 1 year state jail
2. Prior to his convictions, petitioner had filed pretrial writ in Texas state court challenging the constitutionality of Texas Improper photography law §21.15(b)(1)
3. Petitioner pled guilty in July 2011 while his constitutional challenge was pending in Texas state court and was sentenced to a 1 year state jail sentence to be served at Pam Lychner State Jail.

4. On April 12, 2012 while still serving his state jail sentence, plaintiff filed a federal habeas corpus(case # 4:12-cv-01152) raising the same facial invalidity question he had raised in his texas state habeas
5. Petitioner completed his state jail sentence in June 2012 after which he was transferred to an immigration detention facility in Houston Texas—Corrections Corporation of America(CCA)
6. Petitioner was detained at CCA from June 2012 to November 2013 when an immigration judge terminated his immigration proceedings
7. In September 2014, while petitioner’s federal habeas was still pending at the Southern District Court, the Texas Court of Criminal Appeals in an unrelated case declared Texas Improper Photography law unconstitutional. See Ex parte Thompson, 442 S.W.3d 325, 351 (Tex. Crim. App. 2014)
8. After the Texas High Court declared Texas Improper photography law unconstitutional, petitioner filed the instant *Bivens* complaint against Unknown Jailers at CCA arguing that because he was convicted based on an unconstitutional statute, he was “actually innocent” and thus falsely imprisoned
9. Plaintiff’s complaint was denied by the district court and on appeal

10. Strangely however neither the district court, nor the 5th Circuit Court addresses the DISPOSITIVE LEGAL QUESTION underlying plaintiff's claim—that he is “actually innocent” as a matter of law because he was convicted based on an unconstitutional statute

11. Petitioner now comes to the U.S. Supreme Court hoping to find an answer to this CRUCIAL “actual innocence” question that forms the basis of his complaint

ARGUMENT

FORECLOSED BY MINNECI V POLLARD

12. Both the U.S. District Court and the 5th Circuit Complaint decided that plaintiff's *Bivens* complaint was foreclosed by U.S. Supreme Court precedent *Minnecci v Pollard*, 132 S. Ct. 617, 626(2012) where the Supreme Court decided that *Bivens* could not be used against employees of private prisons like CCA.

13. Petitioner's complaint however is markedly different because unlike in *Minnecci*, he is making a valid legal argument that he is “actually innocent” because he was convicted based on an unconstitutional criminal statute

14. The question as to whether he is foreclosed by *Minnecci* is dependent upon the resolution of his “actual innocence” claim. In other words if he is NOT “actually innocent”, then he is foreclosed by *Minnecci*. However if he prevails in his “actual innocence” argument, then he IS NOT foreclosed because the U.S.

Supreme Court has never addressed a *Bivens* complaint based on “actual innocence”

15. Therefore both the district court and the 5th Circuit Court had to make a determination as to petitioner’s “actual innocence” before deciding that he was foreclosed and they both failed to do so—a terrible miscarriage of justice

16. The U.S. Supreme Court must therefore either decide the “actual innocence” question or REMAND to the 5th Circuit Court with instructions to do the same.

SOMEONE CONVICTED BASED ON AN UNCONSTITUTIONAL STATUTE IS
“ACTUALLY INNOCENT”

17. Petitioner’s case is pretty straightforward. Because his convictions were vacated due to facial invalidity of Texas improper photography law, he argues that per

5th Circuit Court precedent Reyes-Requena he is “actually innocent”. See Reyes-Requena v United States, 243 F.3d 893, 903 (5th Cir 2001)

18. In Reyes-Requena, the 5th Circuit Court found Reyes “actually innocent” because he had been convicted of a “non-existent” offense

19. It is settled law that an unconstitutional statute is *void ab initio* and fails to create a crime

20. Someone convicted based on an unconstitutional statute is therefore necessarily convicted of a “non-existent” offense and thus “actually innocent” for 5th Circuit purposes

21. Strangely however, neither the District Court nor the 5th Circuit Court of Appeals tackled petitioner’s legal argument that he is “actually innocent” because he was convicted based on an unconstitutional Texas Statute.

22. Petitioner would like to point out however that this “actual innocence” question has been tackled ON THE MERITS by the Texas Court of Criminal Appeals and the Ohio Supreme Court. See Ex Parte Curtis Fournier, 473 S.W. 3d 789 (Tex. Crim. App. 2015), Bundy v State, 143 Ohio St 3d 237, 2015-Ohio-2138

23. Both state High Courts concluded that someone convicted based on an unconstitutional criminal statute is NOT “actually innocent”

24. Petitioner did not find ANY federal court that has ever tackled this question on the merits which is why it is quite extraordinary that both the district court and 5th Circuit Court DISMISSED his petition WITH THREATS OF SANCTIONS without answering the DISPOSITIVE “actual innocence” question—A TOTAL MISCARRIAGE OF JUSTICE

25. Petitioner also pointed out both at the district court and on appeal that the U.S. Supreme Court has NEVER decided a *Bivens* complaint based on “actual

innocence” meaning the U.S. Supreme Court decision in *Minneci* did not foreclose his *Bivens* complaint. See *Minneci v Pollard*, 132 S. Ct. 617, 626(2012)

26. Reasonable jurists will agree that the U.S. Supreme Court would have been more inclined to extend *Bivens* against defendants if the underlying claim was “actual innocence” and the complainant, like petitioner had no other viable options for redress.

27. In *Davis*, we inferred a new right of action chiefly because the plaintiff lacked any other remedy for the alleged constitutional deprivation. *Davis v. Passman*, 442 U.S. 228 U.S (1979)

28. Petitioner prays that in the interest of justice, the U.S. Supreme Court either tackles this “actual innocence” question ON THE MERITS or remand the case to the 5th Circuit Court with instructions to do so

29. Reasonable jurists will agree that DISMISSING a *pro se* litigant’s complaint without ever answering the DISPOSITIVE legal question underlying their case is the quintessential HOSTILITY towards *pro se* litigants.

NELSON V COLORADO UPENDED TEXAS FALSE IMPRISONMENT STANDARD

30. When criminal convictions are vacated due to facial invalidity one is necessarily FALSELY IMPRISONED

31. Under Texas law “the essential elements of false imprisonment are: (1) willful detention; (2) without consent; and (3) without authority of law.” Randall’s Food Markets, Inc v Johnson, 891 S.W. 2d 640, 644 (Tex 1995)
32. It is settled law that “an unconstitutional law is void and is no law. An offense created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void. Ex Parte Siebold, 100 U.S. 371 (1879)
33. It is illogical to suggest that imprisoning someone based on a void statute is doing so “with authority of law”. As plaintiff stated earlier in cases of facial invalidity because of the *void ab initio* doctrine a false imprisonment claim is inherent.
34. Regarding false imprisonment the district court also held;
- “If an arrest or detention is executed under process which is legally sufficient in form and duly signed by a court of competent jurisdiction, an action for false imprisonment will not lie.” James v. Brown, 637 S.W. 2d 914, 918 (Tex 1982); accord Pete v Metcalfe, 8 F.3d 214, 218-19 (5th Cir 1993) (“A person has legal authority for detaining another where the detention is executed by virtue of legally sufficient process issued by a court of competent jurisdiction.”)
- (see Dismissal DK 31(attached Appendix B) at Pg 5-6)

35. A process based on a criminal statute that is *void ab initio* is likewise void and cannot be said to be "legally sufficient". Neither can a court have "competent jurisdiction" if its actions are based on an invalid criminal statute.
36. "Jurisdiction means the power of a court to hear and determine a cause, which power is conferred by a constitution or a statute, or both." Penn v. Com. 528 S.E.2d 179, 32 Va.App. 422 (2000)
37. "A court cannot acquire jurisdiction to try a person for an act made criminal only by an unconstitutional law, and thus, an offense created by an unconstitutional statute, is no longer a crime and a conviction under such statute cannot be a legal cause for imprisonment." State v. Benzel, 583 N.W.2d 434, 220 Wis.2d 588 (1998)
38. It was therefore clear error for the district judge to decide that defendants acted "with authority of law" even though their actions were based on an invalid Texas statute
39. Petitioner would also like to point to Nelson v. Colorado, a recent U.S. Supreme Court decision which clarified the presumption of innocence question and is applicable to petitioner's case. See Nelson v. Colorado, ___ U.S. ___, 137 S. Ct. 1249 (2017)

40. In Nelson, the state of Colorado ordered the litigant to pay some fines as a result of his criminal convictions for various sex crimes. Once the convictions were vacated, the litigant sued to have his fines refunded

41. Notice that one of the state's arguments for not refunding the fines was that at the time the fees were collected, the convictions were still valid.

42. "Colorado urges, however, that the funds belong to the State because Nelson's and Madden's convictions were in place when the funds were taken. Tr. of Oral Arg. 29–31." (See Nelson Opinion at III-A)

43. In other words Colorado, much like the district court here, assumed that Nelson was "guilty" from the date he was convicted and that his innocence kicked back in only after his convictions were vacated. In much the same way the district court here considers petitioner "guilty" as of 7/29/2011 when he was convicted and "innocent" only from 8/23/2016 onwards after his convictions were vacated. Therefore according to the district court, everything that occurred from 7/29/2011 to 8/23/2016 as a result of petitioner's Improper Photography convictions (including his imprisonment) is valid because he was still "guilty" then

44. The state of Colorado, much like the district court here seem to operate on some guilty to innocence continuum whereby even after your convictions are

vacated you are still adjudged "guilty" for the entire pendency of your criminal convictions. In other words your temporary "guilt" persists even after your convictions are vacated.

45.The U.S. Supreme Court in re-emphasizing the presumption of innocence doctrine TOTALLY REJECTED this bogus argument

46.Specifically the U.S. Supreme Court clarified that once Nelson's convictions were vacated, nothing previously done pursuant to those vacated convictions was valid (including the fee collection)

47.In other words, absent the criminal convictions, Nelson was presumed innocent and the fees associated with his convictions should never have been collected in the first place. He didn't have to prove "actual innocence" to get back monies that should never have been collected in the first place.

48."Colorado may not retain funds taken from Nelson and Madden solely because of their now-invalidated convictions, for Colorado may not presume a person adjudged guilty of no crime, nonetheless guilty enough for monetary exactions". (see Nelson Opinion at III-A)

49."As Justice Hood noted in dissent, however, "reversal is reversal," regardless of the reason, "[a]nd an invalid conviction is no conviction at all." 362 P. 3d, at 1080.(see Nelson Opinion at III-A footnote 10)

50. Likewise the district court may not presume plaintiff, adjudged guilty of no crime, nonetheless guilty enough to justify his imprisonment by the defendant.

51. This erroneous interpretation of the presumption of innocence doctrine has plagued petitioner in virtually ALL HIS COMPLAINTS at the southern district court. See for example;

52. "There is no cause of action for false imprisonment against Unknown Jailers where the order of detention was facially valid." (See Dismissal Order DK 31-attached EXHIBIT B—at pg 6)

53. See also "Plaintiff discloses that he was held at CCA until 'November 2013 when an Immigration Judge terminated plaintiff's proceedings.' Docket Entry No. 1 at 2. There was no indication of any defect in any judicial order mandating plaintiff's confinement until at least 2014, after plaintiff had been released from custody in 2013. Under these circumstances, plaintiff does not state a valid claim for which relief may be granted against the Unknown Jailers for false imprisonment." (see Dismissal Order DK 31—attached EXHIBIT B—at pg 7) (all suggesting that petitioner has been "guilty" from 2011-2016 and is only innocent from 2016 onwards after his convictions were formally vacated)

54. In other words according to the district court and 5th Circuit Court, petitioner has been “validly guilty” from 2011-2016 because his convictions had not been overturned

55. Armed with the Supreme Court decision in Nelson v. Colorado petitioner can now safely say that absent his criminal convictions, he is presumed innocent and that ALL HIS DETENTIONS pursuant to the said invalid convictions have been “without authority of law”. Put another way, plaintiff has NEVER EVER been validly “guilty”

56. Petitioner’s argument at the district court was that the *void ab initio* doctrine that’s associated with invalid statutes made him a prima facie false imprisonment case (defendants acted “without authority of law”).

57. However it turns out plaintiff doesn’t even need the *void ab initio* argument because Nelson v. Colorado by itself settles the false imprisonment question. Because plaintiff’s convictions were vacated, plaintiff is presumed innocent and defendants had “no authority of law” to detain him from 2012-2013

SUMMARY OF ARGUMENT

58. Petitioner has demonstrated clearly that because he was convicted using an unconstitutional Texas state statute he is “actually innocent” of his state criminal convictions as a matter of law (*void ab initio* doctrine).

59. Because he is “actually innocent” of his state criminal convictions, he was also

NECESSARILY FALSELY IMPRISONED by defendants (Unknown Jailers at CCA).

60. Petitioner has also demonstrated clearly that U.S. Supreme Court decision in

Nelson v Colorado UPENDS the Texas False Imprisonment standard

61. Equally important petitioner has demonstrated that because the U.S. Supreme

Court has NEVER addressed *Bivens* in the “actual innocence” context, his instant

Bivens complaint is NOT FORECLOSED by *Minneeci* as the district court and 5th

Circuit Court concluded

REASONS FOR GRANTING CERTIORARI

EXTRAORDINARY CIRCUMSTANCES EXIST IN PETITIONERS CASE

62. Petitioner’s case is pretty simple and straightforward. He was convicted using a Texas state statute that has since been declared unconstitutional.

63. Petitioner argues that given the facial invalidity of Texas Improper Photography law he is “actually innocent” and as a result was FALSELY IMPRISONED.

64. In order to FAIRLY DECIDE petitioner’s case, a preliminary determination has to be made as to whether he is “actually innocent” given the facial invalidity of Texas Improper Photography law. Therein lies the EXTRAORDINARY

CIRCUMSTANCES surrounding petitioner's case. In a nutshell, as shocking as this may sound to the Honorable Members of the U.S. Supreme Court, the Southern District Court judges have simply REFUSED TO ANSWER petitioner's pure legal question as to "actual innocence".

65. Petitioner has lamented this to the 5th Circuit court via a Writ of Mandamus but to no avail (see USCA #15-20486, 5th Cir 2015)

66. The U.S. Supreme Court receives numerous reasons as to why they should grant certiorari, some compelling, others not. However all reasonable jurists will agree that when federal courts LITERALLY REFUSE to answer a valid legal question by a meritorious prose litigant, the U.S. Supreme Court MUST INTERVENE.

67. This is an EXTRAORDINARY circumstance that negatively reflects on the credibility of the federal court system. That petitioner has asked the "actual innocence" question in his federal §2254 and 5 subsequent civil actions, all dependent upon the DISPOSITIVE "actual innocence" question, all to be DISMISSED at the district court WITHOUT EVER answering the dispositive "actual innocence" question speaks of a broken or at the very least very dysfunctional 5th Circuit Court system

68. There is no reason for petitioner to believe that the 5th Circuit Court who petitioner reached out to in 2015 via a Writ of Mandamus regarding this issue to no avail will now answer the TABOO “actual innocence” question

69. A resolution to this question is very important to petitioner because if he prevails, he can collect the much needed \$85,000 “actual innocence” compensation from the state of Texas and possibly prevail on his federal civil suits currently pending at the 5th Circuit Court of Appeals.

70. Americans approach federal courts for ANSWERS to important legal questions affecting their lives. Where, as here, the federal courts HAVE REFUSED TO ANSWER a valid legal question, it raises questions as to the reason for their existence. Why have federal courts if they won’t answer federal constitutional questions?

71. Because this is a serious issue that goes to federal judiciary’s primary mission—to resolve constitutional disputes—the U.S. Supreme Court must GRANT certiorari to answer the elusive “actual innocence” question

EXTREME HOSTILITY TOWARDS INDIGENT *PRO SE* LITIGANTS

72. Petitioner would also like to bring to the attention of the U.S. Supreme Court the EXTREME HOSTILITY indigent *pro se* litigants are subjected to by federal courts in the 5th Circuit region.

73. Petitioner's experience at the Southern District of Texas Courts and the 5th Circuit Court of Appeals boils down to this unspoken rule: "We don't care what your valid legal arguments are, YOUR CASE IS DISMISSED."

74. Simply put, there's NO WAY for an indigent *pro se* litigant to win in the 5th Circuit region—a travesty of justice.

75. The U.S. Supreme Court doesn't have to take petitioner's word for it. The record speaks for itself. Petitioner filed a meritorious 2254 federal habeas in which he asked the district judge to declare him "actually innocent" based on the 5th Circuit precedent Reyes-Requena where it was held that someone convicted of a "non-existent" offense is "actually innocent". (see Nyabwa v Davis, No. H-12-1152 DK #55 & 70 "Motion for declaration of Innocence").

76. Seeing that petitioner, an indigent *pro se* litigant had a meritorious "actual innocence" claim, the district judge LITERALLY REFUSED to decide on petitioner's "actual innocence" motion on the merits.

77. As petitioner stated earlier, the unspoken rule in the 5th Circuit region is that an indigent *pro se* litigant MUST NOT WIN

78. The hostility did not end there. Petitioner has since filed several civil suits at the southern district court all based on his "actual innocence" theory, all to be DISMISSED without ever answering the dispositive question as to whether he

is “actually innocent” in light of Reyes-Requena. (see Nyabwa v CCA 16-1644; Nyabwa v Warden 16-2638; Nyabwa v Unknown Jailers 16-782; Nyabwa v USA 16-783)

79. The best illustration of this HOSTILITY towards *pro se* litigants however was in petitioner’s FTCA complaint (case # 4-16-cv-00783).

80. Unlike other DISMISSALS at the southern district court, in this one the district judge acknowledged that the question as to petitioner’s “actual innocence” has to be resolved because it has a bearing on petitioner’s FTCA complaint (see 4-16-cv-00783 DK 27 at pg 6-7).

81. However SHOCKINGLY, the judge concluded that even though petitioner may be “actually innocent” based on Reyes-Requena, this is not the “actual innocence” definition the 5th Circuit uses in FTCA complaints.

82. Petitioner, flabbergasted, filed two motions to reconsider (DK 29 & 31) arguing that the 5th Circuit had only one definition of “actual innocence” which it applies for the savings clause and everything else.

83. Petitioner then asked the court or the defendants (U.S. Govt) to show which other 5th Circuit “actual innocence” definition was out there other than Reyes-Requena.

84. Even though they couldn't find one, petitioner's FTCA was still dismissed WITH PREJUDICE—the aforementioned EXTREME HOSTILITY towards indigent *pro se* litigants. As petitioner stated earlier there's NO WAY for an indigent *pro se* litigant to win in the 5th Circuit region

85. Also notice that even though the Texas Court declared the Texas Improper Photography law unconstitutional in September 2014 petitioner had to fight for 2 years at the Southern District Court just to be granted 2254 federal habeas relief (see case #12-1152 SD Texas 2016)

86. Federal Courts have always welcomed indigent *pro se* litigants. The U.S. Supreme Court should inquire as to why this is not so in the 5th Circuit region

POLITICAL DYNAMITE

87. Petitioner would also like to point out that the high drama surrounding the “actual innocence” question is rooted in state judicial politics.

88. In Texas for example where my case originates, the state judges are elected via partisan judicial elections (just like members of Congress—Republican and Democrat).

89. For some strange reason, the laws that get struck for unconstitutionality are disproportionately “sex laws”. The improper Photography “upskirt” law for example is classified as a sex law in Texas.

90.The Texas Court of Criminal Appeals concluding that someone convicted based on an unconstitutional statute is “actually innocent” would cause a political earthquake in the state making the judges incapable of re-election

91.The election ads following such a decision would go something like this; “Don’t elect judge...., she made Texas compensate sex offenders..” etc. The Brennan Center for Justice has done a lot of work regarding partisan judicial elections¹.

92.The National Constitution Center also recently hosted a great panel² of federal appellate justices to debate this very topic –partisan judicial elections. The video of this great panel even features comments by your esteemed colleague, Justice Sandra Day O’Connor on the perils of partisan judicial elections (see YouTube video at 57:27)

93.Because of the severe political pressures facing elected state judges, it is understandable why in *Ex Parte Curtis Fournier*, 473 S.W. 3d 789(Tex. Crim. App. 2015) the Texas Court of Criminal Appeals held that someone convicted based on an unconstitutional statute is not “actually innocent”.

94.That decision raises a whole host of serious questions up to and including separation of powers. By deciding in *Ex Parte Fournier* that someone convicted

¹ <https://www.brennancenter.org/blog/judges-and-politics-dont-mix>

² <https://www.youtube.com/watch?v=ty1fH8Dm680>

based on an unconstitutional law is not “actually innocent”, the nine justices at the Texas Court of Criminal Appeals literally usurped constitutional powers exclusively bestowed upon the Texas Legislature.

95. It is settled law that legislatures enact statutes. Statutes, and statutes only create crimes. When a statute is struck down as unconstitutional, the crime it specifies disappears and someone convicted based on such statute is necessarily “actually innocent”—convicted of a non-existent offense.

96. For the nine Texas Justices to conclude that such a person is not “actually innocent” they have essentially created a crime/offense absent a criminal statute—an act beyond the scope of their constitutional powers

97. It is for this reason that Texans have been anxious for federal courts to weigh in on this crucial question especially given the 5th Circuit’s Reyes-Requena decision which says someone convicted of a non-existent offense is “actually innocent”

98. The questionable decision by the Texas Court of Criminal Appeals is understandable given the state political pressures.

99. What has been TOTALLY PERPLEXING is why federal courts in Texas would be TOTALLY HOSTILE to this valid legal question.

100. Petitioner would never have imagined that a federal court would be this hostile to a valid legal question, which is why he calls it an EXTRAORDINARY CIRCUSTANCE worth GRANTING certiorari.

101. The U.S. Supreme Court should definitely inquire about this EXTRAORDINARY CIRCUMSTANCE.

AID IN THE COURTS APPELLATE JURISDICTION

102. Petitioner's case may help improve the court's appellate jurisdiction because the U.S. Supreme Court can use it to implore the lower courts to strive harder to resolve cases on the MERITS.

103. Put another way it helps the appellate process greatly when all the legal issues presented in a civil complaint are answered at the district court prior to someone appealing

104. Maybe the Supreme Court should require all civil complaints at the district court to specify "Legal Questions Presented" like they do on Certiorari.

105. The District Court should be FORCED TO ANSWER all the legal questions listed on the "Legal Questions Presented". This will streamline the appellate process because it will go a long way in doing away with the needless baiting and switching.

106. In my particular case for instance, had such a system existed, I would be approaching the U.S. Supreme Court on Certiorari to challenge a lower court's conclusion on "actual innocence".

107. Instead, I am approaching the U.S. Supreme Court on Certiorari but the dispositive "actual innocence" question I set out to prove is yet unanswered—a total breakdown of the federal appellate process.

108. Better yet had I received an unfavorable "actual innocence" determination from one of the lower courts that I found convincing, I may not have seen a need to file Certiorari, freeing up appellate court resources for other cases.

109. Therefore having legal questions answered on the merits right from the district court is good for everybody—the litigants and the federal court system.

NATIONAL IMPORTANCE

110. The "actual innocence" question is of great national importance. More and more state legislatures are in good faith crafting "actual innocence" compensation schemes.

111. The only problem is that the enforcement of these good faith compensation schemes is left to political state judges who find themselves burdened by partisan political pressures like the Texas example petitioner cited.

112. It is therefore vitally important for the U.S. Supreme Court to step in and settle this question for everybody's sake—especially state appellate justices.

113. There's a VERY STRONG argument to be made that someone convicted based on an unconstitutional law is "actually innocent" and that state appellate courts are deciding otherwise simply due to political pressures.

114. The U.S. Supreme Court can/ and should END this legal controversy.

CONCLUSION

115. The judgment of the United States Court of Appeals for the Fifth Circuit DISMISSING petitioner's complaint as FRIVOLOUS AND THREATENING SANCTIONS towards future filings is a terrible miscarriage of justice because it NEVER ADDRESSED the DISPOSITIVE legal question as to petitioner's "actual innocence"

116. It also demonstrates SEVERE HOSTILITY by the appellate court towards indigent *pro se* litigants

117. The interests of justice DICTATE that the U.S. Supreme Court either ANSWER the "actual innocence" question or REMAND the case to the 5th Circuit Court with instructions that they do the same