

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RUBEN ORLANDO BENITEZ — PETITIONER
(Your Name)

VS.

STATE OF MISSISSIPPI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MISSISSIPPI SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RUBEN ORLANDO BENITEZ
(Your Name)
SOUTHERN MISSISSIPPI COR. FAC.
PO. BOX 1419
(Address)

LEAKESVILLE, MS 39451
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

QUESTION NO. 1

WHETHER THE DECISION RENDERED BY THE MISSISSIPPI SUPREME COURT WAS CONTRARY TO, FAILED TO ADDRESS, OR INVOLVED AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES

QUESTION NO. 2

WHETHER THE MISSISSIPPI SUPREME COURT VIOLATED THE DUE PROCESS RIGHTS OF BENITEZ BY CONSTRUING THE MOTION FOR EVIDENTIARY HEARING AS A PETITION FOR POST-CONVICTION

QUESTION NO. 3

WHETHER THE MISSISSIPPI SUPREME COURT ALLOWS THE MISSISSIPPI COURT OF APPEALS TO VIOLATE MS CODE ANN § 9-4-3 WITHOUT ANY FORM OF REPRIMAND OR REDRESS

LIST OF PARTIES

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

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

UNITED STATES CASES

FRANK V DELAWARE, 438 US 154, 155-56,
98 S.Ct. 2674, 57 L.Ed 2d 667 (1978)

UNITED STATES V CRAIGHEAD, 539 F.3d
1073, 1080 (9TH CIR. 2008)

UNITED STATES V REEVES, 210 F.3d 1041,
1044 (9TH CIR. 2000)

MISSISSIPPI CASES

DUNAWAY V STATE, 111 So 3d 117 (2013)

HALL V STATE, 539 So 2d 1338, 57 USLW
2511 (1989)

PENICK V STATE, 440 So 2d 547 (MISS 1983)

PICKLE V STATE, 791 So 2d 204 (MISS 2001)

ROOKS V STATE, 529 So 2d 546 (1988)

THORSON V STATE, 994 So 2d 707 (2007)

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ 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☐ is unpublished.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 _____ to the petition and is

- ☐ reported at _____; 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 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 N/A 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 _____.

☐ 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 01-10-2018.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 02-02-2018, and a copy of the order denying rehearing appears at Appendix B.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION

FOURTH AMENDMENT

MS CONSTITUTION

ARTICLE 3 § 23

MS STATUTES

9-4-3

41-29-157

99-25-15

99-25-17

99-39-3

STATEMENT OF THE CASE

THIS WRIT PROCEEDS FROM A DENIAL OF A
SUBMITTED MOTION FOR EVIDENTIARY HEARING IN
THE MISSISSIPPI SUPREME COURT FOR WHICH THE
NATURE OF THE SUBMISSION WAS CHANGED TO A
PETITION FOR POST-CONVICTION APPROXIMATELY
EIGHT (8) MONTHS AFTER THE DOCKETING OF THE
ORIGINAL MOTION FOR EVIDENTIARY HEARING ON
DOCKETS 2013-CT-00469-SCT AND 2017-M-00681.

REASONS FOR GRANTING THE PETITION

QUESTION NO. 1

WHETHER THE DECISION RENDERED
BY THE MISSISSIPPI SUPREME COURT
WAS CONTRARY TO, FAILED TO ADDRESS,
OR INVOLVED AN UNREASONABLE
APPLICATION OF CLEARLY ESTABLISHED
FEDERAL LAW, AS DETERMINED BY
THE SUPREME COURT OF THE UNITED STATES

INDIGENT PRO SE PRISONER PETITIONER RUBEN
ORLANDO BENITEZ CONTENDS* THAT THE MISSISSIPPI
SUPREME COURT COMMITTED PLAIN ERROR IN
CHANGING THE "NATURE" OF A SUBMITTED "MOTION FOR
EVIDENTIARY HEARING" TO A "PETITION OF POST-
CONVICTION. THE SUBMISSION IS CLEAR IN ITS
OPENING PARAGRAPH:"

"COMES NOW, RUBEN ORLANDO BENITE,
INDIGENT PRO SE PETITIONER FILING
THIS MOTION FOR EVIDENTIARY HEARING
LEADING TO DETENTION AND CONVICTION.

BENITEZ IS ENTITLED TO AN EVIDENTIARY HEARING WHEN;¹

EVEN IF THE SUBMISSIONS OF A PRO SE LITIGANT ARE TO BE VIEW/READ LIBERALLY, THERE CAN BE NO DISPUTE THAT THE "MOTION FOR EVIDENTIARY HEARING" SUBMITTED BY PRO SE BENITEZ COULD NOT BE CONSTRUED AS A "PETITION FOR POST-CONVICTION" UNDER THE STATUTORY REQUIREMENTS OF MISS CODE ANN § 99-39-3, PICKLE V STATE, 791 SO 2d 204 (MISS 2001). FURTHERMORE, THE MISSISSIPPI SUPREME COURT DOES NOT DOCKET THE SUBMISSION AS A "PETITION FOR POST-CONVICTION" UPON THE SUBMISSIONS INITIAL FILING ON DOCKET NO. 2013-CT-00469-SCT.² MOREOVER, THE "NATURE" OF THE SUBMISSION IS VALIDATED WHEN THE MISSISSIPPI SUPREME COURT "CREATES A MISCELLANEOUS CASE" OF THE IDENTICAL

¹ EXHIBIT #1 MOTION FOR EVIDENTIARY HEARING PG. 1

² EXHIBIT #2 CLERK DOCKET 2013-CT-00469-SCT

"MOTION FOR EVIDENTIARY HEARING" SUBMISSION ON DOCKET NO. 2017-M-00681³ WITHOUT "SHOW OF CAUSE." THE FACT THAT THE MISSISSIPPI SUPREME COURT ALTERS THE "NATURE" OF THE SUBMISSION, APPROXIMATELY EIGHT (8) MONTHS AFTER, IS AT THE VERY LEAST QUESTIONABLE AS A LEGAL INQUIRY. IN ADDITION, THE MISSISSIPPI SUPREME COURT SHOULD HAVE INFORMED PRO SE BENITEZ OF THE "CHANGED" NATURE OF THE SUBMISSION AND PROVIDED AN OPPORTUNITY TO CORRECT ANY DEFICIENCY THE SUBMISSION WOULD HAVE TO COMPLY WITH THE CHANGED NATURE. DUNAWAY V STATE, 111 SO 3d 117 (2013) THIS WOULD INCLUDE THE REQUIRED SUBMISSION OF A "LEAVE TO PROCEED" WHICH IS A VITAL "REQUIREMENT" FOR THE MISSISSIPPI

³ EXHIBIT #3 CLERK DOCKET 2017-M-00681

SUPREME COURT TO ENTERTAIN A PETITION FOR POST-
CONVICTION: THORSON V STATE, 994 SO 2d 707 (MISS 2007);
DUNAWAY V STATE, 111 SO 3d 117 (2013)

QUESTION NO. 2

WHETHER THE MISSISSIPPI SUPREME
COURT VIOLATED THE DUE PROCESS
RIGHTS OF PRO SE BENITEZ BY
CHANGING THE NATURE OF THE MOTION
FOR EVIDENTIARY HEARING INTO A
PETITION* FOR POST-CONVICTION

PRO SE BENITEZ AVERS THAT AN EVIDENTIARY
HEARING IS REQUIRED WHEN,

"MAKING A SUBSTANCIAL PRELIMINARY
SHOWING THAT A FALSE STATEMENT
KNOWINGLY AND INTENTIONALLY, OR
WITH RECKLESS DISREGARD FOR THE
TRUTH, WAS INCLUDED BY THE AFFIANT
IN THE WARRANT AFFIDAVIT, "AND" IF
THE ALLEGEDLY FALSE STATEMENT IS
NECESSARY TO THE FINDING OF
PROBABLE CAUSE."

FRANK V DELAWARE, 438 U.S. 154, 155-56, 98 S.Ct.

2674, 57 L.Ed 2d 667 (1978); UNITED STATES V CRAIGHEAD,

539 F.3d 1073, 1080 (9TH CIR 2008); UNITED STATES V

REEVES, 210 F3d 1041, 1044 (9TH CIR 2000)

IN THE MISSISSIPPI SUPREME COURT ORDER⁴ DENYING
THE MOTION FOR EVIDENTIARY HEARING IT ILLUSTRATES:

"BENITEZ HAS FAILED TO MAKE A SUBSTANTIAL
SHOWING OF THE DENIAL OF A STATE OR
FEDERAL RIGHT."

THIS ILLUSTRATION IS OVERWHELMINGLY DISPROVED BY
THE FIRST PARAGRAPH, OF THE SUBMISSION, ARGUING THE
FIRST "FRANK'S PRONG,"

"BENITEZ ASSERTS ... WHICH LEAD TO A
DIRECT VIOLATION OF THE UNITED STATE'S
CONSTITUTION'S FOURTH AMENDMENT,
MISSISSIPPI CONSTITUTION'S ARTICLE 3 § 23,
AND MISSISSIPPI CODES ANN § 41-29-157,
§ 99-25-15, AND § 99-25-17 WHICH ARE
AFFORDED TO BENITEZ⁵

⁴ EXHIBIT #4 MS SUPREME COURT ORDER

⁵ EXHIBIT #5 MOTION FOR EVIDENTIARY HEARING PG.2

IF THIS WERE THE ONLY SHOWING PRO SE BENITEZ
ILLUSTRATED IN THE SUBMISSION IT WOULD STILL REQUIRE
REVIEW. HOWEVER, PRO SE BENITEZ PROVIDES OVER
SIXTY (60) CITINGS OF FEDERAL AND STATE CASE
LAW TO SUPPORT THE SUBMISSION "SHOWING" HOW
THE "DUE PROCESS RIGHTS" OF PRO SE BENITEZ
WERE NOT ONLY VIOLATED BUT MANIPULATED, FABRI-
CATED, AND "CONSPIRED AGAINST" PRO SE BENITEZ.

THE ORDER, BY THE MISSISSIPPI SUPREME COURT,
ALSO CONTRADICTS ITSELF BY STATING,

"ON 'DIRECT APPEAL', BENITEZ 'CHALLENGED'
... IN THE INSTANT MATTER, HE 'AGAIN'
CHALLENGES.... WE FIND THIS ARGUMENT
WAS CAPABLE OF BEING RAISED AT TRIAL
'OR' ON DIRECT APPEAL, AND IT HAS BEEN
WAIVED."

THE COURT THUS ACKNOWLEDGES THAT PRO SE BENITEZ

HAS "CHALLENGED" THE SEARCH WARRANT ON DIRECT APPEAL AND SUBMISSION FOR EVIDENTIARY HEARING BUT ILLUSTRATES THAT THE ARGUMENT IS WAIVED.

BENITEZ HAS IN FACT "CHALLENGED" THE VALIDITY AND LEGALITY OF THE SEARCH WARRANT AT TRIAL, ON DIRECT APPEAL, ON REHEARING [GRANTED BY HON. JAMES]⁶, ON MOTION TO QUASH SEARCH WARRANT, AND ON WRIT OF CERTIORARI [GRANTED BY HON. DICKINSON P.J.]⁷ AND HAS BEEN DILIGENT IN NOT WAIVING OR OTHERWISE ABANDONING THE VIOLATION OF THIS FUNDAMENTAL CONSTITUTIONAL RIGHT ASSOCIATED TO THE ILLEGAL SEARCH WARRANT, IN THE SUBMITTED "MOTION FOR EVIDENTIARY HEARING."

THEREFORE, THE CONTRADICTIVE ORDER, ISSUED BY THE MISSISSIPPI SUPREME COURT, IS A MANIFEST INJUSTICE FASHIONED BY A FORM OF "PROCRUSTES BED" TO

⁶ EXHIBIT #6 ORDER DENYING MOTION FOR REHEARING

⁷ EXHIBIT #7 ORDER DENYING WRIT OF CERTIORARI

TO ILLUMINATE ANY ABILITY FOR PRO SR BENETZ
TO ACQUIRE JUSTICE IN THE SOVEREIGN STATE OF
MISSISSIPPI.

"WE HAVE, AS FAR AS POSSIBLE, CLOSED
EVERY AVENUE BY WHICH LIGHT MAY
ENTER THEIR MINDS. IF WE COULD
EXTINGUISH THE CAPACITY TO SEE THE
LIGHT, OUR WORK WOULD BE COMPLETE;
THEY WOULD THEN BE ON A LEVEL WITH
THE BEAST OF THE FIELD AND WE SHOULD
BE SAFE."

FROM BROWN AMERICA, THE STORY OF A NEW RACE BY
EDWIN R. EMBREE 1931 THE VIKING PRESS

QUESTION NO. 3

WHETHER THE MISSISSIPPI SUPREME
COURT ALLOWS THE MISSISSIPPI
COURT OF APPEALS TO VIOLATE
MISSISSIPPI CODE ANN § 9-4-3
WITHOUT ANY FORM OF REPREHEND
OR REDRESS

PRO SE BENITEZ AVERS THAT JURISDICTION IS THE PRINCIPAL FACTOR FOR "ANY" COURT PLEADING. THEREFORE IT IS A DETRIMENT TO THE FUNDAMENTAL PRINCIPALS OF THE AMERICAN JUSTICE SYSTEM FOR A COURT TO ISSUE ORDERS FOR PROCEEDINGS IN WHICH THEY CARRY NO JURISDICTION. TO ALLOW ANY SIMILAR ACTION IS TO PROMOTE A SYSTEM OF LAWLESSNESS AND AN UNCONTROLLABLE ANARCHY."

"... WE HAVE THE 'INHERENT AUTHORITY' TO SAY SO," AND WHY DO "WE" HAVE THIS INHERENT AUTHORITY? "BECAUSE WE SAY SO"

HALL V STATE, 539 SO 2D 1338, 57 USLW 2511 (1989) FOOTNOTE

THE MISSISSIPPI SUPREME COURT HAS ALLOWED THE MISSISSIPPI COURT OF APPEALS TO ISSUE ORDERS WHICH HAVE DENIED PRO SE BENITEZ EVEN THE LEAST BIT OF DUE PROCESS SINCE SUBMITTING DOCUMENTS

AS A PRO SE LITIGANT, IT IS BEYOND CAVIL THAT
THE MISSISSIPPI COURT OF APPEALS ISSUES A MANDATE⁸
FOR PRO SE BENITEZ WITHOUT ASSESSING JURISDICTION
WHICH IS A DIRECT VIOLATION OF MISSISSIPPI CODE
ANN § 9-4-3. IF THIS WERE THE ONLY INSTANCE
OF THE VIOLATION IT WOULD BE ENOUGH FOR THE
MISSISSIPPI SUPREME COURT TO ADDRESS THE VIOLATION
OR AT THE VERY LEAST REQUIRE THE MISSISSIPPI
COURT OF APPEALS TO SHOW CAUSE FOR THEIR ACTION.
HOWEVER, THIS HAS NOT BEEN THE "FIRST OR ONLY"
VIOLATION OF MISSISSIPPI CODE ANN § 9-4-3 BY THE
MISSISSIPPI COURT OF APPEAL IN REGARDS TO
SUBMISSION OF PRO SE BENITEZ, THE MISSISSIPPI
COURT OF APPEALS COMMITTED VIOLATIONS OF
MISSISSIPPI CODE ANN § 9-4-3 WHEN IS ISSUED AN

⁸ EXHIBIT #8 CLERK DOCKET 2013-CT-00469-COA

ORDER #2014-3613 ON A FILED "MOTION TO SUSPEND"
ON OCTOBER 10, 2014⁹ AND ON A FILED "MOTION TO
RESCIND" ON OCTOBER 29, 2014.¹⁰ BOTH MOTIONS WERE
TITLED TO THE MISSISSIPPI SUPREME COURT AND
CAUSED NO. 2013-CT-00469-SCT. BOTH WERE UNDER
THE JURISDICTION OF THE MISSISSIPPI SUPREME COURT
WHEN THE MISSISSIPPI COURT OF APPEALS ISSUED
ORDERS WHICH INCLUDED THEIR ACKNOWLEDGMENT OF
THEIR "LACK OF JURISDICTION." THE VIOLATION OF THE
MOST ELEMENTARY PRINCIPAL OF JUSTICE DEPARTS
FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL
PROCEEDINGS, OR SANCTIONS SUCH A DEPARTURE BY
A LOWER COURT, AS TO CALL FOR AN EXERCISE OF
THIS COURT'S SUPERVISORY POWER. IT IS EVIDENT
THAT THE MISSISSIPPI SUPREME COURT HAS ALLOWED

⁹ EXHIBIT #9 MOTION TO SUSPEND AND ORDER DENYING

¹⁰ EXHIBIT #10 MOTION TO RESCIND AND ORDER DENYING

THE MISSISSIPPI COURT OF APPEALS TO ISSUE ORDERS AND UTILIZE A "PROCRUSTES BED" TO DETERMINE THE OUTCOME OF SUBSTANTIATED ARGUMENTS OF PRO SE LITIGANTS WHO DO NOT HAVE THE EXPERIENCE OF PARALEGALS, LAWYERS, PROSECUTORS, OR JUDGES. HOWEVER, THIS COURT MUST PROVIDE THE ULTIMATE JUSTICE NOT TO PRO SE BENITEZ ONLY BUT TO ALL WHICH ARE SIMILARLY SITUATED. *AS TO ALLOW THE LAWLESSNESS TO CONTINUE IS TO ABANDON ITS SUPERVISORY POWER AND ALLOW THE LOWER COURTS TO PROCEED AT WILL AND ADMINISTER THEIR OWN FORM OF JUSTICE.

"THIS CONSTITUTIONAL RIGHT GUARANTEED TO ALL CITIZENS OF "THIS" STATE [MISSISSIPPI] HAS BEEN CAREFULLY GUARDED BY JUDGES WHO WERE LIFELONG RESIDENTS OF

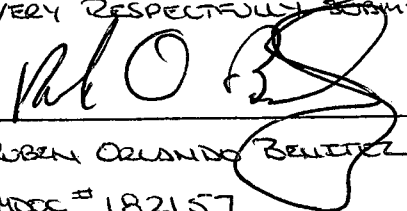
"THIS" STATE, PROFOUNDLY COGNIZANT OF
SOCIAL NEEDS AND INDIVIDUAL RIGHTS.
[MISSISSIPPI COURTS] RETAIN UNTO
"[THEMSELVES]" THE "SOLE" INTERPRETATION
OF [ITS] OWN CONSTITUTION."

ROCKS V STATE, 529 SO 2d 546 (1988); BENICK V STATE,
440 SO 2d 547 (MISS 1983)

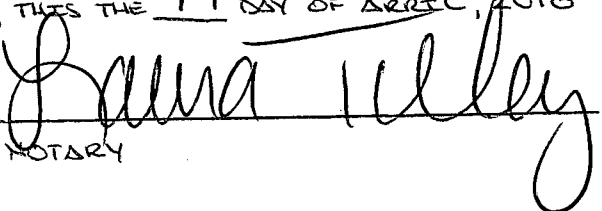
WHEREFORE PREMISES CONSIDERED, INDIGENT
PRO SE PRISONER PETITIONER RUBEN ORLANDO BENITEZ
PRESENTS THIS WRIT OF CERTIORARI TO THE UNITED
STATES SUPREME COURT WITH ACCURACY, BREVITY,
AND CLARITY BEING ESSENTIAL TO READY AND ADEQUATELY
UNDERSTAND THE POINTS REQUIRING CONSIDERATION AND
HOPES AND PRAYS THIS COURT WILL GRANT THE FOREGOING
WRIT OF CERTIORARI.



VERY RESPECTFULLY SUBMITTED,


RUBEN ORLANDO BENITEZ
HDOC # 182157

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE 19 DAY OF APRIL, 2018


NOTARY