

No. _____

IN THE
SUPREME COURT OF THE
UNITED STATES

ALEJANDRO CASILLAS PRIETO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Appeal from the United States
Court of Appeals for the Fifth Circuit
(No. 17-40531)

PETITION FOR WRIT OF CERTIORARI

Mr. Alejandro Casillas-Prieto
Pro se Petitioner
Reg. No. 18154-078
U.S.P. Beaumont
Post Office Box 26030
Beaumont, Texas 77720

QUESTION PRESENTED

Whether § 2253(c) and § 2255 Rule 11(a) contravene the Due Process Clause because they invert the order of operations for a district court determining if a habeas applicant is entitled to a COA

TABLE OF CONTENTS

	Page
Opinion Below	1
Jurisdiction	1
Constitutional and Statutory Provisions Involved	2
Statement of the Case	3
Reason for Granting the Writ	4
Conclusion	9

INDEX TO APPENDICES

Appendix A

Appendix B

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
1. <u>Bell v Atlantic Corp. v Twombly</u> 550 US 544 (2007)	8
2. <u>Buck v Davis</u> , 137 S.Ct. 789 (2016)	5, 6, 8
3. <u>Johnson v Allstate Vehicle & Prop. Ins. Co.</u> , U.S. Dist. Lexis 108530 (SDTX July 13, 2017)	8
4. <u>Mathews v Eldridge</u> , 424 U.S. 319 (1976)	4, 7
5. <u>Miller-El v Cockrell</u> , 537 US 322 (2003)	
6. <u>United States v Prieto</u> , — Fed. Appx. — (5th Cir. 2018)	8
28 USC § 2253(c)	5, passim
Section 2255 Rule 11(a)	4, passim
Federal Rules of Appellate Procedure, Rule 22(b)	6

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

U.S. Constitution, Amendment V

Due Process Clause

28 USC § 2253(c)

IN THE
SUPREME COURT OF THE
UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit appears at Appendix A to the petition and is an unpublished Decision.

The Opinion of the United States District Court for the Eastern District of Texas appears at Appendix B to the petition and is an unpublished Decision.

JURISDICTION

The date on which the United States Court of Appeals decided my case was on February 1, 2018.

No petition for rehearing was filed in this case.

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

STATEMENT OF THE CASE

On March 6, 2014, petitioner sought collateral relief in the U.S. District Court for the Eastern District of Texas under 28 USC Section 2255 following his conviction for violating federal drug laws.

Petitioner's §2255 motion raised a single ground for collateral relief arguing that he was prejudiced by his counsel's misadvising him concerning whether he should accept the government's plea offer. The government opposed the motion and petitioner being granted relief in the §2255 proceedings. Following petitioner filing a reply, through postconviction counsel, the magistrate judge issued a report and recommendation after holding an evidentiary hearing in which petitioner testified ~~and~~ on one side and his trial attorney, along with Marston Alexander (co-counsel) and Special Agent Heriberto Quiroga.

Petitioner filed objections and the district judge adopted the magistrate's report denying him relief, dismissing the §2255 with prejudice and also denying him a COA. Petitioner timely filed a notice of appeal, and sought a COA in the U.S. Court of Appeals for the Fifth Circuit which was denied.

Thus, petitioner seeks a COA in this Court by way of this petition for a writ of certiorari.

REASON FOR GRANTING WRIT

This petitioner seeks this Court to issue him a COA in order to challenge the due process violation created by the Section 2255 Rule which prevents him from meeting the liberal standard necessary to obtain a COA, when seeking to appeal the denial of a §2255 motion for collateral relief. See Mathews v. Eldridge, 424 U.S. 319, 333-34 (1976) (recognizing the "truth is that due process, unlike some legal rules, is not a technical conception with a fixed content... it is flexible and calls for such procedural protections as a particular situation demands").

In this instance, the flexible concept of due process must be viewed in the context of the underlying purpose of the procedure to be followed when determining whether a habeas petitioner should be entitled to appeal the denial of a collateral motion challenging his conviction and sentence through the granting of a COA. Specifically, according to the current §2255 rules, a district court is unconstitutionally permitted to circumvent the important interlocking procedural steps necessary in determining whether a COA should be granted.

This is because the applicable rule which states in pertinent part, that:

"The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."

Rule 11(a) of the Rules Governing §2255

Consequently, this rule which was promulgated in 2009, ~~is~~ is in direct conflict with the corresponding statutory standard which must be met in order to obtain a COA. See 28 USC § 2253(c) (which states an appeal cannot be taken unless the COA applicant makes "a substantial showing of the denial of a constitutional right").

In Buck v Davis, this Court reasoned that "a reviewing court inverted the statutory order of operations by deciding the merits of an appeal and then denying the COA based on adjudication of the actual merits; ... plac[ing] too heavy a burden on the prisoner at the COA stage."

The Buck majority explained that "[t]he COA inquiry... is not coextensive with a merits analysis (because at the COA stage, the only question is whether the applicant has shown that ~~reasonable~~ ^{jurists} of reason could disagree with the district court's resolution of (the) constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Buck, at pp 773. Clearly, this Court has been concerned with a court "sidestep[ing] this process by first deciding the merits on an appeal, and then justifying its denial of a COA based on (that) adjudication." Id.

The concerns of this Court at the COA stage, in the court of appeals, has the same implications for abuse at the lower court level under § 2255 Rule 11(a). This is because as this Court has recognized "The COA inquiry, (it has) emphasized, is not coextensive with a merits analysis." Buck, at p. 7. Therefore, for the district court to simply be allowed to deny a COA in the first instance without giving a habeas applicant the opportunity to make the showing necessary for obtaining a COA has serious due process implications. See FRAP Rule 22(b) - ~~Advisory~~ Committee Notes, 1967 Adoption ("In the interest of insuring that the matter of the certificate will not be overlooked and that, if the certificate is denied, the reasons for denial in the first instance will be available on any subsequent application the proposed rule requires the district judge to issue the certificate or to state reasons for its denial").

Clearly, the procedural structure established by Rule 22 clarifies the requirements of § 2255 in several

important aspects. Because Rule 22(b) establishes an obligatory sequence of interlocking procedural steps which starts with the district court judge's COA determination. However, when this determination is made in accordance with § 2255 Rule 11(a), it impermissibly erodes a habeas applicant's opportunity to meet the requisite showing stated in the statute. See 28 USC § 2253(c).

This practice allows a district court to simply state the statutory language in denying a habeas applicant a COA, while depriving him of his right to demonstrate any entitlement to a COA in the first instance. Such practices is clearly contrary to the COA process, and contravenes due process principles inherent in the application of law. See Mathews, *supra* (a fundamental requirement of due process is the opportunity to be heard in a meaningful time and manner).

This apparent due process violation is demonstrated in petitioner's case, because when the court of appeals denied him a COA it went beyond simply determining

that he failed to make the requisite showing. See U.S. v. Prieto,
— Fed. Appx —; Appeal No. 17-40531 (5th Cir. February 1, 2018);
(Appendix A).

By analogy, the concerns of this Court in Buck
v. Davis, 137 S.Ct. 759 (2016), have equal application
when a district judge denies a COA by simply
tracking the statutory language cannot comport
with due process in this instance. Especially when,
mere formulaic recitation of the statutory lan-
guage... is insufficient to fulfill (a district court's)
obligation to provide 'the reasons for denying a
COA. See e.g., Johnson v. Allstate Vehicle & Prop
Ins. Co., US Dist Lexis 108530 (SDTX July 13, 2017)
(citing Bell Atlantic Corp. v. Twombly, 550 US
544 (2007)).

In sum, this Court should grant review
in order to determine whether § 2255 Rule 11(c)
and 28 USC § 2253(c), are in direct conflict

with the Federal Rules of Appellate Procedure and the Due Process Clause of the United States Constitution.

CONCLUSION

This Court should grant this petition for a writ of certiorari.

Respectfully submitted,



Mr. Alejandro Casillas Prieto
Pro se Petitioner
Reg. No. 18154-078
Post Office Box 26030
Beaumont, Texas 77720