

		No.	
IN THE SUPREME COURT OF THE UNITED STATES			
		JOSEPH DAMIAN SUSALLA	— PETITIONER
vs.			
		SHIRLEE HARRY, WARDEN	— RESPONDENT
ON PETITION FOR A WRIT OF CERTIORARI TO			
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT			
PETITION FOR WRIT OF CERTIORARI			
		Joseph Damian Susalla, 157425	
		<i>In Pro Se</i>	
		E.C. Brooks Correctional Facility	
		2500 South Sheridan Drive	
		(Address)	
		Muskegon Heights, MI 49444	
		(City, State, Zip Code)	

QUESTION PRESENTED

WAS PETITIONER DENIED HIS FUNDAMENTAL AND CONSTITUTIONAL RIGHT TO DUE PROCESS AND A FAIR TRIAL AS GUARANTEED UNDER BOTH STATE AND FEDERAL CONSTITUTIONS, WHEN THE STATE AND FEDERAL COURTS REFUSED TO CONFORM TO WELL SETTLED UNITED STATES SUPREME COURT PRECEDENT OF ESTABLISHING COMPETENCY BEFORE SUBJECTING PETITIONER TO A CRIMINAL TRIAL?

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

all parties to the proceeding in the court whose judgment is the subject of this

Michigan Attorney General

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APPENDIX B – United States Court of Appeals for the Sixth Circuit dated March 21, 2018, Case No. 17-1783.

TABLE OF AUTHORITIES CITED

CITATION	PAGE(S)
Blackburn v. Alabama, 361 U.S. 199, 80 S.Ct. 274, 4 L.Ed2d 242 (1960).	5
Estes v. Texas, 381 U.S. 532, 85 S.Ct 1628, 14 L.Ed2d 543.	5
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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

OPINION BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was December 18, 2017. A petition for rehearing was timely filed in my case and denied on March 21, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Const, Am V – No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

US Const, Am VI – In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

US Const, Am XIV, Section 1 – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner respectfully submits that the Sixth Circuit Court of Appeals abused its discretion when it refused to recognize that the Trial Court never held a competency hearing; especially after subjecting Petitioner to a forensic examination by a State doctor, and a second forensic examination by a private doctor appointed by the State.

The Federal Courts held that the failure by the State Trial Court is not cognizable on Habeas Corpus. Petitioner respectfully objects and argues that under AEDPA, the inferior courts – both State and Federal – have decided this issue in a manner that is contrary to, or an unreasonable application of clearly established law as determined by the United States Supreme Court espoused in **Williams v. Taylor**, 529 U.S. 362, 397, 120 S.Ct. 1495, 1515, 146 L.Ed2d 389 (2000).

Further, Petitioner relies on this Honorable Court's ruling in **Fay v. Noia**, 372 U.S. 391, 418-419, 83 S.Ct. 822, 838, 9 L.Ed2d 837, 857 (1963) where the Court held:

“The party charged waives no defect of jurisdiction by submitting to a trial of his case on the merits, and we think that comity demands that the state courts, under whose process he is held, and which are, equally with the federal courts, charged with the duty of protecting the accused in the enjoyment of his constitutional rights, should be appealed to in the first instance. Should such rights be denied, his remedy in the federal court will remain unimpaired.” **Id.**, 372 U.S. at 418-419, 83 S.Ct. at 838, 9 L.Ed2d at 857.

The **Fay Court** further held:

“Surely no fair-minded person will contend that those who have been deprived of their

liberty without due process of law ought nevertheless to languish in prison. ... **If the states withhold effective remedy, the federal courts have the power and the duty to provide it.**” *Id.*, 372 U.S. at 441, 83 S.Ct. at 850. [Emphasis added].

What makes this situation so egregious, is the fact that the lower Federal Courts have possession of Petitioner’s two sealed forensic reports that Petitioner has yet to see himself. This in and of itself causes concern because Petitioner has no idea what information is contained in those reports. This leaves Petitioner unable to defend against something he has never seen. The sealing of forensic reports - and ones that Petitioner has never seen - is in and of itself, tantamount to a that of a secret tribunal that was discussed and condemned at length in this Honorable Court’s famous case of ***Estes v. Texas***, 381 U.S. 532, 85 S.Ct. 1628, 14 L.Ed2d 543 (1965).

As such, Petitioner avers that what has occurred is also is contrary to the doctrine of fundamental fairness as espoused in ***Blackburn v. Alabama***, 361 U.S. 199, 206, 80 S.Ct. 274, 280, 4 L.Ed2d 242 (1960), citing ***Lisenba v. California***, 314 U.S. 219,

236, 62 S.Ct. 280, 290, 86 L.Ed 166 (1941), and in ***Rochin v. California***, 342 U.S. 165, 72 S.Ct. 205, 96 L.Ed 183 (1952).

Petitioner believes that he has established that he was denied his constitutional right to due process of law under this Honorable Court's mandates argued herein.

REASONS FOR GRANTING THE PETITION

Based upon the foregoing points and authorities, the Petitioner respectfully requests this Honorable Court to grant the within writ and reverse the judgment of the court below. The petition for a writ of certiorari should be granted as Petitioner was denied his fundamental constitutional due process rights and protections.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script that reads "Joseph Damian Susalla". The signature is written in dark ink and is positioned to the right of the date.

Dated: May 23, 2018

Joseph Damian Susalla
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