

25-6979

No. \_\_\_\_\_

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

FILED  
JAN 02 2026  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ANTHONY SHAWN EWELL - Petitioner

vs.

UNITED STATES OF AMERICA - Respondant

NON-PETITION FOR A WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

Anthony Shawn Ewell Reg. # 34694510  
FCC Coleman Low  
P.O. Box 1031  
Coleman, FL 33521

PETITION FOR CERTIORARI  
QUESTIONS PRESENTED FOR REVIEW

1. May a district court force/reinstate pre-trial, a public defender who had been discharged and replaced by movant with new counsel due to her doing no investigation, no interviewing and/or hiring of an expert, and her personal conflict of interest during the same case?

2. May this Court's decision in U.S. v. Gonzalez-Lopez and Christeson v. Roper govern petitioner's facts as to what constitutes denial of counsel of choice?

3. May this Court's decision in Cuyler v. Sullivan, Holloway v. Arkansas, and Mickens v. Taylor constitute ineffective assistance of counsel due to counsel's actions of no investigation, personal conflict of interest (due to medical condition stated on record), no expert, and misrepresentation of viewing of evidence?

### 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 judgement is the subject of this petition is as follows:

1. Ajlani-Macri, Huda - Assistant Federal Public Defender
2. Alexander, Ajay - U.S. Attorney's Office
3. Davis, Dameka L. - Attorney for the Appellant
4. Dimitrouleas, William - U.S. District Court Judge
5. Dominquez, Allari - Assistant Federal Public Defender

### RELATED CASES

There are no related cases pending.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Christeson v. Roper, 524 U.S. 373; 135 S.Ct. 891; 64 L.Ed. 2d 763 (2015)	9,10
Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708; 64 L.Ed. 2d 333 (1980)	10
Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525; 45 L.Ed. 2d 562 (1975)	8
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Martel v. Clair, 132 S.Ct. 1276 (2012)	9
Martinez v. Court of Appeals of California, 528 U.S. 152, 165, 120 S.Ct. 684, 145 L.Ed. 2d 597 (2000)	8
McMann v. Richardson, 397 U.S. 759, 771, n.14, 90 S.Ct. 1441, 25 L.Ed. 2d 763 (1970)	4
Mickens v. Taylor, 535 U.S. 162, 175, 122 S.Ct. 1237, 152 L.Ed. 2d 291 (2002)	10
Padilla v. Kentucky, 559 U.S. 356, 389, 130 S.Ct. 1473, 176 L.Ed. 2d 284 (2010)	3
Powell v. Alabama, 287 U.S. 45, 53, 53 S.Ct. 55, 77 L.Ed. 158 (1932)	3
Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984)	4
United States v. Cronin, 466 U.S. 648, 654, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984)	3
United States v. Davila, 569 U.S. ___, 133 S.Ct. 2139, 186 L.Ed. 2d 139 (2013)	3
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APPENDIX A

Orders and Judgements of Courts Below:

1. Order of District Court, January 14, 2025, denying motion under 28 U.S.C. §2255.
2. Judgement of U.S. Court of Appeals, Eleventh Circuit, July 29, 2025, affirming denial of 28 U.S.C. §2255 COA.
3. Judgement of U.S. Court of Appeals, Eleventh Circuit, October 17, 2025 denying motion for reconsideration 28 U.S.C. §2255 COA.
4. Judgement of U.S. Court of Appeals, Eleventh Circuit, November 12, 2025, denial of en banc hearing intra-circuit conflict related to the 28 U.S.C. §2255.

Other Essential Material

5. Notice of Appeal of ruling on 28 U.S.C. §2255 motion January 29, 2025
6. Transcript of Calendar Call and Plea Colloquy March 10, 2023

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 judgement below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix A-2&3 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 A-1 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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 April 29, 2024.

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: October 17, 2025, and a copy of the order denying rehearing appears at Appendix A-3.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ on \_\_\_\_\_ in Application No. A.

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

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Sixth Amendment, United States Constitution, provides:

That, "[i]n all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defense." That provision "as originally understood and ratified meant only that a defendant had a right to employ counsel, or to use volunteered services of counsel," Padilla v. Kentucky, 559 U.S. 356, 389, 130 S.Ct. 1473, 176 L.Ed 2d 284 (2010).

"The right to select counsel of one's choice" is thus "the root meaning" of the Sixth Amendment right to counsel. United States v. Gonzalez-Lopez, 548 U.S. 140, 147-148, 126 S.Ct. 2557, 165 L.Ed 409 (2006).

In many ways, this is the most precious right a defendant has, because it is his attorney who will fight for the other rights the defendant enjoys. United States v. Cronin, 466 U.S. 648, 654-654, 104 S.Ct. 2039, 80 L. Ed. 2d 657 (1984). And more than 80 years ago, we found it "hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice." Powell v. Alabama, 287 U.S. 45, 53, 53 S.Ct. 55, 77 L.Ed. 158 (1932).

The Amendment requires "that a particular guarantee of fairness be provided-to wit, that the accused be defended by the counsel he believes to be best." Gonzalez-Lopez, at 146. An individual's right to counsel of choice is violated "whenever the defendant's choice is wrongfully denied," and such error "pervades the entire trial." Id. at 150. A violation of this right is therefore a "structural error," ibid; that is, one of the very few kinds of errors that "undermine the fairness of a criminal proceeding as a whole." United States v. Davila, 569 U.S. \_\_\_, \_\_\_, 133 S.Ct. 2139, 186 L. Ed. 2d 139 (2013).

The Sixth Amendment rights providing that an accused shall be informed

of the nature and cause of the accusation, shall be confronted with witnesses against him, shall have compulsory process for obtaining witnesses in his favor, and shall have the assistance of counsel for his defense, are basic to our adversary system of criminal justice, they are part of the due process of law.

Right to counsel includes "'the right to the effective assistance of counsel'" Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984)(quoting McMann v. Richardson, 397 U.S. 759, 771, n. 14, 90 S.Ct. 1441, 25 L.Ed. 2d 763 (1970)). Strickland requires a defendant who claims ineffective assistance of counsel to prove (1) "that counsel's representation fell below an objective standard of reasonableness," and (2) that any deficiency was "prejudicial to the defense." 466 U.S. at 688. 692, 104 S.Ct. 2052, 80 L.Ed. 2d 674,

2. The Fifth Amendment provides that no person shall be deprived of life, liberty, or property, without due process of law. U.S. Const. Amend. V

3. The statute under which Petitioner was prosecuted, though nothing turns on its terms, was 18 U.S.C. §2252(a)(4)(b) which provided: possession of child pornography.

4. The statute under which Petitioner sought post conviction relief was 28 U.S.C. §2255:

Federal Custody: Remedies on Motion Attacking Sentence

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move in court which imposed the sentence to vacate, set aside or correct the sentence.

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgement was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgement vulnerable to collateral attack, the court shall vacate and set the judgement aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgement on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

## STATEMENT OF THE CASE

The facts necessary to place in their setting the questions now raised can be briefly stated:

### I. COURSE OF PROCEEDINGS IN THE SECTION 2255 CASE NOW BEFORE THIS COURT

On March 10, 2023, in a cause then pending in the United States District Court for the Southern District of Florida, entitled United States v. Anthony Shawnn Ewell, Criminal No. 0:22-CR-60257-1, Petitioner was found guilty by Plea on an indictment of one (1) count charging violations of U.S.C. 2252(a)(4)(B) for 2022.

On March 10, 2023, the District Court entered judgement and Petitioner was sentenced to 46 months, and was fined \$6100. This judgement was affirmed by the United States Court of Appeals for the Eleventh Circuit, United States v. Anthony Shawnn Ewell, on July 3, 2024. Petitioner was serving this sentence when the motion under Section 2255 was filed in District Court.

On January 2, 2025 Petitioner filed a motion in the case at bar under 28 U.S.C. §2255 (App. A-1) to vacate and set aside the judgement of conviction. Briefs in support and opposition were filed by each of the parties. No hearing was held.

On January 14, 2025, the District Court entered its order denying the Motion under 28 U.S.C. §2255 (App. A-1 ). On January 14, 2025, the District Court issued its Memorandum in support of this order (App. A-1 ).

On January 29, 2025, Petitioner filed a Notice of Appeal (App. A-5 ).

## II. RELEVANT FACTS CONCERNING THE UNDERLYING CONVICTION

The relevant facts are contained in the March 10, 2023 status hearing transcript (App. A-6), and Petitioner's motion under 28 U.S.C. §2255.

Movant on March 7, 2023 learned from the Public Defender that she still had neither interviewed nor retained a computer forensic expert per movant's request 3 months earlier. There is no record of Public Defender interviewing, hiring, or filing paperwork with the court of retaining an expert. The Public Defender never visited the lab to review the evidence and there is no record of her doing so. The Public Defender essentially did not start the investigation at all per American Bar Association standards and thus movant discharged the Public Defender on March 8, 2023 and replaced with the Rossen Law Firm.

During the March 10, 2023 Status Hearing the Public Defender stated on the record, "Mr. Ewell is going to be hiring private counsel". (App. A-6 p4) There is no record of the court inquiring why (App. A-6). On the record the court states "Better do it by Monday" (March 13, 2023) (App. A-6 p4). On the record the Public Defender states that late discovery of a 300+ page forensic report had arrived and she had not reviewed with an expert or movant. (App. A-6 p4-5) On the record the court states that the Public Defender in court should review the 300+ page report with movant in court that day, which never happened, and pick a jury on Monday. (App. A-6 p5) On the record the Public Defender states that she contacted the new private counsel about the court's requirements that impacted new counsel's lack of time to prepare. Due to this restriction imposed by the court, the new counsel declined to move forward under the circumstances. (App. A-6 p5-6)

During the Status Hearing on the record the Public Defender also revealed that she reduced her investigation time by three weeks due to her medical condition. (App. A-6 p4) The court did not confirm with movant if this personal conflict had or would be waived. (App. A-6) After witnessing what

appeared to be denial of due process movant felt compelled to plea to avoid exposure to threats of 20 yrs. imprisonment.

### III. EXISTENCE OF JURISDICTION BELOW

Petitioner was convicted in the District Court of the Southern District of Florida of one (1) count under 18 U.S.C. §2252. A section 2255 motion was appropriately made in that Court and duly appealed to the Eleventh Circuit.

### IV. THE COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH THE APPLICABLE DECISIONS OF THE COURT

This is a Sixth Amendment and Fifth Amendment due process case. In reaching its decision not to grant a Certificate of Appealability, the Court did not provide a published opinion on the Supreme Court settled principles.

I respectfully urge that all aspects of this decision are erroneous and at variance with this Court's decisions as explained in the argument below.

### REASONS FOR GRANTING THE PETITION

#### I. THE COURT OF APPEALS ERRED BY AFFIRMING THE CONVICTION ON THE BASIS THAT THE PETITIONER'S SIXTH AND FIFTH AMENDMENT RIGHTS WERE NOT VIOLATED

Forcing counsel on a defendant not only impinges on the defendant's autonomy but also, in the case of indigent defendants, means that the defendant is being represented by someone chosen and paid for by the Government. In other words, the person who supposed to protect the accused is on some level, the employee of the accuser. With this fact in mind, Justice Scalia wrote in defense of Faretta, "I have no doubt that the framers of our Constitution...would not have found acceptable the compulsory assignment of counsel by the Government to plead a criminal defendant's case." Martinez v. Court of Appeals of California, 528 U.S. 152, 165, 120 S.Ct. 684, 145 L.Ed. 2d 597 (2000); Faretta v. California,

422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed. 2d 562 (1975).

The fact that a Public Defender who was previously discharged by movant for "good cause" is reinstated and forced to proceed by the lower Court is no valid reason for affirming. I believe that this and the denial of counsel of choice with Ineffective Assistance of Counsel is the heart of the Court of Appeals decision (App. A-2). Such reasoning not only is at variance with this Court's decisions such as United States v. Gonzalez-Lopez, 548 U.S. 140, 126 S.Ct. 2557 165 L.Ed. 2d 409 (2006)

The Faretta Court noted that...to force counsel on a defendant against his wishes , as was done to Faretta, would deny defendant the rights accorded by the Sixth Amendment since "[u]nless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not his defense."

II. THE COURT OF APPEALS ERRED BY  
DETERMINING NOT TO GIVE THIS  
COURT'S PRECEDENT DECISIONS

I respectfully believe that the Court of Appeals below, failed to recognize the facts and are stated on record.

Issue: Failure of the District Court to inquire into the substitution of counsel is addressed by this court in the following: Holloway v. Arkansas, "Judge failed to conduct adequate inquiry"; Christeson v. Roper, "Adequacy of the district court's inquiry is a factor."; Martel v. Clair, "Cannot properly resolve substitution motions without probing."

Issue: Denial of Counsel of Choice. U.S. v. Gonzalez-Lopez "States the Sixth Amendment right to 'counsel by choice' entitles the defendant to choose the counsel that he believes will best serve him."

Issue: Failure of the court to inquire into Public Defender's personal conflict of interest. Cuyler v. Sullivan, When trial court "knows or reasonably should know that a particular conflict exists"; court must initiate an inquiry. Holloway v. Arkansas, "counsel explicitly raised conflict of interest and trial judge failed to conduct adequate inquiry." See Mickens v. Taylor

Issue: Ineffective Assistance of Counsel. Christeson v. Roper, Conflict of interest arises when an attorney's interest in avoiding damage to his reputation is at odds with his client's strongest argument - i.e. that his attorney abandoned him.

Issue: Failure to conduct Garcia Hearing. Holloway v. Arkansas, "The Supreme Court held that once potential conflicts of interest are established by defense counsel, actual prejudice need not be shown to prevail on subsequent ineffective assistance of counsel challenges."

### III. THE QUESTIONS RAISED IN THIS ARE IMPORTANT AND UNRESOLVED

The Eleventh Circuit has decided important questions of Federal Law that have not been, but should be, settled by this Court and are a firm basis for granting Certiorari in this case:

1. The Eleventh Circuit has affirmed that a District Court has the Constitutional right to force counsel upon a movant who discharged counsel prior for "good cause". This has yet to be resolved by the Supreme Court.

2. This petition presents to this Court a more fundamental question for review. May a conviction that is admittedly based in substantial Sixth and Fifth Amendment violations be allowed to stand. This Court's precedent is contrary to Eleventh Circuit decisions and so sufficiently unusual that it is important that this Court reiterate this principle by establishing its supervisory authority.

#### IV. NATIONAL IMPORTANCE

The decision of this Court as to whether it is Constitutional for a lower Court to force counsel upon a movant is of National Importance. If allowed, this ability would negate this Court's "Inquiry" precedent, as well as the Denial of Counsel of Choice precedent. A Court could just rule to reinstate a formerly discharged counsel by movant. This would render Ineffective Assistance of Counsel meaningless and the inverse of the right to effective assistance of counsel Sixth Amendment right.

## CONCLUSION

The judgement here is a unique departure from decisions of this Court that require that convictions based on Sixth and Fifth Amendment violations be set aside any time after conviction. As such, it represents a breach in the wall erected by the Fifth Amendment to the Constitution and the decisions of this Court that were designed to protect a citizen from being convicted by the Government with a fundamental failure of Due Process.