

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

KHALIF ABDUL QAWI MUJAHID PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE 4th CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KHALIF ABDUL QAWI MUJAHID
(Your Name) # 19979-101

USP-ADX, P.O. BOX-8500
(Address)

FLORENCE, COLORADO 81226-8500
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

The United States Court of Appeals for the Fourth Circuit, erred when it entered a decision, in conflict with the decision of other United States Court of Appeals on the same important matters in my appeal from the United States District Court for the Eastern District of Virginia, construing my Fed. R. Civ. P. 60(b) motion as an unauthorized successive 28 U.S.C. § 2255 motion, and dismissing it for lack of jurisdiction.

The United States Court of Appeals for the Fourth Circuit, erred when it denied petition for rehearing and rehearing en banc by the direction of the three judge panel not to request a poll under Fed. R. App. P. 35. That is a legal strategy to deny pro-se motions in this Fourth Circuit Court of Appeals. The Court of Appeals for the Fourth Circuit denied my petition for rehearing that should be settled by this Court or has decided an important Federal question in a way that conflicts with relevant decisions of this Court.

LIST OF PARTIES

- [✓] All parties appear in the caption of the case on the cover page.
- [N] 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:

Mr. Thomas More Hollenhorst, Assistant United States
Attorney, Office of The United States Attorney
2100 - Jamieson Avenue
Alexandria, Virginia 22314-5194

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| APPENDIX E | Order, denying petition for rehearing, and rehearing en banc. NO JUNE REQUESTED A DOLL UNDER FED. R. APP. P. 35 Filed: MAY 16, 2018 |
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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

UNITED STATES V. DEFFRIES, 129 F. 3d
1293, 1304 U.S. App. D.C. 181 C.D.C.
Cir. 1997

U.S. App. U.S. V. RAMIREZ, Jan. 31, 2018

NEELY V. U.S., 527 U.S. 1, 12, 15, 119 S.Ct.
1827, 144 L.Ed 2d 35, (1994)

STROMBERG V. CALIFORNIA, 283 U.S. 359, 75 L
Ed. 1117, 51 S.Ct. 532 (1931)

BOULEY V. CALIFORNIA, 444 U.S. 370, 378, 110
S.Ct. 1190, 108 L.Ed. 2d 316 (1990)

FREDRICK MICHAEL BAER V. RON NEAL, U.S.C. OF
App. FOR THE SEVENTH Cir. 879 F.3d, 764, Jan 11, 2018

RUTLEDGE V. U.S. 517, 292 134, L.Ed 2d S.Ct. (1996)

STATUTES AND RULES JEFFERS V. U.S. 432, S.Ct. 2207 (1997)

permitted appeal § 1600 - REVERSIBLE error - instruction
violated conviction if any part of statute
statute not wholly constitutional.

The Court stated: "The Bain case, which has
NEVER been disapproved, stands for the rule
that a court cannot permit a defendant
to be tried on charges that are not made
in the indictment against him". Id. at
217, 80 S.Ct. at 243.

A conviction must be set aside where the
verdict of guilty did not specify the ground
upon which it rested and the jury were
instructed that their verdict might be given
with respect to any one of the three
clauses of the statute the violation of
which was charged, and one of such clauses
is unconstitutional.

OTHER

SEE petition for rehearing, and rehearing
en banc, with exhibits, and cases
with the page numbers cited each case.

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 A to the petition and is

☒ reported at United States For The Fourth Circuit; 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 B to the petition and is

☒ reported at EASTON DISTRICT OF ALEXANDRIA Virginia; 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 MARCH 16, 2018.

☐ 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: April 4th, 2018, and a copy of the order denying rehearing appears at Appendix E.

☐ 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).

TO REVIEW THE JUDGMENT OF THE FOURTH CIRCUIT COURT OF APPEALS ENTERED ON MARCH 16, 2018, AND MANDATE, FILED: MAY 23, 2018.

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner, argues issues, and supporting facts of constitutional law, made retroactive to cases on collateral review by this Supreme Court.

It was unconstitutional and a Fifth Amendment constitutional violation for my trial judge to allow the government to modify counts of my indictment after trial started, and during jury instructions after my trial attorney told him he couldn't do that.

The judge told the court stenographer to stop typing the transcript when she called the defense, and prosecutors to the bench when my defense attorney objected to the court the timing of the government striking language that is in the indictment and modifying the indictment after trial before reading to the jury their effort to strike surplusage. But, the stenographer never stopped typing, and the court's, the defense, and the government's argument became a part of the transcript.

Because an "improper instruction on an element of the offense violates the sixth amendment's jury trial guarantee", it is a reversible error requiring a new trial unless the error was harmless. The burden is on the government to prove the error was harmless beyond a reasonable doubt.

Jury instructions "may not be judged in artificial isolation, but must be viewed in the context of the overall charge".

The Court stated: "The Bain case, which has never been disapproved, stands for the rule that a court cannot permit a defendant to be tried on charges that are not made in the indictment against him".

STATEMENT OF THE CASE

PETITIONER, was indicted in February 9th, 1945, on a TEN COUNT indictment with a school-teacher and another prisoner for CCE, conspiracy, and other charges for allegedly running a drug ring in the now defunct Lorton Prison, of the D.C. Department of Corrections. The school teacher was acquitted, and the prisoner took a plea bargain, and government witness. PETITIONER, was acquitted on a FIVE charges, and found guilty of FIVE charges, and the Fourth Circuit Court of Appeals, vacated the conspiracy count on appeal in 1996.

PETITIONER, has been incarcerated since September 14th, 1943, and when indicted in 1945, I had already incarcerated for over twenty ONE years. This case was turned down for an indictment for four years straight because the U.S. Attorney, for the Eastern District of Virginia, kept telling the F.B.I. agent that was assigned to the task force in the D.C. Department of Corrections, that he had NO evidence for any kind of an indictment.

The government told the court, and jury during opening statements that there was NO drugs in this case. The trial judge granted court orders for pen registers to record the prison telephone, and families telephones in 1993, and he also gave plea bargains to inmates to inmates to testify against petitioner before I was indicted in 1945.

PETITIONER, contends that my motion for Fed. R. Civ. P. 60(c) and my motion for appeal clearly proves that this was an illegal conviction, and the newly discovered evidence, and attached exhibits clearly shows that this was a manufactured case by the government.

REASONS FOR GRANTING THE PETITION

BECAUSE OF THE COMPELLING REASONS OF THIS CASE, THIS HONORABLE COURT SHOULD REVERSE, AND SET ASIDE MY CONVICTION, OR GRANT ME A NEW TRIAL BECAUSE THE FOURTH CIRCUIT COURT OF APPEALS, ENTERED A DECISION IN CONFLICT WITH THE DECISION OF ANOTHER UNITED STATES COURT OF APPEALS, AND THIS COURT. THUS BECAUSE THE FOURTH CIRCUIT COURT OF APPEALS OVERLOOKED THE SUPPORTING FACTS, AND ARGUMENT THAT THE DISTRICT COURT ALLOWED THE GOVERNMENT TO MODIFY THE JURY INSTRUCTIONS AFTER MY TRIAL HAD STARTED, AND STRUCK THE LANGUAGE IN MY INDICTMENT DURING THEIR CLOSING ARGUMENTS, AND VIOLATED MY CONSTITUTIONAL RIGHTS UNDER THE LAW.

THIS CASE INVOLVES ONE OR MORE QUESTIONS OF EXCEPTIONAL IMPORTANCE, AND MY SUPPORTING FACTS, AND ARGUMENTS MUST BE REVIEWED BY THIS HONORABLE COURT, TO GRANT PETITIONER THE RELIEF I SEEK BY ME SUBMITTING EVIDENCE, AND DOCUMENTS TO SUPPORT MY PETITION.

THE APPEALS COURT, ALSO OVERLOOKED THE DISTRICT COURT ERRED BY KNOWINGLY ALLOWING THE GOVERNMENT TO ENACT THE DOUBLE JEOPARDY CLAUSE TO INDICT, AND TRY PETITIONER ON A FRAUDULENT COUNT, AND COUNTS.

SO, FOR THE REASONS STATED, AND ARGUED IN THIS PETITION, I REQUEST THAT THIS HONORABLE COURT GRANT ME THE RELIEF AND VACATE, AND SET ASIDE MY SENTENCE, AND CONVICTION, AND REMAND BACK TO THE U.S. COURT OF APPEALS, FOR A HEARING, AND APPOINTMENT OF AN ATTORNEY.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Khalif Abdul Qawi Mujahid

Date: JUNE 24th, 2018