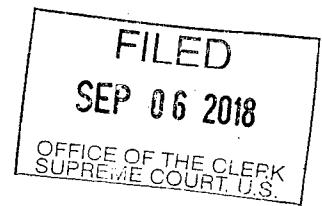


No. 18-7317



IN THE
SUPREME COURT OF THE UNITED STATES

Willie Lee Davis — 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 THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Willie Lee Davis #21433-076
(Your Name)

USP Florence ADMAX, P.O. Box 8500
(Address)

Florence, CO. 81226
(City, State, Zip Code)

(719) 784-9464
(Phone Number)

QUESTION(S) PRESENTED

Whether the Appellate
Court's reading of
18 U.S.C. § 3231 in
relation to 18 U.S.C. § 1791(a)(2)
exceeded Judicial
power?

Whether a Court's interpretation
of law overrides Congressional
intent?

(1)

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:

(11)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4,5
REASONS FOR GRANTING THE WRIT	6,7,8,9
CONCLUSION.....	10

INDEX TO APPENDICES

APPENDIX A Decision of the UNITED STATES Court of Appeals

APPENDIX B Decision of the UNITED STATES District Court

APPENDIX C Order denying Petition for Rehearing en banc

APPENDIX D

APPENDIX E

APPENDIX F

(iii)

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Hicks v. Oklahoma, 447 U.S. 343, 346 (1980) 8

Whalen v. United States, 445 U.S. 684, 689-90 (1980) 8



United States v. Wiltberger, 5 Wheat. 76, 5 L.Ed. 37 (1820) 6, 7

STATUTES AND RULES

18 U.S.C. § 3231 1, 5

18 U.S.C. § 1791(g)(2) 1, 4, 5, 6, 7, 9

Rule of Strict Construction of criminal statutes 6, 7

OTHER

(iv)

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 _____; 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[✓] is unpublished.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 _____; 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 _____.

[] 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 30, 2018, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including September 27, 2018 (date) on July 19, 2018 (date) in Application No. 18 A 72.

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 _____. 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).

2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3231 Appendix A, pg. 4

18 U.S.C. § 1791(a)(2) Appendix A, pg. 4

U.S. Const. Art. III, § 1 Appendix A, pg. 4

STATEMENT OF THE CASE

This is an Appeal from a judgment of the UNITED STATES Court of Appeals for the Third Circuit. The Appeal is brought by Petitioner, Willie Lee Davis, who argued that the Government encroached upon the duties of Congress, by reading statutes in a way that enables Courts to act as the Legislative Branch, and thus, usurp power that is not vested in the Judicial Branch.¹

¹The Petitioner asserted that nothing in the text of 18 U.S.C. § 1791(a)(2) indicates that Congress intended to enact it as a means to execute Congress' Constitutional power to establish Federal Courts. (Appellant's [REDACTED] Reply Brief at 4). The Petitioner made this assertion after the Government identified Article III, Section 1 as the the Constitutional Power being executed by 18 U.S.C. § 1791(a)(2). (ECF No. 48).

STATEMENT OF THE CASE

In response, the Appellate Court provided a reading of 18U.S.C. § 3231 in relation to 18U.S.C. § 1791(a)(2), in which the Appellate Court assumed that Congress intended to enact section 1791(a)(2) in furtherance of Congress' Constitutional power to establish federal courts, and by extending the letter of 18U.S.C. § 1791(a)(2), the Appellate Court concluded that the District Court had jurisdiction pursuant to 18U.S.C. § 3231 via 18U.S.C. § 1791(a)(2) being a federal offense that executes Congress' Constitutional power to establish federal courts.²

² The Appellate Court's reading of 18U.S.C. § 3231 in relation to 18U.S.C. § 1791(a)(2), states "Given Article III, Section 1 of the Constitution ("The judicial power of the United States, shall be vested... in such inferior Courts as the Congress may from time to time ordain and establish."), Congress possessed the power to establish the District Court. "The district courts of the United States shall have original jurisdiction, exclusive of [REDACTED] the courts of the States, of all offenses against the laws of United States." 18 U.S.C. § 3231. "Providing or possessing contraband in prison in violation of § 1791 constitutes an offense against the laws of the United States." (See Appendix A, pg. 4).

REASONS FOR GRANTING THE PETITION

1. It is of national importance under separation-of-powers principles for the Appellate Court in this case to have refrained from determining if it could be seen that 18U.S.C. § 1791(a)(2) could be calculated to attain Congress' Constitutional Power to establish federal courts, the extent to which section 1791(a)(2) conduces Congress' Constitutional power to establish federal courts, or the closeness of the relationship between section 1791(a)(2) and Congress' Constitutional power to establish federal courts, because those are matters for Congressional determination alone.

2. In *United States v. Wittberger*, 5 Wheat. 76, 5 L.Ed. 37 (1820), Chief Justice Marshall explained that "It has been said that although penal laws are to be construed strictly, the intention of the legislature must govern their construction." *id.* at 5 Wheat. 95.

REASONS FOR GRANTING THE PETITION

3. "It is the legislature, not the Court, which is to define a crime, and ordain its punishment." ⁷⁹ id., at 5 Wheat. 95.

4. The constitutional predicate of section 1791(a)(2), is part of its legal definition, and any usurpation of power that is not granted by the necessary and proper clause, is encroachment that is contraconstitutionem, because only Congress may validly enact criminal laws only to the extent that doing so is "necessary and proper for carrying into execution its enumerated powers or other powers that the Constitution vests in the Federal Government. Art. I, [§]8, cl. 18.

5. Nothing in the text of 18 U.S.C. [§] 1791(a)(2) indicates that Congress enacted it in furtherance of Article III, Section 1 of the UNITED STATES Constitution.

REASONS FOR GRANTING THE PETITION

6. Therefore, consistent with the "constitutional principle of separation of powers a defendant has a constitutional right to be deprived of liberty as punishment for criminal conduct only to the extent authorized by congress, and a violation of that principle can trench particularly harshly on individual liberty."⁷⁷ *Whalen v. United States*, 445 U.S. 684, 689-90, 100 S.Ct. 1432, 63 L.Ed. 2d 715 (1980); see also *Hicks v. Oklahoma*, 447 U.S. 343, 346, 100 S.Ct. 2227, 65 L.Ed. 2d 175 (1980) ("criminal defendant has a "substantial and legitimate expectation that he can only be deprived of his liberty to the extent determined by the sentencing body in the exercise of its statutory discretion").

REASONS FOR GRANTING THE PETITION

7. In this case, the petitioner should have only been deprived of his liberty, if the text of 18 U.S.C. § 1791(a)(2), indicated that Congress enacted section 1791(a)(2) in furtherance of its constitutional power to establish federal courts, but Congress never placed the petitioner on notice of such.

8. This is a serious matter, because the separation of powers clause, the necessary and proper clause, the notice clause, the due process clause, and Congress will become obsolete, if encroachment is not checked, corrected, and prohibited.

9.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Willie Davis

Date: September 6, 2018