

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Michael S. Owl Feather - Gorbey PETITIONER
(Your Name)

vs.

Commonwealth of Virginia — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals 4th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael S. Owl Feather - Gorbey 33405-013
(Your Name)

F.C. Cumberland P.O. Box 1000
(Address)

Cumberland, MD. 21501
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- (1) Can A State Habeas Corpus be Removed From State Court To Federal Court?
- (2) Can A State Habeas Corpus, Filed by A "State Prisoner" Contract Housed in Federal Prison (Within the State) be Removed to Federal Court (Without) the State's Consent (After) the State Attorney General Has been served and order to Respond?
- (3) Can D.C. Code § 23-110 bar the State of Virginia From Answering A State Habeas Corpus, Filed by A D.C. "State" Prisoner Contract Housed in A Federal Prison (Within) the State of Virginia. Whom Has Pending Virginia State charges? Also challenging his Extradition to Virginia?

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:

(1) Commonwealth of Virginia

(2) Warden USP Bee.

(3) (Chief) Michael S. Owl Feather - Gorbey

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DENYING Ex banc Rethearing.

APPENDIX B 5-17-2018 order by U.S. Appeal Ct. 4th Cir.
DENYING COA AND DISMISSING Appeal.

APPENDIX C 11-15-2017 order by U.S. DIST. Ct. Roanoke VA.
DISMISSING the Action AND DENYING COA.

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Cincinnati vs. Louisville & NR Co.</u>	56 Fed 481, 223 U.S. 390 (18)
<u>City Bank vs. Schnader</u> (1934)	291 U.S. 24, 78 Fed 628, 54 S.Ct. 259 (17)
<u>County Court vs. Louisa</u> (August 22, 1942)	46 F.Supp. 1 (18)
<u>Creed vs. Virginia</u> (2009 E.D. Va)	596 F.Supp. (17)
<u>Duncan vs. Walker</u>	533 U.S. 167, 178-79 (2001) (6)
<u>Harrington</u>	131 S.Ct. at 287 (6)
<u>O'Sullivan vs. Boerchel</u>	526 U.S. 838, 842 (1999) (6)
<u>Porter vs. Commonwealth</u>	276 Va. 203, 230, 661 SE 2d. 415, 428 (2008) (9)
<u>Rumsfeld vs. Padilla</u>	542 U.S. 426, 440 (2004) (10)
<u>Schwegmann Bros vs. Pharmacy Reports</u> (1980 E.D. Va)	486 F.Supp 606 (17)
<u>Spencer vs. Harris</u> (2005 S.D. W.Va.)	394 F.Supp. 2d. 840. (17)

STATUTES AND RULES

<u>Va Code 17.1-513</u>	Jurisdiction (9)
<u>Va Code 19.2-239</u>	Jurisdiction (9)
<u>28 USC § 1332</u>	Jurisdiction
<u>28 USC § 1441</u>	Removal (17)
<u>28 USC § 2241</u>	Habeas Corpus (6)
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OTHER

<u>US Const. Art. 1 V</u>	(10-11)
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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 review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

☒ reported at 18-6051 Gorbey vs. Warden; 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 C to the petition and is

☒ reported at 2:17-cv-00218-NKM-RSB; 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 5-17-2018.

☐ 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: 7-3-2018, and a copy of the order denying rehearing appears at Appendix A.

☐ 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).

☐ 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

- (1) U.S. CONST. ART. I § 10. CL 3 (INTERSTATE AGREEMENT ON DETAINERS ACT)
- (2) U.S. CONST. ART. IV (C)
- (3) U.S. CONST. ART. IV (E)
- (4) U.S. CONST. AMENDMENT V
- (5) U.S. CONST. AMENDMENT XIV SECTION 1
- (6) U.S. CONST. AMENDMENT X (SOVEREIGN POWER OF THE STATES.)
- (7) U.S. CONSTITUTION ART. 4 § 2 cl. 2. (THE INTERSTATE EXTRADITION clause)
- (8) Virginia Code § 17.1-513 (Jurisdiction over Felonies)
- (9) Virginia Code § 19.2-239 (Cir. Ct. Jurisdiction over All charges in their Perspective Cir.)
- (10) 28 USCS § 1332 Jurisdiction
- (11) 28 USCS § 1441 Removal
- (12) 28 USCS § 2241 Habeas Corpus
- (13) 28 USC §§ 2254 Habeas Corpus
- (14) U.S. CONST. AMENDMENT I (Right to PETITION For Redress of Grievances)

STATEMENT OF THE CASE

Owl Feather - Gorbey is a D.C. "state" prisoner held in Federal custody, whom also has unresolved, Pending (Virginia State Court issues) from Fauquier County Virginia where a capias for arrest and detainer is lodged by Fauquier authorities with the FBIOP.

Owl Feather - Gorbey, while housed at USP Lee Virginia initiated a state Habeas Proceeding Case # 17040081-00 in

the Lee County Cir. Court, Jonesville, VA. challenging (A) His Extradition as a District of Columbia "state"

prisoner, across state lines and the constitutionality of him being housed in the state of Virginia. (without)

(B) Extradition proceedings or his consent.

(B) The validity of the Pending undispositioned Fauquier

County Virginia charges (Applied rule 15 times)

Naming the Commonwealth of Virginia as the primary defendant or respondent.

The Lee County Cir. Ct. served both the Virginia

Attorney General and USP Lee Warden and sought a response, by certified mail.

Federal Prosecutors Representing the Warden, initiated Removal Proceedings (without) obtaining the state VA.

Authorities or D.C.'s consent (none did they consent) and then argue that D.C. 323-110 somehow bar the federal

Court from answering the Petition. (while Gorbey sought Remand back to state court, yet the District Court

dismiss the action and the 4th cir. appeal Ct. affirm.

Gorbey Has been Repeatedly Extradited Across
several other state lines (since the VIRGINIA ACTION)
From Va. To W.Va. To PA. To OK. To Fla To Maryland.
And Has SUFFER A List of PreJudices Cause by
Delays And the UNresolved, Pending Fauquier County
Va. Capias And or Detainer

owl Feather - Gorbey therefore seeks U.S. Supreme
Court Review.

statement of Pro-se Counsel

this Petition Will Aid the Courts Appellate
Jurisdiction As it Raises sever Constitutional
Questions of Rights being denied to the People
I believe I am intitle to Relief and I therefore
Present this Petition in good Faith.

(chief) michael S. owl Feather - Gorbey

33405-013

FCI Cumberland

Po Box 1000

Cumberland. MD.

21501

REASONS FOR GRANTING THE PETITION

QUESTION (1) Can A state Habeas Corpus be Removed From state Court to Federal Court?

NO! section 28 USC § 2254 Requires that A state Habeas Petitioner 1st Exhausts His state Remedies by Affording the state Courts AN opportunity to Act on His claims before He Presents those claims to A Federal Court in A Habeas Petition see.

O'Sullivan vs. Boerchel 526 U.S. 838, 842 (1999) see also Harrington 131 S.Ct. at 787

Under the Exhaustion Requirement, A Habeas Petitioner challenging A state Conviction, sentence or Extradition must 1st Attempt to Present His claim (in state Court).

The Exhaustion Requirement of section 2254 (b) Ensures that the state Courts Have the opportunity to Fully Consider Federal-law challenges to A "state" (Custodial Judgment) before the lower Federal Courts may Entertain A collateral Attack upon the Judgment.
Duncan vs. Walker 533 U.S. 167, 178-79 (2001)

Exhaustion of state Remedies gives the state Fair opportunity to Pass upon and or to Correct Alleged Violations of prisoners Federal Rights.

This case was process under § 2254 in the Federal Courts and Requiring A COA. thus, state Exhaustion was Required.

Therefore, A state Habeas (UNEXHAUSTED) CANNOT be Removed to Federal Court. & then Dismiss Denying A COA.

QUESTION (2) Can A state Habeas Corpus, Filed by A "state Prisoner" Contract Housed in Federal Prison (within the state) be Removed to Federal Court (without) the states Consent, (After) the state Attorney General Has been served AND order to Respond?

NO! once the state Attorney General is served AND order to Respond. the Action cannot be Removed without the states Consent. Nore could the state Consent, see 28 USCS § 1441 (a)

State Defendant NOT Removable. see. City Bank Farmers Trust Co. vs. Schnader (1934) 291 U.S. 24. 78 Fed. 628. 54 S.Ct. 259.

Commonwealth NOT Removable. ~~Party~~ see. Creed vs. Virginia (2009 E.D. Va.) 596 F.Supp.

State As A Party Destroys Removal Proceedings. see Schwegmann Bros Giant Super Market INC vs. Pharmacy Reports INC. (1980 E.D. La) 486 F.Supp 606

To be Removed, the Case must be Removable AND All Parties must Consent. see. Spencer vs. Harris (2005 S.D. WVa) 394 F.Supp. 2d. 840

The Case was Error Removed to Federal Court AND should Have been Promptly Remanded to state Court, the Commonwealth did NOT Nore could NOT Agree to Removal, see Exhibit (1) Copy of April 21, 2017 summons AND order to Respond by lee County Cir. Ct. (to) Mark Herring - Attorney General Richmond. Va. Case #02-17040081-00

QUESTION (3) Can D.C. Code § 23-110 bar the state of Virginia from answering a state Habeas Corpus, filed by a D.C. "state prisoner" contract housed in a federal prison (within) the state of Virginia, whom has pending Virginia state charges?

No! D.C. § 23-110 cannot be construed so broadly as to quash another states sovereign rights to adjudicate Habeas proceedings of state prisoners;

- (a) Extradited across state lines (into) the state of Va.
- (b) Housed within (any) prison or facility (within) the territory boundaries of Virginia. And or.
- (c) Whom has UNresolved or Pending "Virginia state charges." see.

COUNTY COURT VS. LOUISA & FT. GAY BRIDGE CO. (AUGUST 22, 1942)
46 F. Supp. 1.

The Power of Eminent Domain is an attribute of sovereignty within its own jurisdiction.

Each state possesses such sovereign power. see.
CINCINNATI VS. LOUISVILLE & NR. CO. 56 Fed. 481, 223 US 390

A state ought never to be presumed to surrender this power of sovereignty. As it shall be preserved undiminished.

D.C. Code § 23-110 bars another court from answering challenges to a D.C. superior Ct. conviction or sentence. It cannot be construed so broadly as to bar another state from answering extradition questions for

"state Prisoners" Transferred across that states lines into its territorial Jurisdiction or For (Any) state Prisoner Housed within that states borders. And most Ashurdly Cannot stop that state From Addressing charges of its own devise. §23-110 is simply NOT Adequately or Effective to Answer Va. Extradition Questions or to Resolve Felonies Pending in a Virginia state Court. see.

Exhibit (2) Copy of April 11, 2017 letter From M. Khadijah Jackson. (Probation officer) Va. Dist. 25 Probation & Parole. Acknowledging Active Unresolved charges in Fauquier Va. And Acknowledging the action Filed CL17040081-00 in Jonesville. VA. see.

Va. Code. §17.1-513

Cir. Ct. Has Jurisdiction over All Felonies within the Commonwealth.

Va Code §19.2-239

Cir. Ct. Has Jurisdiction over (All Cases) within their Perspective Cir. see.

Article. 4 §2 cl. 2 (Extradition Clause)

Article. Amendment X (Sovereign Power of the states.)

Porter vs. Commonwealth 276 Va. 203, 230, 661 SE. 2d. 415, 428 (2008) (Cir. Ct. Jurisdictions.)

Here, While Housed within Virginia. Gorbey Had A Constitutional Right to challenge His Extradition into the state of Virginia. And A Right to challenge (Any) Charge Pending For Him in Virginia. And D.C. §23-110 Cannot bar those challenges. And, U.S. CONST. Amend. 1. (Right to Petition For Redress)

ONCE JURISDICTION ATTACHED. THE CASE IS NOT MOOTED BY A TRANSFER TO YET ANOTHER STATE. SEE. RUNSFELD VS. PADILLA 542 U.S. 426, 440 (2004)

WHAT DID HAPPEN THOUGH, IS BY THE COMMONWEALTH NOT PROSECUTING ANY UNRESOLVED CHARGES WHILE ALLOWING GORBIEY TO BE EXTRADITED AWAY. VIRGINIA FORFEIT ANY RIGHT TO PROSECUTE, GIVING GORBIEY IRREVOKABLE ASYLUM OUTSIDE OF VIRGINIA. SEE. ARTICLE IV. SETS FORTH THE PROVISION SAYING THAT TRIAL MUST BE HAD PRIOR TO THE PRISONERS TRANSFER, OTHERWISE THE CHARGE SHALL BE DISMISS (WITH PREJUDICE) ART. IV.(e)

THEREFORE. OWLFEATHER - GORBIEY IS INTITLED TO IMMEDIATE RELEASE FROM ALL CUSTODY AS UNDER VA. AND MARYLAND LAW. HE HAS BEEN ILLEGALLY OR UNCONSTITUTIONALLY EXTRADITED ACROSS STATE LINES. VA. FORFEIT THEIR RIGHT TO PROSECUTE AND MARYLAND HAS NO CHARGES PENDING TO JUSTIFY HOLDING GORBIEY.

ARTICLE 4 § 2 CL. 2 THE EXTRADITION CLAUSE.

NO PERSON SHALL BE EXTRADITED ACROSS STATE LINE UNLESS HE HAS COMMITTED A CRIME AND A PROPER DEMAND IS MADE BY THE RECEIVING STATE. AND.

ARTICLE AMEND. X THE COMMERCE CLAUSE.

CONGRESS SHALL NOT CREATE ANY LAW WHICH ABRIDGES ANY RIGHT OF THE PEOPLE.

thus, under both Va. AND Maryland State law AND the Federal Constitution Extraditing state Prisoners Across state lines Without Extradition Proceedings or Without their Consent is simply illegal AND or UNCONSTITUTIONAL. Voiding the lawfulness of D.C. Code §. _____ While allows this to be done to D.C. Superior Ct. "State Prisoners". see.

Exhibit (3) (a) & (b) Copies of Detainer Request by Fauquier Va. lodged with the F.Bop. with a supporting Capias, see Exhibit (4) (a) & (b) Copies of 10-18-2017 order by Fauquier County Cir. Ct. Va. issuing a NEW 2017 Capias AND 10-6-17 List. showing Michael S. Gorbey 19.2-306 Revocation

Declaration of mailing

I Owl Feather - Gorbey declare that on 9-22-18 I deposited this Petition For writ of Certiorari. All Exhibits & lower Ct. orders, motion to Proceed & all Attachments in the FCZ Cumberland external mail system with 1st class postage U.S. Attached 28 USC § 1746 & 18 USC § 1621

(Chief) Michael S. Owl Feather - Gorbey
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Cumberland, Md. 21501

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

(chief) Michael S. Owl Feather - Gorbey

Date: 9-22-18