

18-9458
No. 9th Cir. No 18-72521
D.C No. CR-15-01265-DLR
ORIGINAL

IN TH

Supreme Court of the United States

Supreme

NOV 18 2019

OFFICE

In: Elseddig Elmarioud Musa

Movant Claimant | Petitioner |

Fileing as Pro Per

V

U.S District Court for Arizona

Respondent

[Plaintiff: United State Of America]

Real party of interest

On Emergency Petition For Writ Of Certiorari From The United States Court of Appeals, Ninth Circuit for writ of mandamus

Emergency loss of life no adequate remedy at law.

Loss of life and property without process of law warrants extraordinary remedy

EMERGENCY PETITION FOR WRIT OF CERTIORARI

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For verified emergency petition writ of mandamus new action required.

Questions Presented

- I- Whether The District Court improperly Violated Petitioner Musa's Constitutional right
- II- Whether Petitioner Musa's is Entitled to Emergency relief writ of mandamus due to loss of life and property without process of law warrants extraordinary Remedy
- III- Whether Petitioner Musa's is Entitled to emergency injunctive relief under the constitution and Fed R Giv.P.65 for case void and dismiss

List of Parties

All parties appear in the caption of the case on the cover page. There is no corporate disclosure statement required in this case under Rule 29.6

TABLE OF CONTENTS

COVER PAGE -----	
QUESTIONS PRESENTED-----	1
LIST OF PARTIES-----	2
TABLE OF CONTENTS-----	3
INDEX OF APPENDICES-----	5
REASON FOR GRANTING THE WRIT-----	6
FACT SHOWING THE EXISTENCE OF EMERGENCY-----	7
OPINION BELOW-----	11
JURISDICTION-----	11
CONSTITUTIONAL AND STATUTORY INVOLVED-----	11
STATEMENT OF THE CASE-----	12
CONCLUSION-----	24
CERTIFICATE OR SERVICE-----	25
MOTION FOR FORMA PAUPERIS STATUS-----	26

Cases

Bryan V USA, 524 US 184(1998)

Clyatt V USA, 197 US 207(1905)

USA V Atabay, 415 Fed Appx 772(9the cir 2011)

USA V Franklin, 554 F 3d 903(10the cir 2009)

USA V Merriweather, 777 F 2d 503(9the cir 1985)

USA V Otuya, 720 F 3d 183(4the cir 2013)

USA V Rufai, 732 F 3d 1175(9the cir 2013)

USA V Zitron, 810 F 3d 1253(11the 2016)

INDEX TO APPENDICES

APPENDIX A- ORDER OF THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT DENYING THE PETITION FOR THE WRIT OF
MANDAMUS CASE NO 18-72521, Filed November 9, 2018.

REASONS FOR GRANTING THE WRIT

GROUND(I) The district court violated and breach Musa's constitutional right.

Ground(II) The writ of mandamus involves a significant and novel constitutional issue.

Ground(III) The District court breach the supremacy clause, the statutes used against the accused are inferior by nature and rules, inferior law in repugnance to constitution is void under Marbury V Madison and cannot be enforced in breach of supremacy clause article 6 and the land judicial system of common law due process.

Facts Showing The Existence and Nature Of The Claimed Emergency.

(A) One of the people is being irreparably harmed by loss of life and property arising from being denied constitutional right, remedy and void judgment for imprisonment, causing irreparable injury entitled to remedy extraordinary equitable relief is warranted.

(B) The 9th Circuit Court of Appeals error in affirming the convection of Musa in their decision dated August 1, 2018. From their memorandum see the following:

Ground(1): quote " The evidence showed that Musa had no documents for the 35 reimbursement claims" un-quote. All the 35 claims was submitted before August, 2013, there is no requirement for document, the absent of document and unmatched claims by it self does not prove the legitimacy of a claim, so this ground has been denied.

Ground(2): quote " He submitted claims for more transports than his company could have provided" un-quote. The Government estimated the "unmatched claims over 15,000 but they never prove that, also the claim that in one day the number of people transported is over 300 the government fail to prove that too. There is no one under oath from AHCCCS testify to prove this numbers, so this ground has been denied

Ground(3): quote "Musa also testified that he knowingly submitted inaccurate claims." un-quote. Since there is no record showing that i made that statement in court or any other place, the court error in making that assumption, so this ground has been denied.

The Court decision to affirm Musa convection is violation of

constitution right because the government failed to prove Musa guilty beyond the reasonable doubt.

(C) The 9th Circuit Court of appeals has ruled in their memorandum Decision, and agree by the government in its briefing that unmatched claims are not always fraudulent, that contradict with the 9th Circuit decision of affirming Musa conviction, since the government failed to prove/verified loss prove/verified victims. There is no prove of guilt beyond the reasonable doubt clear violation of constitution right.

(D) The District Court abuse its discretion and deny this petition clear violation of constitutional right.

(E) The relief sought in this petition is been denied by the District Court, so this relief should be granted because mandamus is the proper remedy for a void-dismiss judgment and must come from high court and it can be immediately without delay, full remedy the loss of constitutional protected interest that are being denied by the District Court causing undue substantial burdens.

(F) Numerous of constitutional right has been violated including due process, 4th, 5th, 6th : 14th, amendment.

(G) Ineffective assistance of counsel during trail violation of constitutional right 6th amendment.

(H) Counsel for other parties were notified and served see attached certificate of service.

(I) The trail court order deprived a party of an opportunity to present a substantial portion(all) of its case

(J) Trail court interpretation of the law require a resolution of the conflict by a higher court

(K) The trial court order is both clearly wrong as matter of law and substantially prejudices people case

(L) People is being irreparably harmed or prejudged in a manner that cannot be corrected only by higher court, loss of life requires remedy now

(M) The district court error on off-repeated error, or manifests a persistent disregard of the federal rules.

(N) The district court failed to proceed in a manner required by law

(O) The hearing was conducted in an unfair manner there was no fair trail and no due process.

(P) The writ involves a significant, and novel constitutional issue or an issue of wide-spread interest, the district court order raises new and important problems, or issues of law of the first impression.

(Q) People has direct and substantial beneficial interest in the mandate being issued to command respondent to reverse the void judgment, beneficial interested mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.

(R) Proper rules of court denied because all federal action are civil they are all quasi criminal since the merger with admiralty and not actually criminal under common law.

(S) People is not subject to the bill of paint and penalties under 27 Cfr 72.11 commercial crimes, applicable in 10 square miles that governs commerce, commercial crimes are quasi crimes that do not meet the well establish rules of a common

law or constitutional crime which require a injury or loss, so the proceeding are void for being base on unconstitutional bills of attainder rather than actual criminality.

(T) People is treated differently best on their color, religious belief as "Islam", and national organ, violation of constitutional right.

(U) Dozen of similar cases with unmatched claims has been solve by AHCCCS administratively.

(V) Government withheld Musa document sized by FBI from Musa office in Mesa Arizona on 4/17/2014, violation of due process.

(W) Government Team in charge with Musa case have other interest they are not willing to resolve this case administratively. Similar cases has been resolved by other government team administratively including Native care Transportation case.

(X) Musa was charge by government team harsh and unusual banishment "aggravated identity theft", violation of constitutional right.

IN THE SUPREME COURT OF THE UNITED STATES
EMERGENCY PETITION FOR WRIT OF CERTIORARI

Petitioner, Elseddig Musa ("Musa"), Respectfully prays that a writ of certiorari issue to review petitioner writ of mandamus for emergency verified petition in the alternative emergency declaratory judgment and injunction in the alternative judicial review under the APA for emergency relief from United State Supreme Court final agency order for case void.

OPINION BELOW

A copy of the order of the United States Court of Appeals for the Ninth Circuit denying Musa's petition for Writ of Mandamus is annexed as Appendix A.

Jurisdiction

The date on which the United States Court of Appeals, Ninth Circuit decided this case was November 9, 2018. The jurisdiction of this court is invoked under 28 U.S.C., 1254(1).

Constitutional and statutory provision involved

28 USC 1391(b) (3), 28 USC 1331, 28 USC 1651, 28 USC 1361, 28 USC 2201, 18 USC 1347, 18 USC 1028A.

Rule: 65, FRAP 21, 5 USC 702, Fed R. Giv. P. 65, 27 CFR 72.11

Background:

" Note: this information has been quoted from Defendant Counsel Ms Bruemmer petition to the 9the circuit submitted 08/15/2018, with some changes. Quote"

"On October 6, 2015 one of the people defendant Elseddig Elmarioud Musa was indicted on thirty-eight (38) counts of health care fraud and five (5) counts of aggravated identity theft see indictment, EOR 5, the indictment alleged that Musa, doing business as Arizona One Medical Trans, LLC was registered with AHCCCS as Non-emergency Medical Transportation provider and that from January 2012 through June 2014 Musa was alleged to have "fraudulently billed AHCCCS for thousand of medical transports that never occurred" Id.

The case involved a very short trial on a very complex case without asking the alleged victims wether they were transported or not and wether they had authorized the use of their AHCCCS identification number for a such transport or not, there was insufficient evidence for One Of the People Musa convictions. The 9the circuit court of appeals case# 17-10174 has ruled in its Memorandum Decision, and agreed by the government in its briefing that "Unmatched claims are not always fraudulent". Since there is no victim listed in the indictment testified in open court, interviewed or give statement, there was no evidence submitted that the specific transports underlying Musa's convictions were fraudulent, simply because there were "Unmatched". They government did not call any drivers or medical providers as a witnesses. The government only submits unmatched claims, and one of the people Musa was convicted by "Math". Without evidence

correlating the alleged fraud to the specific victims named in the indictment there is no proof that those specific transports never occurred or that the use of the AHCCCS identification number for those specific transport were unauthorized. constitutional right has been violated that void and dismiss this case. Material points of fact and law has been violated, the jury convicted one of the people Musa without sufficient evident to prove him guilty beyond a reasonable doubt. They government failed to show which of the unmatched claims was based on fraud so if there is no verified victims and no loss there is no harm, violation of the 4the, 5the, and 6the Amendment.

Trail testimony:

Government expert Patricia from AHCCCS testified that Musa enrolled two non-emergency transportation companies between 2007-2014 Id@151, 155, EOR 65, 69 and at some point he had one vehicle registered with AHCCCS, but it is acceptable practice to list one vehicle and driver even if there were additional vehicles and driver's Id@176, 184-186, EOR 90, 98-100.

Government witness Evelyn Grunwald from AHCCCS verified people listed in the indictment Id @ 209, EOR 123, also verified that on August 2013 it became mandatory to get patient's, and drivers signature Id @ 214 EOR 128. (Note: all the patient in the indictment was transported prior to August 2013, there is no requirement of patient's or drivers signature), also verified that error can be made due to clerical errors in input by a third-party provider or medical provider. Id @ 216, EOR 130, also did not talked to any patients. Id@ 217, 219,

EOR 131-133, also verified that an Arizona AHCCCS transport could possibly bring the patient to "New Mexico" provider (which would not show up on the AHCCCS system). Id @222-223, EOR 136-137.

Geoff Foden from AHCCCS testified that he developed software to identify billing irregularities. T.12/7/2016 @ 241, EOR 155. Foden did not talk to any of the AHCCCS patients while doing his reports. His system is susceptible to potential human input error because the system is depending on human input. Id @ 258, 262, EOR 172, 176. If the submission do not represent the actual date of service, the algorithm can be disrupted generating unmatched claims. Id @259, EOR 173. Foden testified that mistakes or fraud could be made at three different levels: Medical provider, transporter, and/or AHCCCS patient. Id @261, EOR 175.

Shauna Dempsey from AHCCCS testified that she did an audit of random sample of Arizona one records. Id @ 287, EOR 201. Dempsey did not speak to any of the patients that were alleged to be transport. Id @305, EOR 219, also acknowledged AHCCCS required signature from both driver and patient August 2013 (which was not required prior to that). Id @306, EOR 220, also acknowledged that individuals could request a ride fro non-medical purposes and there is a potential for fraud by medical providers. Id 308, EOR 222.

Jennifer Schlinz FBI testified that no one to her knowledge contacted any of the patients, also agreed that unmatched claims could be related to fraud by the patient as well as medical provider. Id @331-332, EOR 245-246

Dominic Margarella FBI discussed the audit and execution of

the search warrant. Id@ 337-346, EOR 251-260. Drivers give the trip information to supervisors who would then mail them or hand deliver them to the main office in Mesa AZ. Id @352, EOR 266. Margarella did not talk to any drivers or any patients of AHCCCS. Id @ 432, EOR 346, also he stated that no patients were interviewed. Id@440, EOR 354

One of the people petitioner Musa testified that Arizona One worked at the Indian reservation on the Apache area East side and the Navajo area with main office in Mesa AZ. Id @465, EOR 370.

When drivers transport a patient, the driver fill out a trip sheet with mileage and AHCCCS number(which is not required by AHCCCS prior to august 2013, driver some time fill trip sheet some time not that prior to august 2013). The driver was then supposed to turn in the form to a supervisor. Id@466, EOR 371. Trip sheets could be missing because the driver never fill it, or sent it in. The service date could also be entered incorrectly by the service provider or the billing personal.

Id@467, ERO 372

Musa was able to explain the unmatched trips. One reason was due to the service date being entered wrong as an error or a patient/customer could have taken a free ride without medical appointment. Further, behavioral heath patients go to church as part of their therapy, and the church does not bill AHCCCS. Id @ 468, EOR 373. There are also facilities that were tribal funded and do not bill AHCCCS.Id@469, EOR 374, also a customer could use different insurance for his or her medical services even though they are an AHCCCS member. (The government or the government witnesses did not dispute any of these logical

reasons for unmatched trips).

Musa office prepared the employee manual because of the problem with drivers, drivers some time never fill trip sheet or fill out trip sheet incorrectly and used the company cars and gas cards for personal reasons and took batteries and tires from the vehicles. Id @470-471, EOR 375-376. Musa acknowledged that 354 claims in one day could not happen, and the explanation would be that wrong service date were being enter or there is an error in AHCCCS system. Id@472-473,491, EOR 377-378,396.

Musa stated that his company billed trips that were over 100 (between 100-105) at 81, or 88 miles so that he would not have to get the special authorization "the trips were under billed and there is no crime or wrong doing on that". Id@482,EOR 387. Musa obtained AHCCCS numbers only through the patient or through the driver. Musa did not make any entry errors on purpose. Any errors were mistakes. Id @499, EOR 404.

Vanessa Yazzie, a former AZ one office assistant testified that she prepared schedules. Id@270, EOR 184, also she take calls from driver and patients regarding transport, also she verified other people handled calls from drivers and patient. Id @ 280, EOR 194, also she is in charge of receiving authorization for trip that were longer than 100 miles. Id @ 281, EOR 195.

After the jury reached its verdict the court proceed to the forfeiture portion of the trail which was two real estate residential pieces and fund in accounts, the government value of the forfeiture is 750,000.00. Id@755, EOR 417. The government alleged that the cash and houses were derived from

proceeds related to health care fraud. Id@ 580, EOR 420.

"Note: The houses current market value is about \$650,000.00-\$700,000.00, with the cash the totaling value should be over 950,000.00, but the government value is \$750,000.00 unfair clear violation of constitutional right, 4the, 5the, and 6the amendment" the whole forfeiture portion of the trial is a clear violation of 4the, and 5the amendment.

One of the people Musa was sentence to fifty-seventh (57) months in prison and Restitution was ordered in the amount of 1,203,608.08 without any prove of loss or verified victims causing loss of life and property without process of law, so the relief (void and dismiss case should be ordered).

One of the people "Musa" first trial counsel failed to raise necessary issues like the government withheld of Musa seized office document. " seized by FBI from Mesa office 4/17/2014. Clear violation of due process, failed to provide expert witnesses, exhibits, failed to review document, failed to provide competent defense. clear violation of the 6the amendment, see Care V Caldron, 165, F 3d 1223, 1227(9the cir 1999), ineffective assistance of counsel. Musa trail counsel failed to examine all the evidence and failed to provide his own charts and failed to challenge the government charts leading to wrong conviction of one of the people Musa, 6the amendment violation.

The government did not properly present the case to the jury and left many unanswered questions, and failed to prove loss or to verified victims as pointed out through this petition this case should be void-dismiss immediately.

Argument:

A: Health care Fraud

On the health care fraud the government had to prove that false and fraudulent claims were knowingly and willingly submitted to AHCCCS for transport reimbursement for specific beneficiaries listed in the indictment and that the transport never occurred to establish knowledge and willfulness the government must prove that the defendant acted with knowledge that [his] conduct was unlawful, USA V Franklin-El, 554 F 3d 903, 908 (10th Cir 2009) quoting Bryan V USA, 524, U.S 184, 191-92 (1998). the Supreme court has recognized " the imperative duty of a court to see that all the element of [a defendant's] crime are proved, or at least that testimony is offered which justifies a jury in finding those elements" Clyatt V USA, 197 U.S 207, 222 (1905).

A jury may make reasonable inferences of knowledge and intent from circumstantial evidence, nevertheless, "inferences may become so attenuated from underlying evidence as to cast doubt on the trier of fact's ultimate conclusion " USA V Rufai, 732 F 3d 1175, 1192 (10th Cir 2013).

In such a case a guilty verdict indicates that the jury has impermissibly engaged [d] in a degree of speculation and conjecture that renders its finding a guess or mere possibility"

Based on the evidence presented the jury could not have ruled out other possibilities. See USA V Elseddig Musa case#17-10174 (9th Cir, 2018) The 9th Circuit acknowledged the same (i.e. that there are other explanations for unmatched claims) no actual victim in the indictment testified at trial or was interviewed about whether the particular transport actually

occurred or not. (it was stipulated that all people listed on the indictment were real people). This a case without witnesses. All witnesses with the exception of Ms Yazzie were government agents.

The testimony from Grunwad, Dempsey, and Foden stated that if a trip was actually taken by patient, the claim would be legitimate. The government, the government witnesses and the court non of them would differentiate between unmatched claim due to fraud vs. unmatched claim due to bad accounting (or another innocent reason). Without testimony and statements from the patients (or anyone else who had direct evidence) regarding the transport, the government failed to prove that Musa acted with the knowledge that his conduct of submitting the claims was unlawful so this allegation of health care fraud has been denied and the court should void-dismiss it.

B: Aggravated Identity Theft

Because the evidence (and stipulation) at trial demonstrated that the AHCCCS numbers were provided by the actual AHCCCS members to Musa, this case depending on whether Musa used those numbers without lawful authority. The phrase means that 1028A prohibits the use of another person's identifying information "without a form of authorization recognized by law" USA Votuya, 720 F3d 183, 189 (4th cir 2013). The without lawful authority element can be proven in two ways-with testimony from victim that Musa did not have permission to use his or her identity (AHCCCS number) or with evidence that Musa used victim's means of identification for an unlawful purpose. see USA V Zitron 810 3d 1253, 1260 (11th cir 2016).

If a transport occurred then Musa would have had lawful

authority to use patients AHCCCS number. The absence of a corresponding medical claim does not, by itself prove that the AHCCCS numbers were used without lawful authority, so this allegation has been denied and the court should void-dismiss it.

Indian Health Services benefits (IHS). The belief was that the government presented its case as if the patients being transported were subject to the same AHCCCS requirement but that was not true IHS has different requirement. This issue was never explored at trial. End of the quote. un-quote"

people [petitioner] called "people" has been wrongly coveted and denied constitutional right causing loss of life and property. Numerous constitutional denials of due process occurred as stated above in breach of constitution duty, law and rules of court, there are substantial undue burden upon people interests, as explained herein and loss of life is an emergency warranting extraordinary remedy.

The void-dismiss should issue in the present case because it is clear that the constitutional right of one of the people Musa has been violated, neglected exceed all bounds of law, rationality and law duty resulting of harm of loss of life and property. The judicial system of law rules of procedure and evidence are the supreme law protected by the constitution, when misinterpreting law and facts accord people irreparably harm by loss of life and property rights.

Ground(1): All element in the case shown herein that a

constitutional right has been violated including 4the, 5the, and 6the amendment so this case should be void-dismiss because loss of life, property and constitutional entitlement renders all other remedies inadequate, misinterpretation of the law require resolution. The District Court error on convection of one of the people Musa without due process, verified loss, and verified victim in a clear violation of constitutional right. There was unfair manner(i.e there was no fair trail no due process).

The court orders and decision was not supported by findings and the court finding not supported by evidence.

The relief requested involves a significant, and novel constitutional issue.

People has direct and substantial beneficial interest in the mandate being issued. Due process is beneficial interest, 5the amendment mandates that no man shall have loss of life and property without due process. It is the court duty to protect people constitutional right, there is no direction to deny due process and overturn rule of law void-dismiss case is warranted.

Competent counsel is the key part of people defense people would not be irreparably harmed with loss of life and property if they have been defended by competent counsel, clear violation of constitutional right.

Ground(2): Declaratory relief. There is controversy that required settled. There is no adequate at law if request is not granted. People requires answers in regards to this right-status and other legal matters as set forth below.

Ground(3): injunctive relief under the constitution and Fed.

R. GIV. P.65 is warranted because of the following:

- (1) The unconstitutional convection is causing irreparable injury to the petitioner
- (2) Money damages will not compensate for the invasion of people right. There is no adequate of remedy in a court of law
- (3) People has an undisputed right which has been clearly invaded, in order to balance the equities injunction is proper because the public is not harmed but people is destroyed. Injunction is proper to prevent loss of life without due process and clear wrongdoing against people. Injunction is proper to provide a remedy for rights and interest lost.

The following reason support the element for all grounds outlined above:

- (1) Unverified loss/restitution issued without any review from court. It is important to know that imprisonment was order for alleged victim the United State while restitution for an alleged victim AHCCCS. The victim for restitution is not the plaintiff which is improper procedure.
- (2) No loss or no harm mean no crime this mean that the elements of the crime are not met since there is no verified injured party. Without no verified injured party the court never had jurisdiction. Any court acting without a sworn verified victim testifying in open court to their loss or harm is exceeding jurisdiction.
- (3) The plaintiff must be the victim no one in this judicial system can sue for someone else. United States purport to be injured. AHCCCS is the alleged victim.

(4) Breach of duty to settle administratively first. The government knew or should have known that they have no right to process criminal charges without attempting to settle the matter administratively first, so the case is void-dismiss.

(5) The plaintiff cannot lawfully pay all parties to the case (government attorneys, AHCCCS witness, FBI witness, defendant counsel, court) they all pay by plaintiff The United State and that is hallmark of unfair trail, which void the matter as breach of the constitution 6the amendment right.

(6) Lack of personal interest and standing, Because the plaintiff is acting by and through men/women acting as government attorneys, FBI witness, AHCCCS witness, plaintiff and victim they never proved their personal interest under oath. The doctrine of standing is not met. the entire case is void-dismiss

(7) Burden of proof is not met because fundamental element of the crime are not met 5the amendment right denied.

(8) Loss of property right without due process, people has a priority security interest on his right of happiness|liberty| freedom, privacy, contract right, monies, property right and life 5the amendment right denied.

(9) People accepts Judges oath to the constitution to act judicially, expressly and to protect people from unconstitutional denial that cause one of the people Musa loss of life and property.

(10) The jury members must be selected from the Indian reservation tribal members, because the purpose alleged crime happen at tribal area (federal land), but the jury members have been selected from State of Arizona (Maricopa County),

clear violation of the 6th amendment right.

(11) The government making a big deal out one of the people buying real property with cash and making profit out of a business. It is a legal practice to buy with cash and to make profit as much as you can there is no percent set by law for profit, clear deny of constitutional right.

In conclusion:

People has a clear right to demand the court of law to command to vacate, void, and dismiss unconstitutional conviction, the first duty of the court is to protect against any encroachment of constitutionally secured liberties, action is required and warranted to correct the wrong conviction, vacate, dismiss and void judgment and restore status, quo, property and life.

No man shall have loss of life or property without due process that is a constitutional command decreed by the people, and it is a merely ministerial duty that is proper and just to immediately enforce in this extraordinary emergency situation.

The Court should void-dismiss the entire case.

Executed on this ---Day of August, 2018

Respectfully Submitted

Elseddig Elmarioud Musa |petionor|

Fileing as Pro Per

Tucson Federal Prison Camp

Po Box 24549

Tucson, AZ 85734

Elseddig Musa

Elseddig Elmarioud Musa

Date: 11/19/2018