Supreme Court, U.S.
FILED
APR 13 2020
OFFICE OF THE CLERK

No. 19-1226

In The
Supreme Court of the United States

MASOUD BAMDAD, M.D.,

Petitioner,

vs.

U.S.A.G. WILLIAM BARR,

Respondent.

In Re Bamdad (Ex Parte Bamdad)

On Petition For Original Writ Of Habeas Corpus Pursuant To 28 U.S.C.S. § 2241 Criminal Case No. 08-cr-0506-GW (C.D. Cal.)

ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS BEFORE THE SINGLE JUSTICE, THE HONORABLE JUSTICE ELENA KAGAN, WHO IS SUPERVISING THE NINTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

When the initial §2255 motion and its subsequent procedural remedies have demonstrated to be inadequate and ineffective to test the legality of the detention of a federal prisoner, is he able to obtain the proper relief via the original writ of habeas corpus—28 U.S.C. §2241?

If the answer to the above question is "YES," and the great writ of habeas corpus has not been suspended, then this Petitioner is entitled to relief by this Court, because the other courts including the courts which had/have jurisdiction over his detention places such as the Fifth and Seventh Circuits refuse to hear his claims of relief, claiming that they do not have jurisdiction, and he is incarcerated in violation of the United States Constitution, laws, and related treatise.

LIST OF PARTIES

All parties to the proceeding are identified in the caption of the case.

CERTIFICATE OF INTERESTED PERSONS

I, Masoud Bamdad, hereby certify that the following individuals may have an interest in the outcome of this case. I make these representations in order that the members of this Court may evaluate possible disqualifications and recusal.

District Judge of the Central Dist. of California	Hon. George H. Wu
U.S. Attorney for the Central Dist. of California	Nicola Hanna
United States Attorney General	Hon. William Barr
Petitioner	Masoud Bamdad, M.D.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
LIST OF PARTIES	ii
CERTIFICATE OF INTERESTED PERSONS	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF HABEAS CORPUS	1
REASONS FOR APPLYING TO THIS COURT FOR RELIEF	1
JURISDICTION	2
STATUTORY AND CONSTITUTIONAL LAWS, ORDINANCES, AND REGULATIONS INVOLVED	2
STATEMENT OF THE CASE	3
A. Undisputable Facts	3
B. Investigation of Bamdad's Practice	7
C. Bamdad's Arrest and Indictment (Flaws 1-5)	9
D. Bamdad's Trial	17
E. Unsubstantiated Sentence	20
F. Direct Appeal	25
G. Post-Conviction Proceedings	26
ARGUMENT	28
THE REASONS THAT THE ORIGINAL WRIT OF HABEAS CORPUS (§2241) SHOULD BE AVAILABLE TO PETITIONER BAMDAD	28
CONCLUSION	37

TABLE OF CONTENTS – Continued

Page

VERIFICATION AND AUTHENTICATION..... 38

APPENDICES:

Appendix A: Petitioner Bamdad's Indictment ....App. 1

Appendix B: Chapter 64 of the DEA Procedural Manual ..... App. 7

TABLE OF AUTHORITIES

Page

CASES

Alleyne v. United States,
570 U.S. 99 (2013) 20

Boumediene v. Bush,
553 U.S. 723 (2008) ..... *passim*

Bordenkircher v. Hayes,
434 U.S. 357 (1975) 17

Burrage v. United States,
571 U.S. 204 (2014) 16, 17

Caplin & Drysdale, Chartered v. United States,
491 U.S. 617 (1989) 12

Davis v. United States,
417 U.S. 333 (1974) 27, 30, 33

Ex parte Watkins,
28 U.S. 193, 3 Pet., 7 L.Ed 650 (1830) 36

Ex parte Yerger,
75 U.S. 85, Wall. 85, 19 L.Ed. 332 (1869) 31

Felkner v. Turpin,
518 U.S. 651 (1996) 31

Frank v. Magnum,
237 U.S. 309 (1915) 31

Freeman v. United States,
564 U.S. 522 (2011) 25

Gonzales v. Oregon,
546 U.S. 243 (2006) 13, 14

Hamdan v. Rumsfeld,
548 U.S. 557 (2006) 33

TABLE OF AUTHORITIES – Continued

Page

Hamdi v. Rumsfeld,
542 U.S. 507 (2004) 33

In re Winship,
397 U.S. 358 (1970) 20

INS v. St. Cyr,
533 U.S. 289 (2001) 32

Jones v. Cunningham,
371 U.S. 236 (1963) 36

Libretti v. United States,
516 U.S. 296 (1995) 12

Linder v. United States,
268 U.S. 5 (1925) 13

Mathews v. Eldridge,
424 U.S. 319 (1976) 36

Persaud v. United States,
571 U.S. 1172 (2014) 36

Schlup v. Delo,
513 U.S. 298 (1995) 36

Swain v. Pressley,
430 U.S. 472 (1977) 30

United States v. Bamdad,
459 Fed. Appx. 653 (9th Cir. 2011) 25

United States v. Hall,
521 F.2d 406 (9th Cir. 1975) 12

United States v. Hayman,
342 U.S. 205 (1952) 29, 30

TABLE OF AUTHORITIES – Continued

Page

United States v. Wheeler,
886 F.3d 415 (4th Cir. 2018).....33, 34

Williams v. Wilson,
747 Fed. App. 170 (4th Cir. 2019) 35

CONSTITUTIONAL LAW

United States Constitution; Article I, §9,
cl. 2 .....29, 31, 32

Fourth Amendment to the U.S. Constitution.....*passim*

Fifth Amendment to the U.S. Constitution.....*passim*

Sixth Amendment to the U.S. Constitution .....*passim*

California Constitution, Article I, §1 8

California Constitution, Article I, §15 8

STATUTORY LAW

18 U.S.C. §§2510-22 (Interception Law) 8, 15, 18

21 U.S.C. §841 .....*passim*

21 U.S.C. §871(b).....15

28 U.S.C. §1651 (All Writs Act) 4, 27

28 U.S.C. §1746 38

28 U.S.C. §2241 .....*passim*

28 U.S.C. §2244(b)(3)(E) 31

28 U.S.C. §2255 .....*passim*

TABLE OF AUTHORITIES – Continued

Page

Antiterrorism and Effective Death Penalty Act (AEDPA) 29, 31

California Business and Professional Code 2241.5 ..... 5, 6

California Health and Safety Code Section 11215-11222 6

RULES, PROCEDURES, AND TREATISE

Federal Rule of Criminal Procedure 7(c)(2) 3, 11, 25, 26

Federal Rule of Civil Procedure 54(b) 27

Federal Rule of Civil Procedure 59(e) 27

Federal Rule of Civil Procedure 60(b) 27

Federal Rule of Evidence 106 18

Blackstone, Treatise on Habeas Corpus 36

W. Church, Treatise on the Writ of Habeas Corpus 36

PETITION FOR WRIT OF HABEAS CORPUS

The Petitioner, Dr. Masoud Bamdad, respectfully prays that as a last resort to obtain justice and freedom in the land of liberty, this Court sees fit to hear his grievance, and issue him habeas relief under the original writ of habeas corpus—28 U.S.C. §2241, because he has been incarcerated for almost 12 years in violation(s) of the Constitution, laws, and treatise of the United States.

REASONS FOR APPLYING TO THIS COURT FOR RELIEF

Petitioner Bamdad has already exhausted all his available remedies in other courts through motions for relief under §2255 and its related subsequent actions in the original courts of the Ninth Circuit, which deprive him of adjudication of his meritorious claims of relief by ignoring his claims or misinterpreting the well-settled laws. Petitioner has also filed Petitions under §2241 in the courts of his confinement. Those courts erroneously claimed that they did not have jurisdiction to hear them under §2241, and the claims belong to §2255 motion.

JURISDICTION

Jurisdiction of this Court is invoked under the original great writ of habeas corpus—28 U.S.C. §2241.

STATUTORY AND CONSTITUTIONAL LAWS, ORDINANCES, AND REGULATIONS INVOLVED

"Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdiction . . . " **28 U.S.C. §2241(a).**

"The writ of habeas corpus shall not extend to a prisoner unless—he is in custody in violation of the Constitution or laws or treatise of the United States." **28 U.S.C. §2241(c)(3).**

"An application for a writ of habeas corpus on 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 appears that the remedy by motion is inadequate or ineffective to test the legality of his detention." **28 U.S.C. §2255(e) (savings clause).**

"No judgement of criminal forfeiture may be entered in a criminal proceeding, unless the indictment or the information provides notice that the defendant has an interest in property that is subject to forfeiture

accordance with the applicable statute." **Federal Rule of Criminal Procedure 7(c)(2) (December 2000 Amendment).**

"In cases of the registered practitioner, the DEA agents are prohibited from any kind of undercover and surveillance activities." **Chapter 64 of the DEA Procedural Manual.**

"The right of the people to be secure in their persons, houses, papers, and, effects, against unreasonable searches and seizures, shall not be violated . . . " **Fourth Amendment to the U.S. Constitution.**

"No person shall be held answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . ; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . . " **U.S. Constitution Fifth Amendment.**

"In all criminal prosecutions, the accused shall enjoy the right . . . public trial, by an impartial jury . . . , and to have the Assistance of Counsel for his defense." **Sixth Amendment to the U.S. Constitution.**

STATEMENT OF THE CASE

A. Undisputable Facts:

Masoud Bamdad, M.D. ("Bamdad"), is a 66-year-old U.S. Citizen who was born in Tehran-Iran and has

spent 33 years of his productive life in the United States—treating American patients. He was practicing medicine and surgery for almost 30 years until his arrest and confinement since April 17, 2008.

Based upon the well-settled laws and his constitutional rights, Bamdad has been wrongfully arrested, convicted, and incarcerated for 12 years for practicing his profession based on the Guidelines of the Medical Board of California at the time of his practice. His trial court, instead of being an impartial guardian of law, disregards it, as well as Bamdad's constitutional rights. It ignores a majority of Bamdad's claims of relief, and also misinterprets the laws and misapplies the facts of the case. The Ninth Circuit has as well been refusing to review Bamdad's pro se filings by denying to issue a Certificate of Appealability ("COA") for the past eight years under any available procedural remedy, including a recent filing under extraordinary writ of error(s) audita querela (28 U.S.C. §1651). Pursuant to the rule of law, the trial court and the Ninth Circuit have never had jurisdiction over Bamdad and his case, as a result of defective indictment with at least five flaws. Therefore, Bamdad has remained in prison, based upon the actions and inactions of the courts with no personal and subject-matter jurisdiction.

Bamdad has also filed §2241 petitions in the courts that had/have jurisdiction over the place of his incarceration, such as the Fifth and Seventh Circuits. Those courts claim that they don't have jurisdiction to hear Bamdad's claims, because he cannot demonstrate a new law that shows his innocence, but based on

already established laws, he is innocent and wrongfully confined. It appears that no federal-court has jurisdiction over Bamdad. Therefore, he decided directly to come before this Honorable Justice and Court, seeking justice, possibly terminating this nightmare and miscarriage of justice.

A part of Bamdad's practice was pain management based upon his licensing agency's Guidelines. This was the time before the opioid crisis publicity, which originally was created by the pharmaceutical companies' fraudulent and deceitful advertisements to sell more of their products. This propaganda affected and deceived Congress, the FDA, the Medical Boards, and physicians alike.

The Medical Board of California in 1994 unanimously and formally adopted a policy statement titled; "Prescribing Controlled Substances for Pain." This was revised in 2007 (time of Bamdad's pain management practice). It provided in pertinent part:

> "No physician and surgeon shall be subject to disciplinary action by the Board for prescribing or administering controlled substances in the course of treatment of a person for intractable pain."

(Business and Professional Code Section 2241.5(c) of the California Law.)

The above policy statement outlines the Board's proactive approach in improving appropriate prescribing for effective pain management in California [. . .]. The policy statement was the product of a year of

research, hearings, and discussions. California physicians and surgeons were encouraged to consult the policy statement and these guidelines, which were found at www.mbc.ca.gov.

In May 2002, as a result of AB 487, a task force was established to review the 1994 Guidelines and to assist the Division of Medical Quality to "develop standards to assure the competent review in cases concerning pain management, including, but not limited to, the under treatment, under medication, and over medication of a patient's pain."

The task force expanded the scope of the Guidelines, from intractable pain patients to all patients with pain [. . .].

While it is lawful under both federal and California law to prescribe controlled substances to or for patients for the treatment of chemical dependency (Section 11215-11222 of the California Health and Safety Code). The California Intractable Pain Treatment Act ("CIPTA") does not apply to those persons being treated by physicians and surgeons only for chemical dependency because of the use of the controlled substances (Business and Professional Code Section 2241.5(d) [. . .]).

The Medical Board emphasized the above issues, both to ensure physicians and surgeons know that a patient in pain who is also chemically dependent should not be deprived of appropriate pain relief, and to recognize the special issues and difficulties associated with patients who suffer both from addiction and

pain. The Medical Board expected that the acute pain from trauma and surgery would be addressed regardless of the patient's current or prior history of substance abuse. The Board concluded that "this postscript should not be interpreted as a deterrent for appropriate treatment of pain."

The above are highlights of the Board of California's Recommendation and Guidelines for treatment of pain from copyright 2007, which this Court is most likely able to retrieve from the Internet. The above Program Statement/Guidelines were what governed Bamdad's practice of pain management. These were neither presented to the grand jury, nor to the trial jury. Instead, they were deceived and lied to, as it is discussed below. By presenting the truthful facts and the above Guidelines, the grand jury might have refused to indict Bamdad, and the trial jury would have not convicted him. It is prudent to say that Bamdad during his practice never overprescribed any medication. All his prescriptions were for a legitimate purpose, a legitimate quantity of medication, and in a legitimate time span, as his defective indictment illuminates. *Appendix A.* His prescriptions were for 2-3 pills per day, based on the recommendation of the manufacturer, a legitimate quantity of painkillers for controlling pain solely, not for feeding a habit of a drug addict.

B. Investigation of Bamdad's Practice:

From September of 2007 until mid January 2008, for a four-month-period, two investigators of the

diversion unit of the DEA, whose job is investigating the registrant practitioners, such as Bamdad, initiated an investigation of Bamdad's pain management practice. They sent three undercover DEA agents to pose as fake patients to Bamdad's clinic. The undercover agents falsified their pain and lied in their admitting paperwork about their jobs, their kind of pain, and its severity in order to entrap Bamdad. During consultation with Bamdad, they clandestinely recorded Bamdad with concealed equipment. Their actions were violation(s) of Bamdad's rights under Article I, §§1&15 of California Constitution, as well as violation(s) of the U.S. Constitution 4th (illegal search and seizure), and 5th (self-incrimination and due process) Amendments. Additionally, they violated Bamdad's rights under statutory interception rights (18 U.S.C. §§2510-22). Further, California is one of the nine states that recording anyone's voice needs both parties' consent. Moreover, The DEA undercover agents violated their own agency policy that prohibits them from any kind of undercover and surveillance activities in the cases of the registrant practitioners. Chapter 64 of the DEA procedural manual. *Appendix B.* For their clandestine activities, the undercover DEA agents didn't have a judicial warrant, nor Bamdad's consent to record him in audio and video. Further, the agents against their agency's policy, placed Bamdad and his family under surveillance around the clock. These were due process violation(s).

C. Bamdad's Arrest and Indictment:

After lying under the oath in her affidavit of arrest, at least in 10 different matters, a DEA agent obtained the required warrants. For instance, she asserted that she and her associates consensually recorded Bamdad. There is no verbal or written consent from Bamdad to secretly record him and his conversation in both audio and video.

On April 17, 2008, Bamdad was arrested by a multi-agency task force after simultaneous raids of his residence and clinic. He was then held with no bond. Two weeks later, he was indicted after only one grand jury witness, a DEA agent, and a prosecutor who coached him, lied to the jurors in at least 16 significant matters. For example, the jury was told that Bamdad wasn't allowed to prescribe controlled substances, while Bamdad was licensed and certified to prescribe schedule II-V controlled substances. Also, the grand jury was told that Bamdad was treating pregnant girls with controlled substances. Bamdad never during his practice treated any pregnant woman for pain, let alone prescribe her controlled substances. Other lies to prejudice the grand jury were about Bamdad's income, the type of his patients, and the number of the patients he visited daily, as well as telling them that Bamdad prescribed such a dosage of controlled substances to patients that could result in their deaths. Believing in law and being certain of his innocence, Bamdad refused to plead guilty. After six months being in custody, Bamdad was reindicted by the second jury after providing them the first indictment. They were lied to as well

by the same DEA agent and two new prosecutors who coached him. A few more counts were added, in addition to one Count of prescribing a controlled substance resulting in death (Count 19, A.C.).

A.C. was a 23-year-old athletic man, who suffered from chronic back and bilateral knee pain and deformities, resulting from multiple sport and vehicular accidents. In his third and last visit to Bamdad, a few days before Bamdad's arrest, Bamdad prescribed him 60 pills of 30 milligrams oxycodone, a month supply, with instruction of two pills per day. Apparently, under pressure of his family, he consumed all 60 pills in a couple of hours. He was then transferred to a rehabilitation center instead of a hospital ER, unbeknownst to Bamdad. The evidence illuminates that he recovered from the overdose after a few hours, but the rehab workers administered to him numerous other medications. The next morning, they discovered his unresponsive body. A year after Bamdad's trial, the Los Angeles Times published an article about that rehab center (Las Encinatas at Pasadena, California). The Times revealed the lack of security and negligence of the rehab employees, resulted in a string of overdose deaths and suicides within a year. For instance, in the same week of A.C.'s passing, another young patient died of an overdose from the smuggling of the licit and illicit drugs into the rehab at night.

Indeed, the coroner and toxicologist reported A.C.'s cause of death as mixed drugs overdose (polymedication). Based on the precedents of this Court, Bamdad therefore was not a "but-for" cause of A.C.'s death, and

should have not been accused of or indicted for that overdose to begin with. Particularly so, due to the fact that A.C. was under the care of the rehab center for about 15 hours before his tragic death.

Despite the above, Bamdad's indictment suffers from at least four more defects, which resulted in it being invalid and divesting the federal courts of jurisdiction over him and his case. *See Appendix A.*

1. First Flaw

The forfeiture count (Count 26) is defective. It doesn't have the required specificity and particularity, in violation of Federal Rule of Criminal Procedure 7(c)(2). Rule 7(c)(2) was enacted and explained by this Court in 1972, and amended effective August 1, 1979, to state:

> "No judgment of forfeiture may be entered in a criminal proceeding unless the indictment or information shall allege the extent of the interest of property subject to forfeiture."

In December 2000, the Rule was reamended to state:

> "No judgment of criminal forfeiture may be entered in a criminal proceeding, unless the indictment or the information provides notice that the defendant has an interest in property that is subject to forfeiture accordance with the applicable statute."

Bamdad's indictment lacks the above specificity. Furthermore, the subject property which was ordered by the district court for forfeiture was owned by a California LLC, and wasn't owned by Bamdad personally. As a result of the above defect, Bamdad's indictment is invalid and defective and obtained in violation of due process and the grand jury clause of the Fifth Amendment. And when the misled trial jury voted for its forfeiture, violations of the Sixth Amendment's clauses of the effective assistance of counsel and trial by trial jury occurred.

This Court in *Libretti v. United States,* 516 U.S. 29, 40 (1995), and in *Caplin & Drysdale, Chartered v. United States,* 491 U.S. 617 (1989), explained this matter.

The Ninth Circuit also in a few cases such as *United States v. Hall,* 521 F.2d 406 (1975), honored this Rule of law. Yet, it appears that the established law was not applied in Bamdad's case. Bamdad had properly raised the above law in his pro se §2255 motion and its subsequent procedural remedies under ineffectiveness of his trial, sentencing, and appellate lawyers for the past eight years, in vain. The Ninth Circuit courts ignore his claim and avoid it like the plague.

2. Second Flaw

Bamdad's indictment failed to indicate how, where, and when he violated interstate commerce law to make his alleged offense, the practice of pain management in the State of California and under the Guidelines of its

Medical Board, a federal crime. Bamdad's practice was solely limited to the State of California; all his patients, his practice, and his license to practice, were Californian. He never visited any out-of-state patient or crossed any state line during his practice. Tax, wire, and insurance fraud(s) weren't part of his charges or conviction to make his alleged offense a federal crime. This Court as well observed in *Linder v. United States,* 268 U.S. 5, 18 (1925), "[O]bviously, direct control of medical practice in states is beyond the power of federal government."

For this reason also, Bamdad's indictment is defective and invalid.

3. Third Flaw

Before each set of charges, in the second, third, and fourth pages, Bamdad's indictment states that "defendant MASOUD BAMDAD, then a physician licensed to practice in the State of California, while acting and intending to act outside '*the usual course of professional practice*' and without '*a legitimate medical purpose*' " knowingly and intentionally distributed and dispensed, and caused the intentional distribution and dispensing of [. . .].

In *Gonzales v. Oregon,* 546 U.S. 243 (2006), a case involving authorization of assisting suicide of patients by physicians, this Court held that the above two phrases are a repeat of each other and attempt to summarize the others, and depend on "[Who] decides whether a particular activity is in '*the usual course of*

professional practice' or done for '*a legitimate medical purpose.*'" 546 U.S. at 257. This Court continued that the two phrases are also vague and ambiguous in need of further explanation, and deferred that explanation to another day which is yet to come. Bamdad hopes that that day is now, and in his case, the Court will further explain these phrases, and determine if the government is able to charge someone under ambiguous statutes. This Court observed as well that "[The] Attorney General has rulemaking power to fulfill his duties under the Controlled Substance Act ("CSA"). The specific respects in which he is authorized to make rules, however, instruct [us] that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law." 546 U.S. at 258.

Bamdad's case is identical to *Oregon*'s issue, though they are about two different standards of care which were authorized by two different states. Bamdad followed his licensing agency's Guidelines in prescribing appropriate painkillers to his patients, who complained of pain and claimed that certain kinds of medication help them to perform their daily task. Bamdad never overprescribed any medication as his indictment illustrates. All his prescriptions were in good-faith and in full compliance with his licensing agency guidance.

In *Oregon,* Justice Kennedy also observed that "[It] would be anomalous for Congress to have so painstakingly described the Attorney General's limited

authority to deregister a single physician or schedule a single drug, but to give him [. . .], authority to declare an entire class of activity '*outside the course of professional practice*', and therefore a criminal violation of the CSA." 546 U.S. at 262. "The limits on the Attorney General's authority to define medical standards for the care and treatment of patients bear also on the proper interpretation of §871(b). This section allows the Attorney General to best determine how to execute [his function]. It is quite a different matter, however, to say that the Attorney General can define the substantive standards of medical practice as part of his authority." "[The] structure of the CSA, then, conveys unwillingness to cede medical judgment to an Executive Official who lacks [medical expertise]." 546 U.S. at 262-266.

Therefore, because Bamdad's indictment charged him with ambiguous accusations, it is defective and invalid.

4. Fourth Flaw

Counts 3-8 and 10-11 of the indictment charged Bamdad with prescribing 60 pills of oxycodone to UC1-UC3 (undercover agents 1-3). These counts which Bamdad was convicted of were perpetrated by unconstitutional and unlawful activities of the three undercover agents, who during their clandestine investigation, violated Bamdad's rights under the 4th and 5th Amendments, the interception statutory law (18 U.S.C. §§2510-22), as well as a violation of their own agency

procedures (a due process violation), as explained previously.

Because Bamdad's indictment was obtained via due process and constitutional violation(s) in at least eight of its counts, thus, it is invalid.

5. Fifth Flaw

The first 19 Counts of Bamdad's indictment charged him with nonexistent offenses and punishment under *Burrage v. United States,* 571 U.S. 204 (2014), a substantive retroactive decision, which interpreted the provision (b)(1)(C) of 21 U.S.C. §841. As is stated before, A.C., Count 19, was under the care of a rehab center when he died. They provided him the last dosages of medications which resulted in his polymedication overdose. If the evidence were truthfully and completely presented to the grand jury, no rational jurors would have indicted Bamdad for that Count.

In a 9-0 decision, the *Burrage* Court interpreted the term's "death-result." This Court rejected the Government's interpretation of "result from" to mean that use of a drug distributed by the defendant need only contribute to an aggregate force, and recognized for instance, polymedication intoxication, by itself is a "but-for" cause of a death. *Burrage* drew the limits and reach of the CSA to criminalize and/or punish certain innocent conduct. The Court held that the word "ordinary" imposes a requirement of actual causality, meaning proof that the harm would not have occurred in the

absence of, or "but-for," the defendant's conduct. *Id.* (quotation and citation omitted) (emphasis added).

For this reason as well, Bamdad's indictment is defective and invalid because in its 19 out of 26 counts, it charged him with nonexistent crimes and punishment under the *Burrage* decision.

Besides the above five flaws, Bamdad's indictment doesn't have mens rea for a practicing physician whose job was writing/distributing medications based upon his own knowledge and discretion. The indictment simply states that Bamdad knowingly and intentionally prescribed/distributed certain quantity of medication—a routine activity for a licensed physician to prescribe medications. It doesn't, for example, state that Bamdad "unlawfully," knowingly, and intentionally distributed medications/drugs, in order to act with criminal intent. As a result of this, the trial jury plainly convicted him of his professional conduct. *See Bordenkircher v. Hayes,* 434 U.S. 357 (1978) ("To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort.").

D. Bamdad's Trial:

Bamdad's trial hung on two hinges: (1) selected, edited, out-of-context prejudicial excerpts of inadmissible illegally recorded audio-video tapes, were shown to the jury for total of 39 times, during trial and deliberation without special admonition. The recordings were gathered via violations of the 4th and 5th

Amendments, and the interception laws of California and the United States (18 U.S.C. §§2510-22), in addition to the agents' ignorance of their own agency's policy. The parts that were shown to the jury were Bamdad's responses to the agents without showing what the agents' questions were; and (2) an incomplete presentation of the prejudicial evidence regarding A.C.'s (Count 19) death, which took almost a half of the trial time, in an attempt by the prosecution to show Bamdad as a murderer, not a physician who prescribed a legitimate quantity of painkillers. It was never revealed that A.C. took his medication against its instruction, and numerous other medications, which were administered to him by the rehab workers. None of these were presented to the jury until Bamdad, without any preparation by his lawyer, decided to take the witness stand and was briefly able to explain the situation to the jurors. The prejudicial testimonies, particularly from the deceased's father, caused some of the jurors, such as juror No. 5, to start crying after watching the father cry on the witness stand in a show of morose. The Jury became hung on A.C.'s Count and three other Counts. The Government after the trial dismissed all the hung counts. This was after swaying the jury's emotions against Bamdad resulting in Bamdad's conviction on 13 counts with "prejudicial spillover."

Besides testimonies of the five DEA agents (two orchestrated and three undercover agents), which, during their testimonies, inadmissible and incomplete (in violation of Federal Rule of Evidence 106) recordings were repeatedly shown to the jury, and the irrelevant

testimonies regarding the overdosed patient, including the coroner, toxicologist, and even the pharmacist who dispensed A.C.'s last prescription (Bamdad only prescribed him a legitimate quantity of painkiller based on his symptoms; he never dispensed it though his indictment erroneously charged him with dispensing—another defect of the indictment), Bamdad's trial boiled down to testimonies of five other patients who were immunized by the Government against prosecution, and under duress, they testified to whatever the DEA agents and prosecutors directed them to say.

The star witness/expert of the Government, was a paid general practitioner with no board certification, whose website revealed that he himself was addicted to medically approved opioid painkillers. Yet, this information was not provided to the jury by Bamdad's lawyer. He deceived the jury without any objection from Bamdad's lawyer, and provided the jury with false information such as pure oxycodone would result in liver failure in patients. Bamdad's lawyer didn't object to the false information. And despite Bamdad's persistent requests, and payment to his trial lawyer, fees for hiring a defense expert for rebutting the Government expert, Bamdad's lawyer failed to hire such witness(es), as he was not prepared for the trial, as well, as Bamdad's lawyer didn't have even an opening statement.

After the trial, Bamdad requested that his lawyer to file motions for acquittal and/or retrial. He refused, and filed an ex-parte motion for releasing him from the case, despite his being paid up to the end of the case

and sentencing. The trial judge agreed to release him. Bamdad, a layman to the law, started to study law, and retained another lawyer for sentencing purpose.

Bamdad was convicted of 13 Counts of prescribing a normal and legitimate quantity of medically approved painkillers. Out of the 13 Counts, eight Counts pertained to the DEA agents and their illegal investigation. The amount of oxycodone that Bamdad was convicted of by the duped jury after showing them inadmissible and irrelevant prejudicial evidence, in all 13 counts of conviction aggregates to 51.5 grams of oxycodone—36 grams of it belonged to the eight Counts of undercover agents, and their illegal activities.

E. Unsubstantiated Sentence:

The advisory U.S. Sentencing Guidelines, for conviction of 51.5 grams of oxycodone for a street drug dealer, not a doctor who, by law, was authorized to prescribe it to his patient, suggests offense level 26 and imprisonment between 63-78 months.

Yet, because Bamdad's case from its inception didn't follow the rule of law, and the prosecution wasn't happy with the result of the trials against all this Court's precedents from *In re Winship* (1970) to *Alleyne* (2013), without respect for jury's findings, and conviction beyond a reasonable doubt, the prosecution in collusion with the trial judge, decided to coach the probation officer to prepare an untruthful Presentence Report ("PSR"). They rehired their addicted expert to

review Bamdad's clinic medical records, without even interviewing his patients. These charts included the acquitted and dismissed counts, also. In a lump sum fashion with the advice of the expert, distribution of 51.5 grams found by the jury, was jacked up to 4,818 grams of oxycodone. The PSR was prepared based on this amount that Bamdad was never indicted for, nor convicted of, or admitted to its distribution. The PSR also considered three overdosed deaths though one of those deaths, Count 18, J.D., was alive at the time of Bamdad's trial, and testified for the Government. The probation officer concluded that the trial court could sentence Bamdad from probation to 25 years in prison. He also wrote a separate letter besides the PSR, and suggested that in Bamdad's case, a sentence of 25 years is appropriate in order to not only punish Bamdad but to give a lesson to the medical community in general! Nothing about a criminal fine was mentioned in the PSR.

On July 30, 2010, the sentencing court, sentenced Bamdad to a term of 25 years imprisonment, $1,000,000.00 in criminal fines, and forfeiture of his professional office, though the court was notified that the subject property was owned by an innocent California LLC, and wasn't mentioned specifically in Bamdad's indictment. For the purpose of sentencing, the court considered the unsubstantiated distribution of 4,818 grams oxycodone, which was basically found by the judge, not by the jury, beyond a reasonable doubt. The sentencing court considered, as well, two overdosed individuals

which Bamdad wasn't convicted of by the jury: Count 19, A.C.; and Count 17, L.G.

A.C.'s manner and cause of death has been already explained. L.G., Count 17 of the defective indictment, passed away with mixture of licit and illicit chemicals—None was given or prescribed to him by Bamdad. He overdosed with a combination of crystal methamphetamine, marijuana, alcohol, barbiturates, and oxycodone. The oxycodone was prescribed by Bamdad to his girlfriend, J.D. L.G. took 50 pills of oxycodone belonging to J.D., in addition to the above listed licit and illicit drugs/chemicals. Bamdad is heartbroken by the above two deaths, but by the law, he wasn't the "but-for" cause of either of the above two accidental self-inflicted overdose deaths. Bamdad shouldn't have been indicted or tried for them. The prosecution indicted Bamdad under provision (b)(1)(C) in the first 19 Counts, with the hope that if Bamdad became convicted of those counts, they could later utilize the above provision, in order to enhance Bamdad's sentence. Yet, the sentencing court enhanced Bamdad's sentence without his being convicted of the deaths counts of the first 19 Counts. The sentencing wasn't objected to by Bamdad's retained lawyer. Indeed, the lawyer later wrote a sworn affidavit and admitted to his own ineffectiveness and lack of knowledge of the Sentencing Guidelines. Bamdad presented the affidavit with his §2255 motion, but the district court rejected it and recognized that the lawyer was effective enough.

Here, Bamdad would like to assert a disparity of sentence between his sentence and the similarly

situated physicians, who were convicted and sentenced in the vicinity of the Ninth Circuit. Some of these physicians were tried and sentenced by the state authorities, and for unknown reasons, the others were prosecuted by the federal authorities. It is obvious that there is a significant disparity between punishments in the state and federal courts. The doctors who were prosecuted by the state authorities are: (1) Dr. Peter Dietrich, Sacramento, California. On November 19, 2009, sentenced to 60 days suspended sentence, 4 years probation, 600 hours community service, and $800 fine; (2) Dr. Paul Maynard, sentenced on February 15, 2007 to seven months incarceration; (3) Dr. Nicholas Sasson, Salinas, California. On October 18, 2004, he received five years probation and $1,000.00 fine; (4) Dr. Peter Ahles was sentenced on October 5, 2006, to six months home detention and three years probation; (5) Dr. Joan Keteschbach, Elk Grove, California, was sentenced to one day jail, three years probation, 120 hours community service, and $18,204.11 restitution; and (6) more recently, Dr. Carlos Estandian, Los Angeles, California. He was convicted by a jury on 13 counts of distribution, and one count of manslaughter, because one of his patients died of an overdose and the jury convicted him on that count, in contrast to Bamdad's case. He was sentenced to five years imprisonment in state. He served only 2 1/2 years before his release in 2014-2015.

The next group of physicians were prosecuted by the federal authorities. Although they received more punishment, none of them has been punished as

severely as Bamdad. These doctors are: (1) Dr. Healey, Case No. 09-cr-163-MR (C.D. Cal.)—He received four years imprisonment, 10 years probation, and $150,000.00 fine by Judge Manuel Real, a Very tough judge on drug offenses; (2) Dr. Bassam Yassine, Case No. 07-cr-778-PSG (C.D. Cal.)—He received 37 months incarceration, and $6,500.00 fine; (3) Dr. Ogarrd, Case No. 08-cr-178-DEA (D. Haw.)—He was convicted in a jury trial on multiple counts of distributing controlled substances. He had also overdose death counts. The presiding judges before jury deliberation dismissed the overdose counts by his own motion. He received five years imprisonment, and $12,500.00 fine; (4) Dr. Davis, Case No. 00-cr-1132-MMM (C.D. Cal.)—He received 40 months imprisonment. His case was vacated on direct appeal; (5) Dr. Braun (C.D. Cal.) was convicted on March 5, 2007. He received 70 months incarceration, and $17,500.00 fine; (6) Dr. Vu Le (C.D. Cal.)—On November 17, 2009, he received 57 months Imprisonment, and $1,500.00 fine and assessments; (7) Dr. Joel Stanley Dreyer, Case No. 08-cr-0041 (C.D. Cal.)—He had his prescription pads in parking lots, parties, gyms and spas, writing prescriptions for everyone, including his friends. He was prescribing unlimited quantities of opioids to known addicts. At least two of his patients died of overdoses. He received 9 years imprisonment, but on direct appeal, his case was overturned 2-1 with the assumption that he didn't know what he was doing, because his brain MRI showed multiple microinfarctions most likely from using crystal methamphetamine or cocaine, without having any obvious physical disability; and (8) the most interesting case of this set;

Dr. Kummerle, Case No. 10-cr-417-DMG (C.D. Cal.), who was prosecuted by the same prosecutor as Bamdad, AUSA S. Christensen, but before a different judge. He was charged with more serious offenses than Bamdad such as conspiring with his employees to distribute unlimited quantities of different controlled substances, and lying to the federal agents. He was known as the second largest prescriber of oxycodone in the nation. He pleaded guilty, and received only two months pre-trial detention and some probation. How could this happen in a country known for the rule of law and equal protection under the law? *See Freeman v. United States,* 564 U.S. 522, 533 (2011) (Those who commit crimes of similar severity under similar conditions receive similar sentence). This definitely hasn't happened in Bamdad's case.

F. Direct Appeal:

Despite the fact that during the appeal procedure, Bamdad himself discovered the defect of his indictment under Rule 7(c)(2), and also his 4th Amendment rights violation by the DEA agents during their investigation, and told his appellate lawyer about them, she decided to ignore those important issues. Instead, she raised five weak issues on direct appeal. Therefore, the Ninth Circuit affirmed Bamdad's conviction and sentence. *United States v. Bamdad,* 459 Fed. Appx. 653, 2011 U.S. App. LEXIS 23598. This Court declined to issue a writ of certiorari.

G. Post-Conviction Proceedings:

Six weeks after this Court declined to issue a writ of certiorari on direct appeal, Bamdad filed a §2255 motion, based upon ineffectiveness of his lawyers, including trial, sentencing and appellate ones. He raised violations of his rights under the 4th, 5th, and 6th Amendments, as well as the genuine defects of his indictment, which divested the jurisdiction of the trial and sentencing court. These were basically all claims that have been raised in this instant petition, that, in addition to about 30 more claims that, based on the precedents of the Ninth Circuit, were clear-cut claims of relief. One of the claims, was the claim that 50 days before the trial, Bamdad wrote to the trial court, and asserted that he had a breakdown of communication with his trial lawyer, and requested a hearing. The trial court ignored Bamdad's request. This alone, without considering other constitutional and jurisdictional violation(s) during Bamdad's trial, is a ground for reversal of the case at any stage, in the Ninth Circuit, where there are numerous related cases. Yet, it appears that Bamdad's case doesn't follow the rule of law in that circuit.

After filing his §2255 motion with numerous meritorious claims, Bamdad was expecting that in a few months, he would have been released from unjust custody. Astonishingly, after more than a year, the trial judge, Judge Wu, after ignoring numerous claims of relief, such as the obvious defects of Bamdad's indictment, such as under Fed.R.Crim.P. 7(c)(2), he, in support of the agents, prosecutors, and Bamdad's lawyers,

misapplied the facts of the case, and misinterpreted the well-settled laws, for instance, about protection of the 4th and 5th Amendments. Judge Wu then denied any relief, and stonewalled Bamdad.

Bamdad's endeavors to obtain a COA from Judge Wu or the Ninth Circuit, to appeal the district court's wrongful decision, were fruitless. Subsequently Bamdad filed motions for recusal of Judge Wu, and under Fed.R.Civ.P. 59(e), 60(b), and 54(b) unsuccessfully. Recently, Bamdad filed a motion under the extraordinary writ of error(s) audita querela (28 U.S.C. §1651) and only concentrated on the defects of his indictment, which were never addressed by any court. Judge Wu, again disregarded the law, and summarily denied the said motion. The Ninth Circuit in collusion with Judge Wu, summarily denied to issue a COA, while a motion under the writ of audita querela, doesn't need a COA. A petition for panel rehearing and/or en banc rehearing was as well denied.

While Bamdad was incarcerated under the jurisdiction of the Seventh Circuit, and recently in the Fifth Circuit, he filed petitions under §2241, and asserted that the Ninth Circuit courts, which have held him in prison, don't have jurisdiction over him and his case, as a result of the defective indictment. The Seventh and Fifth Circuit courts, also concluded that they don't have jurisdiction to hear Bamdad's claims under §2241, and the claims belong to §2255 motion, and basically ran Bamdad around. Obviously, they only rely on one of this Court's precedents; *Davis v. United States,* 417 U.S. 333 (1974), and reserved §2241 petitions, for when

an intervening change in substantive law resulted in the imprisonment of one whose conduct was not prohibited by law. Meanwhile, other holdings of this Court, for instance, *Boumediene v. Bush*, 553 U.S. 723 (2008), clearly reserved the §2241 petitions for the occasions that the §2255 motions have been "inadequate or ineffective," or didn't provide the proper relief. Now, Bamdad is before this Honorable Court and Justice: first to demand justice; and second to clarify the application of the §2241 petition, because he believes numerous other federal inmates have been incarcerated in violations of their rights, because the federal courts intentionally or unintentionally misinterpret the laws regarding the great writ of habeas corpus, and its application.

ARGUMENT

THE REASON(S) THAT THE ORIGINAL WRIT OF HABEAS CORPUS (§2241) SHOULD BE AVAILABLE TO PETITIONER BAMDAD

It is unquestionable that the purpose of filing a motion under §2255 is relief from an unconstitutional conviction and/or sentence, as well as for lack of the jurisdiction of the trial court, which ordered incarceration of someone. It is also incontrovertible that Bamdad exhausted all his available procedural remedies, in a timely manner, as the records of his filings in different courts' illuminate. It is, as well, indisputable that the enactment of §2255 in 1984 by Congress as a result of judicial solicitations, didn't abolish the great writ of habeas corpus—§2241, nor activated Federal

Constitution's Suspension Clause (Art. I, §9, cl.2) ("The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it.").

In 1996, 28 U.S.C. §2255 was amended under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), but still didn't repeal, §2241. In §2255, Congress recognized provision (e) ("savings clause"). See page 2 of this Petition for its text. This applies to the text of provisions (a) and (c)(3) of §2241. See their text on page 2 as well.

Relying on the above three provisions of §§2255 and 2241, Bamdad renewed his claims of relief in the Fifth and Seventh Circuit Courts, in vain, as is asserted previously.

To summarize this Court's decisions in the related matter, four years after §2255 enactment, in *United States v. Hayman,* 342 U.S. 205 (1952), this Court considered the effect of the new law (§2255) on habeas corpus claims raised under §2241. There, this Court confirmed the continued availability of the writ of habeas corpus, stating that "in a case where the §2255 procedure is shown to be 'inadequate or ineffective,' the section provides that the habeas corpus remedy shall remain open to afford the necessary hearing." The *Hayman* Court also observed that "Section 2255 was designed to facilitate release of a federal prisoner in a more convenient forum, who has been held against the Constitution and laws of the United States." *Id.* at 213-214.

Later, in *Davis,* supra, 417 U.S. 333, the Court held that imprisonment of one whose conduct wasn't prohibited by law "presents exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus is apparent." The Court concluded that "if [petitioner's] contention is well taken, then [his] conviction and punishment are for an act that the law doesn't make criminal. There can be no room for doubt that such a circumstance inherently resulted in complete miscarriage of justice and present(s) exceptional circumstances that justify collateral relief under §2241." 417 U.S. at 346-47.

A few years later, this Court in *Swain v. Pressley,* 430 U.S. 472 (1977), the "inadequate or ineffective" language as a safety-valve was emphasized by the Court, though, it wasn't completely explained. The Petitioner in that case, challenged the constitutionality of a provision of the District of Columbia Code that channeled prisoners' collateral attacks to the local superior court. This Court, relying on *Hayman,* rejected the contention that the substitution constituted a suspension of the Great Writ, stating: "The Court implicity held in *Hayman,* as [we] hold in this case, that the substitution of a collateral remedy which is neither inadequate nor ineffective to test the legality of a person's detention doesn't constitute a suspension of the writ of habeas corpus." The Court stressed as well that in enacting §2255, Congress intends to minimize the difficulties encountered in habeas hearings by affording the same right in another and more convenient forum." *Ibid.*

Subsequently, in *Felkner v. Turpin,* 518 U.S. 651 (1996), a case involving a state prisoner, this Court considered the extent to which the AEDPA circumscribed its own power to issue writs of habeas corpus. The Court held that although §106(b)(3)(E) of the AEDPA, codified in 28 U.S.C. §2244(b)(3)(E), precludes this Court from reviewing by appeal or petition for certiorari a judgment on an application for leave to file a second habeas petition in district court, the Act doesn't affect this Court's authority to hear petitions filed as original matters in the Court. The Court continued that as its decision more than a century earlier in *Ex parte Yerger,* 75 U.S. 85, Wall. 85, 19 L.Ed. 332 (1869), and specifically "declined to find [. . .] repeal of §2241 by implication." (emphasis added). 518 U.S. at 661.

Ultimately, in *Boumediene,* supra, 553 U.S. 723, a more recent case of an alleged enemy combatant at U.S. Naval Station at Guantanomo Bay, this Court held that to have habeas privilege—28 U.S.C. §2241, purportedly restricting view, is in lieu of invalid suspension of the writ under Suspension Clause. The Court recognized that "[In] order to deny habeas corpus, therefore, Congress had to act in conformance with the Suspension Clause," and observed that provision (e) of §2255 effected an unconstitutional suspension of the writ of habeas corpus. The Court quoted Justice Holmes' observation in *Frank v. Magnum,* 237 U.S. 309, 346 (1915) ("Habeas corpus is a collateral proceeding that exists to cut through all forms and go to the very issue of the structure. It comes from the outside, not in subordination to the proceedings, and although every

form may have been preserved, open the inquiry whether they have been more than an empty shell.") 553 U.S. at 785. The Court also cited *INS v. St. Cyr,* 533 U.S. 289, 302 (2001), held that "[It] is uncontroversial, however that the habeas privilege entitles [the prisoner] to a meaningful opportunity to demonstrate that he is being held pursuant to the 'erroneous application or interpretation of relevant law,' [. . .], and the habeas court must have the power to order the conditional release of an individual unlawfully detained. But more may be required depending on the circumstances." *Ibid.* "Because the [. . .] procedures for reviewing detainees' status aren't 'adequate and effective' substitutes for the habeas writ [. . .] operates as an unconstitutional suspension of the writ." *Ibid.*

The *Boumediene* Court continued that "[A] brief account of the writ's history and origins shows that protection of the habeas privilege was one of the few safeguards of liberty specified in a Constitution that, at the outset, had no Bill of Rights; in the system the Framers conceived [the writ] has a centrality that must inform proper interpretation of the [Suspension Clause]. That the Framers considered the writ a [vital instrument] for the protection of individual liberty is evident from the care taken in the Suspension Clause to specify the limited grounds for its suspension. The clause is designed to protect against cyclical abuses of the writ by the Executives and Legislative branches. It protects detainee rights by a means consistent with the Constitution's essential design, ensuring that, except during periods of formal suspension, the judiciary

will have a time-tested device, [the writ], to maintain the ['delicate balance of governance']" (citing *Hamdi v. Rumsfeld,* 542 U.S. 507, 536 (2004)). Separation-of-powers principles, and the history that influenced their design, inform the Clause's reach and purpose [. . .]. "However, security subsits, too, in fidelity to freedom's first principles, chief among them being free from arbitrary and unlawful restraint and the personal liberty that is secured by adherence to the separation-of-powers." 553 U.S. at 796-798.

Congress should "not be presumed to have effected such denial [of habeas relief] absent an unmistakably clear statement to the contrary." *Hamdan v. Rumsfeld,* 548 U.S. 557 (2006).

The *Boumediene* Court concluded that there must be exhaustion of alternative remedies before a prisoner requests for habeas relief under §2241. *Id.* at 793. This is exactly Bamdad's dire situation. For at least the past eight years, he has raised his claims of relief under any available remedy to him. Yet, his pleas for relief have fallen on deaf ears, and the federal courts have turned blind eyes towards his claims. They ignored and sidestepped his meritorious claims of relief, and unconstitutionally have kept him in prison.

It appears that the only circuit court that recently in some selected cases, has honored other holdings of this Court besides *Davis*, supra, 417 U.S. 333, is the Fourth Circuit, which in *United States v. Wheeler,* 886 F.3d 415 (4th Cir. 2018), where the defendant filed a §2241 petition after his initial §2255 motion was

inadequate and/or ineffective to correct his sentence. The court utilized the "savings clause" without considering a new change in law that resulted in defendant Wheeler being actually innocent of his sentence, and placed its opinion solely based on the fact that Wheeler's §2255 was ineffective, thus, granted the proper relief. The Government subsequently took the case to this Court, but the Court declined to issue a writ of certiorari. Therefore, this Court approved the Fourth Circuit decision in application of §2241 to Wheeler, despite the fact that this Court usually takes the Government requests very seriously. *Wheeler*'s court held that "Congress has bestowed the courts broad remedial powers to secure the historic office of the writ of habeas corpus. It is uncontroversial that the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to the erroneous application or interpretation of relevant law. Habeas is above all, an adequate remedy, and its precise application and scope change depending upon circumstances." That court also recognized that "the savings clause (§2255(e)) pertains to one's detention, and Congress deliberately didn't use the word conviction or offense, as it did elsewhere in §2255, such as §§2255(h)(1) and (f)(1). Where Congress includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion [. . .]. Thus, the text of the savings clause doesn't limit its scope to testing the legality of the underlying criminal conviction." That court continued "Indeed, one purpose

of traditional habeas relief was to remedy statutory, as well as constitutional claims, presenting a fundamental defect which inherently results in a complete miscarriage of justice and exceptional circumstances where the need for the remedy afforded by the writ of habeas corpus is present. But if a court held that a prisoner was foreclosed from seeking collateral relief from a fundamentally defective sentence [conviction], and through no fault of his own, has no source of redress, this purpose would remain unfulfilled. Therefore, §2255(e) must provide an avenue for prisoners to test the legality of their sentence [conviction] pursuant to §2241."

The Fourth Circuit, more recently, in another case after the district court declined to provide the appropriate relief via savings clause, without relying on a new change of law granted the requested relief. *See Williams v. Wilson,* 747 Fed. App. 170, LEXIS 714 (4th Cir. 2019).

Accordingly, it appears that there is, as well, a discrepancy in interpretation of savings clause of §2255 existed between different circuit courts, where the Fifth and Seventh Circuits didn't allow Petitioner Bamdad to utilize this provision and obtain the proper relief via §2241. Thus, this case is an opportunity for this Court to interpret the text of §2255(e). This might help numerous federal prisoners who have been incarcerated against their rights, after their initial §2255 motion(s) have been inadequate and/or ineffective in providing the proper relief.

In *Persaud v. United States,* 571 U.S. 1172 (2014), the United States Solicitor General conceded that the savings clause focuses on detention as a whole in a non-death penalty case. Therefore, the purpose of habeas corpus is to prevent prison officials from "inflicting an unconstitutional sentence [conviction]."

"[The] idea that the necessary scope of habeas review in part depends upon the rigor of any earlier proceedings accord with [our] test for procedural adequacy in due process context." *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976) (noting that the Due Process Clause requires an assessment of, inter alia, "the risk of an erroneous deprivation of [a liberty interest] and the probable value, if any, of additional or substantial procedural safeguard"). This principle has an established foundation in habeas corpus jurisprudence as well, as Chief Justice Marshall's opinion in *Ex parte Watkins,* 28 U.S. 193, 3 Pet., at 209, 7 L.Ed. 650 (1830), demonstrates. Indeed, common-law habeas corpus was, above all, an adequate remedy. Its precise application and scope changed depending upon the circumstances. *See Blackstone* *131 (describing habeas as "the great and efficious writ, in all manners of illegal confinement"). *See also Schlup v. Delo,* 513 U.S. 298, 319 (1995) (Habeas "is, at its core, an equitable remedy"); *Jones v. Cunningham,* 371 U.S. 236, 243 (1963) (Habeas is not "a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose"). "Habeas courts would hear evidence anew if justice require it." *W. Church,* Treatise on the Writ of Habeas Corpus §182, p. 235 (1886).

CONCLUSION

Wherefore, considering the numerous due process and constitutional violations, under the 4th, 5th, and 6th Amendments rights, and the defects of Bamdad's indictment, which divested the jurisdiction of the courts that have held him illegally in prison, and refusal of them to address his claims of relief, as well as refusal of the courts, which had/have jurisdiction over his confinement place to hear his claims of relief, resulted in Bamdad comes before this Honorable Court, seeking justice and appropriate relief either directly by this Court, or through ORDER to the lower courts, to IMMEDIATELY RELEASE him from custody, after VACATING his wrongful conviction, and DISMISSING the defective indictment.

Alternatively, this Court could ask the Attorney General to SHOW CAUSE for continuing detaining Bamdad, or, conditionally release him until further proceedings.

Bamdad also prays for any and all remedies that this Court deems proper in his dire circumstance.

Respectfully submitted,

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