No. 19-6438

ORIGINAL

Supreme Court, U.S.
FILED
AUG 09 2019
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IN THE

SUPREME COURT OF THE UNITED STATES

Jose Luis Tapia Fierro — PETITIONER
(Your Name)

vs.

William Barr, et., al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jose Luis Tapia Fierro
(Your Name)
ASPC-Florence/Central Unit
Post Office Box 8200
(Address)

Florence, Arizona 85132
(City, State, Zip Code)

N/A
(Phone Number)

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QUESTION(S) PRESENTED

1. Whether the State of Arizona's statute of limitations found in the Arizona Revised Statute ("A.R.S." §12-542) applies to a federally litigated cause at the United States district court?

2. Was the July 18, 2018 Order by the United States district court dismissing complaint, as barred by the A.R.S. §12-542, proper?

3. In a *Bivens* action, where federal defendants, not state defendants, are implicated,; Would the State of Arizona's forum of statute of limitations be the correct and/or proper statute of limitations for personal injury actions?

4. Whether Plaintiff exercised due dilligence in complaining, for what is [now known] a wrongful, improper and erroneous removal proceeding, for purposes of [the] federal statute of limitations?

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. William Barr, United States Attorney General.

2. Kevin McAleenan, Acting Secretary of the United States Department of Homeland Security.

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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 A to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

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

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ______ to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the ______ court appears at Appendix ______ to the petition and is

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 19, 2019.

[ ] 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: May 29, 2019, and a copy of the order denying rehearing appears at Appendix C.

[✓] An extension of time to file the petition for a writ of certiorari was granted to and including October 18, 2019 (date) on August 19, 2019 (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

Constitutional Provision(s):

U.S. Constitution Fourth Amendment.

Statutory Provision(s):

Federal Statutes:

8 U.S.C. §1101(a)(43)(F)—The aggravated felony statute.
8 U.S.C. §1326(a),(b)(2)—The illegal reentry statute.
8 U.S.C. §1252(a)(5)—The district court's jurisdiction statute.
8 U.S.C. §1252(b)(9)—The district court's subject matter jurisdiction.
U.S.C. §1331 —— The federal question statute.
28 U.S.C. §2241 —— The federal habeas corpus statute.

Immigration and Nationality Act ("INA"):

INA §212 ——— The inadmissibility statute.
INA §236(c) —— The mandatory detention statute.
INA §237(a) —— The crime of violence statute.

State Statute:

A.R.S. §12-542—The State of Arizona Statute of Limitations.

STATEMENT OF THE CASE

This *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) (hereinafter "*Bivens action*") that petitioner Jose Luis Tapia Fierro filed, on November 16, 2017, at the United States district court - Phoenix division, is about having been improperly and erroneously removed to México as a result of a legal error.

Legal error, by the federal defendants, that subjected me to:

1. a criminal federal prosecution for "illegally" returning;
2. a wrongful and unlawful conviction and sentence for illegal reentry. Case number: D.C. No. CR-01-01115-FJM;
3. a prolonged and unconstitutional detention by the immigration authorities.

Petitioner originally filed [his] complaint under Title 42 U.S.C. § 1983. Case number: D.C. No. 2:17-cv-04005-JAT-ESW.

On March 26, 2018, the district court ordered that Plaintiff's "first amended" complaint be dismissed without prejudice, with leave to amend, for plaintiff to re-file in a court approved form.

On April 26, 2018, plaintiff resubmitted the complaint in the court's-approved form. The complaint was, thereafter, characterized as a "*Bivens* action," under 28 U.S.C. §1331.

On May 17, 2018, the district court issued an order to show cause why the case should not be dismissed as barred by the statute of limitations pursuant to the State of Arizona Revised Statute ("A.R.S.") §12-542. *Id.*

On May 31, 2018, plaintiff submitted a "response to order to show cause" as to why the case (*Bivens* action) should not be dismissed as time barred alleging that the State of Arizona statute found in A.R.S. §12-542 was **not** proper and applicable statute of limitations in this *Bivens* action because plaintiff is/was not suing State (government) employees, but Federal (government) employees.

Assuming *arguendo* that the federal statute of limitations should apply, instead.

On July 11, 2018, the district court dismissed the *Bivens* action. See Appendix B.

Plaintiff appealed the district court's dismissal to the United States court of appeals for the ninth circuit on July 24, 2018. Case number: 18-16543.

On or about September, 2018, plaintiff submitted an "informal brief" to the ninth circuit court of appeals. The circuit court issued an order directing the clerk to file plaintiff's informal brief stating that: "briefing was completed and that the federal [government] defendants had not made an appearance." *Id.*

On February 19, 2019, the ninth circuit court of appeals *affirmed* the district court's dismissal. See Appendix A.

On March 4, 2019, plaintiff submitted a "petition for panel rehearing" within the ninth circuit court of appeals addressing the "questions presented for review" as the same "questions presented for review" to this Honorable U.S. Supreme Court.

In the "petition for panel rehearing," that was filed in the ninth circuit court of appeals in March 4, 2019, petitioner/plaintiff (hereinafter Mr. Tapia Fierro) brought up to the court of appeals' attention the "informal brief's" question(s) two (2) through five (5), basically alleging that Mr. Tapia Fierro spent more than ten (10) years of [his] life in federal custody — five (5) years and seven (7) months incarcerated for an attempted illegal reentry charge and conviction that is [now known] Mr. Tapia Fierro did not commit., And the last four (4) years and seven (7) months in federal immigration custody fighting to vindicate [his] constitutional rights and stay in this country. *Id* at "petition for panel rehearing." Page 4-6.

Specifically, Mr. Tapia Fierro alleged and argued a "crystal clear" violation of the Fourth Amendment to the United States' Constitution for illegal incarceration by the Department of Justice (hereinafter "DOJ") and for the unconstitutional consequent [prolonged] detention by the Department of Homeland Security (hereinafter "DHS"). The federal defendants in this *Bivens* action. *Id.* at "petition for panel rehearing." Page 5.

The ninth circuit court of appeals closed this case on May 29, 2019. See Appendix C.

STATEMENT OF FACTS

2001 Deportation

In June 12, 2001, Mr. Tapia Fierro, an admitted lawful permanent resident (hereinafter "LPR") was determined to be removable and ineligible for cancellation of removal on the basis of having been convicted of involuntary manslaughter, which the immigration judge (hereinafter "IJ") concluded was an aggravated felony under the immigration and nationality act (hereinafter "INA"). Mr. Tapia Fierro was removed the same day.

Two months later, Mr. Tapia Fierro sought to reenter the United States, but was arrested and charged with attempted illegal reentry after deportation under Title 8 U.S.C. §1326(a), (b)(2). District Court No. CR-01-01115-FJM.

Mr. Tapia Fierro was convicted, on a trial-by-jury, and was sentenced to hundred and four (104) months. On appeal, the ninth circuit court of appeals reversed and remanded the case *twice* for re-sentencing. C.A.9 No. 02-10454 and C.A.9 No. 03-10598 (U.S. v. Tapia Fierro, 63 Fed. Appx. 390 (9th Cir. 2003)). See also Appendix D.

In 2004, while Tapia Fierro was serving his sentence for his attempted illegal reentry conviction, this Supreme Court held, in *Leocal v. Ashcroft*, 543 U.S. 1 (2004) that a crime that does not require the intentional use of force is not a "crime of violence," and therefore cannot constitute an "aggravated felony" under the INA.

The following year, the ninth circuit court of appeals, in *Lara-Cazares v. Gonzales*, 408 F. 3d 1217 (9th Cir. 2005), adopted and extended the reasoning in *Leocal* to other crimes that do not require the intentional use of force, including the crime of involuntary manslaughter.

2005 Habeas Petition

In August 2005, Mr. Tapia Fierro filed, *pro se*, a habeas petition under 28 U.S.C. §2241 in the United States district court for the central district of California. District Court Number: ED CV-05-00786 R (SS).

That case was assigned to the Honorable Manuel Real and referred to the Honorable Suzanne Segal for disposition.

In his habeas petition, Mr. Tapia Fierro argued, *inter alia*, that he had never knowingly and intelligently waived his right to appeal the 2001 removal order, and that had he fully understood his appeal rights, he would have appealed and argued that the order was invalid from its inception because involuntary manslaughter does not qualify as an "aggravated felony" under title 8 U.S.C. § 1101(a)(43)(F).

Despite controlling authority holding that Mr. Tapia Fierro's crime of involuntary manslaughter was not an aggravated felony under the INA, therefore rendering Mr. Tapia Fierro's appeal waiver defective, the government argued that the district court, for the central district of California, lacked subject matter jurisdiction to consider the petition in light of 8 U.S.C. §§ 1252(a)(5) and 1252(b)(9).

The district court agreed with the government and, in May 2006, dismissed the petition.

After obtaining *pro bono* counsel, Mr. Tapia Fierro successfully appealed the district court's decision to the ninth circuit court of appeals. *Id.*

The ninth circuit found the rationale of *Singh v. Gonzales*, 499 F.3d 969 (9th Cir. 2007), to be applicable to this case, and determined that Mr. Tapia Fierro was not seeking judicial review of his final removal order but rather advancing an independent challenge based on a due process violation. C.A.9 No. 06-56038.

The court of appeals acknowledged that Mr. Tapia Fierro "seeks only to have the government reenter the removal order and restart the thirty-day appeal period, thereby allowing him his 'day in court'." *Tapia Fierro v. Mukasey*, 305 Fed. Appx. 361, 363 (9th Cir. 2008). The ninth circuit court of appeals remanded the case for further proceedings. Id.

In March, 2007, while Mr. Tapia Fierro's appeal was pending in the ninth circuit, he finished serving time for his attempted illegal reentry conviction and was released into federal immigration custody, where he remained until October 3, 2011.

On April 9, 2010, after obtaining *pro bono* counsel, Mr. Tapia Fierro filed a supplemental brief in support of his habeas petition (§ 2241). In his supplemental brief, Mr. Tapia Fierro argued that, in accordance with *Leocal* and *Lara-Cazares*, his conviction for involuntary manslaughter was not a crime of violence, and hence, not an aggravated felony under the INA.

Mr. Tapia Fierro further argued that these decisions were retroactively applicable to his case because they are subsequent judicial interpretations of a statute.

Because the IJ who presided over Mr. Tapia Fierro's 2001 removal proceedings failed to inform him that he was not deportable, Mr. Tapia Fierro argued that his waiver of his appeal rights during that removal proceeding was invalid.

On May 4, 2010, after reviewing Mr. Tapia Fierro's supplemental brief, and in light of the clear U.S. Supreme Court and ninth circuit precedent showing that Mr. Tapia Fierro had been unlawfully deported, the government (DHS' Office of Chief Counsel) attempted to abandon the 2001 aggravated felony charge and filed a superseding notice to appear (hereinafter "NTA"), in immigration court, against Mr. Tapia Fierro.

In this superseding NTA, the government charged him under section 212 of the INA with being inadmissible based on various other criminal convictions that had taken place over two (2) decades ago. The May 4, 2010 NTA failed to state that he was a LPR of the United States.

The government then attempted to use the May 4, 2010 NTA as a means to undercut the district court's habeas jurisdiction before the court could render a decision on the merits of Mr. Tapia Fierro's constitutional claims. Contrary to ninth circuit precedent, the government (DOJ's attorneys) argued to the district court that Mr. Tapia Fierro's *first* habeas petition was moot as a result of the new NTA charges.

The government (DOJ's attorneys) further took the position, again in contravention of established precedent, that *Leocal* and *Lara Cazares* were not retroactively applicable to Mr. Tapia Fierro's case because his case was not on direct review.

On May 21, 2010, Mr. Tapia Fierro filed his reply brief in support of his habeas petition, arguing that his habeas petition was not moot because he continued to be affected by the collateral consequences of the government's unlawful deportation, particularly because the government (DHS' office of chief counsel) had not stated in its 2010 NTA that he was a LPR of the United States.

Mr. Tapia Fierro also contended that the government's (DOJ attorneys) argument that subsequent judicial interpretations of a statute are retroactively inapplicable on collateral review was directly contradictory to this Supreme Court and ninth circuit law.

While the first habeas petition was pending in the district court, on June 7, 2010 Mr. Tapia Fierro moved the immigration court to terminate the 2010 NTA, or in the alternative, to stay the removal proceedings until after the habeas petition had been decided.

On October 10, 2010, the IJ denied Mr. Tapia Fierro's motion to terminate but granted his motion to continue the proceedings, finding that:

> "[t]he outcome of the habeas proceeding will directly impact the decision made by the court in this case. For example, should the habeas petition be granted

> the prior 2001 proceedings would be reopened and the respondent would be restored to lawful permanent resident status, requiring termination of the instant NTA."

On December 13, 2010, Magistrate Judge Suzanne Segal filed a report and recommendation (hereinafter "R&R"), recommending that the district court grant Mr. Tapia Fierro's habeas petition. Id.

In the R&R, Magistrate Judge Segal agreed with Mr. Tapia Fierro that (1) his habeas petition was not moot because he continued to suffer adverse collateral consequences due to the fact that his LPR status had not been restored; and (2) *Leocal* and *Lara-Cazares* are retroactively applicable even though Mr. Tapia Fierro's case is no longer on direct review. Id. at Appendix E, page 2.

Accordingly, the Magistrate Judge found that Mr. Tapia Fierro's appeal rights had been violated during the 2001 removal proceedings. (*Tapia Fierro v. Holder*, No. EDCV-05-00786, 2010 WL 5525239 (C.D. Cal., Dec. 13, 2010)

On January 5, 2011, the district court Judge Manuel Real adopted the R&R, finding that Mr. Tapia Fierro had been "erroneously deported in 2001," and directed that Mr. Tapia Fierro's 2001 removal proceedings be reopened and that he be given thirty (30) days from any subsequent removal order entered against him to appeal such order. See Appendix G, page 2 of 6, lns. 8-11.

On January 6, 2011, Mr. Tapia Fierro renewed his request that the IJ terminate the 2010 removal proceeding (inadmissibility charges), relying on the IJ's October 20, 2010 order that once the 2001 removal proceedings was reopened the 2010 NTA would be terminated.

Tapia Fierro also moved to terminate the 2001 removal proceeding on the ground that his conviction for involuntary manslaughter was not an aggravated felony. Because this conviction was the sole charge in the 2001 NTA, Mr. Tapia Fierro argued that the proceedings must be terminated and he should be released.

2011 NTA and Bond Hearing

On January 11, 2011, the government (DHS' office of chief counsel) filed a response to Mr. Tapia Fierro's motion and also separately moved to consolidate the 2001 and 2010 removal proceedings, arguing that although Mr. Tapia Fierro was not removable based on his involuntary manslaughter conviction, he was nevertheless inadmissible and, therefore, removable on new charges steeming from crimes Mr. Tapia Fierro had allegedly committed more than two (2) decades ago.

The government attached these new charges to its motion, which were based on section 212 of the INA.

On January 20, 2011, Mr. Tapia Fierro responded to the government's motion to consolidate, arguing that there were no basis for the 2010 removal proceeding to be consolidated with the 2001 removal proceeding, and further argued that section 212 charges could not be lodged against Tapia Fierro because he had been restored to admitted LPR status.

Mr. Tapia Fierro cited the government's (DHS') previous admission, in a July 26, 2010, immigration court filing that:

> "in the 2001 immigration case, §212 charges could not lawfully be leveled against [Mr. Tapia Fierro] since at the time of such proceedings he was lawfully admitted to the United States. Due to such status, §237 charges, and only §237 charges, could lawfully be brought against" Mr. Tapia Fierro.

Mr. Tapia Fierro also cited the immigration court's prior ruling responding to this (DHS') argument in which the immigration court held that:

> "section 212 charges could not have been brought in the 2001 proceedings because the respondent was a lawful permanent resident and, therefore, 'admitted to the United States.'"

Thus, even though the government admitted that section 212 charges could not be brought in the 2001 removal proceeding, the government (DHS) filed section 212 charges against Mr. Tapia Fierro in that very proceeding when it was reopen by order of district court Judge Real.

On February 1, 2011, Mr. Tapia Fierro filed a supplemental letter brief, in immigration court, citing to additional and binding ninth circuit precedent in support of his contention that he is not subject to section 212 charges.

The ninth circuit precedent holds that an alien must be restored to his pre-deportation status if his deportation is unlawfully executed. *Salgado-Diaz v. Gonzales*, 395 F.3d 1158, 1164 (9th Cir. 2005). (Where an alien's deportation "was not voluntary or lawfully executed," the alien must be restored to "his original [] status, under conditions favorable to his qualifying for relief from deportation."); *Mendez v. INS*, 563 F.2d 956, 959 (9th Cir. 1977)(holding that a departure from the United States does not include "illegally executed departures effected by the government.").

On February 16, 2011, at a master hearing, the IJ issued an order terminating the 2010 removal proceeding, dismissing the 2001 ~~aggrava-~~

aggravating felony charge, and further concluding that Mr. Tapia Fierro is "not presently amenable to charges of inadmissibility [under section 212 of the INA]." A copy of the IJ's interim order is attached as Appendix F.

As a result, no pending charges remained against Mr. Tapia Fierro. The IJ granted the government (DHS' Office of chief counsel) two (2) weeks to file any section 237 of the INA charges against Tapia Fierro. Two weeks passed, but the government chose not to assert any new charges against Mr. Tapia Fierro.

On March 3, 2011, Mr. Tapia Fierro filed a motion for entry of final judgment and release from the federal government's (DHS') unlawful and unconstitutional custody.

On March 17, 2011, the IJ held a master calendar hearing, during which the government (DHS) stated that although it had been given the opportunity to pursue section 237 charges against Mr. Tapia Fierro, it had elected not to do so and instead intended to appeal the IJ's conclusion that Mr. Tapia Fierro is not amenable to charges of inadmissibility after a final judgment was entered in this case. A copy of the IJ's order terminating the (2001 and 2010) removal proceedings as "not sustained" is attached as Appendix E.

However, the government's (DHS' attorneys) "chain of e-mails" tends to corroborate [their] wrongful and unlawful acts, as those as "above the law" actions. See Chain of E-mails (2010-2011), Attachment-1. (To be provided upon Court's request).

The IJ then terminated the 2001 removal proceedings, finding that the government had failed to sustain any charges against Mr. Tapia Fierro. In his order the IJ reasoned that Mr. Tapia Fierro's LPR status "has been reinstated by operation of law" as a result of district court Judge Real's order reopening his 2001 removal proceedings. (*Id.* at Appendix E).

The IJ also correctly held that:

> "because Judge Real had concluded that Mr. Tapia Fierro had been 'erroneously deported in 2001,' it necessarily follows that he only is subject to a removal proceeding 'under the law that applied to him at the time his original hearing occurred.'"

Castillo-Perez v. INS, 212 F.3d 518, 528 (9th Cir. 2000); *Salgado-Diaz v. Gonzales*, 395 F.3d 1158 (9th Cir. 2005) (holding that a LPR who is unlawfully removed should be "returned to his original, prearrest status, under conditions favorable to his qualifying for relief from [removal]"); *Mendez v. INS*, 563 F.2d 956 (9th Cir. 1977)(holding that a departure from the United States does not include "illegally executed departures effected by the government"). A copy of the IJ's order terminating removal proceedings is attached as Appendix E, page 3-4.

Upon terminating the proceedings, the IJ held a bond hearing pursuant to *Matter of Joseph*, 22 I.&N. Dec. 799 (B.I.A. 1999), to determine whether Mr. Tapia Fierro is a flight risk or a danger to the community.

Because no charges of removal had been sustained against Mr. Tapia Fierro and the government (DHS) failed to present any evidence that Mr. Tapia Fierro is a flight risk or a danger to the community, the IJ granted bond to Mr. Tapia Fierro in the amount of $1,500.

Immediately after the IJ granted bond to Mr. Tapia Fierro, the government (DHS) obtained an automatic stay of the bond ruling under 8 C.F.R. § 3.19(i)(2), requiring that Mr. Tapia Fierro remain in immigration custody during the pendency of any DHS' appeal of that bond ruling.

The DHS Appeal of Bond Decision

On March 31, 2011, the government filed a notice of appeal to the Board of Immigration Appeals (hereinafter "BIA") with respect to the decision to grant bond.

During the government's appeal of the bond decision to the BIA, Mr. Tapia Fierro argued that the IJ's decision should be affirmed because (1) he was not an "arriving alien," and therefore the IJ had jurisdiction to hold the bond hearing; (2) he was not subject to section 236 of the INA because the IJ had properly conducted a *Matter of Joseph* hearing and because he is not ~~subject~~ in expedited removal proceedings; and (3) the government failed to show by clear and convincing evidence that Mr. Tapia Fierro is a flight risk or poses a danger to the community.

On June 20, 2011, the BIA vacated the IJ's order granting bond, ruling that the IJ had no jurisdiction to "entertain" a "request for change in custody status," and that Mr. Tapia Fierro was amenable to section 212 of the INA charges even though the district court had previously restored his admitted LPR status and Mr. Tapia Fierro had never asked the IJ for any "change in custody status."

By so ruling, the BIA failed to acknowledge that the district court, in California, had found Mr. Tapia Fierro's 2001 deportation to have been erroneous, thereby restoring him to his original LPR status during the 2001 proceedings, which was that of an admitted LPR. As an admitted LPR, Mr. Tapia Fierro could not, as a matter of law, be an arriving alien subject to inadmissibility charges under section 212 of the INA.

The BIA also failed to address Mr. Tapia Fierro's argument that his four-year-plus detention is lengthier than the ninth circuit has held is permissible under the U.S. Constitution. The BIA's decision not only failed to address the government's (DHS') non-compliance with 8 C.F.R. §1003.2(c)(1), which requires the DHS to present new evidence that was previously unavailable to it to warrant a remand, but also failed to acknowledge that the government (DHS) has waived any opportunity to file section 237 of the INA charges against Mr. Tapia Fierro, pursuant to 8 C.F.R. §1003.2(c)(1) when it choose not to assert those charges against [him] when given a two (2) week deadline to do so by the IJ.

During the pendency of the proceedings described above, Mr. Tapia Fierro was held in civil immigration custody and was afforded no means to challenge his [previous] unlawful detention.

2011 [second] Habeas Petition

Mr. Tapia Fierro was left with no choice other than to file another habeas petition in the United States district court for the central district of California. (district court No.: 11-cv-01190-R-SS).

In that petition and companion motion for *preliminary injunction*, Mr. Tapia Fierro argued that previous four-year-plus detention without process was both unconstitutional and unlawful.

On September 19, 2011, after briefing on the motion, the parties (DOJ's attorneys and Mr. Tapia Fierro's *pro bono* attorneys) appeared before the district court for a hearing on Mr. Tapia Fierro's motion for preliminary injunction.

At the hearing, the district court granted preliminary injunctive relief, finding that (1) Mr. Tapia Fierro's then four-year-plus detention was "prolonged."; (2) the government (DHS) failed to demonstrate, by clear and convincing evidence, that Mr. Tapia Fierro was a flight risk or danger to the community, and thus failed to justify his continued detention; (3) Mr. Tapia Fierro's prolonged detention was not authorized under federal immigration law; (4) Mr. Tapia Fierro's prolonged detention without adequate procedural protection was unconstitutional; (5) Mr. Tapia Fierro was likely to suffer irreparable harm in the absence of preliminary relief; (6) the balance of equities tipped sharply in Mr. Tapia Fierro's favor; and (7) the public interest was served by granting preliminary relief

On these grounds, the district court ordered reinstatement of the IJ's March 17, 2011 bond order and directed the government (DHS) to release Mr. Tapia Fierro immediately upon posting bond in the amount of $1,500.

The district court's oral ruling was memoralized in a written [proposed] order on September 26, 2011. <u>See</u> Appendix H. Tapia Fierro was released on 10/03/2011.

On November 18, 2011, Mr. Tapia Fierro moved for summary judgment and for conversion of the preliminary injunction to a permanent injunction.

On January 23, 2012, the district court, for the central district of California, granted the motions for conversion of the preliminary injunction to a permanent injunction and for summary judgment for the reasons stated on the record during the September 19, 2011 and January 9, 2012 hearings.

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REASONS FOR GRANTING THE PETITION

In this petition for a writ of certiorari, Mr. Tapia Fierro contends that the complaint (*Bivens action*) filed in the United States district court in Arizona, is an action for compensatory damages for the illegal incarceration, and that these claims should be cognizable under this Supreme Court's decision in *Heck v. Humphrey*, 512 U.S. 477, 487 (1994) because Tapia Fierro succeeded in obtaining two (2) federal habeas corpus petitions based on the unconstitutionality of removal proceedings, and for the unconstitutionality of a subsequent unlawful incarceration and detention, by the federal defendant(s), all in violation of Mr. Tapia Fierro's Fourth Amendment rights.

In sum, Tapia Fierro's 2001 removal order has had numerous collateral consequences for Mr. Tapia Fierro, which includes: (1) an unlawful conviction, where the "erroneous 2001 removal order" was used and served as a "predicate element" for the illegal reentry after deportation charge; (2) psychological damages before, during and after the wrongful incarceration and detention by the federal government; (3) charges of inadmissibility; (4) new [and currently pending] charges of deportability.

Had Mr. Tapia Fierro not been illegally deported, he would not have been convicted, in a trial-by-jury, for the attempted illegal reentry charge, the government (DHS) would not have been able to charge him with inadmissibility and deportability charges, nor would Mr. Tapia Fierro have suffered irreparable harm, great prejudice and irreversible psychological damage(s).

Because Mr. Tapia Fierro's illegal reentry conviction and the new inadmissibility and deportability charges stem from, and indeed would never have occurred but for, his unlawful removal from this country, these are serious collateral consequences that this Supreme Court should not ignore.

Mr. Tapia Fierro Suffered Great Prejudice As The Result Of The IJ's (2001) Erroneous Findings.

On the first and second habeas petitions, the government did not disputed the fact that Mr. Tapia Fierro has been prejudiced by the IJ's error. Nor can it.

As a result of the IJ's error here, Mr. Tapia Fierro was not only illegally deported, but [he] was wrongfully convicted for illegal reentry, where the 2001 removal order was used and served as a "predicate element" of the conviction, and spent ten (10) years, 2 months in the federal defendant's (DOJ and DHS) custody, most of the time serving the sentence for the illegal reentry conviction [Tapia Fierro] did not commit.

There can be no doubt that Mr. Tapia Fierro has suffered great prejudice and a "manifest injustice."

Mr. Tapia Fierro has long believed that the entrenched bureaucracy, particularly at the DOJ's immigration court and BIA, is out to thwart [me] and also points out to the DHS' attorney's attempts to remove me from the country based upon non-removable offenses, as an example.

Mr. Tapia Fierro submitted to the lower court, in the November 16, 2017 initial complaint, a redacted version of those (2010-2011) government's (DOJ and DHS) e-mails which clearly showed an adbidication of rights to plaintiff by the government's "above the law" actions and maneuverings, submitted as "corroborative documentary evidence" that supports and backs-up the federal government's illegal actions and maneuverings.

The defendant's (DOJ and DHS) emails are no greater than other "material evidence" that tends to prove [their] misconduct and wrongful acts.

Question: In what way did [petitioner] impaired the DOJ and DHS' judgment when they were responding to each other e-mails?
Answer: There was absolutely "no impairment on judgment."

Mr. Tapia Fierro expects that these ["uncovered"] actions and maneuverings, by the federal government, will bring light to the type of behavior — conduct that is been in those departments regarding the rights of LPRs of the United States, such as petitioner.

Mr. Tapia Fierro have had suffered and continues to suffer a concrete and particularized injury as a result of [past] "premeditated misconduct" and wrongfulness by the federal government's defendants in and with respect to irreparable harm, psychological damage(s), and a substantial and irreversible harm to petitioner, Mr. Tapia Fierro.

In Mr. Tapia Fierro's case, the statute of limitations (A.R.S. §12-542) should be tolled because and due to the government's misconduct was not waived and because it was raised in *first* and *second* habeas (28 U.S.C. §2241) proceedings in the U.S. district court for the central district of California and a "clear-cut 'manifest injustice'" result[ed] from it.

* * *

On February 19, 2019, the ninth circuit court of appeal *affirmed* the district court's dismissal, stating:

> "The district court properly dismissed Tapia Fierro's action as time-barred because Tapia Fierro filed this action more than two years after his claim accrued."

(9th Cir. "Memorandum" of February 19, 2019). See Appendix A.

On May 29, 2019, the ninth circuit closed this case denying a petition for panel rehearing. See Appendix B.

Mr. Tapia Fierro contends, however, that even though the ninth circuit court of appeals' precedent holds that *Bivens* action's claims accrues when plaintiff knows, or should know, of the injury which is the basis of the action., Mr. Tapia Fierro urges this Supreme Court to apply the "federal statute of limitations" to this complaint because the claim[ed] injury is not the basis of the action;

Mr. Tapia Fierro's "main basis" for the [filed] complaint against the federal government's defendants are:

(1) having been unlawfully removed;

(2) having been unlawfully convicted and sentenced for "illegally" returning;

(3) having spent more than five (5) years incarcerated for a conviction [Tapia Fierro] did not commit; and

(4) having been detained for more than four (4) years in immigration custody.

Mr. Tapia Fierro, respectfully alleges in this writ of certiorari petition that it does not matter if Tapia Fierro filed a *pro se* complaint outside of the forum state (of Arizona) statute of limitations. And if this Supreme Court determines that it does, Mr. Tapia Fierro respectfully challenges the application of the forum state (of Arizona) statute of limitations, found in the A.R.S. §12-542, to a complaint (*Bivens* action) against federal defendants.

Furthermore, Mr. Tapia Fierro respectfully alleges that what matters here are the following basis of the complaint, such as:

(A) that the "main basis" in the *Bivens* action is to have been convicted of a crime [I] did not commit;

(B) that Tapia Fierro's complaint for damages is a complaint that involves federal agencies (the U.S. DOJ and U.S. DHS), not [any] state of Arizona agencies;

(C) that the forum federal statute of limitations should be the applicable statute of limitations;

(D) that the federal government's induced actions were a substantial factor of plaintiff's past and current irreparable harm, and;

(E) that plaintiff would stick to and within the "four corners" of his, under penalty of perjury, complaint as well as the addendum to complaint filed in 11/16/2017 and 12/14/2017, respectively.

These are the reasons (and basis) for granting the petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jose Cristapia Pierro

Date: October 4, 2019