

DEC 31 2019

No. 19-6540

OFFICE OF THE CLERK

In the Supreme Court of the United States

HOWARD GRANT, PETITIONER

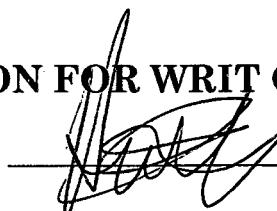
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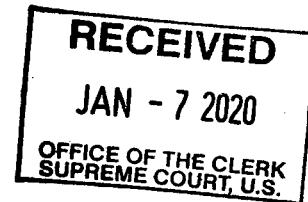
UNITED STATES OF AMERICA, RESPONDENT

REQUEST FOR REHEARING

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit*

PETITION FOR WRIT OF CERTIORARI


HOWARD GRANT, PRO SE
P.O. BOX 300244
HOUSTON, TX 77330
(713) 614-5699



I.

QUESTION:

In a misidentification case involving a Texas professional association, which is a separate legal entity under Texas law, wherein the real party at interest is not served, nor amended the petition to the wrong party, does this fact void the judgment and require a judicial dismissal?

REQUEST FOR REHEARING

Howard Grant, respectfully petitions for Rehearing to review the
Judgment of the United States Court of Appeals for the Fifth Circuit

DISTRICT COURT

NOT RELEVANT IN THE CONTEXT OF THIS REHEARING.

RELEVANT STATUTORY PROVISIONS

: TRCP 124; TBOC ARTICLES 1-7; FRCP 17(a)(1)

CONSTITUTIONAL VIOLATION

FIFTH AMENDMENT: No person shall be deprived of life, liberty, or property without
due process of law; nor shall any person be subject to the same offense twice

...
SIXTH AMENDMENT: 1) Effective Assistance of Counsel. 2) Right to be heard; Right to
a jury of their peers. **EIGHT AMENDMENT:** Cruel and unusual punishment. **ARTICLE**
III SECTION II OF THE U.S. CONSTITUTION

RELEVANT CIVIL LAWS

: The BUSINESS ORGANIZATION CODE of TEXAS, Jan. 1, 2006. FRCP 17 (a)(1);
RULE 124 of the TRCP. TBOC SECTION 4

JURISDICTION:

Jurisdiction is had through USC 1294(1); Rehearing, Rule 44.

This rehearing was requested after a summary denial on December 9, 2019.

STANDARD OF REVIEW

The rehearing mostly involves the substantive laws of the state of Texas, particularly, the application of the Texas Business Organization Code, Articles 1-7 and Section 5 of Title 1., January 1, 2006, and this requires a de novo standard of review.

ARGUMENT

While it is true that the party, Howard Grant, was served and arrested, forthwith, based on a Grand Jury indictment providing Probable Cause, notwithstanding the fact that the *real party in interest was neither served nor presented to the grand or Petit Juries.* (The indictment previously submitted in this case is hereby incorporated by reference). *A certificate of registration or Franchise Tax Statement, of the real party in interest was on file at the Texas Secretary of State's Office.* Once an application is filed and approved with an effective date, these certificates stay alive in perpetuity, though a franchise tax is required yearly. Regardless, the government did not request leave of court to request an amendment under FRCP 15©. FBI investigators apparently failed to do its due diligence. *The law does not impose a legal duty on the real party in interest to aid in that investigation to see whether or not a certificate exists and its status,*

MATTHEW TRUCKING CO. V. SMITH, 682 S.W.2d 239 (Tex. 1984). The defendant was convicted on June 3, 2010 ; the effective date of the PA was November 13, 2008,

This improper service would be a *misidentification* and not simply a *mismomer* because of the close identity of the parties as well as their separate entities. *However, the real party in interest, Howard Grant, M.D. PA, was a separate and distinct legal entity who was never served, not Howard Grant, M.D., contrary to FRCP 17(a)(1).* which mandates the service on the *real party in interest* as well as Texas law, thereby creating a *standing issue* for the government. Failure to effect this service requires an amendment to correct before the five-year conspiracy statute has run, as there is limited tolling allowed in a misidentification, in most instances, as opposed to a mismomer case wherein virtually any party can be legally served and an automatic tolling period ensues upon request of the plaintiff and accomplishment of service before the statute runs, FLOUR BLUFF

INDEPENDENT SCHOOL DISTRICT V. MARGARET BASS, SUPREME COURT OF TEXAS, NO. 01-1106 (2004), whereas the statute can rarely be tolled in a misidentification case and usually occurs when a plaintiff serves an incorrect entity, i.e. one with zero interest in the suit, CHILKEWITZ V. HYSON, 22 S.W.3d 825, 828 (Tex. 1999); however, it could have been tolled in this case upon proper application of an amendment to correct.

There are three limited exceptions that are relevant here, but

there was no request by the government for an amendment to effect the necessary change:

1) There are two separate but related entities using the same name; 2) the correct entity

had notice of the suit; and 3) The correct entity was neither misled or prejudiced by the mistake.

Because the government served the wrong party and who did not harmed the government, Howard Grant, this error naturally invoked a standing issue (see Lujan v. Defenders of Wildlife at p559) and compelled the application of Article III, Section II of the constitution of the United Sates, case or controversy, dealing with jurisdiction. There was, then, a standing issue. a component of *subject-matter jurisdiction*.

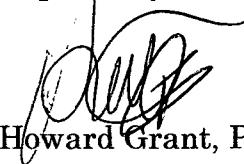
In addition, TBOC, Section 5:058, requires the strict observation of the designation "PA," in one of three forms, behind the doctor's name (no comma), The Texas Professional Association is defined in Chapter 21.223(a), Section 1961 (3) defines "person" as an individual, not an entity. The separate legal personality concept was first recognized in case law in SOLOMAN V. A SOLOMON & CO. LTD, DECIDED IN 1897. As late as January 4, 2019, Justice Masley of the New York County Commercial Division issued a decision in Latin Mkts. Brazil, LLC V. Salsinha, 2019 NY Slip Op.30201 (U), allowing a plaintiff to correct a caption when the plaintiff mistakenly sued under the incorrect name, explaining, defendant objects to the original plaintiff, Market Group, Inc. as an improper plaintiff. However, Market Group, Inc. is not a party to the employment agreement, and thus, has no standing to sue in this action. Defendant objects to Market Groups' attempt to cure its lack of standing by changing Marker Groups, Inc.in the original complaint to Latin Markets Brazil, LLC D/B/A Market Groups in the amended complaint (FRCP 15(c)).

Also United States v. Computer Science Corp., 511 F. Supp. 1125 (E.D. Va. 1981) wherein racketeering could not be established because the Infonet Division was not a *separate legal entity* from CSC (Computer Service Corp.); therefore, was part of CSC and could not advance or benefit the enterprise on its own as alleged in the indictment thereby undermining the RICO counts. Consequently, many criminal counts were withdrawn.

CONCLUSION

I pray that the evidence shown on this piece will compel the court to act according to it as it shows a grave legal, crippling and unconstitutional error by the prosecution in not doing their due diligence in establishing *the real party in interest* AND subjecting him to process and trial in which the court has no subject- matter jurisdiction in its absence, making a jurisdictional dismissal mandatory, for it is hornbook law that a court must have jurisdiction of the subject matter as well as the person in order to acquire jurisdiction, nor act in a way that violates due process.

Respectfully submitted,



Howard Grant, Pro se

CERTIFICATION

According to the dictates of Supreme Court Rule 44, which limits this rehearing to new and important legal grounds, I hereby certify that this request for rehearing is done in good faith and not for delay.

Respectfully submitted,



Howard Grant, Pro se

**Additional material
from this filing is
available in the
Clerk's Office.**