

19-7008

No. \_\_\_\_\_

Supreme Court, U.S.  
FILED

NOV 26 2019

OFFICE OF THE CLERK

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

ABRAHAM HERNANDEZ-ZAVALA — PETITIONER  
(Your Name)

VS.

UNITED STATES OF AMERICA — 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

ABRAHAM HERNANDEZ-ZAVALA, PRO SE  
(Your Name)

FCI MCDOWELL, P.O. BOX 1009  
(Address)

WELCH, WEST VIRGINIA 24801  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

**ORIGINAL**

### QUESTION(S) PRESENTED

WHETHER DEPORTATION AUTHOMATICALLY ENDS AN  
IMMIGRANTS IMPOSED SUPERVISED RELEASE?

IF COURT WAIVES COURT SUPERVISION UPON DEPORATION  
IS ALIEN "IN CUSTODY" AND PRECLUDED THE USE OF THE  
WRIT OF ERROR CORAM NOBIS TO CHALLENGE CRIMINAL  
CONVICTION?

## 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:

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION .....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION .....	

## INDEX TO APPENDICES

APPENDIX A	Decision of the United States Court of Appeals
APPENDIX B	Decision of the United States District Court
APPENDIX C	Order of the United States Court of Appeals Denying Rehearing
APPENDIX D	Criminal Judgment
APPENDIX E	United States Opposition to Coram Nobis Petition
APPENDIX F	Statutory Provisions

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

DeLong v. Hennessey,	6
Jones v. Cunningham,	6
Parker v. Ellis,	6
Setser v. United States,	7
United States v. Akinyemi,	7
United States v. Brown,	7
United States v. Cuero-Flores,	7
United States v. Ramirez-Sanchez,	7

### STATUTES AND RULES

8 U.S.C. § 1252(h)	2
8 U.S.C. § 1326(a)	4
18 U.S.C. § 3583	4, 7
28 U.S.C. § 1651	4
28 U.S.C. § 2255	5, 6

### OTHER

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 May 21, 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: August 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 \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

PLEASE SEE APPENDIX F



## STATEMENT OF THE CASE

In general a Court in imposing a federal sentence may include as part of that sentence a requirement that a criminal defendant be placed on a term of supervised release after imprisonment. 18 U.S.C. §3583(a). And, if alien defendant is subject to deportation, the Court may provide that as a condition of supervised release that such person be deported and remain outside the United States, and may order that the alien be delivered to duly authorized immigration official for such deportation. 18 U.S.C. §3583(d). Petitioner Abraham Hernandez-Zavala, Mexican born, does not challenge the imposition of his supervised release. However, he argues that under the Court's discretion mention above, a Court ordering supervision waived upon deportation must mean an alien is not "in custody" and precluded from seeking relief under the common law writ of error coram nobis, 28 U.S.C. §1651(a), because he no longer face any restrictions once deported.

Mr. Hernandez-Zavala has been in the United States since age eleven. On February 23, 2012, he was sentenced in the United States District Court for the Southern District of California to 48-months and two (2) years supervised release for an attempted entry into the United States after being deported, in violation of 8 U.S.C. §1326. As part of his sentencing judgment, the Court ordered that if Mr. Hernandez-Zavala is deported, his supervision is waived upon the deportation. Appendix D. Mr. Hernandez-Zavala's sentence ended in March 2015. In April 2015 his supervised release begun, and in May of 2015 he was deported to Mexico. Approximately four months after the removal, Mr. Hernandez-Zavala was again arrested by border authorities in Texas. Mr. Hernandez-Zavala pled guilty to a new violation of §1326 offense, and the United States District Court for the Southern

District of Texas sentenced him to 83-months. In addition to the 83-months, based on a violation of the conditions of Southern District Court in California supervision, Mr. Hernandez-Zavala was sentenced to 18-months in Southern District of Texas. Appendix E at 10. Mr. Hernandez-Zavala filed a petition for writ of coram nobis relief to challenge his previous attempted entry conviction in the United States District Court for the Southern District of California and on grounds his presentence report sustained a false accusation that he committed a prior state conviction of a violent sexual assault. Appendix E

On February 15, 2018, the Court denied his coram nobis petition, stating Mr. Hernandez-Zavala was currently in custody for violating his court supervision and must use a more usual post-conviction remedy for federal prisoners, 28 U.S.C. §2255. Appendix B at 4.

On May 21, 2019, the United States Court of Appeals for the Ninth Circuit affirmed that denial of his coram nobis petition. Appendix A.

On August 29, 2019, the Ninth Circuit denied Mr. Hernandez-Zavala's petition for rehearing. Appendix C. This petition ensued.

## REASONS FOR GRANTING THE PETITION

Historically, the federal courts required the petitioner to be presently confined at the time the habeas corpus petition was adjudicated to be considered "in custody" for purposes of federal habeas corpus review. See For Example, Parker v. Ellis, 362 U.S. 574 (1960) (Supreme Court dismissed petition for lack of jurisdiction because the matter became moot once the petitioner completed his sentence and was released from prison); 28 U.S.C. § 2255(a). The definition of "in custody" has since expanded. It is no longer a requirement that petitioner be physically incarcerated at the time his petition is adjudicated, or even at the time he files his petition. For instance, a district court may not dismiss a petition for writ of habeas as moot based on the fact that a petitioner has been released on parole. Jones v. Cunningham, 371 U.S. 236, 243 (1963); see Delong v. Hennessey, 912 F.2d 1144, 1146 (9th Cir. 1990) ("A petitioner who files a habeas petition after he has fully served his sentence and who is not subject to court supervision is not 'in custody' for purposes of this court's subject matter jurisdiction and his petition is therefore properly denied".) The Supreme Court in Jones v. Cunningham, held that a prisoner freed on parole was in the custody of his state parole board for purposes of habeas corpus. 371 U.S. 263; "[W]hile petitioner's parole releases him from immediate physical imprisonment, it imposes conditions which significantly confine and restrain his freedom; this is enough to keep him in the 'custody' of the members of the Virginia Parole Board within the meaning of habeas corpus statute...."

This expansion is now being wrongly interpreted by the United States Court of Appeals. Federal Court has wanted as far as to hold aliens who are deported and imposed court supervision (restraints) ordered waived upon deportation,

aliens are still in custody. The expansion may come from appellate opinions holding that a plain reading of 18 U.S.C. §3583(d) and 8 U.S.C. §1252(h) indicated that both Sections assumed that deportation was consistent with the continuation of supervised release and where no statutory authority to the contrary, the courts could not conclude that an alien's supervised release sentence terminated upon deportation. United States v. Williams, 369 F.3d 250,253 (3d Cir.2004); United States v. Ramirez-Sanchez, 338 F.3d 977(9th Cir.2002); United States v. Cuero-Flores, 276 F.3d 113,117 (2d Cir.2002); United States v. Akinyemi, 108 F.3d 777,977 (7th Cir.1997); United States v. Brown, 54 F.3d 234, 237-238 (5th Cir.1995)

But all of these cases were without the benefit of Setser v. United States, 566 U.S. 231 (2012), which holds the district court's disposition should prevail. See, in example, Akinyemi, stating, "more important than the implications of these sections is the fact no...court order...provid[ing] for the termination of the supervised period." 108 F.3d 777 (emphasis added).

This Honorable Court is ask to request the lower courts to take another look before doing away with an alien's right to correct the record.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Abraham Hernandez-Zavala, pro se

November 26 2019