

No. _____

19-8761

IN THE

SUPREME COURT OF THE UNITED STATES

OF America

Nivaldo Riascos

(Your Name)

PETITIONER

ORIGINAL

vs.

(FCI) McDowell: Warden

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED

MAY 22 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Fourth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Nivaldo Riascos

(Your Name)

P.O. Box 1069

(Address)

Welch, W. Va. 24801

(City, State, Zip Code)

N/A

(Phone Number)

RECEIVED

JUN - 3 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

DOES the COURT OF APPEALS abuse its
DISCRETION in failing to issue a MANDAMUS
ORDER to the DISTRICT COURT to hear PETITIONER
2241 that has been PENDING for SEVEN MONTHS,
ON the basis that the DISTRICT COURT has allowed
PETITIONER DUE PROCESS to object to the denial of
his 2241 PENDING?

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:

RELATED CASES

Criminal Case Number:

Civil Case Number: 1A-cv-00254

Appeal Number: 19-2126

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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 to the petition and is A

[] 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[] is unpublished.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 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[] is unpublished.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[] is unpublished.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[] is unpublished.

1.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 12, 2020.

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: _____, 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. § 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: Art 1, Section 8, Clause 10

28 U.S.C. 2243

21 U.S.C. 841, 846

21 U.S.C. 952(a), 960, 963

STATEMENT OF THE CASE

ON OR AROUND OCTOBER 2019 PETITIONER FILED A 2241 WITH THE FOURTH CIRCUIT DISTRICT COURT. ARGUING THAT HE'S BEING INCARCERATED IN VIOLATION OF THE UNITED STATES CONSTITUTION PURSUANT TO ART. I, SECTION 8, CLAUSE 10 INTERNATIONAL LAW, AND THE FOURTH CIRCUIT COURT OF APPEALS IS FAILING TO ISSUE A MANDAMUS TO COMPEL THE DISTRICT COURT TO RULE AFTER A SEVEN MONTH DELAY BY THE DISTRICT COURT IN RULING ON THE 2241 PETITION.

REASONS FOR GRANTING THE PETITION

At the outset, for a mandamus to issue, there must be a clear right to the relief sought, a plainly defined and peremptory duty on the part of respondent to do the action in question, and no other adequate remedy available, and that the right to the writ is clear and indisputable. *Gant v. F.B.I.*, 922 F. Supp. 846 (4th Cir. 1998). Petitioner assert that he has presented a clear right to relief sought, by showing in the four corners of the 2241 writ of habeas corpus petition, that he's being incarcerated in violation of his constitutional rights pursuant to Art. I, Section 8, Clause 10 of the customary international laws of the United States Constitution. And the district court has a plainly defined and peremptory duty to render a decision pursuant to 28 U.S.C. 2243. Issuance of writ, return, hearing, decision not more than five day's after the return unless for good cause. Further, petitioner can show that the writ is clear and indisputable, by the United States incarcerating petitioner in violation of the Constitution in applying 21 U.S.C. 841, 846 and 21 U.S.C. 952(a), 960, 963 extraterritorial over in Columbia in violation of Art. I, Section 8, Clause 10 of the United States Constitution. Additionally, the failure of the district court to comply with 28 U.S.C. 2243 within five day's after the return, leaves petitioner with no other adequate remedy available to seek relief. The four prerequisite of *Gant v. F.B.I.*, 922 F. Supp. 846 (4th Cir. 1998) were met, and the court of appeals failure to issue the mandamus on the basis that petitioner were provided due process to respond, will eviscerate the function of the Great Writ. *Fay v. Noia*, 372 U.S. 391 (1963).

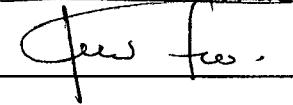
PETITIONER PROCLAIM IF A SEVEN MONTH DELAY IN HEARING A WRIT (ABSENT GOOD REASON) WHERE PURSUANT TO 28 U.S.C. 2243 REQUIRES A HEARING NO MORE THAN FIVE DAY'S AFTER THE RETURN, THE FUNCTION OF THE WRIT OF HABEAS CORPUS WILL BE USELESS. OTHER COURTS HAVE REACTED SIMILARLY TO INORDINATE DELAYS IN DECIDING PETITIONS FOR WRIT OF HABEAS CORPUS. THE NINTH CIRCUIT, IN ANALYZING 28 U.S.C. 2243, HAS HELD:

THE APPLICATION FOR THE WRIT USURPS THE ATTENTION AND DISPLACES THE CALENDAR OF THE JUDGE OR JUSTICE WHO ENTERTAINS IT AND RECEIVES PROMPT ACTION FROM HIM WITHIN THE FOUR CORNERS OF THE APPLICATION. THE ORDINARY RULES OF CIVIL PROCEDURE ARE NOT INTENDED TO APPLY THERETO, AT LEAST IN THE INITIAL EMERGENCY ATTENTION GIVEN AS PRESCRIBED BY STATUTE TO THE APPLICATION OF THE WRIT. RUBY V UNITED STATES, 341 F.2D 585, 587 (9TH CIR 1965), CERT DENIED, 384 U.S. 949, 86 S.C.T. 1841, 16 L.ED. 2D 689 (1966). SEE ALSO VAN BUSKIRK V WILKINSON, 216 F.2D 735, 737-38 (9TH CIR 1954) ("HABEAS CORPUS" IS A SPEEDY REMEDY, ENTITLED BY STATUTE TO SPECIAL, PREFERENTIAL CONSIDERATION TO INSURE EXPEDITIOUS HEARING AND DETERMINATION.); MECKELIAN V YOUNG, 421 F.2D 690, 691 (6TH CIR 1970) (SAME); GLYNN V DONNELLY, 470 F.2D 95, 99 (1ST CIR 1972) (28 U.S.C. 2243 MANIFESTS POLICY THAT HABEAS PETITIONS ARE TO BE HEARD PROMPTLY). UNDER THE CIRCUMSTANCES OF THIS CASE, PETITIONER REQUEST THAT A WRIT OF CERTIORARI ISSUE THAT THE DISTRICT COURT HEAR THE 2241 PENDING WITH THE COURT.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Jevs Fes.

Date: May 20 - 2020