

IN THE SUPREME COURT
OF THE UNITED STATES

No.

20-5039

ANTWOYN TERRELL SPENCER - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

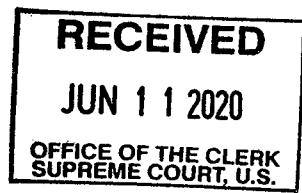
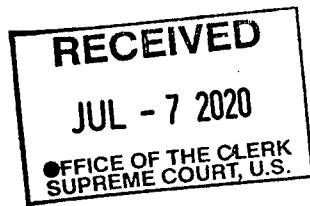
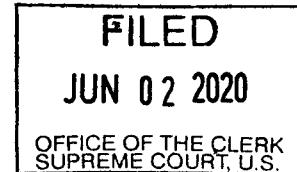
ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL



QUESTIONS PRESENTED

- 1. Whether the Eighth Circuit Court of Appeals Erred Denying Petitioner a Certificate of Appealability?**
- 2. Whether Petitioner is Deprived of his Personal Liberty without Due Process of Law by being held to answer for Infamous Crimes not on a Presentment and Indictment of a Grand Jury in Violation of the Fifth Amendment of the Constitution and Laws of the United States?**

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

RELATED CASES

Antwoyn Terrell Spencer v. United States, 20-mc-29-MJD, U.S. District Court for the District of Minnesota. Judgment entered 3/24/20.

Antwoyn Terrell Spencer v. United States, 20-1913, United States Court of Appeals for the Eighth Circuit. Judgment entered 5/15/20.

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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

[x] For cases from federal court:

The opinion of the United States District Court appears at Appendix

A to the petition and is

[x] published.

The opinion of the United States Court of Appeals appears at Appendix

B to the petition and is

[x] published.

(1)

JURISDICTION

For cases from federal court:

The date on which the United States Court of Appeals decided my case was May 15, 2020.

No petition for rehearing was filed in petitioner's case.

The jurisdiction of this court is invoked under 28 U.S.C.S 1245(1).

Judgment was entered May 15, 2020.

(2)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment: No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury; Nor be deprived of life, liberty, or property without due process of law.

28 U.S.C.S. 2241

(3)

STATEMENT OF THE CASE

1. On March 23, 2020, Petitioner filed a petition for a writ of Habeas Corpus Pursuant to 28 U.S.C.S. 2241.
2. On March 24, 2020, the petition was dismissed and the habeas proceedings ordered closed.
3. Petitioner filed a timely Notice of Appeal and Request for a Certificate of Appealability from the Eighth Circuit Court of Appeals.
4. On May 15, 2020, Petitioner's request was denied.
5. The instant petition follows.

(4)

REASONS FOR GRANTING THE PETITION

The Court of Appeals Erred Denying Petitioner a "COA" (Certificate of Appealability) Because Petitioner Made a Substantial Showing of the Denial of a Constitutional Right in Accordance with the Standards in *Barefoot v. Estelle*, 463 U.S. 880, 892-893 (1983)!

Petitioner initiated habeas corpus proceedings on the grounds that petitioner is deprived of his right not to be held to answer for infamous crimes not on a presentment and indictment of a Grand Jury, against law, in violation of the Fifth Amendment of the United States Constitution, *Ex parte Bain*, 121 U.S. 1, 7 (1887), *Ex parte Wilson*, 114 U.S. 417 (1885), and the Federal Rules of Criminal Procedure, Preliminary Proceedings.

The District Court dismissing petitioner's habeas petition concluded that the court was without jurisdiction because petitioner's request for habeas relief was a second or successive petition and petitioner had not obtained pre-authorization from the Eighth Circuit Court of appeals. And the Court of Appeals denied petitioner a certificate of appealability based on the district court's conclusion.

(5)

In *Barefoot v. Estelle*, 463 U.S. 880, 892-892 (1983), this Court delineated the standards for issuance of a certificate of appealability. This court agreed with the Courts of Appeals which ruled that "a certificate of appealability requires petitioners to make a substantial showing of the denial of a constitutional right. And also quoted with approval other cases, which explained that in order to make this showing a petitioner who has been denied relief in a district court "must demonstrate that the issues are debatable among jurist of reason; that a court could resolve the issues in a different manner; or that the questions are adequate to deserve encouragement to proceed further." 463 U.S., at 893, n.4.

Here, the court of appeals should've issued a certificate of appealability because:

Under 28 U.S.C.S. 2241, district courts has jurisdiction to issue writs of habeas corpus in "all cases where any person may be restrained of his or her liberty in violation of the Constitution, or of any treaty or law of the United States," and providing for inquiry into the facts of detention. See *United States v Hayman*, 342 US 205, 96 L Ed 232 (1952).

"a person in custody pursuant to the final judgment of a court of criminal jurisdiction may have a judicial inquiry in a court of the United States into the very truth and substance of the causes of his detention, although it may become necessary to look behind and beyond the record of his conviction to a sufficient extent to test the jurisdiction of the court to proceed to judgment against him." *Hayman* at 342 US 211.

(6)

Furthermore, "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 1827, 1838 (1973). See *Fay v. Noia*, 372 U.S. 391, 399 n 5 (1963) ("habeas corpus ad subjiciendum - the writ used to inquire into illegal detention with a view to an order releasing the petitioner."). Historically, habeas corpus is the specific instrument when challenging illegal detention. See *Preiser v. Rodriguez*, *supra* at 411 US 487. Also see Bushell's case, *Vaughan* 135, 136, 124 Eng Rep 1006, 1007, "the writ of habeas corpus is now the most usual remedy by which a man is restored to his liberty if he has been against law deprived of it."

Because the district court conclusion that it lacks jurisdiction over petitioner's habeas petition reasoning that it's a second or successive 2255 is incorrect the Court of Appeals erred denying petitioner a certificate of appealability.

CONCLUSION

Petitioner respectfully request that this court in aid of its appellate jurisdiction issue the writ of habeas corpus requested to inquire into the truth and substance of petitioner's detention or in the alternative remand this case to the Court of Appeals with instructions to issue petitioner a certificate of appealability.

Respectfully Submitted,

/s/ ANTWOYN TERRELL SPENCER (Date: 5/30/20)

(7)