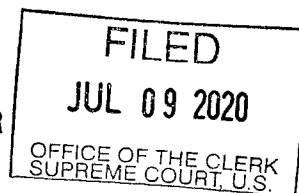


No. 20-5126

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Roger Charles Day, Jr. — PETITIONER
(Your Name)



vs.

Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Roger Charles Day, Jr.
(Your Name) 12388-050

USP Terre Haute PO Box 33
(Address)

Terre Haute IN 47808
(City, State, Zip Code)

h/a
(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether Title 28 U.S.C. § 2241 covers challenges to the validity of one's conviction and sentence or only grounds concerning the execution of a sentence but not the validity of a conviction?
- 2) Whether Title 18 U.S.C. § 3192 imparts specific rights and protections to persons to whom it applies that are directly civilly actionable in United States Courts?

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

n/a

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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☒ is unpublished.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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 March 17, 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: 4/13/2020, 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

Title 18 USC § 3192 (entirely)

Title 28 USC § 2241

Title 28 USC § 2254

Title 28 USC § 2255

Title 42 USC § 1983

The Petitioner because of the COVID-19 pandemic lock down operation here at USP Terre Haute is unable to provision the text of the provisions cited above.

Appx. F

STATEMENT OF THE CASE

BACKGROUND.

On 4/29/2019 the undersigned Appellant filed a civil complaint pursuant UNIQUELY to Title 18 USC Section 3192 seeking from the lower court the specific rights and protections that this Act of Congress specifically bestows upon him.

This civil action was immediately docketed as a "Petition for Writ of Habeas Corpus" by the lower court. see ECF 1.

May 13, 2019, the lower court granted procession in forma pauperis. The lower court refused to allow the case to proceed according to 18 USC Section 3192 by ordering the Appellant to essentially "re-file" the Section 3192 complaint as a Title 28 USC Section 2241 petition for Writ of Habeas Corpus. The lower court also ordered it would "treat" the properly identified Section 3192 Complaint "as a petition for habeas corpus pursuant to 28 USC Section 2241." ECF 5. (The lower court also ordered the clerk to send the Appellant a Title 28 USC 2254 form and a "complaint form", EFC 7-1 & 12-1 respectively).

May 28, 2019, the lower court docketed a timely motion for reconsideration as to ECF. 5, specifically the "directing further proceedings". In this motion the undersigned Appellant, pursuant to Title 28 USC Section 1331, posed specific federal questions to the lower court. ECF 6.

These questions are:

- a) Whether Title 18 USC Section 3192 as a codified act of Congress and therefore Supreme Law of the Land, (Art. VI, cl 2 US Const.) creates a specific civil cause of action directly under said statute for those person/s to whom this statute applies and for violation thereof in United States Courts?
- b) Whether Title 18 USC Section 3192 imparts specific rights and protections to person/s to whom it applies which are directly civilly actionable in United States Courts?
- c) Whether this Court is bound by Title 18 USC Section 3192?
- d) Whether this Court has jurisdiction to deny a person the right to direct civil action pursuant to Title 18 USC Section 3192 when said person is under the protection of said statute?

The lower court never addressed any of these questions. Instead, on 6/6/2019, the lower court characterized the instant 3192 complaint as a "civil rights action", (somehow comparing Section 3192 to a Title 42 USC Section 1983 civil rights complaint). Though this thread of illogic the lower court, mapping 3192 over 1983, denied the undersigned Appellant's right to proceed under Section 3192 jurisdiction. ECF 7.

August 13, 2019, the lower court issued a final judgment never having allowed the Appellant to seek the rights and protection Section 3192 specifically allows.

The Petitioner appealed to the Seventh Circuit who never decided whether 18 USC § 3192 provides privately enforceable rights that are actionable in U.S. Courts, instead cited a Seventh Circuit 2007 case Collins v Holinka, 510 F.3d 666, 667 stating § 2241 relief is available because it is designed for federal prisoners who challenge "the validity of one's conviction and sentence". This case and citation are diametrically opposed

to The Seventh Circuit's 2008 decision in
Idmond v Tett, 272 Fed.Appx. 525, which held
"A motion seeking relief on grounds concerning the
execution of a sentence but NOT THE VALIDITY
OF A CONVICTION FALLS UNDER 28 U.S.C.S. 2241"
Id at 526 (Appx D)

The Seventh Circuit is having it both ways
when they so desire. When convenient they
use either one of these two polar opposite
decisions to rule as they feel not as the
law provides. One day §2241 is applicable
to challenges to one's conviction and sentence
the next no. This violates Rule 10(a) calling
for the use of this Court's supervisory power.

REASONS FOR GRANTING THE PETITION

The Seventh Circuit decision in the Petitioners case

The Panel, citing the 2007 decision, *Collins v Holinka*, 510 F.3d 666, 667 (7th Cir. Dec. 6, 2007) held Section "[2]241 covers challenges to the validity of one's conviction and sentence." (see: Order of March 17, 2020 at p. 4) (Appx. herewith, *A*).

This is diametrically opposed to the 2008 decision of this Court in *Ihmoud v Jett*, 272 Fed. Appx. 525 which held: "A motion seeking relief on grounds concerning the execution of a sentence but NOT THE VALIDITY OF A CONVICTION FALLS UNDER 28 U.S.C.S. 2241." *Id.*, at 526. (Appx. *D*). [emphasis in caps]

The only way the Panel could have ruled as it did, that is to refuse to decide "whether Title 18 USC Section 3192 creates a private right of action" and affirm the lower court's order (Order, Appx. pp. 1-4), was to decide contrary to the STARE DECISIS of *Ihmoud v Jett*, supra. The Panel accomplished this by using *Collins v Holinka*, supra. as its "authority". [FN]

The instant Order of the Panel is also contrary to the lower court prescribed "PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. Section 2241" form which states at 2.: "Who Should Not Use This Form. You should not use this form if * you are challenging the validity of a federal judgment of conviction and sentence (these challenges are generally raised in a motion under 28 U.S.C. Section 2255);" (Appx. *E*).

Now there are TWO distinct contrary legal realities within the United States Court of Appeals for the Seventh Circuit as to Title 28 USC Section 2241 and WHETHER this habeas corpus statute can be used to challenge "the validity of ones conviction and sentence".

The CORRECT answer is either yes or no, IT CAN NOT BE BOTH.

I further call to this Court's attention the number of reported cases from the District Courts within this Circuit that have used *Ihmoud v Jett*, supra. as controlling jurisprudential authority since it was decided in April of 2008, including *Fulks v Krueger*, no. 2:15-cv-33-JRS-MJD (Sept 20, 2019 S.D. Ind.) and *US v Edwards*, no. 95CR508-5 (June 4, 2014 N.D. Ill.) and at least 10 others decisions.

The undersigned Appellant hereby petitions this Court to resolve this obvious conflict as it is THEREFORE NECESSARY to secure and maintain uniformity of the Court's decisions and the application of the law.

FN: It is painfully ironic that the Panel invoked *Collins v Holinka*, supra. This decision forcefully and repeatedly embodies the fact that, "Persons who initiate independent litigation are entitled to have it resolved under grant of authority that has been invoked." Surely this "right" applies to the undersigned Appellant and his litigation initiated under Title 18 USC Section 3192. (Appx. pp. 10-11).

As to the Question regarding 18 USC § 3192

I. THE QUESTION NOW PRESENTED TO THIS COURT: WHETHER TITLE 18 SECTION 3192 CREATES A PRIVATELY ENFORCEABLE RIGHT?

The undersigned Appellant is a person delivered by a foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any offense which he was duly accused. Therefore, Title 18 USC Section 3192 "Protection of accused" with all its rights and obligations is applicable to the undersigned. ECF 1..

These Section 3192 rights and protections are a guarantee that the President of the United States shall take all necessary measures for transportation and safekeeping of the accused person "until conclusion of his trial for the offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such offenses, and for a reasonable time thereafter..."; see *US v DiTommaso*, 817 F.2d 201, 212 (2nd Cir. 1987).

Title 18 USC Section 3192 is an Act of Congress that has been in force and effect, un-repealed, for over over 150 years. This statute bestows specific rights and protection upon a very small group of persons that are extradited by treaty. This statute also imposes obligations upon the Executive to "protect" the person as the statute specifies and grants the Executive board sweeping powers to accomplish the "protection of accused".

Even the title of Section 3192, "Protection of accused" supports the well understood holdings that this statute codifies a "right" of the accused; see: *US v Rauscher*, 119 US 407, 423-24 (1886) (explaining Section 3192's predecessor statute embodied a "right"); *In re Reinitz*, 39 F. 204, 208-09 (S.D.N.Y. 1889) (extensively explaining how and why: "the prisoner is himself clothed with a legal right or immunity"); *Ex parte Brown*, 148 F. 68, 73 (Cir. Ct. S.D.N.Y. 1906) (explaining the court's duty to enforce the 3192 rights when other officials do not); *Ex parte Coy*, 32 F. 911 (Dist. Ct. W.D.TX 1887) (pointedly mocking the idea that 3192 as a statute is not binding on all US officials and cannot be waived); *US v Alvarez-Machain*, 504 US 655, 660 (1992) (making direct reference to the importance of *Rauscher* Court's 3192's predecessor statute, (now Section 3192)). [FN-1]

Section 3192 as Congressional construction of all extradition treaties is "conclusive" and "binding" on the Judiciary. see *Reinitz* at 208 and *Brown* at 71 respectively.

II. TEST ANALYSIS AS TO WHETHER SECTION 3192 CREATES A PRIVATELY ENFORCEABLE RIGHT.

The test is three part: whether the plaintiff is one of the "intended beneficiaries of the statute, whether the plaintiff's asserted interests are not so 'vague and amorphous' as to be 'beyond the competence of the judiciary to enforce,' and whether the statute imposes a binding obligation upon the government." *Blessing v Freestone*, 520 US 329, 338 (1997). see also: *Cort v Ash*, 422 US 66, 78 (1975).

Applying this test to the instant case, first, as established in the SCOTUS statutory interpretations of the exact language of Section 3192, the *Rauscher* and *Ker v Illinois*, 199 US 443 courts in 1886, BOTH, held that the 3192 language "conferred" rights upon the party extradited and it can not be disputed that the undersigned is one of the intended beneficiaries of the rights and protection Section 3192 "confers" as the "party extradited". Second, the asserted interests of the undersigned are not vague nor amorphous as Section 3192 is clear in its meaning and has been repeatedly interpreted and enforced by SCOTUS and other federal and state courts for over 150 years with the remedy being succinctly described by SCOTUS in these cases as well. Third, there is no doubt that 3192 imposes a binding obligation, ("SHALL have the power TO TAKE ALL NECESSARY MEASURES..." and *DiTommaso*, supra.) upon the Executive to protect the undersigned's rights while providing the unique authority to accomplish the statutory protection mandate.

III. THE PRESIDENT'S ALTER EGO, THE WARDEN.

"The President speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties...and that 'the acts of the heads of the departments, within the scope of their powers, are in law the acts of the President'" and an "order sent out from the appropriate executive department in the regular course of business is the legal equivalent of the President's own order to the same effect." *Wilbur v US ex rel. Barton*, 46 F.2d 217, 219 (D.C. Cir. 1930) (quoting *Wilcox v Jackson*, 38 US 498, 513 (1839) and *Wolsey v Chapman*, 101 US 755, 770 (1879)). The proper defendant in the instant is therefore the Warden of FCC Terre Haute.

Instantly, the Appellee/Defendant Warden of FCC Terre Haute, through Federal Bureau of Prisons administrative procedures, failed to protect the undersigned's rights as 3192 require him to have accomplished. ECF 1.

IV. TITLE 28 "HABEAS CORPUS" IS INCOMPATIBLE WITH TITLE 18 USC SECTION 3192. THE SQUARE PEG IN THE

ROUND HOLE.

Congress intended the beneficiaries of Section 3192 to have a specific cause of action to obtain the protection that 3192 confers. Originally, the 1886 version of habeas corpus was more than sufficient to obtain relief for an aggrieved person suffering violation of his 3192 rights. But that was a different habeas statute.

Today, Title 28 Sections 2241, 2254 and 2255 are incompatible with Congress' carefully tailored Section 3192 intent and exclusive remedial scheme. The structure of 3192 is fundamentally incompatible with the private remedies offered by those current Title 28 habeas corpus sections.

Section 2241 is today used exclusively by federal prisoners challenging aspects of his detention other than the legality of the conviction or sentence, e.g., conditions of confinement. See: this Court's multi-decade repetitive jurisprudential pronouncements on 2241's application since its enactment in 1948.

Section 2254, as for some reason suggested by the lower court, applies to state prisoners only and incompatible with 3192's immediate federal Executive legislative mandate. 2254 has strict statute of limitations and state remedial exhaustion requirements, all running afoul of 3192's immediate effect and continual applicability ("until conclusion of trial...and until final discharge from custody...and a reasonable time thereafter"). 18 USC 3192.

Section 2255 also has incompatible statute of limitations language with Section 3192. 2255(f) specifically states, "A 1-year period of limitation shall apply to a motion under this section." See: 28 USC 2255(f)(1)-(4).

There is nothing in the statutory requirements of Section 3192 that can be mapped onto the existing structure of any Title 28 federal habeas petition or motion. The instant statute of limitations for Section 3192 protection of the undersigned has not even come close to expiring, yet, the 2254, 2255, or even 42 USC 1983 respective limitations periods expired years ago. See: *Wilson v Garcia*, 471 US 261 (1985). (TCA's incompatibility with 1983 litigation based on the applicable limitations periods). Exhibits A & B herewith.

V. AS RELIEF THE APPELLANT WAS SEEKING 3192 PROTECTION IN THE UNITED STATES DISTRICT COURT.

Title 18 USC Section 3192 is a unique statute. It bestows special rights upon a very small group of persons. It obligates and empowers the Executive to protect these rights. As an Act of Congress, it is supreme law of the land, binding the authority of the Judiciary; Art. VI, cl. 2 U.S. Const. Section 3192 "protection" is immediate, upon arrival in the United States, lasting longer than the person is imprisoned. It even empowers the President (or his alter-ego) to use the land and naval forces of the United States military against other Americans (such as recalcitrant judges or prosecutors) to effectuate the all important obligatory protection of the accused. No other statute codifies such important powers and obligations, to protect accused and even "condemned" persons.

It is clear that with and within the present day federal statutory habeas scheme that Congress intended Section 3192 to operate as the exclusive remedy by which plaintiffs can obtain relief for violations of the "Protection of [the] accused".

The undersigned Appellant has properly initiated a compliant civil complaint under Title 18 USC Section 3192 jurisdiction seeking the protection that this unique statute affords him as a person having been extradited by treaty. When these rights and protections are ignored and the violated, they Appellant has a specific, Section 3192 cause of action in the federal courts of the United States to seek the enforcement of these rights and the protection 3192 specifically bestows upon him.

VI. RELIEF REQUESTED

As Congress has provided the necessary statutory privately enforceable right under Title 18 USC Section 3192 the lower court HAD AND HAS THE UNIQUE TITLE 18 USC 3192 JURISDICTION ALLOWING A PRIVATE SPECIFIC CAUSE OF ACTION PURSUANT SAID STATUTE. The instant case be REMANDED with the instruction that the instant complaint be filed with the lower court and proceed under Title 18 USC Section 3192 JURISDICTION.

Alternatively, the case REMANDED with the instruction that the lower court allow the undersigned to proceed under the common law constitutional habeas corpus procedure as existed in 1886 and to which the Rauscher Court referenced as the 'speedy remedy' to a 3192 [5275 Rev. Stat.] violation at *US v Rauscher*, supra. at 431.

Respectfully Submitted,

This Court according to Rule 10(a) must use its supervisory power to rectify the obvious contrary decisions of the Seventh Circuit that one way or the other directly oppose those applicable decisions of all the other United States Courts of Appeal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date:
