

20-8283

Supreme Court, U.S.
FILED

MAR 01 2021

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OMAR S. FOLK — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Third Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Omar S. Folk
(Your Name)

FCI Allenwood Medium
(Address)

P.O. Box 2000
White Deer, PA 17887
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. Whether Petitioner Amend complaint under 15(c)(1)(B) Motion In A Initial §§ 2255(f)(1) proceeding is subject to Second or Successive pending final order of Certiorari?
2. Whether Petitioner Amended Judgment under Rule 36 Clerical Error Motion is subject to Second or Successive or 60(b)?
3. Whether Petitioner 28 U.S.C. §§ 2255(f)(1) Original Motion should be held in Abeyance pending New Supreme Court Certiorari Grants?

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

Edward s V. Yanny, 140 S.Ct. 2737 / 206 L.Ed. 2d 917; 2020 U.S. Lexis 2534 No. 19-5007
Wooden v. United States, No. 20-5279 Granted Cert. Feb. 22, 2021 (May 4, 2020)
Borden v. United States, 19-5410 Granted Cert. March 3, 2020)
Greer v. United States, 19-8709 Granted Cert. Jan. 11, 2021)
US v. Nasir, (No. 18-3886) (3rd Cir. Dec. 1, 2020)
US v. Green, (No. 19-4348) (5th Cir. Aug 28, 2020)
US v. Medley, -- F.3d -- (4th Cir. 2020)
US v. Cook, (No. 18-1343) (7th Cir. Aug. 17, 2020)
Balbuena v. Sullivan, 970 F.3d 1176; 2020 U.S. App. Lexis
25987 9th Cir. Aug 17, 2020)

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	On October 15, 2020 the Judgement was Affirmed by the Court of Appeals For The Third Circuit.
APPENDIX B	On May 6, 2020 Doc. 219 MDPA Denied Doc. 191 and 209,
APPENDIX C	Motion For a Status Update Doc. 212 and Dismissed without prejudice Doc. 215 and 216.
APPENDIX D	On May 18, 2020, a timely Notice of Appeal was filed.
APPENDIX E	
APPENDIX F	

Folk v. United States, No. 20-5983 Denied 11/9/2020	
Green v. United States No. 19-8709	9
TABLE OF AUTHORITIES CITED	
Wooden v. United States, No. 19-5410	9
Borden v. United States, No. 20-5279	9
CASES	PAGE NUMBER
Edwards v. Vinney, 140 S.Ct. 273; No. 19-5007	8
Balbuena v. Sullivan, 970 F.3d 1176; 2020 U.S. App. Lexis 25487 9th Cir. Aug. 12, 2020	2
US v. Santarelli, Nos. 16-41149, 18-1362, 2019 WL 2876613, at *7-8 (3d Cir. July 5, 2019)	2
Whith v. United States, 408 F.3d 116, 118 (2d Cir. 2005)	2
Mayle v. Felix, 545 U.S. 644, 656-57, 125 S.Ct. 2562, 162 L.Ed. 2d 582 (2005)	2
US v. Folk, 954 F.3d 597 (3d Cir. 2020)	3
Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, (1972)	4
Migwood v. Patterson, 561 U.S. 320 (2010)	4
Banister v. Davis, 140 S.Ct. 1698 (2020)	4
Johnson v. United States, No. 13-7120 (S.Ct. 2015)	5
In Re Brown v. US, 594 Fed Appx. 726; 2019 U.S. App. Lexis 23195 No. 17-1484 3d Cir. 2019	5
US v. Evans, 2018 U.S. App. Lexis 5231 9th Cir. Feb. 28, 2018	5
US v. Nasiri (No. 18-2886) (3d Cir. Dec. 2020)	10
US v. Green, (No. 19-4348) (5th Cir. Aug. 28, 2020)	10
US v. Medley, (No. 18-9289) (4th Cir. Nov. 12, 2020)	10
US v. Cook, (No. 18-1343) (7th Cir. Aug. 12, 2020)	10
STATUTES AND RULES	
28 U.S.C. §§ 2255-(F)(1)	2, 3, 7
18(C)(1)(B)	2
Supreme Court Rule 13	3
28 U.S.C. § 2101 (1)	3
Fed Rule 36	4
Fed Rule 60(b)	4
Fed Riv. Rule 59(e)	5
Fed Rule SE 1.2(a), SE 1.2(d) and 53 TO, 67(e)	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 OCT. 15, 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

Petitioner 6th Amendment Rights and Fifth Amendment Rights were violated.

STATEMENT OF THE CASE

See Attachment Page 1-10

STATEMENT OF THE CASE

On May 6, 2020, District Court Denied MDPA Doc. 191 and 209, Motion For a Status Update Doc. 212 is Dismissed as moot. Motions seeking relief pursuant to 28 U.S.C. § 2255 (Doc. 215 and 216) are Dismissed without Prejudice, see (Appendix B).

On May 18, 2020, a timely Notice of Appeal was filed. See (Appendix D).

On October 15, 2020 the Judgment was Affirmed by the Court of Appeals For The Third Circuit. See (Appendix A).

Whether Petitioner Amend Complaint under 15CC)(1)(B),
Motion In A Initial 33 2255CF)(1) proceeding is subject
to Second or Successive pending final order of Certiorari?

Petitioner follow upon a Split in cases turning to
relation back theory under 15CC)(1)(B) turning to MD PA
Doc's 208, 211, Doc. 215 and 216, See (Balbuena v. Sullivan,
970 F.3d 1176, 2020 U.S. App. Lexis 25987 9th Cir. Aug. 17, 2020)
(cites US v. Santarelli, Nos. 16-4114 & 18-1362, 2019 WL
2896613, at *7-8 (3rd Cir. July 5, 2019); Whab v. United
States, 408 F.3d 116, 118 (2d Cir. 2005)).

Now Petitioner seek Supreme Court Judges
to take on this split in circuits to rectify a long-
standing decision out of this very court. See (Mayle v.
Felix, 545 U.S. 644, 656-57, 125 S. Ct. 2562, 162 L.Ed 2d
582 (2005)).

Petitioner initial 28 U.S.C. §§ 2255(f)(1) claims MPPA Doc. 177-178 that points to Doc. 139, 151 and 163 were still pending final order from Supreme Court or pending in the circuit court. Furthermore in the record at MPPA Doc. 139 of final order, See CUS v. Folk, 954 F.3d 597 (3d Cir. 2020). The Supreme Court denied Petitioner Cert. Folk v. United States, No. 20-5983 Nov. 9, 2020.

Petitioner Question: Whether if a original 28 U.S.C. §§ 2255 is pending a final order in the Supreme Court can lower court construe the petition as second or successive and not address the claims on the merits.

Petitioner further rely on Supreme Court Rule 13 and 28 U.S.C. § 2101(c) (90-day deadline), but upon Covid-19 pandemic it has been extended to 150 days.

Therefore Petitioner is under this umbrella to have his pending claims address on the merits as if the Supreme Court consider Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, (1972). to follow the day.

Wherefore Petitioner Mr. Folk is requesting this Court to Reverse and Remand 3rd Circuit Court of Appeals order No. 20-2023 Oct. 15, 2020 to be address in the District Court on it's merits.

Whether Petitioner Amended Judgment under Rule 36 Clerical Error Motion is subject to Second or Successive or 60 (b)?

Petitioner will turn MD. PA. Doc. 219 which point to ECF Nos. 191 and 209. The facts Petitioner relied upon Magwood v.

Patterson, 561 U.S. 320 (2010) and Banister v. Davis, 140 S.Ct. 1698,

C2020). To correct the district court factual finding upon the new judgment MDPA Doc. 181 at 4 of 7, which rely's on the revise. Ac 245 c (Rev. 02/18) provision, See (Johnson v. United States, No. 13-7120 (S.Ct. 2015);

In Re Brown v. US, 594 Fed. Appx. 726; 2014 U.S. App. Lexis 23195 No. 14-1484 3d Cir. Dec. 10, 2014). Then the record

which also develop under Fed R. Civ. 59(e) in MDPA Doc.

209 at 2-5 when citing US v. Evans, 2018 U.S. App. Lexis 5231

9th Cir. Feb. 28, 2018) (Striking down "Vague" standard

condition of supervision "as no longer applicable due

to "vagueness" in number 4, 5, and 13). The facts are clear

MDPA Doc. 181 at 4 of 7 is subject to Amended Judgement

under Rule 36. Now one year tall start over from 3/5/18

to 3/5/19 therefore any pleading in Doc. 208 is timely.

When Petitioner turn back to Doc. 209 that point also to Doc. 191 and 194 that turn to Doc. 172. Which was not fully address by lower courts in the district court or Circuit Court. Then pertaining to Petitioner paying fine and cost at Doc. 134 at 32-35. The facts also which is clear Folk was disable coming in the court room with a cane after suffering delay medical treatment.

This further would access Petitioner reasons to follow why at MD PA Doc. 191 was to clarify the record. Petitioner challenge other claims in Doc. 172 in regards to Fine and Cost under SE1.2(a), SE1.2(d) and 5380.08(e).

Now this factual basis was never addressed on merits in district court or Court of Appeals level. This is the reason why Petitioner follow today to clarify the record when Folk

suffer injury during these proceeding which is not being spoke upon by the lower courts.

Therefore Supreme Court Justice's should reverse and remand the lower court's decision to dismiss the fine and cost which was in place during Doc. 134 at 2, 32-35.

Wherefore Petitioner Mr. Folk is requesting this Court to Reverse and Remand 3rd Cir Court of Appeals Order No. 20-2023 Oct. 15, 2020 ECF Doc. 209 under Rule 36 Amended Judgment.

Whether Petitioner 28 U.S.C. §§ 2255(c)(1) Original Pleading should be held in Abeyance pending New Supreme Court Certiorari Grants?

Petitioner follow in the recent Cert. grants which can establish a different outcome pending Supreme Court decisions,

Upon this Petitioner will further point back to the Circuit Court ruling and District Court MDPA ECF No. 219 denying and dismissing motions that Petitioner filed in MDPA POC's 196, 198, 204, 205, 206, 210, 211, 215 and 216.

Now Petitioner ask the Supreme Court Justices to hold in abeyance these motions in light of these pending Supreme court decisions.

See (Edwards v. Vannoy, 140 S.Ct. 2737; 206 L.Ed. 2d 977; 2020 U.S. Lexis 2534 No. 19-5007 May 4, 2020); See (Greer v. United States, No. 19-8709 Supreme Court granted Cert.

on Jan 11, 2021); See (Borden v. United States, No. 19-5410

Supreme Court granted cert. on March 3, 2020); See

(Wooden v. United States, No. 20-5279 Supreme Court

granted cert. on Feb. 22, 2021).

Petitioner comes forth with the pending Supreme Court caselaws to develop the record for why his order

in 3rd Circuit Court of Appeals and District Court

can be reverse and remand pending these Supreme

Court decisions.

Wherefore Petitioner Mr. Folk is requesting this

Court to hold in Abeyance Edward v. Vannoy, No. 140

S.Ct. 2737, No. 19-5207, Greer v. United States, No. 19-8709,

Borden v. United States, No. 19-5410, Wooden v. United States,

No. 20-5279 and GVR Mr. Folk petition back to 3rd

Circuit Court of Appeals pending Supreme Court decisions.

In Conclusion Petitioner Mr. Folk is requesting this Court to EVR his case back to the 3rd Circuit of Appeals in light of above challenges or in the alternative to GRANT CERTIORARI.

See C. Nair, (No. 18-2886) (3d Cir Dec 1 2020)

See C. Green, (No. 19-4348) (5th Cir Aug. 28, 2020)

See C. Medley, (No. 18-4789) (4th Cir Nov. 12, 2020).

See C. Cook, (No. 18-1343) (7th Cir Aug. 17, 2020)

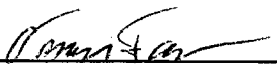
REASONS FOR GRANTING THE PETITION

Petitioner rights was violated under 5th Amendment and 6th Amendment when Third Circuit Court of Appeals Failed to address Retaliation back theory and Clerical Error which the Petitioner case should be Reverse and Remand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: March 1, 2021