

No. 21-366

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Michael Jones

PETITIONER

vs.

United State of America

RESPONDENT(S)

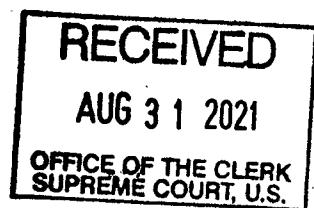
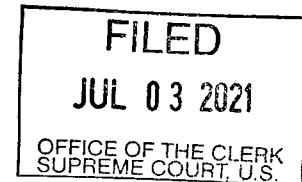
On Petition For Writ of Certiorari

To The United States Court of Appeals

For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

Petitioners Michael Jones hereby adopts the Petitions for Writ of Certiorari filed by Dr. Henry Evans and Dr. Shelton Barnes and the Questions Presented therein, to wit:

Questions Presented by Dr. Evans

- 1.) Are the Medicare rules, regulations, and policies controlling” in a criminal prosecution under 18 U.S.C. § 1347; i.e. is evidence of compliance or non-compliance with the rules, regulations and policies always relevant to a determination of fraud?
- 2.) If the Medicare rules, regulations, and polices are not “controlling,” but are “terms of art,” as the Fifth Circuit opined, must these rules, regulations, and policies nevertheless guide the “reliable principles and methods” of any witness proffered as an expert in eligibility for Medicare benefits?

Questions Presented by Dr. Barnes

- 3.) Does the Panel Decision of the United States Court of Appeals for the Fifth Circuit, rendered October 28, 2020 (979 F.3d 283 (5th Cir. 2020), WL 6304699, rehearing denied January 4, 2021 (hereinafter Panel Decision), conflict with its own authority, holding and reversal in U.S. v. Ganji, 880 F.3d 760 (5th Cir. 2018), which is not substantially distinguishable from the present case, and with the same lack of criminal intent and sufficiency of evidence?
- 4.) Does the Panel Decision conflict with the holding and reversal in the co-defendant and alleged co-conspirator appeal in United States v. Nora, 988 F.3d 823 (5th Cir. 2021),

QUESTION(S) PRESENTED CONTINUED

WL 716628, No. 18-31078, rendered February 24, 2021, by a different Panel of the Fifth Circuit?

- 5.) Does the Panel Decision conflict with U.S. v. Nora, *supra*, and U.S. v. Ganji, *supra*, both decisions from the Fifth Circuit?
- 6.) Does the Panel Decision create a lack of uniformity with U.S. v. Nora, *supra*, and U.S. v. Ganji, *supra*, and other cases, particularly regarding sufficiency of evidence for the knowledge and intent requisite to sustain a conviction?
- 7) Did the improper comments and conduct by the government prosecutor, during the government's rebuttal closing argument, as repeatedly found by the District Court and Fifth Circuit Panel, constitute a violation of Petitioner's rights to due process of law and a fair trial; and, unconstitutionally and substantially impeach the integrity of the proceedings, at that key and crucial time period, especially without the ability of the victim, Petitioner, to defend himself from it?
- 8.) Did the purported expert, Dr. Brobston Lutz's unqualified, confusing, misleading and uneducated testimony as an expert, particularly in the area of homebound status, unconstitutionally and unreasonably confuse the jury and deprive Petitioners of due process of law and a fair trial?

LIST OF PARTIES

[X] 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:

PARTIES TO THE PROCEEDING

Petitioner, Michael Jones, was the defendant in the District Court proceedings and appellant in the Court of Appeals proceedings. Respondent, United States of America, was the plaintiff in the District Court proceedings and appellee in the Court of Appeals proceedings. App. 1, 64, 66

RELATED PROCEEDINGS

United States v. Shelton Barnes, 979 F.3d 283 (5th Cir. 2020).

United States v. Nora, 988 F.3d 823 (5th Cir. 2021).

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TABLE OF AUTHORITIES CITED

Petitioner Michael Jones hereby adopts the Petitions for Writ of Certiorari filed by Dr. Henry Evans and Dr. Shelton Barnes and the authorities cited therein. They further cite the following

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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

The Opinion of the United States Court of Appeals for the Fifth Circuit is published at 979 F.3d283 (5th Cir. 2020), WL 6304699. The proceedings and record in the District Court are filed in Case No. 15-cr-61, Section E, The Honorable Susie Morgan presiding. On January 24, 2021, the Petition for Rehearing was denied. App. 80.

JURISDICTION

The Judgment of the Court of Appeals for the Fifth Circuit was entered on October 28, 2020. This Court extended the time within which to file any Petition for a Writ of Certiorari to 150 days from this date of rendering by the Court of Appeals. Co-petitioner who has contested his case from inception seeks leave to file out of turn. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner Michael Jones hereby adopts the Petitions for Writ of Certiorari filed by Dr. Henry Evans and Dr. Shelton Barnes and their statement regarding the Constitutional and Statutory Provisions Involved.

STATEMENT OF THE CASE

The petitioner Michael Jones was among six African Americans who were convicted of Medicare fraud in the Eastern District of Louisiana. At their trial each had retained counsel and entered pleas of NOT guilty. They were convicted and sentenced by Judge Susie Morgan. Morgan, U.S. District Court, Eastern District of Louisiana.

Notice of Appeal was timely filed to the Fifth Circuit Court of Appeals, by Michael Jones who was once again represented by retained counsel and separately, on appeal to the Fifth Circuit. The Fifth Circuit denied any relief to five of the six defendants and a Petition for Rehearing was sought, but denied by the Fifth Circuit.

Because the Petitioner was sentenced to periods of confinement, which occurred during the appellate process, there was confusion as to their ability to obtain appointed counsel because his financial condition had deteriorated to such an extent that retained counsel was no longer available. Accordingly, the Petitioner is filing a Motion for Leave to have his Petition for Certiorari heard by the Supreme Court because he is merely adopting the Questions Presented by his co-petitioners, primarily Dr. Evans and Dr. Barnes, and suggested the issues presented by both Dr. Evans and Dr. Barnes would be factually applicable to his situation if this Court grants a Writ of Certiorari.

If a writ is granted, the Petitioner will seek representation from the Federal Public Defender panel to explain why their particular situations dictate that, if the Court has to give relief to the co-petitioners, Dr. Barnes and Dr. Evans – whose petitions are before the Court, then similar relief should be granted to him. It would be a real inequity to have the relief granted to those petitioners presently before the Court, and not give similar

relief, if factual applicable to the co-petitioners. Accordingly, the co-petitioner asks for leave to file and adopt the Petitions for Writ of Certiorari by co-petitioners in the case.

REASONS FOR GRANTING THE PETITION

Dr. Michael Jones was one of the four physicians who were indicted and convicted in connection with the instant Medicare fraud charges. The government's theory of the case relied extensively on experts (Dr. Lutz) whose qualifications and testimony are at the center of the co-petitioners Dr. Evans and Dr. Barnes Petition for Writ of Certiorari. The testimony of that expert likewise, had an effect on Dr. Jones, and thus to the extent that relief is granted to the other doctors, Michael Jones should have the benefit of any relief. He adopts the position set forth by his co-petitioners Dr. Evans and Dr. Barnes' pleadings.

Finally, the petitioner cites the outlandish argument by the U.S. Attorney during closing argument in which prosecutor left the podium and, basically, attacked the defense table with her argument, which is the subject matter of issues raised by Dr. Barnes and Dr. Evans. The adverse effect of this closing argument affected all the defendants in the case, not just the doctors. Accordingly, co-Petitioner Michael Jones seeks to adopt the questions presented by co-petitioners and for the ability to, if writs are granted, to explain in more detail the application of these issues to their particular factual situation.

No Prejudice to the Government

If Writs are granted, the government would have to address the issues presented by the co-petitioners, there would be no prejudice to the government in addressing the similar situations with regard to this co-petitioner. Accordingly, with no prejudice to the Government, and the possibility of an inequitable result, co-Petitioner seeks Leave of Court to have the Court consider his Petition, adopting the Questions Presented by co-petitioners, Dr. Barnes and Dr. Evans.

Conclusion

There is no prejudice to the government in allowing co-petitioner who has, for three years contested his conviction and now seeks to join the co-petitioners and raising certain questions before the Court. Co-petitioner prays that leave will be granted to adopt the Petitioners set forth by the other co-petitioners process.

Respectfully submitted,

Date:

Michael B. Jones

8/26/2021