

21-5336

Supreme Court, U.S.  
FILED

FEB 26 2021

OFFICE OF THE CLERK

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

Mr. Theodore Howard

— PETITIONER

(Your Name)

vs.

United States Of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Seventh Circuit Northern Court Of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Mr. Theodoere Howard

(Your Name)

Federal Correctional Institution Pekin

(Address)

P.O. Box Pekin Illinois 61555

(City, State, Zip Code)

None

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. Whether Mr. Theodore Howard, was denied his United States Constitutional fourteenth, and Sixth amendment due-process rights, to fair notice of the indictment charges of "Use" of a firearm, which also resulted in Mr. Howard, receiving an erroneous double, 18 U.S.C. 924(c)(1)(A), Using and carrying a firearm, during and in relation to a crime of violence, stacking 18 U.S.C.924(c)(1)(C), 35 years consecutive imprisonment sentence, on the same indictment, before Mr. Howard, had a prior 18 U.S.C. 924(c)(1)(A), conviction that was final, When the trial jury was erroneously Instructed by jury instruction, On the element of "Use" and convicted Mr.Howard, of "Use" of a firearm on counts Three and Sixth of the Indictment, In the case United States V. Theodore Howard, case No. 07-Cr-674, without the government proving Mr. Howard, "Active Employment" the firearm.
2. Whether Mr. Theodore Howard, violation of 1992(a)(6) qualify categorically as a Crime of violence for the purpose of 18. U.S.C. 924(c)(1)(A), see United States V. Borden, 140 S.Ct. 1262, (Mar 2, 2020) Granting petition for writ of certiorari.

## 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:

## RELATED CASES

1. *Bailey v. United States*, 516 U.S. 137. (1998).
2. *Borden v. United States*, 142 S.Ct. 1262 (March 2, 2020).
3. *Bousley v. United States*, 523 U.S. 614 (1998).
4. *Davis v. United States*, 139 S.Ct. 2319 (2019)
5. *Dean v. United States*, 137 S.Ct. 1170 (2017)
6. *Sessom v. Dimaya*, 138 S.Ct. 1204 (2018)

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*COURT OF APPEALS FOR THE SEVENTH CIRCUIT.*

APPENDIX B *UNITED STATES V. THEODORE HOWARD. CASE NO. 13 C 783*  
*OR 19 C 4006. (7th Cir District Court.*

APPENDIX C

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APPENDIX F

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 United States v. Theodore Howard, Case No. 20-1738; 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 UNITED STATES v. THEODORE HOWARD, CASE NO. 13 C 78, or, 19 C 4006; 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 December 4, 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 March 8, 2021 (date) on July 18, 2021 (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 N/A.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

# THE TABLE OF AUTHORITIES CITED

CASE	PAGE NUMBER
UNITED STATES v. BAILEY, 516 U.S. 137. (1998).	9.
UNITED STATES v. BORDEN, 142 S.Ct. 1262.	APPENDIX A.
UNITED STATES v. BOUSLEY 523 U.S. 614 (1998).	10.
UNITED STATES v. DAVIS, 139 S.Ct. 2319. (2019).	9.
UNITED STATES v. DEAN, 137 S.Ct. 1170. (2017).	9.
SESSION v. DIMAYA, 138 S.Ct. 1204 (2018).	9.

## STATUTE AND RULES

18 U.S.C. § 2.	4.
18 U.S.C. § 924(c)(1)(A)	4.
18 U.S.C. § 924(c)(1)(C)	5.
18 U.S.C. § 1992(a)(6)	5.
18 U.S.C. § 1992(a)(7)	6.
18 U.S.C. § 1992(a)(10)	6.
18 U.S.C. § 1992(b)(1)	6.
18 U.S.C. § 3231.	7.
28 U.S.C. § 1254	7.
28 U.S.C. § 1291	7.

## OTHER

Sixth amendment violation

Fourteenth amendment violation

8.

8.

## THE TABLE OF AUTHORITIES CITED

18 U.S.C. § 2, Aiding and abetting, states in pertinent part below.

an aiding and abetting claim requires not only an independent primary cause of action, but knowledge of the wrongful activity and intentional or purposeful action in assistance of that independent violation, by the party being sought to be held as aiding and abetting.

18 U.S.C. § 924(c)(1)(A), states in pertinent part below.

(c)(1)(A) except to the extent that a greater minimum sentence is otherwise provided by this section or by any other provision or law, any person who, during and in relation to any crime of violence or drug trafficking crime, including a crime of violence or drug trafficking crime that provided for an enhance punishment if committed by the use of a deadly or dangerous weapon or device for which the person may be prosecuted in a court of the United States, use or carries a firearm, or who in furtherance of any such crime, possesses a firearm, shall in addition to the punishment provided for such crime of violence or drug trafficking crime,

- (i) be sentence to a term of imprisonment of not less than 5 years.
- (ii) if the firearm is brandished, be sentence to a term of imprisonment of not less than 7 years, and,
- (iii) if the firearm is discharged, be sentence to a term of imprisonment of not less than 10 years.



THE TABLE OF AUTHORITIES CITED

18 U.S.C. 924§(c)(1)(C), states in pertinent part below.

in case of a violation of this subsection that occurs after  
a prior conviction under this subsection has been final,  
the person shall,

- (i) be sentence to a term of imprisonment of not less  
thatsn 25 years.
- (ii) if the firearm involve is a machinegun or destructive  
device or is equipped with a firearm silencer or  
firearm muffler, be sentence to imprisonment for  
life.

18 U.S.C. § 1992(a)(6), states in pertinent part below.

- (a) General prohibitions, whoever. in a circumstance  
described in this subsection, (1) knowingly and without  
lawful authority or permission,
- (6) with intent to danger the safety of any person, or  
with reckless disregrad for safety of human life,  
interferes with, disable, or incapacitates any  
dispatcher, driver, captain, locomotive engineer,  
railroad conductor, or other person while the person  
is employed in dispatching operating, controlling,  
or maintaining railroad on-track equipment or mass  
transportation vehicle,

THE TABLE OF AUTHORITIES CITED

18 U.S.C. § 1992(a)(7) states in pertinent part below

(a) General prohibition , whoever, in a circumstance described in this subsection, (1) knowingly and without lawful authority or premission,

(7) commits an act, including the use of a dangerous weapon with the intent to cause death, or serious bodily injury to an person, properly describe in subparagraph (A) or (B) of Paragraph (4).

18 U.S.C. § 1992(a)(10), states in pertinent part below.

(a) General prohibition, whoever, in a circumstance described in this subsection, (1) knowingly and without lawful authority or permission.

(10) attempted, threaten, or conspires to engage in any violation of paragraph (1) thru (9)

18 U.S.C. § 1992(b)(1) states in pertinent part below.

(b) aggravated offense : whoever commit an offense under subsection (a) of this section in circumstance in which

(1) the railroad or track-Equipment or mass transportation vehicle was carrying a passenger or employee at the time of the offense

18. U.S.C. 3231. States in Pertinent Part Below.

1. The District Court of the United States. Shall have ORIGINAL JURISDICTION EXCLUSIVE OF THE COURT OF ALL OFFENSES AGAINST THE UNITED STATES.
2. Nothing in this title shall be held to take away or impair the JURISDICTION OF THE COURT OR SEVERAL STATES UNDER THE LAW THEREOF.

28. U.S.C. 1291. States in Pertinent Part Below.

The COURT OF APPEALS FOR THE FEDERAL CIRCUIT SHALL HAVE JURISDICTION OF APPEALS FROM ALL FINAL DECISIONS OF THE DISTRICT COURT OF THE UNITED STATES, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE, THE DISTRICT COURT OF GUAM, AND THE DISTRICT COURT OF VIRGIN ISLAND. EXCEPT WHERE DIRECT REVIEW MAY BE HAD IN THE SUPREME COURT, THE JURISDICTION OF THE UNITED STATES COURT SHALL BE LIMITED TO THE JURISDICTION DESCRIBED IN SECTION 1242 (C) AND (D) AND 1245 OF THIS TITLE 28. U.S.C. 1292 (C) AND (D) AND 1295.

28 U.S.C. 1254. States in Pertinent Part Below.

1. BY WRIT OF CERTIORARI GRANTED UPON THE PETITION OF PARTY TO ANY CIVIL OR CRIMINAL CASE BEFORE OR AFTER REVISION OF A JUDGMENT OR DECREE.
2. BY CERTIFICATION AT ANY TIME BY THE COURT OF APPEALS OF ANY QUESTION OF LAW IN ANY CIVIL OR CRIMINAL CASE AS TO WHICH INSTRUCTIONS ARE DESIRED. AND UPON SUCH CERTIFICATION, THE SUPREME COURT MAY GIVE BINDING INSTRUCTION, OR REQUIRE THE ENTIRE RECORD TO BE SENT UP FOR DECISION OF THE ENTIRE MATTER IN CONTROVERSY.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment Violation, states in pertinent part below.

In all criminal prosecution, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature of and cause of the accusation, to be confronted with the witness against him and to have compulsory process for obtaining witness in his favor, and to have the Assistance of counsel for his defense.

Fourteenth Amendment Violation, states in pertinent part below,

Sec 1. " Citizens Of The United States" All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the states wherein they reside, No state shall make or enforce any laws which shall abridge the privileges or immunities of citizen of the United States, Nor shall any State deprive any person of life, Liberty, or property, without due process of law, nor deny to any person within it's jurisdiction the equal protection of the law.

## Statement of the Case,

The United States District Court for the Northern District of Illinois had jurisdiction pursuant to 18 U.S.C. 3231. AN INDICTED MR. THEODORE HOWARD, with two counts of violence AGAINST MASS TRANSPORTATION SYSTEM CARRYING PASSENGER - EMPLOYEES. Pursuant to SEC. 1992 (A)(6), AND (10), 1992 (b)(1)(2); two counts of violence AGAINST MASS TRANSPORTATION SYSTEM, CARRYING EMPLOYEE'S / PASSENGERS. WITH THE USE OF A DANGEROUS WEAPON Pursuant to 18 U.S.C. 1992 (A)(7), AND (10), AND 1992 (b)(1) AND (2), AND two counts of USE OF A FIREARM DURING COMMISSION OF A CRIME OF VIOLENCE Pursuant to 18 U.S.C. 924 (C)(1)(A) AND (2).

HOWARD WAS SENTENCE TO LIFE IMPRISONMENT ON EACH OF COUNTS ONE, TWO, FOUR AND FIVE, AND A CONSECUTIVE TERM OF 10 YEARS IMPRISONMENTS ON COUNTS THREE, AND A CONSECUTIVE TERM OF 25 YEARS IMPRISONMENT ON COUNT SIX, WITHOUT THE GOVERNMENT PROVING MR. HOWARD "ACTIVE EMPLOYMENT" THE FIREARM IN COUNTS THREE OR COUNT SIX, UNITED STATES V. BARLEY 516 U.S. 132 (1998), ALSO SEE DEAN V. UNITED STATES, 137 S. CT 1170 (2017).

IN MAY 2019, THE COURT OF APPEALS GRANTED HOWARD LEAVE TO FILE A SUCCESSIVE 2855 MOTION TO CHALLENGE HIS 924 (C) CONVICTIONS VAGUENESS GROUND. UNDER SESSION II DIMAYA, 138 S. CT 1204 (2018) IN WHICH THE SUPREME COURT HELD UNCONSTITUTIONALLY VAGUE. THE RESIDUAL CLAUSE IN 18 U.S.C. 16(b) WHICH MIRROR 924 (C)(3)(B) DEFINITION OF A CRIME OF VIOLENCE. SUBSEQUENTLY THE SUPREME COURT HELD IN DAVIS V. UNITED STATES, 139 S. CT 8319 (2019) THAT THAT RESIDUAL CLAUSE IN 924 (C)(3)(B) IS UNCONSTITUTIONALLY VAGUE AND THE DISTRICT COURT DENIED MR. HOWARD MOTION. AND DENIED MR. HOWARD REQUEST FOR A CERTIFICATE OF APPEALABILITY.

MR. HOWARD REQUEST FOR A CERTIFICATE OF APPEALABILITY FROM THE SEVENTH CIRCUIT COURT OF APPEALS, AND IT WAS DENIED, ON DECEMBER 4, 2020.

MR. HOWARD FILED A TIMELY MOTION FOR WRIT OF HABEAS TO THE SUPREME COURT DATED MAR 8, 2021, AND WAS GIVEN 60 DAYS TO PETITION HIS MOTION BY JULY 18, 2021.

REASONS FOR GRANTING THE PETITION

1. Mr. Theodore Howard, was denied his United States of America Constitutional Fourteenth, and Sixth amendment rights to Due-process, at trial, and the right to fair notice of the charges against him, that supported in the seventh circuit northern district case United States v. Theodore Howard, case no. 07-Cr-674, and it is the duty of the United States of America Supreme Court, to make sure that no American Constitutional rights are violated. *UNITED STATE V. BOUSLEY 523 U.S. 614 (1998).*

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mr. Theodore Howard

~~MR. THEODORE HOWARD~~

Date: July 14, 2021