

No. **21-5616**

Appeal Case No. 20-11004

IN THE

SUPREME COURT OF THE UNITED STATES

Felix Antequera Rivera
(Your Name)

PETITIONER

vs.

United States

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED

AUG 27 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

The 11TH Circuit For the U.S. Court of Appeal
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Felix Rivera #71533-018
(Your Name)

P.O. Box 3000
(Address)

Pine Knot, Ky. 42635
(City, State, Zip Code)

N-A
(Phone Number)

QUESTION(S) PRESENTED

Is the Federal government allowed to indict an individual for an alleged State crime that which the very State that the crime was supposedly bounded over from has no criminal history of an arrest and or crime relating to that individual.

And does the promptness requirement of the Fourth amendment which this Court addresses in *County of Riverside v. McLaughlin*, 500 U.S. 44, 114 L. Ed. 2d 49, 111 S.Ct. 1661 (1991) continue to hold its constitutionality if the related case is bounded over to the Federal government.

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

NOTE: unfounded state case

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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 D 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☒ is unpublished.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 _____ 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☐ is unpublished.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☐ is unpublished.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 3, 2021.

☐ 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: April 30, 2021, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

Fourth amendment of the u.s. Constitution

Fourteenth amendment of the u.s. Constitution

STATEMENT OF THE CASE

On June 15, 2018, the Petitioner was detained by a State agency, the Lakeland Police Department in and for Polk County Florida.

On July 11, 2018 the Petitioner was indicted by the Federal government for a possession of a firearm by a felon. A violation of 18 USC. 922(g)(1) and 924(c), which stems from his June 15, 2018 detainment.

On December 10, 2019 the Petitioner was found guilty by a jury trial for this firearm possession and sentenced to 360 months in Federal prison.

On July, 2020 the Petitioner filed a direct appeal to the United States Court of appeal in and for the 11th Circuit.

On March 3, 2021 the 11th Circuit denied the Petitioner's direct appeal.

On March 13, 2021 the Petitioner, by U.S.P.S. mail, submitted a Petition For Rehearing En banc to the 11th Circuit. Challenging his illegal detainment and the lack of subject matter jurisdiction of the government.

On April 30, 2021 the 11th Circuit denied the Petitioner's, Petition For Rehearing. Issuing a mandate on May 11, 2021. See Appendix (A)

And it is from this ruling for which the Petitioner seeks certiorari relief.

REASONS FOR GRANTING THE PETITION

Let's not focus on whether the Petitioner actually possessed a Firearm. Or if there were Constitutional violations made during trial. Let's focus on the indictment of this case where without it there would be no case.

This case is the result of an alleged state arrest that was banded over to the federal government. This alleged state arrest is non-existent, where the very state that it was supposedly banded over from has no knowledge of its existence.

This is because the Petitioner was never actually arrested for this alleged Firearm possession, although there were falsified documents provided to the U.S. prosecutor stating so.

The Petitioner was never actually arrested for a Firearm possession, where he was never booked, fingerprinted nor photographed in support of this alleged offense. See Fla. Statute, 943.325(a) and 943.051(2).

The Fourth and Fourteenth amendments of the United States Constitution protects U.S. Citizens from unfounded interferences with liberty.

And where the Petitioner was never afforded his right to due process he was deprived of these Constitutional protections. See, County of Riverside v. McLaughlin, 500 U.S. 44 (1991)

When a person is arrested in the State of Florida his or her Finger Prints must be submitted to the State's central office.

In return the arresting agency will be issued an offender-based transaction System number.

In other words know as an (O.B.T.S.) number.

This (O.B.T.S.) number is what initiates an arrest and is essential to the disposition report, which is mandatory for each disposition relating to an adult offender, see Fla. Statute 943.052.

Although the (O.B.T.S.) number being mandatory, it was not provided in the falsified documents that the State prosecutor provided to the government, to obtain Probable Cause for his indictment, see Appendix (B).

This was not only violating the Petitioner's right to due process. It was also fraud of the court. See 28 C.F.R. § 20.3(b) where this alleged crime that the Petitioner was in possession of a firearm is not in the State's criminal history record system (F.D.L.E.) nor Federal (N.C.I.C.).

where there is no data of this alleged crime along with the obvious falsification of the Petitioner's Booking photo once compared to the clothings that the Petitioner was wearing the night of his illegal detainment, See Appendix (C), and the fact that none of the arresting documents bearing an (O.B.T.S.) is a overwhelming amount of evidence that the Petitioner has been victimized.

To permit the government to use false criminal information to obtain an indictment on an individual without making reasonable efforts to prevent violations on a person's liberty would be tantamount to permission to accuse individuals of criminal conduct without ever providing such individuals an opportunity to disprove that accusation. Exactly these considerations supported by this court decision in *Joint Anti-Fascist Refugee Committee v. McGrath* Also See, *Gersten v. Pugh*, 420 U.S. 103.

Fla. Statute 94B.325(2) Clearly states that what constitutes an arrest in the state of Florida is where an individual must be apprehended or physically taken into custody, resulting in the submission of arrest fingerprints to the Florida Department of Law Enforcement (F.D.L.E.).

Also, 28 USC § 534 provides: The acquisition, preservation and exchange of identification records are appointed to the Attorney General. The Attorney General authorized the Director of the F.B.I./N.I.C. to perform these functions. See 28 C.F.R. § 0.85(b).

28 USC § 534 is the controlling statute that affects the ability of the Federal agencies to collect and disseminate arrest data from and to state agencies as a matter of comity.

The F.B.I./N.I.C. which is an outgrowth of the Attorney General's Congressionally mandated obligation, has the duty to insure that the information that it collects and disseminate is correct. See, *Tariton v. Saxbe*, 507 F.2d 1116 (D.C. Cir 1974)

In *Tariton*, the court noted in a footnote that: Congress surely cannot

be presumed to undercut its action in 28 USC § 534 by intending that the F.B.I./NCIC be authorized to receive and disseminate without reasonable precautions the sort of incomplete, unchallengeable information from a state or local officials which those officials themselves are forbidden to disseminate.

In the instant case, the central office for the State of Florida (F.D.I.E.) nor the NCIC has any data on this alleged arrest and firearm possession. This is because the acquisition, preservation and dissemination of criminal records fulfills the compelling public need for an effective criminal identification procedure, thereby promoting effective law enforcement. See, *U.S. v. Rabadi*, 889 F. Supp. 757, 759 (S.D.N.Y. 1995); *Natwig v. Webster*, 562 F. Supp. 225, 229 (D.R.I. 1983).

Fairness can not depend on the happenstance of this alleged crime as it did in this case where the documents produced by the U.S. prosecutor that happened to have had the Petitioner's name on them, with a state complaint number. If the government is going to federalize a state case

they are relying on state law enforcement's efforts.

It would be elementary for a U.S. prosecutor to assume that a state law enforcement agency could detain an individual unlawfully, presenting documents stating that that particular individual was arrested for a crime, without affording that individual due process of law. If this unconstitutional method of serving justice was allowed within this country, a corrupted law enforcement officer, with supporting falsified documents, could allege different accusations on a particular individual time after time until he is satisfied with the results. Which would be prejudice in all respects to law, where that particular individual would have no legal remedy to refute the claim.

However, both the states and federal government has created safeguards to prevent this injustice. See, Fla. Statute 943.051(2) and 28 U.S.C. § 534.

Furthermore, 28 C.F.R. § 20.21(c)(2) clearly states, no agency or individual shall

confirm the existence or non-existence of criminal history information to any person or agency that would not be eligible to receive the information it self.

Without the us, prosecutor being E-mailed these falsified documents, for which he used in support to obtain an indictment, he would have not been able to lawfully receive them.

These long prevailling standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime.

28 usc. § 534 precludes the Federal government from maintaining in its Criminal Files as an arrest record, an encounter with the police that has been established not to constitute an arrest. See, Menard v. Saxbe, 498 F.2d 1017; 162 U.S. App. DC. 24 at 52

The Federal government has no subject matter jurisdiction of this unfounded state arrest, and crime

An arrest is the initial stage of a criminal prosecution. When coupled, as here, with custody, it renders permissible a complete search of the person, assuming probable cause for arrest, although a search absent an arrest runs afoul of the Fourth amendment. See *Menard v. Saxbe*, at 45.

In *Mapp v. Ohio*, this Court also held that as a matter of due process, evidence obtained by a search and seizure in violation of the Fourth amendment is inadmissible in a State Court as it is in a Federal Court.

The government's actions is equivalent to an arbitrary arrest, and an arrest on this basis deprived the petitioner of his liberty without due process of law. See *U.S. v. Mackey*, 387 F.Supp. 1112 (1975). The fact state officials provided the government with documents of this unfounded arrest in no way isolates them. See *Elkins v. U.S.*, 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed. 2d 1669 (1960).

Wherefore the Petitioner's conviction shall be reversed and indictment dismissed.

The federal government was disseminated falsified documents by an state official. These documents were then used to obtain an indictment on the Petitioner by the Federal government. These documents alleged a crime that was not founded. The federal government lacks subject matter jurisdiction of a crime that violates 28 U.S.C. § 534 which governs state and federal comity. wherefore all actions taken against the Petition for this unfounded crime shall be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Felipe Rivera

Date: 8-26-2021