

21-5947

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED  
OCT 04 2021  
OFFICE OF THE CLERK

JORGE PETTER, — PETITIONER,  
(Your Name)

vs.

UNITED STATES OF AMERICA, — RESPONDENT(S).

ON PETITION FOR A WRIT OF CERTIORARI TO  
The United States Court Of Appeals  
For The Fourth Circuit

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

PETITION FOR WRIT OF CERTIORARI  
Jorge Petter, c/o: 26624083 (Pro se)

(Your Name)  
Federal Correctional Complex-1  
Post Office Box 5000

(Address)  
Oakdale, Louisiana 71463

(City, State, Zip Code)

Not applicable

September 27, 2021

(Phone Number)

## QUESTION(S) PRESENTED

No person shall be held to answer for a capital, or otherwise crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, "without due process of law;" ...United States Constitution Amendment 5 Criminal actions -- Provisions concerning -- Due process of law and just compensation clauses. To ensure that Incarcerated pro se filers are not convicted for procedures put in place to respond to COVID-19 by the Federal Bureau of Prisons, Louisiana , ... prevented or delayed the ability of incarcerated filers to meet filing deadlines -- A Ground Zero for COVID-19 . See Fifth Circuit Court of Appeals General Order 2020-7.

The question presented, on which the circuits are deeply divided, is whether were the Court of Appeals below failed to issue a standing order specifically extending deadlines to file all pending Panel Rehearing and Rehearing En-banc cases due to COVID-19 pandemic thus, violates Petitioner Petter's "due process right guaranteed under the Fifth Amendment," as did in United States Supreme Court Standing Orders 589 issued on March 19 and April 15, 2020. See *In re Orders*, 2020 U.S. LEXIS 1643 & 2196 (U.S. Mar. 19, Apr. 15, 2020), rescinded on July 19, 2021 (2021 U.S. LEXIS 3591, U.S. July. 19, 2021).

(i)

## 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:

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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**

**[xx] 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 2021 U.S. App. LEXIS 5400; or, / reconsideration  
 has been designated for publication but is not yet reported; or, / Panel Opinion  
 is unpublished. 829 Fed. Appx. 627, 2020 U.S. App. LEXIS 36401, 2020 WL 6791563 (4th Cir. Va., Nov 19, 2020)

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 July 7, 2021; February 23, 2021 and November 19, 2020 (Collectively).

"No petition for rehearing was timely filed in my case, due to COVID-19 Pandemic"

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

**Amendment 5 of the United States Constitution Criminal actions**  
-- Provisions concerning -- Due process of law and just compensation clauses, provides:

No person shall be held to answer for a capital, or otherwise crime, unless on a presentment or indictment of a grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, "without due process of law, " ...

**4th Circuit Local Rule 40(c) provides that:** "The only grounds for an extension of time to file a petition, or to accept an untimely petition, are as follows: (i) the death or serious illness of counsel, or of a member of counsel's immediate family (or in the case of a party proceeding without counsel, the death or serious illness of the party or a member of the party's immediate family); or (ii) an extraordinary circumstance wholly beyond the control of counsel or of a party proceeding without counsel.

**First Step Act of 2018 ("First Step Act"), Pub. L. No. 115-391, 132 Stat. 5194 :**

In December 2018, Congress enacted §404 of the **FIRST STEP Act** which made §2 and §3 of the FSA retroactive. **FIRST STEP Act, § 404(a), (b).**

## STATEMENT OF THE CASE

The question in this case is whether and to what extent a Incarcerated pro se filer charged with filing deadlines may assert a " good faith " defense " Due to extraordinary circumstances related to the COVID-19 virus. To overcome a good faith defense in the **Fourth, Third, Sixth , Seventh, Eighth; Tenth and Eleventh Circuits**, the Appellant must have an extraordinary circumstance, which is defined as "**serious personal illness or death in counsel's-(pro se) immediate family,**" All it takes to deny petitions for panel rehearing and petitions for rehearing en banc under the logistical issues related to the COVID-19 virus is a finding that "**the court strictly enforces the time limits for filing petitions for rehearing and petitions for rehearing en banc in accordance with Fouth Circuit Local Rule 40(c).** The petition in this case is denied as untimely."<sup>1</sup> See App. 001-003.

This case is an ideal vehicle for resolving the question presented. Petitioner filed a reconsideration by asserting that "**in light of the on going public health concerns relating to COVID-19, along with Federal Bureau of Prisons Counselor H . Smith, of FCC Oakdale, in Louisiana 71463 Memorandum in support of the motion to reconsider dated March 4, 2021,**" establishing and showing a good faith defense that petitioner received the Panel Opinion and Judgment issued on November 19, 2020, on December 02, 2020 via FCI-1 Legal Mail Process - already time bared, therefore, requesting additional time in resubmitting his rehearing.. See App. 020-028.

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1) 4th Circuit Local Rule 40(c) provides that: " The only grounds for an extension of time to file a petition, or to accept an untimely petition, are as follows: (i) the death or serious illness of counsel, or of a member of counsel's immediate family (or in the case of a party proceeding without counsel, the death or serious illness of the party or a member of the party's immediate family); or (ii) an extraordinary circumstance wholly beyond the control of counsel or of a party proceeding without counsel .

## REASONS FOR GRANTING THE PETITION

### A. Statutory Framework

The Fifth Amendment of the United States Constitution makes it unlawful for "any person shall be held to answer for a capital. or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, ...; nor shall be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, ' without due process of law ', ... "

*In re Orders*, 2020 U.S. LEXIS 1643 and 2196 (U.S. Mar. 19, Apr. 15, 2020), and rescinded on July 19, 2021 (2021 U.S. LEXIS 3591, U.S. July 19, 2021), this Court acknowledged that In light of the ongoing public health concerns relating to COVID-19, the following shall apply to cases prior to a ruling on a petition for a writ of certiorari, and issued a Standing Order 589 specifically extending the deadline to file "any petition for a writ of certiorari due on or after the date of this order is extended from 90 days to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. See Rules 13.1 and 13.3." ...

### B. Factual Background<sup>2</sup>

#### I Federal Bureau of Prisons, FCC-Oakdale, Louisiana and the COVID-19 Pandemic

Federal Bureau of Prisons was established in 1930 to provide more progressive and humane case for federal inmates, to professionalize the prison service, and to ensure consistent and centralized administration of federal prison.

It is the mission of the Federal Bureau of Prisons to protect society by confining offenders in the controlled environments of prisons and community-based facilities that are safe, humane, cost-efficient, and appropriately secure,

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2) On December 17, 2020, Petitioner Petter, submitted a signed, dated and properly prepared PETITION FOR PANEL REHEARING (Dkt. No. 13) for filing in the 4th Circuit court and delivered to FCI-1 Oakdale prison authorities for forwarding pursuant to *Houston v. Lack*, 487 U.S. 266 (1988) requesting petition for panel rehearing of Substantial Material Statement of Facts overlooked in decision, Pursuant to Fed.R.App.P. 40. See App. 029-057. Each of these exhibits is a matter of public record not subject to reasonable dispute, and thus, is judicially noticeable. See Fed.R.Evid. 201 (b): *Blatt v. Pambakian*, No. 19-cv-7046,

and that provide work and other self-improvement opportunities to assist offenders in becoming law abiding citizens.

In response to the **COVID-19 Pandemic** and the related Statewide shelter-in-place, the Federal Bureau of Prisons, Louisiana Department of Public Safety & Corrections, Mississippi Department of Corrections, and the Texas Department of Criminal Justice , specifically put in place procedures prevented or delayed the ability of Incarcerated filers to meet filing deadlines. The condition in Federal Correctional Complex-1 (FCC-Oakdale) where Petitioner is housed hit the most and was **Ground-zero for COVID-19 Pandemic**. See App. 083- also see Fifth Circuit Standard General order 2020-7 issued on March 25, 2020 and rescinded on January 22, 2021.

Petitioner was charged in the Superseding indictment filed on January 25, 2007, on **Count ONE** alleged a violation of **21 U.S.C. § 841(a)(1) and (b)(1)(A)** and **846**. Petitioner agreed to plead guilty to those provisions in his **Statement of Facts (App. 043-057)** entered in to record along with his plea agreement to the multiple-object drug conspiracy charge under 21 U.S.C § 846 on March 26, 2007. At his plea colloquy hearing, the district court, for the record, failed to correct the plea agreement to include and indicate and reflects Petitioner Petter did in fact plead guilty and did plead guilty to **conspiracy to distribute 35.5 grams or more of cocaine base (App. 055)**. Because of the nature of the conspiracy charge, the penalties for each object of the conspiracy are relevant. On August 08, 2007, Petitioner was sentenced to **372 months imprisonment**. See App. 058-082.

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432 F.Supp.3d 1141, 2020 U.S. dist. LEXIS 31380, 2020 WL 821040, at \*16 (C.D. Cal. Jan 9, 2020)(taking judicial notice of video of news interview because it is publicly available and from a source whose authenticity could not be questioned.. See App. 010-014.

Petitioner Petter asserted in his Motion to reconsider the 4th circuit court order entered on February 23, 2021 [ App. 003 ], that: (a) As specified in the Superseding indictment filed on 01/25/2007, Count ONE alleged a violation of 21 U.S.C.

However, Here, After identifying an unpreserved but plain legal error, this Court likewise routinely remands the case so the court of appeals may resolve whether the error affected the defendant's substantial rights and implicated the fairness, integrity, or public reputation of judicial proceedings-and so (again) determine if the judgment must be revised, this time under Rule 52(b) as did in Hicks v. United States, 137 S.Ct. 2000, No. 16-7806 (June 26, 2017). ( "We remand in cases like these not only when we are certain that curing the error will yield a different outcome, but also in cases where we

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§ 841(a)(1) and (b)(1)(A) and 846. Petitioner Petter agreed to plead guilty to those provisions in his Statement of Facts entered in to record along with in his plea agreement to the multi-object drug conspiracy charge under 21 U.S.C. § 846 on March 26, 2007. In his plea colloquy, the district court, for the record, failed to correct the plea agreement to include and indicate and reflects Petitioner Petter agreed to plead guilty and did in Fact plead guilty to conspiracy to distribute 35.5 grams or more of cocaine base. Because of the nature of the conspiracy charge, the penalties for each object of the conspiracy are relevant. At the time of Petitioner's sentencing, in August of 2007 to 372 months imprisonment, the trial court stated for the record that:

THE COURT: Well, let me say something for the record.

For Mr. Harmon and Mr. Petter, if the defendant admitted to a paragraph in the statement of facts, he is bound by it in the statement of facts, it has already been previously admitted, and the Court's not going to sit here and go back over something the defendant's already admitted because the law simply requires that the defendant not only object but to come forward with an affirmative showing that something's in error. But where he's already admitted that, that is certainly a waste of the court's time, and I'm looking at United States versus Terry at 916 F.2d 157, page 162, Fourth Circuit case.

I'm just putting you on notice, Mr. Harmon, we are not going to spend any time replowing things already admitted by the defendant (See

Sent. Transc. pages 3-4 attached as Appendix "B" to pro se informal opening brief under Appeal No. 19-7904.). In fact the district court expressly adopts the Presentence Investigation Report attached as Appendix "J".; (b) In 2009, Petitioner moved for a reduction in sentence pursuant to the First Step Act. Section 404 of the First Step Act permits a district court to impose reduced sentence upon a defendant convicted of a "covered offense" as if certain provisions of the Fair Sentencing Act of 2010 ("FSA"), Pub.L. 111-220, 124 Stat. 2372, were in effect at the time the defendant committed the "covered offense."; (c) Petitioner Petter appeals the district court's order denying his motion to reduce his sentence under the First Step Act of 2018 ("First Step Act"), Pub. L. No. 115-391, 132 Stat. 5194.; (d) On November 19, 2020, after a fully briefed timely appeal, the

think there's a reasonable probability that will happen." ) See, e.g., Skilling v. United States, 561 U.S. 358, 414, 130 S.Ct. 2896, 177 L.Ed. 2d 619 (2010) (harmless error); Tapia v. United States, 564 U.S. 319, 335, 131, S.Ct. 2382, 180 L.Ed. 2d 357 (2011)(plain error); United States v. Marcus, 560 U.S. 258, 266-267, 130 S.Ct. 2159, 176 L.Ed. 2d 1012 (2010)(Plain error).

In this current case at bar, " A plain legal error infects this judgment," thus, Petitioner Petter was wrongly sentenced to 31 years in prison under a defunct statute. No doubt, too in Here, as in Hicks, there's a reasonable probability that cleansing this error will yield a different outcome.

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4th Circuit Court panel issued a Judgment order affirming the district court judgment and remanded for further proceedings [ See App. 004-014 ].; (e) On December 17, 2020, Petitioner Petter submitted and filed his petition for panel Rehearing, after received 4th circuit court's judgment order entered on November 19, 2020, via FCI-1 Oakdale Legal mail process on December 02, 2020, (Fourteen days already timed bared, see also Counselor H. Smith's memorandum in support of motion to reconsider attached as Appendix "O" along with proof of received USPS print stamped envelope dated 11/19/2020 containing 4th circuit's judgment order entered on 11/19/2020, showing Petitioner Petter also received it on December 02, 2020 via FCI-1 legal mail process - already time bared - attached as Appendix "N" ).; and (f) ...in light of the on going public health concerns relating to COVID-19, the institution where petitioner is housed has been on lockdown status since March 23, 2020, and has been operating in a modified operation with very limited access to Law Library, Printer and Copier, citing Supreme Court's Standing Order: 589 issued on March 19, 2020, relating to COVID-19, extending all deadlines to 150 days to file petition for a writ of certiorari, attached as Appendix "P" in support. See App. 020-028

The question presented arises in virtually most Incarcerated pro se filers during COVID-19 Pandemic. There is every reason to expect this trend to continue.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

By: Jorge Petter  
Jorge Petter, c/o:26624083 ( Pro se )

Date: September 30<sup>th</sup> , 2021