

No. **21-7846**

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

MAY 02 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

JOSE L. ARROYO-GARCIA

— PETITIONER

(Your Name)

VS.

STATE OF OHIO

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Tenth District Court of Appeals for Franklin County, Ohio

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

PETITION FOR WRIT OF CERTIORARI

JOSE L. ARROYO-GARCIA

(Your Name)

(Inst. No. 718286) 15708 McConnelville Road

(Address)

Caldwell, Ohio 43724-8902

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Does the Due Process Clause tolerate invidious discrimination by way of a state court's denial of a well-established exception to the rule?

Is notice required when a state court converts a common-law matter into one governed by a stricter statutory demand?

Does the Constitution tolerate amendments to an indictment that broadens a criminal statute and makes a substantive change in identity of the offense(s)?

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

☐ For cases from **federal courts**:

The opinion of the United States court of appeals 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☐ is unpublished.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 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☐ is unpublished.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 A to the petition and is

☒ reported at 2021-Ohio-4325; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Supreme Court of Ohio court appears at Appendix B to the petition and is

☒ reported at Slip Opinion No. 2022-Ohio-743; 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☐ is unpublished.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 _____.

☐ 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 Mar. 15, 2022.
A copy of that decision appears at Appendix B.

☐ 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).

STATEMENT OF THE CASE

The factual background denoted by the state appellate court adequately details the case, and is incorporated herein by reference.

3.

REASONS FOR GRANTING THE PETITION

This Honorable Court has always struck down instances of invidious discrimination as being protected by the Equal Protection Clause of the Fourteenth Amendment. **Skinner v. Oklahoma, ex rel. Williamson**, 316 U.S. 535, 541 (1942). This case is no less deserving of such considerations. Just because of Petitioner's background, Respondent has predisposed him as a "drug lord", even though not witnessing any sales or seizure of any controlled substances. Rather, respondent relies on questionable phone conversations to support convictions under the theory of offers. Ohio law provides for common-law exceptions to the special provisions of post-conviction relief, but they don't seem to apply to Petitioner, whose immigration status is an illegal alien. However, the Due Process Clause of the Fourteenth Amendment demands different. **Japanese Immigrant Case**, 189 U.S. 86, 101 (1903). Since Petitioner's grievance before the state trial court was that it could have used its inherent power to vacate a void judgment, **Lincoln Tavern, Inc. v. Snader**, 165 Ohio St. 61 (1956), no statute, particularly that of post-conviction relief, could govern its adjudication, **State v. Bush**, 96 Ohio St.3d 235, 2002-Ohio-3993. Should Petitioner be blocked from meaningful access, solely on his nationality?

Even more concerning, the Supreme Court of Ohio has previously held that constitutional law demands that notice be given before a court can put pleadings under a different standard of review. **Petrey v. Simon**, 4 Ohio St.3d 154 (1985). However, the same con-

stitutional tenets and policies were ignored in Petitioner's case, simply because he was presumed guilty due to his nationality. This goes against the canons of decency and fairness. This Court has never hesitated to review such situations. **Rochin v. California** 342 U.S. 165, 169 (1952). There should not be any exceptions made here because Petitioner is a Mexican.

Albeit the Fifth Amendment right to indictment does not extend to state court defendants, the federal criteria for an indictment does. Included among these criteria are amendments that go far beyond variances. **Stirone v. United States**, 361 U.S. 212, 217 (1960). These types of amendments take away the right to be informed of the charges and protection to plead once in jeopardy. **Bennett v. United States**, 227 U.S. 333, 338 (1913).

In Ohio, "a defendant may only be convicted of an offense for which he has been charged, or for a lesser-included offense of the crime charged". **State v. Deem**, 40 Ohio St.3d 205, paragraph one of the syllabus (1988); O.R.C. §2945.74. When a defendant is convicted of an offense that does not fall within either one of these categories, regardless of its similarities to the offense charged, the judge has made a substantive change in the indictment **State v. Johnson** (1988), 61 Ohio App.3d 693, 699. This constitutes a fortiori, because the judge has enlarged the definite and precise parameters of the statute, O.R.C. §2945.74. **Bouie v. City of Columbia**, 378 U.S. 347, 353 (1964). Not only were convictions below changed in identity, but they also didn't constitute lesser included offenses under Ohio law.

These issues deserve this Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: April 28, 2022