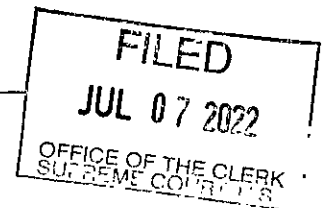


No. **22-5079**

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

In Re:

STEVEN MARTINEZ,

Petitioner

v.

WARDEN, CHRISTOPHER GOMEZ USP-McCREARY,

Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI FROM THE
SIXTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

By:
Steven Martinez, pro-se.
Reg. #45757-019
USP-McCreary
P.O. Box 3000
Pine Knot, KY 42635

QUESTION(S) PRESENTED

DID THE COURT OF APPEALS FOR THE SIXTH CIRCUIT APPLY THE WRONG MODEL FORM MOTION TO **VACATE, SET ASIDE, OR CORRECT SENTENCE** UNDER 28 U.S.C. § 2255 (e); FOR PETITIONER TO PROCEED IN BRINGING A CLAIM OF FALSE IMPRISONMENT IN RESPONDENTS EXECUTING A VOID (J&C) PURSUANT TO 18 U.S.C. § 4001 (a)?

- I. DOES RESPONDENT(S) HAVE THE AUTHORITY UNDER PRISON PROGRAM STATEMENT 5380.06, TO EXECUTE A LIFE TERM OF IMPRISONMENT ON A VOID (J&C); THAT HAS BEEN DISMISSED ON PETITIONER, WHICH ARE UTILIZING TO RECEIVE COST OF INCARCERATION FEE?
- II. IS IT LEGAL TO BE IN RESPONDENT(S) CUSTODY TO PROGRAM STATEMENT 2011.12, INDEFINITELY PURSUANT TO 18 U.S.C. § 4001; WHEN PETITIONER NEVER SIGNED A CONTRACT; OR WAS UNDER THE PRESENTMENT OF A GRAND JURY INDICTMENT?
- III. IS RESPONDENT(S) IN VIOLATION OF PETITIONERS' CONSTITUTIONAL RIGHTS, LAWS AND TREATIES OF THE UNITED STATES, IN DETAINING PETITIONER WITHOUT A CHARGE TO 18 U.S.C. § 4001 (a)?

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceedings in the judgment is the subject of this petition is as follows:

Garland Merrick, Attorney General Department of Justice

Gomez Christopher, Warden USP-McCreary

Gibbons, Larsen, and Strach, Circuit Judges for the Sixth Circuit

Kaplan A. Lewis, United States District Court Judge

Wilhoit R. Henry Jr., United States District Court Judge

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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 issues to review the Judgment below.

OPINION BELOW

FOR CASES FROM FEDERAL COURTS:

The opinion of the United States Court of Appeals for the Sixth Circuit appears at Appendix .K.

The opinion of the United States District Court appears at Appendix .H.

JURISDICTION

For Case From **Federal Courts**:

The date on which the United States Court of Appeals for the Sixth Circuit decided petition was on May 4, 2022.

No petition for rehearing was filed in this case.

The Jurisdiction of this Court is invoked under Article III of the Constitution of the United States. See also 28 U.S.C. § 1251 and the U.S. Const. Amdt. 11, as well as 28 U.S.C. § 1254 (1).

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STATEMENT OF FACTS

March 6, 2019, Petitioner requested from Unit Manager Jones a copy of his signed payment plan contract that is on the front of SENTRY pursuant to prison Program Statement 2011.12, Accounting for Cost of Incarceration Fee, (ACOIF). And showed Unit Team that they are executing a life term of imprisonment on four charges that were dismissed on the day of sentencing. This is shown on their certified copy of Judgment of Commitment, (J&C) front page box 5 to case No. 1:95CR00284-003(LAK), attached with excerpt of November 7, 1996 sentencing minutes, and criminal docket sheet disposition on Count(s): One, Two, Three, and Four are TERMINATED pursuant to 18 U.S.C. § 1117, Conspiracy to Murder, 18 U.S.C. §§ 1111, 1114, Murder, 18 U.S.C. § 371 Conspiracy to Robbery, and 18 U.S.C. § 2114, Robbery. This includes all events to 1:95CR00284-003(LAK). Unit Manager's response was inaccurate to what was requested, please see Appendix .A.

So Petitioner filed on March 10, 2019, BP-9 asserting that the Bureau of Prisons is executing an illegal sentence, to release Petitioner from their custody and disclose Petitioners alleged contract to pay salaries & expenses appropriation annually.

Warden, Joe Coakley response was that the BOP provides the custody and where Petitioner was sentence too, but never addressed the agreed payment plan by Petitioner, please see Appendix .B.

Petitioner proceeded with filing his Administrative Remedies with a BP-10 to the Regional Director's Office, response was not enclosed. This was resubmitted within the 15 days of rejection notice asking the BOP to disclose the contract allowing them to receive (COIF); from executing a void (J&C) in violation of 18 U.S.C. § 4001 (a). See Appendix .C. Regional Director, D.J. Harman states that the BOP Sentence Computation Manual direction on Calculating federal sentence. However, never addressed Petitioner agreed contract to pay staff salaries & expenses under Program Statement 2011.12, (ACOIF) on page 2 ¶¶ 4, and 5 in Appendix .D.

As in Appendix .E. Petitioner proceeded in filing his BP-11 on May 20, 2019 expressing that the legality of his sentence will be determined by the Court, but you have yet too answer or disclose the contract that Petitioner has agreed to paying staff salaries & expenses. July 11, 2019, the Administrator Ian Connors never answered or disclosed Petitioners contract. Although conceded that they are executing a sentence to a life term of imprisonment under case No. 1:95CR00284-003(LAK) in Appendix .F.*

* District Court Judge, Lewis A. Kaplan's order in Petitioner's Rule 36 motion clarifying that Superseding One Indictment for which Respondent(s) are executing a life sentence has been dismissed on the day of sentencing.

To the events that lead the Government dismissing the underlying conviction on Petitioner:

Prior to sentencing and after being found guilty to case No. 1:95CR00-284-003(LAK); trial Counsel Andrew G. Patel disclosed evidence that would have changed the outcome of Petitioners' trial. Petitioner then filed under Fed. R. Crim. P. a Rule 33 motion for a new trial, based on trial Counsel rendering ineffective assistance in not contesting the Government(s) theory with the facts of the case. Judge Kaplan granted a hearing, and in the hearing Petitioner demonstrated that Petitioner was not a criminal actor in the underlying felony-murder; corroborated with trial testimony. What also came to light was that the Honorable Judge, Kaplan failed to inquire on the record if Petitioner consented too: waiving his Constitutional Right not to testify at trial. This infuriated Judge Kaplan who denied Petitioners Rule 33 motion for a new trial under 1:95CR00284-003(LAK), U.S. v. Gallego, et al 944 F. Supp. 309 (S.D.N.Y 1996).

So to prevent Petitioner from bringing this before the Court of Appeals in the Second Circuit; on November 7, after Judge Kaplan imposed a sentence to a life term of imprisonment to the custody of the Attorney General pursuant to Public Law 102-395, prison policy P.S. 2011.12 in Appendix .D. The Government then dismissed the conviction on Petitioner, this way Petitioner would never prevail on Appeal no matter what is brought before the Courts as in case No. 15-6612.

Now instead of being released after the charges were dismissed. Petitioner was immediately remanded to the BOP's custody and placed in segregation in hope of Petitioners cooperation with the Governments' investigation into their felony-murder/robbery.

Months after being in USE-Atlanta segregation unit. The Court of Appeals for the Second Circuit appointed Appeal

Counsel, Theodore S. Green who persisted on Petitioner withdrawing his appeal to case No. 1:95CR00284-003(LAK). So that Appeal Counsel may consolidate the Government's newly discovered evidence with Petitioner's Rule 33 motion.

Appeal Counsel dupe Petitioner into withdrawing his pending appeal under 1:95CR00284-003(LAK), and had Petitioner believe that he still had too absolve the conviction. What Appeal Counsel should have raised at the time was Petitioner being illegally detained to the Department of Justice & Bureau of Prison custody to Public Law 102-395 in violation to 18 U.S.C. § 4001 (a); albeit addle in seeing it now for then that Petitioner could not have raised Public Law 102-395 because it was never put in law books at the time of Petitioner's trial, direct appeal, or his first 28 U.S.C. § 2255 motion.

What Appeal Counsel did appeal was the Government's perjured testimony, without Petitioner's Rule 33 motion. Which allowed the Government too introduce evidence from another trial. The Second Circuit Court of Appeals opinion stated that the Government had overwhelming evidence against Petitioner in *U.S.A. v. Gallego, et al* 191 F.3d 156, (Sept. 2, 1999).

This is why Judge Kaplan is asserting improper legal authority for Respondent(s) false imprisonment. That Petitioner is sentence to a Superseding Two indictment. Nothing on the record shows that Petitioner ever been indicted, arraigned, tried, convicted, or sentence to a Superseding Two indictment S2:95CR00284-003(LAK). Although this does not change the fact Respondent(s) certified copy of their (J&C) to criminal case No. S1:95CR00284-003(LAK) has been dismissed, and are executing a life term of imprisonment to receive (COIF) pursuant too Program Statement 5380.06, and Program Statement 2011.12 (ACOIF).

Before Petitioner exhausted his Administrative Process, he filed a 28 U.S.C. § 2241 in the Northern District of West Virginia in Martinez v. Coakley, No. 3:19-CV-59. This lead to Petitioner being removed from USP-Hazelton; while in transit during the COVID-19 pandemic the District Court of Northern District of West Virginia denied Petitioners Habeas Corpus relief on September 29, 2020.

After arriving at USP-McCreary on October 29, 2020, Receiving & Discharging Department did not want to give Petitioners legal property. Petitioner attempted again to file his habeas corpus relief under § 2241, without his Administrative Appeals in Martinez v. Gomez, case No. 6:21-008 (E.D. Ky denied Petition on Jan. 25, 2021).

After Petitioner received his legal material on April 7, 2021, Petitioner files in the Eastern District of Kentucky another Habeas Corpus pursuant to 28 U.S.C. § 2241 (c) (3), challenging the Department of Justice and the Bureau of Prisons authority in executing a life term of imprisonment on a void (J&C); asking a question to the Court if Respondent(s) have jurisdiction over Petitioner. Thus allowing Respondent(s) to receive (COIF) under Prison Program Statement 5380.06. and 2011.12, requesting the Court to have the Respondent(s) adhere to their ~~rules~~ and

regulation. As well as never being under the presentment of a Grand Jury indictment to be in Respondent(s) custody indefinitely, in other words violating Petitioners Constitutional Rights; including the very statute Respondent(s) hold Petitioner under 18 U.S.C. § 4001(a). Petitioner is seeking his immediate release from the Respondent(s) and disclosure of (COIF). See Appendix .G.

April 16, 2021 United States District Court Judge Henry R. Wilhoit Jr. denied Petitioners habeas corpus relief as impermissible collateral attack on his conviction in Appendix .H.

A timely notice of appeal was filed on April 22, 2021 to the United States Court of Appeals for the Sixth Circuit.

The Court of Appeals requested answers following questions about the appeal; short and direct statement that was submitted before September 7, 2021; as to how Appellee is executing, such as computing a sentence on a void (J&C); among other things in Appendix .I.

April 5, 2022, Petitioner filed a Application for Modification of Detention order pursuant to Federal Rules of Appellant Procedure 23 (c) (d); requesting that Petitioner be released on his own recognizance until the appeal is resolved, please see Appendix .J.

May 4, 2022, the Court of Appeals for the Sixth Circuit rendered an order stating that the only way Petitioner may challenge the execution of his sentence under § 2241, if Petitioner meets the Savings Clause in 28 U.S.C. § 2255 (e); allowing Petitioner to show that his remedy under § 2255 motion is inadequate or ineffective in Appendix .K.

The Court of Appeals never mentioned April 5, 2022, Rule 23 (c) (d) motion under F.R.A.P. nor addressed Petitioners Affidavit in Appendix .J.

**REASONS FOR GRANTING HABEAS CORPUS
RELIEF PURSUANT TO 28 U.S.C. § 2241**

Did the Court of Appeals for the Sixth Circuit apply the wrong model form motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (e); for Petitioner to proceed in bringing a claim of false imprisonment in Respondent(s) executing a void (J&C) pursuant to 18 U.S.C. § 4001 (a)?

This standard of review of § 2255 (e) does not apply to Petitioner who is asserting false imprisonment from Respondent(s) custody. Petitioner is not charged with any crime to (i) Vacate, (ii) Set Aside, and (iii) Correct Sentence. Petitioner is challenging the Respondent(s) authority to executing a life term of imprisonment to a Criminal Judgment in case No. 1:95CR00284-00

3(LAK) that has been dismissed.** Thus bringing into question the statute that allows Respondent(s) to detain or imprison . . . Petitioner to 18 U.S.C. § 4001 (a).

ARGUMENT

I

Does Respondent(s) have the authority under prison Program Statement 5380.06; to execute a life term of imprisonment on a void (J&C), that has been dismissed on Petitioner, which are utilizing to receive Cost Of Incarceration fee?

The Bureau of Prisons' Program Statement 5380.06, (COIF) in Appendix .L. objective is to assess a fee to cover Cost of Incarceration when the Court did not assess a fine when committed to the BOP's custody. November 8, 1996, (J&C) in Appendix .M. shows Petitioner is committed to the BOP's custody under Public Law 102-395, pursuant to 18 U.S.C. § 4001 on page 2, and not to any of the dismissed underlying charges. Now page 3, and 4 shows that

** As to the American Century Dictionary originated by Oxford University press first paperback printed in August of 1996, to "dismiss" definition No.5 Law refuses further hearing to case. The Merriam-Webster Dictionary copyright in 2016, definition to "dismiss", discharge to put out of judicial consideration (all charges).

the Court never assessed a fine.

Program Statement 5380.06, (COIF) is what the Respondents are using to calculate Petitioners' (J&C). Because this is within January 1, 1995 to November 1, 1997, as stated in Appendix .L. page 4 ¶ b.. However, the Respondent(s) are overlooking the first page on the (J&C) box 5 showing count(s) of the underlying indictment are dismissed as shown in Appendix .N. As well as Respondents are misreading Petitioners (J&C) in Appendix .M., page 5 STATEMENT OF REASONS shows that Petitioner's sentence does not exceed 24 months of imprisonment on box 7.

As to Program Statement 5380.06, (COIF) in Appendix .L. on page 7 ¶ number 11. **Inmates Notification** states Petitioner is to be notified at initial classification through the Program Review Report form, a copy of the BP-546 should also be provided to Petitioner.

This is what's been requested through Petitioners Administrative Remedy, but Respondent(s) are not complying with their policy as in Appendix .L., page 11 ¶ c. **COIF Payments**. Which the Office of Financial Management shall provide Petitioner with a receipt for all monies paid toward the assessed fee.

Both Program Statements' 2011.12, (ACOIF) and 5380.06 (COIF) are under Public Law 102-395, pursuant to 18 U.S.C. § 4001. The very statute Respondent(s) detain Petitioner to a life term of imprisonment without an Act of Congress. Which Petitioners only remedy for his release is a habeas corpus under 28 U.S.C. § 2241 pursuant to 18 U.S.C. § 4001 (a). This is stated by the Deputy Assistant Attorney General, John C. Yoo in Appendix .O. page 7 footnote 3, for memorandum to Daniel J Bryant, Assistant Attorney Generals' Office of Legislative Affairs.

ARGUMENT

II

Is it legal to be in Respondent(s) custody to Program Statement 2011.12, (ACOIF) indefinitely pursuant to 18 U.S.C. § 4001; when Petitioner never signed a contract, or was under the presentment of a Grand Jury indictment?

In Appendix .D. P.S. 2011.12, (ACOIF) states that Petitioner agreed to a payment plan that is on the front of SNETRY-generated contract. Petitioner exhausted his Administrative Remedies requesting that Respondent(s) disclose such contract. Respondent(s) will neither disclose nor respond to Petitioners request.

Respondent(s) silence through Petitioners Administrative Exhaustion to 28 U.S.C. § 2675 (a), should be seen as nothing other than guilt. Petitioner respectfully request the Supreme Court grant an order pursuant to 28 U.S.C. § 2243 to resolve the issue of Program Statement 2011.12, (ACOIF), and P.S. 5380.06 (COIF). Because Respondent(s) are violating laws under 15 U.S.C. § 1, in holding Petitioner as an indenture slave to 18 U.S.C. § 4001.

ARGUMENT

III

Are Respondent(s) in violation of Petitioners Constitutional Rights, Laws, and Treaties of the United States? in detaining Petitioner without a charge pursuant to 18 U.S.C. § 4001 (a)?

Four Court document(s) show that Criminal No. 1:95GRO0284-003(LAK) has been dismissed on Petitioner, (i) Sentencing Minutes, (ii) Docket Sheet, (iii) Judgment of Commitment (J&C), and (iv) Rule 36 Order by Lewis A. Kaplan, USDJ. So for the Respondent(s) to detain Petitioner without an Act of Congress violates Petitioners' Fifth Amendment right to Due Process, which Petitioner is not under any presentment of a Grand Jury indictment; or convicted to be detained too life imprisonment.

Respondent(s) concede in Appendix .E. on executing an invalid Judgment of Commitment not only violates 18 U.S.C. § 4001 (a), moreover to the Thirteen Amendment in slaving Petitioner into involuntary servitude to pay (COIF); without being convicted to an Act of Congress.

For the facts to be continuously misconstrued to imprisoning Petitioner is depriving his liberty, and equal protection of the laws within it's States Jurisdiction under the Fourteen Amendment. Because (Petitioners status is as a pretrial detainee who has not been convicted to any Act of Congress).

The U.S. Congress and State legislative have passed statutes (laws) that give pretrial detainee's more rights than those protected by the U.S. Constitution. Which Petitioners has already been denied:

- a. ~~The Federal Bail Reform Act~~
- b. Federal Indictment within 30 days
- c. Federal Speedy Trial Act

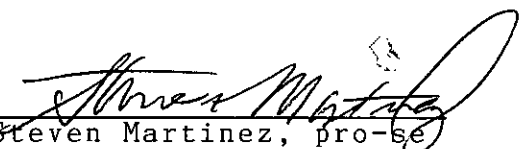
C O N C L U S I O N

Petitioner does not consent to being in Respondents custody, and in the absence of an adjudication from the Supreme Court immediately releasing Petitioner from Respondent(s) false imprisonment; would be allowing Respondents to act no different

than those they imprison for kidnaping and extortion. Petitioner humbly request that he be immediately released from Respondent(s) custody, and order Respondent(s) to adhere to their prison policy P.S. 5380.06, (COIF), and P.S. 2011.12, (ACOIF).

I, Steven Martinez, declare under the penalty of perjury 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed: June 8,, 2022


Steven Martinez, pro-se
Reg. #45757-019
USP-McCreary
P.O. Box 3000
Pine Knot, KY 42635

Subscribed and sworn before me a Notary Public in and for Pine Knot, Kentucky this 8th day of June, 2022.


Notary Public

