

No. 22-5270

IN THE  
SUPREME COURT OF THE UNITED STATES

JOAQUIN MENDEZ-HERNANDEZ - PETITIONER

VS.

CATRICKIA HOWARD - RESPONDENT

Supreme Court, U.S.  
FILED

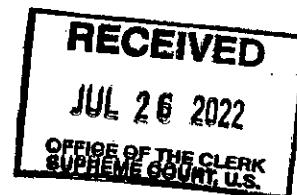
JUL 26 2022

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ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JOAQUIN MENDEZ HERNANDEZ  
REG. NO: 17846-021  
USP-TUCSON  
P.O. BOX 24550  
TUCSON, AZ 85734  
APPEARING PRO SE,  
PREPARED BY: STEVEN CHRISTOPHER CHANEY



QUESTIONS PRESENTED

What is "inadequate or ineffective" to file a Habeas Corpus petition under 28 U.S.C. § 2255(e)'s Savings Clause?

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IN THE  
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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgement below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix (A) to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix (B) to the petition and is reported at Hernandez v. Howard, 2022 U.S. Dist. LEXIS 7609 (D. Ariz. January 13, 2022).

## JURISDICTION

The date on which the United States Court of Appeals decided Petitioner's case was May 25, 2022.

No petition for rehearing was filed in this case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., art. 1, § 9, cl. 2.

"The suspension clause states that the privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

28 U.S.C. § 2241(a)

"Writ of habeas may be granted by the Supreme Court, any Justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the record of the district court of the district wherein the restraint complained of is had."

28 U.S.C. § 2255(e)

"An applicant for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the Court has denied him relief, unless it appears that the motion is inadequate or ineffective to test the legality of his detention."

## STATEMENT OF THE CASE

Petitioner, pursuant to a plea agreement, was convicted in the United States District Court for the Southern District of Georgia on one-count of Conspiracy to engage in sex trafficking, in violation of 18 U.S.C. § 1594(c). See United States v. Mendez-Hernandez, 4:13-cr-00004-LGW-CLR (S.D. Ga. 2013). On February 19, 2014, petitioner was sentenced to life in prison. Id. at Doc. 775. Petitioner did not appeal his conviction or sentence. Id.

On March 25, 2015, Petitioner moved to "reopen the right to appeal." Id. at Doc. 865. On October 7, 2015, his motion was denied. Id. at Doc. 879.

Petitioner on December 12, 2016, filed his initial § 2255 motion. Id. at Doc. 902. On January 12, 2017, his § 2255 motion was denied as untimely without a Government response. Id. at Doc. 906. Petitioner appealed the district court's denial and on September 19, 2017, the Eleventh Circuit denied the appeal. See Mendez-Hernandez v. United States, No. 17-10987 (11th Cir. 2017).

On September 27, 2021, petitioner, after being denied three times to file a second or successive § 2255 motion, filed his first petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 in the District of Arizona. See Hernandez v. Howard, 4:21-cv-00385-TUC-SHR--BGM (D. Ariz. 2021). On October 19, 2021, the district court denied his petition. Id. at Docs. 6-7. Petitioner appealed to the Ninth Circuit. See Hernandez v. Howard, Appeal No. 21-16822 (9th Cir. 2021). That appeal remains pending. Id.

On December 13, 2021, petitioner, serving a life sentence, filed a second petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 in the District of Arizona. See Hernandez v. Howard, 4:21-cv-00541-SHR--BGM (D. Ariz. 2021). The district court also denied this petition. Id. at Doc. 4. On May 25, 2022, the Ninth Circuit denied his appeal. See Hernandez v. Howard, Appeal No. 22-15145 (9th Cir. 2022).

#### REASONS FOR GRANTING THE PETITION

The existence of a Circuit split among lower courts on the meaning of "inadequate or ineffective" in 28 U.S.C. § 2255(e) for Habeas Corpus relief under 28 U.S.C. § 2241.

Review on a Writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a Writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) A United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter...See Rule 10.

The Writ of Habeas Corpus is of such fundamental importance to this nation's legal system that it is known as the Great Writ. See Ex parte Bollman, 8 U.S. (4 cranch) 75, 95, 2 L. Ed. 554 (1807)(Marshall, C.J.). The writers of our constitution recognized the importance of the Writ of Habeas Corpus when they enshrined its existence in that document. U.S. Const. art. 1, § 9, cl. 2. The Great Writ is the tool meant to be available to

any person who finds himself in jail when he ought not be there. However, depending on what circuit you are imprisoned in, depends on whether an inmate can have the benefit of 28 U.S.C. § 2255(e) to "test the legality of his detention." Id.

The lower courts are entrenched in a three-way split on how and who may benefit from the "Savings Clause" in 28 U.S.C. § 2255(e), which reads:

"An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion entertained if it appears that the applicant has failed to apply for relief, by motion to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is INADEQUATE OR INEFFECTIVE TO TEST THE LEGALITY OF HIS DETENTION." Id. (emphasis added).

These splits are broken down into three interpretations of the meaning of "inadequate or ineffective." The First, Second, Third, Fifth, Eighth, and Ninth Circuits would dismiss the petition by relying on the definitions of "actual innocence" as laid out in Bousley. See Damon v. United States, 732 F.3d 1, 6 (CA1. 2013) ("Because Damon contest only the categorization of his prior conviction as a crime of violence, he has not pleaded 'actual innocence' as defined in Bousley" for savings clause jurisdiction.); Poindexter v. Nash, 333 F.3d 372, 382 (CA2. 2003) (same); Okereke v. United States, 307 F.3d 117, 120-21 (CA3. 2002) (same); In re. Bradford, 660 F.3d 226, 230 (CA5. 2011) (per curiam) (same); See Bear v. United States, 644 F.3d 700, 705-06 (CA8. 2011) (en banc); Alaimalo v. United States, 645 F.3d 1042 (CA9. 2011) (same). On a second view, the Tenth and Eleventh

CONCLUSION

This Court should GRANT petitioner's Writ of Certiorari, order briefing on the case, vacate the Ninth Circuit's order, and remand this case for further consideration.

Respectfully submitted on this 18 day of July,  
2022.

(S) 

JOAQUIN MENDEZ-HERNANDEZ  
REG. NO: 17846-021  
USP-TUCSON  
P.O. BOX 24550  
TUCSON, AZ 85734  
APPEARING PRO SE,