

No. 22-5874

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

AUG 22 2022

DUSTIN NGUYEN

— 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 EIGHTH CIRCUIT
From The

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

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

PETITION FOR WRIT OF CERTIORARI

Pro per: Dustin Nguyen, Reg. No. 19389030- K3

(Your Name)

P. O. BOX 1000 (FCI SANDSTONE)

(Address)

SANDSTONE, MN 55072

(City, State, Zip Code)

A living man: Not a corporation

No Phone

(Phone Number)

QUESTIONS PRESENTED

Forthright observance of rights presupposes their forthright definition. Judges must make clear and understandable the reasons for deciding as they do. Statute calls for the judge to 'state his reasons'. Chavez-meza v. U.S. (2018).

1) Did the panel err, violate statute or the public trust, when they failed to state their reasoning for deciding they had no jurisdiction?

The 'Motion To Set Aside A Void Judgment' under F.R.Crim.Proc. Rules was a 'direct attack' by definition. Black's Law Dict., 11th Ed, p.576. It is not possible to "undermine a judgment", that is void: A 'collateral attack'.

2) Was the trial court in error by asserting that said motion, attacking a void judgment, was a 'collateral attack', and/or when the court refused to pass on the issues of the judgment being void and/or denial of due process?

Restated: Was the ORDER, ECF 114, a final order which was appealable?

Whereas: Proceedings are irregular or due process was denied the accused, which goes to the jurisdiction of the court, and renders the cause coram non judice; as the court is enjoined by the law for its exercise of jurisdiction because it is a fundamental principle that trial and imprisonment be lawful:

3) Is a jeopardy terminated by irregular proceedings or the court's loss of jurisdiction, where it is bound to adopt certain rules in its proceedings, but disregards those rules?

The Double jeopardy Clause and the Due Process Clause are in the same 5th Amendment and in the same sentence. Relation is inferred.

4) What is the relation of these two clauses per the Rules of Construction?

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[REDACTED]

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:

The Petitioner is a living man, not a corporation.

RELATED CASES

ALL CASES ARE: UNITED STATES v. NGUYEN

The related cases are: Case No.: 1:19-cr-061- JAJ-HCA, in the UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION; and Case No. 4:22-cv-00222-SMR in the same Court. This is a 28 U.S.C. §2255 Motion.

Appeal No. 22-1360 was filed in the UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT from said District court MOTION TO SET ASIDE VOID JUDGMENT.

The §2255 Motion was filed after the interlocutory appeal was denied.

Synopsis

USDC No. 19-cr-0061, Judgment entered August 17, 2021.

USDC No. 4:22-cv-00222-SMR, opened June 2022 -- pending.

USCA For The Eighth Circuit, NO. 22130, Judgment entered May 20, 2022.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 5, 2022.

☐ 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: May 20, 2022, and a copy of the order denying rehearing appears at Appendix C.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including "as soon as possible" (date) on Sept. 1, 2022 (date) in Application No. A. Per Redmond K Barnes, Clerk.

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

The May 20, 2022 ORDER states no reasoning, but only states:

"The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied. ...

/s/ Michael E. Gans"

☐ For cases from **state courts**: **N/A**

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).

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 A to the petition and is, to the best of my knowledge

☐ 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 B to the petition and is, to the best of my knowledge

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**: N/A

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.

THE CONSTITUTIONAL PROVISIONS, TREATISE, STATUTES, ORDINANCES, AND REGULATIONS

The U.S. Constitution: Art.III,§ 2, cl. 1:

"The judicial Power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made under their Authority;- "...cl.2,"the supreme Court shall have appellate Jurisdiction,"

Amendment V:

"No person shall be held to answer for...;nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;...,nor be deprived of life,liberty, or property, without due process of law;

Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed,...and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

A CONCISE STATEMENT OF THE CASE SETTING OUT THE FACTS MATERIAL

1) The basis for federal jurisdiction in the District Court is an anonymous tip from a website sent to State investigators claiming that child pornography had been placed on their internet server in accounts opened by the Petitioner in prior years. A warrantless search is said to have resulted in evidence which resulted in issuance of indictment.

2) All discovery was concealed from the Petitioner, who was denied his Fifth Amendment right to due process and his Sixth amendment rights to be informed, confront the witnesses against him and to have compulsory process for obtaining witnesses in his favor. He was constructively denied the 'Assistance of Counsel for his defense' and right to speedy trail.

STATEMENT OF THE CASE

3) The trial court refused to consider the Petitioner's claims, which go to the jurisdiction of the Court. The Court denied him due process. It held that Petitioner's MOTION TO SET A VOID JUDGMENT ASIDE, filed under the criminal Rules in the court that issued the judgment, is a collateral attack in a civil proceeding, which is abuse of discretion and clear error.

4) The appeals court sanctioned the abuse of discretion and denial of due process, which pervaded and vitiated the trial process, and stated no reason for its decision.

5) The Court was bound to adopt the rules in the Sixth and Fifth Amendments, from which it deviated. The Court was enjoined by the law for the exercise of jurisdiction for disregarding the rules of proceeding. Dynes v. Hoover, 20 How. 65, 80-81, 15 LED 838; Oritz v. United States, 201 L Ed 2d 601, 2018 U.S. LEXIS 3843; Wellness Int'l Network, Ltd v. Sharif, 191 L Ed 2d 911.

6) The loss of jurisdiction bestowed the right 'not to be tried for the offense' because an attempt to again exercise jurisdiction to prosecute the offense is barred by the Double jeopardy Clause in the same Amendment and same sentence as the Due Process Clause. The rules of Construction forbid presuming that no relation exists between them.

7) The Eighth Circuit panel ineptly dismissed the appeal and rehearing without analysis and without stating the reasons or reasoning, despite the Clerk of the trial court filing "Notice of Appeal Supplement", ECF 117, 02/17/2022, asserting that the Order was a "final judgment": APPENDIX D, Attached, establishing also that IFP and CJA were granted. The Petitioner asserted that denial of due process by disregarding the Rules of proceeding deprived the Court of jurisdiction, making the judgment void.

The deprivation of the Petitioner's Expert witness vitiated the trial process by depriving him of his Sixth Amendment right to have compulsory process for compelling witnesses in his favor. The 'right not-to-be-tried' was bestowed by the Fifth Amendment Clauses, which is a colorable double-jeopardy claim. Due process requires written reasons for decisions. PONTE v. REAL, 471 US 491, 512, 85 L Ed 2d 535, 105 S Ct 2192 (1985).

"We wrote that [1] the statute calls "for the judge to state his reasons". And that requirement reflects sound judicial practice. Judicial Decisions are reasoned decisions...." Chavez-Meza v. United States, 201 L Ed 2d 359, 2018 U.S. LEXIS 3689.

"Meaningful review requires that the reviewing court should review. It it should not be remitted to assumptions. It must have before it a statement of the reasons motivating the waiver, including, of course, a statement of the relevant facts. It may not "assume" that there are adequate reasons, nor may it merely assume that "full investigation has been made." Kent v. United States, 383 US 541, 561, 16 L Ed 2d 84, 86 S Ct 1045 (1966).

REASONS FOR GRANTING THE PETITION

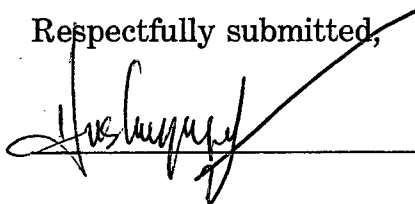
This case involves fundamental Principles, enforcement of which is critical to the Rule of Law, integrity of the judiciary, and protection of private rights. The Court Of Appeals For the Eighth Circuit needs to state its reasoning. The Petitioner needs an opportunity to be heard: Due Process. The **ORDER**, ECF 114, is a final order that falls within Cohen's exception.

The proceedings below are in want of this Court's review. The District court disregarded the rules of proceeding, which rendered the cause **coram non judice, and irregular**, thus not a case under Article III of the Constitution of the United States. The Court lost jurisdiction and the jeopardy ended. **The State must not be allowed endless attempts to obtain conviction.**

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Sept. 28. 2022