

ORIGINAL

CASE NO: 22-600-22-6200

CLERK OF COURT
FOR THE SUPREME COURT
OF THE UNITED STATES

FILED
FEB 13 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In re: Terry Lopez
Plaintiff,
-v-
Hon. Judge Martinez, et al

PETITION FOR REHEARING FROM THE
DENIAL OF THE WRIT OF PROHIBITION FROM
FIFTH CIRCUIT COURT OF APPEALS

TERRY LOPEZ
880 N. ZARAGOZA
P.O. BOX 17003
EL PASO, TEXAS 79917

CERTIFICATE FOR A PARTY (TERRY LOPEZ) UNREPRESENTED BY COUNSEL

This is to certify that Terry Lopez, pursuant to Rule 39 of the Supreme Court Rules, is proceeding in this Petition in Informa Pauperis status.

Terry Lopez further certifies that her application for Rehearing is presented in good faith and not for delay. Petitioner understands that the filing of this Petition is predicated on either intervening circumstances of a substantial or controlling effect, or other substantial grounds not previously presented.

PIVOTAL STATEMENT AND PROCEDURAL STATEMENT UNDERLYING GROUNDS NOT PREVIOUSLY PRESENTED

On August 2019, the government filed a motion to Dismiss Amended Petition by Terry Lopez and request for Final Order OF forfeiture (ECF. No. 222). On March 31, 2020, The District Court rendered its final judgment for Forfeiture as to Real Property located at 396 Pendale Road, El Paso, Texas 79907. On April 13, 2020 in Case # 3:16-CR-00896-prm, Terry Lopez filed an Omnibus Petition for Supervisory Control under mandamus, pursuant to the All Writs Act 28

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U.S.C. 1651(a) to confine the district court to a lawful exercise of its prescribed jurisdiction, and to issue a protective order to Terry Lopez, pursuant to her invocation of the "innocent Owner Doctrine (ECF No. 190). In the same petition, she asserted a "Monell Claim", against the City of El Paso, pursuant to United States v. Dept. of Social Services of the City of New York, 436 U.S. 659 (1978).

On August 17, 2020, Terry Lopez filed an Omnibus petition alleging (1) Federal Law Claims against Hon. Judge Martinez, Kristal Melissa Wade of U.S. Attorneys' Office, and Office of U.S. Marshal, El Paso for various alleged act of wrong doing, under 42 U.S.C. Section 1985(3) implicating conspiracy to violate Plaintiff's civil rights in unlawful possession and order of eviction from her home of thirty years. Also in this omnibus petition she sought transfer to the United States District Court, District of Texas, Houston Division, and finally an Application for stay of execution of judgment for eviction pursuant to Fed. R. App. P. 8(a) and Rule 6(b) of the Federal Rule of Civil Procedure by reason of fraud perpetrated upon the court.

DATE: FEBRUARY 12, 2023.

RESPECTFULLY SUBMITTED,

TERRY LOPEZ

JURISDICTIONAL STATEMENT

Terry Lopez on her way to applying for the Writ of Prohibition in the Supreme Court of the United States, had hitherto applied for relief, to the Federal Circuit Court of Appeals, invoking jurisdiction to review questions of statutory interpretation *de novo*. *Mudge v. United States*, 308 F.3d 1220, 1224 (Fed. Cir. 2002). We must "hold unlawful and set aside agency action, findings, and conclusions found to be in excess of statutory jurisdiction, authority or limitations, or short or statutory right." 5 U.S.C. Section 706(2)(C). This filing by Terry Lopez had to do with the actions of the U.S. Marshals bulldozing into her home and chalking her, two daughters and three grand children and their belongings into the street without a lawful judicial order. This unlawful action transpired at the apex of the Covid -19 pandemic.

According to the Federal Circuit statutory construction jurisprudence, "...In making this determination, we must take due account of prejudicial error. *Id.* Terry Lopez also avers that, the United States constitution limits the subject-matter jurisdiction of federal courts to ongoing cases and controversies. See U.S. Const.. art, 111 Section 2, cl.1. "(A)n actual case or) controversy must exlt not only at the time the Complaint Is filed, bur through out all stages of the litigation." Already, *LLC n. Nike, Inc.* 568 U.S. 85, 90-91, 133 S.Ct. 721, 184 L.Ed.2d 553 (2013).

QUESTIONS PRESENTED IN GOOD FAITH AND NOT FOR DELAY

WHETHER THE DISTRICT COURT AND FIFTH CIRCUIT COURT OF APPEALS BOTH ABUSED THEIR DISCRETION BY IGNORING POINTS OF LAW, TENDERED BY TERRY LOPEZ'S MOTION TO DISMISS THE GOVERNMENT'S MOTION TO DISMISS, AND SET SIDE THE DISRICT COURT'S FORFEITURE ORDER FOR VIOLATIONS OF TERRY LOPEZ'S "INNOCENT OWNER DOCTRINE, PURSUANT TO THE FINAL JUDGMENT OF FORFEITURE, AS TO REAL PROPERTY LOCATED AT 396 PENDALE, EL PASO TEXAS 79907.

Terry Lopez avers that in the Civil Forfeiture Reform Act of 2000, Congress substantially overhauled the procedure governing civil forfeiture proceedings. The laws regarding notice to potential claimants were changed. 18 U.S.C. Section 983(a). The previous requirement that claimant post a "cost bond" were eliminated. 18 U.S.C. Section 983(a)(2)(E); the burden of proof was changed. 18 U.S.C. Section 983(c). A complaint for forfeiture must adhere to the pleading requirements set forth in Rule E(2)(a) of the Supplemental Rules of Certain Admiralty and Maritime Claims.

These rules imposed a more stringent obligation on the government that the notice pleading requirements of the Federal of Civil procedure in setting forth grounds for forfeiture. *United States v. Certain Real Estate Property Located at 4880 S.E. Dixie Highway*, 838 F.2d 1558 (11th Cir. 1988); *United States v. \$38,000 in United States Currency*, 816 F.2d 1538 (11th Cir. 1987); *United States v. Two Parcels of Real Property Located in Russell County, Ala*, 92 F.3d 1123 (11th Cir. 1996).

The rule requires a complaint to state forth circumstances from which the claim arises with such particularity that the defendant or claimant will be able without moving for a more definite statement to commence an investigation of the facts and to frame a responsive pleading.

To satisfy the specificity requirement, the complaint must allege sufficient facts to provide a reasonable belief that the property is subject to forfeiture, in particular, the government has probable cause to believe that a substantial connection exists between the property to be forfeited and the exchange of a controlled substance. \$38,000, *supra*, Russell County, *supra*. In \$8,000, the court found the complaint insufficient because there was not a "whiff" of evidence in the complaint to suggest the property was in any way linked to illegal drug activity. In 4880 S.E. Dixie Highway, *supra*, the court held that the "bare bones" complaint was so deficient that the claimant was entitled to an award of fees under "The Equal Access to Justice Act."

WHETHER TERRY LOPEZ'S "INNOCENT OWNER" CLAIM IN CONJUNCTION WITH THE CIVIL FORFEITURE ACT OF 2000 ACT, CONSTITUTES A COGNIZABL DEFENSE CODIFIED AT 18 U.S.C.. SECTION 983(d).

In Section 983(d) the following rules set forth;

(1) A Claimant (like Terry Lopez) who asserts an "innocent owner defense must establish that she is an innocent owner by a preponderance of the evidence. See EXHIBIT 1 - Establishing

Documents of the inheritance of property, the proceeds of which was utilized for the purchase of the Real Property at 396 Pendale. Also in the Exhibit are tax records that pre-date the criminal indictment of her husband David Lopez. Also see - El Paso Tax Documents establishing same.

(2) Either with respect to a claimant who acquired the property after the criminal conduct, the claimant must show that she did not know of the conduct, giving rise the forfeiture, or upon learning of the Conduct, id.

(3) With respect to a claimant who acquired the property after the criminal conduct, claimant must show she was a bona fide purchaser for value, if she can and that she did not know, and was reasonably without cause to believe that the property was subject to forfeiture.

In conclusion, the gravamen of Terry Lopez's claim arises from the Hon. Judge Martinez's judgment, in contravention of the policy of the City of El Paso, not to be complicit with what amounts to an unconstitutional confiscation of the Real Property purchase in El Paso, that bears no scintilla or nexus to the crime charged. See Page 2 of judgment of the court.

CONCLUSION

The use of a petition for a writ of prohibition is well settled. It is patently clear from two Supreme Court cases in *Dairy Queen Inc. v. Wood*, 469 U.S. L.Ed.2d 44 825 S.Ct. 894 (1962), and *Beacon Theaters v. Wood*, 359 U.S. L.Ed.2d 988, 79 S.Ct. 948 (1959), support the use of the writ of Prohibition to correct an abuse of discretion by the district court. *Personette v. Kennedy*, In re *Midgard Corp* 204 B.R. 768 (10th Cir. 1997).

Like the case at bar, the following cases show that the district court along with the Court of Appeals for the Fifth Circuit, "displayed a persistent disregard of the criminal and civil rules of procedure," *Moothart v. Bell*, 21 F.3d 1499., 1404 (10th Cir. 1994)(quoting *McEwan v. City of Norman*, 926 F.2d 1539, 1553-54 (10th Cir. 1991); *Jennings v. Rivers*, 394 F.3d 850, 854 (10th Cir. 2008)(appellate review of trial court's decision on post judgment set aside voluntary dismissal with prejudice, if it was not "free, calculated and deliberate choice"). *Hackett v. Barnhart*, 475 F.3d 1166, 1172 (10th Cir. 2007)(quoting *Kiowa Indian Tribe of Oklahoma v. Hoover*, 150 F.3d 1163, 1165 (10th Cir. 1998). In re *Graves*, 609 F.3d 1153, 1156 (10th Cir, 2010); See *Braunstein v. McCabe*, 571 F.3d 108, 120 (1st Cir. 2009)(giving courts broad discretion in preventing injustice or unfairness).

The real issue at state in this case is whether or not with no scintilla of evidence linking Terry Lopez's property she had purchased for over thirty years, before her husband David Lopez was indicted in 2016, confiscation of that property by the government, leaving her virtually homeless, constitutes a grave miscarriage of justice.

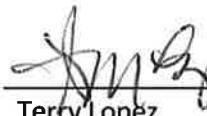
Thus, given the totality of her claims, she expects the Supreme Court to interpret the law and determine whether the Court of Appeals for the Fifth Circuit along with the district Court for the Western District of Texas properly exercised the jurisdiction conferred on them by 28. U.S.C. 3231 and 28 U.S.C. Section 1291 respectively in not finding there is no judicial or prosecutorial immunity arising from actions arising from their acting outside the limits of the law.

RELIEF SOUGHT

WHEREFORE, Terry Lopez moves this Honorable Supreme Court premises permitted to apply the law and restore the rights and property of Terry Lopez, in the interest of justice.

Date: February 12, 2023

Respectfully Submitted,



Terry Lopez
880 N. ZARAGOZA
P.O. BOX 17903
EL PASO, TX 79917

CERTIFICATE OF SERVICE

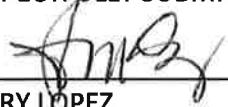
I, Terry Lopez, hereby certify that on this day, February, 2023, I deposited in the mail box at the El Paso Post office, a true copy of the document entitled "PETITION FOR A REHEARING PURSUANT TO THE DENIAL OF THE WRIT OF PROHIBITION ET AL". The document was sent to the following pertinent parties, pursuant to Houston v. Lack (citations omitted);

CLERK OF THE SUPREME COURT
1ST FIRST STREET, N.E.
WASHINGTON, D.C. 20543

U.S. SOLICITOR GENERAL
950 PENNSYLVANIA AVENUE, N.E.
WASHINGTON, D.C. 20530

DATE: FEBRUARY 12, 2023

RESPECTFULLY SUBMITTED,



TERRY LOPEZ
880 N. ZARAGOZA
P.O. BOX 17003
EL PASO, TX 79917

**Additional material
from this filing is
available in the
Clerk's Office.**