22-6211

# IN THE SUPREME COURT OF THE UNITED STATES

In re: PATRICIA ANN SOLOMON
In Propria Persona, Petitioner

ON PETITION FOR WRIT OF HABEAS CORPUS TO
SIXTH CIRCUIT COURT OF APPEALS (No. 16-6683) and UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY (No. 6:13-cr-00040-GFVT-HAI).

# PETITION FOR WRIT OF HABEAS CORPUS

PATRICIA ANN SOLOMON – PETITIONER



Vs.

UNITED STATES OF AMERICA – RESPONDENT



In Care of:
3020 Northwest 96th Street; Miami,
Florida Real Land [33147]

In Propria Persona Proceeding in Sui Juris capacity

## ISSUES PRESENTED FOR REVIEW

As per Honorable Justice Breyer's opinion in the new United States Supreme Court ruling XIULU RUAN v. UNITED STATES No. 20–1410. Argued March 1, 2022—Decided June 27, 2022; "a regulation provides that, "to be effective," a prescription "must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice." 21 CFR §1306.04(a). We assume, as did the courts below and the parties here, that a prescription is "authorized" and therefore lawful if it satisfies this standard.

Under the light of this Honorable Court, Can Ms. Patricia Solomon, a physician assistant who never prescribed any drug, be convicted under 21 U.S.C. §846 in the Eastern District of Kentucky London Division of conspiracy to distribute oxycodone a controlled substance not "as authorized," when the medicines were dispensed in accordance with valid prescriptions lawfully signed by a doctor under his prescribing authority capacity?

See *Heck v. Humphrey*, 512 U.S. 477, at 482 (1994) – establishing the basis for the damages claim necessarily demonstrates the invalidity of the conviction.

## LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

The parties are:

PATRICIA ANN SOLOMON;

UNITED STATES OF AMERICA;

UNITED STATES DEPARTMENT OF JUSTICE;

UNITED STATES ATTORNEY'S OFFICE;

FEDERAL BUREAU OF PRISONS;

INTERNAL REVENUE SERVICE;

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT;

UNITED STATES PROBATION OFFICE;

Solicitor General of the United

Petitioner has no corporate interests to disclose.

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**APPENDIX A** Judgment in a criminal case in the United States District Court for the Eastern District of Kentucky - London, without the name of the payee(s), and docket sheet of the 28 U.S.C. 2255.

**APPENDIX B** Order by Hon. District Judge Gregory F. Van Tatanhove, dismissing the forfeiture money judgment.

**APPENDIX C** Letter from attorney at law Rossman Law, PLLC, Travis A. Rossman informing about the dismissal of the forfeiture money judgment.

# TABLE OF AUTHORITIES

## STATUTES



## RULES

## CASES INVOLVED

1. Case No: 6:13-cr-00040-GFVT-HAI *United States v. PATRICIA ANN SOLOMON*, Entry of Judgment: November 16, 2016. District Court Eastern District of Kentucky.

2. Case No: 16-6683 *PATRICIA ANN SOLOMON v. UNITED STATES*, Entry of Judgment: November 30, 2017. Sixth Circuit Appeal Court.

## PROCEDURES AND ORDERS BELOW

1. On August 30, 2016, Ms. Solomon was convicted in the Eastern district court of Kentucky of conspiracy to distribute oxycodone and sentenced to 121 months of terms in prison and forfeiture of proceeds.

2. On November 16, 2016, Ms. Solomon's counsel appealed the case to the Sixth Court of Appeals 16-6683. The Entry of Judgment for this Appeal was on November 30, 2017.

3. On September 27, 2022, Petitioner filed 28 U.S.C. § 2255 Petition Case 6:13-cr-00040-GFVT-HAI, and the District Court ignored the petition.

## REASONS FOR NOT MAKING APPLICATION TO THE DISTRICT COURT

1. In accordance with 28 U.S.C. §§ 2241, 2242, Petitioner has made application to the district court of the district in which the Petitioner is held. See Case No: 6:13-cr-00040-GFVT-HAI, Sixth Circuit Appeal No. 16-6683.

2. Relative to the issues presented in this Petition, the foregoing proceedings in the District Court and Circuit Court have shown to be inadequate and ineffective for providing an expeditious habeas corpus remedy as intended by Congress. See *United States v. Hayman*, 342 U.S. 205, at 206-207 (1952) - Congress enacted § 2255 in 1948 as an alternative to the § 2241 writ of habeas corpus. The remedy is intended to be as broad as habeas corpus and "provide an **expeditious remedy** for correcting erroneous sentences without resort to habeas corpus." *Id.* at 218. The "Savings Clause" provision (§ 2255(e)) allows federal courts to grant writs of habeas corpus to federal prisoners pursuant to § 2241 when § 2255 is inadequate or ineffective to test the legality of detention. See 28 U.S.C. § 2255. See *Hayman*, at 209-210, 219, 223 – when § 2255 procedure is inadequate and ineffective, it precludes resort to habeas corpus and amounts to an unconstitutional "suspension" of the writ of habeas corpus. See *Hernandez v. Campbell*, 204 F.3d 861, at 864-865 (9th Cir. 2000).

## JURISDICTION

1. The habeas corpus jurisdiction of the Supreme Court is pursuant to 28 U.S.C. §§ 2241, 2255. Also, Original jurisdiction is pursuant to the Constitution Article III, Section 2, Clause 1; 28 U.S.C. § 1251; Judiciary Act of 1789; and Supreme Court Rule (S. Ct. R.) 17. Moreover, the Supreme Court has jurisdiction pursuant to Federal Rules of Appellate Procedure (Fed. R. App. P.) 23(b), (d), and S. Ct. R. 36.3(a), 36.4.

2. This Petition For Habeas Corpus is in aid of the Supreme Court's appellate jurisdiction, which includes the Supreme Court's exercise of its general supervisory control over the federal court system. See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 147 (1803) – the term "' appellate jurisdiction' is to be taken in its larger sense and implies in its nature the right of superintending the inferior tribunals." See *Connor v. Coleman*, 440 U.S. 612, 624 (1979) – when a lower federal court refuses to give effect to or misconstrues the mandate of the Supreme Court, its action may be controlled by the Supreme Court.

3. The authority of the appellate court "is not confined to the issuance of writs in aid of jurisdiction already acquired by appeal but extends to those cases which are within its appellate jurisdiction although no appeal has been perfected." See *FTC v. Dean Foods Co.*, 384 U.S. 597 (1966) (quoting *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 25 (1943)). This authority extends to support an ultimate power to review, although not immediately and directly involved. See *United States v. United States District Court*, 334 U.S. 258, 263 (1948). See S. Ct. R. 11, 17.1, 20.1. See 28 U.S.C. § 2101(e).

4. The Supreme Court also has jurisdiction pursuant to the United Nations Charter (59 Stat. 1046 – June 26, 1945) Articles 1(3), 55(c), 56, 62(2), 68, and 76(c). The United States has internationally pledged itself, through the provisions of the United Nations Charter (duly ratified and adopted by the United States), to promote respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, colour, sex, language, religious belief, political opinion and expression, national or social origin, property, birth or other status. See *Oyama v. California*, 332 U.S. 633 (1948). The United Nations Charter (United States treaty) is indicative of public policy, and courts may treat its provisions as part of the Law of the land. See *Oyama v. California*, 332 U.S. 633, at 650, 673-674 (1948).

## STATEMENT OF THE CASE

1. On June 3, 2014, DEA agents raided the Pain Center of Broward (PCB), where Patricia Solomon had worked as a physician assistant since 2010. They arrived with an arrest warrant for Shumrak (owner of the clinic) and a search warrant for the clinic. The agents entered with weapons drawn but quickly holstered them after securing the building. They arrested Shumrak, handcuffed him, and led him away. The agents then escorted clinic employees to a business office in the front of the clinic and began to search the rest of the building. The lead DEA agent, Officer Dalrymple, told the employees, including Patricia Solomon, "that none of them were under arrest" but that "the agents" would like to talk to each one of them individually" after the agents completed the search. Around 1 p.m., a DEA agent and an investigator from the Florida Department of Health and Human Services brought Solomon to an examination room in the back of the clinic for an interview.

2. Approximately 45 minutes into the interview, DEA Agent Dalrymple entered the room. After about 5 minutes, the other agents concluded their questioning and Agent Dalrymple began speaking with Solomon. Shortly thereafter, believing Ms. Solomon was lying to him, Agent Dalrymple read Miranda warnings to Solomon. Her prior questioners had not read Solomon these warnings. Agent Dalrymple concluded the interview with Solomon after about fifteen to twenty minutes of his questioning.

3. Following the raid, a grand jury in the Eastern District of Kentucky indicted Ms. Solomon for conspiracy to dispense oxycodone. Before trial, Solomon moved to suppress the statements made during her questioning, alleging that she was in custody and threatened by agents at the time she made them. After hearing testimony from Solomon and Agent Dalrymple, a magistrate judge filed a Report and Recommendation that the motion to suppress be denied. The magistrate judge found that Solomon had not been in custody, based primarily on factors set forth in United States v. Panak, 552 F.3d 462, 465 (6th Cir. 2009). The magistrate judge based this evaluation on the relatively familiar location of Solomon's interview, the comparatively short questioning, and the lack of restraints on her movement. The magistrate judge considered testimony from Solomon that agents had threatened her with penalties for noncooperation, but specifically found this testimony "not credible." The magistrate judge also rejected Solomon's argument for suppressing her post-Miranda statements pursuant to Missouri v. Seibert, 542 U.S. 600 (2004). The district court adopted the magistrate judge's Report and Recommendation, holding that Agent Dalrymple's testimony that no coercion occurred was credible and that Solomon's was not.

4. After eight days of trial, a jury found Salomon guilty of conspiracy. Pursuant to that conviction, the court then assessed forfeiture of proceeds from the conspiracy, $10 million in total, against the defendants. Applying the then-prevailing standards of United States v. Honeycutt, 816 F.3d 362, 379–80 (6th Cir. 2016), the court credited the defendants with $8 million previously forfeited by Joel Shumrak, and found them jointly and severally liable for the remaining $2 million. The court finally reduced the defendants' liability in proportion to the percentage of the conspiracy that they participated in.

5. On November 16, 2016, Ms. Solomon's counsel appealed the case to the Sixth Court of Appeals 16-6683. Solomon urges the court to follow United States v. Binder, 26 F. Supp. 3d. 656, 658 (E.D. Mich. 2014), and hold that there was insufficient evidence to prove the distribution of narcotics outside the scope of Solomon's professional practice. Solomon contends that expert testimony was required to assess any deficiencies in her practices as a physician assistant. Solomon additionally challenges the introduction of incriminating statements she made to investigators without having read her Miranda rights. Under Miranda, the Fifth Amendment requires that a person in custodial interrogation must be informed of and choose to waive her rights in order to have the statements used against her. Miranda v. Arizona, 384 U.S. 436, 467–69 (1966).

6. On November 30, 2017, Judgment for this Appeal was entered. Solomon's convictions stand; the forfeiture judgment was remanded to the district court for the limited purpose of recalculation to an amount proportionate with the property defendants actually acquired through the conspiracy.

7. On September 27, 2022, Petitioner filed 28 U.S.C. § 2255 Petition Case 6:13-cr-00040-GFVT-HAI and the District Court ignored the petition.

8. On February 5, 2018, the Judgment for forfeiture was dismissed.

9. Ms. Solomon urges to this honorable Supreme Court that this case could be heard under the light of the United States Supreme Court ruling XIULU RUAN v. UNITED STATES No. 20–1410. Argued March 1, 2022—Decided June 27, 2022, because it's of imperative public importance.

## REASONS FOR GRANTING THE PETITION

1. The judgments rendered in the Eastern District Court of Kentucky (Case No. 6:13-cr-00040-GFVT-HAI and Sixth Circuit of Appeals Case No. 16-6683) have resulted in conflicting Circuit and Supreme Court resolutions arising out of the one and same transaction which shows unusual, exceptional, special circumstances and the high probability that Petitioner will succeed on trial and appeals. Also, the issues presented for review constitute important and novel constitutional issues likely to reoccur in the future, which calls for the supervisory authority (aid of appellate jurisdiction) of the Supreme Court. See 28 U.S.C. § 2101(e). See S. Ct. R. 10(a), (c), 11.

2. Petitioner is currently unlawfully detained and proceeding In Propria Persona; therefore, one original of the Petition For Habeas Corpus, alone, suffices. See S. Ct. R. 12.2, 39.2.

## CONCLUSION

There Is an Acknowledged of imperative public importance, and Solomon's constitutional rights have been violated in the name of judicially fashioned codes. Also, it is an acknowledgment of a violation of the codes, and statutes. This case is an excellent vehicle to decide the question presented.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Patricia Ann Solomon

Patricia Ann Solomon

November 23rd, 2022.