

22-6457

No.

ORIGINAL

FILED

DEC 28 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

IN THE

ROBERTO ANTOINE DARDEN — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMER. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS-FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

~~ROBERTO A. DARDEN~~
(Your Name)

USP-Tucson, PO BOX 24550
(Address)

Tucson, AZ 85734
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether the district court's assessment of petitioner's constitutional claims are debatable or wrong?

Whether constitutional issues deserve encouragement to proceed further?

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:

RELATED CASES

Fontaine v. United States, 411 U.S. 213, 215 (1973).

United States v. De La Fuente, 8 F.3d 1333 (9th Cir. 1993).

In re Complaint of Bankers Trust Co., 752 F.2d at 891-92 (3d Cir. 1984).

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Machibroda v. United States,
368 U.S. 487, 7 L. Ed. 2d 473, 82 S.Ct. 510 (1962)..

Walker v. Johnston,
312 U.S. 275, 85 L ed 830, 61 S.Ct. 574 (1941).....

STATUTES AND RULES

28 USC Section 2255

OTHER

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

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 is unpublished.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 _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

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.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 15, 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: October 14, 2022, 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. § 1254(1).

For cases from **state courts**:

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, 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, which district shall have been previously ascertained by law, 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 that Assistance of Counsel for his defence.

STATEMENT OF THE CASE

Over 50 years ago, this Court held in *Machibroda v. United States*, as its second ruling, that lower courts shall not make findings on controverted issue-of fact without notice to the prisoner and without a hearing. 368 U.S. 487.

In *Walker v. Johnston*, this Court held that when a petition and traverse and accompanying affidavits raises substantial issues of fact it is the petitioner's right to be heard on those issues. 312 U.S. 275.

This case presents the question of whether the district court's "assessment" is debatable or wrong or, whether the issues assessed "deserve encouragement to proceed further" when facts were in dispute but the habeas court rescinded its order that demanded the government to file its disputation, notwithstanding the government's silence as to certain issues.

REASONS FOR GRANTING THE PETITION

To avoid erroneous deprivations of due process of law, this Court should uphold its habeas standard under both Machibroda and Walker that applies when disputed facts are decided without an evidentiary hearing.

In Machibroda v. United States, 368 U.S. 487, this Court opined that lower court's must proceed in conformity with 28 USC Section 2255 when assessing the petition, accompanying affidavits, responses and traverse. *Id.* at 494-95. Here, the Fourth Circuit accepted the district court's assessment of petitioner's constitutional claims, in that, the court's assessment is not debatable nor do those claims deserve encouragement to proceed further. The decision by the Fourth Circuit is plainly incorrect, as it both contradicts the bright-line holding of Machibroda and the express purpose of the rule. The rationale of Machibroda is that courts must assess controverted issues of fact by first holding an evidentiary hearing, not rescission of its order that gave rise to those disputed issues. Put another way, the Fourth Circuit overlooked that since "the District Court did not proceed in conformity with the provisions of 28 USC Section 2255", its assessment deserved encouragement to proceed further by conducting an evidentiary hearing on the purported claims or, those claims deserve encouragement to proceed further due to the court's contravention of the aforesaid provisions. Machibroda, 368 U.S. at 494; see also Walker v. Johnston, 312 U.S. 275 (1941).

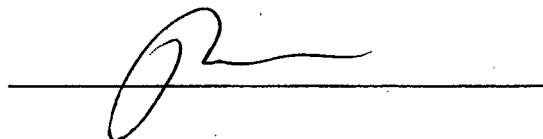
This case presents this Court with an opportunity to uphold the habeas review standards clarified in Machibroda and its predecessors in the face of the habeas court's actions that violate the Machibroda rule. Absent intervention by this Court, the Fourth Circuit unpublished decision will work to undermine

the carefully-crafted procedural safeguards that Congress and this Court has spent a vast amount of time developing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Doe", is written over a horizontal line.

Date: 12/22/22