

22-8680

No. _____

FILED

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OFFICE OF THE CLERK
SUPREME COURT U.S.

WRIT OF CERTIORARI

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL STAPLETON — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL STAPLETON
(Your Name)

FEDERAL CORRECTIONAL COMPLEX PETERSBURG
(Address)

PETERSBURG, V.A. 23804
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

No:1) Was the Court of Appeals wrong for failing to dismiss the defective indictment that created a split in circuits where the the Fifth and Ninth circuits both agreed that an indictment that charges a defendant with aiding and abetting venture designed to smuggle aliens must identify a co-conspirator whom the defendant aided and abetted in the indictment?

No:2) Does the Court of Appeals violate the defendants right to Due Process and the Sixth Amendment rights to effective assistance of counsel by leaving a timely filed motion to discharge counsel unresolved, prior to affirming the defendants conviction?

No:3) Does the Court of Appeals violate the defendants rights to Due Process by leaving a claim unresolved that was raised for the first time and timely filed in a Petition for Re-Hearing and Re-Hearing En Banc under Fed. Rules. Crim. P. 12 (b) (3) (B) which permits a Court to hear a claim at anytime while the case is pending to hear a claim that the indictment or information fails to evoke the Courts Jurisdiction?

No:4) Does the Clerk of the Courts of Appeals violate the defendant rights to Due Process (after) the Court has granted the defendant the right to proceed pro-se by failing to accept a timely filed motion that the court lacked jurisdiction where the Eleventh Circuit has made it clear that a motion for lack of jurisdiction is timely filed once the mandate has not been issued?

No:5) Does it violate the Supreme Courts holdings in Blackledge v. Perry, Menna v. New York and United States v. Broce by allowing a conviction to stand on double jeopardy grounds and by failing to consider facts raised by the defendant in his initial brief that he has been already charged with the same crime in an earlier indictment that charged identical crimes?

No:6) Does the Court of Appeals violates the Supreme Court Holdings in Aprendi v. New Jersey and United States v. Davis by concluding that the 404 (B) evidence used to enhance the defendants sentence (12 levels in total) was a prior conviction when the record of any facts that the 404(B) case used was in fact a prior conviction?

No:7) Can the Court under Fed. Rules. Crim. P. 52(b) exercise its discretion as it did in Silber v. United States to correct a plain error where the defendant was taken to trial, convicted and sentenced on a criminal indictment that the Court did not have jurisdiction to convict in the first place, in a case where the defendant's conduct did not violate the charging statute?

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:

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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 B to the petition and is

[] reported at U.S. v. Stapleton 39, f4th(11th Cir 22} 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 A to the petition and is

[] reported at Case No: 14-80151-Middlebrooks ; 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 July, 12 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: December, 1st, 2022, and a copy of the order denying rehearing appears at Appendix C-1-2

[] 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

1) The Fifth Amendment Right;

No person shall be held to answer to a capital, or otherwise infamous crime, unless on a presentment or an indictment of the Grand Jury; nor shall any person be subject for the same offense to be placed twice in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life and liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2) The Sixth Amendment Right;

In all criminal prosecutions, the accused shall enjoy the right to a speedy 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 the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

The defendant was charged under an indictment in Case No: 13-80201-CR-UNGARO.

The indictment was filed on October, 17th, 2013. That indictment also charged the defendant with conspiracy to encourage and induce an alien to come to, enter, and reside in the United States, in violation of Title 8 U.S.C. & 1324 (a) (1) (A) (v) (I), ten counts of encouraging and inducing an alien to come to, enter, and reside in the United States, in violation of Title 8 U.S.C. & 1324 (a) (1) (A) (iv), and one count of aiding and assisting a certain aliens to enter the United States, in violation of Title 8 U.S.C. & 1327. These offenses allegedly accurred in September 2013.

The defendant was again charged in a 2014 indictment that never superseded the 2013 indictment. On September, 4th, 2014, the government filed another indictment charging two counts of conspiracy to encourage and induce an alien to come to, enter, and reside in the United States, in violation of Title 8 U.S.C. & 1324 (a) (1) (A) (v) (I), (Counts 1 and 2); twenty two counts of encouraging and inducing an alien to come to, enter, and reside in the United States, in violation of Title 8 U.S.C. & 1324 (a) (1) (A) (iv), (Counts 3 through 24); twenty two counts of bringing and attempting to bring aliens into the United States for the purpose of commercial advantage and private financial gain, in violation of Title 8 U.S.C. & 1324 (a) (2) (B) (ii), (Counts 25-46); and one count of aiding and assisting an alien to enter the United States, in violation of Title 8 U.S.C. & 1327, (Count 47).

The defendant timely filed motions to dismiss both indictments in accord to Fed. Rules. Crim. P. 12 (b) (2). The motions were erroneously denied by the District Judge.

The defendant filed an appeal raising the claims made in pre-trial motions that were filed in the District Court but added that the indictment violated the double jeopardy clause, the Court of Appeals affirmed the defendants conviction on all counts.

The defendant now files this Writ of Certiorari to the Supreme Court in hopes that this Court will give the defendant the duly warranted relief.

Prior to defendants conviction being affirmed the defendant filed a timely Motion to Discharge Counsel under Shaw v. Wilson, indictment by the Supreme Court. The defendant asserted the counsel was ineffective for failing to raise stronger issues than the ones raised on behalf of the defendant in his initial brief., specifically about Jurisdiction and Congress Intent, see docket entries on appeal. The Court of Appeals affirmed the defendants conviction and left the Motion to Discharge Counsel unresolved. During the process in filing a Petition for Re: hearing and Re: hearing en banc, the Court noted that the Motion to Discharge Counsel was still pending. The defendant immediately filed a Motion to Reinstate the defendants Direct Appeal and allow the defendant to proceed pro-se or to appoint counsel so that the defendant could raise issues of merit on Direct Appeal. The defendant further expressed to the Court of Appeals that the indictment violated Congress Intent and also had a Jurisdictional defect that counsel failed to raise these issues in his brief. The defendant told the court that the fact that the Court affirmed the defendants conviction only strengthens the defendant Motion to Discharge Counsel and that counsel was ineffective, the court denied the defendant's motion and allowed the defendant to proceed pro-se on the Re: hearing and Re: hearing en banc. However, the Petition to Re: hear the case would NOT allow the defendant to raise new issues but only give reasons why the Petition to Re: hear the case would be warranted. The Court of Appeals violated the defendants rights to Due Process on appeal when the court affirmed the defendants conviction without first addressing the Motion to Discharge Counsel. The defendant relied on Eleventh Circuit case laws which states that a defendant can raise at anytime while the case is pending and before the mandate is issued that the Court lacked subject matter Jurisdiction. Fed. Rules. Crim. P. 12 (b) (3) (B), United States v. Izurieta 710, F.3d 1176 (11th Cir 2013). The Eleventh Circuit has also held that if a defendants conduct falls outside the sweep of the charging statute the defect is Jurisdictional, United States v. Yoisel Espinosa 2022 U.S. App. Lexis (11th Cir 2022). The defendant then raised the claim in the Petition for Re: hearing and Re: hearing en banc, feeling as if the Court could deny the Petition to Re-hear the case the defendant then filed a

separate Motion for Lack of Jurisdiction but the Clerk told the defendant that no action would be taken on the Motion, so the Motion was never filed separately for the Court to consider. Just as the defendant suspected the Court denied the Petition to Re: hear the case but the issue pertaining to Lack of Jurisdiction was again left unresolved.

Once the defendant received notice that the court denied to Re: hear the case, the defendant then filed yet another Motion for Lack of Jurisdiction that was mailed to the court invoking the Prison Mail Box Rule and prior to the mandate being issued, again relying on Eleventh Circuit case laws.

The Fifth and Ninth Circuits both decided that an indictment that charges a defendant with aiding and abetting is appropriate when the defendant assist a principle in an operation designed to smuggle aliens into the United States. United States v. Garcia-Paulin, 627 F.3d 127, 133, (5th Cir 2010), United States v. Singh, 532, F.3d 1053, 1059, (9th Cir 2008). A defendant cannot aid and abet an alien, Singh, 532 F.3d at 1059, no co-conspirators are listed in the indictment or factual basis to establish the existence of a principle whom the defendant aided and abetted. The dangers that alarmed the Fifth and Ninth Circuits are definitely present in the defendants indictment. The Eleventh Circuit created a split in the Circuits by deciding that the defendants indictment was not defective and further that the defendant is not charged with aiding and abetting. Both defendants before the Fifth and Ninth Circuits were charged with aiding and abetting under Title 18 U.S.C & 2, so is the defendant in this indictment before this Court, not only is the defendant charged under Title 18 U.S.C. & 2 the defendant is also charged under Title 8 U.S.C. and 1324 (v) (II) which is another aiding and abetting statute for alien smuggling. However, the Court of Appeals came to the conclusion that the defendant is not charged with aiding and abetting in their Opinion, this assertion by the Court of Appeals is totally contradicted by the indictment on it's face. The decision by the Court of Appeals conflicts with the Fifth and Ninth and the split in Circuits should be resolved.

The Fifth Circuit also vacated the conviction of a defendant for the identical defects and charges in the charging document that is present in this indictment before this Court,

United States v. Garcia-Paulin 627, F.3d 127, 133 (5th Cir, 2010). The only difference was Garcia-Paulin pleaded guilty and the defendant in this case went to trial and even at trial there was nothing to support the fact that the defendants conduct violated the charging statutes as defined in counts 25-47 charged in the indictment. The Fifth Circuit in rejecting the government's arguments that the indictment charged the defendant under the statute that tracks the statutory language, the very case that the government relied upon establishes the point that the defendant conduct did not violate the charging statute. The Eleventh Circuit has held in Anaya, enbanc, that subsection (a) (1) is directed towards those who are directly involved in the physical ingress and subsection (a) (iv) at those who other wise act as accessories. The concurring opinion noted that by adding the offense of encouraging to induce aliens to enter the United States, Congress completed it's statutory scheme, United States v. Anaya, 509, F. Supp. 289, 297 (S.D. Fla 1980). The Fifth Circuit in vacating the defendants conviction under plain error, concluded that there was nothing tieing the bringing charges to the conspiracy, United States v. Adams, 961, F.2d 505, 509 (5th Cir 1992). The defendants conduct could not violate the charging statute when there was nothing tieing the defendant to the conspiracy because the defendant did not bring or attempted to bring any aliens to the United States.

In the Court's Opinion the court based it's entire Opinion on the 2014 indictment, to which the defendant was convicted on. In the defendants initial brief the attorney for the defendant mentions that the defendant was already charged in a 2013 indictment with the same crime, see the Statement of Facts. The Court of Appeals failed to consider the 2013 indictment when the Court rendered it's decision and in doing so violated the Supreme Courts holdings in Blackledge v. Perry 417, U.S. 21, 30, 40, L. Ed. 2d. 628, 94, S. Ct. 2098, (1974), Menna v. New York 423, U.S. 61, 46, L. Ed. 2d. 195, 96, S. Ct. 241, 46, (1975), United States v. Broce supra, 488, U.S. 563, L. Ed. 2d. 927, 109, S. Ct. 757 (1988). The Supreme Court held that the second indictment must fall. The Supreme Court further concluded that the state was precluded from haling a defendant into Court on a charge, Federal Law require that a conviction on the charge be set aside. The Court of Appeals was wrong to base their opinion

solely on the 2014 indictment. Judging both indictments on its face it is clear that the defendant was charged in both indictments with the identical crimes. The Court of Appeals also said that because the 2 conspiracies charged in the 2014 indictment had a substantial overlap in time, the conspiracies were separate. If the Court of Appeals had considered the 2013 indictment the Court of Appeals would have reached another decision because both indictments charged crimes that were just 17 days apart, both indictments charged all three locations as being the same, in Palm Beach County, so the Court of Appeals was wrong to conclude that all three conspiracies took place in separate locations of Florida.

In *Silber v. United States* 370, U.S. 717, 8, L. Ed. 2d. 798, 82, S. Ct. 1287 (1962) the Supreme Court reversed a defendants conviction under plain error. The Supreme Court concluded that Petitioner's timely filed motion to dismiss the indictment made in accord with Fed. Rules. Crim. P. 12 (b) (2) was erroneously denied by the District Court. The Fifth Circuit also vacated a defendants conviction because the government failed to rebut the defendants *prima faci* showing that the 2 indictments violated the double jeopardy clause, *United States v. Rabhan*, 628, F.3d. 200 (5th Cir 2010). The District Court failed to hold a hearing on the double jeopardy grounds and the government failed to make a *prima faci* showing that the 2 indictments did not violate the double jeopardy clause.

Once the defendant was convicted in the 2014 indictment the government drop the 2013 indictment saying that it violated the double jeopardy clause. If the 2013 indictment violated the double jeopardy clause of the 2014 indictment, does this also mean that the 2014 indictment violated the double jeopardy clause to the 2013 indictment as well? The Supreme Court should vacate the defendant's conviction under plain error because a Mis-carriage of Justice has definitely acured in the case and the Court of Appeals was wrong to affirm the defendants conviction. In order to protect the fairness and integrity of the public reputation of judicial proceedings the conviction should not stand and Writ of Certiorari should be granted to undo this unjust conviction.

The Courts of Appeals also concluded that the 404 (B) evidence was not prejudicial and the admittance was proper under Rule 404 (B) because the 404 (B) evidence was a prior conviction. The defendant was never convicted of any crimes in the United States of Alien Smuggling other than the case before this Court. The defendant was sentenced at category (1) of the Federal Guidelines System, if the defendant was convicted of a crime in the United States the defendant would have been sentenced at category (2) of the Federal Guidelines System. The Court of Appeals was wrong to conclude in their Opinion that the 404 (B) evidence was a prior conviction because the 404 (B) evidence was used to enhance the defendants sentence (12) levels in total that violates the very core of the Supreme Courts holdings in United States v. Davis, 588, U. S. 139, S. Ct. 204, L. Ed. 2d. 757 (2019) quoting Aprendi v. New Jersey, 530, U. S. 466, 147, L. Ed. 2d. 485, 120, S. Ct. 2348 (2000), which states that anything used to raise the defendants sentence other than a prior conviction must be submitted to the jury to consider, the record in this case is void of those facts. The 404 (B) evidence was not a prior conviction and should have never been entered in the defendants trial and should have never been used to enhance the defendants sentence (2) levels for a gun, (6) levels for smuggling 32 or more aliens and (4) levels for leadership role, all for a crime that was not a prior conviction the the Court of Appeals said was a prior conviction, see the opinion of the Court of Appeals.

REASONS FOR GRANTING THE PETITION

The Eleventh Circuit in affirming the defendants conviction created a split in the Circuits. The Fifth and Ninth Circuits both decided that an indictment is defective and set a precedent in the Circuits. The Eleventh Circuit has departed from the long standing case precedents and the Writ should be granted to resolve the split in the Circuits, that appears to be the first time impression for the Supreme Court in some areas as it relates to alien smuggling, the defendant has found no cases that the Supreme Court has previously decided.

Namely, the defective indictment that charges a defendant with aiding and abetting but does not identify a co-conspirator in the indictment whom the defendant aided and abetted.

The Eleventh Circuit has departed from clearly established Supreme Court holdings on some issues raised by the defendant in his initial brief, that paints a very disturbing picture. The Court of Appeals relied on completely erroneous fact findings that is clearly contradicted by the record in this case. The defendant has no other recourse but to rely on the Supreme Court to correct the errors because the Eleventh Circuit case laws prohibits a defendant from relitigating the same issues in a 2255 Petition that was already raised on direct appeal.

Granting this Writ will prevent a fundamental miscarriage of justice and protect the fairness, and integrity of the judicial proceedings. Granting this Writ will also bring this case in uniform with other Circuits and Supreme Court laws that has already given other defendants relief on the identical charges, with the identical indictment defects.