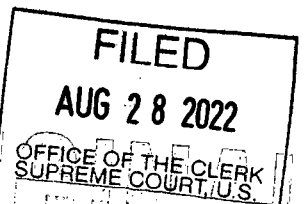


22-6684

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

Fox Joseph Salerno PETITIONER
(Your Name)

Dean Williams vs. David Shinn
~~State of Arizona~~ — RESPONDENT(S)

AN Extraordinary writ of
ON PETITION FOR ~~WRIT OF HABEAS CORPUS~~
Habeas Corpus

ARIZONA DISTRICT COURT
~~ARIZONA COURT OF APPEALS~~
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

Extraordinary writ
PETITION FOR ~~WRIT OF HABEAS CORPUS~~
(HABEAS CORPUS)

Fox Joseph Salerno
(Your Name)

CDoc #164490

~~PO BOX~~ ~~800~~ 49030 State Hwy 71 South

(Address)

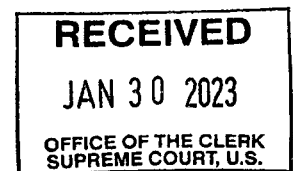
Lima, CO. 80826

~~State, CO. 80826~~

(City, State, Zip Code)

NCNE

(Phone Number)



QUESTION(S) PRESENTED

- ① Did the Arizona District Court have jurisdiction in a Habeas corpus cause in which the petitioner was housed in the Colorado Dept. of correction? And did the NINTH circuit have jurisdiction to deny a certificate of appealability, which was never even asked for?
- ② Where must a 'state' prisoner file a Federal Habeas Corpus (28 USC 2241) if he is confined in another state per the Western Inter-state compact Act; in ^{AZ District} ~~state~~ of conviction or ^{Co-} District he is being confined in?
- ③ Can State prisoners file a Federal Habeas corpus Challenging Execution of Sentence under 28 USC 2241 or are they only allowed Federal Habeas corpus under 28 USC 2254? ^{Three} ~~Two~~ circuits say they cannot, the rest say they can.
- ④ Can a certificate of Appealability in a Habeas corpus cause be denied challenging the execution of his sentence, when issue on the execution of his sentence arose after his previous H.C. was filed and judgment rendered? and petitioner's mandamus was about Jurisdiction - never requested certificate?
- ⑤ Did Salerno require a certificate of Appealability, filing a ^{first} 28 USC 2241 Habeas corpus action? And did A.Z. D.C. erron by turning his mandamus on jurisdiction into a request for certificate of appealability, when Salerno never asked for certificate.

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

- ① Salerno v. U.S. District Court of Colorado, U.S. Supreme Court No. 21-8223, cert denied
- ② Salerno v. Arizona, U.S. Supreme Court No. 22-5052, cert denied.

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APPENDIX A	Ninth circuit Dismissal order dated 9/29/22, denying certificate of appealability.
APPENDIX B	Ninth circuit's order dated 5/25/22 changing mandamus to an appeal.
APPENDIX C	Arizona District court's order dated 4/11/22 changing <u>28 U.S.C 2241</u> to a <u>28 USC 2254</u> and dismissing cause.
APPENDIX D	Salerno's mandamus filed on April 25, 2022
APPENDIX E	Colorado's District court's order transferring case to Arizona District court dated 3/24/22.
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NOTE: This Petition is not challenging denial of certificate of Appealability. It is challenging whether District court of Arizona and Ninth circuit has jurisdiction over this matter at all.

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. (NINTH CIRCUIT; NO. 22-15812).

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 September 29, 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: _____, 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).

NOTE: Salerno is not challenging denial of certiorari of appealability. He argues that neither Arizona District Court nor Ninth Circuit have jurisdiction to issue such a denial. Arizona D.C. improperly accepted jurisdiction which solely belongs to Colorado D.C. and Tenth circuit.

☐ 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 28 USC 2241 - Is this Habeas corpus statute available to state prisoners?
- ② 28 USC 2253(c)(2) - Jurisdiction
- ③ 28 USC 2254
- ④ 28 USC 2244 -
- ⑤ 42 USC 1997e

STATEMENT OF THE CASE

Salerno was convicted and sentenced in an Arizona state case. He was transferred from Arizona D.O.C to Colorado D.O.C. per inter-state compact Act, not Salerno's choice.

Salerno filed a 28 USC 2241 in the Colorado District Court where he is confined, challenging execution of sentence. CO. District Court sent H.C. to the Arizona District Court, over Salerno's objection. (Exhibit E).

The Arizona D.C. changed Salerno's filing from a 2241 to a 28 USC 2254, over Salerno's objection, and promptly dismissed as Salerno previously filed a 28 USC 2254 in 2005 challenging his conviction. (Exhibit C).

Salerno filed a mandamus with Ninth circuit~~is~~ challenging Arizona's D.C.'s jurisdiction as he is being detained outside AZ. D.C.'s control, and arguing against AZ. D.C.'s altering from H.C. 2241 to H.C. 2254 (Exhibit D).

The Ninth circuit failed to rule on jurisdiction or the lower court's altering H.C. statute, they just considered it an Appeal and denied certificate of appealability (Exhibits A & B). Salerno never sought certificate.

By reviewing Salerno's mandamus (Exhibit D) he argues that Rumsfeld v. Padilla, 124 S.Ct 2711 requires he file in District and circuit which he is

confined. There is absolutely no case law on where an inter-state compact prisoner must file a H.C. under 28 USC 2241. Everyone ~~seems~~ seems to be dodging the question of who has jurisdiction.

It is important to Salerno ^{as} ~~and~~ the transfer of H.C. from CO. to AZ, prejudiced him. Under the 10th circuit case law, state prisoners can file under 2241, however, the 9th circuit prohibits 2241 filings and only considers 28 USC 2254 filings from state prisoners White v Lambert, 370 F.3d 1002, 1009-10 (9th cir 2004). By filing 2241 in Colorado D.C. they don't require the hurdle of getting a certificate of appealability, nor do they consider any previous 2254 filing, thus this 2241 is not considered a successive or second H.C.

Furthermore, this is not an appeal of his denial of certificate of appealability as that cannot be appealed, but since Salerno never requested certificate and Ninth Circuit did not have jurisdiction to grant or deny such certificate, this cause and issues can be filed within a certiorari petition.

REASONS FOR GRANTING THE PETITION

- ① No Supreme court case law exists ^{which} allows or prohibits a District court having jurisdiction in a Habeas corpus of a state prisoner in another state, or for that matter an appellate court assuming jurisdiction over said prisoner confined in a different circuit. Conflict in lower courts.
- ② No Supreme court case law which defines a federal court's jurisdiction over a state prisoner in a Habeas corpus cause, in which they are confined in another state per inter-state compact Act. In other words, where must a state prisoner file a Federal H.C., state and district of conviction, or state and district of place of incarceration, filed under 28 USC 2241? Conflict in lower courts.
- ③ Three circuits prohibit 'state' prisoners from filing a 28 USC 2241 Habeas corpus petition, instead mandating they can only use 28 USC 2254 Habeas. All other circuits allow 28 USC 2241 filings.

There is a dispute among circuits as to the availability and legality of state prisoners being able to file under 28 USC 2241 challenging the execution of state sentences.

- ④ The Ninth circuit is mis-applying AEDPA by prohibiting certificates of appealability in ~~state~~ Habeas causes seeking relief for prisoners being held past their release dates (Execution of sentence), if they have already sought relief in a H.C. challenging validity of conviction, even though execution of sentence just occurred after previous H.C.

REASONS WHY EXCEPTIONAL
CIRCUMSTANCES WARRANT
THE EXERCISE OF THE
COURT'S DISCRETIONARY
POWER - RULE 20.1

Petitioner Salerno is filing this to the
U.S. Supreme court Challenging the DECISIONS
OF THE Tenth Circuit and NINTH circuit
courts who have issued contrary rulings
on this matter, thus this is the only
court who can break the tie to set
standardized nationwide

Salerno is not challenging Habeas corpus
decision, he is challenging the lower courts not
allowing him to file H.C. under 28 USC 2241,
and in jurisdiction of confinement.

- ① Salerno is confined in the Colorado Dept. of Corrections, they refuse to allow him to file a Habeas corpus as Salerno was convicted in Arizona state courts. This is next appeal step, to allow H.C. access.
- ② Salerno filed a 28 USC 2241 habeas corpus which the Colorado District court and Tenth circuit said was the appropriate type of action for challenging a sentence.

Arizona District court and Ninth Circuit refuses to hear state prisoner claims under 28 USC 2241, this is a voided, non-existent statute as far as they are concerned, 28 USC 2254 is the only valid state prisoners Habeas statute allowed, in NINTH circuit.

This is a split question among circuits, Supreme court should determine one standard: can state prisoners challenging execution of sentence file under 2241?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Fr J. Salerno

Date: 10/24/22