

IN THE SUPREME COURT OF THE UNITED STATES

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Case No. 22-7519

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DANIEL A. RODRIGUEZ

Petitioner,

- vs -

UNITED STATES OF AMERICA

Respondent.

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PETITIONER'S PETITION FOR REHEARING OF ORDER DENYING  
PETITION FOR WRIT OF CERTIORARI

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## INTRODUCTION

Mr. Daniel A. Rodriguez Petitioned This Court For A Writ Of Certiorari On April 24, 2023. The United States filed a Waiver of Right to Respond on May 16, 2023. Mr. Rodriguez comes here and Petitions the Court for Rehearing Pursuant to Supreme Court Rule 44.

## STATEMENT OF THE CASE

In 1995, Mr. Rodriguez was convicted in the Southern District of Florida of Two Counts of being a Felon in Possession of a Firearm.

At sentencing, he was subject to the Armed Career Criminal Act ("ACCA") enhancement, which triggered a 15-year mandatory minimum. 18 U.S.C. §924(e). The Court sentenced him to 272 months. (Case No. 94-cr-402, D.E. #140).

In 2015, Rodriguez moved to correct his ACCA sentence, under 28 U.S.C. §2255 (Case No. 15-cv-22901). He argued, and the Government agreed, that he was no longer an Armed Career Criminal in light of Johnson v. United States, 576 U.S. 591 (2015). Without the ACCA enhancement, he was subject to a ten-year statutory maximum. 18 U.S.C. §924(e)(2). And, because he had over-served that maximum by about a decade, he sought immediate release. The district court granted his motion, reduced his term of imprisonment to ten-years, ordered his release, and imposed a three-year term of supervision. (Cr. D.E. #200, #201).

In 2018, the district court found that Rodriguez violated his supervised release by committing drug and money-laundering offenses. (Cr. D.E. #213). At the revocation hearing, the Court determined that the applicable guideline range was 30-37 months, and it asked the Government for its position on an appropriate sentence. (Cr. D.E. #221: 4-5). The Government responded that the sentence was "really just academic because he has so much credit time served that no matter what Your Honor sentences him to, he did more time in his original case than he was legally supposed to". Id. at 5. In other words, because Rodriguez had over-served the maximum by about a decade, he had "a lot of time in the bank. More time than Your Honor can sentence him to". Id.

Defense Counsel expressed his view, that the Court could sentence Rodriguez up to 37 months imprisonment. Id. at 5-6. And to "simplify things", Defense Counsel urged the court to "[m]ax him out to whatever you need to max him out to and lets close this case and you won't have to see him again". Id. at 6. At that point, a probation officer interjected that, while the guideline range was 30-37 months, the statutory maximum was only 24 months. Id. at 7. Without explaining why, the Court expressed the contrary view that the maximum was 37 months, and Defense Counsel agreed with the Court. Id. The Court added "that's what the Court of Appeals is for. I'm giving him 37 months". Id. at 8. After pronouncing that sentence, Defense Counsel declined to object. Id. Rodriguez appealed the sentence, but counsel subsequently advised him to voluntarily dismiss the appeal. (Cr. D.E. #215, #214, #223).

Critically however, the 37-month was not "academic". The conduct underlying that sentence had already formed the basis of new criminal charges in a case before another judge in the district. Rodriguez ultimately pled guilty to those charges, and, in June 2019, the district court in that criminal case sentenced him to 400 months imprisonment. (Case No. 17-cr-20904, D.E. #471). Although Rodriguez had about 9 years of banked time that could be credited toward that 400-month sentence, the 37-month sentence reduced that credit, thereby increasing the amount of prison time that he would have to serve.

In 2019, Rodriguez, through Counsel, moved to Vacate the 37-month sentence, pursuant to §2255. (Case No. 19-cv-23867, D.E. #1). He argued, inter alia, that he received Ineffective Assistance of Counsel during the revocation proceeding, because: Counsel failed to properly calculate the statutory maximum; failed to object to that illegal sentence; and instructed Rodriguez to dismiss his direct appeal of the 37-month sentence. Id at 4-5.

In response, the Government did not address the merits or dispute that the 37-month sentence exceeded the 24-month statutory maximum. Instead, it argued that the district lacked subject matter jurisdiction over the §2255 Motion, because Rodriguez was not "in custody". (D.E. #14). Relying on Maleng v. Cook, 490 U.S. 488 (1989) (per curiam), the Government argued that due to his banked time, Rodriguez completed the 37-month sentence the moment it was imposed, so he was not "in custody" when he filed the §2255 motion. Id. at 4-5.

In reply, Rodriguez attached a document from the Bureau of Prisons ("BOP") showing that the "amount of credit time from his over sentence...can in fact be used by the [BOP] as credit in his new case". (D.E. #28:2). In response to his question about whether the "remaining 2461 days [of banked time will] be credited to my new case sentence", a BOP official answered: "Yes. you will receive credit". (D.E. #28 Exh A). Thus, Rodriguez argued that, due to the 37-month sentence, he was "being denied valuable gain time because, for the second time on the same case, he has been over-sentenced". (D.E. #28:7). In other words, he would have to serve at least 13 extra months on his 400-month sentence.

The district court dismissed Rodriguez's §2255 Motion for lack of jurisdiction. (D.E. #36). Relying on Maleng, the Court held that Rodriguez was not "in custody". It agreed with the Government that, due to the 9 years of banked time, Rodriguez completed the 37-month sentence the moment it was imposed, and he was therefore not "in custody" on that sentence when he filed the §2255 motion. Id. at 5-6. But the Court made no mention of the credit issue. Because it concluded that it lacked jurisdiction, it recognized that no COA was required. Id. at 7 (citing Hubbard, 379 F.3d at 1147).

Rodriguez moved, Pro Se, for reconsideration. (D.E. #42). He argued that Garlotte v. Fordice, 515 U.S. 39 (1995), not Maleng, controlled, because as in Garlotte, his 37-month sentence ran consecutive to his current 400-month sentence. Id. at 1-3. He attached BOP documentation confirming that fact. Id. at 8. He

further emphasized that the 37-month sentence "affected [his] current release date". Id. at 4,6. He attached BOP documentation showing that by over-serving his original sentence, he had accrued 3,587 days (i.e. over 9 years) of credit, but that 1,126 days (i.e. 37 months) were applied to that credit, leaving him with 2,461 days of credit. Id. at 12, 14, 16). Thus, he explained, if the court imposed the 24-month statutory maximum, he would receive 13 additional months of credit towards his current sentence. Id. at 4,6).

The district court denied Rodriguez's motion, finding that he had repeated old arguments. (D.E. #48). Rodriguez appealed. (D.E. #37, #50). The Court of Appeals affirmed the District Court and subsequently denied rehearing.

Rodriguez sought this Courts review, which was denied. Finally, Rodriguez comes here Petitioning for Rehearing of that denial.

#### DISCUSSION

Petitioner asks the Court to reconsider the decision declining to review his case. This is as case that has National significance. Moreover, involves substantial questions concerning the basic fundamental rights provided under the United States Constitution. Specifically, the Due Process Clause and the Suspension of the Writ Clause.

The Suspension Clause and the Due Process Clause have distinct functions under the Constitution. The Suspension Clause regulates when Congress or the Executive Branch, can suspend the Writ altogether, so that "except during periods of formal suspension, the Judiciary will have a time-tested device, the Writ, to maintain the 'delicate balance of governance' that is itself the surest safeguard of liberty". See Hamdi, 542 U.S. at 536 (plurality opinion).

The Due Process Clause regulates "the procedural contours of [the] mechanism" used to exact the deprivation of liberty. Id at 525. The Court has consistently enforced the basic right to Due Process and found that decision makers are constitutionally unacceptable when: (1) the decision maker has a direct personal, substantial, and pecuniary interest in the outcome of the case; (2) an adjudicator has been the target of personal abuse or criticism from the party before him; and (3) a Judicial or quasi-Judicial decision maker has the dual role of investigating and adjudicating disputes and complaints. To demonstrate such a Due Process violation and secure relief based thereon, Defendant is required to establish that a genuine question exists concerning the presiding Judge's impartiality. See Lifekey v. United States, 510 U.S. 552 (1994). Most importantly, adjudication before a biased trial judge, falls within the "very limited class of cases" that represents a "structural error subject to reversal". Nedir v. United States, 527 U.S. 1, 7-8, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) (internal quotation marks and citation omitted).

"[T]he Writ of Habeas Corpus...[is] a remedy available to effect discharge from any confinement contrary to the constitution or fundamental law". Preiser v. Rodriguez, 411 U.S. 475, 485 (1973), including a claim that the Petitioner is unlawfully obtained in violation of the United States Constitution. The Due Process Clause provides that "[n]o person shall be deprived of life, liberty or property without due process...". U.S. Const. Amend. V. Accordingly, the Writ can be employed to ensure that the Petitioner "was not deprived of his Liberty without Due Process of Law". Felt v. Murphy, 201 U.S. 123, 129 (1906). See generally Randy Hertz & James S. Liebman, *Federal Habeas Corpus Practice and Procedure* §2.3 (7th Ed. 2015).

In summary, it is well settled that adjudication by a biased Judge is a Due Process violation, rising to the level of a structural error. That the Writ of Habeas Corpus...is a remedy to address such an error. Moreover, that the Writ should never be suspended but under certain circumstances. The question before this Court is: What legal redress a Defendant has available when the Court acts in seemingly contempt of a valid Order of Recusal imposes sentence and deprives Liberty in violation of that (emphasis added) valid recusal order and then fails to address the claim of this Due Process Violation and Structural Error in Section 2255 proceedings. Frankly, such contempt of a recusal order and Due Process, is novel, to say the least. There is no precedent to such contempt. Thus, this Court is needed to establish binding precedent as a deterrent for a Court to act in such a way.

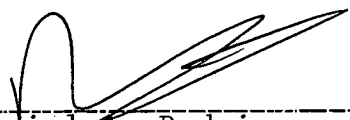


This case provides a perfect example of denial of Due Process and clear Structural Error and an effective suspension of the Writ. If this Court denies relief, Petitioner has no legal redress left other than a Habeas Corpus straight to this Court. The record is clear - there is no question the Court was recused. In fact, the entire District was recused and the case moved to another district to protect Defendant's Due Process and Constitutional rights. The Order of Indefinite Recusal was upheld by the Eleventh Circuit. But yet, the district court, acting under the Jurisdiction invested in the United States District Court of Florida, (emphasis added) Jurisdiction, that for all intent and purposes, negated under the indefinite Order of Recusal, adjudicated and imposed a sentence upon Petitioner. When Petitioner objected and attempted to assert his Constitutional Due Process Rights and have the conviction Vacated under the clear Structural Error, Pursuant to §2255, the Court, acting with a rescinded Jurisdiction, treated this Due Process Violation and Structural Error, with at best indifference, at worst, contempt. When Petitioner Appealed, the Appellate Court recognized the Court lacked authority to impose Judgment and sentence, but with this situation being novel, thus no guiding precedent, reviewed the case regardless of the suspect Jurisdiction. Petitioner turned to this Court of last resort and was denied. In other words, Petitioner was denied the basic constitutional right to Due Process, under a clear Structural Error and the Court that committed the error, effectively suspended the Writ by refusing to recognize and correct the error. The Appeals Court lacked guidance and now this Court has declined to review.

In conclusion, the Petitioner respectfully asks the Justices if this Court closes the door on such a series of denial of fundamental rights, it sends a clear message, that an Order of Recusal, Due Process, and the Writ of Habeas Corpus, are insignificant.

Accordingly, the Court should take this case, not for the sole purpose of granting Petitioner relief, but to protect the integrity of our Constitution, effectively protect the Writ of Habeas Corpus and instill concrete precedent.

Respectfully submitted on 7/10/2023.



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