

22-7549

No.

# ORIGINAL

IN THE

FILED  
MAY 15 2023

**OFFICE OF THE CLERK  
SUPREME COURT, U.S.**

GILBERTO A. CHAVEZ — PETITIONER  
(Your Name)

vs.

UNITED STATES OF America— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SOUTHERN DISTRICT OF IOWA (CENTRAL)  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

**PETITION FOR WRIT OF CERTIORARI**

GILBERTO ARBECOLA CHAVEZ  
(Your Name)

U.S.P. HAZELTON, P.O. box 2000  
(Address)

BRUCETON MILLS WV 26525  
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. IS BORDEN VS. UNITED STATES, 141 S. CT 1817 (2021)  
RETROACTIVELY APPLICABLE FOR POST-CONVICTION RELIEF?
2. DID THE EIGHTH CIRCUIT COURT OF APPEALS  
VIOLATE THE DEFENDANT'S FIRST AMENDMENT  
RIGHTS BY NOT ALLOWING HIM TO FILE A BRIEF  
ON THE MERITS OF HIS ISSUES?

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## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

- BORDEN VS. UNITED STATES, 141 S. CT 1817 (2021)
- UNITED STATES VS. CRANDALL, 25 F.4<sup>th</sup> 582, 586 (8<sup>th</sup> Cir 2022)
- UNITED STATES VS. FRAZIER, 48 F.4<sup>th</sup> 884, 887 (8<sup>th</sup> Cir 2022)

### STATUTES AND RULES

- § 3582 (c)(1)(A)

### 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 0 to the petition and is

reported at N/A; 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 is unpublished.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 0 to the petition and is

reported at N/A; 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 is unpublished.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 is unpublished.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 is unpublished.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 February 28, 2023

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: April 18, 2023, 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

- THE CONSTITUTIONAL PROVISION IN AMENDMENT I TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES WAS VIOLATED.
- THE CONSTITUTIONAL PROVISION IN AMENDMENT V TO NOT BE DEPRIVED OF LIBERTY WITHOUT DUE PROCESS OF LAW.

## STATEMENT OF THE CASE

THE PETITIONER, WAS SENTENCED TO 15 YEARS UNDER THE ARMED CAREER CRIMINAL ACT OF 18 U.S.C. § 924(E), THE SENTENCING COURT USED EXACTLY (3) PREDICATES TO FIND THE PETITIONER AN ARMED CAREER CRIMINAL. WITHIN ONE OF THESE PREDICATES USED WAS A CONVICTION FOR INTIMIDATION WITH A DANGEROUS WEAPON UNDER IOWA LAW.

IN 2021 THIS COURT DECIDED BORDEN, 141 S.C.T. 1817 (2021) AND THE SAME YEAR THE EIGHTH CIRCUIT FOUND IN UNITED STATES VS. FRAZIER, 48 F.4<sup>th</sup> 884, 887 (8<sup>th</sup> cir. 2022) THAT INTIMIDATION WITH A DANGEROUS WEAPON UNDER IOWA LAW NO LONGER QUALIFIED AS A PREDICATE FELONY TO ENHANCE PENALTIES UNDER 18 U.S.C. § 924(E), PURSUANT TO "BORDEN"

THE PETITIONER MOVED FOR RELIEF UNDER 18 U.S.C. § 3582(c)(1)(A) CITING BORDEN, 141 S.C.T. 1817 (2021) AS A "COMPELLING AND EXTRAORDINARY" REASON TO REDUCE HIS SENTENCE BECAUSE IF SENTENCED TODAY HE WOULD NO LONGER BE ELIGIBLE FOR AN ENHANCED SENTENCE UNDER 18 U.S.C. § 924(E).

THE SENTENCING COURT DENIED RELIEF, DETERMINING THAT "BORDEN" WAS NOT RETROACTIVE, CITING UNITED STATES VS CRANHALL, 25 F.4<sup>th</sup> 582, 586 (8<sup>th</sup> cir. 2022).

THE PETITIONER APPEALED, HOWEVER, THE EIGHTH CIRCUIT COURT REFUSED TO ALLOW THE PETITIONER TO FILE A BRIEF ON THE MERITS AND SUMMARILY AFFIRMED THE LOWER COURTS RULING. THE PETITIONER MOVED FOR A RE-HEARING CONTENDING THAT THE SENTENCING COURT ABUSED ITS DISCRETION BY FINDING "BORDEN" NOT TO BE RETROACTIVE. HOWEVER, THE EIGHTH CIRCUIT DENIED THE PETITION.

## REASONS FOR GRANTING THE PETITION

THE EIGHTH CIRCUIT GAVE NO WEIGHT TO THIS COURTS FINDINGS IN BORDEN, 141 S. CT 1817 (2021). THAT FAILURE "FRACTURED LOWER-COURT DECISIONS ADDRESSING WHETHER BORDEN" IS RETROACTIVE ON POST-CONVICTION RELIEF AND MOTIONS UNDER 18 U.S.C. § 3582 (c)(1)(A),

THE EIGHTH CIRCUIT ALSO SPLIT WITH OTHER COURT OF APPEALS IN ERRONEOUSLY HOLDING THAT BORDEN" IS NOT RETROACTIVE ON POST-CONVICTION RELIEF.

THE COURT SHOULD USE THIS CASE TO CORRECT BOTH ERRORS AND ANNOUNCE "A UNIFORM RULE", ON THESE IMPORTANT, RECURRING ISSUES. COMM'R VS. BILDER, 369 U.S. 499, 501 (1962)

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Elberto A. Chavez

Date: 4-30-23