

ORIGINAL

22-7677

No. _____

Supreme Court, U.S.
FILED

MAY 16 2023

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

FRANCIS O. AKPORE — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

11th CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FRANCIS OKIEMUTE AKPORE (prose)
(Your Name)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Does 8 U.S.C. 1252(g) strip the district court of subject matter jurisdiction to hear a noncitizen's FTCA claim of wrongful removal in violation of a mandatory duty from a [court, IJ, BIA]'s order and in egregious violation of the noncitizen's constitutional protections?

Does 8 U.S.C. 1252(g) strip the district court of subject matter jurisdiction to hear a noncitizen's FTCA claim of wrongful removal when ICE purposefully committed verifiable federal crimes and utilized the removal solely to obstruct justice?

LIST OF PARTIES

United States of America ("USA")

RELATED CASES

Francis Okiemute Akpore v. United States of America, 4:20-cv-01596-ACA, U.S. District Court for the Northern District of Alabama (Middle). Judgement entered on 24 March 2021.

Francis Okiemute Akpore v. United States of America, 21-11149, 11th Circuit Court of Appeals. Judgement entered on 14 March 2023.

Francis Okiemute Akpore v. United States of America, denial of Petition for Panel Rehearing 21-11149, Judgement entered on 26 April 2023.

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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 is issued to review the judgement below.

OPINIONS BELOW

Federal courts case (No State courts case):

The opinion of the United States court of appeals appears at Appendix A to the petition and is UNPUBLISHED.

The opinion of the United States district court appears at Appendix B to the petition and is UNPUBLISHED.

The opinion of the United States court of appeals denying panel rehearing appears at Appendix C to the petition and is UNPUBLISHED.

JURISDICTION

The date on which the United States Courts of Appeals decided my case was 14 March 2023.

A timely petition for panel rehearing was denied by the United States Courts of Appeals on the following date: 26 April 2023, and a copy of the order denying panel rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C.1254(1).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

5th Amendment of the United States Constitution Due Process rights: no one shall be deprived of life, liberty or property without due process of law”.

14th Amendment of US Constitution of Equal Protection under the Law: “nor shall any state deny any person within its jurisdiction the equal protection of the laws”.

Arce v USA, No. 15-56706 (9th Cir. 2018) (holding that it had subject matter jurisdiction over FTCA claims of a noncitizen who was wrongfully removed in violation of a court order).

Gupta v. McGahey, No. 11-14240 (11th Cir. 2013) (holding that it lacked subject matter jurisdiction over noncitizen Bivens claim in violation of noncitizen's constitutional rights).

Plyer v. Doe, 457 U.S. 202 (1982) (holding that denial of public education to students not legally admitted into the country violates the equal protection clause).

Silva v. USA 16-1870 (8th Cir. 2017) (holding that it lacked subject matter jurisdiction over FTCA claims of a noncitizen who was wrongfully removed in violation of a stay issued by the Board of Immigration Appeals).

Reno v. Anti-Discrimination Committee (AADC) 70F.3d 1045(CA 1999) (holding that 1252(g) is not to be construed as applying broadly to the full universe of removal-related claims").

Weber v. Doe 486, U.S. 592, 603 (1998) (holding that Congress should not be taken to have intended to preclude review of constitutional claims unless it has explicitly so provided).

8 U.S.C. 1252(g) ("no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases or execute removal orders against any alien").

8 U.S.C.1229(a): ("an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien").

18 U.S.C. 1519: ("whoever knowingly alters, destroy, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the US or any case filed under title, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both").

Articles 3 and 5 of the Universal Declaration of Human Rights (1948): ["Everyone has the right to life, liberty and security of persons" "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"]; respectively.

STATEMENT OF THE CASE

Petitioner's wrongful removal from the USA on 14 August 2018 was the culmination of ICE's attempt to obstruct justice and used as a pretext to shield law enforcement abuses from federal judicial oversight in regards to two grievances of sexual misconducts Petitioner filed while in detention against

employees of an immigration detention center in New Mexico. Three federal employees while acting in an “official capacity”, violated 18 U.S.C. 1519 through the violation of a mandatory duty by perpetuating fraud, they also egregiously violated Petitioner’s due process and equal protection constitutional rights.

Petitioner’s deportation officer in New Mexico disregarded and fabricated an IJ order, Petitioner’s deportation officer in Alabama falsified Petitioner’s actual immigration status based on the fabricated IJ order and when Petitioner filed for habeas corpus, the supervisor of Petitioner’s deportation officer in Alabama swore under the penalty of perjury that the fabricated IJ order was authentic. These actions were done solely to obstruct justice from two grievances of sexual misconducts Petitioner filed against two employees of the detention center and it culminated in Petitioner being forcefully removed, strapped, rolled-up and carried in/out of a private jet after an eighteen-hour flight from Louisiana to Lagos.

REASONS FOR GRANTING THE WRIT

N.B: Contained within is Appendix E, it illuminates on the reasons in the proceeding paragraphs.

The 8th and 9th Circuit Courts of Appeals have contrary judgements on subject matter jurisdiction or the lack thereof to hear noncitizens’ claims for wrongful removal in violation of a mandatory duty from a court/IJ/BIA order because of 8 U.S.C.1252(g). In affirming the district court’s dismissal of Petitioner’s FTCA claim, the 11th Circuit Court of Appeals declared that 8 U.S.C. 1252(g) strips it of subject matter jurisdiction to hear a noncitizen’s FTCA claim for wrongful removal, even when the noncitizen’s constitutional protections were violated prior to and as a result of the removal; as such potentially perpetuating immunity to violators of federal law while decreasing the judiciary power. Petitioner’s matter comprises of both violations of a court/IJ order and Petitioner’s 5th and 14th Amendments Constitutional rights.

The attorney-client privilege is sacrosanct in common law even with regards to posthumous revelations, however when there is a crime-fraud situation, that privileged is revoked in favor of an eventual judicial review. In Petitioner’s matter, the violation of a court order and violation of Petitioner’s constitutional rights are minuscule compared to the criminal violations of 18 U.S.C. 1519 by three federal employees “acting in an official capacity”. The plausible conclusions from the [8th and 11th Circuits] judgements in *Silva v. USA* and *Gupta v. Mcgahey* respectively, have fashioned a sense of real or perceived immunity for potential violators of federal laws and decreases the power of the court to enforce its own laws with adversarial consequences on the separation of powers.

Plyer v. Doe, 457 U.S. 202 (1982) affirmed Petitioner’s 5th and 14th Amendment Constitutional Rights. Also in 8 U.S.C.1229(a), Congress gave explicit delegation to the IJ to determine Petitioner’s fate of “deportability”. Articles 3 and 5 of the Universal Declaration of Human Rights (1948), explicitly reflects the horrific

conditions Petitioner should not have but suffered at the hands of law enforcement officers “acting in official capacity”, to wrongfully remove Petitioner from the USA in order to obstruct justice to be served on two detention facility officers that sexually assaulted and harassed Petitioner, when Petitioner was detained in a detention center in New Mexico.

The approach utilized by the 11th Circuit Court of Appeals in denying Petitioner a panel rehearing of the appeal supports the granting of this Petition for writ of certiorari. The Appeals Court utilized a misrepresented material fact to affirm the district court’s dismissal of Petitioner’s FTCA suit and denied a panel rehearing of the appeal when Petitioner highlighted the errors of fact/law. Brief History: timely filed appeal to the Court of Appeals on 7 April 2021 and on 14 March 2023 the Court affirmed the district court’s dismissal of Petitioner’s FTCA lawsuit, while misrepresenting material facts with multiple inexplicable errors of fact/law. On 30 March 2023 Petitioner identified the errors of fact/law and filed a petition for a panel rehearing, on 26 April 2023 the Court denied Petitioner’s petition for a panel rehearing of the appeal.

Highlighting on the preceding paragraph: As a result of Petitioner’s indigent condition, Petitioner applied for and was granted leave to proceed with the appeal in forma pauperis (“IFP”) by Judge Newsome. While reviewing Petitioner’s FTCA pleadings for the IFP petition judgement, Judge Newsome underscored that Petitioner’s allegations of sexual misconducts were made against “employees of the detention facility” (see Appendix D). However, the panel judges while reviewing the same pleadings, misrepresented this material fact as “immigration officers” (see Appendix A) and utilized this misrepresented material fact to rule that Petitioner did not satisfy the FTCA “notice filing requirement”. Petitioner identified multiple inexplicable errors and filed for a panel rehearing of the appeal, the Court denied Petitioner a panel rehearing of the appeal, stating only that: “The Petition for Panel Rehearing filed by Francis Akpore is DENIED” (see Appendix C).

The gamut of (1) resolving contradictory judgements between the 8th and 9th Circuit Courts of Appeals to hear a noncitizen’s FTCA wrongful removal claim in violation of a mandatory duty, in Petitioner’s case ICE disregarded and fabricated an IJ order. (2) Simultaneously addressing the 11th Circuit Court’s interpretation of 8 U.S.C.1252(g) to lack subject matter jurisdiction to review Petitioner’s FTCA claim of wrongful removal, in spite of Petitioner’s constitutional protections being egregiously violated prior to and as a result of the removal, with (3) crimes: the violation of 18 U.S.C.1519 by three federal employees without the intervention of federal judicial oversight, decreases the judiciary power and parallels to a real or perceived immunity to potential violators to (4) currently, purposefully obstruct justice but possible future other crimes and (5) The mode the 11th Circuit Court affirmed the district court’s dismissal of Petitioner’s FTCA suit with a misrepresented material fact and denied Petitioner appeal panel rehearing.

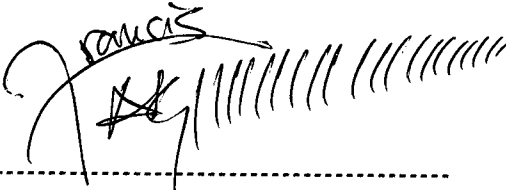
Finally, in *Reno v. AADC* 525, U.S. 471 (1999) paraphrasing, this Honorable Court

stated that 8 U.S.C. 1252(g) did not bar a review of all removal-related cases but limited to three distinct provisions to commence, adjudicate and execute a removal: administrative decisions; the actions highlighted in the preceding paragraph are not administrative decisions. Moreover, in *Weber v. Doe* 486, U.S. 592, 603 (1988) paraphrasing, this Honorable Court stated that Congress needed to be explicitly clear in order to “preclude review of constitutional claims”. Congress has not explicitly defined the phrases “arising from”, “commence”, “adjudicate” or “execute” removal order; so no uniformity within the courts on interpreting 8 U.S.C. 1252(g), neither has Congress explicitly precluded review of the section’s constitutional claims.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,



Date 12 MAY 2023

