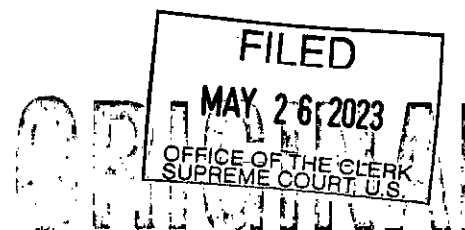


22-7766

No. 21-1291

21-1291(L)
21-1305(CON)



IN THE
SUPREME COURT OF THE UNITED STATES

RAMON RAMIREZ — 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 SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RAMON RAMIREZ #86958-054

(Your Name)
FCI BEAUMONT MEDIUM
P.O. BOX 26040

(Address)

BEAUMONT, TX 77720
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. HAS THE SECOND CIRCUIT COURT OF APPEAL ERRED IN ITS CONCLUSION THAT THE DISTRICT COURT HAD JURISDICTION BASED ON EVIDENCE SUPPORTING THE INTERSTATE COMMERCE ELEMENT OF APPELLANT'S OFFENSE OF CONVICTION?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

CIRCUIT JUDGE RICHARD J. SULLIVAN

ALISON J. NATHAN

SARAH L. MERRIAM

DISTRICT JUDGE P. KEVIN CASTEL

UNITED STATES ATTORNEY AUDREY STRAUSS

ASSISTANT UNITED STATES ATTORNEY ADAM SLAN HOBSON

FRANK J. BALSAMELLO

DEFENSE ATTORNEY MATTEW J. KLUGER

JODIE MORALES

RELATED CASE

DISTRICT COURT CASE NO. 19 Cr. 395(PKC)

APPEAL NO. 21-1291(L)
21-1305(CON)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
MORRISON V UNITED STATES, 529 US 598(2000)	8.
UNITED STATES V ACOSTA, 883 FED. APPX 856(2d Cir 2020)	17.
UNITED STATES V BLACKMON, 839 F2d 900(2d Cir 1988)	8.
BRECHT V ABRAHAMSON, 507 US 619(1993)	9.
UNITED STATES V ENMONS, 410 US 396 (1973)	9.
UNITED STATES V GIORDANO, 442 F2d 1124(2d Cir 2006)	10.
UNITED STATES V ISSACS, 493 F2d 1124(7th Cir 1974)	16.
UNITED STATES V JONES, 592 US 848(2000)	8.
UNITED STATES V LOPEZ, 514 US 549(1995)	8,9.
UNITED STATES V MILLER, 379 F2d 483(7th Cir 1967)	14.
UNITED STATES V PEREZ, 414 F3d 302(2d Cir 2005)	10.
UNITED STATES V RAZO-LEORA, 961 F2d 1140(5th Cir 1992)	8.
UNITED STATES V WEATHERS, 169 F3d 336(6th Cir 1999)	11.

STATUTES AND RULES

18 U.S.C. §1985	7,8,11,15
-----------------	-----------

OTHER

UNITED STATES CONSTITUTION ART. I	8.
MODERN FEDERAL JURY INSTRUCTION	11.

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 2023 U.S. App. Lexis 1257; 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 _____ 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 January 19, 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: _____, 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 question presented implicate the following provisions of law, Title 18 USC §1985:

(a) whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility of interstate or foreign commerce, with intent that a murder be committed in violation of the laws of any state or the united states as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value or who conspires to do so, shall be fined under this title or imprisoned...

STATEMENT OF THE CASE

Acccordingly, the United States District Court lacked subject matter jurisdiction because Mr Ramirez did not use or cause another to use any facility of interstate or foreign commerce as mandated by the murder-for-hire statute, 18 USC §1985. Thus, the district court lacked jurisdiction to adjudicate this matter and the indictment therefore must have been dismissed.

REASONS FOR GRANTING THE PETITION

1. QUESTION ONE:

Has the Second Circuit Court of Appeals and the District Court for the Southern District of New York effectively established a rule to efface and abridge the requirement of subject matter jurisdiction? The requirement that the defendant use or [causes] another to use any facility of interstate or foreign commerce is jurisdictional. *United States v Blackmon*, 839 F2d 900(2d Cir 1988); *United States v Razo-Leora*, 961 F2d 1140 (5th Cir 1992).

The interstate nexus requirement arises from constitutional limits on congressional power over intrastate activities under the commerce clause, U.S. Const. Art I, §8, cl. 3, as that power has been defined by the Supreme Court in *Jones v United States*, 529 US 848(2000); *Morrison v United States* 529 US 598(2000); *Lopez v United States* 514 US 549(1995).

Ramirez assert that where no nexus is established between the alleged crime and the statute, the indictment under 18 USC §1958, must be dismissed. See *Blackmon*, 839 F2d at 907. In the district court and prior to trial, Ramirez's counsel moved to dismissed the indictment for lack of federal jurisdiction...Federal jurisdiction advances important values of federalism and separation of powers, under our federal system, the "state possess primary authority for defining and enforcing criminal law." See, e.g., *United States v Lopez*, 514 US 549, n.3(1995); *Brecht v Abrahamson*, 507 US 619(1993). "When Congress criminalizes conduct already denounced as criminal by the States, it effects 'a change in the sensitive relation between federal and State criminal jurisdiction.'" *Lopez*, 514 US at n.3(quoting *United States v Enmons*, 410 US 396(1973)).

A national telephone network is a facility of interstate commerce. Accordingly, intrastate calls that use such a network can support the interstate commerce element of murder-for-hire statute. *United State v Giordano*, 442 F3d 30(2d Cir 2006); *United States v Perez*, 414 F3d 302(2d Cir 2005).

To establish federal jurisdiction, there must be a sufficient nexus between the context of the call and the murder plot. That is, the telephone call must facilitate or further the scheme-as the district court charge the jury. In this case, there were many telephone calls among the alleged conspirators according to the phone records. But those records lack a nexus to the murder-for-hire plot, there was little testimony about the content of the calls.

Although the use of a cellular telephone may "involve interstate commerce" because of the national reach of the network, courts "must ensure that the nexus between the cellular telephone use" at issue "and the criminal activity" charge "is sufficient to support a conviction under [18 USC] §1958." See, *United States v Weathers*, 169 F3d 336(6th Cir 1999); 3 Modern Federal Jury Instruction ¶60.02, comment at p.6.

That requirement [nexus] was reflected in the jury instruction in this case, with respect to the elements of intent:

"The second element the government must prove is that the use of a facility of interstate commerce was done with the intent that an individual be murdered, "that is, that the use of the phone "was done with the intent to further or facilitate the commission of the murder."

Thus, a call in which the plot is merely alluded to or even mentioned, but which does not advance the murder in anyway, cannot support a conviction. Its the advancement that triggers federal jurisdiction. This means that the government can convict two people for thinking and talking about committing any crime without more. That was the case here as to virtually all of the very few telephone calls Ramirez mentioned at

trial.

The "first" call was allegedly when Collins, not Ramirez, telephoned to change the alleged, so-call mission from just an assault to murder, and set out the greatly enhanced terms of compensation. The phone records show Mowatt was mistaken that this conversation was over the telephone. The alleged agreement between Collins and Mowatt was made and accepted in [per]son. If true, there is a break in the chain, which cannot happen to obtain federal jurisdiction.

Second, Collins telephoned Mowatt to say that Ramirez wanted to meet up "to see basically where [Mowatt's] head was at as far as-as far as jsut everything in general, to see, to make sure that Mowatt was'nt playing games with him." This call was after Collins and Mowatt agreement was in place-which Ramirez had no knowledge of. In fact, Mowatt testified to the fact that Collins, not Ramirez, instructed him never to bring the murder-for-hire plot in Ramirez's presence. "Tha murder was never discussed."

Third, Collins informed Mowatt that he and Ramirez "had a religious gift" for him. That the gift was sopposedly to protect Mowatt when he committed the murder was either mentioned on the phone, or not until the two men arrived at Mowatt's house. In fact, Mowatt gave inconsistent testimony on this point.

Fourth, two more telephone calls were mentioned in connection with Mowatt's alleged sureillance missions to find Santiago. In these calls-twice, Mowatt telephoned Collins, not Ramirez, to say "he didn't see anyone. This ack-of-progress-report certainly did not further or facilitate any plot. Cf. United States v Junkins, 428 F2d 333(6th cir 1970)("facilitate']as used in Travel Act statute] menas 'to make easy or less difficult"); United States v Miller, 379 F2d 483(7th Cir 1967)(same). If there was ever a muder-for-hire plot, the plot was at a standstill.

Fifth, the final telephone call Mowatt mentioned, was after another fruitless surveillance mission. Mowatt said he called Collins, not Ramirez, to verify that the addresses he had for Santiago "were right." Collins said he would check with Ramirez, and later "came back" by phone? or in person? it was never specified and told Mowatt the handwritten address he had had for months was the target's home address. Collins alleged he had called Ramirez for clarification. This alleged statement was the strongest support the government had for federal jurisdiction. However, was this alleged statement for the "assault-for-hire or the murder-for-hire plot? No body knows. This statement should [not] be deemed dispositive.

When Mowatt was given the alleged victim's home address; it was for the purpose of getting him assaulted-not murdered. One of the elements in 18 USC §1958 is murder, another is intent. When Mowatt was given Santiago's home address no federal crime was being initiated for federal jurisdiction. Moreover, it was Mowatt's lack of initiative that spawned the call, which can be viewed as a delaying tactic on his part rather than a genuine need for information to fulfill his mission. The call to verify Santiago's home address occurred by phone was mere happenstance.

Finally, confirmation of where Santiago lived-Mowatt had had his correct work address since early fall at the latest-was treated as a non-event by the parties.

In *United States v. Issacs*, 493 F.2d 1124 (7th Cir. 1974), the court reversed defendant's Travel Act convictions because the basis for federal jurisdiction-the out-of-state clearance by the Federal Reserve Bank of Certain check drawn in connection with the illegal scheme- "was so minimal, incidental, and fortuitous, and so peripheral to the defendant's activities," that federal jurisdiction would not be sustained. *Id.* at 1146.

Here, similarly the calls among the parties were purely local, their activities were confined to New York State, and the few calls mentioned

by Mowatt were of no consequence to forming the murder-for-hire agreement or furthering its goal. Indeed, there was only one call of any apparent substance, to verify where Santiago lived, but this was shown to be a non-event given that the information was not acted on for almost eight months. CF. United States v Acosta, 833 Fed Appx 856 (2d Cir 2020)

On this record, the proof supporting federal jurisdiction is legally insufficient. Ramirez' conviction should be vacated and the indictment dismissed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ramon L. Ray

Date: May 26, 2023