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Supreme Court, U.S.
FILED
AUG 16 2022
OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

ROSA SERRANO,
PETITIONER,

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}
}

V.

22-5056

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SUPREME COURT, U.S.

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS

}
}

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Motion to Compel

Comes Now, Petitioner ("Serrano") and files this motion to compel for the reasons stated herein:

I STAY

Under Fed R. App. P. 41 a motion to stay the mandate can be filed by any party when pending the filing of a petition for a writ of certiorari in the Supreme Court. Such motion was filed to recall mandate under Fifth Circuit rule 41.2 where writ of mandamus denied in 21-50430 will ^{be} issue mandate upon entry of disposition ^{done} on January 06, 2022. A motion to recall and stay the mandate was filed on or about January 2022, upon receipt of determination, Petitioner filed a request to recall and stay mandate. No response was sent to Petitioner. Petitioner proceeded to request

an extension to file a writ of certiorari and was granted on April 08, 2022 in 21A578 (22-5056). Again Petitioner requested to recall and stay mandate, and again no response was issued or received to Petitioner. Where summary disposition on the merits is pending in this Court, a recall and stay of mandate is not overly burdensome on Circuit court to grant. Petitioner seeks this motion to compel where determination by this Court is clear which should significantly change the disposition of 21-50430. Ultimately, a decision by this Court to affirm or deny grant writ will decide the recall of mandate, if necessary, any request to recall and stay, would simply notify others of a pending writ being considered. On or about July 12, 2020, Petitioner again requested to recall and stay mandates, and on August 05, 2022, the Circuit court denied the motions.

II. ~~STAY~~ COMPEL

Where Petitioner has been compliant to Circuit rules and Federal Appellate Rules to notify the clerk of pending writ of certiorari for summary disposition on the merits. Because a simple and easy process to recall and stay mandate does not burden Circuit court, the clerk of the court should stay mandate until disposition under Circuit rule 41(d)(2)(B)(ii). A motion to compel is requested to seek relief from avoid conviction when removal was done under 28 USC 1443. Therein, leaving a question as to

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ministerial duty upon district court to grant release of petitioner, where moreover when no motion to remand exists and district court in 91-17-CV-221-FM confirms removal. However, exceeding the 30-day rule under 28 USC 1447(c), prescribes this Court's authority to oversee compliance of federal statutes is done by district courts to secure a federal right. Otherwise, district courts will be poised as state courts to deny relief when civil rights are inflicted by arbitrary conduct to prejudice litigants or defendants. This Court's oversight is needed to demonstrate that civil rights are still actively safeguarded by federal statutes 28 USC § 1443, 1447c and 42 USC § 1983. A criminal proceeding also observes more severity than civil, when liberty is denied. Such a dearly held staple of the constitution to freedom by a democracy is quickly abrogated when ignored. District and Circuit courts along with state courts need a premise to correctly secure a federal right, otherwise prejudicial practice is developed and eliminating the civil rights issues requiring attention. Because civil cases removed have long been recognized, criminal proceedings ~~are~~ removed are discouraged to avoid defendants to pursue a federal right. And compelling prosecuting attorney to file a motion to remand to secure remand of criminal proceeding. This process is significant, when civil rights can easily be capriciously overlooked and ignored to avoid ~~add~~ additional work onto state courts. Such conduct should not

be condoned. Civil rights statutes are intended to observe not to be ignored, and separation of powers provide for a congressional enactment to create such federal right. It is upon state courts to ignored; defendants can have removal granted upon showing under Georgia v. Rachel, 86 S Ct 1783, 1794-96 (1966) rule.

"... United States Supreme Court held that civil rights removal petitioners must point to a specific state statute or formal expression of state law, not merely an alleged practice, which denies the petitioner a specific right." Georgia v Rachel, 86 S Ct 1783, 1794-96 (1966).

"... Removal is warranted only if it can be predicted that a law of general application will deny a defendant a specified federal right." Id.

"Rachel and Peacock teach that the right of removal under 28 USC §1443 is limited to cases in which the charged conduct enjoys federal protection." Butler v. King, 781 F2d 486, 489 (5th Cir. 1986).

Where Petitioner's case is unique from many state criminal prosecutions, when state actors all contributed to denial of a federal right, duly granted not by Congress but by the Constitutional amendment. Double jeopardy

strictly denies prosecution when criminal contempt determined by civil judgment precludes state criminal prosecution. This is clearly settled by federal statute (42 USC 2000h-1), constitutional amendment (double jeopardy clause) and Supreme Court precedence of civil rights violation to access from prosecutorial misconduct.

"The United States Supreme Court has held that, in some circumstances, the Double Jeopardy Clause bars subsequent criminal prosecution of offenses which form the basis of a previous order of criminal contempt." *United States v. Dixon*, 113 S Ct 2849 (1993).

"In *Dixon*, the Court held that the defendant could not be prosecuted for the same offense for which he was previously punished with criminal contempt." *Dixon*, 113 S Ct at 2864; ~~Busby~~, ~~921~~ *Ex parte Busby*, 921 SW 2d 389, 391 (Tex. App. - Austin 1996).

Where futility exists as to receive relief by state appellate courts, an exemption is made to request a federal habeas for release from a state custody conviction. State appellate court (08-17-00044 CV) removed to grant relief in a state habeas when the judgment is void as shown in 2012 DCV 06341 and 2013 DCV 3139. And procured void contempt orders to which a felony indictment was filed, is unsupported by any legal principle and rule. Thus, futility sets to overcome state court

Further opportunity to properly address any void judgment. Left ~~without~~ without any other manner to ~~challenge~~ challenge the conviction and future prosecution of a false indictment, causes for Petitioner to assert a protected right under the Constitution by seeking redress in this Court. Recall of the mandate is not overwhelming troublesome to indicate that the mandamus is greatly pending issuance when evident of a void conviction. No state court can reasonably be expected to finally accept that a void judgment existed and void contempt orders of infected a state criminal proceeding.

"... if there is no opportunity to obtain redress in state court or if the corrective process is so clearly deficient as to render futile any effort to obtain relief." *Duckworth v. Serrano*, 102 Sct 18, 19 (1981); *Graham v. Johnson*, 94 F3d 958, 969 (5th Cir. 1996).

A federal habeas was sought to seek relief from a void conviction when state court was so deficient to receive any relief became utterly futile. Thereby, a mandamus was requested against district court to grant federal habeas when mandated by a void state conviction, when notice of removal was done under 28 USC 1443. This critical federal statute is a last and only opportunity to present redress when state court were adamant to deny any ~~and~~ and all relief from void conviction of

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void contempt orders. Hereinafter, the mandamus became the only manner to attack a void conviction when false indictments were presented onto Medicaid Fraud.

Yet, the one function of district court is to undertake constitutional rights are guaranteed by a state proceeding, when denied, district court imposes such requirement to compel civil rights are not whimsically overlooked, and state courts ~~the~~ ^{expect to} violate with impunity. Ceasing such conduct is what Congress' intent by impelling the federal statute of civil rights claim, ~~and~~ to ensure all defendants ~~receive~~ receive a fair trial. By a court of jurisdiction is the primary element of a valid judgment. When district court holds a federal jurisdiction to render disposition under the Boren Amendment of the Medicaid Act, FCA, Whistle Blower Act and Third-Party Rights (enrollees) under Civil Rights Claim (42 USC 1983), subject matter jurisdiction is settled. (42 USC 1902 (a) (13) - Boren Amendment)

"First, [T]he litigant must have suffered an injury in fact, thus giving him or her a sufficiently concrete interest in the outcome of the issue in dispute. Second, the litigant must have a close relation to the third-party. Third, there must exist some hindrance to the third-party's ability to protect his or her own

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interests." *Powers v. Ohio*, 111 Sct 1364 (1991)

"These criteria have been satisfied in cases where we have permitted criminal defendants to challenge their convictions by raising the rights of third parties." *Powers*, 111 Sct at 1371.

Permitting to seek and receive mandamus when a void conviction exists, which inevitably will demand denial of mandamus, and directing release of Petitioner. A need for recall and stay of mandate serves to ~~pre~~ prevent an injustice where incarceration should had not occurred.

"'Habeas corpus' is designed to guard against extreme malfunction in state criminal justice systems." *Brecht v. Abrahamson*, 113 Sct 1710⁴, 1720 (1993).

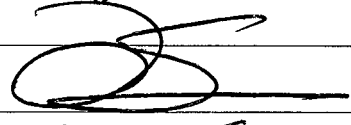
When all conditions are shown to exist, it becomes apparent of one resolution to Petitioner, liberty from a void conviction. And relying that removal will permit the US attorney to investigate Petitioner's allegation of third-party federal right under Medicaid is denied by state actors and private parties. Hereinafter, remand is imminent to finally correct a wrong when state courts failed to grant any relief by a fair tribunal, however jurisdiction is allocated to federal court when subject matter jurisdiction dictates such disposition of federal rights limited or denied by

use of practice & condoned by state actors. Shown to be unsuccessful, third-party rights are unable to be represented and addressed when state actors cause such ~~later~~ intentional act to prejudice enrollees (children) to access to medical care by capitation method. Therein-
 after, the Medicaid Fraud conviction by a state court without jurisdiction, clearly demands exclusivity to federal jurisdiction. The issues remain unattended and ignored which cause an irreparable harm to enrollees (children). The recall and stay mandate as trivial and done either by motion ~~by~~ to compel or summary disposition of writ of certiorari, is relevant to announce a defect of a void conviction exists.

PRAYER

Wherefore premises considered, Petitioner prays that motion to compel is granted to recall and stay mandate of 21-50430. And for any other relief entitled to Petitioner.

Submitted on this day August 16, 2022.

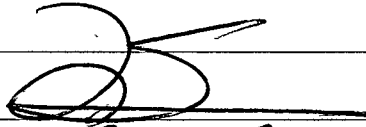


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Certificate of Service

Petitioner, set notice to respondent at: Hon. Alan D Albright,
800 Franklin Ave, Waco, TX 76701.



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