

No. 23-5527

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
AUG 14 2023
OFFICE OF THE CLERK

BRIAN KERRY O'KEEFE — PETITIONER
(Your Name)

vs.
DOUG BILLEXPIE, Sheriff;
ATTORNEY GENERAL FOR THE STATE OF — RESPONDENT(S)
NEVADA

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brian Kerry O'Keefe
(Your Name)

1200 Prison Road
(Address)

Covelock, Nv. 89419
(City, State, Zip Code)

N/A
(Phone Number)

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QUESTION(S) PRESENTED

- 1) Whether as a matter of procedural law, Appellant's motion under Fed. R. Civ. P. 60(b)(6) to reopen § 2241 case was timely where no authority exists in the Ninth Circuit that holds a court loses § 2241 jurisdiction over a properly filed pretrial double jeopardy challenge because the petitioner subsequently becomes a post conviction prisoner.
- 2) Whether a § 2241 petitioner who obtained an order from a circuit court granting in forma pauperis can proceed in a subsequent § 2241 application without payment where both pretrial § 2241 applications are related cases by law caused by the same state criminal information lodged holding petitioner in custody, in violation of the federal double jeopardy clause.
- 3) Whether the filing fee requirement of the federal district courts of the Ninth Circuit for § 2241 hybrid habeas corpus actions conflicts with Congress and other circuit courts where 28 U.S.C. § 1915 is inapplicable.

LIST OF PARTIES

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

☐ 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:

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Case No. 22-16230 FILED AUG 8 2023 RECONSIDERATION DENIED
- APPENDIX C — ORDER UNITED STATES DISTRICT COURT Case No. 2:12-cv-01388-
MMD-CWH FILED 07/11/12 3 77ger Fed. R. Civ. P. 60 (b)(6)
- APPENDIX D — ORDER UNITED STATES DISTRICT COURT Case No. 2:12-cv-01388-
MMD-CWH FILED 8/10/22 Fed. R. Civ. P. 59(e)
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TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

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STATUTES AND RULES

Fed. Rule Civil Procedure 60(b)(6)	Passim
28 U.S.C. § 2241	Passim
FRAP 24(a)(3)(5)	3, 4
28 U.S.C. § 1915	3, 4
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OTHER

U.S. Constitution, article 1, section 9, clause 2	3, 5
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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 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 _____; 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 C 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 June 15, 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: August 8, 2023, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

Federal Rules of Civil Procedure 60 (b)(6) (any other reason that justifies relief).

28 U.S.C. § 2241 Power to Grant Writ.

U.S. Constitution Article I, section 9, Clause 2
(The privilege of the writ of habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it).

FRAP 24 Proceeding in Forma Pauperis:

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, ...

(5) Motion in the Court of Appeals:

A party may file a motion to proceed on appeal in forma pauperis in the court of appeals...

STATEMENT OF THE CASE

- 1) When under no state court judgment, Appellant filed a second subsequent 28 U.S.C. § 2241 petition with an order granting IFP from the first related § 2241 petition and the order granting a certificate of appealability concluding it stated a debatable, namely, double jeopardy violation.
 - (see Appendix C, lines 15-16 at page 1)
- 2) U.S. District Court requested another 28 U.S.C. § 1915 application to be returned where Appellant never received despite having provided address change.
- 3) In light of Buck v. Davis, 137 S.Ct. 759, 767 (2017) citing Conzelmann v. Crosby, 545 U.S. 524 (2005) Appellant filed Fed. R. Civ. P. 60(b)(6) motion to reopen § 2241 hybrid habeas petition that was dismissed without prejudice.
- 4) U.S. District Court issued order on 2/11/22 denying motion for relief from judgment pursuant Fed. R. Civ. P. 60(b)(6) when no time limit exists under the jurisdictional federal § 2241 statute that has standing.
 - (see Appendix C)
- 5) Appellant filed a motion under Fed. R. Civ. P. 59(e) still denied.
 - (see Appendix D)
- 6) Appellant motioned for a certificate of appealability with 9th Circuit.
 - (see Appendix A)
- 7) Appellant filed reconsideration and/or reconsideration en banc.
 - (see Appendix B)
- 8) Appellant now moves this Honorable Court for certiorari review where once the federal § 2241 jurisdiction attached in the District Court, it could not be defeated by the release of the petitioner prior to completion of proceedings on such application and may be reopened under Rule 60(b)(6).

REASONS FOR GRANTING THE PETITION

- 9) Under Scott rule 10 (c) the Circuit Court overlooked that § 2241 jurisdiction can never be waived or forfeited under this Court's holding of Carabaz v. Larabee, 391 U.S. 234, 237-38 (1968).
- 10) Congress conferred jurisdiction under the Great Unlimited Great Writ to the Federal courts with an obligation to exercise jurisdiction.
 - (see Gonzalez v. Thayer, 565 U.S. 134 (2012) citing U.S. v. Cotton, 535 U.S. 625, 630 (2002)); (see also U.S. Const., Art. I, Sec. 9, Cl. 2)
- 11) The U.S. District Court admitted in her order denying Fed.R.Cv.P. 60(b)(6) relief that Appellant O'Keefe's motion properly only attacked the alleged defect in the integrity of his § 2241 habeas proceedings.
 - (see Appendix C at page 2, lines 19-20)
- 12) U.S. District Court Local Rule 7.2-1 (2012) determined that:
A case is related when : 1) Both actions involve same parties... similar claim ; 2) Both actions involve the same event and ;
3) Both actions involve similar questions of fact - law.
- 13) Appellant was already granted In Forma Pauperis on first related § 2241 hybrid action involving same short form state information.
- 14) The Ninth Circuit Certificate of Appealability panel already determined that a colorable double jeopardy violation existed for related § 2241 hybrid action involving same information.
 - (see U.S. Dist. Case no. 2:12-cv-01388-MMD-OWH Document 9 Filed 06/22/22 at Page 8-11) (ORDER GRANTING COA ON NAMELY, Double Jeopardy Violation).

15) Appellant O'Keefe's double jeopardy claim filed under § 2241 has still never been heard without AEDPA despite having timely filed the initial petition while under no state court judgment.

16) The purpose of Fed. R. Civ. P. 60(b)(6) is to make an exception to finality.

17) Federal Statute is a protected liberty interest protected under the U.S. Constitution's XIV Amendment, procedural due process;
• (see 28 U.S.C. § 2241) **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bruce K. O'Keefe

Date: August 14, 2023