

23-5720  
No.:

ORIGINAL

In the Supreme Court of the United States

In re Terrance A. McCauley

Supreme Court, U.S.

FILED

AUG 16 2023

OFFICE OF THE CLERK

On Petition for Writ of Habeas Corpus  
to the United States Court of Appeals  
for the Seventh Circuit

Petition for Writ of Habeas Corpus

~~ALL RIGHTS RESERVED~~

~~Terrance Arnez McCauley - Bey,~~  
Divine Minister, Asst. Grand Sheikh  
for the Moorish Science Temple  
of America, In Propria Persona  
% Redgranite Correctional Inst.  
P.O. Box 925  
1006 County Rd. EE  
Redgranite, Wisconsin [54970]

## Question(s) Presented

Whether the criminal proceedings sustained at the Circuit Court for Rock County against Terrance A. McCauley

- a. deprive the Moorish American national of the constitutionally protected rights to the free exercise of religion and peaceable assembly, and
- b. violate the Court's act of state and sovereign immunity doctrines.

## List of Parties

Curtis Fell, Custodian

## Related Cases

State of Wisconsin v. Terrance A. McCauley, No.(s) 18CM 194, 18CM924, 19CF462, and 20CM773, Rock County Circuit Court. Pending action.

Moorish Science Temple of America ex rel. Terrance A. McCauley v. Barbara W. McCrosy et al, No. 22-cv-475-wmc, U.S. District Court for the Western District of Wisconsin. Judgment entered October 6, 2022.

Terrance A. McCauley v. Troy Knudson, No. 23-cv-53-wmc, U.S. District Court for the Western District of Wisconsin. Judgment entered February 1, 2023.

Terrance A. McCauley v. Chris Stevens, No. 23-1332, U.S. Court of Appeals for the Seventh Circuit. Judgment entered May 23, 2023.

## Table of Contents

|                                                                                                     |    |
|-----------------------------------------------------------------------------------------------------|----|
| Order of the Seventh Circuit denying certificate<br>of appealability (entered on May 23, 2023)      | AA |
| Judgment and Opinion of the Western District of<br>Wisconsin (entered on January 30, 2023)          | AB |
| Decision of the Seventh Circuit denying rehearing<br>(entered on June 22, 2023)                     | AC |
| Decision of the Wisconsin Court of Appeals denying<br>habeas relief (entered on September 15, 2022) | AD |
| Judgment of Conviction by the Jefferson County<br>Circuit Court (entered on June 21, 2022)          | AE |
| Order of the Wisconsin Supreme Court denying<br>review (entered on January 18, 2023)                | AF |

## Table of Contents

|                                                                                                                                                                                                                   |    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Opinions Below                                                                                                                                                                                                    | 1  |
| Jurisdiction                                                                                                                                                                                                      | 2  |
| Constitutional and Statutory Provisions Involved                                                                                                                                                                  | 2  |
| Statement                                                                                                                                                                                                         |    |
| A. Factual Background                                                                                                                                                                                             | 3  |
| B. Procedural History                                                                                                                                                                                             | 5  |
| Reasons For Granting the Petition                                                                                                                                                                                 |    |
| I. A state court has decided an important federal question in a way that conflicts with relevant decisions of this Court.                                                                                         | 6  |
| 1. The criminal proceedings against Terrance A. McCauley prejudice the legal rights of the Moorish Science Temple of America.                                                                                     | 6  |
| 2. The State action runs afoul of principles established by the Court's act of state and sovereign immunity doctrines.                                                                                            | 12 |
| II. The Seventh Circuit has sanctioned a departure from the accepted and usual course of judicial proceedings by the Circuit Court for Rock County which calls for an exercise of this Court's supervisory power. | 20 |
| 1. The State of Wisconsin willfully subjects Terrance A. McCauley to a deprivation of the right(s) to                                                                                                             | 20 |

peaceable assembly and the free exercise of religion  
under color of law.

2. Terrance A. McCauley, being a citizen of a foreign state and domiciled therein, is in custody for an act done under the authority of the foreign state, the validity and effect of which depend upon the law of nations. 28

Conclusion 33

Index to Appendices

Appendix A, Decision of the Seventh Circuit

Appendix B, Decision of the Western District of Wisconsin

Appendix C, Order of the Seventh Circuit denying rehearing en banc

## Table of Authorities

### Cases

|                                                                            |    |
|----------------------------------------------------------------------------|----|
| Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398<br>(1964)                | 16 |
| Cantwell v. Connecticut, 310 U.S. 296 (1940)                               | 26 |
| DeJonge v. Oregon, 299 U.S. 353 (1937)                                     | 25 |
| First National City Bank v. Banco Nacional de Cuba,<br>406 U.S. 759 (1972) | 17 |
| Haines v. Kerner, 404 U.S. 519 (1972)                                      | 31 |
| Modern Woodmen v. Mixer, 267 U.S. 544 (1925)                               | 9  |
| NAACP v. Alabama, 357 U.S. 449 (1958)                                      | 24 |
| NAACP v. Button, 371 U.S. 415 (1963)                                       | 24 |
| Order of Travelers v. Wolfe, 331 U.S. 586 (1947)                           | 9  |
| Pierce v. Society of Sisters, 268 U.S. 510 (1925)                          | 26 |
| Reynolds v. United States, 98 U.S. 145 (1878)                              | 27 |
| Roberts v. United States Jaycees, 468 U.S. 609<br>(1984)                   | 26 |
| Royal Arcanum v. Green, 237 U.S. 531 (1915)                                | 9  |
| Samantar v. Yousuf, 560 U.S. 305 (2010)                                    | 18 |
| Sherbert v. Verner, 374 U.S. 398 (1963)                                    | 25 |
| Sovereign Camp v. Bolin, 305 U.S. 66 (1938)                                | 9  |
| Sweezy v. New Hampshire, 354 U.S. 234 (1957)                               | 24 |
| Testa v. Katt, 330 U.S. 386 (1947)                                         | 30 |

|                                                                                       |    |
|---------------------------------------------------------------------------------------|----|
| Thomas v. Collins, 323 U.S. 516 (1945)                                                | 26 |
| Underhill v. Hernandez, 168 U.S. 250 (1897)                                           | 12 |
| W.S. Kirkpatrick and Co. v. Environmental Tectonics Corp., Int'l, 493 U.S. 400 (1990) | 18 |

## Constitutional Provisions

|                                                   |    |
|---------------------------------------------------|----|
| United States Constitution, Article IV, Section 1 | 8  |
| United States Constitution, Amendment 1           | 21 |

## Statutes

|                                                                       |    |
|-----------------------------------------------------------------------|----|
| United States Code, 18 USC § 241                                      | 28 |
| United States Code, 18 USC § 242                                      | 28 |
| United States Code, 28 USC § 1254                                     | 2  |
| United States Code, 28 USC § 1603                                     | 15 |
| United States Code, 28 USC § 1604                                     | 14 |
| United States Code, 28 USC § 1605                                     | 14 |
| United States Code, 28 USC § 2241                                     | 21 |
| Illinois Compiled Statutes, ILCS Constitution<br>Article 7, Section 6 | 7  |

## Other Authorities and Sources

|                                                 |    |
|-------------------------------------------------|----|
| Letter Concerning Toleration (1689), John Locke | 23 |
| Moorish Divine Constitution and By-Laws, Act 3  | 23 |
| Moorish Divine Constitution and By-Laws, Act 7  | 10 |

## Opinions Below

The Seventh Circuit's decision appears at Appendix A to the petition and is unpublished.

The opinion of the Western District of Wisconsin appears at Appendix B to the petition and is unpublished.

## Jurisdiction

The judgment of the Seventh Circuit was entered on May 23, 2023. APP. A. A petition for rehearing en banc was denied on June 27, 2023. APP. C. The jurisdiction of this Court is thereby invoked under 28 USC § 1254(1).

## Constitutional and Statutory Provisions Involved

Article IV, Section 1 of the Constitution provides in relevant part that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. ...."

The First Amendment to the American Constitution provides in relevant part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging ... the right of the people peaceably to assemble, ...."

The Foreign Sovereign Immunities Act of the United States Code, 28 USC § 1604, provides in relevant part that ".... a foreign state shall be immune from

the jurisdiction of the courts of the United States and of the States...."

## Statement

Terrance Arnez McCauley-Bey, a citizen of the Moorish American Theocratic Government, petitions the Court for habeas relief from pretrial detention at the Rock County Jail. The State of Wisconsin seeks to impose burdens upon the foreign national through criminal proceedings held at the Circuit Court for Rock County for acts taken under the authority of the Moorish government and within the foreign nation's prescribed territory.

## A. Factual Background

1. In February of 2018, McCauley-Bey was charged in Beloit, Wisconsin for an alleged violation of Wisconsin's statutory law after a domestic dispute with the mother of his children. Following that event Petitioner was then charged with 'distribution of intimate representation' after it was reported that nude photos of his live in partner were delivered to her friends and family via text messages. Throughout the

proceedings McCauley-Bey delivered to all interested parties evidence of a pre-existing social arrangement, i.e., a Declaration of Citizenship and evidence of a Security Agreement between the Moorish Science Temple of America and Terrance A. McCauley as trustee for the McCauley-Bey Moorish Tribe trust/estate, etc. To no avail, the foreign national sought dismissal of the action for lack of jurisdiction pursuant to the doctrine of sovereign immunity whereby the circuit court refused declaring that "The State of Wisconsin does not recognize the authority of the Moorish government."

2. On habeas review to the Western District of Wisconsin the district court concluded that the petitioner asserted "that he is sovereign and beyond the jurisdiction of the courts" by arguing that the Rock County Circuit Court cases were nonjusticiable because he is a citizen of the Moorish American Theocratic Government and the proceedings infringe the sovereign interests of the foreign state. On that basis the court dismissed the habeas action. APP. B.

3. On appeal to the Seventh Circuit, Petitioner argued that the lower court erroneously concluded that the petition

asserted a "sovereign citizen-type" theory as a basis for relief. In review of the record the court determined that the petitioner failed to make a "substantial showing of the denial of a constitutional right." Thus, the Seventh Circuit denied the appeal and thereafter denied a petition for rehearing en banc. APP. A and C.

McCauley-Bey subsequently filed Petition for Writ of Habeas Corpus in this Court.

## B. Procedural History

January 23, 2023, Petitioner filed Writ of Habeas Corpus accompanied by Motion to Intervene and Motion for Injunctive Order on behalf of the Moorish Science Temple of America at the Western District of Wisconsin.

February 1, 2023, the district court dismissed all requests for relief. APP. B.

February 21, 2023, Petitioner filed Joint Notice of Appeal.

May 23, 2023, the Seventh Circuit denies the request for a certificate of appealability and motions for relief.

June 12, 2023, Petitioner filed a petition for rehearing en banc.

June 27, 2023, the Seventh Circuit rejects the request for an en banc rehearing.

### Reasons for Granting the Petition

I. A state court has decided an important federal question in a way that conflicts with relevant decisions of this Court.

1. The criminal proceedings against Terrance A. McCauley prejudice the legal rights of the Moorish Science Temple of America.

Terrance Arnez McCauley-Bey is in custody for acts taken under the authority of the Moorish government. This case is about whether the petitioner is entitled to have his actions governed by a foreign power whereby conduct may likely contradict the relevant concerns of the State. So the logical question(s) with which to begin are: does the Moorish Science Temple of America (Temple) have authority to regulate persons and property within its jurisdiction and; can the State of Wisconsin (State)

exercise its regulatory authority over the foreign body politic.

Principles set forth by the Court are clear regarding both the act of state and sovereign immunity doctrines.

The rules state that every nation is sovereign within its own borders and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory. The proceedings held at the Rock County Circuit Court violate these principles and infringe the sovereign interests of the Moorish nation-state in contravention of U.S. foreign policy.

The jurisdiction of the Moorish American Theocratic Government is concurrent to that of the United States Government exercising its authority at North America.

The Temple, a municipal corporation of a fraternal and beneficiary character, is established for the express purpose of administering the governmental affairs of the aboriginal peoples of the land. A National organization with a Rotarian complexion, the Temple is endowed with home rule authority and "may exercise any power and perform any function pertaining to its

government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; ... " ILCS Constitution Article 7, Section 6.

Clothed with powers of state, it does not follow that the members of the Temple would be subject to a State's penal code for adhering to laws enacted under the organization's home rule authority. The Temple has a necessary function to police members of the national association and this essential power is unlawfully impaired by the State. The action sustained by the circuit court denies full faith and credit to the charter of the Moorish American society.

Article IV, Section 1 of the American Constitution demands that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."

The Court's controlling precedents hold that such an organization (of a fraternal and beneficiary character) is entitled under the full faith and credit clause to have a case determined in accordance with the laws of the incorporating state and its own constitution and by-

laws as they had been construed by that state's courts.

"Fraternal benefit societies exist by virtue of the laws of the states of their incorporation, and the rights and obligations incident to membership in them are as much entitled to full faith and credit as the statutes upon which they depend." *Order of Travelers v. Wolfe*, 331 U.S. 586 (1947). See also, *Royal Arcanum v. Green*, 237 U.S. 531 (1915) (holding that the rights of members of a corporation of a fraternal and beneficiary character have their source in the constitution and by-laws of the corporation, and can only be determined by resort thereto, and such constitution and by-laws must necessarily be construed by the law of the state of its incorporation); and *Sovereign Camp v. Bolin*, 305 U.S. 66 (1938) (holding that, in a class suit to determine the validity of certificates issued by a mutual beneficiary association, the association represents all its members and stands in judgment for them....)

Furthermore, this Court has determined that "Becoming a member of an incorporated beneficiary society is more than a contract; it is entering into a complex and abiding relation, and the rights of membership are to be governed by the law of the society's incorporation. Hence, other

states, irrespective of where the certificate of membership is issued, cannot attach to a membership rights against the society which are refused by the law of the domicile."

Modern Woodmen v. Mixer, 267 U.S. 544 (1925).

Indeed, the State intends to impose burdens upon McCauley-Bey which attach to his rights to life and liberty, and would undoubtedly impede the ability to maintain obligations under his national association. As an example, Act 7. of the Moorish Divine Constitution and By-Laws commands all members to "...promptly attend their meetings and become a part and a parcel of all uplifting acts... pay their dues and keep in line with all necessities..." A term of imprisonment imposed on the foreign national would prevent compliance with this Act. Likewise, a term of supervision would subject the Moorish American to reporting requirements whereby performance duties need meet the discretion of an agent of the State.

In addition to its right to make law and enforce laws for the governance of Moorish inhabitants, the Temple's right to promote a religious doctrine is also impaired by the State action. The Holy Koran of the Moorish Science Temple of America is the organization's guide

for the expressive association of all members. Petitioner's right to freely profess the Islamic faith, and to manifest and practice it both in public and private as instructed by the teachings of the institution is prohibited by the State which denounces the Temple's interest in the free exercise of religion.

The laws of Illinois state provide for the independent governmental structure of the nation of Moors assembled. However, the legal rights accorded the foreign state are prejudiced by the criminal proceedings held at the Rock County Circuit Court against Tessance A. McCauley whose contention is to have acted on the authority of the Moorish Science Temple of America. Thus, this case is of national importance as it lies at the core of First Amendment concern, namely, the interest in unabridged association and uninhibited free exercise of religious practice. The case also affects the entire class of persons considered emancipated by the 13<sup>th</sup> Amendment to the Constitution and, more specifically, those of that group which have reclaimed a national status by pledging allegiance to the Moorish American Theocratic Government - a foreign sovereign state.

2. The State action runs afoul of principles established by the Court's act of state and sovereign immunity doctrines.

The State's entire case against McCauley-Bey turns on credence given to the authority of the Moorish American Theocratic Government upon which the foreign national acted pursuant to its public acts. It is well established that the courts in the United States will refrain from examining the validity of acts of foreign governments where those acts take effect within the territory of the foreign state. This rule, commonly known as the Act of State doctrine, says that a nation is sovereign within its own borders, and its domestic actions may not be questioned in the courts of another nation.

The Court thus held, "Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." Underhill v. Hernandez, 168 U.S. 250 (1897).

As a defense to the criminal proceedings the petitioner has argued that the acts in question were taken under

~~to enforce the laws of the Moorish American government~~  
by night and by day. Living according to established

States in any case... in which the action is based upon a commercial activity carried on in the United States by the foreign state;...

Certainly the Moorsish national has not intended to waive the immunity of the foreign state, either explicitly or by implication, raising the question at every stage of the proceedings. The critical function of the courts in administering the latter referenced exception to the Act is the interpretation of the phrase "commercial activity". The definition provided in the text of the Act reads:

For purposes of this chapter — A 'commercial activity' means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose. 28 USC § 1603(d).

Without need to delve into an in-depth analysis of the noted exceptions, it is fair to say that the nature of the course of conduct by which Petitioner is made to stand trial does not arise from, nor entail, any

the validity of the Cuban expropriations even if the plaintiff alleged a violation of international law."

Due to post-Sabbatino congressional enactments which, in effect, overruled that decision, the Court later established that "Where the Executive Branch... expressly represents to the Court that the act of state doctrine would not advance the interests of American foreign policy, that doctrine should not be applied by the courts." First *National City Bank v. Banco Nacional de Cuba*, 406 U.S. 759 (1972).

In the same case, the Court held "The act of state doctrine is a judicially accepted limitation on the normal adjudication processes of the courts, springing from the principle that on occasion individual litigants may have to forego decision on the merits of their claims because involvement of the courts in such a decision might frustrate the conduct of the nation's foreign policy."

In 1990, the Court strictly limited the application of the act of state doctrine to cases in which a court is required to determine the legality of a sovereign state's official acts under that sovereign's own laws. The