

SEP 05 2023

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CASE NO.

23-5898

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTIAN HAYWARD

Petitioner

vs.

UNITED STATES OF AMERICA

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE SIXTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

CHRISTIAN HAYWARD (PRO SE)

REG. # 67110-060

F.C.I. VICTORVILLE MED. #1

P. O. BOX 3725

ADELANTO, CA 92301

ORIGINAL

QUESTIONS PRESENTED

- 1) DID THE LOWER COURT VIOLATE DUE PROCESS AND/OR EQUAL PROTECTION BY FAILING BY FAILING TO RECOGNIZE THAT HAYWARD HAD A PRIVACY POSSESSORY INTEREST IN THE SEIZED PROPERTY THEREBY SUPPORTING STANDING TO CHALLENGE THE SEIZURE OF THE DUFFEL BAG PURSUANT TO PRECEDENT ESTABLISHED IN **UNITED STATES V. PLACE**, 462 U.S. 696 (1983) IN CONJUNCTION WITH **TEXAS V. BROWN**, 462 U.S. 730 (1983)?

- 2) DID THE COURT OF APPEALS VIOLATE DUE PROCESS WHEN IT TOTALLY FAILED TO ADJUDICATE THE ISSUE SQUARELY BEFORE IT THAT THE OFFENSE LEVEL DETERMINED PURSUANT TO THE GUIDELINES WAS IMPROPERLY CALCULATED IN VIOLATION OF **GALL V. UNITED STATES**, 552 U.S. 38 (2007), WHICH THE GOVERNMENT CONCEDED?

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CERTIFICATE OF INTERESTED PARTIES

The petitioner, Christian Hayward, pro se, certifies that the following listed parties have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusals.

CHRISTIAN HAYWARD --- whom is pro se, under the standards of Haines v. Kerner, 404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct. 594 (1972), and is the petitioner in the above entitled case and is presently incarcerated at Federal Correctional Institution Victorville Medium #1.

UNITED STATES OF AMERICA --- by and through, U.S. Attorneys Office, in this case and is Respondent in the above entitled case.

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

TABLE OF CONTENTS

COVER PAGE	
QUESTIONS PRESENTED.....	i
CERTIFICATE OF INTERESTED PARTIES.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
CITATIONS OF OPINIONS AND ORDERS.....	1
JURISDICTION STATEMENT.....	2
STATEMENT OF THE CASE.....	
REASONS FOR GRANTING THE PETITION.....	
CONCLUSION.....	
SIGNATURE.....	
<hr/> <hr/>	
APPENDIX A	
APPENDIX B	

TABLE OF AUTHORITIES

CASES

<u>ARIZONA V. HICKS,</u> 480 U.S. 321, 324-25, 94 L.Ed.2d 347, 107 S.Ct. 1146 (1987).....	8
<u>BOLLING V. SHARPE,</u> 347 U.S. 497, 499, 74 S.Ct. 693, 694, 98 L.Ed.2d 884 (1954).....	8
<u>COPPEDGE V. UNITED STATES,</u> 369 U.S. 438, 441-42, 8 L.Ed.2d 21, 25, 82 S.Ct. 917 (1962).....	10
<u>EVITTS V. LUCEY,</u> 469 U.S. 387, 393-95, 83 L.Ed.2d 821, 105 S.Ct. 830 (1985).....	10
<u>GALL V. UNITED STATES,</u> 552 U.S. 38, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007).....	i,9,10
<u>HAINES V. KERNER,</u> 404 U.S. 519, 520, 30 L.Ed.2d 652, 92 S.Ct. 594 (1972).....	ii
<u>MIRANDA V. ARIZONA,</u> 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).....	4
<u>RHEUARK V. SHAW,</u> 628 F.2d 297, 302 (5TH CIR. 1980).....	10
<u>TEXAS V. BROWN,</u> 460 U.S. 730, 130 S.Ct. 1535, 75 L.Ed.2d 694 (1966).....	i,6,7,8,9
<u>UNITED STATES V. CHADWICK,</u> 433 U.S. 1, 7, 53 L.Ed.2d 538, 97 S.Ct. 2476 (1977).....	7
<u>UNITED STATES V. HAYWARD,</u> 2023 U.S. APP. LEXIS 14470, 2023 FED. APP. 0261N (6TH CIR. 2023).....	1
<u>UNITED STATES V. JACOBSEN,</u> 466 U.S. 109, 104 S.Ct. 1652, 1656, 80 L.Ed.2d 85 (1984).....	8
<u>UNITED STATES V. PLACE,</u> 462 U.S. 696, 77 L.Ed.2d 110, 103 S.Ct. 2637 (1983).....	i,6,7,8,9
<u>UNITED STATES V. SOKOLOW,</u> 490 U.S. 1, 7, 104 L.Ed.2d 1, 109 S.Ct. 1581 (1989).....	8

STATUTES AND RULES

TITLE 21 U.S.C. § 841(a)(1), (b)(1)(A).....	5
TITLE 21 U.S.C. § 846.....	5
TITLE 28 U.S.C. § 1254(1).....	2
TITLE 28 U.S.C. § 1291.....	6

UNITED STATES SENTENCING GUIDELINES

§ 3B1.1(c).....	9
-----------------	---

UNITED STATES CONSTITUTION

FOURTH AMENDMENT.....	7,8
FIFTH AMENDMENT.....	8
FOURTEENTH AMENDMENT.....	8
DUE PROCESS CLAUSE.....	6,7,8,10
EQUAL PROTECTION.....	6,7,8,10

**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

The opinion of the United States court of appeals appears at Appendix A to the Petition and is reported at:

UNITED STATES V. HAYWARD, 2023 U.S. App. LEXIS 14470; 2023 FED.App. 0251N
(6th Cir. 2023)

JURISDICTION STATEMENT

The Supreme Court have jurisdiction under its supervisory powers to be sure that the lower courts apply already established precedent and to be sure that the laws are applied uniformly instead of selectively.

The Supreme Court also have jurisdiction because:

* On June 8, 2023, the Sixth Circuit Court of Appeals affirmed Petitioner Hayward's appeal challenging his conviction and sentence.

See Appendix A.

No petition for rehearing was filed in this instant case.

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

STATEMENT OF THE CASE

On October 24, 2019, plain-clothes DEA agents in Omaha Nebraska, were conducting drug interdiction at the Greyhound bus station. While the passengers from a bus traveling from California to points east was on a brief driver change break at the Omaha bus terminal, the agents entered the passengerless bus to inspect the bags that was left on the bus. The agents, inter alia, noticed and inspected a nice looking blue Nike duffel bag with no luggage identification tag resting on a seat. The agents took seats in the rear of the bus while waiting for the passengers to re-board the bus. One man (Brady Hill - referred to by the Government as "the courier") entered the bus and sat on the row of seats directly behind and adjacent to the seat with the duffel bag. Hill asked if anyone had seen his bag, which the agents subjectively guessed that Hill was "attempting to play dumb or distance himself from ownership" of the bag. Receiving no affirmative response, Hill then saw the bag and sat down with it and retrieved a coughdrop from the bag.

The agents then approached Hill to speak with him. In response to the agent's questions, inter alia: Hill stated that he did not own the bag but later when asked again he nodded that he did; that he was traveling on a one-way ticket from Los Angeles to Cleveland purchased with cash; that he had been in Los Angeles for six days and had not expected to return to Cleveland; that he had no other belongings with him except the duffel bag; that he frequently traveled to Los Angeles and stayed with friends while there, but he lived in Cleveland; that he denied carrying anything illegal; and that he refused to allow the agents to search the duffel bag or to conduct a dog sniff of the bag stating the reason for refusing was that he was not comfortable doing so.

Nevertheless, the agents detained Hill and the duffel bag thereby removing them from the bus, and called for a K9 drug sniffing unit for an open air

inspection of the duffel bag based on Hill's demeanor of refusing to allow agents to search the bag, the way Hill located the bag when he re-boarded the bus after first not locating the duffel bag, and that Hill was traveling on a bus from Los Angeles on a one-way ticket that was purchased with cash. After the dog alerted to the duffel bag containing contraband, Hill told the agents that the duffel bag belonged to Christian Hayward and agreed the agents could search the duffel bag after an agent advised Hill of his Miranda rights and discussed Hill's "options" with him. The agent explained that they were not looking for small amounts of personal use marijuana and, if that was all that was in the bag, then Hill could consent to a search of the bag to confirm that fact and then reboard the bus. Alternatively, if Hill refused to allow a search, the agent said that they would apply for a warrant, which would take some time and would cause Hill to miss the bus. The agents searched the bag and found fifteen individually wrapped bags each containing approximately one pound of a mixture or substance containing a detectable amount of methamphetamine, among Hill's clothes and toiletries and wrapped in clothing.

Now under arrest, Hill agreed to cooperate. Hill told the agents that he obtained the duffel bag of drugs from Hayward in California, and that he was supposed to deliver the duffel bag of drugs to Hayward at the Greyhound bus station in Cleveland when Hayward pick him up there. Hill showed the agents text messages from his cell phone, which Hill stated were between himself and Hayward. Hill said he watched Hayward wipe each of the one pound bags of methamphetamine with alcohol as Hayward wrapped the drug packages each in clothing before Hayward packed the duffel bag with the drugs and then packed Hill's things in the duffel bag; and that Hayward told Hill "not to look" in the bag.

The Omaha DEA agents contacted their Cleveland-area counterparts, who

obtained a warrant authorizing them to determine the realtime location of Hayward's cellphone. Using the locator information, the Cleveland-area agents located and arrested Hayward in the vicinity of the Cleveland Greyhound bus station around the time Hill's bus was scheduled to arrive.

Hayward was charged with one count of conspiracy to distribute and to possess with intent to distribute 500 grams or more of methamphetamine under 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and § 846. On October 15, 2020, the U.S. District Court for the Northern District of Ohio, Eastern Division held a hearing to suppress the evidence obtained from the agent's search of the duffel bag, arguing the agents in Omaha, inter alia, lacked articulable reasonable suspicion sufficient for the initial seizure of the duffel bag from off the bus. the district court denied the requested suppression relief finding that Hayward lacked standing to challenge the search.

After a two-day trial, the jury convicted Hayward. The district court sentenced Hayward to a 292-month term of imprisonment. The district court reached that sentence by calculating Hayward's Guidelines as follows: a base offense level of 38, adding 2-points for a leadership role, and criminal history category III.

Hayward timely appealed his conviction and sentence which was affirmed on June 8, 2023.

REASONS FOR GRANTING THE PETITION

Petitioner Hayward presents to this Honorable Court the following compelling reasons that may also qualify as extraordinary, which is relied on for allowance of this writ. As Hayward only presents two issues demonstrating that a Panel of the Sixth Circuit Court of Appeals entered a decision from an appeal of a district court denial from a suppression hearing that is in conflict with this Court's established precedent related to possessory interest standing. And Hayward presents that the Court of Appeals panel completely failed to adjudicate an issue that was before it in his direct appeal. To compound to exigency of the situation, these two issues can only be presented on direct appeal, causing a drastic hinderance of Hayward's rights under the Due Process Clause and Equal Protection, as well as federal statute (Title 28 U.S.C. §1291).

1) DID THE LOWER COURT VIOLATE DUE PROCESS AND/OR EQUAL PROTECTION BY FAILING TO RECOGNIZE THAT HAYWARD HAD A PRIVACY POSSESSORY INTEREST IN THE SEIZED PROPERTY SUPPORTING STANDING TO CHALLENGE THE SEIZURE OF THE DUFFEL BAG PURSUANT TO PRECEDENT ESTABLISHED IN UNITED STATES V. PLACE, 462 U.S. 696, 77 L.Ed.2d 110, 103 S.Ct. 2637 (1983) IN CONJUNCTION WITH TEXAS V. BROWN, 460 U.S. 730, 130 S.Ct. 1535, 75 L.Ed.2d 502 (1983)?

The facts are undisputed related to this case. The Government presented evidence that Hayward's and Hill's property was seized by DEA agents and taken off the Greyhound bus in Omaha Nebraska while in route to Cleveland Ohio from California. Hill was present with the property and detained also, while Hayward was in Ohio waiting to pick up Hill and the property. Evidence showed that Hayward wrapped the drugs in items of clothing and packed the wrapped drugs in the duffel bag along with Hill's items. The evidence also shows that

Hayward told Hill not to open the bag when he provided the bag to Hill to be transported to Cleveland where Hayward would be there to receive the bag and Hill.

Although Hayward was not present during the search, at no point does the evidence support that he abandoned the duffel bag or its contents. This was all evidences presented by the Government; as well as the Government presenting that the drugs inside the bag belonged to Hayward. Hayward's possessory interest in, at least, the contents of the duffel bag (the drugs) allows for verification of Hayward having standing to challenge the seizure of the property. However, the lower court's failure to recognize the obvious nature of Hayward's standing to challenge the reasonableness of the seizure of the property deprives Hayward of due process to established precedent applied to him and equal treatment as given to other similarly-situated defendants under the Constitution.

The Constitution's Fourth Amendment states in pertinent part, "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation...". the Fourth Amendment "protects people from unreasonable government intrusions in to their legitimate expectations of privacy." United States v. Chadwick, 433 U.S. 1, 7, 53 L.Ed.2d 538, 97 S.Ct. 2476 (1977). This Court affirmed that a person possesses a privacy interest in the contents of personal luggage that is protected by the Fourth Amendment. *Id.* at 13. As such the Fourth Amendment protects "effects" as well as people from unreasonable seizures. United States v. Place, 462 U.S. 696, 716, 103 S.Ct. 2637, 77 L. Ed.2d 110 (1983); also see Texas v. Brown, 460 U.S. 730, 75 L.Ed.2d 502, 103 S.Ct. 1535 (1983).

A seizure of property happens when there is a meaningful governmental interference with a person's possessory interest in that property. United States v. Jacobsen, 466 U.S. 109, 104 S.Ct. 1652, 1656, 80 L.Ed.2d 85 (1984); also see Arizona v. Hicks, 480 U.S. 321, 324-25, 94 L.Ed.2d 347, 107 S.Ct. 1149 (1987). However, if it is not reasonably articulately apparent that an item contains contraband, it is constitutionally unreasonable for law enforcement officials to seize the item without a warrant based on probable cause to believe it contains contraband. Jacobsen, at 1661. Requiring probable cause for seizure ... is consistent with the Fourth Amendment. Texas v. Brown, at 1543. And without a valid consent, the government must establish that the warrantless seizure was justified by probable cause. Place, 462 at 701. In this context, probable cause means reasonable ground for belief that the item seized is contraband or evidence of a crime. Id.; United States v. Sokolow, 490 U.S. 1, 7, 104 L.Ed.2d 1, 109 S.Ct. 1581 (1989).

On the facts of this case, Hayward definitely had standing due to his possessory interest to challenge the unreasonableness of the seizure of the property that the government evidentially presented as Hayward's. The Constitution's Fifth Amendment provides in pertinent part, "No person shall be ... deprived of life, liberty or property, without due process of law." And the Constitution's Fourteenth Amendment further provides, " ... No State shall ... deny to any person within its jurisdiction the equal protection of the laws". The Fifth Amendment also contains an equal protection element. Although it contains no Equal Protection Clause as does the Fourteenth Amendment, the Fifth Amendment's Due Process prohibits the Federal Government from engaging in unequal treatment that is "so unjustifiable as to be violative." Bolling v. Sharpe, 347 U.S. 497, 499, 74 S.Ct. 693, 694, 98 L.Ed. 884 (1954). As such, Hayward should be provided the dictates provided by established

precedent of this very Court for purposes of standing to challenge the reasonableness of the seizure of the property. Other similarly situated defendants received the benefits of an adjudication based on Place, Brown and other relevant cases. And now Hayward ask for the same level of process to be provided to him.

People are cloaked at all times with the right to have the law applied to them in an equal fashion.

2) DID THE COURT OF APPEALS VIOLATE DUE PROCESS WHEN IT TOTALLY FAILED TO ADJUDICATE THE ISSUE SQUARELY BEFORE IT THAT THE OFFENSE LEVEL DETERMINED PURSUANT TO THE GUIDELINES WAS IMPROPERLY CALCULATED IN VIOLATION OF GALL V. UNITED STATES, 552 U.S. 38, 51 (2007), WHICH THE GOVERNMENT CONCEDED?

In his direct appeal to the Sixth Circuit court of Appeals, Hayward squarely presented, argued and re-iterated to the court of appeals that his Sentencing Guidelines offense level was improperly calculated because two levels was improperly applied for a leadership role pursuant to §3B1.1(c) of the U.S. Sentencing Guidelines. Meanwhile, the Government conceded the issue when it failed to oppose the presented claim. Yet, the Court of Appeals failed to adjudicate the government failed forfeited claim on the merits. This action/inaction by the Court of Appeals left Hayward in limbo and impinged Hayward's right to appeal his conviction/sentence.

This violation is egregious because Hayward can only present the particular claim in his direct appeal, otherwise the claim is considered waived. Furthermore, because Hayward's counsel properly presented the claim in the direct appeal, Hayward cannot present an ineffective assistance of counsel claim on the issue. Obviously, since Hayward exercised his right to appeal this meritorious issue, which that right includes an adjudication on the merits

for properly presented claims.

This Court has clearly established that a person convicted in a federal district court has a right to a direct appeal, which accompanies an adjudication on the merits of properly presented claim(s). Coppedge v. United States, 369 U.S. 438, 441-42, 8 L.Ed.2d 21, 25, 82 S.Ct. 117 (1962). As presented ante, due process and equal protection are serious factors in this claim that is being impinged upon thereby depriving Hayward of well established rights. "Due process can be denied by any substantial retardation of the appellate process." Rheuark v. Shaw, 628 F.2d 297, 302 (5th Cir. 1980); also see Evitts v. Lucey, 469 U.S. 387, 393-95, 83 L.Ed.2d 821, 105 S.Ct. 830 (1985)(right to appeal must comport to due process).

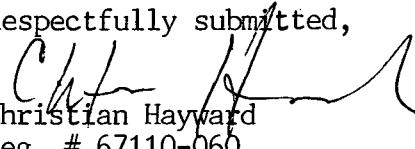
This Court's precedent made clear that sentencing courts are required to properly calculate the correct applicable Guidelines range(s) of a convicted defendant. See Gall v. United States, 552 U.S. 538, 51, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007).

CONCLUSION

The petition for a writ of certiorari should be granted.

Executed on: *September 5, 2023*

Respectfully submitted,


Christian Hayward
Reg. # 67110-060
F.C.I. Victorville Med. #1
P. O. Box 3725
Adelanto, CA 92301