ORIGINAL

No. 23-2137

23-6186

IN THE

SUPREME COURT OF THE UNITED STATES

GUILLERMO BORBOA — 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 EIGHTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Document NAME

GUILLERMO BORBOA
(~~Your~~ Name)

Reg. No. 31281-112
Federal Correctional Institution
P.O. Box 9

(Address)

Mendota, California 93640

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Was the District Court and the Eighth Circuit Court of Appeals in error in dismissing a MOTION FOR IMMEDIATE RELEASE DUE TO COURTS LACK OF SUBJECT-MATTER JURISDICTION when the courts reasoning became an abuse of power simply by construting said Motion as a 28 USC §2255 MOTION ?

How can an Appeals Court sanction a district courts classification of a Titled Filing into being construed as a 28 USC §2255 Motion and thereby circumventing the purpose of said Motion that is challenging the very authority and power of said court to hear said case to begin with.

Under what circumstances may a Federal Court of Appeals confirm the District Courts felony conviction and incarceration of a man whose conviction was not in conformity or compliance in requirement to Fifth Amendment standards, for a legal indictment against the triee?

LIST OF PARTIES

[X] 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:

RELATED CASES

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

STATUTES AND RULES

OTHER

Fifth Amendment to The Constitution of the United States

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

[X] 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,
[XX] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[XX] reported at 2023 U.S. Dist. LEXIS 78315; 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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 12, 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 _____.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including Dec. 9, 2023 (date) on Oct. 30, 2023 (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

This case involves the abuse and complete denial of due process, equal protection and illegal unprecedented circumvention per the requirement of the application and process of an accused person being indicted pursuant to the Fifth Amendment to The Constitution of the United States.

This is simple - except for the FACT that NONE of the Federal "JUDGES" want to take responsibility and correct this grevious error.

This involves two men - The Nebraska Grand Jury Indicted, "Guillermo Borboa a/k/a Omar Borboa". However, by great misfortune instead of the **REAL** Guillermo Borboa a/k/a Omar Borboa being arrested and tried. The REAL **Omar Borboa** was arrested in place of and for **Guillermo Borboa.**

This is a complete abuse of **Omar Borboa** [incarcerated as Guillermo Borboa] Fifth Amendment rights.

Omar Borboa - tried as and for Guillermo Borboa was not **Guillermo Borboa** being tried as **Omar Borboa** but in FACT was the real **Omar Borboa** being tried as the indicted **Guillermo Borboa.**

The District Court of Nebraska failed to have "Subject-Matter Jurisdiction" over the real life and breathing, **OMAR BORBOA**, as the Grand Jury of Indictment ONLY gave the Nebraska District Court Subject-Matter Jurisdiction over **Guillermo Borboa.**

Mr. Omar Borboa, has been denied his life and liberity, been deprived of honest work, a family life and being there for his children and support and help his wife. [Who has been very loyal in all of this to Omar as she knows he is innocent and it was Guillermo Borboa who was charged and indicted for this crime. Not her husband Omar.

Issues - Illegal Arrest, Illegal Incarceration, Fifth Amendment violations.

STATEMENT OF THE CASE

On or about July 04, 2002 a Los Angles Sheriff Deputy questioned a person of interest. This person gave his name as **Omar Borboa.** However, the questioning officer knew **OMAR BORBOA** from previous conversations, and knew the person was not **Omar Borboa.**

The officer then informed the suspect that he knew he was NOT **Omar Borboa** because he knew **Omar Borboa.** Whereupon the suspect was arrested by said Sherrif's Deputy for the offense(s) of, COUNT 01: PC MISD; COUNT 02: 148.9(A), for falsely representing his identy to a law enforcement officer. Please See Appedix "D"

The arresting officer later identified and confirmed that the arrested subject was in fact, "**GUILLERMO EDUARDO BORBOA**". Whom is **Omar Borboa** younger brother and he used **Omar's** name in order to try and mislead the questioning officer.

Then in 2005 a Law Enforcement Officer doing traffic patrol hit his lights and pulled a vehicle over. The drive of the vehicle was **Omar Borboa.** However, the vehicle he was driving was not his and the driver did not have his drivers license with him. The only identification was the Registration of the Vehicle which was registered to **Guillermo E. Borboa.** When the officer ran the registration and identification of **Guillermo E. Borboa** he got a hit for a Federal Arrest Warrant out of Nebraska.

Whereupon, the officer arrested **Omar Borboa** as BEING **Guillermo E. Borboa** for the issued Federal Warrant.

On January 20, 2005 the Federal Grand Jury for the District of Nebraska had issued an indictment styled as; UNITED STATES OF AMERICA v. GUILLERMO BORBOA, a/k/a **Omar Borboa**, and JHOVANNIE ANTONIO REYES, Defendant.

However, due to the mix up with the traffic officer in arresting **Omar** as and for **Guillermo** the officer fingerprinted and incarcerated **Omar Borboa** for **Guillermo E. Borboa.**

Omar told the arresting officer he was NOT Guillermo, and the officer told him not to worry, if he was in fact NOT Guillermo they would straighten it out in the future and take care of it.

OMAR, informed his defense attorney he was NOT Guillermo Borboa, that Guillermo was his brother that had been indicted and not him. However, the court appointed attorney failed to act on this very important fact and issue.

Finally, on the PRESENTENCE INVESTIGATION REPORT, James a. Harms the U.S. Probation Officer "Captioned" and listed said report as; "UNITED STATES OF AMERICA vs GUILLERMO

BORBOA [True Name - Gab[redacted]el Borboa]. This was done some[redacted]e in Oct./Nov. 2005.

This should have raised all kinds of alarm bells for the court but it did not. The actual physcial man in custody was Omar Borboa however the Pre-sentence Investigation Report was FOR - Guillermo Borboa in which Mr. Harms the U.S. Probation Officer had used the criminal history of Guillermo Borboa in computing a sentence for the WRONG man!

Omar is now incarcerated in Federal Custody at FCI mendota at Mendota, California and without any assistance and doing only Pro SE, it is an up hill battle. No ONE including the COURTS - district and Eighth Circuit Court of Appeals want to admit their mistake!

Sometime after the submission of the PSR was filed Omar out of fear and due to the fact that his attorney had not done anything to correct the mainformation and get Omar release as NOT BEING THE INDICTED DEFENDANT - and the court would not listen to it's own error. Omar, who was out on Bond did not report to be sentenced to a sentence for a crime he had not committed. When he failed to show up for sentencing the court issued a warrant for his arrest.

PLEASE TAKE JUDICIAL NOTICE: On November 21, 2006 the United States Marshal, Eastern District of California issued a DETAINER Against Sentenced Prisoner to the; North Kern State Prison in Delano, California for STATE prisoner "GUILLERMO BORBOA. a/k/a Guillermo MONOZ". United States Marshal's went to the North Kern State Prison took the REAL and FORMALLY indicted GUILLERMO BORBOA, a/k/a OMAR BORBOA in Nebraska back to the District Court in Nebraska.

The U.S. Marshal's took Guillermo from the North Kern State Prisons to the Federal District Court in Nebraska per the arrest warrant issued under 18 U.S.C. § 3148.

This was the actual in the flesh "Guillermo Borboa" who had actually been indicted by the Federal Grand Jury in Case No. 8:05-CR-24. But had NOT been arrested previously "as the indicted individual." But instead Guillermo brother, "OMAR BORBOA" had been arrested, incarcerated and presented before the court as; "GUILLERMO BORBOA."

When the court was presented "in court" with the real and actual Guillermo Borboa and the court saw it was NOT the person who had previously been before the court as; "GUILLERMO BORBOA." The court instead of charging the real indicted "GUILLERMO BORBOA" who was in front of the court at the time. Ordered the real indicted Guillermo Borboa on indictment 8:05-CR-24 be release and returned back to North Kern State Prison in California.

The enclosed "Detainer" Appendix "E" substaniates that in 2006 the Federal District Court for Nebraska did in "fact" had real indicted "Guillermo

Marshal's," on the previous Nebraska Indictment of [redacted] No. 8:05-CR-24, and Arrested as "GUILLERMO BORBOA" a/k/a "OMAR BORBOA." When in "fact" they knew the real person in their custody was the real "OMAR BORBOA" and NOT the indicted "GUILLERMO BORBOA - a/k/a - OMAR BORBOA." [Who the court ORDERED RELEASED BACK TO STATE PRISON].

Wherein the FLESH and BLOOD incarcerated "Omar Borboa," is now forced to petition this Court in "name only" of Guillermo Borboa ? Hereby request to do so, and futher states;

he therefore filed a: "Motion for Immediate Release Due To Court Lack of Subject Matter Jurisdiction." See Appendix "F"

In essence the Nebraska Court held; [and contrary to cite law]; that Petitioner Motion questing the court subject - matter jurisdiction could not be entertained because it was an attack on his conviction which was possible through an 18 U.S.C. § 2255 Motion. But since Petitioner had previously filed a § 2255 years before they Stated they could do nothing.

Borboa, filed a "Motion for C.O.A." explaining that the was challenging the courts "itself," subject matter jurisdiction over him as a defendant under his Constitutional Rights of protection under the Fifth and Sixth amendment to the United States Constitution, as applicable to him and his situation.

Pursuant to Aver v. Trans Union, LLC, 902 F.3d 873, 877(quoting Gonzalez v. Thaler 565 U.S. 134, 141, 132 S.D. 641, 181 L. Ed. 2d 619 (2012). Subject - Matter Jurisdiction can be RAISED AT ANYTIME and can NEVER be FORFEITED or Waived.

Standing on this contention, "that subject matter jurisdiction motions, in of themselves", "SHOULD NOT BE GOVERNED BY any 18 U.S.C. §§ 2254 or 2255 applications or prior application."

In as much, as if the trial court, did NOT HAVE subject matter jurisdiction in the first place to begin with. Then how can such a said ORDER or court rules be applicable to any proceeding if said court by statute or otherwise, lack subject matter jurisdiction?

Apply this court holding from Cotton, 535 U.S. at 630; stated; "When a party suggest absence of Subject-Matter Jurisdiction, even, at this late stage of a case the party questions not only the ORIGINAL conviction, but the Power to sentence or reduce the sentence. Any action by a court without Subject-Matter Jurisdiction is "ULTRA VIRES" and therefore void. Ruhrgas Ag v. Marathon Oil Co.. 526 U.S. 574 , 583, 119 S. Ct. 1563, 143 L. Ed. 2d 760 (1999)(quoting Steel Co., 523 U.S. at 101-02.

THEREFORE, Appellant is of the opinion based upon the LAW, both the District Court and the Eighth Circuit Court of Appeals were in error and wrong in dismissing Defendant/Appellant's "Motion For Immediate Release Due To Courts Lack of Subject-Matter Jurisdiction, and then the Eighth Circuit Court erred in not GRANTING a Certificate of Appealibility. Based on the fact and issue that the United States District Court for the District of Nebreska did not have an indictment indicting the person known as, and in the flesh and blood borned and named "Omar Gabriel Borboa"... HOWEVER, the United States District Court for Nebraska did in FACT have a GRAND JURY indictment in compliance to and with the Fifth Amendment to the United States Constitution for the arrest and trial of one; "Guillermo Borboa **ALSO KNOWN AS** Omar Borboa" !!!! Contrary to the Courts actions. No Federal GRAND JURY indicted "OMAR BORBOA **ALSO KNOWN AS** 'Guillermo Borboa'".

Omar Borboa - HAS NEVER been indicted for ANY crimes or offenses in the United States District Court for Nebreska. However, Omar's brother, "Guillermo Borboa who is ALSO KNOWN AS "Omar Borboa", was indicted by said Nebraska Federal Grand Jury.

Which court action and prosecution against OMAR BORBOA has been uncalled for and a waste of Omar Borboa's life and tax payer money.

OMAR BORBOA incarcerated unjustly under and in the name of, "Guillermo Borboa" should be released based on fingerprints of Guillermo Borboa and fingerprints of Omar Borboa that were taken by Law Enforcement Officers in California's Sheriff's Department, California Highway Patrol or local police department in Compton, CA.

To ORDER an investigation into this and if this claims are substaniated then ORDER my immediate release and clean my record of this illegal conviction.

REASONS FOR GRANTING THE PETITION

Appellant would respectfully request for the memeber's and staff of this Honorable Court to please read fully and completely Appellants, MOTION FOR IMMEDIATE RELEASE DUE TO COURTS LACK OF SUBJECT MATTER JURISDICTION (See Appendix "F"), and Defendant/Appellant's REASONS TO DETERMINE THIS COURT SHOULD GRANT A CERTITICATE OF APPEALIBILITY (See Appendix "G").

The reason that this Petition should be granted is the person incarcerazted in prison right now at this time is NOT the GRAND JURY indicted "Guillermo Borboa", but in FACT "Omar Borboa" an innocent man in this indictment.

The enclosed exhibits of California Drivers Licenses clearly prove that the "indicted" Guillermo Borboa is a FREE man and has a current California drivers license. Appendix H

The FACTS clearly shown and contained herein SLAP the Fifth Amendment to the United States Constitution a FARCE and no better than a Banana Republic in upholding the Constitution and said Amendments.

If the District Court of Nebraska wanted to try "OMAR BORBOA" for the alleged crimes contained in indictment No. 8:05-cr-24 then the court could have returned an indictment in the name of "Omar Borboa" and then have afforded "Omar" due process and Fifth Amendment protection.

This court should null, vacate and void the current conviction for indictment 8:05-cr-24 that was imposed on "Omar Borboa", when said sentence was only applicable only to the indicted "Guillermo Borboa", a/k/a **Omar Borboa.** ! Not the "ACTUAL" in person known and NAMED **Omar Borboa** who had NOT been indicted by said Federal Grand Jury, but through error had clearly tried the wrong person, (a person who had NEVER been indicted for any crime in Nebraska), and that person is the real, actual and innocent **Omar Gabriel Borboa!!!** Who is currently in prison due to his brother **Guillermo Borboa** past interaction with the LASD - Compton Station in 2002 telling said officers that he was "Omar Borboa".

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Omar Borboa.

Date: 11/20/2023