

No. 23-6366

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Islas, Jose Martin — PETITIONER
(Your Name)

vs.

DHS/ICE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Islas, Jose Martin
(Your Name)

P.O. Box 276.
(Address)

Chester, GA. 31012.
(City, State, Zip Code)

N/A.
(Phone Number)

ORIGINAL

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 _____ to the petition and is

☒ reported at USCA11 Case 23-10432-C; 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[] is unpublished.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 _____ to the petition and is

☒ reported at 3:23-cv-00002-DHB-BKE; 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[] is unpublished.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[] is unpublished.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[] is unpublished.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 May 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 _____.

☐ 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).

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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 judgement is the subject of this petition is as following:

DHS/ICE

Related Cases

Islas, J. Martin Vs. The State of Georgia. 2016-sur-652(WTS).

Questions Presented

1. A person who is physically present in the United States, whose criminal appeal is pending in a state court, has a visa petition pending, and is not a threat to the society or any other person, SHALL be ordered to be deported by an immigration judge without first allow him or her to exercise their constitutional rights to Equal protection of the law and unfairly, without taking under consideration the pendency of his or her adjust of status and without give the state the opportunity to fix their error(s) ?

2. When person is release of parole under the state color, and his or her conviction is pending on appeal, SHALL be denied of his or her right to post-conviction relief and be ordered to be deported by an immigration judge without first allow him to exercise their rights to Equal protection of the law and Due process?

3. A child who is an American citizen and who has a parent that is a foreign citizen, have their natural rights to ask for their parent presence in the United States until they become an adult(s) after 21 years old. But a child whose parents are foreign citizen, does not have the right to ask for their parents' presence, care and company during their childhood when they need them the most? What about the "the unity of the family and the wellbeing of the American children"?

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STATUS & RULES

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Statement of the Case.

A.

A trial court erred by ignoring the material scientific evidence that "Shaking baby syndrome or Abusive head trauma" (SBS/AHT) Hypothesis is unsound.

The (SBS/AHT) Hypothesis is a diagnostic based on the theory that when an infant present: (i). Subdural hematoma, (ii). Retinal Hemorrhage, (iii). Cerebral edema or encephalopathy it can be inferred those findings were caused by "shaking". This hypothesis further assumed that the trauma would have caused symptoms to arise immediately and therefore was necessarily by the person who has physical custody of the child at the time the symptoms arise.

(SBS/AHT) Hypothesis is unsound and therefore possess a great risk of wrongful convictions. Scientific evidence had made clear that those medical finding can be attributed to the wide variety of causes such as: (Natural deceases), (injuries during the birth), and (short falls). As a result, it is now generally accepted that the present of the "Triad" (or its components does not by itself give rise to a reliable diagnosis of abuse "SHAKING").

Because of the scientific community's lack of understanding of the (SBS/AHT) Hypothesis, the state medical team and expert(s) team did not seriously consider other known causes of the medical finding.

Specially, the court credited medical experts who testified that the most likely explanations for the baby's medical findings was abuse by the defendant (petitioner)

The state's expert testimonies were based on:1). The assumption that – now known to be scientifically erroneous – that the only explanation of the baby's medical findings was abuse.

- 2). The lack of structural failure of the NECK was normal even if you "Shake" a baby violently.
- 3). Lack of physical and medical evidence of the alleged (Aggravated assault), such as:
Bruises on the date of the alleged abuse.
- 4). The child cannot experience a "Lengthy Lucid Interval".
- 5). The state's expert testimony that the baby suffered subdural hematoma in limited scenarios such as falls from a multi-story buildings and high sped automobile accidents was relevant to prove the basis for opinion that a subdural hematoma required massive "Violent" force, but did not prove valid frame of reference from proving level of force necessary to cause a subdural hematoma from (SBS/AHT).
 - a). The trial court erred by ignoring that: Evidence was insufficient to prove that the defendant causes the subdural hematoma to the child, petitioner was helping his girlfriend to raise the children, those children had no signs of abuse.
 - b). The baby's mother has multiple children already, had records to smoke and used drugs.
 - c). The baby had fall who times previously and left without seek medical attention, once by the mother and other by the mother's aunt, the same aunt who had a record of child abuse, she abuses the baby's mother when she was a child, and who was the primary caregiver of the child.
 - d). Also, the baby's father, a violent father who physically abused the baby's mother, therefore he was convicted and incarcerated for AGGRAVATED ASSAULT AND FAMILY VIOLENCE.

e). The baby was under the care primarily of other caregiver, among them, mother's aunt who has a past of child abuse. The petitioner had or has any records of being a violent person neither before his incarceration or during his incarceration.

f). Petitioner care for the children only on two occasions once on Sunday, February 7th and Monday February 8th 2016 and only for a very short amount of time.

g). Factually, the baby suffered two old fractures already heal and they were at least 14 days old. On the date said old injuries occurred were on a date that the child was under the care of another person, and not under the defendant's care. There is no evidence that those injuries occurred under petitioner's care or were inflicted by the defendant.

h). The baby's birth was complicated and the mother was anemic at that time.

i). The baby was missing her regular visits to the Doctor for the last 6 months and her Vaccines as well.

Therefore, and because petitioner's innocence, petitioner's attorney filed a Notice of Appeal and a motion for New Trial, which till currently pending since 2017, under the trial court, judge William Travis Sakrison (WTS).

However, on November 2019, petitioner discover a picture of the trial court (WTS) having Ex-parte communication with the Party against defendant and who also are witness against him the FAMILY VESSELL. Said picture was taking during the time the trial court has under his jurisdiction petitioner's motion for new trial currently pending. Based on the picture that shows ex-parte communication between them, petitioner filed a Motion for Judge to Recuse Himself, judge denied said motion and refuse to recuse himself from the case.

B.

Petitioner's erroneous conviction had been the consider as a reason and bases in this case for removal or deportation.

- 1). On March 7th, 2022 petitioner was scheduled for a hearing for removal proceedings at the Immigration Court 180Twed Turner Dr. S. W. suite 241 Atlanta, Georgia. During said proceedings, petitioner filed several motions such as:
 - (I). Notice of filling collection of data of a man of integrity and wholesome character, filed on 6/6/2022.
 - (ii). Notice to file records from criminal case filed on 6/6/2022;
 - (iii). Motion to preclude from attempt to prosecute based upon a CONVICTION UNDER APPEAL'S REVIEW. (NEVER ANSWER, DENIED OR DISMISS).
 - (iv). Petitioner's copy of records of a petition for change of status, pending (Application for Visa U Nonimmigrant status)
 - (v). Notice of life case records a copy of (Amended Motion for New Trial)

On March 1st, 2022 the United States Government ACC, DHS/ICE, submitted a copy of the petitioner's indictment of his criminal case from Coweta County Georgia base for removal proceedings.

On June 6th, 2022, the Honorable Judge Duncan Randall verbally told petitioner that he **WILL** be sign deportation order against petitioner and clearly instructed petitioner his rights to file an appeal no late than 30 days' limit and ensure the petitioner filed his notice of appeal in that amount of time.

On July 6th, 2022, petitioner's appeal was rejected because the case was still pending, the hon. Judge Duncan never sign the deportation order has he told petitioner, instead, he rescheduled for another hearing on August 1st, 2022.

On the August 1st, hearing, the hon, judge Duncan verbally admitted that he was wrong for made an order of deportation based on petitioner's conviction when the conviction still pending on appeal.

Regardless of the admission of his erroneous order, judge Duncan once again, verbally ordered a second deportation order against petitioner. Said order was based solely upon grounds that the DHS/ICE failure to prosecute on the previous removal proceeding, including on June 6th, 2022.

For the above reasons, Petitioner filed a second notice of appeal at the Board of Immigration Appeals (BIA). The (BIA) erroneously affirmed judge Duncan decision and stated that Judge Duncan did not subsequently reopen the case on the 30-day limit to file an appeal

The (BIA) stated that the judge Duncan "Mentioned" on June 6th, 2022 that he would have entered a removal order. Said (BIA)'s statement cannot be sustained by the records, instead, the records "Clearly" established that the judge verbally said that he "**Will**" order petitioner deportation and instructed him his right to appeal's time limit.

Factual Court's Errors.

The Honorable Judge Duncan and the (BIA) ignored and did not take under consideration the fact that the petitioner is eligible for Deferred Action for Child Arrival (DACA), and is a father of an American citizen under the (DAPA) and his Visa U is currently pending.

Petitioner's wrongful conviction is currently it's currently pending on appeal and removed him from the United States without first allowed him to exhaust his post-conviction remedies will violate his right of Equal Protection of the Law and Due Process Rights under the 14th amendment from the United States Constitution.

The honorable Judge Duncan and the honorable judge Brown (BIA) erred when they both affirmed PREMATURELY Petitioner's deportation without first give the opportunity to fully challenge his wrongful conviction on appeal.

The U.S Government brought this case before an immigration judge in a premature manner based solely on petitioner's conviction that does not met the finality for immigration purposes. *Orabi v. Attorney Gen. of the United States*. 738 f. 3d 535 (3rd Cir. 2013) [et al].

The DHS/ICE withdraw the case against him on August 1st, 2022. That SHALL provide the immigration judge loses of jurisdiction to sign a deportation order against petitioner see (No jurisdiction by mootness).

A consecutive order of deportation was made on August 1st, 2022 made by the 3 judge Duncan based on:

- 1). Petitioner is not a citizen of the United States
- 2). Petitioner is a native of Mexico and citizen of Mexico.
- 3). Petitioner entered to the United States at an unknown date.
- 4). Petitioner was not admitted or paroled after inspection by an immigration officer.

As an answer of said ground, petitioner exercised his constitutional rights under the 5th Amendment that protect against self-incrimination and established the fact that he never broke U.S. Immigration Law intentionally nor unintentionally because he was brought to the United States when he was a child who had no knowledge of the law whatsoever.

5th Amendment from the U.S. Constitution provides that no person shall be compelled to be a witness against himself.

Reasons for Grant the Writ.

1.

Petitioner's wrongful conviction had been pending and has been disturbed, his Motion for New trial's hearing is currently schedule for October 26th, 2023. His order for deportation has prematurely made.

2.

Petitioner's VISA petition as an application for adjustment of status, not yet adjudicated should be under the protection of the 14th amendment from the United States Constitution.

3.

Petitioner's wrongful incarceration(hardship), pose a great risk of miscarriage of justice because other federal lower courts had recognized that convictions based upon "Junk Science" so called (SBS/AHT) had been show to result in false accusation of child abuse.

4.

The (BIA) had recognized that petitioner is eligible for Deferred Action fore Childhood Arrivals (DACA). However, petitioner submitted several documents to show and support his continual presence in the United States. (USCIS) currently does not receive (DACA Applications).

5.

Petitioner is a father of an American citizen, his son, that should make petitioner eligible for Deferred Action for Parents of American citizens (DAPA).

6.

Petitioner has met burden of proof that the petitioner is **not** a threat for the society or for other person. ICE policy well known stablish that if an alien (person), has a Visa pending, they will NOT arrest, detain, or deport the alien (person), unless they think the alien (person) is dangerous to other people.

Hon. Immigration judge Duncan, (BIA), and the Federal Courts' affirmation of the petitioner's deportation it is contradicted because other federal courts has recognized that a conviction pending on appeal does not met the finality for immigration purposes.

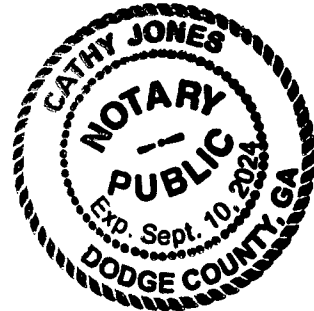
Conclusion.

THEREFORE, petitioner respectfully request this honorable court to grant this petition and conduct a plenary review, or alternative, summarily this premature order of deportation.

Respectfully submitted by: J. Martin

On this 24 day of Aug 2023

Prose.



Isas, Jose Martin

(petitioner).

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Prose.

Cathy Jones
(Notary Public).