No. 24-1037

In The Supreme Court of the United States

Antoine D. Johnson, MD,

v. *Petitioner,*

United States

Respondent.

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FILED
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SUPREME COURT, U.S.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Antoine D. Johnson, MD
In propria persona
P.O. Box #561
Aberdeen, Washington, 98520
(564) 544 – 0864
antoinejohnson388@aol.com

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QUESTIONS PRESENTED

I. If a *program* or *person holding the records* invokes the Confidentiality or records statute (42 U.S.C. § 290dd-2), by presenting evidence under 42 C.F.R. § 2.66(b), is he entitled to judicial review of that presented evidence?

II. "A core concern in this Court's personal jurisdiction cases is fairness." (*Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1784 (2017)). Is it fair to deny a coram nobis hearing to a *program* or *person holding the records* when new, undisputed evidence proves his conduct is presumptively within the scope of statutory immunity provided by 42 U.S.C. § 290dd-2(c) and 42 C.F.R. § 2.66?

III. "[I]f a defendant contests the court's authority, the court must determine whether it can nevertheless assert coercive power over the defendant. That calculus turns first on the statute or rule defining the persons within the court's reach." (*Mallory v. Norfolk Southern Ry. Co.*, 143 S. Ct. 2028, 2055 (2023)). If a Confidentiality of records beneficiary claims he is not within the court's reach, because patient identifying information was improperly used or disclosed, must federal courts determine whether that claim is true?

PARTIES TO THE PROCEEDINGS

The parties to the proceeding in the United States Court of Appeals for the Ninth Circuit were Petitioner, Antoine D. Johnson, MD and his Co-Defendant, LaWanda A. Johnson, Ph.D. The Respondent is the United States of America.

There are no corporate parties involved in this case.

DIRECTLY RELATED PROCEEDINGS

1. Petition for Writ of Error Coram Nobis in the United States District Court for the Western District of Washington at Tacoma. *United States v. Antoine D. Johnson, MD*, No. 3:09-cr-05703-DGE (June 26th, 2023).

2. A Motion challenging a use or disclosure order pursuant to the regulatory process at 42 C. F.R. § 2.66(b); granting, a part 2 program, the person holding the records and any patient "an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order in accordance with paragraph (c) of this section." (42 C.F.R. § 2.66(b)- in pert. part). *United States v. Antoine D. Johnson, MD*, No. 3:09-cr-05703-DGE (Feb. 12th, 2024).

DIRECTLY RELATED PROCEEDINGS- Cont'd.

3. Collateral appeal of order denying revocation of the use or disclosure order issued under 42 C.F.R. § 2.66(a)(1), to the Ninth Circuit Court of Appeals. *United States v. Antoine D. Johnson, MD*, No. 24-4435 (Dec. 20th, 2024).

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CITATION OF OPINIONS AND ORDERS

1. *United States v. Johnson*, 3:09-cr-05703-DGE (W.D. Wash. Jan. 26, 2024).

2. *United States v. Johnson*, Case No. 24-3916 (9th Cir.: 01/27/2025).

3. *United States v. Johnson*, Case No. 23-3676 (9th Cir.: 01/28/2025).

4. *United States v. Johnson,* Case No. 24-4436 (9th Cir.: 12/20/2024).

5. *United States v. Johnson*, Case No. 24-4435 (9th Cir.: 12/20/2024).

6. *United States v. Johnson*, Case No. 22-35715 (9th Cir.: 01/04/2024).

7. *United States v. Johnson*, Case No. 3:14-cv-06018-RBL (9th Cir.: 06/11/2015).

8. *United States v. Johnson*, Case No. 12-30129 (9th Cir.: 09/10/2013).

BASIS FOR JURISDICTION IN THIS COURT

a) This case arises under U.S. Const., Article III, S.2, c1; because, Appellant-petitioner claims "an actual or threatened invasion of his constitutional rights by the enforcement of some act of public authority ... and asks for judicial relief." (Art. III, S.2, c1).

b) The judgment of the court of appeals was entered Dec. 20, 2024. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

AUTHORITY

A. Questions of "immunity usually go to a court's personal jurisdiction over a particular defendant." (*Bankasi v. U.S.*, 143 S. Ct. 940, 952 (2023)).

B. "Personal jurisdiction, too, is an essential element of the jurisdiction of a district court, without which the court is powerless to proceed to an adjudication." (*Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999)).

C. "The requirement that a court have personal jurisdiction flows not from Art. III, but from the Due Process Clause. The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty. Thus, the test for personal jurisdiction requires that the maintenance of the suit not offend traditional notions of fair play and substantial justice." (*Ins. Corp. of Ir. v. Compagnie Des Bauxites De Guinee*, 456 U.S. 694, 702-03 (1982)).

STATEMENT OF THE CASE

Introduction

Appellant-petitioner is a physician. His name appears within an order issued by the United States District Court for the Western District of Washington, at Tacoma, by authority of 42 C.F.R. § 2.66(a)(1):

> "The United States shall notify Antoine Johnson, M.D. and any patient whose substance abuse treatment records are disclosed pursuant to this Order of the fact of disclosure, within ninety (90) days of disclosure or as soon thereafter as possible, as provided in 42 C.F.R. § 2.66(b), granting the affected patients and the treatment program an opportunity to seek revocation or amendment of this Order;"

Appendix ("*App.*"), 13- ¶ 8.

> "The United States is further authorized to, at its discretion, return copies and/or originals of the disclosed substance abuse patient records to Antoine Johnson, M.D."

App. 13- ¶ 9.

In that order, the district court regards Dr. Johnson as a *program* or *the person holding the records*. Accordingly, Dr. Johnson claims immunity in accordance with procedural rules (42 C.F.R. § 2.66(b)), authorized by Congress (42 U.S.C. § 290dd-2(g)). To be clear, Dr. Johnson claims his conviction was ascertained in violation of due process, and is void; because, indisputable evidence proves that Jan. 9th, 2009 order (*supra.*), is invalid.

Factual Background

Pursuant to 42 C.F.R. § 2.66(b), Dr. Johnson presented new, undisputed evidence proving his co-defendant, LaWanda A. Johnson, Ph.D., is a patient (42 C.F.R. § 2.11); and, the use or disclosure of her name in the Jan. 9th order, **without an accompanying order under 42 C.F.R. § 2.65, nor consent**, triggers statutory immunity.

That evidence is Ms. Johnson's Sentence Monitoring Computation DATA (App. 14); and, her Residential Drug Abuse Program, certificate of completion from the Federal Bureau of Prisons. Ms. Johnson's "RDAP" certificate is not in the Appendix; but, can be located at entry #817 of the district court docket, at page 8. Importantly, that evidence governs. (18 U.S.C. § 3625).

Dr. Johnson could not acquire that evidence before trial, direct appeal or his first § 2255 Motion. Furthermore, Dr. Johnson could not possess that

evidence while in custody as it violates prison policy. (28 C.F.R. § 543.11(f)(2)).

DATA shows Ms. Johnson received a sentence reduction under 18 U.S.C. § 3621(e). (*App.* 15). "Under 18 U.S.C. § 3621(e)(2)(B), the period a federal prisoner convicted of a nonviolent offense remains in custody after successfully completing a substance abuse treatment program may be reduced by the Bureau of Prisons." (*Lopez v. Davis*, 531 U.S. 230 (2001)).

Together, DATA and the certificate show Ms. Johnson is:

> "an individual who, after arrest on a criminal charge, is identified as an individual with a substance use disorder in order to determine that individual's eligibility to participate in a part 2 program. This definition includes both current and former patients."

42 C.F.R. § 2.11- in pertinent part.

The evidence proves Ms. Johnson was identified as a patient *before* the Superseding Indictment was filed (05/04/2010). Hence, Dr. Johnson filed a Motion Seeking Revocation or Amendment of the Jan. 9th order; and, sought an adjudication "that actually passes directly on the substance of the particular claim before the court" (*Semtek Int. Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 501-02 (2001)).

Procedural History

Plainly, the new, undisputed evidence goes to the statutory and regulatory criteria for the issuance of the Jan. 9th order; yet, the coram nobis court provides no indication that it reviewed that evidence, or applied that evidence to the Confidentiality of records statute (42 U.S.C. § 290dd-2), and its rules (42 C.F.R. Part 2).

Personal jurisdiction (*i.e.*, immunity), "represents a restriction on judicial power as a matter of individual liberty" (*Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982)); and, "a party may insist that the limitation be observed." (*Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999)).

I continue to do so, through this appeal.

REASONS FOR GRANTING THE WRIT

I. Where a *program* or *person holding the records* invokes the Confidentiality or records statute (42 U.S.C. § 290dd-2), by presenting evidence under 42 C.F.R. § 2.66(b), is he entitled to judicial review of that presented evidence?

Upon implementation of a court order under 42 C.F.R. § 2.66(b), the program, the person holding the records, or any patient whose records are to be used or disclosed, must be afforded an opportunity to seek revocation or amendment of that order. This opportunity is limited to presenting evidence on the statutory and regulatory criteria for the issuance of the court order. (42 C.F.R. § 2.66(b)).

Because the program, the person holding the records, or any patient whose records are used or disclosed, must be given a chance to seek revocation or amendment; such requirement, indicates that judicial review of presented evidence is indeed available after such order is implemented. Without judicial review, "the regulation would hold out only an empty promise." (*U.S. v. Shinderman*, 515 F.3d 5, 12 (1st Cir. 2008)).

In the coram nobis context, judicial review of evidence is determined, generally, by 28 U.S.C. §§ 2254(e) & 2255(b). Recall, coram nobis proceedings are "of the same general character as" habeas and § 2255 Motion proceedings. (*U.S. v. Morgan*, 346 U.S. 502, 506 n.4 (1954)).

Dr. Johnson's claim relies on "a factual predicate that could not have been previously discovered through the exercise of due diligence" (28 U.S.C. § 2254(e)(2)(A)(ii)); and, demonstrates "by clear and convincing evidence," that "no reasonable factfinder" would have convicted him of the charged crime. (28 U.S.C. § 2254 (e)(2)(B)).

Because the coram nobis court failed to resolve the issue of LaWanda's patient status, "[t]his was not a case where the issues raised by the motion were conclusively determined either by the motion itself or by the 'files and records' in the trial court." (*Machibroda v. U.S.*, 368 U.S. 487, 494 (1962)). Accordingly, neither evidentiary review nor, a hearing, would be futile in this case.

Before a federal court may decide whether to grant an evidentiary hearing or otherwise consider new evidence, it must first determine whether such evidence can be legally considered. (*Shoop v. Twyford*, 596 U.S. 811, 812 (2022)). This case is extraordinary; because, 42 C.F.R. § 2.66(b) explicitly authorizes presentation of evidence.

Thus, coram nobis proceedings in this case are **not** needlessly prolonged by review of presented evidence; because, "principles of comity and finality must yield to the imperative of correcting a fundamentally unjust incarceration." (*Engle v. Isaac*, 456 U.S. 107, 135 (1982)).

II. Is it fair to deny a coram nobis hearing to a *program* or *person holding the records* when new, undisputed evidence proves his conduct is presumptively within the scope of statutory immunity provided by 42 U.S.C. § 290dd-2(c) and 42 C.F.R. § 2.66?

The lower courts' failure to resolve the issue of Ms. Johnson's patient status callously ignores the likelihood that the United States has subjected Dr. Johnson "to conviction for conduct which it is powerless to proscribe." (*Pollock v. Williams*, 322 U.S. 4, 23 (1944)).

Except as authorized by a valid court order, the records covered by § 290dd-2(a) may not "be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient." (42 U.S.C. § 290dd-2(c)). If the United States used or disclosed Ms. Johnson's patient identifying information in violation of that statute:

> "Such record or testimony shall not be used by any Federal, State, or local agency for a law enforcement purpose or to conduct any law enforcement investigation."
>
> *42 U.S.C. § 290dd-2(c)(3): cf., 28 U.S.C. § 547(1)*

Hence, the Jan. 9th order is apparently invalid; because, it uses or discloses Ms. Johnson's presumptive *patient identifying information* to investigate and prosecute Ms. Johnson, as well as the *program* or *person holding the records*, without her consent or an accompanying order under 42 C.F.R. § 2.65. That scenario is explicitly proscribed by 42 C.F.R. § 2.66(c)(3) & (d)(2).

Because "the Due Process Clause always protects defendants against fundamentally unfair treatment by the government in criminal proceedings" (*Doggett v. U.S.*, 505 U.S. 647, 666 (1992)), failing to apply or misapplying 42 C.F.R. § 2.66(b), "deprive[s] defendants of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence and no criminal punishment may be regarded as fundamentally fair." (*Neder v. U.S.*, 527 U.S. 1, 8-9 (1999)).

III. If a Confidentiality of records beneficiary claims he is not within the court's reach; because, patient identifying information was improperly used or disclosed, must the inferior courts determine whether that claim is true?

At bar, is a "nonmerits threshold question of personal jurisdiction" (*Sinochem Intern. Co. Ltd. v. Malay. Intern. Shipping Corp.*, 549 U.S. 422, 433 (2007)). "A threshold jurisdictional question must be addressed to determine whether the Court of Appeals and hence this Court lack appellate jurisdiction." (*Baldwin Cty. Welcome Ctr. v. Brown*, 466 U.S. 147, 160-61 (1984)).

The answer to the personal jurisdiction question depends on the resolution of Ms. Johnson's patient status; where, "appellate courts are not to decide factual questions de novo." (*Maine v. Taylor*, 477 U.S. 131, 145 (1986)). Because the fact at issue here may determine the outcome of the case, remand is proper.

"On remand, the task of the District Court, subject to review by the Court of Appeals, will be to make further findings of fact from evidence already in the record ...." (*Dayton Board of Education v. Brinkman*, 433 U.S. 406, 422 (1977)). Restated: the district court should resolve the issue of LaWanda Johnson's patient status to protect defendants' civil liberties; and, ensure the court has not exceeded its jurisdiction.

CONCLUSION

"[T]his court will look into the record, to determine not whether the inferior tribunal has erred in its action, but whether it has exceeded its jurisdiction in the imprisonment of the petitioner." (*Ex Parte Virginia,* 100 U.S. 339, 351 (1879)).

Certiorari should be granted to resolve: ***i)*** LaWanda A. Johnson's patient status; and, ***ii)*** Dr. Johnson's claim of immunity under the Confidentiality of records statute.

Respectfully submitted,

March 12, 2025

Antoine D. Johnson, MD
(In propria persona)