

NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024

---

DUSTIN SIERRA

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

---

ON THE PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES OF APPEALS  
FOR THE EIGHTH CIRCUIT

---

**PETITION FOR A WRIT OF CERTIORARI**

---

Terry L. Pechota  
Attorney for Petitioner  
1617 Sheridan Lake Rd.  
Rapid City, SD 57702  
605-341-4400  
[tpechota@1868treaty.com](mailto:tpechota@1868treaty.com)

---

## **QUESTION PRESENTED**

- I. Whether or not the defendant's case should have been severed from that of his co-defendant brother.
- II. Whether or not the government proved that defendant could be convicted of kidnaping.

## **PARTIES TO THE PROCEEDING**

Petitioner is Dustin Sierra, the defendant-appellant below.

Respondent is the United States of America, the plaintiff-appellee below.

## TABLE OF CONTENTS

Question Presented . . . . .	i
Parties to the Proceeding. . . . .	ii
Table of Authorities . . . . .	iv
Petition for Writ of Certiorari . . . . .	1
Opinion Below . . . . .	2
Jurisdiction. . . . .	2
Statutes Involved . . . . .	2
Statement of the Case . . . . .	2
Reasons for Granting the Petition. . . . .	3
I.    The defendant’s case should have been severed from that of his co- defendant brother . . . . .	3
II.   The government did not prove kidnaping . . . . .	5
Conclusion . . . . .	5
Appendix	
App. A.    Decision and Judgment of the United States Court of Appeals for the Eighth Circuit ( <i>United States v. Dustin Sierra</i> (8 <sup>th</sup> Cir. 2024) . . . . .	1a

## TABLE OF AUTHORITIES

<u>Court of Appeal Cases</u>	<u>Page(s)</u>
<i>Drew v. United States</i> , 331 F2d 85 (D.C. Cir. 1964) . . . . .	4
<i>State ex rel. Juv. Dept. v. Holloway</i> , 795 P2d 589 (Or. Ct. App. 1990) . . . . .	5
<i>United States v. Chavez</i> , 584 F3d 1354 (11 <sup>th</sup> Cir. 2009) . . . . .	4
<i>United States v. De Valle</i> , 674 F3d 696 (7 <sup>th</sup> Cir. 2012) . . . . .	4
<i>United States v. Nichols</i> , 76F4th, 1046 (8 <sup>th</sup> Cir. 2023) . . . . .	5
<i>United States v. DiStefano</i> , 555 F2d 1094 (2 <sup>nd</sup> Cir. 1977) . . . . .	5
<i>United States v. Lewis</i> , 594 F3d 1270 (10 <sup>th</sup> Cir. 2010) . . . . .	5
<i>United States v. Pearlstein</i> , 576 F2d 531 (3 <sup>rd</sup> Cir. 1978). . . . .	5
<u>Statutes</u>	<u>Page(s)</u>
28 U.S.C. § 1254 (a) . . . . .	2
<u>Other</u>	<u>Page(s)</u>
Crim. R. 14 . . . . .	4

NO. \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2023

---

DUSTIN SIERRA

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

---

**PETITION FOR WRIT OF CERTIORARI**

Petitioner, Dustin Sierra, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

## **OPINION BELOW**

The judgment and opinion of the United States Court of Appeals for the Eighth Circuit, was issued on February 28, 2024, and is reprinted in Appendix A to this Petition (“App.A”) at 1a-10a.

## **JURISDICTION**

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (a). The decision of the United States Court of Appeals for the Eighth Circuit for which petitioner seeks review was issued on February 28, 2024. This petition is filed within 90 days of the date that the Eight Circuit Court of Appeals issued its decision and judgment.

## **CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

United States Constitution, Amendment 5, provides in pertinent part:  
No person shall be...deprived of life, liberty, or property, without due process of law... .

United States Constitution, Amendment 6, provides, in relevant part:  
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...

## **STATEMENT OF THE CASE**

This case involves an indictment charging Dustin Sierra and his brother Jesse with kidnaping and different assault charges related to Esther Wolfe, who is now deceased. All the assault charges were dismissed against Dustin Sierra resulting in his conviction for kidnaping for which he was sentenced to 120 months

of incarceration. The reasons for granting this petition sets out facts relevant to each of the issues.

## **REASONS FOR GRANTING THE PETITION**

### **I. THE DEFENDANT'S CASE SHOULD HAVE BEEN SEVERED FROM THAT OF HIS CO-DEFENDANT BROTHER SO THAT THE JURY WOULD NOT BE PRESENTED WITH EVIDENCE OF PHYSICAL ABUSE**

Esther Wolfe was his brother, Jesse's, girlfriend. Esther Wolfe sustained significant injuries at the hands of Jesse Sierra. These inflammatory and prejudicial injuries were depicted in numerous photographs which were introduced and accepted as evidence. The trial judge indicated at sentencing that they were the worst injuries she had observed during her time on the bench. Jesse Sierra was sentenced to life imprisonment.

Boiled to a core, the evidence at trial showed Dustin Sierra's involvement was as follows. Dustin, who was accompanied by his four year old son, gave his brother Jesse a ride from Pine Ridge, on the Pine Ridge Indian Reservation, to Rapid City, a little over an hour away. Little did Dustin know that his brother was going to meet Esther Wolfe, Jesse's girlfriend. Dustin gave them a ride around Rapid City to a restaurant, a gym, and to a testing center operated by law enforcement to enforce sobriety requirements imposed by courts, Jesse being on probation out of Colorado. Later in the day he gave them a ride back to Pine Ridge and dropped them off at the rural residence of Michael Sierra Sr., Dustin and Jesse's father. Dustin and his son, after leaving Jesse and Esther at the Michael



Sierra residence, traveled to Dustin's mobile home a few miles from the Michael Sierra residence.

There was no conversation between Dustin and Wolfe on the way back to Pine Ridge as testified to by Esther Wolfe although Wolfe testified she did not want to go to Pine Ridge. Esther Wolfe testified that she was physically assaulted and raped by Jesse at the Michael Sierra residence after being left off by Dustin. The next day, Jesse Sierra and Esther Wolfe traveled to Dustin's mobile home and went inside though Dustin and his son were not there. Wolfe testified that she was assaulted inside of Dustin's trailer by Jesse while Dustin was gone and when Dustin returned he told them to leave. Jesse and Esther left Dustin's trailer and traveled to the residence of Jesse's mother where they spent the next couple of days. Esther testified that she was assaulted and raped at a separate house on the grounds of the mother's residence. Dustin was not present at the mother's residence other than days later giving Jesse and Esther a ride from that residence to Nebraska, where he left them off as they requested, and he returned to Pine Ridge.

Dustin did not receive a fair trial because Dustin's case should have been severed from the trial of his brother, Jesse. Crim. R. 14; *United States v. Del Valle*, 674 F3d 696 (7<sup>th</sup> Cir. 2012); *United States v. Chavez*, 584 F3d 1354 (11<sup>th</sup> Cir. 2009); *Drew v. United States*, 331 F2d 85, 88 (D.C. Cir. 1964). See Appellant's Brief at 13-14. Throughout the joint proceedings, Dustin made multiple pretrial and trial motions to sever. The inflammatory photographs of Esther Wolfe's injuries as well

as her testimony about the physical and sexual assaults by Jesse causing the injuries were seen and heard by the jury. Dustin had nothing to do with injuries or assaults upon Esther Wolfe and they would not have been admissible at a separate trial.

**II. ESTHER WOLFE VOLUNTARILY ENTERED DEFENDANT'S VEHICLE MULTIPLE TIMES AND VOLUNTARILY TRAVELED TO PINE RIDGE AND NEBRASKA. THE GOVERNMENT DID NOT PROVE KIDNAPPING.**

Dustin was deprived of a fair trial and unlawfully convicted of kidnaping. He was unlawfully convicted of kidnaping because Esther Wolfe voluntarily entered his vehicle at Rapid City, rode around in the car while she was with Jesse in the back seat, had numerous chances to avoid entering and to leave the car, and admitted at trial that she never communicated to the Dustin that she did not want to go to Pine Ridge. A few days later she voluntarily entered Dustin's vehicle again so that she could go to Nebraska with Jesse. There was no kidnaping at either time that she was in Dustin Sierra's vehicle. *E.g., United States v. Nichols*, 76 F4th 1046, 1056 (8<sup>th</sup> Cir. 2023), citing *State ex rel. Juv. Dept. v. Holloway*, 795 P2d 589, 591-592 (Or. Ct. App. 1990); *United States v. Di Stefano*, 555 F2d 1094 (2<sup>nd</sup> Cir. 1977); *United States v. Pearlstein*, 576 534 (3<sup>rd</sup> Cir. 1978); *United States v. Lewis*, 594 F3d 1270 (10<sup>th</sup> Cir. 2010).

**CONCLUSION**

For any one or all of the above reasons set forth in assignment of error I or II, the petition for certiorari should be granted and defendant's conviction

reversed in whole or part and the action dismissed against him or remanded for a new trial as appropriate.

Dated May 24, 2024

Respectfully Submitted,  
/s/ Terry L. Pechota  
Attorney for Petitioner  
1617 Sheridan Lake Rd.  
Rapid City, SD 57702  
605-341-4400  
tpechota@1868treaty.com