

No. 24-5817

IN THE SUPREME COURT OF THE UNITED STATES

Lassissi Afolabi
(Petitioner)

vs.

Warden, Federal Correctional Institutional, Fort Dix
(Respondent)

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR REHEARING



(Sup. Ct. R. 44.2.

The Appellant presents his Petition for a rehearing of the above-entitled cause, and, in support of it, respectfully shows:

Grounds for Rehearing

A rehearing of the decision in the matter is in the interests of justice because the United States Supreme Court has overlooked the Petitioner's Petition for a writ of certiorari and this Court reconsideration of the rehearing is needed for clarification on the constitutional and procedural grounds to resolve the issues.

1. On November 18, 2024, this Court denied the petition for writ of certiorari.
2. The principal ground cited in the Court's per curiam opinion was that the circuit issue had been fully and completely determined by the ruling of the Court in Jones v. Hendrix, 143 S. Ct.1857 (2023), a case decided a mere 202 days before the decision in this case.
3. The grounds for the ruling in Jones v. Hendrix, 143 S. Ct. 1857 (2023), came as a surprise to the Petitioner. The Petitioner had briefed the crucial issue in this case carefully and was aware that a related issue was pending in In re Bowe, Case No. 22-7871, 2024 U.S. LEXIS 988 (Feb. 20, 2024), but the parties in that case did not extensively brief the issue that was crucial to the Court's decision in that case. A decision in the In re Bowe, Case No. 22-7871, 2024 U.S. LEXIS 988 (Feb. 20, 2024) case was expected only on related issue.
4. The Petitioner was not granted any opportunity by the Court to distinguish this case from the Jones case or to suggest why they should not be determined by the same rule.
5. This case contains several crucial factual and procedural distinctions from the case of Jones v. Hendrix, 143 S. Ct. 1857 (2023), that warrant its

determination by a different or at least altered rule.

a. Factual or Procedural Distinction

28 U.S.C. § 2241(c)(3) allows prisoners to pursue their claims in the sentencing court if the prisoner believes that he or she is held in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2241; 28 U.S.C. § 2254(a). But prisoners who are truly federal prisoners proceed their habeas proceedings under 28 U.S.C. § 2255. If a state prisoner who wants to file "second or successive" must ask for authorization from the proper Court of Appeals to file second or successive under 28 U.S.C. § 2244(b)(3), and the federal prisoners file their "second or successive" motion under 28 U.S.C. § 2255(h), which must be certified as provided in section 2244 [28 USCS § 2244] by a panel of the appropriate court of appeals to contain ____ § 2255(h)(1) or (h)(2). Here, there is a distinction between this case and Jones because in Jones, his motion pursuant to 28 U.S.C. § 2255 was resolved by vacating one of his concurrent sentences before filing § 2241. Whereas in this case, the Petitioner's § 2255 motion has not been resolved and his second or successive application has been denied and certified well before Jones decision. The Petitioner has filed a complaint against BOP and the sentencing District Court, asserting that he is being held involuntary servitude because his sentence convicted under Title 18. He has also pursued and exhausted all his administrative remedies before filing § 2241. Thus new rule may apply in this case.

b. Second Factual or Procedural

By affirming the District Court's decision, the court of Appeals for the Third Circuit stated as follows:

In dismissing Afolabi's second § 2241 case, the District Court declined to exercise its discretion under 28 U.S.C. § 1631 to transfer the matter to our Court for treatment as another application for leave to file a second

or successive § 2255 motion. That was not an abuse of discretion, especially since Afolabi's second § 2241 case raises the same claims that undergirded his application that we denied in C.A. No. 21-3203.

This decision of the Court of Appeals is unwarranted and conflicted with other circuits' decisions. See Title 28 U.S.C. § 1631, section 610, chapter 601. The Petition may also be transferred under 28 U.S.C. § 1406(a).

6. In the earlier decision, United States v. Hayman, 342 U.S. 205, 212-214, 219, 72 S. Ct 263, 96 L. Ed. 232 (1952); Goldlawr, Inc. v. Heiman, 369 U.S. 463, 465-66, 82 S. Ct. 913, 8 L. Ed. 2d 39 (1962); Sessions v. Dimaya, 584 U.S. ___ ' ___ ' 138 S. Ct. 1204, 200 L. Ed. 2d 549 (2018), the Court had noted that cases with these factual and procedural distinctions should be treated by a markedly different rule of law from those properly applicable in the Jones v. Hendrix, 143 S. Ct. 1857 (2023) decision that the Court, in its order, stated was controlling in this case.


7. A rehearing tightly and squarely focused on the distinctions between this case and the Jones v. Hendrix, 143 S. Ct. 1857 (2023) case, and whether these distinctions merit a different rule of law, is a matter of fundamental fairness to petitioner and would not unduly burden the Court.

CONCLUSION

For the reasons just stated, Lassissi Afolabi urges that this petition for a rehearing be granted, and that, on further consideration, the Petition for Certiorari be granted or the judgment of the lower court be reversed or as appropriate.

December 12, 2024

Respectfully Submitted


Lassissi Afolabi #28877-050
Paralegal
FCI FORT DIX
P.O. Box 2000
Joint Base MDL, NJ 08640

CERTIFICATE OF GOOD FAITH

I, Lassissi Afolabi, certify that this Petition for Rehearing is presented in good faith and not for delay and that it is restricted to the grounds specified in Supreme Court Rule 44 of the Rules of this Court.



I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 12, 2024



Lassissi Afolabi

No. 24-5817

IN THE
SUPREME COURT OF THE UNITED STATES

Lassissi Afolabi - Petitioner

VS.

Warden, Federal Correctional Institution, Fort Dix - Respondent

PROOF OF SERVICE

I, Lassissi Afolabi, do swear or declare that on this date, December 12, 2024, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR REHEARING on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.


The names and addresses of those served are as follows:

ELIZABETH B. PRELOGAR, Solicitor General

U.S. Department of Justice, Office of the Solicitor General, Room 5612,
Washington, DC 20530

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 12, 2024



Lassissi Afolabi #28877-050
Paralegal