

Case No. #

24-6501

**ORIGINAL**

**FILED**

JAN - 9 2025

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

SUPREME COURT OF THE U.S.

"

In re NOEL J. BENDER

(Petitioner)

V.S.

Iowa Department Of Corrections, et al.  
(Respondents)

" In re Noel Jermaine Bender #1133015 "

Petition Seeking Writ of Prohibition  
And Petition of Writ of Mandamus  
28 U.S.C. § 1651(a)

NOEL JERMAINE BENDER #1133015

Iowa State Penitentiary

P.O. Box # 316

Fort Madison, IA 52627

QUESTION(S) PRESENTED

Whether a defendant is "Cohabiting" with a victim of his assault, such as that he and his victim are "household members" and the assault is thus a domestic abuse assault, when the defendant is merely staying with the victim, at the home of the victim's after he has absconded from a residential treatment facility. Substantial evidence beyond a reasonable doubt.

## CORPORATE DISCLOSURE STATEMENT

Was submitted in a documented petition earlier filed on record in the petition for a writ of Certiorari as recommended by Rule 29.6 back in June 13, 2024.

### 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 judgment is the subject of this petition is as follows:

### RELATED CASES

- State Of Iowa V. Noel Jermaine Bender #SR/R 016095 In the Iowa District Court For Plymouth County. Judgment entered 4-4-17
- State Of Iowa V. Noel Jermaine Bender #17-0646 In The Court Of Appeals of Iowa Judgment entered 4-4-18
- State Of Iowa V. Noel Jermaine Bender #17-0646 In The Iowa Supreme Court Judgment entered 7-12-18
- Noel Jermaine Bender V. Iowa Dept. Of Corrections, et al # 20-CV-4045-LRI In The U.S.D.C. For The Northern District of Iowa Western Division Judgment entered 7-6-23
- Noel Jermaine Bender V. Iowa Dept. Of Corrections, et al # 23-2833 United States Court Of Appeals For The Eighth Circuit Judgment entered 1-17-24
- Noel Jermaine Bender V. Iowa Dept. Of Corrections, et al # 23-2833 United States Court of Appeals For The Eighth Circuit Rehearing Judgment entered 2-20-24

## RELATED CASES CONTINUED

- Noel Jermaine Bender V. Iowa Dept. of Corrections, et al Case # 23-7715 Supreme Court of the U.S. Petition for Writ of Certiorari Judgment entered 10-7-24
- Noel Jermaine Bender V. Iowa Dept. of Corrections, et al Case # 23-7715 Supreme Court of the U.S. Writ of Certiorari Rehearing Judgment entered 11-25-24

## LIST OF ALL PARTIES

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF PROHIBITION AND  
PETITION FOR WRIT OF MANDAMUS UNDER  
28 U.S.C. § 1651 (A)

Petitioner respectfully prays that a Writ of Prohibition and Petition for Writ of Mandamus Issue to review the Judgment below.

OPINIONS BELOW

- ✓ **Cases From State Courts :**  
The opinions of the highest State Court to review the merits appear at Appendix C to the petition and is
- Reported at State of Iowa V. Noel Jermaine Bender  
No. 17-0646

## JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 1-17-24.

☐ 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: 2-20-24, and a copy of the order denying rehearing appears at Appendix D.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including 7-19-24 (date) on 5-15-24 (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 7-12-18. A copy of that decision appears at Appendix C.

☐ 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

- 28 U.S.C. § 1651(a)
- Jackson v. Virginia, 443 U.S. 307 (1979)
- The 5<sup>th</sup>. Amendment of the U.S. Constitution
- The 8<sup>th</sup>. Amendment of the U.S. Constitution
- The 14<sup>th</sup>. Amendment of the U.S. Constitution
- Sec. 9<sup>th</sup> Right of Fair Trial By Jury - Due Process of Law. Iowa Constitution Art. #1. Bill of Rights
- Sec. 23 Slavery - Penal Servitude Iowa Constitution Art. #1 Bill of Rights.
- Article #3. Of The U.S. Constitution - Federal Question Jurisdiction.

## STATEMENT OF THE CASE

Petitioner Noel Bender seeks review of the decision of the Plymouth County District Court of Iowa, which convicted the petitioner was found guilty for Domestic Abuse Assault, Third or Subsequent Offense as a Habitual Offender, in violation of Iowa Code 70B.2A(4) and 902.8 see Judgment and Sentence at 1-2, App'x at 78-79.

Bender was charged, by a trial information filed on May 8<sup>th</sup>, 2015, with a single count of Domestic Abuse Assault, Third or Subsequent Offense, While Being a Habitual Felon, in violation of Iowa Code 70B.2A(4) and 902.8 see Trial Information, App'x at 27.

A jury trial was held on August 18 and 19, 2015, which the jury returned a verdict finding Bender guilty. Bender appealed his conviction, and the Iowa Court of Appeals reversed and remanded for a new trial. See State v. Bender, No. 15-1595, 2016 Iowa App. Lexis 1108 (Iowa Ct. App. Oct. 26, 2016).

A retrial - this time a bench trial - was held on February 14<sup>th</sup>, 2017. See Trial Tr. at 1. On April 4, 2017, the district court issued "Findings, Conclusions, and Verdict," where the court found Bender guilty of Domestic Abuse Assault, Third or Subsequent Offense, as a Habitual Offender. See "Findings, Conclusion, and Verdict" at Appendix B. Petitioner timely appealed. On April 4<sup>th</sup>, 2018, the Iowa Court of Appeals issued its opinion, wherein that court affirmed petitioner's conviction.

## STATEMENT OF THE CASE

Petitioner timely appealed to the Iowa Supreme Court where the Court denied further review. See Appendix # C.

Petitioner then filed a Petition for Relief From a Conviction or Sentence By a Person in State Custody under 28 U.S.C. 2254 on Aug. 21 2020. The Petitioner's grounds raised was Challenging the Sufficiency of the Evidence supporting the District Courts finding of Guilt beyond a Reasonable Doubt that the petitioner and victim were Cohabiting under the Domestic Abuse Act, under Iowa Codes 70B.2A(4) and 902.8.

The United States District Court for the Northern District of Iowa judgment was rendered on Jul 6<sup>th</sup> 2023.

Petitioner then Appealed to the United States Court of Appeals for The Eighth Circuit for Certificate of Appealability Aug. 11<sup>th</sup> 2023. Decision was rendered on Jan. 17<sup>th</sup> 2024, and the motion for Rehearing was denied on Feb 20<sup>th</sup> 2024.

Petitioner timely filed a petition for a Writ of Certiorari on Jun 13, 2024. The Petition for a Writ of Certiorari was denied on Oct. 7<sup>th</sup> 2024 and the petition for a rehearing was submitted timely and denied on Nov. 25<sup>th</sup> 2024.

Petitioner Noel J. Bender now seeks to submit a Petition for a Writ 28 U.S.C. 1651(a). Writ of Prohibition and Writ of Mandamus.

# STATEMENT

- Petitioner Noel J. Bender's trial was commenced at the Plymouth County Courthouse 215 4th Avenue N.E. in Le Mars, Iowa 51031 and Judgment was rendered on April 4th, 2017 by Judge Steven J. Andreasen.
- Petitioner Noel J. Bender appealed timely and the case was put on the docket at the Iowa Court of Appeals 111 East Court Avenue ~~Des~~ Moines, Iowa 50319 and Judgment was rendered by Judge C.J. Danilson, and Judge Vaitheswaran and Judge JJ. Bower, on April 4th, 2018.
- Petitioner Noel J. Bender then filed an Application for further Review To the Iowa Supreme Court in 111 East Court Avenue Des Moines, ~~Iowa~~ 50319 and Judgment was rendered en banc by the Court on July 12th, 2018.
- Petitioner Noel J. Bender then proceeded with a Post-Conviction Relief petition at the Plymouth County Courthouse 215 4th Avenue N.E. in Le Mars, Iowa 51031 The Post-Conviction Relief Petition was docketed and Summary Judgment was rendered by Judge Julie Schumacher on ~~the~~ June 15th 2019.
- Petitioner Noel J. Bender filed an appeal and the Appeal was placed on the docket in the Iowa Court of Appeals located at 111 East Court Avenue Des Moines, ~~Iowa~~. Judgment was considered ~~ed~~ by Judge P.J. Doyle, Judge Mullins and

## CONTINUED

- Judge JJ. Greer on August 5<sup>th</sup> 2020.
- Petitioner Noel J. Bender the filed a writ of Habeas Corpus Petition In the United States District Court For the Northern District of Iowa Western Division Located at 301 U.S. Courthouse 320 Sixth Street Sioux City, Iowa 51102. Petition was placed on the docket on August 21, 2020. Initial Review was rendered by Chief Judge Leonard T. Strand setting the Briefing Schedule, on the 10<sup>th</sup> day of August, of 2021. Judgment was rendered by Judge Linda R. Reade who is a district Judge for the U.S.D.C. Northern District of Iowa on July 6<sup>th</sup> 2023 Located at 301 U.S. Courthouse 320 Sixth Street Sioux City, Iowa.
- Petitioner then filed a Motion for Appealability in the United States Court of Appeals for the Eighth Circuit on August 11<sup>th</sup>, 2023 located at Thomas F. Eagleton U.S. Courthouse 111 South 10<sup>th</sup> Street, Rm. 24.329 St. Louis, Missouri 63102. Judgment was rendered on January 17<sup>th</sup>. 2024 before Circuit Judges Benton, Judge Erickson and Judge Stras who are Circuit Judges for the Eighth Circuit Court with the location above.

## CONTINUED

- Petitioner Noel J. Bender then, filed a Petition for a Rehearing by the panel for United States Court of Appeal for the Eighth Circuit Thomas F. Eagleton Courthouse 14<sup>th</sup> S. 10<sup>th</sup>. Street Rm. # 24.329 St. Louis, Missouri 63102 and the Petition was denied on February 20<sup>th</sup>, 2024.
- On May 13<sup>th</sup>, 2024 Petitioner Noel J. Bender Submitted the Petition for a Writ of Certiorari and on June 13<sup>th</sup>, 2024 the petition was placed on the docket of the Supreme Court of the United States office of the Clerk Scott S. Harris Washington, DC 20543-0001. The U.S Supreme Court entered the following order denying the petition for a writ of Certiorari on October 7<sup>th</sup> 2024. Petitioner then filed a Petition for a rehearing in the United States Supreme Court Washington, DC 20543-0001 and the Court entered the following order denying the Petition for rehearing on November 25<sup>th</sup> 2024
- Petitioner, Noel J. Bender dated January 8<sup>th</sup> 2025 is submitting a petition for a writ of Prohibition and a writ of Mandamus because petitioner can't get relief in any other form or any other Court.

## REASONS FOR GRANTING THE PETITION

This petition will be in aid to the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other Court.

Petitioner was found guilty on the 4th day of April, 2017 for Domestic Abuse Assault, third or subsequent offense, as an Habitual Offender under Iowa Code Section 708.2A(4) and 902.8 following a bench-trial. At the close of the trial and Sentencing hearing ~~petitioner~~ as well as Counsel filed motions of arrest of judgment verbally, and written, that the state's evidence does not support the District Court's finding beyond a reasonable doubt that petitioner and the victim were cohabiting at the time of the assault.

Petitioner appealed timely, in every Courtroom in the State of Iowa, to the United States District Court for the Northern District of Iowa, including the United States Court of Appeals for the eighth Circuit, as well as the United States Supreme Court. Petitioner's grounds raised has been the same argument in every single Courtroom leading to the petition that is in front of this Court. Petitioner's argument has been exhausted timely, in every Courtroom in the United States where relief can be obtained. There is no other alternative or Courtroom where relief can be handed down to the petitioner or form.

Petitioner is asking this Court to grant petitioner's petition for a Writ of Prohibition and Writ of Mandamus which is being submitted together because petitioner will be discharging the full sentence within the next 49 days.

Substantial Evidence Does Not Support The District Court's Finding Beyond A Reasonable Doubt that 1 the Petitioner and the victim were Cohabiting under Iowa law or Statute. The proof is in the Record, and if this petition is accepted, the record will reflect that this petitioner was Wrongfully Imprisoned for a Crime that is outside of the Iowa Code and Iowa Statute.

### CONCLUSION

The Petition for a Writ of Prohibition and Writ of Mandamus should be granted.

Respectfully Submitted,

15/ NCOBma

DATE: January 9<sup>th</sup> 2025