

17-7116

ORIGINAL

No. 17-_____

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

NOV 29 2017

OFFICE OF THE CLERK

JULIAN OKEAYAINNEH

— PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Julian Okeayaimmeh, c/o: 20515112

(Your Name)

Federal Correctional Complex-Low
Post Office Box 9000

(Address)

Seagoville, Republic of Texas [75159-9000]

(City, State, Zip Code)

NOT APPLICABLE

(Phone Number)

QUESTION(S) PRESENTED

- I. Whether there is a reasonable probability of relief in the court below if this Court: a) grants certiorari in *City of Hays v. Vogt*, U.S., No. 16-1495 (Petition for Certiorari filed December 4, 2016) and/or *Parish Ramon Carter v. Colorado*, No. 17-634 (Petition for Certiorari filed October 27, 2017), b) renders judgment in favor of the Petitioners in either or both of those cases, and c) remands the instant case to the court below.
-

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:
-

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-6
REASONS FOR GRANTING THE WRIT	7-9
CONCLUSION.....	10

INDEX TO APPENDICES

- APPENDIX A: Judgment and opinion of the United States Court of Appeals for the Eighth Circuit in the United States v. Julian Okeayainneh, No. 17-2010 (8th Cir. September 28, 2017).
- APPENDIX B: Order of U.S. District Court Denying Pro se Renewed Revised Motion for the Production of Full Unredacted Chronological Disclosure of the Grand Jury Transcript Record, Criminal No. 11-87(MJD/HB).
- APPENDIX C: Order of Eighth Circuit Court Denying re-hearing en banc, and re-hearing by panel petitions, United States v. Julian Okeayainneh, No. 17-2010 (8th Cir. November 01, 2017).
- APPENDIX D: Arrest report of U.S. secret service memorandum of interview with Petitioner Julian Nosa Okeayainneh on December 17, 2010.

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES

CASES

Page No.

Devenpeck v. Alford, 543 U.S. 146, 153 (2003).....	4
Miranda v. Arizona, 384 U.S. 436, 448-50, 455 (1966).....	4,5,7,8
Malloy v. Hogan, 378 U.S. 1, 8 (1964)	4,
Dickerson v. United States, 530 U.S. 428, 444 (2000).....	5,
United States v. Broyles, 37 F.3d 1314, 1318 (8th Cir. 1994).....	5,
United statesv. Villalba-Alvarado, 345 F.3d 1007 (8th Cir. 2003).....	8,
Application of Guyette, 338 F.Supp 1069 (9th Cir. 1972).....	8,
Lawrence v. Chater, 516 U.S. 163, 181 (1996)(Scalia, J., dissenting).....	8
Houston v. Lack, 487 U.S. 266 (1988).....	11

DOCKETED CASES

City of Hays v. Vogt, U.S., No. 16-1495(Petition for Certiorari filed December 4, 2016).....	7,8,10
Parish Ramon Carter v. Colorado, No. 17-634(Petition for Certiorari filed October 27, 2017).....	7,8,10

FEDERAL STATUTES

28 U.S.C. § 1254(1).....	2
--------------------------	---

OTHER

Fifth Amendment to the U.S.Constitution.....	3,4,5,7,8
Sixth Amendment to the U.S.Constitution.....	3,4,8

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 A 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 United States district court appears at Appendix B to the petition and is

☐ reported at _____; 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 September 28, 2017.

☐ 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: November 01, 2017, and a copy of the order denying rehearing appears at Appendix C.

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution reads as follows:

No person shall be held to answer for a capital, or other infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution reads as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

A. Facts and Proceedings in District Court

On December 17, 2010, Petitioner Julian Okeayainneh was unreasonably seized and questioned without being **"Mirandarized"** in violation of his Fifth Amendment right by Federal Agents **Flint and Shoup** and, thereafter, arrested without probable Cause by the same Federal Agents in violation of his Fourth and Fourteenth Amendments rights, herein attached as Appendix D (**Copy of Arrest report of Agents Memorandum of interview**). On December 20, 2010, Agent Flint filed a complaint (**Dkt. No.1**) with the District of Minnesota and attached sworn affidavit in support of and to secure a promptly within forty-eight hours arrest warrant to show judicial determination of probable Cause (**Gerstein, 420 U.S. at 113-14**) for the prior arrest which occurred on December 17, 2010. However, even thou this attached sworn affidavit reason for making the arrest is the criminal offense as to which the known facts provide probable cause inlight of (**Devenpeck v. Alford, 543 U.S. 146, 153 (2003)**) (**"His subjective reason for making the arrest need not be the criminal offense as to which the known facts prvide probable cause."**), does not show a record of petitioner Okeayainneh's valid waiver of his Miranda Constitutional rights, i.e., **"in the absence of a clear, intelligent waiver of the Constitutiona rights involved, be warned prior to questioning that he has the right to remain silent...Miranda v. Arizona, 384 U.S. 436, 448-50, 455 (1966), see also Malloy v. Hogan, 378 U.S. 1, 8 (1964)("This protection applies only to acts that are communicative or testimonial").** nor, was warned of his Miranda rights (**Dkt. No.1. with attached Agents affidavit ¶19 through 22**), and so does Agent's arrest report of memorandum of interview. See Appendix D.

Petitioner Okeayainneh believes and asserts in the district court that these Agents arrest report of memorandum of interview, along with Complaint(**Dkt. No.1**) filed with Agent' Flint's sworn affidavit attached with **Case No. MJ-10-557(JSM)** occurring before Bill of Indictment No. 11/87 was voted on by the Grand Jury is submitted by **Ausa Ann. M. Anaya** to the Grand Jury in support for a Grand Jury's vote, which occurred on March 7, 2011 and filed on March 08, 2011. Petitioner Okeayainneh has now raised these Constitutional colorable claims based on ineffective assistance of counsel in his pending §2255 motion proceeding and needs these transcript for effective argument.

If the "memorandum of arrest interview for December 17, 2010 by federal agents" here in attached as Appendix D, which clearly does not show record that-
-"Petitioner Okeayainneh intelligently waived his Miranda rights, before being questioned as seizure as required under the Fifth Amendment" and self incriminating response statements are used at probable cause hearing but not at a criminal trial and where this Court (Supreme Court) has established that: "unless the suspect is warned of his Fifth Amendment rights, an pretrial statements elicited from the suspect are inadmissible at trial, id. Miranda, 384 U.S. at 492; see also Dickerson v. United States, 530 U.S. 428, 444 (2000)(invalidating federal statute purporting to supersede Miranda's requirements), Wherefore, it is clearly unlawful to submit redacted petitioner' Okeayainneh's response statements when questioned without being warned of his Fifth Amendment Miranda rights at the premises of Airport Super Storage in Ontario, California on December 17, 2010, prior to issuance of arrest warrant, along with Criminal Complaint No. MJ-10-557 (JSM) with attached Agent Flint's(USSS) sworn redacted affidavit in support NOT indicating petitioner Okeayainneh was being questioned by agents before his response statements (Dkt. No.1, see agents affidavit ¶19 through 22) to secure a vote for Bill of Indictment No. 0:11-cr-00087-(1). Petitioner Okeayainneh raised related issue in his §2255 motion (Dkt. Nos. 1219 and 1220 filed May 19, 2017) for relief based on ineffective assistance of counsel, and to avoid a possible continuous injustice, petitioner Okeayainneh needed this Grand Jury transcript as earlier requested to effectively address and argue the related issue preserved and raised. The district court judgment reflected that despite the persistent defendant's request for the grand juris transcripts pertaining to him even after the petit jury found him guilty on February 28, 2012, and sentenced on August 13, 2012, for direct appeal's court de novo review and district court's continuous denial Orders, "The decision is left to the sound discretion of the trial judge and may only be reversed for an abuse of discretion." citing United States v. Broyles, 37 F.3d 1314, 1318 (8th Cir. 1994) in support of its position. The judgment also included a finding that the defendant has not shown that any ground may exist to dismiss the indictment because of a matter that occurred before the grand jury. See Appendix B.

B. The Appeal

On appeal, Petitioner argued that Whether the applicant has shown that "jurists of reason could disagree with the district court's resolution of his

colorful constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement or proceed further" pursuant to this Court decision under *Buck v. Davis*, 137 S.Ct. 759, 780 (2017). (Dkt. No. 1212 filed 05/01/2017). The court of appeals rejected the argument and summarily affirmed the district court's judgment pursuant to Eighth Circuit Rule 47(a). See Appendix A.

REASONS FOR GRANTING THE PETITION

There is a reasonable probability of relief if this Court: a) grants certiorari in *City of Hays v. Vogt*, U.S., No. 16-1495 (Petition for Certiorari filed Decem 4, 2016) and/or Parish Ramon Carter v. Colorado, No. 17-634 (Petition for Certiorari filed October 27, 2017, b) renders judgment in favor of the Petitioners in either or both of those cases, and c) remands the instant case to the court below.

The Fifth Amendment to the United States Constitution provides in part that:

"...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; ...

Thus, Petitioner Okeayainneh's Fifth Amendment right against self-incrimination is violated when his statements are used at a probable cause hearing but not at a criminal trial.

This Court is currently deciding whether to grant certiorari in *City of Hays v. Vogt*, U.S., No. 16-1495 (Petition for Certiorari filed December 4, 2016), and Parish Ramon Carter v. Colorado, No. 17-634 (Petition for Certiorari filed October 27, 2017). These case - both involving Fifth Amendment protection against compelled self-incrimination "in any criminal case" and "when the suspect right to an attorney, satisfy Miranda's requirement that a suspect be clearly informed of his right to an attorney before and during interrogation." If those Petitioners prevail on this challenge, the result will necessarily establish Miranda's requirement and the meaning of "criminal case " in this context. This will plainly eliminate two theories under when suspect statements taken in violation of Miranda rights and used at a probable cause hearing prior to an indictment, but not allowed at a criminal trial.

It is true that at the time when Mr. Okeayainneh was questioned by Federal Agents on December 17, 2010, and arrested (App. D), he was **NOT** warned of his **Miranda rights**. But for reasons stated within, there is nonetheless a reasonable probability that he would receive relief if the petitioners prevail in *City of Hays* and Parish Ramon Carter.

First, while it is now settled under **Miranda** that before questioning suspects before arrest and in custody, Law enforcements officials --**"must inform them, in some manner,"** that: (1) they have the right to remain silent; (2) their statement may be used against them at trial; (3) they have the right to the presence of an attorney during questioning; and, (4) if they cannot afford an attorney, one will be appointed for them...**Miranda**, 384 U.S. at 478-79, Appendix D clearly shows that these was not done by federal agents and their is **NO** record of evidence of Petitioner Okeayainneh ever intelligently waived his **Miranda** rights before being questioned by federal agents on December 17, 2010 prior to the issuance of arrest warrant.

Secondly, and related, there would be additional reason to doubt Eighth Circuit's **"Application of a voluntariness standard is mandated to determine the admissibility of evidence derived from a **Miranda** violation without discrimination in application of the rule to subsequent statements, witness testimony, or physical evidence"** in **Villalba-Alyarado**, 345 F.3d 1007 (8th Cir. 2003). After all, **Miranda** requires that the unwarned admission must be suppressed, the admissibility of any subsequent statement should turn in these circumstances solely on whether it is knowingly and voluntarily made. **Elstad**, 470 U.S. at 309.

Third, on February 29, 1972, the Ninth Circuit Court in **Application of Guyette**, 338 F.Supp 1069 (9th Cir, 1972), held that --**"Error in admitting Garcia's inculpatory statements obtained in violation of **Miranda v. Arizona** (1966), 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694, compels reversal of her conviction and a remand for a new trial from which those statements will be excluded."**

This Court **"regularly hold(s) cases that involve the same issue as a case on which certiorari has been granted and plenary review is being conducted in order that (if appropriate) they may be 'GVR'd' when the case is decided."** **Lawrence v. Chater**, 516 U.S. 163, 181 (1996)(Scalia, J., dissenting). Ultimately, GVR is appropriate if the decision **"reveal(s) a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome..."** **Lawrence**, 516 U.S. at 167. In the event that this Court grants certiorari in **City of Hays and/or Parish Ramon Carter** on the Fifth Amendment right against self-incrimination is violated

when statements are used at a probable cause hearing but not at a criminal trial and **"you have the right to have an attorney,"** without any information about when the suspect has a right to an attorney, satisfy Miranda's requirement that a suspect be clearly informed of his right to an attorney before and during interrogation questions, this will be the proper course.

CONCLUSION

Petitioner respectfully prays that this Honorable Court hold the instant case until it renders a decision in **City of Hays v. Vogt, U.S., No. 16-1495** (Petition for Certiorari filed December 4, 2016), and/or **Ramon Carter v. Colorado, No. 17-634** (Petition for Certiorari filed October 27, 2017), and that it grant certiorari, vacate the judgment below, and remand in light of either or both of those cases. Alternatively, he prays for such relief as to which he may be justly entitled.

Respectfully submitted this 29 day of November 2017.

"Without Prejudice"

By:



Julian Okeayainneh, c/o: 20515112 - In Pro se
Federal Correctional Complex-Low
Post Office Box 9000
Seagoville, Republic of Texas
America near [75159]