No. ______________

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

In Re: VINCENT WALLACE ALDRIDGE
AND TORI ELYSE ALDRIDGE,
Joint Petitioners, On Habeas Corpus

PETITION FOR REHEARING, SUPPLEMENTAL BREIF AND APPENDICES

Vincent W. Aldridge
Pro Se
8224 Montecito Dr.
Denton TX, 76210
682-402-2782
vincent.aldridge64@gmail.com

Tori E. Aldridge
Pro Se
8224 Montecito Dr.
Denton TX, 76210
817-470-6763
torialdridge@utexas.edu

Table of Contents

Table of Contents

Cases

Statutes

Rules

Practice Manuals

Introduction

Pursuant to Rule 44 of this Court, Vincent Aldridge and Tori Aldridge petitioners, hereby respectfully petition for rehearing of this case before a full nine-Member Court. This case involves a denial of due process and as a result, a denial of equal protection of the Constitution and the federal law by the Fifth Circuit's failure to provide a Rule 52(b) plain error review concerning wire fraud venue in the Southern District of Texas. The Aldridge's as pro se defendants raised venue on appeal and the Fifth Circuit found waiver rather than forfeiture. As pro se litigants, the Aldridges' brought to the appellate court's attention that they did not intend to waive what would reasonably amount to an acquittal of all charges. No criminal defendant would knowingly and intelligently waive an acquittal provided by the law. Nor should they be arbitrarily forced to conviction by a court's finding of waiver, if a finding of forfeiture would reasonably lead to an acquittal.

The Court held: "Although a defendant may challenge venue in a motion for venue for judgment for acquittal pursuant to Federal Rule of Criminal Procedure 29, The Aldridges' motion failed to raise any venue issue. Therefore, this issue was not properly preserved for appellate review." United States v. Isgar, 739 F.3d 829, 839(2014). The Fifth Circuit in finding waiver, cited no facts indicating the Aldridges' intended to waive their right to proper wire fraud venue. Nor did the Fifth Circuit's ruling address the 800 pound gorilla in the room which forensically established wire fraud venue not being proper in the trial district. The Fifth Circuit's finding of waiver effectively: (1) alleviated the government's burden of proof concerning wire fraud venue, (2) held harmless the government's forensic knowledge that wire fraud venue was not proper in the trial district, (3) denied the Aldridges' due process and equal protection of the constitution and federal law. The Fifth Circuit's finding of waiver in light of the forensic proof of improper wire fraud venue ultimately robbed the Aldridges' of a fair judicial process. The Aldridge's ask for a rehearing so that they may avail themselves of the constitutional protections afforded every United

States citizens. The Aldridges' have exhausted all legal remedies. Review by this Supreme Court is the only way that the ends of justice may be served.

Procedural History

On January 26, 2011, a jury found the Aldridges' guilty on 19 counts related to a mortgage fraud scheme that resulted in more than $3.7 million in residential loans- conspiracy to commit mail and wire fraud, in violation of 18 USC §§1341, 1343, 1349 (Count 1), aiding and abetting wire fraud, in violation of 18 USC §§2, 1343 (Counts 2-12), conspiracy to engage in monetary transactions in criminally derived property in violation of 18 USC § 1956(h)(Count 13), and aiding and abetting engaging in monetary transactions in criminally derived property in violation of 18 USC §§ 2, 1957 (Counts 14-19).

The district court sentenced the Aldridges' to serve concurrent 63 month prison terms for each count, followed by three years of supervised release. Mrs. Aldridge was ordered to pay $677,765.98 in restitution and a $1,900 special assessment. Mr. Aldridge was ordered to pay $891,000 in restitution and a $1,900 special assessment. In addition, forfeiture was ordered in the amount of $891,000. The Fifth Circuit Court of Appeals affirmed the district court's decision on January 13, 2014. United States v Isgar, 739 F.3d 829 (5th Cir), cert. denied sub nom., Aldridge v United States, 135 S. Ct. 123 (2014). On March 7, 2014, the same Court of Appeals denied the Aldridges' petition for rehearing en banc.

On October 6, 2014, the Supreme Court denied the Aldridges' petition for writ of certiorari. Aldridge v United States, 135 S. Ct. 123 (2014).

On December 17, 2014, Tori Aldridge filed a motion to vacate, set aside or correct her sentence under 28 USC §2255, asserting that 1) venue was improper before the case was presented to the grand jury; 2) trial counsel was ineffective for failing to object to venue in his motion for acquittal under Fed. R. Crim. P. 29; 3) trial counsel was ineffective in failing to raise a defense of withdrawal and statute of limitations, as well as request a jury instruction on these defenses; and 4) the delays in the appellate process violated her right to a speedy trial and appeal. Tori also file a "memorandum of law and facts in support of habeas corpus relief and bail pending review."

On November 6, 2016, Vincent Aldridge filed a motion under 28 USC §2255 claiming 1) Government misconduct; 2) ineffective assistance of counsel- venue; 3) ineffective assistance of counsel-withdrawal and statute of limitation; 4) the denial of due process and a fair appeal; 5) the indictment failed to confer subject matter jurisdiction because it failed to state a cognizable federal claim; 6) the violation of due process to criminalize strictly commercial transactions; and 7) the admission of inadmissible evidence under rules 803(6) and 807.

On July 9, 2015, the district court denied the Aldridges' §2255 motions. The court also issue a 57-page memorandum opinion and order addressing the §2255 claims as well as complaints the Aldridges' had raised in other motions. After the district court's denial of their §2255 motions, the Aldridges' timely filed a certificate of appealability with the Fifth Circuit Court of Appeals which was granted. On appeal of the denial of their §2255 motions, the Fifth Circuit determined that its own circuit law was unclear, and counsel had no duty to object to the impropriety of venue because its law was unclear.

Reasons for Granting Rehearing

Provided is the government trial evidence that wire fraud venue was not proper in the trial district. Also, that the government was aware of this evidence prior to its grand jury and trial presentation. See (Government Exhibits 25, 3c, 6c, 7c, 9c, 10c; CR 106-109) Appendix A, See Wire Certification/Wire Advices, Appendix B. The Solicitor General under its ethical obligation should concede that the wires in question did not breach the trial district. The Aldridge's request the Solicitor General join in requesting this rehearing petition for a plain error review in order that the ends of justice may be served.

Question Presented on Rehearing

In light of the Supreme Court holding in Ohio Power and intervening holdings since 2013 where this Court found the Fifth Circuit denied petitioners due process when it failed to offer plain error analysis when deciding their cases; whether the Aldridge's due a rehearing to dispose of their case in like manner.

This Court decided United States v Deshaw Hicks 582 U. S. ____ (2017) "[w]e have emphasized that a *per se* approach to plain-error review is flawed." For who wouldn't hold a rightly diminished view of our courts if we allowed individuals to linger longer in prison than the law requires only because we were unwilling to correct our own obvious mistakes?

Reason for Rehearing

The Aldridges' went to trial and maintained their innocence. Presented below is a snapshot of the governments' fatal attempt to prove wire fraud venue through its witness Mark Gold. Mark Gold testified as follows:

BY MR. LEUCHTMANN:

Q: Go ahead and just explain real quickly to the jury what a (sic) EFT wire is.
A: It's an electronic payment from one bank to another bank. We're the bank for both the sender and the beneficiary of those wires. We conduct the transaction. We debit one account. Debit one bank, credit the other, credit the other bank.
Q: And when those transactions are conducted, are you able to tell where they're wired from and where they're wired to?
Q: And did all of the wire transfers in the exhibit that I just mentioned or that we just admitted into evidence, did those all go across state lines?
A Yes, they did.
MR. LEUCHTMANN: We pass the witness at this time.
THE COURT: Are you offering [Exhibit] 29?
MR. LEUCHTMANN: Not at this time, Your Honor.
THE COURT: All right.

Mark Gold's testimony established the forensic nature of the EFT wire transfer. Specifically, the nature and travel of the EFT Wires. Mark Gold's testimony fell short of establishing wire fraud venue in the Southern District of Texas. The petit jury could not infer that wire fraud venue was proper in the trial district as the government later argued in defense of the Aldridges' §2255 motion. In defense of the Aldridges' §2255 motion the government did not concede but argued erroneously and against its own evidence that wire fraud venue was proper:

> "the petit jury could indeed find that wire transfers of funds for each of the wire counts alleged in the indictment crossed state lines when they were used to transfer funds from the lenders to title company. On the second day of trial, Mark Gold, investigator and custodian of records for the Federal Reserve Bank in New York City, testified from records of wire transfers at issue, GX 1C, 2C, 3C, 4C, 5B, 6C, 7C, 8C, 9C, and 10C, that each of the wires crossed state lines during the process of the transferring the funds. D.E. 375 pg 14-15. See also, D.E. 138 (Day Two) pg.1 22-124 Mark Golds Testimony."

The district court did not address the government obvious misapplication of the federal law. see FED.R.CRIM.P. 18. Instead the district court applied its own overbroad analysis rather than follow the Supreme Court's mandates on this issue. The district court's holding further denied the Aldridges' due process and equal protection of the law.

> "Because the Aldridges' acts in the Southern District of Texas were essential to the setting in motion of the wires transfers of the purchase money, whether an electronic pulse was not transmitted within or across the territorial boundaries of the Southern District of Texas is an academic point. The Aldridges' acts in the Southern District of Texas foreseeably caused the wires to be used in furtherance of the fraudulent scheme." D.E. 382 pg. 49."

Notwithstanding the government's above argument and district court ruling, the Aldridges had a right to be tried in the state and ***"district"*** where the alleged offense was committed — that is, the venue requirement — finds its source in the United States Constitution, "Article III, § 2 provides that the "trial of all Crimes... shall be held in the State where said Crimes shall have been committed". The Sixth Amendment is further defined by federal statutory law to entitle the accused to trial "by an impartial jury of the State and **[district]** wherein the crime shall have been committed", see FED.R.CRIM.P. 18.

The Supreme Court has held that venue must be narrowly construed. See United States v. Johnson, 323 US 273,276, 65 S. Ct. 249, 89 L. Ed. 236 (1944), abrogated by statute on other grounds.

The locus delicti must be determined from the nature of the crime alleged and the location of the act or acts constituting it; accord, United States v. Anderson, 328 U.S. 699, 703, 66 S.Ct. 1213, 1216, 90 L.Ed. 1529; accord, United States v. Cabrales, 524 U.S. 1, 6-7 (1998). Furthermore, the Supreme Court gives direction on how the issue of venue should be approached. Courts are instructed to determine venue by a two-step inquiry. United States v. Rodriguez-Moreno, 526 US 275, 279, 119 S. Ct. 1239, 143 L. Ed. 2d 388 (1999); applied in United States v. Clenney, 434 F.3d F. 3d 780 (5th Cir.2005). In order to resolve a venue issue, a Court must ascertain "the conduct constituting the offense (nature of the crime) and then discern the location of the commission of the criminal acts." Wire fraud venue is controlled by statute 18 U.S. Code § 3237 (a) (providing that, where the government alleges a continuing offense committed in multiple districts, it must show that the trial is taking place "in any district in which [the] offense was begun, continued, or completed"); the wire advices and the wire certification forensically established that wire fraud venue was proper in New Jersey and the Northern District of Texas. The Aldridges' trial was held in the Southern District of Texas. The government was fully aware that wire fraud venue was not proper as early as September 23, 2009, approximately six months before its grand jury presentment. The Aldridges' indictment was returned on March 25, 2010. See Wire Certification Exhibit A.

The Supreme Court has repeatedly reversed judgements for plain error on the basis of inadvertent or unintentional errors of the court or parties below, Silber v. United States, 370 U.S. 717, 718 (1962)(per curiam)(reversing judgement for plain error as a result of insufficient indictment); Brasfield v. United States, 272 U.S. 448, 449-450 (1926)(reversing judgment for plain error where the trial judge improperly inquired of the jury's numerical division); Clyatt v. United States, 197 U.S. 207, 222(1905)(reversing judgement for plain error where the government presented insufficient evidence to sustain conviction). The Supreme Court has defined waiver as a defendant's intentional relinquishment or abandonment of a known right" while forfeiture is a "failure to make timely assertion of a known right," United States v. Olano, 507 U.S. 725,732, at 735 (1993). Although "Rule 52(b) is not, not mandatory," it is well established courts "should" correct forfeited plain error that affects substantial rights "if the error 'seriously affects the fairness, integrity or the public reputation of the judicial proceedings.'" at 735 Id.

This Court has routinely remanded cases involving inadvertent or unintentional error, for consideration of Olano's fourth prong with the understanding that such errors, "may qualify" for relief. If those conditions are met, "the court of appeals should exercise its discretion to correct the forfeited error if the error ' "seriously affects the fairness, integrity or public reputation of judicial proceedings.

Had the Fifth Circuit and district court provided a plain error review consistent with the holding in Olano, and according to the Supreme Court mandate of Rodriguez-Moreno supra, there existed ample circuit law that suggested the Aldridges' would have been entitled to an acquittal, of all the wire fraud charges. United States v. Strain 396 F.3d 686 (5th Cir. 2005), reh'g denied, 407 F.3d 379, 380 (5th Cir. 2005) (remanding for entry of judgment of acquittal due to the government failure to prove venue and stating that such failure "does not entitle the government to a second chance at prosecution"); Boruff v. United States, 310 F.2d 918 (5th Cir. 1962); (reversed and remanded for judgement of acquittal holding in order to come within the prohibition of 18 U.S.C. § 1343 there must be a use of the wire in the district where the trial is held). United States v. Clenney, 434 F.3d F. 3d 780 (5th Cir.2005) (Because venue was inappropriate in the Northern District of Texas, the judgment of conviction is REVERSED, and this matter is REMANDED so that Clenney may withdraw his guilty plea pursuant to the terms of his plea agreement, and for further proceedings as appropriate); United States v. Reff, 479 F.3d 396 (5th Cir.2007) (The Fifth Circuit agreed with the government, concerning the unpreserved jurisdictional issue of venue, that the plain error applies). The Fifth Circuit finding of waiver effectively denied the Aldridge's due process - a right to establish that wire fraud venue was not proper in the trial district; and equal protection of the constitution and federal law - the aforementioned circuit law established that the Aldridge's were entitled to an acquittal of at least the wire fraud charges. The wire fraud charges were the only substantive charges in the Aldridge's indictment. As a result of an acquittal on the wire fraud counts then a reasonable possibility exists that an acquittal would be had on the other counts in the indictment as well.

The Supreme Court in Hicks v. United States, 582 U.S. ___, ___(2017)(Gorsuch, J., concurring)(slip op., at 2), relying on Olano supra, granted certiorari even though the defendant did not raise the point on appeal seemingly because the government agreed that Mr. Hicks had been sentenced under a now defunct statute as a matter of law. This Court reviewed Hicks case for plain error under the standard set forth in Olano, supra., which is to, (1) discern and error, (2) the error must be plain, (3) affect the defendant's substantial rights, and (4) implicate the fairness, or integrity, or public reputation of judicial proceedings. In the Aldridges' case, the wire advices and wire certification represented the 800 hundred pound gorilla in the room which couldn't be ignored without calling into question the fairness of the American justice system. This 800 pound gorilla demanded attention as it clearly established by undisputed forensic proof that the wires in the Aldridges' indictment, counts 2 thru 11 did not breach the trial district. It also established that the government was well aware of this fact prior to its presentment to the grand jury and trial. See (Government Exhibits 25, 3c, 6c, 7c, 9c, 10c; CR 106-109) Appendix A, See Wire Certification/Wire Advices, Appendix B. The government is charged with knowledge of its investigative files. Kyles v. Whitley, Warden, 514 U.S. 419, (1995). The government, armed with its knowledge of lack of wire fraud venue proceeded to push past the Aldridges' constitutional protections. This governmental action was not a mere oversight but an intentional deprivation of the Aldridges' right to an unbiased grand jury and a fair judicial process, ultimately due process. The due process clause forbids the government from knowingly using, or failing to correct false testimony Mooney v. Holohan, 294 U.S. 103-105 (1935). Professional ethics obligate the prosecution to bring to the attention of the court all significant evidence suggestive of innocence or mitigation that is require after the accused's conviction, Imbler v. Pachtman, 424 U.S. 409 (1984). "A case should not be presented to a grand jury in a district unless venue for the offense lies in that district", U.S. Attorneys' Manual » Title 9: Criminal 9-11.121 - Venue Limitations. In this case the government action was one of omission as it withheld its knowledge that wire venue was not proper from a grand jury, a petit jury, a trial judge and the Fifth Circuit and even now. In effect the Aldridge's had a trial by ambush. The government could only hope to supplant wire fraud venue by confusing it with that of the conspiracies in the indictment.

In Hicks the government "***agreed***" to what was obviously an unintended outcome by all parties. In the present case the solicitor general should concede that wire fraud venue was not proper in the trial district, pursuant government exhibits 25, 3c, 6c, 7c, 9c, 10c; CR 106-109 See Appendix A . This represents error that is plain. Also, the government should concede that it had this forensic evidence in its possession, months prior to its grand jury presentment which took place on March 25, 2010. This prosecutorial overreaching tore at the heart of the fundamental fairness of the Aldridges' judicial process. The aforementioned evidence impugn the American judicial system to a higher degree. Hicks plead to the charges. The Aldridges' went to trial expecting a fair judicial process. Likewise this Supreme Court should acknowledge the provided forensic proof and grant certiorari that the ends of justice might be served.

The Hicks case although significant, at best only amounted to a reasonable probability that a reduction of sentence would occur, yet it was enough to warrant his sentence being vacated and remanded due to plain error. Furthermore, Hicks presented no evidence of governmental overreaching or systemic due process violations of his judicial process. This Court held that a plain legal error infected Hicks judgment as a man was wrongly sentenced to 20 years in prison under a defunct statute. The Aldridges' were convicted when the facts and law supported they had a right to an acquittal on all the wire fraud charges in there indictment as the government did not meet its trial burden.

The Aldridges' have consistently maintained their innocence even beyond this wire fraud venue issue. The issue of wire fraud venue is the clearest in light of the forensic proof coupled with the testimony of government witness Mark Gold. A finding of improper wire fraud venue in the instance case will lead to at worst a reduced sentence and fines as in Hicks. The Aldridges' aver unlike Hicks, there exist a reasonable probability a plain error review would lead to an acquittal on all charges in their indictment. The Aldridge's have unjustly served their sentences and are still subject to the confines of being labeled as felons.

The Fifth Circuits holding of waiver instead of forfeiture runs afoul of the holding in Olano, supra, which distinguished waiver from forfeiture by definition. It also denied the Aldridge's a right they would have had in other circuits.

The Aldridges' would have received a plain error review in the Sixth Circuit, United States v. Utrera, 259 Fed App. 724 (6th Cir. 2008)(when venue not raised in district court, review by appellate court was for plain error affecting substantial rights, and not for abuse of discretion). United States v. Dobson US Dist Lexis 112304 (6th Cir. 2013) (appellate court granted motion for acquittal by general rule 29 (a) motion concerning certain wire fraud counts). In the Eighth Circuit see United States v. McCorkle, 688 f.3d 518 (8th Cir. 2012)(finding that there was no evidence that the defendant intended to waive venue). Likewise, in the Tenth Circuit, United States v. Kelly, 545 F.3d 1229(10th Cir. 2008), the appellate court held that "if a defendant files a general motion for acquittal that does not identify a specific point of attack, the defendant is deemed to be challenging the sufficiency of each essential element of the government's case, including venue." The Tenth Circuit, further stated that it deemed circuits that held otherwise, rationale unpersuasive because they offered no explanation for why venue should be treated differently than any other offense element, the challenge to which would be preserved by general motion for acquittal. The court found no cogent reason from its research to apply differential treatment to venue, an essential element of any offense.

The Aldridges' presented plausible evidence that a reasonable probability existed that a plain error review would lead to an acquittal of all charges as the wire fraud charges are the only "substantive charges" in their indictment and they received a general verdict. See United States v. Skilling, 561 U.S. 358, 414 (2010), citing Yates v. United States, 354 U.S. 298, 312, 77 S. Ct. 1064, 1 L.Ed.2d 1356 (1957). The Supreme Court in Skilling, held that where a jury returns a general verdict of guilt that might rest on multiple legal theories, at least one insufficient in law and the others sufficient, the verdict must be set aside. This Court reasoned that in such a situation, it cannot trust the jury to have chosen the legally sufficient theory and to have ignored the insufficient one, because" [j]urors are not generally equipped to determine whether a particular theory of conviction submitted to them is contrary to law. The Aldridges' have put forth plausible evidence of plain error and constitutional violations far exceeding that of Hicks yet they have been denied on appeal on this issue; denied on motion 2255 on this issue; denied on writ of certiorari by way of appeal on this issue; and denied ineffective assistance of counsel concerning this issue; denied by writ of habeas corpus on this issue to this Court. The prosecutors overreaching by circumventing the Aldridges' right to be charged in the proper venue enough coupled with the courts failure to provide a plain error review establishes the fourth prong Olano. No citizen should be forced to conviction when the law supports acquittal. For what reasonable person would not hold a diminished view of American jurisprudence if this Supreme Court allowed a conviction to stand beyond the protection of due process and equal protection of the constitution and federal law. The Aldridge's conviction is only maintained by an obvious denial of due process and equal protection of the constitution and the federal law at every level of the judicial process. The Aldridge's pray that this Supreme Court grant a rehearing and uphold the Constitution and federal law.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for rehearing, vacate the order dismissing the writ of habeas corpus, and restore this case to its merits docket.

Respectfully,

Vincent W. Aldridge

Tori E. Aldridge

CERTIFICATE OF SERVICE

I certify under the penalty of perjury that a copy of the above Petition was sent by U.S. mail with adequate postage on, March 29, 2018:

Supreme Court of the United States
1 Pennsylvania Ave
Washington, DC 20543

CERTIFICATE OF SERVICE

I certify under the penalty of perjury that a copy of the above Petition was sent by U.S. mail with adequate postage on, March 29, 2018, and subsequently sent by email to the following:

The Solicitor General of the United States SupremeCtBriefs@usdoj.gov
Room 5616 Department of Justice
950 Pennsylvania Avenue, N. W.
Washington, DC 20530-0001

By: Tori Aldridge and Vincent Aldridge, Pro Se Petitioners

Vincent W. Aldridge, Pro Se

Tori E. Aldridge, Pro Se

CERTIFICATE OF PETITIONERS

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

Vincent W. Aldridge, Pro Se

Tori E. Aldridge, Pro Se

Additional material from this filing is available in the Clerk's Office.