

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

LUIS BUILES — PETITIONER
(Your Name)

VS.

S.M. KUTA (Warden) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LUIS BUILES #24644-038
(Your Name)

555 GEO DRIVE
(Address)

PHILIPSBURG, PA 16866
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE FEDERAL BUREAU OF PRISONS'S POLICY OF DISTINGUISHING BETWEEN PRISONERS WITH IMMIGRATION (ICE) DETAINERS AND THOSE WITHOUT IMMIGRATION (ICE) DETAINERS, VIOLATES THE PRISONER'S EQUAL PROTECTION CLAUSE GUARANTEED BY THE DUE PROCESS OF LAW, THE FIFTH, AND THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.

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:

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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☒ is unpublished.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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 November 7, 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: _____, 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. § 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

- (1) FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION
"Not shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the Equal Protection of the Law".
- (2) EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT
"The state may not treat you differently or discriminate against you because you belong to any particular group or "class" of people".
- (3) FIFTH AMENDMENT TO THE U.S. CONSTITUTION
"While the Fifth Amendment contains no Equal Protection Clause, it does forbid discrimination that is so unjustifiable as to be violative of due process of law".
- (4) EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT
"The Equal Protection Clause forbids the state to treat one group of prisoners-arbitrarily worse than another".
- (5) 18 USC & 3553 (SENTENCING FACTORS)
The court in determining a particular sentence to be imposed, shall consider, among other factors:
 - The need for the sentence to be imposed... 18 USC & 3553(a)(2).
 - To provide the defendant with needed educational or vocational training..., or other correctional treatment in the most adequate manner. 18 USC & 3553(a)(2)(D).
 - The need to avoid unwarranted sentence disparities among defendants with similar records, who have been found guilty of similar conduct. 18 USC & 3553(a)(6).

STATEMENT OF THE CASE

(1) The Petitioner, a 53 years old Colombian Citizen, is a federal prisoner serving a twenty years federal sentence for drugs imposed by the United States District Court of Massachusetts.

(2) The petitioner has served fifteen years from the imposed sentence and is currently incarcerated within the confines of Moshannon Valley Correctional Center (MVCC), at Philipsburg, Pennsylvania.

(3) The prisoner has an Immigration ICE detainer lodged against him and will be deported to his country at the end of his sentence.

(4) On 2/10/2017, Mr. Builes, the petitioner, filed a motion under 28 USC & 2241 within the U.S. District Court for the Western District of Pennsylvania, challenging the execution of his federal sentence. He claimed that while executing his federal sentence, the Federal Bureau of Prisons (BOP) violated his constitutional right to Equal Treatment, the Equal Protection Clause, which is afforded to individuals by the Fourteenth Amendment and made available through the Fifth Amendment to the U.S. Constitution.

(5) Based on a Report and Recommendation issued on 6/1/2017, the U.S. District Court for the Western District of Pennsylvania, on 7/11/2017, denied Mr. Builes's motion filed under & 2241 on that, (a) The BOP regulations classify prisoners not as aliens and non-alien, but as those having immigration (ICE) detainers against them and those who do not, and (b) that excluding prisoners with detainers from participating in programs, and consequently from sentence reduction eligibility, is at least rationally related

to the BOP's legitimate interest in preventing prisoners from fleeing detainers while participating in community treatment programs.

(6) The U.S. Court of Appeal for the Third Circuit, which has jurisdiction over the case, on 11/7/2017, denied review of the District Court's finding, thus affirming her ruling, which prompted this instant petition for Certiorari.

REASONS FOR GRANTING THE PETITION

"Not shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the Equal protection of the Law". (Washington v. Harper, 424 US 210 (1990), Fourteenth Amendment to the U.S. Constitution).

The Fourteenth Amendment to the U.S. Constitution guarantees everyone "Equal Protection of the Law". Equal Protection means that a prison can not treat some prisoners differently than it treats others without a reason. "The state may not treat you differently or discriminate against you because you belong to any particular group or 'class' of people". (U.S. Constitution, Amendment XIV).

For a prisoner to make a claim under the Equal protection Clause, the claim has to meet two requirements, (1) It must state that you were treated differently from other prisoners who were in a similar situation or similar circumstances, (See, Veney v. Wyche, 293 F.3d 726, 730-31 (4th Cir. 2002; Wilson v. Taylor, 515 F. Supp. 2nd 469, 472 (D. Del. 2007)); and (2) you must state that the unequal treatment resulted from intentional or purposeful discrimination. (See, Klinger v. Dpto. of Corrections, 31 f.3d 727-731 (8th Cir. 1994; Johnson v. California, 543 US 499, 512, 160 L,Ed (1987))).

Mr. Builes has made a number of, hard-to-dispute claims, were his constitutional rights are being violated. First, he claims that he is being treated differently than other prisoners who are similarly situated, and that the unequal treatment is a result from

intentional and porpuseful discrimination; Second, Mr. Builes has been precluded from taking advantage of the several programs and benefits provided by the BOP to other similarly situated inmates; and third, Mr. Builes claims that he is being blocked from earning a reduction in time, up-to-one year, from his original sentence, all of that based, solely, on Mr. Builes's immigration status.

Mr. Builes was sentenced by the U.S. District Court of Massachusetts to serve 240 months in federal incarceration. The court in determining this particular sentence imposed upon the defendant, had in consideration, among other sentencing factors, (1) the need for the sentence to be imposed..., 18 USC & 3553(a)(2); (2) to reflect the seriousness of the offense, to promote respect for the law, and provide just punishment for the offense. 18 USC & 3553(a)(2)(D); (3) "to provide the defendant with needed educational or vocational training..., or other correctional treatment in the most effective manner"; and (4) "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 USC & 3553(a)(6).

In accord to 18 USC & 3553(d), the Sentencing Commission, in establishing categories of defendants for use in the Guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, set up a set of rules and conditions to be taken into account by the courts, this to assure that the guidelines and policy statements are entirely neutral as to race, sex, national origin, creed, and socio-economic status of offenders. Part (e) states as follows, "the commission shall assure that the guidelines

and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the general inappropriateness of considering the education, vocational skills, employment record, family ties and responsibilities, and community ties of defendant." Part (f) of sentencing factors states as follows, "the Commission, in promulgating guidelines pursuant to Subsection (a)(1), shall promote the purposes set forth in 28 USC & 991(b)(1), with particular attention to requirements of Subsection 991(b)(1)(B) for providing certainty and fairness in sentencing and reducing unwarranted sentence disparities."

To make things clear, Mr. Builes is not challenging the sentence imposed by the court, but the execution of his federal sentence by the Federal Bureau of Prisons. He is arguing that his rights under the due process of law, to equal Protection, as afforded to prisoners by the Fourteenth Amendment through the Fifth Amendment to the U.S. Constitution are being violated by the executioners of his sentence by not allowing him to participate in certain programs available in prison to the majority of prisoners, by precluding him from taking advantage of all the benefits offered by the BOP to American prisoners (those with not immigration (ICE) detainers) that are serving time of incarceration under the same set of circumstances as Mr. Builes's, and as a result, blocking him from earning a reduction in sentence up-to-one year, all of the above in clear violation of his constitutional right to Equal Protection of the Law. The BOP's policies regarding programs and benefits are, at least, discriminatory and without any penalogical purpose.

Because of having an immigration (ICE) detainer against him, Mr. Builes is barred from many programs offered by the BOP to similarly situated American prisoners that are serving sentences for same offenses as him. Because of BOP's so-called "Public Safety Factor of deportable alien", Mr. Builes is barred from taking advantage of: (1) Camp Program, (2) Halfway house detention program when inmate gets closer to reenters society, and (3), and most important of all, he is barred from participating in the Residential Drug Program, which will, if sucessfully completed, allow him to earn a reduction in sentence up-to-one year. The BOP lacks the authority of barring certaing inmates, or group of inmates, from taking advantage, or participating in programs available in prison. The intent of congress is clear. It does not say, "AMERICAN PRISONERS ONLY." Instead, it says "ANY PRISONER." "Any prisoner who, in the judgment of the Director of the Bureau of Prisons, has sucessfully completed a program of residential substance abuse treatment." 18 USC & 3621(e)(2)(A). Therefore, the BOP should not exclude all non-citizen inmates, like the petitioner, from participating in a up-to-one year sentence reduction upon completion of the Residential Drug Abuse Program (RDAP). The BOP pretends to have established this exclusion based on the completion of a community-based treatment program, see 28 C.F.R. & 550.58 (1997), and 61 Fed. Reg. 25121 (1996). Although, the completion of a community-based treatment program is unnecessary, the BOP deceitfully insists this unnecessary requirement to exclude non-U.S. Citizen inmates who have a flight risk during the

Community-based treatment phase because they are subject to possible deportation at the end of their sentences, and therefore have reasons to flee a halfway house.

Again, Mr. Builes is being treated differently than other similarly situated inmates, and the treatment he is being subjected to, is, in no way, related to a legitimate governmental purpose, other than a compelling government interest in keeping those inmates with immigration (ICE) detainers in prison for a longer period of incarceration than those with no immigration (ICE) detainers, and based in economic reasons only.

The fact that Mr. Builes has an immigration (ICE) detainer lodged against him, should not, in any way, be the reason that preclude him from taking advantage of the many programs and benefits offered and made available to those inmates with no immigration (ICE) detainer by the BOP, throughout the whole prison system.

Because of BOP's policies, and as a direct consequences of Mr. Builes having an immigration (ICE) detainer against him, he was, (a) not allowed to work in prison industries (UNICOR, at MCI Herlong, do not employ inmates with immigration (ICE) detainers); (b) He could not take advantage of higher education programs made available by community colleges in prisons (Community Colleges and Universities do not sponsor inmates with immigration (ICE) detainers); (c) "public Safety Factors" triggered by the immigration (ICE) detainer against him, made Mr. Builes non-eligible to camp programs, or to advance to halfway house when getting close to be released, or to be transferred to a near release place, closer to his family, when

getting closer to their release from prison; (d) because of the immigration (ICE) detainer against him, Mr. Builes was excluded from participating in the Residential Drug Program, which, made him non-eligible to earn a reduction in sentence of up-to-one year if completed, as it is allowed to those inmates with no immigration (ICE) detainers against them; (e) because of having an immigration (ICE) detainer against him, Mr. Builes was placed in a private facility that house foreign inmates only, that are within 90 months from being released, and who will be deported at the end of their sentences. The vast majority of foreign prisoners housed in private facilities throughout the country, are, not only, federal inmates, but were sentenced in U.S. Federal courts, are serving federal time of incarceration, under the same rules, for same crimes, and under the same set of circumstances as those inmates (American Prisoners) with no immigration (ICE) detainers against them. Again, federal inmates with immigration (ICE) detainers, are located in different places than those inmates with no immigration (ICE) detainers. The result, similar inmates, situated in similar circumstances, being treated differently by the BOP.

The U.S. District Court for the ~~western~~ District of Pennsylvania, in a decision, which was latter affirmed by the court of appeals for the Third Circuit, stated that "the BOP, only, classifies inmates based in security matters, a risk of escape." According to the Magistrate's Recommendation "the BOP only views inmates as those having immigration (ICE) detainers against them and those who do not." (See, Report & Recommendations attached).

The Magistrate also asserted in her Report & Recommendation (P.3) That "the Bop Regulation classify prisoners not as aliens and non-aliens, but as those having immigration (ICE) Detainers and those who do not." In her own words, the BOP is in its own right to treat inmates with immigration (ICE) detainers and those with no immigration (ICE) detainers differently because the first group presents a risk of fleeing. U.S. District Court's judge, Kim R. Gibson adopted the Report and Recommendation in its entirety, and the U.S. Court of Appeals for the Third Circuit affirmed the lower court's decision on 11/7/2017.

It is the petitioner's view, and there is no other reasonable way to see it, that inmates with immigration (ICE) detainers and those with no immigration (ICE) detainers, are two different groups; they are classified by the BOP as two different groups; and those two different groups, which are similarly situated, are being treated differently by the Federal Bureau of Prisons. "As a result of criminal convictions, for purpose of serving their sentences, inmates with immigration (ICE) detainers and those with no immigration (ICE) detainers, are similarly situated, there should be no favorable treatment one way or the other. They share the same goals of rehabilitation, they are similarly situated for purposes of programs, recreational opportunities, and education."

It is clear, that Mr. Builes belongs to the group which have immigration (ICE) detainers against them. The discrimination at issue here is, at least, suspect because the action of the BOP targets a group that is a minority within its custody. The BOP's

policy is clearly discriminatory and explicitly race related. There are, absolutely, no penalogical reasons that will prevent Mr. Builes from participating in programs available to prisoners in the BOP, and/or from taking advantage of all the benefits offered by the BOP to similarly situated inmates, which if eligible, will allow him to reduce precious time from his original sentence. "The state may not treat you differently or discriminate against you because you belong to a particular group or 'class' of people." (See, Klinger v. Department of Corrections, 31 F.3d 727, 731 (8th Cir. 1994)).

Mr. Builes claims that he is being treated differently than other prisoners who are similarly situated. (See, Veney v. Wyche, 293 F.3d 726, 730-31 (4th Cir. 2002)), and that the unequal treatment is a result from intentional and purposeful discrimination, (See, McCleskey v. Kemp, 481 US 279, 292 (1987)). Mr. Builes is arguing that, "A vague fear of inmates flying lower security prisons, is not sufficient justification for a broad policy of discrimination." (See, Sockwell v. Phelps, 20 F.3d 187 (5th Cir. 1984)).

In accord to BOP's policies, prisoners with immigration (ICE) detainers against them, are not eligible to advance to community-based confinement. Here, Mr. Builes has no interest in placement in a halfway house or a community-based confinement, but he does have a liberty interest in rehabilitation, and in the reduction in sentence to which he is entitled if allowed to participate in the Residential Drug Program. "it is unconstitutional to treat prisoners who are in the same situation, differently."

(See, Fourteenth Amendment to The United States constitution).

The BOP has, absolutely, no reasons that justify blocking Mr. Builes from pursuing a reduction in sentence, which will result in him being deported to his country, at the culmination of his federal sentence, rather sooner than later. "The period a prisoner convicted of a non-violent offense remains in custody after successfully completing a treatment program may be reduced by the BOP, but such reduction may not be more than one year from the term the prisoner must otherwise serve." 18 USC & 3621(e)(2)(B). The way used by the BOP to enforce its policies, are unconstitutional, and it results in members of certain groups being treated differently from other groups based on membership in that group." US v. Lopez-Flores, 63 F.3d 1468 (9th Cir. 1995).

In this instant case, the detainer exclusion, clearly, discriminate against an alien and shows that the BOP's application of the statute, results in a prisoner with immigration (ICE) Detainer being treated differently from prisoners without immigration (ICE) detainers. "If, it is demonstrated that a cognizable class is treated differently, the court must analyze under the appropriate level of scrutiny whether the distinction made between the groups is justified." (See, Lopez-Flores, 63 F.3d at 1472..).

There is no justification, at least no rationally based, for the disqualification of an inmate from a program available to other similarly situated inmates, and consequently, blocking him from sentence reduction eligibility due to his status as an alien subject to removal proceedings. It is a clear violation

of the inmate's Equal Protection Clause, as it is afforded to prisoners by the Fourteenth Amendment through the Fifth Amendment to the United States Constitution,;

CONCLUSION

It is unconstitutional to treat prisoners who are in the same situation differently. The Fifth Circuit's decision is erroneous.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 Jins Builes

Date: January 15, 2018