

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

EDDIE BAKER Jr. — PETITIONER
(Your Name)

vs.

LOUIS WILLIAMS II, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Eddie Baker Jr. #06233-089
(Your Name)

P.O. Box 1000
(Address)

Oxford, WI 53952
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Does or whether one of the people of the United States have a Constitutional habeas corpus right to file a 28 U.S.C. §2241 Petition upon a pretrial condiction challenge of: 'the charging statute is unconstitutional and deprives a federal court of jurisdiction to entertain the unlawful charge?
2. Whether or not 18 U.S.C. Chapter 44 §922(g)(1) is an unconstitutional enactment in violation of the Second Amendment protected conduct right to keep and bear arms? as: can Congress make laws that amend a United States Constitution right without an Article V procedure delegating that authority?
3. Whether or not one of the people can claim a Tenth Amendment challenge against an unconstitutional federal charging when the State fails to make the challenge?

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☒ is unpublished.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 C 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☒ is unpublished.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☐ is unpublished.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 December 8, 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: January 25, 2018, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

Article V, see Appendix D

Second Amendment. A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Tenth Amendment. The powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

18 U.S.C. §922(g)(1). It shall be unlawful for any person -- who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year; to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

28 U.S.C. §1254(1). Case in the courts of appeals may be reviewed by the Supreme Court by the following methods: By writ of certiorari granted upon the petition of any party to any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. §2241. see Appendix E

28 U.S.C. §2255. see Appendix F

STATEMENT OF THE CASE

On May 18, 2016, Eddie Baker Jr. filed a 28 U.S.C. §2241 Writ of Habeas Corpus Petition to the United States District Court for the Western District of Wisconsin, raising pre-trial condition that a federal charging lack of jurisdiction existed based on: (1) the charging statute of "18 U.S.C. Chapter 44 §922(g)(1) is an unconstitutional enactment in violation of Second Amendment rights not delegated by an Article V procedure to Congress to make or the Federal Government to enforce; and (2) a violation of the Tenth Amendment by the fact the statute use is a 'Bill of Attainder' intrusion upon wholly State sovereignty jurisdiction that a state citizen can claim if the State does not. After the habeas petition sat in the district court for over a year, on June 29, 2017, without addressing the "Constitution Questions" presented, the district court without any challenge being made upon a conviction or a sentence (which is the collateral perimeters of a 28 U.S.C. §2255 Motion), recharacterized the 'Habeas Petition' as an attempted successive unaytgiruzed §2255 motion challenge upon the conviction and sentence, see Appendix C.

A timely notice of appeal was filed to the United States Court of Appeals for the Seventh Circuit, challenging the district court's recharacterization and non-addressing of the pre-trial constitution challenges presented, where, on December 8, 2017, the court of appeals affirmed the district Court's decision under a claim of: "The district court denied the petition, observing that it could not be brought as a §2241 action because Baker cited no new, retro-active case of statutory interpretation nor did he identify a struc-

tural problem that made §2255 an inadequate remedy. See 28 U.S.C. §2255(e). We substantially agree with the district court's reasoning", see Appendix A.

A timely motion for reconsideration for en banc determination was filed, pointing out the conflict of that decision with prior Seventh Circuit cases, as well as other circuits cases, Supreme Court determinations, and district courts, whereas, on January 25, 2018 the motion for rehearing was denied, see Appendix B.

REASONS FOR GRANTING THE PETITION

Against Eddie Baker Jr. (hereinafter: Mr. Baker), who is one of the people, the Seventh Circuit Court of Appeals in conflict with other circuit courts of appeal, in conflict with the United States Supreme Court, and in conflict with its own circuit cases, have denied Mr. Baker the constitutional right of habeas corpus pre-trial condition challenges against: (1) being charged to be prosecuted under an unconstitutional statute affecting: (a) a district court's non-jurisdictional ability to entertain an unconstitutional charge; (b) his Second Amendment right that without amendment of cannot be infringed (violated) by simple possession, and (c) his Tenth Amendment right of state sovereignty protection not to be charged of federal offenses that are wholly state jurisdiction charges. A situation calling in the need of this Court's 'Supervisory Power' to resolve and make uniform, the rights of Mr. Baker and the people to use the 28 U.S.C. Chapter 153 §2241 Writ of Habeas Corpus Petition, to have addressed by that codified constitutional procedure, pre-trial condition challenges that a trial court lacks

jurisdiction to entertain a charge brought under an unconstitutional statute, against issues presented here that would require this Court to resolve anyway.

1. Under the expected due process clause conditions of pre-trial confinement, do Mr. Baker have a protected liberty interest not to be detained or prosecuted under an unconstitutional federal statute, that has a base of challenge in a 28 U.S.C. Chapter 153 §2241(c)(3) original writ of habeas corpus, that makes no challenge to a conviction or sentence?

Upon the above contentious question, where Mr. Baker filed a 28 U.S.C. §2241 Writ of Habeas Corpus Petition to the U.S. District Court for the Western District of Wisconsin, challenging the charging statute 18 U.S.C. §922(g)(1) used to detain him before a trial or sentence could be had, is an unconstitutional statute that nullifies any jurisdiction for a district court to entertain a charging under it, based in parts to violation of Mr. Baker's Second and Tenth Amendments protected conduct rights. The district court, though no challenge was made to a conviction or sentence, as a basis not to address the unconstitutional statute claim or the lack of a district court's charging jurisdiction over the matter, recharacterized the §2241 Petition as an attempted successive §2255 Motion, stating: "Baker's §2241 petition is really a §2255 claim in sheep's clothing", see Appendix C's pg. 3.

Upon appeal to the Seventh Circuit, that court affirmed the district court's recharacterization without addressing the pre-trial condition issues by stating: "The district court denied the petition, observing that it could not be brought as a §2241

action because Baker cited no new, retroactive case of statutory interpretation nor did he identify a structural problem that made §2255 an inadequate remedy. See 28 U.S.C. §2255(e). We substantially agree with the district court's reasoning.", see Appendix A.

As Mr. Baker made no challenge to a conviction or sentence in his §2241 action, and §2255(e) states:

"An application for a writ of habeas in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."

There was no need to motion a sentencing court about issues predicated on pre-trial conditions of detention. Showing that the United States Court of Appeals for the Seventh Circuit decision of Appendix A, has departed from the accepted and usual course of judicial proceedings, through sanctioning such a departure by a lower court, as to call for an exercise of this Court's supervisory power; being that Appendix A conflicts with other district and circuit courts decisions on the matter, as well as contradicting its own prior established case law. See, Walck v. Edmonson, 472 F.3d 1227, 1235 (10th Cir. 2007)(holding that "§2241 is the proper avenue by which to challenge pretrial detention, ..." where petitioner "is neither challenging a ... conviction nor sentence"); Jacobs v. McCaughtry, 251 F.3d 596, 597 (7th Cir. 2001)(explaining that a ... defendant attacking his pre-trial detention should bring a habeas petition under §2241.); Zahner v. Crawford, 2017 U.S. Dist. LEXIS 123171 (District Court for the 8th Cir. 2017)(Under 28 U.S.C. §2241(c)(3), the federal courts have jurisdiction over pretrial habeas petitions.)-

(quoting Neville v. Cavanagh, 611 F.2d 673, 675 (7th Cir. 1979)); Huges v. AG of Fla., 377 F.3d 1258, 1262 (11th Cir. 2004)(Where petition for habeas corpus relief is pre-trial petition, it is only properly asserted pursuant to 28 U.S.C. §2241); Stacey v. Warden, Apalache Corr. inst., 854 F.2d 401, 403 n.1 (11th Cir. 1988)("Pre-trial habeas petitions ... are properly brought under 28 U.S.C. §2241, which applies to persons in custody regardless of whether final judgment has been rendered."_; and Oliveira v. Wall, 2011 U.S. Dist. LEXIS 70173 (District Court of the 1st Cir. 2011)(Because this is a pretrial habeas corpus petition, it is technically governed by 28 U.S.C. §2241 ... Reed v. Caufield, 734 F.Supp. 2d 23, 24 (D.D.C. 2010)(citing Dickerson v. Louisiana, 816 F.2d 220, 225 (5th Cir. 1987)("Pre-trial petitions ... are properly brought under 28 U.S.C. §2241, which applies to persons in custody regardless of whether final judgment has been rendered and regardless of the present status of the case pending against [them]."))).

As the lower federal courts decisions only put the above issue in dispute, by not addressing directly the issues presented in the habeas petition and brief in those courts, Mr. Baker is not sure if this Court will address those issues without the lower courts decision that may or may not dispute them; so, I seek a briefing schedule to present the issues presented in the lower courts records, and possibly 15 minutes of oral argument before the Court discerning any disputed issues by the Government, based on: it is established, in such cases like Class v. United States, No. 16-424, reversed on 2/21/18, where a law is claimed to violate the Second Amendment, a criminal defendant's right to challenge

the law's constitutionality, calls into question the government's power to "constitutionally prosecute" him, especially since Appendix D outlines an amendment procedural requirement that has not taken place that would allow any branch of the federal government delegated authority to make or use laws contrary to the protected conduct 'Bill of rights.

CONCLUSION

For the foregoing reasons, the Writ of Dertiorari should be GRANTED.

Repectfully submitted,

Eddie Babin

Date: April 12, 2018