No. 03-6018 ORIGINAL

In The Supreme Court of the United States
October Term, 2002

*In re* ERNEST GLENN AMBORT

Supreme Court, U.S.
FILED
AUG 0 8 2003
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On Petition for Writ of *Habeas Corpus* to the United States District Court, District of Utah

**PETITION FOR**
**A WRIT OF *HABEAS CORPUS***

TO: the Honorable Stephen Breyer, Justice of the United States Supreme Court and Circuit Justice of the Tenth Circuit, in Chambers

COMES NOW Petitioner, Ernest Glenn Ambort, *pro se*, and respectfully Petitions for a Writ of *Habeas Corpus*, pursuant to U.S. Const., Art. I, § 9, Cl. 2, and 28 U.S.C. § 2241 (to the extent that they may differ), as provided in Rules 20 and 22, Rules of the Supreme Court of the United States, for the reasons set forth herein.

DATED: 6 August 2003

Respectfully submitted,

Glenn Ambort

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## QUESTIONS PRESENTED

Whether the detention or confinement of a defendant is lawful, if it is based upon "a detention hearing so flawed that it would not constitute 'a hearing pursuant to the provisions of subsection (f)' for purposes of 3142(e)" of the Bail Reform Act of 1984.

Whether an indictment that fails to charge an offense constitutes probable cause under the Fourth Amendment to justify seizure of a defendant's person for trial.

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## PRELIMINARY STATEMENT

This Petition for the Great Writ is a continuation of a case in the United States District Court for the District of Utah, Case No. 98-CR-197-B, United States v. Ernest Glenn Ambort, John W. Benson, Nona S. Egbert, Merrill B. Hansen, William J. Lewis, and Steven W. Stay, filed against them on 15 April 1998.

## SECTION 2242 STATEMENT

**"Reasons for not making application to the district court of the district in which the applicant is held."**

I filed a petition for a writ of *habeas corpus* with the district court on 21 October 2002, case no.: 02-CV-1152-B on a number of the issues raised herein. Much to my surprise, however, the district court has taken no action whatsoever on my petition.

Trial by jury was held from 5 May through 16 May 2003. I was convicted on one count of conspiracy to defraud the United States, 18 U.S.C. § 371, and 69 counts of aiding others in filing false claims with the Internal Revenue Service ("IRS"), 26 U.S.C. § 7206(2). At the conclusion of the trial, the judge gave me the option of staying at the Cornell half-way house, under 24-hour supervisory community confinement pending sentencing, or in one of the local county jails. I chose Cornell, where I am presently confined.

On 27 May 2003, I filed a notice of appeal of the detention or confinement pending sentencing with the district court, *pro se*. The trial judge then allowed me to obtain passes to go home during the day to access my research and computer materials to pursue my various appeals *pro se*.

For some reason, not entirely clear to me, the Tenth Circuit officials, without informing me, rejected my *pro se* appearance before that Court, and instead, assumed that the Utah Federal Defender would represent me in that appeal. I called and emailed the clerk's office at the Tenth Circuit, and informed the clerks that I wished to pursue my own appeal, and filed an extensive brief with the Court, but was unsuccessful in convincing the Tenth Circuit officials to permit me to pursue my own appeal. They returned my appeal brief, and refused to file or consider it in my appeal.

The appeal was denied and the trial court's order of confinement affirmed on 18 July 2003 (attached

hereto as Appendix A). The appeal attorney at the Utah Federal Defender offices informed me that I had no constitutional right to pursue my own appeal before the Tenth Circuit, and that the Tenth Circuit might not even allow him to withdraw if he submitted a withdrawal motion.

From my vantage point, the district court simply continues to exercise a sort of "pocket veto" on my *habeas corpus* petition of 21 October 2002, and by not denying it, prevents me from appealing it under 28 U.S.C. § 2253. I filed a petition for a writ of *mandamus* at the end of December 2003, in part, to ask the Tenth Circuit to order the district court to act upon my *habeas* petition, but my petition for the writ of *mandamus* was summarily denied. Fed. R. App. P., Rule 22. *Habeas Corpus* and Section 2255 Proceedings, provides:

> (a) Application for the Original Writ. An application for a writ of *habeas corpus* must be made to the appropriate district court. If made to a circuit judge, the application must be transferred to the appropriate district court.

It would seem to be of little avail to file with either the district court or the Tenth Circuit, as the petition would end up in the district court in either case and would, in all likelihood, lie fallow there. Under these circumstances, the issues raised herein will be in aid of the Court's appellate jurisdiction. Exceptional circumstances warrant the exercise of the Court's discretionary powers; adequate relief cannot be obtained in any other form or from any other court.

## THE PARTIES

Petitioner ERNEST GLENN AMBORT is a natural person, born on 19 February 1940 in San Diego, California. I have lived my entire life within the 50 States and the District of Columbia.

Respondent UNITED STATES DISTRICT COURT, DISTRICT OF UTAH, is the Federal Court for the United States, and was at all times mentioned herein doing business in the State of Utah and in the judicial district of Utah.

## JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 2241 (the general *habeas corpus* statute), and the United States Constitution., Art. I, § 9, Cl. 2 (common-law writ of *habeas corpus*), to the extent that they

FILED
United States Court of Appeals
Tenth Circuit

JUL 18 2003

PATRICK FISHER
Clerk
UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

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| UNITED STATES OF AMERICA,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>ERNEST GLENN AMBORT,<br><br>Defendant-Appellant. | ) | No. 03-4117<br><br>(D.C. No. 2:98-CR-197-DB) (D. Utah) |

ORDER AND JUDGMENT(1)

Before EBEL, KELLY, and HARTZ, Circuit Judges.

Ernest Glenn Ambort appeals the district court's ruling ordering appellant retained at a halfway house pending sentencing. Appellant was convicted by a jury of one count of conspiracy to defraud the United States, in violation of 18 U.S.C. § 371, and sixty-nine counts of aiding and assisting in the preparation of false tax returns, in violation of 26 U.S.C. § 7206(2). At the verdict hearing,

> (1) This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

appellant was given a choice by the district court between returning to the halfway house to which he had been committed pending trial and going to jail pending sentencing, which is scheduled for July 29, 2003.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. See United States v. Storey, 2 F.3d 1037, 1040 (10th Cir. 1993). "Appellate review of detention or release orders is plenary as to mixed questions of law and fact and independent, with due deference to the district court's purely factual findings." United States v. Stricklin, 932 F.2d 1353, 1355 (10th Cir. 1991).

Following appellant's conviction, 18 U.S.C. § 3143(a) requires that he "be detained" pending sentencing "unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under section 3142(b) or (c)."

Appellant argues that the district court impliedly found that he was not a flight risk or a danger to the community because the district court allowed him to choose the halfway house instead of detention in the county jail, and complains that the district court failed to make findings in support of the conditions imposed upon him at the halfway house.

Appellant's arguments are precluded by the doctrine of invited error. See *United States v. Burson*, 952 F.2d 1196, 1203 (10th Cir. 1991) (invited error doctrine "prevents a party who induces an erroneous ruling from being able to have it set aside on appeal"). At the time the verdict was announced, appellant specifically sought to remain at the halfway house, and did not object to the court's granting him that request. The district court's order denying appellant's request for release pending appeal is

AFFIRMED.

ENTERED BY THE COURT
PER CURIAM