
**Attique AHMAD, aka Ed Ahmad,
Petitioner**

v.

**STATE OF TEXAS,
Respondent**

No. 99-123456

Petition for Certiorari to the United States
Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF

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BRIEF FOR RESPONDENT

QUESTIONS PRESENTED

1. Can the State of Texas enforce its laws banning illegal discharges to waters of the State against Petitioner even though the United States previously failed to obtain a conviction against him under separate federal laws?
2. Did the lower court properly allow the jury to weigh Petitioner's refusal to answer a civil information request issued to the corporation that he operates when that corporation lacks a right against self-incrimination under the U.S. Constitution?

STATEMENT OF THE CASE

The startling facts of this case are well known to this Court. During his operation of a convenience store and gas station, Petitioner admittedly discharged 4,690 gallons of gasoline into a nearby creek and local sewage treatment plant. The resultant explosion risk led the City of Conroe to remove all non-essential personnel from the sewage treatment plant and evacuate two nearby schools. According to testimony at Petitioner's initial trial, an explosion of the gasoline would have led to "hundreds, if not thousands, of deaths and injuries" and millions of dollars of

property damage. *United States v. Ahmad*, 101 F.3d 386, 388 (5th Cir. 1996).

Mr. Ahmad was initially tried in federal court and found guilty of knowingly discharging a pollutant into waters of the United States without a permit and knowingly operating a source in violation of a pretreatment standard. On appeal, this Court reversed the conviction because the lower court had not properly instructed the jury that it had to find that the Petitioner knowingly discharged the gasoline from the tank. On remand, the Petitioner was found not guilty of both charges described above.

After Petitioner's trial under federal law, the State of Texas chose to bring an action against him for violations of state law. In particular, the State charged petitioner with negligently discharging a pollutant into waters of the State without a permit. This action violated Section 9.999 of the Texas Clean Water Act, which incorporates by reference Section 1319(c)(1)(A) of the Federal Clean Water Act. The jury found Petitioner guilty of such a negligent discharge, and the trial court imposed the maximum sentence allowed under Texas law for this misdemeanor offense.

Among the voluminous evidence introduced during Petitioner's trial before the state court, the State submitted into evidence Petitioner's response to an information request issued by the U.S. Environmental Protection Agency (EPA). The EPA had issued this request to the Spin-and-Market No. 12, Inc. under authority granted by Section 104(e) of the

Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA, or "Superfund Act"). CERCLA grants the EPA broad authority to seek information pertaining to releases of hazardous substances into the environment and the financial ability of potentially responsible parties to pay for the clean-up of those releases. 42 U.S.C. § 9604(e) (1999).

Petitioner responded to the information request on behalf of Spin-and-Market No. 12, Inc. as its sole corporate officer and employee. He alleged that he could not answer the information request without incriminating himself, and he therefore refused to answer. The trial court ruled that Petitioner could not assert a personal right against self-incrimination to refuse to answer an information request that was issued to a separate corporation which lacked any such constitutional right. The trial court therefore allowed admission of Petitioner's refusal to answer, and allowed the State to draw negative inferences from Petitioner's silence during its closing argument. The court also instructed the jurors that they could draw similar inferences if they so chose. Joint Appendix at pp. 1130-1142.

Petitioner has exhausted all avenues of appeal in the state courts. He has brought this petition for habeas corpus to allege federal constitutional grounds for reversal of his conviction.

SUMMARY OF ARGUMENT

1. The State of Texas has an absolute right to try Petitioner for separate violations of state law that he committed through his illegal discharges. First, it is well-settled law that the State as a separate sovereign can prosecute persons for violations of state law. The State has this power even when the federal government has obtained a conviction for violations of federal law arising from that person's same actions. Second, the elements of the offense charged by the State differ from those alleged by the United States in the initial trial of Petitioner. As a result, no double jeopardy can attach. *United States v. Louisville Edible Oil Products, Inc.*, 926 F.2d 584, 588 (6th Cir. 1991).

2. Petitioner cannot assert a right against self-incrimination to bar the issuance of an information request to a completely different person. While Petitioner may hold an important position in Spin-and-Market No. 12, Inc. as the chief responsible corporate officer, the corporation nonetheless has a separate jurisdictional existence. Absent a piercing of the corporate veil or a finding of fraud, the corporation itself can also face separate criminal and civil liability from Petitioner. *See United States v. Best Foods*, 118 U.S. 1876 (1998). This finding is especially warranted when the corporate citizen for whom Petitioner acts lacks the federal constitutional right asserted by Petitioner.
