

APPENDIX [A]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-20016

In re: MICHAEL OJEGBA AGBONIFO,

Petitioner

Petition for a Writ of Mandamus to the
United States District Court for the
Southern District of Texas

Before SMITH, HAYNES, and WILLETT, Circuit Judges.

PER CURIAM:

Michael Ojegba Agbonifo has filed in this court a pro se petition for a writ of mandamus and a motion requesting leave to file his mandamus petition in forma pauperis (IFP). The motion for leave to proceed IFP is GRANTED.

Agbonifo is currently under indictment and awaiting trial on charges of conspiracy to commit wire fraud, wire fraud, aggravated identity theft, passport fraud, and visa fraud. He was committed for evaluation of his mental capacity by order entered April 28, 2017, and the commitment was extended on December 29, 2017. He raises a host of challenges to actions by his counsel, the district court, the prosecution, and government agents, and asserts a number of violations of his rights. The crux of his claims is that his prosecution is part of a conspiracy among the court, the prosecution, and counsel to cover up unlawful conduct by the U.S. Postal Inspector who

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provided the affidavit supporting the criminal complaint against him. According to Agbonifo, the inspector seized him without a warrant, coerced him into confessing and to consenting to a search of his apartment, and sexually assaulted him. He further argues, *inter alia*, that his counsel conspired to waive his right to be present at a competency hearing; that the district court refused to dismiss the indictment; that the district court unlawfully committed him for mental health treatment and evaluation as part of the coverup; that a psychiatrist at the mental health facility tried to coerce him into pleading guilty; that the district court improperly refused to terminate appointed counsel's representation; that his speedy trial rights have been violated; that the district court lacks jurisdiction; and that his arrest on a traffic ticket that led to his current detention was improper. He seeks immediate dismissal of the prosecution.

Agbonifo has appointed counsel in his criminal case in the district court. Thus, we question whether he may proceed *pro se* to seek relief relating to that case. *See McKaskle v. Wiggins*, 465 U.S. 168, 183 (1984); *United States v. Daniels*, 572 F.2d 535, 540 (5th Cir. 1978). We need not reach that question, however, as Agbonifo is not entitled to relief.

The mandamus remedy is "extraordinary" and is granted "only in the clearest and most compelling cases." *In re Willy*, 831 F.2d 545, 549 (5th Cir. 1987). A party seeking mandamus relief must show that he has no other adequate means to obtain the requested relief and that he has a "clear and indisputable" right to mandamus relief. *Id.* (internal quotation marks and citation omitted). Mandamus is not a substitute for appeal. *Id.* "Where an interest can be vindicated through direct appeal after a final judgment, this court will ordinarily not grant a writ of mandamus." *Campanioni v. Barr*, 962 F.2d 461, 464 (5th Cir. 1992).

The Court reason for denial is that petitioner can be vindicated through direct appeal after final judgment which has called for the question of how can the petitioner gets a direct appeal without first having a trial or pleading guilty?

This court agrees that petitioner's argument or complain is denial of trial, then why the opinion of direct appeal after Judgment?

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The court admitted that petitioner's claims are very fantastic by why not granting relief sought for?

Aside from the fantastic nature of Agbonifo's claims of a conspiracy, Agbonifo has not shown that any of his legal and constitutional challenges to his arrest, the search, his confession, the district court's jurisdiction, and any alleged misconduct by counsel and the prosecution may not be raised on direct appeal after judgment. With respect to his claims that his current commitment to a mental health facility is unlawful, he has a pending appeal challenging his commitment in No. 18-20066. Although his appointed counsel has moved to dismiss that appeal as frivolous, counsel was ordered to provide additional information about the appeal and recently filed her response.

Agbonifo has failed to show he lacks other means of achieving the requested relief. The petition for a writ of mandamus is DENIED.



A True Copy
Certified order issued Jul 11, 2018

Jule W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

The court admitting that appointed counsel was bogus but why negotiating with an apparent bogus counsel?