

No. \_\_\_\_\_

19-8854

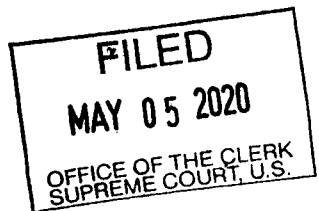
IN THE  
SUPREME COURT OF THE UNITED STATES

REGINALD STROTHER — PETITIONER  
(Your Name)

vs.

MICHAEL TRUNCLE — RESPONDENT(S)  
(MANDAMUS)  
ON PETITION FOR A WRIT OF CERTIORARI TO

**ORIGINAL**



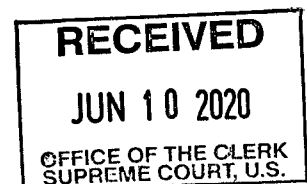
FIFTH CIRCUIT COURT OF APPEALS  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)  
(MANDAMUS)  
PETITION FOR WRIT OF CERTIORARI

REGINALD STROTHER  
(Your Name)

P.O. Box  
26030  
(Address)

BEAUMONT, TX 77720  
(City, State, Zip Code)

(323) 694-9855  
(Phone Number)



QUESTION(S) PRESENTED

I. WHETHER REFUSING TO RULE ON PETITIONER'S MOTION FOR 16 MONTHS CONSTITUTES UNDUE, UNNECESSARY, AND UNREASONABLE DELAY

## 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:

- MARCIA A. CRONE, DISTRICT COURT JUDGE
- JOHN ALBERT CRAFT, AUSA
- DAVID HENDERSON, AUSA
- THOMAS BURBANK, DEFENSE ATTORNEY

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## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

UNITED STATES V. STROTHER,  
387 F. APPX. 508 (5TH CIR 2010) (UNPUBLISHED)

### STATUTES AND RULES

- FIRST STEP ACT § 404(b)
- 21 U.S.C. § 841(b)(1)(A); § 851
- 21 U.S.C. § 841(b)(1)(B)(iii)

### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
(MANABAMUS)  
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 \_\_\_\_\_ to the petition and is

- ☐ reported at 387 F. Appx. 508 (5th Cir. 2010); 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☒ is unpublished.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 A 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 9.2.2010.

☒ 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

- 5<sup>TH</sup> AMENDMENT TO THE U.S. CONSTITUTION
- FIRST STEP ACT § 404 (b)
- 21 U.S.C. § 841 (b)(1)(A); § 851
- 21 U.S.C. § 841 (b)(1)(B) (iii)



## STATEMENT OF THE CASE

ON 1.4.19, PETITIONER FILED A MOTION FOR RESENTENCING PURSUANT TO SEC. 404 (b) OF THE FIRST STEP ACT. AFTER 16 PLUS MONTHS, THE DISTRICT COURT STILL REFUSES TO RULE ON PETITIONER'S MOTION CAUSING HIM TO CONTINUE TO SERVE A MANDATORY LIFE SENTENCE THAT HAS BEEN INVALIDATED THROUGH RETROACTIVITY.  
(SEE ATTACHED PETITION)

## REASONS FOR GRANTING THE PETITION

SINCE PETITIONER WAS SENTENCED FOR A "COVERED OFFENSE" BEFORE AUGUST 3, 2010, (1) HE HAS A STATUTORY RIGHT UNDER SEC 404(b) TO BE RESENTENCED, (2) TRUNCATE HAS A STATUTORY DUTY TO APPLY THE FAIR SENTENCING ACT RETROACTIVELY UNDER SEC. 404(b), AND (3) PETITIONER HAS NO OTHER REMEDY TO CAUSE TRUNCATE TO ~~PERFORM HIS JUDICIAL DUTY~~ PERFORM HIS JUDICIAL DUTY.

IN THE SUPREME COURT OF THE UNITED STATES

REGINALD STROTHER

EMERGENCY PETITION FOR

V.

WRIT OF HABEAS CORPUS

MICHAEL J. TRUNCAL

No. 1:06-cr-182

COMES NOW, PETITIONER "PRO SE" FILING THIS EMERGENCY PETITION SHOWING THE FOLLOWING:

"COVERED OFFENSE"

ON 2-4-09, IN THE U.S. DISTRICT COURT FOR THE EASTERN OF TEXAS BEAUMONT DIVISION, PETITIONER WAS SENTENCED TO MANDATORY LIFE IMPRISONMENT FOR 81 GRAMS OF CRACK COCAINE AND TWO PRIOR CONVICTIONS PURSUANT TO 21 U.S.C. §§ 841(b)(1)(A) AND 851.

FIRST STEP ACT

ON 12-21-18, CONGRESS PASSED SEC. 404 OF THE FIRST STEP ACT WHICH MADE THE FAIR SENTENCING ACT OF 2010 (FSA) RETROACTIVE TO "COVERED OFFENSES" LIKE PETITIONER'S COMMITTED ON OR BEFORE AUGUST 3, 2010.

RESENTENCING

16 MONTHS AGO, ON 1-14-19 PETITIONER FILED A MOTION FOR RESENTENCING UNDER SEC. 404(b). ON 5-6-19, THE U.S. PROBATION DEPARTMENT IN PLANO TEXAS CONTACTED THE

BUREAU OF PRISONS (BOP) AT MARION, ILLINOIS AND ADVISED THEM THAT PETITIONER WAS ELIGIBLE FOR RELIEF UNDER SEC. 404. LIKEWISE, AUSA MATT QUINN BY MOTION FILED ON 5.30.19 IN CASE NO. 1906-CR-182 ALSO ADVISED THAT PETITIONER WAS ELIGIBLE FOR RELIEF UNDER SEC. 404. HOWEVER, DISPUTE BEING AWARE OF THESE FACTS MR. TRUNCAL RE- FUSES TO RULE ON PETITIONERS MOTION FOR RESENTENCING.

BY REFUSING TO TAKE ACTION ON PETITIONERS MOTION FOR 16 MONTHS, MR. TRUNCAL (1) IS CAUSING UNNECESSARY / UNNOU DELAY, (2) IS DENYING PETITIONER DUE PROCESS, AND (3) IS RE- FUSING TO FOLLOW THE LAW AS PASSED BY CONGRESS UNDER SEC. 404 OF THE FIRST STEP ACT.

RELIEF NOT AVAILABLE IN ANY OTHER COURT

ON OR AROUND 1.5.20, PETITIONER FILED A WRIT OF MANDAMUS WITH THE 5<sup>TH</sup> CIRCUIT. BECAUSE PETITIONER WAS PLACED IN THE SHU THROUGH NO FAULT OF HIS OWN, HE WAS UNABLE TO SECURE AN IN FORMA PAUPERIS FORM FROM THE STAFF. ON OR AROUND 1.20.20, THE 5<sup>TH</sup> CIRCUIT RESPONDED STATING PETITIONERS MANDAMUS WAS DOCKETED UNDER CASE No. 20-40017 AND ENCLOSED AN IN FORMA PAUPERIS FORM TO BE COMPLETED AND RETURNED TO THE CIRCUIT CO-URT. EXACTLY 7 DAYS LATER ON 1.27.20, PETITIONER PLACED THE COMPLETED IN FORMA PAUPERIS FORM IN THE HANDS THE MAIL-ROOM STAFF AT MCC CHICAGO VIA CERTIFIED MAIL, AND RECEIVED THE POST-MARKED RETURN RECEIPT ON 1.28.20.

RECEIVED  
MAR 2 - 2020  
2044

ON 2.12.20, PETITIONER WAS TRANSFERRED TO BEAUMONT U.S.P. WHERE RAO STAFF CONFISCATED ALL OF HIS LEGAL WORK INCLUDING HIS DISCOVERY AND THE POST-MARKED RETURN - RECEIPT AND THESE DOCUMENTS WERE NEVER RETURNED.

ON THE VERY NEXT DAY, 2.13.20, THE 5TH CIRCUIT DISMISSED THE PETITION CLAIMING "A WANT OF PROSECUTION" ALTHOUGH THE IN FORMA PAUPERIS FORM WAS TIMELY COMPLETED AND RETURNED. IN AN EFFORT TO GET THE POST-MARKED RECEIPT BACK AS PROOF OF A TIMELY RETURN, PETITIONER FILED A BP.8 WITH ASSOC. WARDEN YOUNG ON 2.24.20. ON 3.4.20, WARDEN YOUNG RESPONDED STATING THAT MY CONFISCATED DOCUMENTS WERE SENT TO U.S.P. MARION WITH NO EXPLANATION AND THAT A CALL WAS MADE TO GET THEM BACK. HOWEVER, AS STATED EARLIER THESE DOCUMENTS WERE NEVER RETURNED.

AS A REMEDY, PETITIONER FILED A WRIT OF MANDAMUS WITH THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS BEAUMONT DIVISION PURSUANT TO 28 U.S.C. § 1361. NEEDLESS TO SAY, NO ACTION WAS TAKEN ON THE MANDAMUS AS IT APPEARS THAT THE JUDGES IN THE BEAUMONT DIVISION ARE NOT WILLING TO HOLD MR. TRUNCALB ACCOUNTABLE TO THE LAW. BASED UPON THESE FACTS, RELIEF IS NOT AVAILABLE IN ANY OTHER COURT.

MANDAMUS IS RIFE FOR ISSUE

WHILE A SENTENCING COURT IS NOT REQUIRED TO "IMPOSE

A REOUCED SENTENCE" UNDER SEC. 404(b), IT IS REQUIRED TO APPLY THE FSA OF 2010 RETROACTIVELY TO "COVERED OFFENSES" COMMITTED ON OR BEFORE AUGUST 3, 2010.

AS SUCH, (1) SINCE PETITIONER WAS SENTENCED FOR A "COVERED OFFENSE" BEFORE AUGUST 3, 2010 HE HAS A STATUTORY RIGHT TO TO BE RESENTENCED UNDER SEC. 2 OF THE FSA OF 2010, (2) MR. TRUNCALC HAS A CLEAR DUTY TO ACT AS CASE No. 1:06-cr-182 IS ASSIGNED TO HIM, AND (3) AS SHOWN ABOVE IN OBTAIN PETITIONER HAS NO OTHER REMEDY TO CAUSE MR. TRUNCALC TO APPLY THE FSA OF 2010 RETROACTIVELY TO HIS CASE AS MANDATED BY SEC. 404 OF THE FIRST STEP ACT.

BASED ON THE FOREGOING, MANDAMUS IS RIFE FOR ISSUE AND PETITIONER SEEKS SUCH ISSUANCE.

#### CERTIFICATE OF SERVICE

PROOF OF SERVICE IS MADE BY THE "PROOF OF SERVICE" FORM ENCLOSED.




ALL RIGHTS RESERVED

## CONCLUSION

(MANDAMUS)

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_

Date: 5-26-20