

No. 20-1209

IN THE  
SUPREME COURT OF THE UNITED STATES

In re: RAYMOND L. ROGERS, Pro se - PETITIONER

vs.

ORIGINAL

HARTZ, BALDOCK AND GORSUCH, Circuit Judges - RESPONDENTS

ON PETITION FOR A WRIT OF MANDAMUS AND/OR  
WRIT OF PROHIBITION TO

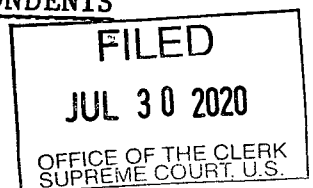
UNITED STATES TENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

RAYMOND L. ROGERS, Pro se

P.O. BOX 3000-Medium

FORREST CITY, AR 72336



ISSUE PRESENTED FOR REVIEW

Your Petitioner is [requesting] and [praying] for this United States Supreme Court to exercise its supervisory appellate powers pursuant-to 28 U.S.C. § 1651(a) under the "All Writs Act", to [command] Judge Bobby R. Baldock (hereinafter "Judge Baldock") a Circuit Court Judge sitting on the Tenth Circuit Court of Appeals three judges appellate panel whom ruled on your Petitioner criminal direct appeals proceedings, to "[vacate]" the court's April 5, 2013, Order and Judgment, now being challenged by way of this extraordinary remedy attached hereto as Exhibits "A", and to retain jurisdiction of your Petitioner's criminal direct appeals proceedings pursuant-to 28 U.S.C § 1291, and proceed to [first] properly ask and answer the Articial III jurisdictional question concerning the Kansas District Court's statutory criminal authority to prosecute and punish your Petitioner for the crimes he was found guilty in the Kansas District Court for violating, and which he now sits punished in a Federal Prison for.

## TABLE OF CONTENTS

|   | Pages |
|---|-------|
| OPINIONS BELOW .....                              | 1     |
| JURISDICTION.....                                 | 1     |
| STATEMENT OF THE CASE .....                       | 2-5   |
| FACTS, ARGUMENTS, AND LAW IN SUPPORT OF WRIT..... | 5-12  |
| PRAYER FOR RELIEF.....                            | 12-13 |

## INDEX TO APPENDIXES

EXHIBIT A: ORDER AND JUDGMENT OF JUDGE BOBBY R. BALDOCK'S

EXHIBIT B: RECORD/CRIMINAL DOCKET SHEET OF THE KANSAS DISTRICT  
COURT'S PROCEEDINGS FOR CASE NO.:

ROGERS V. UNITED STATES, Et. Al., 6:10-CR-10186-  
JTM/JWB

EXHIBIT C: (1). AUSA'S MOTION TO DISMISS FIRST SUPERSEDING  
INDICTMENT

(2). JUDGE J. THOMAS MARTEN'S NOVEMBER 28, 2011,  
ORDER, DISMISSING GRAND JURY'S JUNE 21, 2011,  
FIRST SUPERSEDING INDICTMENT

(3). COPY OF THE GRAND JURY'S JUNE 21, 2011, FIRST  
SUPERSEDING INDICTMENT BEFORE BEING DISMISSED

## 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:

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF MANDAMUS  
AND/OR PROHIBITION

Petitioner respectfully prays that a Writ of Mandamus and/or  
Writ of Prohibition issue to review the judgment below.

OPINIONS BELOW

[X] For cases from a Federal Court:

The opinion of the United States Court of Appeals for  
the Tenth Circuit Court appears at Exhibit A to the petition  
and is reported at; United States v. RAYMOND L. ROGERS, 520  
Fed. Appx. 727; 2013 U.S. App. LEXIS 6954; No. 12-3125  
TENTH CIRCUIT COURT OF APPEALS, April 5, 2013.

JURISDICTION

[X] For cases from a Federal Court:

The date on which the United States Court of Appeals  
decided my case was April 5, 2013.

[X] No petition for rehearing was timely filed in my case.

The [j]urisdiction of this United States Supreme Court's  
is invoked under 28 U.S.C. § 1651(a) of the "All Writs Act".

## STATEMENT OF THE CASE

On December 1, 2010, your Petitioner and his two co-defendants were arrested without "probable cause" or an "arrest warrant".

On December 3, 2010, a two count criminal "complaint" was founded against your Petitioner and his two co-defendants for the violations of; (1). 18 U.S.C. § 2113(a) "Unarmed Bank Robbery", and (2). 18 U.S.C. § 924(c)(1)(A) "Possession of a firearm in furtherance of a crime of violence". (Exhibits B, docs. 1).

On December 7, 2010, your Petitioner and his two co-defendants were indicted by a Federal Grand Jury for the violations of; (1). 18 U.S.C. § 2113(a) "Unarmed Bank Robbery", (2). 18 U.S.C. § 924(c)(1)(A) "Possession of a firearm in furtherance of a crime of violence, and (3). 18 U.S.C. § 922(g) "Felon in possession of a firearm". (Exhibits B, docs 12).

Your Petitioner and his two co-defendants were "arraigned" on the Grand Jury's December 7, 2010, Original Indictment, on December 13, 2010, at which point they plead "not guilty" to all the counts contained in the indictment. (Exhibits B, docs. 21).

Once no favorable "plea" [n]egotiation could be reached between your Petitioner and the attorney for the United States of America, the attorney for the United States of America returned back before a setting Federal Grand Jury to seek a "[F]irst Super[sed]ing Indictment, charging your Petitioner with three additional charges for; (4). 18 U.S.C. § 2113(a) "Bank Robbery Unarmed", (5). 18 U.S.C. § 924(c)(1)(A) "Possession of a firearm in furtherance of a crime of violence, and (6). 18 U.S.C. § 922(g) "Felon in possession of a firearm". (Exhibits B, docs 54).

Your Petitioner was again "arraigned" on the Grand Jury's

June 21, 2011, "[F]irst Super[sed]ing Indictment", on July 6, 2011, before Magistrate Judge Karen M. Humphreys, at which point he plead "not guilty" on all six counts now charged in the Grand Jury's June 21, 2011, First Superseding Indictment. (Exhibits B, docs 63).

After numerous other "Status Conferences" and other motions filed by the United States of America, the AUSA for the United States of America moved the Kansas District Court via a "Motion to Dismiss", to [dismiss] the Grand Jury's June 21, 2011, "[F]irst Super[sed]ing Indictment. (Exhibits B, docs 89) & (Exhibits C).

The Kansas District Court, on November 28, 2011, issued an "Order" [granting] the AUSA's November 28, 2011, "Motion to Dismiss". (Exhibits B, docs 91) & (Exhibits C).

Without the AUSA returning back before a Federal Grand Jury to seek a [new] indictment against your Petitioner and his two co-defendants after just "[dismissing]" the only [v]alid federal criminal charging instrument against your Petitioner and his two co-defendants, your Petitioner was criminally tried in the Kansas District Court before Judge J. Thomas Marten, and 12 jurors (consisting of 12 white and 1 black member)-- during a 3 day jury trial which took place from November 29, 2011, through December 1, 2011. (Exhibits B, docs 91-104).

Your Petitioner was found guilty by the 12 jurors for the criminal violations of: (1). 18 U.S.C. § 2113(d) "Armed Bank Robbery", (2). 18 U.S.C. § 924(c)(1)(A) "Possession of a firearm in furtherance of a crime of violence", and (3). 18 U.S.C. § 922(g) "Felon in possession of a firearm after being a convicted

felon". (Exhibits B docs 98, jury instr. No. 18-20).

On April 16, 2011, your Petitioner was sentenced to 234 months of imprisonment followed by a 5 years supervisory probation period for the crimes he was found guilty by the 12 jurors on. (Exhibits B, docs 119-120).

On May 1, 2012, your Petitioner's trial counsel filed a "Notice of Appeal" on behalf of your Petitioner in the Kansas District Court to challenge Judge J. Thomas Marten's April 17, 2012, judgment of conviction, in your Petitioner's criminal case, to the Tenth Circuit Court of Appeals. (Exhibits B, docs 122-124).

After having an oral argument hearing in the Tenth Circuit Court of Appeals before Judges Hartz, Baldock, and Gorsuch, the three judges appellate panel "affirmed" the Kansas District Court's 234 months judgment of conviction in your Petitioner's criminal case, on April 5, 2013. The Tenth Circuit Court of Appeals thereafter issued its mandate to the Kansas District Court. (Exhibits B, docs 125-142).

No petition for "en banc" was filed in the Tenth Circuit Court of Appeals challenging the Circuit Court's April 5, 2013, Order and Judgment, nor has any petition for a Writ of Certiorari in the United States Supreme Court been filed to challenge the Tenth Circuit Court of Appeals three judges appellate panel's April 5, 2013, Order and Judgment.

Your Petitioner has filed numerous other post conviction motions for relief from the Kansas District Court's criminal judgment of conviction, yet he has been unsuccessful with gaining any relief from the Kansas District Court or the Tenth Circuit



Court of Appeals.

FACTS, ARGUMENTS, AND LAW IN  
SUPPORT OF WRITS ISSUANCE

The facts, arguments, and law that supports your Petitioner's [request] and [prayer] for issuance of these extraordinary Writs of [Mandamus] and or [Prohibition] to the Tenth Circuit Court of Appeals to "[c]ommand" Judge Baldock to [vacate] the April 5, 2013, Order and Judgment, [affirming], on the merits, the Kansas District Court's April 17, 2012, judgment of conviction in your Petitioner's criminal case is as follows;

After your Petitioner was tried, convicted, and sentenced in the Kansas District Court pursuant to a criminal prosecution that took place without a valid federal criminal [i]ndictment in violation of the United States Constitution's Fifth and Sixth amendments, in light of Judge J. Thomas Marten's November 28, 2011, Order, "[d]ismissing" the Grand Jury's June 21, 2011, "[F]irst Super[sed]ing Indictment" upon request of the AUSA's November 28, 2011, "Motion to Dismiss", your Petitioner through his trial counsel moved the Tenth Circuit Court of Appeals to review the Kansas District Court's April 17, 2012, criminal judgment of conviction. See Attachment (Exhibits A).

The Tenth Circuit Court of Appeals retained jurisdiction of your Petitioner's criminal matter pursuant to 28 U.S.C. § 1291 and held an "oral" argument hearing "on the merits" of the issues presented by your Petitioner's trial/appellate counsel in his opening appeals brief. Although the Tenth Circuit Court's three

judges appellate panel whom "affirmed" the Kansas District Court's April 17, 2012, criminal judgment of conviction against your Petitioner determined on the merits the questions raised by your Petitioner's trial/appellate counsel in his opening appeals brief, the three judges appellate panel "failed" to [first] properly engage in an Articial III [j]urisdictional inquiry before the panel proceeded to determine the merits of the questions raised by your Petitioner's trial/appellate counsel in his opening appeals brief. See (Exhibits A).

In fact, a review of Judge Baldock's April 5, 2013, Order and Judgment, attached as Exhibits "A" shows that the panel simply "hypothesized" the Kansas District Court's Articial III statutory [j]urisdictional limitations based on the facts that; (1). a jury convicted your Petitioner of robbing a federally-insured bank, brandishing a firearm during the robbery, and possessing a firearm after a felony conviction; (2). the Kansas District Court sentenced your Petitioner to 234 months of imprisonment. See (Exhibits A).

Your Petitioner argues that these facts relied upon by the three judges panel in Judge Baldock's "procedural posture" in the April 5, 2013, Order and Judgment, cannot be relied upon for satisfying the Kansas District Court's Articial III [j]urisdiction to criminally prosecute your Petitioner for the crimes he currently stands sentenced in federal prison for.

The law is clearly established that all federal criminal felony prosecutions must be preceded by way of a Grand Jury's presentment or indictment. See U.S. Cons. Amendment 5 ("[no] person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand

Jury... nor shall be deprived of life, liberty, or property, without due process of law".). In other words, a federal district court's Articial III [j]urisdictional authority is statutory and in all federal criminal prosecutions, this statutory power is vested to the district court upon the Government's filing of an [in]dictment and the return of such indictment from a federal Grand Jury. See 18 U.S.C. § 3231; also see Ex parte Bain, 121 U.S. 1, 30 L. Ed 849, 7 S. Ct. 781 (1887); also Stirone v. United States, 361 U.S. 212, 80 S. Ct. 270, 4 L. Ed 2d 252 (1960); also see Cotton v. United States, 152 L. Ed 2d 860, 535 U.S. 625, 122 S. Ct. 1781 (2002).

A review of the April 5, 2013, Order and Judgment, written by Judge Baldock further shows that the three judge appellate panel "[f]ailed" to engage in an Articial III inquiry during your Petitioner's direct criminal appeals review because the April 5, 2013, Order and Judgment, is [absent] of the words "[indict]ment" or "[j]urisdiction". Without the words "[indict]ment" or "[j]urisdiction" present anywhere throughout the April 5, 2013, Order and Judgment, how could the three judges panel actually know what crimes your Petitioner was actually indicted by a federal Grand Jury for violating? Regardless of what your Petitioner was found guilty in the Kansas District Court for violating.

The "[a]bsence" of the words "[indict]ment" or "[j]urisdiction" spelled anywhere throughout the April 5, 2013, Order and Judgment, is a clear indication that the three judges appellate panel "exceeded" its authority on appeal by determining the merits of claims raised by your Petitioner's appellate counsel in his

opening brief, before the appellate panel [first] engaged in an Articial III [j]urisdictional inquiry concerning the lower Kansas District Court's criminal statutory [j]urisdiction in your Petitioner's criminal case. See (Exhibits A).

This United States Supreme Court held in Steel Co., that "the requirement that [j]urisdiction be established as a [thres]hold matter 'springs from the nature and limits of the judicial power of the United States' and 'is inflexible and without exception'." The court further held that "[on] every writ of error or appeal, the first and [f]undamental question is that of [j]urisdiction. Jurisdiction of the reviewing court's and then the court's from which the record comes from. The reviewing court is [bound] to ask and answer for itself, its Articial III [j]urisdiction even when not otherwise suggested, and without respect to the relation of the parties to it." See Steel Co. v. Citizens For Better Env., 523 U.S. 83, 140 L. Ed 2d 210, 118 S. Ct. 1003 (1998); also see Mansfield, C. & L. M. R. Co. v. Swan, 111 U.S. 379, 382, 28 L. Ed 462, 4 S. Ct. 510 (1884); also accord Capron v. Van Noorden, 2 Cranch 126, 2 L. Ed 229 (1804).

In accordance with these authorities and the requirement that [j]urisdiction be established as a "[thres]hold" matter, and this analysis is 'inflexible and without exception', on every writ of error or appeal, your Petitioner argues that Judge Baldock's April 5, 2013, Order and Judgment, is "tentative" and therefore, amounts to nothing more than an "hypothetical judgment"- which is the same thing as an "advisory opinion" because the panel simply "hypothesized" the Kansas District Court's stautory [j]urisdiction

based on the facts the court outlined in its "Procedural Posture" section in the April 5, 2013, Order and Judgment. See (Exhibits A).

Your Petitioner's direct criminal appeals review has now been an unresolved matter for the last 7½ years, due to the panel's handling over your Petitioner's appeals proceedings.

Your Petitioner further argues that this United States Supreme Court should find or conclude that he has provided enough "overwhelming" evidence attached hereto as "Exhibits B & C", for this court to agree with your Petitioner that his case presents an "[except]ional circumstance" and "[extraor]dinary" cause for this United States Supreme Court to exercise its statutory "supervisory" appellate power pursuant to 28 U.S.C. § 1651(a) under the "All Writs Act".

This is so, because, there can be no doubt that both the Tenth Circuit Court of Appeals and the Kansas District Court's Artificial III [j]urisdictional limitations is a [probl]em in your Petitioner's criminal case in accordance with Judge J. Thomas Marten's, November 28, 2011, "[dis]missal Order", attached hereto as Exhibits "C".

Likewise, Judge Baldock's April 5, 2013, Order and Judgment, currently being challenged presents an "[ex]traordinary" matter for this court's supervisory appellate power pursuant to 28 U.S.C. § 1651(a) under the "All Writs Act" because the Order and Judgment is "tentative" (i.e., its fails to [f]irst show the court of review [j]urisdiction) and therefore, your Petitioner's direct appeals proceedings remains unresolved.

The principles and usages of law, warrant, that a Writ of [M]andamus and/or [P]rohibition shall issue- (1). where the cause

does not originally belong to the inferior court; and (2). where the collateral matter arising from the cause is not within the [j]urisdiction of the inferior court. See Marbury v. Madison, 1 Cranch 137, 173-180, 2 L Ed 60, 72-74.

Ruling wrongly that a specified case is within some general subject of its jurisdiction, a court commits error. Attempting to exercise jurisdiction over some subject matter when it has none, the inferior court [usurps] power. While the error must be corrected by appeal; the "[usurpation]" may be prevented by a Writ of Prohibition. For a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no lawful [j]urisdiction to do so is, by very definition, for a court to act "[ultra] vires." See Steel Co., supra, 118 S. Ct. 1003 (1998).

Since the Articial III [j]urisdiction question is always an antecedent question that must be resolved separately and at the outset of every appeal, from the merits of the controversy, there can be no doubt that Judge Baldock's April 5, 2013, Order and Judgment, is [v]oid. The three judges appellate panel whom affirmed the Kansas District Court's April 17, 2012, criminal judgment of conviction against your Petitioner was [oblig]ated, as a matter of the case and controversy for review before the court, to inspect the proceedings of the Kansas District Court's in order to verify the lower court's Articial III [j]urisdictional limits.

The Articial III [j]urisdictional question is not a [dis]cretionary matter for which the three judges appellate panel could simply disregard in favor of proceeding to determining the merits of the questions presented on appeal.

Your Petitioner argues that since the April 5, 2013, Order and Judgment, currently being challenged, is an "[usur]pation" of judicial power because the three judges appellate panel [f]ailed to inquiry into the Kansas District Court's Articial III [j]urisdic[t]ion, before, the panel determined the questions presented for review on the [m]erits and terminated your Petitioner's direct appeals review against him, Judge Baldock's April 5, 2013, Order and Judgment, frustrates this United States Supreme Court's [certiorari] [j]urisdiction pursuant to 28 U.S.C. § 1254(1) to review, on the merits, any of the claims raised by your Petitioner's trial/appellate counsel in his opening appellate's brief, thus the April 5, 2013, Order and Judgment, offends [f]undamental principles of the "[sep]aration of powers" doctrine. See Steel Co., supra, 523 U.S. 83, 118 S. Ct. 1003 (1998).

Judge Baldock's April 5, 2013, Order and Judgment, is not just simply a case of a "[r]eversible error" which can be corrected by way of [certiorari] review, it is an "[usur]pation" of judicial power which may be corrected by way of these extraordinary writs. See Ex parte, Commonwealth of Virginia, 25 L. ed 677, 100 U.S. 313 (1880); also see Ex parte Bain, 121 U.S. 1, 30 L. ed 849, 7 S. Ct. 781 (1887).

Lastly, your Petitioner argues that because both the Tenth Circuit Court of Appeals and the Kansas District Court's, April 5, 2013, and April 17, 2012, Orders and Judgments, are "[v]oid" and an absolute "[null]ity" for want of an [in]dictment in the Kansas District Court, in your Petitioner's criminal matter at issue, in light of Judge J. Thomas Marten's November 28, 2011, [Or]der of "Dismissal" (see Exhibits C), this United States

Supreme Court supervisory appellate powers pursuant-to 28 U.S.C. § 1651(a) under the "All Writs Act" would be in aid of this Court's [j]urisdiction to revise or correct both lower court's authority to issue the judgments they have in your Petitioner's criminal cause; Rogers v. United States, et al., 6:10-CR-10186-JTM-01. See The Alicia, 19 L.Ed 84, 7 Wall 571 (1869).

Your Petitioner argues that his questions and concerns about the [j]urisdictions of both lower court's Orders and Judgments, in his criminal case, is properly a [suff]icient case to be resolved by this United States Supreme Court during this current proceedings, in order to confine both the Tenth Circuit Court of Appeals and the Kansas District Court, to a lawful exercise of their prescribed judicial [j]urisdictions. See 28 U.S.C. § 1651(a); also see Marbury v. Madison, supra, 1 Cranch 137.

#### PRAYER FOR RELIEF

It is now [prayed] for by your Petitioner that this United States Supreme Court: ""[command]" Judge Bobby R. Baldock, a Circuit Court judge in the Tenth Circuit Court of Appeals, to [re]tain [j]urisdiction of your Petitioner's direct criminal appeals review proceedings pursuant-to 28 U.S.C. § 1291, and to [first] properly ask and answer the Articial III [j]urisdictional question, which every appellate court has a special [ob]ligation to satisfy itself of, even when not raised or otherwise ready to be concede by a party on appeal, of the Kansas District Court's criminal statutory [j]urisdiction in your Petitioner's criminal case. "

Alternatively, your Petitioner [prays] this United States



Supreme Court will take action in this proceedings, and upon, the record of the proceeding that took place in the Kansas District Court, attached hereto as Exhibits "B", and upon the "[dis]missal" [O]rder, of the Kansas District Court's entered on November 28, 2011, "[ter]minating" your Petitioner's criminal case no. 6:10-CR-10186-JWB-01, at the AUSA's request via, a November 28, 2011, "[Mo]tion to [D]ismiss" (Exhibits C), "[command]" Judge Baldock to [vacate] the April 5, 2013, Order and Judgment, "affirming" the Kansas District Court's April 17, 2012, criminal judgment of conviction, and [r]everse, the April 17, 2012, criminal judgment of conviction, for "[want] of an [in]dictment" or Articial III statutory [j]urisdiction in accordance with the November 28, 2011, [dis]missal Order, and Judge Baldock must order your Petitioner to be released from his unlawful and illegal imprisonment."

RESPECTFULLY PRAYED FOR,

"I CAN'T BREATHE",

Raymond L. Rogers

RAYMOND L. ROGERS, Pro se.

**§1746 UNSWORN DECLARATIONS UNDER PENALTY OF PERJURY**

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on November 4, 2020

Signature,

Raymond L. Rogers

RAYMOND L. ROGERS, Pro se

# **EXHIBIT**