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IN THE SUPREME COURT OF THE UNITED STATES

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CHARLES FRANCIS HURT

VS.

UNITED STATES OF AMERICA

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ON PETITION FOR RULE 44 REHEARING TO  
SUPREME COURT OF THE UNITED STATES

CASE 21-6032

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PETITION FOR REHEARING

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CHARLES FRANCIS HURT REG#89763-379 *rose*  
FORT WORTH FEDERAL MEDICAL CENTER ("FMC")

P.O. BOX 15330

FORT WORTH TEXAS 76119

[MESSAGE NUMBER #951-733-4971]

[DURABLE POWER OF ATTORNEY - LOUISE HURT]

**ORIGINAL**

QUESTION OF EXTRAORDINARY NATIONAL CONCERN TO  
PRO SE PRISONER LITIGANTS CONSTITUTIONAL RIGHT TO DUE PROCESS

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IF Recharacterization of pro se prisoner litigant's Petition by the Courts,  
[As seen in Castro v. United States , 540 U.S. 375, 124 SCT786, 157 LED2D 778]  
is a VIOLATION of litigant's Constitutional Right to DUE PROCESS to a "FAIR HEARING  
or TRIAL";

THEN, Why wouldn't Recharacterization of any pro se prisoner litigant's  
petition or claims by the Courts not also VIOLATE litigant's Constitutional Right  
to DUE PROCESS to a "FAIR HEARING or TRIAL"?

STATEMENT OF GROUNDS

Lower Appellate Court violated pro se prisoner litigant's  
DUE Process "FAIR HEARING" Clause by intentional Recharacterization  
of "litigant's choice of procedural Vehicle" to override  
the Substantive Rule and Controlling effect of the  
litigation Presented before the Court. Castro Supra.

Either this Court Holds Due Process "FAIR HEARING"  
Clause for ALL Pro Se Prisoner litigant's litigations.  
Or NONE AT ALL , Showing Then the prejudice  
OF the Courts NOT Protecting the Pro Se Prisoner  
Litigants Constitutional SUBSTANTIVE RIGHT  
of DUE PROCESS "FAIR HEARING" Clause.

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## **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:

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United States Court of Appeals for the Fifth Circuit

No. 21-40171

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CERTIFICATE OF COMPLIANCE  
FOR RULE 44 CERTIFICATE OF GROUNDS

I the undersigned do hereby certify under the  
penalty of perjury 28 USCS §1746 First Class Postage  
Pre Paid and Affixed, that this petition grounds  
are limited to intervening circumstances  
& Substantially or controlling effect of the  
lower court intervention ("Recharacterization")  
of "litigant's choice & procedural vehicle" [See Castro v. United States, 540 US 375] to violate this  
pro se prisoner litigant's Due Process "FAIR HEARING"  
clause; AS TRUE AND CORRECT; AND NOT PREVIOUSLY  
PRESENTED BEFORE THIS COURT.

That this petition for rehearing is presented  
in good faith and not for delay.

This CERTIFICATE HAS BEEN EXECUTED AND SENT VIA  
US POSTAL SYSTEM BY WAY OF THE INMATE MAIL SYSTEM  
FIRST CLASS POSTAGE PREPAID AND AFFIXED; FROM FORT WORTH FEDERAL  
MEDICAL CENTER ("FMC") PO BOX 15330, FORT WORTH TEXAS 76119  
CERTIFIED MAIL RECEIPT 7020 1810 0000 1243 5561

TO THE OFFICE OF THE CLERK FOR THE SUPREME COURT OF THE  
UNITED STATES, AND A TRUE AND CORRECT COPY HAS  
BEEN SENT FOR RULE 29 TO THE SOLICITOR GENERAL  
OF THE UNITED STATES, ROOM S-614, DEPARTMENT OF JUSTICE,  
950 PENNSYLVANIA AVE. NW. WASHINGTON DC 20530

CERTIFIED MAIL RECEIPT 7020 1810 0000 1243 5578

Executed on 5th December, 2022

*RP* *SM* *2022*  
Hurt, Jr.; Charles - ~~Elizaveta~~  
# 89763379 PROSE.

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IN THE SUPREME COURT OF THE UNITED STATES

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CHARLES FRANCIS HURT

VS.

UNITED STATES OF AMERICA

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ON PETITION FOR RULE 44 REHEARING TO

SUPREME COURT OF THE UNITED STATES

CASE 21-6032

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PETITION FOR REHEARING

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Comes before the Honorable Courts, under the Jurisdictional Authority of  
TITLE 28 U.S.C.S. §1254(1) Invoked for the Petition for Rehearing.

The Supreme Court states "We have a rule for rehearing, Rule 44, but it provides  
only for petitions filed within 25 days of the entry of the judgement in question."

Agostino v. Felton 521 US 203, 117 SCT 1997, 138 LED2D 391(1997) cf Reid v. Covert  
354 US 1, 77 SCT 1222, 1 LED2D 1148 (1956) Showing subsequently the Supreme Court  
GRANTED a Petition for Rehearing .

Petition has been filed timely within 25 Days under the Mail-box Rule Established  
by Houston v. Lack, 487 US 266

BACKGROUND:

On February 11, 2021 Petitioner forwarded a handwritten "Writ of Error for Want of Jurisdiction" to his Durable power of attorney [Due to the COVID QUARANTINE] and was received on March 2, 2021 and forwarded the same day to the United States Circuit Court of Appeals for the Fifth Circuit. [Appendix A]

On March 15, 2021 the Court of Appeals Received and placed into the Docket the "WRIT OF ERROR" Docket #21-40171. [Appendix B]

Court of Appeals sent a 3 page notice stating "We have docketed your petition for writ of mandamus"....[Appendix B]

On April 1, 2021 a Typed and Corrected NOTICE to the Court of Appeals as to the "Writ of Error for Want of Jurisdiction" Correction along with Petition 19 pages. [Appendix C]

On July 15, 2021 the Court of Appeals placed "The petition for a writ of mandamus is Denied." [Appendix D]

On July 23, 2021 Petition's Petition for rehearing was sent to the Court of Appeals for the "Writ of Error for Want of Jurisdiction" [Appendix E]

On August 3, 2021 Letter of Notice - Petition for rehearing accepted. [Appendix F]

On August 25, 2021 Memorandum "the petition for rehearing en banc is DENIED." [Appendix G]

On September 1, 2021 and Received September 8, 2021 by the Supreme Court a "Writ of Certiorari" was placed before the Court Clerk. And September 28, 2021 a letter from Clayton R. Higgins, Jr. returning papers for corrections. [Appendix H]

On October 4, 2021 a returned Copy of corrected "Writ of Certiorari" was sent to the Clerk, Clayton R. Higgins Jr. [Appendix I]

On November 1, 2021 The United States Solicitor General provided a Government Waiver for right to file a response; No. 21-6032 Showing the Petitioner's Respondant

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as US DISTRICT COURT OF APPEALS FOR THE SOUTHERN DISTRICT OF TEXAS. [Appendix J]

On December 6, 2021 Scott S. Harris, Clerk Sent a Notice as to Re:Charles Francis Hurt v. United States District Court for the Southern District of Texas No. 21-6032. [Appendix K]

**STATEMENT OF THE CASE:**

**REHEARING ISSUE PRESENTED:**

The Courts overlooked an issue of Exceptional Importance to the Criminal Justice System where the Courts Recharacterization of litigant's pleading VIOLATES the DUE PROCESS "FAIR HEARING" also as "FAIR TRIAL" Clause; when the Court's deliberately overridden the Pro Se litigants choice of personal vehicle for his claim or pleading of litigation that was sought.

**INTRODUCTION:**

The change of Recharacterization to any petitions of pro se litigants by the Courts as a substantive rule would substantially impact the Criminal Justice System just as Johnson as example has upended many statutes; Seen in Bordon v. United States, US , 210 LED2D 63.

In Montgomery v. Louisiana, 577 US 190, 136 SCT718, 193LED2D 599, The Court's has used Miller v. Alabama, 567 US 460, 132 SCT2455, 183LED2D 407 to explain Substantial Rule; but also in explaining the nexus used in Ex Parte Siebold, 100 US 371, 25 LED 717(1880) between the "Writ of Error" for "Want of Jurisdiction" could show a violation of a substantive rule; though when the Courts use a Recahracterization as they have done in this case, to alter the Pro Se prisoner's petition or claim for litigation; Does such violation not provide the same due process violation to a "Fair Hearing" as explained in Castro v. United States 540 US 375, 124SCT786, 157LED2D778?

Castro only limits such recharacterization to pro se prisoners on §2255. For this reason the Court's must look at this Petition for Rehearing. That all petitions and claims of a pro se prisoner litigant are to be provided the same protection as provided in Castro for all Courts Recharacterizations. Then a Substantive Rule would protect the Constitutional Rights to all Pro Se litigants for the Due Process of a "Fair Hearing" & "Fair Trial".

#### COURT'S USE OF CASTRO

With the use of Scalia, J. concurrence in Castro as to Haines v. Kerner, 404 US 519, 92 S.Ct. 594, 30 LEd.2d 652(1972) That a pro se litigant's complaint are to be held "to a less stringent standard than a formal pleading drafted by lawyers." so not to violate Due Process. The Court's have within the Circuits held and overriden the Stare Decisis of Scalia, J. use of "Less stringent standard".

The Court's have split between the pro se litigant availability of Erickson v. Pardus 551 US 89, 94 127 S.Ct 2197, 167 L.Ed.2d 652(2007) and Justice Scalia, J. use of Haines v. Kerner, Supra., as to actually protecting pro se litigants from recharacterization from a Due Process violation as shown in Castro, Supra.

So first the Court must compare the split, just as the following examples provide; FIRST: Erickson v. Pardus; SECOND Haines v. Kerner.

#### - LOOKING AT ERICKSON v. PARDUS -

Although the 5th Circuit while stating as to ..."Appeals Pro Se 'a document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers' Erickson v. Pardus, 551 US 89, 94. 127 S.Ct.2197, 167 L.Ed.2d 1081(2007) (per curiam)(internal marks and citation omitted) 'Although we liberally construe the briefs of Pro Se Appellants, we also require that arguments must be briefed to be preserved.' Yohey v. Collins, 985 F.2d 222,225(5th Cir.1993)(citations ommitted.)"

Bourne v. Gunnels, 921 F.3d 484 April 16, 2019 (CA5 2019)

COMPARED TO THE 6th Circuit:

"While the Court has an obligation to generously construe a pro se complaint, Erickson v. Pardus, 551 US 89, 94, 127 S. Ct. 2197, 167 L.Ed.2d 1081(2007) It is not required to conjure up claims that are not squarely presented.' Wells v. Brown 891 F.2d 591,594(6th Cir. 1989); Beaudett v. City of Hampton, 775 F. 2d 1274,1278 (4th Cir. 1985)" Seen in Adkins v. Southern Health Partners, 2021 US Dist LEXIS 95094 May 18, 2021 (6th Cir. 2021)

THEN 4th Circuit:

"A document filed pro se is to be liberally construed. Erickson v. Pardus, 551 US 89, 94, 127 S.Ct. 2197 167 L.Ed.2d 1081(2007) However, this solicitude does not transfer the district court into an advocate for the pro se litigant. United States v. Wilson, 699 F. 3d. 789 797(4th Cir. 2012)" Jeong v. Cabrera, 799 Fed. Appx. 185, March 25, 202 (CA4 2020)

LAST 7th Circuit:

"However a trial court is obligated to give a liberal construction to a pro se plaintiffs filing, Nichols v. Mich. City Plant Planning Dep't, 755 F. 3d 594,600 (7th Cir. 2014)(citing Erickson v. Pardus, 551 US 89, 94 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007)) Both of these considerations must be weighed by the district court in its final determination as to whether an argument has been preserved." Eagan v. Dempsey 987 F. 3d 667, Fed. 9, 2021(CA7 2021)

RESULTS:

That 2 Circuit Appeals Courts in agreement with the Supreme Court (6th and 7th) and 2 (4th and 5th) who conflict against the Supreme Court stare decisis

of Erickson v. Pardus, Supra.

- LOOKING AT HAINES v. KERNER -

As cited by Scalia, J.

5th Circuit:

"We liberally construe arguments in a pro se brief, Haines v. Kerner, 404 US 519, 92 S. Ct. 594, 30 L.Ed.2d 652(1972), But we still require pro se parties to brief their arguments adequately. Grant v. Cueállar, 59 E.3d 523, 524(5th Cir.1995)"  
Bangmon v. Alexander 2021 US APP.LEXIS 23383 August 21, 2021 (CA5 2021)

6th Circuit:

"Because pro se plaintiffs are not trained in legal technicalities, we generally read pro se complaints liberally. Wells.v. Brown 891 F. 2d 591 594(6th Cir. 1989)  
(Citing Haines v. Kerner, 404 US 519, 520-21, 92 S.Ct. 594, 30 LEd.2d 652(1972)  
(per curiam)) True, we caution district courts not to over correct so as to "Conjure Up" unpled allegations. Id (citations omitted)" Lumbard v. Lillywhite 815 Fed. Appx. 826, May 21, 2020(CA6 2020)

AND 2nd Circuit:

"To give such 'Extra leeway', courts are, for example to construe a pro se litigant's pleadings and motions liberally, see Haines v. Kerner, 404 US 519, 520, 92 S. Ct. 594, 30 L.Ed.2d 562(1972), amendments to a pro se litigant's pleadings are more freely, See Holmes v. Goldin, 615 F 2d 83, 85(2nd Cir. 1980); courts should not allow a pro se litigants rights to be impaired by harsh application of technical Rules. Traguth v. Zuck, 710 F.Ed 90,95(2nd Cir. 1983) " Sims v. Blot, 543 F. 3d 117 July 18, 2008(CA2 2008)

LAST 9th Circuit:

"It is entrenched principle that pro se filings 'however inartfully pleaded' are held to less stringent standards than formal pleading drafted by lawyers.' Hughes v. Rowe, 449 US 5, 9, 101 S. Ct. 173, 66 L.Ed. 2d 163(1980)(Per curiam) (quoting Haines v. Kerner, 404 US 519, 520, 92 S.Ct. 594 30 L.Ed.2d 652(1972)); Hamilton v. United States, 67 F. 3d 761,764(9th Cir. 1995) We are specifically directed to construe pro se pleadings liberally.' Hamilton, 67 F. 3d at 764. The duty applies equally to pro se inmates. See e.g. Thomas v. Ponder, 611 F.3d 1144,1150(9th Cir. 2010); Zichko v. Idaho, 247 F. 3d 1015,1020(9th Cir. 2001)" United States v. Qazi, 975 F.3d 989 May 11,202(CA9, 2020)

RESULTS:

In this comparison of 4 circuits this time it is 3 circuits in compliance to the jurisprudence and stare decisis of Haines v. Kerner that Judge Scalia, J. cited. (2nd, 6th, 9th)

And only one who prefers to override the Supreme Court stare decisis with a 5th Circuit Precedence, and that is the 5th Circuit.

SCORE:

<u>FOR</u>	<u>AGAINST</u>	
2	2	<u>Erickson v. Pardus</u>
3	1	<u>Haines v. Kerner</u>

Showing that neither comparison the 5th Circuit agrees with Scalia, J. in his Concurrence in Castro v. United States, Supra.

- SO CASTRO IS NOW IN COMPARISON -

RECHARACTERIZATION

In 5th Circuit Court of Appeals

Ortiz-Lopez v. Fed. Bureau of Prisons, 830 Fed. Appx. 127, October 6, 2020

"Ortiz principally challenges the recharacterization of his complaint..."

The Court uses "Hernandez v. Thaler, 630 F.3d 420,426-27(5th Circuit 2011)

(per curiam)('It is the substance of the relief sought by the pro se pleading not the label that the petitioner attached to it, that determines the true nature and operative effect of a Habeas filing...') See also Solson v. Warden FCI 821 821 F.2d 1129,1132 n.1(5th Cir. 1987)(same)"

The Courts seems to find more precedence with their own precedence than the Stare Decisis of the Supreme Court, using Hopes v. Davis, 761 F. App'x 307,310 (5th Cir. 2019) ("[A]lthough this district court failed to comply with Castro when recasting his petition. Hopes can litigate any Castro error...if he later sees fit to file another habeas corpus petition." United States v. Marcon, 177 F. App'x 382, 383(5th Cir. 2006)(per curiam)("[R]echaracterization without warning is not reversible error.")

\*\*\* Why is recharacterization in Castro IGNORED in all other proceedings by the Fifth Circuit?

\*\*\* And whether it be the title or content or both, does a pro se prisoner not have the same rights as a trained in the art of law, Lawyer?

The Exceptional Importance of the Pro Se Prisoner held in the Criminal Justice System, without finance or means to obtain professional legal counsel to fight the wrong recharacterization to any petition before the Court and not just the §2255; seems to be the CRUX of DUE PROCESS VIOLATION of a Constitutional

"Fair Hearing" or "Fair Trial" that a Court recharacterization prevents.

"It is Elementary that 'a fair trial in a fair tribunal is a basic requirement of Due Process'" Weiss v. United States, 510 US 163

Seen in Inre:Murchison, 349 US 133

The Question before the courts stems from the deliberate recharacterization of Petitioner's as a "litigant's choice of procedural vehicle." Castro, Supra. The use of the All Writs Act - "Which provides, in 28 U.S.C. §1651(a), that Federal Courts may issue ALL WRITS Necessary of appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law where another federal statute specifically addresses the particular issue at hand, it is that Authority not the All Writs Act, that is controlling." Syngenta Crop Protection v. Henson, 537 US 28, 123 SCT366, 154 LED2D 368 "As Siebold stated, it was forbidden to use the Federal Habeas Writ 'as a mere writ of error'. 100 US, at 375,25 L.ed 717. "The only ground which this court, or any court, without some special statute authorizing it [could] give relief on Habeas Corpus to a prisoner under conviction and sentence of another court is the Want of Jurisdiction in such court over the person or the cause, or some other matter rendering its proceedings VOID."

Montgomery v. Louisiana, Supra.

AS SEEN IN, Louie v. United States, 254 US 548, 65 LED399, ..."the writ of error for want of jurisdiction on the ground that, since the sole question presented was whether the district court had jurisdiction, its decision could be reviewed only by direct Writ of Error from this court to the district court." See United States v. Jahn, 155 US 109, 114,115,39 L.Ed, 87,90,15 Sup.Ct. Rep 39; Compared Raton Waterworks Co. v. Raton, 249 US 552, 63 L.Ed. 768,39 Sup. Ct. Rep 384"

"The requirement that the question of jurisdiction alone should be certificate

for decision." Jahn, Supra.

\*\*\* An Appellate Court is the correct Court to review such "Writ of Error" on Petition by the Pro Se Prisoner litigant.

Though a "Patronized litigant [may] be harmed rather than assisted by the Courts intrevention." Hopes v. Davis, Supra. [which was the case here]

So when the Appellate Court Recharacterized litigants "Writ of Error for Want of Jurisdiction" Louie, Supra. FOR A "writ of Mandamus"; the court must place any action to "FIRST DO NO HARM"... Manuell v. City of Joliet, US , 197LED2D  
ALSO SEEN IN Castro Supra, Scalia, J. concurence.

So to determine whether Appellate Court and the Supreme Court first had regard to the "Exceptional Nature of Recharacterization" Castro Supra. WHETHER A "Writ of Error" is the same as a "Writ of Mandamus".

BLACKS LAW DICTIONARY - THIRD POCKET ED.

MANDAMUS: "A Writ issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly."

WRIT OF ERROR: "A Writ issued by an Appellate court to deliver the record in the case for review."

DUE PROCESS: "The conduct of legal proceeding according to established rules and principles for the protection and enforcement of Private Rights, including notice and the Right to a "FAIR HEARING" before a tribunal with power to decide the case."

\*\*\*QUESTION\*\*\* So was "Due Process" PROVIDED BY RECHARACTERIZATION OF THE Appelate Court to give a pro se prisoner litigant a "FAIR HEARING"?

AS SEEN IN Rose v. Lundy, 455 US 509, 102 SCT1198, 71 LED2D379 It was the "Writ of error that enabled a higher court to correct errors committed by a nisi prius tribunal in the trial of Civil or Criminal Case by ordering further proceedings whenever trial error was detected."

Showing that the only court that could re-examine a lower courts jurisdiction on a "Writ of Error, if one were authorized" would be the Supreme Court. Ex Parte Snow, 120 US 274, 30 LED 658 And "The record in a criminal case is binding upon the ...court in which an original proceeding by way of Writ of Error is instituted to test the validity of a sentence of imprisonment following a plea of guilty, and therefore also conclusive upon the Supreme Court of the United States on Review." Foster v. Illinois, 322 US 134

So did the Appellate courts deliberate Recharacterization of this Pro Se Prisoner litigant's Writ of Error petition to a Writ of Mandamus provide litigant to be "Deprived of rights essential to a FAIR HEARING under the Federal Constitution."? DeMeerleer v. Michigan, 329 US 663

JUSTICE GRAY, in ExParte Sawyer, 124 US 200, 31 LED 402 STATED: "If a person... denied any right secured to him by the Constitution of the United States he can obtain relief by a 'WRIT OF ERROR' from this Court...."

"Where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise its judgment, until reversed, is regarding as binding in every other court. But if it act without authority, its judgments and orders are regarded nullities, they are not voidable, but simpley VOID."

SECOND ISSUE FOR REHEARING:

"A Fair Trial, as required by Due Process, requires not only an absence of Actual Bias on the part of the judge, but also that no one man be a judge in his own case to try cases where he has an interest in the outcome." Re: Murchinson,

Supra

At the point of which the Appellate Court Denied the litigant's Petition for Writ of Error as a Writ of Mandamus; and then denied the rehearing en banc August 25, 2021, then they denied litigant's due process to a FAIR HEARING.

[See Appendix G]

This Pro Se Prisoner litigant placed timely a petition for a Writ of Certiorari postmarked September 1, 2021 and Received September 8, 2021 by the clerk of the court for the Supreme Court for the United States, Clayton R. Higgins, Jr., Clerk; who returned as need requirement fulfillment. [See Appendix H]

On October 1st, 2021 litigant received such returned notice and correctly resubmitted all corrected and Notarized required documentation, and the Petition for Writ of Certiorari was placed as:

Hurt,Jr.:Charles-Francis, Petitioner,

vs.

United States of America, Respondant

[See Appendix I]

On November 5th, 2021, litigant received from Respondant's Counsel-Solicitor General, Elizabeth B. Prelogar (Without Signature) A waiver for No.21-6032 placed as:

HURT, CHARLES FRANCIS  
Petitioner,  
vs.

US DISTRICT COURT OF APPEALS FOR THE SOUTHERN DISTRICT OF TEXAS  
Respondant.

[See Appendix J]

On December 10, 2021, litigant received a Order from the Supreme Court of the United States, Office of the Clerk, Scott S. Harris, Clerk; Dated December 6, 2021 AS TO "The petition for a writ of certiorari is denied." Reported AS:

Re:Charles Francis Hurt  
v. United States District Court for the Southern  
District of Texas No.21-6032

[See Appendix K]

The Court must ask firmly as to whom of the three (3) parties that are listed as respondents was the litigant's petition placed against.

"It is not the job of a Federal Court to create a 'Better Correspondence' between the substance of a claim and its underlying procedural basis." Castro, Supra.

Justice Scalia,J. in concurrence, also say "The party who brings a suit is master to decide what law he will rely upon." Castro,Supra.

Does this not also hold true as to whom the party brings the litigation against as well? Was DUE PROCESS of a FAIR TRIAL or FAIR HEARING provided by the recharacterization made by the Federal Court?

The Only Example of this kind of recharacterization of the respondents would be:

\*\*\* A man brings before the Court a litigation for divorce to be placed against the man's wife as the respondent.

The Mans wife as respondent, waives response stating the litigation is against the Mother-in Law.

The Court denies Man's Petition for divorce brought against the dog.

As absurd of example this is, it is exact in the courts recharacterization of the litigant's respondent placed on the petition.

So the Court in Castro placed recharacterization as violation of a Fair Trial and Castro's Due Process, for his petition before the Court; and would the court's jurisprudence and stare decisis not hold true for all recharacterization against pro se prisoner litigant's whom are to be held "to less stringent standard than formal pleadings drafted by lawyers"? Haines v. Kerner, Supra.

ARGUMENT:

IF Castro hold that Recharacterization violates the "DUE PROCESS" of a "FAIR TRIAL";

AND A Federal Court Recharacterizes a pro se prisoner litigant's petition; THEN the Court's Recharacterization is a clear VIOLATION of DUE PROCESS to a FAIR TRIAL of this Pro Se Prisoner litigant's petition; Requiring Correction be made.

SO AS TO RECHARACTERIZATION BY the Courts, shown by Castro, Supra, of a Pro Se Prisoner litigants litigation, CREATES A Constitutional violation of their Substantive Right To Due Process "FAIR HEARING" clause; IF this Court were to Fail to GRANT THIS Petition for Rehearing; Then the Court would be making a clear Statement as To the prejudice Against the Pro Se Prisoner litigant's Constitutional Substantive Right To Due Process.

BS:

SM:Severance/2

## CONCLUSION

The petition for a Rule 44 REHEARING should be granted.

Respectfully submitted,

CERTIFIED MAIL RECEIPT:

# 7020 1810 0000 1243 5424

BS,  
CHARLES FRANCIS SCHURT, Pro Se

Date: 17M December 2021.

DeJure County of Tarrant  
DeJure State of Texas

Tevin Broussard  
NAME OF NOTARY

June 3, 2025  
Date of Expiration

Notary Signature

Sec 1

