

No. 21-7125 ORIGINAL

In the Supreme Court of the United States

William F. Kaetz — Petitioner

vs.

United States of America — Respondent

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SUPREME COURT, U.S.

On Petition for A Writ of Certiorari To
To the United States Court of Appeals
for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Federal rules of civil procedure Rule 60 and a Writ of Coram Nobis both can be used to set aside a judgment, one is for civil cases, and one is for criminal cases. If a petitioner seeks to set aside a judgment to correct a miscarriage of justice and the evidence indisputably proves a miscarriage of justice caused by fraud on the court, would it be the lower courts' duty and obligation to correct a miscarriage of justice regardless of a harmless error of mixing the two procedures?
2. Does fraud on the court principles, as in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238,248 (1944), a civil case, apply to criminal cases and count as a fundamental error and a miscarriage of justice for grounds for a Writ of Coram Nobis?
3. Did the U.S. Attorney commit fraud on the court in the appeals court by using documents that was a product of a fraud on the court in the district court in a motion for summary affirmance to dismiss an appeal?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	2
LIST OF PARTIES	3
OPINIONS BELOW	5
JURISDICTION.....	5
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	6
STATEMENT OF THE CASE.....	7
A QUICK FRAUD ON THE COURT AND WRIT OF CORAM NOBIS ANALYSIS ..	9
Coram Nobis is the proper remedy.....	12
REASONS FOR GRANTING THE PETITION	14
This Area of the Law Is Badly in Need of The Supreme Court's Authoritative Voice	15
This Case is Likely to Produce an Opinion That Will Give Useful Guidance to the Lower Courts	16
There Would Be a Negative National Impact by this Court by Letting the Lower Court's Decision Stand	17
CONCLUSION.....	17
PROOF OF SERVICE	18

INDEX TO APPENDIX

United States Court of Appeals order	pa1
United States District Court order	pa2
United States Court of Appeals rehearing order.....	pa3
United States Supreme Court order granting extension of time	pa4 to pa5

TABLE OF AUTHORITIES CITED

Cases

<i>Bruno v. United States</i> , 474 F. 2d 1261 (8th Cir. 1973).....	13
<i>Byrnes v. United States</i> , 408 F. 2d 599, (9th Cir. 1969)	13
<i>Correa - Negron v. United States</i> , 473 F. 2d 684 (5th Cir. 1973)	12
<i>Davis v. United States</i> , 417 U.S. 333, 346 – 47 94 S. Ct. 2298 (1974).....	13
<i>Gamble v. United States</i> , 139 S. Ct. 1960 (U.S. June 17, 2019).....	15
<i>H.K. Porter Co. v. Goodyear Tire & Rubber Co.</i> , 536 F.2d 1115, (6th Cir. 1976)	11
<i>Hazel-Atlas Glass Co. v. Hartford-Empire Co.</i> , 322 U.S. 238,248 (1944)	passim

<i>Herring v. United States</i> , 424 F.3d 384, 386-87 (3d Cir. 2005)	12
<i>Lockwood v. Bowles</i> , 46 F.R.D. 625,634 (D.D.C. 1969)	10
<i>Root Refining Co. v. Universal Oil Prods. Co.</i> , 169 F.2d 514, (3d Cir. 1948)	10, 14
<i>United States v. Justus</i> , 701 F. Supp 2d 806(W.D. Va. 2010)	13
<i>United States v. Norman</i> , 391 F. 2d 212, (5th Cir. 1968)	12
<i>United States v. Stoneman</i> , 870 F. 2d 102, 105 – 106 (3rd Cir. 1989)	12

CONSTITUTIONAL PROVISIONS

Art. II, § I, cl. 8	15
Art. VI, cl. 3	15
U.S. Constitution Amendment IX	7
U.S. Constitution Amendment V	6
U.S. Constitution Amendment VIII	6
U.S. Constitution Amendment XIV	7
United States Constitution Article VI	6

STATUTES

28 U. S. C. § 1254(1)	6
28 U.S. Code § 1651 – Writs	7

RULES

Federal rules of civil procedure Rule 60	2
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OTHER AUTHORITIES

Writ of Coram Nobis	2
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No. _____

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix pa1.

The opinion of the United States District Court appears at Appendix pa2.

JURISDICTION

The date on which the United States Court of Appeals decided my case was 5/27/2021. A copy of that order appears at Appendix pa1. The date on which the United States District Court decided my case was 6/01/2020. A copy of that order appears at Appendix pa2. A petition for rehearing was timely filed in my case. A

timely petition for rehearing was denied by the United States Court of Appeals on 9/14/2021. The order denying rehearing appears at Appendix pa3. An extension of time to file the petition for a writ of certiorari was granted and included 2/11/2022 on 11/29/2021 on Application No. 21A179. The order granting the extension appears at Appendix pa4 to pa5. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Article VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

U.S. Constitution Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Constitution Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

U.S. Constitution Amendment XIV

Section 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S. Code § 1651 – Writs

- (a)The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
- (b)An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

STATEMENT OF THE CASE

There was fraud on the court in the procurement of the criminal complaint against me Twenty Years Ago. I did the time, and the case is closed. Eighteen years later I tried to correct the fraud on the court and clear my record. The lower district court used technical issues to dismiss my action, and the appeals court used a motion for summary affirmance created by the U.S. Attorney that used court documents that were a product of the fraud on the court. The lower courts did not

address the fraud on the court and the U.S. Attorney did not dispute the fraud on the court.

Twenty years ago, a fraud perpetrated by the IRS was relied on by the Third District Court of the Eastern District of Pennsylvania. There was fraud on the court in the procurement of a criminal warrant and complaint. The gist of the case is that I petitioned the government and an IRS agent claimed it was a U.S. Postal Service crime, a threatening communication using the U.S. mail, and he had authority to investigate a U.S. Postal Service crime and he had authority to execute a warrant for my arrest (with someone else's name on it), the U.S. attorney went along with it. The result was me, the petitioner, taking a plea agreement in the case.

Over time and diligent research, new court cases developed, the fraud on the court was revealed. The IRS agent did not have authority to investigate a U.S. Postal Service crime and execute the warrant for arrest that was defective, it was a first amendment retaliation action by the government in violation of my 1st, 4th, 5th, 8th, 9th, and 14th amendment rights (to petition the government, self-protection, to be left alone, due process and equal protection of the laws, to be free from cruel and unusual punishment, and all other rights). The criminal case revolved around this fraud. The fraud on the court and other defects are undisputable. I filed in the lower courts seeking to be relieved of the twenty-year-old criminal case and expunge the case. The lower courts did not address the fraud on the court and the miscarriage of justice, instead, they dismissed my actions on technical issues and used case

information that was a product of the fraud on the court by the use of a motion for summary affirmance by the U.S. Attorney.

I first filed a Rule 60 motion, then asked the appeals court to convert it to a Writ of Error Coram Nobis because this concerns a criminal plea agreement case.

I believe courts have a duty and obligation to correct a miscarriage of justice regardless of a harmless error of mixing the two procedures to correct fraud on the court. Due process, evidence, and justice should have driven the case, but it did not.

As Justice Roberts stated in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238,248 (1944) at 322 U.S. 251, "no fraud is more odious than an attempt to subvert the administration of justice". There is no plausible explanation why a claim for fraud on the court cannot stand when the deception or misconduct occurs on the onset of a warrant and complaint based on perjury and issues that impedes the court from performing in the usual manner its impartial task of adjudging the case, like the fraud on the court in my case, the fraudulent assumption of the IRS's authority to investigate an U.S. Postal Service crime and the creation of a crime out of the exercise of one's rights.

A QUICK FRAUD ON THE COURT AND WRIT OF CORAM NOBIS ANALYSIS

This Court's Case of *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944) is important for a full understanding of the meaning of the phrase "fraud on the court". In an opinion authored by Justice Black, held that: [T]he general rule [is] that [federal courts will] not alter or set aside their judgments after the expiration of the term at which the judgments were finally entered... [but]. ...

[e]very element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments. This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury. Here, even if we consider nothing but Hartford's sworn admissions, we find a deliberately planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals." Id. at 245.

Nearly all the principles that govern a claim of fraud on the court come from the *Hazel-Atlas* case. First, the power to set aside a judgment exists in every court. Second, in whichever court the fraud was committed, that court should consider the matter. Third, while parties have the right to file a motion requesting the court to set aside a judgment procured by fraud, the court may also proceed on its own motion. Indeed, one court stated that the facts that had come to its attention "not only justify the inquiry but impose upon us the duty to make it, even if no party to the original cause should be willing to cooperate, to the end that the records of the court might be purged of fraud, if any should be found to exist." *Root Refining Co. v. Universal Oil Prods. Co.*, 169 F.2d 514, 521-23 (3d Cir. 1948) Fourth, unlike just about every other remedy or claim existing under the rules of civil procedure or common law, there is no time limit on setting aside a judgment obtained by fraud, nor can laches bar consideration of the matter. The logic is clear: "[T]he law favors discovery and correction of corruption of the judicial process even more than it requires an end to lawsuits." *Lockwood v. Bowles*, 46 F.R.D. 625,634 (D.D.C. 1969).

The Model Rules of Professional Conduct provide further guidance. Lawyers are professionally and ethically responsible for accuracy in their representations to the court. Rule 3.1 of the Model Rules of Professional Conduct states that lawyers "shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law." Model Rules of Prof'l Conduct R 3.1 (AM. BAR. ASS'N 2013) Similarly, Rule 3.3 provides that "[a] lawyer shall not knowingly ... make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Id. at 3.3(a).

In addition to the rules of professional conduct and an attorney's duty of candor as an officer of the court, Federal Rule 11 imposes a duty on attorneys to certify that they have conducted a reasonable inquiry and have determined that any papers filed with the court are well grounded in fact, legally tenable, and not interposed for any improper purpose.

An examination of the offender and his duties is important because violations of Federal Rule 11 or even the rules of professional conduct may give rise to a fraud-on-the-court claim, even if those violations were not specifically directed to the court itself. In other words, "[s]ince attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court." *H.K. Porter Co. v. Goodyear Tire & Rubber Co.*, 536 F.2d 1115, 1119 (6th Cir. 1976) In order to establish fraud on the court, some courts require the movant to prove by clear and convincing evidence

intentional fraudulent conduct specifically directed at the court itself. *Herring v. United States*, 424 F.3d 384, 386-87 (3d Cir. 2005).

A harsh approach is unreasonable, especially if courts consider the victim. This Court in *Hazel - Atlas* made it clear that the fraud-on-the-court rule should be characterized by flexibility and an ability to meet new situations demanding equitable intervention. Because of the equitable and flexible nature of the rule, this memorandum contends that courts have ample leeway and discretion to consider the victim's status - i.e., those parties unable to recognize or combat the fraud pre-judgment - in determining whether to set aside a judgment for fraud on the court, it should not matter if it was a civil or criminal case when it comes to fraud on the court.

Coram Nobis is the proper remedy

“Despite express abolition of Coram Nobis relief in federal civil actions, USCS Fed. Rules of Civil Procedure Rule 60 ... is still available with respect to criminal convictions under the All Writs statute 28 U.S.C. § 1651 (a).” *United States v. Norman*, 391 F. 2d 212, (5th Cir. 1968); *Correa - Negron v. United States*, 473 F. 2d 684 (5th Cir. 1973). I asked the lower courts to convert my Rule 60 motion to a Writ for Coram Nobis relief because it is almost identical to each other.

“Coram Nobis remedy is reserved for exceptional circumstances only. For example, if a defendant were convicted and punished for an act that the law does not make criminal, such a circumstance results in a complete miscarriage of justice and presents exceptional circumstances that justify Coram Nobis relief.” *United States v. Stoneman*, 870 F. 2d 102, 105 – 106 (3rd Cir. 1989) at 105 (citing *Davis v.*

United States, 417 U.S. 333, 346 – 47 94 S. Ct. 2298 (1974)). It is evidenced that my actions are protected under the 1st, 4th, 5th, and 14th Amendments, I have a right to petition the government for redress of grievances and to protect myself and my family and to be left alone, and to due process and equal protection of the laws, there was a miscarriage of justice.

“Only when record discloses error of fact of such fundamental nature as to render proceeding itself irregular an invalid or compel action to achieve justice, will Coram Nobis relief be granted” *Bruno v. United States*, 474 F. 2d 1261 (8th Cir. 1973). My evidence proves errors of fact that are fundamental and that is the fraud on the court, it is undisputable.

“Extraordinary remedy of Coram Nobis should issue only under circumstances compelling such action to achieve justice; given other prerequisites for consideration of Coram Nobis claim, if court determines that defendant’s conduct cannot support his conviction for crime charged in indictment relief may be appropriate.” *United States v. Justus*, 701 F. Supp 2d 806(W.D. Va. 2010). I was not indicted; I was pressured into a plea agreement. A jury would have not convicted me, my actions are protected by the Constitution and there is fraud on the court. There is undisputed evidence of fraud on the court.

“Constitutional controversy must be presented upon petition for relief in nature of a Writ of Error Coram Nobis.” *Byrnes v. United States*, 408 F. 2d 599, (9th Cir. 1969). My claims proven with undisputable evidence are of Constitutional Dimensions and I present Constitutional Controversy.

REASONS FOR GRANTING THE PETITION

In Root Refining Co. v. Universal Oil Prods. Co., 169 F.2d 514, 534-35 (3d Cir.

1948) the court stated that "No principle is better settled than the maxim that he who comes into equity must come with clean hands and keep them clean throughout the course of the litigation, and that if he violates this rule, he must be denied all relief whatever may have been the merits of his claim". This Court is asked to also recognize the maxim this Court expressed in *Hazel-Atlas*, the fraud-on-the-court rule should be characterized by flexibility and an ability to meet new situations demanding equitable intervention. These maxims should include criminal cases.

In this case the record shows the government did not come in this case with clean hands and throughout this case did not keep clean hands. An attorney is an officer of the court and owes the court fiduciary duties and loyalty. The attorney for the United States has misrepresented and omitted material facts to the court, acted on the IRS agent's perjury and distortion of evidence, his conduct constitute a fraud on the court. The attorney of the United States, an officer of the court, failed to correct misrepresentations and retract false evidence submitted to the court, this also constitute fraud on the court. Notwithstanding, examination of the offender and his duty is not limited solely to an attorney 's duty of candor toward the tribunal. Rather, the analysis requires courts to examine certain duties that arise well before the offender involves the court. The lower courts had a duty to relieve the petitioner of judgement and expunge of the case because of fraud on the court.

This Area of the Law Is Badly in Need of The Supreme Court's Authoritative Voice

The Supreme Court's Authoritative Voice in the area of fraud on the court in criminal cases is badly in need. There is Rule 60 that is for civil cases. Criminal cases have habeas corpus with time, location, and administrative exhaustion requirements restrictions, and the Writ of Coram Nobis that is difficult, its 100% discretionary. In my case there were not any requirements upon the respondents to answer the fraud on the court issues, they evaded answering by using documents produced by the original fraud. The fraud on the court in my case was not disputed. The Supreme Court's Authoritative Voice for a remedy to this loophole of fraud on the court in criminal cases that it will prevent false imprisonment is needed. The Court cannot allow a carte blanche approach to government employees to do whatever they want in court. In *Gamble v. United States*, 139 S. Ct. 1960 (U.S. June 17, 2019) Justice Thomas explained;

“When faced with a demonstrably erroneous precedent, my rule is simple: we should not follow it. This view ... follows directly from the Constitution Supremacy over other sources of law – including our own precedents. That the Constitution outranks other sources of law is inherent in its nature, ... The Constitution’s Supremacy is also reflected in its requirement that all judicial officers, executive officers, congressmen and state legislators take an oath to “support this Constitution”, Art. VI, cl. 3; see also Art. II, § I, cl. 8 ...”

“I am aware of no legislative reason why a court may privilege a demonstrably erroneous interpretation of the Constitution over the Constitution itself” ... “the same principle applies when interpreting statutes and other sources of law; if a prior decision demonstrably erred in interpreting such a law, federal judges should exercise the judicial power – not perpetuated a usurpation of legislative power – and correct the error. A contrary rule would permit judges to “substitute their own pleasure” for the law....”

Pursuant to *Gamble* federal courts should fix demonstrably erroneous interpretations of law, not perpetrate a usurpation of power – not make law – and adhere to the Constitution and the same goes for the IRS and U.S. Attorneys. In my case, and similar cases, this Court's authoritative voice is needed to correct the IRS's and the U.S. Attorney's fraud on the court that was used to silence and chill the exercise of my constitutionally protected rights and violated the due process of law. The supremacy of the Constitution must prevail. There was fraud on the court that created a criminal case that was and still is detriment to my rights and freedom and is defamation of my character. I am not the only one this happened to. This area of law, fraud on the court in criminal cases, creating criminal charges with usurpations of power and authority, creating probable cause with fraud, needs to be strongly disfavored. Many people are being criminalized effortlessly, for disagreements and on viewpoint and content discrimination of facts, and on alterations and suppression of facts, and for political views, it's an open door to political prosecution and retaliatory acts that needs to be closed. Fraud on the court in criminal cases need the authoritative voice of the United States Supreme Court.

This Case is Likely to Produce an Opinion That Will Give Useful Guidance to the Lower Courts

The guidance produced by this case will produce a positive useful guidance to all fraud on the court claims in criminal matters. Fraud on the court is a serious offence and any type of fraud on the court, including viewpoint and content discriminations, alterations and suppression of facts should not be tolerated in criminal cases to fabricate a criminal complaint and to keep people in jail. Business

of the Courts is a serious business, this case will strengthen this fact and make it harder to incriminate law biding people simply exercising their rights.

There Would Be a Negative National Impact by this Court by Letting the Lower Court's Decision Stand

The courts are backlogged as it is, and the pandemic caused more backlog. This zealous incriminations with usurpations of power are causing more backlogs that will be a negative national impact and have serious consequences.

By letting the lower courts' decision stand, it will send a message that it's okay to disrespect the business of the courts, the Constitution is dead, fraud on the court and usurpation of power is okay, legislation does not matter, delegation of authority does not matter, we are a totalitarian nation. It is a bad message to send at any time and could cause civil unrest that is a negative national impact. The courts below committed an error so important that it must be corrected immediately. They were inconsistent with accepted Supreme Court precedents and made a procedural and technical error that can be demonstrated unequivocally.

CONCLUSION

The petition for a writ of certiorari should be granted or a summary reversal as an alternative remedy.

Respectfully submitted,

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