

NO:

21-7909

IN THE
SUPREME COURT OF THE UNITED STATES

KEVIN DEWAYNE MOORE

PETITIONER

V

UNITED STATES OF AMERICA
RESPONDENT

Supreme Court, U.S.
FILED

FEB 12 2022

OFFICE OF THE CLERK

ON PETITION FOR A CERTIFICATE OF
APPEALABILITY TO THE UNITED STATES
COURT OF APPEALS FOR THE
FIFTH CIRCUIT

PETITION FOR A CERTIFICATE OF APPEALABILITY

RECEIVED

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

- 1) **EVERY** Supreme Court Justice - currently seated, **MUST** have an Appointment Affidavit **AND** to have taken the/an Oath of Office to defend/uphold the Constitution. If you **DO NOT HAVE BOTH OF THESE** Constitutionally required documents, you **CANNOT** become a civil servant/Supreme Court Justice, Therefore, can an individual who **DOES NOT HAVE** an Appointment Affidavit **AND HAS NOT** taken the/an Oath of Office, become a civil servant/assistant United States attorney (AUSA) for the government? And if not, are **ANY** of the actions/job duties previously performed, **WITHOUT THESE DOCUMENTS** and/or in that capacity, Constitutionally/legally valid?
- 2) Did the lower court(s) abuse its/their discretion and/or violate the plain, concise, express language that Congress placed in Fed.R. Evid. (FRE) Rule 201, when the court(s) failed/refused to take judicial notice of adjudicative facts/documents, when petitioner: A) requested the court(s) to take judicial notice; B) supplied the court(s) with the necessary information - facts/documents, and then the USDC's recharacterization of his FRE 201 into a second/successive §2255?
- 3) Did the United States Court of Appeals (USCA) abuse its discretion when it refused to accept Petitioner's motion to file out-of-time Fed.R.App.P (FRAP) Rule 40 [21-10088], and motion for an extention of time to file a FRAP 40 [20-11242], when the USCA denied his Application for a Certificate of Appealability (COA) on November 24, 2021, but petitioner did not receive the denials until December 29, 2021, and was unable to send in his FRAP 40: 21-10088 and motion for extention of time, until January 10, 2022 - due to: i) this prison's "modified lockdown" due to COVID-19 and ii) his "unit teams" absolute refusal to make copies of these court documents? And when the 45th day was also January 10, 2022 - pursuant to FRAP Rule 26(a)(1)(C)?
- 4) Did the lower court(s) abuse its/their discretion when it/they failed/refused to adjudicate the merits of Petitioner's 59(e), when he presented: A) facts showing the USDC failed to follow/abide by/ adhere to the plain, concise, express language in FRE 201; B) facts

straight out of the record, that show his claim AGAINST AUSA-Ms Aisha Saleem, has never been adjudicated on its merits - that a "restatement" of the claim is **NOT** any type of adjudication for double jeopardy purposes; C) facts showing that Ms Saleem has remained completely silent and has **NEVER BEEN ORDERED/COMPELLED** to defend herself, by ANY court?

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PARTIES TO THE PROCEEDING:

PETITIONER: KEVIN DEWAYNE MOORE

RESPONDENT: UNITED STATES OF AMERICA

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OPINIONS PRESENTED

- A) January 19, 2022. USCA's denial of Petitioner's FRAP 40. Presented as Attachment A.
- B) November 24, 2021. USCA's denial of Petitioner's Application for a Certificate of Appealability (COA). Received on December 29, 2021. Presented as Attachment B.
- C) April 18, 2021. United States District Court (USDC) denying Petitioner to be issued a COA. (Dkt 231). Presented as Attachment C.
- D) December 3, 2021. USDC's denial of Petitioner's Fed.R.Civ.P. Rule 59(e) motion. (Dkt 216). Presented as Attachment D.
- E) October 15, 2020. USDC's denial of Petitioner's FRE 201 motion and its recharacterization of his FRE 201 into a second/successive §2255. (Dkt 204; Dkt 3). Presented as Attachments E and F.
- G) January 10, 2022. Copy of Exhibit A - front of envelopes received - postmarked December 13, 2021, submitted in Petitioner's Motion to file out-of-time FRAP 40 and Motion for extention of Time, and Certificate of Mailing. Presented as Attachment G.

JURISDICTIONAL STATEMENT

The judgment of the USCA for the Fifth Circuit was entered on November 24, 2021. The USCA refused to accept Petitioner's FRAP Rule 40, and denied it on January 19, 2022. The jurisdiction of this Court is invoked pursuant to 28 USC §1254(1).

CONSTITUTIONAL, STATUTORY, UNITED STATES CODE, FEDERAL RULES PROVISIONS

The Fifth Amendment of the U.S. Constitution, **VERY CLAERLY, CONCISELY, EXPRESSLY** states:

"NO PERSON SHALL be held to answer for a crime, UNLESS ON A... INDICTMENT OF A GRAND JURY." (COA, pg 11, FRAP 40, pg 5).

The Fourteenth Amendment of the U.S. Constitution, states, in pertinent part:

"No state shall make or enforce any law which shall abridge the privileges or immunities of the United States; nor shall any state deprive any person...due process of law; nor deny to any person... equal protection of the laws."

ARTICLES OF THE U.S. CONSTITUTION

Art II, §2, CL 2 - "Appointment Clause," states:

"He shall have power, by and with the advise and consent of the senate,..., shall **APPOINT...ALL OTHER OFFICERS OF THE UNITED STATES.**"

Art VI, CL 3 - "Oath of Office," states:

"...**ALL EXECUTIVE AND JUDICIAL OFFICERS,...OF THE UNITED STATES..., SHALL BE BOUND BY OATH OF AFFIRMATION.**"

UNITED STATES CODE (USC)

5 USC §3331 - "Oath of Office," states:

"An individual,..., elected or appointed to an office of honor or profit in the civil service or uniformed services, **SHALL TAKE THE FOLLOWING OATH....**"

28 USC §515 - Oath of Office for Special Attorneys, states:

"(b) **EACH** attorney specially appointed under the authority of the Department of Justice...**SHALL TAKE THE OATH REQUIRED BY LAW.**"

28 USC §544 - "Oath of Office," states:

"**EACH** United States attorney, **ASSISTANT** United States attorney, and attorney appointed under section 543 of this title [28 USC §543]. **BEFORE TAKING OFFICE SHALL TAKE AN OATH** to execute faithfully his [her] duties."

FEDERAL RULES OF CRIMINAL PROCEDURE (FRCrP)

FRCrP RULE 6 - Grand Jury, states:

"(d) Who may be present.

"(1) While the grand jury is in session. The following persons may be present while the grand jury is in session: **ATTORNEYS FOR THE GOVERNMENT....**"

FRCrP RULE 7 - The indictment and the information, states:

"(c) Nature and contents.

"(1) In general. The indictment...**MUST BE SIGNED BY AN ATTORNEY FOR THE GOVERNMENT....**"

FEDERAL RULES OF EVIDENCE (FRE)

FRE 201 - Judicial Notice of Adjudicative facts, states:

"(b) Kinds of facts that may be judicially noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:..."

"(2) can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned.

- (c) Taking notice. The court:...
- (2) **MUST** take judicial notice if a party requests it and the court is supplied with the necessary information.
- (d) Timing. The court may take judicial notice at **ANY STAGE OF THE PROCEEDING.**"

REASONS FOR GRANTING THE APPLICATION

Mr Moore avers that this case will have immediate and far reaching consequences - or this Court can seal this case, as this case presents/involves: government official not having the proper documentation to be a civil servant/assistant United States attorney (AUSA) for the government; the various court(s) defending and/or covering up for this AUSA - being the AUSA's attorneys; court(s) violating plain, clear, concise, express language Congress used when creating/enacting Federal Laws/Statutes, rules, etc.; lower court(s) violating the current, well-established precedent of its OWN circuit and of THIS Court; court(s) allowing violations of the U.S. Constitution, Federal Laws/Statutes, Rules, etc., to go uncorrected.

The record shows that **ONE HUNDRED PERCENT (100%) OF EVERYTHING** - presented to the lower courts, **AS WELL AS TO THIS COURT**, are supported with: undenied/uncontested facts and documented evidence; United States Code - Federal Law/Statutes; Federal Rules; current, well-established **FIFTH CIRCUIT AND THIS COURT'S PRECEDENTS**, that the lower courts refuse to adhere to, abide by, or follow; refusing to take judicial notice or adjudicate the merits of the claims/violations presented to them.

The record very clearly shows that Mr Moore has presented and proven his claim of the denial, of a Constitutional right/protection, as well as presented a *prima facie* case of this/these violations.

STATEMENT OF INSTANT CASE

1) **THE RECORD VERY CLEARLY SHOWS** that THIS claim has **NEVER** been adjudicated on its merits, because: i) **AT NO TIME HAS ANY COURT** ordered/compelled the AUSA to issue a statement; ii) **AT NO TIME HAS ANY COURT** ordered/compelled the AUSA to provide her documentation to overcome the documentation presented by Mr Moore; iii) **AT NO TIME HAS ANY COURT OR THE AUSA** ever contested or stated the facts and documented evidence presented, to be: a) fake; b) false; c) counterfeit; d) not factual/accurate/authentic. **ABSOLUTE SILENCE BY THE AUSA - NOT A SINGLE WORD FROM HER**, and the courts - including **THIS COURT**, have/are allowed/allowing this to happen/continue.

The record shows that Mr Moore has presented a *prima facie* case/claim, with supporting documented evidence and current, well-established precedents, that, the AUSA does **NOT** have: the required Appointment Affidavit; has **NOT** taken the required Oath of Office; the Department of Justice (DOJ) has **NO RECORD** of her claimed employment; the DOJ has **NO RECORD** of any posting orders, for the AUSA. **ALL** of these undenied/uncontested facts were derived from the documentation - which remains undenied/uncontested, presented to the courts - including **THIS COURT**, that show the AUSA was/is **NOT** a duly appointed or authorized attorney for the government.

2) The record shows that Mr Moore presented a Fed.R.Evid. (FRE) Rule 201 motion - "Judicial Notice of Adjudicative Facts, pursuant to Federal Rules of Evidence Rule 201," dkt 192, to the United States District Court (USDC).

In this FRE 201 motion, Mr Moore presented facts and documents that he requested the USDC, and then the USCA for the Fifth Circuit, to take judicial notice of.

The record shows that he was **NOT** "challenging" his conviction or sentence, as he stated: "Mr Moore wishes to clarify that this judicial notice, under FRE 201, is not to be construed as anything other than that." (Dkt 192, pg 1).

The record shows that Mr Moore **DID NOT** request anything about his conviction or sentence, in his relief requested. (Dkt 192, pg 5).

The USDC recharacterized Mr Moore's FRE 201 into a second/successive §2255 and denied it, as well as denying him a COA. (See: Attachments E&C).

The record shows that the USDC completely ignored the facts, case law, etc., presented to it in Mr Moore's Fed.R.Civ.P. (FRCvP) Rule 59(e), which shows that the FRE 201 motion was not a second/successive §2255, and that the USDC ignored/violated the language in the FRE 201.

The record shows that the USCA for the Fifth Circuit completely ignored the facts presented to it in Mr Moore's Application for a COA, and failed/refused to take judicial notice as requested.

3) The record shows that the USCA denied Mr Moore's Application for a COA, on November 24, 2021. (See: Attachment B).

The record shows that on December 13, 2021, Mr Moore called the USCA

for a "status update," and was told that this case was dismissed on November 24, 2021.

The record shows that Mr Moore informed the clerk that he had not received any denial and that she resent these denials on December 13, 2021, to him. (See: Attachment G).

The record shows that Mr Moore did not receive these denials, until December 29, 2021. That he called the USCA clerk and told her this.

The record shows that Mr Moore filed his FRAP 40 [21-10088] and his motion to file out-of-time FRAP 40 and for an extention of time to file a FRAP 40 [20-11242 - THIS case].

The record shows that the USCA did not care that Mr Moore did not receive these denials in a timely manner. It simply denied them as untimely filed, using FRAP Rule 27, instead of FRAP Rule 40's time limit.

Mr Moore avers that he has never received the denials originally mailed out, by the USCA, on or about November 24, 2021 - NO envelopes with that on or about date "postmarked" on it/them.

DISCUSSION

I SUBSTANTIAL SHOWING/PRIMA FACIE SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT/PROTECTION

- 1) Failure to comply with the U.S. Constitution and Federal Laws/Statues, resulting in invalid indictment(s) and unconstitutional/illegal incarceration.

The record shows that the USDC recharacterized Mr Moore's FRE 201 motion into a second/successive §2255, by claiming he is "challenging" his conviction or sentence. (Dkt 204; dkt 3; Attachments E & F). Therefore, as the USCA has stated, Mr Moore has no alternative way to appeal the denial of his FRE 201 or the recharacterization of his FRE 201, except by filing for a COA. Which he has done.

THE RECORD VERY CLEARLY SHOWS that the following undenied, uncontested factual claim, with supporting irrefuted, uncontested documented evidence, **HAS NEVER BEEN ADJUDICATED ON ITS MERITS - BY ANY COURT, JUDGE OR JUSTICE THEREOF**, including THIS COURT.

THE RECORD SHOWS that when Mr Moore requested to be provided with the docket number(s), page number(s), court order(s) for the AUSA - Ms Aisha Saleem (Saleem) to issue a statement and to provide her documentation to overcome Mr Moore's, that **NOT ONLY WAS THE INFORMATION NOT**

PROVIDED, BUT THE USDC THREATENED HIM WITH SANCTIONS. (Dkt 216, pg 2; Attachment D).

The record shows that the USCA has stated to Mr Moore that:

"To obtain a COA, an applicant must make a substantial showing of the denial of a constitutional right." MOORE v US, No 21-10088, pg 1 (CA5 Nov 24, 2021).

The record shows that the USCA told Mr Moore in its denial of: 21-10088, that he has to make a substantial showing of the denial of a constitutional right, in order to obtain a COA.

Mr Moore avers that the U.S. Constitution's Fifth Amendment **VERY CLEARLY, CONCISELY, PLAINLY, EXPRESSLY** states:

"NO PERSON SHALL be held to answer for a...crime, UNLESS ON A... INDICTMENT OF A GRAND JURY." (COA, pg 11).

Mr Moore avers that there are several critical steps involved in order for a **VALID** indictment to be issued by/from the grand jury, pursuant to the FRCrP. They are: A) allegation of violating a federal law/statute - presented to the grand jury **BY** a duly appointed or authorized attorney **FOR** the government; B) if the grand jury decides to issue an indictment - it **MUST BE SIGNED BY AN ATTORNEY FOR THE GOVERNMENT** - FRCrP Rule 7(c)(1); C) there can be **NO UNAUTHORIZED INDIVIDUAL** present in the grand jury room while they are in session - FRCrP Rule 6(d)(1).

The record shows that if **ANY OF THESE ARE VIOLATED**, Mr Moore's indictment(s) are **INVALID**. Thus, showing that he is unconstitutionally incarcerated - in **VIOLATION** of the rights/protections of/in the Fifth Amendment.

The record shows that Mr Moore has presented facts that have **NEVER** been denied - **COMPLETE AND UTTER SILENCE**, by the alleged AUSA - Saleem **AND** the courts - USDC, USCA, and including **THIS COURT**. (COA, pg 12).

The record shows that the undenied, uncontested facts presented are that Saleem was/is **NOT**: a) a civil servant/federal officer; b) an employee of the DOJ; c) a duly appointed or authorized attorney for the government; d) authorized to be present while the grand jury is/was in session; e) authorized to invoke the criminal jurisdiction of the DOJ and/or the court(s); f) authorized to sign his indictment(s). (Dkt 192, pg 1; COA, pgs 11-12).

The record shows that Saleem has never denied or even contested any of these facts. (Dkt 192, pg 2; COA, pgs 11-12).

The record shows that **BOTH** the U.S. Constitution **AND** the United

States Code (USC) - federal law/statutes, REQUIRE an Appointment Affidavit **AND** that an Oath of Office **MUST** be taken/administered. As: A) Appointment Affidavit is required by: U.S. Const Art II, §2, Cl 2; B) Oath of Office is required by: U.S. Const Art VI, Cl 3, **AND** Titles 5 and 28 of the USC - federal laws/statutes. (Dkt 192, pgs 2-3; COA, pgs 11-12).

The record shows that Mr Moore presented documents from: A) Department of Justice (DOJ); B) Executive Office for United States Attorneys (EOUSA); C) National Personnel records Center (NPRC), that very clearly state that they have **NO RECORD** of Saleem having an Appointment Affidavit or taking the Oath of Office or being employeed with/by the DOJ. (Dkt 192, pgs 2-3, Exhibits A-H).

The record very clearly shows tha Saleem has **NEVER** denied or contested the above facts, nor has she **EVER** stated that these documents were/are: i) fake; ii) false; iii) counterfeit; iv) not factual/truthful/accurate. (Dkt 192, pgs 2-3; COA, pgs 10, 11, 12).

"ALL FEDERAL OFFICERS of the United States are to be appointed in accordance with the appointment clause (Art II, §2, Cl 2); **NO** class or type of officer is excluded because of its special functions." **BUCKLEY v VALEO**, 424 US 1 (1976); **WEISS v US**, 510 US 163 (1994); **EDMOND v US**, 520 US 651 (1977). (COA, pg 12).

The record shows that U.S. Supreme Court precedent is very clear and well-established, on this point.

The record shows that Mr Moore also presented a document from the DOJ, EOUSA, stating that they have "**NO** employment dates," for Saleem. (Dkt 192, pg 3, Exhibit E; COA, pg 10).

The record shows that Saleem did **NOT** deny or contest this fact. (Dkt 192, pgs 1, 2; COA, pgs 10, 11, 12).

The record shows that **NO** unauthorized person is allowed in the grand jury room, while, they are in session, as it violates: FRCrP Rule 6(d)(1). (COA, pgs 11-12).

THE RECORD SHOWS that the **FIFTH CIRCUIT'S WELL-ESTABLISHED PRECEDENT SUPPORTS THIS FACT**, and **ANY** violation of this rule and/or precedent will result in an invalid indictment, as the **FIFTH CIRCUIT HAS HELD**:

"The presence of an unauthorized person before the grand jury is per se grounds for quashing an indictment. **UNITED STATES v BRANIFF AIRWAYS** 428 F Supp 579, 582-583 (**WD TEX** 1977); **LATHAM v UNITED STATES**, 226 F 420 (**5th Cir** 1915). In establishing a per se rule for violation of the

rule [6(d)(1)], the **FIFTH CIRCUIT HELD**: the right of a citizen to an indictment by a grand jury pursuant to the law of the land is invaded by the participation of an unauthorized person. It is **NOT** necessary that participation be corrupt, or that unfair means were used. If that person participating was unauthorized, it was **UNLAWFUL**. **THE FIFTH CIRCUIT REAFFIRMED** this principle in **UNITED STATES v ECHOLS**, 542 F 2d 948 (5th Cir [1976])...There the court stated: to effectuate these purposes, courts generally have indicated that this rule should be **STRICTLY** construed...in **LATHAM**, **THIS COURT HELD** that the presence of an unauthorized person results in a *per se* **INVALIDITY OF INDICTMENT**. **NO** showing of prejudice is required to quash an indictment secured with the presence of an unauthorized person in the grand jury room. *Id*, 951. " **US v TREADWAY**, 445 F Supp 959, 962 (5th Cir 1978), Also see: **US v PIGNATELLO**, 582 F Supp 251, 254 (10th Cir 1984), which held: "The requirements of rules 6(d) and 54, together with §544 of title 28 **ARE CLEAR AND UNEQUIVOCAL**. The consequences of a violation of these requirements **SHOULD ALSO BE CLEAR AND UNEQUIVOCAL AND THAT MEANS DISMISSAL OF THE INDICTMENT**." (COA, pgs 11-12).

The record very clearly shows that Saleem's **UNAUTHORIZED PRESENCE** IN the grand jury room, while they were in session, means that Mr Moore's indictment(s) is/are invalid and **MUST** be dismissed with prejudice, pursuant to **FIFTH CIRCUIT PRECEDENT**.

The record very clearly shows and supports Mr Moore's "substantial showing of the denial of a constitutional right." -violation of the Fifth Amendment.

The record further shows that since Saleem **DOES NOT HAVE ANY OF THE REQUIRED DOCUMENTS**, Saleem was **NOT** authorized to sign Mr Moore's indictment(s), in violation of FRCrP Rule 7(c)(1). (Dkt 192, pg 2; COA, pgs 11-12).

The record shows that **BOTH FIFTH CIRCUIT AND U.S. SUPREME COURT** current, well-established precedent, are very clear that if Mr Moore's indictment(s) is/are **NOT SIGNED BY AN** attorney for the government. it/they are invalid and **MUST** be dismissed with prejudice.

"Rule 7~~SETS OUT THE REQUIREMENTS~~ of an indictment which **SHALL BE SIGNED BY AN ATTORNEY FOR THE GOVERNMENT**. Rule 7(c)(1)." **US v JOHNSON**, No C-10-20-3 (5th Cir 2014). "1. **LEGAL STANDARD**. Federal Rules of Criminal Procedure 7(c) sets forth the **REQUIREMENTS** for what **MUST** be contained in an indictment. (1) General. The indictment...**MUST BE SIGNED BY AN ATTORNEY FOR THE GOVERNMENT**." **US v BOYD**, 78 F Supp 1207 (9th Cir 2015); **US v DAUNHAUER**, CR-11-06-BLG-JDS (MONT 2011)(SAME); **US v JOHNSON**, No 1:16-CR-00124-01 (5th Cir 2017)(SAME). (COA, pg 12).

"A prosecution cannot proceed **UNLESS** the prosecutor signs the indictment." **REHBERG v PAULK**, 182 L Ed 2d 593, 607-608 (2012). (COA, pg 12).

THE RECORD VERY CLEARLY SHOWS that the undenied/uncontested facts,

that are supported by the irrefuted/uncontested documented evidence from the DOJ, EOUSA, NPPC, VERY CLEARLY shows that Saleem has **NONE OF THE REQUIRED DOCUMENTS**, to be an attorney for the government.

The record shows that the **FIFTH CIRCUIT** has stated that a signature of the government attorney is "necessary for the validity of the indictment," **AS THE FIFTH CIRCUIT HAS HELD:**

"**WITHOUT THE SIGNATURE** there can be **NO CRIMINAL PROCEEDING** brought upon an indictment. AS WE [USCA 5TH CIR] CONCLUDE the signature of the government attorney **IS NECESSARY TO THE VALIDITY OF THE INDICTMENT.**"

"Judges Tutle, Jones, Brown and Wilson join in the conclusion that the signatures of the United States Attorney **IS ESSENTIAL TO THE VALIDITY OF AN INDICTMENT.** The order before us for review...it **REQUIRES** the United States attorney to prepare **AND SIGN**" the indictment. US v COX, 342 F 2d 167 (CA5 1965). (COA, pg 12).

Mr Moore avers that he has **NOT** been able to find where this Fifth Circuit precedent has been overturned.

The record shows that Saleem is **NOT** a duly appointed or authorized attorney for the government, therefore, Saleem was **NOT AUTHORIZED** to sign Mr Moore's indictment(s). Thereby, making it/them invalid requiring dismissal with prejudice.

The record shows that since Mr Moore's indictment(s) is/are invalid, he is incarcerated in violation of the plain, concise, express language in the U.S. Constitution's Fifth Amendment.

The record shows that Mr Moore has very clearly made the required substantial showing of the denial of a constitutional right," as required/stated by the USCA Fifth Circuit, as well as a *prima facie* case a violation of his constitutional right/protection.

The record shows that the USDC and/or the USCA completely ignored the above facts, that were presented to it/them, with supporting precedent and documented evidence.

The record shows that the USDC and/or the USCA has abused its discretion when it/they failed to uphold Mr Moore's constitutional rights/protections - pursuant to the U.S. Constitution's Fifth Amendment, thus, allowing his unconstitutional/illegal incarceration - on invalid indictment(s), to go uncorrected.

II

- 2) The lower courts violation/failure to abide by/follow the plain, concise, express language Congress placed in the FRE 201, when

it/they failed/refused to take judicial notice as requested, and the USDC's recharacterization of this FRE 201 into a second §2255. (Dkt 204; dkt 3; Attachment E and F).

THE RECORD VERY CLEARLY SHOWS that Mr Moore did **NOT** file a §2255, in the USDC. He filed a motion titled: "Judicial Notice of Adjudicative Facts, Pursuant to Federal Rules of Evidence Rule 201." (Dkt 192).

The record shows that in the "Relief requested," in dkt 192, Mr Moore **ONLY** requested:

"...is respectfully requesting that this court [USDC] take judicial notice of the foregoing facts and documented evidence, that has been presented to the USDC, in this judicial notice and in the filings listed in case numbers: i) 3:07-CR-0125-0 and ii) 3:11-CV-2540-0. FRE Rule 201(c)(2)." (Dkt 192, pg 5).

The record shows that Mr Moore did **NOT** request that his sentence or conviction be overturned/vacated/etc..

The record shows that Mr Moore **ONLY** requested the USDC to take judicial notice of the facts and documented evidence presented.

The record shows that Mr Moore also stated:

"Mr Moore wishes to clarify that this judicial notice, under FRE Rule 201, is not to be construed as anything other than that." (Dkt 192, pg 1).

The record shows that the USDC recharacterized Mr Moore's FRE 201 motion into a second/successive §2255, in order to deny it. (Attachment E and F).

The record shows that since the USDC recharacterized this into a second/successive §2255, the USCA for the Fifth Circuit informed him that the **ONLY** way to "appeal" this is to file for a COA. This is exactly what Mr Moore did.

The record shows that all Mr Moore wanted was for the USDC or the USCA to take judicial notice of the facts and evidence presented. This was **NOT** done.

The record shows that since the USDC recharacterized Mr Moore's FRE 201 into a second/successive §2255, he had **NO** choice but to file for a COA.

Mr Moore avers that he filed his FRE 201 motion **SPECIFICALLY** to have the USDC take judicial notice of the facts and documented evidence, presented in Sections II and III, in dkt 192, on pages 2-4. This did **NOT** happen.

Mr Moore avers that FRE 201(c)(2) - which is part of the Rule he

presented in his FRE 201 motion under, shows that the plain, concise, express language **SPECIFICALLY** states:

"(c) Taking notice. The court:

(2) **MUST** take judicial notice if a party requests it [the record shows that Mr Moore had requested it] and the court is supplied with the necessary information [the record shows that Mr Moore HAS 'supplied the necessary information.' Dkt 192, pgs 2-4]." FRE 201, Jan 2, 1975, PL 93-595 §1, 88 Stat 1093. (COA, pg 5).

The record shows that even though FRE 201(c)(2) states the USDC "**MUST TAKE JUDICIAL NOTICE,**" it refused/failed to do so. Then the USDC recharacterized it as a second/successive §2255, in order to deny it. (Attachment E and F).

Mr Moore avers that FRE 201(d) states:

"(d) Timing. The court may take judicial notice **AT ANY STAGE** of the proceeding."

Mr Moore avers that pursuant to FRE 201 Advisory Committee Note to Subdivision (d) the court(s) are "**MANDATED**" to take judicial notice if he requests it to and has supplied the necessary information. The taking of judicial notice is **NOT "DISCRETIONARY,"** in this instant case, as the committee note states:

"The taking of judicial notice is **MANDATORY** under subsection (d), **ONLY WHEN A PARTY REQUESTS IT AND THE NECESSARY INFORMATION IS SUPPLIED.**" (COA, pg 7)

The record shows that the USDC and the USCA did **NOT** abide by nor follow this MANDATE.

"The **FIFTH CIRCUIT HAS MADE CLEAR** Federal Rule of Evidence 201 'authorizes the court to take notice of "adjudicative facts."'" IN RE ANDRY, No 15-2478 (CA5 2020). (COA, pg 8).

The record shows that the facts presented, are "**NOT** subject to reasonable dispute," as these facts are **DERIVED ENTIRELY FROM THE DOCUMENTED EVIDENCE PROVIDED** by: i) Department of Justice (DOJ); ii) Executive Office for United States Attorneys (EOUSA); 3) National Personnel Records Center (NPRC) - **ALL** of which are **GOVERNMENT AGENCIES/DEPARTMENTS** and they are **ALL** facts/documents "capable of accurate and ready determination by resort to sources [DOJ, EOUSA, NPRC] whose accuracy cannot be questioned." See: TAYLOR v CHARTER MED CORP, 162 F 3d 827, 829 (5th Cir 1998); INDIAN HARBOR INS CO v KB LONE STAR INC, No: 11-CV-1846, at *1 (SD TEX July 12, 2012); US v RICHIE, 342 F 3d

903, 908-909 (9th Cir 2003). (COA, pgs 5, 6).

The record shows that these facts/documents "constitute judicially noticeable facts," as they are responses received from Freedom of Information Act (FOIA) requests to various governmental agencies/departments, and are "public records" AVAILABLE TO ANYONE WHO REQUESTS THEM. (COA, pg 6).

FUNK v STRYKER CORP, 631 F 3d 777, 783 (CA5 2011)(finding that "the district court took appropriate judicial notice of publicly - available documents and transcripts....which were a matter of public record."). "Here, **THE UNDERSIGNED TAKES JUDICIAL NOTICE OF THE DOJ REPORT**, which is readily available on the Department of Justice's website,...,and is not subject to reasonable dispute." FRANK v CITY OF VILLE PLATTE, No 17-1351 (5th Cir 2019). "Filings with government agencies, PUBLIC RECORDS, AND GOVERNMENT DOCUMENTS, available from an official government website, or **OTHER RELIABLE SOURCE** [agency/department] ...have been held **NOT** to be subject to reasonable dispute. DOMAIN VAULT LLC v McNAIR, 2015 U.S. DIST LEXIS 130449, 2015 WL 5695519, at *2 (ND TEX Sept 28, 2015)(Lindsay, J)." ERVING v DALL HOUSING AUTH, No 3:16-CV-1091-L (5th Cir 2018). (COA, pg 6).

The record shows that Mr Moore has MET/EXCEEDED THE ABOVE REQUIREMENT(S).

The record shows that Mr Moore has presented facts/documents evidence that have NEVER been disputed as being: i) fake; ii) false; iii) counterfeit; nor has the USDC, USCA, or the alleged AUSA - Saleem ever claimed the documents are not truthful, authentic, or accurate. Therefore, judicial notice **MUST BE TAKEN**, as requested and required, pursuant to FRE 201(c)(2), and/or (d). (COA, pg 6). See: SOSEBEE v STEADFAST INS CO, No 11-31144, 701 F 3d 1012...at *14, N1 (5th Cir Nov 27, 2012)(Quoting FRE 201(b)).

The record shows that Mr Moore requested the USCA to take judicial notice of the facts/documents evidence presented, as it has the authority to do so. See: "1. Jack B Weinstein, Weinstein's Federal Evidence §201w32 (2011) ('Because rule 201 authorizes the taking of judicial notice "at any stage of the proceeding," judicial notice may be taken by an appellate court.')". TREVINO v THALER, No 10-70004 (CA5 2011). (COA, pg 5).

The record shows that the USDC and/or the USCA have/are violating the plain, concise, express language Congress placed in FRE 201, as well as violating a Public Law enacted by Congress, by failing/refusing to take judicial notice of the facts/documents evidence placed before it/them, as requested by Mr Moore.

The record shows that the above are what and how the lower court(s)

are failing/refusing to do, and have violated/failed to abide by/follow the language in FRE 201; the USDC abused its discretion when it failed to take judicial notice, as requested and with the necessary information being supplied, and the recharacterization of his FRE 201 into a second/ successive §2255, when his conviction/sentence was NOT being challenged. (Dkt 204; Dkt 3; Attachment E and F).

III

3) The USCA abused its discretion when it denied Mr Moore's Motion to File an Out-of-Time FRAP 40 [21-10088] and his Motion for an Extension of Time to File a FRAP 40 [20-11242 - THIS FRAP 40].

Mr Moore avers that the USCA denied his COA on November 24, 2021. However, due to **CIRCUMSTANCES THAT ARE OUT OF HIS CONTROL** - U.S. Postal Service [mail delivery], and this prison's mailroom staff, he did not receive that denial until December 29, 2021.

On December 13, 2021, Mr Moore called the USCA's Court Clerk, at: 504-310-7706, and spoke to Claudia.

Mr Moore informed her that he was calling for a "status update" on case numbers: 20-11242 and 21-10088.

She told Mr Moore that these cases had been denied on November 24, 2021.

Mr Moore informed her that he had not received anything on these cases, and that is why he was calling to check on them.

The clerk stated that she would mail out copies of the USCA's denials, which she did. See copies of the front of those envelopes - postmarked on December 13, 2021. (Attachment G).

Mr Moore avers that he did not receive these denials until December 29, 2021.

Mr Moore avers that on Monday, January 3, 2022, he attempted to contact the USCA - about the receipt of the denials, after he returned from work, to no avail.

Mr Moore avers that on Tuesday - January 4, 2022, he called: 504-310-7694, and spoke to Mary Francis. He informed her that he received these denials on December 29, 2021, and that he could not make the court's deadline.

Mr Moore avers that he is only allowed to go to the law library on Mondays, due to the "modified" lockdown this prison is under - due to COVID-19.

Mr Moore avers that there are approximately 260 inmates in the storage building he is stored in - bldg 53. That there is ONLY one (1) legal research computer and one (1) typewriter available in bldg 53. There are numerous other prisoners that have ongoing cases - needing the computer and typewriter.

Mr Moore had diligently worked to get his FRAP 40 motions - for BOTH cases, into the USCA. However, due to the fact that he did not receive the denials in a timely manner, and the constraints of ONLY having one typewriter and computer, he was only able to get his FRAP 40 for 21-10088 and his Motion to file an out-of-time FRAP 40 and for an extention of time to file a FRAP 40, completed on January 7, 2021. Due to his "unit team's" refusal to make copies - even for legal deadlines, he was forced to wait until Monday, January 10, 2021, to get copies and get these two (2) motions in the mail. (See: Attachment G).

Mr Moore avers that on Monday, January 10, 2022, he called the USCA at: 504-310-7694, and spoke to Mary Francis. He informed her that the FRAP 40 for 21-10088 and motion for extention of time for 20-11242 and 21-10088 were mailed that day.

The record shows that the USCA did NOT take into consideration his diligence at keeping in contact with the court and in keeping the USCA apprised of his progress, nor to the fact that January 10, 2022, was the 45th day of the 45 day time limit - mailbox rule has been complied with, pursuant to FRAP Rule 26(a)(1)(C).

The record shows that the USCA used FRAP Rule 27, to deny Mr Moore's FRAP 40 motion [20-11242]. (Attachment A).

The record shows that Mr Moore filed a FRAP 40, which has its own filing deadline/time limit, as FRAP Rule 40(a)(1), states:

"(a)(1) Time. ...a petition for panel rehearing...may be filed by any party **WITHIN 45 DAYS** after entry of judgment if one of the parties is:
(A) the United States...."

FRAP Rule 26(a) - Computing time. (1)...when the period is stated in days or longer unit of time:

"(A) Exclude the day of the event that triggered the period [45 days]."
Denied on November 24, 2021. Therefore, "day 1" is November 25, 2021.

Mr Moore avers that counting every day, pursuant to FRAP 26(a)(1)(B), the 45th day is on Saturday, January 8, 2022. However, since that day is a Saturday, pursuant to 26(a)(1)(C), the 45 day limit is EXTENDED to

the "end of the next day that is not a Saturday, Sunday, or legal holiday." This now puts the deadline at/on Monday, January 10, 2022.

Therefore, this shows that Mr Moore did, in fact, timely file his FRAP 40 [21-1008] and his motion to file an out-of-time FRAP 40 [21-10088] and motion for an extention of time to file THIS FRAP 40 [20-11242].

Mr Moore avers that the USCA for the Fifth Circuit is abusing its discretion, as well as violating Congress's plain, concise, express language in FRAP 40. To further show this:

NOTES OF ADVISORY COMMITTEE ON 1994 AMENDMENTS. "Note to subdivision (a). The amendment LENGTHENS THE TIME FOR FILING A PETITION FOR REHEARING FROM 14 TO 45 DAYS IN CIVIL CASES INVOLVING THE UNITED STATES or its agencies or officers...in a case in which the court of appeals believes it necessary to restrict the time for filing a rehearing petition, the amendment provides that the court may do so BY ORDER [NO order was given by the USCA to shorten the 45 day time limit]. Although the first sentence of rule 40 PERMITS a court of appeals TO SHORTEN OR LENGTHEN THE USUAL 14 DAY FILING PERIOD BY ORDER or local rule, the sentence governing appeals in civil cases involving the United States PURPOSELY LIMITS A COURT'S POWER TO ALTER THE 45 DAY PERIOD to orders in specific cases. IF A COURT OF APPEALS COULD ADOPT A LOCAL RULE SHORTENING THE TIME FOR FILING A PETITION FOR REHEARING IN ALL CASES INVOLVING THE UNITED STATES, THE PURPOSE OF THE AMENDMENT WOULD BE DEFEATED."

Mr Moore avers that this is exactly what the USCA has/is doing, in this case - shortening the time to file a FRAP 40 - panel rehearing, as well as not accepting this motion to file an out-of-time FRAP 40 and his motion for an extention of time to file THIS FRAP 40 [20-11242].

Mr Moore avers that on January 25, 2022, he received the USCA's denial of THIS FRAP 40 [20-11242]. On January 26, 2022, he called the USCA at: 504-310-7806 and spoke to Mary. He called to inquire about USCA case: 21-10088. She stated that both FRAP 40 [21-10088] and the motion to file out of time FRAP 40 and for extention of time, were denied. He informed her that he had NOT received those denials, but that he had received the denial of USAC: 20-11242 - THIS case.

Mr Moore avers that On February 1, 2022, he received the USCA's denial of his Motion for out of time FRAP 40 and for an extention of time. However, the letter/notice shows that it is for the out of time and extention of time motion. It does NOT state anything about his FRAP 40 for case number: 21-10088.

IV

4) The USCA abused its discretion when it failed to adjudicate the merits of or acknowledge the denial of Mr Moore's Fed.R.Civ.P. (FRCvP) 59(e) - which was denied by the USDC without a merits determination. (Dkt 216; Attachment D).

The record shows that the USDC recharacterized Mr Moore's FRE 201 into a second/successive §2255. (Attachment E and F).

The record shows that Mr Moore timely filed his FRCvP 59(e). (Dkt 213).

The record shows that Mr Moore, IN his 59(e), has shown that the USDC failed to abide by or follow the plain, concise, express language in FRE 201. (Dkt 213).

The record shows that Mr Moore stated, in his 59(e):

"The record shows that NEITHER the USDC or Ms saleem has NEVER DENIED THE AUTHENTICITY OF THE DOCUMENTED EVIDENCE OR THE ACCURACY OF THE FACTS Mr Moore has presented to the USDC - UNDER THE PENALTY OF PERJURY." (Dkt 213, pg 5).

The record shows that in the USDC's denial/recharacterization of Mr Moore's FRE 201, the USDC claims that this claim - regarding Saleem, was presented in his original §2255 and it was denied on the merits. (dkt 204; dkt 3; Attachment E and F, pg 2).

The record **VERY CLEARLY SHOWS** that this is **NOT TRUE**, as **AT NO TIME** has: 1) Saleem or ANY court, judge, justice thereof, ever stated Saleem is a duly appointed or authorized attorney for the government; 2) Saleem denied, contested the facts or documented evidence presented against her - **COMPLETE AND UTTER SILENCE**; 3) the magistrate or the USDC judge, or ANY OTHER court/judge/justice, **EVER** ordered/compelled Saleem to issue a statement and to provide her documentation, and employment records with the DOJ, to Mr Moore or to the court(s), (Dkt 213, pg 7).

The USDC attempts to claim that Mr Moore's factual claim against Saleem, has been adjudicated on its merits. **THE RECORD DOES NOT SUPPORT** this conclusory claim by the USDC, as the USDC claims/stated:

"The denial states that: 'Moore filed a previous §2255 motion on September 26, 2011. See ECF No 149. The motion was denied on the merits. See Moore v United States, No 3:11-CV-2540-O, ECF Nos 29, 39, 40 (ND TEX 2013). (Dkt 3, pgs 2-3 [dkt 204, pgs 2-3])." (Dkt 213, pg 6).

The record shows that Mr Moore **DISPROVED THE ABOVE CLAIM**, by the USDC, regarding this claim against Saleem, as he stated:

"The record shows that the above is **NOT** a factual statement, as the statement finds no support in the record, (regarding his claim against Saleem), in this case.

The record shows that **ALL** the USDC has ever done, is to 'restate' Mr Moore's factual claim. See: Dkt 29, pg 12: 'The prosecution lacked authority to prosecute him'; dkt 39, pg 1: 'The court accepts the magistrate's findings'; dkt 40, pg 1: 'The court has entered its order accepting the findings...of the magistrate judge...'; dkt 3, pg 1: 'Moore's claims that Aisha Saleem during the relevant time period, was **NOT** a duly appointed or authorized attorney for the government and was therefore not authorized to prosecute him'; dkt 156, pg 1: 'The prosecutor failed to take the Oath of Office to be an assistant United States attorney'; pg 2 (SAME); dkt 160, pg 1: 'The court accepts the magistrate's findings'; dkt 168, pg 1: 'His claim that the assistant United States attorney who prosecuted him, Aisha Saleem, was not a duly authorized prosecutor for the United States, that she was never appointed as an assistant United States attorney, and that she never took an oath of office'; dkt 172, pg 1: 'Asks the court to dismiss the indictment in this case because the assistant United States attorney who prosecuted him, Aisah Saleem, was not a duly authorized prosecutor for the United States. He asserts that she has no employment records with the United States, that she was never appointed as an assistant United States attorney, and that she never took an Oath of Office.'" (Dkt 213, pgs 6-7).

Mr Moore has to ask THIS HONORABLE COURT, **WHERE IS THE ADJUDICATION OF THIS CLAIM AT**, in the above? It is **NOT** there. The above represents **EVERYTHING THE USDC HAS EVER STATED/DONE**, regarding his claim against Saleem.

Mr Moore avers that what you **WILL NOT FIND ANYWHERE IN THE RECORD**, is Saleem's or the USDC's statement that Saleem **IS** a duly appointed or authorized attorney for the government - **BECAUSE SHE HAS NEVER ISSUED A STATEMENT - COMPLETE AND UTTER SILENCE.**

Mr Moore avers that what you **WILL NOT FIND ANYWHERE IN THE RECORD**, is where the magistrate, USDC judge, or **ANY OTHER** court/judge/justice thereof, has ever ordered/compelled Saleem to issue a statement and to provide **HER DOCUMENTATION** - Appointment Affidavit, Oath of Office, employment records with the DOJ, to Mr Moore or to the court(s).

The record shows that Mr Moore presented to the USDC that:

"Mr Moore avers that he has reviewed **EVERY SINGLE PIECE OF PAPER HE HAS RECEIVED FROM THE MAGISTRATE AND THE USDC JUDGE, REGARDING SALEEM, AND HAS NOT FOUND ONE DOCUMENT** - Appointment Affidavit, Oath of Office, proof of her employment with the DOJ, posting orders from the DOJ, that were presented to Mr Moore or to the USDC.

The record shows that Mr Moore has **OBTAINED AND PRESENTED TO THE USDC, IRREFUTED** documented evidence that show that Ms Saleem does **NOT** have an Appointment Affidavit; **NO** Oath of Office; **NOT** employed by the DOJ; **NO** posting orders from the DOJ. (Dkt 192, Exhibits A-H).)Dkt 213, pg 7).

The record shows that the USDC did not deny this; that the USCA did not acknowledge these facts, in its denial of Mr Moore's COA.

The record shows that Mr Moore further presented to the USDC:

"Mr Moore avers that he has also NOT found a/the magistrate's or the USDC's order(s) compelling Ms Saleem to issue a statement; a/the order(s) compelling Ms Saleem to present her Appointment Affidavit, Oath of Office, employment records with the DOJ, posting orders, to Mr Moore and to the USDC. He has NOT FOUND ANY OF THESE, IN THE RECORD, OF THIS CASE." (Dkt 213, pg 7).

The record shows that the USCA did NOT acknowledge these facts, in its denial of Mr Moore's COA. Nor did the USCA compel Saleem to issue a statement and present her documentation. (See Attachment B).

THE RECORD VERY CLEARLY SHOWS that since Mr Moore was **UNABLE** to find/locate the above, in the record, and the USDC keeps claiming it has "adjudicated" the merits of this claim against Saleem, then Mr Moore, in his "Relief Requested," in his 59(e), very clearly and specifically requested:

"B) ...to be provided with the docket number(s) and page number(s), of where Ms Saleem, the U.S. Attorney's Office, or the DOJ, has issued a statement as to whether Ms Saleem was/is a duly appointed or authorized attorney for the government - during the relevant time period, or not." (Dkt 213, pg 8).

"C) ...is requesting to be provided with copies of the magistrate's and the USDC's order(s) compelling Ms Saleem to issue a statement; to present/provide her Appointment Affidavit, Oath of Office, employment verification from the DOJ, posting orders, to Mr Moore and the USDC." (Dkt 213, pg 8).

"D) ...is requesting to be provided with the docket number(s) and page number(s) of where, in the record, the magistrate and the USDC judge adjudicated the merits of this UNDENIED factual claim; where in the record the magistrate and the USDC judge states that the IRREFUTED documented evidence is: i) fake/false; ii) counterfeit; iii) overcomes/contradicted by/with Ms Saleem's evidence." (Dkt 213, pg 8).

"E) ...is requesting that he be provided with Certified Copies of Ms Saleem's: i) Appointment Affidavit; ii) Oath of Office; iii) verification of employment by/with the DOJ; iv) posting orders from the DOJ." (Dkt 213, pg 8).

The record shows that the USDC **ONLY RESTATE**D Mr Moore's factual claim, in its denial of his 59(e), by stating:

"Moore wants the court to take judicial notice of responses to letters and Freedom of Information Act requests that he and another federal inmate Charles Hunter, have received regarding the employment of assistant United States attorney, Aisha Saleem, the prosecutor in this action. See id. Moore claims that Saleem was not a duly authorized

assistant United States attorney and therefore lacked lawful authority to prosecute him." (Dkt 216, pg 1; Attachment D).

The record shows that, **ONCE AGAIN**, the USDC **ONLY** "restates" Mr Moore's claim against Saleem, and did not even get it correct, as the USDC completely ignored what Mr Moore stated, in his 59(e), dkt 213, pg 2, section II, ¶4, 5, which states: "...that this statement is **ONLY PARTLY CORRECT/TRUE**;" "...and the USDC **FAILED TO MENTION** that he **ALSO PRESENTED...**" The above is still **NOT** any type of adjudication, just a restatement of the facts presented.

The USDC's denial states:

"Here, defendant Moore reasserts the argument set forth in his original motion which have been addressed by the court." (Dkt 216, pg 2).

The record clearly shows that this conclusory allegation, by the USDC, **FINDS NO SUPPORT** in the record, in this case, otherwise, Mr Moore would not have presented it/these in his 59(e). Additionally, the USDC **STILL DID NOT** provide the docket/page number(s) of where its merits decision is at.

The record further shows that instead of the USDC providing the readily/easily available docket and page number(s), order(s), statement(s), etc., to Mr Moore, as the USDC continues to claim that **THIS CLAIM AGAINST SALEEM HAS BEEN ADJUDICATED ON ITS MERITS**, even though the record shows it has **NOT** been, the USDC threatened Mr Moore with sanctions, for nothing more than his attempt(s) to get the USDC to do its job; perform its duty.

The record shows that the USDC did nothing more than "restate" Mr Moore's factual claim; fail to adjudicate the merits of his claim against Saleem, and threaten him with sanctions, in its denial. (Dkt 216; Attachment D).

The record shows that the USCA did **NOT** even mention the USDC's failure to adjudicate the merits of Mr Moore's 59(e), in its denial. (Attachment D).

"The record shows that the USDC abused its discretion when it denied Mr Moore's 59(e), **WITHOUT** adjudicating the merits or providing the requested locations/information/documents/orders/etc., as listed/requested in the 'Relief Requested' section of Dkt 213, pgs 7-8." (COA, pg 13).

Mr Moore avers that the **RECORD VERY CLEARLY SHOWS** that all he wants

is: i) the **SPECIFIC** docket and page number(s) of **WHERE**, in the record, **ANYONE** - Saleem, court(s), judge(s), justice(s), etc., has stated that she/Saleem is a duly appointed or authorized attorney for the government; ii) **WHERE IN THE RECORD ANY** court, judge or justice thereof, has **ORDERED/COMPELLED** Saleem to issue a statement and provide HER documents; iii) **WHERE IN THE RECORD** Saleem has issued HER statement and presented HER documents. **WHEN NONE OF THESE ARE FOUND**, THEN TO DECLARE Mr Moore's indictment(s) invalid requiring dismissal with prejudice, instead of: a) attempting to state this claim against Saleem has been adjudicated - **WHERE?**; b) placing and threatening him with sanctions. (Dkt 213).

V
RELIEF REQUESTED

The record shows that Mr Moore has presented a *prima facie* case/claim of a substantial denial of a Constitutional right/protection.

Therefore, he is respectfully requesting the following relief: i) for this court to order/compel Saleem to issue a statement stating she is or is not a duly appointed or authorized attorney for the government; ii) to present HER Appointment/Affidavit and Oath of Office and Employment verification with the DOJ; iii) if/when none or not all of the above is done, for this court, or any other court, to find that Mr Moore's indictment(s) are invalid requiring dismissal with prejudice; iv) to find that the AUSA was not an attorney for the government, and that the AUSA's actions, in this instant case, were/are unconstitutional/illegal requiring reversal/vacation; v) for this court to find that the USDC and/or the USCA has violated the plain, concise, express language in FRE 201; vi) order/compel the USDC and/or the USCA to take judicial notice of the facts and documented evidence he presented to it/them; vii) to find that the USDC abused its discretion when it recharacterized his FRE 201 into a second/successive §2255; viii) to find that the USCA abused its discretion when it failed/refused to accept his timely filed - mailbox rule, pursuant to FRAP 26 and/or 40, motion to file out of time FRAP 40 and for an extention of time to file a FRAP 40 [20-11242], when he placed it into the hands of prison officials on the day of the deadline - since he did not receive the USCA's denials in a timely manner, thereby showing it was timely filed; ix) that the USDC and/or the USCA abused its/their discretion when it/they failed/refused to adjudicate/acknowledge the facts placed before it/them in

his 59(e); x) to compel the USDC and/or the USCA to adjudicate the merits of, and to provide the requested information/documents, in his 59(e); xi) for this court to remand to the USDC and/or the USCA for an evidentiary hearing; xii) to remand to the USDC and/or the USCA and order it/them to adjudicate the merits of his claim he presented; xiii) for this court to uphold his Constitutional right/protection and spontaneously dismiss his indictment(s) with prejudice, since the record clearly shows that the lower court(s) will NOT uphold his Constitutional right(s)/protection(s).

VI CONCLUSION

For any or all of the foregoing, Mr Moore prays that this Honorable Court will grant the relief requested, as well as any/all additional relief this Court deems needed or necessary to correct this denial of a Constitutional right/protection case/claim.

Respectfully submitted

BY:LS: K. D. Moore, Head of State - House of Moore, Est
(Kevin DeWayne: Moore)
'80, Secured Creditor, D/B/A: KEVIN DEWAYNE MOORE: CEO, Oklahoma
National, American National, in esse, sui juris, legalis homo, without
prejudice, without recourse.

Date: February 2022

The Four Corners of this: Application for a Certificate of Appealability, are under the Highest level of Knowledge, Truth, and Fact, as scribed and dated hereunder, thereof: Kevin Dewayne: Moore, Secured Creditor, D/B/A: KEVIN DEWAYNE MOORE: CEO, Oklahoma National, American National, in esse, sui juris, legalis homo. Given under the PENALTY OF PERJURY.

BY:LS: K. Dwayne Moore, Head of State, House of Moore, Est
(Kevin Dewayne Moore)
'80, Secured Creditor, D/B/A: KEVIN DEWAYNE MOORE: CEO, Oklahoma
National, American National, in esse, sui juris, legalis homo, without
prejudice, without recourse.

Date: February 2022

NO FURTHER ENTRIES THIS PAGE