21-8055 ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

In re: Shane Jeansonne — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

(ON PETITION FOR A WRIT OF
of mandamus)

United States Fifth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shane Jeansonne
(Your Name)

1101 Canvasback St.
(Address)

Lake Charles, LA 70615
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

Due to the circumstances of this case, petitioner ~~movant~~ is requesting to place the petition(s) in a perpetual state of abeyance until a counsel is found to represent petitioner. This will take much longer than the 90 days allotted to seek certiorari and to preserve his rights to both certiorari and mandamus, ~~movant~~ st petitioner is required to submit this dummy petition, then later amend it.

As indicated, petitioner ~~movant~~ is indigent and cannot afford counsel at this time. Additionally, petitioner's ~~movant's~~ conviction has put him at a seriously poor and disadvantageous state to be able to afford counsel.

Lastly, this case potentially involves judiciall corruption. Counsel is required to ensure fundamental fairness and integrity by acting as a witness to the events thereof. Any information not submitted in this petition will be submitted on amendment.

In re Jeansonne

Supreme Court of the United States

"Writ of Mandamus"

1. Movant, Shane Jeansonne, in pro se capacity, respectfully moves this honorable court to issue a writ of mandamus to the United States Fifth Circuit Court of Appeals to reinstate the petition for a Certificate of Appealability made by movant pursuant to 28 USC 2253 and order the Fifth Circuit to consider the correct issue provided by movant; whether or not the District Court erred by not finding a claim, that the effect of the dismissal on the merits of the first petition under 28 USC 2255 given pursuant to F. R. Civ. P. Rule 41(b) violated the jurisdictional limitations of 28 USC 2072(b) when the effect of that dismissal rendered subsequent petitions second or successive under 28 USC 2255(h) which modified or abridged movant's substantive right to file for relief under 28 USC 2255(a), was placed in the Section 2255 petition at all. To wit:

2. 1. Prologue - Movant begins his story with the sad notion of peril with the expectation that the judicial system operated with fundamental fairness and integrity. Sadly, movant's expectations has been shattered. If the treatment of movant's complaints in the lower courts is any indication of how this court will treat this petition, then it is all too obvious that movant will gain nothing; it would confirm movant's suspicion that all courts in this country have the authority to interpret all petitions as a request to possess a

nuclear devices.[1] What is the value of the First Amendment right to seek a redress of grievances when a court can interpret a petition to add, subtract, or modify a complaint on a whim or capricious basis to thwart access to relief?

3. That is what the lower courts have done in movant's case. Sadly, the reputation of the judicial system has been so badly tarnished by this atrocity that it would surprise movant if this court adjudicated this petition on the correct issue that movant is presenting instead of coming up with some random issue that the court could perceive without bothering to request of movant a clarification of the issue. In fact, movant expects that this court will attempt to intentionally thwart movant's petition by making such an interpretation. That is how bad the judicial system has gotten.

4. 2. Procedural Background - Movant was convicted of one count of possession of child pornography in violation of 18 USC 2252A(a)(5)(B) in the Western District of Louisiana. See Ex. Doc. 00516047060 (COA request), at iv, 1. After the appeals process, movant sought relief under 28 USC 2255 that was dismissed on the merits due to waived or non-cognizable claims. See Id. Movant then submitted another Section 2255 petition that was voluntarily dismissed. See Id. Movant then submitted the Section 2255 petition at issue here.

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[1] The Fifth Circuit did not interpret the COA as a request to possess a nuclear device. What scares movant is that the Fifth Circuit could have done so based on how the outcome of the matter ended up, and not cared about the constitutional consequences involved nor the rules of judicial practice. The critical issue here is both the rules of interpreting pro se petitions and how movant's petitions in the lower courts have been interpreted.

See Id.; Ex. Doc. 112, 112-1. The government was ordered to respond to the petition. See Id. About the same time the government responded, movant amended his petition. See Id.; Ex. Doc. 117 (Response), Doc. 121 (Amended petition). The amendment was granted and the government was ordered to respond to the amended petition. See Id.; Ex. Doc. 122. Movant replied, but withdrew it for another reply. See Id.; Ex. Doc. 124. The District Court dismissed the complaint as second or successive without even mentioning the Rule 41(b) issue. See Id.; Ex. Doc. 126.

5. Movant then sought a certificate of appealability pursuant to 28 USC 2253 in the U. S. Fifth Circuit Court of Appeals. See Ex. Doc. 00516047060. The Fifth Circuit denied the request. See Ex. Doc. 00516253438. Movant then sought a reconsideration because the Fifth Circuit did not address the correct issue. See Ex. Doc. 00516237119. The request to reconsider was also denied. See Ex. Doc. 00516243823.

6. 3. The All Writs Act - A writ of mandamus is a writ authorized to be issued under the All Writs Act (28 USC 1651(a)). A writ may be issued when "necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principle of law." See 28 USC 1651(a).

7. Supreme Court Rule 20(1) states that: "Issuance by the Court of an extraordinary writ authorized by 28 U. S. C. §1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ

will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court." See also Cheney v. U.S. Dist. Court for D.C. , 542 U.S. 367, 380-381, 124 S.Ct. 2576, 159 L.Ed.2d 459 (2004). ("First, the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process. Second, the petitioner must satisfy the burden of showing that [his] right to issuance of the writ is clear and indisputable. Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances.")

8. "The clearest traditional office of mandamus and prohibition has been to control jurisdictional excesses, whether the lower court has acted without power or has refused to act when it had no power to refuse." 16 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3933.1 (3d ed.) [hereinafter WRIGHT & MILLER]. That was true at common law. See 3 WILLIAM BLACKSTONE , COMMENTARIES * 112 (explaining the writ of prohibition issued to "any inferior court, commanding them to cease" a case that did "not belong to that jurisdiction"). And it's true today. "The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine [the court against which mandamus is sought] to a lawful exercise of its prescribed jurisdiction." Cheney , 542 U.S. at 380, 124 S.Ct. 2576 (quoting Roche v. Evaporated Milk Ass'n , 319 U.S. 21, 26, 63 S.Ct. 938, 87 L.Ed. 1185 (1943)); see also 16 WRIGHT & MILLER § 3932 ("The most common traditional

statement is that the extraordinary writs are available to a court of appeals to prevent a district court from acting beyond its jurisdiction, or to compel it to take action that it lacks power to withhold.").

9. Movant contends that the Fifth Circuit committed egregious jurisdictional error when it went beyond the scope of the COA requested by movant by assenting that the Rule 41(b) claim was indeed in the Section 2255 petition by proceeding to analyze the substantive merits of the claim. See Ex. Doc. 00516253438, at 1-2 ("Jeansonne asserts that the motion was not successive because a prior dismissal under Federal Rule of Civil Procedure 41(b) can have no preclusive effect. To obtain a COA, Jeansonne must make a 'substantial showing of the denial of a constitutional right....' Jeansonne fails to make this showing.") Movant never requested a COA on the substantive merits of the Rule 41(b) issue, but only to address the substantive merits to ensure that the claim was in the petition. This is because courts do not, sua sponte, typically consider matters not raised by the parties involved. In other words, if the Fifth Circuit found the petition to include the Rule 41(b) issue (which they did so by passing over the substantive merits of the claim), then the District Court committed clear error by failing to do the same. This is jurisdictional error because this court has already stated before, and movant advised the Fifth Circuit of, that only a threshold merits determination is permitted in the COA stage. When the Fifth Circuit went past the immediate issue to determine the substantive merits of the Rule 41(b) issue, the Fifth Circuit acted without jurisdiction because substantive merits was not ruled upon by the District Court. Moreover, if the immediate question is whether or not the Section 2255 petition included the Rule 41(b) claim, then ruling on the

substantive merits is an affirmation that the claim was in-fact included and therefore confirmed the would be full merits of the issue presented in the COA had the Fifth Circuit construed the petition accurately. Essentially, the COA should have been granted because the Fifth Circuit did find that the Section 2255 petition did include the Rule 41(b) issue, and should have summarily remanded to the District Court to determine the substantive plausibility of the claim as required under Federal Rules of Civil Procedure 8(a)(2) and/or Rules Governing Section 2255 Proceedings 4(b).

10. No Other Adequate Means – Being that movant has already sought review in the Fifth Circuit, the only appellate measure left is to seek Certiorari in this court. This court has indicated before that review in this court is not necessary to complete the appellate process because of the astonishingly low chance that certiorari would be granted even with a substantially strong and meritorious claim. Due to the discretionary feature of certiorari, it does not provide movant with an adequate means to contest the jurisdictional errors by the Fifth Circuit.

11. Specifically, there is no reason why movant needs to send a frivolous petition for certiorari that will be denied (and cause movant to lose hundreds of dollars to boot) which would ultimately result in movant seeking mandamus anyway. The gatekeeping function of certiorari does not provide a remedy to cure the jurisdictional errors of the Fifth Circuit. Instead, certiorari is exactly as claimed; merely a gatekeeping function[2] to the appellate process no different than the COA process itself. Even assuming that this court shows clear intent to grant certiorari, it does not follow that the merits are strong in

movant's favor as this court has denied relief after granting certiorari many times before. At the very least, the process of Mandamus provides for a quick and direct resolution on the merits, which is objectively necessary to end any injury done to movant by this jurisdictional error at the earliest possible time; the process has potentially caused an undue burden on movant by extending the amount of time in a convicted state.

12. Moreover, appealing the judgment of the Fifth Circuit as-is would equate to a waiver of the jurisdictional questions posed there-in. Movant would be necessarily required to appeal the judgment of the Fifth Circuit on the basis of the correctness of its ruling of which movant cannot properly contend to because his COA petition was not made in the format to challenge if the Rule 41(b) issue had substantive merits. If movant sought a COA making that contention, then movant would have a meaningful process in seeking certiorari. But again, that is not what is at issue here. Movant cannot request certiorari on a matter that was never formally adjudicated on; whether or not the Section 2255 petition included the Rule 41(b) issue.

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[2] There is a meaningful appellate process only when certiorari is granted. Certiorari does not test the merits of a claim. Certiorari tests certain things such as public importance or Circuit splits in interpreting the law. See Supreme Court Rule 10. Movant does not have sufficient basis in any of those factors to warrant certiorari. Therefore the appellate process is unavailable to movant and all appellate review is exhausted.

13. Right to the Writ – In In re Gee, 941 F.3d 153 (5th Cir. 2019), the Fifth Circuit explained that:

"Our mandamus precedent has long distinguished between discretionary decisions and non-discretionary duties. If the issue "is one committed to the discretion of the trial court, a clear and indisputable right to the issuance of the writ of mandamus will arise only if the district court has clearly abused its discretion, such that it amounts to a judicial usurpation of power." In re First S. Sav. Ass'n , 820 F.2d 700, 707 (5th Cir. 1987). But if the district court has violated a non-discretionary duty, the petitioner necessarily has a clear and indisputable right to relief. See United States ex rel. Bernardin v. Duell , 172 U.S. 576, 582, 19 S.Ct. 286, 43 L.Ed. 559 (1899) (holding "the writ of mandamus will not ordinarily be granted ... unless the duty sought to be enforced is clear and indisputable"); In re Digicon Marine, Inc. , 966 F.2d 158, 160 (5th Cir. 1992) (granting mandamus because "the district court had no discretion" (quotation omitted)); In re Estelle , 516 F.2d 480, 483 (5th Cir. 1975) ("[A]n extraordinary Writ may be appropriate to prevent a trial court from making a discretionary decision where a statute effectively removes the decision from the realm of discretion."); SEC v. Krentzman , 397 F.2d 55, 59 (5th Cir. 1968) (holding mandamus was appropriate because the district court "exercised what he thought to be a discretionary power which he did not possess").

A district court's obligation to consider a challenge to its jurisdiction is non-discretionary. When the defendant "challenge[s] the jurisdiction of the district court in an appropriate manner," that court has a "duty of making further inquiry as to its own jurisdiction." Opelika Nursing Home, Inc. v. Richardson , 448 F.2d 658, 666 (5th Cir. 1971). "[F]ederal courts are under an independent obligation to examine their own jurisdiction, and standing 'is perhaps the most important of [the jurisdictional] doctrines.' " FW/PBS, Inc. v. City of Dallas , 493 U.S. 215, 231, 110 S.Ct. 596, 107 L.Ed.2d 603 (1990) (quoting Allen v. Wright , 468 U.S. 737, 750, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984)); see also United States v. Hays , 515 U.S. 737, 742, 115 S.Ct. 2431, 132 L.Ed.2d 635 (1995). This obligation applies to each statute being challenged. See, e.g. , Lewis v. Casey , 518 U.S. 343, 358 & n.6, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996)." Id., at 158-159

15. As explained earlier at paragraph 9 above, this court has indicated that appellate courts do not have the jurisdiction to adjudicate the full merits of an appeal while in the COA stage. See Buck v. Davis, 137 S. Ct. 759, 773, 197 L. Ed. 2d 1 (2017) ("When a

court of appeals sidesteps [the COA] process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction.") Movant clearly established in his COA request that the District Court never adjudicated the claim. See Ex. Doc. 00516047060, at 11 ("This is not a case where the District Court dismissed a claim for failure to state a claim for relief.... This is a case where the District Court utterly failed to address a claim.") Movant indicated that the claim was placed in the Section 2255 petition. See Ex. Doc. 00516047060, at 13 ("Appellant provided sufficient factual basis to establish that F. R. Civ. P. Rule 41(b) violates 28 USC 2072(b).... And movant referenced the applicability of Rule 41(b) to the first petition....") And movant made it clear what he was seeking a COA on. See Ex. Doc. 00516047060, at 8 ("Without any explanation, movant can only assume the probable, that the District Court found no claim that the effect of the first petition pursuant to Rule 41(b) violated 28 USC 2072(b) could be found in the petition as construed under F. R. Civ. P. Rule 8. And it is this issue that movant seeks a COA on.") Even upon reconsideration, movant maintained this element of the COA request. See Ex. Doc. 00516237119, at 3 ("Movant, in his COA request, was 'NOT' necessarily challenging whether or not the Section 2255 petition was second or successive. Movant sought a COA to correct a procedural issue that is pretextual to whether or not the petition was second or successive."). The question is simply as such: does the judgment of the Fifth Circuit, although not explicitly stated in such terms, lend reasoning that they have drawn a conclusion that the Rule 41(b) issue was included in the Section 2255 petition? If so, then they have reached the full merits of the issue movant

placed in front of the Fifth Circuit in violation of this court's mandate not to adjudicate the merits of the appeal before granting the COA. And establishing as such within the petition for reconsideration, the Fifth Circuit refused to correct that jurisdictional issue. See Ex. Doc. 00516253438, at 1-2 ("Jeansonne asserts that the motion was not successive because a prior dismissal under Federal Rule of Civil Procedure 41(b) can have no preclusive effect. To obtain a COA, Jeansonne must make a 'substantial showing of the denial of a constitutional right....' Jeansonne fails to make this showing."); Ex. Doc. 00516243823, at 1 ("The panel has considered Appellant's motion for reconsideration... It is ordered that the motion is denied.")

16. Movant has a clear and indisputable right to the Writ in this regard. Movant made appropriate jurisdictional objections that clearly had strong merit. The actions by the Fifth Circuit "is closer to a "refusal to be guided by established doctrines governing jurisdiction." See In re Gee, 941 F.3d 153, 159 (5th Cir. 2019)

17. Exercise of Discretion – Lastly, this court should exercise its discretion to issue the Writ. With all due respect to this court, failing to order the Fifth Circuit to clean up the mess they made is tantamount to endorsing it. See e.g., Shelley v. Kraemer, 334 U.S. 1, 20, 68 S. Ct. 836 (1948) ("We hold that in granting judicial enforcement of the restrictive agreements in these cases, the States have denied petitioners the equal protection of the laws and that, therefore, the action of the state courts cannot stand.")

18. If for some reason Mandamus is not appropriate in this case because there are alternative remedies such as merely remanding the case to the District Court to consider

the Rule 41(b) issue, then that is fine. However, the drasticness of the Fifth Circuit's actions should not go unpunished and movant would want to contest valid remedies, such as placing permanent special masters in the Fifth Circuit that reports to this court, to ensure that this never happens again. Therefore this court, before denying mandamus because alternative remedies to the more direct issue may be available, should consider mandamus in light of the remedies not available to curb malicious judicial conduct. Movant will have to leave that task to the sound discretion of this court.

19. Interpreting the COA – In all things considered, the operative merits to be considered is an interpretation of the COA. This court has stated many times that factual allegations alone may state a claim for relief. As a matter of fact, this court has confronted the Fifth Circuit before on this issue. See e.g., Johnson v. City of Shelby, 574 U.S. 10, 11-12 (2014) (Remanding from the Fifth Circuit because "Having informed the city of the factual basis for their complaint, they were required to do no more to stave off threshold dismissal for want of an adequate statement of their claim.")

20. In Sause v. Bauer, 138 S. Ct. 2561, 2563, 129 S. Ct. 315, 201 L. Ed. 2d 982, 172 L. Ed. 2d 229 (2018), this court indicated how Court's must construe petitions. "In considering the defendants' motion to dismiss, the District Court was required to interpret the *pro se* complaint liberally, and when the complaint is read that way, it may be understood to state Fourth Amendment claims that could not properly be dismissed for failure to state a claim." See Id. This has been a rule of judicial practice for many years. See Ex. Doc. 00516047060, at 12 (citing F. R. Civ. P. Rule 8(e); Haines v. Kerner, 404

U. S. 519 (1972))

21. Likewise the concurrence of Justices Kagan and Sotomayor in Simmons v. United States, No. 20-1704 (U.S. Nov. 1, 2021) involved the same mechanic. "The Sixth Circuit's reasoning appears questionable. To the extent the court was imposing a diligence requirement for invoking the §2255(f)(2) filing deadline, that requirement appears nowhere in the provision's text. To the extent the court was not imposing such a requirement, it was likely imposing an inappropriately high bar on a pro se filing. Simmons specified the legal materials that were unavailable: the "'Rules Governing 2255 Proceedings and [the Antiterrorism and Effective Death Penalty Act of 1996] statute of limitations, '" as well as any "'federal Law Library.'" Id., at 793. And he explained that this lack of access "'prevented him from having the ability to timely pursue and know the timeliness for filing a 2255 Motion.'" Ibid. Little "liberal construction" is required to understand this as pleading causation: Simmons alleged that his inability to access habeas law materials prevented him from understanding how and when to file a habeas petition, and therefore from filing."

22. There are many other cases movant can cite. But the obvious aspect of precedent is that liberally construing a pro se petition does not solely depend upon what proper remedy is available, but is dependent on what was alleged in the petition. For example, both a challenge to the substantive merits of the Rule 41(b) issue and a challenge on whether or not the District Court should have found the Rule 41(b) issue in the Section 2255 petition can be construed as a petition for a COA. The fact that movant may have

raised both does not permit the Fifth Circuit to ignore the lesser included constitutional claim. In Sause, this court construed the petition to include a Fourth Amendment claim because it was predicate to the violation of Sause's First Amendment rights. See Sause, 138 S. Ct. at 2365 ("We appreciate that petitioner elected on appeal to raise only a First Amendment argument and not to pursue an independent Fourth Amendment claim, but under the circumstances, the First Amendment claim demanded consideration of the ground on which the officers were present in the apartment and the nature of any legitimate law enforcement interests that might have justified an order to stop praying at the specific time in question. Without considering these matters, neither the free exercise issue nor the officers' entitlement to qualified immunity can be resolved. Thus, petitioner's choice to abandon her Fourth Amendment claim on appeal did not obviate the need to address these matters.")

23. Likewise in Simmons, that petition was construed to include a First Amendment violation to right of access to the courts when "Simmons specified the legal materials that were unavailable: the "'Rules Governing 2255 Proceedings and [the Antiterrorism and Effective Death Penalty Act of 1996] statute of limitations, '" as well as any "'federal Law Library.'" *Id.,* at 793. And he explained that this lack of access "'prevented him from having the ability to timely pursue and know the timeliness for filing a 2255 Motion.'" *Ibid.* Again, this court construed the petition based on the facts alleged in the petition.

24. What does this mean for movant's COA? Obviously movant's reference to the rules

of construing petitions was not meant to ensure that the petition was to be treated as a request for a COA, but to highlight the particular issues to be addressed in the COA. Again, movant made clear on what he was seeking a COA on. See paragraph 15, ante. The Fifth Circuit should have liberally construed the COA request exactly as movant has addressed here, there, and everywhere; as an allegation that the District Court deprived movant of his First Amendment right to redress the Rule 41(b) issue by ignoring a perfectly (albeit inartfully) placed claim in the Section 2255 petition. "Obviously there is no fairness or integrity of the judicial system if they can interpret a Section 2255 petition as a request to possess a nuclear device... To be clear, whether or not a petition could be construed under 42 USC 1983, 28 USC 2255, or any other statutory remedy depends on how a court interprets the allegations in the petition." See Ex. Doc. 00516237119, at 5.

PRAYER – Wherefore movant has exhibited merits to grant his petition movant respectfully prays that this honorable court do so and provide any and all relief appropriate at the sound discretion of this court. Further, this court should give notice to all of the courts in this country that it will not tolerate mis-application of clearly established rules of judicial practice. Petitions are to be construed to do substantial justice, and not substantial injustice.

Respectfully Submitted,
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