

No. \_\_\_\_\_

---

**IN THE  
SUPREME COURT OF THE UNITED STATES**

---

Larry Welenc, Petitioner

v

State of Florida, Respondent

---

**ON PETITION FOR WRIT OF CERTIORARI  
TO UNITED STATES DISTRICT COURT OF APPEAL  
DC CIRCUIT**

---

**MOTION FOR REHEARING**

---

**LARRY WELENC  
Po Box 4207  
Clearwater FL 33758  
(727)-687-9344**

---

## PRELIMINARY STATEMENT

This Petition in part concerned the question of whether a US District Court of Appeal tribunal , once assigned, must consist of three judges throughout the proceeding. Petitioner's three (3) subsequent Motions to the Denial of the Appeal by a three (3) panel tribunal was denied with the same notation in the Orders of March 17, 2022, April 5, 2022 and May 27, 2022 DC Circuit Court of Appeal **"Petition DENIED. Justice Jackson took no part in the consideration or decision of this petition"**.

Judge Jackson despite being in consideration for the vacant Supreme Court Seat did participate in the original order of January 6, 2022 denying the Petitioner's Appeal. The hearing date of this Petition for Rehearing was set three (3) day before Judge Jackson was to begin her first day of hearing cases on October 3. Petitioner does not find this to be a coincidence. Had Justice Brown began hearing cases with this court three days earlier she would have had to either participate in the hearing and justify her signing the Order of January 6, 2022 in this case or recuse herself .

Petitioner had inquired with the Clerk of the Court about the possibility of withdrawing the Motion to proceed in forma Pauperis and paying the filing fee for this Petition after coming to the conclusion that cases in which the Petitioner was allowed to proceed in forma Pauperis were not being taken seriously and simply being rubber stamped "Denied". Upon examination of Petitioner's 2020 Affidavit to Proceed in forma Pauperis in this case, Petitioner discovered that that his Affidavit contained a serious error which if

had been caught by the court may have resulted in the denial of the Application to Proceed in Forma Pauperis. Petitioner had erroneously entered amounts of money he owed to the banks as money the banks owed him leading Petitioner to conclude that in forma Pauperis Petitions were simply granted as an easy way to dispose of them.

Petitioner had spoken with the Deputy Clerk at 202-863-1004 who advised Petitioner not to pay the fee since he would also have to submit 70 copies of the Petition. Petitioner was informed by a Deputy Clerk that Jake Levitan was assigned to his case and to speak with Mr. Levitan for any matters involving the Petition. Aside from sending Petitioner a letter with a form to be filled out indicating that a copy of the Motion was sent to the Respondent which Mr. Levitan forgot to enclose, Petitioner had no further contact with Mr. Levitan despite several attempts by Petitioner to contact Mr. Levitan by phone, none of which were returned, and a written correspondence which went unanswered and unacknowledged. Petitioner had intended to request a list of all forma Pauperis cases in the last two years to examine their outcome before making his decision as to withdraw the Motion to proceed in forma Pauperis but no one from the court would return the Petitioner's calls or answer his written correspondences. Petitioner proceeded with his Motion to proceed in forma Pauperis despite his realization that this might be counterproductive to his case.

Petitioner is submitting a copy of the rules of the court from the courts own website [www.uscourts.gov](http://www.uscourts.gov) regarding the required composition of the Appeals Tribunal. It is

Petitioner's contention that these rules were being ignored by the Appeals Court to protect the first black female Judge from any repercussions resulting from her participation in Orders subsequent to January 6, 2022 Order of the Appeals Court thus allowing and failing to remedy ongoing violations of Petitioner's 5<sup>th</sup> and 14<sup>th</sup>s Amendment by the Defendant.

## **REASONS FOR THE MOTION FOR REHEARING**

### **THE COURT HAS OVERLOOKED A VIOLATION OF PETITIONER'S FOURTEENTH (14<sup>TH</sup>) RIGHTS OF DUE PROCESS**

Though Petitioner's Petition was primarily based on two violations of Petitioner's Fourteenth (14<sup>th</sup>) Amendment right to due process of the Appeals court 1.) A tribunal consisting of two Judges instead of the three Judges required according to the Rules of the District Court of Appeal DC Circuit Court and 2.) the Altering of the facts of the case by the Judges to fit the Order of March 17, 2022, April 5, 2022 and May 27, 2022 Petitioner will only focus here on the violation of the rules of the court in reference to the number of Judges on the tribunal as the altering of the facts of the case to fit the Orders is adequately documented in the Petition.

As stated in Exhibit A,

"appellate court's task is to determine whether or not the law was applied correctly in the trial court. Appeals courts consist of three-judges and do not use a jury."

To allow the tribunal to consist of any other number of Judges than the number established in the rules of the court would be an arbitrary abuse of power which would allow the court to skew the decision to one side or the other and thus would thus be a violation of procedural due process prohibited by the 14<sup>th</sup> Amendment.

#### THE COURT HAS OVERLOOKED GRAVE VIOLATION OF PETITIONER'S FIFTH (5<sup>th</sup>) AMENDMENT RIGHTS

The Defendant had conducted over a prolonged period of time surveillance of the Petitioner without obtaining a warrant and showing probable cause to believe that the person has committed or will commit a crime.

Petitioner became known to the FBI in 1980 after graduating from the University of Delaware in August 1980 with a degree in Geology (Note: Petitioner's Diploma erroneously states 1981) after completing Geology Summer Field Camp at the University of Nevada in June and July 1980.

Petitioner returned to Nevada around September 1980 and immediately began applying for jobs as a Geologist at the Nevada Test Site with Fenix and Scissions which require a high-level Security Clearance since the place of employment was inside the Nevada Test Site. Petitioner was also one of the two final candidates of a National Laboratories Petitioner either Los Alamos or Lawrence Livermore to which Petitioner submitted applications. All three Positions required a high level security clearance. Petitioner was

1 of 5 candidates for 5 positions with Fenix an Scissions was based in the Nevada test site and which required a preliminary investigation by the FBI . Petitioner after his initial interview that he was informed under further consideration for the next step of the hiring process was the preliminary background check by the FBI. Several weeks later, Petitioner was informed by Fenix and Scissions that he would not be considered further for the Position. No explanation was given.

Around January 1986 Petitioner was able to cut thought the red tape and secured a GS 5 position with the Bureau of Land Management as a Geologist. The Bureau of Land Management in Las Vegas had been looking for a Geologist for eight months and no one was being referred to them from the CPO Central Personnel Office in Washington DC. Petitioner formally submitted the application for employment which was processed immediately. Petitioner was immediately hired but before Petitioner was scheduled to start, he received a call from the Manager at the Bureau of land Management who hired Petitioner and informed Petitioner somewhat in disbelief that could not be hired stating "I know how to say this but I just received a call that Reagan pulled funding for the position" . This job would also have required high level Security clearance since some of the work would be at the Nevada Test site and thus would have required the same preliminary investigation by the FBI.

Petitioner again found himself in the FBI circles shortly before leaving Las Vegas through his employment at the Royal Hotel Casino in Las Vegas around 1984 which the Gaming Control Board had taken over due to a money laundering investigation and has

reason to believe that been unwittingly speaking with an FBI agents posing as dealer making it know that Petitioner was heading to the Caribbean to work as a dealer and from there to Europe.. Certain elements of Petitioners' conversations seem to have made their way to Europe where the Petitioner relocated in 1985. After Petitioner returned to the USA after and 8 and a half year residency in Europe and submitted a FOIA request with the US Department of State around 1995 in which the FBI got involved by making the FOIA request a dual request , the FBI called the Petitioner's employer, the Horseshoe Hotel and Casino around December 1996 inquiring as to whether the Petitioner was employed with them in an apparent attempt to get Petitioner fired which eventually succeeded though not immediately as the FBI presumably thought it would.

As there was nothing in Petitioner's background that would have prevented Petitioner from obtaining any sort of Security Clearance, Petitioner is certain that FBI Interference in petitioner 5<sup>th</sup> amendment right to life liberty and the pursuit of happiness was not due at that time in 1980 to any animosity towards the Petitioner, though it became personal over the years, but almost certainly stems from the background of Petitioner's family. Though Petitioner mother's side of the family which originated from Sicily would upon investigation have caught the attention of the FBI especially in Las Vegas Nevada simply by emigrating from Sicily, Petitioner is primarily referring to his father's side of the family, which though ethnically Polish were citizens of the Czarist Russian and emigrated to the USA with Russian Passports. Petitioner had done an extensive search both locally, statewide and with NARA. (National Archives) and found that Petitioner's Polish grandmother never became a US citizen.

Petitioner made in an effort to obtain European citizenship in a common market country through both sides of the family around 2014 and established with certainty that Petitioner's Polish grandmother never applied took up Polish citizenship which became available to all Polish citizenship under the Russian Empire in 1921 nor did she ever become a US citizens according to NARA and Pennsylvania, New York and New Jersey state and local records. She was according to the Polish consulate *de facto* a Russian citizen until she died in 1990 at the age of 98. Though Petitioner's Polish grandfather put in an application US citizenship in 1921 he never went through with the application and never applied for Polish citizenship according to the Polish Consulate und was also *de facto* a Russian citizen when in died in 1930.

Petitioner did discover around 2012 by chance that the Department of Justice had a restricted file on his Polish grandmother which can only be found with the NARA archives with the correct keywords. She was called in by the Department of Justice when they were calling in foreigners during the Second (2<sup>nd</sup>) World War as were the Japanese, Germans and other potential Enemies of the State". She admitted to being arrested around 1920 for Bootlegging by the Department of Treasury and getting off with a fine and coming to the USA twice though she could not give a date or location of her second arrival. She also admitted and belonging to a Polish Organization "Kosciuszko" , an obvious reference to Thaddeus Kosciuszko , the Polish General and Engineer who fought in the American Revolutionary war.

This interrogation may have been the result of the 1940 census which contained an question mark and remark "Misinformation" next to their census entry. This "Misinformation" which may have been explained in Petitioner's Polish grandfather's application for US citizenship in which a second residency on the West side of the street is indicated. The family's main household on the East side of the street was listed. This fact that seemed to have initially escaped the notice the New Jersey State Police who gave Petitioner access the personnel files of his father, New Jersey State Trooper Hilary Welenc, who died on duty on November 20, 1959.

Petitioner began investigation into the death of his father New Jersey State Trooper Hilary Welenc after the sudden death of Petitioner's mother in July 2004 shortly before Petitioner was to return to Berlin Germany to keep a tentative appointment date with the US Consulate in Berlin to renounce his US citizenship.

Petitioner's investigation which ran over 10 years revealed that the Hilary Welenc who enlisted in the US Air Force for three years at the age of 18 in 1948 and the Hilary Welenc who enlisted in the New Jersey State Police at the age of 23 in 1953 had two different Blood types, Blood type O in the Air Force and Blood Type A with the New Jersey State Police. While under normal times with no other outstanding circumstances this would have probably been simply considered a clerical error albeit an unforgivable one for obvious reasons- , Blood type O is a universal donor Blood type A would kill a person

with Blood Type O , this was the age of McCarthyism where suspected communist were around every corner.

For all the reason above an much more including the fact that had Trooper Hilary Welenc lived for one more month he would have been enlisted for life with the New Jersey State Police and there was nothing in his file as the two State Police Officers pointed out indicating anything which would have stood in the way of Trooper Welenc's enlistment for life except in Petitioner's opinion the US Government including the FBI who might not have able to come to terms with a New Jersey State Trooper with two blood types and a mother whose mother remained defacto was a Russian citizen to her death around 1990.

The criminal case concerning the death of Hilary Welenc which took place Camden County Court in New Jersey in 1961 during which five (5) five State Police Officers testified including the Lieutenant of Hilary Welenc who retired one month after the "accident" and his Sergeant who retired before the Criminal Hearing and who kept changing his story as to where he was at the time of the death of Hilary Welenc and was questioned about it in court. According to the transcript of the case on the next day when a routine hearing was scheduled to take place, the Judge without warning and without calling the jury found the Defendant "Not Guilty".

It is clear from the transcript of the case that the Judge knew the Officers were not being truthful and it may have been that the Judge was made aware the two-page article

Camden Courier who were at the scene of the accident and recorded in that who actually showed up at the scene of the accident. All five (5) officer left out the second (2<sup>nd</sup>) officer to arrive , stating that it was the Sergeant who arrived after the first Officer, a Sergeant who kept changing his story as to were he was at the time of the accident.

The Pensions of all five officers who testified except for the first officer to arrive at the scene are missing from the New Jersey State Police Pension records. Petitioner eventually submitted a case to the New Jersey Government Records Counsel (GRC) around 2017 for an explanation on the missing Pensions as this would open a door into the true nature of Trooper Welenc's death. An explanation was not given except to that they might be found at [www.Money.com](http://www.Money.com) . The New Jersey GRC accepted this explanation by the New Jersey State Police. The website which simply interfaced with the State of New Jersey Pension records did not needless to say contain those missing Pensions. It is not Petitioner's intent to reinvestigate the death of his father Trooper Hilary Welenc, though Petitioner holds the FBI to be complicit in his death but simply to outline a series of events which resulting in an investigation of the Petitioner which seems to after 22 years have no end in sight.

The Respondent in their Motion to Dismiss with the lower Court continuously referred to the Declaration or David Hardy, which made reference to an alleged investigation of the Plaintiff. The Declaration of Mr. Hardy was used by the Defendant to deny Petitioners 2008 Motion to Expunge the photo in question and was further utilized in their 2017 Answer Brief in the lower court to justify the non release of documents insinuating that the investigation was still on going Nineteen (19) years later in 2017, well above the 5

year statute of limitation. The FBI has clearly violated the Petitioner's Fifth (5<sup>th</sup>) and Fourteenth (14<sup>th</sup>) Amendment rights by keeping an investigation even should it be bogus open for over 19 years.

Judge Reggie Walton stated in his Memorandum and Opinion that even if the information in the withheld records exonerates the Plaintiff as he speculates, the FBI need not disclose it if a FOIA Exemption applies. Though the FBI's notes which were released to the Petitioner in a previous FOIA request around 2005 clearly exonerate the Petitioner of a misdemeanor trespass as not even having been in the RIO Suite Hotel and Casino that night, the question before the court is not so much the release of exonerating evidence but the keeping an investigation real or bogus open in violation of Petitioner's Fifth (5<sup>th</sup>) and Fourteenth (14<sup>th</sup>) Amendment rights. Since the date of the FBI notation in 1998 exonerating the Petitioner, and the date of Respondent's reference to the Declaration of David Hardy in their Answer Brief in 2017 with the lower court, nineteen (19) years had passed.

As Petitioner stated in the lower court case and in his premature Petition with this court in 2020, "The FBI through their attorney in his Answer to the Petition tried to get the lower court case dismissed in part because this was an ongoing investigation and cited the 2008 case (petition to expunge the alleged photo of the Petitioner in their files) as evidence that the petitioner was trying to relitigate the case. The Motion for Dismissal was denied.. The FBI in their Motion to Dismiss with the lower Court continuously referred to the Declaration of David Hardy, which made reference to an alleged investigation of the Plaintiff which was used to deny Petitioners Motion to Expunge the photo. By making

this argument in their 2017 the FBI was admitting that an Investigation had been going on for some 19 years ( 29 years according to the date in the surveillance camera in the phot) which lies well above the 5 year statute of limitation.

Even if Judge Reggie Walton stated in his Memorandum and Opinion were correct, the FBI could not make reference to the Declaration of David Hardy as if there were still an ongoing investigation if in fact that investigation had been concluded. Since the FBI used the Declaration of Warren Hardy to justify their refusal to release the requested information in 2017 it must be assume that the investigation if ongoing in 2022 and in its 22<sup>nd</sup> year and in it's 32<sup>nd</sup> if the time stamp on the Security camera in the photo is to be taken seriously. Regardless of whether an the investigation of a misdemeanor trespass even should it fall under FBI jurisdiction in a Las Vegas Casino, or whether the investigation was simply fabricated to justify the photo in their files, either way Petitioners 5<sup>th</sup> and 14<sup>th</sup> Amendment rights have been violated.

As stated in Appeal It is the Petitioner's contention that there is no basis for investigation and that the FBI simply opening a fictitious investigation based on a fictitious surveillance photo to keep track of the Plaintiff after his trip to Hungary in 1988 from Vienna Austria during his 8-and-a-half-year residency in Europe which would be in **violation of Petitioner's 5<sup>th</sup> and 14<sup>th</sup> Amendment rights.** Petitioner did not register with the US Department of State before making the trip to Hungary in 1988.

Petitioner has made the events that took place during that trip to Hungary as well as the rest of his travels through Europe public on his Facebook page in a series of posts. Also made public on Petitioner's Facebook page was a document released through another FOIA Request on the FBI's attempt to set up an International Police academy in Budapest Hungary after fall of the Wall. That Document referred to the seating arrangement recommended by the FBI in order "not to kill the goose that laid the golden egg" **[Note: it is only a matter of obtaining the seating arrangement to determine who the "golden goose" was but this information was expunged from the FOIA Petitioner FOIA request for that information]**. Petitioner did appeal the excising of the information released but except for a few insignificant additional documents released, the FOIA request was denied.

To this date the Respondent has not made any reference to information released by the Petitioner, nor have they questioned or charged the Petitioner with any crime other than a misdemeanor trespass at the Hotel RIO Suite Hotel and Casino in which Petitioner was attacked and beaten to the ground by four Security Officers when he tried to leave the Casino all of which would have been caught on the RIO's Security cameras which the RIO Suite Hotel & Casino touted at time as the most sophisticated in the world.

## CONCLUSION

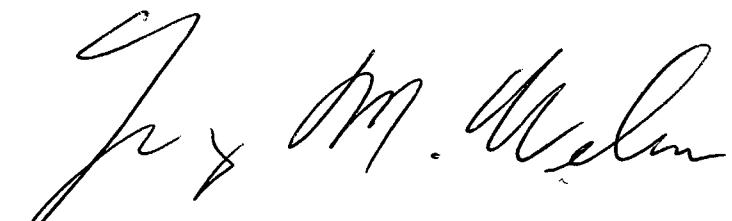
The issue has been raised by Judge Walton in the lower court case as to whether the FBI must release exonerating evidence, if other restriction apply. Presumably by "case" a FOIA case is meant but where is the line drawn to the non release of exonerating

evidence due to restrictions. If it applies to misdemeanor cases does it apply to felony cases as well? Is it not the primary obligation of the government to protect the innocent? Should a FOIA exemption be allowed interfere with that obligation? If the government decided to prosecute a citizens for real or imagined reason or an act of retaliation, is it not the obligation of the courts to put an end to that persecution?

The FBI has admitted to an ongoing investigation of the Petitioner which if dated from the time of the alleged incident in 1998, a misdemeanor trespass over which the FBI has no jurisdiction and is now in its 22nd year. If this court refuses to even hear the case where does the Petitioner turn to end this persecution by the FBI to an International Court for protections of Petitioner's right. Was it not Thomas Jefferson who stated in the Declaration of Independence,

*That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.*

Respectfully submitted,

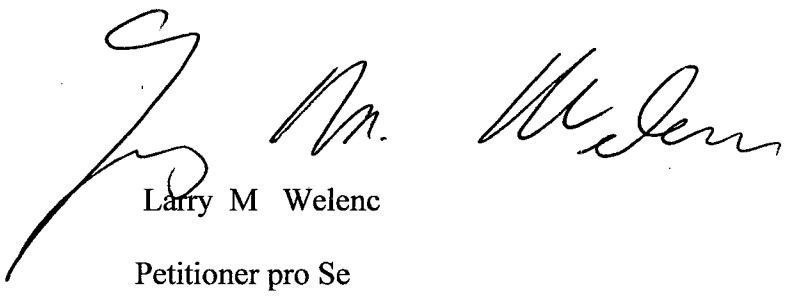


Larry Welenc  
Petitioner Pro se

Dated: October 18, 2022

## CERTIFICATE OF COUNSEL

Pursuant to Rule 44.2, Petitioner pro se certifies that the Petition is restricted to the grounds specified in the Rule with substantial grounds not previously presented  
Petitioner pro se certifies that this Petition is presented in good faith and not for delay



Larry M. Welenc  
Petitioner pro Se

# AFFIDAVIT OF SERVICE

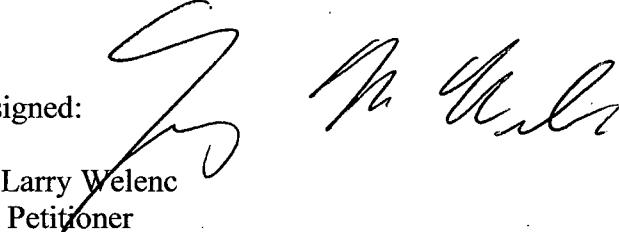
I hereby certify that a copy of the Motion for Rehearing was mailed to the Respondent on this day the 18<sup>th</sup> of October 2022 to

Elizabeth B. Prelogar  
Counsel of Record  
Solicitor General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001  
SupremeCtBriefs@USDOJ.gov

dated: Ocotber 18, 2022

signed:

Larry Welenc  
Petitioner



# Court Role and Structure

*Exh. b, r A*

*Federal courts hear cases involving the constitutionality of a law, cases involving the laws and treaties of the U.S. ambassadors and public ministers, disputes between two or more states, admiralty law, also known as maritime law, and bankruptcy cases.*

The federal judiciary operates separately from the executive and legislative branches, but often works with them as the Constitution requires. Federal laws are passed by Congress and signed by the President. The judicial branch decides the constitutionality of federal laws and resolves other disputes about federal laws. However, judges depend on our government's executive branch to enforce court decisions.

Courts decide what really happened and what should be done about it. They decide whether a person committed a crime and what the punishment should be. They also provide a peaceful way to decide private disputes that people can't resolve themselves. Depending on the dispute or crime, some cases end up in the federal courts and some end up in state courts. Learn more about the different types of federal courts.

## Supreme Court

The Supreme Court is the highest court in the United States. Article III of the U.S. Constitution created the Supreme Court and authorized Congress to pass laws establishing a system of lower courts. In the federal court system's present form, 94 district level trial courts and 13 courts of appeals sit below the Supreme Court. [Learn more about the Supreme Court.](#)  
[\(http://www.supremecourt.gov/\)](http://www.supremecourt.gov/)

## Courts of Appeals

There are 13 appellate courts that sit below the U.S. Supreme Court, and they are called the U.S. Courts of Appeals. The 94 federal judicial districts are organized into 12 regional circuits, each of which has a court of appeals. The appellate court's task is to determine whether or not the law was applied correctly in the trial court. Appeals courts consist of three judges and do not use a jury.

A court of appeals hears challenges to district court decisions from courts located within its circuit, as well as appeals from decisions of federal administrative agencies.

In addition, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals