

22-7142
No. 21-3477

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM M. PLUMP,

Petitioner,

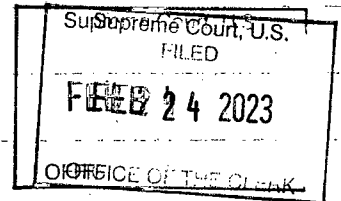
v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit.

PETITION FOR WRIT OF CERTIORARI



William M. Plump
08419-027 F Unit
Federal Correctional Institution
P.O. Box 1000
Sandstone, MN 55072
Pro Se

QUESTION PRESENTED

The law of the Eighth Circuit is that an attorney violates the federal mail and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, if they make material misstatements or omissions to the court. United States v. Hansmeier, 988 F.3d 428 (8th Cir. 2021). At Petitioner's sentencing, counsel for the government falsely claimed that Petitioner was on federal supervised release when he committed his offenses and that Petitioner was transporting drugs in his child's diaper bag. These material misstatements were violations of the mail-wire fraud statutes, according to the Eighth Circuit's Hansmeier decision.

The question presented by this petition is:

Does Due Process prohibit the government from using criminal fraud to obtain a conviction?

LIST OF PARTIES

All parties appear in the caption on the cover page of this Petition.

TABLE OF CONTENTS

Page

QUESTION PRESENTED

i

LIST OF PARTIES

ii

TABLE OF CONTENTS

iii

TABLE OF AUTHORITIES

v

PETITION FOR WRIT OF CERTIORARI

1

OPINION BELOW

2

JURISDICTION

2

RELEVANT STATUTORY PROVISIONS

3

INTRODUCTION

4

STATEMENT OF THE CASE

7

REASONS FOR GRANTING THE PETITION

11

CONCLUSION

12

APPENDIX

App. A. Opinion of Court of Appeals Below

App. 1-2

App. B. Court of Appeals Order Denying Motion for Rehearing App. 3

App. C. Relevant Statutory Provisions

App. 4-5

(18 U.S.C. §§ 1341, 1343)

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Bridge v. Phoenix Bond & Indem. Co.,</u> 553 U.S. 639 (2008)	7
<u>Neder v. United States,</u> 527 U.S. 1 (1999)	7
<u>United States v. Hansmeier,</u> 988 F.3d 428 (8th Cir. 2021)	i, 7, 9, 10
<u>United States v. Plump,</u> No. 21-3477 (8th Cir. Oct. 21, 2022)	2
<u>Statutes</u>	
18 U.S.C. § 1341	i, 3
18 U.S.C. § 1343	i, 3
21 U.S.C. § 841	9
28 U.S.C. § 1254(1)	2

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM M. PLUMP,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner William M. Plump respectfully seeks a writ of certiorari
to review the judgment of the United States Court of Appeals for the
Eighth Circuit.

OPINION BELOW

The opinion below is unpublished as United States v. Plump, No. 21-3477 (8th Cir. Oct. 21, 2022) (per curiam), and is reprinted in the Appendix to this Petition. (App. 1-2).

JURISDICTION

The Eighth Circuit Court of Appeals issued its decision on October 21, 2022, (App. 1) and denied the request for rehearing en banc on November 28, 2022. Hence, this Petition is timely. This Court has jurisdiction to review the decision of the court of appeals under 28 U.S.C. § 1254 (1).

RELEVANT STATUTORY PROVISIONS

This petition involves the federal mail and wire fraud statutes, codified in Title 18 of the United States Code at Chapter 63, and fully reprinted in the Appendix (App. 4-5). Relevant excerpts follow:

18 U.S.C. § 1341

Frauds and Swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises *** for the purpose of executing such scheme or artifice or attempting to do so, places in the post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier ~~xxxx~~ shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 1343

Fraud by Wire, Radio or Television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or

television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.

INTRODUCTION

This Court's intervention is urgently needed to address a severe threat to the judiciary's institutional viability. The law of the Eighth Circuit is that an attorney commits federal mail and wire fraud if they make material misstatements or omissions to a tribunal. At a criminal sentencing, counsel for the government violated the federal mail and wire fraud statutes by falsely stating that Petitioner was on federal supervised release when he committed his drug offense and that Petitioner was transporting drugs in his child's diaper bag. By their very nature, these statements were designed to inflame the district court into imposing a greater-than-warranted term of imprisonment, and were thus material.

Everyone accepts the maxim: if you do the crime, then you do the time.

Allowing the government the power to violate the federal criminal statutes in pursuit of "more time" destroys that acceptance. Our criminal laws are a list of actions that we, as a society, deem to be so outrageous as to justify the enormously expensive proposition of incarceration. The courts cannot yawn or shrug their shoulders when the government resorts to outrageous extremes; if they do, then they will inevitably lose the public's support. Petitioner accepts that there are consequences for association with methamphetamine, but because of the government's conduct at sentencing, he believes that his judgment of conviction is rotten. Petitioner's friends, family and community also think that the judgment is rotten.

Everyone associated with this case expected the Eighth Circuit to intervene. Surely, the Eighth Circuit would not declare material misstatements to courts to be criminal fraud, only to allow the government the power to resort to this very conduct in furtherance of its criminal prosecutions. But the

Eighth Circuit did, thus transferring the problem to this Court.

This Court has a significant decision to make. Will it reject the federal judiciary's association with criminal fraud by ordering that Petitioner's sentence be vacated - leaving it to the Eighth Circuit to decide whether Petitioner should be resentenced or the government should be barred from obtaining any conviction at all. Or will the Court deny review and thus allow the cancer of this idea to spread and threaten the judiciary. As each subsequent criminal defendant is subjected to a judgment tainted by criminal fraud, that defendant and their friends, family and community will learn to view the courts as a rotten institution. Once a critical mass is reached, rather than marching through the streets chanting, "Defund the Police," the people will demand, "Defund the Courts;" the Court will put itself one demagogue away from its demise. It is unrealistic to believe that the people will accept imprisonment of their loved ones via

criminal means. The Court can and should act to halt this train before it hurtles dangerously down the track.

STATEMENT OF THE CASE

1. The federal mail fraud, 18 U.S.C. § 1341, and wire fraud, § 1343 statutes proscribe "any scheme or artifice to defraud" in connection with specified modes of communication. Id. "The gravamen of the offense is the scheme to defraud." Bridge v. Phoenix Bond + Indem. Co., 553 U.S. 639, 647 (2008). In United States v. Hansmeier, 988 F.3d 428 (8th Cir. 2021), the Eighth Circuit held that an attorney schemes to defraud by making material misrepresentations or omissions to a tribunal.

2. In the appellate briefing, the government conceded that counsel for the government made two misrepresentations at Petitioner's sentencing hearing: (1) counsel falsely stated that Petitioner was on

federal supervised release when he engaged in the offense conduct; and

(2) Petitioner was transporting drugs in his child's diaper bag. These statements were entirely false.

3. These statements were also material. A falsehood is material if it has a "natural tendency to influence, or [was] capable of influencing, the decision-making body to which it was addressed." Needer v. United States, 527 U.S. 1, 16 (1999) (cleaned up).

4. A defendant who commits crimes while on federal supervised release might deserve a stiffer sentence, as might one who endangers their child by transporting drugs in a diaper bag, where drug residue might contaminate items that are placed on sensitive areas of the body. See 18 U.S.C. § 3553(a) (listing factors that district court judges must consider at sentencing). These statements were material.

5. Petitioner was sentenced on October 20, 2021, to a 144 month term of imprisonment, a five year term of supervised release and a \$100 special assessment based on his conviction for possession with intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A). Petitioner's sentence exceeded the sentence advocated for by his counsel by 24 months, and the statutory minimum by the same.

6. Petitioner's sentence is tainted by government counsel's criminal conduct. The government violated the Eighth Circuit's Hansmeier prohibition on material misstatements and omissions to the courts and thus brought counsel's conduct within the orbit of the mail-wire fraud statutes. Petitioner is not only a criminal, but he is also the victim of criminal conduct by counsel for the government.

7. Petitioner appealed to the Eighth Circuit Court of Appeals.

In his appeal, Petitioner argued that counsel's resort to criminal tactics to obtain his sentence violated Petitioner's Fifth Amendment Due Process rights. Petitioner requested that he be resentenced in a proceeding free of Hansmeier-style mail-wire fraud or that his conviction be vacated and the government barred from pursuing a conviction because of the government's outrageous conduct.

8. The Eighth Circuit affirmed, but the panel did not meaningfully address Petitioner's position. For example, the panel did not reject Petitioner's argument that counsel for the government engaged in criminal fraud. All the Eighth Circuit did was hold that the judgment should be affirmed because Petitioner was unable to show that the misstatements lengthened his sentence.

9. Yet, federal mail-wire fraud is accomplished regardless of whether the fraud is successful. The essence of mail-wire fraud is the scheme to defraud, which occurs irrespective of whether the fraud succeeds. Whether Petitioner's sentence was lengthened is a different question than whether he was targeted and victimized by criminal activity.

10. The Eighth Circuit's rule appears to be that the government may resort to criminal activity to obtain a sentence so long as the criminal activity does not have an obvious impact on a defendant's sentence.

REASONS FOR GRANTING THE PETITION

Petitioner respectfully requests that the Court accept review of the question presented, because the question is important, with a weighty impact on the administration of criminal justice. By becoming the first Circuit Court to expand the scope of the federal mail-wire

fraud statutes to cover allegations of material misstatements and omissions in a judicial proceeding, the Eighth Circuit created a circumstance in which judgments in criminal proceedings may be tainted with criminal fraud. The questions created by the Eighth Circuit's novel step deserve this Court's immediate oversight.

The public will quickly lose respect for the courts if the courts do nothing about attorneys for the government victimizing the public in judicial proceedings via criminal fraud. Instead of associating the courts with white marble, solemn robes and formality, the public will associate the courts with Bernie Madoff-style tactics and his hedge fund.

How many people need to be taken away via the use of criminal fraud before their family members start demanding that Congress do something about those judges? All that needs to happen is for a

politician with greater ambitions for "reforming" the Court to seize the talking point and the Court will find itself the subject of more reforms than may truly serve the public interest. In the end, the point is simple: if the government commits crimes in a judicial proceeding, then the Court must do more than shrug its shoulders. Judges are supposed to protect us from such government overreach.

CONCLUSION

The Court should grant this Petition for a Writ of Certiorari

Dated: 2-24-23

William M. Plump

William M. Plump

08419-027 F Unit

Federal Correctional Institution

P.O. Box 1000

Sandstone, MN 55072