

22-7540  
No. \_\_\_\_\_

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

FILED  
MAY 03 2023  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

HARRY COLE — PETITIONER  
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. DISTRICT COURT, WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

HARRY COLE  
(Your Name)

P.O. BOX 5010  
(Address)

OAKDALE, LA. 71463  
(City, State, Zip Code)

(Phone Number)

**QUESTION(S) PRESENTED**

1. Whether venue is only a jurisdictional concept rather than essential element of an offense that must be proved beyond a reasonable doubt;
2. Whether an appellate Court can Sua Sponte exercise its judicial authority power to review an improper venue issue (venue-issue) not preserved by an objection at the District Court and that was not raised in an appellant brief.

## LIST OF PARTIES

Not applicable

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

Stephen Omowaiye, Docket No. A-16-CR-140(01)SS

Krystah Mae Barr, docket No. A-18-CR-363(01) LT

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE.....	
REASONS FOR GRANTING THE WRIT.....	
CONCLUSION.....	

## INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
(i) United States v. Gaudin, 515 U.S. 506, 522-23 (1995);	
(ii) United States v. Rodriguez-Moreno, 526 U.S. 275, 279 (1999);	
(iii) United States v. Cabreles, 524 U.S. 1, 6-7 (1998);	
(iv) United States v. Lombardo, 241 U.S. 73, 60 (1910);	
(v) United States v. Anderson, 328 U.S. 699, 703 (1946);	
(vi) Travis v. United States, 364 U.S. 631, 635-637 (1961);	
(vii) United States v. Cores, 356 U.S. 405, 408-409 (1958);	
(viii) Hyde v. United States, 225 U.S. 347, 56 (1911);	
(ix) United States v. Whartson, 320 F.3d 526 (5th Cir. 2003);	
(x) United States v. Dickie, 775 F.2d 607, 609-10 (5th Cir. 1985);	
(xi) United States v. Pomranz, 43 F.3d 156, 158-59 (5th Cir. 1995)	
(xii) United States v. Shepard, 101 F.3d 558, 568 (D.C. Cir. 1996);	
(xiii) United States v. Nwoye, 663 F.3d 460, 466 (D.C. Cir. 2011);	
(xiv) United States v. Grossman, 400 F.2d 951, 953 (4th Cir. 1968);	
(xv) United States v. Cordova, 157 F.3d 587, 597, n.3 (8th Cir. 1998);	
(xvi) United States v. Ghanem, 993 F.3d 1113 (9th Cir. 2021);	
(xvii) United States v. Perez, 280 F.3d 318, 329 (3rd Cir. 2002);	
(xviii) United States v. Barsanti, 943 F.2d 428 (4th Cir. 1991);	
(xix) United States v. Gonzalez, 922 F.2d 1044, 1054-55 (2nd Cir. 1991);	
(xx) United States v. Taylor, 828 F.2d 630 (10th Cir. 1986);	
(xxi) United States v. Males, 715 F.2d 568 (11th Cir. 1983);	
(xxii) United States v. Powell, 493 F.2d 890 (9th Cir. 1974);	
(xxiii) 2 Charles Alan Wright and Arthur R. Miller, Federal Practice and Procedure § 307 (3rd Ed. 2000);	
(xxiv) Lafoon v. United States, 250 F.2d 958 (5th Cir. 1958);	
(xxv) United States v. Nash, 175 F.3d 440 (6th Cir. 1999);	
(xxvi) Williams v. United States, 582 F.2d 1039, 1041 (6th Cir. 1978);	
(xxvii) Lavergene v. Cain, U.S. Dist. LEXIS 70690 (W.D. La., 2018);	
(xxviii) Owens v. McLaughlin, 733 F.3d 320 (11th Cir. 2013);	
(xxix) United States v. Gevena 709 F.Supp. 52 (D.Conn. 1989).	

## STATUTES AND RULES

- (i) 18 U.S.C. § 1343
- (ii) 18 U.S.C. § 1341
- (iii) 18 U.S.C. § 1349
- (iv) 18 U.S.C. § 1956
- (v) 18 U.S.C. § 3231; §3237; §3238
- (vi) 18 U.S.C. § 1029
- (vii) 18 Federal Rule of Criminal Procedure rule 18

## OTHER

N/A

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

[ ] reported at \_\_\_\_\_; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was January 10th, 2023.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_A\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1):

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_A\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The Sixth Amendment to the U.S. Constitution provides in relevant part that: "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District where in the crime shall have been committed." U.S. Constitution VI.

This provision of the 6th Amendment is also echoed by Fed. Rule of Crim. P. Rule 18 ["prosecution shall be had in a District in which the offense was committed"].

The U.S. const. Art. III, §2, cl.3: states that "the trial of all crimes.... shall be held in the state where the said crimes shall have been committed, but when not committed within any State, the trial shall be at such place or places as the congress may by law have directed" Id.

Moreso, Title 18, Section 3237 of the United States Codes provides in relevant part that "any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed" 18 U.S.C. § 3237(a). And for the crimes committed outside the Country, the Constitution vests Congress with the power to determining the venue for trial U.S. const. Art. III, §2, cl.3. In turn, congress has determined that the trial for such a crime "shall be in the district in which the offender..... is arrested or is first brought" 18 U.S.C. §3238.

## STATEMENT OF THE CASE

On September 4, 2018, the United States charged Defendant-Petitioner Harry Cole, by indictment with conspiracy to commit mail and wire fraud in violation of 18 U.S.C. §§ 1341, 1343, and 1349 (count. 1) and Conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h) (count 3). The indictment also provided notice of demand for forfeiture for sums of money that represent the property involved in the alleged counts and an intent to seek a money judgment and substitute assets.

On October 27, 2021, Mr. Cole entered a plea of guilty to count-1 of the indictment (conspiracy to commit mail and wire fraud).

On February 17, 2022, the District Court sentenced Mr. Cole to serve 166 months in the custody of the Bureau of Prisons, and imposed a three-year term of supervised release. The District Court waived the fine, but imposed a mandatory special assessment of \$100.00 and ordered restitution in the amount of \$111,870.25. The District Court found Mr. Cole jointly and severely liable with his co-defendants for the restitution. Finally, the District Court entered an order of forfeiture and a money judgment for \$850,000.00.

After the District Court pronounced judgment, Mr. Cole's trial counsel moved to withdraw. On February 24, 2022, the District Court appointed appellant counsel. On March 1, 2022, appellant counsel filed a timely notice of appeal. Separately, Mr. Cole, from jail, mailed notice of appeal on February 22, 2022. The District Court clerk entered the notice on February 23, 2022.

Finally, on July 18, 2022, appellant counsel filed an Anders Brief to the Fifth Circuit Court of Appeals, and the Court subsequently granted his request to withdraw as Petitioner's counsel. Thus, the appeal was dismissed. See United States v. Cole, 2023 U.S. App. LEXIS 661 (5th Cir. 2023).

## REASONS FOR GRANTING THE PETITION

The issues presented here are reoccurring in the U.S. District Court when prosecuting a criminal defendant for ancillary offenses (e.g., conspiracy, aiding and abetting) whose statutes do not have venue provision. For example, the federal fraud statutes 18 U.S.C. §§ 1341, 1343, 1349, etc. The venue issue is also inherent in the Constitution of the United States. However, it has been construed by some federal Courts as less important compare to other trial rights that a criminal defendant enjoys. Most Courts have held that venue are only to be submitted to the Judge to find, and not the jury, and that the government should only prove venue by a preponderance of evidence because it is not an essential element of an offense, that is, its prove is not "material" to the guilt of an accussed. Therefore, Courts do not require that a "reasonable doubt standard" be used to prove proper venue in a prosecution.

Nevertheless, because the Constitution requires that venue be proper in a criminal prosecution and this Court has not determined the "materiality" of the venue issue in *United States v. Gaudin*, 515 U.S. 506, 522-23 (1995), this case presents an appropriate avenue for this Court to consider the "materiality" of venue issue and whether venue should be treated as an essential element of a crime that requires its prove beyond a reasonable doubt. Moreso, this issue is important because venue issue has been a defense that can be used to determine the "loci delicti" and the "corpus delicti" in a criminal prosecution. This case will resolve the issue that a defendant cannot raise the issue of venue in a plain error review when a defendant did not preserve the issue via an objection at the District Court. This is unlike some Constitutional rights and some substantial issues.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

HARRY COLE Johnson

Date: April 6<sup>th</sup>, 2023