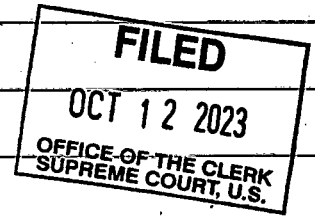


23-6548

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



PAUL R. HANSMEIER,

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 A WRIT OF CERTIORARI

Paul R. Hansmeier

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Petitioner

QUESTIONS PRESENTED

Question 1:

This Court's decision in Cotton v. United States, 535 U.S. 625, 152 L. Ed. 2d 860, 122 S. Ct. 1781 (2002) established that not all indictment defects are jurisdictional. The Circuit Courts have split in their interpretation of Cotton. The split is over the issue of whether an indictment that affirmatively alleges a course of conduct outside the scope of the charging statute deprives a district court of subject matter jurisdiction.

The question presented by this petition is:

Does a district court lack subject matter jurisdiction when an indictment alleges only a non-offense or to accept a plea to conduct that does not violate the charging statute?

Question 2:

The federal mail and wire fraud statutes have historically been applied only to property transactions. Kelly v. United States, 140 S.Ct. 1565, 1571 (2020).

The question presented by this petition is:

Do allegations of litigation misconduct come within the scope of the federal mail and wire fraud statutes?

LIST OF PARTIES

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

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PETITION FOR WRIT OF CERTIORARI

Petitioner Paul Hansmeier 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The opinion below is unpublished and is reprinted in the Appendix to
this Petition.

JURISDICTION

The Eighth Circuit Court of Appeals issued its decision on August 8, 2023. 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 criminal jurisdiction of the district courts of the United States, which is established by 18 U.S.C. § 3231.

18 U.S.C. § 3231

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

INTRODUCTION

This Court's intervention is urgently needed to resolve a split among the lower courts on an important question of the subject matter jurisdiction of the United States district courts in criminal proceedings. That question is whether United States district courts have subject matter jurisdiction in cases in which the allegations in the indictment or established

at the change of plea hearing establish a specific course of conduct outside the scope of the charging statute. For example, this Court recently rejected the "right to control" theory of mail and wire fraud. See Ciminelli v. United States, 143 S. Ct. 1121, 215 L. Ed. 2d 291 (2023). Would a United States district court have subject matter jurisdiction over an action in which the indictment alleges only a "right to control" violation of the federal mail-wire fraud statutes? As another example, this Court held that attempted Hobbs Act robbery is not a crime of violence. See United States v. Taylor, 142 S. Ct. 2015, 213 L. Ed. 2d 349 (2022). Would a United States district court have subject matter jurisdiction to impose a sentence of imprisonment on a defendant who pled guilty to use of a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c) when the facts established at the change of plea hearing are that the underlying crime of violence was attempted Hobbs Act robbery?

The Circuit Courts disagree about the answer to this important question of federal subject matter jurisdiction.

Equally vital is the second question presented by this Petition. Every Circuit Court to specifically address the issue has rejected attempts to apply the federal fraud statutes to allegations of litigation conduct. These courts have warned that allowing such theories would impermissibly undermine the functioning of the courts by inviting retaliatory fraud claims, destroying finality in judicial proceedings and severely chilling access to the courts. The lower court ignored the stark warnings of the First, Second, Fifth, Ninth, Tenth and Eleventh Circuits (and even its prior panel decisions) in affirming the judgment of conviction and then denying a certificate of appealability on the issue in Petitioner's 28 U.S.C. § 2255 proceeding.

STATEMENT OF THE CASE

1. In the case at hand, Petitioner was an attorney who developed software that would track most of the world's Internet piracy in real time. He then traveled to adult industry conventions to purchase copyrights from the many websites that were failing due to Internet piracy. Finally, he flooded the major Internet piracy hubs with these copyrighted works and turned around and sued tens of thousands of people who pirated the works.

2. What seemed like a good idea in theory was a bad idea in practice. The litigation was too politically toxic and Petitioner was driven from the courts, though the litigation did noticeably decrease piracy.

3. In 2016, the U.S. Attorney for the District of Minnesota charged Petitioner with fraud offenses stemming from Petitioner's copyright enforcement strategy. The Eighth Circuit would ultimately interpret the indictment as alleging two litigation strategies. The first litigation strategy involved

fraud through omission because, according to the Eighth Circuit, Petitioner failed to disclose material facts in his discovery applications to the courts. The discovery applications were necessary to connect the data collected by Petitioner's tracking software to the infringer's real world identity.

4. The second litigation strategy involved Petitioner's shift to the alternative theory of liability under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, for pursuing the infringers. The infringers accessed Petitioner's investigator's computer systems to access the copyrighted works. Petitioner's claim was that the infringers accessed these computer systems without authorization and obtained information as a result in violation of 18 U.S.C. § 1030(a)(2)(C). The indictment alleged that Petitioner's claims under the Computer Fraud and Abuse Act were frivolous and therefore fraudulent. According to the indictment, the frivolousness of these claims resulted in Petitioner

making affirmative misrepresentations to the courts in his discovery applications.

5. Petitioner moved to dismiss the indictment. In his motion to dismiss, Petitioner argued that allegations of litigation misconduct fall outside the scope of the federal mail-wire fraud statutes, as numerous Circuit Courts have held. Kim v. Kimm, 884 F.3d 98, 104 (2d Cir. 2018) (collecting cases for the proposition that allegations of frivolous, fraudulent, or baseless litigation activities, such as proffering false affidavits and testimony to a state court, cannot constitute mail fraud). Petitioner raised other arguments as well.

6. The district court denied Petitioner's motion to dismiss, but did not reach Petitioner's argument that allegations of litigation misconduct fall outside the scope of the federal mail-wire fraud statutes. Petitioner entered into a conditional plea that allowed him to continue challenging the government's theory of fraud. Petitioner renewed

this argument in his appeal, but the Eighth Circuit affirmed without specifically addressing it.

7. Petitioner filed a motion under 28 U.S.C. § 2255 that asserted this argument. The district denied it, holding that it was not cognizable in a section 2255 proceeding. The district court further held the issue was not jurisdictional. Finally, the district court denied a certificate of appealability.

8. Petitioner filed a request for a certificate of appealability with the Eighth Circuit. Petitioner's request specifically raised this argument and specifically noted the Circuit divide over whether this sort of attack is jurisdictional in nature. The Eighth Circuit denied Petitioner's request without comment. This timely Petition follows.

REASONS FOR GRANTING THE PETITION

Petitioner respectfully requests that the Court accept review of the questions presented because: (1) the questions have generated conflicting authority among lower courts; (2) the questions are important, with a weighty impact upon the administration of civil and criminal justice; (3) this case presents an apt vehicle to resolve the questions; and (4) the lower court's application of the fraud statutes to litigation conduct conflicts with this Court's traditional limitation of the fraud statutes to allegations centered in property transactions.

1. The questions have generated a divide in the lower courts.

The first question presented for review is whether a district court maintains subject matter jurisdiction when the indictment or facts established at the change of plea hearing affirmatively show that no federal

offense occurred.

The Eleventh Circuit has repeatedly held that an indictment is jurisdictionally defective when it shows that no federal offense occurred.

According to the Eleventh Circuit, an indictment that shows that no federal offense occurred fails to invoke the district court's statutory authority under 18 U.S.C.

§ 3231 over offenses against laws of the United States. See, e.g., United States v. St. Hubert, 909 F.3d 335, 343-44 (11th Cir. 2018); United States v. Izurieta, 710 F.3d 1176, 1184 (11th Cir. 2013); and United States v. Peter, 310 F.3d 709, 711-13 (11th Cir. 2002) (per curiam).

In contrast, several Circuit Courts have expressly rejected the Eleventh Circuit's reasoning. United States v. De Vaughn, 694 F.3d 1141, 1147-49 (10th Cir. 2012) (analyzing the Eleventh Circuit's decision in Peter and rejecting its reasoning).

For the sake of clarity, the question in this Petition does not relate to indictments which merely omit an essential element of the charged offense or contain some other technical defect. Cotton made clear that these issues are non-jurisdictional. Rather, the question is whether a federal district court has subject matter jurisdiction to adjudicate a matter when an indictment (or the facts established at a change of plea hearing) shows a course of conduct that is outside the scope of the charging statute.

This difficult question has divided the Circuit Courts. Because of this Court's special duty to proactively address subject matter jurisdiction, because of this question's intersection with the liberty interest, and because of the dangers of government overreach in the imprisonment power, the Court should grant this Petition and decide the question.

The second question in this Petition equally demands this Court's attention.

As for the second question, Petitioner is imprisoned based on allegations of litigation misconduct — even though apparently every Circuit Court to consider the issue has rejected the expansion of the mail-wire fraud statutes to cover such conduct. Kim, 884 F.3d at 104 (collecting cases); United States v. Camick, 796 F.3d 1206, 1214-17 (10th Cir. 2015) (reversing mail fraud conviction based on allegations of litigation misconduct); United States v. Pendergraft, 297 F.3d 1198, 1204-09 (11th Cir. 2002) (same). There is a sharp divide between the circumstances of Petitioner's imprisonment and the decisions of the other Circuit Courts.

2. The question is importantly with a weighty impact on the administration of civil and criminal justice.

The first question goes to the heart of the federal courts' criminal subject matter jurisdiction. Subject matter jurisdiction is so foundational to the Constitutional design that all federal courts,

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including this one, have an affirmative duty to consider subject matter jurisdiction defects sua sponte. Because of the Circuit divide over this issue, we know with certainty that federal district courts in large swaths of the Nation are misconstruing their subject matter jurisdiction in criminal matters. The only question is: which ones have it wrong?

Ratcheting up the importance of this question is its intersection with the liberty interest. If the Eleventh Circuit is correct, then the reality is that men and women are being imprisoned at federal facilities beyond the federal government's power to imprison. This is the very essence of tyranny; the Court has a solemn obligation to quiet the question.

As for the second question, the application of the federal fraud statutes to litigation conduct threatens to fatally undermine the civil justice system.

The Kim court summarized the concerns as being: (1) inundating the federal courts with complex retaliatory RICO pleadings arising out of allegations

of fraudulent litigation activity; (2) eroding the principles undergirding finality in litigation as allegations of fraud undermine the integrity of judicial decisions; (3) chilling resort to the courts as any lawsuit could lead to a lengthy term of imprisonment. Kim, 884 F.3d at 104.

These theoretical concerns have borne out in Hansmeier's practical experience. Copyright holders are chilled from enforcing their copyrights against the onslaught of digital piracy because they fear imprisonment from accessing the courts. Hansmeier's post-conviction litigation activities have devolved into contests of each side accusing the other of criminal activity — indeed, Hansmeier's first step in his current litigation efforts is a vanguard action seeking declaratory relief that the lawsuit he would like to bring isn't criminal fraud. District court judges in Minnesota and Iowa are describing the theory of fraud as "unworkable." The Court can fix this by intervening. 16

3. This case presents an apt vehicle by which to resolve the questions.

The case at hand presents the issues clearly and clearly. The issues are central to Petitioner's 28 U.S.C. § 2255 motion, the Court can decide the questions without having to reach any other questions and there are no procedural barriers to the Court's consideration of the question.

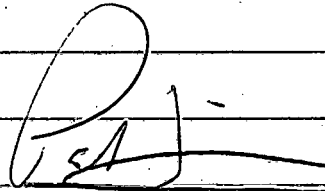
4. The lower court's application of the federal mail and wire fraud statutes to allegations of litigation misconduct conflicts with this Court's traditional limitation of the fraud statutes to allegations centered in property transactions.

From McNally to Cleveland to Kelly to Ciminelli, this Court has consistently limited the federal mail and wire fraud statutes to allegations centered in property transactions. This traditional limitation would seem to exclude allegations of litigation misconduct from these statutes' reaches. The lower court's application of those statutes to allegations of litigation misconduct conflicts with this Court's traditional property limitation on the scope of the federal mail and wire fraud statutes.

CONCLUSION

For all these reasons, Petitioner respectfully asks the Court to grant this Petition for a Writ of Certiorari.

Dated: September 23, 2023



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