

No. 23-7194

ORIGINAL

FILED

APR 03 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

In Re Furvio Flete-Garcia PETITIONER
(Your Name)

ON PETITION FOR A WRIT OF MANDAMUS

PETITION FOR WRIT OF MANDAMUS

Furvio Flete-Garcia
(Your Name)

Route 37
(Address)

Danbury, C.T. 06811
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Does the United States Court of Appeals for the First Circuit's violation of Fed. R. App. P. 45(c) in failing to serve Mr. Fleete-Garcia with notice of entry of an issued mandate warrant issuance of a writ of Mandamus in order to correct a clerical error of the lower court?

LIST OF PARTIES

- ☐ 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:

Fur v. Fleete - Garcia
United States

RELATED CASES

20-2188

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Ex parte Fahey, 332 U.S. 258, 259-60	2
Roche v. Evaporated Milk Assn., 319 U.S. 21, 26	2
Will v. United States, 389 U.S. 90, 95	2
Bankers Life & Casualty Co. v. Holland, 346 U.S. 379	2
Kerr v. United States Dist. Court for the Northern Dist. of Cal., 426 U.S. 394, 408	3
Schlagenhauf v. Holder, 379 U.S. 104, 112 n.8	3
Baldwin v. United States, 140 S. Ct. 690	4

STATUTES AND RULES

28 U.S.C. § 1651 (a)	2
Fed. R. App. P. 45(a)	3

OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment Right to Due Process
28 U.S.C. § 1651 (a) All Writs Act
Fed. R. App. P. 45(e)

SUPREME COURT OF THE
UNITED STATES

In Re: Furvio Flete-Garcia,
Petitioner

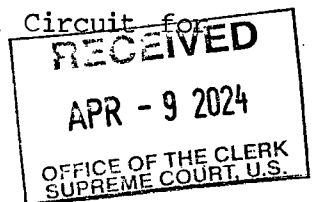
Court of Appeals Docket No. 20-2188

Writ of Mandamus

1. Petitioner Furvio Flete-Garcia ("Mr. Flete-Garcia"), acting pro se, brings this Writ of Mandamus pursuant to 28 U.S.C. §1651(a) in order to correct a clerical error of the United States Court of Appeal for the First Circuit and enforce the performance of a ministerial act. Mr. Flete-Garcia petition this Court given the fact that the First Circuit issued a mandate in his case in Court of Appeals Docket No. 20-2188, however, failed to serve a notice of entry on him and the First Circuit has refused to accept any further filings in the case. See letter dated January 31, 2024 attached.

2. On December 30, 2020, the United States District Court for the District of Massachusetts denied Mr. Flete-Garcia §2255 habeas relief with respect to his "fraud" case. On multiple occasions Mr. Flete-Garcia filed letters with the First Circuit requested an extension of time to file a Certificate of Appealability (COA) in order to obtain the necessary documents needed to file the motion. See Exhibit #2 attached. Ultimately the documents being sought were not obtained given they don't exist and the letters were improperly construed as the actual COA brief. Finally, on May 23, 2023 the First Circuit mistakenly denied Mr. Flete-Garcia COA although he never actually filed the COA motion.

3. On June 15, 2023 Mr. Flete-Garcia moved in the First Circuit for



rehearing. The Court denied a petition for panel rehearing on August 30, 2023. By letter dated September 12, 2023, Mr. Flete-Garcia made a request for a hearing en banc in the First Circuit. By order dated October 16, 2023, the same panel which denied Mr. Flete-Garcia's COA construed his en banc request as a motion to recall mandate, on the basis that mandate was entered in the case on September 7, 2023, although he was never notified regarding the issuance of a mandate in the case.

4. The common-law writ of mandamus against a lower court is codified at 28 U.S.C. §1651(a): "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." This is a "drastic and extraordinary" remedy "reserved for really extraordinary causes." *Ex parte Fahey*, 332 U.S. 258, 259-260, 91 L. Ed. 2041, 67 S. Ct. 1558 (1947). "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." *Roche v. Evaporated Milk Assn.*, 319 U.S. 21, 26, 87 L. Ed. 1185, 63 S. Ct. 938 (1943). Although courts have not "confined themselves to an arbitrary and technical definition of 'jurisdiction,'" *Will v. United States*, 389, U.S. 90, 95, 19 L. Ed. 2d 305, 88 S. Ct. 269 (1967), "only exceptional circumstances amounting to a judicial 'usurpation of power,'" *ibid*, or a "clear abuse of discretion," *Bankers Life & Casualty Co. v. Holland*, 346 U.S. 379, 383, 98 L. Ed. 106, 74 S. Ct. 145 (1953), "will justify the invocation of this extraordinary remedy." *Will*, 389 U.S. at 95, 19 L. Ed. 2d 305, 88 S. Ct. 269.

5. As the writ is one of "the most potent weapons in the judicial arsenal," *id*, at 107, 19 L. Ed. 2d 305, 88 S. Ct. 269, three conditions must

be satisfied before it may issue. *Kerr v. United States Dist. Court for the northern Dist. of Cal*, 426 U.S. 394, 403, 48 L. Ed. 2d 725, 96 S. Ct. 2119 (1976). First, "the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires," *ibid.* -- a condition designed to ensure that the writ will not be used as a substitute for the regular appeal process. *Fahey, supra*, at 260, 91 L. Ed. 2041, 67 S. Ct. 1558. Second, the petitioner must satisfy "the burden of showing that [his] right to issuance of the writ is 'clear and indisputable.'" *Kerr, supra*, at 403, 48 L. Ed. 2d 725, 96 S. Ct. 2119 (quoting *Bankers Life & Casualty Co., supra*, at 384, 98 L. Ed. 106, 74 S. Ct. 145). 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. *Kerr, Supra*, at 403, 48 L. Ed. 2d 725, 96 S. Ct. 2119 (citing *Schlagenhauf v. Holder*, 379 U.S. 104, 112, n. 8, 13 L. Ed. 2d 152, 85 S. Ct. 234 (1964)).

6. As has already been demonstrated Mr. Flete-Garcia has no other alternative means to seek the relief he now petitions this Court for. He is seeking to recall the mandate of the First Circuit, yet, that court has refused to accept any further filings in the case.

7. Respectfully submitted, Mr. Flete-Garcia's right to issuance of the writ is clear and indisputable. Mr. Flete-Garcia presented his appeal submission as an incarcerated pro se litigant. Indeed, Fed. R. App. P. 45(c) provides "[u]pon the entry of an order or judgement, the circuit clerk must immediately serve a notice of entry on each party, with a copy of any opinion, and must note the date of service on the docket." As has been demonstrated Mr. Flete-Garcia was not duly afforded such notice. It thus follows that Mr. Flete-Garcia should not be bound by a mandate for which he

was not given due notice of.

8. Finally, Mr. Flete-Garcia respectfully submits that issuance of the writ is appropriate under the circumstances of this case. "In mandamus cases, courts generally would not second-guess legal interpretations made 'in discharge of any official duty, partaking in any respect of an executive character,' but they would 'enforce the performance of a mere ministerial act.'" Baldwin v. United States, 140 S. Ct. 690, 206 L. Ed. 231; 2020 U.S. LEXIS 1359, at *9-10; 88 U.S.L.W. 3277 (2020). "Recall of a mandate - other than to correct a clerical error - threatens important interests in finality and is a step to be taken only in the most unusual circumstances." United States v. Fraser, 407 F. 3d 9, 10 (1st Cir. 2005). This case presents the unusual circumstance in which the circuit clerk should have served notice of the entry of the issued mandate upon Mr. Flete-Garcia, however, did not.

WHEREFORE it is for all of the foregoing reasons that Mr. Flete-Garcia prays for an order of this Court to issue a writ of mandamus in order to correct the procedural error of the First Circuit and for any further or other relief this Court deems proper in accordance with law.

Dated: 03-01-2024

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7022 3330 0002 0544 3657

Respectfully Submitted,

Furvio Flete Garcia

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