

ORIGINAL

No. _____

23-7291

FILED

APR 06 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 31
(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. Flete-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:

Furvio Flete-Garcia
United States

RELATED CASES

21-1169

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Ex parte Fahey</i> , 332 U.S. 258, 259-60, 91 L. Ed. 2d 2041, 61 S. Ct. 1558 (1941)	2
<i>Roth v. Evaporated Milk Assn.</i> , 319 U.S. 21, 26, 87 L. Ed. 2d 1185, 63 S. Ct. 938 (1943)	2
<i>Will v. United States</i> , 389 U.S. 90, 95, 19 L. Ed. 2d 305, 88 S. Ct. 269 (1967)	2
<i>Bankers Life & Casualty Co. v. Holland</i> , 346 U.S. 379, 383, 98 L. Ed. 2d 106, 74 S. Ct. 145 (1953)	2
<i>Kerr v. United States Dist. Court for the Northern Dist. of Cal.</i> , 426 U.S. 394, 403, 48 L. Ed. 2d 725, 96 S. Ct. 2119 (1976)	3
<i>Schlagenhauf v. Holder</i> , 379 U.S. 104, 112 n.8, 13 L. Ed. 2d 152, 85 S. Ct. 234 (1964)	3
<i>Baldwin v. United States</i> , 140 S. Ct. 690, 206 L. Ed. 2d	4
STATUTES AND RULES	
28 U.S.C. § 1651 (a)	2
Fed. R. App. P. 45(c)	3

OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment Right to Due Process

28 U.S.C. § 1651 (4) All Writs Act

Fed. R. App. P. 45 (4)

SUPREME COURT OF THE
UNITED STATES

In Re: Furvio Flete-Garcia,
Petitioner

Court of Appeals Docket No. 21-1169

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 Appeals for the First Circuit and enforce the performance of a ministerial act. Mr. Flete-Garcia petitions this Court given the fact that the United States Court of Appeals for the First Circuit issued a mandate in Mr. Flete-Garcia's Court of Appeals Docket No. 21-1169,

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 district court (United States District Court for the District of Massachusetts) denied Mr. Flete-Garcia §2255 relief, thus, he moved in the United States Court of Appeals for the First Circuit for a Certificate of Appealability ("COA") on April 5, 2021. For two whole years the First Circuit was completely silent as to the prospects of Mr. Flete-Garcia's COA motion leaving him at a complete loss as to the procedural posture of his case. Finally, on May 23, 2023 the First Circuit denied Mr. Flete-Garcia COA. On June 15, 2023 he moved for rehearing. Again, the First Circuit denied the petition for panel rehearing on August 30, 2023. By letter dated September 12,

2023 Mr. Flete-Garcia requested review of his claims by hearing en banc. By order dated October 30, 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 duly notified regarding the issuance of a mandate. See Court of Appeals Docket No. 21-1169 attached indicating mandate issued 9/7/2023 with no notice of such entry ever being sent to Mr. Flete-Garcia.

3. 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