No. 24-159

In the
Supreme Court of the United States

THE WALL GUY, INC.;
JEFFREY FRYE; JR CONTRACTORS,
Petitioners,

v.

FEDERAL DEPOSIT INSURANCE CORPORATION,
as receiver for The First State Bank,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING

Steven T. Cook
Counsel of Record
COOK LAW OFFICES, PLLC
P. O. Box 549
Barboursville, WV 25504
(304) 521-1304
cooklaw31@gmail.com

Counsel for Petitioners

*Gibson*Moore Appellate Services, LLC
206 East Cary Street ♦ Richmond, VA 23219
804-249-7770 ♦ www.gibsonmoore.net

QUESTIONS PRESENTED

1. WHETHER THE BOND AND SURETY, ORIGINATING IN STATE COURT, PROVIDES CURRENT PROTECTIONS, ALONG WITH AN IRREVOCABLE STANDBY LETTER OF CREDIT FROM THE SUCCESSOR BANK, STILL IN EFFECT AND AWAITING ADDITIONAL REQUIRED HEARING, HAVING BEEN CLEARLY A CONCERN FOR THE 4TH CIRCUIT, AS ENUMERATED IN ORAL ARGUMENT, HAVING MADE ITS DECISION PRIOR TO THIS COURT'S REVERSAL OF THE *CHEVRON DOCTRINE,* CONSTITUTES PLAIN AND SUBSTANTIAL ERROR REQUIRING RELIEF AS REQUESTED BELOW?

2. WHETHER THE PLAIN AND SUBSTANTIAL ERROR ABOVE COULD SIMPLY BE CORRECTED BY THIS HONORABLE COURT SUMMARILY GRANTING WRIT OF CERTIORARI, VACATING THE JUDGMENT BELOW, AND REMANDING TO THE LOWER COURT FOR FURTHER PROCEEDINGS AND REVIEW, ESSENTIALLY A G.V.R. ORDER?

CORPORATE DISCLOSURE STATEMENT

None of the Appellants (Wall Guy, JR Contractors, or Jeff Frye) or any parties have any parent company that is a publicly held company that owns 10% or more of the corporation's stock.

TABLE OF CONTENTS

Page:

TABLE OF AUTHORITIES

Page(s):

Cases:

Statutes:

Rules:

PETITION FOR REHEARING OF DENIAL OF WRIT OF CERTIORARI

The Wall Guy respectfully petitions for rehearing of a denial of a writ of certiorari from 10/7/24.

JURISDICTION

The judgment of the 4th Circuit was rendered on 3/18/24. *See Wall Guy, Inc. v. Fed. Deposit Ins. Corp.*, 95 F.4th 862 (4th Cir. 2024) A petition for Rehearing / Rehearing *en banc* was denied on 5/14/24. The petition for writ of certiorari was filed timely, and denied on 10/7/24. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and the Court's inherent authority over state court actions. Rule 44 of the US Supreme Court of Appeals provides for the Petition for Rehearing.

STATUTES AND RULES INVOLVED

Rule 44 of the US Supreme Court Rules

12 U.S.C. § 1823(e)(2)(A)

12 U.S.C. § 1821(5)(D)(iii)

STATEMENT OF THE CASE

Wall Guy reasserts all facts as previously set forth in the prior statement of the case from the original Petition for Writ of Certiorari, and asserts the new issues, facts, and law as below:

PROCEDURAL HISTORY AND TIMELINE

Wall Guy was initially defrauded by the bank and Jackie Cantley, loan officer. (*see* 3:13-cr-00245). This civil case involves breaches of contract, a jury verdict for 1.5 million, judgments, and

pledge/agreement/bond/surety of 2.6 million. Wall Guy prevailed against the bank in a civil suit for 2 breaches of contract, where a state court jury awarded 1.5 million dollars. On 4/23/19 a 2.6 million pledge agreement, which was **later converted to bond/surety, protecting Wall Guy against bank insolvency**. With 2 state court proceedings still pending, an appeal to WVSCA was filed, but return to state court to resolve this case, as well as the one pending case, to credit Wall Guy for missing funds, judgment and/or remitted judgment, and over-collection. After filing notice of appeal, the state court rendered rulings contained in the transcript from the 4/23/19 hearing, reduced to Order dated 6/03/19; however, the same were not properly transferred to district court by the FDIC, required by both US Code and *Resolution Trust Corp. v. Allen*, 16 F.3d 568 (4th Cir. 1994), which states, "), the Court was required first to " 'adopt the state court judgment as its own' " and then treat the judgment "the same as other judgments entered by the district court, [with] . . . the parties . . . follow[ing] the ordinary rules regarding post-judgment remedies. Petitioner supplemented said transcript in 2022, after the repeated failures to supplement the same by the FDIC, even after FDIC was ordered to do so by district court, which prevented review in district court in its 2021 Order. Quotes from the transcript, which should have been transferred to district court by the FDIC:

> Petitioner's counsel stated, "one of my main concerns is if the bank goes under or gets in some sort of trouble, where FDIC or whoever steps in, we may be more in an impaired position. If there was a performance bond ---

> that's normally what happens when someone stops execution."
>
> The bank's counsel, "We're perfectly content with seeking an order **which maintains the status quo during the pendency of an appeal**. Once the [WVSCA] rules in whatever fashion they do, we are more than happy to come back …"
>
> Banks' counsel, **"In the event the bank fails, which apparently they're concerned about, [deeds of trust and bond/surety] aren't invalidated by the bank failure.**
>
> Petitioner's counsel, "I believe we are satisfied with status quo until we can see what the [WCSCA] returns.
>
> The state court: All right if you have any further issues you can always come back." The state court entered an Order Granting the bank's motion to stay proceedings to enforce judgment from the hearing held on 4/23/2019 on 6/03/19, which entirely protected Petitioner herein with bond/surety which is still currently in place.

Wall Guy since prevailing has been protected by a Pledge Agreement/Bond Surety [which included mortgages and deeds of trust totaling 2.6 million dollars]. Petitioner has always had a remitted judgment of $523,024.00 subject to enforcement, which was stayed with the Bond/Surety/Pledge Agreement above. The same was later modified and converted over the objection of the Petitioner by the district court to an **IRREVOCABLE** STANDBY LETTER OF CREDIT HLB8322223530002, dated

12/19/22, from the Federal Home Loan Bank for the successor bank herein, which continues to this day and is irrevocable. The letter of credit is for the exact amount of the remitted judgment of $523,024.00, which Petitioner was undeniably entitled to at a minimum on 4/23/19, but was stayed by the state court, until the appeal was resolved and the matter, at the request of the bank, and then all parties could return to start court for further hearing.

Counsel was contacted by the successor bank as recently as 10/7/24, in regards to the status of the appeal. It is undisputed, that the successor bank has been unjustly enriched by the funds received from the failed bank, that are the protected property of the Petitioner herein. These issues need resolution, and how this Honorable Court and the lower courts beneath it address these matters could not be more germane to preventing manifest injustice. Petitioner, at all times, has always protected his justified awards and judgments, even in advance, protecting Wall Guy from the underlying bank's insolvency, to creating bond/surety at all stages to be adequately protected**, so that Wall Guy did not need to rely on the FDIC, nor should Petitioner now need the FDIC for protection.**

The 4th Circuit's questions and answers at the oral argument clearly enunciate that the lower court had issues with the **bond/surety,** and were concerned that FDIC under the Chevron doctrine was determining the application of the law to the facts in this case. *See* ***Loper Bright Enterprises v. Raimondo***, 144 S. Ct. 2244 (June 28, 2024). Quotes from oral argument with approximate timestamps applies:

1. The Pledge Agreement [Bond / Surety] was extended (at 6:48)
2. Petitioner was concerned about the bank going under (at 7:10)
3. [4th circuit] is trying to understand when the Pledge Agreement was entered into (13:15)
4. [4th circuit] When the Pledge Agreement was entered? (at 14:40)
5. **Where the bank couldn't post [cash] bond surety and then posted the Bond / Security [property] is an exception to FIRREA.** (at 15:12)
6. **FDIC violated federal stay [selling property in Bond/surety]** (at 15:30)
7. [4th circuit] What are you seeking? Answer: my client who won a jury verdict, won trials**, has not received a single penny ever!** In fact the bank over-collected from him over half a million dollars, that's in the consolidated case, **remand to district court**, **order direct payment of the claim [which is secured by bond/surety].** (At 16:00)[1]
8. [4th circuit] What remedy are you asking of us? Answer: Remand to

[1] District court struggled with the logic involved in reversing the prior ruling which resulted in Judgment for Wall Guy, by denoting FDIC acknowledged $ owed to Wall Guy ***See*** **App. Page 58a,** presumably because the FDIC interpreted the law rather than the district court.

district court, order direct payment of his claim [which is protected [by the Bond/surety]. A lot of money is owed in the companion case throughout this whole time [to Petitioner]. (At 16:20)

9. [4th circuit] Where is the companion case? 3:20-0305, [district case] consolidated with this case. (At 17:02)

10. [4th circuit] You accepted the Remitted Judgment? Answer: "We accepted it and lawfully accepted it, ($523,024) and we expected to get it, as well as the companion case we expected to get an additional half of million dollars in proceeds." (At 17:50)

11. [4th circuit justice] I assume if we approve the 2023 judgment the Pledge Agreement would be moot? Answer [by FDIC] Yes, we believe so. (At 24:18) [The FDIC should not be interpreting the law, the lower court should have under this Court's new decision in *Loper*]

12. [FDIC counsel] incorrectly states the purpose of the Pledge Agreement (24:27).[2]

13. [4th circuit then asks one of the most critical questions]: … It starts out as a jury verdict 1.5 million, your opponent says they end up with nothing, and not

---

[2] The actual purpose of the Pledge agreement bond/surety was to protect Wall Guy's interest, judgment and financial losses from the potential bank failure which was clearly set forth in the 4/23/19 transcript and order therefrom

> gotten anything out of this case, what's the posture of this case and where does it go from here, in turns of the outcome of the case? (At 26:23)

ARGUMENT

I. WHETHER THE BOND AND SURETY, ORIGINATING IN STATE COURT, PROVIDES CURRENT PROTECTIONS, ALONG WITH AN IRREVOCABLE STANDBY LETTER OF CREDIT FROM THE SUCCESSOR BANK, STILL IN EFFECT AND AWAITING ADDITIONAL REQUIRED HEARING, HAVING BEEN CLEARLY A CONCERN FOR THE 4TH CIRCUIT, AS ENUMERATED IN ORAL ARGUMENT, HAVING MADE ITS DECISION PRIOR TO THIS COURT'S REVERSAL OF THE *CHEVRON DOCTRINE,* CONSTITUTES PLAIN AND SUBSTANTIAL ERROR REQUIRING RELIEF AS REQUESTED BELOW?

The transcript from 4/23/19 and state court order therefrom are critical because 12 U.S.C. § 1823(e)(2)(A), provided that the same were an exception to FIRREA, because bond/surety is an exception to FIRREA. Petitioner was protected before, during, after, and currently from the bank failure. The Statement of Case, timeline, and procedural history should leave this Honorable Court with the unequivocal determination that manifest injustice has occurred and continues to occur to this day. This case involves "complicated legal issues against a unique procedural backdrop." (App. 33a from original writ of certiorari) as well as the plain error of misapplying the exceptions to bond/surety, because the bank's failure has no effect on the Wall

Guy's claim and the funds previously set aside to protect the same in state court.

After this plain error is exposed, the remedy is simple:

1. The loans / contracts in this case began in 2012, and this entire matter has been a "**SHELL GAME**"".
2. The fraud committed by the bank loan officer(s)' shuffled money, costing Petitioner herein hundreds of thousands of dollars.
3. The bank then went on to over-collect against Petitioner's assets by over another half a million dollars, and underfunded him in their continued shell game.
4. A West Virginia jury awarded 1.5 million dollars.
5. During the post-trial motions verdict was remitted to $523,024.
6. Petitioner appealed to WVSCA to reinstate the jury verdict. Petitioner was entitled to $523,024, and further the matter was to come back to state court to resolve the half a million plus in claims of over-collection by the bank in the companion case (which has never been resolved), regardless of bank failure.
7. Petitioner was very concerned that his award above would not be protected if the bank failed. Based upon the bank and state court's assurance that the

same were protected, the state court allowed the bank to CONVERT/MODIFY the prior PLEDGE AGREEMENT in the 4/23/19 hearing and created BOND/SURETY protecting Petitioner for 2.6 million dollars.

8. To this day, the Bond/Surety remains. The successor bank got all 4 bonded properties, improperly sold the same, and is unjustly enriched by the same. In 2022, the successor bank posted an IRREVOCABLE credit line of $523,024 from the Federal Home Loan Bank, which is also an exception under U.S.C. 1821(5) **Procedures for determination of claims (D)Authority to disallow claims: (iii) Exceptions** No provision of this paragraph shall apply with respect to—

   (I)
   any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

   (II)
   any security interest in the assets of the institution securing any such extension of credit.

9. FDIC, at all times, made internal analysis, improperly applying the exception law under the Chevron Doctrine. Petitioner has never been able to have a hearing on the same, in state court, administrative hearings, or before the district court, etc., and have any

lower court make a proper decision on the merits at any stage, after jury verdict and judgments.

10. If the case remains in its posture and proposed status, what will happen to the pledge agreement/bond/surety (currently in the form of an irrevocable line of credit) protecting Petitioner?

11. To allow the FDIC to decide that matter simply flies in the face of the logic as set forth in ***Loper Bright Enterprises v. Raimondo***, 144 S. Ct. 2244 (June 28, 2024). The FDIC has interpreted the law rather than the lower courts. Remand so argument can be made to the lower court, whether that be district court or state court to apply the applicable law thereto and to hold **THE FIRST HEARING** on this issue and properly compensate the Wall Guy from the bond/surety.

12. The shell game continues to this day. The funds that were taken from Petitioner, still exist in the form of a line of credit serving as bond/surety.

13. The Bond/Surety protects Petitioner, and this case should be remanded pursuant to a simple Grant, Vacate and Remand order from this Court. The same would stop the "shell game" because Petitioner has selected the correct shell, and address the core issue, what do we do with the funds protected in the bond/surety? The proper funds

due to Petitioner should be paid from the bond surety. By remanding to the 4th Circuit, the issue, or further remand for appropriate hearings in district court and/or state court, could be accomplished, if this Court executes its G.V.R. powers in a simple remand Order.

14. This case boils down to the missing funds due Petitioner, the insured and protected amounts currently in the bond/surety. The FDIC is not the insurer herein of the Wall Guys claim, the bond/surety is.

II. WHETHER THE PLAIN AND SUBSTANTIAL ERROR ABOVE COULD SIMPLY BE CORRECTED BY THIS HONORABLE COURT SUMMARILY GRANTING WRIT OF CERTIORARI, VACATING THE JUDGMENT BELOW, AND REMANDING TO THE LOWER COURT FOR FURTHER PROCEEDINGS AND REVIEW, ESSENTIALLY A G.V.R. ORDER?

The substantial error complained of herein would be corrected by this Court simply using its Grant, Convey and Remand powers and directing a hearing on the status of the Bond/Surety/Pledge Agreement. When this Honorable Court reversed the *Chevron Doctrine* with ***Loper Bright Enterprises v. Raimondo***, 144 S. Ct. 2244 (June 28, 2024), **this Court paved the way to stop the shell game which has been going on since the very first bank fraud and bank breach, and continued through the administrative process, and district court, especially in the improper Order**

and rulings made in 2021 from which Wall Guy initially appealed from district court. This should allow Petitioner a hearing with the lower court, not the FDIC, to argue the merits and argue the amounts due and owing. **Manifest Injustice will result if this Court fails to enter a G.V.R.** This simple remedy will finally bring the results that a jury found appropriate in 2018, which was codified in state court judgments, and a district court judgment in 2021, all finding for the Petitioner. The funds are available within the bond/surety outside of the FDIC and have always been present and remain protected to this day. **Petitioner is not asking for a do-over or a second bite at the apple, because he never had a hearing on his claim protected by bond/surety. Petitioner is requesting remand for a hearing, which he should have had since winning a jury trial and multiple judgments.** A lower court (district court or state court), not the FDIC, should determine Wall Guy's fate under ***Loper Bright Enterprises v. Raimondo***, 144 S. Ct. 2244 (June 28, 2024). Had this case been available at the time for the 4th Circuit's decision, remand to address the same appropriately in district court and/or state court would have been required, and Wall Guy would have been protected by the US Code cited and the Bond/Surety. **The substantial error can be corrected, manifest injustice can be thwarted, the bond/surety, which has been present at all stages before and after bank failure, and even continuing to this day, protects and insures the Petitioner. Petitioner does not depend on the FDIC to insure or protect the funds owed by the failed bank, the state court had already done so on his own, and the US Code supports said**

finding, and Wall Guy needs this Court to enter a G.V.R. so Wall Guy can access those protections he is undeniably entitled and currently still has.

CONCLUSION

The Petition for Rehearing should be granted and this Honorable Court should simply employ its G.V.R. power to enter an Order requiring remand in light of ***Loper Bright Enterprises v. Raimondo***, 144 S. Ct. 2244 (June 28, 2024). **The bond/surety herein transcends all issues herein.** It existed before bank failure, after bank failure, and it still exists to this day, and the US Code exempts the FDIC from it. **The bond/surety Pledge Agreement and its protections should be determined by the lower court and not by the FDIC**. Petitioner has not received a penny, and the funds due and owing exist, and are protected in the bond/surety herein, which prevents gross unjust enrichment by the successor bank. Counsel is gravely concerned that without the aid of a G.V.R. order, because of the ongoing shell game played by the prior bank, the FDIC, and now the successor bank will continue to magically sweep an IRRECOVABLE credit line, as well as other relief due and owing, and protected in state court, under the rug, rather than provide the same to Petitioner. Congress carved clear exceptions to prevent this from occurring and this Court can continue to pave the road to justice in this matter, because Wall Guy was entirely and completely protected from bank failure in the state court, and Congress had the foresight to

protect the same in **FIRREA,** and the lower court should be the gatekeeper of the same.

/s/ Steven T. Cook
Steven T. Cook
Counsel of Record
COOK LAW OFFICES, PLLC
P. O. Box 549
Barboursville, WV 25504
(304) 521-1304
cooklaw31@gmail.com

Counsel for Petitioners

CERTIFICATION OF COUNSEL

Counsel asserts that the filing for a Rule 44 Petition for Rehearing of the previous denial of the Writ of Certiorari is presented in good faith and not for the purpose of delay. The request is limited to intervening circumstances of controlling effect and to other substantial grounds not previously presented.

/s/ Steven T. Cook
Steven T. Cook
Counsel of Record
COOK LAW OFFICES, PLLC
P. O. Box 549
Barboursville, WV 25504
(304) 521-1304
cooklaw31@gmail.com

Counsel for Petitioners