No. 24- 242

IN THE

Supreme Court of the United States

IN RE: PETER K. STERN, EX PARTE,

Petitioner.

ON PETITION FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION

PETER K. STERN
Pro Se
P.O. Box 326
Franklin, NC 28744
(828) 349-3007
pkstern@dnet.net

117059

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether the Petitioner prevails on his claim of want of subject matter jurisdiction on the part of the District Court for the Western District of North Carolina on Counts One, Two and Three of the original Indictment in Case No. 2:99-cr-ooo81-MR-1 due to the clearly stated Congressional Intent memorialized in THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS of the U.S. Senate Hearing on S.1009, July 17, 1996 and the fatal flaw and lack of subject matter jurisdiction created by the absence of an implementing regulation in 26 U.S.C. supporting 26 U.S.C. § 7212A thereby exceeding the bounds of its lawful jurisdiction and wrongfully usurping the authority of Congress.

2. Whether the Petitioner prevails on his claim that the District Court materially and wrongfully erred and exhibited prejudice and bias against the Petitioner in denying the Petitioner the exculpatory testimony of Russell Dean Landers in Case No. Case No. 2:99-cr-00081-MR-1 with respect to Counts Four, Five, Six and Seven of the Indictment and withholding the exculpatory evidence in the S.1009 Congressional Report nullifying Counts One and Three of the Indictment from the Trial Jury in violation of the Fifth and Sixth Amendment and on which the government failed to prove an essential element of the offense.

3. Whether the Petitioner prevails in his claim that the U.S. Attorney's office in the Western District of North Carolina through A.U.S.A. David Brown perpetrated a series of material, pervasive, deliberate, and knowing acts of fraud on the District Court, the Grand Jury, and the

Petitioner in Case No. 2:99-cr-00081-MR-1 and committed multiple acts of prosecutorial misconduct creating structural errors demanding reversal of the convictions against the Petitioner.

4. Whether the District Court materially erred, exhibited prejudice and bias against the Petitioner, and violated the protections and guarantees of the Fifth and Sixth Amendment in repeatedly denying the Petitioner access to the court in Case No. 1:23-cv-185-MR-WCM and Petitioner's prior filings thereby wrongfully denying a meaningful and full hearing on his claims to vindicate his rights despite the overwhelming evidence in the Petitioner's favor that no reasonable jurist would overlook.

5. Whether the Fourth Circuit panel materially erred by ratifying and condoning the District Court's denials of access to the courts in violation of the guaranteed protections of the Fifth and Sixth Amendment by also denying the Petitioner's access to the courts in Case No. 1:23-cv-185-MR-WCM and Petitioner's prior filings thereby denying the Petitioner a meaningful and full hearing on the merits of his claims to vindicate his rights despite the overwhelming evidence in the Petitioner's favor that no reasonable jurist would overlook.

6. Whether the Supreme Court should grant the Writ of Mandamus and Writ of Prohibition sought herein or in the alternative recognize, find and rule that there is no reasonable expectation that based on the long term incontrovertible record, neither the Fourth Circuit nor the District Court can be expected to afford the Petitioner a full and fair evidentiary hearing free from judicial bias and prejudice on his claims to the extent that the Supreme

Court should, in the interests of justice and fair play, undertake to ORDER, ADJUDGE, and DECREE the Petitioner prevails on his claims articulated in the Petition for Declaratory Judgment in Case No. 1:23-cv-00185-MR-WCM in the U.S. District court for the Western District of North Carolina, Asheville Division and this case to the extent that the convictions in Case No. 2:99-cr-00081-MR-1 should be reversed, overturned in their entirety, and his record expunged.

STATEMENT OF RELATED PROCEEDINGS

Peter K. Stern v. U.S., No. 23-2080, U.S. Court of Appeals for the Fourth Circuit, Judgement entered May 1, 2024.

Peter K. Stern v. U.S., 1:23-cv-000185-MR-WCM, U.S. District Court for the Western District of North Carolina, Judgment entered September 18, 2023.

Stern v. United States, 1:16-cv-00329-MR, Doc.1, U.S. District Court for the Western District of North Carolina

U.S. v. Peter Kay Stern, No. 12-6898, U.S. Court of Appeals for the Fourth Circuit, Judgement entered November 28, 2012.

Stern v. United States, No. 17-1139, U.S. Court of Appeals for the Fourth Circuit, Judgement entered August, 2017.

In Re: Peter K. Stern, No. 06-8017, U.S. Court of Appeals for the Fourth Circuit

U.S. v. Stern, 164 F. Appx. 306 (2006)

Stern v. U.S., 543 U.S. 1097, 125 S.Ct. 988, 160 L.Ed. 996 (2005)

U.S. v. Peter K. Stern, No. 2-99-cr-00081-MR-1, U.S. District Court for the Western District of North Carolina.

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INTRODUCTORY STATEMENT

This timely application for a Writ of Mandamus and/or Prohibition from the actions of the U.S. Court of Appeal for the Fourth Circuit and U.S. District Court for the Western District of North Carolina arises from what the Petitioner alleges and avers is the knee jerk reflexive and wrongful denial and abuse of Judicial Discretion of the Petitioner's attempt to file a Petition for Declaratory Judgement action in the U.S. District Court for the Western District of North Carolina in an attempt to seek meaningful access to the courts and obtain a hearing on the merits of his claims and judicial determinations on the merits of a series of unresolved questions relating to long standing claims of Constitutional violations of great magnitude involving what the Petitioner states are issues affecting the Petitioner's right, titles and interests which to date neither the District Court nor the Fourth Circuit will address.

The Petitioner asserts and avers that the reasons articulated by the District Court and the Fourth Circuit for denying the Petitioner access to the courts and any meaningful hearing on the merits of his claims for many years appear to be without any legal merit, an obvious coordinated effort to cover up ongoing judicial misconduct based on abuse of Judicial Discretion, personal animus, and prejudice and bias against the Petitioner and demonstrably legally wrong conclusions which are contradicted by the bedrock case law set out in the Petitioner's pleadings, compelling and irrefutable evidence, and records of the proceedings the Petitioner sought to undertake to clear his name from the stigma due to convictions in in Case No. 2:99-cr-00081-MR-1.

OPINIONS BELOW

The opinion in *Peter K. Stern v. U.S.*, No. 23-2080, U.S. Court of Appeals for the Fourth Circuit, Judgement entered February 26, 2024 is reproduced below at 1a.

JURISDICTIONAL STATEMENT AND RULE 20.1 STATEMENT

This Court has jurisdiction under 28 U.S.C.§1651(a). 28 U.S.C. §1651(a) states,

"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."

A writ of mandamus or prohibition would be in aid of the Court's oversight and governance in ensuring the reputation of the Federal System of Justice is seen as fair and impartial in the eyes of the public as well as correcting an obvious miscarriage of justice in the Petitioner's case. See *Ex parte Republic of Peru*, 318 U.S. 578, 583 (1943) ("writs thus afford an expeditious and effective means of confining the inferior court to a lawful exercise of its prescribed jurisdiction"); *In re Chicago, Rock Island & Pac. Ry. Co.*, 255 U.S. 273, 275-76 (1921).

In addition, a Writ of Prohibition would restrain the lower courts from the flagrant misconduct and abuse of judicial discretion that can be perceived as the Court acting as an arm of the prosecution and destroying any perception of the Court following the requirement to exercise impartiality as occurred in the Petitioner's cases.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Bill of Rights Amendment Five

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Bill of Rights Amendment Six

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 wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

5 U.S.C. 552
5 U.S.C. 553
5 U.S.C. 558(b)
26 U.S.C.
26 U.S.C. 6001

26 U.S.C. 7201
26 U.S.C. 7212(A)
27 C.F.R.
44 U.S.C. 1505(a)

FEDERAL RULES

F.R. C. P. Rule 8(b)(3)
F.R. C. P. Rule 8(b)(6)
F.R. C. P. Rule 6 (c)(1)
F.R.Cv.P. Rule 12(b)(6)
F.R.Cv.P Rule 44(a)(1)
F.R.Cv. P. Rule 56(c)
F.R.Cv.P. Rule 59(b)
F.R.Cv.P. Rule 60(b) (3), (4) and (6)
S. Ct. Rule 20.1
S. Ct. Rule 33.2
Judicial Code §262
F.R. Evid. Rule 201(b)
F.R. Evid. Rule 201(d)
F.R. Evid. 902(5)
F.R. Evid. 902 (10)

CONGRESSIONAL RECORD

THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS of the U.S. Senate Hearing on S.1009, July 17, 1996

TREASURY ORDERS

Treasury Order #201-01 June 6, 1972

STATEMENT OF THE CASE

NOW COMES, Peter K. Stern, appearing Pro Se and Ex Parte,

hereinafter at all times relevant Petitioner, and files this timely PETITION pursuant to S. Ct. Rule 33.2 directly to the Honorable John Roberts in both his capacity as Chief Justice of the Supreme Court as well as Circuit Justice with domain and authority over the Fourth Circuit Court of Appeals on the following grounds;

The Petitioner, an 81 year old U.S.A.F. veteran medically retired with a 100% service connected disability, is laboring under ongoing consequences of the wrongful and unlawful conviction in the underlying case, has standing before this Court and has a right to clear his name and reputation and remove the civil disabilities that attached as a consequence thereof. *U.S. v. Morgan*, 346 U.S. 502 (1954).

The Petitioner categorically states and asserts that this is not a second or successive 28 USC § 2255 motion nor a Coram Nobis Petition and should not be misconstrued as such.

The Petitioner asserts the claim not only does he have standing to be before this Court, at no time has he waived any rights or remedies, and has continually and diligently for many years pursued all available remedies to date to no avail due the abuse of judicial discretion and mis-conduct complained of herein.

COURT OF LAST RESORTS

This is the 'Court of Last Resorts' since there are no other adequate avenues, remedies nor courts available.

The Petitioner further asserts the claim that the Public has an interest in the outcome of this action since the errors and egregious and wrongful Judicial misconduct and egregious abuse of Judicial Discretion claimed and demonstrated herein are of such a magnitude that if left to stand, they will bring about a gross mistrust of the honor and integrity of the Federal System of Justice.

The relief sought is that this Court overturn the obviously unlawful and wrongful May 17, 2024 ORDER of the United States Court of Appeals for the Fourth Circuit in Case Number 23-2080 which violates natural justice standards, wrongfully and erroneously violating the Petitioner's basic rights and Constitutional guarantees under the Bill of Rights as the Petitioner appeals from an equally outrageous long term series of dangerous and ultra vires conduct on the part of the District Court for the Western District of North Carolina in Case Number 1:23-cv-00185-MR-WCM which at all times relevant has been and is now once again acting as an arm of the Prosecution by repeatedly denying the Petitioner any meaningful access to the Courts to hold evidentiary hearings on the merits of the Petitioner's multiple claims in his ongoing attempts to litigate the obvious wrongful convictions in Case Number 2:99-cr-00081-MR-1 in the Western District of North Carolina. The Petitioner argues that he has successfully laid out a demonstrably undisputable set of facts, legal arguments, and proffered ultimate compelling evidence requiring that

the convictions be overturned and the Petitioner's record be expunged.

THIS PETITION AIDS IN THE SUPREME COURT'S APPELLATE JURISDICTION

This Petition is tendered in aid of the Supreme Court's appellate jurisdiction as this Court pursuant to the Judicial Code §262, as this Court has oversight and authority over the Fourth Circuit Court of Appeals and their inferior courts.

This Court has a clear obligation and a material ministerial duty to correct the unlawful, unconstitutional and egregious judicial bias, prejudice, and misconduct exhibited by the Fourth Circuit and the U.S. District Court for the Western District of North Carolina in failing to perform their ministerial duties and follow the law by allowing the convictions complained of to stand in light of the clearly demonstrated want of subject matter jurisdiction, Constitutional violations, and their failing to follow established case law and to correct their errors, and maintain the integrity of the Judicial System. *U.S. v. District Court*, 334 U.S. 258 (1948).

The exhibits provided herein establish beyond question that adequate relief cannot be obtained in any other form or from any other court.

ISSUES PRESENTED AND SUPPORTING FACTS

The references to the 28 U.S.C §2255 document filed in Case No. 2:99-cr-00081-MR-1 Doc. # 204, 205,206, 207 October 26, 2006) are necessary to set the stage for the success of the claim in this Petition.

The Petitioner is not now in custody.

What is clear from the few Supreme Court decisions concerning the domain of the All Writs Act in postconviction litigation is that federal courts have "belated" jurisdiction over criminal cases that have become final.

Because it is a continuation of a criminal suit, this Petition is not barred by the abolition of the writ in federal civil practice under Rule 60(b).

U.S. v. Morgan, 346 U.S. at 505 n.4.199. *Jones v. Watts*, 142 F.2d 575, 576 (5th Cir. 1944); *Coffin v. Ewer*, 46 Mass.(5 Met.) 228, 230 (1842); *Shumway v. Sargeant*, 27 Vt. 440, 442 (1855); *Gleason v. Peck*, 12 Vt. 56, 58-59 (1840).200. *Pac. R.R. of Mo. v. Mo. Pac. Ry. Co.*, 111 U.S. 505, 522 (1884). No modern court has made any definitive argument to the contrary. See, e.g., *Triestman v. United States*, 124 F.3d 361, 380 n.24 (2d Cir. 1997) (suggesting circumstances under which Audita Querela may be available and implying other remedies sought under the All Writs Act fall under this concept).

This Petition invokes both equitable as well as Constitutional claims.

The Petitioner contends equitable tolling must be applied and any presumption of a procedural bar deemed void, ab initio, since this claim clearly rises to a level of a Constitutional claim. *Murray v. Carrier*, 477 U.S. 478, 496, 106 S.Ct. 2639, 91 L.Ed. 2nd 397 (1986). F.R.C.P. Rule 60 (b) (3), (4) and (6) apply as this is a separate action. *Hazel-Atlas Glass Co. v. Hartford Empire Co.* (1944) 322 U.S. 238, 4 Fed. Rules Serv. 942,945. See also *U.S. v. Mandel*,

862 F2d 1067 (4th Cir. 1988) where despite a 10 year time span, the 4th Circuit found "Without *coram nobis* relief, the petitioners, who contested their guilt at each stage of the proceeding, would face the remainder of their lives branded as criminals simply because their federal trial occurred before rather than after the Supreme Court's ruling in *McNally.* See *Travers*, 514 F.2d at 1178-79." and "The sufficiency of the evidence in a case is a question in each instance to be submitted to a jury, subject only to being set aside for insufficiency. *United States v. Caudle*, 758 F.2d 994, 997 (4th Cir. 1985)."

CASE AND CONTROVERSY

This action is raised as an obvious case and controversy brought about by the fact that the U.S. District Court for the Western District of North Carolina and Fourth Circuit have once again arbitrarily, capriciously, and unlawfully abused it's/their discretion and denied the Petitioner access to the Courts and a full and fair hearing on the merits of his claims in violation of **Amendment Five and Amendment Six of the Bill of Rights** leaving the Petitioner to labor under long term irreparable harm and without access to clearly established available legal rights, remedies, and equal protections of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 816-818 (1982).

The Fourth Circuit Court of Appeals and District Court continue to display **deliberate indifference to the documentary ultimate evidence** tendered by the Petitioner and controlling *stare decisis* case law to continue to conspire and operate outside clearly established Law, thereby violating their respective Oaths

of Office and ministerial duty to follow the Law by helping protect and cover up the District Court's misconduct, abuse of Judicial Discretion, and unjustifiable long term pattern and practice of denying the Petitioner access to the Courts in violation of the **5th and 6th Amendment** and obtaining any meaningful hearing on the merits of his claims for relief.

It is abundantly clear that the only remedy available to the Petitioner appears to the avenue clearly available under the 28 USC §1651(a) All Writs Act in the instant Court.

"The essence of Due Process is being able to be heard at a meaningful time and in a meaningful place, **Mathews v. Eldridge**, 424 U.S. 319, 333, 96 S. Ct. 893, 902, 47 L.Ed. 2d 18 91976), when liberty or property interests are involved.".

Clearly the Petitioner has been and still is wrongfully denied the protections guaranteed by the Fifth and Sixth Amendments and any meaningful opportunity to be heard on the record.

The District Court has clearly usurped the authority of Congress to declare what is or is not a Federal crime and the Fourth Circuit by its complicity has ratified and condoned that mis-conduct.

MANDAMUS/PROHIBITION ARGUMENT

The allegation and claim upon fundamental Constitutional grounds arises from the fact that the District Court summarily and wrongfully denied the

Petitioner a timely and meaningful evidentiary hearing on his PETITION FOR A DECLARATORY JUDGEMENT Petition, as it has in Petitioner's repeated prior attempts to prosecute his 28 U.S.C.2255 Petition and subsequently in the cases listed above thereby depriving him of a Constitutionally guaranteed clear and indisputable right under the **Due Process Clause and Equal Rights Clauses of the 5th Amendment and the Compulsory Process Clause of the 6th Amendment** by casually tossing out the Petitioner's properly filed PETITION FOR A DECLARATORY JUDGEMENT Petition as it has in all of the Petitioner's other prior attempts to gain meaningful access to the court in order to cover up the District Court's ongoing mis-conduct as has the Fourth Circuit.

"The defense or discharge must be a legal defect in the conviction, or in the sentence which taints the conviction." See *Doe v. I.N.S.*, 120 F.3d 200, 203 (9th Cir.1997). *Kessack*, 2008 WL 189679, at *5.

WANT OF SUBJECT MATTER ON COUNTS ONE, TWO, AND THREE

There is no more compelling legal defect than **the absolute want of Congressionally granted subject matter jurisdiction** of the acts alleged against the Petitioner in Counts One, Count Two and Count Three of the Indictment.

The District Court and the Fourth Circuit have continued to exhibit deliberate indifference to the factual evidence portrayed by the Congressional Record and S.1009 statements. See Exhibit #2 of Exhibit #3 of the Petition For Recall of the Mandate in Case #23-2080 in

the Fourth Circuit and all of the Petitioner's prior filings, See also the INFORMAL BRIEF in Case No. 06-8017, U.S. Court of Appeals for the Fourth Circuit, and have misrepresented the clear and undeniable Constitutional violations claims established by the Petitioner.

From the outset of this case, the Petitioner has maintained a claim of actual and factual innocence with respect to 6 of the 7 counts in the Indictment as set forth in the original Petitions and subsequent pleadings.

Counts 4 through 7 were directly attacked in Ground 45, Pages 205-208 of the original §2255 Petition, as well as in subsequent pleadings, the Declaratory Judgement action currently appealed from and made a part hereof by reference as if fully reproduced herein by reference, and supported by the unchallenged Affidavit of Russell Dean Landers made a part hereof by reference as if fully reproduced herein by reference.

In said Affidavit Landers directly confessed to the acts alleged to the Petitioner and unequivocally absolved the Petitioner from one or more of the essential elements of the offense and is thus totally exculpatory. This was and is squarely before the Court and makes the claims of the Petitioner a justiciable issue of Constitutional magnitude based on actual and factual innocence based on a total lack of proof on one or more of the essential elements of the offense claimed.

At trial, the record reflects that the Trial Court wrongfully denied the Petitioner a Writ of Habeas Corpus Ad Testificandum for Mr. Landers, thereby denying the Petitioner the right to present clearly exculpatory evidence

(DOC. #204, 205 and 206 Case No. 2:99-cr-ooo81-MR-1) in the Western District of North Carolina and in so doing, the trial Court violated the **Constitutional Fifth Amendment Due Process** clause and **Sixth Amendment "Compulsory Process"** clause guarantees and protections and actively assisted the Government to obtain a wrongful conviction.

The Petitioner contends equitable tolling must be applied and any presumption of a procedural bar deemed void, ab initio, since this claim clearly rises to a level of a Constitutional claim. Murray v. Carrier, 477 U.S. 478, 496, 106 S.Ct. 2639, 91 L.Ed. 2nd 397 (1986). F.R.C.P. Rule 60 (b) (3), (4) and (6) apply as this is a separate action. Hazel-Atlas Glass Co. v. Hartford Empire Co. (1944) 322 U.S. 238, 4 Fed. Rules Serv. 942,945.

In addition to the above claim, the Petitioner asserts the claim that with respect to Counts 1 and 3 of the original Indictment involving a document titled "Controllers Warrant" dated December 16, 1995 this Court must take mandatory judicial notice of the record of Congress and its unequivocally stated Congressional intent with respect to what constitutes criminal behavior with respect to the instruments referred to in the original Indictment pursuant to F.R.Cv.P Rule 44 (a)(1). The Petitioner asks the Court to take mandatory judicial notice of the official Congressional publication consisting of the record of THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS of the U.S. Senate Hearing on S.1009, July 17, 1996 lodged as Exhibit #20 in the original §2255 Petition and made a part hereof in its' entirety by reference as if fully reproduced herein by reference and on the record and before the Court. Key to the Petitioner's argument of actual innocence is the clear and unequivocal

statement of Senator Alfonse D'Amato the the effect that "Over the past several years, innovative criminals have exploited a loophole in the Federal anti-counterfeiting laws. These laws do not specifically criminalize the production or passing of a phony check, bond, or security if the check, bond or security is not a copy of an actual financial instrument."

Until September 30, 1996 when Title 18 U.S.C. § 514 was added, Pub. L. 104 -208, div. A, title I, 101(f) [title VI, 648(b)(1)], title II, 2603(b)(1), Sept. 30, 1996, 110 Stat. 3009 -314, 3009-367, 3009-470, the activities complained of by the Government, all related to the Comptroller's Warrant, and all occurring well before the September 30, 1996 date, were not punishable under the laws of the United States.

The Actual and Legal Innocence claim is therefore again re-asserted with respect to Counts One and Three, an alleged violation of 18 USC §286 and 18 USC § 1344 which by expressly stated Congressional intent was not applicable to the act of December 16, 1995 attributed to the Petitioner in the Indictment which in turn conclusively proves that the District Court lacked subject matter jurisdiction over the alleged conduct.

After objections by A.U.S.A. David Brown, the trial Court denied the Defense's proffer of a copy of the Congressional Record of the Senate Hearing on S.1009 thereby leaving the jury blind as to this clearly and undeniably exculpatory evidence.

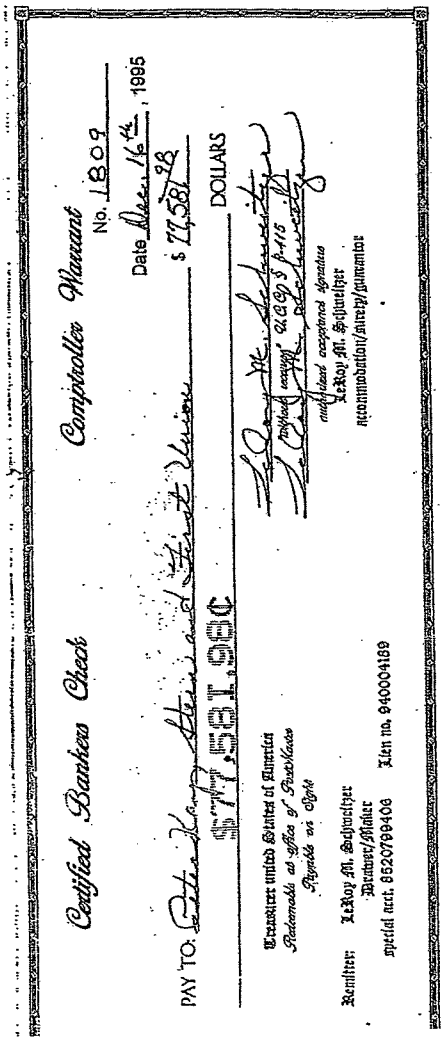
United States v. Morgan, 346 U.S. 502, 506 (1954).26. See, e.g., I.N.S. v. St. Cyr, 533 U.S. 289, 299 (2001) ("[A] s a general matter, when a particular interpretation of a

statute invokes the outer limits of Congress' power, we expect a clear indication that Congress intended that result."

One of the factual claims again asserted herein is the ongoing bad faith, unclean hands and Judicial wrongdoing exhibited by District Court Judge Martin Reidinger in his ORDER stating at Page # 3 that "the Petitioner has not made a substantial showing of a denial of a Constitutional right." knowing full well that the Petitioner's Complaint as well as all of his prior pleadings did call out those violations of his Constitutional guarantees and protections under the Bill of Rights with specificity.

At Ground 9 of the original §2255 Petition, and all of the Petitioner's subsequent filings, made a part hereof by reference as if fully reproduced herein by reference, the Petitioner clearly demonstrates that at the time of the alleged offense with respect to Counts One and Three, the Petitioner's behavior on December 16, 1995, by explicit statements of Congressional intent, was not criminal in nature and did not become so until September 30, 1996 **making the prosecution a Constitutionally forbidden Ex Post Facto act.** The Petitioner contends that Exhibit #20 of the original §2255 Petition, the record of THE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS of the U.S. Senate Hearing on S.1009, July 17, 1996, repeatedly make clear that there was no properly promulgated criminal law statute on record in the Statutes At Large or Title 18 U.S.C. to place the behavior alleged in Count 1 nor Count 3 within the scope and purview of Title 18 U.S.C See also COMPLAINT FOR DECLARATORY JUDGMENT Case # 1:23-cv-00185-MR-WCM U.S. D.C. for the Western District of North

Carolina, therefor the trial court was clearly in want of Subject Matter Jurisdiction and was operating **ultra vires and unconstitutionally.**



Only those acts which Congress has forbidden are crimes. *U.S. v. Hudson & Goodwin*, 11 U.S. 32 (7th Cir.

1812); *U.S. v. Cooledge*, 14 U.S. (1 Wheaton) 415; *U.S. v. Britton*, 108 U.S. 199, 206 (1883); *U.S. v. Eaton*, 144 U.S. 677,687 (1892).

Until September 30, 1996 when Title 18 U.S.C. § 514 was added, http://www.gpo.gov/fdsys/pkg/PLAW-104publ208/html/PLAW-104publ208.htm, Pub. L. 104 -208, div. A, title I, § 101(f) [title VI, § 648(b)(1)], title II, §2603(b)(1), Sept. 30, 1996, http://uscode.house.gov/statviewer.htm?volume=110&page=3009-314, 110 Stat. 3009-314, 3009-367, 3009-470), the activities complained of by the Government, all related to the Comptroller's Warrant, and all occurring well before the September 30, 1996 date, were not punishable under the laws of the United States.

Attempts by the defense to enter this undeniably, compelling and powerful exculpatory exhibit at trial which is on it's face important to a vital and principle point of the case were denied by the trial Judge Lacy Thornburg, and thusly withheld from the jury, a clear and plain Constitutional and Fundamental and Structural Legal error and an undeniable abuse of judicial discretion when taken in context with the impact on the Petitioner's defense which resulted in the Petitioner being denied "a meaningful opportunity to present a complete defense." This prejudicial act by the trial court withheld from the jury concrete and material evidence which is clearly prejudicial to the Petitioner and his substantive rights and which implicates violations of the **Due Process Clause of the Fifth Amendment and is also rooted in the Compulsory Process and Confrontation Clause of the 6th Amendment.** *Holmes v. South Carolina*, 547 U.S. 319, 126 S.Ct. 1727, 1731, 164 L.Ed.2d 503 (2006),

and postured the court to favor the prosecution such as to insure a conviction. U.S. v. Newsome, 322 F.3d 328, 334 (4th Circuit 2003) citing U.S. v. Castner, 50 F.3d 1267, 1272 (4th Circuit 1995) to a point where for this court to leave this unaddressed and corrected would "seriously affect [ ] the fairness, integrity or public reputation of the judicial proceedings" U.S. v. Gray, 405 F.3d 227, 243 (4th Circuit 2005), cert. denied 126 S.Ct.275 (2005) in U.S. v. Cardwell, 03-4585 (4th Circuit Dec. 30, 2005).

With respect to Counts 4, 5, 6 and 7, as a consequence of the trial court's prejudicial denial of the Writ Of Habeas Corpus ad Testificandum for Russell Dean Landers as a defense witness at trial, Doc. # 119, 120, 122, 123, Petitioner must resort to the material exculpatory evidence contained in the Affidavit of Russell Dean Landers lodged with the District Court court in the evidence package of the §2255 petition and now before this Court as well as in all of the Petitioner's prior pleadings revealing a violation of the "**compulsory process" protections of the Sixth Amendment** which clearly shows the denial was a fundamental miscarriage of justice, a Constitutional violation, and a denial of fundamental substantive equal rights of the Petitioner since Mr. Lander's testimony relates to a vital and principal point of the case and would most certainly have informed and influenced the jury.

The unchallenged Affidavit, the highest level of evidence, and properly before this court under F.R.Cv. P. Rules 12 (b)(6) and Rule 56 (c), clearly demonstrates that the Petitioner did not commit the acts accused of and constitutes a credible showing sufficient to allow this Court to reach the merits of the Petition. *Schlup v. Delo*, 513 U.S. 298 317, 115 S. Ct. 851 (1995), and establishes the Constitutional gateway to have the claim considered on its

merits. Id. At 315, 115 S.Ct.851 (citing *Herrera v. Collins*, 506 U.S. 390, 404, 113 S. Ct. 853, 122 L.Ed. 2nd 203 (1993).

In that the prosecution did not answer nor challenge the Petitioner's claims and allegations, pursuant to F.R.C.P.Rule 8(b)(3) & (6) they are admitted as true and carry the day.

WANT OF SUBJECT MATTER JURISDICTION AND ILLEGAL PROSECUTION ON COUNT TWO

With respect to Count Two, and alleged violation of 26 U.S.C. §7212A, the Petitioner again asserts the claim that the trial Court was in want of Subject Matter jurisdiction on the following grounds :

Absent an implementing regulation in harmony with the statute and Code section allegedly violated, and in the event procedure does not preserve substantive rights secured by the Fifth and Sixth Amendments, the court lacks subject matter jurisdiction to prosecute criminal offenses classified in Part I, Chapter 75 of the Internal Revenue Code.

CODE SECTIONS AT ISSUE: 7201-7212

"For Federal tax purposes, the Federal Regulations govern. *Lyeth v. Hoey*, 1938, 305 U.S. 188, 59 S.Ct. 155, 83 L.Ed. 119," quoted in *Dodd v. U.S.*, 223 F.Supp. 785(1963), which goes on to state that the implementing regulation, 26 CFR 20.2056(b)-4(c) has to be consistent with the statute.

"*** Construction may not be substituted for legislation.', *U.S. v. Missouri P.R. Co.*, 278 U.S. 269,

277, 49 S.Ct. 133, 136, 73 L.Ed. 322. Another rule often overlooked in construing a revenue statute is that in a doubtful situation the taxpayer is entitled to the benefit of the doubt. As was said by the court in *U.S. v. Merriam*, supra, 263 U.S. at page 188, 44 S.Ct. at 71, 68 L.Ed. 240, 29 A.L.R. 1547: 'If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer.'" quoted in *Bussev v. C.I.R.*, 479 F.2d 1147 (1973).

To support the assertion that it is mandatory for implementing regulations to be promulgated by the Secretary (Commissioner in past times), we look to *California Bankers Assn. v. Schultz*, 39 L.Ed. 2d 812 at 820:

"Because it has a bearing on some of the issues raised by the parties, we think it important to note that the Act's civil and criminal penalties attach only upon violation of regulations promulgated by the Secretary; if the Secretary were to do nothing, the Act itself would impose no penalties on anyone."

In *U.S. v. Murphy*, 809 F.2d 1427 at 1430 (9th Cir. 1987), following California Bankers Association rationale, the court said:

"The reporting act is not self-executing; it can impose no reporting duties until implementing regulations have been promulgated."

In *U.S. v. Reinis*, 794 F.2d 506 at 508 (9th Cir. 1986) the court said:

"An individual cannot be prosecuted for violating this Act unless he violates an implementing regulation

The result is that neither the statute nor the regulations are complete without the other, and only together do they have any force. In effect, therefore, the construction of one necessarily involves the construction of the other."

U.S. v. Mersky, 361 U.S. 431, 4 L.Ed. 2d 423, 80 S.Ct. 459 (1960), agreed with in *Leyeth v. Hoey*, supra, *U.S. v. $200,00 in U.S. Currency*, 590 F.Supp. 866; *U.S. v. Palzer*, 745 F.2d 1350 (1984); *U.S. v. Cook*, 745 F.2d 1311 (1984); *U.S. v. Gertner*, 65 F.3d 963 (1st Cir. 1995); *Diamond Ring Ranch v. Morton*, 531 F.2d 1397, 1401 (1976); *U.S. v. Omega Chemical Corp.*, 156 F.3d 994 (9th Cir. 1998); U.S. v. Corona, 849 F.2d 562, 565 (11th Cir. 1988); *U.S. v. Esposito*, 754 F.2d 521, 523-24 (1985); *U.S. v. Goldfarb*, 643 F.2d. 422, 429-30 (1981).

Ruling *stare decisis* case law dictates that there must be implementing regulations supporting penalty statutes, and that the requirement applies to numerous titles of the United States Code including the Internal Revenue Code.

The Federal Register Act, particularly 44 U.S.C. 1505(a), infra, the Administrative Procedures Act (5 U.S.C. 552 & 553) and the Internal Revenue Code (26 U.S.C. 6001 & 7805(a)) all require the Secretary of the Treasury to promulgate regulations for Internal Revenue Code sections that materially affect anybody liable for or liable for collecting taxes imposed by internal revenue laws of the United States. The core requirement to promulgate regulations, or provide direct written notice of liability under internal revenue laws, is codified at 26 U.S.C. 6001:

6001. Notice or regulations requiring records, statements, and special returns.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a).

Absent direct written notice that includes findings of fact and conclusions of law, the Secretary of the Treasury must promulgate regulations for both taxing and liability statutes in order to provide notice of duties imposed by internal revenue laws of the United States. As is the case for sales taxes, the person responsible for collecting income and employment taxes may be liable for the taxes whether or not they are collected.

Per the last sentence of Rule 6(c)(1) of the Federal Rules of Criminal Procedure, "The indictment or information shall state for each count the official or customary citation of the statute, rule, regulation or other provision of law which the defendant is alleged therein to have violated." **No violation of any Regulation in 26 U.S.C. is charged in the Indictment.**

The **Sixth Amendment to the Constitution of the United States** secures the defendant's right " to be

informed of the nature and cause of the accusation " Where Congress has imposed the duty of promulgating implementing regulations for taxing and liability statutes classified in the Internal Revenue Code in order to inform those subject to or responsible for collecting any given tax imposed by internal revenue laws of the United States (26 U.S.C.6001 & 7805(a)), identification of applicable regulations is mandated to satisfy requirements of Rule 6(c)(1) of the Federal Rules of Criminal Procedure and the Sixth Amendment for an indictment or information to be valid.

Are there implementing regulations under Internal Revenue Service subject matter jurisdiction, applicable to Subtitles A & C of the Internal Revenue Code, for penalty statutes classified as 26 U.S.C. 7201-7212?

To answer the question, we must consult the Parallel Table of Authorities and Rules, published in the Index volume of the Code or Federal Regulations or available as a PDF document on the Government Printing Office web page. This finding aid, and its standing as *prima facie* evidence that warrants judicial notice (Rules 201(b) & (d) and Rule 902(5) & (10), Federal Rules of Evidence), is authorized by 44 U.S.C. §1510:

> The following citations, with captions for Internal Revenue Code sections added, appear in the current edition of the Parallel Table of Authorities and Rules. Code section citations followed by "no regulation" do not appear in the ancillary finding aid.

26 U.S.C. (1986 I.R.C.)

Section	*Title*	*Related regulations*
7201	Attempt to evade or defeat tax	No regulations
7202	Willful failure to collect or pay over tax	
7203	Willful failure to file return, supply information, or pay tax	
7204	Fraudulent statement or failure to make statement to employees	
7206	Fraud and false statements	
7207	Fraudulent returns, statements, or other documents	
7208	Offenses relating to stamps	
7209	Unauthorized use or sale of stamps	27 Part 70
7210	Failure to obey summons	
7211	False statement to purchasers or lessees relating to tax	
7212	Attempts to interfere with administration of internal revenue laws	27 Parts 170, 270, 275, 290, 295

The only regulations listed in the Parallel Table of Authorities and Rules for criminal Code sections 26 U.S.C. 7201-7212 are from Title 27 of the Code of Federal Regulations.

Title 27 of the Code of Federal Regulations is under Bureau of Alcohol, Tobacco and Firearms (ATF)

administration, **not** the Internal Revenue Service administration. Per 5 U.S.C. 558(b), an agency may enforce only provisions for which it has administrative authority.

It is abundantly clear that by way of Treasury Order #120-01 of June 6, 1972, the Secretary of the Treasury segregated ATF from the Internal Revenue Service, and thereafter ATF regulations were classified in Title 27 of the Code of Federal Regulations and have since been under exclusive ATF jurisdiction.

Implementing regulations for the Internal Revenue Code are mandated by 5 U.S.C. 552(a) and 6001 & 7805(a). The Parallel Table of Authorities and Rules, authorized by 44 U.S.C. 1510, creates the rebuttable presumption that the Internal Revenue Service does not have regulatory authority to prosecute penalty statutes classified as 26 U.S.C. 7201-7212. Per ruling case law previously cited, statutes and implementing regulations must both be in evidence to establish the basis of criminal conduct.

Restating the Petitioner's position that the original Docket in Case #2:99-cr-00081 reveals there is no violation of any implementing regulation under 26 U.S.C. charged.

Absent an implementing regulation in harmony with the statute and Code section allegedly violated, and in the event procedure does not preserve substantive rights secured by the **Fifth and Sixth Amendments**, the court lacks subject matter jurisdiction to prosecute criminal offenses classified in Part I, Chapter 75 of the Internal Revenue Code.

Despite all of the Petitioner's efforts to obtain a meaningful evidentiary hearing on this issue, the District Court and the Fourth Circuit continue to stonewall the Petitioner and deny access to the courts.

The trial court was in want of subject matter jurisdiction on these three Counts and this claim and argument for the instant Court to so rule is properly and squarely before this court. *Matson Nav. Co. v. U.S.*, 284 U.S. 352, 76 L.Ed. 336, 52 S.Ct.162.

This Court cannot ignore this irrefutable fact nor the parallel fact that Petitioners prior claims to that effect have gone unopposed by the Government.

This claim squarely meets the test of "lack of fair notice and government restraint ***. *Weaver v Graham*, 450 U.S.24, 67 L.Ed. 2d 17, 101 S. Ct. 960 (1981) **(cited in** *U.S. v. Davenport*, No. 05-4304 (4th Circuit, April 21, 2006).

Of equal import is the fact that attempts on the part the defense in the trial to enter the S.1009 document, undeniably exculpatory in nature, into evidence for the jury to see were objected to by the government and suppressed by the trial court. "Suppression of exculpatory evidence by the government that is material to the outcome of the trial violates **Due Process Clause of the 5th Amendment**, irrespective of the motivation of the prosecutor." *U.S. v. Kelly*, 35 F.2d.929, 936(4th Circuit 1994) (citing *Brady v. Maryland*, 10 L.Ed.2d 215 (1963) and constitutes a fundamental structural error. The mere fact the government moved to deny the jury exculpatory evidence which Due Process requires the government to disclose as being material to the outcome of the trial

also violates the Due Process Clause. *Giglio v. U.S.* 31 L.Ed.2d 104 (1972).

FRAUD INFECTS THE ENTIRE HISTORY OF THIS CASE

The District Court failed to do its due diligence and afford the Petitioner a timely and meaningful hearing of his claims of FRAUD.

Federal Rule of Civil Procedure 60(b) affords relief where petitioner can show:1) mistake, inadvertence, surprise, or excusable neglect; 2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); 3) ***fraud (whether previously called intrinsic or extrinsic), mis-representation, or misconduct by an opposing party***; 4) ***the judgment is void***;" as in this case it is, ab initio, due to the clear lack of an applicable criminal statute at the time of the alleged offense as clearly stated by Congress, and 5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or 6) ***any other reason that justifies relief.***

AIDING THE COURT'S APPELLATE JURISDICTION

The Petitioner asserts the claim that the District Court was in material error by arbitrarily and capriciously dismissing the Petitioner's COMPLAINT FOR A DECLARATORY JUDGEMENT- as was the Fourth Circuit.

NOTE: The Petitioner asserts the claim that by so doing, the District Court as well as the Fourth Circuit Panel are acting in Bad Faith, with Unclean Hands, revealing demonstrable prejudice and bias, obvious personal animus against the Petitioner, and participating as an ongoing active part of the prosecution, intentionally stripping the Petitioner of his guaranteed and protected Fundamental Rights, have essentially nullified the 5th and 6th Amendment, destroyed any semblance of impartiality, misrepresented the facts, ratified and condoned the Fraud perpetrated by the Prosecution, and wrongfully cast aside and disregarded the long list of controlling *stare decisis* precedent case law supporting the Petitioner's position and on which the Petitioner based his claims. These unconscionable acts make the term "Equal under the Law" a hollow promise. In doing so, the Judges of the District Court and Fourth Circuit openly violated their respective Oaths of Office in what is arguably a mutually agreed upon series of actions meant to cover up the Judicial misconduct by and protect the rogue Judges in these cases.

As is all to often the case, it is the *COVER UP* such as is happening in this case that is a greater affront to the public order than the underlying misconduct.

This Court has to look no farther than Docket # 3 in Case No. 1:23-cv-00185-MR-WCM where Judge Martin Reidinger issued a "CASTRO ORDER" obviously attempting to deliberately and maliciously mislead the Petitioner, a layman and not an attorney, into accepting filing a 28 U.S.C. 2255 motion knowing full well that the Petitioner was not in custody and such an act would

inevitably lead to an instantaneous dismissal on the grounds the filing would be a "second or successive" motion and inapplicable due to the Petitioner's status to reach the conclusions articulated above.

08/07/2023	3	CASTRO ORDER that the Petitioner may comply with the provisions of this Order by written filing on or before 30 days from service of this Order. The Clerk of Court is respectfully directed to provide the Petitioner with appropriate § 2255 motion form along with a copy of this Order. Response due by *9/9/2023. Signed by Chief Judge Martin Reidinger on 8/7/2023. (Pro se litigant served by US Mail.) (ejb) Modified *Response due date is 9/9/2023 on 8/7/2023. NEF Regenerated (ejb). (Entered: 08/07/2023)

This abuse of judicial discretion on the part of Judge Lacy Thornburg can also be inferred by the District Court's contemptuously disregarding the Petitioner's win in the Supreme Court in *Stern v. U.S., 543 U.S. 1097, 125 S.Ct. 988, 160 L.Ed. 996 (2005)* finding Petitioner should be ***sentenced to no more than 57 months***, handed back down through the Fourth Circuit to the District Court by this Court, *U.S. v. Stern, 164 F. Appx. 306 (2006)*, which the District Court contemptuously ignored by re-sentencing Appellant to 124 months. Case 3 2:99-cr-00081 **(Doc. 194)** as did the Fourth Circuit panel.

NOTE: "No court has a right to imprison a citizen who has violated no law, even if exercised by a court under

guise and form of law and such an act is subversive of the right of the citizen as if were exercised by a person not clothed with authority." *Ex Parte Siebold*, 100 U.S. 371, 25 L. Ed 717. The instant Court may and has the obligation to determine in this proceeding the Constitutionality of the conviction under which the Petitioner was convicted and irrespective of the stage or any other relief available to the Petitioner, discharge the conviction if the proceedings prove to based on no Congressionally mandated law, *Minnesota v. Barber*, 136 U.S. 313, 34 L.Ed 455, 10 S.Ct. 862, which in this case by clearly stated Congressional intent is the undisputable factual setting and constitutes a fundamental error.

The 4th Circuit wrongfully disregarded the force and effect of the controlling precedent bedrock case law relied upon in the Petitioner's claims and allegations of FRAUD in the COMPLAINT FOR DECLARATORY JUDGEMENT, which by clearly established controlling case law required them to immediately follow their ministerial duty to set a hearing and delve into the merits of the FRAUD claim.

By bringing these claims before this Court, the Petitioner creates the opportunity for the instant Court exercise it's appellate powers to correct these egregious attacks on the Rule of Law.

WRITS OF MANDAMUS OR PROHIBITION ARE APPROPRIATE REMEDIES IN THESE EXTRORDINARY AND EXCEPTIONAL CIRCUMSTANCES

Petitioner asserts the claim that his claim falls squarely within the "extraordinary circumstances" where

the sought "extraordinary remedy" must be granted. *U.S. v. Prescott*, 221 F.3d 686, 688 (4th Cir. 2000), *Harris v. Hutchison*, 209 F.3d 325, 330 (4th Cir. 2000).

This claim is asserted on the grounds that it is truly exceptional that the District Court and the Fourth Circuit are operating together against the Petitioner in an obvious attempt to cover up the abuse of judicial discretion and misconduct perpetrated by Judge Lacy Thornburg in the face of indisputable want of subject matter jurisdiction and usurping the power of the Legislative arm of the Government, the coequal Congress, and perpetrating the clear Constitutional violations set out in the Petitioner's many pleadings.

At this point it is abundantly clear and beyond dispute that adequate relief cannot be obtained in any other form or from any other Court.

A writ of mandamus or prohibition is appropriate for exceptional circumstances of the kind presented here. In general, the writ may issue in this Court's discretion when there is no other adequate means to attain the desired relief and when the petitioner's right is clear and indisputable. *See Cheney v. U.S. Dist. Ct. for the Dist. of Columbia*, 542 U.S. 367, 380-81 (2004); Sup. Ct. R. 20.1. "These hurdles, however demanding, are not insuperable." *Cheney*, 542 U.S. at 381. The Court has historically used these writs to "confin[e] the inferior court to a lawful exercise of its prescribed jurisdiction." *Ex parte Peru*, 318 U.S. 578, 583 (1943); *Schlagenhauf v. Holder*, 379 U.S. 104, 109-10 (1964). This includes other "exceptional circumstances" include those "amounting to a judicial usurpation of power, [of Congress]" as is demonstrably the case here.

The current action has both criminal and civil aspects. *O'Brien v. Moore*, 395 F.3d 499, 505 (4th Circuit 2005).

The Petitioner shows that his original Petition and Complaint for Declaratory Judgement sets forth clear and undeniable claims of deliberate FRAUD on the part of the prosecution which permeates the entire proceedings beginning at the original Grand Jury as set forth at Ground 3 of the original §2255 Petition beginning at Page 58 and continuing through Page 76 and continues through today.

Petitioner refers the Court to those pleadings and supporting Exhibits in their entirety for elaboration and incorporates them herein by reference as if fully reproduced herein by reference.

It is a long-standing matter of well settled law (*stare decisis*) that there is no statute of limitations on fraud. Once the Badges of Fraud appear, "in any manner", the Court has no other path open to it other than to proceed on that issue "without further investigation as to the materiality" and to "vitiate the judgment". *Great Coastal Exp. V. International Broth., Etc.* 675 F.2d 1349, 1353-54 (4th Circuit 1982) citing *Hazel Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944), something the District Court failed to do. The Fourth Circuit wrongfully ratified and condoned that misconduct.

The Petitioner contends that the Petitioner labors under "concrete and continuing injury other than the now-ended incarceration or parole" existing in the form of deprivation of rights and the enduring stigma and the

clouding of his name and reputation in the community that exists as a result of the collateral consequence of the conviction. *Spencer v. Kemna*, 523 U.S. 1, 7, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998). The injury is sufficient to maintain this action as a justiciable Case and or Controversy and give the Petitioner reinforced standing before the Court.

It cannot be denied that the Petitioner has set forth compelling, overwhelming, irrefutable and sound factual proof of the predicate core issues and that proof is of sufficient weight to have this Petition granted in full under the concept of equitable tolling as well as 28 USC § 1651a.

From the train of events set out in this Petition, it is abundantly clear that the trial court was prejudiced and biased against the Petitioner and in favor of the government, at all times relevant aided and abetted the Prosecution and worked its abuse of judicial discretion against the Petitioner ensuring a fundamental and structural miscarriage of justice and a wrongful conviction was wrought on the Petitioner as a result.

All appearances of a fair and impartial trial are erased and buried under the overwhelming and indisputable evidence set out by the Petitioner and found on the record.

It is beyond question that the Judge Lacy Thornburg had a ministerial duty to not usurp the Power of Congress to define what is or more importantly in this case WHAT IS NOT a criminal act and defining statute and not go beyond that clearly stated boundary. (S.1009 Congressional Hearing Record*). United States v. Wilbur*, 283 U.S. 414, 420 (1931); *ICC v. New York, N.H. & H.R. Co.*, 287 U.S. 178, 204 (1932); *Will v. United States*, 389 U.S. 90 (1967).

It is also beyond question that the Fourth Circuit also repeatedly failed to live up to its obligation and ministerial duty to be impartial, rein in an out of control District Court which was clearly in want of subject matter jurisdiction on Counts One, Two and Three of the original Indictment, failed to abide to the requirements of the Fifth and Sixth Amendments to the U.S. Constitution, ignored the law-of-the-case in contempt of the Supreme Court as set forth in *Stern v. U.S.*, 543 U.S. 1097, 125 S.Ct. 988, 160 L.Ed. 996 (2005), operated as an arm of the prosecution by denying the jury an opportunity to have before it the exculpatory evidence the defense attempted to place on the record, and failed to rule in the Petitioner's favor on the basis of a long train of case law that supported the Petitioner's claim that without properly promulgated implementing Regulations in 26 U.S.C., Count Two was a nullity from the outset, and grant the Petitioner the relief he sought.

The ancient Maxim of "Justice delayed is justice denied." aptly applies in this case since the District Court and subsequently the Fourth Circuit could have and should have done its duty and granted the relief sought in the original §2255 Petition allowed a meaningful hearing on the merits of his claim as well as on the instant Declaratory Judgment action rather than subject the Petitioner to years of litigation in what is to date an unsuccessful attempt to vindicate his Rights.

The Petitioner asserts the Claim and contends that this is precisely and unarguably the situation that Mandamus contemplates.

CONCLUSION AND CLAIMS FOR MANDAMUS AND PROHIBITION RELIEF

The Chief Justice is asked to remember the words of Lord Acton to the extent that "Power corrupts and absolute power corrupts absolutely." and recognize and admit that the acts and omissions of the lower Court judges memorialized in the Petitioner's pleadings, the supporting evidence and dockets' records epitomizes exactly the type of corruption Lord Acton's statement was focused on.

Based upon the grounds set forth herein, controlling case Law and the facts and supporting material evidence that are clear and indisputable, the **Writ of Mandamus** must issue requiring the Fourth Circuit to reverse their OPINIONS and ORDERS and compel them to ORDER the District Court to overturn the convictions in Case No. 2:99-cr-00081-MR-1 and expunge the Petitioner's record.

A **Writ of Prohibition** must issue compelling the Fourth Circuit Court of Appeals and the U.S. District Court for the Western District of North Carolina to cease and desist from the egregious judicial misconduct and gross miscarriage of Justice and outrageous misbehavior that they perpetrated against the Petitioner's fundamental Rights in this line of cases since the outset.

Wherefore, the Petitioner respectfully petitions this Court and Chief Justice John Roberts to immediately grant the WRIT OF MANDAMUS directing the Fourth

Circuit and U.S. District Court for the Western District of North Carolina that upon overwhelming weight of the evidence and grounds set forth herein are of merit and carry sufficient weight that the original convictions are overturned, reversed in their entirety, with prejudice, ab initio, and the record of Petitioner's conviction be expunged in its entirety.

In the alternative, since from the record of the history of the train of events documented in the Petitioner's filings, this Court should find and rule that there is NO REASONABLE EXPECTATION that allowing the Fourth Circuit nor the District Court to hold any hearings on these matters would result in anything more than the same mis-conduct.

Wherefor the instant COURT should also issue a WRIT OF PROHIBITION prohibiting each and all of the judges involved from continuing the obvious wrongful and ultra vires conduct against the Petitioner and follow the law without fail.

The Petitioner respectfully moves this Court to also grant such remedies and relief as the Court finds equitable and right under these circumstances.

Since the Judge Reidinger of the District Court immediately stepped in and shut down the initial procedural steps in Case No. 1:23-cv-00185-MR-WCM before the Petitioner could affect service of process and obtain joinder on an opposing party See Doc. #2 and Doc.

#5, it appears that no service of process is needed in this case on any opposing party and this case can proceed Ex Parte.

DATED: August 28, 2024

Respectfully Submitted,

PETER K. STERN
Pro Se
P.O. Box 326
Franklin, NC 28744
(828) 349-3007
pkstern@dnet.net