

24-5801
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

00115
OFFICE OF THE CLERK

In Re: FRANK EDWIN PATE - PETITIONER

ON PETITION FOR A WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

Frank Edwin Pate

(Your Name)

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(Phone Number)

QUESTION(S) PRESENTED

- 1) Can lower courts, delay and deny access to Habeas Corpus, and maintain Constitutional adherence's to such right?
- 2) Can a Person break Federal law, when he runs his company in compliance with the State laws governing his management of said company?
- 3) Can a District court, allow a prosecution against a person, without an affidavit supported complaint being filed, warranting the persons arrest?
- 4) Does the Postal Inspector, hold Police power over the USPS routes and have arresting power? Is proof of mail fraud required to arrest?
- 5) Is a Grand Jury designed, for the purposes of protecting a citizens rights under the Constitution?
- 6) Can the search of property, be initiated without the evidence of any search warrant, supported by affidavit of probable cause?
- 7) Can an attorney, lacking in Art. II, sec. II, cl. II, "Appointments Clause" adherence, be allowed to present a prosecutuion for the United States Executive?

LIST OF PARTIES

All parties in the caption of the case in 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:

RELATED CASES

- 1) E.D. of Texas, Sherman Division, 4:14-cr-000125-ALM
- 2) 5th Circuit Court of Appeals: 15-41481
- 3) Habeas Corpus 3:21-cv-00595 ND of Florida;
3:21-cv- 1049 ND of Florida;
3:20-cv-5408 ND of Florida;
3:20-cv-5857 ND of Florida;
2:19-cv-580(transferred to ED of Texas as 2255) MD of Alabama;
2:18-cv-840 (challenging Article III authority of Trial court) MD of Alabama

IN THE
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PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue.

OPTIONS BELOW

For cases of **federal courts**:

The opinion of the United States court of appeals appears at Appendix ____ to the petition and is

****NO FINAL JUDGMENT AND OPINION HAS EVER BEEN ISSUED****

JURISDICTION

For cases from **federal courts**:

- No petition for rehearing was timely filed in my case.
- The jurisdiction of this court is invoked under 28 U.S.C. section 2241, 2242, 2243.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Provisions at Contest:

- 1) Article III Sec. 2, cl. 1.
- 2) Article II,
- 3) Article 1 sec. 9. cl. 2 “Habeas Corpus” privilege
- 4) 4th, 5th, 6th, 7th, 8th, 10th and 14th Amendments.

Statutes at Contest:

- 1) 18 USCS 3001, 3231, 3041, 3044, 3046, 3047, 1341, 1343, 4001
- 2) 28 USCS 519, 528, 530(B), 530(C)(b)(4), 533 (1), and 547(1).

STATEMENT OF THE CASE & RULE 20.4(A) STATEMENT

Extensive litigation has revealed Constitutional, Statutory, and Procedural violations which prove all Investigation and Prosecution efforts point to a fatally flawed indictment charged before an illegal Court forum, which produced (3) Void Judgments. Petitioner is being detained and imprisoned in violation of the Constitution and Laws of the United States.

First, the Government lacked the necessary “Standing” to seek a criminal charge for a civil dispute outside of federal jurisdiction. Undeterred, Prosecutors proceeded to abrogate Constitutional Protections, violate Statutory Laws, evade Federal Rules of Criminal Procedure, manufacture invalid Theories of Law and criminalize an innocent man, tortiously interfering with his Business. See Professional Real Estate Investors, Inc. V. Columbia Pictures Ind. Inc., 508 US 49, 113 S.Ct, 1920 (1993), also termed “Sham Lawsuit” or “Sham Action” (Blacks Law, Page 25, 10th Edition).

Lacking in requisite standing to Sue, the United States Executive Branch Officer(s) (Relying on now stricken Chevron deference) dominated and bullied their way past all limiting Legislation, Authorities and Offices – both Executive and Judicial – “collapsing the Separation of Powers”. Functioning under the Color of Article II Authority the Executives pushed the Court to proceed ‘Ultra Vires’, in violation of Art. III principles.

28 USC section 2241(c)(1) and (c)(3) speak directly to this circumstance: “[Petitioner] is in custody under the color of authority of the United States and in violation of the Constitution and Law of the United States”.

A court of competent Jurisdiction is: “A court that has the Power and Authority to do a particular act” (Blacks Law, 10th Edition). Lacking such Power, any Court is therefore incompetent.

18 USC Section 3041 allows judicial Power to extend for the purpose of bringing a Defendant before a Court of competent Jurisdiction only for “An offense against the United States,” and be held to

answer for allegedly criminally intended, Legal harms. Harms against the United States Constitutionally cognizable rights – actual existent rights – protected under federal Law.

Since F.R.Crim.P Rule 3 – ‘The Complaint’ initiates any criminal process when the Plaintiff seeks to arrest the defendant upon “probable Cause” (4th Amendment), and then to Trial Test their “Cause” of action and the “Probability” of criminal intent. Such rules are to be followed. Procedural due process falls away otherwise.

Without properly accessing Article III Powers, any Federal Judicial Officer later becomes: “A self appointed Tribunal – in which the principles of Law and Justice are disregarded, perverted, or parodied.” (Definition #2)

This Definition above defines a “Kangaroo Court”. {See Blacks Law, Page 314, 10th Edition.}

Accordingly, Petitioner respectfully requests this Honorable Court grant Petitioner the Writ of Habeas Corpus.

RULE 20.4 (a) STATEMENT

Pursuant to Rule 20.4(a):

“A petition seeking a Writ of Habeas Corpus shall comply with the requirements of 28 USC Section 2241 and 2242, and in particular with the provision in the last paragraph of Section 2242, which requires a statement of the “reasons for not making application to the district court of the district in which the applicant is held.” [] To justify the granting of a Writ of Habeas Corpus, ***the Petitioner must show that exceptional circumstances warrant the exercise of the Court’s discretionary powers, and the adequate relief cannot be obtained in any other form or from any other court.***”

NOTICE: This rule of law goes against Miranda V. Arizona, 384 US 436 (1966):

“Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them.”

Article VI’s Supremacy Clause mandates that **ANY** Court **SHALL** issue the Writ of Habeas Corpus granted in Article I, Section IX, Clause II.

In conflict with this Constitutional Right are the District Courts abuses of discretion over a non-discretionary Writ of Habeas Corpus. All Courts exceeded their discretion by implying that the Constitutional privilege of the Writ of Habeas Corpus is not – after all – a privilege. The District Court, instead, relied on Section 2255(e) as a procedural (yet unconstitutional) side-step. Effectively abrogating access to a Constitutional privilege (i.e. - habeas Corpus). This Court must take appropriate action, to remedy this illegal custody.

A 28 USCS 2255 Motion, is an inadequate and ineffective remedy because it only reaches to “errors in a Sentence” (“in the nature of the ancient Writ of Error Coram Nobis”. See Advisory Committee Notes to 28 USC Section 2255). This does not claw-back to the Constitutional, Statutory, and Procedural violations which allowed an illegal investigation and prosecution. By pressing an Article III Judge – who lacked competent Jurisdiction – the court was ‘Ultra Vires’ and thus issued Void Judgment(s).

Finally, Section 2255 is a discretionary Motion continuing a Criminal Case. This does not provide directives authorizing the District Court to reach back to an invalid conviction. In fact no mention of Conviction invalidity relief is ever spoken of by the Congressional legislation.

How does one vacate a VOID judgment of convictions? One cannot, for all authority is absent.

In opposition, Section 2241 mandates release of a Prisoner when facts alleged show he is in custody in violation of the Constitution or the Laws of the United States. Accordingly, any 28 USCS 2241 authority is not discretionary, yet instead is mandatory.

Petitioner has further attempted to gain release under FRAP Rule 9 – thru his Court of Appeals Case, yet this too, was left unresolved by the 5th Circuit Court of Appeals.

NOTICE: Lower District court failed to provide a “Final Decision” (as to Rule 29 Acquittal) in the VOID criminal case, thus effectively barring access to the Privilege of Habeas Corpus. This has been raised to the 5th Circuits attention. Now it is raised to this court as well.

GROUNDS FOR GRANTING THE PETITION

GROUND ONE: Petitioner is being detained and imprisoned in violation of the 18 USC Section 4001 which states: “*(a) No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress.*” The following Grounds outline the ‘Acts of Congress’ (statutes, Procedures, Rules of Criminal Procedure) which were violated by the Government to trespass over Petitioner’s Constitutional Rights, resulting in Void Judgment’s, and the wrongful imprisonment of Petitioner.

The U.S. Government Prosecution lacked any cognizable basis (“Standing”) to bring a ‘Case’ or to seek out a ‘Controversy’ in the Legal Affairs of a Private Corporation. Pursuant to F.R.Crim.P Rule 6(a)(1) “When the Public interest so requires, the Court must order that one or more Grand Juries be summoned.” Clearly, there was no Public interest in the Legal Affairs of a Private Delaware State Licensed Corporation nor its President’s management over it,(nor his Isle of Mann Corporation). The

Government's Theory of Prosecution targeted Petitioner's 'Right to Control' his businesses management. Recent Supreme Court and Circuit Court Rulings establish that Petitioner was convicted of non-existent offenses because the 'Right to Control' Theory of Wire/Mail Fraud is an invalid Legal Theory. (See: Percoco, Ciminelli, Kelly, Yates, and Takhlov, et al.). In these Cases, the Government was found to lack a valid Legal theory for prosecution. In Petitioner's Case, the Government lacked a Legal, Regulatory interest in the affairs of Petitioner's Businesses or in Petitioner's management of such. The Government lacked Standing because, as the Indictment reveals, Petitioner committed no "***Offense against the United States,***" the threshold the Government must overcome to obtain statutory authorization, pursuant to an 'Act of Congress,' and pursuant to Article III, Section II, Cl.1. In Petitioner's 'Case' the Government lacked in both Congressional and Constitutional authority to either investigate, prosecute or Convict the Petitioner. No legal record arrest, was ever executed.

GROUND TWO: Petitioner is being detained and imprisoned in violation of the Executive's failure to apply Statutory Limitations to investigate and prosecute ONLY for "Offenses against the United States." Accordingly, the Attorney General's investigative and prosecutorial authorities are identified in 28 USC Sections 519, 528, 530(B), 530(C)(b)(4), 533(1), and 547(1).

The Government's over reach and failures in 'Supervisory Authority,' oversight and management, as Statutorily mandated in accordance with 'Acts of Congress,' permitted unauthorized intrusions into the Private (sans Public) Affairs of private Business.

GROUND THREE: Petitioner is being detained and imprisoned for alleged conduct that is not an "Offense against the United States." It's not an offense against anyone, as the reader will see.

Accordingly, the Government possessed NO Constitutional or Statutory authority to abrogate the Tenth (10th) Amendment and Fourteenth 14th Amendment Protected Rights of Petitioner and his

Business relationships. Nor did the Government possess the authority to 'Ignore the Corporate Veil' of Petitioner's Businesses and tortiously interfere with its day-to-day operations.

The Government possessed NO right nor authority to criminalize an innocent man. Instead, the Government is evidenced to have interfered with Interstate and Foreign Commerce Rights belonging to Petitioner and his Businesses, thru effectively shutting down his business, without any evidence of probable cause. This for over 10 years, without an arrest or properly pleaded indictment(s).

GROUND FOUR: Petitioner is being detained and imprisoned in violation of 18 USC Section 3001 – 'Procedure governed by the Rules.' The criterion for commencing a Criminal Process begins with F.R.Crim.P Rule 3, which accesses judicial power, by 18 USC Section 3041 – for an "Offense against the United States." **BUT FOR**, the Government's refusals to apply such Rule of Law, Petitioner was taken through illegal investigations and unlawful Proceedings by a tribunal in violation of 18 USC Section 3044, which governs F.R.Crim.P Rule 3 - 'The Complaint Rule.' The prosecution failed to File any Affidavit Supported Complaint outlining 'Probable Cause' pursuant to, and in accordance with the Fourth Amendment. Records reveal that there is NO Rule 3 Complaint nor Rule 4 Arrest Warrant Issuance or Return. (Please see the Docket for Case No. 2:14-mj-05373-JAB, in U.S. District Court, District of Arizona) (Ex A)

The PACER Cover page, prior to Docket entry #1 (which is the Indictment) expressly documents the fact that there is no Rule 3 Complaint. See "Complaint – None." Clearly, without a Rule 3 Complaint the suit never officially, Legally commenced and all that followed thus was without competent authority.

GROUND FIVE: Petitioner is detained and imprisoned in violation of the Fourth (4th) Amendment and 18 USC Sections 3046 and 3047, which require a Warrant for Arresting purposes – pursuant to F.R.Crim.P Rules 3, 4, and 9. Petitioner has never been lawfully arrested, yet the Prosecution's

compliance with each of these Rules is mandated. Pursuant to Rule 9, a Rule 6 “Indictment” **SHALL** be supported by a Rule 3 Complaint and Rule 4 Warrant. As stated, no such requirements were satisfied. **Accordingly, a Judicial Officer never issued a valid arrest warrant.**

18 USC Section 3047 expressly instructs the prosecution that “A Warrant **SHALL** be necessary to commit [Defendant] for Trial.” None of the Rules of Criminal Procedure, which are established by ‘Acts of Congress’ (for the protection of the citizens liberty rights) were ever complied with. Here, the prosecution is shown to have failed to comply with the Federal Rules of Criminal Procedure and the Statutory Law’s enforcing them. Worse, the prosecution trespassed upon Petitioner’s Fourth Amendment Rights and Protections that these Statutory Laws and Federal Rules of Criminal Procedure stand upon.

Without adherence to the Rules of Law and Petitioner's Constitutional Rights and Protections under the Fourth Amendment, the Prosecution and Article III Court officers violated 18 USC Section 3041 and incarcerated Petitioner without Authority and Jurisdiction to do so. As a result, Petitioner remains incarcerated in violation of the Constitution and Laws of the United States.

GROUND SIX: Petitioner was sanctioned for \$2,800,000+. This was not authorized, and in violation of 18 USCS 3554 3555, and 3556. Petitioner was never charged with RICO or any other qualifying offense. Restitution is not mentioned in EITHER indictment. Any judgment included for monetary sanctions, was therefor illegally procured. Any punishment based on such, would also be illegal, as notices were lacking and made the Indictment a legal nullity.

GROUND SEVEN: The court in the first instance, relied on 18 USCS 3231 as its claim to jurisdiction over Petitioner. Such reliance however, failed to reach subject-matter jurisdiction as required under 18

USC 3231. When the court trial – illegally taken – failed to provide evidence of the charged ‘crimes’. The court further compounded its already legal nullity. Remarkable.

GROUND EIGHT: Petitioner is being detained and imprisoned in violation of the Fourth, Fifth and Sixth Amendment protections of the United States Constitution. All aforementioned Grounds prove that Petitioner is and has been, deprived of his Liberty and property, without Procedural Due Process of Law. Without legal arrest, lawful indictment, valid grand jury and proper notice of all accusations, then all process was illegal. Any judgment is VOID, IF, we follow the Constitutions of the United States.

GROUND NINE: Petitioner was prosecuted by an Attorney, who is NOT the United States Attorney, for the District, appointed by Congress and Presidential decree. Further such attorney was not licensed in the State of Texas as required by ethics code legislation governing such. This violates Article II, sec. 2 cl. 2 of the U.S. Constitution. This was just ruled illegal, providing grounds for dismissing an Indictment. (United States v Donald J. Trump, 24-CR-80101, DE 672, page 2, opening statement by Judge Aileen Cannon for the United States District Court for the Southern District of Florida).

Any prosecution taken by such attorney in this case, (just like Donald J. Trump) lacks in the Constitutional assurance that a prosecution was authorized by the Constitutions ‘Appointment Clause’ protections. Procedural Due process applies. Without prosecution, arrest, indictment, grand jury and proper notice, by a Lawful United States Attorney appointed per the Constitution, then all processes were illegal.

The petition for a writ of habeas corpus should be granted.

Respectfully submitted,

Date: 10 OCT 2024

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