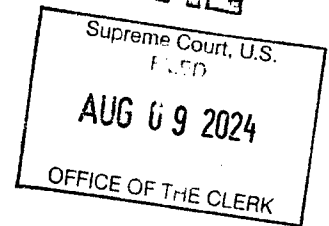


No. 24-6116

ORIGINAL



IN THE  
SUPREME COURT OF THE UNITED STATES

In Re: **FRANK EDWIN PATE** – PETITIONER

ON PETITION FOR A WRIT OF MANDAMUS  
to the 5<sup>th</sup> Circuit Court of Appeals

PETITION FOR WRIT OF MANDAMUS

Frank Pate

(Your Name)

P.O. Box 8000

(Address)

Anthony, NM 88021

(City, State, Zip Code)

(Phone Number)

## **ISSUE(S) PRESENTED**

- 1) Can the 5<sup>th</sup> Circuit, ignore the 28 USC 2111 final judgment and review mandates, and allow a case to lay dormant for over 8 years? If so, this negatively affects the national public interest to a legislative right of reviewing.
- 2) Does the United States Attorney (for his district) have to be the Officer Appointed under the Constitution, in order the lawfully lead the prosecution of a Government criminal claim? (28 USCS 547(1))
- 3) Is the Petitioner entitled to Supreme Court approved counsel, in representing him under 18 USCS 3006A(c), as this is a continuation of his unresolved Appeals case?

### **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) 15-41481 5<sup>th</sup> Circuit Court of Appeals for the United States
- 2) 4:14-cr-000125-ALM

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of mandamus issue.

**OPINIONS BELOW**

☒ For cases of **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_ to the petition and is:

**NOT AVAILABLE DUE TO FAILURE BY 5<sup>th</sup> to ISSUE FINAL JUDGMENT**

## **JURISDICTION**

☒ For cases from **federal courts**:

☒ No petition for rehearing was timely filed in the lower Court case.

Accordingly due to the lack of a final judgment, which has yet to be entered in over 8 years since filing for Direct Review..

☒ The jurisdiction of this court is invoked under 28 U.S.C.  
section **28 USCS 1651**

## **REPRESENTATIVE COUNSEL**

Under 18 USCS 3006A(c), Petitioner humbly request this honorable court appoint representative counsel, to argue these matters, as the US Constitution and statute at large, provides for.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **Constitutional Provisions at Contest:**

- 1) Article III Sec. 2, cl. 1.
- 2) Article II Sec 2. cl. 2
- 3) 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 14<sup>th</sup> Amendments.

### **Statutes at Contest:**

- 1) 18 USCS 3001, 3041, 3044, 3046, 3047, 1341, 1343, 3231;
  - 2) 28 USCS 519, 528, 530(B), 530(C)(b)(4), 533 (1), 543 and 547(1).
- 28 USCS 2106/2111

## **STATEMENT OF THE CASE & RULE 20.2(A) STATEMENT**

Extensive review has revealed Constitutional, Statutory, and Procedural violations which prove all Investigation and Prosecution efforts pointed to non-justiciable Indictment(s) before an illegal Court forum which produced a Void Judgment. The 5<sup>th</sup> Circuit Court Staff, knew this from the facts of the Trial Records. A Rule 29 timely filed, was never addressed de novo. Accordingly, the Court exceeded its 28 USCS 2106/2111 authority, and failed to review the records for the clear errors manifested, instead allowing the filing of an uncontested motion for reduction of sentence, by Court Appointed CJA counsel. This was not an available remedy, as evidenced by the Courts own opinions of law. (Mootness doctrine as outline in US v Barton, 2024, 5<sup>th</sup> Cir. 22-11242) Petitioner is being detained and imprisoned in violation of the Constitution and Laws of the United States.

The Government lacked the necessary “Standing” to seek a criminal charge for a private business dispute. A criminal offense requires proof of an “evil-meaning mind” as well as “an evil-doing hand”. (See “Overruled” by Justice Neil Gorsuch and Janie Nietz) Undeterred, Prosecutors proceeded to abrogate Constitutional Protections, violate Statutory Laws, evade Federal Rules of Criminal Procedure, manufacture invalid Theories of Law (Right to Control over management of Company money) and steal property rights belonging to other innocent parties. 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, 10<sup>th</sup> Edition).

Lacking in the requisite standing to Sue, the United States Executive Branch Officer(s) 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.

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

28 USCS 1291 only allows for reviewing of Final Decisions over merits claims. Claims which are not moot. Lacking in standing to bring suit, Mootness doctrine applies at the Indictment and all stages thereafter. (Barton supra) 18 USC Section 3041 – only – 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 against the United States Constitutionally cognizable rights, as protected under federal Law.

F.R.Crim.P Rule 3 – ‘The Complaint’ initiates any criminal process when the Plaintiff seeks to arrest the defendant upon “probable Cause” (4<sup>th</sup> Amendment), and then to Trial Test their “Cause” of action and the “Probability” of criminal intent. Such rules shall be followed. Procedural due process fails otherwise. (See: United States v. Giordenello, 1958 5<sup>th</sup> Circuit Supreme Court case ruling governance over Rules 3-4 and 4<sup>th</sup> Amendment protections due to such rules)

Without properly exerting Article III Powers, any Federal Judicial Officer 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 Mandamus, ORDERING the 5<sup>th</sup> Circuit to issue a Final Judgment on 15-41481.**



## RULE 20.2 STATEMENT

Solicitor General of the United States has been served pursuant of the rule, a Room 5614,  
Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001.

USPS # 7000 1670 0009 4588 1909

**“Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them.” Miranda V. Arizona, 384 US 436 (1966):**

Article VI’s Supremacy Clause mandates that ANY Court May issue the Writ of Mandamus granted authority, within 28 USCS 1651, “All Writs Act”, and since the lower courts are currently abstentious, Mandamus relief is ripe.

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, and sit in Mootness at the 5<sup>th</sup> Circuit. The lowest court, with a moot ‘case’, cannot reach beyond the higher court’s error.

## GROUND 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, resulted in a Void Judgment, and the wrongful imprisonment of Petitioner. Why? The 5<sup>th</sup> Circuit, failed to satisfy its own jurisdictional check, yet instead issued a remedy(28 USCS 2106 relief) for a merits determination sentencing issue of law(Obstruction of Justice

Enhancement). In doing so, the lower appeals court compounded an already Moot process of law. One which was lacking any cognizable basis for relief. Laying manifest for so many years. Extraordinary Remedy is warranted.

The U.S. Government Prosecution lacked any recognizable basis (“Standing”) to bring a ‘Case’ or to seek out a ‘Controversy’ in the affairs of a State citizen, (Frank Edwin Pate and Infinity Companies Inc.). Pursuant to F.R.Crim.P Rule 6(a)(1), ONLY “When the Public interest so requires, the Court must order that one or more Grand Juries be summoned.” Clearly, there was no national Public interest in the private actions of a State of Delaware Company. One not publicly traded, holding only 2 partners including Petitioner. In Petitioner’s Case, the Government lacked a Legal, Regulatory interest in the affairs of Petitioner’s legal business activities. The Government lacked Standing as the record reveals, because Petitioner committed no “Offense against the United States,” which is 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.(see 18 USCS 3041; Giordenello supra) In Petitioner’s ‘Case’ the Government lacked in both Congressional and Constitutional authority to either investigate, prosecute or Convict the Petitioner. Accordingly, the 5<sup>th</sup> Circuit could not issue a final judgment accordingly, and abused its 28 USC 2106 discretion by instead Granting a Motion for reduction of sentence, as opposed to correctly DISMISSING for mootness and lack of jurisdiction. (Barton, supra)

**“Article II of the Constitution assigns to the Federal Judiciary the responsibility and power to adjudicate “Cases” and “Controversies”, concrete disputes with consequences for the parties included.” 603 U.S. \_\_\_\_ (2023) 7 (Loper opinion, June 2024) The United States never held a public interest in these matters, as law is concerned: Public interest’ is too vague a standard to be left to free-wheeling administrations” like the DOJ. (“Overruled” pg 77.)**

**GROUND TWO:** Petitioner is being imprisoned in violation of the Executive's failure to yield to Statutory Limitations and 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), 543 and 547(1).

The Government's failures in Executive and Judicial 'Supervisory Authority,' oversight and management, permitted unauthorized intrusions into State Civil Contracting rights. Rights, protected under the 7<sup>th</sup>, 10<sup>th</sup> and 14<sup>th</sup> amendments. **"To ensure the "steady, upright and impartial administration of the Laws, "the Framers structured the Constitution to allow judges to exercise that judgment independent of influence from the political branches."** The Federalist 78 at 525

**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 Seventh, Tenth, and Fourteenth 14<sup>th</sup> Amendment Protected Rights of Petitioner and his State rights and business relationships.

The Government possessed neither right, nor authority to federally criminalize State residents, irrespective of the alleged – and unproven – conducts. **"As Justice story put it "in cases where [a courts] own judgment...differed form that of other high functionaries, "the court was not at liberty to surrender, or waive it.' "** **Dickson, 15 Pet., At 162. (Loper 603 US \_\_\_\_\_ 2024)**

**GROUND FOUR:** Petitioner is 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 Affidavit Suupported Rule 3 Complaint nor Rule 4 Arrest Warrant Issuance or Return.

The PACER Cover page, prior to Docket entry #1 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 which followed thus was without competent authority. *"[T]he judicial power, as originally understood, requires a court to exercise its independent judgment in interpreting and expounding upon the laws."* *Perez, 575 U.S., at 119*

**GROUND FIVE:** Petitioner is imprisoned in violation of the Fourth (4<sup>th</sup>) 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 was never lawfully arrested. Pursuant to Rule 9, a Rule 6 "Indictment" SHALL be supported by a Rule 3 Complaint and Rule 4 Warrant. No such requirements were ever satisfied.

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

Lacking in 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 Executive Authority and Judicial Jurisdiction to do so. As a result, Petitioner remains incarcerated in violation of the Constitution and Laws of the United States.

**GROUND SIX:** Petitioner is being detained and imprisoned in violation of the Fifth and Sixth Amendment protections of the United States Constitution. All aforementioned Grounds prove that Petitioner is and has been, deprived of his Liberty, without Procedural Due Process of Law. Lacking a legal arrest, indictment by a valid grand jury, holding full and proper notice (\$2.8 mm sought in Restitution was never noticed in the Indictments) and so, all process was illegally taken.

**GROUND SEVEN:** Petitioner was prosecuted by an Attorney, who is NOT the United States Attorney, for the District, appointed by Senate and Presidential decree. This violates Article II, sec. 2 cl. 2 of the U.S. Constitution. This was just ruled illegal, providing grounds for dismissing an Indictment. (See: United States v Donald J. Trump, 24-CR-80101, DE 672, page 2, opening statement , Judge Aileen Cannon for the United States District Court for the Southern District of Florida). Prosecution taken by some other attorney, as in this case, lacks in the Constitutional assurance that a prosecution is 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 was illegal.

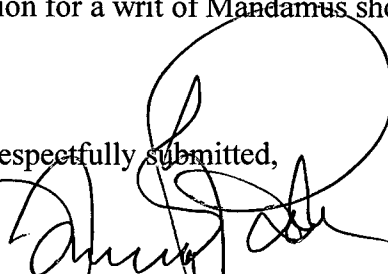
### **CONCLUSION**

All facts reveal the 5<sup>th</sup> CIRCUIT exceeded its limited authority in relying on 28 USC 2106 authority, to VACATE a judgment and re-sentencing, while avoiding its duty to issue judgment under 28 USCS 2111. This created the manifest error of law, continuing the Petitioner's years of illegal detainment.

Mandamus shall issue, Commanding the 5<sup>th</sup> Circuit to Issue Final Judgment (28 USCS 2111) after reviewing for sufficiency of evidences; document such findings; then issue VACATE and Remand with ORDERS to DISMISS the Indictment, due to Mootness and lack of jurisdiction accordingly.

The petition for a writ of Mandamus should be granted.

Respectfully submitted,



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Frank Edwin Pate  
FPC La Tuna  
PO BOX 8000  
Anthony, NM

Date: \_\_\_\_\_

19 Sep 2024

**“Observance of the rule of law,” as Raz said, “is necessary if the law is to respect human dignity,”**  
a respect that **“entails treating humans as persons capable of planning and plotting their future.”**  
(pg. 28 of Justice Gorsuch book, “Over Ruled”)