24-6351

No. ____________

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Edson Gelin — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the District of Columbia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Edson Gelin
(Your Name)

P.O. Box 33
(Address)

Terre Haute, IN. 47808-0033
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Whether 21 U.S.C. 881(b) corresponds with 28 U.S.C. 2680(h)'s definition of "investigative or law enforcement Officer?"

2. Whether the term "investigative or law enforcement officer" in 28 U.S.C. 2680(h) include federal prosecutors?

3. Whether the letter and spirit of "Abuse of Process" torts were intended to encompass prosecutorial abuse of the legal process?

4. Whether "Abuse of Process" claims require reversal or invalidation of criminal conviction or sentence when the alleged abuse occurred in Motion for New Trial proceedings?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Boggs, Emmett Jackson, Jr.
2. Gelin, Edson
3. Handberg, Roger B.
4. Mendoza, The Honorable Carlos E.
5. Price, The Honorable Leslie Hoffman
6. Rhodes, David P.
7. Seider, Germain M.

RELATED CASES

Gelin v. United States, Appeal No. 23-5305 (D.C. Cir.).

Gelin v. United States, Civil Action No. 1:23-cv-02855-UNA (D.D.C.).

United States v. Gelin, Criminal Case No. 6:17-cr-00131-CEM-LHP (M.D. Fla.).

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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[✓] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix N/A to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix N/A to the petition and is

[✓] reported at 2023 U.S. Dist. LEXIS 195606 (D.D.C.); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix ______ to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the ______________________ court appears at Appendix ______ to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 5, 2024.

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: September 20, 2024, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ______ (date) on ______ (date) in Application No. __A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was ______. A copy of that decision appears at Appendix ______.

[ ] A timely petition for rehearing was thereafter denied on the following date: ______, and a copy of the order denying rehearing appears at Appendix ______.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ______ (date) on ______ (date) in Application No. __A______.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. 981

21 U.S.C. 881

28 U.S.C. 1346. (FTCA)

28 U.S.C. 2671-2680 (FTCA)

STATEMENT OF THE CASE

Petitioner sued the United States for "Abuse of Process" under the Federal Tort Claims Act ("FTCA") based on several acts of prosecutorial misconduct including, but not limited to, racial/ethnic discrimination, fraud on the court, and Obstruction of justice. Civil Action No. 1:23-cv-02855 (UNA) (D.D.C.), ECF No. 1. The district court dismissed the case without prejudice, stating that Petitioner was first required to "demonstrate that his conviction or sentence has been reversed or otherwise invalidated," relying on this Court's decision in Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). Gelin v. United States, 2023 U.S. Dist. LEXIS 195606, at *1-2 (D.D.C., Oct. 30, 2023). The district court also noted that "unless a prosecutor proceeds in the clear absence of all jurisdiction, absolute immunity exists for those prosecutorial activities intimately associated with the judicial phase of the criminal process." Id. (citing Gary v. Bell, 712 F.2d 490, 499 (D.C. Cir. 1983)).

On appeal, the D.C. Circuit affirmed the district court's dismissal, holding that the FTCA "does not waive sovereign immunity for...abuse of process...," and that "abuse of process" claims waive sovereign immunity only "if the claim arises from the conduct of 'investigative or law enforcement officers of the United States Government,'" concluding that "a prosecutor is not an investigative or law enforcement officer within the meaning of Section 2680(h).'" Gelin v. United States, No. 23-5305 (D.C. Cir., June 5, 2024).

In an en banc petition, Petitioner argued that "the letter and Spirit" of Abuse of Process tort claims "indisputably establishes" that it applies to prosecutors who abuse the

Statement of the Case (Cont'd)

criminal or civil legal process "primarily to accomplish a purpose for which it is not designed." See Gelin's en banc Petition at 4-5. Petitioner also highlighted this Court's acknowledgement that in some instances (including in abuse of process claims), a suit can be brought where it "would not necessarily imply" an unlawful conviction or sentence. Id. (Citing Heck 512 U.S. at 487 n.7). Finally, Petitioner asserted that 21 U.S.C. 881(a)-(b), this Court's articulation in United States v. Coin & Currency, 401 U.S. 715, 719-20 (1971), and the Eleventh Circuit's reiteration of Coin & Currency (which Petitioner cited as supplemental authorities on appeal), all, establish that a prosecutor is an "investigative or law enforcement officer" within the meaning of 28 U.S.C. 2680(h) because Section 881(b) empowers the "Attorney General" (and subordinates) to "seize" property, which this Court has identified can be "guilty of wrongdoing." Id. (citing Coin & Currency, 401 U.S. at 719-20). The Panel denied rehearing on September 20, 2024. See Appendix A.

REASONS FOR GRANTING THE PETITION

The United States Court of Appeals for the District of Columbia has entered a decision as to Petitioner's case that is in conflict with United States v. Valdes, 876 F.2d 1554, 1559 (11th Cir. 1989). More specifically, the D.C. Circuit held that "a prosecutor is not an investigative or law enforcement officer within the meaning of 28 U.S.C. 2680(h)," relying on its previous holding in United States v. Moore, F.3d 705, 710 (D.C. Cir. 2000). Section 2680(h) defines "investigative or law enforcement officers" as "any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law." 28 U.S.C. 2680(h). This FTCA provision "focuses on the status of persons whose conduct may be actionable, not the types of activities that may give rise to a tort claim against the United States." Millbrook v. United States, 569 U.S. 50, 56 (2013).

In United States v. Valdes, the Eleventh Circuit held, inter alia, that 21 U.S.C. 881(b) unambiguously "gave the attorney general the right to seize property without a warrant if he had probable cause to believe that it was forfeitable." 876 F.2d 1554, 1559 (11th Cir. 1989). Relying on this Court's previous articulation in United States v. Coin & Currency, 401 U.S. 715, 719-20 (1971), the Eleventh Circuit stated that "A seizure of property under Section 881(b)(4) is essentially the same as the arrest of a person." Valdes, 876 F.2d at 1559 (citing Coin & Currency, 401 U.S. at 719-20). In this context, under Section 881(b), the term "property" and "evidence" can be used interchangably and falls squarely within the "investigative or law enforcement" provision in 28 U.S.C. 2680(h) that include the "attorney general," or, relevant here, U.S. Attorneys. Accord 21 U.S.C. 881(b), with 28 U.S.C. 2680(h). Since the "status" of U.S. Attorneys allow them to "seize property" or "evidence" under 18 U.S.C. 981(b) and 21 U.S.C. 881(b), their "conduct" is "actionable" under the FTCA. See Millbrook v. United States, 569 U.S. 50, 56 (2013). Both 21 U.S.C. 881(b) and 28 U.S.C. 2680(h) correspond.

The D.C. Circuit's decision as to Petitioner's case has also so far departed from the accepted and usual course of judicial proceedings requiring courts not to encroach upon the prerogatives of congressional intent — here, involving the misinterpretation and/or misapplication of 28 U.S.C. 2680(h), which defines "investigative or law enforcement officers" to include federal prosecutors. See, e.g., Loving v. United States, 517 U.S. 748, 756 (1996).

Next, the letter and spirit of tort liability involving "Abuse of Process" claims encompass prosecutorial misconduct because history shows they (more often than any other official) are frequently in the position to use a criminal or civil legal process "primarily to accomplish a purpose for which it is not designed." Restatement (Second) of Torts Section 682, Illustration 1 (1977); See also Imbler v. Pachtman, 424 U.S. 409, 429 (1976); Wayte v. United States, 470 U.S. 598, 608 (1985) (selectively prosecuted for exercising First Amendment Constitutional rights); Yick Wo v. Hopkins, 118 U.S. 356, 373-74 (1886) (selectively prosecuted based on ethnicity); Massiah v. United States, 377 U.S. 201, 206 (1964) (prosecutorial misconduct when government used post-indictment statements made during conversation with codefendant who was cooperating with the government without defendant's knowledge in violation of his Sixth Amendment rights). Without this check on prosecutorial misconduct, weaponization of the legal system would be more prevalent, as prosecutors would be given a "carte blanche" to impose tyranny on the general public with impunity. See, e.g., Mistretta v. United States, 488 U.S. 361, 381 (1989).

Finally, this Court has previously noted that "Abuse of Process" claims do not require reversal or invalidation of conviction or sentence, because the "graveman of" abuse of process "is not the wrongfulness of the prosecution, but some extortionate perversion of lawfully initiated process to illegitimate ends." Heck v. Humphrey, 512 U.S. 477, 486 n.5 (1994).

Accordingly, an exercise of this Court's supervisory power is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

[signature]

Date: December 13, 2024