

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-6703

PETITION FOR REHEARING FOLLOWING
DENIAL OF PETITION FOR
WRIT OF CERTIORARI

Steven Brewer.

PETITIONER,

)

)

V.

)

United States,

RESPONDENT(S).

)

)

)

Steven Brewer - In Pro se
c/o: 24281077
Federal Correctional Complex-Low
Post Office Box 9000
Seagoville, Texas [75159]

LIST OF PARTIES

Steven Brewer, PETITIONER
In Pro Se

United States of America, RESPONDENT(S)

The Petitioner, Steven Brewer, certify that the grounds are limited to
interveining circumstances of substantial or controlling effect or to other
substantial grounds not previously presented.

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APPENDIX H

Steven Brewer v. United States, Supreme Court Order, Case No. 17-6703,
(S.Ct. January 8, 2018)

APPENDIX I

Freedom of Information Act Request sent on November 20, 2017.

APPENDIX J

FOIA-2018-001063 process response received on about January 17, 2018.

APPENDIX K

United States v. Steven Brewer, United States District Court, Northern District
of Texas Judgment Order Under Cause Numbers: 3: 96-CR-293-H(1) & 3: 96-CR-294-H(1)
entered on March 20 and 27, 1997 respectively.

**PETITION FOR REHEARING FOLLOWING DENIAL
OF PETITION FOR WRIT OF CERTIORARI**

The Petitioner, Steven Brewer, appearing Pro se, timely petitions for a rehearing pursuant to Supreme Court Rule ~~§44~~, following the denial of his petition for a Writ of Certiorari on January 08, 2018, No. **17-6703**. The Writ was sought to review the Ninth Circuit Court of Appeals' Opinion, in Case Nos. **15-10178 and 15-10306**.

PROCEDURAL HISTORY

Criminal conviction following jury trial, the district court entered its final judgment and sentence on March 31, 2015. Brewer filed a timely notice of appeal of the judgment and sentence on April 08, 2015. The district court entered a second amended judgment and sentence on June 03, 2015 (**to add restitution and a revised self-surrender date**). Brewer filed another timely notice of appeal on June 10, 2015. Thus, both appeals were timely. **D.C. No. 2: 12-CR--01927-NVW-2 (United States v. Rachel, 2014 U.S. Dist. LEXIS 169994 D. Ariz., Dec. 9, 2014)**. The Ninth Circuit Court Affirmed Judgment with the opinion of the Ninth Circuit by **United States v. Brewer, 692 Fed. Appx. 334 (9th Cir. May 15, 2017)**, rehearing en banc and rehearing of panel review denied on **August 8, 2017**. Certiorari was denied on **January 08, 2018, Steven Brewer v. United States. See Appendix H**. In January 2018, Seventy-days after the filings and submission of Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari Case, Petitioner Brewer received **FOIA-2018-001063** process response for the proof of appointments, for the Oath of Office, assignment/postings of **Paul E. Coggins (U.S. Attorney), Lynn Hastings (Assistant U.S. Attorney) and Stewart C. Robinson (Deputy Criminal Chief)**. All of these attorneys appeared on behalf of the United States for the Northern District of Texas (Dallas Division) at some point during his 1996 two federal felony prior convictions with assigned Case Nos: **3: 96-CR-293-H-1 and 3: 96-CR-294-H-1. See Appendix K**. Similarly, this Court issued an intervening opinion involving and related to Petitioner Brewer's In Relevant Conduct sentence enhancement through restitution on **Nelson v. Colorado, 137 S.Ct. 1249 (April 19, 2017)**.

STATEMENT OF BASIS OF JURISDICTION

The Supreme Court of the United States has jurisdiction to review the Ninth Circuit Court of Appeals Opinion under 28 U.S.C. §1254(1), Case no. 17-6703,

The Ninth Circuit Court of Appeals has jurisdiction to review all final decisions by the United States District Court for the District of Arizona pursuant to 28 U.S.C. § 1291.

CONSTITUTIONAL PROVISIONS INVOLVED

1. United States Constitution, Article II, Section 2, is hereto adopted and fully incorporated.
2. United States Constitution, Article VI, Clause 3, is hereto adopted and fully incorporated.

STATUTORY PROVISIONS INVOLVED

5 U.S.C. § 3331

28 U.S.C. § 544

5 U.S.C. § 3106

28 U.S.C. § 516

28 U.S.C. § 542 et seq.,

ARGUMENT

S STATEMENT OF THE CASE - FACTS AND REQUEST FOR ORAL ARGUMENT

Petitioner Brewer sought through the FOIA-2018-001063 process the proof of appointments, for the Oath of Office, assignment/posting(s) of **Paul E. Coggins (U.S. Attorney)**, **Lynn Hastings (Assistant U.S. Attorney)** and **Stewart C. Robinson (Deputy Criminal Chief)**. All of these attorneys appeared on behalf of the United States for the Northern District of Texas (Dallas Division) at some point during his 1996 two federal felony prior convictions with assigned Case Nos: **3: 96-CR-293-H-1** and **3: 96-CR-294-H-1**. (See Appendix K.

The FOIA-2018-001063 process has provided the following: **Paul E. Coggins (U.S. Attorney)**, have no appointment, no oath of office, no assignment and posting's that has been found [App. I & J]; **Lynn Hastings (Assistant U.S. Attorney)**, have no appointment, no oath of office, no assignment and posting's that has been found [App. I & J]; and, **Stewart C. Robinson (Deputy Criminal Chief)**, also have no appointment, no oath of office, no assignment and posting's that has been found [App. I & J]. The National Personnel Records has no records for any of them.

Law and Argument:

28 U.S.C. §542(a) states, "The Attorney General may appoint one or more assistant United States attorneys in any district where the public interest so requires." Section 542 appears to be the only enactment by Congress that establishes an office called "assistant United States attorney." Section 542 does not provide any specific term of office, but it does direct that each assistant United States attorney is subject to removal by the Attorney General. 28 U.S.C. §542(b). Assistant United States attorneys "are appointed directly by the Attorney General" and "their ability to act ... derives from the Attorney General's plenary power over litigation to which the United States is a party." *United States v. Hilario*, 218 F.3d 19, 22 (1st Cir. 2000).

As public officers, assistant United States attorneys do enjoy an initial presumption that they are acting within the legal powers granted. "The presumption of regularity supports the official acts of public officers and, in the absence

of clear evidence to the contrary, courts presume they have properly discharged their official duties." *United States v. Chemical Foundation*, 272 U.S. 1, 14-15 (1926); and see *U.S. Postal Service v. Gregory*, 534 U.S. 1, 10 (2001). "Any appointee exercising significant authority pursuant to the laws of the United States is an 'Officer of the United States,' and must, therefore, be appointed in the manner prescribed by Section 2, Cl.2 of the Article." *Buckley v. Valeo*, 424 U.S. 1, 126 (1976); see also *SW General, Inc. v. NLRB*, No. 14-1107 (D.C. Cir. 2015), petition for writ of certiorari granted.

Other than life-time tenure of judicial officers under Article III, "no civil officer has ever held office by a life tenure since the foundation of the government." *Shurtleff v. U.S.*, 189 U.S. 311, 316 (1903). Where an "Act is silent as to their terms of office, they can presumably be appointed for any term not exceeding that of the officer appointing them." *DeCastro v. Board of Commissioners*, 322 U.S. 451, 462 (1944). An assistant United States attorney can be "appointed only by the Attorney General." *United States v. Bridwell*, 583 F.2d 1135, 1140 (10th Cir. 1978). And in the "absence of congressional statement to the contrary, inferior officers serve at the discretion of their appointing officers." *Kalaris v. Donovan*, 697 F.2d 376, 397 (D.C. Cir. 1982).

"Courts must look behind the names that symbolize the parties to determine whether a justifiable case or controversy is presented." *Providence Journal Co.*, 485 U.S. 693, 708 n.11 (1988). When an attorney alleging to represent the United States is not authorized to do so, the United States "is not a party within the meaning of Article III." *United States v. Navarro*, 972 F.Supp. 1296, 1305 (E.D. Cal. 1997). "Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law." *Davis v. Passman*, 442 U.S. 228, 247 (1979). "No man [or woman] in this Country is so high that he [or she] is above the law. No officer of the law may set that law at defiance with impunity. All Officers of the Government, from the highest to the lowest, are creatures of the law, and are bound to obey it." *United States v. Lee*, 106 U.S. 196, 220 (1882).

Because the law must be followed, even by the attorneys representing the United States, compelling production of their proper appointments and oath of office should be ordered by this Court. If they had no authority to act on

behalf of the United States, then the charges were wrongfully brought against Mr. Brewer, based on documented newly discovered evidence showing now that during the relevant time period: Ms. Lynn Hastings (Assistant United States Attorney at the relevant time period)--1) had no Appointment Affidavit, as required by U.S. Const. Art II, Sec 2, Cl 2; (2) had not taken the "Oath of Office," as required by U.S. Const. Art VI, Cl 3; 5 U.S.C. §3331 and 28 U.S.C. §544; (3) the DOJ had no record of her claimed employment; (4) the DOJ had no Posting Orders for her. Because she had none of the above required documentation, she was not a duly appointed or authorized attorney for the government. Therefore, she was nothing more than a private citizen. This means that she was forbidden to be present while the Grand Jury was in session. Fed.R.Crim.P. (FRCrP) Rule 6(d)(1); She was also not authorized to sign Petitioner Brewer's Indictment(s) with assigned Case Nos: 3: 96-CR-293-H and 3: 96-CR-294-H. FRCrP Rule 7(c)(1); She was not authorized to invoke the jurisdiction of the executive Branch-DOJ or the United States District Court (USDC); She was not authorized to charge, indict or prosecute petitioner Brewer, 5 U.S.C. §3106; 28 U.S.C. §516. The above Constitutional, Jurisdictional, Federal Law/Statute and FRCrP Rules violations, require that petitioner Brewer's indictment(s) be dismissed, with prejudice. The rule of law and this Court precedent are very well established and clear on this issue. See e.g., *S.W. General Ambulance, Inc., v. NLRB*, 137 S.Ct. 929 (March 21, 2017), this Court held that -- "void numerous decisions by the NLRB where the prosecutor, named General Counsel, was not holding that office of the United States according to Federal statute creating that particular office and the appointments clause itself." This Court further explained that -- many individuals holding office of the United States were serving "well beyond the time limits prescribed" by law. In other words their actions were subject to being invalidated if only those affected, i.e., with standing to complain, would challenge the individual's exercise of that authority [As it applies Here to Mr. Brewer]- for which they were unauthorized to do.

This Court found that by limiting those who could exercise the authority and power of the United States against its Citizens through the Appointment Clause; "those who wielded it were accountable to political force and the will of the people." *Freytag v. CIR*, 501 U.S. 868, 884 (1991). "The appointments

clause also promotes public accountability by identifying the public officials who appoint officers." *Bandimere v. SEC*, 844 F.3d 1168, 1172 (10th Cir. 2016), citing *Edmonds v. U.S.*, 520 U.S. 651, 660 (1997). Further, there is no evidence that Ms. Lynn Hastings was appointed and took an oath of office under U.S. Attorney General Janet Reno, who was the U.S. Attorney General when petitioner Steven Brewer was arrested, indicted, pleaded guilty and sentenced on March 20, 1997 under Case Nos: 3: 96-CR-293-H(1) and 3: 96-CR-294-H(1) respectively. See Appendix K.

Based on the documented newly discovered evidence (Appendix I, J & K), facts and the arguments, this Court should grant certiorari, vacate the judgment below, and remand in light of the documented newly discovered evidence. Alternatively, petitioner Brewer prays for such relief as to which he may be justly entitled.

Nelson v. Colorado, 137 S.Ct. 1249, No. 15-1256 (April 19, 2017), was decided while Mr. Brewer's case was still pending before the Ninth Circuit Court of Appeals and has not become final. Following the jury trial, U.S. Probation Officer - Ms Susan D. Nork submitted the Presentence Investigation Report, recommended that Brewer's sentence should be enhanced with [**In Relevant Conduct**] (PSR ¶ 49) on March 24, 2015 (Dkt. No.686) and adopted by the Court at sentencing. The (PSR) Officer determined and made a findings in part that:

Base Offense Level: ...The intended loss attributed to the defendant is \$35,388,199.93; therefore, because the offense involved a loss of more than \$20,000,000, but not more than \$50,000,000, the offense level is increased by 22 levels, USSG 2B1.1(b)(1)(L)

By preponderance of the evidence pursuant to *United States v. Watts*, 519 U.S. 148 (1997) (per curiam) holding that: "a jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence." At Brewer's sentencing hearing held on March 30, 2015 (Dkt. No.700), U.S.District Judge Neil V. Wake considering and adopting the PSR Officer Nork's recommendation --"relevant conduct stated in paragraph 49" under U.S.S.G. §2B1.1 (b)(1)(L), enhanced Mr. Brewer's sentence. *Watts*, (1997) has now been over ruled by this Court's recent interveining rulings under *Nelson v. Colorado*, 137 S.Ct. 1249 (2017) holding that: "Under a balancing test for due process, a court evaluates;

(A) the private interest affected; (B) the risk of erroneous deprivation of that interest through the procedures used; and (C) the governmental interest at stake."

CONCLUSION

For the reasons just stated, Petitioner Brewer urges that this petition for a rehearing be granted, and that, on further consideration, the Petition for Certiorari be granted and the judgment of the lower court be reversed or as appropriate.

Respectfully submitted,

Dated: 29th January, 2018.

By:


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America

DECLARATION UNDER PENALTY OF PERJURY

The Petitioner, Steven Brewer, declares that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented. Furthermore, Petitioner also declares under penalty of perjury pursuant to 28 U.S.C. § 1746 that the petition for rehearing is presented in good faith and not for delay, and that the foregoing is true and correct.

Executed this 29th day of January, 2018, at Federal Correctional Complex-Low, Seagoville, Texas [75159]

By:


Steven Brewer, c/o: 24281077 - In Pro se

**Additional material
from this filing is
available in the
Clerk's Office.**