ORIGINAL

No. 23-966

In The

Supreme Court of the United States

OSCAR STILLEY,

Petitioner,

v.

UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

OSCAR STILLEY
10600 North Highway 59
Cedarville, AR 72932
479.384.2303
479.401.2615 fax
oscarstilley@gmail.com

QUESTIONS PRESENTED

1. Whether or not 13 consecutive cross-designations of Oklahoma district judges, with apparent intent to issue new cross-designations each year, in perpetuity, are nevertheless "temporary" within the meaning of 28 U.S.C. 292(b).

2. Whether a criminal defendant who is by the written admission of the government not guilty of the charge of the indictment, or of the theories of the government pretrial, may be imprisoned for an alleged violation of supervised release.

3. Whether or not a circuit court, on its own motion and own initiative, may excuse both prosecutors and judges from compliance with ethical rules and their own oaths of office.

PARTIES TO THE PROCEEDING

Petitioner is Oscar Stilley. His co-defendant in the federal criminal case below was Lindsey Kent Springer (Springer). Respondent is the United States.

LIST OF PROCEEDINGS

10th Circuit No. 22-5113, *United States v. Oscar Stilley*, appeal of revocation of supervised release, judgment entered 10-16-2023, order denying petition for rehearing entered 12-4-2023. Appeal of Northern District of Oklahoma (OKND) *US v. Springer & Stilley*, 4:09-cr-43, original judgment entered 4-23-2010; judgment against Stilley on revocation entered 11-23-2022.

Western District of Oklahoma, (OKWD) *US v. Stilley*, 5:22-cr-357. Opened 8-24-2022 as a transfer of Stilley's supervision. Jurisdiction returned to OKND for lack of jurisdiction 11-03-2022.

10th Circuit No. 22-5000, *US v. Stilley*, appeal of dismissal of 2255 petition, judgment entered 6-6-2022. OKND *US v. Stilley*, 4:21-cv-361, 2255 petition dismissed 11-4-2021.

10th Circuit, *US v. Springer*, (10-5055) *US v. Stilley*, (10-5057) criminal judgments affirmed 10-26-2011, rehearing denied 12-12-2011.

LIST OF PROCEEDINGS – Continued

5th Circuit No. 21-60022, *Stilley v. Merrick Garland, et al.*, affirmed May 18, 2022, rehearing denied 7-19-2022. Appeal from Southern District of Mississippi (MSSD) *Stilley v. Garland, et al.*, 3:19-cv-6, prison conditions, dismissed 11-20-2020.

8th Circuit, No. 18-2188, *Stilley v. US et al.*, affirmed 7-11-19, rehearing denied 9-11-2019. Appeal of Arkansas Eastern District (ARED) 2:15-cv-163, prison conditions, dismissed 11-20-2020.

Springer separately prosecuted OKND 4:13-cv-00145, *US v. Springer*, 2255 petition, terminated 8-22-2014.

Springer in the 10th Circuit separately prosecuted 1) No. 09-5165, *In Re Lindsey Springer*, petition for mandamus denied 12-04-2009; 2) No. 10-5101, *In Re Lindsey Springer*, petition for mandamus denied 10-22-2010; 3) No. 11-5053 (#447) *US et al. v. Springer*, petition for certiorari denied 11-28-2011; 4) No. 13-5062 (#497) *US v. Springer*, dismissed 6-20-2013; 5) No. 13-5113, *In Re: Lindsey Springer*, petition for mandamus, rehearing denied 11-15-2013; 6) No. 14-5047 (#554) *US v. Springer*, dismissed 6-4-14; 7) No. 14-5109 (#588) *US v. Springer*, prisoner petition, recall of mandate denied 9-22-2015, rehearing denied 11-13-2015; 8) No. 14-5111, *In Re Lindsey Springer*, petition for mandamus, dismissed 10-22-14; 9) No. 15-5109 (#607) *US v. Springer*, terminated 11-17-17, certificate of appealability denied; 10) No. 18-5104 (#659) *US v. Springer*,

LIST OF PROCEEDINGS – Continued

prisoner petition, terminated 6-28-2019; and 11) No. 20-5000 *US v. Springer*, post-conviction, terminated 7-15-2020.

Springer in the US Supreme Court prosecuted 1) No. 11-10096, *Springer v. US*, petition for certiorari on direct criminal appeal denied 6-4-2012; and 2) No. 17-8312 *Springer v. US*, petition for certiorari denied May 14, 2018.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
LIST OF PROCEEDINGS	ii
TABLE OF AUTHORITIES	vii
DECISIONS BELOW	1
STATEMENT OF JURISDICTION	1
PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	10
I. The Court should grant certiorari to determine whether or not 17 consecutive cross-designations, with apparent intent to issue new cross-designations each year, in perpetuity, are nevertheless "temporary" within the meaning of 28 U.S.C. 292(b)	10
II. The Court should grant certiorari to say that actual innocence renders punishment on revocation of supervised release inconsistent with the 5th Amendment	16
III. The Court should grant certiorari to determine whether the 5th Amendment prevents a court of appeals from raising a technical defense to assist attorneys in violating their oaths of office and their ethical obligations	19
CONCLUSION	27

TABLE OF CONTENTS – Continued

Page

APPENDIX

APPENDIX A: Court of Appeals decision, Oct. 16, 2023 ..... App. 1

APPENDIX B: District Court decision, Nov. 21, 2022 ..... App. 14

APPENDIX C: Order denying rehearing, Dec. 4, 2023 ..... App. 20

TABLE OF AUTHORITIES

Page

CASES

Bousley v. United States, 523 U.S. 614 (1998).....17

Burns v. Alcala, 420 U.S. 575 (1975).....11

Duncan v. Walker, 533 U.S. 167 (2001).....11

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).....27

United States v. Haymond, 139 S. Ct. 2369 (2019).....17

United States v. Haymond, 869 F.3d 1153 (10th Cir. 2017).....18

CONSTITUTION

US Constitution, 1st Amendment.....2, 3, 6, 25

US Constitution, 5th Amendment.....2, 16, 19, 23, 26

STATUTES

28 U.S.C. 1254(1).....1

28 U.S.C. 1291.....1

28 U.S.C. 2255.....7, 17, 18

28 U.S.C. 292(b).....1, 8, 10-12, 16

28 U.S.C. 3231.....1

Title 5, Attorneys and State Bar, Chapter 1, Appendix 5, Rules Governing Admission to the Practice of Law in the State of Oklahoma.....19

TABLE OF AUTHORITIES – Continued

Page

RULES

FRAP 10(a).....5

Oklahoma Rule of Professional Conduct 8.3 23

OTHER AUTHORITIES

Rules of Procedure of the State Bar of California, Title IV. Standards For Attorney Sanctions for Professional Misconduct Part A., 2.2, Commingling and Other Trust Account Violations 25

DECISIONS BELOW

The order and judgment in *US v. Stilley*, 10th Cir. No. 22-5113 is not reported. Pet. App. 1.

The District Court's oral order revoking Petitioner's supervised release and sentencing him to 3 months incarceration in *United States v. Oscar Amos Stilley*, OKND 4:09-cr-43 SPF-2 is not reported. Pet. App. 14.

The 10th Circuit order denying rehearing and rehearing *en banc* is not reported. Pet. App. 20.

STATEMENT OF JURISDICTION

On October 16, 2023, the Tenth Circuit issued its opinion affirming the District Court. Rehearing was denied 12-4-2023. The District Court had jurisdiction pursuant to 28 U.S.C. 3231. Jurisdiction to appeal to the 10th Circuit is at 28 U.S.C. 1291, for appeal from a final decision of a US District Court. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

This case principally involves:

1) 28 U.S.C. 292(b), "The chief judge of a circuit may, in the public interest, designate and assign temporarily any district judge

of the circuit to hold a district court in any district within the circuit."

2) US Constitution, 1st Amendment, "Congress shall make no law . . . abridging . . . the right of the people peaceably to . . . petition the Government for a redress of grievances . . . "

3) US Constitution, 5th Amendment, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law . . . "

STATEMENT OF THE CASE

The cause below was a criminal case against Petitioner Oscar Stilley (Stilley) and Lindsey Springer. Stilley was a practicing Arkansas lawyer for almost 2 decades prior to his sentencing but is now disbarred. Stilley was charged with conspiracy to defraud the United States (Count 1) and two counts of tax evasion (Counts 3 & 4). Stilley on 4-23-2010 was sentenced to the maximum 5-year sentence on all counts,[1] all to run consecutively.

The government pretrial claimed, not less than six times, that Stilley's codefendant Lindsey Springer had

[1] Stilley doesn't concede that a "defraud clause" conspiracy is necessarily a felony, but that issue isn't material to this petition.

earned money, and that Stilley had paid him the amounts earned, from Stilley's attorney trust fund account. Springer claimed he received the money as gifts or donations, upon which he owed no income tax. Eddy Patterson, the individual involved in Count 3 was convicted of tax charges in 2003, and Patrick Turner, the individual involved in Count 4 was under federal criminal investigation in 2005, for potential tax charges. The government claimed the payments amounted to compensation for Springer's services in assisting Patterson and Turner with criminal defense and 1st Amendment peaceful petition.

The government resisted any response to a bill of particulars, on the very theory that the government is ***bound by the particulars so stated***. Dkt. 42, pg. 8.

The District Court on 1-22-2010 issued a *sua sponte* order (Dkt. 290). This was a scheduling order, quite often done *sua sponte* without malice and without prejudice to the parties.

Tucked into this order was a cutoff date of 2-1-2010, for dispositive motions. A mere 12 days later the government switched to a "theft" theory of criminal liability, at least as to Count 4. See comment made 2-12-2010, at Dkt. 310, pg. 11, about Patrick Turner's "naive belief" that "Defendant Springer had any intention of repaying the money Defendants stole."

Indeed, the government on 3-3-2010 confessed that if the trial jury had not adopted the post-trial "stealing" theory of the case, they would have returned verdicts of "not guilty," at least as to Count 4.

Objections to PSR, page 3. In other words, the government admitted that their pretrial theory was ***thoroughly*** incapable of supporting a criminal judgment. They could do this with great confidence, since the District Court had just days before ***cut clean off*** any opportunity to file any dispositive motions. Stilley was relegated to seeking relief on appeal.

The government thereupon utterly crushed and destroyed Stilley's legal right to one direct criminal appeal – precisely because they knew the probable outcome of a ***competent*** appeal by Stilley.

In summary, this is what has transpired.

1) Petitioner Stilley and Springer utterly devastated the government's pretrial theories, so much that the government abandoned them in favor of theories laughably inconsistent with the indictment. Dkt. 701, pg. 23-25, esp. 24.

2) Stilley was denied a trial, fair or otherwise, *on the allegations of the purported indictment*. Everyone concedes Stilley is innocent ***of that***.

3) Stilley was denied any consideration of his motion for new trial and judgment as a matter of law, altogether contrary to the District Court's own written belief of the requirements of due process. Dkt. 701, pg. 44-49.

4) Stilley was denied an unopposed motion for transcripts, at a time that would have

allowed him to prepare appellate arguments on the issue of criminal liability, prior to incarceration. Stilley was denied transcripts until the US Department of Justice[2] was able to deprive its ***adversary*** Stilley of access to the docket and docket items. Stilley's wife sent the docket and docket items (about 4,500 pages at the time) to Stilley's place of confinement, but the package was rejected, contrary to the DOJ-FBOP's own due process rules. Thus Stilley never allowed to possess the official record as defined by FRAP 10(a). Prior to incarceration he had the docket items, after incarceration he was allowed to possess the transcripts, but he was never permitted to possess *both* at the same time.

5) The District Court *sua sponte* slammed the door on dispositive motions, just days before the government abandoned the trial theory of liability and adopted the "theft theory."

6) The government for purposes of sentencing more than doubled its pretrial alleged "tax losses." Dkt. 701, pg. 26.

7) Stilley and Springer were both locked up immediately upon the imposition of sentence, with instructions to keep the two separate. Dkt. 338, pg. 2. The District Judge ignored Springer's objection to

[2] By and through its subsidiary the Federal Bureau of Prisons (DOJ-FBOP).

interference with the US mails, committed with the apparent intention of obstructing peaceful petition and due process. Dkt. 364, 376.

8) Stilley repeatedly sought the wherewithal to prepare a competent appeal brief, by pleadings filed at the 10th Circuit from May 2010 through November 2011. 10-5057 docket He was not successful. Unable to prepare a competent appeal brief, he adopted Springer's counseled brief, and attempted to reserve the right to file an opening brief after the government's obstruction of his right to appeal ceased. 10-5057 docket, pg. 9.

9) Stilley sought relief from District Court, for denial of access to those things necessary for a competent appeal, explaining that his administrative remedy requests were being obstructed, but was denied. Dkt. 443, pg. 7.

Stilley wasn't ***tried*** on the allegations of the indictment, was denied ***any*** consideration of the most critical post-trial motions, was sentenced on an ***altogether new theory***, after being barred from challenging it, was tagged for obviously ***false and fraudulent*** sentencing guideline "points" and restitution, was denied the ***one direct appeal*** to which he was legally entitled, was denied his 1st Amendment right of peaceful petition and due process for the duration of his incarceration, was repeatedly and extensively punished for efforts to get due process and the right of peaceful

petition, and has never had so much as a pretense that any district or circuit court has considered or decided any motion under 28 U.S.C. 2255 ***on the merits***.

After coming to supervised release, Stilley sought the opportunity to challenge a requirement that any phone or computer that he uses must have monitoring software, at his own expense. This request was denied. Stilley was told that he had to comply immediately or go back to prison.

Special Judge Stephen P. Friot transferred the case to the Western District of Oklahoma (OKWD) on his own motion. It appears that nobody but Judge Friot himself was Stilley's accuser. Judge Friot was also the judge in OKWD. In the OKWD, Stilley challenged jurisdiction. Judge Friot transferred the case back to OKND, where he once again assumed the role of presiding judge.

Stilley argued that 1) by the government's own admission Stilley couldn't possibly be guilty of the charges of the indictment, 2) nothing in the record supported employment restrictions, which the computer monitoring requirement undeniably was, and 3) since punishment on revocation of supervised release is punishment for the original offense, any punishment would be a flagrant violation of due process. Stilley requested a true and correct record, which was denied at page 17 of the revocation transcript.

Stilley was sentenced to 3 months in prison plus an additional 33 months of supervised release. He was denied release pending appeal, home confinement, or

self-surrender. After his release, he prepared and filed his appeal brief to the 10th Circuit. His chief argument, consuming the lion's share of the word count, was insufficiency of the evidence. His second point on appeal was a challenge to serial issuance of cross-designations pursuant to 28 U.S.C. 292(b). His third point challenged the imposition of yet another prison sentence for the performance of an act required by the applicable attorney ethics rules in his home state of Arkansas. His last point challenged the use of theories contradictory to the indictment, pretrial claims by the government, and the trial evidence, as a fraud upon the court.

After all, Stilley had already served two full 5-year prison sentences day for day – and much more. Therefore, the government's written admission that Stilley could not possibly be guilty of the allegations *of the indictment* would necessarily preclude any supervised release or revocation thereof.

The government included ***exactly none*** of these issues in its response brief table of contents. Under heading "A." the government says that " . . . Revocation of Supervised Release Was a Proper Exercise of the Court's Discretion." Under heading "B" the government says "Defendant's Arguments Fail." That's all! That's the whole of only two principal headings under a main heading entitled "Argument."

The table of contents was laughable because the government had no meritorious response to any of Stilley's appellate arguments.

The 10th Circuit panel ignored everything, claiming that Stilley didn't preserve his arguments. Actually, they conceded that he initially raised the arguments and got a ruling, but claimed he failed to ***renew*** his arguments and get ***yet another ruling***, right before he was hustled off to jail.

Except that he ***did***. Judge Friot, after pronouncement of sentence but right before the conclusion of the hearing, uttered these words:

> THE COURT: A stay is denied. You are remanded to the custody of the marshal. And by the way, ***if I forgot to say it***, the motion for a true and correct record at docket entry number 749 is also denied. You are remanded to the custody of the marshal to begin serving your three-month term today. The stay is denied and home confinement is denied. Court will be in recess.
>
> (Emphases added) (Revocation TR pg. 122)

Judge Friot at revocation transcript 17 explained his reason for denying the motion for a true and correct record – saying that such a motion amounted to a challenge to the original conviction and sentence. At page 9 he called the special conditions the "law of the case." In other words, *in Judge Friot's opinion* a true and correct record is *incompatible* with 1) a criminal judgment and conviction, whether original or on revocation, and 2) the special conditions of supervision challenged by Stilley.

The factual and legal basis for the 10th Circuit panel's decision was 1) raised and argued *solely* by the panel, and 2) utterly inconsistent with the record. Stilley proved this beyond reasonable doubt in his petition for rehearing and rehearing *en banc* – which failed to garner so much as a request for a vote.

REASONS FOR GRANTING THE WRIT

I. The Court should grant certiorari to determine whether or not 17 consecutive cross-designations, with apparent intent to issue new cross-designations each year, in perpetuity, are nevertheless "temporary" within the meaning of 28 U.S.C. 292(b).

Petitioner Oscar Stilley (Stilley) was sentenced in 2010 by Stephen P. Friot, a US District Judge for the Western District of Oklahoma, (OKWD) to 15 years in federal prison. Judge Friot sentenced Stilley again in November of 2022, to 3 months of incarceration, on revocation of supervised release. Pet. App. 15.

Judge Friot transferred Stilley's case to his home district of OKWD for the purpose of prosecuting the alleged violation of supervised release. No signatures of any personnel of the Northern District of Oklahoma (OKND) appeared on any of the paperwork leading up to the transfer. Judge Friot was listed as the presiding judge in the OKWD case.

Petitioner Stilley vigorously objected to being prosecuted in OKWD. The matter was transferred back

to the OKND. Judge Friot once again followed the case, over the strenuous objection of Stilley. Judge Friot relied on cross-designation orders issued pursuant to 28 U.S.C. 292(b), which provides:

> (b) The chief judge of a circuit may, in the public interest, designate and assign temporarily any district judge of the circuit to hold a district court in any district within the circuit.

A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning. *Burns v. Alcala*, 420 U.S. 575, 580-581 (1975). It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant. *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

These 13 cross-designation orders originally complained of aren't "temporary" within the ordinary meaning of the word or within the meaning of 28 U.S.C. 292(b). They aren't in the public interest. They don't allege a public interest, even in the most conclusory way. They aren't authorized by the constitution or by statute.

As a practical matter, these cross-designated judges are used even when the remaining judges have not recused at all. That's what happened in Petitioner Stilley's case. See OKND 4:09-cr-43, docket entries ## 1-24

Nor is there the slightest indicia of any intent to change the practice. The number of consecutive cross-designations has increased by 3,[3] since Stilley initially got a set from the 10th Circuit. Why 3 since only 2 years have elapsed? Because when District Judges John Russell and Sara Hill ascended the Oklahoma bench in January 2024, a new cross-designation was issued especially for them, on January 17, 2024. The 10th Circuit is not being subtle, about its claimed right to stretch the cross-designations to cover all Oklahoma judges, in perpetuity.

Actually, not quite all the judges. Some of the judges have a bona fide, Congressionally authorized judicial seat in all three of Oklahoma's judicial districts. They aren't cross-designated. What that means is that a Congressional judicial commission actually confers *less power* than serial cross designations under 28 U.S.C. 292(b). Cross-designations can be ***and are*** used to evade the requirement of random selection of judges. District Judges with a judicial commission to all 3 judicial districts must be assigned in compliance with the applicable rules of random selection.

Where did the judges of the OKND recuse in Stilley's case? The docket sheet[4] should have recusals for each judge, each *prior to* Docket #24, whereby

---

[3] The December 9, 2021 cross-designation appears in both sets.

[4] Recapthelaw provides reliable, publicly available access to dockets such as this one.

Judge Friot was assigned to the case. The recusals are conspicuous by their absence.

Stilley has argued that Stephen P. Friot was recruited to be the District Judge, because for example the fact that he ***refused to rule at all***, when a ruling – any ruling, whether right or wrong – would have ***necessarily*** led to the exoneration of Skoshi Thedford Farr. Docket 699, pg. 8-10.[5]

Here's what happened in this case:

1) The District Court transferred the case to the OKWD, *sua sponte*, (OKWD Dkt. 1) whereupon Aric *Holloway*, a US Probation Officer working in the William J. *Holloway*, Jr., Courthouse, made accusation against Stilley. Not a solitary OKND US Probation Officer or Assistant US Attorney (AUSA) has fingerprints on these accusations.

2) The District Court issued an order stating that he would vacate the order of transfer if Stilley could persuade him that jurisdiction didn't lie in the OKWD. Dkt. 13.

3) When Stilley "chinned the bar" with his jurisdictional arguments, the District Court decided to transfer all the allegations and process, including the summons, back to OKND. OKWD Dkt. 20.

---

[5] Using the filemark header pagination.

4) The summons, formerly OKWD Docket #4, disappeared from the OKWD docket, without a trace or explanation. OKWD Docket, pg. 2.

5) The summons re-appeared as Docket #739 in the OKND. The docket entry honestly states the source as OKWD, and indicates that it "contains one or more restricted pdfs." Why the public shouldn't see such mundane materials is not explained.

6) The District Court proceeded in such a "hurry-up" manner that he had no time for an initial appearance, (Dkt. 742) and no time to re-appoint standby counsel picked by the District Court. Dkt. 751, pg. 2. Stilley sought the re-appointment of Robert Burton, IV,[6] who sat through the entire criminal jury trial and sentencing, and upon whom the District Court

---

[6] Burton was disbarred for converting client funds some 20 months prior to Stilley's hearing. On information and belief, part of the "hurry-up" was so the district court and government counsel wouldn't have to explain why Stilley should go to prison *yet again* for ***not*** converting client funds by refusing to pay what the government insisted (pretrial) was a lawful – indeed constitutionally protected – payment for services, while denying Stilley the assistance of said standby lawyer due to **disbarment for committing that very offense, namely conversion of client funds**. Thus the absurd order to supplement Stilley's request for counsel within 15 days, Dkt. 751, pg. 2 while being sent to solitary confinement in jail with a 14 day deadline for a notice of appeal, which divests the district court of jurisdiction.

lavished the most effusive praise, in an order granting him attorney's fees. Dkt. 418.

7) The District Court told Stilley that he would forgive the past if Stilley would comply going forward. Revocation TR pg. 10.

When Stilley agreed to comply, the District Court decided that he needed the hearing after all – right after Stilley mentioned attorney-client privileged materials. Revocation TR pg. 20. The District Court admitted that the challenged computer monitoring software might make attorney-client privileged materials[7] available to the government, but deemed this outcome "earned and warranted." Revocation TR pg. 98-99. How a breach of attorney-client privilege would be fair to Stilley's former clients was not explained. Soon after Judge Friot found Stilley guilty, sentencing him to 3 months in prison plus 33 months with the same onerous special conditions of supervised release as before.

The cross-designation orders aren't public or published. Petitioner of course challenged the cross-designation orders at the district court level. However, since the offending cross-designation orders are issued by the 10th Circuit, it is utterly unreasonable to expect the 10th Circuit to allow the *district court* to find those

[7] The main issue was a treasure trove of attorney-client privileged materials from Stilley's almost two decades of law practice, stored on his computer. A large percentage of this material involved litigation or conflict with the United States, the beneficiary of this attorney-client confidentiality breach.

orders unconstitutional. Higher courts review the decisions of lower courts. The reverse is rarely if ever true.

Nobody thinks there is case law on point. Stilley frankly admitted that fact. The government, at pages 23-25 of their response brief, addressed the issue but cited no cases arguably in their favor. The Circuit Court addressed the issue but likewise cited no case law. Pet. App. 10-11.

This is a case of first impression. A decision is critical to the proper functioning of the government. If a Congressional requirement that cross-designations be "temporary" can be permanently nullified by the simple expedient of issuing new cross-designations year after year, this Court should be the one to say that.

This Court should grant certiorari and decide whether or not 28 U.S.C. 292(b) authorizes the serial issuance of cross-designation orders for district judges, without any *stated* or *plausible* public interest, and without any apparent intention to honor the requirement that such orders be temporary.

II. The Court should grant certiorari to say that actual innocence renders punishment on revocation of supervised release inconsistent with the 5th Amendment.

Stilley has already served more than 5 years each, on two out of three counts, day for day. Therefore, the loss of any count of the indictment means that Stilley

is entitled to immediate release, from any incarceration or supervision whatsoever. *United States v. Haymond*, 139 S. Ct. 2369, 2379, 204 L. Ed. 2d 897, 906-907 (2019).

The government in writing admits that Stilley could not possibly be guilty of the charges of the purported indictment, Count 4. 10th Circuit 22-5000 Opening Brief 36-39.[8] The sentencing theory irreconcilably contradicted the pretrial and trial theories, (*Id.*) and before sentencing the government admitted in writing that if the jury hadn't concluded that Springer and Stilley had ***stolen*** Patrick Turner's money, they would have acquitted. *Id.*

Pretrial, the government consistently claimed that Springer ***earned*** the money, and Stilley paid it over out of client funds, pursuant to the express directives of his clients. That left Stilley utterly baffled about how he could even be named in the purported indictment.

The illegality of Stilley's conviction and punishment is clearly established by this Court's precedent. See *Bousley v. United States*, 523 U.S. 614, 624, 118 S. Ct. 1604, 1612 (1998), where the Court said:

> In this case, the Government maintains that petitioner must demonstrate that he is actually innocent of both "using" and "carrying" a firearm in violation of § 924(c)(1). But petitioner's indictment charged him only with "using" firearms in violation of § 924(c)(1).

[8] Tenth Circuit appeal #22-5000 was an appeal of the refusal to consider Stilley's motion under 28 U.S.C. 2255.

> Pet. App. 5-6. And there is no record evidence that the Government elected not to charge petitioner with "carrying" a firearm in exchange for his plea of guilty. Accordingly, petitioner need demonstrate no more than that he did not "use" a firearm as that term is defined in *Bailey*.

The District Court *sua sponte* swatted down Stilley's motion for judgment as a matter of law, despite his own written opinions or orders both before and after, stating that he cannot constitutionally do that without prior notice and opportunity to be heard. Dkt. 701, pg. 44-49.

Stilley proved that attorney ethical rules, civil law, and criminal law required him to pay over the money to the "person entitled." 10th Cir. 22-5000 Opening Brief 47-51. To this day Stilley has not been able to get a ruling on the merits of this legal claim and argument – ***anywhere***. There was no non-frivolous argument in support of denying Stilley a reversal and dismissal of all counts of conviction, with prejudice to any refiling, on this argument. Stilley lost because 1) he was denied his direct appeal, 2) he was denied a ruling on the merits of his petition under 28 U.S.C. 2255, and 3) he was denied any other effective means of challenging his conviction and punishment.

Prison time due to revocation proceedings is punishment for the original crime. *United States v. Haymond*, 869 F.3d 1153, 1165 (10th Cir. 2017). This legal rule was implemented to avoid numerous

constitutional infirmities that would arise if a revocation was considered punishment for a new offense.

This Court should grant certiorari to determine whether the knowing and willful punishment of an innocent person, on revocation of supervised release, violates the 5th Amendment guarantee of due process.

III. The Court should grant certiorari to determine whether the 5th Amendment prevents a court of appeals from raising a technical defense to assist attorneys in violating their oaths of office and their ethical obligations.

The 10th Circuit panel is the ***only*** source of the erroneous claim that Stilley failed to obtain a ruling after the objectionable findings and rulings were made against him. This is an embarrassing error. The District Court reiterated the original ruling immediately before Stilley was hustled off to prison – immediately after pronouncement of the sentence of revocation. Revocation TR 122.

At least three of the government lawyers who procured the 3-month revocation sentence – two in OKND and one in OKWD – have taken the following oath, required of all attorneys practicing in Oklahoma:[9]

---

[9] Title 5, Attorneys and State Bar, Chapter 1, Appendix 5, Rules Governing Admission to the Practice of Law in the State of Oklahoma, sometimes abbreviated as 5 Okl. St. Chap. 1, Appx. 5, Rule 1.

> RULE 1. Qualifications to Practice Law in Oklahoma
>
> Upon being permitted to practice as attorneys and counselors at law, they shall, in open court, take the following oath: You do solemnly swear that you will support, protect and defend the Constitution of the United States, and the Constitution of the State of Oklahoma; *that you will do no* ***falsehood*** *or* <u>*consent*</u> *that any be done in court*, and ***if you know of any you will give knowledge thereof to the judges of the court, or some one of them,*** <u>***that it may be reformed***</u>; you will not wittingly, willingly or knowingly promote, sue, or procure to be sued, any false or unlawful suit, or give aid or consent to the same; you will delay no man for lucre or malice, but will act in the office of attorney in this court according to your best learning and discretion, with all good fidelity as well to the court as to your client, so help you God.
>
> (Emphases added)

The 10th Circuit panel rendered this solemn oath a laughable nullity for the lawyers who have their fingerprints on this wrongful conviction, imprisonment, and new supervised release with onerous and utterly unlawful conditions on Stilley.

Out of twelve judges in active service in the 10th Circuit, three were Oklahoma attorneys – Robert E.

Bacharach, Gregory A. Phillips,[10] and Scott M. Matheson, Jr. They took this oath – and violated it when they denied the petition for rehearing.

Clinton J. Johnson, sitting US Attorney for the Northern District of Oklahoma, was "of counsel" on the 10th Circuit appeal. Jeffrey Gallant was local counsel, and prosecuted Stilley in the revocation proceedings. AUSA Vani Singhal assisted.

Bacharach, Phillips, Matheson, Jr., Johnson, Gallant, Singhal and District Judge Stephen P. Friot were all admitted to the Oklahoma bar. By logical extension, we can know that all 7 of these Oklahoma lawyers raised their right hands and solemnly swore that they:

> . . . will do no falsehood or consent that any be done in court, and if you **know of any** you will give knowledge thereof to the judges of the court, or some one of them, *that it may be reformed*; . . .
>
> (Emphases added)

This obligation is not imposed *in a vacuum*. It is *imposed for a purpose*. If the lawyer knows of any falsehood, said lawyer is duty bound to raise his or her voice, and to pursue the matter such that the falsehood is reformed. In other words, they have a duty to ensure that the falsehood is *remediated*.

---

[10] His name is on the order denying a certificate of appealability in US v. Stilley, 10th Cir. 22-5000. He has multiple sources of knowledge imposing duties under his Oklahoma attorney oath of office.

Admittedly, the government claimed that Stilley "raised no objection" to the special conditions, at the *original sentencing* in 2010. They know how to claim that Stilley failed to raise an issue or failed to preserve an issue sufficiently for appellate review. In this case, they just **didn't**, with respect to sufficiency of the evidence on appeal of ***the revocation proceedings***. They knew that any such argument would be embarrassingly frivolous.

District Judge Friot had already cut Stilley off from any challenges to the judgment, after the government's theory switch, with the following language in a *sua sponte* order 1-22-2010. (Dkt. 290).

> No motion, application or brief seeking relief which, if granted wholly or in part, would (i) terminate this case short of sentencing as to either defendant, or (ii) terminate this case short of sentencing as to any count of conviction, or (iii) obviate the necessity of sentencing as to any count of conviction, shall be filed by either defendant later than February 1, 2010.

Less than two weeks after this deadline, on 2-12-2010, the government gave its first notice of a switch to the "theft theory" of criminal liability, at Dkt. 310, pg. 11, about Patrick Turner's "naive belief" that "Defendant Springer had any intention of repaying the money Defendants stole." On March 3, 2010, the government stated unequivocally that reliance upon the trial and pretrial theory was utterly untenable. Objections to PSR, page 3.

Does a criminal defendant deserve a 15-year federal prison sentence for respecting the order of a presiding judge, on the mistaken assumption that he would be allowed the one direct appeal to which he is by law entitled? Does the 5th Amendment protect against punishment on a theory never alleged in any indictment, never found by a trial jury, and never passed upon by any court of appeals?

If so, is the criminal defendant cut clean off from ever challenging the illegal conditions at a later date? Is the defendant cut clean off from proving, beyond a shadow of a doubt, by the expressed written admission of the prosecutor, that he *could not possibly be guilty* of the allegations of the indictment? If that's the law, a criminal defendant can get "life on the installment plan," on the basis of an admittedly lawless original criminal judgment. We see in this very case that a hand-picked judge sentenced Stilley to 3 months in prison on revocation of supervised release, *specifically* so he could keep him under onerous conditions for an additional 33 months. Pet. App. 15.

Attorneys are bound by ethical rules requiring the reporting of serious ethical breaches of other lawyers. Consider Oklahoma Rule of Professional Conduct 8.3 – Reporting Professional Misconduct, which provides in pertinent part:

> **(a)** A lawyer *who knows* that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other

> respects, shall inform the appropriate professional authority.
>
> (Emphasis added)

The duty is triggered by *knowledge*. Sure, the rule has exceptions – none of which apply here. Save for the exceptions, the *source* of knowledge is irrelevant. This Court depends on four law clerks per justice, except that the chief justice may have five. Supreme Court personnel in this case must necessarily become aware of 1) grievous and flagrant violations of attorney oaths of office, and 2) equally grievous and flagrant violations of attorney ethics.

Pretrial, the government stated not less than 6 times, in writing, that Springer earned money and Stilley paid it out of client funds in his IOLTA[11] account, on the express directive of the clients who owned the money.

At the revocation sentencing, in making findings in support of revocation and harsh conditions of supervised release, the district court called Stilley's IOLTA account "an instrument of fraud pure and simple," (Revocation TR 93) claimed that prison would merely be "an interruption . . . in your criminal way of life," (Revocation TR 94) claimed that Stilley lacked "even a thin strand of truth or integrity to your conduct or your way of life," and called Stilley's license to practice law "an instrument of fraud and a license to steal."

---

[11] Interest on Lawyers Trust Account, a trust account for client funds.

(Revocation TR 95) By his own admission Judge Friot was quoting from the original sentencing transcript.

What's missing? Both at the original sentencing and at the sentencing on revocation, there was not so much as a snippet of *evidence* that Stilley ever committed any of these bad deeds. The District Court's "findings," both at the original sentencing and at the revocation hearing, amount to nothing more than conclusory vituperation. There is neither evidence nor findings that Stilley stole anything in particular from any specific person. The District Court's "findings" are **utterly contradicted by both the government's pretrial theories and the evidence at trial**.

Conspicuous by its absence is the slightest reliance on the government's pretrial theory of criminal liability. They ***can't***. They've abandoned it, plus it doesn't allege a crime at all, on the part of Stilley. It alleges that Stilley performed an ethical duty imposed upon lawyers, both by Stilley's home state of Arkansas and by the state of Oklahoma, where he was tried. Indeed, in Charles O'Reilly's home state of California, failure to promptly pay out client funds carries a presumptive penalty of 3 months suspension from the practice of law.[12]

The payment of money allegedly earned – in furtherance of 1st Amendment peaceful petition, no less – is the ***diametric opposite*** of the fraud and thievery

[12] Rules of Procedure of the State Bar of California, Title IV. Standards For Attorney Sanctions for Professional Misconduct Part A., 2.2, Commingling and Other Trust Account Violations

alleged by Judge Friot. The government has never put forth any opposition to Stilley's citations to the record, showing the pretrial theory. The government has never attempted to show so much as a snippet of evidence to support the District Court's findings and conclusions. They lay low and let the courts help them flagrantly and willfully violate their oaths of office. The government and the courts below have rendered the 5th Amendment rights of indictment and due process *de facto* nullities.

Certiorari is discretionary. Attorney ethical obligations are not. Lest anyone say that this imposes an excessive burden on the personnel of this Court, a well drafted ethics complaint is available here.[13] The California bar is doing its best to slow-walk it, to protect the primary prosecutor of Petitioner Stilley, namely Charles Anthony O'Reilly. O'Reilly is a California licensed attorney. That's why he's getting the fight there.

Plus, the US Supreme Court customarily issues opinions and orders to the courts to which it issued certiorari. What keeps this Honorable Court from ordering the 10th Circuit to see that the oaths of the Oklahoma attorneys involved, and the ethical rules for attorneys, are respected and ***enforced***? The duties were *their own*. It is neither fair nor rational nor efficient to allow them to offload their ethical duties onto the personnel of this Court. "It is emphatically the province and duty of the judicial department to say

---

[13] https://bustingthefeds.com/wp-content/uploads/2022/09/BarComplaintCA1.pdf.

what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

This Court should grant certiorari to say that a circuit court is not at liberty to *sua sponte* raise a technical defense to an otherwise meritorious appeal, where that technical defense ***necessarily*** amounts to collaboration with prosecutors in their violation of their own oaths of office, attorney ethical rules, etc.

CONCLUSION

This Court should grant certiorari on such of the three questions set forth herein as may be most conducive to the development of the law.

Respectfully submitted,

OSCAR STILLEY
10600 North Highway 59
Cedarville, AR 72932
479.384.2303
479.401.2615 fax
oscarstilley@gmail.com