

25-7080

ORIGINAL

CASE NO.
IN THE SUPREME COURT
OF THE UNITED STATES

FILED
JUL 29 2025
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN RE OSCAR MARQUEZ

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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QUESTION(S) PRESENTED

- I. Whether Anyone Other Than A United States Attorney Can File Charges In A Federal Court

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:

United States of America

RELATED CASES

Consumer Fin. Prot. Bureau v. Gordon, 819 F.3d 1179 (9th, 2015)
East Bay Sanctuary Covenant v. Garland, 994 F.3d 962 (9th, 2021)
Hollingsworth, 133 S.Ct. at 2659
Lujan, 504 U.S. at 561
Meland v. Weber, U.S. App LEXIS 15378 (9th, 2021)
Raines v. Byrd, 117 S.Ct. 2312 (1977)
Revolution Eyewear Inc., U.S. Dist LEXIS 105188 (9th, 2007)
Sebelius v. Auburn Reg'l Med Ctr., 133 S.Ct. 817, 184 (2013)
Sierra Nev. Transp. Inc. v. Nev. Transp. Auth., U.S. App LEXIS 27677 (9th, 2023)
Steel Co. v. Citizens for Better Env., 523 U.S. 83 (1998)
Skaff v. Meridien N. Am. Beverly Hills, LLC, 506 F.3d 832, 838 (9th, 2007)
U.S. v. Bryson, 434 F.Supp 986 (1977)
U.S. v. Davis, 906 F.2d 829 (2nd, 1990)
U.S. v. Hayes, 115 S.Ct. 2431 (1995)
U.S. v. Morfin-Diaz, 566 Fed Appx 557 (9th, 2014)
Warth v. Seldin, 422 U.S. 490 (1975)
Wilbur v. Locke, 423 F.3d 1101, 1107 (9th, 2005)
White v. Lee, 227 F.3d 1214 (9th, 2000)

TABLE OF CONTENTS

OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION	7

INDEX TO APPENDICES

APPENDIX A	Copy of the Criminal Complaint
APPENDIX B	Complainant's Affidavit
APPENDIX C	Motion to supplement Brief, raising Standing issue
APPENDIX D	Reply to government's response raising standing issue
APPENDIX E	Transcripts challenging jurisdiction before trial
APPENDIX F	Order denying COA
Appendix G	Order denying Motion to Reconsider
Appendix H	Order denying Motion to vacate or Correct sentence
Appendix I	Order denying C.O.A. by the Ninth Circuit Court

Reference To The Opinion Below

-On 11-19-2024, the Sentencing Court entered a final Order but cited no Case-Law.

-28 U.S.C. §2255(f)(1) was cited as the reason for the denial.

-28 U.S.C. §547(1) was cited to state that a Task Force Officer is a United States ("U.S.") Attorney. (See Atta 8H)

Jurisdiction

This Court's Jurisdiction derives from Article III of the Constitution and S. Ct. R. 20 which is extended by Rule 17 of to review the denial of Petitioner's Motion under 28 U.S.C. §2255 in the Order dated 11-19-2024 by the Sentencing Court (see Atta. 8H) and 3-31-2025 by the Ninth Circuit Court of Appeals (see Atta. 9I).

Concise Statement Of The Case

-On 8-20-2024, Petitioner filed a Motion under 28 U.S.C. §2255 showing that a challenge to a lack of Article III Standing is non-waivable and non-forfeitable, can be raised at any time, and cannot "be vanquished by a statute of limitations affirmative defense such as §2255."(DKT 270)

-On 8-26-2024, the Sentencing Court ordered the government to respond.

-On 9-16-2024, Natalie k. Wright (Wright), as the government's representative, filed a response stating 1) that a Task Force Officer can commence a prosecution, 2) that §2255's statute of limitations estoppels any challenge to a lack of Article III Standing, and 3) that a Task Force Officer is appointed in the manner prescribed by Article II, §3. (DKT 272).

-On 10-03-2024, Petitioner replied showing 1)that a non-waivable, non-forfeitable challenge to a lack of Article III Standing can be raised at any time, 2)only an officer appointed by the President is exempt from the injury requirement of Article III that every individual bears the burden of proving, and 3)that no such person with such a stake in the outcome claimed an injury on 7-30-2019, the date of the filing of Cheryl Banks' Federal Criminal Complaint, therefore, there was no Case or Controversy for the U.S. Attorney to prosecute. (DKT 273).

-On 11-19-2024, the Sentencing Court denied Petitioner's §2255 by 1)raising the statute of limitations affirmative defense under §2255(f)(1), 2)stating that Cheryl Banks is a U.S. Attorney under 28 U.S.C. §547(1), and 3)stating that a lack of Article III Standing is frivolous and warrant's dismissal of a Motion under §2255. (DKT 275)(See Atta. 8H).

-On 12-16-2024, Petitioner filed a Motion for Reconsideration Which was construed as a Notice of Appeal. (DKT 278).

-On 1-30-2025, the Ninth Circuit Court of Appeals remanded to the Sentencing Court to issue a C.O.A. or to state its reasons for the denial.

-On 2-19-2025, the Sentencing Court denied Petitioner's C.O.A. (See Atta. 6F).

-On 3-21-2025, the Ninth Circuit Court of Appeals denied Petitioner a C.O.A. (See Atta. 9I).

-On 5-12-2025, Petitioner filed a Motion for Reconsideration and was denied by the Ninth Circuit Court of Appeals.

-On 8-14-2025, Petitioner filed a Petition for Writ of Certiorari in this Court.

28 U.S.C. §2255 gave the court of first instance jurisdiction and authority to reevaluate the entire sentence beginning with the threshold matter of Article III Standing.

Comes now, Petitioner, with a Petition for Writ of Certiorari to the Judgment of the United States Court of Appeals for the Ninth Circuit and in support shows the following:

LEGAL STANDARD

THE LAW

Article III of the Constitution provides courts with the judicial power to hear a case or controversy. In order to have a "Case" or "Controversy" a party invoking the jurisdiction of the federal court bears the burden of establishing Constitutional Article III Standing. Meland v. Weber, U.S. App LEXIS 15378 (9th, 2021) ("The party invoking federal jurisdiction bears the burden of establishing the elements of standing."); Warth v. Seldin, 422 U.S. 490 (1975) ("The rules of standing, whether the aspects of the 'case or controversy' requirement of Article III of the federal Constitution or as reflections of prudential considerations defining and limiting the role of the courts are threshold determinants of the propriety of judicial intervention. it is the responsibility of the complainant clearly to allege facts demonstrating that he is the proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers.").

This must be done at the time the complaint is filed. White v. Lee, 227 F.3d 1214 (9th, 2000) ("Standing...is to be determined as of the time the complaint is filed."); Skaiff v. Meridien N. Am. Beverly Hills, LLC, 506 F.3d 832, 838 (9th, 2007) ("The existence of standing turns on the facts as they existed at the time the plaintiff filed the complaint."); See also Lujan, 504 U.S. at 561; See also Sierra Nev. Transp., Inc. v. Nev. Transp. Auth., U.S. App LEXIS 27677 (9th, 2023).

"Courts do not have jurisdiction over cases prosecuted in the name of the United States unless they are prosecuted by a US Attorney...The courts would not accept for filing a complaint which had not been authorized by the United States Attorney." U.S. v. Bryson, 434 F.Supp 986 (1977); See also 28 USC §547, and by law, standing "must affirmatively appear on the record." steel Co. v. Citizens for Better Env., 523 U.S. 83 (1998). A court "cannot rely on events that unfolded after the filing of the complaint to establish...standing," Wilbur v. Locke, 423 F.3d 1101, 1107 (9th, 2005), and "a lack of standing is not a defect that can be cured." Revolution Eyewear Inc., U.S. Dist LEXIS 105188 (9th, 2007).

Without Article III Standing, a court has a mandatory duty to dismiss. Steel Co., supra; See also, Consumer Fin. Prot. Bureau v. Gordon, 819 F.3d 1179 (9th, 2015)("Because the requirements of Article III were not satisfied when [the complaint was filed], the district court was obliged to dismiss."); See also Raines v. Byrd, 117 S.Ct. 2312 (1977)("The limitations imposed by Article III may not be swept aside for the sake of convenience and efficiency."); See also Hollingsworth, 133 S.Ct. at 2659.

GROUND I

WHETHER ANYONE OTHER THAN A UNITED STATES ATTORNEY, CAN FILE CHARGES IN A FEDERAL COURT

On 7/30/2019, when case No. 3:19-cr-00356 was filed by complaint No. 3:19-mj-00134, U.S. Attorney, Natalie K. Wright, did not file a complaint, presentment, indictment, charging instrument, or any other document whatever, never invoked the power of the court, and, as a result, failed to establish a 'case or controversy' under Article III and thus a lack of Article III Standing. Revolution Eyewear, Steel Co., Wilbur, Bryson, Lujan, White,...Supra.

As proof of fact, in her response to Petitioner's S2255, Wright notes that Petitioner "was charged by criminal complaint" that was filed by "FBI Task Force Officer Cheryl Banks." (ECF No. 1)(Atta. #1). Wright makes Petitioner's point here. On 7/30/2019, Banks commenced a Federal prosecution against Petitioner without the authorization of the U.S. Attorney. Bryson, supra. "Task Force Officers do not file charges or otherwise control prosecution, their status as federal agents...does not implicate the United States as a sovereign." U.S. v. Davis, 906 F.2d 829 (2nd, 1990); U.S. v. Morfin-Diaz, 566 Fed Appx 557 (9th, 2014)("The complaint charged defendant with two counts.").

"[T]he authority to bring federal charges was vested solely in the United States Attorney." Davis, supra. "While Task Force Officers may choose to report their evidence initially to one prosecutor, that is not the same as initiating a prosecution. Filing charges remains a sovereign decision within the discretionary authority of the United States Attorney with respect to federal court." Id.

On the other hand, in the affidavit attached to the criminal complaint (Atta#2), Banks admits to being employed by the City of Hillsboro Police Department and that she has been a member of a Task Force with the FBI since October 2002 but makes no reference to the authority she has in filing criminal charges. According to Title 5 USC §3372(a)(2) a task force officer's appointment is limited to two (2) years with the possibility for a one time extension by the head of the agency of an additional two (2) years, which does not appear on the record.

