

NO: 25-7262

IN THE
SUPREME COURT OF THE UNITED STATES

Samuel Kwushue

PETITIONER

v.

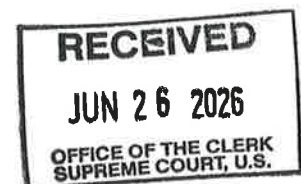
United States of America

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT.

PETITION FOR REHEARING


Samuel Kwushue (*Pro se*)
6001 Kahiti Trc.
Union City, GA 30291
404-477-9905



PETITION FOR REHEARING

Pursuant to Sup. Ct. R. 44.2, petitioner (Samuel Kwushue) respectfully petitions this Court for an order (1) granting rehearing, (2) vacating the Court's June 8, 2026 order denying certiorari, (3) granting the petition for writ of certiorari.

THE EXTRAORDINARY CIRCUMSTANCE OF THIS CASE

This court's supervisory power may be warranted in this case because, the Eleventh Circuit "second bite at the same apple" doctrine, applied to deny the review of petitioner's coram nobis petition may be validating the district court's judgment, where subject matter jurisdiction may not have been originally conferred by the grand jury indictment. Petitioner's allegation that the district court may lack subject matter jurisdiction, based on an indictment, which may have affirmatively charged conduct, not proscribed by the wire fraud statute-18 USCS 1343, not addressed in petitioner's 2255 motion, subsist in the record. Pet. for Cert. page 6. Crim. Doc 106-1 page 1.

A "SECOND BITE AT THE SAME APPLE" DOCTRINE, MAY NOT APPLY, WHERE JURISDICTION WAS NOT ORIGINALLY CONFERRED ON THE DISTRICT COURT BY GRAND JURY INDICTMENT.

Petitioner submits that his petition for rehearing may present a special circumstance that should warrant the granting of certiorari in the above case. The record shows that petitioner's "Claim (1)- JURISDICTIONAL ERROR" based on a defective indictment, preserved in petitioner's 2255 motion to vacate, was not

addressed by the district court, in violation of *Clisby v Jones*, 960 F.2d 225, 936 (11th Cir. 1992) en banc. The “All Claim” rule.

Petitioner’s application for Certificate of Appealability for the same claim was denied. **Pet. for Cert. page 6. Crim Doc, 160**

In *Ruhrgas Ag. v. Marathon oil et al.* No 98-470, cited here for the proposition that “...Federal courts may not hypothesize subject matter jurisdiction, that the requirement, ...that jurisdiction be established as a threshold matter is inflexible and without exception, that jurisdiction is power to declare the law and without jurisdiction, the court cannot proceed at all in any cause.”

THE UNRESOLVED FEDERAL JURISDICTIONAL QUESTION:

The grand jury indictment charged petitioner with eight counts of substantive wire fraud offense. The indictment asserts; “Contrary to SNAP rules and regulations, KWUSHUE provided cash to food stamp recipients in exchange for EBT card payments..., **All in violation of Title 18, United States Code, Section 1343.**”
DOC. 1 paragraph 7 & 8.

The pertinent, unresolved Jurisdictional question is; whether the charging Statute-18 USCS 1343 contains rules and regulation for SNAP program as charged. This court held that “the wire fraud statute criminalizes the use of “deception” to deprive a victim of money or property. *Kelly v United States*, 590 U.S (2020). In the light of the holding in *Kelly v United States*, 590 U.S (2020). the district court may not be conferred with jurisdiction. The indictment upon which petitioner was convicted may not

confer the district court with jurisdiction to enter judgment or accept petitioner's guilty plea.

Because a court's jurisdiction, is a fundamental, non-waivable requirement for a judgment to stand, the Eleventh Circuit reversed the convictions in *United States v. Peter*, 310 F.3d 709 (11th Cir. 2002); and *United States v. Izurieta*, 710 F.3d 1176 (11th Cir. 2013)

The question arising from the foregoing is: Will a procedural "second bite at the same apple" supersede an unaddressed allegation of a district court's lack of subject matter jurisdiction in a 2255 motion, to bar review of that same claim in a coram nobis petition. **Pet.for Cert. page i.**

In its opinion, the Eleventh circuit held that "Here, the district court did not abuse its discretion because each of Kwushue's errors could have been—and actually was—raised earlier in his December 2018 motion to vacate, set aside, or correct a sentence under 28 U.S.C. § 2255. Not only was there another avenue of relief available to Kwushue, but he already availed himself of it. Coram nobis does not offer him another bite at the same apple." The Eleventh circuit did not say that petitioner's Claim (1) Jurisdictional error, was resolved.

The writ of error coram nobis is "an extraordinary remedy of last resort available only in compelling circumstances where necessary to achieve justice." *United States v. Mills*, 221 F.3d 1201, 1203 (11th Cir. 2000). The writ of Error Coram nobis allows persons who have served their sentences to draw the courts attention to the most

fundamental error in the proceedings leading to their conviction. Petitioner availed himself of the use of 28 USCS 2255 to attempt to vacate his conviction. The district court may have erroneously overlooked petitioner's "Claim (1)- JURISDICTIONAL ERROR" which alleged the district court may lack Jurisdiction on the ground that the charging statute 18 USCS 1343 may not contain rules and regulation for SNAP program as charged; that the charged conduct may be outside the sweep of the charging statute.

In *United States v. McIntosh*, 704 F.3d 894 (11th Cir. 2013), the Eleventh Circuit has explained that "indictment errors are not all the same" and should not be treated categorically." That "some indictments are defective because they charge no federal crime at all, such as the indictment that charged conspiracies "to attempt" to import and to possess marijuana with the intent to distribute the drug in United States v. Meacham, 626 F.2d 503, 507 (5th Cir.1980), offenses not set forth in the United States Code. The defect, the court asserted "...deprived the district court of jurisdiction—not because the indictment was defective, but because Congress's grant of jurisdiction to the district courts in criminal cases extends only to "offenses against the laws of the United States." See 18 U.S.C. § 3231. The court further asserted "If an indictment fails to charge such an offense, then a court has no basis for exercising jurisdiction. citing United States v. Peter, 310 F.3d 709, 713–14 (11th Cir.2002) (explaining that Cotton did not upset the rule of Meacham that an

indictment's failure to describe conduct proscribed by a federal statute is a jurisdictional defect).

This court, and the Eleventh circuit precedents holds that a district court's jurisdiction depends on whether the charged conduct falls within the scope of the applicable jurisdictional statute.

This court held that "there are no constructive offenses; and, before one can be punished, it must be shown that his case is plainly within the statute." *Fasulo v. U.S.*, 272 U.S. 620, 629, 47 S.Ct. 200, 202, 71 L.Ed. 443 (1926). The indictment upon which petitioner was convicted may have asserted conduct that fell outside the sweep of the wire fraud statute,

The grand jury indictment may not invoke the district court's jurisdiction, because the charging statute 18 USCS 1343, may not contain rules and regulations for SNAP program as charged. The affirmative conduct charged in the indictment may not be within the sweep of the charging statute 18 USCS 1343.

An allegation that a district court lacks subject matter jurisdiction may be a "compelling circumstances" to warrant the exercise of the supervisory power of this court to ensure that "subject matter jurisdiction is not assumed" before a "second bite at the same apple" is applied to this case.

CONCLUSION

For the foregoing reasons, petitioner prays this Court (1) grant rehearing of the order denying the petition for writ of certiorari in this case, (2) vacate the Court's June 8, 2026 order denying certiorari, (3) grant the petition for a writ of certiorari..

06/22/2026

Respectfully Submitted,


Samuel Kwushie

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404-477-9905

DISCLOSURE STATEMENT/ CERTIFICATE OF INTERESTED PERSONS

Pursuant to 11th Cir. R. 26.1-1 appellant (Samuel Kwusue) here files a Certificate of Interested Persons and Corporate Disclosure Statement (CIP) with this court.

Grossman, Richard

Jones, Steve

Kaplan, Nicole

Kaushal, Samir

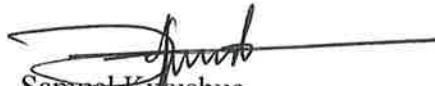
Lutz, Bryan

Sigalos Jason

Summerfield, Lawrence

Weil, Amy Levin.

Submitted by:


Samuel Kwusue

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Union City, Ga 30291

4044779905

NO: 25-7262

IN THE SUPREME COURT OF THE UNITED STATES

SAMUEL KWUSHUE, Petitioner,

v.

UNITED STATES OF AMERICA, Respondent

CERTIFICATION OF GOOD FAITH FILING

Petitioner, Samuel Kwushue, certifies that this petition for rehearing it is restricted to the grounds specified in this paragraph and that it is presented in good faith and not for delay;

June 22, 2026



Samuel Kwushue
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(404)- 477- 9905

NO: 25- 7262

SAMUEL KWUSHUE, Petitioner,

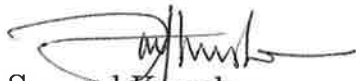
V.

UNITED STATES OF AMERICA, Respondent

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the PETITION FOR REHEARING in the above styled case complies with the typeface requirement of Supreme Court Rule 33.1(b), being prepared in Century Schoolbook 12 point for the text and 10 point for the footnotes, and this brief contains 1218 words, excluding the parts that are exempted by Supreme Court Rule 33.1(d), as needed. I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 22, 2026.



Samuel Kwushue
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