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In The  
Supreme Court Of The  
United States

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In re: BRIAN DAVID HILL,

*Petitioner,*

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On Petition for a Writ of Certiorari to  
the United States Court of Appeals for  
the Fourth Circuit

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**PETITION FOR A WRIT OF  
CERTIORARI**

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**ORIGINAL**

## **I. Questions Presented**

Where the U.S. Court of Appeals didn't think that the Petition for Writ of Mandamus should apply to the case of multiple pending motions not being acted upon by the judicial officer of the U.S. District Court for months and months after being filed?

Where the U.S. District Court failed or refused to act on multiple motions that asked to vacate an unconstitutional judgment or judgment(s) over the basis of the United States Attorney lying, deceiving, and filing or submitting false facts to the U.S. District Court in a criminal case, even though jurisdiction had already been challenged?

Where the U.S. Court of Appeals dismissed the Petition for the Writ of Mandamus even though it was originally asking for mandating that the U.S. District Court act upon the motions asking for vacatur of null and void judgments that were produced out of frauds upon the court by the United States Attorney?

Where case law precedent in this very Court and the lower Courts all held that petitioning for the Writ of Mandamus relief is only reserved to special

circumstances including but not limited to Judges that act in excess of jurisdiction by failing to act or refusing to act on pending motions?

Where the “due process of law” clause of the U.S. Constitution, Amendment V, is being deprived and ignored by the U.S. District Court in North Carolina and where judgments/orders that may not even have valid jurisdiction to have ever been entered is being allowed when frauds upon the court have been proven by the Defendant?

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#### IV. Petition for Writ Of Certiorari

Brian David Hill, an criminal defendant currently serving a sentence of supervised release by and through the United States Probation Office for the Western District of Virginia by order of the Middle District of North Carolina, respectfully petitions this court for a writ of certiorari to review the judgment of the U.S. Court of Appeals, denying and dismissing the Petition for Writ of Mandamus and Prohibition for a judge failing or refusing to act upon multiple uncontested pending motions asking for relief, and failing or refusing to respond to the challenges to the jurisdiction of the judgment(s) before his Court. The U.S. Court of Appeals for the Fourth Circuit (“U.S. Court of Appeals”) under case no. #19-2338, is the originating case where the Petition for Writ of Mandamus and Prohibition, was originally filed and the very case that is being appealed to the United States Supreme Court to undo a miscarriage of justice.

**V. Opinions Below**

The decision by the U.S. Court of Appeals denying Mr. Hill's petition for Writ of Mandamus is reported in an unpublished opinion as In re: BRIAN DAVID HILL, case No. 19-2338 (February 10, 2020) by the panel of Judge Diaz, Judge Harris, and Judge Rushing. Mr. Hill filed a petition for rehearing dated February 13, 2020. The U.S. Court of Appeals denied Mr. Hill's petition for rehearing on April 28, 2020. That order was unpublished and stated that "The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc. Entered at the direction of the panel: Judge Diaz, Judge Harris, and Judge Rushing."

**VI. Jurisdiction**

Mr. Hill's petition for hearing to the U.S. Court of Appeals was denied on April 28, 2020. Mr. Hill invokes this Court's jurisdiction under 28 U.S.C. § 1254(1), having timely filed this petition for a writ of certiorari within sixty or ninety days of the United



States Court of Appeal's final judgment under 28

U.S.C. § 2101.

**VII. Constitutional Provisions Involved**

United States Constitution, Amendment V:

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

### VIII. Statement of the Case

Over 70 years ago, this Court held in Roche v. Evaporated Milk Assn that the Writ of Mandamus is an appropriate vehicle to “*confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so*”. Roche v. Evaporated Milk Assn holds that the U.S. Court of Appeals has the authority to use Mandamus and Prohibition relief for extraordinary circumstances including Judges that do not act on pending motions that were validly filed and are pending for months and months without a decision to have ever been rendered. Unless a decision is made by the judge towards the pending motions before him/her, an appeal action can never happen and the party to the case has no way to ask for the relief requested before the pending motions unless a higher Court compels the lower Court to act upon the pending motions that it is his/her duty to act upon.

See this Court’s ruling under Roche v. Evaporated Milk Assn, 319 U.S. 21, 26 (1943) (“**while**

a function of mandamus in aid of appellate jurisdiction is to remove obstacles to appeal, it may not appropriately be used merely as a substitute for the appeal procedure prescribed by the statute.”) Roche v. Evaporated Milk Assn, 319 U.S. 21, 26 (1943) (“The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. Ex parte Peru, supra, p. 584, and cases cited; Ex parte Newman, 14 Wall. 152, 165-6, 169; Ex parte Sawyer, 21 Wall. 235, 238; Interstate Commerce Comm'n v. United States ex rel. Campbell, 289 U.S. 385, 394.”)

Not just in this Supreme Court, but the Virginia Supreme Court also ruled that mandamus relief is a necessary action to compel a judge in an inferior court to act upon a pending motion. See In re Commonwealth of Virginia, 278 Va. 1, 22 (Va. 2009) (“Specifically with regard to mandamus directed to an inferior court, we have previously explained that”, “mandamus may be

appropriately used and is often used to compel courts to act where they refuse to act and ought to act”). As the Supreme Court of Virginia had previously explained in their 2009 case law: “[Mandamus] may be appropriately used and is often used to compel courts to act where they refuse to act and ought to act, but not to direct and control the judicial discretion to be exercised in the performance of the act to be done; to compel courts to hear and decide where they have jurisdiction, but not to pre-determine the decision to be made; to require them to proceed to judgment, but not to fix and prescribe the judgment to be rendered.”.

This case presents very important questions of exceptional circumstances as to whether the Court of Appeals of the United States should deny petitions seeking Writ of Mandamus and Prohibition over multiple pending motions before the Hon. Judge Thomas David Schroeder of the U.S. District Court that were uncontested, undisputed on the record of the U.S. District Court, and yet weeks and months have gone by and the pending motions were never acted upon, even after being served with a copy of the

Petition for the Writ of mandamus by Brian David Hill.  
Should Courts be allowed to dismiss the Petition for  
the Writ of Mandamus when it asks for appropriate  
relief to prevent a Court from never acting upon  
pending motions when validly cited under the rules,  
case law, and cites or contains appropriate evidence  
under the Federal Rules of Evidence?

**1. The Pending Motions by Mr. Hill**

On October 4, 2019, Brian Hill filed under Dkt. #199 a "MOTION entitled "Motion for Sanctions and to Vacate Judgment in Plaintiff's/Respondent's Favor" "Motion and Brief/Memorandum of Law in Support of Requesting the Honorable Court in this case Vacate Fraudulent Begotten Judgment or Judgments" filed by BRIAN DAVID HILL. Response to Motion due by 10/25/2019. (Attachments: # 1 Supplement 1, # 2 Supplement 2, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Envelope - Front and Back) (Civil Case number: 17CV1036) (Garland, Leah) (Entered: 10/04/2019)". That motion was uncontested by the United States Attorney and no response was filed by October 25, 2019.

On October 16, 2019, Brian Hill filed under Dkt. #206 a "MOTION entitled "Petitioner's Second Motion for Sanctions and to Vacate Judgment that was in Plaintiff's/Respondent's Favor; Motion and Brief/Memorandum of Law in support of Requesting the Honorable Court in this case Vacate Fraudulent begotten Judgment or Judgments" filed by BRIAN DAVID HILL. Response to Motion due by 11/5/2019.

(Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Supplement 1, # 4 Supplement 2, # 5 Supplement 3, # 6 Supplement 4, # 7 Envelope - Front and Back) (Garland, Leah) (Entered: 10/16/2019)". That motion was uncontested by the United States Attorney and no response was filed by November 5, 2019.

On November 8, 2019, Brian Hill filed under Dkt. #217 a "MOTION entitled "Request that the U.S. District Court Vacate Fraudulent Begotten Judgment, Vacate the Frauds upon the Court against Brian David Hill", filed by BRIAN DAVID HILL re: 199 Motion. Response to Motion due by 12/2/2019 (Attachments: # 1 Envelope - Front and Back) (Garland, Leah) Modified on 11/12/2019 to correctly link document. (Garland, Leah) (Entered: 11/08/2019)". That motion was uncontested by the United States Attorney and no response was filed by December 2, 2019.

On November 21, 2019, Brian Hill filed under Dkt. #222 a "MOTION entitled "Petitioner's third Motion for Sanctions, Motion for Default Judgment in 2255 case and to Vacate Judgment that was in

Plaintiff/Respondent's favor" filed by BRIAN DAVID HILL. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Supplement 1, # 12 Envelope - Front and Back) (Garland, Leah) (Entered: 11/21/2019)". That motion was uncontested by the United States Attorney on the U.S. District Court record as no response was ever filed addressing the allegations on the record of the U.S. District Court. On November 27, 2019, the U.S. Attorney Office had finally filed Appellate Dkt. #17 responding to the allegations but within the U.S. Court of Appeals in response to Appellate Dkt. #14 Emergency "MOTION by Brian David Hill for stay pending appeal" by Anand Ramaswamy "[Entered: 11/27/2019 01:50 PM]". The response was never filed in the U.S. District Court, and never directly addressed each and every allegation within all of the pending motions concerning "fraud upon the court" and jurisdictional challenges.

**2. The Petition for Writ of Mandamus and Prohibition filed**



On November 22, 2019, Mr. Hill had filed his Petition for Writ of Mandamus and Prohibition in the U.S. Court of Appeals in response to waiting for days, weeks, and then a month that had passed with no action(s) on any of the pending motions before it. Mr. Hill was to turn himself into the Federal Prison as ordered on December 6, 2019, while motions to vacate the fraudulent begotten judgments were pending before that same Court. This created a jurisdictional crisis where Mr. Hill had been ordered under Dkt. #200 to self-report to a Federal prison despite the multiple pending motions before it challenging the jurisdiction of that Court and challenging the fraud(s) upon the court by the U.S. Attorney Office when the frauds concern the deceit, lies and false information or misleading evidence or facts which concerns the very revocation of Supervised Release. When a judgment is grounded upon fraud, normally a judgment may be null and void and does not have the jurisdiction to have ever ordered such unenforceable demands under Dkt. #200 without ever rendering a decision on the pending motions before it with allegations of fraud(s) upon the court which all of them were uncontested on the record before that Court. This Court had

made rulings that a U.S. District Court has always had an inherent power or implied power to deal with any judgments that were wrongfully obtained by use of fraud upon the court by an officer of the court. Usually such judgments should be vacated on its face if the core foundation for such judgment was grounded on fraud and fiat. Judgments grounded on fraud are not sound judgments but are judgments of fiat.

See this Court's decision under *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991) ("The court noted that the alleged sanctionable conduct was that Chambers had (1) attempted to deprive the court of jurisdiction by acts of fraud, nearly all of which were performed outside the confines of the court, (2) filed false and frivolous pleadings, and (3) "attempted, by other tactics of delay, oppression, harassment and massive expense to reduce [NASCO] to exhausted compliance.") *Id.* *Chambers*, 501 U.S. 32, 33 (1991) ("(a) Federal courts have the inherent power to manage their own proceedings and to control the conduct of those who appear before them. In invoking the inherent power to punish conduct which abuses the judicial process, a court must exercise discretion in fashioning an

appropriate sanction, which may range from dismissal of a lawsuit to an assessment of attorney's fees.") *Id.* *Chambers*, 501 U.S. 32, 44 (1991) ("Of particular relevance here, the inherent power also allows a federal court to vacate its own judgment upon proof that a fraud has been perpetrated upon the court. See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944); *Universal Oil Products Co. v. Root Refining Co.*, 328 U.S. 575, 580 (1946). This "historic power of equity to set aside fraudulently begotten judgments," *Hazel-Atlas*, 322 U.S., at 245, is necessary to the integrity of the courts, for "tampering with the administration of justice in [this] manner . . . involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public." *Id.*, at 246. Moreover, a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud. *Universal Oil*, *supra*, at 580.")

Because the pending motions had already challenged jurisdiction and validity of the judgment(s) and thus the U.S. District Court should have proven that they did have jurisdiction and addressed all claims, evidence/exhibits,

and case law in regards to the fraud upon the court by an officer of the Court, on November 26, 2019, Mr. Hill had filed an emergency motion for stay of the judgment pending the Writ of Mandamus challenging the lack of a decision on the pending motions to vacate the fraudulent begotten judgment(s), appeal Dkt. #14. However the sole intent of the Writ of Mandamus and Prohibition was not to stay the judgment regarding the revocation of Mr. Hill's supervised release but was to compel the Court to act upon multiple pending motions challenging jurisdiction of the judgment(s) for being grounded on fraud upon the court by the United States Attorney, the prosecutor of the criminal case. It was not one remote allegation or allegations of fraud, but fraud was exposed in each motion that was filed asking to vacate the fraudulent begotten judgment(s). Under the Local Federal Rules of Civil Procedure for the Middle District of North Carolina, cited in the Petition for Writ of Mandamus it said that:

**LR 7.3 MOTION PRACTICE (k) "(k) Failure to File and Serve Motion Papers. The failure to file a brief or response within the time specified in this rule shall constitute a waiver of the right thereafter to file such brief or response, except upon a showing of excusable neglect. A motion unaccompanied by a required brief may, in the discretion of the Court, be summarily denied. A response**

unaccompanied by a required brief may, in the discretion of the Court, be disregarded and the pending motion may be considered and decided as an uncontested motion. **If a respondent fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion, and ordinarily will be granted without further notice.**”

The petition properly cited that local rule which applies under Civil Procedure. The pending motions were actually filed under the 2255 case, and that was why the Clerk had added a response deadline date such as for example: “Response to Motion due by 11/5/2019.” When multiple pending motions contains allegations of fraud upon the court against the officer of the court--United States Attorney are uncontested on the record, then jurisdiction had already buckled and the motion(s) should have been summarily granted or denied, so that Mr. Hill could appeal the decision if he feels that it is unfavorable.

Anand Ramaswamy, of the United States Attorney, had filed a response to Mr. Hill’s “Motion [14]. [19-2338]”, on November 27, 2019. Mr. Hill filed a brief reply in “response [17]. [19-2338] JSN [Entered: 12/02/2019 10:11 AM]” on December 2, 2019.

On February 10, 2020, an “UNPUBLISHED PER CURIAM OPINION” had been filed. “Motion disposition in opinion--denying Motion for writ of mandamus [2]; denying Motion for other relief [3]; denying Motion for stay pending appeal [3], denying Motion for stay pending appeal [14]. Originating case number: 1:13-cr-00435-TDS-1. Copies to all parties and the district court/agency. [1000679730]. Mailed to: Brian Hill. [19-2338] JSN [Entered: 02/10/2020 10:33 AM]”. The judgment was consecutively filed that same day entitled “JUDGMENT ORDER filed. Decision: Petition denied. Originating case number: 1:13-cr-00435-TDS-1. Entered on Docket Date: 02/10/2020. [1000679732] Copies to all parties and the district court/agency. Mailed to: Brian Hill. [19-2338] JSN [Entered: 02/10/2020 10:35 AM]”.

On February 13, 2020, Mr. Hill had filed a timely “PETITION for rehearing and rehearing en banc by Brian David Hill.”

On April 28, 2020, the U.S. Court of Appeals had denied the petition for rehearing with its docket entry entitled “COURT ORDER filed denying Motion for rehearing and rehearing en banc [21]. Copies to all parties.

Mailed to: Brian Hill. [1000729149] [19-2338] JSN

[Entered: 04/28/2020 09:47 AM]".

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## IX. REASONS FOR GRANTING THE WRIT

- A. To avoid erroneous deprivations of the right to due process by the judge's duty to act upon validly filed pending motion or motions before it, especially when the pending motion(s) address the issue or issues of fraud upon the court and challenging jurisdiction of the judgment or judgments as null and void.

In Roche v. Evaporated Milk Assn, 319 U.S. 21, 26 (1943), this Court adopted the usage of the Writ Of Mandamus and Prohibition to compel or confine a Court to fulfill its duties including acting upon motions that are properly brought before the Court, which protects every party's Fifth Amendment right to procedural due process of law. Procedural Due process clause requires that a judge at least act upon each and every motion to ensure that requesting relief is attainable for somebody that has any property interests or life at stake of it being deprived of by the State Government under the Amendment XIV of the Constitution or the Federal Government under Amendment V. This Court further instructed that "while a function of mandamus in aid of appellate jurisdiction is to remove obstacles to appeal". Mr. Hill cannot appeal any decision for pending motions that have not been acted upon, that



deprived Mr. Hill of due process. That is in contradiction with this Court, in contradiction with this Supreme Court of the United States. This Court further reasoned that “The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to **confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.**”

If the judicial officer of the U.S. District Court fails or refuses to fulfil the duties of his respective office, then it is not only acting in excess of jurisdiction, but is a dereliction of duty. When a soldier in a war refuses or fails to follow the commanding officer’s order and duties, then that soldier is acting in such a way that it unravels the usage of military or civilian law when an “officer” refuses to do his duty and refuses to carry out his/her duties. It makes the law virtually unenforceable or selectively enforced in violation of the Equal Protection Clause or Fifth Amendment under the U.S. Constitution. Even though the Equal Protection

Clause itself applies only to state and local governments, this Supreme Court held in Bolling v. Sharpe, 347 U.S. 497 (1954), that the Due Process Clause of the Fifth Amendment nonetheless imposes various **equal protection requirements on the federal government** via reverse incorporation. All laws must be enforced, that is why we even have laws. If an officer fails or refuses to fulfil his duty, then he has become essentially a useless official, wasting the resources, time, and legitimacy of his respective office. If a judge personally feels that a motion was not validly filed and assigned to him/her before his/her respective Court, he/she can simply order the denial. If the motion was validly filed and assigned to him/her before his/her respective Court, then the Judge must act upon it within the necessary time needed to review over the motion and decide whether it has merit or not. A District Court cannot just simply ignore a motion or multiple motions pending for months and leave it sitting there forever. It virtually deprives a party of due process and makes it impossible to seek justice in a District Court when there is such a

dereliction of duty. The same as insubordination, when a soldier is ordered to march with the troops to war and the soldier refuses it and just sits down and places his hands over his ears, his hands over his eyes, and his hands over his mouth. Same with a police officer who his/her duty is to patrol for potential law violators and enforce the law but instead the officer just sees people violating the law and stands there as if nothing is happening. Like a quote from the great genius Albert Einstein once said: "The world is a dangerous place to live, not because of the people who are evil but because of the people who don't do anything about it." The U.S. Court of Appeals had also not done anything about the dereliction of duty, so their judgment dismissing the Writ of Mandamus and Prohibition had further escalated the dereliction of duty of an inferior court Judge and allowed an excess of jurisdiction. If a U.S. Court of Appeals can refuse a petition for mandamus over an excess of jurisdiction, over an extraordinary matter that blocks the appeal process and deprives a party of due process of law, then it creates a mechanism of unenforceable duties

where duties can be shirked and doesn't have to be followed. This makes our Courts virtually wishy washy and not solid institutions of law and order, law and justice.

Here, the U.S. Court of Appeals accepted the decision of the U.S. District Court taking no action on pending motions before it and allowed challenges to its jurisdiction to go as it were unchallenged which contradicts the filings on record. The court also did not disturb the judgment or judgments that may have been founded upon fraud or frauds upon the court by an officer of the court which is subject to sanctions when caught deceiving the court at a later time. That is not a sound judgment but was a judgment of fiat, a judgment is not sound when the facts which fueled one or more judgments are proven as untrue at a later time. When a judgment is proven to have been rendered on fraudulent evidence, fraudulent facts, fraudulent claims, and/or conflicts with the law (or case law) which shows lack of jurisdiction for such judgment then it is not a sound judgment, it is not a legal judgment under the law, it is not a valid

judgment and can be challenged by Mandamus and Prohibition. The U.S. Court of Appeals had conceded in its opinion that somehow it was just an attempt to be an alternative to appeal a decision that was already appealable. The judgment revoking the supervised release of Brian David Hill is appealable, yes, and it is being prosecuted by a lawyer representing Brian David Hill on appeal, yes. However the petition for Writ of Mandamus and Prohibition was not merely a substitute for appeal, but was mainly acting as an enforcement mechanism to require action on pending motions that were asking to vacate the fraudulent begotten judgment(s) over the discovery and documentation of one or more fraud that had been perpetuated upon the court. Multiple reasons show that the usage of the Writ was valid and should not have been dismissed at all. An appeal cannot address frauds documented and discovered at a later time and filed with the Court. When frauds have been discovered, it is appropriate to file a motion or motions addressing each and every discovered and documented fraud. When those motions are not acted

upon, it shows that the Court is shirking its own responsibility and duty to maintain its integrity and its responsibility to follow the law as well as enforcing the law as well as due process of law.

The decision by the U.S. Court of Appeals is plainly incorrect and contradictory to the Supreme Court of Virginia legal precedent and U.S. Supreme Court legal precedent, as it both contradicts the holding of Roche v. Evaporated Milk Assn to confine a court to follow their duties of office and the express purpose of why extraordinary writs of Writ of Mandamus and Prohibition is necessary under circumstances such as challenging the jurisdiction of a void judgment and/or to compel that the Court act upon the pending written motions and pleadings that were before it. The rationale of Roche v. Evaporated Milk Assn decided by this Supreme Court and the Supreme Court of Virginia's decision under In re Commonwealth of Virginia is that once a motion is filed it can be denied or granted as it is the Judge's duty to dispose of pending cases and pending motions by their inherit and implied powers of authority and any other authority granted to it by the Constitution of

the United States and as prescribed by Congress, the lawmakers.

The present case is a textbook example of an inferior Court not fulfilling its duties of its respective office. A Court needs to act upon any motion that the Clerk accepts for filing, and motions that follow the rules. If a motion does not follow the rules, then it is has no jurisdictional value and can simply be denied. If a motion has any jurisdictional value, it can be granted or denied depending on the merits, any responsive arguments or pleading, and depending upon the evidence and case law that was brought in the motion. Not just case law but citing any law is sufficient to attempt to show that a party may or may not be entitled to relief. A motion being ignored is simply an excess of jurisdiction and is a dangerous measure which may show that the specific inferior Court is broken and has lack of due process, lack of jurisdiction.

“We first heard the term "mandamus" in junior high civics, in connection with the case of Marbury v. Madison. Marbury wanted the writ to issue against Madison, requiring him to come across with Marbury's commission.”;

“The Supreme Court long ago emphasized that when acting under an appellate court's mandate, an inferior court "is bound by the decree as the law of the case; and must carry it into execution, according to the mandate. That court cannot vary it, or examine it for any other purpose than execution." In re Sanford Fork & Tool Co., 160 U.S. 247, 255 (1895).” -- Sourced from SW Virginia law blog, By Steve Minor, the law firm of Elliot, Lawson & Minor, and dated October 1, 2012.

The “mandate rule” is “merely a ‘specific application of the law of the case doctrine,’” and “in the absence of exceptional circumstances, it compels compliance on remand with the dictates of a superior court and forecloses relitigation of issues expressly or impliedly decided by the appellate court.” United States v. Bell, 5 F.3d 64, 66 (4th Cir. 1993), cited in West v. West, 59 Va. App. 225, 230-31, 717 S.E.2d 831, 833 (2011).

The U.S. Court of Appeals' erroneous decision circumvents this premise, effectively permitting U.S. District Courts the right to ignore motions, ignore evidence, and ignore pleadings and requests at their



leisure. And, regardless whether the motion was well-grounded in law or not, regardless of whether it hold merit or not. The motions will never have a decision rendered by the Court, and thus can never be appealed, in deprivation of the due process clause.

Under the facts then presented, the U.S. Court of Appeals did not exercise its mandate authority to compel the duties of the judge of an inferior court to make a decision on a pending motion or motions.

- B. To keep in uniformity with the past opinions of this Supreme Court and the Supreme Court of Virginia, regarding the issuance of the Writ of Mandamus and Prohibition to compel exercise of acting upon pending motions and making a decision on pending motions challenging the Court's jurisdiction and documenting fraud.

This Court has the ability to use its authority to grant the Petition for Writ of Certiorari to keep the uniformity of not just this Court's decision regarding usage of the Writ of Mandamus and/or Prohibition to compel a Court to render a decision or judgment on pending motions before it, especially if uncontested, but that uncontested pending motions that had properly challenged the U.S. District Court's jurisdiction to have

filed possibly null and void judgments due to fraud upon the court can properly be used in the Writ of Mandamus and Prohibition. The U.S. Court of Appeals was clearly in the wrong for dismissing the Writ and clearly in the wrong for denying the petition for rehearing as their decision conflicts with the case law precedent of this Court and the other courts nationwide.

Case laws: “Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action.” *Melo v. US*, 505 F.2d 1026 (8th Cir. 1974). “The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings.” *Hagans v. Lavine*, 415 U. S. 533 (1974). “Once challenged, jurisdiction cannot be assumed, it must be proved to exist.” *Stuck v. Medical Examiners*, 94 Cal. 2d 751, 211 P.2d 389 (Cal. Ct. App. 1949). “The burden shifts to the court to prove jurisdiction.” *Rosemound Sand Gravel Co. v. Lambert Sand*, 469 F.2d 416 (5th Cir. 1972). “The law provides that once State and Federal Jurisdiction has been challenged, it must be

proven.” Main v. Thiboutot, 100 S. Ct. 2502 (1980). “A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court”. OLD WAYNE MUT. L. ASSOC. v. McDONOUGH, 204 U. S. 8, 27 S. Ct. 236 (1907).

This case presents this Court with an opportunity to clarify the Writ of Mandamus and Prohibition standard in the face of inferior Courts that refuse to answer allegations of fraud or even refuse to answer the challenge to its jurisdiction to have ever entered such an order. Absent intervention by this Court, the U.S. Court of Appeals and the U.S. District Court will work to undermine the duty of their respective offices by ignoring any pending motions by any party or even by any attorney, then it undoes carefully-crafted procedural safeguards and case law across the country that this Court and other Courts of this great country have spent for the past hundred or more of years developing the opinions regarding the inherit or implied powers of every Courthouse in the United States, and its ability to undo fraudulent begotten judgments. It will create a

nationwide disconnect from case law precedent across the country and will show all Courts of Appeals and District Courts that they don't have to follow the law and that the requirement for valid legal jurisdiction does not matter anymore. It will allow Courts to ignore any motions they want at their discretion when past case law including from one or more of the State Supreme Courts ruled that judges are in excess of jurisdiction by not fulfilling their ministerial duties to act upon any written motion pending before it where they are supposed to act and ought to act.

Writ of Mandamus is appropriate in the matters of a judicial officer not faithfully discharging his duties as required by law. A judge is an excess of jurisdiction by taking no action on a motion pending before it.

“Mandamus is an extraordinary remedy employed to compel a public official to perform a purely ministerial duty imposed upon him by law.” *Richlands Med. Ass'n v. Commonwealth*, 230 Va. 384, 386, 337 S.E.2d 737, 739 (1985); accord *In re Commonwealth's Attorney for the City of Roanoke*, 265 Va. 313, 317, 576 S.E.2d 458, 461 (2003). “A ministerial act is ‘one which a person

performs in a given state of facts and prescribed manner in obedience to the mandate of legal authority without regard to, or the exercise of, his own judgment upon the propriety of the act being done.” Richlands Med. Ass’n, 230 Va. at 386, 337 S.E.2d at 739 (quoting Dovel v. Bertram, 184 Va. 19, 22, 34 S.E.2d 369, 370 (1945)).

When jurisdiction is challenged in the Writ of Mandamus and Prohibition, the emergency motion for stay of the judgment was appropriate since the U.S. District Court should have to prove that it had jurisdiction to have entered its order or orders once allegations and evidence is filed with the Court proving or alleging fraud upon the court by an attorney, an officer of the court.

## **X. CONCLUSION**

For the foregoing reasons, Mr. Hill respectfully requests that this Court issue a writ of certiorari to review the judgment of the U.S. Court of Appeals denying and dismissing Mr. Hill’s petition for Writ of Mandamus and Prohibition.

*II*

DATED this 5th day of May, 2020.

Respectfully submitted,

*Brian D. Hill*  
*Signed*

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