No.20-____

In The Supreme Court Of The United States

In re: BRIAN DAVID HILL,

Petitioner,

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

PETITION FOR A WRIT OF CERTIORARI

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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 inherit 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 Virgina'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 F2d 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 Ca 2d 751. 211 P2d 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,

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Signed

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Petitioner,

Appendix

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jsh

In the United States Court of Appeals
For the Fourth Circuit

No. 19-2338

In re BRIAN DAVID HILL, in his individual capacity as former news reporter of USWGO Alternative News
Petitioner

v.

United States of America,
Respondent

PETITIONER'S REPLY TO UNITED STATES REPONSE [DKT. #17] TO "EMERGENCY MOTION FOR STAY EXECUTION OF JUDGMENT OF THE DISTRICT COURT PENDING WRIT OF MANDAMUS APPEAL OR IN THE ALTERNATIVE TO STAY EXECUTION OF IMPRISONMENT PENDING WRIT OF MANDAMUS APPEAL"

PETITIONER'S REPLY TO UNITED STATES REPONSE [DKT. #17] TO "EMERGENCY MOTION FOR STAY EXECUTION OF JUDGMENT OF THE DISTRICT COURT PENDING WRIT OF MANDAMUS APPEAL OR IN THE ALTERNATIVE TO STAY EXECUTION OF IMPRISONMENT PENDING WRIT OF MANDAMUS APPEAL"

U.S.W.G.O.
Brian D. Hill - Ally of QANON
310 Forest Street, Apartment 2
Martinsville, Virginia 24112

Cover Page

Brian David Hill ("Appellant"), by and through, Brian D. Hill, proceeding pro se in this action, hereby replies to the response of the United States [DE #17 in Case No. 19-2338] to "Emergency Motion for Stay Execution of Judgment of the District Court Pending Writ of Mandamus Appeal or in Alternative to Stay Execution of Imprisonment Pending Writ of Mandamus Appeal" [DE #14 in Case No. 19-2338]. Appellant replies to the response and opposes it for the reasons as set forth below.

Pg 6: "*Hill makes such pro se motions at a time when he has appointed counsel, as he now does during the pendency of his appeal in case 19-4758. When ordered by this Court or the district court, the Government responds to Hill's pro se motions.*"

The issues of fraud upon the court, is an independent action by party: Brian David Hill. Appellant was not appointed counsel for any reasons, purposes, or any orders involving the issues of "fraud upon the court". Brian's court appointed Counsel Renorda Pryor has no jurisdiction/authorization to represent Appellant in his 2255 case and any or all matters concerning his 2255 case, and has no jurisdiction/authorization to represent Appellant's independent actions of requesting relief for fraud upon the court. Renorda Pryor was only appointed [See Entry entered: Jun 26, 2019, *appointment of counsel entered by clerk O'Doherty, Sinead*] for representation of Appellant for the Supervised Release Violation [Dkt. #157] which ended after the final oral judgment on September 12, 2019. Renorda Pryor couldn't file anything in regards to fraud upon the court and wasn't given authorization to have represented Appellant in that matter. Renorda was removed as appellate counsel and cannot and will not file any motions in the District Court since her ineffective assistance of counsel allegations were brought forth in his appeal in case 19-4758, and thus Attorney Ryan Kennedy was appointed only for purposes of appeal. No attorney is representing Appellant for the matters of independent collateral actions such as 2255 Motion, 2255 case pending, and issues

of fraud upon the court based upon the Court's inherit powers. Criminal Justice Act does not appoint counsel for independent actions such as citing and requesting use of Court's inherit Constitutional powers, writs, 2255 cases unless ordered so by the court, and civil cases.

Some of Brian's fraud upon the court motions or allegations were brought forth when counsel wasn't even appointed. See Dkt. 169, "*MOTION for Hearing and for Appointment for Counsel filed by BRIAN DAVID HILL.* ***Responses due by 2/20/2019.***" That "responses due" may be considered an order by the Clerk to respond to a motion prior to the Court acting upon it. See Dkt. 211, "*Notice of Mailing Recommendation: Objections to R&R due by 11/4/2019. Objections to R&R for Pro Se due by 11/7/2019. (Garland, Leah) (Entered: 10/21/2019)*"

Pg 6: "*There were no such orders of any court obligating the Government to respond to the motions he cites in his instant motion and petition for mandamus.*"

Does a Court have to manually enter a separate order for response for each motion filed?

The Clerk is an officer of the Court, and when the Clerk gives the Government an opportunity to respond by a certain deadline, that may be considered an order to at least give the other party an opportunity to respond.

Also it is mandated by Local Rule of the Middle District of North Carolina, that a motion that has no response after being served is considered uncontested (aka unopposed).

M.D.N.C. Civil Procedure: L.R. 7.3 MOTION PRACTICE: "*...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.*"

Dkt. #199, Dkt. #169 motions was filed in "Civil Case number: 17CV1036", thus the local rules of civil procedure applied to that motion. No response means that the facts and claims in that motion were uncontested and ordinarily will be granted without further notice. Clerk's office made a clerical error not filing "Document #206" and "#169" under that civil case number as was with #199 and #213. The U.S. Attorney office had two weeks to file a response (by the Clerk's instructions by notice, Dkt. #211) to the obbjections which also includes but not limited to fraud upon the court allegations in Document #213 and did not file any such response, so Appellant's/Petitioner's objections and fraud upon the court allegations in that pleading was also uncontested. The entire case is already grounded on fraud, and uncontested criminal/civil motions. Document #169 was also a civil motion for the 2255 case but the Clerk's clerical mistake of not adding that it was a civil motion under 17CV1036, doesn't change the fact that the motion was unopposed/uncontested and by default shall obtain the relief sought.

Pg 4: "*Hill's claims that his supervised release revocation was initiated and secured by frauds on the court is belied by the district court's findings in its Memorandum Order regarding the accuracy of the transcript, which states in relevant portion: Mr. Hill was caught by law enforcement exposing himself in public throughout his hometown in Martinsville, Virginia, in the early morning hours of September 21, 2018, proof of which was provided by officer testimony as well as photographs Mr. Hill took of himself on his camera. At the time he was apprehended, Mr. Hill was completely naked, except for footwear. The Defendant was convicted of indecent exposure in state court in Virginia in 2018, and his federal revocation proceeding followed.*"

That was a lie at the time the memorandum order was entered. There was no conviction upon appeal from General District Court to Circuit Court, known as

Trial De Novo. There was no conviction in state court in 2018 after the appeal was timely filed for Trial De Novo. The revocation charge under Dkt. 157 was filed in November, 2018, before the General District Court trial on December 21, 2018. So the revocation proceedings already had begun during the trial de novo process.

Also this Court should take judicial notice of state appeal case law under Dkt. 206-3, 206-4, 206-5, 206-6, that Appellant did not violate Virginia law regarding indecent exposure unless there was any evidence of obscenity. There was no evidence that Ramaswamy/Respondent had ever cited showing any proof of obscenity as required by Virginia courts to convict. No mention of any sexual conduct. No mention of nor reference to any evidence of obscenity. Brian's conduct on September 21, 2018 was inappropriate behavior socially, but was not illegal.

Pg 7: "*Mandamus relief is available only when the petitioner has a clear right to the relief sought. In re Murphy-Brown, LLC, 907 F.3d 788, 795 (4th Cir. 2018).*"

While voidable orders are readily appealable and must be attacked directly, void order may be circumvented by collateral attack or remedied by mandamus, *Sanchez v. Hester,* 911 S.W.2d 173, (Tex.App. – Corpus Christi 1995).

Appellant had already filed three fraud upon the court motions uncontested (Dkt. #169, #199, #206) and pleadings uncontested regarding any issues of fraud (Dkt. #213) and the U.S. District Court had failed or refused to enter any order for any of those motions asking for relief by vacating void judgments. Thus the Court has failed in their duties to act upon a Motion well-grounded in law, aka the inherit powers of the court to vacate any fraudulent begotten judgments to protect the

judicial machinery from fraud/abuses including the All Writs Act (28 U.S.C §1651).

Petitioner clearly has a right to relief in being relived from any void judgments, and void judgments are created when an order was procured through fraud, then a judgment is no longer valid and can be attacked at any time in any court that has territorial jurisdiction, through mandamus or collateral attack. When a District Court has three uncontested motions and uncontested pleadings (collateral attack) regarding orders procured through fraud by an officer of the court, and does nothing to act on any uncontested motions, it has failed in their duties to administer justice and thus the only form of relief left is for a higher court to order a lower court to take action on the uncontested fraud/sanctions motions. These motions were filed in both the criminal and civil case as part of the 2255 case. Federal Rules of Civil and Criminal procedure also apply to a 2255 case, which include local rules. Uncontested motions are entitled to the Court acting upon them at any time after the response deadline has no response by the party adverse to the Movant of the Motion.

Pg 4-5: "*Docket Entry #223 at 1 in case 1:13CR-435-TDS-1. In Hill's petition for mandamus and in his instant motion for stay, he does not provide proof of his claims of fraud upon the court in terms of relevant portions of the record, contravening evidence, or any other justification for the extraordinary relief he seeks in the form of mandamus; rather, Hill only offers unsupported conclusory statements of fraud.*"

That is psychological gas-lighting by this counsel, and is attempting to negate any chance of review or investigation by a higher court or even the lower court into the proven frauds. How is it unsupported and not part of the relevant portions of the record when actual evidence and citation of different parts of the record or

transcript was cited in each "motion for sanctions". It is gas lighting to consider all claims, evidence, and citations to be "*unsupported conclusory statements*". Supported by evidence, past evidence in other pleadings, case law, and showing cross referencing. All of that does not fit the U.S. Attorney's narrative for the gas-lighting statement noted above. "*Gaslighting is a form of psychological manipulation in which a person seeks to sow seeds of doubt in a targeted individual or in members of a targeted group, making them question their own memory, perception, and sanity.*"

The District Court ignores Brian's, his family's proof of a setup, that Brian is innocent of the initial charge of child porn possession.

To understand the proof documents on Brian's 2255 Motion, you would have to know the dates that the Mayodan police department claims that child porn was downloaded on Brian's laptop computer (July 20, 2012 to July 27, 2012) and the dates that the NC SBI claim (July 20, 2012 until July 28, 2013) as well as the date of the police raid on Brian's house by Mayodan police and when they took this computer (August 28, 2012). These dates are the Government's Discovery Proof from Mayodan police & NC SBI report.

Threat emails Brian received in 2013 & 2015: Brian's 2255 Motion, **Document 71-1; Document #131, Filed 11/14/17,** Page 70-71. Town of Mayodan knew Brian's address before he was set up with child porn. Email Brian sent to town of Mayodan on **3/12/2012. Document #132,** Filed 11/14/17, Page 42.

Brian wrote an article on **July 12, 2012** on the Internet that he was afraid of the Mayodan police chief and was afraid that they were going to try to arrest him or his mom eight days before the alleged child porn was put on Brian's computer. For proof see Page 78-81. Mayodan police report: Discovery used by the

government attorneys: Page 46 proof that in August, 2012 before the police questioned Brian, they knew he was disabled. Page 47 again from the government's attorneys: Page 52 Brian was speaking at Mayodan town hall meetings in March, April, May, July 9, 2012. (Page 95) Proof in court records in 2014, in Brian's 2255 Motion. Connections between Investigators & Politicians Unethical & Conflict of interest. (**Document #132,** Page 57-68). Proof documents that Brian was writing articles on his USWGO website about these people on **July 16, 2012**. (Page 98), Viruses (Document #131, pg 79-89).

Affidavit from Brian's mom that she was called by someone about her being a third party custodian in December, 2013 maybe letting Brian come home under the Adam Walsh sex act before Brian's case even went to trial. Neither he nor his family would be allowed to have a phone, etc. **Document #131,** Filed 11/14/17, Page 1-2. Brian was not given any insulin his first days in jail, and he is a brittle insulin dependent diabetic. Many Medical documents prove cruel & unusual punishment while Brian was in the jail system in NC: **Page 3-18.** On many court days Brian was not given insulin until that evening. Doctor's prescription since February, 1992 is 4 or more insulin shots per day. He was taken to Cone Hospital on 11/7/2014 with hyperglycemia (glucose over 500): Page 19-21.

Brian's family sent emails to his court appointed attorney explaining about Brian's health (autism, etc), witness affidavits, etc. in December, 2013. Found out while sending these to Brian's mom in March, 2017 that Yahoo email had a note that Placke had deleted all attachments. We sent this proof to the court: (Document #131, Page 25-35).

Read **Document #134, Filed 11/14/17, Page 76-87. This is his mom (Roberta Hill)'s eye witness account as she is Brian's main caregiver trained in autism,**

was a nurses aid in NC, was at the Mayodan police station when Brian confessed falsely to downloading it and was at the June & September, 2014 hearings. She also read the discovery (police report & NC SBI report).

This was the reason Brian took the guilty plea as recorded in a supplement in his 2255. See **Document #134, Page 50**. This attorney did use the benefit or a threat of harm the night before on the phone to Brian's family when he told Brian's family to tell Brian to plead guilty: There is a common law rule in the **Fifth Amendment of our Constitution;** the rationale was the **unreliability of the confession's contents when induced by a promise of benefit or a threat of harm. Attorney Placke admitted to the court that he was not prepared for jury trial. Document #18, Filed 06/04/14, Page 1-4.**

These detectives in Mayodan police report claim they are familiar with the child porn that they claimed was in this laptop computer. The US government revealed in the Presentence Investigation Report in paragraph #13, **Document #33**, Filed 09/16/2014, page 6 of 26 that *none of the children have been identified as part of a known series by the National Center for Missing and exploited Children.*

Constitutional laws broken: **Amendment VIII; Fifth Amendment of our Constitution; Fourth Amendment, etc.**

WITNESS accounts ignored by this court: Attorney Susan Basko's Declaration **Document #46, Filed 09/30/14, Page 1-3.** Susan Basko is a lawyer for independent media, Attorney/Counsellor of the Supreme Court of the United States. (Stella Forinash) in **Document #134, Filed 11/14/17, Pages 34-72;** Kenneth R. Forinash,

TSgt, USAF, Ret) **Pages 73-75;** Roberta Hill) **Pages 76-87. Court never got a medical expert: (page 88-99).**

A **false confession** is an admission of guilt for a **crime** for which the confessor is not responsible. **False confessions** can be induced through coercion or by the mental disorder or incompetency of the accused. Proof of Brian's actual innocence, set up threats in 2013/2015, ineffective attorneys, and fraud upon the court are in various documents in Brian's 2255 Motion in November & December 2017. For more information see Stella Forinash's investigation & witness proof, Document #213, Filed 11/01/19, Page 91-137.

Both attorneys admit in court that they had ignored all of Brian's witnesses in September, 2014 (Rule 3.8).

WHEREFORE, the Appellant respectfully requests that the Court grant Appellant's/Hill's "Emergency Motion for Stay" in Docket Entry #14 of the instant case.

Respectfully filed with the Court, this the 29th day of November, 2019.

Respectfully submitted,

Brian D. Hill
Signed

Signed
Brian D. Hill (Pro Se)
310 Forest Street, Apartment 2
Martinsville, Virginia 24112
Phone #: (276) 790-3505

U.S.W.G.O.

Former U.S.W.G.O. Alternative News reporter
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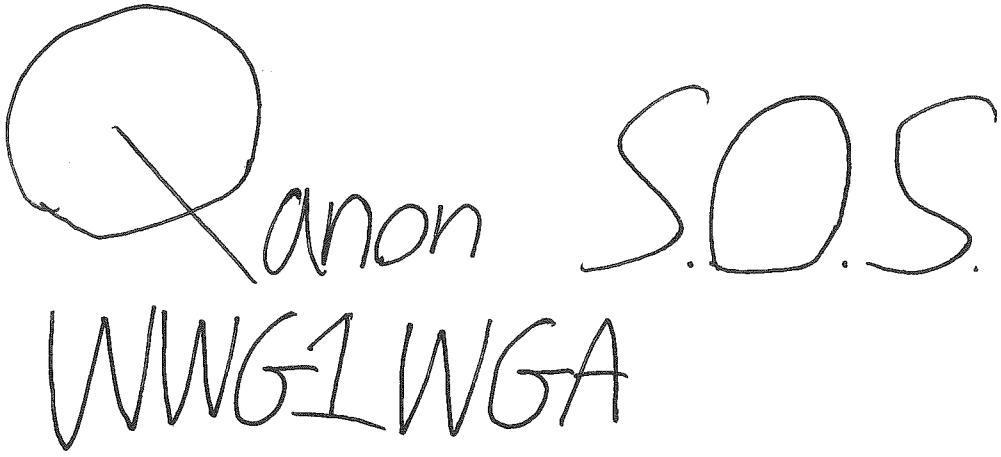

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Effective 12/01/2016

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(s) Brian D. Hill
Signed

Party Name Brian David Hill

Dated: November 29, 2019

FOR: "PETITIONER'S REPLY TO UNITED STATES REPONSE [DKT. #17] TO "EMERGENCY MOTION FOR STAY EXECUTION OF JUDGMENT OF THE DISTRICT COURT PENDING WRIT OF MANDAMUS APPEAL OR IN THE ALTERNATIVE TO STAY EXECUTION OF IMPRISONMENT PENDING WRIT OF MANDAMUS" APPEAL"

11/14/2016 SCC

CERTIFICATE OF SERVICE

Petitioner/Appellant requests with the Court that a copy of this pleading be served upon the Government as stated in 28 U.S.C. § 1915(d), that "The officers of the court shall issue and serve all process, and preform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases". Petitioner requests that copies be served with the U.S. Attorney office of Greensboro, NC via CM/ECF Notice of Electronic Filing ("NEF") email, by facsimile if the Government consents, or upon U.S. Mail. Thank You!

Petitioner hereby certifies that on November 29, 2019, service was made by mailing the original of the foregoing:

"PETITIONER'S REPLY TO UNITED STATES REPONSE [DKT. #17] TO "EMERGENCY MOTION FOR STAY EXECUTION OF JUDGMENT OF THE DISTRICT COURT PENDING WRIT OF MANDAMUS APPEAL OR IN THE ALTERNATIVE TO STAY EXECUTION OF IMPRISONMENT PENDING WRIT OF MANDAMUS APPEAL""

by deposit in the United States Post Office, in an envelope (Express mail), Postage prepaid, on November 29, 2019 addressed to the Clerk of the Court in the United States Court of Appeals for the Fourth Circuit, 1100 East Main Street, Suite 501, Richmond, VA 23219.

Then pursuant to 28 U.S.C. §1915(d), Petitioner requests that the Clerk of the Court move to electronically file the foregoing using the CM/ECF system which will send notification of such filing to the following parties to be served in this action:

Anand Prakash Ramaswamy U.S. Attorney Office 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 Anand.Ramaswamy@usdoj.gov	Angela Hewlett Miller U.S. Attorney Office 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 angela.miller@usdoj.gov
JOHN M. ALSUP U.S. Attorney Office 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401	

john.alsup@usdoj.gov	

This is pursuant to Petitioner's "In forma Pauperis" ("IFP") status, 28 U.S.C. §1915(d) that "The officers of the court shall issue and serve all process, and perform all duties in such cases ... "the Clerk shall serve process via CM/ECF to serve process with all parties.

Date of signing: November 29, 2019	Respectfully submitted, Brian D. Hill Signed Signed Brian D. Hill (Pro Se) 310 Forest Street, Apartment 1 Martinsville, Virginia 24112 Phone #: (276) 790-3505 U.S.W.G.O. I stand with QANON/Donald-Trump – Drain the Swamp I ask Qanon and Donald John Trump for Assistance (S.O.S.) Make America Great Again JusticeForUSWGO.wordpress.com

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2338

In re: BRIAN DAVID HILL,

Petitioner.

On Petition for Writ of Mandamus. (1:13-cr-00435-TDS-1)

Submitted: December 30, 2019 Decided: February 10, 2020

Before DIAZ, HARRIS, and RUSHING, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Brian David Hill, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brian David Hill petitions for writs of mandamus and prohibition seeking an order directing the district court to vacate its judgment revoking Hill's supervised release and vacate various postjudgment orders. He has also filed two motions for a stay of the district court's judgment pending the disposition of the petitions. We conclude that Hill is not entitled to relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. *Kerr v. U.S. Dist. Court*, 426 U.S. 394, 402 (1976); *United States v. Moussaoui*, 333 F.3d 509, 516-17 (4th Cir. 2003). Further, mandamus relief is available only when the petitioner has a clear right to the relief sought. *In re Braxton*, 258 F.3d 250, 261 (4th Cir. 2001). Mandamus may not be used as a substitute for appeal. *In re Lockheed Martin Corp.*, 503 F.3d 351, 353 (4th Cir. 2007).

Similarly, a writ of prohibition "is a drastic and extraordinary remedy which should be granted only when the petitioner has shown his right to the writ to be clear and undisputable and that the actions of the court were a clear abuse of discretion." *In re Vargas*, 723 F.2d 1461, 1468 (10th Cir. 1983). A writ of prohibition also may not be used as a substitute for appeal. *Id.*

Hill can seek the requested relief in an appeal of the district court's judgment, and indeed, such an appeal is currently pending before this court. *See United States v. Hill*, No. 19-4758.[*] Accordingly, we deny the petition for writs of mandamus and prohibition and

[*] We express no opinion about the merits of this appeal.

Hill's motions for a stay of the district court's judgment pending adjudication of these petitions. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED

FILED: February 10, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2338
(1:13-cr-00435-TDS-1)

In re: BRIAN DAVID HILL

Petitioner

J U D G M E N T

In accordance with the decision of this court, the petitions for writ of mandamus and prohibition are denied.

/s/ PATRICIA S. CONNOR, CLERK

JSN

RECORD NO. 19-2338

In The

United States Court of Appeals

For The Fourth Circuit

IN RE: BRIAN DAVID HILL,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF MANDAMUS AND PROHIBITION

PETITION FOR REHEARING OR REHEARING EN BANC

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RULE

I. INTRODUCTION AND RULE 35(b)(1) STATEMENT

This case involves an inferior Court aka a District Court Judge's failure, refusal, or dereliction of duty to make a ruling on any or all of the motions for sanctions and the purpose of those motions were to vacate fraudulent begotten judgments (See Dkt. #199, Dkt. #206, Dkt. #222) over the issues of fraud upon the court and over the United States of America not filing any responses contesting those motions (Id.) within the three-week response times (See Local Civil Rule of the Middle District of North Carolina, 7.3(k) MOTION PRACTICE). The Court did not make any decisions on those motions and therefore cannot be directly appealable as a matter of right, thus possible direct appeal is not substituted by Petitioner's Writ of Mandamus. Therefore it was necessary for Petitioner to have filed his Writ of Mandamus and Prohibition. No appeals that Petitioner had filed concerning the case in the Middle District of North Carolina (referring to 1:13-cr-435) can bring the very relief to correct inaction that was requested by the foregoing Writ of Mandamus under Appeal Document #2. The panel's decision to deny the Petition are on an erroneous basis and had been an error of law. The Writ of Mandamus can be used as a vehicle when a Judge refuses to make a decision on a motion for months and months without a ruling, especially motions that are uncontested by their respective response deadlines set forth by the Clerk. Especially for a case that Brian doesn't have the right to appointed counsel and appointed counsel in the criminal case was not appointed for the representation in the 2255 case but only for the matter of Supervised

Release Violation.

For decades in various Federal and State Courts and well-established case law, collateral attack or Writ of Mandamus[1] may be used to deter jurisdictional issues that may include fraud upon the court and to deter lack of actions by a District Court Judge when he/she has a responsibility to make a ruling on all valid motions (See Dkt. #199, Dkt. #206, Dkt. #222) under both Criminal and Civil Procedures (*2255 cases are brought forth under Rules of Civil Procedure and Criminal Procedure*) that bring up an important issue(s) and is well-grounded in law including the inherit or implied powers of all Courts. It is unprecedented for a Judge or a Court to be ignoring or refusing or failing to make any decision on a motion or motions to sanction the officer(s) of the court who engaged in fraud upon the court. There has been no evidentiary hearing regarding these frauds brought up in these motions, there has been no decision and those motions were filed last year. They were filed in the 2255 case, therefore no counsel was appointed to that case and Petitioner was unrepresented. When a Judge takes no action for a particular motion, it can never be directly appealed to seek remedy. Thus Mandamus is the only extraordinary remedy.

The Panel's decision deprives Petitioner of due process of law guaranteed by the United States Constitution. The Writ of Mandamus was an attempt to mandate that the District Court enter order(s) on the motion(s) to stop illegal orders/judgments, and to mandate that the Judge needs to make a decision on uncontested motions that

[1] While voidable orders are readily appealable and must be attacked directly, void order may be circumvented by collateral attack or remedied by mandamus, Sanchez v. Hester, 911 S.W.2d 173, (Tex.App. – Corpus Christi 1995).

were under well-established case law and the deadline caused by the Local Civil Rules of the Middle District of North Carolina would have caused the motion to have been decided upon by not being contested by the other party. Writ of Mandamus is the only vehicle for the issues laid out in the Petition, it is the appropriate vehicle for the issues laid out in the Petition. Any uncontested motion(s) to vacate fraudulent begotten judgements that have never been acted upon by the District Court Judge is a dereliction of duty and doesn't fix the issues of fraud contaminating the judicial machinery. The Judgments are null and void, and the inferior Court has a responsibility to rule that the fraudulent begotten judgments are to be null and void as fraud upon the court when the merit is founded can nullify the jurisdiction of the Court over a case or over a particular judgment as null and void.

In this case, Petition for Writ of Mandamus was appropriately used as a vehicle for action to have been taken on the inaction of a lower court. Under the All Writs Act and this Court's and the lower Court's inherit powers, this court and the U.S. District Court has the authority to vacate fraudulent begotten judgments and to nullify any judgments that don't have valid jurisdiction.

Respectfully, the Hon. Allison Jones Rushing, the Hon. Albert Diaz, and the Hon. Pamela A. Harris have misinterpreted the intent and spirit of the Writ of Mandamus. This Petition shall correct the misinterpretation and explain why the Writ of Mandamus should not be denied, and as to why rehearing is warranted. It was either misinterpreted or overlooked by mistake (Citing one ground for rehearing is: 1. a material factual or legal matter was overlooked in the decision)

Rehearing is warranted because the panel's decision will have far-reaching consequences for the conduct of a Judge not making any decision on uncontested motions (Id. Dkt. #199, Dkt. #206, Dkt. #222) in cases bound by the Rules of Civil Procedure and Rules of Criminal Procedure for 2255 cases, and motions that are well-grounded in law by the Court's inherit powers. The consequences that could come is that District Court Judges can and will be able to ignore motions at their own discretion and ignore evidence, and ignore frauds upon the court, doesn't even matter if those motions were well-grounded in law. For decades and centuries the Supreme Court and lower Courts have made rulings over matters of fraud, jurisdictional challenges, and maintaining their integrity. Chambers v. Nasco, Inc., 501 U.S. 32 (1991). Herring v. U.S., 424 F.3d 384, 387 n. 1 (3d Cir. 2005) ("The United States Court of Appeals for the Sixth Circuit has set forth five elements of fraud upon the court which consist of conduct: "1. On the part of an officer of the court; 2. That is directed to the `judicial machinery' itself; 3. That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth; 4. That is a positive averment or is concealment when one is under a duty to disclose; 5. That deceives the court." Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993).").

This decision by the panel threatens that integrity because then a lower Court Judge can ignore proof of frauds and deceptions all day long and then no average citizen of the United States or any citizen of the world will ever believe a word in anything presented before a Federal Court. Nobody will ever believe anything a Federal Court has to say anymore because there will be no integrity and then eventually becomes a lack of honor, no justice, just lies and frauds will be filled in

the Courts because nobody will do anything about it. Like the saying goes, "*The world is a dangerous place, not because of evil, but because of those who look on and do nothing*" – Quote from scientific genius Albert Einstein.

Should this very Court be sleeping on the issues of inaction by a Court that may lack proper or valid jurisdiction? Should this Court allow motions to forever be unanswered, and then forever just sit in the records of a Court without ever any action taken on them? When fraud is discovered should a lower Court look on and do nothing about it? Will the District Court ever be respected again in both the criminal and civil contexts by allowing/ignoring fraud(s) upon the court simply because it may be a Government counsel perpetuating these frauds?

Under the panel decision, a lower Court can repeatedly ignore motions and refuse to make a decision on them to vacate any fraudulent begotten judgments while forcing Petitioner to comply with unconstitutional, illegal and void judgments, and then those that perpetuate fraud(s) upon the Court can evade legal accountability for this misconduct. They can commit whatever crimes or misconduct that they want to and never be held accountable for any of it. That is a serious and egregious form of miscarriage of justice and legal abuses that will forever be considered acceptable.

If this Court can reconsider its decision to deny the Petition, then the Judge can be compelled to make a decision on all its undecided motions that were uncontested by the counsel of the United States of America and not yet ruled upon, and then if any are unfavorable then the Petitioner can file an appeal for any of those decisions.

II. BACKGROUND

The Writ of Mandamus originally in this case will be attached to this Petition as attachment, supporting documentation and will explain the background.

III. ARGUMENT

i. Rehearing Is Warranted Because The Panel's Decision Renders A Broad Category Of Judicial Officer Misconduct (fraud(s) upon the Court) Judicially Unreviewable, In violation Of well-established case law and Supreme Court Precedent.

The panel's sweeping refusal to review over the inactions of the lower Court, in the face of two potential vehicles of jurisdictional challenges and fraud upon the court, is contrary to controlling case law.

"*Similarly, a writ of prohibition "is a drastic and extraordinary remedy which should be granted only when the petitioner has shown his right to the writ to be clear and undisputable and that the actions of the court were a clear abuse of discretion." In re Vargas, 723 F.2d 1461, 1468 (10th Cir. 1983). A writ of prohibition also may not be used as a substitute for appeal. Id.*"

There is no substitute for appeal in this Writ of Mandamus when there is inaction to valid motions requesting relief for fraud(s) upon the Court. Until action is taken on a particular motion(s), there is no avenue of direct appeal. Writ of Mandamus is appropriate as a vehicle to review and to direct relief for an inaction by a lower Court.

A judgment is void, and therefore subject to relief under Rule 60(b)(4), only if the court that rendered judgment lacked jurisdiction or in circumstances in which the court's action amounts to a plain usurpation of power constituting a violation of due process. United States v. Boch Oldsmobile, Inc., 909 F.2d 657, 661 (1st Cir. 1990).

Citing (Ms. *6-8) Ex Parte Ford Motor Credit Co., 607 So. 2d 169 (Ala. 1992), the Court examined when a trial judge may be held to have exceeded his or her discretion in failing to rule upon a pending motion, noting "... [W]hile the writ will issue to compel the exercise of discretion by a circuit judge, it will not issue to compel the exercise of discretion in a particular manner. On the other hand, mandamus is an appropriate remedy when there is a clear showing that the trial judge abused his or her discretion by exercising it in an arbitrary and capricious manner." Ms. *7. Concluding (Ms. *14-15), the Court reasoned "the circuit court exceeded its discretion by failing to rule on, and instead 'taking under advisement' the motion to dismiss the third-party complaint based on improper venue while allowing discovery on the merits to proceed and setting deadlines for summary-judgment motions and setting the trial date. Therefore, we issue the writ and direct the circuit court to issue an order addressing the merits of [International Paper's] motion to dismiss based on improper venue."

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")

In re Harrell, No. 01-11-00760-CV (Tex. App. – Houston [1st Dist.] 1/26/2013) (mem. op.)(orig. proc.). The Court of Appeals stated:

> A court of appeals may not prescribe the manner in which a trial court exercises its discretion, but it may, by mandamus, require a trial court to exercise its discretion in some manner. A trial court may not arbitrarily halt proceedings in a pending case, and mandamus will lie to compel a trial court to entertain and rule on motions pending before it. A trial court is required to consider and rule upon a motion within a reasonable time. If a motion is properly filed and pending before a trial court, the act of considering and ruling upon that motion is ministerial, and mandamus may issue to compel the trial court to act. (citations omitted).

ii. The Panel misinterpreted or overlooked the purpose of the Writ of Mandamus and was sidetracked by the Emergency Motion for Stay of Judgment.

Respectfully, the Panel made human errors of judgment by overlooking the intent, spirit, and purpose of the Writ of Mandamus.

USCA Appeal, 19-2338, Doc: 19, pg.2: "Brian David Hill petitions for writs of mandamus and prohibition seeking an order directing the district court to vacate its judgment revoking Hill's supervised release and vacate various postjudgment orders."

Actually that is incorrect and was not the intent, spirit, and purpose of the Writ of Mandamus. It wasn't merely asking the Appeals Court to vacate all fraudulent begotten judgments of the District Court, but was asking to mandate that the lower Court enter its decision on the motions asking to vacate all fraudulent begotten judgments. The Arguments pushed in the Writ of Mandamus are as follows:

Citing "Argument I. THIS COURT SHOULD ISSUE A WRIT OF MANDAMUS DIRECTING THE DISTRICT COURT TO ENTER ITS ORDER VACATING ANY OR ALL FRAUDULENT BEGOTTEN JUDGMENTS" page

21 of Document #2, Writ of Mandamus itself.

Citing "II. THIS COURT SHOULD ISSUE A WRIT OF PROHIBITION DIRECTING THE DISTRICT COURT TO NOT ENFORCE IT'S FRAUDULENT BEGOTTEN JUDGMENTS" page 23 of Document #2, Writ of Mandamus itself.

The decision by the panel was out of misinterpretation and misunderstanding what the purpose of the Writ of Mandamus was for. It wasn't to make decisions of the District Court, but to direct the District Court to take action on the motions to vacate the fraudulent begotten judgments, if that makes sense.

Also citing directly from the Writ of Mandamus, is the relief requested was not to vacate the post-judgment orders, but to order the lower court to enter an order on the motions to vacate the post-judgment orders that such merits by an officer of the Court are believed to be fraudulently based.

Citing: "This Court should issue a writ of mandamus directing the district court to immediately file orders concerning any and all issues involving fraud upon the court and that the issues of fraud should no longer be ignored, and that the Court file the order(s) within a fixed time period concerning the fraudulent begotten judgments entered under Document #54, Document #122, oral Judgment (Doc. #186) on September 12,2019 and written Judgment under Document #200 concerning the wrongful imprisonment of Petitioner and violating Petitioner's constitutional and due process rights including but not limited to impartiality and that frauds affect the integrity throughout the entire criminal case. Additionally, this Court should stay district court proceedings or judgments, pending resolution of this petition." page 24 of Document #2, Writ of Mandamus itself.

Citing: "This Court should issue a writ of prohibition directing the district court to immediately prohibit execution and enforcement of any or all of the oral Judgment (Doc. #186) on September 12, 2019 and written Judgment under Document #200 concerning the wrongful imprisonment of Petitioner. Additionally, this Court should stay district court proceedings or judgments and this Court should stay the imprisonment, pending resolution of this petition." page 25 of Document #2, Writ of Mandamus itself.

The Panel erred and overlooked the case law when they concluded that "*He*

has also filed two motions for a stay of the district court's judgment pending the disposition of the petitions. We conclude that Hill is not entitled to relief." The motions for stay were appropriate in this instance as motions were already filed in the District Court disproving the Government by showing its lies (referring specifically to Anand Prakash Ramaswamy) and cross-referring (or cross-examining) the statements of the Government to being of lies, deception, and misinformation in their attempts to always prevail in the criminal case of United States v. Brian David Hill. Then they are served a copy of those motions by Notice of Electronic Filing along with a docket-note from the Clerk of the Court that a "Response due by" a certain date. Three weeks' time to respond to a motion according to Local Civil Rule M.D.N.C., 7.3(k), and if uncontested then a Court can make a decision on the uncontested motion(s). Usually if the uncontested motion(s) is well-grounded in facts and law, there should be no issue granting the motion(s) by default in favor of the Movant.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. Kerr v. U.S. Dist. Court,426 U.S. 394, 402 (1976); United States v. Moussaoui, 333 F.3d 509, 516-17 (4th Cir. 2003). Further, mandamus relief is available only when the petitioner has a clear right to the relief sought. In re Braxton, 258 F.3d 250, 261 (4th Cir. 2001). Mandamus may not be used as a substitute for appeal. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007).

Again, in this case, an indecision on uncontested motion(s) can be brought in a Writ of Mandamus petition, especially with the proven fraud(s) upon the Court. It

is understandable that judges don't want to look through the hundreds to thousands of pages of case files to find the proof that Petitioner has demonstrated, but this is a serious matter which may allow an officer of the court to get away with permanent irreparable harm and misconduct such as defrauding the judicial machinery and defaming the party and making it a permanent victim that cannot seek any relief.

There cannot be an appeal on an indecision to a motion(s). Writ of Mandamus was the only vehicle challenging an indecision which is a failure or refusal to make any decisions on valid motions that are well-grounded in law.

While voidable orders are readily appealable and must be attacked directly, void order may be circumvented by collateral attack or remedied by mandamus, Sanchez v. Hester, 911 S.W.2d 173, (Tex.App. – Corpus Christi 1995). Arizona courts give great weight to federal courts' interpretations of Federal Rule of Civil Procedure governing motion for relief from judgment in interpreting identical text of Arizona Rule of Civil Procedure, Estate of Page v. Litzenburg, 852 P.2d 128, review denied (Ariz.App. Div. 1, 1998).

When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, *Orner v. Shalala,* 30 F.3d 1307, (Colo. 1994). Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside, Jaffe and Asher v. Van Brunt, S.D.N.Y.1994. 158 F.R.D. 278.

USCA Appeal, 19-2338, Doc: 19, pg.2: "Hill can seek the requested relief in an appeal of the district court's judgment, and indeed, such an appeal is currently pending before this court. See United States v. Hill, No. 19-4758.."

That is not true, that is not the case. That direct appeal under case No. 19-4758 is ONLY concerning the revocation of Petitioner's supervised release. The Attorney representing Petitioner over that matter cannot represent Petitioner over the separate matters of the motions for sanctions in regards to fraud(s) upon the court. That Attorney cannot argue matters of fraud upon the court because those were not on the record for that appeal. Fraud upon the Court cannot be directly appealed. Appeals can only be reviewed for what was on the record at the time the judgment was entered in a case. Appeals can only be to find errors and abuses of discretion. Fraud(s) upon the court was not known, not discovered and/or not brought to the attention of the Court by the time the order was entered. Appeal under No. 19-4758 cannot deal with the issues of fraud upon the Court because it was not part of the record for that direct appeal. It was brought up after the revocation of Supervised Release which direct appeal was entered under Case No. 19-4758. Therefore this Writ of Mandamus cannot possibly be a substitute for appeal under Case No. 19-4758. Petitioner cannot seek the requested relief under No. 19-4758, because the motions for sanctions and proven evidence of fraud(s) were not entered prior to the judgment and revocation of Supervised Release. It takes time after judgment to research/investigate and expose the fraud(s) upon the Court concerning that very judgment. Direct appeal cannot provide remedy for frauds upon the Court. Appeal under Case No. 19-4758 cannot provide relief for fraud(s) upon the Court because the motions for sanctions that were not ruled upon were filed and entered after the judgment to revoke Petitioner's supervised release.

Also this Court should review over Document #18 in USCA4 Appeal: 19-

2338. Thus that document will be attached as well, after attaching the Petition for Writ of Mandamus and Prohibition. Both are attached as evidence disproving the opinion(s) of the Panel and thus the case needs to be reopened. This Court of Appeals needs to be investigating the misconduct of Anand Prakash Ramaswamy and may need to sanction him and ask him questions as to why he is defrauding the District Court as well as possibly defrauding the U.S. Court of Appeals.

Also it should be noted that the Panel was sidetracked by the "Emergency Motion for stay execution of judgment of the District Court pending Writ of Mandamus Appeal or in the alternative to stay execution of imprisonment pending Writ of Mandamus Appeal" [Dkt. 14]. They assumed that it was another attempt of the motion for stay of imprisonment filed by counsel in Appeal Case No. 19-4758. That is not the case. Frauds cannot be brought up by counsel as that was not part of the record in that direct appeal. With the fraud(s) being discovered after direct appeal and then motion(s) were filed concerning this fraud, it was the Court's duty to vacate those judgments and refuse to enforce those judgments as they may be illegal and void judgment(s). Therefore stay of imprisonment was warranted if the District Court had done their duty but they have shirked their responsibilities by their inactions. Taking no action on any of the frauds is an issue that Mandamus was meant for. Mandamus and Prohibition is an appropriate vehicle for the issue of fraud(s) and challenging jurisdiction when appeal is not available due to a Court's lack of action on valid motions challenging jurisdiction and bringing evidence and arguments of fraud to the Court's attention.

IV. CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court grant this petition for rehearing or rehearing en banc. Petitioner respectfully requests that the Writ of Mandamus case be re-opened so that the District Court be compelled to take action on the motion(s) that they have yet action upon.

Respectfully Submitted,

BRIAN DAVID HILL
Pro Se

2/11/2020

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Dated: February 11, 2020

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 11th day of February, 2020, I caused this Petition for Rehearing or Rehearing En Banc and attachments to be filed with the Clerk of the Court by mailing the foregoing (Certified Mail tracking no. 7019-2280-0000-8211-5086) with the Clerk of the Court then request that pursuant to 28 U.S.C. §1915(d) that the Clerk of the Court move to electronically file the foregoing using the CM/ECF system, which will send notice of such filing to the following registered CM/ECF users:

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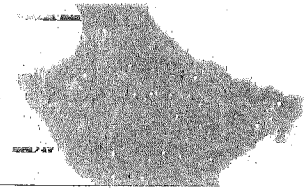

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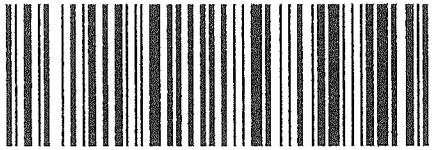

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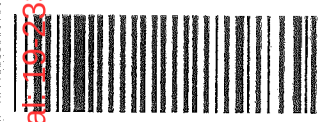

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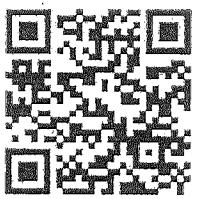

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FILED: April 28, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2338
(1:13-cr-00435-TDS-1)

In re: BRIAN DAVID HILL

Petitioner

O R D E R

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.

For the Court

/s/ Patricia S. Connor, Clerk