

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

In re: Joseph Cammarata

Case No. 25-1188

MOTION TO PROVIDE NEWLY DISCOVERED AND DEVELOPED DISPOSITIVE
EVIDENCE THAT REQUIRES CONSIDERATION FOR THE INSTANT MANDAMUS
PETITION

NOW COMES the Petitioner, Joseph Cammarata, pro se, seeking relief through this Court's inherent authority under the ALL Write Act, 28 U.S.C. 1651, and respectfully submits this Motion for the consideration of newly discovered and developed dispositive evidence, in support of his Emergency Petition for a Writ of Mandamus currently pending before this panel. New evidence has emerged since the initial filing of the petition, warranting immediate consideration and relief.

INTRODUCTION

This motion presents newly discovered and developed evidence that is indisputably dispositive and mandates the application of the controlling United States Supreme Court precedent and Third Circuit law that this Court has thus far avoided in the direct appeals associated with the three interconnected federal prosecutions against Petitioner. This evidence not only further

satisfies the criteria for mandamus relief but also demonstrates the necessity for immediate intervention to rectify the ongoing miscarriage of justice resulting in over three and half years of wrongful prosecution and deprivation of liberty and property without due process of law. The new evidence also underscores unrefuted misconduct and constitutional violations, including Rule 5(f) of the Federal Rules of Criminal Procedure and the Due Process Protections Act ("DPPA"), further tainting the proceedings against the Petitioner.

SUMMARY OF THE NEWLY DISCOVERED EVIDENCE

The newly added documents that require consideration further corroborate the previously submitted evidence and demonstrate the pervasive due process violations, judicial bias, and constitutional breaches in all of the interrelated underlying cases. These documents provide critical insights into the procedural and substantive failures in the handling of the civil and criminal matters, highlighting the systematic efforts to suppress exculpatory evidence and obscure legal defects in the government's case. The pending Petition for a Writ of Mandamus has already demonstrated, and the government has failed to refute, the existence of pervasive judicial bias, prosecutorial misconduct, unaddressed constitutional violations, the three year expiration of an illegal asset freeze, and a pattern of structural errors that have tainted the entirety of these proceedings.

This newly discovered evidence is in the form of filed documents, including but not limited to, case # 23-2110 ECF# 69 and 70, case # 24-1381 ECF# 68, 69, and 70 (while maintaining the

reliance on ECF# 22 and 42), case # 24-1983 ECF# 42 and 50 (untimely extension request), and 24-cv-1000-ZNQ in the D.N.J., further underscore the urgency of the mandamus relief sought.

LEGAL ARGUMENTS FOR NEW EVIDENCE

A. Fraud Appeal (Case # 23-2110 ECF# 69 and 70) Unaddressed Controlling Law and Due Process Protections Act Violations

i. Refusal to Apply Controlling Law

The newly developed evidence reveals that the district court and the Third Circuit have disregarded the most exculpatory and controlling law established by the U.S. Supreme Court and Pennsylvania Law on Assignments, both of which were presented at trial and in post-trial motions.

These precedents incontrovertibly demonstrated that Mr. Cammarata legally assigned his trades, properly filed claims in the names of the assignees and fully disclosed them as beneficial owners on every claim form filed. All of this was legal conduct, in accordance with the presented laws and proved that the government's entire theory of prosecution surrounding their "two essential facts required" were completely fabricated and materially misrepresented to the grand jury to indict and the trial jury to convict.

Specifically, the district court and now the Third Circuit has willfully neglected to apply the controlling law from the United States Supreme Court decision in *Sprint Communications Co., L.P. v. APCC Services, Inc.*, 554 U.S. 269 (2008), and the binding Pennsylvania Law of Assignments (1939), which categorically exonerate Petitioner by proving that the underlying transactions were lawfully assigned and fully disclosed as required under the securities class action settlement framework.

ii. Due Process Protections Act and Brady Violations

The district courts, in both criminal proceedings, committed documented and undeniable violations of the Due Process Protections of 2020 ("DPPA") and Fed. R. Crim. P. 5(f) ("Rule 5(f)") which were prejudicial structural errors and permitted the same government prosecutors in both criminal trials, to subvert their Brady obligations and the harsh consequences mandated. Under the Due Process Protections Act of 2020, signed into law on October 21st, 2020, Rule 5(f) of the Federal Rules of Criminal Procedure requires the district court to issue and oral and written order at the first court appearance, instructing both prosecution and defense counsel of the prosecutor's obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. The district court in both of the criminal trials failed to comply with this mandate, depriving the prosecution of the critical duty to disclose exculpatory evidence, as expanded by the DPPA.

These failures were not harmless errors. if the prosecution was properly advised of its duty under Rule 5(f), they would have been compelled, by court order, to disclose the exculpatory evidence

that was presented by Mr. Cammarata at trial, including the Supreme Court's Sprint Communications decision and the Pennsylvania Law of Assignments. In both criminal trials, the prosecution's mandated disclosure of that material and exculpatory law and evidence, would have undermined the entire basis of the government's cases. Both district courts' failures to issue an order, as required by Rule 5(f), prevented the (same prosecutors in both cases) from fulfilling their "affirmative duty to SEEK OUT AND PROVIDE to the defense, all material evidence that is favorable to the accused". *Strickler v. Greene*, 527 U.S. 263, 280-81, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999).

The suppressed and unapplied exculpatory evidence and law provided by Mr. Cammarata at trial and post-trial motions, including the principal that the assignee of class action claims is the beneficial owner and has the rights to file claims as a first-party, in their own name, was not addressed by the district court. The prosecution even conceded this point in their closing arguments, acknowledging that the conduct was legal, yet Mr. Cammarata was wrongfully convicted. The district courts' failures to issue the required orders under Rule 5(f) meant that the crucial and material exculpatory evidence was never given the proper (or any) weight in the trial process. Had the district court not violated Rule 5(f) and the prosecution in both criminal cases, would have been properly warned and advised of their obligations to Brady and its progeny, the evidence presented at trial by Mr. Cammarata, would have conclusively established that his conduct was lawful, rendering the charges against him baseless (and not an offense against the United States).

This Court's Order, ECF# 70 of 23-21110, further elucidates the Third Circuit's improper refusal to apply the controlling Supreme Court and Pennsylvania law that indisputably negates the government's completely wrong "two essential facts", which their entire theory of prosecution relied upon, and belied all the elements of the alleged offenses in the fraud conviction. This ongoing failure to apply the controlling law or address the Brady and Rule 5(f) violations, constitutes a due process violation that is contrary to fundamental justice, that mandates immediate corrective action by this Panel.

B. Obstruction of Justice and Undue Delays

Despite the multiple urgent and emergency appeal briefs pending before this Court, the government refuses to respond or refute the charges of misconduct against them. There are three separate pending appeals in the Third Circuit that were filed as early as June 2024 and the government has either refused to respond or request numerous extensions, missing timely response dates, and delaying justice to avoid exposing what may be considered judicial corruption by the parties involved.

i. Case # 24-1381 ECF# 42 and 42, Judicial Recusal, SEC Misconduct, and More

The initial appeal brief (ECF# 22) was filed in June of 2024 and provides overwhelming evidence of documented bias, refusal to recuse, many Constitutional violations including the first amendment (repeated deletion of bias comments from hearing testimony), Sixth amendment

(repeated denial of criminal defense counsel and rights to a fair trial), Fifth Amendment (multiple denials of Due Process, fatally defective indictments, and multiple constructive amendments to the indictments at trial), Seventh Amendment (denial of a trial in the SEC civil case, by abuses of discretion and clear errors of law to grant an illegal summary judgment based on collateral estoppel), Eight Amendment (excessive fines and penalties from the asset freeze), conflicts of interest, simultaneous hearings held without notice, the lack of subject matter jurisdiction, unlawfully enforcing an expired asset freeze (for over three years), several judicial actions in the absence of all jurisdiction, and many other well established failures of legal procedures and judicial misconduct, all of which require the disqualification of the district judge. The subsequent appeal brief, ECF# 42, was to appeal the district judge's order surrounding the improper granting of summary judgment to the SEC based on the erroneous application of collateral estoppel, clear error, and the lack of subject matter jurisdiction.

The SEC has requested many extensions and involved family members' health to obtain several more months, until they can delay no more and had to employ defensive procedural efforts to avoid responding. There is presently an absurd stay granted to the Commission on the 24-1381 appeal brief, purporting to rely upon the ruling of 23-2110. While these are interrelated cases, any relevant decision in 23-2110 would not dismiss the disqualification of the district judge, the clear errors, abuses of discretion, illegal enforcement of an illegal and expire asset freeze, or his lack of jurisdiction. Additionally, there is the ripe Emergency Motion to Immediately Release Assets Improperly Frozen (ECF# 68), that has caused over \$100 million in documented damages and continues to cause irreparable damage, requiring immediate action by this Court, even if stayed.

ii. Case # 24-1983 ECF# 42 and 50, Criminal Tax Conviction Appeal

This direct appeal brief for the criminal tax case, features the same debauched prosecutors who, again, engaged in egregious misconduct, made material misrepresentations to the grand jury and district court, not only withheld the requested exculpatory IRS 1042-S forms, but actually deleted all of the critically exculpatory business expenses and accounts from the tax trial discover index, despite them being presented on the fraud discovery index. The business expenses and losses proving there was never a tax due and owing (an essential element of the alleged tax offense), was always withheld from the Petitioner, in spite of the requests and court order to provide them. The tax trial, among many other issues, included Brady and Rule 16(E) violations, presentation of hearsay evidence, constructive amendments to the indictment, and Fed. R. Evid. 403 violations. These undeniable constitutional infractions, like in the SEC appeals, provide no defensible argument in which the government could assert, so they refuse to respond, refute, or acknowledge the misconduct. Rather, the government requests continuous extensions to cause undue delay and avoid exposing the pervasive constitutional breaches that demonstrate a miscarriage of justice, requiring Mr. Cammarata's immediate release from prison.

Remarkably, after numerous extension requests and grants in the 24-1983 case, the government requested a, last minute, verbal extension on March 31st, 2025, that was granted by the Court, requiring the government's response brief by April 21st, 2025, at 5pm. However, after two weeks past the filing deadline, the government, untimely requested yet another extension. While the government claimed that Mr. Cammarata "graciously" consented to the very untimely filed

extension request through his counsel, it is absolutely untrue. In fact, Mr. Cammarata had not spoken to his counsel in months, did not and would not have consented to another extension request, after the many already and missing the filing date by two weeks.

The Petitioner had spoken to the Third Circuit several times since the past due date of April 21st, 2025, to confirm that the government failed to file any timely response or extension and was assured they had missed the filing deadline. This is another example of Mr. Cammarata being prejudiced by the government's continued misconduct and failure to respond, which is resulting in vindictively keeping him from obtaining due process and justice, for over three years now.

iii. Case # 25-1188, This Petition for a Writ of Mandamus is also Unopposed.

Similar conduct has also been exhibited in this case where, again, the government has failed to refute any of the charges of the Petition for a Writ of Mandamus. This consistent pattern of failing to respond, causing undue legal delays, and obstructing justice, should now be identified by this Panel as the admission of guilt and desire of the government to maintain this miscarriage of justice to keep Mr. Cammarata wrongfully incarcerated, stripped of his liberty, and property for as long as they could before a Court of integrity that is willing to honor their oath to justice and finally take corrective action.

C. The Same Bias Comments and Actions, Deleted from the Transcripts of Two Separate Hearings

Since the filing of the opening brief for Case # 24-1381, the Petitioner has attempted to obtain the audio recordings from the hearings in which the same biased comments and critical evidence is deleted from the transcripts. The government has denied these requests, along with the requests to obtain the seized property taken by Mr. Cammarata on November 3rd and November 17th, 2021. Both of these denied request contain evidence of innocence for Mr. Cammarata that was never provided, and the audio recordings would prove that the same most biased and improper comments made in two separate hearings have been deleted from the transcripts, in violation of the First Amendment.

Even if this Panel bifurcates the multitude of other unchallenged constitutional issues requiring mandamus relief, the First Amendment denial of the public's rights to access the court's transcripts has been a longstanding staple for the transparency of judicial proceedings, especially criminal. This precise issue has been thoughtfully addressed in the dissent of *Reed v. Bernard*, 976 F.3d 302. The Honorable Judge Krause gave an extensive and well-supported opinion on the matter that has been argued as part of the instant Mandamus Petition (and in referencing ECF# 22 from case # 24-1381). "Despite Supreme Court precedent and our own case law holding that the public is entitled to a complete and verifiable record of proceedings to which the right of access attaches the [district court] allows the government [or district court] - having refused to produce any transcript or audio recordings of its own - to also prohibit the public from making

even an unobtrusive recording in circumstances where there is no other means of obtaining a complete and verifiable record of what transpired. “Reed v. Bernard @ 308. This should be particularly troubling to this Panel in that the deleted sections of the transcript occurred (both times) where the district court is already accused of bias and an undisclosed family conflict, and in relation to one of the judge's first on the record comments being, "I consider this a crime against the courts!". This first occurred in the SEC civil case, TRO hearing on November 9th, 2021 (when Mr. Cammarata was not noticed and was in a simultaneous criminal bail hearing in Miami). Then again, in Mr. Cammarata's criminal sentencing hearing on June 6th, 2023, where Mr. Cammarata was forced to make his own pro se sentencing arguments, due to the district court's improper and constant denial of untainted Sixth Amendment criminal defense funds for post-trial motions, the criminal tax case, and SEC civil case. At the sentencing hearing, Mr. Cammarata had heard enough of the district judge's unsupported ad hominem attacks and told the district court judge that, he "had been biased and corrupted from the start of the proceedings and one of the court's first on the record comments, was, 'I consider this a crime against the courts!'" . Curiously, that comment is once again, also removed from the criminal sentencing hearing transcript, like the TRO hearing. This behavior should be quite telling to this Panel's review, of not only the First Amendment violations, but also the clear "appearance of bias" and its continued cover-up.

What is most troublesome is the important reason for the First Amendment's requirement of access to the complete and accurate record, is to provide full transparency to the public and ensure that any misconduct or injustice can be available for appropriate review. The Supreme Court has held, "By subjecting the police, prosecutors, and judicial process to extensive public

scrutiny and criticism," the right also plays an essential role in "effective judicial administration". Sheppard v. Maxwell, 384 U.S. 333, 350, 86 S. Ct. 1507, 16 L. Ed. 2d 600 (1966). "And the right reaches the zenith when it comes to criminal prosecutions, which are the matters of the "high[est] concern and importance to the people." Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 575, 100 S. Ct. 2814, 65 L. 2d 973 (1980). This inspection of the record and "extensive scrutiny" is exactly what the district court and government have been attempting to avoid by participating in what appears to be a massive cover-up of documented constitutional infractions, denial of due process, and misconduct.

D. The Government Also Fails to Provide a Single File from Multiple FOIA Requests Pursuant to 5 U.S.C. 552 and 552(a)

To further illustrate the coordinated collusion of multiple government agencies to ensure this miscarriage of justice continues, Mr. Cammarata has made several Freedom of Information Act ("FOIA") requests in February 2025. The FOIA requests were made pursuant to 5 U.S.C. 552 and 552(a) and were required to be responded to within 10 days and they have all taken months to simply decline. The requests were made to the DOJ, SEC, FBI, IRS, CBP and the U.S. Marshals Service, which were just some of the government agencies that has investigated and prosecuted Mr. Cammarata since 2019. There were over 5.5 million pages of discovery in the fraud trial alone, and yet each of these government agencies has responded that they have NOTHING responsive! The actual request made to each one was for, "Any and all emails, notes or memos, both interagency and externally related to any of the matters involving Joseph

Cammarata. Including, but not limited to the following: Case # 21-cv-4848 in the Eastern District of Pennsylvania, Case # 21-cr-427 also in E.D. PA. Also, in the District of New Jersey, case # 22-cr-639 and 24-cv-1000."

Notably, every agency has now replied (two months later), stating they have not a single email, memo, or page to provide. That is obviously absurd, as there are thousands of responsive documents, and for every agency to make bald faced assertions to having none of these items are additional constitutional and statutory violations by these agencies that continue to subvert the laws. The Petitioner has many of the FBI 302 memos, emails between the FBI, DOJ, and U.S. Marshals, memos between the SEC and DOJ, and many other items of which are required to be legally produced, but again the government has refused to comply. They simply say that there is nothing responsive and or available, then provide contacts information for appeals, which have yet to answer a phone or reply in weeks.

These emails, memos, and notes, of which are certainly available and never provided, demonstrate a tremendous amount of exculpatory evidence that was also suppressed, and continue to be, but will also show the evidence of the corrupted collusion amongst the agencies that Mr. Cammarata has personally seen in emails from March of 2022.

E. SEC Opposition to Emergency Motion to Release Frozen Assets (24-1381 ECF# 68), Permits the Ongoing Asset Freeze Violations

The SEC's opposition (ECF# 69) to Mr. Cammarata's emergency motion to release improperly frozen assets, (ECF# 68), filed on April 16th, 2025, provides further evidence that the district court and SEC continues to maintain an asset freeze that expired as of November 24th, 2021, under Rule 65(b)(2), without any valid basis, or due process of law. The enforcement of this freeze, despite the undenied expiration of the TRO and the lack of any lawful adjudication extending it beyond the 14 day maximum term (under the explicit language of Rule 65(b)(2)), constitutes a direct violation of due process and the right to property under the Fifth Amendment. The SEC's opposition also highlights the failure to refute or address any of the core arguments advanced by Mr. Cammarata, which are all supported by law and the record. The fact that the Third Circuit has refused to apply controlling law and has still not ruled to enjoin the SEC and district court from unlawfully enforcing a known invalid and expired asset freeze, is complicit in the failure of ethics and justice, in allowing this unconscionable misconduct and irreparable harm to continue.

CONCLUSION

The opening Petition for the Writ of Mandamus (25-1188 ECF# 1), the applicable referenced documentation, and the record all demonstrate undeniable judicial bias, including improper ex parte communications with the presiding district court judge of the tax trial (during the proceedings), deletion of hearing testimony from multiple transcripts, undisclosed family conflicts, inappropriate comments to Mr. Cammarata's wife that were biased and improperly

presumed guilt, clear errors of law and abuses of discretion to grant the SEC summary judgment on collateral estoppel, illegally granting an ex parte TRO, willful denials of due process and failure to ever remedy them, enforcing an invalid and expired asset freeze for three years, and effecting other misconduct and judicial acts in the absence of all jurisdiction. While all of these charges remain unchallenged, the newly presented evidence in this motion only buttress what is proven to be a three-year miscarriage of justice. This collective conduct, amongst all three federal prosecutions against Mr. Cammarata necessitate the immediate disqualification of the district judge and reversal of all orders in violation of due process.

For the foregoing reasons, Petitioner respectfully requests that this Court grant the relief sought in the Emergency Petition for a Writ of Mandamus, apply the controlling law as required, vacate the underlying orders and convictions, and provide any other relief deemed just and proper.

Respectfully submitted,

/s/ Joseph Cammarata

Joseph Cammarata

Dated: May 20th, 2025

CERTIFICATE OF SERVICE

I hereby certify, this 20th day of May, 2025, that I caused to be served a true and correct copy of the foregoing "Motion to Provide Newly Discovered and Developed Dispositive Evidence that Requires Consideration for the Instant Mandamus Petition" to be served on the following parties:

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Joseph Cammarata

/s/ Joseph Cammarata