

No. 23-16039

**United States Court of Appeals
for the Ninth Circuit**

ANDREW U. D. STRAW,
Appellant,

v.

UNITED STATES,
Appellee.

**ORAL ARGUMENT
NOT REQUESTED**

Appeal from the United States District Court for
the Northern District of California,
San Francisco Division
Case No. 3:23-cv-2265-TLT
The Honorable Judge Trina L. Thompson

PETITION FOR REHEARING *EN BANC*



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PETITION

I, appellant Andrew U. D. Straw, make the following PETITION FOR REHEARING *EN BANC*:

The proceeding involves one or more questions of exceptional importance, each of which must be concisely stated; for example, a petition may assert that a proceeding presents a question of exceptional importance if it involves an issue on which the panel decision conflicts with the authoritative decisions of other United States Courts of Appeals that have addressed the issue.

FRAP Rule 35(b)(1)(B).

REASONS FOR THE PETITION

1. My appeal was dismissed and the erroneous lower decision affirmed by two senior judges and a sitting judge of this Court as a panel on March 28, 2024. [Dkt. 19-1](#).
2. Only one reason was given and it was an erroneous reason, contrary to fact and law. The panel in its 2 page order said that I had not alleged facts that could plausibly be an actionable claim.

FACTS

3. I alleged that **I was denied certiorari 13x**. This is a fact. No one disputes it. My panel does not dispute it. The Court below does not dispute it.
4. I alleged statutory and constitutional rights in those 13 cases that desperately needed U.S. Supreme Court review, including taking away my 5 law licenses illegally and over the strong objections of the [Virginia State Bar](#)

and my national property expert agreed with VSB and [went even farther](#) in my favor.

5. Ruining decades of my work to be a lawyer and civil rights leader for people with disabilities with immoral and illegal judge actions constituting disability discrimination is [an outrage](#) and **the U.S. Supreme Court OWED ME a merits decision** and relief.
6. These are the operative facts. The appellee does not dispute them.

LAW

7. The law is that there was a constitutional right to a merits decision prior to the Judges Act of 1925. We know this is true because the U.S. Supreme Court said it was true in 1926 in a majority opinion written by **Justice Brandeis**. *Moore v. Fidelity & Deposit Co.*, 272 U.S. 317, [321](#) (1926).
8. Justice Brandeis stated in no uncertain terms on page 321 of that decision as follows: “The general purpose of the Act of 1925 was to relieve this Court by **limiting further the absolute right to a review by it.**”
9. Ergo, there WAS an absolute right to a review by the U.S. Supreme Court. This is not disputable. My panel does not explain or dispute this legal fact.
10. The panel decision is in direct conflict with the *Moore* U.S. Supreme Court holding and this justifies *en banc* review.
11. My position, not disproven either here or below, is that there is a fundamental right to an appeal to the U.S. Supreme Court and with it the **right to a merits decision.**

12. The fire wall erected by that 1925 law of Congress tears down the absolute constitutional right and replaces it with a justice discretion. A discretion that now limits access to a merits decision to about **1%** of the people who petition for a writ of certiorari. This is in my brief and not disputed or explained differently by the panel.

13. I have asserted that there is an Article III U.S. Constitution right for the U.S. Supreme Court to be **open to all** because the existence of a Court means it is open for business and providing decisions. This is in my brief. The panel does not dispute it. That's what open means.

14. I have asserted that there is a First Amendment right for the U.S. Supreme Court to be **open to all**, just like the lower courts. This is in my brief. The panel does not dispute it or explain it differently.

15. I have asserted a Due Process right to a merits decision as a matter of fundamental fairness under the Fifth Amendment precisely because there is an absolute constitutional right to a merits decision that Congress cannot change without a constitutional amendment. This is in my brief. The panel does not dispute it or explain it differently.

DISCUSSION

16. To oppose these indisputable facts and irrefutable fundamental laws in our constitutional system, the panel simply says no.

17. Saying no is not enough. This Court must show that I did not allege facts that implicate these rights when **I did provide the operative facts.**

18. This Court must show that there no law to support the right I asserted, and I **showed 3 separate constitutional provisions that support my position.**
19. This Court must show that there is no U.S. Supreme Court or lower court decision that supports what I say. But Justice Brandeis conveniently provided me with such language in 1926 in *Moore*. Not disputable. He did so.
20. This case and appeal are about my being denied certiorari **13x** because my absolute right to a merits decision (*Moore*) was stripped by an unconstitutional law, the Judges Act of 1925. Congress did not have power to remove my right and all the damage this law caused must be compensated because a constitutional right violated must be met under our system with a remedy.
21. Even the Federal Rules of Civil Procedure anticipate actions that challenge the constitutionality of statutes. [FRCP Rule 5.1](#).
22. Since *Marbury v. Madison* [5 U.S. 137](#) (1803), U.S. courts have judicially reviewed statutes for constitutionality. That is all my case was, with a demand for damages for the violation of my constitutional rights.
23. My panel does not provide enough legal reasoning in its 2 page order for anyone else to be able to understand why I was denied or why my legal reasoning was wrong.
24. Just saying no is not legal reasoning.
25. Nobody suggests in my panel order that I don't have standing. I do. It is called 13 denials of certiorari and this fact is well established, not disputed.

26. The Court below and this panel here have both avoided the frontal assault I make on the Judges Act of 1925 and refuse to treat my facts and law with the respect they deserve.
27. Every American has these rights, not just me.
28. Every lawyer should be able to oppose [bogus suspensions](#) that ruin the person's law career. Indiana has a dictatorship for a state supreme court and that Court has taken away 5 law licenses from me without any other court doing an appellate review.
29. This Court must care about that, at least—how LAWYERS are treated by courts. Federal lawyers, like me.
30. This case is about how the U.S. Supreme Court works and how that erroneous system affected me and my constitutional rights. It operates either according to the Congress with an ability to strip constitutional rights via legislation or it functions per the language of Article III and the Bill of Rights, which are ABOVE any congressional enactment.
31. Those provisions support me.
32. Most of these petitions had something to do with the Indiana Supreme Court taking my 5 law licenses, 4 federal, for 7 years without compensation or a right to review. All 4 federal licenses were reciprocally suspended without any hearing even when I demanded hearings. Federal courts that did not sanction me followed Indiana in sanctioning me for what happened in those federal courts.

33. This system is utterly failing me. It is corrupt Rule by Man, not Rule by Law.
34. Like the Court below, the panel decision is arbitrary and capricious, an abuse of discretion as a matter of law, and do not even discuss my facts, not one word. The law is not even developed given the meat of the decision only consists of one page.
35. The reason there is so little development or legal discussion is because I am right and the panel wants to deny me with a bald denial without reasons because *there are no reasons to deny me*. My facts are solid. My law is solid. The only way to oppose this appeal is to just say no, arbitrarily, and that, my panel has done.

REHEARING STANDARD

36. The standard for rehearing *en banc* under FRAP Rule 35(2) is that “(2) the proceeding involves a question of exceptional importance.”
37. As shown *supra*, my case involves questions of exceptional constitutional and Bill of Rights importance and should be decided *en banc* in my favor.
38. To my knowledge, no other U.S. Court of Appeals has squarely addressed this issue of U.S. Supreme Court merits decisions being fundamental and absolute rights as I have fully presented the matter on the record here and below.
39. Amazingly, in the last 99 years since 1925, it appears no one has objected to the removal of their absolute right to an appeal to the U.S. Supreme Court. I do now. Every American will be affected by how this Court rules.

WHEREFORE, it being of the utmost importance as a constitutional and statutory interpretation matter, *en banc* review and approval of my claims should be done. I PETITION thus under FRAP Rule 35. Every motion and pleading of mine in this appeal should be granted instead of being denied given I am right and the government did not even both to appear after I served it. It is noteworthy that my appeal, my facts, my law are all not disputed by the opposing party by counsel. More reason to give me what I ask.

I, Andrew U. D. Straw, verify that the above statements are true and correct on penalty of perjury. I further certify as true and correct that the above countable words of the motion consist of **1,567 words. March 28, 2024**

Respectfully,

A handwritten signature in black ink that reads "Andrew U. D. Straw". The signature is written in a cursive style and is positioned above a horizontal line.

ANDREW U. D. STRAW
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CERTIFICATE OF SERVICE

I, Andrew U. D. Straw, certify that I filed this PETITION with the Clerk of Court via CM/ECF and that system will serve all parties and counsel of record associated with this appeal. Done this **28st day of March, 2024**.

Copy via email on same date to: SupremeCtBriefs@usdoj.gov

Respectfully,

A handwritten signature in black ink that reads "Andrew U. D. Straw". The signature is written in a cursive style and is positioned above a solid horizontal line.

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