No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

In Re [Lewis Brown] — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
ON PETITION FOR A WRIT OF MANDAMUS/PROHIBITION

Sixth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI
PETITION FOR WRIT OF MANDAMUS/PROHIBITION

Lewis Brown
(Your Name)

FCI Beaumont Low
(Address)

Beaumont, TX 77720-6020
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(1) Is an individual, who is named an adverse party opponent, allowed to sit as a Judge over the very proceeding in which he is named a defendant, or is he prohibited by law, statute, and the Constitution?

(2) If an adverse party opponent sits as a Judge over the proceedings in which he is named a defendant, refused to recuse himself, and rules in said proceedings, does this constitute structural error, which is not subjected to harmless error review?

(3) Did the Sixth Circuit Court of Appeals err in using the incorrect standard of review in matters concerning a Judge, who was a former prosecutor, and possibly could have made important decisions or contributions in the Petitioner's case by not applying the objective bias standard of review as dictated by this United States Supreme Court's precedence?

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LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Sixth Circuit Court of Appeals
U.S. District Court Judge Dan Polster
(See page 5 below)

TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

"No man shall be a judge in his own case." In re Murchison, 349 U.S. 133 (1955)

§§ 455(a), (b)(1), (b)(2), (b)(4), and (b)(5); (i - v)

OTHER

28 U.S.C. § 1651—All Writs Act.

CASES: (CONTINUED): PAGE #:

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix J to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was 08/23/2017.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 09/20/2017 (EXH 1), and a copy of the order denying rehearing appears at Appendix E.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was N/A.
A copy of that decision appears at Appendix N/A.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment of the Constitution—Right to Due Process

Fourteenth Amendment of the Constitution—Right to Due Process

§§ 455(a), (b)(1), (b)(2), (b)(4), and (b)(5); (i - v)

JURISDICTION

28 U.S.C. § 1651—All Writs Act.

(See page 5 below)

STATEMENT OF THE CASE

See page 5 below

REASONS FOR GRANTING THE PETITION

See pages 11 - 25 below

I.

A. The Parties

The Petitioner is defendant sub judice Lewis Brown.

The respondent is the United States District Court (ND Ohio)(Polster, J.).

B. Subject Matter Jurisdiction

The United States Supreme Court, pursuant to 28 USC § 1651(a), the All Writs Act, has subject matter jurisdiction to issue all writs in protection of its appellate jurisdiction with respect to Petitioner's Rule 42(a)(1) and Fraud on the Court petitions, (the "Petitions"), to aid in fact-finding abdicated by the District Court, having an actual bias and prejudice, which required constitutional and statutory recusal (i.e., 28 USC §§ 455(a), 455(b)(1), (b)(2), (b)(4), and (b)(5)(i-iv)), judicial disqualification in apropos the petition's adjudication. In re Sybcore Guan., Inc., 757 F.3d 511, 512 (6th Cir. 2014)(writ granted, District Court ordered to adjudicate the merits of bankruptcy appeal without delay).

C. Extra-Ordinary Circumstances

The district judge, sub judice, Polster, J., not to any degree palpably completely abused all judicial discretion, being names as an adverse party-opponent in the adjudication of the petitions, callously and defiantly, refused to judicially disqualify himself from the proceedings sub judice, in egregious, execrable, and unprecedented judicial misconduct and clear and indisputable fraud on the court. Such actions designed and evilly motivated to impede, obstruct, delay and frustrate by trickery, deceit, fraud, aiding and abetting, and conspiracy, Petitioner's absolute legal right to present fraud on the court and Rule 42(a)(1) claims to the district court for unbiased and impartial fact-finding and adjudication on the merits.

The court in Roof Ref. Co. v Univ. Oil Prod. Co., 169 F.2d 514 (3rd Cir. 1948) explained that corruption of the court itself, i.e., the federal judges, through

improper influence and other nefarious (immoral) methods and devices was an attack on the very "temple" of justice and constituted an attack on the "administration of justice" and would not be tolerated in the federal courts of the United States. The district judge, sub judice, Polster, J., extra-ordinary and defiant judicial misconduct cannot be tolerated in the federal court system, cf., Carey v Wolnitzek, 614 F.3d 189, 204 (6th Cir. 2010)(litigants have a due process right to a trial judge who is both impartial and unbiased).

The district judge (Polster, J.) knew that he was named as an adverse party-opponent, a material witness, and an unindicated co-conspirator in the very proceedings he was to officiate (i.e., the referee and participant in the same contest). Constitutionally and statutorily indisputably disqualified from all judicial involvement in the proceedings.

Furthermore, Polster, J., the district judge was formerly employed as an assistant United States attorney for the Northern District of Ohio, (the "USAO"), and therefore had a professional and an undisclosed covert and professional interest with the USAO and its currect employees. Respondents named in the petitions. It is, therfore, indisputable that Polster had a conflict of interest, divided loyalties, and a significant personal, pecuniary, and professional interest in the outcome of the adjudication of the petitions. As a matter of stautory law, 28 USC §§ 544(a) and (b), and the Constitution's due process clause, Polster, J., was deemed actually biased and prejudiced and, therefore, judicially disqualified. Required to have recused himself, i.e., extra-ordinary circumstances. In re Aetna Cas. & Sur. Co., 919 F.2d 1136, 1143 (6th Cir. 1990)("mandamus is the proper remedy to vacate the orders of a judge who acted when he should have recused.").

In In re Hines, 2016 U.S. App. LEXIS 2679 (6th Cir.) explained the precedent of the Sixth Circuit: "This Court may consider a petition for mandamus following a district court's refusal to recuse itself under the circumstances involving an

alleged conflict of interest and/or appearance of impropriety."

D. Statement of the Case

On February 13, 2017, Dkt #222, Petitioner filed his F. R. Crim. P. 42(a)(1) petition in the district court (NDOH), which was assigned to District Judge Dan A. Polster, ("Polster"). A Former undisclosed employee of the Office of the United States Attorney (ND OH), (the "USAO"). During the time the USAO prosecuted Petitioner based on false, fabricated, manufactures, and known suborned perjured testimony of Government trial witness, Levester Johnson, and DEA agent, James Hummel, and others who knowingly and willfully committed perjury suborned by the USAO, Polster's undisclosed former employer.

Petitioner, now pro se, seeks to exercise his legal right to enforce a discovery order margin entry 05/24/1995, Dkt. 24-1 (granting in part Dkt. #24), the "Discovery Order").

Rather than order his former covert employer, the USAO, to show cause why the relief should not be granted, Polster, on February 21, 2017, Dkt. #223, summarily denied the Rule 42(a)(1) petition as part of an insidious judicial corruption "plan and scheme" orchestrated by officers of the court, directed toward the "judicial machinery" implemented and designed with an evil motive and purpose to delay, impede, and obstruct Petitioner's legal right to an impartial and unbiased adjudication of his claims on the merits. Per se fraud on the court.

On March 15, 2017, Dkt. #225, Petitioner timely filed his motion for reconsideration of Polster's oder, Dkt. #223. On March 16, 2017, Dkt. #225, Polster, again, summarily denied Petitioner's reconsideration motion without opinion or written reason as the means and method to shield his former employer, the USAO, from being compelled to come into court and defend against Petitioner's claims.

Polster clearly acted with divided loyalties and acted to obstruct, impede, and render futile the rule of law, and flagrantly refused to recuse himself from

the proceedings knowingly and having a covert undisclosed conflict of interest.

On April 20, 2017, Petitioner's fraud on the court and renewed Rule 42(a)(1) petition was docketed in the court, Dkt. #226. On May 8, 2017, Dkt. #227, Polster again, summarily, without making any finding of facts or conclusions of law - while acting under a covert actual conflict of interest and being actually biased and prejudiced in the interests of his former employer - denied Petitioner's fraud on the court and Rule 42(a)(1) petition where Polster was named as an adverse party-opponent. As a matter of law, ipso facto, judicially disqualified from the proceedings pursuant to federal law, 28 USC §§ 455(a) and (b) and the Constitution's due process clause.

On May 19, 2017, Petitioner filed his timely notice of appeal of the district court (Polster, J.). May 8, 2017, frivolous order, Dkt. #227, denying his fraud on the court/Rule 42(a)(1) petition, Dkt. #336, Dkt. #223, and Dkt. #225.

E. Statement of Material Facts Relevant to this Petition

Petitioner herein incorporates by reference as if set forth herein, in heac verba, section II, ¶¶ 1-11 sworn factual statement filed in Dkt. #226, his fraud on the court petition, as the factual basis for the requested relief; and further supplements the facts below, to wit:

¶1. Dan Aaron Polster, "Polster", was formerly employed as an assistant United States attorney (ND OH), a party to this proceeding which Polster did not and has not disclosed to the parties. Polster was so employed during the time that the USAO criminally prosecuted Petitioner in the underlying criminal case. (United States v Brown, et al., 05:95-CR-00147-KMO-1).

¶2. Polster committed judicial treason, fraud on the court, and conspired with his former employer, the USAO, to obstruct justice, aided and abetted a criminal fraud on the federal courts and the public, and committed unprecedented damage and harm to the "administration of justice."

¶3. Polster was named as an adverse-party opponent in Petitioner's fraud on the court/Rule 42(a)(1) petition, cf., Dkt. #226. Therefore, Polster was constitutionally and statutorily required to recuse himself from all judicial involvement in the proceedings.

¶4. Polster and the respondents to the fraud on the court petition agreed to collude, conspire, and obstruct the adjudication of the merits of Petitioner's claims. This would reveal the depth and breadth of the conspiracy committed in the underlying criminal proceedings by Polster's former employer, the USAO: the wholesale fabrication and known introduction of perjured trial exhibits and perjured trial testimony of government witnesses, Hummel, Levester Johnson, and others. See Dkt. #226, exhibits (clear and convincing evidence).

¶5. Judicial corruption and frauds committed by the court itself, the trial judge, Polster, acting in furtherance of a criminal enterprise in fact, as defined in 18 USC § 1961(4), is a per se judicial structural error, a fraud on the court, actual bias and prejudice, a per se violation of due process of law, judicial treason, and constitute "extra-ordinary" circumstances requiring "extra-ordinary" relief within the scope and jurisdiction of the All Writs Act mandamus authority.

¶6. The adjudication of the merits of the Petitioner's claims contained in the fraud on the court motion would have shown, dispositively, that the respondents all colluded, conspired, aided and abetted, lead by the district judge Katherine M. O'Malley, and orchestrated the criminal obstruction of justice by the prosecutors in the known introduction into the record of a United States court, the perjured exhibits and testimony of James Hummel, Levester Johnson, and other government witnesses. This requires the immediate release, from all custody, the Petitioner, and requiring criminal contempt, investigations and possibly prosecutions.

By necessary implication, Polster and the respondents, each, had a significant personal, penal, and pecuniary interest in defiling the machinery of the judicial

processes and procedures of the federal courts of the United States, and criminally impeding the due "administration of justice."

¶7. Polster knew that he had previously been employed by the very law firm, the USAO, now a party in the proceedings, as well as being a party to the proceedings subject to criminal contempt sanctions for egregious Brady discovery violations representing the respondents. Moreover, Polster failed to disclose whether or not he had "extra-judicial" information regarding the issues obtained via his prior employment at the USAO; and Polster also failed to disclose whether or not he had previously participated in Petitioner's underlying criminal matters while he(Polster) was employed at the USAO during the time period Petitioner was criminally prosecuted by Polster's previous employer and the extent of his participation.

Any disinterested person having knowledge of the above facts would certainly question Polster's ability to impartial and fair to the interest of Petitioner's, over his own, and his previous employer's interests.

¶8. Polster's egregious and execrable judicial misconduct is a perfect example of incongruent duplicity: on the one hand Polster professes to be a judge, and therefore, by implication to be impartial; yet, on the other hand, Polster clearly has an interest in the outcome of the proceedings, being named as an adverse party-opponent. A rare combination of petulance and hubris in one man.

A unique example of bathos in its most abstract and indeterminate configuration.

¶9. Polster's judicial misconduct in not recusing himself from the proceedings is an egregious and flagrant violation of the Code of Conduct for federal judges cannons; and constituted per se acts of judicial misconduct actionable, sua sponte, by the Court of Appeals (6th Cir.); and actionable by Polster's previous employer, the USAO (ND OH): the criminal violation of due process of law, and conspiracy to obstruct justice and impede a criminal proceedings (i.e., the Rule 42(a)(1)

contempt petitioner's adjudication).

¶10. The record below as it currently stands is incomplete in regard to Polster's prior affiliations with a party (the USAO) to this proceeding. Polster's previous employer, see Easley, 853 F.2d at 1338, remand for limited evidentiary hearing ordered to explore the extent of the district judge's relationships with a party, and investigate whether the judge had "extrajudicial access" and knowledge regarding matters material to the controversy.

¶11. Polster's conduct is an egregious example of "a deep-seeded antagonism which made fair judgment impossible" given covert and nefarious entanglements, collusion, conspiracy, aiding and abetting, obstruction of justice, and other execrable bathos and incongruent duplicity grafted illegally into judicial proceedings by the improper influence of the respondents on the district judge (Polster). Given the severity and dire consequences awaiting each respondent upon the adjudication of the merits of Petitioner's claims of prosecutorial and judicial misconduct, named against Polster's previous employer (the USAO) which Polster currently has many personal relationships with current and former members of that law firm. A disinterested person knowing all the facts involved, and facts which Polster and the respondents have hid, supressed, covered up, and concealed from the record, any such disinterested person would conclude that Polster was actually biased, actually prejudiced, not impartial, and clearly the "appearance of partiality" existed to such an extent Polster was required, sua sponte, to have disqualified himself from the proceedings to maintain the public's confidence in the Judiciary. See § 455(a).

¶12. Petitioner having just recently, after filing the pleadings sub judice, discovered that Polster had previously been employed with a party, the respondent, United States law firm, the USAO (ND OH) during the time that Petitioner was falsely prosecuted by Polster's previous employer in regard to current issues apropos that

very criminal proceeding (i.e., United States v Brown, et al.) - regarding issues and claims that Polster might have been involved in or have access to "extrajudicial" information material to the resolution of the issues and claims in Petitioner's pleadings - has credible reasons to believe that Polster has been illegally and unduly influenced by the respondents and their proxies, surrogates, and alter-egos to such an extent, to protect their personal, penal, and pecuniary interests, that Polster has been irreparably contaminated, polluted, and defiled in the eyes of the law to "render fair judgment impossible" in the proceedings; and the appearance of bias or prejudice against the interests of Petitioner and in favor of he and the respondent's interests has made a complete farce of any resemblance of a neutral disinterested, impartial adjudicator as demanded by the Constitution and federal law as expressed in the public policy of the United States via 28 USC § 455 et seqs. and the Codes of Conduct for Federal Judges.

¶13. Polster must be held accountable for his flagrant, egregious, execrable, and criminal judicial misconduct, willfully, deliberately, and in bad faith executed against Petitioner, the public, and the United States courts. Justice cannot be denied in this matter if justice is to be afforded in any matter. This being the epitome of incongruent duplicity and antagonistic bathos and putalant attack on the rule of law: Judicial treason by Polster, collectively, ¶¶ 1-14 (the "Extra-ordinary Circumstances").

Signed this 8 day of March, 2018, under oath subject to the penalty of perjury, having personal knowledge of the facts pursuant to 28 USC § 1746 at Beaumont, Texas.

L. Brown

Lewis Brown, Pro Se
March 8, 2018, signed.

II.

A. The Relevant Legal Standards for Granting the Writ

The Supreme Court in Cheney v United States District Court, 542 US 367 (2004), explained the legal standard a petitioner had to meet for the writ to issue. The Court, Id. at 380-81, set forth the sine qua non element which must be established, they are being:

1. Extraordinary circumstances;

2. The party seeking the writ must show that it has no other adequate means of obtaining the relief he desires;

3. The right to the writ is clear and indisputable; and

4. The granting of the writ is appropriate under the circumstances to correct a "clear" abuse of discretion or judicial usurpation of power. Id.

The Sixth Circuit Court of Appeals in In re Aetna Cas. & Sur. Co., 919 F.2d 1136, 1143 (6th Cir. 1990)(en banc) following the Seventh and First Circuits, explained and held: "This court may consider a petition for mandamus following a district court's refusal to recuse under circumstances involving an alleged conflict of interest and/or appearance of impropriety." See also, In re Corrugated Anti-Trust Litig., 614 F.2d 958, 961, n. 4 (5th Cir. 1980)(same); Moody v Simmons, 858 F.2d 137, 143 (3rd Cir. 1988)(same).

In Easley v Univ. of Mich. Ed. of Regents, 853 F.2d 1351, 1357 (6th Cir. 1988) the court noted in remanding for an evidentiary hearing to fully develop the record on the recusal issue that a court of appeals may consider allegations of bias raised for the first time on appeal; and remand for a limited evidentiary hearing to develop the factual basis for the recusal claim was proper and would be granted to petitioner where the district judge had potential access to "extrajudicial" information given his "affiliations" and "relationships" with a part to the proceedings. Causing the judge's impartiality to be questioned. Cf., United States v Smith, 36 Fed. Appx.

820, 821 (6th Cir. 2002)(sentence vacated and remanded for record to be developed for bias issue where judge's secretary was listed as a victim to the defendant's crimes); Barksdale v Emerick, 853 F.2d 1359, 1361-62 (6th Cir. 1988)(remand ordered to develop recusal issue record where judge failed to disclose the extent of his relationship and affiliation with one of the defendants; and also noting that § 455(a) was permitted to be applied "retroactively" in order to rectify an oversight to maintain the appearance of impartiality of the judiciary), cf., Liljeberg v Health Serv. Acq. Corp., 486 US 847 (1988)(affirmed court of appeals ruling that judge's imputed, constructive, knowledge was sufficient to require disqualification under § 455(a) per the "disinterested person test").

Several courts also explained that § 455(a) "is self-executing" provision for the disqualification of judges which set forth no particular procedure for a party to follow. Hence allegations of bias can be raised for the first time of appeal with a remand to develop the recusal record. Latham v United States, 106 Fed. Appx. 395, 396 (6th Cir. 2004); see also Easley, 853 F.2d at 1356, 1362; and Health Serv. Acq. Corp. v Liljeberg, 796 F.2d 796, 798 (5th Cir. 1986)(affirmed Supreme Court, same).

In In re Murchinson, 349 US 133, 135 (1955) the Court explained that in compliance with due process of law "To this end no man [Dan Aaron Polster] can be a judge in his own case [i.e., Petitioner's fraud on the court petition, Dkt. #226 sub judice where Polster was named as an adverse party-opponent and material witness in the proceedings and therefore, automatically, statutorily (§ 455 et seqs.), and constitutionally (the due process clause) must recuse himself.]" "The due process clause **clearly** 'requires a fair trial in a fair tribunal before a judge with no actual bias against the defendant or interest in the outcome of his particular case.'" Bracy v Gramley, 520 US 899, 904-05 (1997)(emphasis added).

Moreover, the Court has ruled that an actually biased and prejudiced judge

is a "clear" violation of due process of law and constitutes a "judicial structural error" contaminating the entire proceeding, is not harmless, and requires "automatic reversal." Arizona v Fulminante, 499 US 279, 308-12 (1991).

Section 455(a) is a "self-executing provision" of public policy requiring a federal judge to "sua sponte" recuse (disqualify) himself from any judicial proceeding which his impartiality could "reasonably" be questioned apropos to a covert "appearance of bias or prejudice" even if not "actually" biased or prejudiced against the interest of a party. United States v Story, 716 F.2d 1088, 1091 (6th Cir. 1983).

B. Applying the Legal Standard of Reasons why the Writ Should be Granted

Contentions

1. Petitioner contents that "extraordinary circumstances", see §I(E), supra, pages 6-10, ¶¶ 1-13, currently exist in regard to the extreme, egregious, execrable, and criminal violations of due process of law, i.e. "judicial treason", knowingly, willfully, and in bad faith, committed by District Judge Dan Aaron Polster, named as an adverse party-opponent below, and yet refused to "sua sponte" disqualify himself from the proceedings. A per se judicial "structural error", Fulminante, 499 US at 308-12, and a "clear" violation of due process of law. Bracy, 520 US at 904-05.

Docket #226, Petitioner's fraud on the court petition "clearly" named Polster as a respondent in the matter given his previous unexplained and clear abuse of discretion in refusing to enter the required show cause order in regard to Petitioner's Rule 42 (a)(1) criminal contempt petition, which named as respondents: Polster's former colleagues and employer, the USAO (ND OH), i.e., parties which Polster has previous and current relationships and covert affiliations. Providing Polster with the opportunity, motive, and incentive to acquire "extrajudicial" information regarding the issues on dispute in proceedings before Polster. An

egregious breach of all known ethics, protocol, and norms. Notwithstanding a "clear" violation of the Codes of Conduct for Federal Judges.

Petitioner recently (June 1, 2016) became aware that Polster was previously employed in the USAO (ND OH) as an assistant United States attorney ("AUSA") during the exact same time that law firm, named as a party in the fraud on the court and Rule 42(a)(1) criminal contempt petition, criminally prosecuted Petitioner in United States v Brown, et al. by and through the known and suborned fabrication of false evidence and perjured witness testimony.

Applying the legal standard in Murchinson, 349 US at 135: "[T]o that end no man can be a judge in his own case." Polster knew or willfully blind in not knowing that being named as a party-respondent in the proceedings then before it, it was "clear" that he was both constitutionally and statutorily disqualified from all judicial participation in the proceedings, Id.; and therefore, required to "sua sponte" disqualify himself. Easley, 853 F.2d at 1357. Polster refused to comply with the public policy of the United States as expressed in federal law, 28 USC §§ 455 et seqs. Polster is "clearly" guilty of the "extraordinary circumstance" of judicial misconduct.

Therefore, Petitioner has met the "extraordinary circumstance" prong of the Cheney test.

C. Petitioner Contends he has No Other Adequate Means to Obtain Relief

Petitioner has exhausted all available procedural remedies authorized by law to obtain relief, i.e., adjudication of the merits of his claims before an impartial, unbiased, and competent district judge who does not have an interest in the outcome of the proceedings, see Dkt. ## 222-227, sub judice in the district court's proceedings before Polster. See also exhibits A, B, D, F, H, I . The proceedings below are currently on docket before Polster in the district court. Yet, no fact-finding or conclusions of law have been made below regarding the merits of Petitioner's

fraud on the court or criminal contempt claims, nor on the recusal issue of the district judge, Polster J., covert "relationships" and "affiliations" with a party in the proceedings. The Sixth Circuit Court of appeals, in its opinion of denial of Petitioner's writ of mandamus, the Sixth Circuit ignored the most egregious fact: the main component of the appeal, which was the fact that Dan Aaron Polster was named as an adverse party-opponent in the proceedings that he sat as a judge. See exhibit B and C. Petitioner sought reconsideration and highlighted these most significant components, but again, the Sixth Circuit Court of Appeals refused to address this issue in its denial of the reconsideration. See exhibit E.

Petitioner sought legal clarification of the panel's position on the omitted facts that were not addressed. Once again, the Sixth Circuit Court of Appeals remained silent on the Murchinson precedent, which Petitioner highlighted, governing this issue.

The motion for clarification was never docketed. Exhibit O. Criminal docket sheet for this case shows that even up to this time of Petitioner seeking mandamus/prohibition, Polster has refused to recuse himself.

On October 30, 2017, Petitioner filed a fraud on the court, recusal, and Rule 42(a)(1) contempt motion. See exhibit H. The exhibit sheet shows that up until January 17, 2018, approximately three months after the filing of the Petitioner's recusal motion, the respondent, Dan Aaron Polster, has yet to recuse himself, henceforth, Petitioner is now seeking mandamus/prohibition to address this structural error, which Polster continues to commit.

Federal law, § 455(e), required Polster to make a full and complete disclosure of his past and current "relationships", "affiliations", and "interests" which could be viewed by a disinterested person creating "an unconstitutionally high probability of bias." Caperton v A.T. Massey Coal Co., 556 US 868, 887 (2009). Polster was required by public policy of the United States, absolutely binding on all federal

judges, to fully and completely disclose all sources, relationships, affiliations, and interests while could reasonably be viewed as potential sources of "extra judicial" information regarding the proceedings before the district court.

The Sixth Circuit Court of Appeals held in In re Hines, 2016 US App. LEXIS 2679 (6th Cir.)(order), citing Aetna, 919 F.2d at 1143: "This court may consider a petition for mandamus following a district's refusal to [sua sponte] recuse itself under circumstances involving an alleged conflict of interest and/or appearance of impropriety [i.e., Polster refusing to sua sponte recuse himself where named as an adverse party-opponent in proceedings then before his court concerning his former employer, the USAO (ND OH), a party-respondent in the proceedings]." (emphasis added).

Given that a court of appeals has no lawful jurisdiction to conduct fact-finding in regard to Petitioner's claims, Petitioner has no other legal remedy but mandamus/ prohibition from this United States Supreme Court remanding to a disinterested district judge, outside the ND OH, to conduct fact-finding and complete adjudication of the merits of Petitioner's claims. Petitioner has met the second prong of the Cheney test.

D. Petitioner Contends His Right to the Writ is "Clear" and "Indisputable"

Petitioner contends that the district judge (Polster, J.), named as an adverse party-opponent, actually biased and prejudices, and suffering under an unconstitutional "appearance of" bias or prejudice was required by federal law, 28 USC §§ 455 et seqs. and the due process clause of the Constitution, the public policy of the United States, Murchison, 349 US at 135, and Bracy, 520 US at 904-05 ("the due process clause **clearly** requires a fair trial in a fair tribunal before [a neutral disinterested, unbiased, and impartial] judge with no ... interest in the outcome of [the] particular case.").

Polster's unethical judicial participation in the district court's proceedings

in a matter he was named as an adverse party-opponent, "clearly" was in conflict with the decision in Murchison, Id., the due process clause, and "indisputably" constituted a judicial structural error as defined in Fulminante, 499 US at 308-12. Polster's illegal and judicially unethical judicial misconduct "clearly" was in contradiction and conflict with federal law, 28 USC §§ 455(a) and (b); and therefore, was a "clear" abuse of discretion. Within the scope of mandamus, Bracy, 520 US at 904-05. Petitioner has satisfied the third prong of Cheney.

The legal standard to be applied in this particular factual situation is exceptionally "clear." The district judge "clearly" and indisputably abused his discretion. The rule of law, rather than man, is "clear." Polster was required by current federal law, 28 USC §§ 455(a) and (b), and the Constitution to have sua sponte disqualified himself, exercised self-restraint, and showed respect for the law as a federal judge. Polster "clearly" usurped power that he did not properly and lawfully possess, deliberately and willfully "tampered with the administration of justice", and egregiously exhibited a pejorative betos which manifested itself in incongruent duplicity and a form of insidious insouciance. This caused unprecedented harm to the ethical administration of justice in the federal courts of the United States. Petitioner has met the third prong of the Cheney test.

E. Petitioner Contends Under the Circumstances the Writ Should Be Granted

Petitioner asserts that the district judge, Polster, J., knew that he was named in a matter before his court as an adverse party-opponent in a fraud on the court proceedings where his precious employer, the USAO (ND OH) was also named as a party; and Polster knew, and deliberately failed to disclose, that he was so employed with the USAO (ND OH) as an assistant United States attorney ("AUSA") during the time that the party criminally prosecuted the Petitioner. Furthermore, Polster knew that issues and claims related to his former employer's alleged prosecutorial misconduct and fraud on the court had been raised by Petitioner challenging the USAO's and

its witnesses and the trial judge, O'Malley, judicial misconduct and frauds committed in the criminal trial. Knowing all this, Polster callously and flagrantly refused to disclose his previous employment with the USAO (ND OH), and furthermore, Polster has yet to state on the record whether or not his "affiliations" and "relationships" provided any "extrajudicial" information apropos any issues, major decision making, or claims in dispute in the proceedings then before Polster.

Knowing all this, a disinterested person could draw a reasonable inference that Polster had something to hide, cover up, and held in secret that he did not desire to publicly disclose. In other words,Polster is hiding something he knows is damaging to him and his friends, colleagues, and associates' penal and/or pecuniary interests. Harmful to such an extent, Pulster was motivated and incentivised, professionally and socially, to thumb his nose at the rule of law and sit as a judge in "his own cases" in violation of Supreme Court precedent, Murchison, Id. at 135, federal law, Id. at §§ 455(a) and (b), and the Constitution's due process clause.

From a public policy perspective, Polster's egregious and execrable judicial misconduct is untenable, intolerable, and constituted a "fundamental miscarriage of justice" and a criminal violation of due process of law, 18 USC §§ 2, 241, 242, and 371 to obstruct justice, Id. at § 1503. The court of the United States cannot function if federal judges themselves violate the law, act to benefit them and their friends' interests, and generally pervert the rule of law in such an insidious, callous, flagrant, and criminal matter, the entire system is placed in a precarious and highly unstable position. No single federal judge, Polster, interests are greater than or exceed the interests of justice. Polster must be thoroughly investigated along with the respondents to the fraud on the court petition, in a public forum, and compelled to publicly explain exactly whose interests he was attempting to protect, and exactly what benefits he was offered, received, or had been promised

to subvert the impartial administration of justice in the courts of the United states. Anything less in the eyes of the public will be condonment of criminality, cronyism, and systemic corruption in the federal Government. An intolerable and highly unstable , perfidious circumstance.

Petitioner has met the fourth prong of the Cheney test.

Petitioner has overwhelmingly established that he has met the legal standards for the writ to be granted (1) disqualifying Polster, retroactively, (2) vacating the Sixth Circuit of Appeals decision along with all of Polster's prior orders, and (3) for a remand to the Appeals Court to instruct them to remand to the district court, outside the ND OH, before an impartial and unbiased district judge, for the merits of his fraud on the court and Rule 42(a)(1) criminal contempt petitions for adjudication on the merits, which Polster was willing to and deliberately obstructed and conspired to obstruct justice to prevent.

A brief but in depth look at the Sixth Circuit's order shows clearly that with proper application of established Supreme Court law and even the Sixth Circuits very own precedent, the writ of mandamus is most definitely warranted. In the order denying mandamus, the Sixth Circuit stated: "His 'allegations' in his mandamus center on Judge Polster's prior position as an AUSA ... Although this could support recusal, Brown never sought Judge Polster's recusal on this basis before the district court."

First and foremost, due process "guarantees" an absence of actual bias on the part of a judge." In re Murchison, 349 US 133, 136, 75 S. Ct. 623, 99 LED 942 (1955). The court asks not whether an actual subjective bias exists in the judge, but instead, whether as an objective matter, the average judge in his position is likely to be neutral or whether there is an unconstitutional potential for bias.

Therefore, by making such a judicial finding that the fact that judge was employed as an AUSA could "support recusal." The court is, itself, admitting that there exists an unconstitutional potential for bias.

Just on the above mentioned fact alone, a remand was warranted through issuance of the writ. To examine if the situation in its entirety to be in compliance with the due process guarantee, that "an absence of actual bias" on part of a judge. Murchison, Id.

Federal law § 455(e) required Polster to make a full and complete disclosure of his past and current "relationships", "affiliations", and "interests" which could be reasonably viewed as potential sources of "extrajudicial" information regarding the proceedings before the district court. This creates an unconstitutionally high probability of bias. Caperton v A.T. Massey Coal Co., 556 US 868, 887 (2009).

The Sixth Circuit held, in In re Hines, 2016 US APP LEXIS 2679 (6th Cir.)(order) Citing Aetna, 919 F.2d at 1143: "This court may consider a petition for a writ of mandamus following a district's refusal to [sua sponte] recuse itself under circumstances involving an alleged conflict of interest and/or appearance of impropriety."

According to its very own binding precedent, the Sixth Circuit was obligated by its judicial finding to remand for fact-finding into Petitioner's claims given that a court of appeals has no lawful jurisdiction to conduct fact-finding.

The actions, or inactions, of the Sixth Circuit Court of Appeals are contrary not only to established to Supreme Court precedence, but also to its very own precedence.

The Court has also explained that § 455(a) "is self-executing" provision for disqualification of judges which set forth no particular procedure for a party to follow. Hence, allegations of bias can be raised for the first time on appeal with a remand to develop the recusal record. Latham v United States, 106 Fed Appx 395, 396 (6th Cir. 2004); see also Easley, 853 F.2d at 1356, 1362.

In Liljeberg v Health Serv. Acq. Corp., 486 US 847 (1988), the United States

Supreme Court in dealing with matters regarding § 455(a), permitted this section to be applied retroactively in order to rectify an oversight to maintain the appearance of impartiality of the judiciary, cf., Liljeberg, Id. (affirmed court of appeals ruling that judge's imputed, constructive knowledge was sufficient to require disqualification under § 455(a) per the disinterested persons test.).

In Williams v Pennsylvania, 136 S. Ct. 1899 (2016). This United States Supreme Court held that "The Court's precedents do not set forth a specific test governing recusal when a judge had prior involvement in a case as a prosecutor, but the principle on which these precedents best dictate the rule that must control in these circumstances here. Under the due process clause (195 LED2D 157) there is an "impermissible risk" of actual bias when a judge either had a significant personal involvement as a prosecutor in a critical decision regarding a defendant's case. The court requires an objective standard that requires recusal when the likelyhood of bias on the part of the judge "is too high to be constitutionally tolerable. Caperton, 556 US at 872.

The established precedents of both the Supreme Court and the Sixth Circuit Court of Appeals along with §§ 455(a), (e), etc. and all ethical requirements pertaining to judges, require a thorough in depth look into the situation of Polster who was an AUSA working out of the ND OH when Petitioner went on trial. Polster covertly slipped into the judicial role over Petitioner's proceedings with no disclosure (to Petitioner, who was the only person blindsided by Polster's actions) and proceeded to act contemptuously and adversarily against Petitioner, which prompted petitioner to take an in depth look at Polster, henceforth, discovering his past affiliations and associations with the subjects of petitioners fraud on the courts claims. These associations and affiliations were camouflaged by Polster's covert actions.

In Rippo v Baker, 580 US 137 (2017) [Earlier the very same year the Sixth

Circuit made the erroneous ruling] the United States Supreme Court vacated the Nevada Supreme Court's judgment because "it applied the wrong legal standard under our precedents, the due process clause may sometimes demand recusal, even when a judge "ha[s] no actual bias" Aetna Life Ins. Co. v Lavoie, 475 US 813, 825, 106 S. Ct. 1580, 89 LED2D 823 (1986). Recusal is required when objectively speaking, the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable. Withrow v Larkin, 421 US 35, 47, 95 S. Ct. 1456, 43 LED2D 712 (1975); see Williams v Pennsylvania, 579 US 1899, 2016, 136 S. Ct. 1899, 195 LED2D 132 (2016)(The court asks not whether a judge harbors an actual bias, subjective bias, but instead, whether as an objective matter, the average in his position is likely to be neutral, or whether there is an unconstitutional potential for bias)(internal quotations omitted). "Our decision in Bracy is not to the contrary although we explained that the petitioner there had pointed to facts suggesting actual, subjective bias, we did not hold that a litigant must show as a matter of course that a judge was actually biased in [the litigant's] case." 132 Nev. at ____ 368 p.3d at 744. Much less that he must do so when, as here, he does not allege a theory of camouflaging bias. "The Nevada Court did not ask the question our precedents require, whether considering all the circumstances alleged, the risk of bias was too high to be constitutionally tolerable." As a result, the Nevada court vacated and remanded the case for further proceedings not inconsistent with the opinion.

The Sixth Circuit ignored the precedent set forth and affirmed by this United States Supreme Court months before they chose to go renegade and attempt to dance around these issues that this United States Supreme Court declared that just the risk of such bias could be constitutionally intolerable, instead, they circumvented the totality of the circumstances and left petitioner exposed to the risk of potential bias.

Petitioner humbly requests of this United States Supreme Court, the granting of this writ of mandamus, in accordance with it precedents under the requirements of the due process clause, which according to this United States Supreme Court, may sometimes require recusal, even when a judge has no actual bias. The correct legal standard of review in these circumstances must be applied to ensure due process protection.

Now the elephant in the room. "No man can be a judge in his own case," and "no man is permitted to try cases where he has an interest in the outcome." Id. at 136, In re Murchison.

Witrow v Larkin, 421 US 35, 43 LED2D 712, 95 S. Ct. 1456, the US Supreme Court held: Cases in which the adjudicator has a pecuniary interest in the outcome and in which he has been target of personal abuse or criticism from the party before him are situations where the probability of actual bias on the part of the judge or decision maker are too high to be constitutionally tolerable under due process of law.

Such practice has long since been prohibited even in the common law, a fair tribunal means that "no man can be a judge in his own case." 1 E. Coke. Institutes at Law of England § 212 141a ("[A] liquis non debet esse inted in propia causa") That common law conception of a fair tribunal was a narrow one.

A judge could not decide a case in which he has a direct and personal financial stake, nor could he adjudicate a case in which he was a party. See Earl of Derby's, Case 12 Co. Rep. 114, 77 Eng Rep. 1390 (KB, 1614).

Polster was not only named a respondent party in Petitioner's fraud on the court claims, but was also a subject of financial relief sought by Petitioner. See exhibit I. Fraud on the court and renewed 42(a)(1) criminal contempt motion. Polster indeed was and still is the subject of a criminal contempt motion presently on the docket sheet sitting before the court with Polster still the

assigned judge. See exhibit O, docket sheet for Brown. Case no.: 5:95 CR 00147 DAP. United States v Brown. Up to this point, Polster has adamantly refused to recuse himself even though by the law, the Constitution and the United States statutes, he is not only disqualified, but prohibited.

When Petitioner, pro se, a lay man at law, researched prohibition in preparation of this emergency petition for writ of mandamus/prohibition, petitioner found that in the very definition of "prohibition" is what Polster did.

Inquum est alguem rei sui esse judicem. It is unjust for anyone to be a judge in his own case.

Polster knew he should have recused, but chose not to, violating the laws, the Constitution, Supreme Court precedent, and even the very due process clause which he swore to uphold.

The Sixth Circuit remained silent on this issue when it was presented to them. Petitioner's pleas for this most fundamental issue fell on deaf ears. In denying motions for reconsideration, see exhibit's C, E, G, the Sixth Circuit did not even mention In re Murchison nor honor § 455(a) and its requirements.

This United States Supreme Court is Petitioner's last and only hope of recourse. The Sixth Circuit stated it considered and rejected the issues in the order denying motion for reconsideration of mandamus. See exhibit E. Therefore, an appeal to the very same circuit, that already rejected these issues twice, would be fruitless. Petitioner humbly presents the issue of Polster, sitting as judge in his own case, to this United States Supreme Court to address the structural error that has contaminated the proceedings in the district court, as the Sixth Circuit refuses to. See Puckett v United States, 556 US 129, 149 ( ).

Because this Court has consistently prohibited such actions before, Id. Murchison and Id. Mayberry, and Id. Williams v Pennsylvania, also Id. Rippo v Baker, Warden, 137 S. Ct. 905 (2017). This Court reversed because the Nevada Supreme Court

applied the wrong legal standard "under our precedents of the due process clause established in the US Supreme Court.

Petitioner prays this United States Supreme Court grant this writ of mandamus/ prohibition in consistence with its precedents, prohibiting Polster from sitting as a judge in this case where is his a named defendant, too.

In Rodgers and Turner v United States Steel Co., the United States Court of Appeals for the Third Circuit correctly put in effect, touching the issuance of a writ of mandamus, which is not contrary to this United States Supreme Court. "The power to issue writs of mandamus, prohibition and certiorari, in aid of a court's potential, appellate jurisdiction, comprehends its responsibility for the orderly and efficient administration of justice, within the circuit. The power will not, of course, be used to control the decision of a trial court, even if erroneous, made within its jurisdiction, buy may be used to confine a trial court to the proper sphere of its lawful power or to correct a clear abuse of discretion." Polster definitely abused his discretion.

Again, Judge Dan Aaron Polster was not only employed as an AUSA in ND OH when Petitioner went to trial in 1995 in Clevland, Ohio, but Polster was also named an adverse party-opponent/defendant when he exercised judicial indiscretion by refusing to recuse himself.

Petitioner's right to due process is Petitioner's right to the writ, too, as due process requires the Petitioner be granted the opportunity to present his claims to a court, unburdened by any possible temptation - not to hold the balance nice, clean, and true. See Williams v Pennsylvania, 136 US 510, 532, 47 S. Ct. 437, LED at 1446 (2016).

Petitioner's right to due process was clearly violated when Polster sat as judge over proceedings (case) in which he is named an adverse party. Such actions constitute structural error, which is not subjected to harmless error review. Id. Williams quoting Puckett v United States, 556 US 129, 149.

REQUESTS

Immediately suspend Polster from all judicial involvement in any matter or proceeding related to or associated with any disputed issue or fact concerning the petitioner sub judice;

Order Polster to file into the record of the district court a sworn affidavit under oath subject to the penalty of perjury disclosing all bribes, kick backs, pay offs, favors, gifts, illegal gratuities, inside information, donations, loans, stock, bonds, tickets, discounts, other things of value, or benefits offered, received, or promised for his judicial discretion exercised in any manner, or for any purpose apropos in regard to the proceedings in the district court;

Order Polster to disclose all "affiliations", "relationships", or other interests and associations which could have, did, or potentially provide(d) Polster with "extrajudicial" information regarding any disputed issue or claim(s) in the proceedings before Polster, any and all major or minor decisions he made concerning the Petitioner's trial;

Order Polster to disclose publicly under oath whether or not he, while employed at the USAO (NDOH) during the time that party criminally prosecuted Petitioner in United States v Brown, et al. participated in any way, assisted, investigated, researched, interviewed witnesses, prepped witnesses, conducted any grand jury matter or proceeding, attended trial, or other proceedings, read reports, or at any time since, discussed any issue, claim, or other aspect of the proceedings with any person, judge, prosecutor, witness, agent, or privy of any respondent named in the petitions then before Polster;

Order Polster judicially disqualified in all matters and proceedings related to or associated with the petition's adjudication;

Order Polster referred to the State Bar of Ohio to initiate disbarment proceedings against Polster for conduct unbecoming of an officer of the court;

And any other relief the Court deems just and appropriate given the egregious and perfidious conduct of District Judge Aaron Polster to obstruct the administration of justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lewis Brown

Date: 04-05-18

CERTIFICATE OF SERVICE

I, Lewis Brown, petitioner herein, certify that I have, on this 5th day of April, 2018, via the United States Postal Service, served District Judge Dan Aaron Polster (ND OH) with a corrected copy of this emergency petition for a writ of mandamus and other relief, along with all other interested parties involved.

L. Brown

Lewis Brown
Beaumont, TX 77720-6020
Petitioner Pro Se

Additional material from this filing is available in the Clerk's Office.