

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re BRENT DOUGLAS COLE - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT
ON PETITION FOR A WRIT OF MANDAMUS TO
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF MANDAMUS

In propria persona: Brent Douglas Cole, Reg. no. 71911-097
P. O. Box 1000
Oxford, WI 53952

QUESTIONS PRESENTED

1. Is a court's refusal to allow an accused person any opportunity to be heard by themself and counsel a substantive violation of due process, common law right, Sixth Amendment, justice, and/or the First Amendment right to petition the government for redress? *Supra*, pp. 5 & 6.

2. Is the "right to be heard by himself and counsel", or invested with a right which he is always free to assert, an inherent common law right affirmed by 1 Stat. 92, ch. xx, §35 and embodied within the Sixth Amendment to the Constitution of the United States? *Supra*, p. 5, Valdez.

3. Is the imposition of counsel to "represent" violative of the Constitutional right to the "Assistance of Counsel"? *Supra*, p. 7, ¶¶ 2.

4. Is the refusal of a court to allow an accused to dispense with counsel violative of "Considerations that go to the substance of an accused's position before the law"? *Adams v United States*, 317 U.S. 269, 279 (1943).

5. Is essential fairness lacking, or the ability to put one's case in court effectively, impaired by refusal to permit the accused to be heard? If so, is the court enjoined "by the law"? *Supra*, p. 5, Dynes, & Wellness.

6. Is failure/refusal by a court to consider a non-disruptive party's pleading a usurpation of power or violation of Oath or duty?

7. Does refusal to allow a party to manage or plead their own cause violate their right to opportunity to defend or statute (1 Stat. 92, ch. 20, §35)?

8. Does the privilege of presence include the right to be heard.

QUESTIONS PRESENTED

1. Is a court's refusal to allow an accused person any opportunity to be heard by themself and counsel a substantive violation of due process, common law right, Sixth Amendment, justice, and/or the First Amendment right to petition the government for redress? Supra, pp. 5&6.
2. Is the "right to be heard by himself and counsel", or "invested with a right which he is always free to assert", an inherent common law right affirmed by 1 Stat. 92, ch.xx, §35 and embodied within the Sixth Amendment to the Constitution of the United States? Supra p. 5, Valdez v United States, 244 US 432,453, 61 LED 1242 (1917).
3. Is the imposition of counsel to "represent" violative of the Constitutional right to the "Assistance of Counsel"? Supra, p.7, par.2.
4. Is the refusal of a court to allow an accused to dispense with counsel violative of "considerations that go to the substance of an accused's position befor the law"? Adams v United States, 317 US 269, 279 (1943).
5. Is essential fairness lacking, or the ability to put one's case in court effectively, impaired by refusal to permit the accused to be heard? If so, is the court enjoined "by the law"? Supra, p.5, Dynes v Hoover, 20 How 65, 80, 81, 15 LED 838; Wellness Int'l Network, Ltd. v Sharrif, 191 L Ed 2d 911, 935 (2015).
6. Is failure/refusal by a court to consider a non-disruptive party's pleading a usurpation of power or violation of Oath or Duty?
7. Does refusal to allow a party to manage or plead their own cause violate their right to opportunity to defend or statute (1 Stat. 92 ch. 20, §35)?
8. Does the privilege of presence include the right to be heard?

PETITION FOR A WRIT OF MANDAMUS - COLE v UNITED STATES -

TABLE OF CONTENTS

DECLARATION	1-2
OPINIONS BELOW	3
JURISDICTION	4-5
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	6
STATEMENT OF THE CASE	7-10
REASONS FOR GRANTING THE WRIT	11
CONCLUSION	12

INDEX TO APPENDICES

APPENDIX A - "ORDER" Nov 9, 2017: "[This court declined to entertain appellant's pro se submissions, because he is represented.]"

APPENDIX B - "ORDER" Oct. 20, 2017: "...declines to entertain..."

APPENDIX C - "ORDER Sept. 13, 2017: "...declines to entertain..."

APPENDIX D - U.S. Supreme Court Clerk's letter July 27, 2017: "Your case must first be reviewed by a United States court of appeals...."

APPENDIX E - USCA Clerk's letter Nov. 3, 2017: "The Court is in receipt of appellants pro se brief....only counsel may submit filings..."

APPENDIX F - U.S. District Court "ORDER"

APPENDIX H - Grand Jury EXHIBIT 1 and 2 with pictures proving that the "evidence" used was planted and claims in appendix F are false.

TABLE OF COMMON LAW AUTHORITIES CITED

Jurisdiction	1, 4-6, 8,11
Coram non judice	5, 10
Common justice	1, 2, 5
One's "day in court"	2, 7
"meaningful opportunity to present a complete defense"	7, 9
"due process of law"	4-8, 10
"deprivation of right to confront witnesses"	7, 9
Falsification of evidence	10
JUDGMENT WITHOUT HEARING	10
Structural error	10
Adversarial testing	7
Res judicata	4, 7
Presence: Right to be heard by one's self in defense	2,4-7,10,11
NOTICE AND AN OPPORTUNITY TO DEFEND	5, 6, 10
EQUAL PROTECTION	2

TABLE OF AUTHORITIES CITED

CASES

PAGE NOS.

1. Abney v United States, 431 US 651, 658-663 (1977)	11
2. Addington v Texas, 441 US 418, 425 (1979)	1
3. Baldwin v Hale, 1 Wall 223, 233 (1834)	5
4. California v Trombetta, 467 US at 485	7
5. Cole v Arkansas, 333 US 196	8, 10
6. Coopers& Lybrand v Livesay, 437 US 463, 466, n6 (1978)	11
7. Crane v Kentucky, 476 US 683, 690 (1986)	9
8. Debeers Consol. Mines v United States, 325 US 212, 217 (1932)	4
9. Dusenberry v United States, 534 US 161, 173	7
10. Dynes v Hoover, 20 How 65, 80, 81	5
11. Ex parte Crane, 5 Pet 190, 193 (1831)	4
12. Ex parte Hoge, 48 Cal. 3	10
13. Ex parte United States, 287 US 241, 245 (1932)	4
14. Fairey v Tucker, 567 US 924 (2012)	7
15. Florida v Nixon, 534 US 175 (2004)	5
16. Gillespie v US Steel Corp., 379 US 148, 149-152, 154 (1964)	11
17. Granis v Ordean, 234 US 385, 394 (1914)	5
18. Hamdi v Rumsfeld, 542 US 507, 533	7
19. Holden v Hardy, 169 US 366, 389-391 (1898)	5
20. Hovey v Elliot, 167 US 409, 416-419 (1897)	2, 4
21. Kaley v United States, 188 L Ed 2d 46 (2014)	5, 7
22. Kerry v Din, 192 L Ed 2d 183 (2015)	5
23. Montana v Egelhoff, 518 US 37	9
24. O'Dell v Netherland, 521 US 151, 169	10
25. Roche v Evaporated Milk Association, 319 US 21, 25-26	2
26. Simon v Craft, 182 US 427, 436-437 (1901)	5
27. Snyder v Massachusetts, 291 US 97, 129-131 (1934)	6, 7
28. Valdez v United States, 244 US 432, 453 (1917)	2, 5
29. Washington v Gluckensberg, 521 US 702k 720-721 (1997)	5
30. Wellness Int'l Network Ltd. v Sharif, 191 LEd 2d 911, 935	5
31. Will v United States, 389 US 90, 95, 108 (1967)	2, 11
32. Windsor v McVeigh, 93 US 274 (1876)	10

STATUTES AND RULES/CONSTITUTIONAL AUTHORITY

Constitution of the U.S. -- Article III, § 2	6
First Amendment	8
Fifth Amendment	1, 2, 4, 5
Sixth Amendment	1, 5, 6, 7
Fourteenth Amendment	1, 2, 4, 5
Judiciary Act of 1789 (1 Stat., ch. xx, §) §13	4, 6
	§14
28 USC §§ 1254, and 1651	4
18 USC §§ 1001, and 1623	3, 10
Magna Charta	4, 5
Northwest Ordinance, Art. 2	6
Judiciary Act of 1789, §35	6
U.S. Constitution, Article VI	6
Act of May 31, 1870 (16 Stat. at L.144)	7

IN THE SUPREME COURT OF THE UNITED STATES

Petitioner respectfully prays that a peremptory writ of mandamus issue.

DECLARATION

Petitioner, hereinafter COLE, is the defendant in a criminal action entitled UNITED STATES OF AMERICA V. BRENT DOUGLAS COLE, on appeal in UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT from case no. 2:14-cr-0269, UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA. COLE has been incarcerated for over 3 1/2 years in violation of the Constitution and laws of the United States, jurisdiction being presumed without affirmative showing or inquiry by the courts, COLE having been constructively denied counsel, denied his rights to manage and plead his own cause personally, denied his Constitutional entitlement to proceedings according to the course of the common law, denied due process of law, denied his right to be heard by himself for the purpose of explaining his own conduct, and the appeals Court is proceeding erroneously presuming res judicata while refusing to allow COLE to be heard, after forcing counsel upon him who refused to respect his direction, raise his defense or issues, refuses to withdraw, and the appeals court refuses to permit COLE to dismiss said counsel for cause.

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

I

Petitioner is Brent Douglas Cole, a natural born man and citizen of State of New Mexico and United States of America, real party in interest.

II

Respondent is the United States of America and its agencies.

III

Respondent has clear, present and ministerial duties to adhere to law (Law of the Land), common law, and to protect private rights.

"[3] [C]ommitment for any purpose constitutes a significant deprivation of liberty that requires due process protection."

Addington v Texas, 441 US 418, 425, 60 L Ed 2d 323, 95 S Ct 1804(1979)

IV

Respondent has failed and/or refused to abide by the law, common law, perform its duty to obey the law, protect private rights, or afford the equal protection of the law.

"[S]ecuring to the accused in all criminal prosecutions 'the right to be heard by himself and counsel,' makes his presence indispensable at every stage of the trial, or invests him with a right which he is always free to assert,...." Valdez v United States, 244 US 432, 453, 61 LED 1242 (1917), -- "a rule as old as the law,... that no one shall be personally bound until he has had his day in court,...." Hovey v Elliot, 167 US 409, 416-419, 42 LED 215 (1897).

V

Petitioner has no plain, speedy, and adequate remedy in the ordinary course of the law other than by this petition.

VI

Petitioner has performed all conditions precedent to the filing of this petition, by having first exhausted all available remedy.

VII

At all times mentioned herein, respondent has been able to adhere to law which governs the within subject mater. Notwithstanding such ability, and despite petitioner's demands as stated herein, respondent continues to fail and/or refuse to perform its ministerial duties in protecting private rights and providing equal protection.

VIII

"[E]xceptional circumstances amounting to a judicial "usurpation of power" will justify the invocation of this extraordinary remedy. ...[M]andamus is proper where a court finds exceptional circumstances to support such an order." Will v United States, 389 US 90, 95, 108, 19 L Ed 2d 305 (1967): [The question is;] "Is the case an appropriate exercise of that power?" Roche v Evaporated Milk Association, 319 US 21, 25, 26, 87 LED 1185 (1943).

OPINIONS BELOW

The opinion of the United States Court of Appeals (USCA) appears at APPENDIX A to the petition, and is unpublished: "ORDER" Nov. 9, 2017.

The opinion of the USCA appears at APPENDIX B to the petition, and is unpublished: "ORDER" Oct. 20 2017, which regards the "NOTICE OF DISMISSAL OF COUNSEL AND BILL QUIA TIMET".

The opinion of the USCA appears at APPENDIX C to the petition, and is unpublished: "ORDER" Sept. 13, 2017, which regards the "LETTER OF DIRECTION" filed by petitioner to court appointed counsel, and also appears at APPENDIX C, WITH PROOF OF SERVICE of the Docket No. 78 documents of appeal No. 15-10459.

The U. S. Supreme Court Clerk's letter, July 27, 2017, appears at APPENDIX D to the petition and is unpublished: Excerpts from the Supreme Court petition returned with the letter and from the exc-
erpts filed with petitioner's in propria persona (SUPPLEMENTAL) REPLY BRIEF also appear at APPENDIX D to the petition.

The opinion of the USCA appears at APPENDIX E to the petition, dated Nov. 3, 2017, p. 1. and the U. S. Attorney's letter of Oct. 30, 2017, p. 2. Also, petitioner's "OBJECTION TO FUNDAMENTAL UN-FAIRNESS AND DENIAL OF RIGHTS", Nov. 30 2017.

The opinion of the USCA appears at APPENDIX F to the petition and is reported at 2015 U.S. Dist. LEXIS 115762.

Petitioner asserts that this published opinion is replete with fraud propagated by false witness of Judge BURRELL while sitting the bench. It is an obdurate display of bias by the judge against the petitioner, who has never been permitted to respond or defend.

JURISDICTION

Jurisdiction is invoked under 28 USC §§ 1254,1651, and 1 Stat.,c.20,§13:

"The Judicial Act[1789],sec. 13, enacts that the Supreme Court shall have power to issue writs of prohibition...; and writs of mandamus in cases warranted by the principles and usages of law, to any courts appointed, or persons holding offices under the authority of the United States. A mandamus to an officer is held to be an exercise of original jurisdiction, but a mandamus to an inferior court of the United States is in the nature of appellate jurisdiction." Ex parte Crane, 5 Pet 190, 193 (1831). See Ex parte United States, 287 US 241, 245, 77 LED 283 (1932).

"[W]hen a court has no judicial power to do what it purports to do when its action is not a mere error but a usurpation of power-the situation falls precisely within the allowable use of § 262." Debeers Consol. Mines v United States, 325 US 212, 217, 89 LED 283 (1932).

"... vel per legem terrae'....[T]his clause in effect affirms the right of trial according to the process and proceedings of the common law. Can it be doubted that due process of law signifies a right to be heard in one's defense? If the legislative department of the govenment were to enact a statute conferring the right to condemn the citizen without any opportunitywhatever of being heard would it be pretended that such an enactment would not be violative of the Constitution? If this be true, as it undoubtedly is, how can it be said that the judicial department, the source and fountain of justice itself, has yet the authority to render lawful that which if done under express legislative sanction would be violative of the Constitution?" Hovey v Elliot, 167 US 409, 416-417, 42 LED 215 (1897): -- "1. Due proces of law signifies a right to be heard in one's defense." Id., headnote 1.

The courts absolute denial of any opportunity for COLE to be heard by himself in his own defense constituted an exercise of jurisdiction to deny Cole due process of law in violation of the Fifth, and Fourteenth Amendments. The damage that will be done by the appeal Court erroneously presuming res judicata and denying COLE fundamental fairness by the same usurpation of power to deny due process of law will not be repairable. It is not a step in the proceedings and is effectively unreviewable. The matter is not separable from the main proceeding and is therefor barred from being appealed by the normal process. The right is not secondary and subordinate to the criminal accusations, nor does it add what is lacking.

The courts have abrogated the right to due process of law by usurpment of jurisdiction rendering all subsequent proceedings fundamentally unfair, manifestly unjust, and void. The petitioner "has a protected liberty interest in" the right to be heard by himself and by counsel, Kerry v Din, 192 L Ed 2d 183, 2015 U.S. LEXIS 3918, which interest is

"objectively deep rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if [it was] sacrificed." Washington v Gluckensberg, 521 US 702, 720-721, 138 L Ed 2d 772 (1997).

"[T]he words "law of the land" as used in the Magna Charta, implied a conformity with the "ancient and customary laws of the English people." ... [T]hese words imply a conformity with natural and inherent principles of justice, and forbid that...one shall be condemned in his person or property without an opportunity of being heard in his own defense. Holden v Hardy, 169 US 366, 389-391, 42 LED 780 (1898).

"The essential elements of due process of law are notice and opportunity to defend. In determining whether such rights were denied, we are governed by the substance of things, and not by mere form....[T]he due process clause...necessitate[s] that ... there shall be a regular course of proceedings in which notice is given of the claim asserted, and an opportunity afforded to defend against it." Simon v Craft, 182 US 427, 436-37, 45 LED 1165 (1901).

"The fundamental requisit of due process of law is the opportunity to be heard", Grannis v Ordean, 234 US 385, 394, 58 LED 1363 (1914), "at a meaningful time and in a meaningful manner." Kaley v United States, 188 L Ed 2d 46, 2014 U.S. LEXIS 1634.

"[S]ecuring to the accused in all criminal prosecutions 'the right to be heard by himself and counsel,' makes his presence indispensable at every stage of trial, or invests him with a right which he is always free to assert,..." Valdez v United States, 244 US 432, 453, 61 LED 1242 (1917).

"Such is the law in either case in respect to the court, which acts without having jurisdiction over the subject matter; or which having jurisdiction disregards the rules of proceeding enjoined by the law for its exercise, so as to render the case *coram non judice*." Dynes v Hoover, 20 How 65, 80, 81, 15 LED 838; Wellness Int'l Network, Ltd. v Sharrif, 191 LEd2d 911, 935 (2015).

"An attorney undoubtedly has a duty to consult with the client regarding "important decisions"....Concerning those decisions, an attorney must both consult with the defendant and obtain consent to the recommended course of action." Florida v Nixon, 534 US 175, 160 L Ed 2d 565, 2004 U.S. Lexis 8270.

"Common justice requires that no man shall be condemned in his person or property without... an opportunity to make his defense." Baldwin v Hale, 1 Wall 223, 233, 17 LED 531 (1834).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Authority to issue the writ arises under 28 USC §1651 and 1 Stat., ch. xx, §§13-14. The jurisdiction of the Court arises under Art.III, §2, U.S. Const. The right to be heard "by himself and counsel" is according to the course of the common law, an inherent right that is affirmed by 1 Stat.92, ch. xx, §35, espoused in the Magna Carta, is guaranteed by the Sixth Amendment to the Constitution of the United States, and to which the petitioner is entitled arising under the compact formed by the Prior Engagement of the Northwest Ordinance 1787, Art. 2, July 13, declared to be 'Law of the Land' by US Const. Art.VI.

"It is hereby ordained and declared by the authority aforesaid [Congress assembled], That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory and forever remain unalterable, unless by common consent, to wit: ... Art. 2. THE inhabitants of said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury;... and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capitol offenses, where the proof shall be evident or the presumption great. All fines shall be moderate: and no cruel and unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; ... And in the just preservation of rights and property, it is understood and declared, that no law ought ever be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, bona fide, and without fraud, previously formed." Northwest Ordinance Art. 2

"The Sixth assures one accused of crime that if prosecuted under federal law he shall have a public trial, be informed of the cause of the accusation, be confronted with the witnesses against him, and have the assistance of counsel for his defense. Out of excess of caution the fundamental law of many of the states specifically safeguards the right of the accused, "to appear and defend in person." ...[A]ll these instruments were intended to secure the same great privilege-a fair hearing. Accordingly, the courts have uniformly and invariably held that the Sixth Amendment...secures to the accused the privilege of presence at every stage of his trial. This Court has so declared. In commenting upon..."the right to be heard by himself and counsel," this was said: "An identical or similar provision is found in the constitutions of the several States, and its substantial equivalent [291 US 131] is embodied in the Sixth Amendment to the Constitution of the United States." Massachusetts, 291 US 97,129-131, 78 LED 674 (1934).

Snyder v.

STATEMENT OF THE CASE

The petitioner, hereafter COLE, is an indigent defendant who has been denied the fundamental requisit of due process of law, "the opportunity to be heard", Dusenbery v United States, 534 US 161, 173, 151 L Ed 2d 597, which deprived him of the "fundamental instrument for judicial judgment", "adversarial proceedings in which both parties may participate" "at a meaningful time and in a meaningful manner", Kaley v United States, 188 L Ed 2d, 2014 LEXIS 1634, which "essential constitutional promises may not be eroded." Hamdi v Rumsfeld, 542 US 507, 533, 159 L Ed 2d 578. The Constitutional guarantee of a "meaningful opportunity to present a complete defense", California v Trombeta, 467 US at 485, 81 L Ed 2d 413, was diminished into empty promise, and adversarial testing of the prosecution's case against COLE did not occur. Cole has been precluded from raising issues, attempting to rebut the allegations, confronting the witnesses against him, compelling witnesses in his favor, examining evidence, submitting evidence, objecting, or obtaining any consideration by the courts of any of the merits of his pleadings.

~~COLE has attempted since his first appearance in the Federal District Court Sept. 25, 2014 to obtain his day in court; that is, to be heard in his own person in defense of the allegations against him, but the courts have forced counsel upon him to "represent" him, against his expressed demand that he be allowed to plead and manage his own cause personally with the assistance of counsel, in accord with the 'Law of the Land', statute, and justice. "Represent" means TO STAND IN PLACE OF. "Assist means HELP. -Substitution of "representation" for "assistance of counsel" is subterfuge that is used to divest an accused of their right "to be heard by himself and counsel", Snyder v Massachusetts, 291 US 97, 129-131, 78 LED 674 (1934); Fairey v Tucker, 567 US 924, 183 L Ed 2d 653, 2012 US LEXIS 4508.~~

Both the trial court and the appeals court have denied COLE due process of law, and the full benefit of all laws and "proceedings for the security of person and property", Act May 31, 1870, 16 Stat. at L. 144, continuously, by so doing.

Due process must be accorded in the course of the appellate procedure Cole v Arkansas, 333 US 196, but the abrogation of the right to be heard by himself and counsel has caused all proceedings to be unreliable and fundamentally unfair. Counsels have failed/refused to be an advocate. This is Structural Error. It is not subject to harmless error analysis. The deprivation of said right removes the means of enforcing rights and for obtaining redress. It violates the First Amendment right to petition the Government and it is the removal of all remedy for the enforcement of rights, which is the removal of the rights themselves, an unjust power forbidden by law.

APPENDIX A, ORDER, Nov. 9, 2017, evinces that counsel was forced on the petitioner, and that it is the practice of the Ninth Circuit not to allow an accused to be heard. APPENDIX B, ORDER, Oct. 20, 2017, evinces the refusal to allow an accused to dispense with counsel, appointed by the court, for refusal to follow explicit direction.

No attempt has been made to see if the court has jurisdiction.

Counsel has refused to raise COLE's issues or point out relevant facts to rebut false allegations, essentially pleading COLE guilty by refusing to endorse his defense. This revives the detestable conduct of the Star Chamber. APPENDIX C, ORDER, Sept. 3, 2017, evinces that the Certiorari Petition, Letter of Direction, and Affidavit were received by the Court and Counsel, Docket no. 78; but, counsel did not endorse or comply with COLE's direction to file a motion for leave for him to file a supplemental reply brief. APPENDIX D, is excerpts of record submitted with the APPELLANT'S (SUPPLEMENTAL) REPLY BRIEF, that was refused consideration (appendix A). Page 1 is the Clerk's Letter, July 27, 2017 returning the Petition, and the rest is appendices of it.

Justice requires that the relevant facts and truth be known. An investigation requires the material facts and evidence be impartially examined and considered in relation to all claims. The truth and facts remain concealed. No genuine investigation was conducted. Even the name of the lead investigator, Russell Greene, is absent from the federal record; removed from COLE's witness list by court imposed defense counsel to conceal the facts and preclude Cole from being able to compell any witness in his favor. J. Toney removed all but one name from the list of 23 given to him in October 2014, then waited until the day before "trial" to file it. Judge BURRELL then used the untimely submission to preclude all defense witnesses. RUSSELL GREENE is BLM agent PULTORAK's associate/friend and also is COLE's accuser in state case M14-00388. He had two personal conflicts of interest and did not do ~~an~~ impartial investigation. His only focus or consideration was to make all evidence implicate COLE guilty of criminal acts. Every effort was made to conceal all exculpatory evidence in Cole's favor and fabricate or catalog all evidence to implicate him. PULTORAK immediately contacted GREENE, who immediately showed up and seized control of the investigation. COLE previously had proceeded in state court as a statutory federal officer in an attempt to prove GREENE had committed crimes against him in furtherance of an ongoing criminal enterprise (RICO) and entrapped him. These facts were known to the prosecution and are material to COLE's defense, but have been intentionally concealed from both juries and from the record with considerable effort from Judge BURRELL and others. This denied "a meaningful opportunity to present a complete defense."

Crane v Kentucky, 476 US 683, 690 (1986); Montana v Egelhoff, 518 US 37,

GREENE turned the "investigation" into naught but an effort to implicate COLE and to conceal, suppress, or falsify the evidence to convict. No analysis was made of the bullet trajectories, and no gunpowder residue test on COLE's clothing was done. The abrogation of COLE's rights to examine the evidence, be informed of the allegations against him, cross-examine any witness against him, or be heard by himself and counsel created a kangaroo court fixed on obtaining a proclamation of guilt and precluding all possible recourse while concealing the truth. Depriving the accused of the right to address the court or be heard makes proceedings fundamentally unfair. It deprived COLE of the opportunity to defend. Counsel failed/refused to perform as an advocate. This constitutes Structural Error, as fundamental unfairness and unreliability is the touchstone of it, the criteria for determining it. Due process must be accorded in the course of appellate procedure.

Cole v Arkansas, 333 US 196; Ex parte Hoge, 48 Cal. 3. Cole has been silenced and prevented from responding to the State's case against him, depriving him of "his fundamental constitutional right to an opportunity to present a defense." O'dell v Netherland, 521 US 151, 169. The judgment and sentence were pronounced by the trial court without hearing COLE or giving him any opportunity to be heard: The appeals Court is now proceeding under erroneous presumption of res judicata:

"*1. A sentence of a court, pronounced against a party without hearing him or giving him an opportunity to be heard is not a judicial determination of his rights, and is not entitled to respect in any other tribunal." Windsor v McVeigh, 93 US 274 (1876).

Reporter's Transcript, April 24, 2015, Docket No. 90, p. 14, Mtn.hrng.:

"THE COURT: Mr. Cole,...I had no obligation to respond to any of your filings when you were not representing yourself. You were represented by counsel. ..." (P. 14, lines 22-25)

"THE DEFENDANT: At trial I was not even allowed to address the Court when I had a problem or an issue." (P. 16, lines 16-17)

REASONS FOR GRANTING THE PETITION

The issue raised is fundamental to attaining the first stated purpose for ordaining the Constitution of the United States: To Establish Justice. It is essential that accused persons be allowed an ample opportunity to defend, else the very purpose and essence of the Constitution is defeated. The lower courts now routinely engage in the practice of refusing to allow the accused to address the courts by themselves for any reason or for any purpose. The lower courts have abrogated the right of the accused to be heard in defense of the allegations against them or to lawfully attempt to enforce any rights or present any grievance, evidence, or objection, which deprives all proceedings of fundamental fairness. This violates the "Law of the Land" and renders Obtaining Justice impossible. The issue is the courts depriving accused persons of due process of law. The practice renders the Judicial System to be nothing but a mockery of Justice by converting the courts of the United States into the "Fit and Fitting Instrument for subjecting the People under Absolute Despotism". It is such an affront to the Principles of Justice and this Nation as to be utterly intolerable.

This Court has the duty to exercise the Judicial power of the United States to require the lower courts to comply with the established practice and the law.

"[1][2][3] The peremptory writ of mandamus has traditionally been used to confine an inferior court to a lawful exercise of its prescribed jurisdiction...." Will v United States, 389 US 90, 95, 108, 19 L Ed 2d 305 (1967).

[It] "may be used to review an interlocutory order." Coopers & Lybrand, 437 US 463, 466, n6, 57 L Ed 2d 305 (1978).

v. Livesay
"[E]xceptional circumstances amounting to a judicial "usurpation of power" will justify the invocation of this extraordinary remedy. ...[T]he issuance of the writ of mandamus is proper where a court finds exceptional circumstances to support such an order." Id., Will v United States, 389 US 90, 95, 108, 19 L Ed 2d 305 (1967).

In this case, the right sought to be enforced is "fundamental to the further conduct of the case." Gillespie v US Steel Corp., 379 US 148 149-152, 154, 13 L Ed 2d 199 (1964). See Abney v United States, 431, US 651, 658-663, 52 L Ed 2d 651 (1977).

RELIEF REQUESTED

Petitioner prays this Court Will issue a peremptory writ of mandamus and/or writ of prohibition to the Ninth Circuit Court of Appeals and the District Court Eastern District of California ORDERING that all persons accused of a crime be accorded their right to be heard and accorded their rights to proceedings according to the course of the common law, especially their right to be heard by themself and by counsel. Further, this Court is requested to take any and all other actions which it deems appropriate to enforce these rights.

APPENDIX H to the petition is Grand Jury Exhibit 1 and pictures showing that the evidence of "probable cause" was planted by investigators.

CONCLUSION

The petition for a writ of mandamus should be granted.

VERIFICATION

I am the petitioner in this action. All facts alleged in the above petition not otherwise supported by citations to the record, exhibits, or other documents are true of my own personal knowledge. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.
So help me God.

This petition was originally submitted Feb. 8, 2018, received by the Court on Feb. 21, 2018, and returned to petitioner for deficiency correction July 9. 2018. The requested affidavit was prepared, this page was retyped, and this verification clause was added to correct said deficiency created by unannounced closures of the prison law library and the haste created thereby. All replaced pages are appended to the Motion For Leave To Proceed In Forma Pauperis.

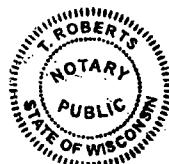
Executed at Oxford, Wisconsin :

On this 16th day of July, 2018
the person known to me as Brent Douglas Cole
voluntarily appeared before me and signed
this verification before me. In witness
whereof, I have subscribed this document
and affixed my seal.

T. Cole *Adams City*
Notary Public in and for the State of Wisconsin,

My commission expires May 24, 2019.
PETITION FOR A WRIT OF MANDAMUS - COLE v UNITED STATES -

Brent D. Cole
Brent Douglas Cole, # 71911-097
P.O. Box 1000
Oxford, WI 53952



RELIEF REQUESTED

Petitioner prays this Court will issue a peremptory writ of ^{mandamus} and/or writ of prohibition to the Ninth Circuit Court of Appeals and the District Court Eastern District Of California ORDERING that all persons accused of a crime be accorded their right to be heard and accorded their rights to proceedings according to the course of the common law, especially their right to be heard by themself and by counsel. Further, this Court is requested to take any and all other actions which it deems appropriate to enforce these rights.

APPENDIX H to the petition is Grand Jury Exhibit 1 and pictures showing that the evidence of "probable cause" was planted by investigators.

CONCLUSION

The petition for a writ of ^{mandamus} ~~REB~~ A should be granted.

Respectfully submitted,

Brent D. Cole, #71911-097

Date: February 8, 2018

Brent D. Cole, #71911-097
P.O. Box 1000
Oxford, WI 53952