No. ______

In The
Supreme Court of The United States

In Re: Kenneth Simpson
Pro Se Petitioner

On a Petition For a Writ of Mandamus.

To the 8th Circuit Court of Appeals

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On two prior occasions, the 8th Circuit has refused to address statutory and Constitutional challenges to both supervised release and SORNA, even though such challenges are routinely addressed in appeals of revocation. This raises the concern that continual reincarceration without adjudication will repeat both now and the future under laws of questionable validity. The Court has also refused to address challenges to the underlying conviction, though those challenges received no ruling in prior proceedings through no fault of my own.

Questions Presented

· When an individual claims that he is being incarcerated under an illegal statute, which is unconstitutional for any reason, can a Court refuse to address that claim under Bond v U.S., 189 LEd2d 1 (2014)? Are Constitutional attacks to supervised release or its conditions available at revocation hearings under Johnson v U.S., 529 US 694 (2000)?

When a releasee can show that he has never received a ruling - through no fault of his own - on the legality of his underlying conviction, do cases like Daniels v U.S., 532 US 374 (2001) allow the releasee to raise that anew at revocation hearings? Does it violate Due Process to allow the Government to relitigate the original conviction or add new penalties while denying the releasee a reciprocal right?

Must Courts review claims that conditions of release impede successful reintegration or increase reincarceration rates, contrary to the stated purpose of release and Johnson v U.S., 529 US 53 (2000)? May a Court impose conditions that serve no valid societal purpose or protect against largely imaginary threats?

Where a releasee substantiates a claim of judicial bias that has required recusal in other cases, may the Court summarily dismiss the claim?

List of Parties

Kenneth Simpson

United States of America

U.S. 8th Circuit Court of Appeals

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In The

United States Supreme Court

Petition For Writ of Mandamus

Comes now Kenneth Simpson, requesting this Honorable Court grant a Writ of Mandamus to force the lower court, the 8th Circuit Court of Appeals to address the legality of supervised release in pending case 18-1692. Without this Court's intervention, it is certain that the 8th Circuit will wait until I am about to be released, as it has twice before, before summarily denying me on a procedural basis never invoked outside of this case.

Opinions Below

The Eastern District of Missouri, Judge Rodney W. Sippel, revoked release in this instant case, 4:10-cr-00169-RWS-1, on March 28, 2018. [redacted] as refused, despite multiple requests, to send the judgment. It is therefore not included.

The 8th Circuit has twice before claimed that I am unable to raise a challenge to the legality of supervised release, contrary to 8th Circuit precedent, in cases 16-1031 and 16-4498. These were reported at 653 Fed Appx 850 (8th, 2016) & 704 Fed Appx 609 (8th, 2017) respectively and are included at Appendix [redacted]

Jurisdiction

Extraordinary writs, governed by Supreme Court Rule 20, are available in pending cases. Jurisdiction to grant such writs is granted by 28 U.S.C. § 1651(a).

Standard For Mandamus

A writ of mandamus is a "drastic and extraordinary remedy reserved for really extraordinary causes." In Re U.S., 199 L Ed 2d 417, 418 (2017) (citing Cheney v U.S. Dist Court of D.C., 542 US 367, 380 (2004)). It will only issue to compel performance of a clearly nondiscretionary duty, Pittston Coal Group v Sebben, 488 US 105, 121 (1988). This right must be clear and undisputable, Will v Calvert Fire Ins. Co., 437 US 655, 665-666 (1978).

To prevail on a request for mandamus, a petitioner must make three showings: (1) that he has a clear right to the requested relief; (2) that the official in question has a duty to give that relief; and (3) that he has no other way to obtain the relief he seeks. If all three are met, mandamus may issue.

Here, Simpson has consistently raised objections to both the legality of the underlying conviction and to the continuing application of new sanctions that the District Court and 8th Circuit have repeatedly refused to address. This is Simpson's third violation of supervised release. On both prior occasions, the 8th Circuit issued summary denials ignoring its own standing precedent. These denials came right before the expiration of term, making effective filing for Certiorari impossible.

If, as argued within, there is a clear duty to rule on (1) Constitutional objections to the existance or operation of release; (2) the uncontested lack of regularity of the underlying conviction and subsequent proceedings; and (3) the lack of fairness in having an adversarial judge sit over the proceedings, then the 8th Circuit's error is plain. And, as the merits of the previous challenges are largely uncontested, relief is warranted. Finally, as Certiorari is both discretionary and rare, the denial of an appeal is often the last review. If that review is illusory, a releasee gets denied his only opportunity for relief. Repetition of this process leaves no other avenue.

Constitutional and Statutory Provisions.

Amendment V ...nor shall any person be placed twice in jeopardy of life or limb for the same offense...

18 U.S.C. §3553(a) Included at Appendix C

18 U.S.C. §3582(e)(2) The Court may extend a term of supervised release if less than the maximum was imposed and may modify, reduce, or enlarge the conditions of supervised release at any time prior to the expiration of supervised release...

18 U.S.C. §3583(d) Included at Appendix C

18 U.S.C. §3583(h) When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment, the Court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by the statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

Statement of The Case

In 2010, I was arrested by the U.S. Marshalls on a federal indictment for Receipt of Child Pornography in the Eastern District of Missouri. When the parties scheduled a pre-trial conference to set the terms of the impending trial and to discuss jury selection, Judge Rodney Sippel violated F.R. Cr. P. 11 in addressing me to threaten punish me if I exercised my right to go to trial and was found guilty. Not only would I be sentenced for things I did not do, but supposedly, even the prosecutor would object to the harshness of the sentence, to no avail. I quickly pled to 5 years, and lifetime release was imposed.

Due to my lawyer filing an Anders brief, and my request for an extention of time was treated as my Penson reply, my appeal was forfeitted. I filed a §2255, challenging my plea, as obtained through threats and misinformation, and also my conviction on numerous grounds, most of which were never contested. After the 8th Circuit became involved, Judge Sippel issued a denial that didn't address most of the alleged errors. To avoid overturning the conviction, Judge Sippel removed the elements of "Knowing Receipt" and altered the commerce element from "interstate movement" to "using a facility" and "affecting commerce" to reflect the admitted intrastate nature of the charge. Deciding to proceed without briefing, the 8th Circuit denied a C.O.A.

When I tried to reraise the unadjudicated claims, and to challenge the lack of Due Process, the Judge dismissed the motion without reading it, a fact he would later admit, and addressed arguments he invented instead of mine. When I protested this, he barred me from filing future motions, though 8th Circuit precedent forbids this. All attempts to get him to lift this ban and address basic issues, including jurisdiction, went nowhere. The original challenges remain unresolved.

In 2015, when I was scheduled to be released, Judge Sippel filed a false complaint with the Marshalls, claiming I threatened to kill him. This "threat" was investigated, but determined to be baseless. The next month I was released.

Upon returning to Missouri, I travelled from the halfway house to St. Francis County Sheriff's Department, letting them arrest me so that I could challenge the legality of the sex offender registry. Though the challenge was successful in part, my P.O. violated my term before I could be released to prevent me from pursuing it. At the revocation hearing, I challenged the Court's authority to proceed, in part on Double Jeopardy grounds. This was summarily dismissed.

On appeal, the 8th Circuit created a bar to Double Jeopardy challenges which had never been found by any Court before and which have been used in no case since. Though the Government never argued procedural bar to any claim, the 8th Circuit sua sponte dismissed all of them, including jurisdictional ones, as collateral attacks without warning. The dismissal came right before my release. The Court also claimed I had defaulted my challenge to the registry, though it was the entire basis of the revocation.

Upon release, I again challenged my obligation to register. When the State prosecutor refused to press charges and hinted at supporting my petition, federal authorities arrested me again to moot my challenges. Though no one contested my right to legally challenge the registry - which is plain - or the correctness of the challenge, the Judge violated my release again. On appeal, the 8th Circuit allowed me to fire my lawyer when he refused to renew my challenges from the lower court. However, there was no briefing schedule set to allow me to present my case. Again, the appeal was summarily dismissed without even the pretense of real review.

As the 8th Circuit has consistently denied me review and adjudication at every stage, and as it has twice refused to address the legality of either supervised release or the sex offender registry, I cannot believe this time will be different. There is a clear, unambiguous duty, addressed more within these pages, both to finally rule on the original conviction's legality - an adjudication I have never received, through no fault of my own - and an obligation to test the legality of the statutes which I am contesting that have led to my imprisonment. It seems the 8th Circuit will not perform these duties on its own, without this Court's intervention.

So I come to this Honorable Court, seeking mandamus.

Reasons to Grant the Writ

I. A Court has no "discretion" to refuse to address a challenge to the law's Constitutionality under which a defendant/releasee is being imprisoned, forcing them to endure potentially unconstitutional incarceration.

This is the third time that I have been arrested and imprisoned for violating supervised release. The first two violations were for challenging my obligation to register as a sex offender under Missouri law - the first time successfully, the second time mooted by arrest. Though this violation is for absconding, the sentence was based solely on the two prior violations. Despite explicitly challenging the legality of both the registry and supervised release, the 8th Circuit declined to address those challenges, exercising an authority it is not disputed they do not possess.

The 8th Circuit's claim to deny review, that releasees do not have the right to challenge the legality of release or its conditions at a revocation hearing has never been found by any Court in the country. To the contrary, it has been consistently addressed by every Court it has been raised in. Even the 8th Circuit has previously adjudicated it on the same grounds as here, Double Jeopardy, at numerous revocation appeals, see, for example, U.S. v Bennett, 561 F.3d 799, 802-803 (8th, 2004). This sudden insistence on "finality" of supervised release as part of the original sentence flies in the face of the 8th Circuit's prior statements that release is never final, U.S. v McFarlin, 535 F.3d 808, 812 (8th, 2008) and that the Court must give de novo review to challenges to the legality of release, U.S. v Asalati, 615 F.3d 1001, 1006 (8th, 2010); U.S. v Lewis, 519 F.3d 822, 824 (8th, 2008).

To date, my case is the only case on LexisNexis where a Court of Appeals has refused to hear a Constitutional attack to supervised release at revocation. Neither before nor after has the 8th Circuit has ever followed this practice. It was not the law, then or now. Indeed, if this were the law, Johnson v U.S., 529 US 694 (2000), in which this Court allowed an ex post facto challenge to be raised, and where this Court raised both Double Jeopardy and Due Process concerns on its own motion, could never have occured.

As this Court recently noted in Montgomery v Louisiana, 193 LEd 2d 599, 612, 616-617 (2016), if the Government lacks the power to pass a law, obviously, it may not insist that an individual stay in prison under that invalid law. Thus, Courts must address such claims when they arise. A law beyond the power of Congress, for any reason, is no law at all, and may not be enforced, Bond v U.S., 180 LEd 2d 269, 284 (2011). This is true whether it goes to the power to convict, or to punish, Montgomery at 614-615.

While this Court has stated that an individual need not subject themselves to arrest and prosecution to enforce their rights, Susan B Anthony List v Dreihaus, 189 LEd 2d 246, 255-256 (2014), and he cannot be forced to "bet the farm" or "burn down a building" to ask the courts to intercede, MedImmune, Inc v Genetech, Inc, 549 US 118, 134 (2007); Steffel v Thompson, 415 US 452, 459 (1974), the Courts below have done just that here. Worse, they've turned the process on its head. Not only have I had to submit myself to arrest and imprisonment, I cannot even get a ruling on whether my incarceration is valid. Release is being used to deny me adjudication.

Bad as this is, the 8th Circuit made it worse by raising this sua sponte without an opportunity to brief it, and no warning, contrary to Day v McDonough, 547 US 188, 210 (2006). The 8th Circuit has used this procedural rule to circumvent its clear duty to address the claims. If either claim is found valid-and neither is seriously contested-relief is mandatory, Branch v Smith, 538 US 254, 300-301 (2003). Since the 8th Circuit has twice ignored its own precedent and long settled law, common sense dictates that it will again give me summary denial without this Court issuing Mandamus to order it to finally review the matter.

II. The 8th Circuit's refusal to address collateral attacks in revocation hearings runs contrary to Daniels v U.S., 532 US 374 (2001) and Lackwana County D.A. v Cass, 532 US 394 (2001) where a releasee who has been denied prior resolution, through no fault of his own, is allowed to reraise his claims. The Government may not be granted the right to relitigate the original offense if the releasee cannot as well.

In what seems to be an adoption of this Court's reasoning of Daniels, at 381, the lower courts are generally prohibiting releasees from using revocation hearings as a way to circumvent the limitations of the AEDPA. Much like sentencing under the ACCA, though an illegal sentence may, of course, be challenged, at 380, the proper avenue is an appeal or §2255. Finality has attached, and the principle of regularity should not lightly be disturbed. See, for example, U.S. v Novak, 217 F3d 566, 570-571 (8th, 2001).

Important as finality might be, this Court did not make the presumption of regularity irrebutable in any proceeding where it has been applied. Indeed, in Daniels, the Court acknowledged there would be cases where the defendant could show he was previously denied an adjudication, though he timely raised a challenge, at 384. Likewise, in Lackwana, at 403-406, the Court noted that a defendant making such a showing was entitled to a hearing on the claim that his prior is constitutionally invalid. Thus, to the extent that Novak and its bretheren adopt this rule, the ability to show that the rule is inapplicable as applied must be part of the parcel.

This case shows the necessity of the exception. Because of my lawyer's Anders brief, and my request for an extention being treated as my Penson reply, I was constructively denied an appeal. Though I filed a §2255, the Judge picked and chose amongst the claims he wished to address. And, since he later barred me from filing, I cannot seek to correct this via the "right" avenue.

Unlike a case where a defendant seeks to relitigate claims he has lost, or to untimely raise new claims, I have never received a ruling on properly raised claims. The only Judge to review my claims is the very Judge I am accusing of deliberate misconduct, not mere error. The infirmities are so glaring, the Government has never contested them, despite multiple opportunities to do so. This is exactly what Daniels and Lackwana describes.

Even were this exception not spelled out in this Court's prior cases, it would still need to be applied because of our concern for fundamental fairness. If a Judge has a duty to rule, it would be unjust if he could avoid that duty indefinitely avoid it either through negligence or deliberate refusal to perform it. The individual would lose his entitlement due to the failure or misconduct of the official. Such a result would not just be inequitable, it would be illegal.

While there are obviously differences between release violations and the ACCA, those differences do not speak against applying the exception. If anything, they speak in favor of a broader, more releasee friendly rule.

Unlike the ACCA, a violation of release is a "second bite at the apple"; it reopens the original proceedings, something this Court has consistently disapproved of, see U.S. v DiFranscesco, 449 US 117, 140 (1980). The Government is, by definition, seeking to extend a criminal sentence beyond what was originally imposed, or to add a new penalty altogether, Johnson, at 700; Moore v U.S., 592 F.2d 753, 755 (4th, 1979). It is always open to modification; it is never final, U.S. v Davies, 380 F.3d 329, 332 (8th, 2004).

Something cannot both be final and subject to modification. By holding open the door for Courts to revisit the matter at any time for any reason, Congress has foreclosed any claim that the matter is closed or beyond litigation. Even where later penalties are added to an original sentence, this Court has never hesitated to let an individual raise obvious constitutional problems, either with the original conviction, Chaidez v U.S., 185 L Ed 2d 1103 (2013) or of the right of the Government to impose new punishment, Department of Revenue of Mont. v Kurth Ranch, 511 US 767 (1994).

Here, the Court's sole ability to act stems from the original conviction. If that conviction is Constitutionally infirm, entered without jurisdiction, or has been

III. The 8th Circuit is giving no meaningful review to the reasonableness of conditions of release. Without addressing serious challenges that conditions serve no valid purpose, inhibit reintegration, overly restrict liberty, or violate the purpose of release, the 8th Circuit is negating the statutory and Constitutional limits of release by inaction.

Right now, district courts in the 8th Circuit are being given virtually unlimited latitude in imposing conditions of release. So long as a Judge mentions one of the four factors listed in 18 U.S.C §3583(d) when imposing conditions, that condition will almost certainly be upheld on appeal. There is no enforcement of the requirement that the condition restrict no more liberty than absolutely necessary, and objections to its need are almost always swept aside without real examination.

While this problem is not unique to the sex or porn offender context, it is more severe. These offenses are almost always subjected to a plethora of extremely restrictive special conditions upon the erroneous-but widely held-view that such offenders are almost guaranteed to reoffend, and pose "unique dangers" to the public, see U.S. v Kane, 470 F.3d 1277, 1281 (8th, 2006). These conditions severely limit, or even prohibit, releasees from engaging in legal, often Constitutionally protected, activities that are beneficial, if not essential, to successful reintegration.

It is difficult to overstate the hurdles that defendants face in trying to get the 8th Circuit to hold lower courts within the statutory or constitutional limits on review. The Court upheld bans on association with minors, including one's own children or grandchildren, severely curtailing 1st Amendment and familial rights, see; U.S. v Muhlenbruch, 682 F.3d 1096 (8th, 2012). Even assuming that there is some connection with the offense, which is questionable, the Court brushed aside claims that this deprived him of more liberty than necessary based on nebulous, possible future threats, ignoring his evidence that he posed no such threat, at 1103-1104. Yet, absent such a threat, society has no legitimate reason to interfere with family relationships.

Likewise, the 8th Circuit has approved of what amounts to a de facto ban on all use of internet or technology, so long as it is at the discretion of the P.O., as opposed to the explicit order of the Court, U.S. v Fields, 324 F.3d 1025 (8th, 2003). For the releasee, this minor change in procedure has no real difference. Pretending otherwise exalts form over substance, Baldwin County Welcome Center v Brown, 466 US 147, 164 (1984). The practical effect is the same, regardless of who bans him, he is forbidden from using tools necessary to function in today's society. These restrictions, often imposed for life, have been upheld so many times without any explanation whatsoever that they have undermined by later events, this necessarily calls into question the Court's authority to act. It is well settled that a Court may not act in excess of its Constitutional bounds, or to refuse to address its own authority to act, or the lack thereof, Nebraska v Colorado, 194 LEd2d 545 (2016); Perez v Mortgage Bankers Ass'n, 191 LEd2d 186, 213 (2014).

Perhaps a revocation may not be the primo avenue to address such issues, but if the matter is in front of the Court and can-or, in many cases, must-be adjudicated, it is unjust to resentence the releasee and make him file under the "correct" avenue, instead of correcting it. This fails to conserve judicial resources, and, where it may be unconstitutional to proceed at all, this practice raises serious Constitutional doubts.

While the rule is both unwarranted, and contrary to Cass and Daniels, it is not at all clear that the rule is sound in a general matter. Currently, the lower courts are uniformly allowing the Government to openly relitigate a releasee's original crime. See, for example, U.S. v Johnson, 827 F.3d 740, 745 (8th, 2016). Prosecutors are allowed to ask for terms to be violated or sentences increased by raising claims that prior sentences were unduly lenient, or a releasee was far more culpable for his crime than recognized, etc. These arguments usually win. So, while the releasee is barred from doing this, the Prosecution has unfettered freedom.

There is no reason to believe that Congress intended such an unfair, lopsided result. Moreover, even were we to ascribe such a motive, it could not legally be enforced. Congress cannot simply declare whatever it wants to be "due process of law", Den v The Hoboken Land & Development Co., 18 How 272, 276 (1856). If a fact or issue is to be relevant to if one is to be punished, or how much, the person being punished must have the right to litigate the matter, Simmons v South Carolina, 512 US 154, 165 (1994). It is telling that, in the context of the ACCA, the Government is sharply limited, as is the defendant, Shepard v U.S., 544 US 13 (2005).

Under existing precedent, I was entitled to a ruling on my claims-that I did not commit a crime; that I was threatened into a plea; that §2252 is unconstitutional as applied; and that this was not within Federal jurisdiction. It was serious error to refuse to do so originally, and every subsequent refusal has exponentially compounded the error. Without this Court's intervention, the 8th Circuit will continue to refuse to address the original claims and the claim that the presumption of regularity does not apply in this case. Mandamus is essential to get review that the 8th Circuit is supposed to give as a matter of course.

become routine. They are presumed reasonable, and that presumption may become irrebutable, U.S. v Phillips, 785 F.3d 282, 284 (8th, 2015).

Any deprivation of liberties must be rationally related to a legitimate interest, such as the public health, safety, or morals, or general welfare, Village of Euclid v Ambler Realty Co., 272 US 365, 395 (1926). Our Constitutional system requires that the government should leave the individual alone unless good cause is shown to disturb him, U.S. v Balsys, 524 US 666, 690 (1998). Just because an interest is claimed does not mean that the law advances that interest, nor that it doesn't violate individuals' rights, Whole Women's Health v Hellerstadt, 136 S.Ct. 2292, 2316 (2016). Courts must address claims that any interference does not deprive the individual of liberty more than necessary, both to preserve the people's rights, and to keep Government in check.

In the context of supervised release, this simply isn't being done. Courts do not provide scrutiny of if the stated reason for a condition is valid. For instance, broad bans on contact with minors and prohibitions on frequenting public places where they may be are justified in porn cases, since the offense "involved children", which is truly debatable. So, too, conditions are imposed to "prevent recidivism", or to "protect the public." It is never asked if an offender is likely to reoffend or if he poses a real danger.

Even if there is a valid reason to impose a condition, the requirement that it restrict no more liberty than reasonably necessary to fulfill the goals stated in 18 U.S.C. §3583(b) is almost never followed, and the 8th Circuit never enforces it. For example, if there is truly a concern that a releasee will download more pornography, monitoring software will accomplish the same goals in a less restrictive, more Constitutionally acceptable, manner. It will always be a superior option to any ban. Conditions on minor association can likewise be drawn up without burdening incidental contact or family relationships, let alone banning the releasee from public places. These options are never explored.

Few conditions actually serve a valid purpose, and virtually all of them, to some degree or other, deprive releasees of basic rights. This is problematic enough on its own; but release is not supposed to be punishment, but is to fulfill rehabilitative ends distinct from incarceration. It is supposed to assist the releasee in easing back into society, ensuring successful reintegration, U.S. v Johnson, 529 US 53, 59 (2000). As it stands, supervised release not only fails to fulfill this goal, it hinders it, impeding reentry.

Many of the conditions of release, especially in porn and sex cases, make it difficult, if not impossible, to live a normal life in compliance with the law, Werner v Wall, 836 F.3d 696, 697, 703 (7th, 2016). Computer use is not a luxury in today's world; it is a requirement in even minimum wage jobs. It is not possible to truly function without internet, which is why most Courts of Appeals forbid banning people from using it, See U.S. v Ullmann, 788 F.3d 1260, 1263 (10th, 2015) (collecting cases) for example. Many Courts are starting to acknowledge just how onerous these conditions truly are, see U.S. v Jenkins, 854 F.3d 181, 194-195 (2nd, 2017).

This case is illustrative of the problem. All parties acknowledge that I pose no risk of reoffense, and that release is causing me to fail at reintegrating by locking me back up for legal behavior. The original term of 5 years was agreed to be excessive at my original hearing, but has now been doubled. Though no one can offer any justification, I have lifetime paper and some of the most harsh conditions that can be imposed. Well reasoned challenges to this have been summarily dismissed since there is no way to justify my continued treatment.

Imposing conditions is not a game; it has real world consequences for releasees. For a third of releasees, the careless imposition of conditions leads to further incarceration, mostly for legal behavior. Given the harsh consequences of violation, it is not too much to expect actual explanation, capable of surviving real scrutiny, and real review by Appellate Courts, if the conditions are challenged. A real chance to contest the validity of restrictions is a basic requirement of due process, U.S. v Carolene Products, 304 US 144, 152 (1938).

Congress has set statutory factors to be followed, the Constitution sets limits as well. If the Court is exceeding either boundary, the conditions cannot stand. If there is no review and no relief when conditions are beyond a Court's power to impose, for any reason, this calls the Constitutionality of release itself into question. The individual doesn't care who is depriving him of his rights; they are supposed to be safe from all branches of Government, Reid v Covert, 354 US 1, 16 (1956). If a Court errs in enforcing an invalid law, National Mines Corp v Caryl, 497 US 922, 923 (1990), then it stands to reason that it errs in enforcing invalid conditions. Yet, without mandamus, it will continue to do so, ignoring all challenges to current practices.

IV. Courts must address claims of judicial bias, instead of summarily dismissing them. If similar claims required recusal in the past, they deserve discussion here.

Having a fair trial in front of a fair tribunal is a basic requirement of Due Process. Because of the importance of this requirement, this Court has stated that even the possibility of bias is unacceptable, Robertson v California, 112 LEd 2d 575, 576 (1990). It is important that defendants get not just the actuality of justice; they must have its appearance, too. This is essential to keep public respect for the judiciary, and to ensure its orders will keep being followed, Williams-Yulee v Fla Bar, 191 LEd 2d 570, 585 (2015). So it is not relevant if the Judge is actually biased, the test is if an average person, knowing the facts of the case, would question if the judge could be fair, Caperton v A.T. Massey Coal Co, 556 US 868, 888 (2009).

Allegations of this sort are extremely serious as they undermine the integrity of the trial if true. Courts should be vigilant in policing such claims. Regardless of the outcome, public perception of the bench can only be increased by genuine review. By contrast, summary dismissal, even that comes to the correct result, can only diminish respect for the bench, creating the impression that courts are uninterested in correcting misconduct.

This takes added importance when similar claims to one raised by a given complainant have been found sufficiently serious as to require recusal in other cases. Refusal to address such claims necessarily creates arbitrary enforcement; one person who makes a claim gets a new judge, but another with the same claim gets no attention at all. If the two cases are genuinely similar, this is a denial of equal protection, Engquist v Oregon Dep, 553 US 591, 602 (2008). It also increases discontent amongst petitioners, leading to repeat petitions.

Here, at least two claims have been made which have required recusal in other cases. If a Judge violates Rule 11 and urges a defendant to plea, he is to step down if requested, In Re Larson, 43 F3d 410, 416 & n 7 (8th, 1994). So, too, if a Judge becomes personally embroiled with a defendant (say by filing a false death threat complaint with the Marshalls), he can no longer sit over the case, In Re Murchison, 349 US 133, 141 (1955). Other errors requiring mandatory reversal have been raised, such as barring future filings, contrary to 8th Circuit precedent; upholding jurisdiction on a basis not advanced by the parties, Beneficial National Bank v Anderson, 539 US 1, 12 (2003); refusing to adjudicate issues, Truehill v Florida, 198 LEd 2d 272, 273 (2017); and more.

These issues have never been denied. Instead, the Government essentially asked the 8th Circuit to ignore them. Given the other problems with the earlier rulings, and the complete lack of discussion, it seems this suggestion was accepted. This hardly instills faith or confidence in the system. Perception in the justice system is as important as reality, and here it appears the 8th Circuit is ignoring serious claims of misconduct, whether to achieve a desired outcome, to shield a Chief Judge, or to show a troublesome violator who is boss. None of those is legitimate.

I am entitled to review of my claims. And, if the Government does not dispute the existance or import of the allegations, which they have not, I am entitled to new hearings under a new Judge. However, based on past circumstances, the 8th Circuit has given me every reason to believe they will continue to refuse to look into the matter. Mandamus is essential, not just to provide me the fair hearing I am entitled to, but also to stop practices that call into question the integrity of the lower court.

Conclusion

Without this Court's intervention, the 8th Circuit will almost certainly continue their practice of refusing to address the Constitutional and statutory questions raised in the attached appellate brief. It is sincerely prayed that this Court issue a Writ of Mandamus to compel the 8th Circuit to provide the required review.

Respectfully submitted,
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