No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Ya'Shua Amen Shekhem El Bey — PETITIONER
(Your Name)

vs.

United States of America, et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
The United States Court of Appeals for the District of Columbia Circuit

_____
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ya'Shua Amen Shekhem El Bey
(Your Name)

1 W Prospect Avenue, # 259
(Address)

Mount Vernon, New York 10550
(City, State, Zip Code)

347-238-0639
(Phone Number)

QUESTION(S) PRESENTED

1. Whether the district court denied Petitioner's rights to due process of law when it failed to serve it's "Minute Order" upon the Petitioner and failing to assign a civil docket entry number to it, yet was used to dismiss Petitioner's Motion filed under Rule 60 (b)(3), (4), (6) and (d)(3) of the Federal Rules of Civil Procedure for fraud on the court against the memorandum opinion and Order of U.S. District Court Judge Beryl A. Howell.

2. Whether the district court abused its discretion when it failed to serve it's "Minute Order" upon the Petitioner and failing to assign a civil docket entry number to it, yet was used to dismiss Petitioner's Motion under Rule 60 (b)(3), (4), (6) and (d)(3) of the Federal Rules of Civil Procedure for fraud on the court against the memorandum opinion and Order of U.S. District Court Judge Beryl A. Howell.

3. Whether the district court's action as described above violates the fundamental principle of due process in which the U.S. Supreme Court is in place to uphold and protect.

LIST OF PARTIES

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:

Alison Julie Nathan, U.S. District Court Judge for the Southern District of New York

TABLE OF AUTHORITIES CITED

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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

No opinions were entered in the United States Court of Appeals.

The opinion (and Order) of the United States district court appears at Appendix H to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was June 30, 2018, Appendix A, at 1a.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2201 (Creation of remedy):

(a) In a case of actual controversy within its jurisdiction...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2202 (Further relief):

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment (June 25, 1948, ch. 646, 62 Stat. 964.).

42 U.S.C. § 1983 (Civil actions for deprivation of rights)

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

Fed. R. Civ. P. 60 [Relief from a Judgment or Order]:

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

Fed. R. Civ. P. 60(b):

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

Fed. R. Civ. P. 60(b)(3):

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

Fed. R. Civ. P 60(b)(4):

(4) the judgment is void;

Fed. R. Civ. P. 60(d)(3):

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:
(3) set aside a judgment for fraud on the court.

Article 3, Section 1 of the United States Constitution:

1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Article 6 of the United States Constitution:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

First Amendment to the United States Constitution:

"Congress shall make no law...abridging the freedom of speech...and to petition the government for a redress of grievances."

STATEMENT OF THE CASE

Petitoner brings this Petition for Writ of Certiorari to the United States Supreme Court in presenting an issue that is a matter of public interest which warrants that this Court provide the necessary guidance to the D.C. district and circuit court that has deviated far away from the fundamental principles of due process which makes it necessary for this High Court to uphold and protect the Constition for the United States of America, otherwise gross judicial abuse, lawless official misconduct and judicial tyrany will undoubtedly overtake and grow like a cancer, if it hasn't already, that will undue this republic from within, and the accountibilty falls in the hands of this illustrious high Court pursuant to Article 3 and 6 of the United States Consitution.

On June 19, 2017 in the U.S. district court for the district of Columbia, Petitioner filed a motion pursuant to Federal Rules of Civil Procedure ("Fed.R.Civ.P.") 60 (b)(3), (4) and (d)(3) for relief [Appendix G, a36 to 79; USDC/DC, 16-164, Dkt. No. 25] to vacate as void for fraud on the court and misrepresentation, the memorandum opinion and order, both dated January 28, 2016 (entered February 2, 2016) [Appendix H, a80 to a82; USDC/DC, 16-164, Dkt. No. 3 and 4, respectively].

The Petitioner's motion pursuant to Fed.R.Civ.P. 60 (b)(3), (4) and (d)(3) ("Rule 60 Motion") was submitted to address the false and fraudulent classification of Petitioner's Petition misrepresented by the D.C. district court as a 1983 civil rights cause of action, which it is not. Petitioner's civil action is clearly a declaratory judgment petition pursuant to and under 28 U.S.C. § 2201 and 2202.

Petitioner filed a declaratory judgment petition pursuant to 28 U.S.C. § 2201 and 2202, seeking clarification of rights, not appellate review or under the statute shown as 42 U.S.C. § 1983 appearing on the district court's docket summary report [Ya'shua Amen Shekhem El Bey v. U.S.A, et. al. USDC/DC, 16-164 (UNA)]. Approximately 29 days after the Petitioner filed his Rule 60 Motion [Appendix G, a36 to 79; USDC/DC, 16-164, Dkt. No. 25], the U.S. district court Judge Tanya S. Chutkan issued a "minute order" that was supposedly entered on July 18, 2017 without any document entry number that would make it accessible or retrievable, as the five (5) previous orders entered on the civil docket summary by the respective district court judges, as to USDC/DC, 16-164, Dkt. No. 4, 13, 14, 19 and 21, respectively.

At no time did the Petitioner ever received service or notice of the minute order by the district court and Petitioner only became aware of said minute order by inquiry to the district court's pro se office clerk. "Due process is rooted in conception of fairness" U.S. v. Rampton, 762 F3d 1152 (10th Cir. 2014); and "Due Process always require, at a minimum, notice and an opportunity to respond." U.S. v. Raya-Vaca, 771 F3d 1195 (9th Cir. 2014).

Petitioner filed his Notice of Appeal, dated and filed August 2, 2017 [Appendix F, a29 to a35; USDC/DC, 16-164, Dkt. No. 27] with attached copy of Dkt. No. 26. which is the "supplemental record on appeal transmitted to the U.S. court of appeals – re order on motion to vacate. Separately, Petitioner filed a Letter of Complaint, dated August 2, 2017 entitled "Pro Se Clerk Office Docketing Clerk Office Misconduct Complaint For Failure to Post Minute Order on The Civil Docket", after learning from the status of the Rule 60 Motion from the Pro Se Clerk's office on or about the last week of July 2017 that a decision was rendered denying Petitioner's Rule 60 motion [Appendix G, a36 to 79; USDC/DC, 16-164, Dkt. No. 25]. Rather than the district court filing the Petitioners misconduct complaint separately, it added the complaint with Petitioner's notice of appeal [Appendix F, a29 to a35; USDC/DC, 16-164, Dkt. No. 27].

Upon a thorough review of the district court civil docket summary report, the Petitioner was perplexed as the summary report indicated that the minute order was entered July 18, 2017 and signed by U.S. district court Judge Tanya S. Chutkan, yet it is not retrievable from the district court docket summary report as it did not have an associated document entry number as do the five (5) previous orders issued in the civil docket summary report such as USDC/DC, 16-164, Dkt. No. 4, 13, 14, 19 and 21, respectively. The Petitioner was under the belief that such document entry number is needed should the appeal of the order, herein the minute order, go up to the dc circuit court and/or United States Supreme Court wherein the said minute order would be appended, much less to be able to append said minute order in the court of appeals for the district of Columbia.

According to the district court's civil docket summary report, USDC/DC, 15-164, Dkt. No. 26 [entered August 4, 2017] denotes "Suplemental Record on Appeal transmitted to U.S. Court of Appeals..." that was entered the same day that the Minute Order was entered without a document entry number, that being July 18, 2017. This scheme clearly showed that the district court did not afford nor intended to afford the 14 day time for Petitioner to move for reconsideration in the dc district court given that there were no document entry number. The dc circuit court entered Petitioner's Notice of Appeal [Appendix F, a29 to a35; USDC/DC, 16-164, Dkt. No. 27] on August 8, 2017 [USCA/DCC, 17-5181; Dkt. No. 1687754], which was transmitted from the D.C. district court, USDC/DC, 16-164; Dkt. No. 27, entered August 4, 2017. By circuit clerk's order, entered August 8, 2017 [USCA Dkt No. 1687756], the appellant's brief and the appendix was set due for September 27, 2017.

Because the Minute Order from the district court was never served and not made accessible from the civil docket summary report to which an appendix of the order could be made in the D.C. circuit court and given that there is no associated document entry number assigned (hyperlinked) or associated to the Minute Order in the D.C. district court, Petitioner filed his motion to stay or hold the appellate court in abeyance [USCA/DCC, 17-5181; Dkt. No. 1692465], dated August 29, 2017, filed on August 30, 2017 and entered September 11, 2017, pending the resolution of the D.C. district court's failure to serve notice and failure to properly post the mininute order. Separately, Petitioner filed a motion in the D.C. circuit court to take

judicial notice, dated September 20, 2017 on September 21, 2017 [entered September 22, 2017; USCA/DCC, 17-5181; Dkt. No. 1694055].

By per ccuriam order of the three panel D.C. circuit Judges, Sri Srinivasan, Robert L. Wilkins and senior circuit Judge Douglas H. Ginsburg, filed and entered November 30, 2017 [Appendix E, a27 to a28; USCA/DCC, 17-5181; Dkt. No. 1706715] denied Petitioner's motion to stay or hold the appeal in abeyance [USCA/DCC, 17-5181; Dkt. No. 1692456], and denied Petitoner's motion to take judicial notice [USCA/DCC, 17-5181; Dkt. No. 1694055] and by the circuit court's own motion in its pur curiam order [USCA/DCC, 17-5181; Dkt. No. 1706715] that Petitioner "...show cause within 30 days of the date of this Order why the district court's minute order of July 18, 2017 should not be summarily affirmed in light of this court's determination that appellant failed to show any prejudice cause by the challenged docket notation or that any fraud occurred."

The Petitioner timely responded to the circuit court's order to show cause set forth within it's November 30, 2017 pur curiam order [Appendix E, a27 to a28; USCA/DCC, 17-5181; Dkt. No. 1706715] on December 12, 2017 by Petitioner's reply [USCA/DCC, 17-5181; Dkt. No. 1709023] to the circuit court's order to show cause [USCA/DCC, 17-5181; Dkt. No 1706715] and separately filed a motion for en banc reconsideration [Appendix D, a18 to a26; USCA/DCC, 17-5181; Dkt. No. 1709025], both of which was entered December 14, 2017.

Approximately 107 days after Petitioner's submission of his reply to the D.C. circuit court's order to show cause [Appendix E, a27 to a28; USCA/DCC, 17-5181; Dkt. No. 1706715] and separate submission of Petitioner's en banc reconsideration motion [Appendix D, a18 to a26; USCA/DCC, 17-5181; Dkt. No. 1709025], the D.C. circuit court issued its pur curiam order, filed March 28, 2018 [Appendix C, a16 to a17; USCA/DCC 17-5181; Dkt. No. 1724134] in which it discharged their order to show cause and denied Petitoner's motion for reconsideration en banc.

On April 11, 2018 Petitioner subsequently filed a Petition for Rehearing En Banc [Appendix B, a2 to a15; USCA/DCC, 17-5181; Dkt. No. 1726432] in response to the dc circuit court's per curiam order of March 28, 2018 [Appendix C, a16 to 17; USCA/DCC 17-5181; Dkt. No. 1724134], which denied Petitioner's motion for reconsideration en banc [Appendix D, a18 to a26; USCA/DCC, 17-5181; Dkt. No. 1709025]. Petitoner's motion for reconsideration en banc sought reconsideration of Petitioner's prior application that was denied by the dc circuit court's per curiam order, dated November 30, 2017 [Appendix E, a27 to a28; USCA/DCC, 17-5181; Dkt. No. 1706715] signed by U.S. district Judge Tanya S. Chutkan, which has no assigned document entry number to which it could be accessed nor was it served upon the Petitioner. Petitioner did not receive nor was ever served with the U.S. district court Judge Tanya S. Chutkan's minute order of July 18, 2017 and remains inaccessible on the civil docket summary report of the D.C. district court as there is no docket entry number associated with it, yet all five (5) previous U.S. district court orders do have their associated docket entry number, as to USDC/DC, 16-164, Dkt. No. 4, 13, 14, 19 and 21, respectively.

The minute order is made the exception as there is no hyperlinked document entry number assigned to it, which amounts to flagrant denial of procedural due process, in which case the record required the appropriate corrections to be made. It was for this reason that the D.C. circuit court should have stayed the appellate proceedings and remanded the case to the D.C. district court pending the resolution of this matter and to properly address Petitioner's Rule 60 Motion with instructions to the D.C. district court to properly post the minute order and to serve said minute order upon the Petitioner, so that the Petitioner is afforded the opportunity to exhuast his remedies in the district court and beyond. The principle that "The right to file a legal action is protected under the First Amendment." Spencer v. Jackson County Mo, 728 F3d 907 (8th Cir. 2013), also extensd to ones right to the opportunity to be served with notice, which was not afforded. Also, "Judges must not only be scrupously fair in the administration of justice, but also must fosteran aura of fairness", U.S. v. Brooks, 145 F3d 446 (1st Cir. 1998).

The D.C. circuit court issued its per curiam order, filed May 30, 2018 [Appendix A, a1; USCA/DCC, 17-5181; Dkt. No. 1733226] denying Petitioner's Petition for Rehearing En Banc [Appendix B, a2 to a15; USCA/DCC, 17-5181; Dkt. No. 1726432]. It is clear that the judicial process and the adminstration of justice in the D.C. district and D.C. circuit court appear to be grossly compromised and is in need of correction and judicial review by this illustrious U.S. Supreme Court, as "Generally, public interest concerns are implicated when a Constitutional right has been violated, because all Citizens have a stake in upholding the Constitution", Rodriguez v. Robbins, 715 F3d 1127 (9th Cir. 2013).

REASON FOR GRANTING THE PETITION

1. Denial of Procedural Due Process:

Petitoner was never served with the minute order from the D.C. district court nor is the minute order accessible to be retrieved via the court's access terminal. Yet, all five (5) previous orders in the district court can be accessed. The minute order was the exception, which served to obstruct and deny the Petitioner procedural and substantive due process in which the Petitioner is not able to exhibit or append the minute order with respect to appealing the order to the next higher court.

Since the Petitioner was never served with the minute order as it was electronically filed and given that Petitioner never consented to being served via the electronic filing system as explained in Petitioner's reply [USCA/DCC, 17-5181; Dkt. No. 1709023] to the D.C. circuit court's order to show cause [Appendix E, a27 to a28; USCA/DCC, 17-5181; Dkt. No. 1706715] and separate motion for en banc reconsideration [USCA/DCC, 17-5181; Dkt. No. 1709025], all of which is ignored by the D.C. circuit court. The Petitioner is undoubtedly denied the fundamental right and opportunity to appeal the minute order denying Petitoner's legitimate Rule 60 Motion [USDC/DC, 16-164 / Dkt. No. 25]. Thus, the D.C. circuit court is in gross error and abused its discretion by denying Petitioner the right to a proper appeal of the district court's minute order, which has never been served upon the Petitioner.

2. The district Court did not address Fraud on the Court with respect to Fed.R.Civ. P. 60(b)(3), (4) and (d)(3), Motion (doc # 25)

Both the record of the D.C. district court and its inaccessible minute order without a document entry number, does not address the Appellant's Rule 60 Motion [USDC/DC 16-164 / Dkt. No. 25]. There is an obvious bias and extreme prejudice in this case as the D.C. district court avoids altogether the issues presented by the Petitioner in the Rule 60 Motion [USDC/DC 16-164 / Dkt. No. 25] given that Counsel, R. Craig Lawrence, Esq., for the Respondent(s) never responded to any of Petitioner's submission, making the case one-sided in which the D.C. district court and circuit court judges seemed as though their roles was that of both counsel and judge over this case below. Petitioner was never afforded a full and fair adjudication in this matter.

The Ninth Circuit has stated that fraud on the court is "an unconscionable plan or scheme which is designed to improperly influence the court in its decision." Abatti v. Commissioner, 859 F2d 115, 118 (9th Cir. 1988)(internal quotation omitted). Under the Federal Rules of Civil Procedure, the court may relieve a party or its legal representative from a final judgment, order or proceeding on motion and upon such terms as are just where the judgment is void. Fed. R. Civ.P. 60(b)(4). 'A Void judgement is one that from its very inception is a complete nullity and without legal effect'. Holstein v. City of Chicago, 803 F.Supp. 205 (N.D. Ill. 1992), order aff'd, 29 F3d 1145 (7th Cir. 1994).

"A judgment rendered in violation of due process is void...and is not entitled to full faith and credit elsewhere." Pennover v. Neff, 95 U.S. 714, 732-733 (1878). "Fraud vitiates the most solemn documents, and even judgments." United States v. Throckmorton, 98 U.S. 61 (1878). "Judgment...that were otherwise entered in violation of due process of law, must be set aside." Jaffe and Asher v. Van Brunt, 158, F.R.D. 278 (S.D.N.Y. 1994).

"A void judgment, as we all know, grounds no rights, forms no defense to actions taken thereunder, and is vulnerable to any manner of collateral attack...No Statute of limitations or repose runds on its holdings, the matters thought to be settled thereby are not Res Judicata, and years later, when memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been..." Frits v. Krugh, Supreme Court of Michigan, 92 N.W. 2d 604; 354 Mich. 97 [10/13/1958]. "Res Judicata consequene will not be applied to a void judgment which is one which from its very inception is a nullity and without legal efect." Allcock v. Allcock, 437 N.E. 2d 392 [Ill. App. 3d Dist. 1982]. As such the minute order, that is not accessible but only referenced under USDC/DC, 16-164; Dkt. No. 26 [Supplemental Record on Appeal transmitted to U.S. Court of Apppeal], Dkt. No. 27 [Appendix F, a29 to a35; USDC/DC, 16-164, Dkt. No. 27] and Dkt. No. 28 [Transmission of the Notice of Apeal...].

It is patenly clear that the D.C. district court has been one-sided, bias and extremly prejudice in denying Petitoner's Rule 60 Motion, which sought relief from a final order or judgment, by using a minute order that was never served and deliberately made inaccessible on the civil docket summary report as it did not have a document entry number (to be hyperlinked) as the five (5)

previous orders issued in the D.C. district court and making matters worse, the D.C. circuit court simply went along with the sharade and turned a blind eye, failing to execute its judicial powers to grant a stay the proceedings to allow the D.C. district court to correct its errors and properly post the minute order, which does not provide any arguable basis for its decision.

3. The Merits of Petitioner's Rule 60 Motion has not been Adjudicated as to Fraud on the Court

The D.C. district court's narrative and fact pattern governing the Petitioner's case is grossly misplaced, inapplicable and the scheme used to perpetrate fraud on the court in order to dismiss Petitioner's Rule 60 Motion, the scheme of which, had been successfully completed by virtue of the D.C. circuit court turning a blind eye. At the very inception with respect to a related case under 16-5102 that was dismissed, the D.C. district court on its own improperly disignated and couched Petitioner's case as a 42 U.S.C. § 1983 civil rights cause of action in order to facilitate the dismissal of Petitoner's case, as indicated on the civil docket summary report in the D.C. district court, which the D.C. appellate court must have over looked.

The D.C. district court, having somehow couched Petitioner's declaratory judgment Petition under 28 U.S.C. § 2201 and 2202, erronously as a 42 U.S.C § 1983 civil rights cause of action as indicated on the civil docket summary report "Cause: 28: 1983 Civil Rights" [Appendix F, a29 to a35; USDC/DC, 16-164, Dkt. No. 27], whereby the D.C. district and circuit court under the 42 U.S.C. § 1983 would lack subject matter jurisdiction in reaching the conclusion that "...a district court or circuit lacks authority to review the decision of a district court in another district in another district or circuit." That is part of the fraud that has infected Petitioner's case. The D.C. circuit court's use of Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) is inapplicable in the D.C. circuit court with respect to Petitioner who only sought clarification of rights under the declaratory judgment act, 28 U.S.C. § 2201 and 2202.

To the extent that Petitioner's declaratory judgment Petition was in any way defective, then the D.C. district court, at the bear minimum, should have granted Petitioner the opportunity for leave to amend his Petition before dismissal. See Hains v. Kerner, 404 U.S. 519, 30 LEd2d 652, 92 SCt 594 (1972); Boag v. MacDougall, 454 U.S. 364, 70 LEd2d 551, 102 SCt 700 (1982); Angellino v. Royal Family Al-Saud, 681 F3d 463 (D.C. Cir. 2012); and U.S. v. Sellner, 773 F3d 927 (8th Cir. 2014).

4. The Prior Decision Held in 16-5102, et. al. Occurred Because the Case is Falsely designated as a 1983 Civil Rights Cause of Action

As previously set forth in Petitioner's motion to the D.C. circuit to stay the appellate court proceedings [USCA/DCC, 17-5181; Dkt. No. 1692465] pending resolution of the D.C. district court's gross failure to provide proper notice and to correct the civil docket to properly reflect Petitioner's action under 28 U.S.C. § 2201 (and 2202) and motion to take judicial notice [USCA/DCC, 17-5181; Dkt. No. 1694055], all of which has been ignored, overlooked or denied,

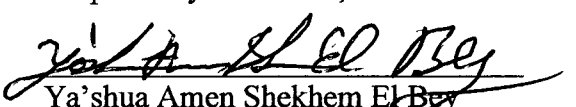
has provided adequate basis for this Court to grant the Writ of Certiorari and to remand this case to the D.C. district court for correction of the record.

CONCLUSION

Based upon the foregoing, Petitioner's Petition for Writ of Certiorari should be granted in the interest of Justice and in the public interest, and as to such other and further relief deem just and reasonable under the circumstances.

Dated: August 27, 2018
Washington, D.C.

Respectfully submitted,



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