

18-9200

No.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

APR 02 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Andrew Cox

— PETITIONER

(Your Name)

vs.

United States

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Third Circuit Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Andrew Cox (Reg # 69123-061)

(Your Name)

Po Box 10

(Address)

Lisbon, OH 44432

(City, State, Zip Code)

n/a

(Phone Number)

TRULINCS 69123061 - COX, ANDREW - Unit: ELK-F-A

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FROM: 69123061

TO:

SUBJECT: Questions Presented

DATE: 04/01/2019 04:51:26 PM

#### QUESTIONS PRESENTED

I. Does the Fifth Amendment demand immediate correction of a fraudulently manipulated district court docket (arrest post-dated 35 days) used to per se maliciously prosecute an actually innocent American citizen?

II. Is Petitioner legally entitled to a change of venue because his case criminally implicates both District of New Jersey (now Chief) USDJ Jose L. Linares and (now) Third Circuit Judge Patty Shwartz with fraud and felony obstruction of justice?

III. Alternatively to II., is Petitioner entitled to disqualification of (1) USDJ Claire C. Cecchi for presumed bias, and (2) DNJ AUSA Shana W. Chen for perpetuating the fraudulent manipulation of his district court docket to post-date his arrest 35 days?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ 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:

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FROM: 69123061

TO:

SUBJECT: USSC (1)

DATE: 04/01/2019 04:52:49 PM

#### PETITION FOR A WRIT OF CERTIORARI

Andrew Cox respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in *United States v. Cox*, No. 18-3451 (3d Cir. 2019)(Ambro, Krause, and Porter, Circuit Judges).

#### OPINIONS BELOW

The opinion of the district court appears at Appendix A and is unpublished.

The opinion of the court of appeals appears at Appendix B and is unpublished.

#### JURISDICTION

The Court of Appeals decided this case on 13 March 2019. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 USC 1254(1).

#### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides that: "No person shall ... be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

#### STATEMENT OF THE CASE

Cox was illegally arrested in the Southern District of Ohio on 02 December 2010, under an initial Complaint and a facially invalid arrest warrant for someone named "Richard Rowley." See Appendix C-1 (executed arrest warrant dated 12/2/10); and Appendix C-2 (SDOH docket for 10-mj-0829 recording Cox's illegal arrest on 12/02/2010).

The United States then procured a second, facially valid (but non-executable) arrest warrant for "Andrew Cox" -- well AFTER Cox was illegally arrested under the facially invalid arrest warrant for "Richard Rowley." See DNJ 11-cr-99 at Dkt 04.

Third Circuit Judge Patty Schwartz -- who was then Cox's District of New Jersey Magistrate-Judge, and thus the ONLY person in a position to do so -- then criminally obstructed justice by: (1) intercepting or deleting from the docket the return of Cox's executed arrest warrant as explicitly required by FRCrimP 4(c)(4)(A), and (2) intercepting or deleting from the docket Cox's Rule 5 transfer documents from the Southern District of Ohio to the District of New Jersey.

Thus, because of Judge Schwartz's criminal judicial misconduct, Cox's actual 02 December 2010 arrest in the Southern District of Ohio was never entered on the docket for District of New Jersey criminal action number 11-cr-99.

On 23 December 2010, DNJ AUSA Jane Hong-Mee Yoon filed a fraudulent, ex-parte, pre-indictment transportation continuance falsely claiming Cox was in custody in Ohio, when -- according to the United States Marshals Service -- she knew that Cox was secretly being held in MDC-Brooklyn in New York. See DNJ 11-cr-99 at Dkt 06; Dkt 54, pg 04, pt 14; Dkt 57, pg 52; Dkt 62, pg 20; Dkt 257, pg 03, pts 05-07.

Judge Patty Schwartz knowingly signed AUSA Yoon's fraudulent continuance falsely claiming Cox was in CUSTODY in Ohio -- though according to Cox's New Jersey docket he had yet to be "arrested" -- two days AFTER Cox's father-in-law, Dennis E. Maitland, explicitly told Judge Schwartz that Cox was in MDC-Brooklyn. See DNJ 11-cr-99 at Dkt 35, pg 06; Dkt 40, Certification of Dennis E. Maitland; Dkt 62, pgs 20-22.

On 30 December 2010, the United States was able to file a fraudulent Superseding Complaint (DNJ 11-cr-99 at Dkt 05) directly contradicting (one full month after-the-fact) Cox's arresting probable cause because -- even though Cox had already been arrested on the initial Complaint 28 days earlier -- Cox's 02 December 2010 arrest was never properly entered on his New Jersey docket. See, notably, DNJ 11-cr-99 at Dkt 125, pg 02; *United States v. Cox*, 2012 US Dist Lexis 113190 (DNJ 2012).

On 05 January 2011 -- in a repeatedly Government conceded criminal conspiracy with AUSA Jane Hong-Mee Yoon -- (then)

Magistrate-Judge Patty Shwartz ordered her judicial assistant, Amy Andersonn (initials "aa" on the docket), to fraudulently manipulate Cox's district court docket and post-date his arrest 35 days, to 05 January 2011, instead of the correct 02 December 2010, under the directly contradicting Superseding Complaint and the facially valid arrest warrant for "Andrew Cox." See Appendix C-3 (docket for DNJ 11-cr-99, where Amy Andersonn (aa) fraudulently recorded "Arrest of Andrew Cox" on 01/05/2011); and DNJ 11-cr-99 at Dkt 257, pg 04, pt 11; Dkt 261; Dkt 266.

To date -- over eight years later(!) -- the docket for District of New Jersey criminal action number 11-cr-99 still fraudulently states "Arrest of Andrew Cox" on 05 January 2011, under the Superseding Complaint and the facially valid arrest warrant for "Andrew Cox," instead of the correct 02 December 2010, under the initial Complaint and the facially invalid arrest warrant for "Richard Rowley." See DNJ 11-cr-99 docket.

The pattern of fraudulent manipulations to Cox's district court docket to post-date his arrest 35 days successfully obstructed justice by causing prejudice to at least five different dispositive issues, including, inter alia, per se malicious prosecution after being untimely indicted (see DNJ 11-cr-99 at Dkts 14, 27, and 63) solely for contradicted count(s) from the Superseding Complaint under which Cox was not arrested. See DNJ 11-cr-99 at Dkt 238.

During oral arguments on 26 September 2011, USDJ Jose L. Linares explicitly stated Cox's 02 December 2010 arrest date on the record (DNJ 11-cr-99 at Dkt 57, pg 22), and even forced a concession from AUSA Shana W. Chen regarding the start of Cox's Speedy Trial Act clock under 18 USC 3161(b)(1) at Dkt 57, pg 49).

Importantly, during the same oral arguments, AUSA Shana W. Chen flagrantly perjured herself to the Court by: (1) repeatedly failing in her affirmative Constitutional duty to correct information she knows to be false -- specifically by refusing to admit that Cox's district court docket was fraudulently manipulated to post-date his arrest 35 days -- and (2) affirmatively capitalizing on the fraudulent docket manipulation by re-stating it: "Now, even before the defendant was arrested, though, another amended arrest warrant was issued." Id at Dkt 57, pg 43.

Judge Linares explicitly relied on AUSA Shana Chen's affirmative misrepresentation to Cox's detriment. See *United States v. Cox*, 2011 US Dist Lexis 119737 (DNJ 2011) ("the Government's amendment of the arrest warrant to substitute "Andrew Cox" for "Richard Rowley" before his arrest on December 2, 2010.").

On 05 October 2011 -- between Cox's oral arguments on 26 September 2011, and Judge Linares's written opinion on 19 October 2011 (DNJ 11-cr-99 at Dkt 62) -- District of New Jersey Magistrate-Judge Patty Shwartz was officially nominated by President Barack Obama to sit on the Third Circuit Court of Appeals. See White House, Office of the Press Secretary, "President Obama Nominates Judge Patty Shwartz for the United States Court of Appeals," Oct. 05, 2011.

On 19 October 2011, Judge Linares inexplicably contradicted HIMSELF to fraudulently find Cox was arrested on 05 January 2011 under the directly contradicting Superseding Complaint and the facially valid arrest warrant for "Andrew Cox" -- instead of the correct 02 December 2010 under the initial Complaint and the facially invalid arrest warrant for "Richard Rowley." See DNJ 11-cr-99 at Dkt 62, pg 12.

Cox explicitly and repeatedly brought the fraudulent docket manipulation to the attention of Judge Linares after it was discovered on 01 May 2012 -- with definitive evidence including Cox's executed arrest warrant and Southern District of Ohio docket. See DNJ 11-cr-99 at Dkt 103 and Dkt 123 (transcript).

Judge Linares completely ignored everything Cox filed (Dkt 103) and stated on the record (Dkt 123 throughout) -- to again directly contradict HIMSELF (Dkt 57, pgs 22 & 49; Dkt 62, pg 02) -- and fraudulently maintained Cox was arrested on 05 January 2011 under the Superseding Complaint and the facially valid arrest warrant for "Andrew Cox," instead of 02 December 2010 under the initial Complaint and the facially invalid arrest warrant for "Richard Rowley." See DNJ 11-cr-99 at Dkt 125, pg 02; *United States v. Cox*, 2012 US Dist Lexis 113190 (DNJ 2012).

More egregiously, Judge Linares -- in apparent criminal conspiracy with (now) Third Circuit Judge Patty Shwartz -- committed felony obstruction of justice under 18 USC 1506 (alteration of court records) by altering Cox's 16 July 2012 hearing transcript (Dkt 123) to delete Cox's explicit oral motion for the Court to correct the fraudulent docket entry post-dating his arrest 35 days. See, e.g., DNJ 11-cr-99 at Dkt 236 & Dkt 240.

On 29 January 2014, the Third Circuit issued an opinion denying the merits of Cox's direct appeal. See *United States v. Cox*, 553 Fed Appx 123 (3d Cir. 2014).

Notably, the Third Circuit directly contradicted ITSELF regarding Cox being arrested on 02 December 2010 (Id at 125), yet

finding Cox's indictment only two days untimely under the statutory Speedy Trial Act (Id at 129) -- which implicates the Circuit summarily adopting the fraudulent manipulation of Cox's district court docket orchestrated by (now) Third Circuit Judge Patty Shwartz to post-date Cox's arrest 35 days.

While Cox's direct appeal was pending with the Supreme Court, Cox wrote (then) DNJ Chief Judge Jerome B. Simandle regarding USDJ Jose L. Linares's criminal judicial misconduct. See DNJ 11-cr-99 at Dkt 236.

In immediate response to Cox's concerns, Chief Judge Simandle SUA SPONTE removed Judge Linares for fraud because he maintained Cox was arrested on 05 January 2011 under the directly contradicting Superseding Complaint and the facially valid arrest warrant, and felony obstruction of justice regarding Judge Linares's alteration of the 16 July 2012 hearing transcript to delete Cox's explicit oral motion to correct the fraudulent docket manipulation, and reassigned criminal action number 11-cr-99 to USDJ Claire C. Cecchi. See DNJ 11-cr-99 at Dkt 237.

The United States did not appeal Chief Judge Simandle's sua sponte order removing Judge Linares from Cox's case for criminal judicial misconduct.

On 29 December 2014, Cox filed an Expedited Motion for Court Audio Records to definitively prove that USDJ Jose L. Linares committed felony obstruction of justice by altering Cox's 16 July 2012 hearing transcript, see DNJ 11-cr-99 at Dkt 240 -- which Judge Cecchi summarily denied on 06 January 2017. Id at Dkt 302.

The United States subsequently failed to dispute (and thus legally conceded) that AUSA Jane Hong-Mee Yoon criminally conspired with (now) Third Circuit Judge Patty Shwartz to fraudulently manipulate Cox's district court docket and post-date his arrest 35 days -- from the correct 02 December 2010 to the false 05 January 2011 -- in order to per se maliciously prosecute Cox as an actually innocent American citizen. See DNJ 11-cr-99 at Dkts 238, 241-242, 249, 253, 266.

On 20 January 2016, Cox filed a timely motion to vacate under 28 USC 2255. See DNJ 16-cv-345.

Judge Cecchi refused to exercise jurisdiction over Cox's 2255 motion.

On 20 January 2017, Cox filed a Motion for Change of Venue under FRCrimP 21(a) because this case criminally implicates USDJ Jose L. Linares and (now) Third Circuit Judge Patty Shwartz with fraud and felony obstruction of justice. See DNJ 11-cr-99 at Dkt 304.

The United States did not contest Cox's motion for change of venue.

On 24 January 2017, Cox filed an Expedited Motion to Recuse USDJ Claire C. Cecchi for Judicial Misconduct because, *inter alia*, she unlawfully attempted to shift the issues surrounding the fraudulent manipulation of Cox's criminal docket onto his 2255 docket, and then refused to consider Cox's 2255 motion. See DNJ 11-cr-99 at Dkt 306.

The United States did not contest Cox's motion to recuse Judge Cecchi.

On 21 March 2017, Cox filed a Motion to Recuse AUSA Shana W. Chen for Fraud because since being assigned to this criminal action in 2011, she has completely failed in her affirmative constitutional duty to admit that Cox's district court docket was fraudulently manipulated to post-date his arrest 35 days, and more egregiously, affirmatively capitalized on the docket fraud to Cox's detriment. See DNJ 11-cr-99 at Dkt 308; with an addendum regarding newly published controlling authority filed on 24 August 2017 at Dkt 314.

The United States did not contest Cox's motion to recuse AUSA Shana W. Chen.

On 21 March 2017, Cox filed an Emergency Motion to Correct Criminal Docket Frauds, regarding: (1) his actual arrest on 02 December 2010 under the initial Complaint and the facially invalid arrest warrant for "Richard Rowley;" (2) return of Cox's executed arrest warrant as explicitly required by FRCrimP 4(c)(4)(A); and (3) properly filing the Rule 5 documents regarding Cox's transfer from the Southern District of Ohio to the District of New Jersey.

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The United States did not contest Cox's emergency motion to correct criminal docket frauds.

On 17 November 2017 -- 22 months after Cox's 2255 motion was filed in January of 2016 -- Judge Cecchi finally issued a briefing schedule. See DNJ 16-cv-0345 at Dkt 22.

On 02 March 2018, the United States filed a stupidly frivolous and borderline incoherent Answer to Cox's 2255 motion, which failed to dispute ANY of Cox's claims -- including, inter alia, at least three different sets of Brady violations definitively proving Cox's factual innocence, and that Cox was per se maliciously prosecuted as an actually innocent American citizen via the fraudulent manipulation of his district court docket to post-date his arrest 35 days. See DNJ 16-cv-345 at Dkt 29.

Notably, the Government's undersigned, AUSA Shana W. Chen, again failed in her affirmative constitutional duty to correct information she knows to be false by refusing to admit that Cox's district court docket was fraudulently manipulated to post-date his arrest 35 days.

On 13 March 2018, Cox filed a motion for summary judgment of his (now) uncontested motion to vacate under 28 USC 2255. See DNJ 16-cv-345 at Dkt 30. The United States did not contest Cox's motion for summary judgment, but to date Judge Cecchi continues to refuse to exercise jurisdiction over Cox's uncontested 2255 motion.

On 11 October 2018, the district court issued an Order denying Cox's motion for change of venue (Dkt 304); motion to recuse Judge Cecchi (Dkt 306); motion to recuse AUSA Shana W. Chen (Dkt 308); and motion to correct criminal docket frauds (Dkt 309). See DNJ 11-cr-99 at Dkt 315; and included here as Appendix A.

Regarding Cox's motion for change of venue, the district court stated: "Defendant has provided no support for the claim that this case criminally implicates any Judge in this Circuit, and such allegations run counter to the established record in this case." Appx A-2.

Regarding Cox's motion to recuse Judge Cecchi, the district court stated: "Defendant has not presented this Court with any valid basis for recusal. The Court's disagreement with Defendant on the merits of the legal arguments in this case does not warrant recusal." Appx A-4.

Regarding Cox's motion to recuse AUSA Shana W. Chen, the district court stated: "Defendant has failed to submit any evidence in support of the allegation that AUSA Chen failed to correct false information." Appx A-5.

Regarding Cox's motion to correct criminal docket frauds, the district court stated: "It appears that Defendant has raised such arguments in his 2255 motion, which is currently pending before the Court and will be adjudicated in due course." Appx A-5.

Judge Cecchi completely ignored the entire factual and procedural history of this case as outlined above, including the fact that she was only assigned to this case after (then) Chief Judge Simandle sua sponte removed USDJ Jose L. Linares for criminal judicial misconduct related to the fraudulent manipulation of Cox's district court docket to post-date his arrest 35 days, and Judge Linares's subsequent cover-up to protect Judge Patty Shwartz's Third Circuit nomination.

On appeal, the Third Circuit summarily affirmed the district court's order, stating "we see no error in the District Court's dismissal of Cox's 'motion to correct criminal docket frauds,' given that, as the District Court noted, he raised this issue in his currently pending 2255 proceedings." Appx B-3.

Inexplicably, the Third Circuit again directly contradicted ITSELF by stating "Cox failed to provide any support for his claim that AUSA Chen knowingly failed to correct the alleged docket manipulation." Appx B-3.

The support for Cox's claim that AUSA Chen knowingly failed to correct the fraudulent manipulation of his district docket is the fact that AUSA Chen indeed failed to correct the docket manipulation -- despite this issue being raised by Cox literally dozens of times since April of 2012 -- as clearly reflected on Cox's district docket, which STILL fraudulently states "Arrest of Andrew Cox" on the false 05 January 2011, instead of the correct 02 December 2010. See DNJ 11-cr-99 docket.

That is not justice; that is a witch-hunt and a railroad job.



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This appeal followed.

### REASONS THE WRIT SHOULD BE GRANTED

I. Cox is legally entitled to correction of his criminal docket.

The Fifth Amendment provides that: "No person shall ... be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

Constitutional due process requires Cox's record to have correct information. *United States v. Tucker*, 404 US 443, 447 (1972) (citing *Townsend v. Burke*, 334 US 736 (1948)). See also *United States v. Mori*, 444 F2d 240, 246 (5th Cir. 1971) regarding "intentional falsification or plain unreasonableness" of errors in the record.

In *Hicks v. United States*, 582 US \_\_\_\_ (2017), this Court stated: "For who wouldn't hold a rightly diminished view of our courts if we allowed individuals to linger longer in prison than the law requires only because we were unwilling to correct our own obvious mistakes?" *Id.* at \_\_\_\_ (Gorsuch, Justice, concurring).

"Indeed, the lone peril in the present case seems to me the possibility that we might permit the government to deny someone his liberty longer than the law permits only because we refuse to correct an obvious judicial error." *Id.*

Here, Cox has now spent eight prime years of his life in federal custody for a crime the Government has repeatedly conceded he did not commit because (now) Third Circuit Judge Patty Shwartz fraudulently manipulated his district court docket to post-date his arrest 35 days, and USDJ Jose L. Linares conspired with her to cover it up.

Once the three "obvious judicial errors" are corrected -- specifically: (1) the criminal docket is corrected to reflect Cox's actual arrest on 02 December 2010 under the initial Complaint (Dkt 01) and the facially invalid arrest warrant for "Richard Rowley" (Dkt 03); (2) Cox's executed arrest warrant is returned as explicitly required by FRCrimP 4(c)(4)(A); and (3) the Rule 5 documents regarding Cox's transfer from the Southern District of Ohio to the District of New Jersey are entered as appropriate -- *inter alia*, the initial arresting Complaint must be dismissed with prejudice for untimely indictment as of 01 January 2011, and there is nothing legally holding Cox in custody.

Thus, because Cox was prejudiced at least five different ways by the fraudulent manipulations of his criminal docket and arrest date (see DNJ 11-cr-99 at Dkt 238), he is entitled to relief. See *Bell v. Director, TDCJ-CID*, 2009 US Dist Lexis 124700 (EDTX 2009).

It must also be noted -- like in *Townsend*, *supra* -- the Government has already conceded that the "misinformation" concerning Cox's fraudulent arrest date was caused by underlying constitutional violations, and indeed by criminal judicial and prosecutorial misconduct constituting an unprecedented fraud on/by the Court. See DNJ 11-cr-99 at Dkts 241, 261, and 268; DNJ 16-cv-345 at Dkt 30.

To the District Court's point that Cox raised these "arguments in his 2255 motion, which is currently pending before the Court and will be adjudicated in due course," DNJ 11-cr-99 at Dkt 315, pg 05; Att. A-5 -- the effects of the corrections and the dispositive relief Cox seeks may be granted under the civil docket for his 2255 motion, but the underlying manipulations occurred on the criminal docket, and thus the fraudulently manipulated criminal docket must be corrected so that going forward Cox's record has correct information.

Therefore, since Due Process requires Cox's record to have correct information, and Cox was prejudiced at least five different ways by the fraudulent manipulations to his arrest date, Cox is legally entitled to correction of his criminal docket.

II. Cox is legally entitled to a change of venue.

Motions for change of venue in federal court are governed by Federal Rule of Criminal Procedure 21(a), which provides:

"The court upon motion of the defendant shall transfer the proceeding as to that defendant to another district whether or not such district is specified in the defendant's motion if the court is satisfied that there exists in the district where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial at

any place fixed by law for holding court in that district."

FRCrimP 21(a); see also *United States v. Jackson*, 364 Fed Appx 776, 780 (3d Cir. 2010).

In *LaSalle Nat'l Bank v. First Conn. Holding Group*, 287 F3d 279, 292 (3d Cir. 2002), this Court ordered District of New Jersey USDJ Faith S. Hochberg to be reassigned from a case because of "the awkwardness of any judge being placed in a position of making credibility determinations regarding his/her law clerk's testimony in an adversarial setting."

Noting counsel's "untenable position ... of having to cross examine the judge's law clerk and possibly attack her credibility," *Id.*, "a judge would be most reluctant to allow his/her law clerk to be called to the witness stand and questioned under oath under the circumstances here." *Id.* at 290.

While sympathetic to the dilemma this created for Judge Hochberg, that dilemma did not justify short circuiting the judicial process. *Id.*

Here, it would be even more awkward for Judge Cecchi -- or any judge in the District of New Jersey or Third Circuit Court of Appeals -- to be placed in a position of making credibility determinations regarding the testimony of fellow district judge Jose L. Linares or circuit judge Patty Shwartz in an adversarial setting.

Any District of New Jersey or Third Circuit judge would be most reluctant to allow a colleague or superior to be called to the witness stand and questioned under oath as to the disturbing pattern of frauds, conspiracies, and felony obstructions of justice regarding how/why Cox's district court docket was intentionally manipulated to per se maliciously prosecute him as an actually innocent American citizen.

While Cox is sympathetic to the dilemma this creates for all judges in the District of New Jersey and the Third Circuit, that dilemma does not justify short circuiting the judicial process. This is especially true in light of the severe consequences that flowed from the fraudulent manipulation of Cox's district court docket to post-date his arrest 35 days.

Thus, if Judge Hochberg cannot be forced to implicate her own clerk, then by logical extension, under controlling authority neither Judge Cecchi nor any district judge in New Jersey or appeals judge in the Third Circuit can be forced to criminally implicate a fellow district or circuit judge, and Cox must receive a change of venue.

\* \* \*

The general principle invoked by Cox has long been established by the Supreme Court.

"No person [may] be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." *Marshall v. Jerrico, Inc.*, 446 US 238, 242 (1980).

That assurance is absent -- and judicial conduct improper -- whenever a judge appears biased, even if she actually is not biased. See *In re Antar*, 71 F3d 97, 101 (3d Cir. 1995); cf. *Liteky v. United States*, 510 US 540, 548 (1994).

To the Circuit's point that "insofar as Cox sought to transfer his case out of Judge Cecchi's court by invoking Rule 21(a) of the Federal Rules of Criminal Procedure, this Rule permits a court to transfer a criminal trial to a different venue, and Cox's trial has already taken place" Appx B-3 -- criminally implicated judges are biased/interested arbiters, constituting fundamental structural errors, which require automatic reversal and a new trial.

See, e.g., *Tumey v. Ohio*, 273 US 510 (1927)(trial by a biased judge is a fundamental structural error); and *Brecht v. Abrahamson*, 507 US 619, 629-630 (1993)("The existence of such [structural] defects requires automatic reversal of the conviction because they infect the entire trial process.").

Judges Linares and Shwartz both have a personal interest in the outcome of these proceedings (including litigation of Cox's motion to vacate under 28 USC 2255) because they both face prosecution for fraud, conspiracy, and felony obstruction of justice since it has already been shown that they are implicated in filing an inaccurate record.

Therefore, even though Cox's trial has already taken place, Cox is entitled to a new trial in a different district/circuit venue under Rule 21(a) because this case criminally implicates both DNJ USDJ Jose L. Linares and (now) Third Circuit Judge Patty Shwartz with multiple frauds and felony obstructions of justice.

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SUBJECT: USSC (3)

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III. Alternatively to II. above, USDJ Claire C. Cecchi and AUSA Shana W. Chen must be disqualified from this criminal action.

A. Disqualification of USDJ Claire C. Cecchi

"Part of the overall responsibility of serving as United States District Judge is to do one's job fairly and impartially." *FTC v. Namer*, 2007 US App Lexis 24013 (5th Cir. 2007).

Since "judges take an oath to uphold the law, they are expected to disfavor its violation." *United States v. Cooley*, 1 F3d 985, 993 n.4 (10th Cir. 1993).

A judge is not free to "undermine[] the very laws the judge has taken an oath to uphold and defend." *United States v. Higdon*, 638 F3d 233, 247 (3d Cir. 2011).

If "a judge proves unable to put aside his personal convictions in order to carry out the law, [if] his hostility toward a litigant's position has become so pervasive that he cannot reasonably hope to provide a fair hearing, then recusal is of course warranted." *United States v. Snyder*, 235 F3d 42, 48 (1st Cir. 2000).

First, in denying the motions resulting in the instant appeal, Judge Cecchi completely ignored the entire factual and procedural history of this case as outlined above.

This includes the fact that (now) Third Circuit Judge Patty Shwartz, as a District of New Jersey Magistrate-Judge:

- (1) ordered her judicial assistant, Amy Andersonn, to fraudulently manipulate Cox's district court docket and post-date his arrest 35 days;
- (2) intercepted or deleted the return of Cox's executed arrest warrant as required by FRCrimP 4(c)(4)(A);
- (3) intercepted or deleted Cox's Rule 5 transfer documents from the Southern District of Ohio; and
- (4) knowingly signed AUSA Jane Hong-Mee Yoon's fraudulent transportation continuance two days AFTER she was explicitly told Cox was in Brooklyn.

This also includes the fact that USDJ Jose L. Linares:

- (1) repeatedly contradicted HIMSELF to fraudulently find that Cox was arrested on 05 January 2011, under the directly contradicting Superseding Complaint and facially valid arrest warrant; and
- (2) committed felony obstruction of justice by altering Cox's 16 July 2012 hearing transcript regarding the fraudulent manipulation of his district court docket.

To the extent that Cox does not have definitive proof -- in the form of audio records to reconcile the written transcript -- that Judge Linares altered his 16 July 2012 transcript, that is because Judge Cecchi summarily denied Cox's motion for audio records (see DNJ 11-cr-99 at Dkts 240 & 302), and thus Judge Cecchi is now trying to benefit from her own misconduct by denying Cox the evidence he sought, and then claiming that Cox "has provided no support for the claim that this case criminally implicates any judge in this Circuit[.]" Appx A-2.

That is absolutely absurd.

A judge "in such circumstances should not be permitted to benefit from her own misconduct[.]" *United States v. McCormac*, 309 F3d 623, 627 (9th Cir. 2002).

Most importantly, Judge Cecchi completely ignored the fact that (then) Chief Judge Simandle sua sponte removed Judge Linares from Cox's case for fraud and felony obstruction of justice -- meaning this case was only assigned to Judge Cecchi BECAUSE Judge Linares committed criminal judicial misconduct, and was then removed for cause.

Thus, "the appearance of justice," *Offutt v. United States*, 348 US 11, 13 (1954), implies Judge Cecchi railroaded Cox to protect Judges Linares and Shwartz from a criminal investigation.

Second, Judge Cecchi's treatment of Cox's uncontested motion to vacate under 28 USC 2255 (DNJ 16-cv-345) is well beyond presumptively prejudicial.

In *Doggett v. United States*, 505 US 647, 652 n.1 (1992), the Supreme Court held that unnecessary delays of one year or more are "presumptively prejudicial."

Here, Judge Cecchi inexplicably wasted 22 months after Cox's 2255 motion was filed in January of 2016 before even issuing a briefing schedule. See DNJ 16-cv-345 at Dkt 22.

Once the Government's stupidly frivolous Answer was filed in March of 2018 (Id at Dkt 29), Cox immediately filed a motion for summary judgment (Id at Dkt 30) of his now uncontested 2255 motion.

To date, a full 39 months after Cox's 2255 was filed, Judge Cecchi has refused to exercise jurisdiction over Cox's uncontested 2255 motion -- presumably because the Government failed to dispute (thus legally conceding) that Cox's case criminally implicates Judges Linares and Shwartz.

It must also be noted that Judge Cecchi appears to have a pattern of dilatory handling of 2255 motions. See *In re West*, 678 Fed Appx 82 (3d Cir. 2017)(over three year delay).

Furthermore, even if Judge Cecchi's refusal to exercise jurisdiction (over an uncontested motion!) were to be measured from 13 March 2018, when briefing was completed on Cox's uncontested 2255 motion (see DNJ 16-cv-345 at Dkt 30) -- thirteen months ago -- as one commentator explains "it may generally be said that any delay of eight months or longer is presumptively prejudicial." *United States v. Woolfolk*, 399 F3d 590, 598 (4th Cir. 2005)(citing 4 Wayne R. Lafave, Jerold H. Israel, & Nancy J. King, *Criminal Procedure* 18.2(b)(2d ed. 1999)).

Thus, since Judge Cecchi obviously cannot "put aside [her] personal convictions in order to carry out the law ... then recusal is of course warranted." *Snyder*, 235 F3d at 48.

Finally, reassignment to a different district judge is appropriate under 28 USC 2106.

"Due process is not satisfied [] by rubberstamp denials," *Chi Thon Ngo v. INS*, 192 F3d 390, 398 (3d Cir. 1999), and Judge Cecchi has now established an incredibly disturbing pattern of completely ignoring the entire factual and procedural history of this case -- including and especially why it was transferred to her after Chief Judge Simandle removed Judge Linares for cause -- and simply refusing to exercise jurisdiction over Cox's uncontested 2255 motion for years.

See, e.g., *Living Designs, Inc. v. E.I. Dupont de Nemours and Co.*, 431 F3d 353, 372-373 (9th Cir. 2005)(concluding under 28 USC 2106 that, even absent allegations of bias, because of the highly unusual procedures the trial judge employed, "the appearance of justice requires reassignment on remand"); and *Sobel v. Yeshiva Univ.*, 839 F2d 18, 37 (2d Cir. 1988) (concluding "that it is necessary to remand the case to a different district judge" because court of appeals was "disturbed by the manner in which the district court treated this case").

Therefore, if Cox is not granted a new venue, he is alternatively entitled to disqualification of USDJ Claire C. Cecchi.

#### B. Disqualification of AUSA Shana W. Chen

A prosecutor has a duty to correct information she knows to be false. *Giglio v. United States*, 405 US 150 (1972); *Napue v. Illinois*, 360 US 264 (1959).

In *Haskell v. Superintendent Greene SCI*, No. 15-3427 (3d Cir. 8/1/17), the Third Circuit held that prosecutors who knowingly present perjured testimony or fail to correct it violate a defendant's right to due process.

Judge Ambro, writing for the court, quoted the Supreme Court in *Napue v. Illinois*, stating: "A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth[.]"

See also *Robinson v. Aivonio*, 27 F3d 877, 886 (3d Cir. 1993)("The prosecutor must be charged with the error because he failed to take advantage of opportunities ... to correct the perjured testimony.").

Here, since being assigned to this criminal action in 2011, AUSA Shana W. Chen has completely failed in her affirmative constitutional duty to correct information she knows to be false regarding multiple fraudulent manipulations to Cox's district court docket to post-date his arrest 35 days under a directly contradicting Superseding Complaint and facially valid arrest warrant.

Further, like in Haskell where the prosecutor not only failed to correct a lie, but affirmatively capitalized on the lie by restating it, AUSA Chen explicitly capitalized on the fraudulent docket manipulations by stating: "Now, even before the defendant was arrested, though, another amended arrest warrant was issued." See DNJ 11-cr-99 at Dkt 57, pg 43.

That statement is itself a lie -- which the District Court explicitly relied on to Cox's detriment (United States v. Cox, 2011 US Dist Lexis 119737 (DNJ 2011)) -- and affirmatively capitalized on the repeated fraudulent manipulations to Cox's district court docket to post-date his arrest from the correct 02 December 2010 to the false 05 January 2011.

The Government cannot benefit from its own alleged misconduct. Rosner v. United States, 231 FSupp2d 1202, 1209 (SDFL 2002).

Therefore, by continually refusing to perform her legal, ethical, and moral duty to immediately correct material frauds on/by the Court, and indeed by affirmatively capitalizing on them (!), AUSA Chen is guilty of fraud and felony obstruction of justice, and must be disqualified from this criminal action.

In conclusion, this Court should summarily vacate the District of New Jersey's 11 October 2018 Order, and then transfer Cox's criminal action to another venue as required by FRCrimP 21(a), because this case criminally implicates both District of New Jersey (now Chief) USDJ Jose L. Linares and (now) Third Circuit Judge Patty Shwartz with fraud and felony obstruction of justice.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andrew Cox

Date: 01 April 2019