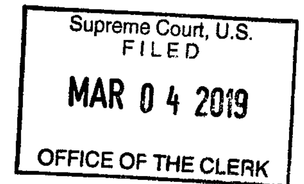
ORIGINAL

No. 18-9331

IN THE

SUPREME COURT OF THE UNITED STATES



NAWAZ AHMED – PETITIONER

Vs.

TIM SHOOP, WARDEN, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DEATH PENALTY STATE HABEAS CASE

NAWAZ AHMED,

A404511,

Prisoner, Pro Se, Petitioner,

Chillicothe Correctional Institute,

P.O.Box 5500

Chillicothe, OHIO 45601.

CAPITAL HABEAS CASE

Introductory Statement: Circumstances of the Case (per R.14.1(a) & 10/2015 Memo by Clerk):

In case 18-3292 Court of Appeals erroneous dismissal of collateral appeal without exercising its (a) Potential, (b) Pendent, (c) 28 U.S.C.S. § 1651(a) review by Mandamus in aid of appeal, and (d) 28 USCS 1291(a)(1) jurisdiction to review injunctions and (e) collateral jurisdictions to review the constructive, implied denial of Motion to Substitute capital habeas counsel Mr. Yeazel by district court in abuse of discretion by not exercise its discretion, all these five basis of jurisdiction claimed in timely filed (Doc.22) per 6th Cir. IOP (a)(1)(A) rule. The exercise of 28 U.S.C.S. § 1651 Jurisdiction, was required under 6th Cir. Precedents and by Firestone, 449 U.S. at 378 n.13. The Petitioner was appointed two habeas counsels (ECF#03, Sept. 13, 2007) in capital habeas case 2:07-CV-658.. The collateral appeal was taken from two filed Orders and one implied denial with out ruling on Motion to Substitute Attorney Keith A. Yeazel (ECF.132-1) and from four injunction orders, mentioned in Notice of Appeal at pages 1 to 4. By 01/30/18 Order, magistrate judge granted the conditional withdrawl (Appendix "F") of Attorney David J. Graeff, without applying the "interest of justice" standard and violating local rule SD Ohio Civ.Rule 83.4(c)(4), and wrongly directed counsel to propose a replacement counsel, while also directed Petitioner to file his Responsive Motion after the fact by March 01/2018 (ECF.#130, January 30,2018), thereby violating Petitioner's right to meaningful, effective access to courts. Before Petitioner was due for filing his Responsive Motion to Substitute Mr. Yeazel, his right to meaningful, effective access to court were denied, by two in-person, ex-party meetings by Attorney Keith A. Yeazel with Judge Watson, because Petitioner had told him to either withdraw or tell the court that Petitioner will seek his substitution. See, Notice of Appeal at page 2,4. Attorney Yeazel was told over the recorded telephone call that Petitioner will move for his substitution based on his illegal drug-use, substance abuse and his involvement in case-fixing with warden's counsels, by deliberately filing partial, defective, deficient 1st habeas Petition by scanning appeal brief, Applications to Reopen appeal, then continuous copying into Traverse and Objections, without specific Objections, abandoning all wrongly included state law claims, and abandoning all claims preserved in postconviction petition and in direct appeal, and for intentionally deficient discovery Motion seeking to take 150 depositions. OH Attorney General Dewine after an investigation upon Petitioner's written complaint, fired, terminated all three attorneys working for OAG in Ahmed v. Houk, case 2:07-cv-658 as their replacements were hired. See, (Ecf.# 109, dated 01/28/15, Ecf.# 121 dated 08/07/15; Ecf.#127 dated 12/08/17), proved the **serious counsel misconduct.** To prevent review of these serious true allegations,the magistrate Judge was circumvented from making non-dispositive orders involving withdrawl, replacement, substitution of capital habeas counsels, to substitute Mr. Yeazel (Appendix, F& G), but reappointed as "Counsel of Record" and cocounsel Attorney S. Adele Shank already having past conflict of interest with Petitioner, violating "interest of justice". Neither the Magistrate Judge nor the District judge have ruled upon the Motion to Substitute Mr. Yeazel (ECF.132-1, February 26,2018,*PageId*#10086-10101), thus impliedly, constructively denied it, violating "interests of justice", without exercising any discretion. Petitioner listed **counsel misconduct, severe conflict of interests, abandonment, irreconcilable differences and disloyalty** by Attorney Keith A.Yeazel in seeking his Substitution. Petitioner also alleged already existing conflict of interest with cocounsel Attorney S. Adele Shank. Which became more serious as she abandoned Petitioner, never filed an appearance in appeal case 18-3292, violating 18 USCS 3599(e) statutory duty, and letter from senior case manager PJE per Ct App 6th Cir. R. 45(a)(5).

QUESTION PRESENTED FOR REVIEW

(a) (Doc.22) New Petition for Rehearing En Banc requested but Court of Appeals failed to apply the existing basis of (a) Potential, (b) Pendent, (c) 28 U.S.C.S. § 1651(a) review by Mandamus in aid of appeal, and (d) 28 USCS 1292(a)(1) jurisdiction to review injunctions and (e) **collateral review of** constructive, implied denial of Motion for Substitution of capital habeas counsel by applying 28 U.S.C. §2254(i) &§ 2261(e) absolute prohibition against post final judgment relief, remedy thus review, of any actions, omissions, waivers by capital habeas counsel, necessitating a timely prejudgment substitution of capital habeas counsel.

(b) Would it be violation of procedural & substantive due process and deprivation of right to meaningful, effective access to courts, if District Courts, Court of Appeals and or Supreme Court deprive the statutorily guaranteed right per 18 U.S.C.S. § 3599(e) to representation by qualified [conflict-free] appointed counsel "throughout every subsequent stages of judicial proceedings, petition, discovery, appeals, applications for writ of certiorari to the Supreme Court", including arguing for **Potential, Pendent, collateral** review and 28 U.S.C.S. § 1651(a) **Mandamus reviews** in aid of appeal in the Court of Appeals and Supreme Court.

(c) If **18 U.S.C.S. § 3599(d)(e)** goal is to "improve and ensure high quality capital habeas representation", necessary to obtain fundamental fairness and just result in the imposition of the death penalty", must it not then translate into ABA standard for legal representation and "interest of justice" enforceable standard by a timely collateral review of "attorney misconduct, conflict-of-interest, abandonment, irreconcilable dispute" by on-record inquiry, during pre-final habeas judgment, to determine if "timely substitution of counsel was warranted" as the only available

judicial remedy, securable by interlocutory and 28 U.S.C.S. § 1651(a), Mandamus Review as the **later** review, remedy, relief and substantive habeas relief are precluded by binding the capital habeas Petitioner to dishonest, malicious actions, omissions, waivers by habeas counsel, made unaccountable by 28 U.S.C. §2254(i), **28 U.S.C. § 2261(c)**.

(d) Has the court of appeals by not reviewing 2nd order of district court (Appendix G) and not reviewing the constructive denial of Motion to Substitute (Appen.P) capital habeas counsel Mr. Yeazel,(Ecf.#132-1) and by not reviewing the four injunction/Restraining orders, fairly mentioned in pro se Notice of Appeals with addendum, have departed from the accepted and usual course of judicial proceedings, and has sanctioned such a departure by lower courts, and has ignored the conflict between circuit panels and conflict with other circuits?.

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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APPENDIX C **unreported,** Panel Order Ahmed v. Shoop, (6th Cir, July 02, 2018) Vacated the Panel Order filed May 21,2018.

APPENDIX D Ahmed v. Shoop, 2018 U.S. App. LEXIS 27698 (6th Cir, Sep.27, 2018)

APPENDIX E Ahmed v. Shoop, 2018 U.S. App. LEXIS 34037 (6th Cir, Dec. 03, 2018)

APPENDIX F Order of the Magistrate Judge of the United States **District Court** dated **January 30, 2018** is unpublished.

APPENDIX G Order of the United States District Judge dated **February 15, 2018 is** unpublished.

APPENDIX H A letter from senior case manager, noticing Attorney Adel Shank for appellate representation of Petitioner but ignored by counsel, despite getting served all pleadings, all notices, and all orders.

APPENDIX I The Letter by Chief Deputy Clerk Susan Rogers dated January 27,2018 in case 18-3292, denying filing of Motion To Reconsider authorized by **FRAP 27(a)(1),(b), 45 and 6th Cir. R 27(g), I.O.P. 27 and** Ct App 6th Cir, IOP 35(d)(1)(2)(A),(B) and **IOP 45(a)(5), (c) Reconsideration** Motion is attached.

APPENDIX J A Letter from Hon. Clerk of Supreme Court denying § 3599(a)(2),(e), pro

se Motion For Appointment of capital habeas counsel for preparing and filing the **Petition For WRIT Of Certiorari** and PETITION FOR AN EXTRAORDINARY WRIT. Sd/ Jacob C, dated January 29,2019.

APPENDIX K — A copy of court of appeals case 18-3292 docket contain many erroneous involving Notice of Appeal (Doc.4), Petition for rehearing (Doc.9 later filed as Doc.19), New Petition for Rehearing En Banc (Doc.22) wrongly identified as Supplemental Memorandum of Law, when 6th Cir. IOP 35 (a)(2)(A) provided for an amended or a New Petition For Rehearing En Banc and declining to docket Motion to Reconsider.

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APPENDIX L — Order filed 4/16/2008 (ECF.#32) at last para, page 5 of 5, (Nawaz Ahmed v. Marc C. Houk, 2:07-cv-658,2008 U.S. Dist. LEXIS 109687 (April 16, 2008 Order, doc. 32, id at last para)).

APPENDIX M — Order filed 07/09/14 (ECF.#96) sue sponte, without any hearing,

APPENDIX N — Order filed 02/19/15 (ECF.#111, PageID# 9955-9957) striking 28 USCS § 455, 28 USCS § 144 pro se Motions (ECF.107, filed 01/13/2015) and striking pro se **Motion for Substitution** of capital habeas counsels (ECF.110, filed 02/18/2015), was ordered stricken of Records.

APPENDIX O — The Order filed 03/11/15 **(ECF.#114, PageID# 9961)**, striking pro se 28 USCS § 2250 Motion for Records was filed in violation of any law but resulted in another restraining/Injunction.

APPENDIX P — Motion For Substitution of Attorney Keith A. Yeazel (ECF.132-1) filed in 02/26/2018 in district court case Ahmed v. Houk, 2:07-cv-658 in compliance with (Appendix F), was constructively, impliedly denied without ruling upon it, and was presented in Notice of Appeal (Appendix Q), Petition for Rehearing (Doc.16) and in New Petition for Rehearing En Banc (Doc.22,Appendix R) and in Motion for Reconsideration, Setaside (Doc.24,25;Appendix T).

INDEX OF APPEMDICES OF PLEADINGS FILED IN COURT OF APPEALS BUT INCORRECTED DOCKETED ON DOCKET SHEET AND NOTCIRCULATED TO PANEL AND/ OR TO FULL COURT

APPENDIX Q — Notice of Appeal (Doc.4) not shown on case docket 13-3292, mentioned the filing of the Motion to Substitute (Ecf.#132) Capital Habeas Corpus Counsel Keith A. Yeazel by the filing date of **02/26/2018**, and on next three pages Appellant elaborated further by more facts. Magistrate Judge had set two preconditions for full grant of Motion to Withdraw (Ecf.#129) as two prerequisite conditions are set forth in the Magistrate's Order Ecf.#130 (Appendix "F"). In the Notice of Appeal (Doc.4) it could not be listed as a separate 3rd order because District Court had denied the Motion without ruling upon it, without filing any actual order. However, on Pages 1& 2 addendum to the Notice of Appeal, the Appellant sufficiently explained the circumstances and correctly identified the Motion to

Substitute as ECF#132, and how it was circumvented and implicitly, constructively denied, without ruling upon the responsive Motion to Substitute. At page 4, Petitioner-Appellant identified the unconstitutionally overbroad **"injunctions orders"** entered sue sponte without any hearings. The implication of constructive, implicit denial of Motion for Substitution(Ecf.132) is obvious from ECF #130-1 (Appendix "G") in which district judge Watson after meeting ex-party with Mr. Yeazel twice, (a) decided to circumvent the Magistrate Judge having full authority to rule upon non-dispositive motions and (b) disregarded the due filing date of March 01,2018 for Petitioner to file his Responsive Motion (Ecf.#132-1, as actually filed ahead of due date on 02/16/2018) and (c) appointed Mr. Yeazel as "counsel of record". These facts so obvious from the text of the Second Order (Appendix "G") appealed from, are very relevant to explain why implicit, constructive denial of Motion to Substitute occurred because on 02/15/2018, the Hon. Judge Watson had already decided that he will not allow review of Motion for Substitution of Mr. Yeazel, even if it is filed on or before due date, even when ordered by the magistrate judge having full authority over non-dispositive Motions, Orders. Petitioner in Notice of Appeal under the some what made up sub-heading "Proof of service" further explained it in the writing between the two signatures in the Notice of Appeal, full circumstances how and why Motion to Substitute was denied without ruling upon it.

APPENDIX R <u>**New Petition for Rehearing En Banc**</u> (Doc.22) neither correctly docketed, nor circulated, thus denied without considering it, even when timely filed per 6th Cir. IOP 35 (a)(2)(A),(g).

APPENDIX S **Motion to Substitute Appeal Counsel** S. Adele Shank (Doc.18) was not correctly docketed as FILED but as TENDERED and not circulated to the Clerk and or to the Panel, thus also ignored by the Clerk and by the sixth Cir. Court of Appeals.

APPENDIX T <u>**Motion to Reconsider**</u> (Doc.25 should be Doc.24) served upon Clerk as stamped RECEIVED on 12/26/2018 and also directly served upon all three circuit judges of the panel, as evident from the one served upon Hon. Cir. Judge SUTTON is filed while the En Banc Coordinator refused its filing and returned it without filing with a letter from Chief deputy Clerk. This Motion to Reconsider again requested review of all injunction, all orders, and constructive denial of Substitution Motion by Mandamus Jurisdiction.

APPENDIX U A copy of court of appeals case 18-3292 docket contain many erroneous involving Notice of Appeal (Doc.4), Petition for rehearing (Doc.9 later filed as Doc.19), New Petition for Rehearing En Banc (Doc.22) wrongly identified as <u>Supplemental Memorandum of Law</u>, when 6th Cir. IOP 35 (a)(2)(A) provided for an amended or a New Petition For Rehearing En Banc and declining to docket Motion to Reconsider.

APPENDIX V Petition For Rehearing (Doc. 9, 16)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

1. Petitioner respectfully prays that a writ of certiorari issue to review the judgment, orders of courts of appeals in case 18-3292 (Appen. D,E) and the Motion to Substitute Appeal Counsel (Doc.18) denied without ruling upon it and the four injunction orders (Appen..L,M,N,O) of the district court case 2:07-cv-658 below, and Motion to Substitute capital habeas Keith A. Yeazel (Ecf-132-1, Appen.. P), as both courts have failed to provide a full and fair presentation and review of the issues involved in this matter. Martel v. Clair, 565 U.S. 648,650(2012),**"courts have an obligation to ensure that the habeas Petitioner's statutory right to** [conflict free] **counsel was satisfied throughout the litigation"**, citing 18 U.S.C. § 3599(a)(2),(e). Courts below have failed to exercise their discretion, thus abused it by not exercising it, as they avoided their obligation to ensure that the capital habeas Petitioner's statutory rights to appeals, collateral appeal, Mandamus review and statutory right to "conflict-free counsel" per 18 U.S.C. § 3599(e) are protected by timely adjudicated Motion For Substitution of habeas counsel (Ecf.#132-1) by "appointing a different capital habeas counsel at any phase", throughout the capital habeas corpus litigation, because the 28 U.S.C. §2254(i) "The ineffectiveness or incompetence of counsel ...in a capital case shall not be a ground for relief", and 28 U.S.C. §2261(e) prevent any meaningful review or effective remedy after final habeas corpus judgment.

28 U.S.C.S. 1746 declaration: I, Nawaz Ahmed, Petitioner pro se, declare under penalty of perjury that every material fact including legal facts stated in this Petition are true and based on personal knowledge of the pro se Petitioner-Appellant.

OPINIONS BELOW

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

1. The Opinion Order of the United States court of appeals appear at Appendix **"A"** to the Petition and is:

   [√] **reported** at Ahmed v. Shoop, 2018 U.S. App. LEXIS 11015(6th Cir. Apr. 27,2018

2. The Opinion Order of the United States court of appeals appear at Appendix **"B"** to the Petition and is published:

   [√] reported at Ahmed v. Shoop, 2018 U.S. App. LEXIS 13252 (6th Cir.May 21,2018.

3. The Opinion Order of the United States court of appeals appear at Appendix **"C"** to the Petition and is: Unpublished, it VACATED the Opinion Order of (6th Cir.May 21,2018)

   [√] And this unpublished Opinion Order appears at Appendix "C" filed Ahmed v. Shoop, (6th Cir.July,02,2018).

4. The Opinion Order of the United States court of appeals appear at Appendix **"D"** to the Petition and is published:

   [√] reported **at** Ahmed v. Shoop, 2018 U.S. App. LEXIS 27698 (6th Cir, Sep.27, 2018)

5. The Opinion Order denying Rehearing En Banc by the United States court of appeals, appear at Appendix "E" to the Petition and is published:

   [√] reported at Ahmed v. Shoop, 2018 U.S. App. LEXIS 34037 (6th Cir, Dec. 03, 2018)

6. The Order of the United States Magistrate Judge dated January 30,2018 appears at Appendix "F" to The Petition and

   [√] is unpublished.

7. The Order of Judge Watson of United States District Court dated **February 15, 2018** appears at Appendix **"G"** to the Petition and

[√] is unpublished.

8. The <u>Motion to Substitute</u> capital habeas counsel Keith A. Yeazel,(ECF.132-1) appears at (Appendix P) to the Petition and is

[√] constructively, impliedly denied without ruling upon it.

<u>UNCONSTITUTIONALLY OVERBROAD INJUNCTION ORDERS OF DIST.COURT</u>

9. The 1st **<u>INJUNCTION Order</u>** sue sponte filed 4/16/2008 (ECF.#32) at last para, page 5 of 5, Appears at (Appendix L) to the Petition and is published:

[√] reported at (<u>Nawaz Ahmed v. Marc C. Houk, 2:07-cv-658,2008 U.S. Dist. LEXIS 109687 (April 16, 2008 Order, doc. 32, id at last para)</u>).

10. The 2nd **<u>INJUNCTION Order</u>** sue sponte filed 07/09/14 (ECF.#96) Appears at (APPENDIX M) to Petition and

[√] is unpublished

11. The 3rd **<u>INJUNCTION Order</u>** sue sponte filed 02/19/15 (ECF.#111, PageID# 9955-9957) appears at (APPENDIX N) to the Petition and is

[√] is unpublished,

striking <u>28 USCS § 455</u>, <u>28 USCS § 144</u> pro se Motions (ECF.107, filed 01/13/2015)and striking pro se <u>Motion for Substitution</u> of capital habeas counsels (ECF.110, filed 02/18/2015), were ordered stricken of Records.

12. The 4th **<u>INJUNCTION Order</u>** sue sponte filed 03/11/15 (ECF.#114, PageID# 9961), regarding Motion For Records per <u>28 USCS § 2250</u> appears at (APPENDIX O) to the Petition and

[√] is unpublished,

13. **New Petition for Rehearing En Banc** (Doc.22) is at ***(Appendix R)*** to the Petition, which is neither correctly docketed, nor circulated, thus denied without considering it, even when timely filed per 6th Cir. IOP 35 (a)(2)(A),(g).

14. **Motion to Substitute Appeal Counsel** S. Adele Shank (Doc.18) in case 18-3292 is at ***(Appendix S)*** to petition and is constructively, implied denied without ruling upon it.

15. **Motion to Setaside and Reconsider** (Doc.25) is at ***(Appendix T)*** to the Petition, seeking setaside and to Vacate all erroneous actions of clerk and her staff and vacate incomplete, partial panel's Orders per 6th Cir. Rule 27 (g), FRAP 27 (a)(1),(b), IOP 35(d)(2)(A) and caselaw (Bronson v. Schulten, 104 U.S. 410,416 (1881) was submitted to Clerk on December 10, 2018 and also served upon all three Circuit Judges of the panel as evident from filing in case 18-3292, the Correspondence from Petitioner (Doc.23) sent to Hon. Circuit Judge Sutton on 12/17/18. BLH did not file a copy of Motion to Reconsider directly served upon Clerk/her on 12/10/18, but later wrongly stamped it RECEIVED on 12/26/18 and returned to Petitioner unfiled with a 12/27/18 letter from Chief Deputy Clerk Susan Rogers (Doc.24) denying its filing in case 18-3292, is at ***(Appendix I)***.

JURISDICTION

[√] For cases from federal Courts:

[√] The jurisdiction of this Court is invoked under 28 USCS 1254(1).

[√] The jurisdiction of this Court in aid of appeal is also invoked under, 28 U.S.C.S. § 1651(a).

The date on which the United States Court of Appeals decided my case 18-3292 was (Sep.27, 2018) as is reported at Ahmed v. Shoop, 2018 U.S. App. LEXIS 27698 (6th Cir, Sep.27, 2018) and is attached at Appendix "D".

[√] A timely New Petition for Rehearing En Banc (Doc.22) was denied without ruling upon it by the United States Court of Appeals on (Dec. 03, 2018), and the Order denying the superseded Petition for Rehearing en Banc (Doc.16) appears at APPENDIX "E" and is reported at Ahmed v. Shoop, 2018 U.S. App. LEXIS 34037 (6th Cir, Dec. 03, 2018.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

USCS Const. Amend. 6:
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and **to have the Assistance of Counsel for his defence**.

USCS Const. Amend. 14, § 1
No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

18 USCS § 3599(e)
(e) Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed **shall represent the defendant throughout every subsequent stage of available judicial proceedings**, including pretrial proceedings, trial, sentencing, motions for new trial, **appeals, applications for writ of certiorari to the Supreme Court of the United States**, and **all available post-conviction process**, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

28 USCS § 1291, Final decisions of district courts
The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, ...except where a direct review may be had in the Supreme Court.

28 USCS § 1292
(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:
(1) Interlocutory orders of the district courts of the United States, the United States ...or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

28 U.S.C.S. § 1651(a) Writs
(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

STATEMENT OF THE CASE

1. In case 18-3292 Court of Appeals erroneous dismissal of collateral appeal without exercising its (a) Potential, (b) Pendent, (c) 28 U.S.C.S. § 1651(a) review by Mandamus in aid of appeal, sought as per sixth circuit. existing precedents, and (d) 28 USCS 1291(a)(1) jurisdiction to review four unconstitutionally overbroad INJUNCTIONS Orders (Appen.L,M,N,O), and (e) collateral jurisdictions to review the constructive, implied denial of Motion to Substitute capital habeas counsel Mr. Yeazel by district court in abuse of discretion, by not exercise its discretion. All these five basis of jurisdiction claimed in timely filed (Doc.22) per 6th Cir. IOP (a)(1)(A) rule and in Notice of Appeal. The exercise of 28 U.S.C.S. § 1651 Jurisdiction, was required under 6th Cir. Precedents and by Firestone, 449 U.S. at 378 n.13. The Petitioner was appointed two habeas counsels (ECF#03, Sept. 13, 2007) in capital habeas case 2:07-CV-658.. The collateral appeal was taken from two filed Orders and one implied denial with out ruling on Motion to Substitute Attorney Keith A. Yeazel (ECF.132-1, Appen. P) and from four injunction orders, mentioned in Notice of Appeal at pages 1 to 4. By 01/30/18 Order, magistrate judge granted the conditional withdrawl (Appendix "F") of Attorney David J. Graeff, without applying the "interest of justice" standard and violating local rule SD Ohio Civ.Rule 83.4(c)(4), and wrongly directed counsel to propose the name of a replacement counsel, while also directed Petitioner to file his Responsive Motion after the fact by March 01/2018 (ECF.#130, January 30,2018), thereby violating Petitioner's right to meaningful, effective access to courts and procedural and substantive due process. Before Petitioner was due for filing his

Responsive Motion to Substitute Mr. Yeazel, his right to meaningful, effective access to court were denied, by two in-person, ex-party meetings by Attorney Keith A. Yeazel with Judge Watson, because Petitioner had told him over the recorded telephone, to either withdraw or tell the court that Petitioner will seek his substitution. See, Notice of Appeal at page 2,4. Attorney Yeazel was told over the recorded telephone call that Petitioner will move for his substitution based on his illegal drug-use, substance abuse and his involvement in "case-fixing" with warden's counsels, by deliberately filing partial, defective, deficient 1st habeas Petition by scanning Appeal Brief, Applications to Reopen Appeal, including impermissible state law claims, then continuously copied Petition into Traverse and Objections, without specific Objections, only later abandoning all wrongly included state law claims, and abandoning all claims preserved in postconviction petition by counsels and those presented in Motions filed in direct appeal, like denial of counsel of choice on appeal and for intentionally deficient discovery Motion seeking to take 150 depositions. OH Attorney General Dewine after an investigation upon Petitioner's written complaint, fired, terminated all three attorneys working for OAG in Ahmed v. Houk, case 2:07-cv-658 as their replacements were hired. See, (Ecf.# 109, dated 01/28/15, Ecf.# 121 dated 08/07/15; Ecf.#127 dated 12/08/17), proved the **serious counsel misconduct, disloyalty, abandonment, irreconcilable dispute,** lack of professional ethics and impaired professional judgment, To prevent review of these serious true allegations, the magistrate Judge was circumvented from making non-dispositive orders involving withdrawal, replacement, substitution of capital habeas counsels, to substitute Mr. Yeazel (Appendix, F& G), as Mr. Yeazel directly secured from Judge Watson, his appointed as "Counsel of Record" and cocounsel Attorney S. Adele Shank already having past conflict of interest with Petitioner, violating "interest of justice". Neither the Magistrate Judge nor the District judge have ruled

upon the Motion to Substitute Mr. Yeazel (Appen.P, ECF.132-1, filed February 26,2018,*PageId*#10086-10101), thus impliedly, constructively denied it,without ruling upon the Motion, violating "interests of justice", without exercising any discretion. Petitioner listed **counsel misconduct, severe conflict of interests, abandonment, irreconcilable differences and disloyalty** by Attorney Keith A.Yeazel in seeking his Substitution. Petitioner also alleged already existing conflict of interest with cocounsel Attorney S. Adele Shank. Which became more serious as she abandoned Petitioner on Appeal, never filed an appearance in appeal case 18-3292, violating statutory duty per 18 USCS 3599(e), and (Appen. H) letter from senior case manager PJE per Ct App 6th Cir. R. 45(a)(5).

2. Petitioner has many meritorious habeas claims involving violations of constitutional of denial of right to counsel of choice on Trial and Appeal, denial of right to self representation and denial of speedy trial rights, and denial of 6th,14th amendment right to use of own personal untainted funds, denied by over fifteen continuous restraining orders filed by Trial Judge even in total lack of jurisdiction ordering Probate judge and conservator to not to dismiss the conservatorship and even if dismissed deposit all funds with Clerk of courts and do not give any funds to defendant, who had signed written contracts with Ten trial and appeal counsels, but they could not take up representation because use of untainted funds were illegally denied to defendant and even to private selected counsels, who demanded retainer before filing appearance and even those who did file a formal appearance in criminal case, but were illegally, erroneously removed from the case, taken out of court room carried by deputies of sheriff per orders of trial court, all in record. Thus use of own untainted funds were also denied in probate court

conservatorship case 2000-GD-40, and , in utterly bogus civil case 99-CV-457 dismissed two years after conviction when challenged to show jurisdiction and show cause of action..

3. Court of appeal has only partially reviewed for interlocutory appealability the (Appendix "F") without applying the effect of prohibitions against any review or relief per **28 U.S.C.S. §2254(i)** and/or **§2261(e),** in capital habeas case after final capital habeas judgment. Court of Appeals avoided the other order (Appendix "G") and specially avoided the third implied, constructive Denial of Motion to Substitute habeas counsel, and avoided to exercise jurisdiction to review four unconstitutional overbroad INJUNCTIONS under 28 USCS 1291(a)(1);

4. It is obvious from a review of the case docket 18-3292 and also is obvious from Appendix "A", "B", "C", "D", "E","H", that there is **no specific existing precedent** from Supreme Court and from any of the Circuit Court of Appeals, applicable to collateral/ interlocutory appeal arising in a capital habeas corpus case, involving Denial of **Substitution of capital habeas counsel**, by not ruling upon it, in light of **28 U.S.C.S. §2254(i)** and/or **§2261(e)** prohibitions; It was a test of patience to deal with courts and court staff and judges from the confines of deathrow, so frustrating at times, that only good option was a prayer for them all and often.

AS such this case present questions of first impression and of public importance, for proper guidance from the Supreme Court for all similarly situated capital habeas corpus litigants and habeas counsels, and lower courts.

Perhaps precepts of fundamental fairness inherent in "due process" suggest that a forum to litigate challenges to conviction obtained in violation of right to counsel of choice must be made available *somewhere* for the odd case by timely substituting, capital habeas counsels pre-final-habeas judgment.(modified-paraphrase JUSTICE SCALIA, concurring in part.532 U.S. at 376).

REASONS FOR GRANTING THE PETITION

5. Petitioner has presented the "abandonment" by attorney S. Adele Shank as substitution ground to Court of Appeals in the case 18-3292 Motion to Substitute (Doc.18). She had prior conflict of interest with Petitioner Ahmed, thus Petition is now represented with both appointed counsels, laboring under disabling conflict of interest.

PARA 6 BELOW IS RELATED TO QUESTIONS (a)(b)(c)(d)

6. STATUTORY RIGHT TO APPEAL COUNSEL DENIED IN CASE 18-3292 BY THE SIXTH CIRCUIT COURT OF APPEALS AND NOW BY THE SUPREME COURT

(a) Petitioner on January 22, 2019 had served upon Hon. Clerk of the Hon. Supreme Court, A MOTION TO APPOINT COUNSEL per 18 U.S.C. § 3599(a)(2),(e), requesting the appointment of conflict-free counsels, essential for preparing and filing the Petition for Writ of Certiorari and Petition for extraordinary Writ of Certiorari and related proceedings, as a statutory right granted by the congress at 18 U.S.C. § 3599(a)(2),(e), "each attorney so appointed shall represent the defendant/petitioner throughout every subsequent stage of the available judicial proceedings...**appeals**...including **applications for writ of certiorari** to the Supreme Court of the United States, and all available post-conviction process". Because current counsels representing petitioner in district court only, have clear conflict of interest, as they both have "abandoned" the Petitioner in district court and in court of appeals, and in Supreme Court in this matter, and Petitioner is seeking their Substitution.

However, there is a clear conflict between above statutory right to counsel per 18 U.S.C. § 3599(a)(2),(e) and Ct App 6th Cir. R. 45(a)(5) and S.Ct.R. 39.6 which only Supreme Court can resolve by amending its rules of practice, but has not amended Rule 39.6 for so many years of enactment of statutory right to counsel for filing **applications for writ of certiorari** to the Supreme Court of the United States, provided by 18 U.S.C. § 3599(a)(2),(e). Due to this obvious

conflict, the hon. Clerk of the Supreme Court have informed this prisoner-Appellant-Petitioner, by 01/29/19 letter signed by Jacob C. Travers, (Appen.J) that "Supreme court does not appoint counsels for preparing and filing Application for writ of certiorari to the Supreme Court of the United States. sd/ Jacob C. Travers.(Appendix J). The question of appointment of counsel for filing Cert Petition was left open in Douglas v. California, at 356-7 but by 18 U.S.C. § 3599(a)(2),(e) congress has made it is a statutory right.

(b) The court of appeals violated 18 U.S.C. § 3599(a)(2),(e) command of "attorney so appointed shall represent the defendant/ Petitioner **throughout** every subsequent stage of the available judicial proceedings...**appeals**... **applications for writ of certiorari** to the Supreme Court of the United States", as Court of Appeals **failed to appoint conflict-free appeal counsels** for the (a) 28 U.S.C.S. § 1292(a)(1) Appeal (page 4 of NOA), (b) Pendent, (c) Potential, (d) Mandamus, (e) collateral jurisdictional appeal and failed to rule upon the Motion to Substitute Appeal counsel S. Adele Shank (Appen.S, Doc.18) and failed to allow and rule on Motion To Reconsider (Doc.25, which should be Doc.24). The letter of chief deputy Clerk (Appendix H) is mistaken about panel's jurisdiction to review Motion to Reconsider, set-aside after [flawed] en banc review because (BLH) after wrongly docketing it as a Supplemental Memorandum of Law (Doc.22), never circulated the New Petition for Rehearing en banc to panel and to full court.

7. PARA 7 BELOW APLY TO QUESTION (d)

7.1. All panel orders relate to only one Order (Aped. F), undertaken by partial review and without application of **28 U.S.C.S. §2254(i)** and/or **§2261(e)**, thus leaving behind the un-reviewed Order (Appendix G) and four INJUNCTION Orders (Appen.L,M,N,O) and constructive, implied denial without ruling upon the Motion to Substitute capital habeas Mr.

Keith A, Yeazek (Appen.P) and the implied, constructive denial without ruling upon Motion to Substitute Appeal Counsel S. Adele Shank (Appen. S). Not allowing filing of Motion to Set-aside and Reconsideration served on 01/10/19 was denied filing after a review without ruling from panel (Appen.I, T) by a letter dated 01/27/19 from Chief deputy Clerk of court of appeals, when Motion is specifically allowed by caselaw and FRAP 27(a)(1),(b), 45 and 6th Cir. R 27(g), I.O.P. 27 and Ct App 6th Cir, IOP 35(d)(1)(2)(A)(B) and IOP 45(a)(5), (c). See, Rodriguez v. Brown, **1994 U.S. Vet.** App. LEXIS 595(Ct of Vet.Appeals, June 23, 1994).Bronson v. Schulten, 104 U.S. 410,416 (1881): United States v. Mayer, 235 U.S. 55; United States v. Morgan, 346 U.S. 502(1954):

"The power of the courts to vacate its judgments, orders of the courts, however conclusive in their character, are under the control of that court which pronounces them, and may then be set-aside, vacated or modified for errors where the errors were of the most fundamental character, that is, such is rendered the proceeding itself irregular, and invalid". Bronson v. Schulten, 104 U.S. 410,416 (1881):

The order denying a rehearing is a standard order, like almost every other **en banc denial** that this court issues. Schafer v. Multiband Corp., 629 Fed. Appx. 653(6th Cir.2015)

Thus Petitioner is without any conflict-free habeas counsels and no Fed. Courts seem to ensure, and provide this statutory right to conflict-free habeas counsel granted by the congress, for all stages of the available habeas corpus proceedings. 18 U.S.C. § 3599(a)(2),(e).

A motion for reconsideration may be brought on the basis of judicial mistakes, as well as mistakes of a party or his counsel. *Liberty Mutual Insurance Co. v. E.E.O.C.*, 691 F.2d 438, 441 (9th Cir. 1982).

These failures to act when it was duty of the court of appeals is "clear abuse of discretion" *Bankers Life & Casualty Co.* v. *Holland*, 346 U.S. 379, 383 (1953), or exercise some authority the court of appeals wrongfully declined to use or conduct amounting to "usurpation of [the judicial] power," *De Beers Consolidated Mines, Ltd.* v. *United States*, 325 U.S. 212, 217 (1945).

Therefore, Petitioner is to issuance of the writ from the Supreme Court..

PARA 8 BELOW IS RELATED TO 28 U.S.C.S. § 1292(a)(1) JURISDICTION AND QUESTIONS (a)(b)(c)(d):

8. APPEAL FROM UNCONSTITUTIONALLY OVERBROAD INJUNCTIONS /RESTRAINING ORDERS TO PREVENT STATURILY ALLOWED PRO SE FILINGS

8.1. Supreme Court has direct jurisdiction under 28 U.S.C.S. § 1292(a)(1) and Mandamus Jurisdiction, as exception applies and petitioner has alleged that delay in review will cause very serious irreparable harm. See Firestone Tire, 449 U.S. at 378 n.13. In case 18-3292 Court of Appeals erroneous dismissal of collateral appeal without exercising its (a) Potential, (b) Pendent, (c) 28 U.S.C.S. § 1651(a) review by Mandamus in aid of appeal, and (d) 28 USCS 1291(a)(1) jurisdiction to review unconstitutionally overbroad INJUNCTION Orders and (e) collateral jurisdictions to review the constructive, implied denial of Motion to Substitute capital habeas counsel Mr. Yeazel by district court in abuse of discretion by not exercise its discretion. All these five basis of jurisdiction claimed in timely filed (Doc.22) per 6th Cir. IOP (a)(1)(A) rule. The exercise of 28 U.S.C.S. § 1651 Jurisdiction, was required under 6th Cir. Precedents and by Firestone, 449 U.S. at 378 n.13.

8.2. There is no automatic right to appeal from final habeas judgment, to review collateral issues like unconstitutionally overbroad restraining/injunction orders prohibiting habeas petitioner to file statutorily allowed pro se pleadings/Motions to vindicate statutory rights granted under 18 USCS § 3599(a)(2),(e) , 28 U.S.C. § 1654, 28 USCS § 455, 28 USCS § 144, 28 USCS § 2250 to obtain records for filing Mandamus or pro se appeal, and 28 USCS § 137 and 28 USCS § 351,illegal corruption of random case assignment for judge shopping and 28 USCS § 2242, 28 USCS § 2254, timely filing of first habeas petition pro se to guard against the unscrupulous, unethical, dishonest, malicious acts,ommissions of appointed habeas counsels who engaged in case-fixing, deliberately file defective, deficient pleading, to get the meritorious claims

dismissed, while emboldened by (28 U.S.C. § 2254(i) and/or 28 USCS § 2261(e)) lack of accountability, or functional enforceable standard and prohibition against any substantive relief, including impracticality of filing 42 USCS § 1983 action against the appointed habeas counsels, especially when a deathrow habeas petitioner will not live but most likely executed, thus prevented from any civil relief against his appointed counsels, thus no meaningful remedy. The denial of timely substitution of habeas counsels, rigid rule of collaterally unappealability under § 1291 to timely vindicate the statutory right to "conflict free habeas counsel" will be irretrievably lost due to total lack of any alternative remedy or relief due to (28 U.S.C. § 2254(i)," "The ineffectiveness or incompetence of counsel...shall not be a ground for relief" and/or 28 USCS § 2261(e))," "This limitation shall not preclude the appointment of different counsel, at the request of the prisoner, at any phase of ... proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings". The Court of appeals intentionally avoided applying this **unique limitation only applicable to capital habeas cases** that after the adverse final habeas judgment with un-substituted counsel, there is no relief or effective remedy. Time to act is pre-judgment. Petitioner lacks the right to review of adverse habeas judgment without a COA and is also prohibited from filing Notice of Appeal in District Court due to existing four Injunction Orders, stated in NOA. Petitioner cannot represent himself pro se on appeal, as the same conflict-ridden habeas counsels are required to continue on appeal (18 USCS § 3599(e)), who cannot argue their own incompetence and misconduct, case-fixing, as all actions of counsels are immune from review or remedy in appeal of a final habeas judgment. *Martel v. Clair*, 565 U.S. 648, 652, n.3, 132 S. Ct. 1276 (2012) and Christeson v. Roper, 135 S.Ct 891,894)2015);

8.3. The following Injunction Orders are statutorily illegal, unconstitutionally overbroad injunctions/Restraining Orders entered sue sponte without any hearings, were violative of statutory rights to pro se file certain pleadings. Thus Orders wrongly intended to prevent the exercise of statutory rights and statutorily allowed pro se Motions per 18 USCS § 3599(a)(2),(e) , 28 U.S.C. § 1654, 28 USCS § 455, 28 USCS § 144, 28 USCS § 2250 to obtain records for filing Mandamus or pro se pleading including pro se appeal, and 28 USCS § 137 and 28 USCS § 351,illegal manipulation of random case assignment system for judge shopping and 28 USCS § 2242, 28 USCS § 2254 :

(a) (Appen.L) Order filed 4/16/2008 (ECF.#32) at last para, page 5 of 5, (*Nawaz Ahmed v. Marc C. Houk*, 2:07-cv-658, 2008 U.S. Dist. LEXIS 109687 (April 16, 2008 Order, doc. 32, id at last para)), seeking another or Substitute or Replacement habeas counsel paid by the brother of Petitioner, but was denied. By this restraining/injunction order, Petitioner was also prevented from filing statutorily allowed 28 USCS § 2242, 28 USCS § 2254 placeholder 1st habeas Petition in case 2:07-cv-658, after Petitioner learned that habeas counsels were scanning appeal brief and scanning application to reopen appeal will all impermissible state law claims, to call it their 1st habeas Petition, and excluding all claims preserved by postconviction counsel and presented by pro se amendments to postconviction Petition and also those claims presented pro se during the first appeal of right and habeas counsel cutting-off-all communications with Petitioner, may not even file any 1st habeas Petition by due date or show it to Petitioner before filing..

(b) (Appen.M) Order filed 07/09/14 (ECF.#96) sue sponte, without any hearing,

(c) (Appen.N) Order filed 02/19/15 (ECF.#111, PageID# 9955-9957) striking 28 USCS § 455, 28 USCS § 144 pro se Motions (ECF.107, filed 01/13/2015) and striking pro se **Motion for Substitution** of capital habeas counsels (ECF.110, filed 02/18/2015), was ordered stricken of Records.

(d) (Appen.O) The Order filed 03/11/15 (ECF.#114, PageID# 9961), striking pro se 28 USCS § 2250 Motion for Records, was not a violation of any law but resulted in another restraining/Injunction.

8.4. The district court by holding ex-party meetings with Attorney Yeazel, decided to circumvent Magistrate Judge and circumvent his non-dispositive Orer (Appen.F) requiring Petitioner to file his Responsive Motion. So district judge decided to ignore and constructively, impliedly deny the timely rule upon Motion to Substitute Mr. Yeazel, without ruling and appointed Mr. Yeazel as "counsel of record," thus acted in violation of Petitioner's right to due process and equal protection and violated right to meaningful access to court and violated Local Rule SD Ohio Civ.Rule 83.4(c)(4) and 18 USCS 3599(e) caselaw.. Thereby created the exceptional circumstances amounting to a judicial "usurpation of power" will justify the invocation of this extraordinary remedy.'" Kerr v. United States District Court, 426 U.S. 394, 402 (1976); The Petitioner's **right to the issuance of the writ is "'clear and indisputable**"; A timely and proper notice of appeal goes to the jurisdiction of the Court of Appeals; *Marten* v. *Hess*, 176 F.2d 834 (C. A. 6th Cir. 1949); Please See, *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972) (per curiam) and Hopson v. Miller, 2017 U.S. App. LEXIS 17596(6th Cir.2017) holding that:

"Although an order ... is not immediately appealable, it may be reviewed in a Mandamus proceeding. Alford v. Mohr, 2018 U.S. App. LEXIS 28379(6th Cir. Oct.25, 2018) citing *In re Aetna Cas. & Sur. Co.*, 919 F.2d 1136, 1143 (6th Cir. 1990) (en banc). and *Mischler*, 887 F.3d at 272; A notice of appeal from an order that is not immediately appealable may be treated as a Petition for a writ of Mandamus. *Hammons v. Teamsters Local No. 20*, 754 F.2d 177, 179 (6th Cir. 1985)."

8.5. For POTENTIAL Jurisdiction under Roche, at 25, 319 U.S. 21(1943) and cases cited therein and LaBuy v. Howes, 353 U.S. 249, 254-255 (1975) for Potential Jurisdiction..

8.6. For, PENDENT Jurisdiction: "Normally when court review a restrining/Injunction order it can review all other orders as well."(Doc.22). The INJUNCTION Orders (Appen. L,M,N,O) prevented filing pro se Motion to Substitute habeas counsels and court did strike the first Motion to Substitute capital habeas Counsels (Appen.N) and refused to review the second Motion to Substitute Counsel (Appen. P). The drug-edict, corrupt, disloyal, unethical, case-fixer counsels very easily abandon client because they know that INJUNCTION Order prohibit pro se filing of Motion to Substitute. That is why they did not appeal any of the unconstitutionally overbroad Injunction orders, even when Injunctions clearly violated statutorily allowed pro se filings. Wherefore, both claims are "inextricably intertwined". The review of final appelable Injunction Orders can be reviewed alongside the non-appealable "Substitution of Counsel".

See Gates v. Cook, 234 F.3d 221(5th Cir.2000). *see Transworld Airlines, Inc. v. American Coupon Exchange, Inc.*, 913 F.2d 676 (9th Cir. 1990); *Swint v. Chambers County Comm.*, 514 U.S. 35, 44 n.2, 115 S. Ct. 1203 (1995). *Law v. National Collegiate Athletic Ass'n*, 134 F.3d 1025, 1028 (10th Cir.1998); *Jenkins v. Weinshienk*, 670 F.2d 915, 918 (10th Cir. 1982)(stating that a court retains power to "decide collateral matters necessary to render complete justice");*See Curry v. Del Priore*, 941 F.2d 730, 731-32 (9th Cir. 1991) (stating that the practice

allows a court to "render an efficacious judgment," to "control the litigation before it" and "to regulate members of its own bar");, *Nat'l Equip. Rental, Ltd. v. Mercury Typesetting Co.*, 323 F.2d 784, 786 n.1 (2d Cir. 1963) ("The termination of relations between a party in litigation in a federal court and his attorney is a matter relating to the protection of the court's own officers.");

Kalyawongsa v. Moffett, 105 F.3d 283,287(6th Cir. 1997)(" Its concern with the effect of **substitution of counsel** is particularly relevant to the instant case: ").
Federal courts have the power to exercise supplemental jurisdiction over related claims that form part of the same case or controversy. 28 U.S.C. § 1367(a) (1996). § 1367 incorporates the prior doctrines of ancillary and **pendent jurisdiction** and the cases interpreting and applying them. *See Ahearn v. Charter Township of Bloomfield*, 100 F.3d 451, 454 (6th Cir. 1996).

8.7. By declining the review the unconstitutionally overbroad INJUNCTION/Restraining Orders filed in case Ahmed v. Houck, 2:07-cv-658 capital habeas corpus case, the Sixth Cir. wrongly limited its finding of lack of jurisdiction per 28 USCS 1291, and did not exercise Mandamus Jurisdiction requested. (Appen.R, Doc.22). When Petitioner had also mentioned Injunction Orders needing Review in (Notice of Appeal at Page 4 & Doc.22 at para 4, 4.2, 4.3) and separately argued in (Doc.16 Petition for Rehearing). Because injunctions orders also prohibited clerk to file pro se Notice of Appeal. So any delay is directly attributed to district court and compliant counsels. The issue of these Injunctions/Restraining Orders was fourth time presented in Motion to Reconsider (Doc. 25, should be Doc. 24). Then Sixth Cir. Court of Appeal was also requested to review all injunction orders under 28 U.S.C.S. § 1651(a) Mandamus Jurisdiction by per existing circuit precedents. Therefore, this issue of unconstitutionally overbroad injunctions was properly appealed and argued four times but 6th Cir. Court of appeals still failed to rule upon these unconstitutionally overbroad injunctions, under its proper appellate jurisdiction per 28 U.S.C.S. § 1292(a)(1) or under Pendent or Potential or Mandamus, or collateral order doctrine jurisdiction.

THE PARA 9 BELOW APPLY TO QUESTIONS(a)(b)(c)(d).

REVIEW AFTER FINAL APPEAL IS PROHIBITED BY STATTE AND INEFFECTIVE BUT WILL CAUSE GRAVE HARM TO THE RIGHTS OF CAPITAL HABEAS PETITIONER.

9.1. Acceptance of Jurisdiction by Supreme Court in this case is in the public interest and issues presented prejudgment in this capital habeas case are of first impression due to limitation of 28 U.S.C. § 2254(i ; . In fact no prior precedence involve a collateral appeal from a capital habeas corpus case, involving "constructive, implied denial of Motion for Substitution of capital habeas counsel", without ruling upon it, thus abuse of discretion. The limitation effect of **28 U.S.C. §2254(i) and or 28 U.S.C. §2261(e)** have never resulted in any type of relief or remedy after final habeas judgment. Wherefore, exercise of Mandamus jurisdiction in aid of interlocutory appeal from constructive, implied denial of Motion to Substitute capital habeas counsel in the context of this case and or for the guidance of similarly situated other habeas corpus litigants will result in proper guidance from Supreme Court, will improve the fairness of the proceeding.

The [substitution] **motion not ruled upon** by the court is **considered as denied**," the **motion is treated on appeal as denied,** *Performance Autoplex II Ltd. v. Mid-Continent Cas. Co.*, 322 F.3d 847, 862 n.22 (5th Cir. 2003); United States ex rel. Doe v. Dow Chem. Co., 343 F.3d 325, 330, n.1 (5th Cir. 2003);

9.2. Given the attorney Keith A. Yeazel's personal and financial interest in the Substitution Motion, he prevented its review by any court by using all ticks of the lawyering trade, including his contacts with the en Banc Coordinator to subvert the collateral appeal. He has abused his acquaintance with Judge Watson, to continue his untreated drug-use, substance abuse, unethical, unprofessional, disloyal, and case-fixing, filing intentionally ineffective pleadings. The Motion for the withdrawal was wrongly, prematurely granted, without applying "interest of justice" and without allowing Petitioner to file his Responsive Motion before the Magistrate Review all

matters togather.(Appen.F,G,P). There was no consideration for unavoidable delay, as it was prudent to substitute Attorney Keith A. Yeazel, as both replaced counsels immediately appointed, would minimize the otherwise unavoidable delay. Had the Court of Appeals reviewed the Doc.22, New petition for rehearing En banc,(Appen.R), many "exceptional circumstances" were shown, a writ of mandamus from the court of appeals should have been available." ***Firestone Tire*** *& Rubber Co.* v. Risjord, (1981), 449 U.S. 368, 378-379, n. 13.

9.2. The 6th Cir. in Ahmed v. Shoop, 2018 U.S. App. LEXIS 27698 (6th Cir, Sep.27, 2018) Order undertook partial review of the district court's grant of Withdrawal of capital Habeas David J. Graeff as the only order, when 3 orders were appealed, is extremely erroneous on many grounds, including (a) Magistrate Judge failed to follow the Procedure of Local Rule SD Ohio Civ.Rule 83.4(c)(4), (b) failed to apply the "interest of justice" standard, (c) Magistrate Judge and Judge Watson abused their discretion, (d) The Magistrate's Order (Appendix "F") was not yet final order but "**conditional Order**" by its terms, (e) upon Petitioner filing his Responsive Motion (Ecf.3132-1), (f) Counsels would submit the **name of replacement capital habeas counsel** to Magistrate judge after consultation among themselves and discussing with client/Petitioner Ahmed, so that suggested counsel is conflict free, (g) Magistrate Judge can make an informed final decision as per law, (h) District Court violated Petitioner's right to due process and equal protection and violated right to meaningful access to court (i) Mr. Keith A. Yeazel will get a fair chance to defend against the Petitioner's **Motion to Substitute** him (ECF.132-1), and (j) habeas Judge Watson need not interfere in the magistrate's power to enter non-dispositive Orders, (k) Mr. Yeazel and Judge Watson would not have to violate ethical duty and judicial rules of conduct by meeting ex-party to scheme to circumvent, subvert the

petitioner's right to fair proceeding, (l) Mr. Graeff knew at the time of his appointment, his age and the fact that most capital cases taken ten to fifteen years to reach their final conclusion, (m) Attorney David J. Graeff should have declined appointment, if he was unable to devote his time to this case, over a long time.

The 6th Cir. failed to consider the above (a) to (m) factors, and also failed to apply the prohibitions of 28 U.S.C. § 2254(i) and 28 U.S.C.§2261(e) to correctly analyze all three Cohn factors. The decision set a bad precedence and must be overturned. The 6th Cir. declining to accept collateral/interlocutory appeal was seriously flawed and failed to provide full review of the issues presented. Because it deliberately avoided to accept Mandamus Jurisdiction in aid of collateral appeal, when it applied the Mandamus review in other cases in the same time frame. Thus 6th Cir. rendered an erroneous, unfair, partial, incomplete, deficient decision/judgment, which must be over turned and remanded by issue of writ of Certiorai. The above (a) to (m) factors must have great cause/reason why 6th Cir. failed to fully review all three Orders appealed from, alongwith the unconstitutionally overbroad five injunction orders and why 6th Cir. avoided ruling on Motion to Substitute appeal counsel, and why it did not accept Mandamus jurisdiction, and why it avoided to read the timely filed New Petition for Rehearing En Banc(Doc.22) and why it allowed its Clerk and her staff to subvert the Petitioner'e right to full, fair appeal proceeding.

FOLLOWING PRARAS 10,11 ARE APPLICABLE TO QUESTION (a),(b),(c),d):

10. The 6th Cir. Ahmed v. Shoop, 2018 U.S. App. LEXIS 27698 (6th Cir, Sep.27, 2018) decision mention two orders, but only one order it reviewed for Chon analysis. When Notice of Appeal also specifically included a third, by its date 02/26/18 the "constructive, impliedly denied

without ruling upon the **Motion to Substitute** capital habeas counsel Attorney Keith A. Yeazel (ECF,132-1) and further explained it pages 2,4 of NOA, including mention INJUNCTIONS.

11. The 6th Cir. FAILED TO PERFORM CORRECT COHN ANALYSYS:

It stated: Consequently, the only way we may have jurisdiction to review the order on appeal is if it is among "that small class [of decisions] which **finally determine claims of right separable from, and collateral to, rights asserted in the action,** too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949). An order is appealable under the *Cohen* collateral order doctrine "if it (1) conclusively determines the disputed question; (2) resolves an important issue completely separate from the merits of the action; and (3) is effectively unreviewable on appeal from a final judgment." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 105, 130 S. Ct. 599, 175 L. Ed. 2d 458 (2009) (citation omitted).

(a) The Orders allowing withdrawl of capital habeas counsel (Appendix "F") and the Order appointing Replacement counsel (Appendix "G") and the constructive, implied denial of Motion For Substitution of habeas counsel without ruling on it, (Ecf.#132-1) are collateral final Orders involving "Claims of Right to conflict-free capital habeas counsels (18 U.S.C. §3599(a)(2),(d),(e).), too important to be denied collateral review, due to 28 U.S.C. § 2254(i), pre-final habeas judgment.

(b) But are too independent, separate of the capital habeas corpus cause itself.

(c) The constructive, implied **denial of timely substitution** of capital habeas counsels, is appealable under the *Cohen* collateral order doctrine "as it

(d) (1) **conclusively** determines the disputed question of Substitution of capital habeas corpus counsel upon Petitioner's Motion (18 U.S.C. §3599(a)(2),(d),(e)), (2) **resolves an important issue** of right to conflict-free capital habeas counsel, ***completely separate*** from the merits of the capital habeas action;

(3) is **effectively unreviewable** due to 28 U.S.C. §2254(i) and or 28 U.S.C.§2261(e) command against any relief thus no futile review of the any actions or omissions of habeas counsels, on appeal from a final judgment."

Mohawk Indus., Inc. v. Carpenter, 558 U.S. 100, 105(2009) (citation omitted).

The sixth circuit panels avoided, ignored its duty to review the Order (Appendix "G) which appointed capital habeas counsel already having existing conflict with Petitioner, made more evident by her **abandonment on appeal,** and for Mandamus and **filing Cert Petition**. Sixth Cir. Panel also totally ignore, avoid the constructive, implied denial of **Motion to Substitute** Mr. Keith A. Yeazel, but hide-behind the only Order granting withdrawl of counsel, by relying upon the totally inapplicable civil liability case, not any capital habeas case involving 28 U.S.C. §2254(i) limitation to grant any relief, thus no effective review. See, as the sixth circuit concluded at last para.:

"The order granting counsel's motion to withdraw does not satisfy the requirements of the collateral order doctrine and is therefore not immediately **[*3]** appealable. *See* *Schwartz v. City of New York*, 57 F.3d 236, 237 (2d Cir. 1995).

By wrongly relying on non-habeas corpus civil case, *with no statutory right to counsel,* without any application of limitations of 28 U.S.C. §2254(i) and 28 U.S.C.§2261(e) conclusive limit "no relief means no review, of any actions, omissions of capital habeas counsel. Without any analysis of other two orders appealed from is, and four INJUNCTIONS, fairly mentioned in NOA,p1,2,4; (Appen. Q). Similarly, panel avoided mention of "New Petition for Rehearing en ban (Doc.22)" timely filed as per Per I.O.P. 35(d)(2)(A). But neither circulated to panel nor to full en banc court, nor the panel reviewed the New Petition for Rehearing En Banc. As evident from case docket 12/03/18 entry only mentioned "original submission"(Doc.16) and not Doc.22. final order Ahmed v. Shoop, 2018 U.S. App. LEXIS 34037 (6th Cir., Dec. 3, 2018) that "The panel

has reviewed the original Petition for Rehearing (Doc.16) and concludes that the issues raised in the Petition were fully considered upon the original submission (Doc.16) and decision of the case. "; Therefore, the Petition (Doc.16) is denied. But not New Petition (Doc.22: Appen.R).

ABUSE OF DISCRETION BY 6th Cir. COURT OF APPEALS

12. Court of Appeals in case 18-3292 similarly deny by not ruling upon the crucial real issue, the district court "denial of substitution of habeas Appeal counsel" by not ruling upon it. Court of appeals could have exercised its discretionary Mandamus jurisdiction in aid of collateral appeal, to compel the district court to rule upon the Motion for Substitution as law provided to, "compel the district court to exercise its authority when it is its duty to do so." Mallard v. United States Dist. Court, 490 U.S. 296, 308.

The [substitution] motion not ruled upon by the court is considered as denied," the motion is treated on appeal as denied, *Performance Autoplex II Ltd. v. Mid-Continent Cas. Co.*, 322 F.3d 847, 862 n.22 (5th Cir. 2003); United States ex rel. Doe v. Dow Chem. Co., 343 F.3d 325, 330, n.1 (5th Cir. 2003);

13. Similarly, Court of Appeals decline to rule upon the issues presented, thus denied them, which arose during the interlocutory appeal (Doc.18, 22, 25) "**Motion to Substitute Appeal Counsel**" S. Adele Shank (Appen.S), when presented with the issue of "abandonment by appeal counsel" S. Adele Shank as she refused to appear in case 18-3292 to represent Petitioner in collateral appeal and file Mandamus Petition, a statutory duty imposed by §3599(e) "shall represent at appeals"; Martel v. Clair, 565 U.S. 648, 652, n.3(2012) and Christeson v. Roper, 135 S.Ct 891,894(2015); The district court and the Court of Appeals deny by not ruling upon the timely filed "Motion for Substitution of both capital habeas counsels" based upon uncontroverted proof (Appendix. P,R,S,T) of "conflict of interest", and "abandonment" and "serious misconduct

of counsel", irreconcilable dispute, Counsel's involvement in case fixing, intentional filing of incomplete, ineffective, deficient 1st Petition by copying appeal brief, copied into Traverse, again copied in purported Objections, without any specific objections".

14. COUNSEL MISCONDUCT, ABANDONEMENT AND CASE-FIXING:

Both counsels refusal to seek stay and abeyance of habeas case per Harbison v. Bell, 556 U.S.180,190,n.7.(2009) authorizing fed. habeas counsel to seek stay and abeyance of habeas case and represent petitioner in state courts to exhaust these already timely filed 48 postconviction claims, 28 U.S.C. § 2254(b). Petitioner is seeking reopening of postconviction proceedings wrongly closed without ruling upon all claims filed, thus claims remain open (28 U.S.C. § 2244(d)(2)), and are neither denied nor dismissed. Therefore, Ohio Supreme Court has authority to order reopening of erroneously closed postconvicion proceeding to exhaust these unexhausted claims, for no fault of Petitioner, under 14th amend equal protection right, applicable to faulty state postconviction proceedings/process as a whole.

"Unless **state collateral review violates some independent constitutional right**, such as the Equal Protection Clause, errors in state collateral review cannot form the basis for federal habeas corpus relief." *Montgomery v. Meloy*, 90 F.3d 1200, 1206 (7th Cir. 1996) (citations omitted).

See, e.g., *Sanders v. Curtin*, 529 Fed. App'x 506, 517 n.5 (6th Cir. 2013) ("Although *Cullen v. Pinholster*, 563 U.S. 170 (2011) additionally warrants stay-and-abeyance under certain circumstances, specifically addressed § 2254(d)(1), but the § 2254(d)(2) by its terms, logically Cullen v. Pinholster includes the § 2254(d)(2) determination as well. So exhaustion of all timely filed claims but never ruled upon by any state court, for no fault of the defendant-petitioner, is very essential to fulfill the duty to exhaust all claims. See *Castille v. Peoples*, 489 U.S. 346, 349 (1989); *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); *Rhines* v. *Weber*, 544 U.S. 269, 278(2005). Jones v. Bock, 549 U.S. 199 (2007). *Heleva v. Brooks*, 581 F.3d 187, 191 (3d Cir.

2009) (holding that stay-and-abeyance may be utilized "in at least some limited circumstances beyond the presentation of a mixed petition"). *Rhines v. Weber*, 544 U.S. at 271-72. See Conway v. Houk, 2016 U.S. Dist. LEXIS 184299(S.D. Ohio, arch 01, 2016) granted stay and abeyance.

The following cases further support petitioner's request for stay and exhaustion.

See also Jalowiec v. Bradshaw, 657 F.3d 293, 304-05 (6th Cir. 2011) also Wogenstahl v. Mitchell, 668 F.3d 307, 321 (6th Cir. 2012) See Cunningham v. Hudson, No. 3:06CV167, 2014 U.S. Dist. LEXIS 148820, 2014 WL 5341703, at * 2 (N.D. Ohio East. Div. Oct. 20, 2014). Furthermore, the Court need not determine whether every unexhausted claim is plainly meritless, "as long as at least one claim has potential merit." Zebroski v. Phelps, No. 03-853-LPS, 2013 U.S. Dist. LEXIS 67595, 2013 WL 1969248, at * 3 (D. Del. May 13, 2013). McConnell v. Baker, 2012 U.S. Dist. LEXIS 105487, 2012 WL 3100559 (D. Nev. Jul. 27, 2012), See,Rhines v. Weber, 544 U.S. 269, 278, 125 S. Ct. 1528 (2005); and Cunningham v. Hudson, 756 F.3d 477, 486 (6th Cir. 2014) and See, **Gary v. Georgia Diagnostic Prison, 686 F.3d 1261**(11th Cir.2012). Lugo v. Sec'y, Fla. Dep't of Corr., 750 F.3d 1198(11th Cir.2014). Hill v. Anderson, 2014 U.S. Dist. LEXIS 66975(N.D. Ohio, May 15, 2014) *Conway v. Houk*, Case No. 3:07-cv-345, 2015 U.S. Dist. LEXIS 186574 (S.D. Ohio, East. Div. Jul. 8, 2015). **Drummond v. Jenkins, 2017 U.S. Dist. LEXIS 24533**(N.D. Ohio, Feb.22,2017) Conway v. Houk, 2016 U.S. Dist. LEXIS 184299(S.D. Ohio, March 1,2016), Conway v. Houk, 2013 U.S. Dist. LEXIS 166403(S.D. Ohio, November 22,2013), Adams v. Shoop, 2018 U.S. Dist. LEXIS 188966(N.D. Ohio, November 5,2018)so many others.

Respondent has already consented to unopposed expansion of state court record, thus agreeing that these timely filed postconvictioon claims remain unexhausted for no fault of the defendant-Petitioner in case Ahmed v. Houk, 2:07-658, (ECF#.45). It is foolish for drug-edict, substance abuser, case-fixer, having impaired judgment, fails to understand 28 U.S.C. § 2254(b), (c) requirements, and lack of professional ethics (Doc.22) who abandoned all postconviction claims properly filed and preserved by postconviction counsel and pro se, and totally resorted to pay Office Max to scan appeal brief and application to reopen appeal to call it his 1st Petition. See, Magistrate Judge in his R&R (Doc.88) in footnotes # 16, 25,31 reproduced at para 4.2(d) of New Petition for Rehearing En Banc (Doc.22, Appen. P,R,S,T).

Please read the R&R (Do. 88) as the Magistrate Judge Merz stated:

Foot Notes # 16

"The court notes that most, not all, of the references to standard of review applicable to an Ohio state court direct appeal have been cut (scanned) from the argument presented in the [habeas] Petition, and that typographical errors are different in each version of the claim, but the substantively there is no difference between the claim as it was presented in the state court and as it has been presented here. **This short-cut and off-point practice of law** (if it can be called that) **is especially troubling in a capital case.**

FOOTNOTE #25 : Indeed, much of what argued in Ahmed's appellate brief there is (unsurprisingly) imported into his Petition and Traverse here.

FOOTNOTE#31 :" Most likely, the inclusion of allegations that the Ohio death penalty statutes violate the Ohio Constitution appear here as a consequence of habeas counsel's **devotion to copying** [scanning by office-Max] Ahmed's **arguments from his brief in the state court into his habeas Petition and traverse**, a practice that has been repeatedly and unfavourably commented upon, supra.

The footnote#31 show that Mr. Yeazel due to his continuous drug-use and substance abuse had lost his most of his common sense, logic, reason, rationality and had very impaired professional judgment, lack of attorney ethics to know that statelaw claims are not cognizable in fed. habeas corpus under AEDPA to the extent that 28 USCS § 2244(d) claims that state judgment is invalid under state law, that claim is not cognizable on habeas corpus review. Frazier v Moore, 252 Fed Appx 1, 2007 FED App 741N (CA6 Ohio, 2007).

15. It was foolish action of Mr. Yeazel working under drug-abused influence impaired professional judgment failed to comprehend 28 U.S.C. § 2254(b), (c) requirement for exhaustion. He wrongly asked the Magistrate Judge to review these (Traverse. Doc. 71, PageId# 1664) never ruled upon postconviction claims, which are not included in habeas petition and magistrate declined. The capital habeas counsels ignore the well settled law that before a federal habeas court may review any claim to grant relief, a state prisoner must first exhaust his available remedies in the state courts, and if he fails to do so before the state remedy becomes unavailable, he cannot raise the unexhausted claim before a federal court. *O'Sullivan v. Boerckel*, 526 U.S. 838, 848(1999). *Castille v. Peoples*, 489 U.S. 346, 349(1989); *Silverburg v. Evitts*, 993 F.2d 124, 126 (6th Cir. 1993). Court of Appeals erroneously avoided to rule upon these proven allegations presented in Petition for Rehearing (Doc.16) and again in New Petition For Rehearing en banc (Doc.22 at para, and 4, 4.2(d) and again in Motion to SetAside, Reconsider, vacate (Doc.24,25).

(Appen. P,R,S,T). Supreme Court is requested to grant Review per Firestone, 449 U.S. at 378 n.13; The constructive or implied "denial of Motion for Substitution" of capital habeas counsel" are not the type of issues requiring certification from district court to appeal under 28 U.S.C.S. § 1292(b). Wherefore, petitioner is limited to 28 U.S.C.S. § 1291 collateral order exception doctrine and 28 U.S.C.S. § 1651(a) jurisdiction in aid of collateral appeal, wrongly denied by the 6th Cir. incomplete adjudication and lack of any existing caselaw for guidance. Petitioner cannot obtain adequate relief from any other court. S.Ct. Rule 20.1.

See, "A writ of Mandamus may issue "'to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.'" *Mallard v. United States Dist. Court*, 490 U.S. 296, 308, 109 S. Ct. 1814(1989).

16. In the case below the district court's refusal by not ruling upon the timely filed "**Motion for Substitution** of capital habeas counsel" Keith A. Yeazel, is abuse of its discretion. Which is further supplemented by Court of Appeal's own abuse of discretion by not performing any analysis of application of collateral review doctrine in the capital habeas corpus context, with due regard to existing limitation of **28 U.S.C. §2254(i) and §2261(e)** as an issue of first impression but important enough for the public to know what the law provides or change it;

17. Court of Appeals refusing to accept discretionary collateral appeal and refusing to rule under its Mandamus Jurisdiction in aid of collateral appeal under 28 U.S.C. § 1654, under the existing circuit precedents of Hopson v. Miller, 2017 U.S. App. LEXIS 17596(6th Cir.2017), Alford v. Mohr, 2018 U.S. App. LEXIS 28379(6th Cir. Oct.25, 2018). *Marten* v. *Hess*, 176 F.2d 834 (6th Cir. 1949). *In re Aetna Cas. & Sur. Co.*, 919 F.2d 1136, 1143 (6th Cir. 1990) (en

banc) and *Mischler*, 887 F.3d at 272(2018); A notice of appeal from an order that is not immediately appealable may be treated as a Petition for a writ of Mandamus. *Hammons v. Teamsters Local No. 20*, 754 F.2d 177, 179 (6th Cir. 1985)." See also Cf.. *Firestone Tire & Rubber Co.* v. Risjord, 449 U.S. 368, 374, 376, 378 (1981).

18. Court of appeals avoided to review these issue, without giving any reason, despite having presented four times in (a) Notice of Appeal timely filed, (b) Petition for Rehearing(Doc.16), and again in (c) New petition for Rehearing en banc (Doc.22), filed per Per I.O.P. 35(d)(2)(A),(g); FRAP 35 and FRAP 25(a)(2)(C) and fourthly (d) presented it in Motion for Reconsideration (Doc.25) filed per (6th.Cir.R.27(g), (Fed Rules App. Proc R. 25(a)(2)(C)(ii). Please, see case 18-3292 (Docs. 1, 16,22,25) and Appen..

19. In addition to para 14 to 18 above, the following crucial facts are listed to establish that appointed capital habeas counsels have abandoned the Petitioner, by abandoning the meritorious claims and continue deficient representation in retaliatory conflict of interest, and continue in active disabling conflict of interest, and continue in capital habeas counsel's obvious serious misconduct. Martel v. Clair, 565 U.S. 648,650(2012),**"courts have an obligation to ensure** that the habeas Petitioner's **statutory right to [conflict free] counsel was satisfied throughout the litigation,** *citing* 18 U.S.C. §3599(a)(2),(d),(e). While the courts fail to ensure that the capital habeas Petitioner's (a) statutory rights to meaningful access to courts, (b) right to merit review of sue sponte filed without any hearing, five unconstitutionally overbroad injunctions/restraining orders, (c) timely pre-judgment collateral review of lower courts judgment orders which cannot be meaningfully reviewed after final habeas judgment, and (d) existing exceptional circumstances warranting review by Mandamus jurisdiction, and (e) an obligation to ensure that

18 U.S.C. §3599(a)(2),(d),(e) statutory "right to conflict-free counsel" was satisfied throughout the habeas corpus litigation. As the 28 U.S.C. §2254(i) and 28 U.S.C.§2261(e) (using similar language) prohibits the courts from granting substantive habeas relief after final habeas judgment, on the basis of a lawyer's misconduct, conflict of interest, deliberate ineffectiveness to deliver "case-fixing" in capital habeas proceedings, not from timely substituting counsel on that ground. Martel v. Clair,supra,at n.3.

20. ON APPEAL OH SUPREME COURT DESPITE RAISING THE ISSUE FAILED TO RULE UPON ERRONEOUS DEPRIVATION OF RIGHT TO COUNSEL OF CHOICE:

ON appeal OH Supreme Court justice Resnic [who was herself convicted for drunk-driving and resigned after] writing the opinion in **State v. Ahmed, 103 Ohio St. 3d 27, 31(Aug 25, 2004)** that:

[**P25] Although appellant sought to **hire attorneys of his own choosing**, he was never able to do so. [because of fifteen illegal, non-jurisdictional restraining orders against use of untainted funds filed by trial judge, and dictated to probate judge holding funds in conservatorship]

[**P27] At a January 2, 2001 hearing, appellant told the court that **he** had **hired attorney Joseph Carpino** to represent him [at trial].

[**P29] Also at the January 8, 2001 hearing, the court found that **Carpino could not serve as appellant's counsel** [of choice] because he was not certified to act as counsel in capital cases. The court overruled Carpino's motion to become appellant's trial counsel [of choice]..

The trial case 99-CR-192 record on direct appeal, contained over fifteen illegal, unconstitutional Restraining Orders filed sue sponte by trial judge, in unison well coordinated Machinations of prosecutor, sheriff, trial judge, probate judge John Mark Costine, conservator Sustersic, civil judge Solovan and county public defender, appointed trial counsels, all writing letters to each other and serving illegal restraining orders upon each other, as Trial judge prohibiting them all to Release any untainted funds of defendant Ahmed (over $ 80,000.00) to pay to any of his Ten Retained counsels, *and erroneously denying services of chosen counsel*

Carpino, who filed formal appearance and sught recognition as counsel of choice by a Motion but was not allowed by erroneous excuse of ***non-existing certification requirement*** *in Ohio,* ***for counsel of choice.*** See,

State v. Keith, 79 Ohio St.3d at 534, 684 N.E.2d 47,66, (Ohio, March 4,1997) ("we decline to impose a rule that creates a presumption of ineffective assistance of counsel where counsel [**66] has been retained by or for a defendant and is not qualified under C.P.Sup.R. 65 (Sup.R.20(I)(B)). The provisions for the appointment of counsel set forth in C.P.Sup.R.65 (Sup.R.20(I)(B)) apply "only in cases where the defendant is indigent and counsel is not privately retained by or for the defendant * * * .C.P.Sup.R. 65(I)(B) [(Sup.R.20(I)(B)]... In this case, appellant privately retained his trial counsel and certification under the rule [Sup.R.20(I)(B)] was not required for this representation."); the Sup.R. 20(I)(C) also provides: "If the defendant engages one privately retained attorney, the court shall not appoint a second attorney pursuant to this rule."

See also *State v. Leonard*, 104 Ohio St.3d 54,81, 818 N.E.2d 229(July 20, 2004) , ¶ 142."(Leonard, instead, chose to retain private counsel. citing, *State v. Keith* (1997), 79 Ohio St.3d 514, 534, 684 N.E.2d 47(Ohio, 1997) ("we declined to "impose a [certification] rule... where counsel has been retained by or for a defendant and is not qualified under C.P.Sup.R. 65" [then current (Sup.R.20(I)(B))];

See also State v. Hunter, 131 Ohio St. 3d 67,76, 960 N.E.2d 955,967 (Ohio,2011);

Wherefore, defendant was erroneously deprived representation by counsels of choice at trial and appeal in clear violation of *Powell* v. *Alabama*, 287 U.S. 45, 53,69, S. Ct. 55 (1932), United States v. Gonzalez-Lopez, 548 U.S. 140, 147-148,150 (June 2006). Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 624-626 (1989); United States v. Stein, 541 F.3d 130,155-6 (2d Cir. 2008) and Libbey-Owens-Ford Co. v. Skeddle, 1996 U.S. App. LEXIS 15626 (6th Cir. Ohio, May 31, 1996), *id* at page 16 and Libbey-Owens-Ford Co., 1999 U.S. Dist. LEXIS 4272(6th Cir. Ohio, March 23,1999) ***id*** at page 9; Rambo v. Nogan, 2017 U.S. Dist. LEXIS 163332 (D.N.J., Oct. 2, 2017); Luis v. United States,136 S. Ct. 1083, 1085-1087, 1089,1093-4,1099,1101(2016);

The old cases Powel, at 53,69 and Caplin,at 624-626 set out general principles of 6th amendment right to counsel of choice. Of these later cases Gonzalez-Lopez was the "existing precedent" at the time of, "relevant state court decision" denied postconviction relief on specific claim. The

Luis is old rule under Teague, "illustrative of the constitutional principles for proper application of 6th amend. right to counsel of choice, standard for, "clearly established federal law" under Teague & 2242(d). See, Williams, Rompilla, Wiggins v. Smith, 539 U.S. 510,**522,n.62** (2003) and Pinholster, 131 S.Ct.at 1407,n.17 and Gilmore v. Taylor, 508 U.S. 333,341-2 (1993) allow consideration of later old rule case (Luis)_ for clarification of applicability, and illustration of the established principles of constitutional law of "earlier existing cases"(Powel, Caplin at 624-625, Gonzalez-Lopez), and did not change the existing law, and didn't announce a New Rule but **result in the later case** (Luis) **is "dictated by established** precedent at the time of relevant state court decision". See, also Newland v. Hall, 527 F.3d 1162,1196-1201,n.64 (11th Cir. 2008).

31. SUBVERTED CLAIM OF RIGHT TO SELF REPRESENTATION:

Mr. Yeazel was told over the recorded telephone and by written letters, but in another misconduct, he intentionally cited fifth amendment case North Carolina v. Butler, 441 U.S. 369, 375-76 (1979), for waiver of counsel in "denial of right to self representation" claim. (Traverse, Doc.71 at PageId# 1700), violating Solem v. Stumes, 465 U.S. 638, n.7 (19840); Mr. Yeazel continued his misconduct despite Magistrate pointing out that the fifth amendment case is inapposite. See, (Objections,Doc.105 at PageId# 9635). When he was given the correct sixth amendment precedents many a times over the telephone and in written letters, including Faretta v. California, 422 U.S. 806, 820, 834-36 (1975), Carnley v. Cochran, 369 U.S. 506, 516 (1962), Johnson v. Zerbst, 304 U.S. 458, 465(1938); There are many such intentional misconduct of wrong citation of caselaw, to deliver the "case-fixing";

32. REFUSAL TO FILE APPEAL FROM UNCONSTITUTIONALY OVERBROAD INJUNCTIONS/RESTRAINING ORDERS:

Mr. Yeazel refused to take up appeal per 28 U. S. C. § 1292(a)(1) **"granting, continuing** injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court; The following unconstitutional overbroad injunctions/erroneous restraining orders were entered sue sponte without any hearing, targeted to prevent Petitioner from exercising his statutorily granted rights to file specifically allowed pro se pleadings under 18 USCS 3599 (a)(2),(e), 28 USCS § 455, 28 USCS § 144, 28 USCS § 2250, 28 USCS § 137 and 28 USCS § 351,illegal manipulation of random case assignment system for judge shopping and 28 USCS § 2242, 28 USCS § 2254 and 28 U.S.C. § 1654 pro se filing of place holder 1st Petition to guard against unscrupulous, malicious appointed habeas counsels. The listed below are five unconstitutionally overbroad injunction/restraining Orders entered to erroneously, illegally prohibited pro se exercise of statutory rights granted to Petitioner. See First unconstitutionally overbroad injunctiion/ Restraining Order (Ecf.#32) at last para, page 5 of 5 is published at (Nawaz Ahmed v. Marc C. Houk, 2:07-cv-658, 2008 U.S. Dist. LEXIS 109687 (April 16, 2008) (Doc.# 32, id at page 5 of 5 **at last para**.); See the 2nd unconstitutionally overbroad Injunction/Restraining Order (ECF.#96, filed 07/09/14**). See,** Third unconstitutionally overbroad injunction/restraining Order (Ecf.#107, filed 01/13/2015). See, Fourth unconstitutionally overbroad injunction/Restraining Order of (Ecf.#110, filed 02/18/2015) and the unconstitutionally overbroad injunction/restraining Order filed 02/19/15 (ECF.#111, PageID# 9955-9957) striking pro se pleading filed at (Ecf.107 and Ecf.110). See, Fifth unconstitutionally overbroad injunction/Restraining Order filed 03/11/15 (ECF.#114, PageID# 9961), on a pro se 28 USCS § 2250 Motion, thus was not a violation of any law but still resulted in renewed unconstitutionally overbroad Injunction/Restraining Order filed 03/11/15 (Ecf.#114, PageId#39961).

See Cromer, 390 F.3d at 819 (striking down as overbroad order preventing plaintiff from ever again filing documents in a particular case); The blanket filing bars, unconstitutionally overbroad restraining orders were entered when Petitioner tried to exercise his statutorily authorized rights to file statutorily allowed proceedings under 18 USCS 3599 (a)(2),(e); 28 USCS 2242; 28 USCS 455 and 144; 28 USCS 2250; 28 USCS 137 and 28 USCS 351; 28 USCS 1291 and 28 USCS 1291 related pleadings and FRAP 3 and 4 related filings. These unconstitutionally overbroad restraining orders/injunctions also prohibit the Clerk of Dist. Ct. to refuse any pro se filing received from Nawaz Ahmed including the Notice of Appeal or postjudgment Motions, including Rule 59(e) Motion and Motion to Reconsider. The Chapman v. Exec.Comm, 324 Fed. Appx. 500 (7th Cir. 2009) stated," The orders are unconstitutionally overboroad as the restraining orders allow no statutory exceptions. Courts have rejected as overbroad filing bars in perpetuity." Cok v. Fam. Ct. of Rhod Island, 985 F.2d 32, 34-35 (1st Cir. 1993)("striking overbroad injunction preventing plaintiff from ever again filing pro se suits.);
See Miller, 541 F.3d at 1096-99 (injunctions permanently preventing plaintiff from obtaining in forma paupris status was overbroad); Delong, 912 F.2d at 1148(order permanently preventing plaintiff from filing any paper in a particular district court was overbroad); same in Procup, 792 F.2d at 1071.

33. Instead of filing for his withdrawl as his **substitution will not have causes any undue additional delay or other prejudice to the Respondent**, but lack of substitution will surely deny the Petitioner's "right to conflict free habeas counsel" under 18 USCS § 3599(a)(2),(d)(e). *Martel v. Clair*, 565 U.S. 648, 649, 650, 662, n.3, 655, 658-663 (2012), And *Christeson v. Roper*, 135 S. Ct. 891, 894 (2015);

34. Disabled by continued illegal drug use, substance abuse, impaired ethics and crippling professional judgment, and to circumvent the Petitioner "right to conflict free habeas counsel", and to continue harmful misrepresentations, continued attorney misconduct, with "disabling conflict of interest", on January 30,2018, Attorney Keith A. Yeazel **met ex-party** with District Judge Michael H. Watson to ask that the magistrate judge Michael R. Merz be asked to make the withdrawl of Mr. Graeff contingent upon counsel/he proposing the name of replacement counsel. Mr. Yeazel failed to inform Magistrate judge Michael R. Merz and Judge Watson that

Petitioner is seeking the substitution of Attorney Keith A. Yeazel. So Judge Watson complied as asked by Mr. Yeazel, his long time class-fellow of college and law school years at OSU, thus favored for court appointments.

35. The magistrate judge **Michael R. Merz** per 28 U.S.C.S. § 636(b)(1)(A) *without* applying "interest of justice" and Local Rule SD Ohio Civ.Rule 83.4(c)(4) **instantly** granted the withdrawal of Mr. Graeff, contingent upon Petitioner to file after the fact his Responsive Motion by March 01,2018 and counsel propose the name of replacement counsel.(Appendix "G").

36. After knowing that Petitioner will file the Motion for Substitution of Attorney Keith A. Yeazel as his substitution will not cause any undue delay or otherwise prejudice the respondent, except to function as reliable state agent for continued efforts for "case-fixing" on behalf of Counsels for Respondent/Warden. However, to circumvent petitioner's "right to conflict free habeas counsel," Mr. Yeazel on February 15,2018 **again met ex-party** with Habeas Judge Michael H. Watson, asking not to wait for the Petitioner's Responsive Motion, and circumvent the Magistrate Judge's authority to enter non-dispositive Order per 28 U.S.C.S. § 636(b)(1)(A), but instead instantly enter an Order (Appendix "F") appointing Mr. Yeazel as "Counsel of Record" and Attorney S. Adele Shank as cocounsel. Judge Watson complied with the suggestion, even when Magistrate Judge was awkwardly, illegally cut-off from his authority under 28 U.S.C.S. § 636(b)(1)(A) to make non-dispositive Order of appointment of replacement counsel.

37. Petitioner filed his timely Responsive Motion (Ecf.132, 132-1, 132-2,132-3,132-4,132-5) for Substitution of habeas counsel Keith A. Yeazel. 18 USCS § 3599(e), *Martel v. Clair*, 132 S.Ct. 1276, 1279,1287, n.3 (2012), "in the interest of justice". *Christeson v. Roper*, 135 S. Ct.

891, 894 (2015), the Supreme Court held that a capital habeas Petitioner may request the court to substitute counsel if he can establish that it is "in the interests of justice" and show that appointed capital habeas counsel "actively represents conflicting interests, has actual, "disabling conflict of interest", counsel misconduct. The **court would have to ensure that the defendant's statutory right to counsel was satisfied throughout the litigation.** ***Id.*** **at 1288.** Any DELAY is unavoidable, essential, for newly appointed counsel to read records and is thus not caused by Petitioner. Wherefore, Petitioner respectfully pray that a writ of Certiorari issue to review the **constructive denial of Motion to Substitute capital habeas counsel, without ruling upon it**, which district court and 6th Cir.have intentionally failed to review (ECF.132-1). When the filings show that Mr. Yeazel have diminished capacity due to his illegal drugs and substance abuse, and had engaged in capital habeas "case-fixing" with three warden's counsels, who appeared in in case 2:07-cv-658. Upon written complaint from Petitioner Ahmed, after internal investigation, then OAG now Governor Devine *fired all of them, as their replacements got hired, as proven by (* ECF#109 filed 01/28/15, ECF#121 filed 8/7/15, ECF.#127 filed 12/08/17), *their Notices of Terminations*]. To realize "case-fixing", Mr. Yeazel deliberately filed defective habeas pleadings with intent to get them surely rejected, Nawaz Ahmed v. Houk, 2010 U.S. Dist. LEXIS 95789 (S.D. Ohio, July 30, 2010), and Ahmed v. Houk, 2010 U.S. Dist. LEXIS 95768 (S.D. Ohio, Sept. 14, 2010) and Ahmed v. Houk, 2011 U.S. Dist. LEXIS 101065 (S.D. Ohio, Sept. 8, 2011) and Ahmed v. Houk, 2011 U.S. Dist. LEXIS 156682 (S.D. Ohio, Oct. 5, 2011) and Ahmed v. Houk, 2014 U.S. Dist. LEXIS 81971 (S.D. Ohio, June 16, 2014).

38. Mr. Yeazel also refused to include ALL claims preserved in postconviction Petition filed by OPD counsel and additional Postconviction claims filed pro se, and all claims validly presented by appellant-petitioner in pro se Motion for Reconsideration but summarily denied

without any opinion by OH Supreme Court, which included constitutional claims requiring no showing of prejudice. For example. in capital criminal case 99-CR-192 denial of public trial, **trial** jury venire unrepresentative of fair cross section of community, illegal use of testimonial, photo, DNA, charts etc. evidence at trial, even when it did not match the defendant but removed from marital home rented by defendant by paying advance deposit by his own personal check, thus lien-holder, all illegally removed without any search warrant, and denial of the use of ALL untainted funds of defendant Ahmed, including those in retirement accounts and others placed under probate conservatorship, but denied their release to pay to chosen trial and appeal counsels, by over fifteen illegal, non-jurisdictional, restraining orders, one after the other, in a well coordinated sue sponte restraining orders filed without hearings, by well coordinated judicial machination by three common please judges, serving their orders and letters upon each other, upon prosecutor. These claims of denial of own untainted funds to plan and execute own defense included corrupt actions of Belmont county public defenders, imposed upon a non-indigent defendant who never met non-indigent defendant at jail nor preserved any evidence, nor filed any witness list, not interviewed any witnesses but sought continuances of trial to give more time to prosecutor, even when prosecutor had discovered nothing, and public defenders were instrumental in initial denial of the use of personal untainted funds of defendant, along-with the Prosecutor, Sheriff, county Jail administrator. Trial Judge filing over fifteen sue sponte Restraining Orders, one after the other, starting with illegal arrest and continued at "critical stages of arraignment" and all subsequent "critical stages" of pre-trial and trial period, including orders of the probate judge (himself ex-public defender) denying release of funder in Ahmed's conservatorship or refused to terminate the conservatorship and civil judge denying release of own untainted funds (of defendant who had no prior run with law, by illegally using a totally

bogus civil case 99-CV-657 process for entering illegal, non-jurisdictional pre-judgment attachment, later dismissing the bogus civil case after criminal trial, when challenged to show jurisdiction. see Hampton v. Ahmed, 2005-Ohio-1115 (Ohio Ct. App., Belmont County, March, 7, 2005), *id* at [*P3] and [*P6]). Therefore, all in unison violating 5th, 14th, Sixth Amendment right to use own untainted funds and to pay to retained chosen counsels, in violation of. [Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 624-626 and Powel v. Alabama, and Luis v. United States, 136 S.Ct. 1083,1086, 1089, 1094, 1011(2016)]; Also erroneously disqualifying retained chosen counsel Joseph Carpino by Trial Judge in violation of Sup.R.20(I)(B)and Sup.R.20(I)(C), by wrongly invented, the non-existent certification requirement for chosen counsel retained by non-indigent defendant in violation of [Powell, 287 U.S. 45, 53 and United States v. Gonzalez-Lopez, 548 U.S. 140, 143, 147-148,150 (June 2006)] after Mr. Carpino had obtained an order from Trial Judge to meet defendant Ahmed at jail for representation as chosen counsel (Transcript of December 8, 2000. Hearing, Trial Tr., Vol. 3 at 1-6.) and had signed the contract for representation (Transcript of January 2, 2001, Hearing, Trial Tr., Vol. 3 at 9.), after Attorney Carpino was recognised by defendant as his contracted-chosen counsel in public at the transcribed hearing and also similarly declared chosen counsel in jointly filed Motion, and after he had filed written appearance, seeking recognition as chosen counsel of defendant. But non-indigent Defendant Ahmed was forced to go to trial with court imposed appointed counsels and court imposed public defenders pre-trial and on appeal, as a direct result, consequence of 15 illegal restraining orders against untainted funds in out-of-state financial institutions in retirement accounts, so that three judges can manufacture non-existing-never claimed indigency.

39. RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM AND FROM ANY OTHER COURT:

Petitioner timely served his New Petition for Rehearing En Banc(Doc.22 (Appen.R) per 6th Cir. IOP 35(a)(2)(d). But the En Banc Coordinator (BLH) refused to stamp it "filed" and circulate it to the full court and to the panel as she falsely docketed it as "Supplemental Memorandum of Law" (Doc.22). In this Petition the Petitioner raised many issues and sought its review under Mandamus jurisdiction under the sixth Cir Court of Appeals existing precedents in Hopson v. Miller, 2017 U.S. App. LEXIS 17596(6th Cir.2017), *Mischler v. Bevin*, 887 F.3d 271, 271 (6th Cir. 2018) (citing *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 373-75, n.13(1981).Alford v. Mohr, 2018 U.S. App. LEXIS 28379(6th Cir. Oct.25, 2018) citing *In re Aetna Cas. & Sur. Co.*, 919 F.2d 1136, 1143 (6th Cir. 1990).

Deputy Clerk Susan Rogers denying its filing in case 18-3292,of Motion to Setaside,Vacate,Reconsider Motion, allowed 6th Cir. Rule 27(g) and others and caselaw cited above(Appen."H").

The above explained "extra ordinary circumstances" warranted the exercise of discretionary review by the Court of Appeals. A timely filed New Petition for Rehearing En Banc (Doc.22) Requested the Court of Appeals to exercise its collateral and original Mandamus jurisdiction in aid of the collateral appeal under All Writs Act, 28 U.S.C.S. § 1651(a). **But for no fault of the Petitioner,** The timely filed New Petition (Doc.22) authorized by IOP 35(a)(2)(A), was not ruled upon by the Court of Appeals panel and not considered by the en banc court, as En Banc Coordinator due to corrupt interference by habeas counsels, failed to circulate the New Petition (Doc.22). Court of Appeals failed to perform an **analysis of the cited records** in New En Banc Petition, failed to undertake the applicable test to correctly conclude that mandamus

relief is warranted in this case. So Court of Appeals erroneously denied the appeal for wrong reasons. See also *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 25, 27-31, 63 S. Ct. 938 (1943) and cases cited therein and LaBuy v. Howes, 353 U.S. 249, 254-255 (1975) for exercise of **potential** jurisdiction and Pendent Jurisdiction.

CONCLUSION

The Cohn test would not fail to meet the unreviewability prong of the collateral order doctrine when limitation of 28 U.S.C. § 2254(i) is applied to denial of Substitution of capital habeas counsel due to ineffectiveness, misconduct, abandonement on collateral review before final habeas judgment. Mandamus is appropriate in this case as crucial collateral claims would be lost causing irreparable harm, given attorneys personal and financial interest in the disqualification decision has already shaped capital habeas proceeding to denial of due relief and petitioner will surely suffer irreparable injuries, by further acts or omissions of counsels disloyalty, and "the effect of such a tainted proceeding is frustrating public policy," of high quality capital habeas representation. The two appealable collateral orders ignored by 6th cit. will be "effectively unreviewable" on final capital habeas appeal due to prohibitions of 28 USCS 2245(i). *Mathews* v. *Eldridge*, 424 U.S. 319, 331, n. 11 (1976). The exception applies to this case as petitioner Ahmed in New Petition for Rehearing en banc has already alleged that delay will cause irreparable harm. Firestone Tire, 449 U.S. at 378 n.13. The petition for a writ of certiorari should be granted.

Respectfully Submitted,

(NAWAZ AHMED)

A404-511,CCI, P.O.Box 5500

Date: February 26, 2019 Chillicothe, OH 45601