

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

CASE NO. 19 - 5380

FILED

JUN 27 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN RE CHARLES LAYMON COX

§ PETITION FOR EXTRAORDINARY WRIT

§ ON APPEAL FROM

§ THE UNITED STATES COURT OF APPEALS

PETITION FOR WRIT OF MANDAMUS

Charles Laymon Cox pro se, herein Motions for Leave to File this Petition for Writ of Mandamus, Petitioner requests Mandamus Ordering the Judge of the 213th Judicial district court, Tarrant County, located at 401 West Belknap, Fort Worth, Texas 76196-0402, to **Vacate** the April 27, 1998 Unadjudicated Judgment on Plea of Guilt or Nolo Contendere and Suspending Imposition of Sentence, Case No. 0647447-D as **Null** and **Void**, and all papers signed in agreement **Nullified**. Petitioner requests the October 4, 2007 Judgment Adjudicating Guilt, Case No. 0647447-D **Reversed** and **Void**. And **Order** the immediate release of Charles Laymon Cox TDCJ ID. 01463721 incarcerated at the Clements Unit, 9601 Spur 591, Amarillo, Texas 79107.

Petitioner **Prays** the Court **Grant** his Petition for Writ of Mandamus.

"I Charles Laymon Cox declare and state under penalty of perjury the foregoing is true and correct." Signed on this day of June 27, 2019

Respectfully Submitted

Charles Laymon Cox

IN THE
SUPREME COURT OF THE UNITED STATES
CASE NO. _____

IN RE CHARLES LAYMON COX

§ PETITION FOR EXTRAORDINARY WRIT
§ ON APPEAL FROM
§ THE UNITED STATES COURT OF APPEALS
§ FIFTH CIRCUIT
§

MOTION FOR LEAVE TO FILE

PETITION FOR EXTRAORDINARY WRIT

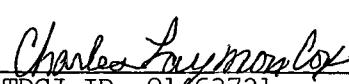
AND

BRIEF IN SUPPORT

Charles Laymon Cox Petitioner pro se, herein Motions for Leave to File, Petition for Extraordinary Writ and Brief in Support. 28U.S.C.1651(a), that exceptional circumstances warrant the exercise of this Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

"I declare and state under penalty of perjury that the foregoing is true and correct." Signed on this day June 27, 2019.

Respectfully Submitted


TDCJ ID. 01463721
Clements Unit
9601 Spur 591
Amarillo, TX. 79107

IN THE
SUPREME COURT OF THE UNITED STATES
CASE NO. _____

IN RE CHARLES LAYMON COX

§ PETITION FOR EXTRAORDINARY WRIT
§ ON APPEAL FROM
§ THE UNITED STATES COURT OF APPEALS
§ FIFTH CIRCUIT
§

PETITION FOR EXTRAORDINARY WRIT

AND

BRIEF IN SUPPORT

Respectfully submitted

Charles Laymon Cox

Signed on this day June 27, 2019

Petitioner pro se
TDCJ ID. 01463721
Clements Units
9601 Spur 591
Amarillo, TX. 79107

QUESTIONS PRESENTED

Is Texas Code of Criminal Procedure, Article 42.12§5(a) deferred Adjudication Community Supervision void for vagueness? Where the term 'deferred adjudication' is ambiguous. Section 2.(A) of this article 'Definitions' does not define what type of criminal proceedings are deferred or, what deferred adjudication means in context with Section 5 of Article 42.12 Community Supervision.

Is the 1998 Unadjudicated Judgment on Plea of Guilty or Nolo Contendere and Suspending Imposition of Sentence, named herein as the Judgment on appeal void? Failing Subject Matter Jurisdiction of Texas Code of Criminal Procedure, Article 42.12§5(a) deferred Adjudication Community supervision and the United States Constitution's 5th and 14th Amendments Due Process and Equal Protection Clause (respectively). Where a judge may not Defer Punishment prior to a formal proceeding convened for determining guilt.

Does the 1998 Unadjudicated Judgment on Plea of Guilty or Nolo Contendere and Suspending Imposition of Sentence, named herein as the Judgment on appeal, violate Separation of Constitutional Powers Article I§1. Legislative Powers and Article III§2. Judicial Powers, promulgating unlegislated jurisdiction, by ~~joining~~ two statutes of Community Supervision. Texas Code of Criminal Procedure, Article 42.12§5(a) Deferred Adjudication probation with Article 42.12§3(a) Judge Ordered probation?

LIST OF PARTIES

Charles Laymon Cox, pro se
TDCJ ID# 01463721
not an Attorney

Clements Unit
9601 Spur 591
Amarillo, TX 79107

Ken Paxton
Attorney General of Texas
Gretchen B. Merenda
Assistant Attorney General of Texas

P.O. Box 12548
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Austin, TX. 78711

The Attorney General and the Assistant Attorney General Are ~~not~~
parties of concern representing the State of Texas.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR EXTRAORDINARY WRIT OF MANDAMUS

Petitioner Respectfully prays the court grant jurisdiction of Petition for Writ of Mandamus.

Opinions Below

The Opinion of the 213th Judicial District Court of Tarrant County, Texas appears at Appendix page 1 and 2 to Petition. Is unpublished.

The Opinion and Order of the United States Court of Appeals, Fifth Circuit appears at Appendix page 25 and 26 to Petition. Is unpublished.

The Opinion and Order of the United States Court of Appeals, Fifth Circuit Panel Rehearing appears at Appendix page 27 to Petition. Is unpublished.

The Opinion and Order of the United States District Court for the Northern District of Texas appears at Appendix page 18,19,20,21,22,23 to Petition. Is unpublished.

The Opinion of the Texas Court of Criminal Appeals appears at Appendix page 16 and 17 to Petition. Is unpublished.

The Recommendation of the 213th Judicial District Court, Tarrant County, Texas appears at Appendix page 14 to Petition. Is unpublished.

The Opinion of the Judgment Adjudicating Guilt of the 213th Judicial District Court, Tarrant County, Texas appears at Appendix page 11 and 12 to Petition. Is unpublished.

JURISDICTION

United States Supreme court Rule 10:

The United States Court of Appeals, Fifth Circuit, has departed from accepted and normal course of judicial proceedings and sanctioned such departure by a lower court.

28U.S.C. §1651(a): That exceptional circumstances warrant the exercise of this Court's discretionary powers. And that adequate relief cannot be obtained in any other form in any other court.

Both Courts, The United States District Court for the Northern District of Texas Case No. 4:16-CV-767-0 denied on June 8, 2018, appx.pg.18 and the United States Court of Appeals, Fifth Circuit Case No. 18-10871 denied on February 4, 2019 appx.pg.25. Have ignored the April 27, 1998 Unadjudicated Judgment on Plea of Guilty or Nolo Contendere and Suspending Imposition of Sentence Case No. 0647447-D submitted in evidence, to the U.S.D.C., central to Petitioner's claim the judgment is void. Both Courts incorrectly stating; Petitioner is challenging the 1998 judgment where the trial court 'deferred a finding of guilt.' appx.pg.18 and 25. Fatally undermining the fact finding process. Petitioner is on appeal from the ruling of the Fifth Circuit Court based on **Miller-El v. Cockrell** 537U.S.322,327(2003), Stating "Cox has not made the required showing." appx.pg.26; Motion for Panel Rehearing denied March 14 2019 appx.pg.27.

The motion for C.O.A., 28U.S.C. §2253 in the United States Court of appeals, Fifth Circuit was preceeded by Petition for Habeas Corpus 28U.S.C. §2254 in the United States District Court for the Northern District of Texas. In accordance with 28U.S.C. §1391(b). Jurisdiction Statement 28U.S.C. §1331 Federal Question.

Constitutional and Statutory Provisions Involved

The Constitution of the United States

Article I, Section 1. All Legislative Powers herein shall be vested in a Congress of the United States.

Article III, Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution.

Amendment V; No person shall be held to answer for a capitol or otherwise infamous crime, unless upon presentment or indictment of a Grand Jury;...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law,...

Amendment XIV, Section 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 any person within it's jurisdiction the equal protection of the laws.

Separation of Powers Doctrine was adopted by convention in (1787). See also The Federalist 78 at 465 (A. Hamilton) ("The legislature... prescribes the rules by which the duties and rights of every citizen are to be regulated.")

Vagueness Doctrine - Constitutional law; Based on the Due Process Clause requiring a criminal statute state explicitly what acts are prohibited so as to provide fair warning and preclude arbitrary enforcement.

Texas Code of Criminal procedure, Article 42.12 Community Supervision, Vernons Texes Codes Annotated (2006).

Section 1. Purpose of this article to place wholly within the state courts the responsibility for determining when the imposition of sentence in certain case shall be suspended, the conditions of community supervision, and the supervision of defendants placed on community supervision, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. It is the purpose of this article to remove from existing statutes the ~~numerous~~ limitations, other than questions of constitutionality, that have acted as barriers to effective systems of community supervision and the public interest.

Section 2. Definitions

(2) "Community supervision" means the placement of a defendant by a court under a continuum of programs and sanctions, with conditions imposed by the Court for a specific period during which:

(A) criminal proceedings are deferred without an adjudication of guilt, or;
(B) a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine is probated and the imposition of sentence is suspended in whole or in part.

Section 3. Judge Ordered Community Supervision

(a) A Judge, in the best interest of justice, the public, and the defendant, after a conviction or a plea of guilty or nolo contendere, may suspend the imposition of the sentence and place the defendant on community supervision or impose a fine applicable to the offense and place the defendant on community supervision

Section 5. Deferred Adjudication Community Supervision

(a) 'in relevant part', Except as provided by Subsection (d) of this section, when in the judge's opinion the best interest of society and the defendant will be served, the judge may, after receiving a plea of guilty or nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of a guilty, and place the defendant on community supervision. A judge may place on community supervision under this section a defendant charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a defendant charged with a felony described by Section 13B(d) of this article, only if the judge makes a finding in open court that placing the defendant on community supervision is in the best interest of the victim. The failure of the judge to find that deferred adjudication is in the best interest of the victim is not grounds for the defendant to set aside deferred adjudication, or any subsequent conviction or sentence.

Section 5(b) Violation

On Violation of a condition of community supervision imposed under Subsection (a) of this section, the defendant may be arrested as provided under Section 21 of this article. The defendant is entitled to a hearing limited to the determination by the court whether it proceeds with an adjudication on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting community supervision, and defendant's appeal continue as if the adjudication of guilt had not been deferred.

Section 5(b) was revised after Petitioner's Judgment Adjudicating Guilt on October 4, 2007 to read: The determination to proceed with an adjudication of guilt is reviewable in the same manner as a revocation hearing conducted under Section 21 in a case in which an adjudication of guilt had not been deferred.

Statement of the Case

The April 27, 1998 Unadjudicated Judgment on Plea of Guilt or Nolo Contendere and Suspending Imposition of Sentence Case No. 0647447-D is Void failing Subject Matter Jurisdiction of Texas Code of Criminal procedure, article 42.12 §5(a) Deferred Adjudication.

Whereupon the face of the document in terms and compliance, the Court is neither authorized by constitutional law or statutory construction to enter a Judgment Deferring Punishment prior to a formal Adjudication of Guilt. The terms in agreement with the Deferred Adjudication statute of community supervision probation are Null and Void dependant on involuntary Plea of Guilty or Nolo Contendere to the Void Judgment.

The Unadjudicated Judgment Suspending Sentence joindered two seperate statutes of community supervision, Section 5(a) Deferred Adjudication (of) guilt probation with Section 3(a) Judge Ordered-adjudicated probation, promulgating unlegislated jurisdiction denying clear operation of law, creating unconstitutional latent ambiguity to resolution of Deferred Adjudication probation.

The following Judgment Adjudicating Guilt on October 4, 2007 Case No. 0647447-D, from a probation Revocation Hearing convened for Adjudication of Guilt, is a direct result of unlegislated jurisdiction created by joinder Section 3(a) Suspending Sentence of the Void Judgment.

Brief In Support of Reasons for Granting Petition

The term deferred adjudication is ambiguous and Texas Courts have abused that ambiguity applied to Texas Code of Criminal procedure, Article 42.12§5(a) Deferred Adjudication probation, as a deferred judgment placing a convicted defendant on probation, see Tex.CodeCrimProc.Art.42.12§3(a) Judge Ordered probation, suspending imposition of sentence.

Black's Law Dictionary 8th, ed. (2004)

pg.454-**deferred adjudication** see **deferred judgment** under **JUDGMENT**

pg.859-**deferred judgment** - A judgment placing a convicted defendant on probation the successful completion of which will prevent entry of the underlying judgment of conviction...[also termed deferred adjudication:deferred adjudication probation; deferred prosecution; probation before judgment; probation without judgment; pre-trial intervention; adjudication withheld]

There are (8) different terms of deferred adjudication with (8) different implied meanings. However, an Unadjudicated Judgment is not included.

On April 27, 1998 Case No. 0647447-D, the 213th District Court, Tarrant County, Texas issued a Void Judgment. The **Unadjudicated Judgment on Plea of Guilty or Nolo Contendere and Suspending Imposition of Sentence** to Count One of Indictment, appx.pg.1,2; Indictment Count One appx.pg.A

Petitioner Charles Laymon Cox did not plea bargain to an Unadjudicated Judgment Suspending Sentence, to an unknown term of incarceration. All papers signed were to receive 7 years. Deferred Adjudication probation, Tex.Code Crim.Proc. art.42.12§5(a). see Written Plea Admonishment appx.pg.3,4,5,6. Also Terms and Conditions of Community Supervision. appx.pg.7,8,9. The 1998 Judgment Suspending Sentence is void on its face failing Subject Matter Jurisdiction of Tex.Code Crim.Proc.art.42.12§5(a).

The trial court on that day was neither authorized by constitutional law or statutory construction to defer Punishment prior to a formal Adjudication of Guilt. see Texas Constitution§19 Due Course of Law and United States Constitution Amendments 5 and 14 Due Process and Equal Protection Clause (respectively).

Black's Law Dictionary 8th ed.(2004), Does not contain legal reference or legal definition of the term 'Unadjudicated Judgment'.

The American Heritage Dictionary 4th ed. (2007) paperback, defines the preface -un - to be - NOT - used as an intensive pg.881

Black's Law Dictionary - defines:

pg.44 - **adjudge**-l. ADJUDICATE, 2. To deem or pronounce to be

pg.45 - **adjudicate**-l. To rule upon judicially

pg.858 - **judgment**-l. A court's final determination... The term includes an equitable decree and order from which an appeal lies.

There is no legislated Code of Criminal Procedure for a - NOT - ruled upon judicially - final determination of a decree or order - on plea of guilty or nolo contendere suspending imposition of sentence.

Petitioner did not, cannot or could have knowingly, intelligently or voluntarilly plead to a - NOT - adjudged - judgment suspending sentence it does not exist. The Judgment is Void.

U.S. v. Deters 143 F.3d.577,581(10th cir.1988) When Government action deprives a person of life, liberty, or property without fair procedures it violates due process. [5,6] The Due Process Clause has both procedural and and substantive components. see **United States v. Salermat** 481U.S.739,747,107 S.Ct.2095,2101-02(1987) The defendant does not complain of lack of procedure; Thus she does not implicate the procedural component of Due Process Clause. Id 582.

Petitioner had reasonable expectations that the United States Court of Appeals, Fifth Circuit, take independant action and grant relief. see Fed.Rules Civ.Proc. Rule 60 Relief from a Judgment or Order. (d) Other Powers to Grant Relief, This rule does not limit a courts power to: (1) entertain an independant action to relieve a party from a judgment, order, or proceeding.

Wendt v. Leonard 431 F.3d.410,412,13(4th Cir.2005) Id at 214, An order is "void for purposes of Rule 60(b)(4) only if the court rendering the decision lacked personal or subject matter jurisdiction or acted in a manner inconsistant with due process of law".

United States v. Zima 766 F.2d.1153,1159(7th Cir.1985) "[a] void judgment is one which, from it's inception was a complete nullity and without legal effect." Id 1159... Only in the rare instance of a clear usurpation of power will a judgment be rendered void Id.

Black's Law Dictionary 8th ed.(2004) pg.861 void Judgment, A judgment that has no legal force or effect, the invalidity of which may be asserted by any party whose rights are affected at any time and any place, whether directly or collaterally.

The Unadjudicated Judgment on Plea of Guilty or Nolo Contendere and Suspending Imposition of Sentence on April 27, 1998 Case No. 0647447-D states in relevant part:

"On this day, set forth above, this cause came on for trial"..."The Court, after receiving the plea shown and hearing the evidence, finds that it substantiates the Defendant's guilt and that further proceedings should be deferred without entering an adjudication of guilt and that the Defendant should be placed on probation on reasonable terms and conditions as the Court may require."

"And it is further ORDERED by the Court that the imposition of sentence of the judgment of conviction shall be suspended during the good behavior of the Defendant and that Defendant be placed on probation during the period of time fixed by the Court"..."appx.pgl1

Compare to Vernons Texas Code Ann.(2006) Deferred Adjudication Community Supervision, Texas Code of Criminal Procedure, Article 42.12§5(a) in relevant part states:

When in the judge's opinion the best interest of society and the ~~Defendant~~ Defendant will be served, the judge may after receiving a plea of guilty or nolo contendere, hearing the evidence, and finding that it ~~substantiates~~ substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision. A judge may place on community supervision under this ~~section~~ section a defendant 'charged' (emphasis mine) with an offense under section 21.11,22.011 or 22.021 Penal Code regardless of the age of the victim. The failure of the judge to find that deferred adjudication is in the best interest of the victim is not grounds for the defendant to set aside the plea, deferred adjudication, or any subsequent conviction or sentence.

Judge Ordered Community Supervision, Texas Code of Criminal Procedure, Article 42.12§3(a) in relevant part states:

A judge in the best interest of justice, the public and the defendant after conviction or a plea of guilty or nolo contendere may suspend the imposition of the sentence and place the defendant on community supervision...

Article 42.12 Community Supervision, V.T.C.A.(2006) Section 1. states: It is the purpose of this article to place wholly within the State Courts the responsibility for determining when imposition of sentence in 'certain cases' (emphasis mine), shall be suspended. That authority does not create an exception for the Court to defraud a defendant by circumventing Section 5(a) deferred adjudication (of) guilt probation's pre-trial intervention by issuing Orders under section 3(a) Judge Ordered probation's judgment of conviction suspending imposition of sentence on his plea. Even though Petitioner was admonished, that 'if' convicted he faced a possible life term or not more than 99 years or less than 5 years incarceration. appx.pg.3. He has not agreed to a judgment of conviction suspending imposition of sentence on his plea to an unknown term of confinement on violation of terms of probation, and cannot do so knowingly, intelligently or voluntarily.

'The judge may find for deferred adjudication, or not find for deferred adjudication but he may not do both'.(emphasis added) And in doing so, as the case before this Court, promulgated unlegislated jurisdiction denying clear operation of law, creating unconstitutional latent ambiguity to resolution of Deferred adjudication. Denying Due Process and Fair Notice.

United States v. Ready 82 F.3d.551,559(2d.Cir.1996) Id.559

[17]...Second, we construe the agreement against a general background understanding of legality. That is we presume that both parties to the plea agreement contemplated that all promises were legal, and that the non-contracting "party" who implements the agreement (the district judge) will act legally in executing the agreement, see **Walsh v. Schlecht** 429 U.S.401,408,97 S.Ct.679,685,50 L.Ed.2d641(1977)...**Central States v. Joe McClelland Inc.** 23F.3d. 125b,1258(7th Cir.1994)("Terms that are lawful as written may not be given an illegal spin as part of an effort to curtail obligations they create.")

U.S. v. Herrera 29 F.Supp.756(ND Tex.1998)Id. at 761 **United States v. Thomas** 991 F.2d.206,215(5th Cir.1993)("Actual or prtential aberant results do not excuse[a court's] reading or (writting) anything into or out of a statute that Congress has consciously adopted." see **Hammack v. Baroid Corp.** 142 F.3d.266, 271(5th Cir.1998)("theories of underlying intent or purpose cannot trump statutory language.")

Habeas courts of appeal have sanctioned the abuse of arbitrary powers by lower courts illegally joindering Judge Ordered probation's judgment of conviction suspending sentence with Deferred Adjudication probation. see **Watson v. State** 924S.W.2d.711(Tex.Cr.App.1996) "Of course an accused has neither been convicted or found guilty."; **Visosky v. State** 953 S.W.2d.819,821(Tex.App. Corpus Shristi 1997) "The very essence of deferred adjudication is that a conviction is not final and guilty and is ~~not~~concluded of any defendant"; **Watson v.**

defendant is not found guilty and is not convicted of any offense."; **Hurley v. State** 130 S.W.3d.501(Tex.Cr.App.2004) "the term conviction may mean different things in different statutes."; **Grimes v. Director TDCJ** Civil Action No.1:12-CV-298(2014 U.S.Dist.LEXIS 104744) Deferred Adjudication: Under Texas deferred adjudication scheme, a judge makes a finding the evidence substantiates the defendant's guilt, and then defers adjudication of guilt and places defendant on community supervision. citing **Donovan v. State** 68 S.W.3d.633,636(Tex.Cr.App. 2002) "there has been 'no final conviction' when adjudication is deferred." So holding, there has been 'no final conviction' or 'defendant has not been convicted or found guilty of any offense'. These courts have sanctioned the inherent prejudice created by Section 3(a) Judge Ordered probation and the trial court's abuse of unlegislated jurisdiction on violation. Where by rote of Section 3(a) the defendant is brought to trial for Revocation Hearing convened to Adjudicate Guilt of the Judgment of Conviction 'on his previous plea'. The Court finds the defendant guilty on his previous plea and proceeds to the deferred sentencing on the Original Judgment Suspending Sentence. see Revocation Docket entry 10-4-2007 petition to proceed to adjudication, granted. Defendant found guilty per previous plea and sentenced to 65 years. appx.pg.13, the Judgment Adjudicating Guilt. October 4, 2007, Case No. 0647447-D appx.pg. 11,12 is Null and Void, dependant on the Involuntary plea to the Void 1998 Unadjudicated Judgment on plea of Guilty or Nolo Contendere and Suspending Imposition of Sentence Case No. 0647447-D

CONCLUSION

The term deferred adjudication is ambiguous and Texas Courts have abused that ambiguity applied to Deferred Adjudication Community Supervision as a deferred judgment of conviction and suspended sentence on violation of community supervision. A plea-bargain to Deferred Adjudication Community Supervision is not a plea-bargain to a Judge Ordered judgment of conviction suspending the imposition of sentence to an unknown term of confinement on violation of Community Supervision.

Petitioner Charles Laymon Cox has been denied Due Process, Fair Notice, Equal Protection of Law, he has been illegally incarcerated and denied appeal of a void judgment in State and Federal court.

"I Charles Laymon Cox state and declare under penalty of perjury that the foregoing is true and correct. Executed on this day of June 27, 2019"

Respectfully Submitted

Charles Laymon Cox
TDCJ ID# 01463721
Clements Unit
9601 Spur 591
Amarillo, TX. 79107

MAIL SERVICE

"I Charles Laymon Cox state and declare under penalty of perjury that the Attorney General and the Assistant Attorney General representing the State of Texas has been served the foregoing document at their place of business, via the United States Postal service by way of the Clements Unit Mail Room drop box."

Executed on this day of June 27, 2019

FILED	Respectfully Submitted
JUN 27 2019	<u>Charles Laymon Cox</u>
OFFICE OF THE CLERK SUPREME COURT, U.S.	