

Case No. \_\_\_\_\_

**19-6121**

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IN THE  
SUPREME COURT OF THE UNITED STATES

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In re: MATTHEW LEE STASZAK,

Petitioner

v.

J. PHIL GILBERT,

Respondent.

**FILED**

**SEP 17 2019**

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

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ON PETITION FOR WRIT OF MANDAMUS TO THE  
UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ILLINOIS  
FOR THE SEVENTH CIRCUIT

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PETITION FOR WRIT OF MANDAMUS

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QUESTION FOR THE COURT

SHOULD THIS SUPREME COURT ISSUE THE WRIT OF MANDAMUS TO THE LOWER U.S. DISTRICT COURT IN ORDER TO COMPEL THE DISTRICT COURT TO EXERCISE ITS ARTICLE III POWERS AND ITS JURISDICTION TO ADJUDICATE PETITIONER'S 28 USC § 2255 HABEAS CORPUS PETITION IN A TIMELY MANNER, THUS TO SUMMARILY HEAR AND DETERMINE THE FACTS, AND DISPOSE OF THE MATTER AS LAW AND JUSTICE REQUIRED OF PETITIONER'S NUMEROUS GROUNDS OF INEFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS VIOLATIONS, PROSECUTORIAL MISCONDUCT, ADDITIONAL CLAIMS OF CONSTITUTIONAL VIOLATIONS, AND WHERE ANY DELAY IN ADJUDICATING PETITIONER'S 2255 CASE ON THE MERITS VIOLATES, INTER ALIA, HIS CONSTITUTIONAL RIGHT TO DUE PROCESS AND HIS RIGHT AGAINST CRUEL AND UNUSUAL PUNISHMENT?

LIST OF THE PARTIES

All parties appear in the caption case citing on the cover page of this Writ of Mandamus.

JURISDICTION

This Honorable Court has jurisdiction under 28 USC § 1651(a).

LIBERALLY CONSTRUED

This Petition for Writ of Mandamus to the U.S. Supreme Court is to be liberally construed per:

Estelle v. Gamble, 429 US 97 (1976);

Haines v. Kerner, 404 US 519 (1972).

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## APPENDICES

- A -- Transcript of AUSA Kit R. Morrissey (1 page) March 23, 2018.
- B -- Transcript of Judge J. Phil Gilbert (1 page) April 25, 2018.
- C -- Cover Letter to Court Clerk for the Eastern District of Arkansas pertaining to Exhibits filed (1 page)  
Filed May 20, 2019. Staszak v. Darlene Gallardo; USA
- D -- Appendix of Exhibits 1, 2, 3, and 4. (1 page) Filed May 20, 2019. Staszak v. Darlene Gallardo; USA
- E -- Letter to Judge Gilbert/Exhibit 1 (2 pages) Filed May 20, 2019. Staszak v. Darlene Gallardo; USA
- F -- Affidavit of Matthew L. Staszak/Exhibit 2 (4 pages)  
Filed May 20, 2019. Staszak v. Darlene Gallardo; USA
- G -- Affidavit of Terry M. Green/Exhibit 3 (1 page) Filed May 20, 2019. Staszak v. Darlene Gallardo; USA
- H -- Letter to OIG/Exhibit 4 (2 pages) Filed May 20, 2019.  
Staszak v. Darlene Gallardo; USA
- I -- ORDER from the Seventh Court of Appeals of Writ of Mandamus DENIED. (1 page) Filed July 24, 2019. (Doc. 133) in Petitioner's Section 2255 3:15-cv-00020-JPG.
- J -- ORDER from the Seventh Circuit Court of Appeals of Petition for Rehearing DENIED. (1 page) Filed September 9, 2019.
- K -- Petitioner's STAY OF MANDATE. (3 pages)

## AUTHORITIES

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i -- 28 USC § 1651(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.

1 -- 28 USC § 2255. Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts any any circuit judge within their respective jurisdictions.

1/12 -- 28 USC § 2243. A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto. The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

i -- Estelle v. Gamble, 429 US 97 US (1976)

i -- Hanies v. Kerner, 404 US 519 (1972)

1 -- Staszak v. United States, No. 3:15-cv-00020-JPG

1 -- Staszak v. Gilbert, No. 19-2367, (7th Cir.)

7 -- Staszak v. Gallardo; USA, 2:19-cv-00052-KGB-PSH (E.D. AR)

8 -- Fay v. Noia, 9LED2D 837, 372 US 391 (1963) at 400

8 -- Bowen v. Johnson, 306 US 19, 83 LED 455, 59 S. Ct. 895 (1961)

8 -- Smith v. Bennett, 365 US 708, 6 LED2D 39, 81 S. Ct. 895 (1961)

10 -- Robinson v. California, 370 US 660, 82 S. Ct. 1417 (1962)

10/11/12 -- Rule 20.1 Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. § 1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be an aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

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PETITION FOR WRIT OF MANDAMUS

COMES NOW MATTHEW LEE STASZAK, the Petitioner in  
Case No. 3:15-cv-00020-JPG, and Case No. 19-2367, and respectfully petitions the United States Supreme Court in order to Compel the United States District Court for the Southern District of Illinois pursuant to 28 USC § 2243 to "forthwith",

"summarily hear and determine the facts, and dispose of the matter as law and justice require."

#### STATEMENT OF THE CASE

Petitioner, Matthew Lee Staszak, nearly five-years ago filed his Section 2255 Motion to Vacate, Set Aside or Correct Sentence on January 8, 2015. Petitioner is being denied due process of law, thus his liberty is being denied in violation of the United States Constitution.

Petitioner began preparing his Section 2255 Motion beginning in May of 2014. The Motion was filed on January 8, 2015. The Court ordered on April 7, 2015, for the Government to file a response to Grounds 1 through 11. As time passed the Government requested numerous extensions of time on various motions filed by Petitioner. All extensions of time filed by the Government were granted by the Court, even though Petitioner contested on occasions the actual reasons and validation of the requested extensions.

Stall tactics appear to be the normal operating procedure of the Government, when it involves Petitioner's Section 2255 Motion. Petitioner's has his own speculation pertaining to his Section 2255 as to why the Government has stalled the case at all-costs based upon Petitioner's merits and the allegations within his Petition.

A rule of necessity must apply with Petitioner's outstanding Section 2255 Petition. Petitioner was granted an Evidentiary Hearing by the District Court on November 21, 2017,

but the District Court made clear that the hearing was to only cover the aspects of the events leading up to Petitioner's change of plea hearing on August 5, 2013, and the events afterwards that would pertain to the change of plea. Instead, Petitioner was recklessly attacked by Assistant United States Attorney Kit R. Morrissey, while he was under cross-examination over ridiculous questions based upon facebook chats and FBI documents. AUSA Morrissey was admonished more than once for her outrageous conduct even though she had been warned that the Evidentiary Hearing process was not a trial against the Petitioner.

In fact, AUSA Morrissey's conduct became unprofessional throughout most of the Evidentiary process, especially when she stated on record in a loud frantic voice in open Court proceedings while cross-examining the Petitioner as follows: "This puts our licenses on the line, Judge." (E. Trans. Vol. 2 p. 160, 11-12). (Appendices, A).

The Government continues to allow AUSA Morrissey to operate within the U.S. Attorneys Office within the Southern District of Illinois, even though, Petitioner's allegations rasie considerable merit and Petitioner having to endure a level of unprofessionalism by the Government in a attempt to further harass, embarrass, humiliate, degrade and evade the Petitioner by his means of justice though his Section 2255 Petition that remains outstanding to this present day.

At around the end of April of 2018, Petitioner was

to personally meet with his appointed Counsel Mr. Terry M. Green of West Frankfort, Illinois, at the Williamson County Jail around 11 a.m. on a Friday morning. This was just days after the last day of the 5-day Evidentary process that ended on April 25, 2018. Counsel and Petitioner discussed from the last moments in the Courtroom on April 25, 2018, that we needed to get together in order to prepare notes for the final argument that would be due in about 3-weeks. Counsel and Petitioner wanted to review the Grounds 1 through 11 and Grounds 13 and 14 as they were under Reserv[ed] Ruling by the District Court as we were to prepare our notes for the final argument. Nonetheless, this did not occur because Petitioner was extracted that Friday morning by the U.S. Marshal Service. Note: Grounds 13 and 14 were filed after the April 7, 2015, original motion to Vacate, Set Aside and Correct Sentence as supplements. \*The Court granted those supplements on May 27, 2015, (Doc. 7) and January 20, 2017 (Doc. 37). Petitioner had filed a Writ of Mandamus in January of 2017, in complaint thereof due to the Government's non-response to his Grounds 13 and 14. Upon Petitioner's Writ of Mandamus being filed it was denied, but the District Court did act forthwith to remedy Petitioner's complaint. The Government was ordered for a second time to respond to Petitioner's Grounds 13 and 14, in which, after a 60-day extension of time the Government responded to the Grounds 13 and 14 of Petitioner's Section 2255.

\* Please see the District Court Docket (15-cv-00020-JPG), (S.D. IL).

All requisite responses and replys have been before the United States District Court from January 8, 2015, now to present date.

Petitioner has been subjected to many forms of harassment and retaliation throughout his entire Section 2255 process, leaving off from the incident at the Williamson County Jail where Petitioner was extracted the day of his meeting with his attorney, where his attorney was actually informed by the jail that: "He's gone and we don't know where he is at." Needless to say, Petitioner was not able to go over the final argument with his attorney concerning his Section 2255 cause.

During this time, Petitioner's attorney was having family emergencies due to Petitioner's attorney's wife declining health. Because of this, and because of Petitioner's sudden extraction this made Petitioner and his attorney have difficulties in having contact to go over and discuss preparation of Petitioner's final argument. In mid-October of 2018, Petitioner's attorney suffered the loss of his spouse.

But, unfortunately, matters for Petitioner only became remarkably worse. On November 30, 2018, the due date of Petitioner's final argument he was able to have telephone contact with his attorney. During the scheduled attorney-client privileged call, Unit Manager Darlene Gallardo, a officer for the United States Government/Federal Bureau of Prisons subjected Petitioner to a rude, unprofessional interruption by barging into Petitioner's private setting where he was conducting his attorney call providing his attorney private and

confidential informations pertaining to his Section 2255 Motion and the underlying criminal case it challenges. Here, Unit Manager Darlene Gallardo brazenly informed Petitioner that his attorney call must end immeadiately. Furthermore, Petitioner was instructed by Unit Manager Darlene Gallardo, in a demanding voice, to pack of of his legal documents and to move to her office. Petitioner clearly responded to Darlene Gallardo by stating: "No, I am not comfortable with this." Gallardo then grabbed the phone from Petitioner and began to converse with Petitioner's Attorney Terry M. Green. A brief dialogue went on between Attorney Green and Gallardo and Petitioner thereafter was handed the phone from Gallardo where Attorney Green advised Petitioner the following: "Move to the other office, but watch what you say. We need to get this done." Petitioner then reluctantly moved to Gallardo's office.

Upon entering Gallardo's office she refused to allow Petitioner any privacy whatsoever, where Gallardo insisted to remain seated at her desk, just an earshot's distance from Petitioner all-while Petitioner was attempting to provide his attorney private informations, within a discreet way, due to this new uncomfortable set-up and circumstances.

Petitioner continued during this time to endure the angry stares by Gallardo because of Petitioner's gall to challenge her from the earlier incident of his previous statement in the other office where Petitioner had privacy afforded to him.

Petitioner was pressured into this situation by Gallardo whom is a officer for the U.S. Government.

And it was not until Petitioner's final argument, (that was due that same day on November 30, 2018, to the U.S. District Court), that Petitioner had ever experienced this level of misconduct, so that, a officer for the U.S. Government could listen word-for-word to Petitioner's confidential attorney-client communications.

But there is good news, the above styled misconduct by Darlene Gallardo whom is a officer for the United States Government are both Defendants within a lawsuit that Petitioner filed. (See Case No. 2:19-cv-00052-KGB-PSH). All Defendants are served to include Darlene Gallardo, the U.S. Attorney for the Eastern District of Arkansas (represented by Richard Pence, AUSA), and the Attorney General of the United States. This case is proceeding forward. The Amended Complaint, (Doc. 9) was filed on June 19, 2019, and the Court ordered the Defendants served by the U.S. Marshal on June 21, 2019. To Petitioner's knowledge all Defendants are served the summonses. (See Appendices to reference additional information).

The above styled misconduct adds to the previously mentioned behind-the-scenes conduct and stall tactics by the Government within Petitioner's Section 2255. These violations of Petitioner's Constitutional rights and later his Attorney-Client Privilege, in which violated his Fifth and Sixth Amendment rights are the highest levels of misconduct; they are criminal acts against the Petitioner; they jeopardize the Government's criminal case, thus leading to prejudice against the Petitioner. (Appendices, C, D, E, F, G, and H).

Petitioner wants to reiterate that it has been a long-standing goal of our justice system to afford Habeas Corpus litigants the most fair, swiftest and most imperative remedies available, especially with meritorious claims at the ready. Not to mention, the recent acts of misconduct against the Petitioner by the Government. Petitioner's Habeas Petition is ripe for judgment with prejudice, in Petitioner's favor.

Fay v. Noia, 9 LED2D 837, 372 US 391 (1963) at 400: ("only two terms ago this Court had occasion to reaffirm the high place of the writ in our jurisprudence; "We repeat what has been so truly said of the federal writ: 'there is no higher duty than to maintain it unimpaired,' Bowen v. Johnson, 306 US 19, 83 LED 455, 59 S. Ct. 442 (1939). and unsuspended, save only in cases specified in our Constitution." Smith v. Bennett, 365 US 708, 6 LED2D 39, 81 S. Ct. 895 (1961). These are not extravagant expressions. Behind them may be discerned the unceasing contest between personal liberty and government oppression. Although in form of the Great Writ is simply a mode of procedure, its history is inextricably intertwined with the fundamental growth of personal liberty. For its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. Its root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment; if the imprisonment cannot be shown to conform with the fundamental requirement of the law, the individual is entitled to his immediate release. Thus there is nothing novel in the fact that today habeas corpus in the federal courts provides

a mode for the redress of denials of due process of law. Vindication of due process is precisely its historic office.") (emphasis added).

#### REASON FOR GRANTING THE WRIT OF MANDAMUS

There is no lawful reason to delay adjudication on the merits within Petitioner's Habeas Corpus Petition.

On April 25, 2018, at the very conclusion of the Evidentiary process Senior District Court Judge J. Phil Gilbert clearly announced from the bench the following: (Appendices, A).

"Okay. I will wait for the briefing. But, in the meantime the Court will also be looking at the cases, too, okay?"

After this statement from the bench Petitioner and his Attorney Terry M. Green found this statement to mean that the Court was eager to rule on the Section 2255 quickly. This is when Petitioner and his Attorney made the preparations to prepare the final argument and was going to meet at the jail to go over the notes and the Grounds within the 2255. Again, this did not occur due to Petitioner's extraction from the jail, which resulted Petitioner being in an in-transit status.

During the in-transit status, Petitioner and his Attorney gathered this was a behind the scenes maneuver, where the Government used its invisible hand pulling a time constraint stunt through various means and proxies to delay any meaningful advantage to Petitioner and his Attorney in order to prepare a final argument within 21-days for the District Court.

The final argument was not filed until December 3, 2018 by Petitioner because of the maneuvers by the Government

against him.

There is a point made in Robinson v. California, 370 US 660, 82 S. Ct. 1417 (1962) ("even one day in prison would be cruel and unusual punishment for the 'crime' of having a common cold.").

It has now been over 17-months since the United States District Court clearly announced that it would be going over the cases. This was the beginning and starting point of the Court of preparing its Opinion and Ruling. From April of 2018 to September of 2019 is a significant amount of time in order to rule on Petitioner's Section 2255 Motion that was filed on January 8, 2015. This case must no longer be deferred.

Petitioner has been patient awaiting a ruling on his Section 2255 Motion for over 17-months. Petitioner awaits adjudication on the merits, so that the District Court will make good on the wrongs, in order to bring Petitioner atonement of the Government's misconduct and offenses committed against him. Everyday Petitioner awaits adjudication he remains illegally confined.

#### RULE 20.1 COMPLIANCE

Granting Petitioner the Writ of Mandamus will aid in this Honorable Court's appellate jurisdiction as it will actually resolve any further potential abridgment caused by limits placed upon the Petitioner's right to collateral Habeas review as the U.S. Congress clearly intended for the Great Writ.

That Petitioner has been sentenced by the U.S. District Court to 240 months imprisonment for a fraudulent case presented

by Assistant United States Attorney Kit R. Morrissey and Assistant United States Attorney Angela Scott by means of presenting fraudulent information to the United States District Court based upon a Plea Agreement that was signed by the Petitioner on August 5, 2013, the very same day of his change of plea, due to his previous Counsel Melissa A. Day and through her supervisor Phillip J. Kavanaugh, whom relayed information to Petitioner that the Government would arrest, charge and prosecute his parents for the alleged crime of aiding and abetting, if Petitioner countinued to hold out and refuse to plead guilty to the Second Superceding Indictment as stipulated by the Government within the Plea Agreement. And that Melissa A. Day informed Petitioner when he inquired as to whom was making these threats to her to relay to Petitioner her response was: "They are coming from the U.S. Attorney's Office." Furthermore, that AUSA Morrissey and Federal Public Defender Day remained silent at both Petitioner's change of plea Rule 11 hearing and remained silent at Petitioner's sentencing Rule 32 hearing, when questioned by the Court if there was any additional information the Court needed to be aware of and that needed to be addressed pertaining to Petitioner's Plea Agreement terms. Ironically, this speaks for itself.

It is simple, when a AUSA and a Senior FPD both remain silent as to the Court's inquiry, and to add insult to injury, these "benifits" the Government and FPD Day refer to pertaining the threats to arrest and procectue Petitioner's parents are not anywhere to be found within the Plea Argreement;

this was a deception and a fraud upon the United States District Court by the AUSA and Petitioner's former lawyer. They both had a duty to speak to the Court when addressed, instead, they claimed nothing further. This is clearly constructive fraud between the lawyers. But, hopefully soon the District Court will rule on Petitioner's case involving this matter. Therefore, the relief currently sought by Petitioner "cannot be obtained in any other form or from any other court."

That the Rule 20.1 Compliance meets an extraordinary circumstance warranting the exercise of this Court's discretionary powers.

Lastly, that the Seventh Circuit did review the Petition for rehearing for over 30-days before it denied the Petition on September 9, 2019. (Appendices, I, J, and K).

#### CONCLUSION

WHEREFORE, for the above foregoing reasons, Petitioner Matthew L. Staszak respectfully requests that this Honorable Supreme Court issue the Writ of Mandamus; or in the alternative, direct the United States District Court for the Southern District of Illinois to comply with the Mandate of 28 USC 2243 and adjudicate Petitioner's Section 2255 Petition, forthwith.

Respectfully submitted this 17<sup>th</sup> day of September, 2019.

  
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