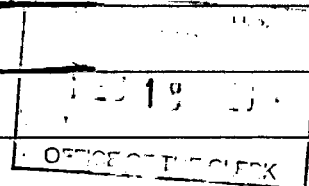


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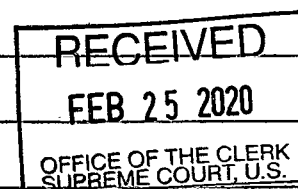


IN THE SUPREME COURT
OF THE UNITED STATES

In Re DARNELL W. MOON - PETITIONER
PETITION FOR A WRIT OF MANDAMUS
PURSUANT TO 28 USC 1651(a)

Darnell W. Moon
FBOP Register # 34077-044
United States Penitentiary - Marion, Illinois
P.O. Box 1000
Marion, IL 62959-1000

Oral Argument Is Requested



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QUESTION PRESENTED

Whether the Seventh Circuit erred in not only denying petitioner's Writ of Mandamus, but also failing to explain the reason for its denial of the mandamus petition, and whether the District Court erred in placing petitioner in "restricted filer" status. =

PARTIES

The petitioner is Darnell W. Moon, an inmate at the United States Penitentiary - Marion, IL Communications Management Unit ("CMU"). The respondent(s) is the United States District Court - Southern District of Illinois.

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DECISIONS BELOW

The decision of the United States Court of Appeals for the Seventh Circuit is unreported, and a copy is attached as Appendix A to this petition. A copy of the order of the US Court of Appeals for the Seventh Circuit, denying rehearing and/or rehearing en banc, is attached as Appendix B to this petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on 11/12/2019. An order denying a petition for rehearing and/or rehearing en banc was entered on January 7, 2020, and a copy of that order is attached as Appendix B to this petition. Jurisdiction is conferred by 28 USC 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Article I, Section 9, Clause 2 of the United States Constitution, which provides:

Article I, Section 9, Clause 2. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

This case also involves Amendment I to the US Constitution, which provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

This case also involves Title 28 Section 1651, Subsection (a), of the United States Code:

"The Supreme Court and all courts established by Act of Congress may issue all writs neces-

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any or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law": 28 USC 1651(a).

This case also involves Title 28, Section 1915(g), United States Code:

"In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury."

This case also involves 28 USC 1915(e)(2), which states:

"Notwithstanding any filing fee, or any portion thereof that may have been paid, the court shall dismiss the case at any time if the court determines that—
(A) the allegation of poverty is untrue": 28 USC 1915(e)(2)

Statement Of The Case

Petitioner, Darnell W. Moon, is a Sunni Muslim currently incarcerated at the United States Penitentiary—Marion, Illinois. Prior to the petitioner's placement at USP-Marion, IL on 8/26/2019, petitioner was housed at the Federal Correctional Institution—Sheridan, Oregon. Petitioner's Writ of Mandamus filed with the Seventh Circuit in 2019 alleged that he, upon release from Federal Bureau of Prisons ("FBI") custody in 2015, filed six lawsuits in the United States District Court for the Southern District of Illinois. It further alleged that petitioner sought, and was later granted, permission to proceed In Forma Pauperis in the District Court, based upon the info provided by petitioner to the court in his financial affidavits.

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At some point after all 6 lawsuits had been filed in mid-to-late 2015, petitioner was rearrested at his mother's apartment in Cape Girardeau, MO, in February of 2016. At that time several thousand dollars was discovered in a drop-ceiling of the apartment petitioner was staying in with his mother. Around this time, the district court had already screened all 6 lawsuits, and most of the defendants in those cases had already been served with a summons, with replies being filed for the attorneys representing the defendants, requesting extensions of time to answer those complaints.

While litigation was still ongoing in all 6 cases, petitioner was housed at a county jail in the Eastern District of Missouri, separated from the documents not only needed to help the petitioner respond to court orders, but also to further litigate the cases. As a result, the petitioner was unaware that the defendants had filed numerous motions in those cases, most notably, motion(s) to revoke petitioner's IFP status. Because petitioner was housed at the jail and unable to receive court orders, given that the court was unaware of petitioner's address change, petitioner was unable to respond to the show cause orders in all 6 cases. In fact, petitioner had to send a changed address to his sister's address, because she would be the only person capable of receiving court orders and sending them to the petitioner, given that no one was at the petitioner's mother's apartment, who could send petitioner's mail to him.

And, petitioner feared he would be abruptly transferred to the Federal Transfer Center in Oklahoma City, Oklahoma, and as a result petitioner's mail would be sent back to the court, rendering petitioner, yet again, unable to respond to court orders.

On or around 2/26/2016, defendants moved to revoke petitioner's In Forma Pauperis status in most of the 6 cases, alleging, inter alia, (1) that petitioner "fraudulently" omitted his litigation history, in violation of Seventh Circuit precedent, and (2) petitioner lied on the Financial Affidavit (CJA 23) forms used to submit with his IFP mot-

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ions to the court, about petitioner's income and assets. Specifically, defendants alleged that petitioner (1) didn't disclose cash/assets that had been seized from petitioner while petitioner was residing in the Southern District of Ohio, (2) petitioner omitted his litigation history from his complaint, in order to "deceive" the court and (3) petitioner's testimony in a now closed criminal case out of the Eastern District of Missouri "contradicts" info on petitioner's IFF motions filed in those 6 cases. As stated before, all of these motions, and subsequent show cause orders, were filed while petitioner was in transit.

Petitioner arrived at the Federal Correctional Institution - Terre Haute, Indiana, on or around 4/12/2016. At that time, Steven Julian, one of the defendants in those 6 cases, was Warden at FCI - Terre Haute, IN, and Dan Spraul was the Associate Warden, also a defendant in those cases. Stephen Gipe and John Simmons, both Intelligence Analysts with the FBI's Counter Terrorism Unit, were also responsible for monitoring the petitioner's communications and were also defendants in those 6 cases. These defendants all took active steps to prevent petitioner from responding to "show cause" orders in those cases. As a result, petitioner was not able to properly respond to court orders in those cases, which resulted in all 6 being dismissed with prejudice. The judges in those cases found that petitioner lied to the court about petitioner's financial situation at the time the IFF motions were filed, and that petitioner "fraudulently" omitted his litigation history, inter alia, and as a sanction dismissed all 6 cases with prejudice, ordered petitioner to pay all outstanding filing fees for all 6 cases, and barred petitioner from filing further litigation in the court. Petitioner was placed in "restricted filer" status and not even allowed to file habeas petitions under 28 USC 2241. Petitioner later attempted to file an appeal to the Seventh Circuit to challenge the dismissal of those 6 cases but the clerks in the Southern District of Illinois returned the notices of appeal to petitioner, unfiled, when petitioner was at a Residential Re-entry Center ("RRC") in Nashville in 2016 after being released from FCI - Terre Haute, Indiana.

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For over 3 years, even after petitioner was released, and then subsequently re-incarcerated, petitioner relentlessly sent "motions for reconsideration," Rule 60(b) motions, "notices of appeal," and other motions and documents to the court, only to have them returned to the ~~court~~ petitioner, unfiled and unacknowledged. Prior to petitioner's re-arrest in 2016, petitioner had access to PACER (Public Access to Court Electronic Records), and as petitioner was sending documents to the court, petitioner was simultaneously watching PACER to see if any of the documents were filed. They were not. When petitioner arrived at the Federal Correctional Institution - Sheridan, Oregon, in August of 2018, petitioner prepared another round of Rule 60(b) motions, notices of appeals for all 6 cases and sent them to the clerks of the court(s) in the Southern District of Illinois. No responses or acknowledgements were provided.

While petitioner was detained in the Special Housing Unit ("SHU") at FCI-Sheridan, OR, petitioner prepared yet another round of Rule 60(b) motions and "notices of appeal" on all 6 cases, and sent them to the clerks in the Southern District of Illinois. Once again, no responses or acknowledgements from the court were provided to the petitioner. Not only that, employees of the Federal Bureau of Prisons, working in the SHU at FCI-Sheridan, OR, took active steps to thwart petitioner from challenging the 2016 court orders. Some of the defendants in those lawsuits were involved in the efforts, including John Simmons, and Stephen Cope, to prevent petitioner from challenging the 2016 court orders. Upon petitioner's arrival to the USP Marion, IL Communications Management Unit, where petitioner is currently housed, petitioner filed a Writ of Mandamus to the US Court of Appeals for the Seventh Circuit, that was received on 10/25/2019, along with an accompanying "Motion To Proceed In Forma Pauperis," that was also received on 10/25/2019.

The Seventh Circuit Court of Appeals received and docketed the Writ of Mandamus, and on 11/12/2019 without any explanation or reason, denied petitioner's Mandamus petition. Petitioner was baffled, because no reason, or explanation, was provided.

for the denial. Furthermore, the Seventh Circuit also denied the Motion For Appointment of Counsel, without written explanation or reason. Petitioner filed a petition for rehearing, and/or rehearing en banc, which was filed on 12/4/2019, and on 1/7/2020, the Seventh Circuit denied the petition for rehearing and/or rehearing en banc, with no explanation provided for the decision.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of the interpretation of the Petition Clause of the First Amendment, which protects "the right of the people... to petition the Government for a redress of grievances." This case also raises a question of the interpretation of the Habeas Corpus Clause of Article I, Section 9, of the US Constitution. The district court had jurisdiction under the general federal question jurisdiction conferred by 28 USC 1331, and the appellate court had jurisdiction under 28 USC 1651(a).

REASONS FOR GRANTING THE WRIT.

A. Conflicts With Decisions Of Other Courts Of Appeals / Procedures Of Other Appeals Courts

The Seventh Circuit's decision, denying petitioner's Writ of Mandamus, without explanation, is contrary to established procedure, in other federal circuits. In other circuits that have decided petitions for Writs of Mandamus, those circuits, even when denying Writs of Mandamus, have at least provided reasons for the denials. See, for e.g., *In re Cohen v. United States District Court for the Northern District of California*, 586 F.3d 703 (9th Cir. 2009); *In re Gee*, 941 F.3d 153 (5th Cir. 2019); *In re Lewis*, 2019 U.S. App. LEXIS 28765 (D.C. Cir. 2019); *In re Martinez*, 778 Fed. Appx. 198 (3rd Cir. 2019); *In re Providence Journal Co.*, 293 F.3d 1 (1st Cir. 2002); *In re United States of America*, 572 F.3d 301 (7th Cir. 2009). In all of these cases, these courts have, in denying these mandamus petitions,

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provided reasons for their decisions. By contrast, the Seventh Circuit provided no reasons for its denial of petitioner's Mandamus petition under 28 USC 1651(a), so petitioner has absolutely no way to know what grounds the Seventh Circuit relied on in reaching its decision.

B. Importance of The Questions Presented

This case presents a fundamental question of the interpretation of 28 USC 1651(a), which, *inter alia*, codified the common-law Writ of Mandamus, as well as Article I, Section 9, Clause 2 of the US Constitution, which states "The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." *Id.* Furthermore, this case also presents a fundamental question of the interpretation of the Petition Clause of the First Amendment, which protects "the right of the people... to petition the Government for a redress of grievances."

Furthermore, this case also presents a question of the interpretation of this Court's ~~mandamus~~ mandamus decisions in *Ex parte Fahey*, 332 U.S. 258, 91 L. Ed. 2041, 67 S. Ct. 1558 (1947), *Roche v. Evaporated Milk Association*, 319 U.S. 21, 87 L. Ed. 1185, 63 S. Ct. 938 (1943), and others, including *Cheney v. U.S. District Court for the District of Columbia*, 542 U.S. 367, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004). The questions presented are of great public importance because ~~they affect~~ the ability of inmates, like the petitioner, to be able to access the Federal courts, both district and appellate, and because it affects the ability of this Court to correct errors, serious errors, committed by the lower courts. Guidance on these questions is also of great importance to prisoners in petitioner's position, because it affects their ability to receive fair decisions in the lower district and Federal appellate courts, in proceedings that may result in inmates being indefinitely barred from accessing the courts to pursue civil litigation, and file habeas petitions.

The issues' importance is enhanced by the fact that the lower courts in this case have completely barred petitioner from pursuing litigation in the lower district court, going so far as to even bar petitioner from even filing habeas petitions in the lower court.

Mandamus is a "drastic remedy traditionally used to confine a lower court to the lawful exercise of its jurisdiction or to compel it to exercise its authority when it has a duty to do so." *United States v. Lapi*, 458 F.3d 555, 560-61 (7th Cir. 2006); see also *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35, 101 S.Ct. 188, 66 L.Ed.2d 193 (1980) ("Only exceptional circumstances, amounting to a judicial usurpation of power, will justify the invocation of the extraordinary remedy."). First, the lower appellate court provided absolutely no explanation for its outright denial of petitioner's mandamus petition, leaving petitioner to only guess why it was denied. This denial, with no explanation, conflicts with other circuit courts of appeals mandamus decisions, even those that were denied, *supra*, because in those cases when mandamus petitions were denied, the courts of appeals provided a reason for the denial.

Second, the lower district court's order, placing petitioner on a "restricted filer" list, barring petitioner from challenging those orders via Rule 60(b) motions, and via notice(s) of appeal, infringes upon petitioner's right of access to the courts under the First Amendment, and petitioner's right to petition the government for redress of grievances. Furthermore, the lower court's order goes even further, to bar petitioner from even filing habeas petitions under 28 USC 2241, to challenge petitioner's confinement, disciplinary proceedings, and other aspects of petitioner's confinement that may arise during petitioner's incarceration. And, those orders were issued even though there was no evidence whatsoever to believe petitioner "defrauded" or deceived the court.

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The lower district court's conclusion that petitioner defrauded the court by "lying" in his affidavit submitted with the IEP motions, and by omitting litigation history in the 6 cases filed in the district court, *inter alia*, was completely erroneous for several reasons. First, as petitioner stated to the district court in responses to some of the motions filed by defendants, petitioner was working on multiple lawsuits that needed to be filed in several district courts throughout the country, in addition to handling family issues (petitioner's mother has colon cancer, and petitioner was the one responsible for taking care of her), dealing with petitioner's probation officer, trying to find and maintain a job, etc, and petitioner's "omission" of every single lawsuit petitioner had ever filed in the U.S. District Court for the Southern District of Illinois, was due to carelessness and/or gross negligence, not any attempt to "deceive" the court. And, as petitioner stated to the lower court, petitioner did not think that the lower court would be concerned with the litigation history of a civil litigant, who was proceeding *pro se*, not subject to the PLRA.

Furthermore, the lower court chastised petitioner for not including all civil cases in the "litigation history" section of all 6 complaints, including the 6 that were all filed at the same time. But, it would not have been possible to include those cases in the litigation history section of each lawsuit, given that all 6 were prepared simultaneously, and of course, no case numbers had been issued for these lawsuits.

Second, with regard to all 6 IEP applications filed on all 6 cases, the defendants in these cases argued that petitioner's IEP status should be revoked because petitioner's "other civil and criminal court records contradict his statements on the IEP form." ... *Moore v. Rivas et al* (Case # 3:15-CV-00891-SMV-PME, 2016 U.S. Dist. LEXIS 96681, *10-11 (S.D. Illinois 4/14/16). Defendants pointed to statements petitioner made in petitioner's civil case in *Moore v. Fischer et al*, case # 3:15-CV-00274-MJN (S.A. Ohio) (Doc. # 11), wherein petitioner stated in that case that over \$3000 in cash had been sei-

zed on 3/27/2015, when petitioner was arrested. However as petitioner stated in the petition in the court of appeals, those funds came from illegal sources, and no one in petitioner's position would have thought he would have to report illegally earned income on a CITA-23 Financial Affidavit form he was using to apply for TFP status, especially given that those funds were confiscated by law enforcement.

Defendants, in the district court, stated that another reason petitioner's TFP status should be revoked, is because petitioner did not include income, on his TFP applications, that he earned while working at Arby's of Cape Girardeau. However the petitioner only worked at Arby's for barely a month and earned 2-3 small paychecks. Petitioner's employment with Arby's was so short-lived, that petitioner forgot about it and did not include the small income from that job on the TFP applications. Defendants also pointed to statements petitioner made during a 2015 revocation hearing in the Eastern District of Missouri - Southeastern Division - wherein petitioner informed the court that his sister had saved up \$4700 to buy him a truck. As petitioner informed the district court, although his sister did state that she had \$4700 to purchase a vehicle for the petitioner, petitioner was only going by what she told him, and had no way of knowing if what she said was true or false. Either way, petitioner did not have \$4700 in cash, even if his sister did.

Defendants also stated that because petitioner admitted to sending money to friends in the Gaza strip on a weekly basis, that was further proof that, *inter alia*, petitioner was hiding cash assets petitioner didn't reveal on his TFP applications. Subsequently, the judges in those cases revoked petitioner's TFP status, placed petitioner in a "restricted filer" status, and barred petitioner from filing any litigation in that court, including habeas petitions under 28 USC 2241, until all outstanding filing fees were paid for the cases.

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In the appellate court, petitioner asked the court to review the mandamus petition, and to review the lower court's dismissal of the 6 cases for "fraud" under a clear error standard, and dismissal of those cases with prejudice, as a sanction, under an "abuse of discretion" standard, citing *Thomas v. General Motors Acceptance Corp.*, 288 F.3d 305, 307-08 (7th Cir. 2002).

The common-law Writ of Mandamus against a lower court is codified at 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." *Id.* This is a "drastic and extraordinary" remedy, "reserved for really extraordinary causes." *Ex parte Fahey*, 332 U.S. 258-259-260, 91 L.Ed. 2041, 67 S.Ct. 1558 (1947). "The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine the court against which mandamus is sought to a lawful exercise of its prescribed jurisdiction." *Roche v. Evaporated Milk Association*, 319 U.S. 21, 26, 87 L.Ed. 1185, 63 S.Ct. 938 (1943).

Although courts have not "confined themselves to an arbitrary and technical definition of jurisdiction," *Will v. United States*, 389 U.S. 90, 95, 19 L.Ed. 2d 305, 88 S.Ct. 269 (1969), "only exceptional circumstances amounting to a judicial 'usurpation of power'; *ibid.*, or a 'clear abuse of discretion,' *Bankers Life and Casualty Co. v. Holland*, 346 U.S. 379, 383, 98 L.Ed. 106, 74 S.Ct. 145 (1953), 'will justify the invocation of this extraordinary remedy,' *Will*, 389 U.S., at 95, 19 L.Ed. 2d 305, 88 S.Ct. 269. "As the Writ is one of the most potent weapons in the judicial arsenal," *id.*, at 107, 19 L.Ed. 2d 305, 88 S.Ct. 269, three conditions must be satisfied before it may issue. *Kerr v. United States District Court For The Northern District of California*, 426 U.S. 394, 403, 48 L.Ed. 2d 725, 96 S.Ct. 2119 (1976).

First "the party seeking issuance of the writ must have no other adequate means to attain the relief he desires," *ibid.* — a condition designed to ensure that the writ will not

be used as a substitute for the regular appeals process. *Fahey*, *supra* at 260, 91 L. Ed. 204, 67 S.Ct. 1558. Second, the petitioner must satisfy "the burden of showing that his right to issuance of the writ is 'clear and indisputable.'" *Kerr*, *supra*, at 403, 48 L. Ed. 2d 725, 96 S.Ct. 2119 (quoting *Bankers Life and Casualty Co.*, *supra*, at 384, 98 L. Ed. 106, 74 S.Ct. 145). Third, even if the first two pre-requisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. *Kerr*, *supra* at 403, 48 L. Ed. 2d 725, 96 S.Ct. 2119 (citing *Schlagenhauf v. Holder*, 379 U.S. 104, 112 n. 8, 13 L. Ed. 2d 155, 85 S.Ct. 234 (1964)); see also *Cheney v. U.S. District Court for the District of Columbia*, 542 U.S. 367, 380-81, 124 S.Ct. 25-76, 159 L. Ed. 2d 459 (2004); *In re Sandahl*, 950 F.2d 1118, 1119 (7th Cir. 1992) ("The petitioner must show irreparable harm (or, what amounts to the same thing, the lack of an adequate remedy by way of direct appeal, or otherwise), and a clear right to the relief sought."); see also *Allied Chemical Corporation v. Daiflon, Inc.*, 449 U.S. 33, 35, 101 S.Ct. 188, 66 L. Ed. 2d 193 (1980) ("Only exceptional circumstances, amounting to a judicial usurpation of power, will justify the invocation of this extraordinary remedy.")

Here, in this case, the district court barred petitioner from not only bringing any future civil litigation in that court until all outstanding filing fees were paid, but also instructed the clerks to not accept any motions, or notices of appeal, preventing petitioner from the right to have the Seventh Circuit review the lower district court's decision. The petitioner never had an opportunity to seek review of the lower district court's decision because the clerks returned all Rule 60(b) motions, and notices of appeal, at the direction of the lower court judges. Petitioner has no other means by which he can obtain review of the lower court's decisions. Given these unique and extraordinary circumstances, petitioner meets the criteria for issuance of an extraordinary writ under 28 USC 1651(a).

Furthermore, the district court erred when it concluded that petitioner's allegation of poverty

was false, citing 28 USC 1915(e)(2). 28 USC 1915(e)(2) provides that: "Notwithstanding any filing fee, or any portion thereof that may have been paid, the court shall dismiss the case at any time if the court determines that - - - (A) the allegation of poverty is untrue." However, as petitioner stated, petitioner made not false statements to the court on the ITP motions submitted with his six lawsuits. And, the lower court rightly stated, and plaintiff admits, that he would (emphasis added) have been subject to the "three-strikes" provision of the PLRA, had he been a "prisoner" at the time the 6 lawsuits were filed. See 28 USC 1915(g). However, petitioner was on "supervised release" at that time, and individuals on supervised release are not subject to the three-strikes provision of the PLRA. See *Kerr v. Puckett*, 138 F.3d 321, 323 (7th Cir. 1999).

Former Chief US District Judge Michael J. Reggan stated that, inter alia, because the petitioner failed to alert the clerk to his "three-strikes" status, petitioner was attempting to "defraud" the court, citing *Sloan v. Lesza*, 181 F.3d 857, 859 (7th Cir. 1999) ("An effort to bamboozle the court by seeking permission to proceed ITP after a federal judge has held that 1915(g) applies to a particular litigant will lead to immediate termination of the suit.") However, as stated, supra, petitioner never attempted to "bamboozle" the court, unlike the plaintiffs in *Gay v. Chandra*, 682 F.3d 590, 595-96 (7th Cir. 2012); *Hoskins v. Dart*, 633 F.3d 541, 593 (7th Cir. 2011); *Ammons v. Gerlinger*, 547 F.3d 724, 725 (7th Cir. 2008); *Taylor v. City of Chicago Police Dept.*, 2008 U.S. Dist. LEXIS 47204, 2008 WL 2477694, at *4 (N.D. Illinois, June 18, 2008) (Oau, J.), aff'd. *Taylor v. City of Chicago*, 334 Fed. Appx 760 (7th Cir. 2009). In these cases, there was clear evidence these plaintiffs fraudulently omitted their litigation history from their complaints, with intent to deceive. By contrast, there was/is no evidence to indicate that petitioner intended to deceive the court. The petitioner's omission of his litigation history was intentional, but not meant to deceive the court, as petitioner explained to the court.

As petitioner stated earlier, the district court erred when it concluded that petitioner

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"defrauded" the court and subsequently placed petitioner on restricted filer status, and then instructed **all** of the clerks in the Southern District of Illinois to reject any future civil cases filed by me, along with any motions challenging the dismissal of the 6 cases, including any notice of appeal filed by petitioner. And in all of the orders dismissing the cases, the judges made repeated references to the petitioner's "relentless litigation and endeavors," over and over, indirectly criticizing petitioner for filing the 6 lawsuits while petitioner was on supervised release, not subject to the Prison Litigation Reform Act's "three strikes" rule.

A judge may not restrict a person's filing activities because litigiousness alone cannot support an injunction restricting a pro se litigant's filing activities. See e.g., *Pavlonis v. King*, 626 F.2d 1075, 1079 (1st Cir. 1980); *Rudner v. United States*, 462 F.2d 897, 899 (8th Cir. 1972) (per curiam), cert. denied, 409 U.S. 1031, 34 L.Ed.2d 482, 93 S.Ct. 540 (1972). Access to the courts is a fundamental tenet of the judicial system — legitimate claims should receive a full and fair hearing, no matter how litigious ~~the~~ the plaintiff may be. Accord *Baums v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977). Moreover, the "In Forma Pauperis" statute, Title 28, was enacted specifically to provide poor persons with equal access to the federal courts. See e.g., *Martin v. Davies*, 917 F.2d 336, 338 (7th Cir. 1990); see also ~~██████~~ *In re: Lanny Oliver*, 682 F.2d 443 (3rd Cir. 1982).

And, the court's orders suspend/prohibit petitioner from even filing habeas petitions under 28 USC 2241, which in effect, amounts to the "suspension" of the writ of habeas corpus under Article I, Section 9, Clause 2 of the US Constitution.

And, the allegations in the petitioner's 6 lawsuits filed in the lower district court raise/implicate serious constitutional concerns. Petitioner's lawsuits alleged that, inter alia, high-level executive Federal Bureau of Prisons officials implemented/executed discriminatory, anti-Islamic policies against petitioner, a Sunni Muslim, and other Muslims.

confined to the USF-Marion, IL Communications Management Unit ("CMU") where the petitioner is currently housed, specifically, policies banning Muslims from cutting their pants leg, policies banning Muslims from praying together, inter alia, and even went so far as to "divide and conquer" the Muslims in the CMU. See *Moore v. Garcia et al*, case # 3:15-CV-00921-SMY-PMF (S.D. Illinois), 2015 U.S. Dist. LEXIS 129291 (9/25/2015). And, most notably, petitioner is aware of several cases in the lower courts where these same judges allowed pro-se litigants who had actually intended to deceive the court by omitting litigation history and/or engaging in other fraudulent conduct, proceed forward, albeit with a warning from the court. See *Chester D'Quinn v. Chapman et al*, 3:14-CV-00407-JPG-PMF (S.D. Illinois), 2014 U.S. Dist. LEXIS 180927 (12/23/2014); *Hall v. Allsup*, Case # 3:10-CV-00643-MJR, 2011 U.S. Dist. LEXIS 32305 (S.D. Illinois, 3/28/2011) (omitted litigation history - no sanctions); *Robinson v. Opolka*, Case # 3:13-CV-00489-MJR, 2013 U.S. Dist. LEXIS 84525 (S.D. Illinois, 6/17/2013) (omitted litigation history in complaint, and given warning - no sanctions). In these cases, supra, all of the plaintiffs omitted their litigation history, and engaged in other fraudulent conduct, but were given warnings, and allowed to proceed. And, in *Isby v. Brown et al*, 856 F.3d 508 (7th Cir. 2017), the appellant purposely concealed his restricted status in the lower court, and in ^{the} ~~that~~ ^{appellate} court. Yet, given the serious nature of his constitutional claims, inter alia, ~~that~~ ^{the} court declined to dismiss his appeal, even though the appellees urged the Seventh Circuit to do so.

Finally, in the district court, petitioner asked the district court to grant him an evidentiary hearing, a live hearing, after the court dismissed all 6 cases, and before they were all dismissed. Unsurprisingly, the court never docketed, nor acknowledged, petitioner's request for a live hearing on the dismissals, even though they were sent both before and after the 6 cases had been dismissed. Since the court implied that it wanted to sanction petitioner, petitioner thought a live hearing would be appropriate so he could testify, and allow the court to make a credibility determination. In the context of a

request for sanctions, a live hearing is necessary only if it could assist the court in its decision: *Kapco Mfg. Co. v. Cand O Enters, Inc.*, 886 F.2d 1485, 1495 (7th Cir. 1989). A live hearing should have been granted.

CONCLUSION

The Seventh Circuit's outright denial of petitioner's mandamus petition, without any explanation, violated petitioner's right of access to the courts and is contrary to established practice in the other federal courts of appeals. Petitioner met all of the criteria for the issuance of an extraordinary writ under 28 USC 1651(d). Petitioner was completely deprived of the opportunity to challenge the dismissals of the 6 lawsuits in the lower district courts. Petitioner respectfully requests this COURT to grant certiorari in this case and **REVERSE** the decision of the Seventh Circuit, and order the Seventh Circuit to **RESPOND** to the WRIT OF MANDAMUS. =

dated: 2/¹⁴~~10~~/2020

Respectfully Submitted,
 Damell W. Moon
 #34077-044
 USP Marion, IL
 P.O. Box 1000
 Marion, IL 62959-1000

①

NO.

IN THE SUPREME COURT
OF THE UNITED STATES

In Re DARNELL W. MOON - Petitioner

Petition For A Writ of Mandamus Pursuant
To 28 USC 1651(a)

Darnell W. Moon
FBOP Register # 34077-044
United States Penitentiary - Marion, IL
P.O. Box 1000
Marion, IL 62959-1000

Oral Argument Is Requested

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Question Presented

① Whether the Seventh Circuit Court of Appeals erred in not only denying petitioner's Writ of Mandamus pursuant to 28 USC 1651(a), but also failing to explain the reason for its denial of the mandamus petition - (2) Whether the District Court erred in placing petitioner in a "restricted filer" status and barring petitioner from challenging the dismissal of 6 lawsuits in the lower court, and whether the court's action(s) violate petitioner's right of access to the courts under the First Amendment.

PARTIES

The petitioner is Darrell W. Moon, an inmate at the United States Penitentiary-Marion, IL Communications Management Unit ("CMU"). The respondent(s) is the United States District Court-Southern District of Illinois.

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Decisions Below

The decision of the United States Court of Appeals for the Seventh Circuit is unreported, and a copy is attached as Appendix A to this petition. A copy of the order of the US Court of Appeals for the Seventh Circuit, denying rehearing and/or rehearing en banc is attached as Appendix B to this petition.

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JURISDICTION

The judgement of the United States Court of Appeals for the Seventh Circuit was entered on 11/12/2019. An order denying a petition for rehearing and/or rehearing en banc was entered on 1/7/2020 and a copy of that order is attached as Appendix 8 to this petition. Jurisdiction is conferred by 28 USC 1254(1) and 28 USC 1651(a).

Constitutional And Statutory Provisions Involved

This case involves several provisions of the US Constitution, most notably Article I, Section 9, Clause 2, of the US Constitution, which provides:

"Article I, Section 9, Clause 2. The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of Rebellion or Invasion, the public Safety may require it."

This case also involves Amendment I to the US Constitution, which provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

This case also involves Title 28, Section 1651, Subsection (a), of the United States Code: "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." 28 USC 1651(a).

This case also involves 28 USC 1915(e)(2), which states:

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"Notwithstanding any filing fee, or any portion thereof that may have been paid, the court shall dismiss the case at any time if the court determines that — — — —
(A) the allegation of poverty is untrue." 28 USC 1915(e)(2).

Statement Of The Case

Petitioner, Darnell W. Mann, is a Sunni Muslim currently incarcerated at the United States Penitentiary - Marion, IL. Prior to the petitioner's placement at USP-Marion, IL on 8/26/2019, petitioner was housed at the Federal Correctional Institution - Sheridan, Oregon. Petitioner's Writ of Mandamus filed with the Seventh Circuit in 2019 alleged that he, upon release from Federal Bureau of Prisons custody in 2015, filed six lawsuits in the United States District Court for the Southern District of Illinois. It further alleged that the petitioner sought, and was later granted, permission to proceed IFP in the District Court, based upon the info provided by petitioner to the court in his financial affidavits.

At some point after all 6 lawsuits had been filed in mid-to-late 2015, petitioner was re-arrested at his mother's apartment in Cape Girardeau, MO, in February of 2016. At that time, several thousand dollars was discovered in a drop ceiling of the apartment petitioner was staying in, with his mother. Around this time, the district court had already screened all 6 lawsuits, and most of the defendants in those cases had already been served with a summons, and had filed motions in those cases.

While litigation was ongoing in all 6 cases, petitioner was housed at a county jail in the Eastern District of Missouri, separated from the documents not only needed to help the petitioner respond to court orders, but also to further litigate the cases. As a result, the petitioner was unaware that the defendants had filed numerous motions in those cases, most notably, motion(s) to revoke petitioner's IFP status. Because petitioner was [REDACTED]

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housed at the jail, and unable to receive court orders, given that the court was unaware of petitioner's address change, petitioner was unable to respond to the show cause orders in all 6 cases. In fact, petitioner had to send a change of address to his sister's address, because she would be the only person capable of receiving court orders and sending them to the petitioner, given that no one was at the petitioner's mother's address/apartment, who could send mail to him.

And, petitioner feared he would be abruptly transferred to the Federal Transfer Center in Oklahoma City, OK, and as a result petitioner's mail would be sent back to the court, rendering petitioner, yet again, unable to respond to court orders.

On or around 2/26/2016, while petitioner was still being held pretrial, defendants moved to revoke petitioner's TFP status in those 6 cases, alleging that, inter alia, (1) that petitioner "fraudulently" omitted his litigation history, in violation of Seventh Circuit precedent, and (2) petitioner lied on the Financial Affidavit (CJA-23) forms used to submit with his TFP motions to the court, about petitioner's income and assets. Specifically, defendants alleged that petitioner (1) didn't disclose cash/assets that had been seized from petitioner while petitioner was residing in the Southern District of Ohio, (2) petitioner omitted his litigation history from his complaint in order to "deceive" the court and (3) petitioner's testimony in a now closed criminal case out of the Eastern District of Missouri "contradicts" info on petitioner's TFP motions filed in those 6 cases. As stated before, all of these motions, and subsequent show cause orders, were filed while petitioner was in transit.

Petitioner arrived at the Federal Correctional Institution - Terre Haute, Indiana, on or around 4/12/2016. At that time, Steven Talian, one of the defendants in those 6 cases, was Warden at FCI - Terre Haute, Indiana, and Dan Spradl was the Associate Warden, also a defendant in those 6 cases. Stephen Cope and John Simmons, both

Intelligence Analysts with the FBI's Counter Terrorism Unit ("CTU"), were also responsible for monitoring the petitioner's communications, and were also defendants in those cases. These defendants all took active steps to prevent petitioner from responding to show cause orders in those cases. As a result, petitioner was not able to properly respond to court orders in those cases, which resulted in all 6 cases being dismissed with prejudice. The judges in those cases found that petitioner lied to the court about petitioner's financial situation at the time the TFP motions were filed, and that the petitioner "fraudulently omitted" his litigation history, inter alia, and as a sanction dismissed all 6 cases with prejudice ordered the petitioner to pay all outstanding filing fees for all 6 cases, and barred petitioner from filing further litigation in the court. Petitioner was placed in "restricted filer" status, and not even allowed to file habeas petitions under 28 USC 2241. Petitioner attempted to file an appeal to the Seventh Circuit to challenge the dismissal of those 6 cases, but the clerks in the Southern District of Illinois returned the notices of appeal to the petitioner, unfiled, when petitioner was at a Residential Re-entry Center ("RRC") in Nashville, TN, in 2016, after being released from FCI - Terre Haute, Indiana.

For over 3 years, even after petitioner was released, and then subsequently reincarcerated, petitioner relentlessly sent "motions for reconsideration," Rule 60(b) motions, "notices of appeals," and other motions and documents to the court, only to have them returned to the petitioner, unfiled and unacknowledged. Prior to petitioner's re-arrest in 2016, petitioner had access to PACER (Public Access to Court Electronic Records), and as petitioner was sending documents to the court, petitioner was simultaneously watching PACER to see if any of the documents were filed. They were not. When petitioner arrived at the Federal Correctional Institution - Sheridan, Oregon, in August of 2018, petitioner prepared another round of Rule 60(b) motions, notices of appeals for all 6 cases, and sent them to the clerks of the court(s) in the Southern District of Illinois. No responses, or acknowledgements, were provided.

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While petitioner was detained in the Special Housing Unit ("SHU") at FCI-Sheridan, OK, petitioner prepared yet another round of Rule 60(b) motions, and "notices of appeals," on all 6 cases, and sent them to the clerks in the Southern District of Illinois. Once again, no responses were provided to the petitioner. Not only that, employees of the Federal Bureau of Prisons, working in the SHU at FCI-Sheridan, OK, took active steps to thwart petitioner from challenging the 2016 court orders. Some of the defendants in those lawsuits were involved in the efforts, including John Simmons, and Stephen Cox, to prevent petitioner from challenging the 2016 court orders. Upon petitioner's arrival to the USP Marion, IL, Communications Management Unit where petitioner is currently housed, petitioner filed a Writ of Mandamus, to the US Court of Appeals for the Seventh Circuit, that was received on 10/25/2019, along with an accompanying "Motion To Proceed In Forma Pauperis," that was also received on 10/25/2019.

The Seventh Circuit Court of Appeals received, and docketed the Writ of Mandamus, and on 11/12/2019, without any explanation or reason, denied petitioner's Mandamus petition. Petitioner was baffled, because no reason or explanation was provided for the denial of the Mandamus petition. Furthermore, the Seventh Circuit also denied the Motion for Appointment of Counsel, without written explanation or reason. Petitioner filed a petition for rehearing, and/or rehearing en banc, which was filed on 12/4/2019, and on 1/7/2020, the Seventh Circuit denied the petition for rehearing and/or rehearing en banc, with no explanation provided for the decision.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of the interpretation of the Petition Clause of the First Amendment, which protects "the right of the people . . . to petition the Government for a redress of grievances." This case also raises a question of the interpretation of the Habeas Corpus clause of Article I, Section 9, of the US Constitution. The district

court had jurisdiction under the general federal question jurisdiction conferred by 28 USC 1331, and the appellate court had jurisdiction under 28 USC 1651(a).

REASONS FOR GRANTING THE WRIT

A. The Seventh Circuit's Refusal To Provide A Reason For The Denial Of The Writ Conflicts With The Practice Of Other Circuit Courts

The Seventh Circuit's decision, denying petitioner's Writ of Mandamus, without explanation, is contrary to established procedure in other federal circuits. In other circuits that have decided petitions for Writ of Mandamus, those circuits, even when denying Writs of Mandamus, have at least provided reasons for the denials. See, e.g., *In re Chen v. United States District Court for the Northern District of California*, 586 F.3d 703 (9th Cir. 2009); *In re Gee*, 941 F.3d 153 (5th Cir. 2019); *In re Lewis*, 2019 U.S. App. LEXIS 28765 (D.C. Cir. 2019); *In re Martinez*, 778 Fed. Appx. 198 (3rd Cir. 2019); *In re Providence Journal Co.*, 293 F.3d 1 (1st Cir. 2002); *In re United States of America*, 572 F.3d 301 (7th Cir. 2009). In all of these cases, the federal courts of appeals in denying/granting the Writs of Mandamus, at least, provided reasons for their decisions. By contrast, the Seventh Circuit provided no reasons for its denial of petitioner's Mandamus petition under 28 USC 1651(a), so petitioner has absolutely no way to know what grounds the Seventh Circuit relied on in reaching its decision.

B. Importance Of The Question Presented

This case presents a fundamental question of the interpretation of 28 USC 1651(a), which *inter alia*, codified the common-law Writ of Mandamus, as well as Article I, Section 9, Clause 2, of the US Constitution, which states "The Privilege of the Writ of Habeas

Corpus shall not be suspended unless when in cases of Rebellion or Invasion the public Safety may require it. "Id. Furthermore, this case also presents a fundamental question of the interpretation of the Petition Clause of the First Amendment, which protects the right of the people..... to petition the Government for a redress of grievances."

Furthermore, this case also presents a question of the interpretation of this Court's mandamus decisions in *Ex parte Fahey*, 332 U.S. 258, 91 L.Ed. 2041, 67 S.Ct. 1558 (1947), *Roche v. Evaporated Milk Association*, 319 U.S. 21, 87 L.Ed. 1185, 63 S.Ct. 938 (1943), and others, including *Cheney v. U.S. District Court for the District of Columbia*, 542 U.S. 367, 124 S.Ct. 2576, 159 L.Ed. 21459 (2004). The questions presented are of great public importance because they affect the ability of inmates, like the petitioner, to be able to access the federal courts, both district and appellate, and because it affects the ability of this court to correct errors, serious errors, committed by the lower courts. Guidance on these questions is also of great importance to prisoners in petitioner's position, because it affects their ability to receive fair decisions in the lower district and position, because it affects their ability to receive fair decisions in the lower district and federal appellate courts, in proceedings that may result in inmates being indefinitely barred from accessing the courts to pursue civil litigation, and file habeas petitions.

The issues importance is enhanced by the fact that the lower courts in this case have completely barred petitioner from pursuing litigation in the lower district court going so far as to even bar petitioner from even filing habeas petitions in the lower court.

Mandamus is a "drastic remedy traditionally used to confine a lower court to the lawful exercise of its jurisdiction or to compel it to exercise its authority when it has a duty

to do so." (*United States v. Lapi*, 458 F.3d 555, 560-61 (7th Cir. 2006); see also *Alfred Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35, 101 S.Ct. 188, 66 L.Ed. 2d 193 (1980) ("Only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of the extraordinary remedy."). First, the lower appellate court provided absolutely no explanation for its outright denial of petitioner's mandamus petition, leaving petitioner to only guess why it was denied. This denial, with no explanation, conflicts with other circuit courts of appeals' mandamus decisions, even those that were denied, *supra*, because in those cases, when mandamus petitions were denied, the courts of appeals provided a reason for the denial.

Second, the lower district court's order placing petitioner on a "restricted filer" list, barring petitioner from challenging those orders via Rule 60(b) motions, and via notices of appeals, infringes upon petitioner's right of access to the courts under the First Amendment, and petitioner's right to access to the courts under the First Amendment, and petitioner's right to petition the government for a redress of grievances. Furthermore, the lower court's order goes even further, to bar petitioner from even filing habeas petitions under 28 U.S.C. 2241, to challenge petitioner's confinement, disciplinary proceedings, and other aspects of petitioner's confinement that may arise during petitioner's incarceration. And, those orders were issued even though there was no evidence whatsoever to believe that petitioner "defrauded" the court.

The lower court erred when it reached the conclusion that petitioner defrauded the court by "lying" in his affidavit submitted with the IEP motions, and by omitting his litigation history in the 6 cases filed in the district court. First, as petitioner stated in the district court in response to some of the motions filed by the defendants, petitioner was working on multiple lawsuits that needed to be filed in several district courts throughout the country, in addition to handling family issues (petitioner's mother has colon cancer, and petitioner was the one responsible for taking care of her), dealing with petitioner's probation officer,

trying to find and maintain a job, etc., and petitioner's "omission" of every single lawsuit that petitioner had ever filed in the U.S. District Court for the Southern District of Illinois, was due to carelessness and/or gross negligence, not any attempt to "deceive" the court. And as the petitioner stated to the court, petitioner did not think that the court would be concerned with the litigation history of a civil litigant proceeding pro se, not subject to the PUCR.

Furthermore, the lower court chastised petitioner for not including all civil cases in the "litigation history" section of all 6 complaints, including the 6 that were all filed at the same time. But, it would not have been possible to include those cases in the litigation history section of each lawsuit, given that all 6 were prepared simultaneously, and of course, no case numbers had been issued for these 6 lawsuits.

Second, with regard to all 6 IFP applications filed on all 6 cases, the defendants in those cases argued that petitioner's IFP status should be revoked because the petitioner's "other civil and criminal court records contradict his statements on the IFP form"..... Moon v. Rivas et al, case # 3:15-CV-00891-SMY-PMF, 2016 U.S. Dist. LEXIS 96681, *10-11 (S.D. Illinois 4/14/16). Defendants pointed to statements petitioner made in petitioner's civil case in Moon v. Fischer, et al, case # 3:15-CV-00274-MTN (S.D. Ohio) (Doc. #11), wherein petitioner stated in that case that over \$3000 in cash had been seized on 3/27/2015, when the petitioner was arrested. However, as petitioner stated in the petition in the court of appeals, those funds came from illegal sources, and no one in petitioner's ~~position~~ position would have thought he would have had to report illegally earned income on a CTA-23 Financial Affidavit form he was using to apply for IFP status, given that those funds were confiscated by law enforcement.

Defendants in the district court, stated that another reason petitioner's IFP status should be revoked is because petitioner did ~~not~~ not include income on his IFP application, that he earned while working at Arbys of Cape Girardeau, MO. However, the petitioner

only worked at Arbys for barely a month, and earned 2-3 small paychecks. Petitioner's employment with Arbys was so short-lived, that petitioner forgot about it, and did not include the income from that job on his I/P applications. Defendants also pointed to statements petitioner made during a 2015 revocation hearing in the Eastern District of Missouri - Southeastern Division - wherein petitioner informed the court that his sister had saved up \$4700 to buy petitioner a truck. As petitioner informed the district court, although his sister did state that she had \$4700 to purchase a vehicle for the petitioner, petitioner was only going off of what she told him, and had no way, of course, to know whether what she was saying was true or false. Either way, petitioner did not have \$4700 cash in his possession, even if his sister did.

Defendants also stated that because petitioner admitted to sending money to friends in the Gaza strip on a weekly basis, that was "further proof" that, *inter alia*, petitioner was hiding assets / cash that petitioner didn't reveal on his I/P applications. Subsequently, "restricted filer" status, and barred petitioner from filing any further litigation in that court, including habeas petitions under 28 USC 2241, until all outstanding filing fees were paid for the beases.

In the appellate court, petitioner asked the court to review the mandamus petition, and to review the lower court's dismissal of the 6 cases for "fraud" under a clear error standard, and dismissal of those cases with prejudice, as a sanction, under an "abuse of discretion" standard, citing *Thomas v. General Motors Acceptance Corp.*, 288 F.3d 305, 307-08 (7th Cir. 2002).

The common-law Writ of Mandamus against a lower court is codified at 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." *Id.* This is a "drastic and extraordinary remedy," "reserved for

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really extraordinary causes." *Ex parte Fahey*, 332 U.S. 258, 259-260, 91 L. Ed. 2041, 67 S. Ct. 1558 (1947). "The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine the court against which mandamus is sought to a lawful exercise of its prescribed jurisdiction." *Loche v. Euphrated Milk Association*, 319 U.S. 21, 26, 87 L. Ed. 1185, 63 S. Ct. 938 (1943).

Although courts have not "confined themselves to an arbitrary and technical definition of jurisdiction," *Will v. United States*, 389 U.S. 90, 95, 19 L. Ed. 2d 305, 88 S. Ct. 269 (1967), "only exceptional circumstances amounting to a judicial 'usurpation of power,'" *ibid.*, or a "clear abuse of discretion," *Bankers Life and Casualty Co. v. Holland*, 346 U.S. 379, 383, 98 L. Ed. 106, 74 S. Ct. 145 (1953), "will justify the invocation of this extraordinary remedy," *Will*, 389 U.S. at 95, 19 L. Ed. 2d 305, 88 S. Ct. 269. As the writ is one of the most potent weapons in the judicial arsenal, *id.* at 107, 19 L. Ed. 2d 305, 88 S. Ct. 269, three conditions must be satisfied before it may issue. *Kerr v. United States District Court For The Northern District of California*, 426 U.S. 394, 403, 48 L. Ed. 2d 725, 96 S. Ct. 2119 (1976).

First, "the party seeking issuance of the writ must have no other adequate means to attain the relief he desires," *ibid.* — a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process. *Fahey*, *supra* at 260, 91 L. Ed. 2041, 67 S. Ct. 1558. Second, the petitioner must satisfy "the burden of showing that his right to issuance of the writ is 'clear and indisputable.'" *Kerr*, *supra* at 403, 48 L. Ed. 2d 725, 96 S. Ct. 2119 (quoting *Bankers Life and Casualty Co.*, *supra*, at 384, 98 L. Ed. 106, 74 S. Ct. 145). Third, even if the first two pre-requisites are met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. *Kerr*, *supra* at 403, 48 L. Ed. 2d 725, 96 S. Ct. 2119 (citing *Schlagenhauf v. Holder*, 379 U.S. 104, 112 n. 8, 13 L. Ed. 2d 152, 85 S. Ct. 234 (1964)); see also *Cheney v. U.S. District Court for the District of Columbia*, 542 U.S. 367, 380-81, 124 S. Ct. 25-76, 159 L. Ed. 2d 459 (2004); *In re Sandahl*, 950 F.2d 1118, 1119 (7th Cir. 1992) ("The

petitioner must show irreparable harm (or, what amounts to the same thing, the lack of an adequate remedy by way of direct appeal, or otherwise, and a clear right to the relief sought."); see also *Allied Chemical Corporation v. Dai-Itan, Inc.*, 449 U.S. 33, 35, 101 S.Ct. 188, 66 L.Ed.2d 193 (1980) ("Only exceptional circumstances, amounting to a judicial usurpation of power, will justify the invocation of this extraordinary remedy.").

Here, in this case, the district court barred petitioner from not only bringing any future civil litigation in that court until all outstanding filing fees were paid, but also instructed the clerks to not accept any motions or notices of appeal, preventing petitioner from the right to have the Seventh Circuit review the lower district court's decision, because the clerks returned all Rule 60(b) motions and notices of appeal, at the direction of the lower court judges. Petitioner has no other means by which he can obtain review of the lower court's decisions. Given these unique and extraordinary circumstances, petitioner meets the criteria for issuance of an extraordinary writ under 28 USC 1651(a).

Furthermore, the district court erred when it concluded that petitioner's allegation of poverty was false citing 28 USC 1915(e)(2). 28 USC 1915(e)(2) provides that: "Notwithstanding any filing fee, or any portion thereof that may have been paid, the court shall dismiss the case at any time if the court determines that --- (A) the allegation of poverty is untrue." Id. However, as petitioner stated, petitioner made no false statements to the court on the JPR motions submitted with his six lawsuits. And the lower court rightly stated, and petitioner admits that he would have been subject to the "three-strikes" provision of the PLRA, had he been a "prisoner" at the time the 6 lawsuits were filed. See 28 USC 1915(g). However, petitioner was on "supervised release" at that time, and individuals on supervised release are not subject to the three-strikes provision of the PLRA. See *Kerr v. Pudeett*, 138 F.3d 321, 323 (7th Cir. 1999).

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Former Chief U.S. District Judge Michael J. Reagan, stated that, *inter alia*, because the petitioner failed to alert the clerk to his "three-strikes" status, petitioner was attempting to "defraud" the court, citing *Sloan v. Lesza*, 181 F.3d 857, 859 (7th Cir. 1999) ("the effort to bamboozle the court by seeking permission to proceed IFP after a Federal judge has held that 1915(g) applies to a particular litigant, will lead to immediate termination of the suit."). However, as stated *supra*, petitioner never attempted to "bamboozle" the court, unlike the plaintiffs in *Gay v. Chandru*, 682 F.3d 590, 595-96 (7th Cir. 2012); *Hoskins v. Dart*, 633 F.3d 541, 543 (7th Cir. 2011); *Ammans v. Gerlinger*, 547 F.3d 724, 725 (7th Cir. 2008); *Taylor v. City of Chicago Police Dept.*, 2008 U.S. Dist. LEXIS 47209, 2008 WL 2477694, at *4 (N.D. Illinois, June 18, 2008) (Oau, J.), *aff'd*, *Taylor v. City of Chicago*, 334 Fed. Appx 760 (7th Cir. 2009). In these cases, there was clear evidence these plaintiffs fraudulently omitted their litigation history from their complaints, with intent to deceive. By contrast, there was, and is, no evidence to indicate that petitioner intended to deceive the court. The petitioner's omission of his litigation history was intentional, but not meant to deceive the court, as petitioner explained to the court.

As petitioner stated earlier, the district court erred when it concluded that petitioner "defrauded" the court, and subsequently placed petitioner on "restricted filer" status, and then instructed all of the clerks in the Southern District of Illinois to reject any future civil cases filed by me, along with other motions challenging the dismissal of the 6 cases, including any notice of appeal filed by petitioner. And in all of the orders dismissing the cases, the judges made repeated references to the petitioner's "relentless litigation endeavors," over and over, indirectly criticizing petitioner for filing the 6 lawsuits while petitioner was on supervised release, not subject to the Prison Litigation Reform Act's "three-strikes" rule.

A judge may not restrict a person's filing activities, because litigiousness alone cannot support an injunction restricting a pro se litigant's filing activities. See, e.g., *Pavlovic*

v. King, 626 F.2d 1075, 1079 (1st Cir. 1980); *Rudner v. United States*, 462 F.2d 897, 899 (8th Cir. 1972) (*per curiam*), cert. denied, 409 U.S. 1031, 34 L.Ed. 2d 482, 93 S.Ct. 540 (1972). Access to the courts is a fundamental tenet of the judicial system—legitimate claims should receive a full and fair hearing, no matter how litigious the plaintiff may be. *Accord Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed. 2d 72 (1977). Moreover, the "In Forma Pauperis" Title 28, was enacted specifically to provide poor persons with equal access to the federal courts. See e.g., *Martin v. Davies*, 917 F.2d 336, 338 (7th Cir. 1990); see also *In re: Lenzy Oliver*, 682 F.2d 443 (3rd Cir. 1982).

And, the court's orders suspend/prohibit petitioner from even filing habeas petitions under 28 U.S.C. 2241, which in effect, amounts to the "suspension" of the writ of habeas corpus under Article I, Section 9, Clause 2 of the U.S. Constitution.

And, the allegations in the petitioner's 6 lawsuits filed in the lower district court raise/implicate serious constitutional concerns. Petitioner's lawsuits alleged that, inter alia, high-level executive Federal Bureau of Prisons officials implemented/executed discriminatory, anti-Islamic policies against petitioner, a Sunni Muslim, and other Muslims confined to the USP Marion, IL Communications Management Unit ("CMU"), where the petitioner is currently housed, specifically, policies banning Muslims from cutting their pants leg, policies banning Muslims from praying together, inter alia, and even went so far as to "divide and conquer" the Muslims in the CMU. See *Moore v. Garcia, et al.*, case # 3:15-cv-00921-SmV-PMF (S.D. Illinois), 2015 U.S. Dist. LEXIS 129291 (9/25/2015). And, most notably, petitioner is aware of several cases in the lower courts where these same judges allowed pro se litigants who had actually intended to deceive the court by omitting litigation history and/or engaging in other fraudulent conduct, proceed forward, albeit with a warning from the court. See *Chester O'Quinn v. Chapman, et al.*, case # 3:14-cv-00407-JP6-PMF (S.D. Illinois), 2014 U.S. Dist. LEXIS 180927 (12/23/2014); *Hall v. Hall*, case # 3:10-

00643-MJR, 2011 U.S. Dist. LEXIS 32305 (S.D. Illinois, 3/28/2011) (omitted litigation history - no sanctions); Robinson v. Polk, Case # 3:13-cv-00489-MJR, 2013 U.S. Dist. LEXIS 84525 (S.D. Illinois, 6/17/2013) (omitted litigation history in complaint, and given warning - no sanctions). In all of these cases, *supra*, all of the plaintiff's fraudulently omitted their litigation history, and engaged in other fraudulent conduct in those cases, but were given warnings, and allowed to proceed in those cases. And, in *Isby v. Brown et al*, 856 F.3d 508 (7th Cir. 2017), that appellant concealed his "restricted" (1415(g)) status in the lower district court and in the appellate court. Yet, given the serious nature of his constitutional claims, *inter alia*, that appellate court declined to dismiss his appeal, even though the appellees urged the Seventh Circuit to close.

Finally, in the district court, petitioner asked the court to GRANT him a live, evidentiary hearing, before and after, the court dismissed all 6 lawsuits. Unsurprisingly, the court never docketed, nor even acknowledged, petitioner's request for a live hearing. Since the court indicated, in the show cause orders, that it wanted to sanction the petitioner, petitioner thought a live hearing would be appropriate so he could testify, and explain to the court that he did not "defraud" the court. This would have allowed the judges to make a credibility determination, by observing petitioner's demeanor and body language at the hearing. In the context of a live hearing, regarding a request for sanctions, a live hearing is necessary only if "it could assist the court in its decision." *Kapco Mfg. Co. v. C and O Enters, Inc.*, 886 F.2d 1485, 1495 (7th Cir. 1989). When petitioner requested a live hearing, one should have been granted.

CONCLUSION

The Seventh Circuit's outright denial of petitioner's mandamus petition, without any explanation, violated petitioner's right of access to the courts, and is contrary to established practice in the other federal courts of appeals. Petitioner met all of the criteria for the issuance

of an extraordinary writ under 28 USC 1651(a). Petitioner was completely deprived of the opportunity to challenge the dismissals of the 6 lawsuits in the lower district courts. Petitioner respectfully requests that this COURT GRANT the WRIT OF HABEAS CORPUS under 28 USC 1651(a), REVERSE the decision of the Seventh Circuit, and REMAND this case back to the Seventh Circuit. =

dated: 2/14/2020

Respectfully Submitted,

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