

## **APPENDIX "A"**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 20-12986-G

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In re: DONOVAN G. DAVIS, JR.,

Petitioner.

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On Petition for a Writ of Mandamus to the United States  
District Court for the Middle District of Florida

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BEFORE: ROSENBAUM and BRASHER, Circuit Judges.

BY THE COURT:

Before the Court is Petitioner Donovan G. Davis, Jr.'s petition for a writ of mandamus, which asks this Court to issue a writ of mandamus directing the district court judge to transfer the motion to recuse the district court judge to a different judge. The petitioner filed a motion to recuse the district court judge on June 22, 2020. On June 24, 2020, the district court judge entered a thorough order denying the petitioner's recusal motion. On July 1, 2020, the petitioner filed a motion for reconsideration of that order, which the district court judge denied on July 6, 2020.

We ordinarily review a district court judge's decision not to recuse for abuse of discretion. *In re Moody*, 755 F.3d 891, 898 (11th Cir. 2014). Because the petitioner seeks a writ of mandamus, however, our review of the district court judge's failure to recuse is even more stringent. *Id.* After careful review of the record, the petitioner's petition for a writ of mandamus is DENIED because the petitioner has not shown that his right to this "drastic remedy" is "clear and indisputable." *Jackson v. Motel 6 Multipurpose, Inc.*, 130 F.3d 999, 1004 (11th Cir. 1997).

## **APPENDIX "B"**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

**DONOVAN G. DAVIS, JR.,**

**Petitioner,**

**v.**

**Case No: 6:20-cv-1037-Orl-41DCI  
(6:14-cr-43-Orl-41DCI)**

**UNITED STATES OF AMERICA.,**

**Respondent.**

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**ORDER**

THIS CAUSE is before the Court on Petitioner's Application Under 28 U.S.C. § 141 for the Recusal of the Honorable Carlos E. Mendoza ("Motion for Recusal," Doc. 2) and Motion for Leave to Expand Page Limit (Doc. 7). In conjunction with the Motion for Recusal, Petitioner filed his own Affidavit (Doc. 3); a Certificate of Good Faith signed by attorney, Brain D. Horwitz (Doc. 4); and the Second Declaration of Frank L. Amodeo (Doc. 5).

According to Petitioner, after the trial in the underlying criminal case, he sought "the assistance of a trained legal assistant, Frank Amodeo, in preparing a Rule 33 motion." (Doc. 2 at 3). Petitioner asserts that the undersigned discovered that Amodeo was a disbarred attorney and had a "distaste" for Amodeo, which resulted in prejudicial rulings. (*Id.* at 3-4). In particular, Petitioner states as follows:

Judge Mendoza surmised that Mr. Amodeo put together (presumably false) affidavits that states both the government's key witness (Damien Bromfield) committed perjury, and that the government knew of Bromfield's perjury and allowed it. (*Id.*). Judge Mendoza must have relied upon extrajudicial information—since nothing in the record indicates Mr. Amodeo manufactured or gathered the affidavits.

(*Id.* at 4). Petitioner continues that the undersigned "used the privately-gathered, off-record information to create a story that Mr. Amodio influenced the affiants, which Judge Mendoza imported into Mr. Davis's case." (*Id.* at 5).

A district judge must disqualify himself "in any proceeding in which his impartiality might reasonably be questioned," 28 U.S.C. § 455(a), or "[w]here he has a personal bias or prejudice concerning a party . . . ." 28 U.S.C. § 455(b)(1). The test "is whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *United States v. Patti*, 337 F.3d 1317, 1321 (11th Cir. 2003). There must be a showing that the bias was personal, not judicial in nature. *United States v. Archbold-Newball*, 554 F.2d 665, 682 (5th Cir. 1977). "[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1990).

In the present case, Petitioner has not established any source of extrajudicial bias or shown that there was pervasive bias that prejudiced him. Petitioner's allegations of bias are based on rulings of the undersigned unfavorable to him, which were clearly made within the context of judicial proceedings. In fact, on direct appeal of Petitioner's criminal conviction, the Eleventh Circuit Court of Appeals affirmed the Court's denial of a prior recusal motion filed by Petitioner, which alleged bias because Amodio was involved in the case.<sup>1</sup> The Eleventh Circuit Court of Appeals determined as follows:

Here, Davis has not identified any source of extrajudicial bias or shown that there was pervasive bias that prejudiced him. *See United States v. Bailey*, 175 F.3d 966, 968 (11th Cir. 1999). While the district court's December 21, 2016, denial of his amended Rule 33 motion indicated a distaste for the filings of Amodio, the prisoner

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<sup>1</sup> Petitioner filed a Motion for Recusal of the undersigned on April 12, 2017, which the Court denied on April 17, 2017. (Criminal Case 6:14-cr-43-Orl-41DCI, Doc. Nos. 295, 296).

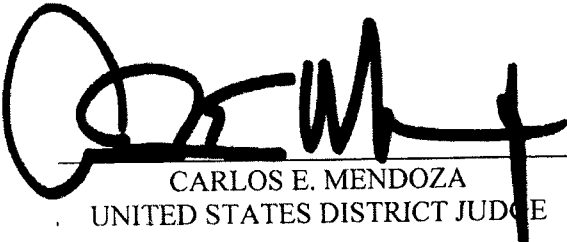
who prepared the motion, that's not enough for an objective, disinterested lay observer to entertain a significant doubt about the judge's impartiality. *See Patti*, 337 F.3d at 1321. As explained above, there were good alternative reasons for the court to deny the motion, and adverse rulings "alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555 (1994).

(Criminal Case Doc. 407 at 40-41). As such, Petitioner's allegations are legally insufficient to support a motion for disqualification.

Therefore, it is **ORDERED and ADJUDGED** as follows:

1. Petitioner's Application Under 28 U.S.C. § 141 for the Recusal of the Honorable Carlos E. Mendoza ("Motion for Recusal," Doc. 2) is **DENIED**.
2. Petitioner's Motion for Leave to Expand Page Limit (Doc. 7) is **GRANTED** in that Petitioner will be permitted to proceed with the Motion to Vacate, Set Aside, or Correct Sentence (Doc. 1) as filed.

**DONE and ORDERED** in Orlando, Florida on June 24, 2020.



CARLOS E. MENDOZA  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Unrepresented Party

## **APPENDIX "C"**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 20-12986-G

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In re: DONOVAN G. DAVIS, JR.,

Petitioner.

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On Petition for a Writ of Mandamus to the United States  
District Court for the Middle District of Florida

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BEFORE: ROSENBAUM and BRASHER, Circuit Judges.

BY THE COURT:

Petitioner's "Motion for Reconsideration of Denial of Petition for Writ of Mandamus" is  
DENIED.



## **APPENDIX "D"**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

Donovan Davis, Jr.,

Movant,

v.

Case No.

United States of America,

Respondent.

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APPLICATION UNDER 28 U.S.C. § 144 FOR THE  
RECUSAL OF THE HONORABLE CARLOS E. MENDOZA

Donovan Davis, Jr. seeks the disqualification of The Honorable Carlos E. Mendoza from any proceeding involving Mr. Davis; particularly Mr. Davis's motion submitted under 28 U.S.C. § 2255. Mr. Davis invokes 28 U.S.C. § 144, since Judge Mendoza's actions indicate that he has an actual prejudice against Mr. Davis. A prejudice that not only arose from extrajudicial sources, but also caused Judge Mendoza to actively seek information from extrajudicial sources.

1. At its core, Judge Mendoza has a prejudice against individuals that believe they deserve wealth without what Judge Mendoza thinks was sufficient effort<sup>1</sup>.

2. Whenever Judge Mendoza perceives an individual as undeserving, Judge Mendoza permits his prejudice to affect his judicial judgment. (See Fn.1 ante).

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<sup>1</sup> Judge Mendoza expressed this prejudice in the sentencing hearing of alleged co-conspirator Damien Bromfield.

"And what makes it particularly troubling is it's bad enough that all of you, as may be typical in your generation, believe that life is about getting on an elevator and going to the top floor immediately without any work in between. That seems to be normal now among the younger generation. 'Why can't I be at the top floor immediately upon graduating from high school or when I start?'"

3. Judge Mendoza disliked Mr. Davis because Judge Mendoza believes Mr. Davis acted wealthier than a high school graduate should. (Fnt. 1 ante). Judge Mendoza believed Mr. Davis attained his (image of) success by freeloading off his parents as well as from the alleged fraudulent conduct. (Crim. Doc. 156 at 2)<sup>2</sup>("the remaining funds Defendant claims to have been 'his' were those invested by his family.")(internal quotations in the original)).

4. Prior to Mr. Davis's trial, Judge Mendoza had concluded Mr. Davis was guilty. (Crim. Doc. 351 at 58)("I do think you stole the money. I think that the fact that you and your co-defendants were paying each other or paying yourselves \$15,000 a month and having as much as \$50,000 in monthly expenses ... you made a deliberate decision with your co-defendants that you were going to defraud these people.")(Mendoza, J.).

5. Prior to sentencing, July 29, 2015, Mr. Davis fired one attorney (Crim. Doc. 165) and on the same day hired another attorney. (Crim. Doc. 163). On July 30, 2015, Judge Mendoza scheduled a hearing for July 31, 2015. (Crim. Doc. 167). Judge Mendoza surmised Mr. Davis was acting dilatory and trying to game the system. (Crim. Doc. 321 at 9-10). This, even though Mr. Davis was already incarcerated and new counsel wanted to push back the sentencing only 30 days. Judge Mendoza's conclusions concerning Mr. Davis's purpose for changing counsel are not supported by the record.

6. After the conviction, Judge Mendoza believed that Mr. Davis continued the same self-centered, deceptive behavior. (Crim. Doc. 275 at 7). Judge Mendoza believed Mr. Davis was manipulating the process by changing representation. (Cf. Crim. Doc. 321 at 9-10)("I mean, he [Donovan Davis, Jr.] has a right to choose

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<sup>2</sup>Citations in the form of "(Crim. Doc. #)" refers to the numbered entries on the district court's docket in **United States v. Donovan Davis, Jr.**, No. 6:14-cr-43-CEM-DCI (M.D. Fla.).

his own counsel, but he did not have the right to demand that any particular lawyer come in here....")(Mendoza, J.).

7. While awaiting his appeal, Mr. Davis learned that his (alleged) co-conspirator admitted to lying at trial and that the lying was at the behest of the government. (Crim. Docs. 236-3, 236-6, 236-8, 236-9).

8. Mr. Davis sought the assistance of a trained legal assistant, Frank Amodeo, in preparing a Rule 33 motion. A process that the district court clerk frequently recommends. (Exhibit "1").

9. Judge Mendoza discovered (by some means other than the record) that the prison's law clerk, Frank Amodeo, was a disbarred attorney. Judge Mendoza had a "distaste" for Mr. Amodeo's writing style. (Crim. Doc. 407 at 39). Judge Mendoza implied that Mr. Amodeo, an unlicensed attorney, felon should not be practicing law. (Crim. Doc. 275 at 2); (Id. at 9)("This attempt by a jailhouse lawyer to gather and coordinate affidavits from inmates in order to help another inmate is, to say the least, suspect.")(emphasis added).

10. Judge Mendoza's distaste for Mr. Amodeo must stem from Judge Mendoza's inherent prejudice because Mr. Amodeo is alien to the criminal case, and there is nothing in the record to show that Mr. Amodeo actually assisted with the Rule 33 (see Crim. Doc. 236, 241)(submitted by Thomas Sadaka, Esquire).

11. Judge Mendoza publicly accused Mr. Amodeo of criminal conduct. A disbarred lawyer openly practicing law. (Crim. Doc. 275 at 2).

12. Judge Mendoza complained that Mr. Davis was working with Mr. Amodeo to concoct a plan to deceive the court. (Crim. Doc. 275 at 9).

13. Judge Mendoza's prejudice flared causing Judge Mendoza to act in a manner that a judge should not: Judge Mendoza actively pursued non-judicial sources of information and then used that surreptitiously obtained information to make judicial decisions. (Crim. Doc. 275 at 9)(Amodeo attempts "gather and coordinate affidavits ... in order to help another inmate.").

14. Judge Mendoza has never met, spoken to, or communicated with Mr. Amodeo. Judge Mendoza used an unverified, off-record website to provide information to disparage Mr. Amodeo. (Second Declaration of Frank Amodeo).

15. From the extrajudicial sources, Judge Mendoza learned that the author of the pleading was not a lawyer. (Crim. Doc. 213).

16. From that premise, Judge Mendoza crafted a scenario concerning Mr. Amodeo's assistance of Mr. Davis. Judge Mendoza's theory—he decided that Mr. Amodeo manufactured evidence to help Mr. Davis. (Crim. Doc. 275 at 6-8). Judge Mendoza surmised that Mr. Amodeo put together (presumably false) affidavits that stated both the government's key witness (Damien Bromfield) committed perjury, and that the government knew of Bromfield's perjury and allowed it. (Id.). Judge Mendoza must have relied upon extrajudicial information—since nothing in the record indicates Mr. Amodeo manufactured or gathered the affidavits.

17. Judge Mendoza used his theory of Amodeo's plan to strike Mr. Davis's pro se Rule 33 motion. (Crim. Doc. 275 at 8-9)("attempt by a jailhouse lawyer ... is, to say the least, suspect.")

18. After striking the motion authored by Mr. Amodeo, Judge Mendoza told two attorneys that he was going to criticize the stricken pleading's author and implied that if they adopted the author's language the two attorneys would be encompassed in the criticism. (Crim. Doc. 291 at 4).

19. Thereafter, Judge Mendoza's prejudice caused him to publicly disclose that Mr. Amodeo engaged in the unauthorized practice of law, even though it was irrelevant to Mr. Davis's case. (Crim. Doc. 275 at 2).

20. More importantly, Judge Mendoza used the privately-gathered, off-record information to create a story that Mr. Amodeo influenced the affiants, which Judge Mendoza imported into Mr. Davis's case. Then he used the off-record theory to deny both counseled motions and unrelated pro se motions. (See Crim. Docs. 275, 296, 399).

21. Judge Mendoza gave more credence to his off-record private investigation than he gave to adversarilly-tested information provided by the Internal Revenue Service. Nothing in the record shows that Mr. Amodeo had any contact with Thiago Correa. (Crim. Doc. 236-4). Indeed, the IRS produced the original report about Mr. Correa. (Id.) Yet, Judge Mendoza lumped the IRS's report with the other affidavits that he presumed were prepared by Mr. Amodeo and discounted all of them as untrustworthy.

22. Judge Mendoza found that Mr. Amodeo pursued the witnesses who provided the affidavits for the Rule 33 motion. (Crim. Doc. 275 at 9). Yet, the record does not show that the witnesses knew Mr. Amodeo prior to preparing the affidavits. (Crim. Docs. 236-3, 236-6, 236-8, 236-9). Judge Mendoza did not disclose the extrajudicial source upon which his finding was based.

23. Similarly, Judge Mendoza implied that Mr. Amodeo assisted in preparing the affidavits. (Crim. Doc. 275 at 2, 3, 9). A fact Judge Mendoza must have

learned from extrajudicial private investigation because the evidentiary record does not show Mr. Amodeo assisted with the affidavits. (§ 144 Aff. at 1-3)<sup>3</sup>.

24. Judge Mendoza implies that Mr. Amodeo coached the affiants. (Crim. Doc. 275 at 9). Yet, the record reveals that neither Mr. Correa nor the government ever mentioned Mr. Correa having any contact with Mr. Amodeo. (Crim. Docs. 236-3, 236-4).

25. Furthermore, in the court record none of the witnesses stated that Mr. Amodeo prepared either their statement or their affidavit. (Crim. Docs. 236-3, 236-6, 236-8, 236-9). Indicating once more, Judge Mendoza's opinion must have been based on the information gathered from outside the judicial proceedings. (§ 144 Aff. at 2, 4, 5, 7).

26. Judge Mendoza's personal prejudice appears when he instructs (and approves of) the magistrate's order that any Davis pleading that, like the 41(g) motion (Crim. Doc. 330), even mentions Mr. Amodeo's name would be stricken. (Crim. Doc. 337 at 2)(Amodeo prepared petition stands to be stricken). Unlike the pleadings references in the order, Crim. Docs. 213 and 215, Mr. Amodeo's purported signature did not appear on the 41(g) motion. Mr. Amodeo had nothing to do with preparation of the motion. This "distaste" for Mr. Amodeo could only have sprung from extrajudicial sources, since—as mentioned—the record is sans any activity by Mr. Amodeo except for the stricken pleading. (§ 144 Aff. at 2, 4, 7). And Judge Mendoza's Amodeo-bias spills over unto Mr. Davis.

27. Further support of Judge Mendoza's actual prejudice and use of non-judicial evidence can be gleaned from neither the government nor defense counsel ever stating that Mr. Amodeo participated in developing the Rule 33 motions, the

<sup>3</sup>Citations in the form of "(§ 144 Aff. #)" refers to the AFFIDAVIT OF DONOVAN DAVIS, JR. IN SUPPORT OF MR. DAVIS'S 28 U.S.C. § 144 MOTION TO RECUSE.

affidavits, the evidence, or anything. Therefore, Judge Mendoza either learned of those facts from an off-record source, or from speculation sparked by seeing Mr. Amodeo's name and learning from an extrajudicial source that Mr. Amodeo was a disbarred attorney. (§ 144 Aff. at 3, 6-7).

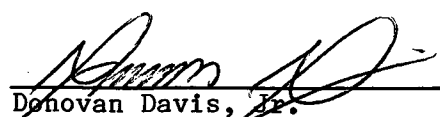
28. Finally, it is noteworthy that the record shows Mr. Davis was the only person to mention that Mr. Amodeo prepared the stricken motion, no evidence exists that Mr. Amodeo signed the pleading. (Crim. Doc. 245 at 5)(USA's only mentions Amodeo purportedly prepared). No government representative, including the court, has ever spoken to Mr. Amodeo concerning this litigation, the affidavits, or Mr. Amodeo's involvement therewith. (Second Declaration of Frank Amodeo). Since Judge Mendoza finds Mr. Davis to be an inveterate fraudster and liar (Crim. Doc. 275 at 7)("it is not lost on this court that Defendant's underlying conviction involved an unlawful and fraudulent scheme"). Why would Judge Mendoza have thought Mr. Davis was truthful about Mr. Amodeo's signature being in the pleading? Judge Mendoza believed nothing Mr. Davis wrote. (Id.) Therefore, Judge Mendoza must have used an extrajudicial source to confirm Mr. Amodeo's involvement. On this record no proof supports that conclusion. If, as Judge Mendoza found, Mr. Davis was manufacturing this controversy, then how, without extrajudicial sources, did Judge Mendoza conclude that Mr. Davis did not manufacture Mr. Amodeo's signature.

#### CONCLUSION

Mr. Davis respectfully requests that Judge Mendoza recuse himself from any proceedings involving Mr. Davis. Alternatively, this court should disqualify Judge Mendoza under 28 U.S.C. § 144 because of Judge Mendoza's personal prejudice and his tendency to use extrajudicial sources to make decisions concerning Mr. Davis.



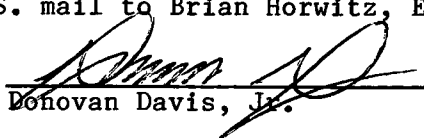
Respectfully submitted by Donovan Davis, Jr. on this June 11, 2020.

  
Donovan Davis, Jr.  
Reg. No. 60439-018  
Federal Correctional Complex (Low)  
P.O. Box 1031 Unit B-3  
Coleman, FL 33521

#### CERTIFICATE OF SERVICE


This document was delivered in a properly addressed, postage-prepaid envelope to the prison mailing authorities on the same day as signed.

A copy of this document was sent via U.S. mail to Brian Horwitz, Esquire.

  
Donovan Davis, Jr.

#### VERIFICATION

Under the penalty of perjury as authorized in 28 U.S.C. § 1746, I declare that all factual allegations and factual statements contained in this document is true and correct to the best of my knowledge.

  
Donovan Davis, Jr.

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

Donovan Davis, Jr.,

Movant,

v.

Case No.

United States of America,

Respondent.

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**AFFIDAVIT OF DONOVAN DAVIS, JR. IN SUPPORT OF  
MR. DAVIS'S 28 U.S.C. § 144 MOTION TO RECUSE**

My name is Donovan Davis, Jr. I am currently incarcerated in the Federal Correctional Complex (Low) in Coleman, FL. 33521. I am over 18 years of age and of sound mind.

This declaration is made for the purpose of supporting a petition to recuse United States District Judge Carlos E. Mendoza from presiding over any of my proceedings, especially my 28 U.S.C. § 2255 motion.

All of the statements made in this affidavit are made from my personal knowledge or events which I witnessed.

**I. I was unaware Amodeo prepared the affidavits.**

Judge Mendoza found that Frank L. Amodeo prepared the affidavits, which were attached to the Rule 33 motion that identified Mr. Amodeo as the author, and that Judge Mendoza struck from the record.

The stricken motion was filed in **United States v. Davis**, No. 6:14-cr-43-CEM-DCI (M.D. Fla.) at docket entry 212. Judge Mendoza struck the motion at Doc. 213. Judge Mendoza made the following comments about the affidavits:

1. "It is worth noting that the three Defense Affidavits submitted by Amodeo are prepared in the same font, share precisely the same format, and are dated November 10, 2015." (Crim. Doc. 275 at 3).<sup>1</sup>
2. "Further, as the United States aptly points out, the sworn statement of Colaprete, Easter, and Grocoff were attached to the Stricken Motion, which was authored by Amodeo—a convicted felon, fellow prison inmate, and serial filer." (Id. at 6).
3. "Moreover, as previously stated, three of the sworn statements were in the same font, format, and executed on the exact same date. These circumstances indicate a coordinated effort by those involved to manufacture a controversy." (Id. at 7).
4. "The Defense Affidavits are contrived and rudimentary in their attempt to manufacture circumstances that simply do not exist." (Id. at 8).
5. "This attempt by a jailhouse lawyer to gather and coordinate affidavits from inmates in order to help another inmate, is, to say the least, suspect." (Id. at 9).

I was unaware that Mr. Amodeo had prepared the affidavits or filed them. I thought the affidavits were based on the witnesses' written statements, which were given to an inmate who made his prison living ("hustle") typing up documents for other people. Except for Judge Mendoza's findings, I believed that Mr. Amodeo did not know how to type and I understand he never used a typewriter while in Coleman (Low).

Also, I believed that Mr. Amodeo did not know, or even speak to, the affiants until months after the affidavits had been prepared, and vetted by GrayRobinson, P.A. I can find no mention within the record that indicates Mr. Amodeo prepared or presented the affidavits. That is, neither the government, nor a third party, nor the witnesses stated that Mr. Amodeo coached, drafted, typed, or submitted the affidavits.

<sup>1</sup> Citations in the form of "(Crim. Doc. #)" refers to the numbered entries on the district court's docket in **United States v. Donovan Davis, Jr.**, No. 6:14-cr-43-CEM-DCI (M.D. Fla.).

Hence, in making his findings, Judge Mendoza's must have had access to and relied upon information obtained from outside the judicial proceedings.

**II. I was unaware the affiants were ever in the same prison.**

Judge Mendoza found the four affiants statements were incredible. Judge Mendoza predicated that finding on the location of the affiants:

"All four individuals who submitted affidavits—Matthew Colaprete, Donald Easter, Ronald Grocoff, and Thiago Correa (the "Affiants")—are currently serving prison sentences at the same facility as Defendant...."

(Id. at 2) (emphasis added).

I was not aware that Thiago Correa was at the Federal Correctional Complex (Low), nor was I aware that he was simultaneously at the same facility as all the others. The government never stated—at least that I am aware of—that Mr. Correa was at the same facility as me or any of the other affiants.

Once more Judge Mendoza must have gathered information from an extrajudicial source in order to support his ruling. Conceivably, in order to support the outcome he wanted, Judge Mendoza's prejudice against young wealthy, uneducated blacks caused him to search information sources other than the parties..

**III. I was unaware that Amodeo was engaged in the unauthorized practice of law or made a series of filings on my behalf.**

Judge Mendoza states that:

"a series of motions ... were stricken because they were authored by an inmate in federal custody—Frank L. Amodeo—who was engaging in the unauthorized practice of law."

(Id. at 2).

I was unaware that Mr. Amodeo filed a series of motions or that Mr. Amodeo was engaged "in the unauthorized practice of law."

The government never stated in any pleading that Mr. Amodeo was engaged in the unauthorized practice of law. To the contrary, ask any prison staff member a question and they will tell you go see the law clerk, who is Mr. Amodeo. Thus, Judge Mendoza must have learned something about Mr. Amodeo's practices from a source outside the proceedings.

Plus, I did not know that Mr. Amodeo authored a series of motions. After Judge Mendoza struck the motion Mr. Amodeo helped me prepare, Mr. Amodeo told me to go to my parents and retain an attorney, that I had too good of a claim to waste time splitting hairs with the judge about Amodeo.

Once more Judge Mendoza relied on a fact (Amodeo's multiple filings) that neither party raised, hence must have come from outside the proceedings.

I believe Judge Mendoza's bias against me kept him from, promptly informing me that Mr. Amodeo's actions were illegal and that Mr. Amodeo had made a series of filings.

**IV. I was unaware that Amodeo and Sadaka cooperated in producing the affidavits for my counseled Rule 33 motion.**

Judge Mendoza surmises "the current Motion relies on the same affidavits first filed by Amodeo plus one additional Affidavit." (Id. at 2). I was unaware that my new attorney, Thomas Sadaka, relied only upon the typewritten affidavits that had been stricken.

Mr. Sadaka and my parents hired a private investigator to confirm the affiants' statements. And the United States Attorney's Office sent their own investigators to interview each witness. Those investigators located the "one additional Affidavit." I understood that Mr. Sadaka relied upon his investigator and the USAO's investigators in preparing the Rule 33 motion.

Judge Mendoza's independent investigation must have provided the evidence that Mr. Sadaka chose to rely on Mr. Amodeo rather than his and the government's investigators. I believe Judge Mendoza's prejudice caused him to engage in this extrajudicial search which resulted in his decision to deny my motion because of facts, which were not asserted by neither myself or the government, i.e. that Mr. Amodeo and Mr. Sadaka were producing affidavits.

**V. Judge Mendoza learned information about Amodeo from a source outside the record.**

Judge Mendoza discredits my counseled-Rule 33 motion because he associates it with Mr. Amodeo, who he labels a serial filer. (Id. at 6). I did not know Mr. Amodeo was considered a serial filer. I understood serial filers submitted frivolous or harassing pleadings over and over again. But the Middle District of Florida refers inmates to consult with other inmates. (Exhibit "1"). And the prison regularly refers inmates to Mr. Amodeo, and he appears to have an exceptional track record—at last count 721 sentence reductions, 1933 years saved; 128 § 2255 grants; 148 reversals, remands, reconsiderations, or COA grants; 2 certioraris, and 8 solicitor-general responses.

If Judge Mendoza knew this was not true, then he must have learned it from some extrajudicial source, which has not been identified. I am not sure why this is important to my case though. Mr. Amodeo had nothing to do with Capital Blu. I never knew of him until I got to prison. Plus, during the prosecution, I had attorneys. Obviously, Judge Mendoza knows something I do not and that "something" fueled his prejudice against me.

**VI. Judge Mendoza's hatred of Amodeo makes his prejudice against me worse.**

Also, I feel he hates Mr. Amodeo and that hate has been amplified his prejudice against me, why else would he speak more (on 6 of 9 pages) about Mr. Amodeo in the Rule 33 order. Why else would he order Magistrate Irick to strike any pleadings that has Frank Amodeo's name on it, not his signature just his name. (Crim. Doc. 337 at 2).

This is very concerning to me since, according to Mr. Amodeo, Mr. Amodeo has never seen, let alone communicated, with Judge Mendoza. Yet, Judge Mendoza hates him more than anything, and because he cannot get Mr. Amodeo, he takes the hatred out on me.

**VII. Judge Mendoza learned that Correa, Easter, Colaprete, and Grocoff were related, yet the affiants and the government considered them independent.**

Judge Mendoza based his Rule 33 order on his knowledge that "four convicted felons, who, as noted [], were not independent or unrelated...." (Id. at 7). As far as I knew, no more than two of the affiants had ever talked to each other, or spoke with Thiago Correa. In addition, the government stated that the affiants were "complete strangers."

Where Judge Mendoza learned that the affiants were not unrelated, I cannot figure out. Significantly, even the affiants who happened to have met say they did not discuss with each other anything about Mr. Bromfield or Mr. Davis.

**VIII. Judge Mendoza discovered that Amodeo coordinated and collected the eyewitness affidavits.**

Judge Mendoza states, "[t]his attempt by a jailhouse lawyer to gather and coordinate affidavits from inmates in order to help another inmate, is, to say the least, suspect." (Crim. Doc. 275 at 9).


First, no one considers Mr. Amodeo a jailhouse lawyer: staff, inmates,

courts, and the government consider him an attorney, albeit an unlicensed one, and a bit crazy, but a lawyer nonetheless. If he is merely a jailhouse lawyer then that is information that was not available to me or the government, and certainly not part of these proceedings.

Second, and more importantly, I was unaware that Mr. Amodeo ever gathered anything from or about the affiants. I understand he briefly spoke to the three affiants at Coleman (Low) in order to confirm that each had submitted an affidavit. Mr. Amodeo never saw, spoke, or communicated with Mr. Correa.

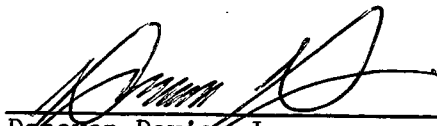
I did not know Mr. Amodeo did anything more than have these limited conversations. The government never claimed Mr. Amodeo did any "gathering" or "coordinating." But Judge Mendoza, inspired by his prejudice for me and hatred for Mr. Amodeo, must have conducted a separate investigation and learned of Mr. Amodeo's activities.

Respectfully submitted by Donovan Davis, Jr. on this 11 June, 2020:

  
\_\_\_\_\_  
Donovan Davis, Jr.  
Reg. No. 60439-018  
Federal Correctional Complex (Low)  
P.O. Box 1031 Unit B-3  
Coleman, FL 33521

**VERIFICATION**

Under penalty of perjury as authorized in 28 U.S.C. § 1746, I declare that the factual allegations and factual statements contained in this document are true and correct to the best of my knowledge.

  
\_\_\_\_\_  
Donovan Davis, Jr.



**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

Donovan Davis, Jr.,

Movant,

v.

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

United States of America,

Respondent.

\_\_\_\_\_/

**CERTIFICATE OF GOOD FAITH**

I, Brian D. Horwitz, Esq., the undersigned, am a member in good standing of both the Florida Bar Association and the United States District Court for the Middle District of Florida.

I served as direct appeals counsel for Movant in two of his consolidated appeals. In anticipation of Mr. Davis filing a motion to vacate his criminal conviction (28 U.S.C. § 2255) and simultaneously seeking the disqualification of the Honorable United States District Court Judge Carlos E. Mendoza from presiding over that action (28 U.S.C. §§ 144, 455), Mr. Davis engaged me to examine his §144 application for recusal and his supporting affidavit.

I have examined each document and spoken with Mr. Davis concerning both at length, and I can certify that Mr. Davis sincerely and in good faith believes that Judge Mendoza has a personal prejudice and actual bias against Mr. Davis.

Further, I have examined each paragraph of the recusal application and each section of the affidavit. I find the documents are accurate and presented in good faith.

In making this determination, I examined each of Mr. Davis' statements and compared them to the identified record references or supporting documents. The statements accurately

reflect the evidentiary references. For ease of review, I have asked Mr. Davis to include the key portions of the evidentiary record in an appendix filed with his application and affidavit.

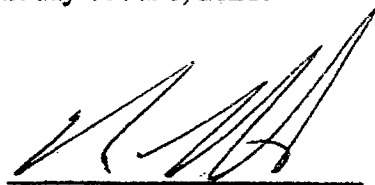
As an additional measure of certainty, in reviewing Mr. Davis' statements, I ensured not only that the record supported his proposition, but also that the inferences drawn therefrom were reasonable given the context from which they arose, as well as the literal record upon which they were predicated.

In sum, I have spoken with Mr. Davis on several occasions regarding his concerns that Judge Mendoza supported several of his rulings on facts that were either unknown to Mr. Davis or which Mr. Davis could not find within the record. Nevertheless, I informed Mr. Davis that given the appellate court's decisions, he and anyone must presume Judge Mendoza's factual conclusions are true, and that they have evidentiary support, even if that source is other than apparent from the record.

Finally, Mr. Davis expresses concerns with respect to Judge Mendoza's extrajudicial prejudgment of persons who are in the same class as Mr. Davis, which concerns appear to have record support.

I, Brian Horwitz, in good faith certify Mr. Davis makes his application for § 144 recusal in good faith and supports that application with a good faith affidavit.

Respectfully submitted by Brian Horwitz on this 16th day of June, 2020.



Brian D. Horwitz, Esq.  
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Orlando, Florida 32812  
(407) 373-9690  
bhorwitz@vaticlaw.com

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**APPENDIX "E"**

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

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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IN RE DONOVAN DAVIS, JR.  
*Petitioner*

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PETITION FOR WRIT OF MANDAMUS TO THE UNITED STATES  
WITH APPENDIX IN SUPPORT

DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

Related to  
District Court Case No. 6:20-cv-1037-Orl-41DCI

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*Attorney for Petitioner*

Dated August 10, 2020

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

Donovan Davis, Jr.	Petitioner
Roger B. Handberg	AUSA
Honorable Judge Daniel C. Irick	Magistrate Judge
Honorable Judge Carlos E. Mendoza Judge	District Court
Brian D. Horwitz, Esq.	Attorney for Davis

No publicly traded company or corporation has an interest in the outcome of this appeal.

### **Relief Sought**

Donovan G. Davis, Jr. requests that this court issue a writ of mandamus ordering The Honorable Carlos E. Mendoza to comply with 28 U.S.C. § 144.

### **Relevant Background**

In 2015, the United States indicted, tried, and convicted Donovan G. Davis, Jr., of various fraud related crimes. In June of 2020, Mr. Davis sought to vacate the criminal conviction under 28 U.S.C. § 2255. *Davis v. United States*, No. 6:20-cv-1037-Orl-41DCI, Doc. 1 (M.D. Fla. 2020). In Mr. Davis's § 2255 proceeding, he sought the recusal of Judge Mendoza under 28 U.S.C. § 144. ((*Id.* at Doc. 2 § 144 Application) (Attachment "1", Doc. 3 § 144 Affidavit) (Attachment "2", Doc. 4 (Certificate of Counsel)) (Attachment "3"))<sup>1</sup>. The bases for the disqualification application were that in the earlier stages of the criminal prosecution: (1) Judge Mendoza expressed a bias against an entire class of defendants; and (2) Judge Mendoza willingly relied upon extrajudicial sources when making factual findings.

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<sup>1</sup> Citations in the form of "(Doc. #)" or "(Docs. #)" refers to the docket entries in *Davis*, No. 6:20-cv-1037-Orl-41DCI.

## **I. Issues Presented**

Judge Mendoza refused to comply with 28 U.S.C. § 144 by not allowing a different judge to decide whether the statute required Judge Mendoza's disqualification.<sup>2</sup> (Doc. 8) (Order denying §144 Application) (Attachment "4").

The law entitles Mr. Davis's §144 application be reviewed by an independent judge. 28 U.S.C. § 144 ("such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding"). As explained below, this Circuit's precedent permits Mr. Davis to enforce that entitlement through a writ of mandamus.

## **II. Governing Standards**

On mandamus review, 28 U.S.C. § 1651(a), the appellate court may reverse the district court's decision only if the district court clearly abused its discretion.<sup>3</sup> In *re Ricoh Corp.*, 870 F.2d 570, 573 (11th Cir. 1989); *Jackson v. Motel 6 Multipurposes, Inc.*, 130 F.3d 999, 1003 (11th Cir. 1997) (The district court's "communications order was an abuse of discretion... We therefore grant the writ

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<sup>2</sup>Mr. Davis questions the procedure Judge Mendoza followed, if any, in passing upon the legal sufficiency of the affidavit because Judge Mendoza apparently used the 28 U.S.C. § 455 legal standard. (Doc. 8 at 2). It is also worth noting, Judge Mendoza cites to **28 U.S.C. § 141** throughout the order. *Id.* Not once did Judge Mendoza mention 28 U.S.C. § 144 in the order denying the § 144 application.

<sup>3</sup>"A district court abuses its discretion if it applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous." *Matthews v. State Farm Fire and Casualty Company*, 2020 U.S. App. LEXIS 17294 at \*10, n.4 (11th Cir. June 2, 2020)(quoting *F.T.C. v. Nat'l Urological Grp., Inc.*, 784 F.3d 477, 481 (11th Cir. 2015) (quotation marks omitted)).

[of mandamus]...."). In sum, the clear abuse of discretion allows for a writ of mandamus.

Of course, mandamus is an extraordinary remedy that may only lie when no other remedy is available and the petitioner's entitlement to the relief is nearly undeniable. In re *United States*, 985 F.2d 510, 511 (11th Cir. 1993). And in order for a writ of mandamus to issue the writ seeker must:

1. Show no adequate remedy exists at law or otherwise, *Motel 6*, 130 F.3d at 1004; and
2. Demonstrate that the petitioner's cause must be clear and indisputable. *In re BellSouth Corp.*, 334 F.3d 941, 966 (11th Cir. 2003).

**a. Mandamus is Appropriate**

This circuit holds that a recusal order may be challenged on direct appeal, see *Christo v. Padgett*, 223 F.3d 1324 (11th Cir. 2000), but also expressly concludes (as do a majority of the circuits) that a district judge's refusal to recuse permits an aggrieved individual to seek relief through a writ of mandamus. *United States v. Patti*, 337 F.3d 1317, 1322-23 (11th Cir. 2003) ("Patti immediately could have petitioned this Court [11th Cir.] for a writ of mandamus...."). See, e.g., *In re Nettles*, 394 F.3d 1001 (7th Cir. 2004) (granting mandamus prior to final order); *Clemens v. U.S. District Court for Central Dist. of Calif.*, 428 F.3d 1175, 1179-80 (9th Cir. 2005) (denying mandamus but on the lack of merit in the request for recusal).



Given these circumstances, this court's governing authority empowers it to hear this mandamus petition.

**b. Abuse of Discretion in the Context of Recusal**

This circuit also holds that when a judge abuses his discretion, particularly with regards to whether a recusal is appropriate, then mandamus serves as the preferred remedy. A judge abuses his or her discretion when the judge's remarks in a judicial context "stem from extrajudicial sources." *Thomas v. Tenneco Packaging Co.*, 293 F.3d 1306, 1329 (11th Cir. 2002) (quoting *Hamm v. Board of Regents*, 708 F.2d 647, 651 (11th Cir. 1983)).

**c. Legal Sufficiency**

Throughout the circuits, "[a]lthough the authorities are not uniform, a substantial body of law supports the proposition that mandamus to a United States Court of Appeals will lie when a district judge has rejected affidavits seeking his recusal as 'legally insufficient.'" *Pfizer, Inc. v. Lord*, 456 F.2d 532, 536 (8th Cir. 1972).

**III. Facts Supporting Issues Presented**

Mr. Davis's § 144 application and § 144 affidavit alleged that Judge Mendoza expressed a class bias and relied upon extrajudicial sources to decide controversies. (Docs. 2, 3). Judge Mendoza failed, under 28 U.S.C. § 144, to

recuse in order to allow a different judge to review Mr. Davis's § 144 application. (Doc. 8); (Doc. 10) (Order denying motion for reconsideration) (Attachment "5").

Significantly, at this stage of the § 144 proceedings (as well as in the § 2255 proceedings), Mr. Davis's allegations are presumed true. *Berger v. United States*, 255 U.S. 22, 35-36 (1921); see also *United States v. Ala*, 828 F.2d 1532, 1540 (11th Cir. 1987) ("[T]he trial judge may not pass upon the truthfulness of the facts stated in the affidavit even when the court knows these allegations to be false."). The law required Judge Mendoza to transfer the § 144 application to be reviewed by a different judge. His refusal to transfer the disqualification application constitutes an abuse of discretion. Therefore, this Court may remedy through mandamus.

As alleged in Mr. Davis's § 144 application, Judge Mendoza stated that individuals of Mr. Davis' generation typically lack integrity and work ethic—a clear indication of inherent prejudice. (Doc. 2 at 1, n.1). In addition, Mr. Davis' application alleged that Judge Mendoza relied upon extrajudicial sources of information when making factual findings, a judicial act demonstrative of bias. (Doc. 3).

**a. Judge Mendoza's Personal Bias**

Judge Mendoza's rulings reveal that his bias arose from extrajudicial sources because the record provides no factual support for his findings. Judge Mendoza's

statements include: "typical in your generation" and "going to the top floor immediately without any work," (Doc. 2 at 1, n.1). The record contains no evidence that Mr. Davis, a high school graduate and former ditch digger, had any such traits. Further, the record contains no evidence that Mr. Davis's entire generation has those attitudes and behaviors (and, indeed, the record could not contain evidence supportive of this clear generational bias). Judge Mendoza's comments indicate that he possesses an innate class and age bias. Alternatively, the absence of any record support implies that the ruling is founded on the premise of extrajudicial information. Under either scenario, not only does the law, minimally, require Judge Mendoza to transfer Mr. Davis's § 144 recusal application to a different judge, it ultimately necessitates Judge Mendoza's recusal.

**b. Judge Mendoza's Reliance on Extrajudicial Sources**

Another example of Judge Mendoza's use of extrajudicial sources is evident in the order denying Mr. Davis's Rule 33 motion, wherein Judge Mendoza states that Frank L. Amodeo assisted in the creation of four eyewitness affidavits. *United States v. Davis*, No. 6:14-cr-43-CEM-DCI, Doc. 275 (M.D. Fla. 2016) (Order denying counseled Rule 33) (Attachment "6"). The record provides no evidence that Mr. Amodeo had any involvement with the formation of the affidavits and their content. To the contrary, the record shows that Mr. Amodeo had no involvement with the affiants or affidavits, or is otherwise silent concerning their

formation. *Davis*, No. 6:14-cr-CEM-DCI at Docs. 236-3, 236-6, 236-8, 236-9 (Eyewitness Affidavits) (Attachment "7"). Accordingly, Judge Mendoza used extrajudicial information to find, contrary to the entire record, that Mr. Amodeo had manufactured the affidavits (and that unsupported factual finding served as a significant basis for Judge Mendoza's final decision).

The law presumes that Judge Mendoza's prior findings were correct. That presumption is addressed in Mr. Davis's verified §144 application and affidavit.<sup>4</sup> (Doc. 2, 3). Hence, for purposes of the recusal proceeding, Judge Mendoza's conclusions about Mr. Amodeo manufacturing the eyewitness affidavits are presumed to be correct. The argument Mr. Davis was and is making, however, is that Judge Mendoza reached outside the record and/or relied on his personal biases to make his findings.

Stated otherwise, because the record contains nothing to support Judge Mendoza's findings, for Judge Mendoza to be correct, Judge Mendoza had to have relied upon substantial extrajudicial evidence to overcome the record. Judge

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<sup>4</sup>Notably, in *In re Corrugated Container Antitrust Litig.*, the defendants challenged the rulings of the district court judge, but not that the judge's rulings were based on evidence outside the record. 614 F.2d 958, 964-65 (5th Cir. 1980).

Here, Mr. Davis does not challenge Judge Mendoza's rulings in the order denying Mr. Davis's Rule 33 motion (*Davis*, No. 6:14-cr-43-CEM-DCI at Doc. 275)—as the law presumes Judge Mendoza's findings correct. Mr. Davis contends that Judge Mendoza's findings were reached by use of extrajudicial sources.

Mendoza's willingness to use extrajudicial information violates controlling authority and evinces partiality. The law requires recusal.

#### **IV. Reasons for Granting the Writ**

Judge Mendoza's remarks and findings stem from extrajudicial sources. Judge Mendoza abused his discretion by failing to recuse. Section 144 imposes on the district court stringent presumptions in favor of recusal. Judge Mendoza did not apply those statutory presumptions in favor of recusal. He did not apply those statutory presumptions in deciding Mr. Davis's recusal application. Instead, Judge Mendoza denied Mr. Davis's right to have his § 144 application reviewed by a different district court judge, who not only would be impartial, but also would appear impartial.

Further, Judge Mendoza's repeated reliance on extrajudicial facts and refusal to presume Mr. Davis's allegations as true creates a belief in either a reasonable jurist (or a fully-informed, objective layperson) that Judge Mendoza has a bias. Judge Mendoza's refusal to follow the law and transfer the recusal action to an untainted judge only served to magnify the appearance of bias and impropriety.

#### **CONCLUSION**

This Court should grant the writ of mandamus, and order Judge Mendoza to transfer the recusal application to a different judge.

s/Brian D. Horwitz  
Brian D. Horwitz, Esq.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on August 10, 2020, a true and correct copy of the foregoing was filed via CM/ECF providing notice to all counsel of record.

s/ Brian D. Horwitz

Brian D. Horwitz, Esq.