

20-8058  
No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

KENNETH ROSE

(Your Name)

— PETITIONER

ORIGINAL  
PETITION

VS.

UNITED STATES OF AMERICA <sup>et al.</sup>

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED

APR 30 2021

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

SIXTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KENNETH ROSE

(Your Name)

WARREN CORRECTIONAL INSTITUTION  
5787 STATE ROUTE 63

(Address)

LEBANON, OH 45036

(City, State, Zip Code)

(513) 932-3388

(Phone Number)

**QUESTIONS PRESENTED**

1. Has the Sixth Circuit Court of Appeals so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power when:
  - a) United States Supreme Court precedent was applied in violation of *Haines v. Kerner*, 404 U.S. 519, 520-21
  - b) Same Circuit precedent, which would have required a different result, was ignored by Courts where no findings on precedent applicability in Orders
  - c) District Court rules on Certificate of Appealability while Motion to Disqualify is pending
  - d) Court subverts 4th Amendment protections by concealing fact that underlying affidavit for search warrant didn't merely omit the street address actually searched, in fact, a completely different street address is averred in the underlying affidavit in violation of Leon's 3rd exception
2. The Sixth Circuit Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court when, *inter alia*:
  - a) The Sixth Circuit effectively holds that *Liteky*, 510 U.S. at 555, as it relates to 'the rarest circumstances' evincing judicial bias, will never be debatable by 'reasonable jurists' when no extrajudicial source is involved, for purposes of a Certificate of Appealability
  - b) The Sixth Circuit effectively holds that *Townsend*, 372 U.S. at 313 does not require 'merits of the factual dispute' to be resolved when adjudicating claims of judicial bias

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Christy L. Muncy, Assistant United States Attorney  
221 East Fourth Street, Suite 400  
Cincinnati, OH 45202

Solicitor General of the United States, Room 5614  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

## TABLE OF CONTENTS

OPINIONS BELOW . . . . .	1
JURISDICTION . . . . .	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED. . . . .	3
STATEMENT OF THE CASE . . . . .	4
REASONS FOR GRANTING THE WRIT . . . . .	5
CONCLUSION . . . . .	6

## INDEX TO APPENDICES

APPENDIX A	1/27/21 Order, 6th Cir. Denying rehearing en banc
APPENDIX B	1/12/21 Order, 6th Cir., Denying rehearing
APPENDIX C	12/21/20 Rose's Motion for Rehearing/Rehearing-en-banc
APPENDIX D	12/7/20 Order, 6th Cir., Denying COA, Denying COVID stay, etc.
APPENDIX E	9/30/20 Rose's Motion for Leave with appointed counsel or 180 day stay
APPENDIX F <sup>1</sup>	1/9/20 Order, Distict Court, Denying 59(e) rehearing on 11/21/19 Order also Denying Rule 52 request to correct/amend/supplement findings
APPENDIX F2	12/19/19 ENUMERATED LIST OF PROPOSED ADDITIONAL FINDINGS (PageID#:1108)
APPENDIX G	9/9/19 Rose's 60(b) Motion from 9/6/18 Order Denying 2255 relief
APPENDIX H	11/2/18 Rose's Motion to Disqualify
APPENDIX I	9/6/18 Order, District Court, Denying 2255 relief (note: page 13 of 16, PageID#:1009, FN1, "The Court notes that the search warrant affidavit in this case did include...709 Elberon...")
APPENDIX J	5/15/18 SCOTUS letter
APPENDIX K	4/12/18 Rose's Amended 2255 Motion (Doc#: 190)
APPENDIX L	3/22/18 Annotated Search Warrant Affidavit showing Frank's violations

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix C to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 12-7-20

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 1-27-21, and a copy of the order denying rehearing appears at Appendix A.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

4th Amendment to U.S. Constitution - Search and Seizure

6th Amendment to U.S. Constitution - Right to effective assistance of counsel

14th Amendment to U.S. Constitution - Right to Due Process

28 U.S.C. 2255 - Post-Conviction relief

28 U.S.C. 2253(c)(2) - regarding Certificates of Appealability

28 U.S.C. 2244 - successive federal habeas corpus petitions

28 U.S.C. 144 & 455 - Disqualification of Judge

Fed. R. Civ. Proc. 52 - Request for additional findings

Fed. R. Civ. Proc. 59 - Request for rehearing

Fed. R. Civ. Proc. 60 - Motion for relief

Fed. R. App. P. 40 - Petitions for rehearing

Fed. R. App. P. 35 - Petition for rehearing en banc

## STATEMENT OF THE CASE

The District Court's 9/6/18 Order (Appendix I), denying 2255 relief, revealed judicial bias was, more likely than not, responsible for obfuscation of pivotal facts that would have changed the outcome had they been squarely applied to either Sixth Circuit precedent or United States Supreme Court precedent. Among other things, the District Court erroneously claimed as fact: "The Court notes that the search warrant affidavit in this case did include...709 Elberon..." (Appendix I, Page 13 of 16, PageID.: 1009, FN1). A reasonable jurist would find that in light of filings in this case, particularly the Amended 2255 (Appendix K) and the 3/22/18 Annotated Search Warrant Affidavit showing Frank's violations (Appendix L), this monumental false-fact could be the result of judicial bias and the issue was at least worthy of a certificate of appealability. Other instances evincing judicial bias were outlined in 11/2/18 Motion to Disqualify (Appendix H), however, while this motion was pending, the same District Court judge proceeded to adjudicate the worthiness of the Movant's claims for purposes of a certificate of appealability - the result of which was of no surprise - no claims were deemed worthy to proceed on appeal. A Motion for relief was filed on 9/9/19 to bring to the Court's attention that the merits of the 2255 claims can not be said to have been reached, in accordance with Due Process, if critical material facts were overlooked which would have changed the outcome of the proceedings had they not been overlooked (Appendix G). The District Court re-characterized most of that request for relief as requiring 2244 approval. A Rule 59(e) and 52 Motion was filed against that Order, along with the 12/19/19 ENUMERATED LIST OF PROPOSED ADDITIONAL FINDINGS (Appendix F2, PageID: 1108) to clearly demonstrated that the claims can not be said to have been reached on the merits where pivotal facts that would have changed the outcome were never uttered, on the record, as having been applied/factored to either the Sixth Circuit or United States Supreme Court precedent. A reasonable jurist could find that the claims were treated by the Courts (both) in violation of Kerner, Liteky, Buck v. Davis, and/or Townsend.

## REASONS FOR GRANTING THE WRIT

Liteky, 510 U.S. at 565 notes the importance of "preserving both the appearance and reality of fairness". Reasonable jurists would understand that there are instances, although rare, where the judge can be said to have demonstrated bias in the very act appraising a litigants assertions in such a way as to weaken them to the appearance of frivolity. Haines v. Kerner, 404 U.S. 519, 520-21, holds that Pro Se pleadings are to be liberally construed and interpreted to raise the strongest argument they suggest.

Napue v. Illinois, 360 U.S. 264, holds that "the prosecutor has the responsibility and duty to correct what he knows to be false. The prosecution in this case has never disputed that the presence of the street address '1000 Mian Street", which was averred on the underlying affidavit for search warrant, in fact, renders the underlying affidavit bare-bones under Leon's 3rd prong. The prosecution has also never once disputed that Sixth Circuit precedent (Mills and/or Cline) mandated suppression under the true factual setting of this case - because the prosecution can't. It appears, up to this point, the prosecution need not respond to any claims in a substantive way because the District Court never intended to give the claims a full and fair hearing on all of the relevant pivotal material facts.

I pray this Honorable Court will grant this writ to clarify how public confidence in Due Process will be protected by United States Supreme Court precedent.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*Kenneth Rose*

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Date: 4-27-21