No. _____

In the
Supreme Court of the United States

JUDY WRIGHT,
Petitioner,
v.

MAY 27, 2011 ORDER; MAY 22, 2012 JUDGMENT,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

LARRY E. PARRISH
Counsel of Record
PARRISH LAWYERS, P.C.
1661 International Dr.
Suite 400
Memphis, TN, 38120
(901) 603-4739
parrish@parrishandshaw.com

Counsel for Petitioner

March 14, 2022

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED

1. For Petitioner to have standing to be heard on her claim that a "judgment" by a judge with an undenied appearance of undermined neutrality, must Petitioner allege and prove that Petitioner suffered harm from the "judgment"?

2. Did Petitioner have standing, in this diversity (28 U.S.C. § 1332(1)) and federal question (28 U.S.C. § 1331) action, to plead a never-before-pled claim for relief from a state court "judgment" adjudicated by a judge, with an undenied appearance of undermined neutrality?

3. Is the state court "judgment" adjudicated by a judge with an undenied appearance of undermined neutrality, named as the *res* in Petitioner's *in rem* complaint subject to being set aside as *coram non judice*?

PARTIES TO THE PROCEEDING BELOW

The only petitioner is Judy Morrow Wright, who was the only claimant in the district court and the only person appearing in the court of appeals.

There were no persons who appeared in district court in opposition to Petitioner's claim for relief. There were no persons who appeared in the Sixth Circuit in opposition to Petitioner's appeal.

CORPORATE DISCLOSURE

Petitioner is a private person with no corporate affiliations. There are no respondents nor any persons who made any appearance to claim any interest in or rights to the *res* defendants or otherwise adverse to any position asserted by Petitioner here or in the courts below.

STATEMENT OF RELATED PROCEEDINGS

There are no proceedings that are directly related to this case.

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Petitioner petitions the Court issue a writ of certiorari to the United States Court of Appeals for the Sixth Circuit to deliver the record on appeal and other records connected to the appeal styled *Judy Wright v. May 27, 2011 Order and May 22, 2012 Judgment* from the decision of the United States District Court for the Western District of Tennessee in the case styled *In re: May 2011 Order and May 2012 Judgment.*

OPINIONS BELOW

The opinion of the Court of Appeals ("Sixth Circuit") (App. 1-4) is the final nail in the coffin of *Williams v. Pennsylvania*, 579 U.S. 1 (2016) ("*Williams*") because the opinion cuts off access of a litigant (like Petitioner) to remedy the effect of an adjudication by a judge who, by a structural violation (*infra* at 2-3, 6-10, 13-14) of the Fourteenth Amendment, adjudicated with an appearance of undermined neutrality.

The Sixth Circuit opinion (App. 1-4) includes a holding, i.e., that Petitioner lacked standing to be heard on Petitioner's claim that the *res* defendant ("judgment" of state court) was *coram non judice* because Petitioner failed to plead that Petitioner suffered harm from the res defendant ("judgment"), in direct opposition to the *Williams*' holding that an adjudication by a judge with an appearance of undermined neutrality is a structural violation of the Fourteenth Amendment.

The Sixth Circuit opinion is notable by the fact that there is no mention of *Williams*.

Likewise, the Sixth Circuit opinion is notable by the fact that, though the question presented for resolution in the state court was whether the state court judge adjudicated the state court judgment (the *res*) with an appearance of an undermined neutrality, the Sixth Circuit opinion characterizes the plea in district court below as a request for an advisory opinion on a matter of state court procedure, which is not substantiated in the record.

Likewise, the Sixth Circuit opinion is notable by the fact that there is an abundance of dicta, much of which is ad hominem and directed to counsel for Petitioner.

JURISDICTION

This Court's appellate jurisdiction is invoked pursuant to Title 28, United States Code § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Process Due Clause, Amend. 14, Article I, § 8.

United States Constitution, Supremacy Clause, Article VI, paragraph 2.

Title 28, United States Code § 1254(1).

STATEMENT OF THE CASE

Unique about this Petition is the fact is that there are no factual issues. All the facts come directly from the four corners of the never amended *in rem* complaint ("Rule 60 *In Rem* Complaint") (RE 1, Page ID # 1-60). Though the *in rem* complaint was dismissed, no person

ever appeared to answer or to make any claim adverse to Petitioner's claims, and neither court below made any findings of fact in contradicts any claim or allegation in the *in rem* complaint. (RE 1, Page ID # 1-60). The dismissal and affirmance were purely based on a holding that neither court had jurisdiction to hear the unrefuted and undenied claim in the *in rem* complaint that the *res* (state court "judgment") was adjudicated by a judge's structural violation of the Fourteenth Amendment.

Therefore, this Petition begins and ends with the unrefuted and undenied fact that the state court judge adjudicated, with the appearance of undermined neutrality, the *res* (state court "judgment") in the *in rem* complaint. This Petition does not involve the Court in whether the undenied conduct is an unconstitutional appearance of undermined neutrality, but only in whether Petitioner is entitled to be heard in the district court for a determination of whether the state judge adjudicated by a structural violation of the Fourteenth Amendment.

On May 27, 2012, Judge Benham in probate court for Shelby County Tennessee, had before him, for adjudication, a contested issue as to whether a revocable, living trust, as with all with all revocable living trusts in Tennessee, was illegal based on the ruling of the Tennessee Supreme Court in *Crews v. Overbey*, 645 S.W.2d 388 (Tenn. 1983).

The instant Petition raises no issue about whether revocable living trusts in Tennessee are illegal or whether res judicata or the law of the case doctrine was correctly applied or incorrectly applied by the state

courts. These are issues to be decided by state courts in due time by a state judge who adjudicates without an appearance of undermined neutrality.

Petitioner is not seeking a second bite at the apple. Rather, Petitioner is seeking one bite at the apple before a trial judge who is not disqualified by an appearance of undermined neutrality.

The orders in the district court and in the Sixth Circuit are *sua sponte* rulings on the law.

Five months after the last state court proceeding the Court published, in June 2016, the Court's opinion in *Williams*.

The case now before the court was commenced by an *in rem* complaint, filed March 30, 2020, against the judgment of probate court (Res One) and against the judgment of the Tennessee Court of Appeals (Res Two). No human or entity parties were named in the complaint (RE 1, Page ID # 1-60) as defendants or respondents.

The *in rem* complaint is purely in *rem* and seeks no relief except relief specified in Federal Rules of Civil Procedure, Rule 60(b)(4) and Rule 60(d)(1) and Tennessee Rules of Civil Procedure, Rule 60.02(3) and Rule 60.02(5) (hereinafter combined referenced "Rule 60") which are codifications of the common law bill of review that give post-judgment courts the jurisdiction to set aside *coram non judice* "judgments."

On August 24, 2020, Petitioner filed a motion for judgment on the pleadings. Notice was given to all persons who conceivably could have a claim to state

adverse to the claims of Petitioner. On November 5, 2020, the district court judge, *sua sponte*, entered an order denying Petitioner's motion for judgment on the pleadings.

Even though the complaint was explicitly grounded in *Williams*, the district court order of dismissal with prejudice did not acknowledge the existence of *Williams*.

On November 24, 2020, Petitioner filed a motion to alter or amend the *sua sponte* order of the district court.

OUTCOME BELOW

On May 14, 2021, the district court entered an order denying Petitioner's motion to alter or amend.

On July 9, 2021, Petitioner filed Petitioner's opening brief in the Sixth Circuit. There being no appellees or otherwise contesting parties, Petitioner had no opportunity to file a reply brief in the Sixth Circuit.

Without oral argument, on December 1, 2021, the Sixth Circuit rendered its judgment with the opinion described above.

On December 10, 2021, Petitioner, in the Sixth Circuit, filed a petition to rehear which was summarily denied on December 14, 2021.

This is Petitioner's timely filed petition for certiorari in the Court.

REASONS FOR GRANTING THE PETITION

Williams is a landmark decision which, in practical effect in the 5+ years since the Court decided *Williams* has had no material effect as precedent on the operation of the judiciary in the United States.

With a very few notable exceptions (e.g., *Echavarria v. Filson*, 896 F.3d 1118, 1130–31 (9th Cir. 2018), cert. denied sub nom. *Gittere v. Echavarria*, 139 S. Ct. 2613, 204 L. Ed. 2d 276 (2019)), *Williams* has generated opinions which distinguish *Williams*, cut back the scope and application of *Williams*, or prominently ignore *Williams*, as if *Williams* does not exist (as the Sixth Circuit and district court below ignored *Williams*, even though the entire case was about *Williams*).

This Petition presents the Court with a very uncomplicated opportunity to reaffirm that *Williams* is alive and well and not available to be effectively overturned by courts shunning *Williams*.

The no-standing holding of the Sixth Circuit below leaves *Williams* a paper tiger, at best. The predicament of Petitioner, as will be the case with all litigants, is that Petitioner is a party in a state court case where the judge rendered, by an undisputed structural violation of the Fourteenth Amendment, a "judgment" indisputably burdened by an appearance of undermined neutrality.

Because the "judgment" (Res One) is the product of an unwaivable structural violation of the Fourteenth Amendment. The "judgment," being a structural violation is automatically reversable and and cannot be enforced. But the "judgment" remains of record and is

treated by the State of Tennessee as a judgment, not as a "judgment" which is the product of a structural violation of the Fourteenth Amendment.

Because the "judgment" (Res One) is the product of a structural violation, it is immaterial whether the "judgment" harmed Petitioner; thus, Petitioner cannot be held to either alleging or proving harm to have access to an adjudication as to whether the "judgment" is the product of a structural violation. Yet, The Sixth Circuit ruling below holds exactly the opposite.

Thus, the Sixth Circuit ruling below overruled, without so stating, the Court's ruling in *Williams* so that a "judgment" by a judge with an appearance of undermined neutrality is a structural violation.

For Petitioner to get relief from the "judgment" which is a structural violation of the Fourteenth Amendment from the Sixth Circuit's holding, Petitioner must file an *in personam* suit to create a case or controversy or have *in personam* claimants appear, in an *in rem* case, and make a claim to the res ("judgment") adverse to Petitioner's claim.

Petitioner seeks no relief from any person. Petitioner wants no relief from any person. What *in personam* suit would Petitioner file? Who would Petitioner sue?

The only ox goring Petitioner is the "judgment" (Res One). How the "judgment" (Res One) is goring Petitioner is that it is denying Petitioner Petitioner's one and only opportunity for a hearing before a qualified judge, i.e., a judge without an appearance of undermined neutrality. Rule 60, state and federal, as did the

predecessor common law bill of review, is an *in rem* proceeding. Whether claimants show up to file a claim adverse to the initiating claimant is 100% out of the control of the initiating claimant.

If, as the Sixth Circuit's paradigm requires, all a beneficiary of a "judgment" which is the product of a structural violation of the Fourteenth Amendment must do to secure the ill-got gain of the unconstitutional "judgment" is show up to controvert the claim of a person like Petitioner.

Not appearing to controvert, according to the Sixth Circuit opinion below, denies Petitioner standing to prove that the "judgment" is a structural violation of the Fourteenth Amendment.

Respectfully, the reasoning of the Sixth Circuit opinion below is circular and would reduce the Rule 60 remedy to virtual nothingness, in the instant case and others.

The Court has held in multiple cases[1] that an affirmation of a "judgment" of a disqualified trial judge does not cure the disqualification of the trial judge. Every litigant is entitled to a hearing, in the "first

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[1] *Concrete Pipe & Prod. of California, Inc. v. Constr. Laborers Pension Tr. for S. California*, 508 U.S. 602, 617-18 (1993); *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004); *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 248 (1980); *North v. Russell*, 427 U.S. 328, 345 (1976); *Rissler v. Jefferson City Bd. of Zoning Appeals*, 693 S.E.2d 321, 327 (2010); *Ward v. Vill. of Monroeville, Ohio*, 409 U.S. 57, 61-62 (1972); *See also*, *State v. Smith*, 323 S.E.2d 316, 328 (NC 1984); *Esso Standard Oil Co. v. Cotto*, 389 F.3d 212, 220 (1st Cir. 2004).

instance," before a qualified judge. The opinion of the Sixth Circuit below seals off Petitioner's access to Petitioner's right to a trial judge not disqualified by an appearance of an undermined neutrality.

The collateral damage by the Sixth Circuit opinion is that it keeps "judgments" which are structural violations of the Fourteenth Amendment, authored by judges disqualified by an appearance of undermined neutrality, secure in court records and treated by states as genuine judgments. How extensive the destruction to justice this travesty is can only be imagined.

Comparing what the Court found about Chief Justice Castille's action in *Williams* to be a structural violation of the Fourteenth Amendment to what the uncontradicted account of Judge Benham's conduct (App. 11, ¶ 154 – App. 46, ¶ 76) is the comparison of a mouse (Chief Justice Castille's action) to a gorilla (Judge Benham's action).

Williams is landmark in that, by *Williams*, the Court seemed to take account of the fact that the respect for courts and confidence that courts are playing the role that courts are designed to play is precipitously declining and that at least a major part of the burgeoning disrespect is that judges are perceived (appear) to a significantly large part of the public to have lost neutrality. The result is that the public sees judges (true or not) with personal philosophies deciding cases, instead of by donning Lady Justice's blindfold and leaving the results to the legislative and executive branches, adjudicating as if sociologists.

The Justices of the Court, apparently, are acutely aware that the judiciary is continuing to suffer from the appearance the public has that judges are moved by political and personal philosophies and, concomitantly, the disrespect of the public is increasing.

From news reports and from watching appearances on television news, the Justices of the Court are expressing publicly the need to curtail the public's perception that judges are not merely calling balls and strikes but are injecting themselves in a legislative/executive way that oversteps the separation of powers doctrine.

The phenomenon that has most fostered this public perception has manifested itself in the advice and consent process for the appointment of new Justices. Whether liberal, conservative or neither, all rational persons must agree that the debacle of recent advice and consent proceedings has the potential so injure the Court and all courts that the judiciary, as it is designed to be in this constitutional democracy, will no longer exist. There must be a restoration of the public perception that judges can be trusted to call balls and strikes in the way symbolized by Lady Justice.

Petitioner argues that *Williams* was intended to be a giant step toward restoration of this public perception. Petitioner argues that, by *Williams*, the Court nailed the malefactor that has infected the judiciary to bring it to its present disrespected status. The malefactor suggested by Petitioner is what the public perceives to be the slippage in cold neutrality of judges.

Williams elevates appearance of a possibility that a judge might be influenced by a predisposition, even an unconscious predisposition, that interferes with neutrality.

While the appearance factor has always been present, by *Williams*, the appearance factor has, for all practical purposes, displaced actuality so that whether a judge is or is not compromised in the judge's neutrality is an immaterial question. Instead, the key factor is exclusively the appearance that a judge's neutrality might be compromised.

Judges can no longer say, figuratively, this case is about whether duck hunting is legal, and I am a lifelong duck hunter, but I am confident that I will be neutral when I decide this case. In actuality, the judge might be 100% neutral, but what the judge thinks, even if he/she thinks correctly, is of no concern to the appearance question.

It is what the public sees that is causing the public's disrespect; it is not what exists in actuality inside a judge's head. The public is left with only what the public sees, and what the public sees is what determines the public's confidence and respect for judges and decisions that judges make.

The problem which has developed is that the judiciary has revolted at the standards *Williams* makes the law of the land. *Williams*, standing alone, is of academic significance only. *Williams* must be given teeth to be enforceable all-inclusive rule of law.

Petitioner contends that this is a crossroads for *Williams* and the precedent *Williams* created. That is,

the Court will either abandon *Williams* (deny the Petition and turn away from the opportunity the Petition presents) or will make *Williams* unavoidable and unshunable by courts' adjudicators (grant the Petition and seize the opportunity the Petition presents).

The case before the Court has all the elements necessary for the Court to revisit *Williams* and decide how the Court intends the judiciary in the United States to be seen by the public, as is or as judges who will not tolerate even an appearance of non-neutrality.

The district court and the Sixth Circuit, in this case, conceived an escape route that released the courts from addressing Judge Benham's conduct. (App. 11, ¶ 154 – App. 46, ¶ 76). Respectfully, the reasons given by the courts below have no basis in fact or law. The tone and tenor of the opinions below and the lack of legal support give the appearance of an attempt to keep a lid on *Williams*.

The Sixth Circuit held that it is immaterial what the trial judge did unless the trial court harmed the litigant seeking relief because the litigant was denied an adjudication by a judge who had no appearance of undermined neutrality.

Such a holding could not be more opposite from *Williams*' clear-cut statement that a judge adjudicating with an appearance of undermined neutrality is a structural violation, i.e., if a judge, any time, for any reason, in any case adjudicates with an appearance of undermined neutrality, the fact that no litigant

suffered any harm is irrelevant to the requirement that the adjudication constitutionally must be set aside.

A structural violation harms the justice system (the structure), and no litigant can waive the violation because it is the integrity of the structure (justice system) that is redressed by the setting aside of such an adjudication.

The word structural was emphasized by the Court. The word structural and what being structural implicates is overlooked by the Sixth Circuit opinion. An adjudication by a judge with an appearance of undermined neutrality is *coram non judice* from its first word to its last word.

Such an adjudication is clutter in the records of courts with destructive force because the state takes the clutter to be a judgment (*coram judice*) of a court and invades the life, liberty and property based on a judgment rendered by a judge who adjudicated with an unconstitutional appearance of undermined neutrality.

Respectfully, to overlook what the Court held in *Williams*, when it discussed the structural aspect of the appearance of undermined neutrality, is to cut the heart and soul out of *Williams*.

Stated another way, the Sixth Circuit opinion effectively reversed *Williams*. If *Williams* could have had the effect as precedent as the Court intended without what the Court included in *Williams* about the structural nature of the violation, what the Court included on the subject would not have been put in *Williams*.

If the Court allows the Sixth Circuit opinion to go unreversed, the message is that what the Court included in *Williams* about adjudicating with an appearance of undermined neutrality being a structural violation is now excised from *Williams*.

The stipulation by Petitioner that Petitioner was not harmed by the adjudication of Judge Benham was not a concession that indicated lack of standing; rather, it was a stipulation to highlight that harm is not a prerequisite where the wrong constitutes a structural violation of the Fourteenth Amendment.

THIS COURT'S RELEVANT PRECEDENT

Williams v. Pennsylvania, 579 U.S. 1 (2016). *Rippo v. Baker*, ___ U.S. ____, 137 S.Ct. 905, 197 L.Ed.2d 167 (2017), on March 6, 2017, in a per curiam opinion, the Court reaffirmed *Williams*.

In her concurring opinion, in *Isom v. Arkansas*, 140 S. Ct. 342, 344 (2019), Justice Sotomayor opined as follows (at 344):

> [T]he risk that a judge might "'be so psychologically wedded to his or her previous position'" that he or she will "'consciously or unconsciously avoid the appearance of having erred or changed position.'" *Williams*, 579 U. S., at ——[136 S. Ct. at 1906]. And it [Supreme Court] has warned that a judge's "personal knowledge and impression" of a case may sometimes outweigh the parties' arguments. *In re Murchison*, 349 U.S. 133, 138 … (1955).

This Court denied a writ of certiorari in *Echavarria v. Filson*, 896 F.3d 1118, 1130–31 (9th Cir. 2018), cert. denied sub nom. *Gittere v. Echavarria*, 139 S. Ct. 2613, 204 L. Ed. 2d 276 (2019) where the petition claimed as error that the trial court misapplied *Williams* in finding that the judge had adjudicated with an appearance of undermined neutrality.

CONCLUSION

Petitioner contends with all due respect for the courts below and the judges on the courts that the orders are typical of the treatment *Williams* has received in the judiciary since *Williams* was decided in June 2016. Why judges are resistant to the *Williams* standards is debatable. But the Court did not decide *Williams* as a question for debate; rather, the Court decided *Williams* as binding precedent.

The pushback from the judiciary is compelling evidence that the alarming decline in respect for courts has a basis in fact. What legitimate reason could any judge have for the strictest standards necessary or, even, conceivable to ensure universal neutrality of all judges all of the time?

Petitioner urges the Court to grant the Petition to give opportunity to reaffirm *Williams* to make certain that *Williams* is precedent that the Court intends to be assiduously followed with doubts resolved in favor of application of the precepts and principles the Court pronounced in *Williams*.

Petitioner urges the Court to grant the Petition to give opportunity to make clear that every litigant in the United States is entitled to an adjudication by a

trial court where the judge is bereft of any appearance that any pre-case predisposition could reasonably appear to a neutral onlooker as a factor that could undermine the judge's cold neutrality.

Petitioner urges the Court to grant the Petition to give opportunity to explicitly adopt Tennessee's standard that the neutrality required is "cold" neutrality and that "any" doubt about whether cold neutrality might appear to reasonable persons to exist requires the judge to take the initiative, without waiting for a recusal motion, to withdraw from adjudication of the case.

Petitioner urges the Court to grant the Petition to give opportunity to announce precedent that the onus is on the judge to withdraw where any doubt about an appearance reasonably would appear to a neutral observer is great enough that an imprudent failure to withdraw means that any adjudication that follows from the judge is *coram non judice*, forever.

Petitioner urges the Court to grant the Petition to underscore that the neutrality required by the Fourteenth Amendment is not merely an animus-based impartiality but, rather, is neutrality with respect to the outcome and results of strict application of rule of law, which leaves to the legislative branch and the executive branch to make whatever adjustments are necessary, from a public policy standpoint, because of results produced by neutral application of law to facts.

Finally, Petitioner suggests that the Court taking the opportunity this Petition presents is vitally

important to preserving or reestablishing failing respect for courts and judges.

The preservation of a judiciary as designed is at stake. This country is torn asunder by divisiveness. For the healing that must take place for our constitutional democracy to be preserved, a neutral judiciary applying rule of law without concern of the consequences must be restored to a place where the respect for courts and judges is widespread at the 75% - 90% level rather than the present below 50% level and sinking.

If this does not happen, the imperative separation of powers crumbles into a sham. Judges are not rulers. Judges are not the law. When, in practical effect, the line between the role of a judge and the role of law is blurred, the entire judiciary is imperiled.

Respectfully Submitted,

LARRY E. PARRISH
Counsel of Record
PARRISH LAWYERS, P.C.
1661 International Dr.
Suite 400
Memphis, TN, 38120
(901) 603-4739
parrish@parrishandshaw.com

Counsel for Petitioner