No. 21- 21-5343

ORIGINAL

IN THE
Supreme Court of the United States

In re Jim Washington

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

PETITION FOR WRIT OF CERTIORARI

Jim Washington
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Petitioner, Pro Se

Dated: August 1, 2021

QUESTIONS PRESENTED

1. Whether a court of appeals failure to grant a first and second amended petition for writ of mandamus conflicts with this court and other court of appeals precedents when it based on a standard less than the Cheney mandated three prong inquiry test.

2. Whether certiorari is an appropriate remedy to seek immediate relief to enjoin the orders of a court of appeals that have the practical effect of denying request for stay and injunctive relief.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 DISCLOSURE STATEMENT

Petitioner, Jim Washington e-mail address WTS Transport, LLC@yahoo.com is plaintiff in the district court and was petitioner-appellant in the U.S. Fourth Circuit Court of Appeals. Washington, (WTS Transport, LLC) is a privately owned transportation company in the business of transporting goods nationally for contractors. Washington , is owner of WTS Transport, LLC a limited liability company duly organized under the laws of the State of South Carolina on July 15, 2011 with a duration at will which was issued a certificate of existence by the Secretary of State. This business is no longer operating.

Respondents are Defendant Trident Medical Center, LLC, and U.S. District Court, Charleston Division, for the district of South Carolina.

Pursuant to Supreme Court Rule 29.6, Petitioner Jim Washington, (WTS Transport, LLC) certifies that it is no longer in operation and without asset.

RELATED PROCEEDINGS

United States District Court (S.C.):

Jim Washington v. Trident Medical Center, LLC, No. 2:20-cv-00953-RMG-MGB(February 16, 2021)

Jim Washington v. Trident Medical Center, LLC, No. 2:20-cv-00953-RMG-MGB(January 28, 2021)

Jim Washington v. Trident Medical Center, LLC, No. 2:20-cv-00953-RMG-MGB(January 29, 2021)

Jim Washington v. Trident Medical Center, LLC, No. 2:20-cv-00953-RMG-MGB(January 11, 2021)

United States Court of Appeals for the Fourth Circuit

In re Jim Washington, No. 21-1045(May 4, 2021)

Jim Washington v. Trident Medical Center, LLC, No. 21-2196(May 4, 2021)

Jim Washington v. Trident Medical Center, LLC, No. 21-1296(April 14, 2021)

In re Jim Washington, No. 21-1045(March 23, 2021)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jim Washington (Washington) respectfully petitions for a writ of certiorari to review the orders of the United States Court of Appeals for the Fourth Circuit.

DECISIONS BELOW

The Fourth Circuit issued its orders on petitioner's motions for first and second amended petition for writ of mandamus on March 23, 2021. A copy of the opinion and order are reproduced at App. 4a-6a. The Fourth Circuit denial of Washington's petition for rehearing petition for writ of mandamus, rehearing motions for stay appeal and injunction, entered on may 4, 2021 are reproduced at App. 1a-2a.

The district court's orders and report and recommendation are reproduced at App. 10a-33a.

JURISDICTION

The U.S. Court of Appeals for the fourth Circuit issued its final opinion and order on March 23, 2021 and its denial of the petition for rehearing and motions for rehearing stay of the appeal and injunction was entered on May 4, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. statute 1254(1) and 28 U.S.C. statute 1651.

RELEVANT STATUTORY PROVISION

Excerpts from the All Writs Act

28 U.S.C. statute 1651. Writs

(a) The Supreme Court and all courts established by Acts of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usage and principles of law.

STATEMENT

I. Statement of the Issues.

This case concerns power of an appellate court to issue the extraordinary relief of mandamus, as a last resort to compel a trial court to rule on allegations in the complaint and to develop its record in aid of appellate jurisdiction because the trial court ruling and failure to rule created exceptional circumstances thwarting appellate review. This case concerns a trial court that issued its orders in manifest bad faith to insulate its order from appellate review and the court of appeals fail to take corrective action leaving a litigant without an adequate remedy on appeal to get relief for his claims in the complaint.

First the Fourth Circuit panel in its March 23, 2021 opinion wrongly relied solely on the first amended petition for writ f mandamus as a basis for its decision without also considering the motion for leave to file a second amended petition for writ of mandamus because the second amended petition requesting the writ was clarifying the basis for the appropriateness of the writ based on the subsequent development

after the district court issued its orders. Thus based on the three prong mandated inquiry standard under, Cheney v. United States District Court for D.C., 542 U.S. 367, 380-381, 124 S. Ct. 2576, 159 L. Ed.2d 459(2004), the Fourth Circuit wrongly denied mandamus relief to petitioner in his second amended petition which must analyze the all three prong to issue the writ. The Fourth Circuit per curiam opinion analyzed the appropriate of the writ under a standard **less** than the Cheney's **three prong mandated** test by not considering the second amended petition for writ of mandamus together with the first amended petition by simply ruling that "Washington petition this court alleging that the district court has unduly delayed acting on his 42 U.S.C. statute 1983 action. He seeks an order from this court directing the district court to act. Our review of the district court docket reveals that the district court dismissed Washington's second amended complaint on January 28, 2021. Accordingly, because the district court has recently decided Washington's case, we deny the mandamus and amended mandamus petition as moot." App. 4a-6a.

Second, the Fourth Circuit second order issued on the same day but separately issued which denies the second amended petition for writ of mandamus is wrongly decided because it suffer from the same or similar flaw because it is based on a standard that is **less** than the Cheney's **three prong** standard for appropriateness to issue the writ by its decision which states that "After the district court entered judgment and denied post-judgment relief in the

underlying matter, petitioner filed a notice of appeal in the district court and a motion for leave to filed a second amended mandamus petition in this court. The motion for leave to file a second amended mandamus petition is denied without prejudice to petitioner's appeal in this case" because it fail to consider petitioner's request for relief was base on the ground the writ was appropriate because the district court issued its orders in manifest bad faith to insulate its orders from appellate review without a well develop record, refused to discuss petitioner's objections further which evades appellate jurisdiction to review on appeal. App. 4a-6a; 216a-229a. Cheney v. United States District Court for D.C., 542 U.S. 367, 380-381, 124 S. Ct. 2546, 159 L. Ed.2d 459(2004);In re Trump, 958 F.3d 274(4th Cir.2020).

Third the Fourth Circuit orders denying rehearing petition for writ of mandamus, rehearing motion for stay and injunction based on its enforcement of its local procedural rule 27(b) to dispose of substantive issues conflict with this Court and other court of appeals precedent by its arbitrary use which alter the right, remedy and decision. The Fourth Circuit practice to authorize the clerk of court to rule on motions filed by litigants under its local rule prevents a litigant from getting a ruling from the three judges panel and litigants who have been previously denied motions such as petitioner's motion for leave to file a second amended petition for writ of mandamus, motion for stay and injunction by orders of the clerk of court adverse ruling are once again at the clerk of court discretion subject to another procedural ruling from the clerk of court on substantive issues in their motion rather

than a ruling from the panel which affects the rights, remedy and the decision on the merit and conflicts with this Court precedents. App. 1a-2a; 133a-153a; 186a-200a; 203a-213a. See Hollingsworth v. Perry, 558 U.S. 183, 130 S. Ct. 705, 706-715, 175 L. Ed.2d 657(2010); See also In Re United States, 139 S. Ct. 452, 453(2018); See In re United States, 138 S. Ct. 443(2017). Petitioner's substantive rights, remedy and a decision from the panel were lost by court of appeals practice of its procedural rule which conflicts with the above cited precedents of this Court.

Fourth the Fourth Circuit ruling on petitioner's motions for stay has the practical effect of denying stay and injunction relief which conflicts with this Court's precedent because of petitioner's request for these relief and the combination of the court of appeals rulings in denying petitioner's requested relief has the practical effect of denying stay and injunction even though the labels attach to the denial orders do not specifically say denial of motions for stay and injunction but it in effect refuse to stay the appeal proceeding, fail to enjoin the district court from engaging in any future misconduct made in manifest bad faith to insulate its orders from appellate jurisdiction causing irreparable injury without a well develop record and findings of allegations in the second amended complaint alleging a conspiracy to cover-up a 2/4/19 Memorandum of law to violate petitioner's federal constitutional right to procedural due process to present his objections and be heard. App. 1a-7a; 133a-229a. See Abbott v. Perez, 138 S. Ct. 2305, 2319-2321(2018); See also Sampsonv. Murray, 415 U.S. 61, 86-88, 94 S. Ct. 937, 39 L. Ed.2d 166(1974); See

Carson v. American Brands, Inc., 450 U.S. 79, 81-83, 101 S. Ct. 993, 67 L. Ed.2d 59(1981).

Fifth the Fourth Circuit orders denying stay and injunction are immediately appealable to this Court because petitioner would suffer irreparable injury to proceed on appeal without granting a stay and injunction of the appeal proceedings without an adequate well develop record and adequate findings on the merit of his constitutional claims leaving petitioner without an adequate remedy for appellate review. App. 1a-7a; 133a-229a. See In re United States, 139 S. Ct. 452, 453(2018); see also Hollingsworth v. Perry, 558 U.S. 183, 130 S. Ct. 705, 710-715(2010). Thus the court of appeals orders denying stay and injunction are immediately appealable to avoid irreparable injury. See Carson v. American Brands, Inc., 450 U.S. 79, 84-90, 101 S. Ct. 993, 67 L. Ed.2d 59(1981).

Sixth a writ of mandamus is an appropriate remedy in aid of this Court's jurisdiction to compel the district court to develop its record and make a ruling on the allegations in second amended complaint alleging a conspiracy to cover-up petitioner's memorandum of law with attach contract consent agreement dated September 30, 2012 with intent to deprive petitioner of his federal constitutional right to an adequate pre-deprivation and post-deprivation hearing procedure to present his objections and be heard that he met his burden of proof to have the 2016 judgment vacate. App. 10a 33a; 50a-75a; 77a-120a.; 133a-185a. Abbott v. Perez, 138 S. Ct. 2305, 2324-2327(2018); Reeve v. Sanderson Plumbing Company,

Inc., 530 U.S. 133, 140-143(2000)(citing Mcdonnel Douglas Compay, Inc. v. Green, 411 U.S. 792, 802(1973). The writ of mandamus is an appropriate remedy in this Court because the court of appeals fail to take corrective action to compel the district court to develop its record and making findings because the orders were issued in manifest bad faith to insulate its orders from meaningful appellate review leaving petitioner without an adequate remedy on appeals. App. 1a-7a; 133a-231a. See In re United States, 138 S. Ct. 452, 453(2018).

II. FACTUAL BACKGROUND

This case arises out of petitioner filing a 42 U.S.C. statue 1983 action in federal district court alleging that state court officials acting under color of law participation in a joint concerted agreement to conspire with Defendant's attorneys with intent to deprive petitioner of his federal constitutional rights to procedural due process of law to present his objections and be heard at a February 7, 2019 hearing agreeing that nothing needed to be done with the court files and that the court lacked jurisdiction over two rule 60(b) motions not disposed of on appeal to cover-up the October 20, 2018 telephone calls between petitioner and the original state court judge by and through his law clerk that the 2 rule 60(b) motions were not concluded on appeal leaving the court to hold a hearing on the motions. App. 50a-73a. This was also an agreement to cover-up petitioner's Memorandum of Law with attached contract consent document, filed in state circuit court on February 4, 2019 which

met his burden of proof that the prior 2016 judgment was obtain by extrinsic fraud on the court by Defendant's attorneys with intent to deprive petitioner of federal constitutional right to procedural due process to pre-deprivation and post-deprivation hearing procedure to present his objection and be heard to later rule the court lack jurisdiction over the 2 rule 60(b) motions and petitioner fail to meet his burden of proof to vacate the 2016 judgment. App.50a-73a; 110a-120a. And that in furtherance of the agreement in the post-deprivation hearing proceeding state court official tacitly agreed with Defendant's attorneys to shift the burden of proof from petitioner to Defendant's attorneys to agree that petitioner are raising the same facts, theories and arguments already ruled on by stating " Defendants have not highlighted any portions of the record this court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly the motion to alter/amend judgment is denied" with intent to deprive petitioner of federal constitutional right to due process of law to an adequate procedure to present his objection and be heard. App. 36a-42a; 50a-73a; 93a-108a.

The record in the district court demonstrates that the above factual allegations of a conspiracy to cover-up the two telephone calls of October 20, 2018 in the second amended complaint were not taken as true as required at the motion to dismiss stage but simply rejected on the ground that no record exist in the state court files that the court issued such a decision that the two rule 60(b) motions remained open or that this communication even occurred. App. 10a-33a. Thus, the

district court records demonstrates that it misapplied Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 1951-1952(2009)(citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1963-1974(2007) standard pleading which does not require this heighten pleading of a probability. And was adopted by the district court which overruled petitioner's objections and refused to discuss the objections further and refused to issue an order for certification for interlocutory appeal on the issue whether he met the Iqbal and Twombly standard on a controlling question of law . App. 10a-33a; 156a-185a. The record in the district court also shows that the court issued its orders arbitrarily in manifest bad faith to insulate its orders from appellate review by ruling that petitioner's pleadings allegations challenges of a conspiracy to violate his federal constitutional rights was simply challenging **a claim for fraud on the court** without developing its record nor made finding of petitioners allegations in the complaint which alleges: that state court official reach an agreement with Defendant's attorneys that "nothing else needed to be done with the court files" to conspire against him to cover-up his Memorandum of Law with attach contract consent agreement, filed on February 4, 2019 which met his burden of proof to vacate the 2016 judgment with intent to later rule that petitioner fail to meet his burden of proof to violate petitioner's federal constitutional right to due process of law to an adequate pre-deprivation procedure to present his objections and be heard. App. 26a-30a; 50a-75a; 110a-120a. And allege that in furtherance of the conspiracy agreement shift the burden of proof from petitioner to Defendant's

attorneys with intent deprive petitioner of his federal constitutional right to an adequate post-deprivation hearing procedure to present his objection and be heard. App. 36a-41a; 50a-75a. The district court denied petitioner relief finding fraud on the court as the basis to dismiss the action without developing the record or made findings of the above plausible allegations of a joint concerted participant conspiracy agreement to violate petitioner's federal constitutional rights was therefore wholly arbitrarily made in manifest bad faith to insulate its orders from appellate review. App. 10a-33a.

REASONS FOR GRANTING THE PETITION

I. The Fourth Circuit Decisions Denying The Petitions For Writ Of Mandamus Are Wrong Because The Decisions Conflicts With Cheney And Other Courts Of Appeals Precedents And Involves Important Federal Questions About The Scope Of Mandamus Review.

On March 23, 2021 the Fourth Circuit denied petitioner's motions for leave to file a first and second amended petition for writ of mandamus in two separate orders which conflicts with this Court's precedent and other court of appeals precedents by using an inquiry that is less than the Cheney's required three prong mandate for issuance of the writ standard because it: (1) fail to consider that the district court's rulings were a clear abuse of discretion when the district court overruled his objections and refused to discuss petitioner's objections further; and (2) fail to consider that the district court failed to develop its record to make necessary findings and rulings on the allegations in the second Amended complaint were arbitrary rulings made in manifest bad faith to insulate its orders from appellate

review leaving petitioner without an adequate remedy on appeal which were **then** the **reasons** asserted in petitioner's petitions as **grounds** for issuance of the writ. App. 5a-7a.;10a-33a; 215a-231a. The Fourth Circuit using a standard that is less than Cheney v. U.S. District Court for D.C., 542 U.S. 367, 380-381, 124 S. Ct. 2576, 159 L. Ed.2d 459(2004) required three prong test wrongly rule that petitioner "jimmie Washington petitions for a writ of mandamus, alleging that the district court has unduly delayed acting on his 42 U.S.C. statute 1983 action. He seeks an order from this court directing the district court to act. Our review of the district court's docket reveals that the district court dismissed Washington's second amended complaint on January 28, 2021. Accordingly, because the district court recently decided Washington's case, we deny the mandamus petition and amended mandamus petition as moot." App. 5a. The Fourth Circuit then on the same day after denying the petition and amended petition for writ of mandamus ruled in a separate order on petitioner's pending second amended petition for writ of mandamus denying it on the ground as stated that "After the district court entered judgment and denied post-judgment relief in the underlying matter, petitioner filed a notice of appeal in the district court and a motion for leave to file a second amended mandamus petition in this court. The motion for leave to file a second mandamus petition is denied without prejudice to petitioner's appeal in this case." App. 6a. However, petitioner argues that, based upon the petitions the Cheney v. U.S. District Court for D.C., 542 U.S. 367, 380-381,124 S. Ct. 2576, 159 L. Ed.2d

459(2004), three part inquiry were met by petitioner's first and second amended writ of mandamus petitions but as clearly shown by the Fourth Circuit two orders denying his petitions **used** a standard that is **less** than the Cheney's mandate three prong standard by "failing to consider that the petitions were not simply seeking an order from the Fourth Circuit to compel the district court to act on a delayed rulings on his second amended complaint still pending seeking a writ of mandamus petition before the district court made any ruling but **rather** was **now** challenging the district court's **rulings** on his second amended complaint and its **refusal** to issue an order for stay and certification for interlocutory appeal when the criteria were met; and overruled his objections and **refusal** to discuss petitioner's objections further was a clear abuse of discretion ; and alleging that the district court issued its orders arbitrarily in manifest bad faith to insulate its orders from appellate review by failing to develop its records of the allegation in his second amended complaint of a conspiracy to cover-up his Memorandum of Law with attach contract consent agreement with intent to later rule he fail to meet his burden of proof. Then to further the conspiracy shift the burden of proof from petitioner to Defendant attorneys to violate his constitutional rights rule arbitrary in **bad faith** that petitioner's allege simple a **fraud on the court** claim **defeats** a conspiracy claim" were the entire basis petitioner sought mandamus relief. App. 10a-33a; 50a-75a; 110a-120a; 133a-229a. The Fourth Circuit orders conflicts with this court and other court of appeals precedents because even though the district court **acted** the

petitions satisfied the Cheney's three prong inquiry of: (1) a clear and indisputable right; (2) no adequate remedy to obtain the relief; (3) writ is appropriate under the totality of circumstances. App. 4a-7a; 10a-33a; 133a-229a. 542 U.S. at 380-381. First the petitions alleged that petitioner had a clear and indisputable right to file objections to the magistrate's report and recommendations and a clear and indisputable right to a full de nova review of his objections of the magistrate judge report and recommendations under Fourth Circuit precedents, Sample v. Ballard, 860 F.3d 266, 271-273(4th Cir. 2017)(quoting U.S. v. George, 971 F.2d 1113, 1117-1118(4th Cir. 1994)(same), citing 28 U.S.C. statute 636(b)(1), Fed. R. Civ. P. 72) raising the issue that the magistrate failure to rule on portions of the allegations in his second amended complaint and fail to develop the record of these allegations in manifest bad faith to insulate its order from appellate review. And that the district court acting in manifest bad faith to insulate its order from appellate review overruled his objections and refused to discuss petitioner's objections further was a clear abuse of discretion leaving petitioner without an adequate remedy on appeal without a well develop record **thwarts appellate jurisdiction to review** his claims under its precedents which held that " We believe that as part of the obligation to determine de nova review any issue to which proper objection is made, a district court is required to consider all arguments directed to that issue, regardless of whether they were raised before the magistrate. .... The district court cannot artificially limit the scope of its review by ordinary prudential rules, such as waiver,

provided that proper objection to the magistrate's proposed finding or conclusion has been made and the appellant's right to de nova review by the district court has been established." App. 10a-33a; 77a-120a;133a-229a. Sample v. Ballard, 860 F.3d 266, 271-273(4th Cir. 2017); U.S. v. George, 971 F.2d 1113, 1117-1118(4th Cir. 1992), 28 U.S.C. statute 636(b)(1), Fed. R. Civ. P. 72. Thus under the above cited precedents, statute and rule petitioner has a clear and indisputable right to full de nova review of his objections and a clear and indisputable right to a ruling on his allegations in his complaint of a conspiracy to violate his constitutional right claims. App. 50a-120a. Therefore, under Cheney the petition met the requirement but the Fourth Circuit Court of Appeals wrongly fail to analyze the Cheney's first and second prongs in the petitions. App. 4a-6a; 133a-229a. Cheney v. United States District Court for D.C., 542 U.S. 367, 391, 124 S. Ct. 2576, 159 L. Ed.2d 459(2004)(same). Second, the Fourth Circuit fail to analyze the first and second amended petitions request for the writ of mandamus under the third factor of the Cheney's standard whether the writ was appropriate under the exceptional totality of circumstances of the case as a whole. App. 4a-7a; 133a-229a. Cheney v. United States Dist. Court for D.C., 542 U.S. at 391(same). This Court has repeatedly made it clear that when it is also shown the lower court has clearly abused its discretion in a case properly before it the writ is an appropriate remedy when a lower court acts in a manner that thwarts appellate jurisdiction over a case and the petitioner has no alternative adequate remedy to be granted his rights to the relief he seeks in

petition. Cheney v. United States District Court for D.C., 542 U.S. 367, 380-381, 124 S. Ct. 2576, 159 L. Ed.2d 459(2004)(citing cases). The first and second amended petition for writ of mandamus shows that the Fourth Circuit's March 23, 2021 orders denying mandamus are wrong because the petitions met the Cheney's third appropriate of the writ exceptional irreparably injury prerequisites because they sufficiently demonstrates that the Fourth Circuit's jurisdiction is frustrated to review whether he met the factual pleading standard under, Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1951-1952(2009)(citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1963-1974(2007)), of a plausible pleading of a conspiracy to violate petitioner's federal constitutional right claims based on the existing district court record and mandamus would be the appropriate remedy to intervene to compel the district court to develop its record and rule on the portions of the second amended complaint not yet ruled on because the Magistrate Judge **arbitrarily** only ruled on the allegations of a claim for **fraud on the court** and the district court overruled his objections and refused to discuss petitioner's objections further; refused to grant a stay of the proceeding pending appeal and denied certification for interlocutory appeal. App. 10a-33a; 50a-120a. Cheney v. United States Dist. Court for D.C., 542 U.S. 367, 380-381, 391, 124 S. Ct. 2576, 159 L. Ed.2d 459(2004)(same). The orders of the Fourth Circuit denying mandamus, stay of the appeal proceeding and injunction relief shows that petitioner have no adequate remedy on appeal to be granted the relief he seeks on his conspiracy to violate his federal constitutional

right claims without certiorari or mandamus relief from this Court to compel the district court to perform its **duty** to conduct a de nova review and to rule on the portions of his objections that " it overruled and refused to discuss further" and in manifest bad faith fail to develop its record **thwarts** appellate jurisdiction to review its order satisfies the third prong of the Cheney's standard for appropriate of the writ under the exceptional totality of circumstances of the test. App. 1a-7a; 10a-33a; 50a-120a. Cheney v. United States District Court for D.C., 542 U.S. 367, 380-381, 391,124 S. Ct. 2576, 159 L. Ed.2d 459(2004)(citing Roche v. Evaporated Milk Assn., 319 U.S. 21, 25-26, 63 S. Ct. 938, 87 L. Ed. 1185(1943); Hollingsworth v. Perry, 558 U.S. 183, 130 S. Ct. 705, 710-715, 175 L. Ed.2d 657(2010)(finding irreparable injury where district court adopt local rule in violation of federal law). This Court in, In Re United States, 138 S. Ct. 452, 453(2018), denied stay pending a petition for writ of mandamus on the grounds that adequate relief could be granted in the court of appeals because " the Ninth Circuit denied mandamus twice it did so without prejudice. And the court basis for denying relief rested in large part on the early stage of the litigation, the likelihood that plaintiffs' claims would narrow as the case progressed, and the possibility of attaining relief through ordinary dispositive motions." Id. However, in petitioner's case in this petition the circumstances are to the contrary because the Fourth Circuit denied mandamus twice because it used a standard that is less than the Cheney's three prong test; and practically in effect denied injunction and stay of the appeal leaving petitioner irreparably injured

without an adequate remedy on appeal to get relief. App:1a-7a; 133a-229a. Cheney v. United States Dist. Court for D.C., 542 U.S. 367, 391, 124 S. Ct. 2576, 159 L. Ed.2d 459(2004)(same); Carson v. American Brands, Inc., 450 U.S. 79, 83-90, 101 S. Ct. 993, 67 L. Ed.2d 59(1981); In Re United States, 138 S. Ct. 452, 453(2018). First petitioner argues that his circumstances are exactly like the case of, Cheney v. United States Dist. Court for D.C., 542 U.S. 367, 391, 124 S. Ct. 2576, 159 L. Ed.2d 459(2004), in that this Court held that the court of appeals **fail** to make **inquiry of all three factors** required to issue the writ, thus vacated and remanded to the court of appeals in the first instance to make the necessary inquiry. Id. Petitioner argues that his circumstances are also akin to this Court's decision in, In re United States, 138 S. Ct. 443(2017), where the Court granted mandamus or in the alternative certiorari reaching a conclusion that a stay should have been granted. Vacated and Remand for the court of appeals to take action for the district court to rule on the issue. And consider to issue an order for certification for interlocutory appeal. But ruled that the government should be given the opportunity to compiled the record before being compel to do so. Id. This Court in, Camp v. Pitts, 411 U.S. 138, 139-143, 93 S. Ct. 1241, 36 L.Ed.2d106(1973) and Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402,408-421, 91 S. Ct. 814, 28 L. Ed.2d 136(1971), are consistent with above the precedent to determine whether the appeal would provide and adequate remedy for review where it was held that a reviewing court must have an adequate record for review and if the challenge ground for review is

that the order was issued arbitrarily or in bad faith frustrates review that a court should compel that the record be supplemented and bad faith and arbitrary conduct must be considered as part of court decision to order that record be develop, supplemented and make additional findings when the interest of justice is served. Id. In re Clinton, 973 F.3d 109, 113-117(D.C. Cir. 2020), that court reached a contrary result under the second prong of the Cheney test because It found that bad faith was not relevant to the inquiry of adequacy or reasonableness of agency search to discover documents related to case because all documents and records were already complied with and finding the district court clear abuse its discretion under D.C. precedent and rules to order discovery under the circumstances. But held that bad faith would be relevant to the individuals who conducted the search. In re Clinton, 973 F.3d at 115. The Fourth Circuit itself has held that bad faith would be appropriate inquiry in a petition for writ of mandamus case in, In re Trump, , 958 F.3d 274, 285(4th Cir. 2020)(rehearing en banc), relying on decisions from this Court but found that the standard was not met in the case. The second dissenting opinion disagreed finding that the district court's order was issued to insulate its ruling from appellate review on the ground that the criteria for certification for interlocutory appeal were met. In re Trump, 958 F.3d at 313-322. Petitioner, argument before the Fourth Circuit was the same as the majority and dissent on the two separate issues of bad faith and arbitrary issued its orders to insulate it from appellate review on his federal constitutional right claims and certification for interlocutory appeal.

App. 133a-145a; 215a-229a. The D.C. Circuit was faced with mandamus similar to Washington's petitions on constitutional right grounds, In re Al Baluchi, 952 F.3d 363, 368-372(D.C. Cir. 2020),held that if the site was destroyed mandamus was available showing irreparable injury because the evidence would no longer exist and without an adequate remedy on appeal. And further held if the favorable evidence was destroyed was required to be preserve by statute or case laws where no available substitute record was available on appeal it would violate his right to a fair trial under the U.S. Constitution. Id. The above cited authorities support petitioner argument that he satisfies the second and third prong of the Cheney's test of no adequate remedy and the writ is appropriate. Cheney v. United States Dist. Court for D.C., 542 U.S. 367, 380-381, 124 S. Ct. 2576, 159 L. Ed.2d 459(2004).

Thus based on Washington's request for mandamus relief and above authorities supports petitioner argument that the Fourth Circuit denied Washington's petitions based on a standard that is less than Cheney's three prong inquiry and conflicts with this Court's precedent and other court of appeals precedents as cited above. App. 1a-7a;133a-145a; 146a-229a. Cheney, 542 U.S. 367, 380-381, 391(2004).

Thus, If the Cheney's three part inquiry is to remain this Court's standard in U.S. Federal Courts this Court should grant Washington's petition to examine the detrimental consequences of the Fourth Circuit decisions and to answer an important federal question of the scope of review for future litigants seeking mandamus to be denied relief by decisions by the Fourth Circuit when it applies a

standard that is in conflict with this Court and other court of appeals. Cheney v. United States District Court for D.C., 542 U.S. 367, 380-381, 391, 124 S. Ct. 2576, 159 L. Ed.2d 45992004) ;In re Al Baluchi, 952 F.3d 363, 367-372(D.C. Cir. 2020).

II. The Fourth Circuit Decision Denying Rehearing Has The Practical Effect of Denying Stay and Injunction Relief Making Certiorari An Appropriate Remedy For Immediate Relief In This Court

On May 4, 2021 the Fourth Circuit Court of Appeals issued orders denying petitioner motion for rehearing mandamus under its local procedural rule issued by the clerk of court by the direction of the panel and issued a separate order denying appellant's motions for rehearing stay of the appeal on the ground that:" Appellant's motion to reconsider this court's order denying his motion to suspend the informal briefing schedule and extending the deadline for his informal opening brief to May 14, 2021, is denied as moot in light of this court's order denying his petition for rehearing in No. 21-1045, In re: Washington. The due date for appellant's informal opening brief is extended to May 28, 2021." Petitioner, seeks certiorari because the Fourth Circuit's orders has the **practical effect** of denying **stay** and **injunction** relief **requested** in his motions for rehearing regardless of the labels it attaches to its orders based on its effect to his cases. App. 1a-7a; 190a-192a. Abbott v. Perez, 138 S. Ct. 2305, , 2319-2321(2018); Rota-McLarty v. Santander Consumer USA, Inc., 700 F.3d 690, 698-699(4th Cir. 2012).

First, petitioner's motions for rehearing sought the Fourth Circuit to: (1) **enjoin** Defendant's attorneys from any future repeated misconduct with court officials to conspire against him to deprive him of his federal constitutional rights to present his objections and be heard concerning his Memorandum of Law with attached contract consent agreement between the parties "that the second hospital where he was admitted would be the decision-maker to **settle the dispute** of the source of petitioner's CVA bodily injuries and future medical needs" filed in state court on February 4, 2019. App. 110a-129a;190a-192a. (2) to **enjoin** the district court's orders to prevent continuous irreparable injury due to (a) the district court repeated misconduct in its rulings of his federal constitutional claims and denial of his motions for **stay** and **certification for interlocutory appeal** arbitrarily issued in manifest bad faith to bar certification when the criteria were met (b) overrule his objections and refuse to discuss them further deprived him of right to full de nova review of his constitutional claims from appellate review without a well develop record (c) limit its finding in the complaint were a continuation of the patterns of misconduct in state court which **continues** to prevent the opportunity in the appeal process to **settle contract dispute** in his Memorandum of law with attach contract consent agreement **prior** to the appeal and **continues** to cause irreparable injury. App. 54a-75a; 110a-129a; 190a-192a. Los Angeles v. Lyons,461 U.S. 95, 99-113A, 103 S. Ct. 1660, 75 L. Ed.2d 675(1983); Carson v. American Brands, Inc. , 450 U.S. 79, 85-90, 101 S. Ct. 993, 67 L. Ed.2d 59(1981).

Second, the Fourth Circuits orders denying rehearing are immediately appealable because petitioner would suffer irreparable injury by the repeated adverse rulings by the Fourth Circuit (1) denial of petitioner's petitions for writ of mandamus to compel the district court to develop its records; (2) petitioner might **lose** the opportunity to effectively challenge denial of stay and injunction. First, he might **lose** the opportunity to **settle** the contract consent agreement terms; and he might lose the opportunity to challenge his constitutional right claims raising the contract consent agreement issue without a well develop record because mandamus has been denied twice on the same issues and the Fourth Circuit practically in effect denied stay and injunction based on the contract issues seeking to **enjoin** the district court orders App. 1a-7a; 144a-153a;190a--192a. Matter of Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300(7th Cir. 1997); Carson v. American Brands, Inc., 450 U.S. 79, 86-90, 101 S. Ct. 993, L. Ed.2d 59(1981).

The Third Circuit rulings in the above cited case of Matter of Forty-Eight Insulations, Inc. is directly on all fours with the issues raised in the Fourth Circuit as justification for granting a stay and injunction and directly related to petitioner's right to **enforce** the contract consent agreement to preserve the **status quo**. App. 190a-192a. Petitioner argued that he had a strong probability to succeed on the merit to get a reversal of the district court orders because the court overruled his objections that the magistrate judge only ruled on issues of " fraud on the court." He alleged that the Defendant's attorneys reached an agreement with

state court officials that "**nothing needed to be done with the court files** with intent to conspire against him to cover-up the favorable evidence which entitle to relief that he contacted the original state court circuit judge by and through his law clerk per two telephone calls on October 20, 2018 as instructed by the judge letter and was told the two rule 60(b) motions remained open and the court had jurisdiction over the 2 rule 60(b) motions for a hearing. Thus the conspiracy agreement petitioner alleged was to cover-up the two telephone calls and his Memorandum of law with attached contract consent agreement meeting his burden of a particularized showing that the original February 5, 2016 judgment was obtained by the Defendant's attorneys extrinsic fraud upon the court. Allege the conspiracy agreement between the second state court judge and Defendant's attorneys was to later rule the court lack jurisdiction and that he fail to meet his burden of proof to deprive him of his federal constitutional right to procedural due process of law to a meaningful pre-deprivation and post-deprivation procedure to present his objections and be heard that 2 rule 60 motions remain viable; and that he filed a memorandum of law with attached contract consent agreement meeting his burden of proof. And in furtherance of the conspiracy shift the burden of proof from petitioner to the Defendant's attorneys to tacitly agree that petitioner was raising the same arguments already raised and rejected by the court with intent to violate his constitutional right to a meaningful post-deprivation procedure to present his objections and be heard." App.54a-76;195a-197a. He request the Court to issue a stay and

injunction against Defendant's attorneys future misconduct and the district court orders concerning his Memorandum of Law with attach contract consent agreement not ruling on the issue and refuse to discuss the objections on the issue further to settle the dispute of the contract would cause **irreparable injury** on appeal. App. 190a-192a. Matter of Forty-Eight Insulations, Inc., 115 F.3d at 1300-1305. This Court in, Carson v. American Brands, Inc., 450 U.S. 79, 83-90, 101 S. Ct. 993, 67 l. Ed.2d 59(1981), held the same as petitioner here argues concerning his Memorandum of Law with attached contract consent agreement, filed in state court on February 4, 2019 "that the orders denying motion to enter the consent decree was immediately appealable because petitioners would lose the opportunity to **effectively challenge** an interlocutory order that denies them injunctive relief and that plainly has a serious, perhaps irreparable consequences. First, petitioners might lose their opportunity to settle the negotiated terms. Second "serious, perhaps irreparable, consequences" that justifies that the order is immediately appealable under 28 USC statute 1292(a)(1). In seeking the injunction they sought immediate restructuring of respondents' transfer and promotional policies. They asserted in their complaint that they would suffer irreparable injury unless they obtain that injunctive at the earliest possible time and any delay in review the propriety of the district court refusal to enter the decree might cause them serious or irreparable harm." 450 U.S. at 86-90. However, the Fourth Circuit practical in effect denied petitioner request for a stay and injunction which this Court held in Carson warrants a stay and injunction relief. App. 1

a-7a; 110a-129a; 190a-192a. Based upon the above circumstances this Court's test for granting stay and immediate appeal in, In Re United States, 139 S. Ct. 452, 453 (2018)(citing case)(citations omitted), does not bar granting this petition but in fact support granting the petition because here the Fourth Circuit not only denied the writ of mandamus twice but also in practical effect denied stay and injunction relief on the dispositive issues central to the **merit of all issues** of no adequate remedy on appeal in seeking to enjoin the district court's orders to get relief without a well develop record nor ruling would render his ability to challenge the issues effectively on appeal and cause petitioner to suffer irreparable injury if the relief was not granted prior to commencing the appeal process. App. 1a-7a; 54a-75a; 133a-183a; 190a-192a. Salazar ex rel. Salazar v. District of Columbia, 671 F.3d 1258, 1261-1267(D.C. Cir. 2012); Carson v. American Brands, Inc., 450 U.S. 79, 84-90, 101 S. Ct. 993, 67 L. Ed.2d 59(1981).

The Fourth Circuit improperly fail to analyze the irreparable injury factor in denying relief. App. 1a-7a; 54a-75a; 190a-192a. Salazar ex rel. Salazar v. District of Columbia, 671 F.3d 1258, 1261-1267(D.C. Cir. 2012); Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1547-1550(2016).

Third, the Fourth Circuit failure to grant a stay of the appeal process and injunctive relief against the district court orders will force the petitioner's to proceed in the appeal process without an adequate remedy and suffer irreparable injury if this Court does not intervene by granting certiorari to allow petitioner's right to **settle** the **dispute** of the contract and damages which he **continues to lose the opportunity to settle** due to the Fourth Circuit repeated failure to grant mandamus to compel the district court to

develop its record and to rule on his objections which were overruled and refused to discuss his objections further. App. 1a-7a; 10a-33a;190a-192a. And the practical effect of the Fourth Circuit denial of stay and injunction which **continues** to cause petitioner to suffer irreparable injury due to **loss of opportunity** to **settle contract consent agreement dispute** between the" parties" because the Fourth Circuit fail to **enjoin** the district court orders to grant a stay and injunction relief. App. 1a-7a; 110a-129a; 190a- 192a. In Re United States, 139 S. Ct. 452, 453(2018)(citing Holliingsworth v. Perry, 558 U.S. 183, 190, 130 S. Ct. 705, 175 L. Ed.2d 657(2010); Los Angeles v. Lyons, 461 U.S. 95, 99-113A,103 S. Ct. 1660, 75 L. Ed.2d 675(1983); Carson v. American Brands, Inc., 450 U.S.79, 83-90, 101 S. Ct. 993, 67 L. Ed.2d 59(1981); SAS Institute, Inc. v. World Programming Ltd., 952 F.3d 513, 525(4th Cir. 2020); Salazar ex rel. Salazar v. District of Columbia, 671 F.3d 1258, 1261-1267(D.C. Cir. 2012).

CONCLUSION

For the forgoing reasons, petitioner Washington respectfully requests that the Court grant this petition for certiorari.

Respectfully submitted,
S/ Jim Wash

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August 1, 2021

CERTIFICATION

Petitioner, do hereby certify that the documents submitted complies with the type-Volume limitations for filing a petition for writ of certiorari which consist of 26 pages double space-type words on a font size 12 letters.

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No-21-

IN THE
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Jim Washington,
Petitioner,
v.
Trident Medical Center, LLC
Respondent.

Civil Action No._____

PROOF OF SERVICE

I , certify that Petitioner's Petition for Writ of Certiorari was served on Respondent's attorneys. A copy was serve by mailing in a prepaid wrapper **VIA U.S. MAIL with return receipt requested** to the following addresses:

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