No. 21-6978

In The

SUPREME COURT OF THE UNITED STATES

In re Isaiah S. Harris Sr., Petitioner

PETITION FOR WRIT OF MANDAMUS

Isaiah S. Harris Sr., #570016
Richland Correctional Institution
P.O. Box 8107
Mansfield, Ohio 44901

Pro se Litigant

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

QUESTION(S) PRESENTED

Harris' case presents exceptional circumstances that **warrant** exercise of this Court's discretionary power. Because of the ***willful disobedience or adoption of a deliberate policy in open defiance of the federal rules handed down by this court,*** has allowed clerk Hunt to become the ***judge, jury, and executioner*** of Harris' protected constitutional rights to get proper redress in federal court pursuant to **§2254(B)(i)(ii)(D)(1) and 2241(c)(3),** which has had **a detrimental effect** on Harris' meritorious **constitutional Brady-Chambers due process claims,** leaving **no other remedy** but **mandamus** for the right to issuance of the writ ***is clear and indisputable.***

(1) Is it clear and indisputable that, U.S. Sixth Circuit Appeal Court clerk Deborah S. Hunt **acted in ultra vires** in her unpublished **COA denial** in light of the full factual or legal basis adduced in support of Harris' constitutional claims?

(2) Is it clear and indisputable that, ***jurists of reason*** could disagree with the district court's resolution of his constitutional claims or that ***jurists could conclude*** the issues presented are adequate to deserve encouragement to proceed further?

(3) Is it clear and indisputable that, the issuance of the writ is appropriate in this case because exceptional circumstances have amounted to a judicial **"usurpation of power," or a "clear abuse of discretion,"** justifying the invocation of this extraordinary remedy?

(4) Is it clear and indisputable that, it is agreeable to principles and usages of law, ***to compel the performance of a ministerial act,*** under the U.S. Sixth Circuit Appeal Court's jurisdiction ***for a de novo certificate of appealability*** of Harris' claims, in light of the facts and law presented in this action?

LIST OF PARTIES

[X] All parties appear in the caption of the cover page.

Just to be clear, The United States Sixth Circuit Appeals Court clerk is Deborah S. Hunt, and I don't know the Solicitor General of the United States personal name, but he was served by title and address, and the Richland Correctional Institution's Warden is Kenneth Black, and Petitioner Prison inmate is Isaiah S. Harris Sr.

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PETITION FOR WRIT OF MANDAMUS

Petitioner Isaiah S. Harris Sr., invokes this Court's broad and discretionary power pursuant to 28 U.S.C. §§ 2241, 2254(a), 1651(a), and Article III of the U.S. Constitution, to remand this case to the Sixth Circuit for a proper COA determination in compliance with firmly established federal statutory law and this court's holding in Buck v. Davis, 137 S. Ct. 759 at HN4,5.

OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is unpublished at USAP6 No. 17-3326, September 28, 2017 and attached at Appendix-A.

STATEMENT OF JURISDICTION

The order of the Court of Appeals denying equitable tolling to overcome 28 U.S.C. § 2244(d)(1(D), Brady-Chambers due process relief, and (COA) certificate of appealability under its duty pursuant to 28 U.S.C. § 2253(c)(1)(c)(2) was entered on September 28, 2017. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 2241, 2254(a) 1651(a), and Article III of the U.S. Constitution.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

THE FIRST AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: Right to petition the Government for a redress of grievances.

THE FIFTH AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: Nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law;

THE SIXTH AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: Shall enjoy the right to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Banks v. Dretke, 540 U.S. 668, (U.S. 2004)

Bell v. Arn, 536 F.2d 123, (6th Cir. 176)

Benge v. Johnson, 474 F.3d 236, (6th Cir.)

Bowen v. Johnston, 306 U.S. 19, (U.S. 1939)

Brady v. Maryland, 373 U.S. 83, (U.S. 1963)

Buck v. Davis, 137 S. Ct. 759, (U.S. 2017)

Buns v. Ohio, 360 U.S. 252, (U.S. 1959)

Carter v. Bell, 218 F.3d 581, (6th Cir. 2000)

Castro V. United States, 540 U.S. 374, (U.S. 2003)

Chambers v. Mississippi, 401 U.S. 284, (U.S. 1973)

Cheney v. United States Dist. Court, 542 U.S. 367, (2004)

Davis v. Lafler, 658 F.3d 525, (6th Cir. 2011)

Estes v. Texas, 381 U.S. 523, (U.S. 1965)

Ex parte Fahey, 332 U.S. 258, (U.S. 1947)

Ex parte Milligan, 71 U.S. 2, (U.S. 1866)

Giglio v. United States, 405 U.S. 150, (U.S. 1972)

Hohn v. United States, 524 U.S. 236, (U.S. 1998)

House v. Bell, 547 U.S. 518, (U.S.2006)

Imbler v. Pachtman, 424 U.S. 409, (U.S. 1976)

Johnson v. Avery, 393 U.S. 483, (U.S. 1963)

Kendall v. United States, 37 U.S. 524, (U.S. 1838)

Marbury v. Madison, 5 U.S. 137, (U.S. 1803)

Mc Quiggin v. Perkins, 569 U.S. 383, (U.S. 2013)

Norton v. Shelby County, 118 U.S. 425, (U.S. 1886)

Smith v. Cain, 565 U.S. 73, (U.S. 2012)

Strickler v. Greene, 527. U.S. 263, (U.S. 1999)

United States v. Millins, 22 F.3d 1365, (6th Cir. 1994)

United States v. Tavera, 719 F.3d 705, (6th Cir. 2013)

Wearry v. Cain, 136 S. Ct. 1002, (U.S. 2016)

Will v. United States, 389 U.S. 90, (U.S. 1967)

EXCEPTIONAL CIRCUMSTANCES THAT WARRANT THE RIGHT TO ISSUANCE OF THE WRIT IS CLEAR AND INDISPUTABLE
(Statement of the Case)

This Court's power to grant an extraordinary writ is very broad but reserved for exceptional cases in which **"appeal is clearly inadequate remedy". *See Ex parte Fahey, 332 U.S. 258, at 260 (1947)* See Appendixes I and J 28 U.S.C. §§2241 Power to grant writ and 2254 State Custody Federal Remedies.**

With due regard, not merely for the reviewing functions of this Court, but for the **"drastic and extraordinary"** nature of the mandamus remedy. ***See Ex parte Fahey, 332 U.S. 258, at 259.*** "These should be resorted to only where appeal is clearly inadequate remedy. We are unwilling to utilize them as substitutes for appeals." **Id at [*260].**

"Although courts have not confined themselves to an arbitrary and technical definition of **"jurisdiction"**, only exceptional circumstance amounting to a judicial **"usurpation of power"**, or a **"clear abuse of discretion"**, will justify the invocation of this extraordinary remedy". ***See Cheney v. United States Dist. Court, 542 U.S. 367, at HN6, HN7 (2004)***[1]

Harris' case has an extremely extraordinary criminal rule & appellate rule posture, and it is nothing more than **a direct reflection of** respondent Sixth Circuit United States of Appeals Court Clerk Deborah S. Hunt's (hereinafter Mrs. Hunt or Clerk Hunt) **actions in doing an unauthorized COA/habeas merits review, amounting to a judicial "usurpation of power", or "clear abuse of discretion".**

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[1] As the **writ of mandamus** is one of the **most potent weapons** in the judicial arsenal, **three conditions must be satisfied before it may issue. First,** the party seeking issuance of the writ must have no other adequate means to attain the relief he desires,-- a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process. **Second,** the petitioner must satisfy the burden of showing that his right to issuance of the writ is **"clear and indisputable". Third,** even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. **These hurdles, however demanding, are not insuperable.** The United States Supreme Court has issued the writ to restrain a lower court when its actions would threaten the separation of powers **by embarrassing the executive arm of the Government** or result in the intrusion by federal judiciary on a delicate area of federal-state relations.

Effectively violating Harris' rights to file a grievance against the government to get redress for his constitutional claims, under our constitutional law. This has had a negative effect on Harris' interest to have a proper review of his constitutional claims within the jurisdiction of the Federal District Court under **§2254,** because of the **unlawful use** of the Sixth Circuits jurisdiction by adopting a deliberate policy in open defiance of the federal rules in matters of **COA's 28 U.S.C. §2253(c)(1)(c)(2) federal appellate Rules. See appendix L.**

Because Clerk Hunt has **unlawfully sidestepped** the **COA** process by **first** deciding the merits of an appeal, and then **second,** justifying it's denial of **COA** based on its adjudication of the actual merits, **it is in essence deciding an appeal without jurisdiction,** and robbing Harris of his constitutionally protected rights to file grievance against the government within the Sixth Circuit and Federal District Court jurisdictions.

At the **COA** stage the **only question is** whether the applicant has shown that jurist of reason could disagree with the district court's resolution of his constitutional claims or jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. ***See Buck v. Davis, 137 S. Ct. 759, at HN4, HN5.***[2]

The exceptional circumstances that warrant the right to issuance of the writ is clear and indisputable here because, Clerk Hunt has adopted a deliberate policy in open defiance of the federal rules and has become the **judge, jury, and executioner of**

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[2] **HN4 A state prisoner** whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal. Federal law requires that he first obtain a certificate of appealability **(COA)** from a **circuit justice or judge. 28 U.S.C. §2253(c)(1).** A **COA** may issue only if the applicant has made a substantial showing of the denial of a constitutional right. **28 U.S.C. §2253(c)(2).** Until the prisoner secures a **COA,** the Court of Appeals may not rule on the merits of his case.

HN5 The **certificate of appealability (COA) inquiry** is not coextensive with a merit analysis. **At the COA Stage, the only question** is whether the applicant has shown that jurists of reason could **disagree with** the district court's resolution of his constitutional claims or that jurists could concluded the issues presented are adequate to deserve encouragement to proceed further. This threshold question should be decided **without full consideration** of the factual or legal bases adduced in support of the claims. When a court of appeals **sidesteps the COA process by first** deciding the merits of an appeal, and then **(second)** justifying it's denial of a **COA** based on its adjudication on the actual merits, **it is in essence deciding appeal without jurisdiction.**

Harris' protected constitutional rights to get redress in Federal Court.

"It is the **duty of the clerk** of a court, in the absence of instructions from the court to the contrary, to accept for filing any paper presented to him, provided such paper is not scurrilous or obscene, is properly prepared and is accompanied by the requisite filling fee". "A **court clerk acts** as the court in carrying out is instructions". ***See Burns v. Ohio, 360 U.S. 252, at HN5, HN6. (1965)***

Harris asked this Court to **compel** the United States Sixth Circuit of Appeals Court to reveal the name of the Sixth Circuit Judge or Justice in the alternative, so this Court can identify the person(s) who to direct to give a **lawful corrected COA determination** based on the laws and facts highlighted in this mandamus action, because the current order from the Sixth Circuit **violates clearly established federal law.**

With that being said, Harris maintains a writ of mandamus can be filed on anyone. "The writ of prohibition appears to have been used more than the writ of mandamus to control inferior courts mandamus could issue to **any person in respect of anything** that pertained to his office and was in the nature of a public duty." ***See 1 Halsbury's laws of England para, 81 (4th ed. 1973).***

"The legal proposition that mandamus will lie in appropriate cases to correct **willful disobedience** of the rules laid down by this Court is not controverted." ***See Will v. United States, 389 U.S. 90, at 100 (1967) (added emphasis)***

"The peremptory writ of mandamus has traditionally been used in the federal courts only to confine an inferior court to a **lawful exercise** of its prescribed jurisdiction or to compel it to **exercise its authority when it is its duty to do so..."** ***See Will v. United States, 389 U.S. 90, at HN1(1967)***

'For the overriding rule of judicial intervention must be **"first, do no harm"**. ***See Castro v. United States, 540 U.S. 375, at 386 (2003) (added emphasis)***

Harris declares, because of the willful disobedience or adoption of a deliberate policy in open defiance of the federal rules handed down by this Court, has allowed clerk Hunt to become the **judge, jury, and executioner of** Harris' protected constitutional rights to get redress in federal court pursuant to **§§ 2254(B)(i)(ii)(d)(1) and 2241(c)(3) See appendixes I & J.**

"Since the basic **purpose of the writ of habeas corpus** is to enable those **unlawfully incarcerated to obtain their freedom**, it is fundamental that **access of prisoner to the courts** for the purpose of presenting their complaints **may not** be denied or obstructed". ***See Johnson v. Avery, 393 U.S. 483, at HN1 (added emphasis) (1969).***

"The writ of **habeas corpus** is the precious safe guard of personal liberty and **there is no higher duty** than to maintain it unimpaired". ***See Bowen v. Johnston, 306 U.S. 19, at HN9 (1939) (added emphasis)***

Harris maintains that because **there is no higher duty** of this Court than to maintain the precious safe guard of habeas corpus **unimpaired,** that is all the more of a reason for why **this Court must issue this writ** because of the exceptional circumstances highlighted are clear and indisputable.

At the COA Stage, the only question is whether the applicant has shown that jurists of reason could **disagree with** the district court's resolution of his constitutional claims **or that jurists could concluded** the issues presented are adequate to deserve encouragement to proceed further in the federal district court. If it were not for **clerk Hunt's intervention** Harris was forced to proceed to the United States Supreme Court under this ***Courts Rule 10 and 20,*** instead of the normal course of appellate procedure of proceeding in the federal district court under habeas review, because her order **violated clearly establish federal law.**

On September 28, 2017. Clerk Deborah S. Hunt did an **illegal, unpublished** merits review and denied **(COA). See appendix A at 3rd page 1st paragraph.** Also contrary to the traditional ministerial role of clerks and pursuant to ***Buck v. Davis, 137 S. Ct. 759, at HN4, HN5.*** **Also see appendix L §2253 (COA).**

The Sixth Circuit used case law that is in direct opposition to United States Supreme Court precedents used in **Brady v. Maryland, 373 U.S. 83, (1963); Giglio v. United States, 405 U.S. 150,(1972); Chambers v. Miss., 410 U.S. 284,(1973); Smith v. Cain, 565 U.S. 73,(2012); Wearry v. Cain, 136 S. Ct. 1002,(2016); and Strickler v. Greene, 527 U.S. at 281-82.(1999).**

The Sixth Circuit United States Court of Appeals stated: "Although the **trial record shows** that the prosecution **did not disclose to** Harris that K.T. had previously made domestic violence allegations against him, that the police determined were unfounded, the **record also shows** that Harris' attorney acquired the information independently before trial. Consequently, the prosecution's failure to disclose the impeachment evidence was harmless". ***See Cater v. Bell, 218 F.3d 581, 601, (6th Cir. 2000)*** (Stating that there is **no Brady violation** if the information was available to defendant form another source.) **See appendix A at 3rd page 1st paragraph.**

The crux of what the **contravening "affirmative due diligence" 4th prong to the Brady analysis** used in some form or fashion by **eight out of twelve-66% United States Appeal Circuit Courts-or 38 out of 50 States,** is ***defendant's actions*** in taking advantage of the knowledge of the Brady evidence at trial. ***See Benge, 474 F.3d at 234-44; Mullins, 22 F.3d at 1371-72.*** What is **apparently distinguishable** in Harris' case is the fact the Court suppressed it in defiance of the U.S. Constitution and fundamental fairness on the record.

Harris has shown that jurists of reason could **disagree with** the district court's resolution of his constitutional claims **or that jurists could concluded** the issues presented are adequate to deserve encouragement to proceed further in the federal district court. Whether or not the **contravening "affirmative due diligence" 4th prong to the Brady analysis** is applied in Harris' case or not, what Clerk Hunt failed to analyze is **what is distinguishable in Harris case is reflected on the record that, Harris' numerous attempts to** take advantage of the knowledge of the Brady evidence at trial. Thus, Satisfying the **controversial "affirmative due diligence" 4th prong to the Brady analysis.**

Whether or not, if the **controversial "affirmative due diligence" 4th prong to the Brady analysis** is applied here or not, at the very least **jurists of reason could flatly disagree** because **(1)** Harris' numerous attempts to use the Brady evidence in open court and the suppression of the evidence is **still attributed** to the State. **(2)** The United States Supreme Court **never required or recognized** this **controversial "affirmative due diligence" 4th prong to the Brady analysis.**

So as a consequence Harris is left high & dry without any other legal recourse but **the issuing of this writ of mandamus to confine** the Sixth Circuit to a **lawful exercise** of it's prescribed jurisdiction or to compel it to exercise it's authority when it is its duty to do so.

Harris affirms the right to issuance of the writ is clear and indisputable with exceptional circumstance amounting to a judicial **"usurpation of power", or a "clear abuse of discretion",** will justify the invocation of this extraordinary remedy.

Harris was denied his **"Brady-Chambers"** right to a fundamental fair trial guaranteed by the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. Thus, Harris was denied his rights to **due process** as the record shows the trial court was put on notice, to the existence of **exculpatory Brady evidence.**

To wit: (on the record as follows) Q: you have been falsely accused by her in the past. A: Yes. Mr. Pierre: Objection. A: **Yes, I was.** The Court: Hold on a second. **I'll allow it.** Mr. Rich: I might as well put this on the record. My issue with this is, **once again I believe it was Brady material,** because we are dealing with the same parties, **in the same city,** with the **same police department,** and there are **three or four incidents** with the same people, in which it is **very clear there is impeachment evidence** with Ms. Taylor. Once again, **defense counsel has to do a public records request.** So I do have this information, **but that does not alleviate the State's burden to be providing exculpatory evidence.** And when I say **exculpatory evidence,** I mean, **it is favorable to the defense.** It is evidence that I could impeach her with that I started to get into, a degree in which I believe that the Court will allow. This is not a personal attack on Mr. Pierre. My long-standing argument is I still believe that the questions are not asked of the **individual police department** about impeachment evidence or evidence favorable to the defense. As I have been standing here right now, I'm willing to argue **I bet you Mr. Pierre doesn't have**

personal knowledge these incidents and reports exist, **but by law he is deemed to have knowledge because of the agents, the Lorain Police Department.** **Once again, I feel there is favorable information that was available that should have been provided, and it wasn't.** The Court: ***Be this as it may,*** Mr. Rich what does that have to do with the question to him? Mr. Pierre***: Am I going to have a chance to respond to his Brady argument?*** The Court: ***No, I think you will have to sit there and take it. (T.p. ID# 223-224)***[3]

In the present case the trial judge and the State's prosecutor became **vitiators.** The reason why the judge said **"No, I think you will have to sit there and take it".** Is because if the prosecutor (Mr. Pierre) would have responded on the record to the defense's **Brady argument.** All that **"acknowledged" Brady evidence** would have come out during Isaiah S. Harris Sr.'s trial in 2009 and the state **never intended** that to happen. Also, what was revealed on the record, the prosecutor **did not know** these police reports existed.

Ironically, the alleged victim had previously, come very close to being prosecuted for **fabricating an almost identical accusation** against Harris- there Ms. Taylor alleged that Harris had **broken into her residence and threaten to assault her with a knife** while she was pregnant with their third child. **And the only reason that she evaded prosecution was as a direct result of her being pregnant.** At the time of this incident she was **two months pregnant May 3, 2007,** and Harris **was not aware** she made these charges until he was pulled over by police **two months later on July 5, 2007,** which **made her four months pregnant** by the time he was arraigned on these charges. **See appendix F at pages 3,5. (2007 same lie report) See also (T.p. ID# 178-179).** Ms. Taylor testified to the age and birthdays of their three children and this report from **2007** shows she was pregnant with their third child **born January 3, 2008. See (T.p. ID# 130-131).**

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[3] This is the **single most important clue, that implicates all State officials,** by knowingly willful Deprivation of Rights Under Color of Law **pursuant to 18 U.S.C. §242. See appendix DD.** The Trial court denied Harris' right to a fair trial with a verdict worthy of confidence by **knowingly suppressing favorable evidence** for the defense in violation ***of Brady v. Maryland, 373 U.S. 83, (1963); Chambers v. Mississippi, 410 U.S. 283, at HN1, HN2, HN3, (1973) and Imbler v. Pachtman, 424 U.S. 409, at 429,441;443, (1976)***

As Harris stood convicted this time in **2008,** She took her antics a step further: By adding a **rape allegation** for a more dramatic effect. Yet, Harris was **unlawfully prevented from introducing this evidence during his trial, and also unjustly prevented from thoroughly questioning her-** so as to impeach her credibility pertaining to the specifics of this event.

To wit: (on the record as follows) {The alleged victim while under cross-examination by defense counsel} Q: Hi. Now you were asked about these incidents with Isaiah in chronological. Correct? A: Yes. Q: And would you agree with me some of the problems you had as a couple go back to **2002.** Correct? A: Yes. Q: And early on in **2002** he was accused of domestic violence by you. Correct? Mr. Pierre: Objection. The Court: I'll overrule it. Q: Correct? A: Yes. Q: **Did you tell Mr. Pierre or Det. Sivert about any of these police reports and incidents with the defendant, prior to the case that they asked about?** A: **From 2002?** Q: Right. A: **No.** Q: **You recall you were actually going to be charged in Lorain Municipal Court. Correct?** Mr. Pierre: Objection. The Court: Overruled. A: **I believe so, yeah.** Q: **For lying to the prosecutor. Correct?** A: **"I..."** Q: Let me ask you this. It would be something pretty easy to remember, correct, if you were going to be charged. Right? A: **Yes.** (Mr. Rich hands the document to Mr. Pierre) Mr. Pierre: For the record, I just want to object to the use to defendant's exhibit 1. **I have never seen it.** The state did request reciprocal discovery, and it is not something that has ever been provided in this case. The Court: Let's see what it is. We don't have a jury, so I will hopefully be able to sort it all out. Q: I'm going to show you what has been marked as defendant exhibit 1. I want you to take a look at that. Do you recognize the date on here? A: Yes. Q: **August 5, 2002.** I want you to, not read out loud, but I want you to read that statement to yourself. Mr. Pierre: I'm going to object. Is he trying to refresh her recollection? The Court: I'm waiting to see. We haven't gotten a question yet. **See (T.p. ID#178-180).**

Harris proves his case was **never investigated** in good faith, tried, or convicted **in the interest of justice.** As the prosecutor and trial **Knowingly conspires on the record** to deprive Harris of his basic constitutional right to a fundamentally fair trial.

To wit: (on the record as follows) {the alleged victim while under cross-examination by defense counsel}. Q: **So you are willing to lie if it suits your purposes?** A: Excuse me? Q: **So you are willing to lie if you feel it will benefit you?** A: **Yes.** Q: **Like you did at Lorain Municipal Court?** Mr. Pierre: **Objection!** The Court: **Sustained! See (T.p. ID# 186-187).**

In fact, the state did everything it could to **prevent Brady material** from being revealed on the record- i.e. ***The suppression of the evidence is attributed to the state as revealed on the record.*** Exculpatory evidence that the state failed to turn over to the defense in spite of its ***duty under Crim. R. 16.***

To wit: (on the record as follows) Q: Do you recall she was going to be charged for lying to the police department? A: **Yes, in 2007.** Q: And when I provided you the discovery in the case, correct? A: Yes. Q: Do you recall ever getting that from the state of Ohio, that incident? **A: No!** Mr. Pierre: **Objection!** The Court: **Sustained. Stricken.** Mr. Pierre: **Thank you.** The Court: **"Last time we cover that issue, Mr. Rich."** Mr. Rich: Thank you, Your Honor. **See (T.p. ID# 226-227).**

Harris exposed here, that he satisfied the **controversial "affirmative due diligence" 4th prong requirement to the Brady analysis,** and the threshold question at the **COA stage** that jurists of reason **could debate over in a de novo lawful exercise** of the Sixth Circuit Court jurisdiction.

Thus, as relevant to this case, **U.S.C. Fed Rules Crim. Proc. R. 16(a)(E)(i)(ii)** permits the accused to inspect tangible evidence that is material to the preparation of his defense. **See appendix Y.**

In the case at bar within the official uniform incident report marked as **appendix M. See at page 5, paragraph 1,2,3 (2008 rape police report), under narrative supplement,** it reveals the police ***initially*** responds to a **menacing complaint.** Also, it reveals Ms. Taylor **knew** of Harris' **plans to go to trial** for the **March 26, 2008 and June 30, 2008 incident.**

This **prior knowledge of Harris' plans to go to trial** calls into question **her motive** to change the **nature of the initial complaint** from a **misdemeanor menacing complaint to a first degree felony rape complaint.** This is in addition to the fact that there is **proof the door was not kicked in** as later testified to by the alleged victim on the record. Harris asserts non-harmless **Brady-Chambers due process violation** on the record of his case **is clear and indisputable.**

This Court holds: "Our system of law has always endeavored to **prevent even the probability** of unfairness..." **See Estes v. Texas, 381 U.S. 532, See HN8, and HN9 (1965) (added emphasis)**

See **appendix M (rape police report) at page 7 last paragraph. Under narrative supplement** it reveals that dispatch ran a CCH (criminal background history check) on Harris and Harris **has been arrested many** times for domestic violence but **there were not any convictions. Id.**

Domestic Violence Arrest Provisions of **R.C. 2935.03(B)(3)-(A)** City required to adopt policy in compliance with this rule. **ORC. 2935.032(A)(2)** provision requiring the peace officers, to do all of the follow: **(A)(2)(C)...(i)** conduct separate interviews with victim and the alleged offender in separate locations, **(ii)** and take a written statement from the victim that indicates the **frequency and severity** of any prior incidents of physical abuse of the victim by the alleged offender, **(iii) number of times the victim has called peace officers for assistance, (iv)** and the disposition of those calls, if known. **See appendix BB at page 3.**

Because of officer R. Hall's, Det. Buddy Sivert's, and Lt. Stack's **total failure to follow the state of Ohio's mandates in ORC. 2935.032 as required.** Now proven to be the ***origin or genesis*** of the malicious prosecution that was knowingly maintained and perpetuated by all courts officials named in this action culminating in the Sixth Circuit's **unlawful use of the COA appellate federal policy.**

See appendix E (Magistrate Judge's R&R see at page 11, paragraph 5.) In **Harris v. Clipper, 2015, U.S. Dist. LEXIS 187060** Stating: "Simply put, the evidence Harris would like to add now (and which he would have liked to present at trial) ***may or may not*** have had an impact on the trial judge's assessment of K.T.'s credibility. Issues of credibility are reserved to the finder of fact".

Also, see appendix B (Federal District rehearing at page 3, paragraphs 1,2,3 and 4). This ***opinion defies all logic*** and **Giglio, 405 U.S. at 154-55[4] (added emphasis)** When the **District Court Judge Sara Lioi** seconded the ***may or may not*** function or value of Harris' evidence, while clearly identifying it as impeachment evidence, **which are all the hallmarks to** be successful under Brady and it's progeny when she stated: **"At best the evidence that he points to now provides merely impeachment value, which is not sufficient to establish a gateway claim of innocence". Id.**

Harris maintains, the cases cited by the District Court are used **out of context** because the impeachment history and relationship between the alleged victim and defendant are always ***intrinsic***. Especially in the **context** of ***may or may not*** had an effect of the outcome of Harris' case.

"Pieces of evidence are **not to be viewed in a vacuum;** rather, they are viewed in relation to the other evidence in the case". **See Davis v. Lafler, 658 F.3d 525, at HN10 (6th Cir. 2011).**

Ms. Taylor's testimony was called into question with **very limited** cross-examination on the record. So with the **wealth of Brady** evidence **unlawfully withheld** from the record, ***(not used in this mandamus action please see index to appendixes in table of contents)*** the only way Harris' conviction could stand is in a **vacuum** detached from logic, context, and the reality that Ms. Taylor is a ***proven liar, that lied in the past and is lying now.***

This begs the **question** how can any reasonable Court feel **confident** with a verdict, or find Harris guilty of the essential elements of the crime(s), beyond a reasonable doubt, **by connecting dots,** that was said on the record, (under direct state review) it was **based solely on inferences** made from that witness's trial testimony? **See appendix H.**

(explaining that a state court's decision is **not unreasonable** if it took the controlling standard "seriously and produce[d] an answer within the range of defensible positions".) **See Davis v. Lafler, 658 F.3d 525, at 535 (6th Cir. 2011).**

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[4] "**Impeachment evidence** may be considered **"material"** for purposes of **Brady** when the **government's case depends almost entirely on a witness's testimony, without which,** there could be **no indictment** and **no evidence** to carry the case to a jury". **(added emphasis)**

Harris would like to say that the **District Court Judge Sara Lioi's** and former head prosecutor for **Lorain County, Ohio** turned **United States Magistrate judge Greg White's** Characterization, is at **best off key to existing** United States Supreme Court and Sixth Circuit Precedent when the handed down their orders in **2015 and 2017.**

"Issues concerning the admissibility of evidence are state law question and not open to challenge on collateral review **unless the fundamental fairness** of the trial has been so impugned as to **amount to denial of due process"** See **Bell v. Arn, 536 F.2d 123 (6th Cir.1976) See Brofford v. Marshall, 751 F.2d 845, at HN11 (6th Cir. 1985).**

"To prevail on his Brady claim, Wearry need not show that he 'more likely than not' would have been acquitted had the new evidence been admitted". **Smith v. Cain, 565 U.S. 73,75, 132 S. Ct. 627, 630, 181 L. Ed. 2d 571, 574 (2012) (internal quotation marks and brackets omitted).** "He **must only show** that the new evidence is sufficient to **'undermine confidence'** in the verdict. Ibid. [6] Given this legal standard, Wearry can prevail even if, as the dissent suggest, the undisclosed information ***may not*** have affected the jury's verdict". **Wearry v. Cain, 136 S. Ct. 1002, at 1006.**

Harris would like to affirm this is **analogous** with actual innocence **Schlup** requirements for first time habeas petitioners like Harris to overcome **28 U.S.C. §2244(d)(1)(D). See appendix K.**

See House v. Bell, 547 U.S. 518. At HN2,3,6, and 7.(2006)[5] **HN3** "Yet a petition supported by a convincing gateway showing raises sufficient doubt about the petitioner's guilt **to undermine confidence** in the result of the trial without the assurance that the trial was untainted by constitutional error; hence, **a review of the merits** of the constitutional claims is **justified". (added emphasis)**

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[5] **HN7** The gateway **actual-innocence standard** for habeas corpus relief **is by no means equivalent to the standard** which govern claims of insufficient evidence. When confronted with a challenge based on trial evidence, courts presume the jury resolved evidentiary disputes reasonable so long as sufficient evidence supports the verdict. Because an actual-innocence claim involves evidence the trial did not have before in, **the inquires the federal court to assess how reasonable jurors would react to the overall**, newly supplemented record. If new evidence so requires, **this may include consideration of the credibility of the witnesses presented at trial.**

See Mc Quiggin v. Perkins, 569 U.S. 383, See HN8- "No Showing of innocence required". Also See HN10,15,16,1,7, and 12.[6]

Harris maintains that it is **clear and indisputable** that jurist of reason of reason could disagree with the district court's, ***(may or may not standard analysis of his Brady evidence)*** resolution of his constitutional claims and deserves encouragement to proceed further within federal district court **under a proper de novo review of a COA** from the Sixth Circuit Court of Appeals.

Harris affirms, that whenever there is a constitutional **injury that is unreviewable by this Court,** "the Court ought to assist by **mandamus,** upon reasons of justice, as the writ express, ***and upon reasons of public policy to preserve, order and good government.*** This writ ought to be used upon ***all occasions*** where in justice and good government there ought to be one". **See Marbury v. Madison, 5 U.S. 137, at HN8 and HN9 (1803)**

REASON FOR GRANTING THE WRIT

This Court's power to grant an extraordinary writ is very broad but reserved for exceptional cases in which **"appeal is clearly inadequate remedy". *See Ex parte Fahey, 332 U.S. 258, at 260 (1947)* See Appendixes I and J 28 U.S.C. §§2241 Power to grant writ and 2254 State Custody Federal Remedies.**

With due regard, not merely for the reviewing functions of this Court, but for the **"drastic and extraordinary"** nature of the mandamus remedy. ***See Ex parte Fahey, 332 U.S. 258, at 259.*** "These should be resorted to only where appeal is clearly inadequate remedy. We are unwilling to utilize them as substitutes for appeals." **Id at [*260].**

"Although courts have not confined themselves to an arbitrary and technical definition of **"jurisdiction",** only exceptional circumstance amounting to a judicial **"usurpation of power",** or a **"clear abuse of discretion",** will justify the invocation of this extraordinary remedy". ***See Cheney v. United States Dist. Court, 542 U.S. 367, at HN6, HN7 (2004)***

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[6] **HN10** "i.e. **a first petition** for federal habeas relief, the miscarriage of justice exception **survived** the AEDPA's passage **intact and unrestricted.**

Harris' case has an extremely extraordinary criminal Rule & appellate Rule posture, and it is nothing more than **a direct reflection of** respondent Sixth Circuit United States of Appeals Court Clerk Deborah S. Hunt's **actions in doing an unauthorized COA/habeas merits review, amounting to a judicial "usurpation of power", or "clear abuse of discretion".**

Effectively **violating Harris' rights to file a grievance against the government** to get redress for his constitutional claims, under our constitutional law. This has had a negative effect on Harris' interest to have a proper review of his constitutional claims within the jurisdiction of the Federal District Court under **§2254,** because of the **unlawful use** of the Sixth Circuits jurisdiction by adopting a deliberate policy in open defiance of the federal rules in matters of **COA's 28 U.S.C. §2253(c)(1)(c)(2) federal appellate Rules.**

Because Clerk Hunt has **unlawfully sidestepped** the **COA** process by **first** deciding the merits of an appeal, and then **second,** justifying it's denial of **COA** based on its adjudication of the actual merits, **it is in essence deciding an appeal without jurisdiction,** and robbing Harris of his constitutionally protected rights to file grievance against the government within the Sixth Circuit and Federal District Courts jurisdiction's.

At the **COA stage** the **only question is** whether the applicant has shown that jurist of reason could disagree with the district court's resolution of his constitutional claims or jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. ***See Buck v. Davis, 137 S. Ct. 759, at HN4, HN5.***

The exceptional circumstances that warrant the right to issuance of the writ is clear and indisputable here because, Clerk Hunt has adopted a deliberate policy in open defiance of the federal rules and has become the **judge, jury, and executioner of Harris' protected constitutional rights to get redress in Federal Court.**

Rule 20 **(See appendix V)** of this court requires a petitioner seeking a writ of Mandamus demonstrate that **(1)** "exceptional circumstances warrant the exercise of this power", **(2)** "adequate relief cannot be obtained in any other form or from any other court, and **(3)** the writ will be in aid of the Court's appellate jurisdiction". Further, this Court's authority to grant relief is limited by **28 U.S.C. §§2254(B)(i)(ii)(d)(1) and 2241(c)(3). See appendixes I and J.** And any considerations of a first time habeas petition must be **"inform[ed]" by 28 U.S.C. §2244(d)(1)(D).**

Mr. Harris' **last hope for a lawful** first-time federal habeas review with the federal district court **lies with this court.** His case presents exceptional circumstances that **warrant** exercise of this Court's discretionary power.

This begs the question(s) where are the gatekeepers of righteousness? In essence, Harris filed a timely appeal to the Sixth Circuit, received a case number, and ***never made it to*** a judge's docket or notice, clerk Hunt ***attempted to bury*** Harris in the everyday shuffle of cases going through the court **without the slightest blip** on anyone's radar.

In a system that affords due process, where everyone has been sworn to uphold the constitution, any willful contrary act, is the exception. His case presents exceptional circumstances that **warrant** exercise of this Court's discretionary power.

I.STATEMENT OF REASON FOR NOT FILING IN THE DISTRICT COURT

As required by this Court's **Rule 20.1, 20.4, and 28 U.S.C. §§2241 and 2242.** Mr. Harris states that he has not applied to the District Court because the Sixth Circuit Court prohibited such an application. **See appendix A.** Mr. Harris exhausted his state remedies for his **Schlup** actual innocence **"gateway"** claim because either there is ***an absence of available state corrective process;*** or circumstances exist that **render such process ineffective to protect the rights of the applicant, pursuant to 28 U.S.C. §§2254(B)(i)(ii)(d)(1) and 2241(c)(3). See appendixes I and J.**

Harris affirms, ***"adequate relief cannot be obtained in any other form or from any other court."***

II. THE EXCEPTIONAL CIRCUMSTANCES OF THIS CASE WARRANT THE EXERCISE OF THIS COURT'S JURISDICTION

Because of the ***willful disobedience or adoption of a deliberate policy in open defiance of the federal rules handed down by this court,*** has allowed clerk Hunt to become the ***judge, jury, and executioner*** of Harris' protected constitutional rights to get proper redress in federal court pursuant to **§2254(B)(i)(ii)(D)(1) and 2241(c)(3).** See **appendixes I and J,** which has had **a detrimental effect** on Harris' meritorious **constitutional Brady-Chambers due process claims,** leaving **no other remedy** but **mandamus** for the right to issuance of the writ ***is clear and indisputable.***

Foremost, Harris maintains, that the **"writ will be in aid of the Court's appellate jurisdiction," (1)** because the Court has jurisdiction to review denial of application for certificates of appealability, because those denials are judicial in nature. **See Hohn v. United States, 524 U.S. 236, (1998) (cites omitted).**

Also (2) See Ex parte Milligan, 71 U.S. 2, 4 wall. 2, 110-113, 18 L. Ed. 281, (1866), Which reasoned that a petition for habeas corpus is a suit because the petitioner sees **"that remedy which the law affords him"** to recover his liberty.

(3) See Cheney v. United States Dist. Court, 542 U.S. 367, at HN6. (2004) "The common-law writ of **mandamus** against a lower court **is codified at 28 U.S.C. §1651(a):** The United States Supreme and all courts established by Act of Congress may issue all writ necessary or appropriate of their respective jurisdiction, and agreeable to the usages and principles of law".

It was well established law by the U.S. Supreme Court on ***February 22, 2017 in Buck v. Davis,137 S. Ct. 759, at HN4, HN5.*** "That when a circuit judge or justice decides an appeal on merits by sidestepping the **COA** process they are effectively deciding an appeal without jurisdiction".

So how much more so, does an ***unauthorized unpublished COA decision on the merits by a clerk,*** offends a court's jurisdiction? **"Any unconstitutional act** is null and void of law, it confers ***no*** rights, it imposes ***no*** duties, it affords ***no*** protections, it creates ***no*** office**". See Norton v. Shelby County, 118 U.S. 425, at HN1 (1886)**

Harris Highlights that in essence clerk Hunt's order denying Harris a proper **COA review is not binding like it never existed or happened,** but for the real life consequences of Harris spending more time in prison on an unconstitutional conviction **without a proper remedy** for relief. ***The right to issuance of the writ is clear and indisputable.***

Harris ask this Court, ***"does a tree in the forest make a noise when it falls, if no one is there to hear it fall"?*** Harris affirms that the illustration used here is **tantamount to** the extraordinary time we are living in today. Where clerks ***act as gods or judges,*** where the back-drop is the polarizing events of the January 6th Capital Riot and an ongoing Covid-19 Global Pandemic. Since we are **not living in a vacuum** we are all feeling the effects of these exceptionally uncertain times.

Today, someone with the ability to reason... is the exception. How many trees have fallen...? ***This term?*** How many cases have clerks ended without making a sound? Will a clerk ***rule*** on this mandamus?

This Court knows the answer to the ***"riddle of the fallen tree,"*** and will signal to the judicial world that it is ***clear and indisputable*** that a fallen tree does make a sound. A clerk's role is not judicial in but ministerial in nature.

Harris affirms, ***"adequate relief cannot be obtained in any other form or from any other court."***

Harris points out here, that one could only speculate what could be the ***motivating factor(s) for such an embarrassing break down*** in the actual and perceived integrity of the judicial process, or ***is this normal policy put in place*** for financially vulnerable, pro se, convicted minorities like Harris?

WHAT IS CLEAR AND INDISPUTABLE

- That the Sixth Circuit United States of Appeals Court's September 28, 2017 order that denied Harris **(COA) a certificate of appealability** is unauthorized by federal constitutional and statutory law, and the rules and policy handed down by this Court.

- At this point **"appeal is clearly inadequate remedy"** to address Harris' constitutional injury, because ***there is not a right to an appeal*** absent a COA from the Sixth Circuit to rectify Harris' constitutional injury. Please see Harris' procedural history in the index to the appendixes, he has ***tried to get review in every appropriate court.***

- Harris **has made** a substantial showing of the denial of a constitutional right, that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement. **De novo COA review** is warranted in the Sixth Circuit of Appeals Court of the facts and law stated in this action.

- **HN6**"The authority to issue the **writ of mandamus** to an officer of the United States, ***commanding him to perform a specific act required by law of the United States,*** is within the scope of the judicial powers of the United States, under the constitution."[7]

- **HN8** "The ***very essence*** of civil liberty certainly consists in the right of every individual ***to claim*** the protection of the laws, whenever he receives an injury. One of the ***first duties of government*** is to afford that protection".

- **HN9** "Where there is a legal right, ***there is also a legal remedy by suit or action at law,*** whenever that right is invaded".

- **HN14** "The Court ***ought to assist*** by mandamus, upon reasons of justice, as the writ expresses, and upon reasons of public policy,

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[7]**HN5** Under the constitution, **the power to issue a mandamus** to an executive officer of the United States, may be vested in the inferior court of the United States; and it is the appropriate writ, and proper to be employed, agreeably to principles and usages of law, **to compel the performance of a ministerial act,** necessary to the completion of an individual right arising under the laws of the United States. **See Kendall v. United States, 37 U.S. 524, at HN5, HN6. (1838)**

to preserve, order and good government. This ***writ ought to*** be used upon all occasions where the law has **established no specific remedy**, and where in justice and good government there ***ought to be one".***

- **HN15** "To ***render*** the mandamus ***a proper remedy,*** the officer to whom it is directed, must be to whom, on legal principles, such writ may be directed; ***and the person applying for it must be without any other specific remedy".*** [8]

- Harris affirms, the right to issuance of the writ is clear and indisputable with exceptional circumstances ***amounting to a judicial "usurpation of power," or a "clear abuse of discretion,"*** will justify the invocation of this extraordinary remedy.[9]

The exceptional circumstances that warrant the right to issuance of the writ is clear and indisputable in Harris' case. It is clear and indisputable that the ***Sixth Circuit has decided the actual merits of his constitutional claim without jurisdiction.***

In doing so has left Harris ***without any legal recourse,*** but to come to the United States Supreme Court to compel the Sixth Circuit Court of Appeals to ***issue a new proper*** certificate of appealability, without deciding the full factual or legal bases adduced in support of his claims, ***de novo,*** as presented to this Court.

Because jurists of reason ***could flatly disagree with*** the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.

Moreover, in light of **the controversial 4th prong** the Sixth Circuit applied to the Brady analysis in Harris case, has effectively ***relinquished the trial prosecutor of his absolute duty to turn over Brady impeachment evidence in the first instance in derogation of its duty of disclosure,*** contrary to U.S. Supreme Court's directive that courts are not to do so. **See Banks v. Dretke, 540 U.S. 668, at HN14. (2004) Also, see United v. Tavera, 719 F.3d 705,** As dissenting Sixth Circuit Judge Eric L. Clay pointed out in dissent (3rd paragraph)[10]

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[8] **See Marbury v. Madison, 5 U.S. 137, at HN8, HN9, HN14, and HN15. (1803)**
[9] **See Cheney v. United States Dist. Court, 542 U.S. 367, at HN6. (2004)**
[10] ***"Brady is not the only star in the constellation of cases*** that we are obliged to consider and faithfully apply. Even if ***many of the controlling cases are***

Harris emphasizes, if it pleases the Court just for argument sake, the crux of the controversial **"affirmative due diligence" 4th prong requirement to the Brady analysis,** used in some form or fashion by ***66% or 8 out of 12 United States Appeal Circuit Courts that have 38 out of 50 States under their respective jurisdictions,*** **is defendant's actions** in taking advantage of the knowledge of the Brady evidence at trial. **See Benge, 474 F.3d at 234-44; Mullins, 22 F.3d at 1371-72.**

Harris has clearly shown from the record that the prosecutor ***did not disclose the Brady evidence in the first instance*** in derogation of its duty under federal policy. And then the trial court ***flatly suppressed the Brady evidence*** on the record in defiance of Harris' ***numerous attempts*** to take advantage of said evidence in open court on the record.

Thus, satisfying the contoverisal **"affirmative due diligence" 4th prong requirement to the Brady analysis,** and threshold question at the **COA stage, (that jurists of reason could debate over...)** would be satisfied under **de novo COA review** to encourage further review in federal court, is clear and indisputable.

Furthermore, Harris does not want to lose sight of what the jurists of reason could debate over in ***federal district court***, when that court held: **See appendix E (Magistrate Judge's R&R see at page 11, paragraph 5.)** In **Harris v. Clipper, 2015, U.S. Dist. LEXIS 187060** Stating: "Simply put, the evidence Harris would like to add now (and which he would have liked to present at trial) ***may or may not*** have had an impact on the trial judge's assessment of K.T.'s credibility. Issues of credibility are reserved to the finder of fact"

Also, see appendix B (Federal District rehearing at page 3, paragraphs 1,2,3 and 4). This ***opinion defies all logic*** and **Giglio, 405 U.S. at 154-55 (added emphasis)** When the **District Court Judge Sara Lioi** seconded the ***may or may not*** function or value of Harris' evidence, while clearly identifying it as impeachment evidence, **which are all the hallmarks to** be successful under Brady and it's progeny when she stated: **"At best the evidence that he points to now provides merely impeachment value,**

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unwise or ill-conceived in light of the fairness concerns that underpin Brady, we are no less bound to adhere to them".

which is not sufficient to establish a gateway claim of innocence". Id.

Harris maintains, the cases cited by the District Court are used **out of context** because the impeachment history and relationship between the alleged victim and defendant are always ***intrinsic.*** Especially in the **context** of ***may or may not*** had an effect of the outcome of Harris' case.

Harris affirms, ***that at the very least*** jurists of reason could debate over the federal district court's resolution of his constitutional claims and warrants encouragement to proceed further.

Thus, ***de novo COA review*** is warranted in the Sixth Circuit of the facts and law stated in this action, ***upon reasons of justice, as the writ expresses, and upon reasons of public policy, to preserve, order and good government.*** This writ ought to be used upon all occasions where the law has established ***no specific remedy,*** and where ***in justice and good government*** there ought to be one".

The ***posture of Harris' case*** is nothing more than a reflection of the ***embarrassing abuse of power*** starting with the Lorain Police Department's failure to follow policy, the trial prosecutor's dereliction of duty to search for truth and justice, and trial court's clear abuse of discretion, ***upheld by clearly bizarre and illogical opinions from the district court that flies in the face of this Court's precedent,*** culminating in an unauthorized COA determination by a Sixth Circuit clerk, ***such precedent is unimaginable in any judicial jurisprudence.*** This is clearly and indisputably a case of first impression.

CONCLUSION

Harris ***prays that this Court issues the writ of mandamus*** because he has shown that it ***is appropriate, agreeable to principles and usages of law, and he has no other legal recourse.*** Harris affirms although this standard is ***demanding it is not insuperable.*** The right to issuance of the writ is clear and indisputable.

Respectful Submitted,

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