**No. 21-7246**

In The

SUPREME COURT OF THE UNITED STATES

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*In re Isaiah S. Harris Sr., Petitioner*

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PETITION FOR REHEARING

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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 Sixth Circuit Clerk Ms. Deborah S. Hunt and United States Supreme Court Case Analyst Clayton R. Higgins Jr., 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it clear and indisputable that, U.S. Sixth Circuit Appeal Court Clerk Deborah S. Hunt ***acted in ultra vires*** in her unpublished COA merits review, when she denied Harris' constitutional claims, in light of federal statutory policy? ***See §2253(c)(1)(c)(2) in comparison to Cir. R. 45. Duties of Clerk-Procedural Orders.***

***(2)*** Is it clear and indisputable that, U.S. Court of Appeals for the Sixth Circuit Clerk Ms. Hunt United States Supreme Court Case Analyst Clayton R. Higgins Jr., went beyond professional norms and violated Harris' ***1st and 14th U.S. Const. Amend?*** freedom of speech to file grievance against the government to get redress and equal protection of law?

***(3)*** Is it clear and indisputable that, the issuance of the writ is appropriate in this case because exceptional circumstances from the respondents 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 Supreme Court Case Analyst is Clayton R. Higgins Jr., and The United States Court of Appeal for the Sixth Circuit Appeals Court Clerk is Deborah S. Hunt, and will be represented by The United States Solicitor General. I don't know the Solicitor's personal name, he/she was severed by title and address. The Warden of Richland Correctional Institution is Kenneth Black, and Petitioner Prison Inmate is Isaiah S. Harris Sr.

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TABLE OF AUTHORITIES CITED

## PETITION FOR REHEARING

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 remove United States Supreme Court Case Analyst Clayton R. Higgins Jr., from Petitioner's cases, and to remand this case to the Sixth Circuit for a proper COA determination in compliance with firmly established federal statutory law pursuant to Cir. R. 45, §2253(c)(1)(c)(2), and 1st Amendment of the United States Constitution.

## 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: Congress shall make no law... abridging the freedom of speech... or the right to petition the Government for 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 witness 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.

CONSTITUTINAL AND STATUTORY PROVISIONS INVOLVED

1966 AMC 12 (U.S. 1965)

Abdirahman v. United States, 2018 U.S. Lexis 4114 (U.S. 2018)

ABF Freight System v. NLRB, 510 U.S. 317, (U.S. 1994)

Barton v. Warden, S. Ohio Corr. Facility, 786 F.3d 450, (6th Cir. 2015)

Benge v. Johnston, 474 F.3d 236, (6th Cir. 2007)

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

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

Burns 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, 410 U.S. 283, (U.S. 1973)

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

Cotton v. Clerk, 2015 U.S. Dist. LEXIS 106060 (6th Cir. 2015)

Criston v. United States, 125 S. Ct. 1112, (U.S. 2005)

Dretke v. Haley, 541 U.S. 393, (U.S. 2004)

Foster v. Texas, 179 L. Ed. 2d. 797, (U.S. 2011)

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

Gonzalez-Longoria v. United States, 2018 U.S. Lexis 3693 (U.S. 2018)

Hemphill v. New York, 2022 U.S. LEXIS 590, (U.S. 2022)

Hill v. Mitchell, 2012 U.S. Dist. Lexis 40312, (6th Cir. 2012)

Johnson v. Avery, 393 U.S. 483, (U.S. 1969)

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

Lewis v. Casey, 518 U.S. 343, (U.S. 1996)

Lewis v. Wilkinson, 307 F.3d 413, (6th Cir. 2000)

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

Mathis v. Berghuis, 90 Fed. Appx. 101, (6th Cir. 2004)

Miller-El v. Cockrell, 537 U.S. 322, (U.S. 2003)

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

Robinson v. Mills, 592 F.3d 730, (6th Cir. 2010)

Rutherford v. Columbia Gas, 575 F.3d 616, (6th Cir. 2009)

Sandlain v. United States, 2017 U.S. Dist. LEXIS 72606 (6th Cir. 2017)

Slack v. McDaniel, 529 U.S. 473, (U.S. 2000)

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

State v. Brown, 115 Ohio St. 3d 55, (Supreme Court Ohio 2007)

State ex rel Langheney v. Britt, 151 Ohio St. 3d 227, (2017)

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

Souter v. Jones, 395 F.3d 577, (6th Cir. 2005)

United States v. Ohio Power Co., 353 U.S. 98, (U.S. 1957)

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

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

Weed v. Bilbrey, 400 U.S. 982, (U.S. 1970)

Westfield Ins. Co. v. Galatis, 100 Ohio St. 3d 216, (Supreme Court Ohio 2003)

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

GROUNDS FOR INTERVENING CIRCUMSTANCES OF A SUBSTANIAL OR CONTROLLING EFFECT
(Statement of the Case)

Harris' case has an extremely extraordinary criminal rule and appellate rule posture, and it is nothing more than a direct reflection of the respondents United States Supreme Court Case Analyst Clayton R. Higgins Jr., and United States Court of Appeals for the Sixth Circuit Clerk Ms. Deborah S. Hunt's on going conspiracy to violate Harris' protected first amendment United States Constitutional rights to free speech to file grievance against the government to get proper redress. ***See Lewis v. Casey, 518 U.S. 343, at HN1, HN5 (U.S. 1996).***

The ongoing conspiracy consist of the facts the United States Supreme Court Case Analyst Clayton R. Higgins Jr.'s record of denying Petitioner Harris access to the court by holding and refusing to file and docket Harris' case, and U.S. Court of Appeals for the Sixth Circuit's clerk Ms. Hunt's illegal unpublished COA decision without the slightest indication Harris case was ever before a judge. ***See appendix A in comparison to appendix B, C, D, (published orders).***

***On September 28, 2017*** Sixth Circuit Clerk Ms. Hunt did an illegal, unpublished merits review and denied COA. ***See appendix A.*** Also, this order is contrary to the traditional ministerial role of clerks and this courts holding in ***Buck v. Davis, 137 S. Ct. 759, at HN4,5 (U.S. 2017). Also, See appendix E (§2253(c)(1)(c)(2), and appendix F (Cir. R. 45. Duties of Clerks).***

Harris wants the court to focus on ***seven points*** why this court ***must*** intervene in the interest of justice. ***(1)*** Because U.S. Case Analyst Clayton R. Higgins Jr. and Sixth Circuit Clerk Ms. Hunt have ***no*** legal authority to make any determination as to the legality or constitutionality or the merits of Harris' constitutional claims, and Harris is ***entitled*** to a lawful COA determination. ***(2)*** Case Analyst Clayton R. Higgins Jr., and Clerk Hunt has a ***clear legal duty*** to perform the ministerial function of her office to allow a circuit judge or justice to review Harris' claims for

COA. ***(3)*** Harris has a ***clear legal right*** to compel the performance of that duty. ***(4)*** Harris is without an adequate remedy in the ordinary course of law. **(5)** Because of clerk Hunt's unauthorized ***COA*** determination was made ***without*** jurisdiction and is unreviewable by any court.[1]***(6)***. In addition to, the fact the District Court ***doesn't have jurisdiction*** to issue the writ of mandamus to compel the Sixth Circuit to do anything. ***See Cotton v. Clerk, 2015 U.S. Dist. LEXIS 106060 (6th Cir. 2015). (7) See Sandlain v. United States, 2017 U.S. Dist. LEXIS 72606, at *8 and *9 (6th Cir. 2017).*** Ms. Hunt has a troubling track record of committing ***fraud by signing and denying*** pro se motions for certificate of appealability ***(COA's)*** without any indication it was ever before a judge.

Harris affirms, that the duty of the clerk is ministerial in nature in every jurisdiction in the nation as reflected in U.S. Supreme Court and Ohio Supreme Court precedents in ***Burns v. Ohio, 360 U.S. 252, at HN5, and HN6 (U.S. 1960); also see State ex rel. Langheney v. Britt, 151 Ohio St. 3d 227, at p21-24, (2017).***

> *"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 in not controverted."* ***See Will v. United States, 389 U.S. 90, at 100 (U.S. 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 (U.S. 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 (U.S. 2003) (added emphasis)***

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[1] "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". ***Marbury v. Madison, 5 U.S. 137, at HN8 and HN9 (U.S. 1803).***

DEAD-BANG-WINNING-ARGUMENT NEVER CONSIDERED BY A SIXTH CIRCUIT JUDGE OR JUSTICE BECAUSE OF CLERK HUNT'S INTERVENTION

The Sixth Circuit Clerk used case law that is in direct opposition to U.S. Supreme Court precedents used in ***Brady v. Maryland, 373 U.S. 83, (U.S. 1963); Giglio v. United States, 405 U.S. 150, (U.S. 1972); Chambers v. Miss., 410 U.S. 284, (U.S. 1973); Hemphill v. New York, 2022 U.S. LEXIS 590, at HN11, (U.S. 2022); Smith v. Cain, 565 U.S. 73, (U.S. 2012); Wearry v. Cain, 136 S. Ct. 1002, (U.S. 2016); and Strickler v. Greene, 527 U.S. at 281-82. (U.S. 1999).***

> The Sixth Circuit Clerk 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 Carter v. Bell, 218 F.3d 581, at 601. (6th Cir. 2000)** (Stating that there is **no** Brady violation if the information was available to defendant from 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 illegally applied here by a clerk without jurisdiction, and used in some form or fashion by ***8 out of 12*** U.S. Appeal Circuit Courts that have ***38 out of 50 States*** within 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.*** What is ***apparently distinguishable*** in Harris' case is the fact the Court suppressed it in defiance of Harris' numerous attempts to use the Brady evidence in open court and in defiance of the U.S. Constitution.

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 HN4,5 (U.S. 2017). See also, Miller-El v. Cockrell, 537 U.S. 322, at HN2,5,6,7,8, and 10. (U.S. 2003); Slack v. Mc. Daniel, 529 U.S. 473, at 1,6,7,8,8, and 10. (U.S. 2000)***

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 at trial and the suppression of the evidence is still attributed to the state. ***(2) The U.S. Supreme Court never required or recognized this controversial "affirmative due diligence" 4th prong to the Brady analysis.***

So as a consequence of Mr. Higgins and Ms. Hunt's intervention, 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 its prescribed jurisdiction. The U.S. Supreme Court is the ***only Court able*** to compel it to exercise its authority when it is its duty to do so.

The goal of the criminal justice system, as set forth in ***Brady*** and its progeny "is not to punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but ***when criminals' trials are fair." Brady, 373 U.S. at 87. (U.S. 1963) (emphasis added)***

> ***Barton v. Warden, S. Ohio Corr. Facility, 786 F.3d 450, at HN2,5,6, and8 (6th Cir. 2015)***
> ***HN5-*** Procedural rulings are not subject to on-the-merits Antiterrorism and Death Penalty Act of 1996 deference. ***HN6-*** The language of ***28 USCS §2254(d)*** makes it clear that this provision applies only when federal claim was adjudicated on the merits in state court. ***Barton,*** **Id. (emphasis added)**
> ***HN8-*** Although deference should be accorded to the rulings of state court, ***such deference may, in certain cases, be inappropriate.*** That is especially true where, within the habeas context, there is reason to think some other explanation of the state court's decision is more likely than an on-the-merits adjudication. ***Barton,*** **Id.**
> ***HN2-*** The appellate court reviews a district court's decision to dismiss a habeas petition de novo, ***but typically reviews any factual findings by the district court for clear error.*** However, where the district court does not itself conduct an evidentiary hearing and

relies instead exclusively on the state-court record, the appellate court reviews the district court's factual findings de novo. ***Barton,* Id. *Also, see Souter v. Jones, 395 F.3d 577, at HN1,2, and 3 (6th. Cir. 2005).***

Harris also, wants to point out again how inconsistent the opinion from the district court is in Harris' case, when one considers the doctrine of ***stare decisis*** and this Court's holdings in: ***Rutherford v. Columbia Gas, 575 F.3d 616, at HN5 (6th Cir. 2009); Mathis v. Berghuis, 90 Fed. Appx. 101, HN3,4,5,6,7, and 8 (6th Cir. 2004) and Lewis v. Wilkinson, 307 F.3d 413, HN6,8,9, and 10 (6th. Cir. 2002); Robinson v. Mills, 592 F.3d 730, at HN6,8 (6th Cir. 2010); (emphasis added)***

> ***In Rutherford,*** Although the owner appealed the district court's unfavorable ruling on the owner's claims, the appeal was premature because the district court had not yet ruled on the company's counterclaims. However, the court had jurisdiction to entertain the appeal because the company agreed to the dismissal of its counterclaims. ***The court went on to hold that the owner's claims were almost identical to the claims of another land owner in a recent suit against the same company.*** In that suit, the court also found in favor of the company. Thus, ***the claims in the instant suit were largely controlled by the court's decision in the first suit,*** finding that the removal of the trees was consistent with the terms of the easement. That the owner's trees had been planted around the time the company's predecessor obtained the last of the easements at issue was inconsequential because the court considered not only the circumstances surrounding the creation of the easement but also what was reasonable necessary and convenient to serve the purposes for which the easement was granted. ***As no Ohio court had suggested that the court misapplied Ohio law in the first case, that holding controlled here.***
>
> ***In Mathis,*** a jury found the inmate guilty of two counts of criminal sexual misconduct. Following the guilty verdict, ***the defendant discovered that the victim had filed a number of police reports prior to the one underlying his conviction.*** Two of these ***reports*** were of particular interest: they involved highly dubious—***if not patently false***—allegations that she was a victim of violent crimes including rape and armed robbery. ***The new evidence obtained by the inmate formed the heart of this dispute.*** The inmate moved for a new trial, claiming that this evidence from ***prior police reports was impeachment evidence that the prosecutor had been required to turn over to under Brady. Based on this new evidence, a judge issued a writ of habeas corpus ordering a new trial or release.*** The instant court found that had the jury been aware of this ***impeaching evidence*** there was a ***reasonable probability*** that, had the evidence been disclosed to the defense, ***the result of the proceeding would have been different***.

***In Lewis,*** petitioner was convicted of rape and was sentenced to a term of eight years. At issue was whether failure to admit specific portions of the victim's diary at trial effectively denied petitioner his ***Sixth Amendment right to confront a witness.*** Petitioner took issue with a portion of the victim's diary that read: "And I'm sick of myself for giving in to them, I'm not a nympho like all those guys think. I'm just not strong enough to say no to them. ***I'm tired of being a whore, this is where it ends."*** The instant court found that portions of this passage, ***in connection with admitted statements could reasonably be read as the victim's pursuing rape charges against petitioner as a way of taking a stand against all the men who previously took advantage of her.*** *The statements had substantial probative value as to both consent and the victim's motive in pressing charges.* The constitutional violations were significant enough to outweigh any violation of the rape shield law, whose purposes could be served by instruction of the trial court. ***The error had a substantial and injurious influence in determining the jury's verdict.***

***Lewis HN6-*** The Sixth Amendment guarantees a defendant the right to be confronted with the witnesses against him U.S. Const. Amend. VI. The right to confrontation includes the right to conduct reasonable cross-examination. Cross-examination is the principal means by which the ***believability of a witness and the truth of his testimony are tested.*** The exposure of a witness's motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. In this vein, the United States Supreme Court has distinguished between a general attack on the credibility of a witness—in which the cross-examiner intends to afford the jury a basis to ***infer*** the witness's character is such that he would be less likely than the average trustworthy citizen to be truthful in his testimony—and a more particular attack on credibility directed toward revealing possible biases, prejudices, or ulterior motive as they may relate directly to issues or personalities in the case at hand.
***Lewis HN8-*** When a trial court has limited cross-examination form which a jury could have assessed a witness's motive to testify, a reviewing court ***must*** take two additional steps: ***First,*** the reviewing court ***must*** assess whether the jury had enough information, despite the limits placed on otherwise permitted cross-examination, to assess the defense theory of improper motive, ***Second,*** if this is not the case, and there is indeed a denial or significant diminution of cross-examination that implicates the confrontation clause, the court applies a balancing test, weighing the violation against the competing interest at stake. ***Lewis HN9-*** A finding that the confrontation clause is implicated requires the court to weigh such violation against the competing interest at stake.
***Lewis HN10-*** The test for harmless error, for purposes of determining habeas corpus relief, ***is whether the error made at trial had a substantial and injurious effect or influence in determining the jury's verdict,*** rather than whether the error was harmless beyond a reasonable doubt.

***Robinson HN6-*** Considerable authority from the U.S. Supreme Court and the U.S. Court of Appeals for the Sixth Circuit indicates that a defendant suffers prejudice from the withholding of favorable impeachment evidence when the ***prosecution's case hinges on***

> ***the testimony of one witness. HN8-*** In the context of a ***Brady claim, it makes little sense to argue*** that because the defendant tried to impeach the key witness and failed, any further impeachment evidence would be useless. It is more likely that defendant may have failed to impeach the key witness because the most damning impeachment evidence in fact was withheld by the government. ***(added emphasis)***

So how much more so, ***should Harris be entitled to habeas relief,*** when this Court is duty-bound by the doctrine of ***stare decisis*** and this Court's holdings ***in Mathis and in Lewis?*** Here, in the instant case Harris has ***police reports*** and ***actual testimony from his alleged victim that goes to the heart of his conviction, that is contingent on the state's sole witness's credibility. Harris asserts, that as Ms. Taylor's credibility goes, so does the state's case against him.***

> ***See State v. Brown, 115 Ohio St. 3d 55, HN1,2 (Supreme Court Ohio 2007).*** Where the defendant was convicted of multiple offenses and sentenced. On appeal, the court found that the prosecutor's ***failure to turn over two undisclosed police reports*** were in violation of ***Brady v. Maryland***. As a critical element of the crime could not be proven without testimony from the only eyewitness to the murders. ***See also, Westfield Ins. Co. v. Galatis, 100 Ohio St. 3d 216, at HN16,17, and 18 (Supreme Court Ohio 2003)***

***On February 10, 2021*** Harris filed a writ of mandamus with this court against respondents in ***Case No. 21-7246. On April 1, 2022*** the Solicitor General of the United States failed to respond to Harris' mandamus, in which he/she defaulted pursuant to ***USCS Fed Rules Civ Proc. R. 55 Default; Default Judgment see appendix G.***

Petition for rehearing of denial of a petition was part of appellate procedure authorized by rules of the Supreme Court, subject to requirements of predecessor to Rule 44 on rehearings; right to such consideration ***was not to be deemed an empty formality*** as though such petitions would as matter of course be denied; denial of petitions should not be treated as definitive determination in Supreme Court, subject to all consequences of such an interpretation.

Occasionally, the principle in favor of the finality of judgments is outweighed by the interest of justice. In one case a taxpayer prevailed against the government in the Court of Claims and the Supreme Court denied the government's petition for certiorari and two subsequent petitions for rehearing. Nearly ***nine months after*** its initial order denying the petition for certiorari, the court vacated that order ***sua sponte*** and granted certiorari so that the case could be disposed of in accordance with the holdings of two cases that were decided by the court after its initial order denying certiorari. The Court Stated "[W]e have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules. ***See United States v. Ohio Power Co., 353 U.S. 98 (U.S. 1957) (per curaim) (untimely petition for rehearing granted).***

The "interest of justice," however, are often vague, and the case law has not yet yielded a reliable standard to divine them. In a case involving a claim for death benefits under the Longshoremen's and Harborworker's Act arising from the death of an employee in an automobile accident, the Fifth Circuit affirmed the district court's denial of benefits and the Supreme Court denied certiorari and subsequent petition for rehearing. Thereafter, the Fourth Circuit upheld an award of benefits to the survivors of another employee killed in the same accident. The Fifth Circuit then questioned the validity of its earlier holding, noting that its decision was inconsistent with Supreme Court case law. Based on these facts, the Supreme Court granted certiorari in the interests of justice and reversed the judgement. ***See 1966 AMC 12 (U.S. 1965) (untimely petition for rehearing granted).***

However, the court reached the opposite result in a case arising from the death of boaters in separate accidents in Florida waters. The survivors of each boater sought to apply federal maritime doctrines to their claims, instead of state law, which barred their recovery. Initially, the Supreme Court denied certiorari to one claimant, who had been denied recovery below. Three weeks later, the claimant in the other action petitioned for certiorari. The first claimant then petitioned for a rehearing in an effort to combine the two cases before the court. This petition was denied. When certiorari was granted in the second case, the first claimant again petitioned for a rehearing, and was again denied. Finally, when a judgment was reached in favor of the survivor in the other case, the first claimant again petitioned for a rehearing, and was again denied. ***See Weed v. Bilbrey 400 U.S. 982 (U.S. 1970) (per curaim) (untimely petition for rehearing denied).***

These cases illustrate the difficulty in applying the "interests-of-justice" standard. It would be of great assistance to practitioners if the Court, either by opinion rule, or a combination of the two were to elaborate upon the factors that are involved in the determination. ***See 23 Moore's Federal Practice- Civil §544.06***

> "The interest in finality of litigation ***must yield*** where the interest of justice would make unfair the strict application of our rules. This policy finds expression in the manner in which ***we have exercised our power over our own judgments***, both in civil and criminal cases." ***See United States v. Ohio Power Co., 353 U.S. 98,99 or HN1 (U.S. 1957)***

Harris has an unexhausted list of the latest examples where this court has exercised its power over its own judgments in the interest of justice, or intervening circumstance of a substantial or controlling effect:

- ***Abdirahman v. United States, 2018 U.S. Lexis 4114 (U.S. 2018) rehearing granted.***
- ***Gonzalez-Longoria v. United States, 2018 U.S. Lexis 3693 (U.S. 2018) rehearing granted.***
- ***Foster v. Texas, 179 L. Ed. 2d. 797, (U.S. 2011) rehearing granted.***
- ***Criston v. United States, 125 S. Ct. 1112, (U.S. 2005) rehearing granted.***

Harris affirms that ***Rule 20.4(b) see appendix H*** of this court states in relevant part: "neither the denial of the petition, without more..., is an adjudication on the merits, and therefore ***does not preclude*** further application to another court for the relief sought."

Also, Harris declares that ***Rule 44.2 see appendix I*** of this Court States in relevant part: "but its grounds shall be limited to intervening circumstances of a ***substantial or controlling effect...***"

Today, if the court is ***not*** motivated to intervene, the rule of law will suffer irreparable harm in light of the facts highlighted in this case properly before the court. Today, if the court is willing to sit down and look at ***case analyst Higgins 4-year-record and clerk Hunt's illegal unpublished order*** without any indication it was ever before a judge. It will create a de facto policy that justice is intangible and illusive for some pro se criminal defendants. That insurgent subordinate United States Circuit Court's, if ***repulsed*** by some pro se criminal defendant's

willingness to exercise their God given right to seek redress, ***and try to break free from America's caste system,*** that courts can ***despoil*** those rights and make the term "in the interest of justice" meaningless to those petitioners.

- *"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, (U.S. 1886)***

- ***See Cheney v. United States Dist. Court, 542 U.S. 367, at HN6, (U.S. 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 writs necessary or appropriate of their respective jurisdictions, and agreeable to the usages and principles of law."*

- ***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."*[2]

- ***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, 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."*[3]

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[2] ***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. (U.S. 1838)***

[3] ***See Marbury v. Madison, 5 U.S. 137, at HN8, HN9, HN14, and HN15. (U.S. 1803).***

Today, if this court is ***not*** motivated to intervene, the rule of law is susceptible to be just as intangible and illusive to some, as it was for ***black slaves*** when the United States Constitution was drafted by this County's Fore Fathers. Harris asked this court if this court is ***not*** motivated to intervene because a circuit clerk violated his protected constitutional rights, ***who*** bares the responsibility to protect his individual rights? ***Where*** can Harris go to compel the United States Sixth Circuit Court of Appeals to a lawful exercise of its proscribed jurisdiction when they have a duty to do so?

Harris wants to remind this court of a ***seemingly*** forgotten era with the truthful words of Justice Kennedy:

> "Our law must not become so caught up in procedural niceties that it fails to sort out simple instances of right from wrong and give some redress for the latter." ***See ABF Freight System v. NLRB, 510 U.S. 317, 325 (U.S. 1994)***
>
> See also ***Dretke v. Haley, 541 U.S. 393, at 399-400 (U.S. 2004)*** "The law must serve the cause of justice... perhaps some would say that Haley's innocence is a mere technicality, but that would miss the point. In a society devoted to the rule of law, the difference between violating or not violating a criminal statute cannot be shrugged aside as a minor detail."

Higgins and Hunt still are actively denying Harris access to the court, now totaling 5-years. **See appendix A through Y. See also Johnson v. Avery, 393 U.S. 483, at HN1, HN5 (U.S. 1969).** Together their actions have caused injuries actionable ***under §§ 1983, 1985, 1986, 242.***

Harris case highlights a ***very sad reality*** for financially vulnerable pro se minorities such as himself. That at every stage of his litigation starting with his first encounter with law enforcement and up until this petition for rehearing, ***if this court does not intervene,*** Harris was ***never*** afforded this country's birthright of ***due process. Harris asked, "Is this not the People's Court?" "As a people and as a government can we still believe in the rule of law?"***

## CONCLUSION

Harris prays that this Court issues the Petition for Rehearing 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.

Isaiah S. Harris Sr.

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Mansfield, Ohio 44901

Pro Se Litigant

**No. 21-7246**

In The

SUPREME COURT OF THE UNITED STATES

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*In re Isaiah S. Harris Sr., Petitioner*

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CERTIFICATION OF COUNSEL OR PARTY UNREPRESNTED

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Richland Correctional Institution
P.O. Box 8107
Mansfield, Ohio 44901

Pro se Litigant

Solicitor General of the United States,
Room 5614, Department of Justice,
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Washington, DC. 20530-0001

## CERTIFICATE OF COUNSEL OR PARTY UNREPRESENTED

I, Isaiah S. Harris Sr., do declare that to the best of petitioner's ability and understanding he has complied with all ***United States Supreme Court Rules,*** in good faith and without delay, to present ***GROUNDS FOR INTERVENING CIRCUMSTANCES OF A SUBSTANIAL OR CONTROLLING EFFECT*** of constitutional due process claims within this Petition for Rehearing, that proves this 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.

I declare under penalty of perjury that the forgoing is true and correct pursuant to ***28 U.S.C.S. §1746.***

Executed on May 2, 2022.

Respectfully Submitted,

Isaiah S. Harris Sr.

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