No. 22-6203

IN THE

SUPREME COURT OF THE UNITED STATES

Peter Gakuba — PETITIONER
(Your Name)

vs.

Rachel Dodd — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Gakuba v. Dodd, 22-1982 (USCA7) (Rule 60(b)(6) DENIED on 11/22/2022)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Peter Gakuba / pgakuba@gmail.com
(Your Name)

58 W. Biddle St., Apt. 103
(Address)

Baltimore, MD 21201
(City, State, Zip Code)

410-244-8100
(Phone Number)

Case No.

UNITED STATES SUPREME COURT

ISSUES PRESENTED FOR REVIEW

I. HABEAS 28 USC § 2254; CERT. OF APPEAL. 28 USC §2253; F.R. CIV. P. RULE 60(B)(6)

Per *Gonzalez v. Crosby*, 545 US 524, 125 S. Ct. 2641 (2005), Gakuba's F.R.Civ.P.Rule 60(b)(6) motion challenging the USDC-ND.IL, Rockford, E-Division's violation of habeas due process on "mixed" habeas petitions when it dismissed "unexhausted" claims then denied exhausted claims, was DENIED in an unsupported and wholly conclusory order.

This was objectively unreasonable, contrary to *Gonzalez*. See accord *Sparks v. Dorethy*, 2018 US APP LEXIS 32265 ** 1-3 (USCA-7)(01/09/2018)("mixed" habeas – cites *Rose v. Lundy*, 455 US 569 (1982); *Rhines v. Weber*, 544 US 369 (2005)).

First, Fifth and 14th Amendments violations.

II. HABEAS 28 USC § 2254; CERT. OF APPEAL. 28 USC §2253; F.R. CIV. P. RULE 60(B)(6); N.D. IL Local Rule 40.3(b)(1)(C)-(D)

N.D. IL Local Rule 40.3(b)(1)(C)-(D) barred USDC-ND IL Judge Frederick Kapala from presiding over Gakuba's first pro se habeas petition because USDC-ND IL Judge Kapala already was presiding over Gakuba's extant pro se civil suits. *Gakuba v. O'Brien,* 711 F.3d 751 (7th Cir. 2013); *Gakuba v. O'Brien,* 12-cv-7296 (USDC-ND IL); *Gakuba v. Karner,* 13-cv-50218 (USDC-ND IL).

Per se conflict-of-interest USDC-ND IL Judge Kapala's denial of Gakuba's first pro se habeas petition was violative of Gakuba's 14th Amendment right to be free from an irrationally biased and prejudiced federal jurist. Structural error. 5th and 14th Amendments violations.

Affirmance of this structural error meant the USCA7 was biased and prejudiced too.

LIST OF PARTIES

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

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

RELATED CASES

Gakuba v. Illinois Prisoner Review Bd., 129009 (IL S. Ct.) (cert. denied 11/03/22)

Gakuba v. Grissom, 20-7506 (US S. Ct.) (cert. denied)

Gakuba v. USA, 20-6392 (US S. Ct.) (cert. denied)

Gakuba v. O'Brien, 19-8395 (US S. Ct.) (cert. denied)

Gakuba v. Neese, 19-6543 (US S. Ct.) (cert. denied)

Gakuba v. Illinois, 18-9041 (US S. Ct.) (cert. denied)

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UNITED STATES SUPREME COURT

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UNITED STATES SUPREME COURT

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[☑] For cases from **federal courts**:

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[☑] is unpublished.

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[☑] is unpublished.

[ ] For cases from **state courts**:

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[☑] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 11/22/2022.

[☑] No petition for rehearing was timely filed in my case.

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

[ ] For cases from **state courts**:

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

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

Case No.

UNITED STATES SUPREME COURT

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution:

1st, 5th and 14th Amendments

Video Privacy Protection Act of 1988:

- 18 USC §2710(a)
- 18 USC §2710(b)(2)(C)
- 18 USC §2710(d)
- 18 USC §2710(e)

Habeas Corpus Act:

- 28 USC § 2254(d)(1)-(2)
- 28 USC § 2253

Federal Rules of Civil Procedure:

- Fed. R. Civ. P. Rule 60(b)(6)

Local Rules:

- **N.D. IL Local Rule 40.3(b)(1)(C)-(D) (per se conflict-of-interest)**

per...

** "mixed" habeas due process violations **

UNITED STATES SUPREME COURT

STATEMENT OF THE CASE

I. Background and History

A. Rule 60(b)(6) Motion – ECF 106

1. Original Proceeding

04/27/2023 Gakuba's "in custody" concludes when his parole concludes.

Habeas relief will no longer exist once Gakuba no longer is in custody.

09/18/2017 Gakuba filed his pro se handwritten habeas petition in Chicago, IL. *Gakuba v. Rains,* 17-cv-6719 (USDC-ND IL) (ECF 1).

The jurisdiction statement pleaded to adjudicate the habeas petition in Chicago versus Rockford, IL due to bias and prejudice Gakuba encountered by the federal district judge(s) and magistrate(s) in Rockford.

Over vociferous objections, Judge Blakey transferred the case to Rockford. (ECF 16)

Judge Kapala then dismissed the petition citing Gakuba's erroneous use of forms for federal prisoner habeas petitions. (ECF 20)

11/07/2017 Gakuba re-filed his pro se handwritten habeas petition using the correct forms. *Gakuba v. Neese,* 17-cv-50337 (USDC-ND IL) (ECF 1).

Gakuba cited numerous structural, plain, and clear errors of both law and fact.

Notably, as "issue 4", Gakuba was denied his 6th Amendment right to re-invoke his self-representation, 3-6 "weeks before trial" as a "delay tactic" when there was no delay at all by Gakuba.[1] (ECF 1)

11/20/2017 Judge Kapala ruled that it was a **"mixed"** habeas petition. (ECF 9)

Then, without allowing Gakuba to decide what to do next, proceeded to dismiss the "unexhausted" claims (issues 5-7) and decided the "exhausted" claims (issues 1-4).

This violated habeas due process.

See *Sparks v. Dorethy,* 2018 US App. Lexis 32265 (01/09/2018 USCA7) (cites *Rhines v. Weber*, 544 US 269 (2005)).

10/24/2018 Judge Kapala dismissed the habeas petition.

Specific to the 6th Amendment self-representation structural error, Judge Kapala cited to dicta in *Imani v. Pollard,* 825 F.3d 939, 947 (7th Cir. 2016). (ECF 38 Page 14 of 16 Page ID #2925-2926).

However, the holding of *Imani* was that the denial of self-representation "weeks before trial" is a 6th Amendment violation and structural error.

> *Imani* at 947: And in any case, Imani made his request four weeks before trial and said he would not need any extra time to prepare. *Faretta* held it was a constitutional error to deny request made "weeks before trial." Id . The judge would have been entitled to hold Imani to that assurance if he had later asked for a delay, but he could not deny Imani his Sixth Amendment right to represent himself on this basis.

In fact, the U.S. Court of Appeals – 7th Cir. (USCA7) granted habeas relief at least four (4) times just years prior to Gakuba's own pro se handwritten habeas petition.

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[1] Gakuba was pro se for some 19 months during the 9-year pretrial pendency of his case. An Illinois record.

See *Washington v. Boughton,* 884 F.3d 692, 703 (7th Cir. 2018) ("In *Imani*, *Tatum*, and a third case, *Jordan v. Hepp,* 831 F.3d 837 (7th Cir. 2016), we synthesized the principles emerging from *Faretta*[.]").

2. Appellate Proceeding—1st (*Gakuba*, 20-7506 (USCA7))

11/05/2018 Gakuba noticed his appeal per a petition for a certificate of appealability. (*Gakuba*, 17-cv-50337 (USDC-ND IL) (ECF 40-41))

08/13/2019 the USCA7 denied the petition for a C.O.A. in a wholly conclusory order that was boilerplate: "We have reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. 28 USC §2253(c)(2)." (ECF 48)

That's it. It was objectively unreasonable having deliberately disregarded the 41-page petition for a C.O.A. (and accompanying records for support as exhibits 1-4 (26-pages)).

09/03/2019 Gakuba filed his "Motion for Relief from 'Void' Judgment per Fed. R. Civ. P. Rule 60(b)(4)." (ECF 53)

01/08/2020 Judge Lee denied it in a wholly conclusory order that deliberately ignored the controlling law and substantive facts. (ECF 66)

See accord *Milke v. Ryan,* 711 F.3d 998, 1002-03, 1005, 1007-11, 1019 (9th Cir. 2013) (COA and habeas grant: Milke wrongly convicted on fabricated confession by police with history of flagrant perjury).

It was neither thoughtful, fact-based, and bereft of any reasoning other than to merely state that Gakuba's habeas petition having been denied, and a petition for a C.O.A. denied too, meant that "this case is terminated." (ECF 66)

See also *McShane v. Cate,* 636 Fed. Appx. 410, 412 (9th Cir. 2016) (**'a state court's fact-finding process is fatally undermined when the court 'has before it, yet apparently ignores, evidence that is highly probative and central to petitioner's claim.'** *Milke v. Ryan,* 711 F.3d 998, 1008 (9th Cir. 2013); see *Miller-El v. Cockrell,* 537 US 322, 346 (2003) (noting that the state court 'had before it, and apparently ignored,' testimony relevant to the correct inquiry).

01/24/2020 Gakuba noticed an appeal. (ECF 69)

02/06/2020 Judge Lee's minutes asserted that Gakuba is not entitled to habeas due process on "mixed" petitions because there is no underlying constitutional violation. (ECF 85)

Judge Lee's wholly conclusory ruling deliberately ignored the undisputed facts as clear error, which, in turn, resulted in an objectively unreasonable application of the law. *Milke*, 711 F.3d. at 1019 (9th Cir. 2013).

See also *Lee v. Kink*, 922 F.3d 772, 774-75 (7th Cir. 2019)

Lee at 775:

> "Our analysis has an additional implication: By deciding the merits without receiving the evidence that Lee sought to have considered, the state judiciary acted unreasonably. Illinois observes that *Cullen v. Pinholster* , 563 U.S. 170, 180–86, 131 S.Ct. 1388, 179 L.Ed.2d 557 (2011), holds that, when 28 U.S.C. § 2254(d)(1) requires a federal court to reject a collateral challenge, the court may not hold an evidentiary hearing and consider evidence not presented to the state judiciary. Illinois wants us to treat this as equivalent to a rule that state courts may insulate their decisions from federal review by refusing to entertain vital evidence. Yet a state court's refusal to consider evidence can render its decision unreasonable under § 2254(d)(2) even when its legal analysis satisfies § 2254(d)(1).
>
> **Section 2254(d)(2) provides that "a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding" lacks the shelter of § 2254(d) as a whole.** If the affidavits were all Lee had offered to the state judiciary, then its decision may have been a reasonable application of the law to a reasonable determination of the facts. But Lee wanted to introduce more, and the state barred the door. *Pinholster* concerns the application of § 2254(d)(1) to a state court's legal reasoning; it does not prevent a federal court from finding factual aspects of a state court's decision unreasonable under § 2254(d)(2). See 563 U.S. at 184–85 &

> n.7, 131 S.Ct. 1388. By assuming that the language of the five affidavits would have been the totality of the witnesses' testimony had they been called at trial, the state made an unreasonable factual determination under § 2254(d)(2), which permits a federal evidentiary hearing under § 2254(e)(2)."

11/25/2020 the USCA7 denied review. (ECF 95)

Once again, the language was wholly conclusory, boiler plate. Further, they threatened sanctions were Gakuba to file "further frivolous filings."

However, they cite *Alexander v. USA*, 121 F.3d 312, 315 (7th Cir. 1997) for support, which is readily distinguishable because Alexander had filed "for the third time" habeas petitions and "the current" fourth one "has had the same theme ... We have addressed and resolved this contention twice before." *Alexander* at 313.

Here, Gakuba's pro se habeas petition had two (2) structural errors; the 6th Amendment right to re-invoke self-representation 3-6 "weeks before trial" as a "delay tactic" when no record exists of Gakuba ever seeking a continuance—but asst. public defender (APD) Gustafson did on the day-of-trial which was heard and denied. Thus, assuming arguendo, a pro se trial date continuance by Gakuba would have been denied too. (ECF 1: habeas' "issue 4")

Secondly, Gakuba's 6th Amendment right to a public trial was violated as structural error as well; ASA Kate Kurtz was ordered by the trial judge to conduct direct examination of the state's key witness---Charles O'Brien (being sued by Gakuba)—"off the record, out of the well of the court." Structural error. Plainly documented by overwhelming records of support on file in this case. (ECF 1: habeas "issue 1")

3. Appellate Proceedings – 2nd (*Gakuba*, 22-1982 (USCA7))

June 2, 2022 a petition for certificate of appealability was filed of the denial of a Rule 60(b)(6) motion. November 22, 2022 it was denied with sanctions imposed. (ECF 1, 19)

UNITED STATES SUPREME COURT

REASONS FOR GRANTING THE PETITION

I. *Sparks v. Dorethy,* 2018 US App. Lexis 32265 (01/09/2018 USCA7)

05/31/2017 Sparks' petition for a certificate of appealability was docketed. *Sparks v. Dorethy,* 17-2135 (USCA7) (ECF 1).

01/09/2018 it was adjudicated.

It preceded Gakuba's own petition for a certificate of appealability filed that year.

01/09/2018 the USCA7 *sua sponte* granted the C.O.A. on the violation of Sparks' habeas due process rights on "mixed" petitions. (ECF 23)

Moreover, it flagged the habeas due process violation and sought briefing from Sparks who failed to do so. (ECF 15-21)

Nevertheless, vacatur was the just result.

All the while Gakuba's identical "mixed" habeas petition due process violation was before the USCA7—shortly after ruling on Sparks—the USCA7 deliberately ignores the very same "mixed" habeas due process violation that occurred with Gakuba, that had occurred to Sparks.

Sparks v. Dorethy, 2018 US App. LEXIS 32265 **1-3 (01/09/18) (cites *Rhines v. Weber,* 544 US 269 (2005)).

Id at **1-2: "Judge [Kapala] dismissed the unexhausted claims and proceeded to

> decide the rest. The judge did not wait for Sparks [/Gakuba] to decide whether to amend the petition so that it contained only exhausted claims. Instead, the court treated the opportunity extended by ***Rhines*** as one that can be accepted by the judge. Yet the choice belongs to the petitioner, and failing to protest the judge's decision to proceed is not an effective choice to dismiss the unexhausted claims. Giving the choice about dismissing the unexhausted claims to the judge rather than the litigant would about to overruling ***Lundy***, which ***Rhines*** did not do. Once

dismissed, claims cannot be reasserted in a later collateral attack without appellate approval for a 2nd or successive petition. Sparks [/Gakuba] had never manifested his consent to having the unexhausted claims treated that way."

And because every preceding federal district and circuit judge presiding over this case disposed of it in wholly conclusory, boiler plate terms—notably the 6th Amendment structural error of self-representation—the conclusion that there are no "underlying constitutional violations" when Judge Kapala ruled there to be (just he fabricated an opinion using fanciful and objectively unreasonable contrivances of the law), cannot be dismissed as mere error.

But calculated judicial overreach by an irrationally biased and prejudiced federal judiciary.

Gakuba v. O'Brien, 12-cv-7296 and *Gakuba v. Karner,* 12-cv-50218 (USDC-ND IL) are pending pro se civil suits which hinge on the vacatur of Gakuba's wrongful convictions.

It's a 1st Amendment retaliation violation for IL and federal police and court officers to conspire to deny Gakuba his rights under the U.S. Constitution.

And the layering of specious conclusions of law and fact—one adjudication on top of another—when Gakuba had presented detailed pleadings with records and offers of proof for support, plainly reveals IL and federal police and court officers insidiously complicit in this legal lynching.

No case exists—none—of a pro se criminal defendant being denied his right (to re-invoke no less) pro se status 3-6 "weeks before trial" as a "delay tactic" when no delay was ever sought by Gakuba, but by APD Gustafson on the trial date itself. Heard and denied.

But because the preceding presiding judges are abetting a malicious prosecution, Gakuba undoubtedly expects any subsequent federal district or circuit judge to aid in affirming these undisputed wrongful convictions.

Rule 60(b)(6) compels adherence to all Gakuba's federal and state constitutional and statutory rights.

It was not done here, necessitating Rule 60(b)(6) to correct these flagrant and egregious violations of federal constitution and statutory law.

Judicial notice must be made of the detailed prior litigation in the USCA7 and in other federal circuits by pro se Gakuba. All have been dismissed in wholly conclusory, boilerplate one to two sentence orders.

Ipse dixit.

This Rule 60(b) motion must be granted as a matter of law.

See *Spitznas v. Boone*, 464 F.3d 1213, 1215-16 *10th Cir. 2016) (under *Gonzalez v. Crosby,* 545 US 524 (2005) a 60(b) motion is truly such if it "either (1) challenges only a procedural ruling of the habeas court ... or (2) challenges a defect in the integrity of the federal habeas proceeding[.]").

See also *Arrieta v. Battaglia*, 461 F.3d 861 (7th Cir. 2006) (*Rhines v. Weber* and *Gonzalez v. Crosby*). *Gakuba*, 20-1137 (USCA7) (ECF 9: memorandum of law, *Arrieta* cited).

Arrieta at 864: Rule 60 is available to reopen previously dismissed habeas petitions per 28 USC §2254 provided relief sought does not attack resolution of claims on the merits. *Gonzalez v. Crosby*, 125 S.Ct. 2641, 2649 (2005) ("Rule 60(b) has an unquestionably valid role to play in habeas cases.").

The undisputed facts are that the 6th Amendment pro se re-invocation right by Gakuba 3-6 "weeks before trial" was structural error which the USCA7 granted habeas relief at least four times before denying the identical relief to Gakuba.

This was due to their irrational bias and prejudice.

Judge Lee's wholly conclusory claim that "mixed" habeas petition due process violations are (impliedly) harmless error if there are no underlying constitutional violations, is contrary to *Sparks* which cites *Rose v. Lundy* for support.

II. Errors of Fact and Law Mandating Reversal

A. N.D. IL Local Rule 40.3(b)(1)(C)-(D) Was Flagrantly and Egregiously Violated by Judge Kapala; Disregarded by Judge Alonso

May 27, 2022 Judge Alonso DENIED Gakuba's Rule 60(b)(6) motion in this first habeas petition case. (ECF 133)

Notable in this denial was the denial to consolidate this habeas petition with a civil case. See *Gakuba v. Maher,* 22-cv-50092 (USDC-ND IL).

> Id. at ECF 133 Page ID #10312: With respect to Gakuba's motions to have this case
>
> and Case No. 22 C 50092 decided by the same judge, **this Court's local rules direct that cases seeking habeas corpus relief should not be assigned to the same judge presiding over a civil rights case filed by the petitioner, and vice-versa.** See N.D. Ill. Local Rule 40.3(b)(1)(C)-(D); *Glaus v. Anderson*, 408 F.3d 382, 386-89 (7th Cir. 2005) (explaining the difference between cases seeking habeas corpus relief and civil rights cases).

The problem: *this* habeas petition *was* decided and denied by USDC-ND IL Judge Kapala while he *also* presided over Gakuba's "civil rights case[s]." See *Gakuba v. O'Brien,* 12-cv-7296 and *Gakuba v. Karner,* 13-cv-50337 (USDC-ND IL, W. Div.).

Therefore, Gakuba was undisputedly denied his rights under the 5th and 14th Amendments' due process and equal protection clauses.

Since 2012, Gakuba has "vociferously" and repeatedly argued that the Rockford state and federal judges were irrationally biased and prejudiced against him.

Gakuba v. O'Brien was filed in Chicago, IL for that very reason. On appeal from dismissal of that case, the USCA7 seemingly agreed. See *Gakuba v. O'Brien,* 711 F.3d 751, 753 (7th Cir. 2013) (venue is "appropriate" in either Chicago or Rockford).

Nonetheless, the case (upon remand) was wrongfully transferred *sua sponte* by USDC-ND IL Judge Castillo when Gakuba filed a substitution of judge motion against Judge Castillo.

Gakuba v. Rains, 17-cv-6719 (USDC-ND IL) was Gakuba's initial habeas petition.

It was filed in Chicago. It contained a "jurisdiction/venue" statement specifically pleading for venue to remain in Chicago due to bias and prejudice Gakuba experienced before the Rockford state and federal judges.

Judge Blakey disregarded this undisputed fact and *sua sponte* transferred the case anyway to the W. Division where it was assigned to Judge Kapala—who also presided over Gakuba's pending civil suits.

That *sua sponte* transferred habeas petition occurred over Gakuba's "vociferous" objections plainly pleading a "jurisdiction / venue" statement. See *Gakuba*, 17-cv-50337, ECF 1 Page 21 of 92 Page ID #21.

Id. at Page ID #21:

III. Jurisdiction / Venue

The USDC-ND IL, E. Div. (Chicago)

> See *Gakuba v. O'Brien,* 711 F.3d 751, 753 (7th Cir. 2013) ("we note that although the district court could have transferred the case to the western division, see 28 USC §1404(a), venue would be proper in either division, see id §1391(b)(2); *Graham v. UPS,* 519 F.Supp.2d 801, 809 (USDC-ND IL 2007) (Rockford, IL resident's Chicago venue choice was proper).
>
> Note: On remand, and in response to Gakuba's "Motion to Substitute Judge" for cause, that case's presiding Judge Castillo sua sponte ordered that case to be transferred to the W. Division—Rockford citing the mandate of the U.S. Court of Appeals—7th ("USCA7"). Wrong. A vindictive and retaliatory act by a biased

and prejudiced federal district judge who denied every single one of Gakuba's motions in that case resulting in appellate review vacating the final judgment.

Rather than ruling on the merits of the substitution of judge motion, Judge Castillo evaded doing so—in violation of the "mandate" rule—by perversely citing the mandate of the USCA7 as its basis. A mandamus writ will be filed in the future to restore justice, law and order.

Worse still, the Rockford, IL federal magistrates and judges had at the inception of this state criminal case rubber-stamped warrants and presided over grand juries (in a concomitant FBI dragnet) that plainly illegally obtained, and, illegally were in receipt of Gakuba's identity evidence. See 18 USC §§2710 (b)(2)(C), (d); *Gakuba v. Karner,* 3:13-cv-50218-FJK (USDC-ND IL, W. Div.); Gakuba's opening brief p.1 n.1.

Gakuba would object vociferously to any jurisdiction/venue change, consequently.

Gakuba complained about this per se conflict: Judge Kapala's irrational bias and prejudice in his subsequent pleading before the USCA7: "Petition for Rehearing / Hearing En Banc for Certificate of Appealability." See *Gakuba v. Neese,* 18-3398 (USCA7) (ECF 31-1 Page 37 ((21-24) of 304)).

Id. at 21-24 of 304:

IV. NEW ISSUE: Structural Error—Federal District Judge Kapala's Irrational Bias and Prejudice

A. Background

In 2012 Gakuba sued 39 Illinois state and federal law enforcement agents, officers by bringing suit in Chicago versus Rockford. (The majority of these defendants are Rockford-based.) See *Gakuba v. O'Brien,* 12-cv-7296 (USDC-ND IL); 711 F.3d. 751, 753 (7th Cir. 2013). Then USDC-ND IL Judge Castillo denied every pro se motion by Gakuba then dismissed without prejudice the 42 USC §1983 claims ignoring altogether the 18 USC §2710, §2721 claims. Judge Castillo then responded to Gakuba's pro se motion to substitute judge for cause by sua sponte transferring the case to Rockford citing the USCA7's mandate, and, over Gakuba's ad hoc objections.

In 2017 Gakuba filed his 28 USC §2254 pro se habeas in Chicago. *Gakuba v. Rains,* 17-cv-6719 (USDC-ND IL). The 60-page habeas contained a

"jurisdictional statement" that Gakuba would vociferously object to a sua sponte venue change citing to *Gakuba,* 711 F.3d at 753.

Six weeks later, the assigned Chicago judge sua sponte transferred the case to Rockford. Habeas cases being ostensibly time critical, Gakuba forwent an appeal that would have let to delay and may have proven fruitless.

Commendably, Judge Kapala found merit in short order: a couple weeks, November 2017. Briefing concluded in February 2018. *Gakuba v. Brannon,* 17-cv-50337 (USDC-ND IL). Then the wait began for a decision. Every 60-days Gakuba requested a decision, status report per Local Rule 78.5. All were ignored. Yet, in *Gakuba v. O'Brien,* status reports had been required every 90-days.

After six months of waiting yielding nothing, Gakuba's August 2018 "Motion to Lift Stay" in *Gakuba v. O'Brien* was granted. An aggressive litigation schedule was set. In a September 2018 ruling on Gakuba's August 2018 motions, Magistrate Johnston's "Report and Recommendation" ("R&R") denied Gakuba's "Motion for Equitable Relief—TRO, preliminary and permanent injunction, declaratory judgment"—then denied Gakuba's "Motion for Change of Venue from Rockford to Chicago" in the opposite order Gakuba requested in a letter to the court clerk to file first the venue change motion such that Gakuba could immediately appeal the denial. While Gakuba was denied any say in the sua sponte Chicago to Rockford transfers, Judge Kapala sua sponte ordered the defendants to respond to Gakuba's venue transfer motion. *Heck* was invoked by Magistrate Johnson to deny all equitable relief. Only Rockford federal prosecutors and a Rockford state judge (Schafer) responded. Largely, they parroted the R&R's *Heck* rubric which IL state defendants invoked in 2015 to get the case dismissed. *O'Brien,* 12-cv-7296 (USDC-ND IL) (ECF #279, ID 1476—"*Heck*" defense dismissal argument).

October 2018 Judge Kapala issued a 16-page habeas ruling that scissor pasted wholesale the state's 16-page habeas answer/response. No independent review of the state appeal's record was made, and it ignored completely Gakuba's 6th Amendment public trial right addressed by the IL App. Court and Gakuba's habeas. *Gakuba-2017* at ¶56. Habeas petition pp. 24-25. This was no mere error but calculated judicial overreach by irrationally biased and prejudiced judges.

B. Discussion

It is well established that *Heck* bars civil suits against government malfeasors and tortfeasors as proof of such in a civil suit necessarily impinges upon the integrity of the criminal conviction which the wrongly convicted challenge. Also, it is well established that magistrates serve as proxies for judges. In Rockford, there is only one magistrate answering to one judge. They do not work independently. Rather, they are interdependent. So much so that Gakuba finds that it rarely happens that magistrate and judge fail to see eye-to-eye on pending cases.

As Gakuba complained in pro se filings in August 2012 thru October 2013 in *O'Brien,* 12-cv-7296 that the magistrate's R&R invoking *Heck* foreshadowed prejudgment in the then ostensibly pending habeas petition, *Brannon,* 17-cv-50337, those fears and suspicions became reality as the habeas was denied, and, so too a certificate of appealability ("COA").

Simply stated, the totality-of-the-circumstances of both these interrelated cases reveals rank bias and prejudice. By concluding, prejudging Gakuba's guilt in Gakuba's pending civil suit—*O'Brien,* 12-cv-7296—it rendered the habeas denial and denial of a COA a mere formality. And as history played out, indeed it was. Structural error. See accord *Franklin v. McCaughtry,* 398 F.3d 955, 961 (7th Cir. 2005) (habeas grant—judge bias) (at 961: despite using "alleged" exemplifying Franklin's case for recidivism, trial judge "prejudged Franklin's case" and presumed guilt).

Here, the "alleged" is the magistrate's R&R. But because Judge Kapala knew of and approved of its findings by ordering defendants' response, it was merely the fig leaf of cover for the formality of denying habeas/COA and concurrence in all respects with the magistrate's R&R.

Gakuba finds no case law precedence of a federal judge presiding over a civil suit holding liable numerous small town government actors—the judge's hometown which he resides in retirement—then being the same judge over a federal habeas writ, which if granted, would result in substantial monetary damages (already a $52 million default judgment awaits) against many many government agents whom Judge Kapala presumptively regards highly through his working relationships as a former IL App. Court – 2nd District appellate judge (where Gakuba's direct appeal failed); and former Rockford circuit and associate judge, and preceding that, a former Rockford prosecutor. These relationships span a lifetime and were Gakuba's wrongful convictions vacated—as they should by law, 14th Amendment fabrications—then this "not from our community" aggrieved party prevailing in a malicious prosecution puts at risk the jobs and law careers of said Rockford tort- and malfeasors according to the (retired) trial judge—as advocated—when vouching for police and prosecutors. See Issue #6—habeas petition.

> **THE COURT:**"Why is everyone out to get you? **Why you as opposed to me** or anyone else on the face of earth? What's your theory that [] **Ms. Kurtz has targeted you as the one who she is willing to risk her law license and her entire career over?** I just have a hard time wrapping my head around that? And every, **why every police officer would be willing to risk their career to get you[?]"** (emphasis)
>
> July 19, 2013 pretrial hearing, pp. 57-58.[1]

[1] *Gakuba v. Neese,* 18-3398 (USCA7) (ECF 31-2 Pages: 267 (139 of 304)

> Should the USCA7 deny Gakuba justice by denying a COA then it should transparently do so in a thoughtful, fact-based, well-reasoned ruling, citing every case whereby the presiding federal district judge in a habeas writ was one-and-the-same judge presiding over a pending civil suit which wholly depended on that habeas being granted.
>
> Moreover, to remove even the slightest appearances of judge bias and prejudice, remand the case for a thorough and independent review of the state direct appeal's record consistent with *Nasby v. McDaniel,* 853 F.3d 1049, 1052 (9th Cir. 2017) with reassignment to a judge not presiding over the civil case. Circuit Rule 36. Accord *USA v. El-Bey,* 873 F.3d 1015 (7th Cir. 2017) (judge bias is structural error for no matter the degree of guilt, due process dictates fairness).

Yet, despite the self-evident per se conflict of interest and violation of local rules barring federal district judges from presiding over Gakuba's pro se civil suits (extant)--all the while determining Gakuba's pro se habeas petition (which those civil suits' standing hinged upon)—none of the preceding federal district nor circuit judges acknowledged it.

See *McShane v. Cate,* 636 Fed. Appx. 410, 412 (9th Cir. 2016) ('a state court's fact-finding process is fatally undermined when the court 'has before it, yet apparently ignores, evidence that is highly probative and central to petitioner's claim.' *Milke v. Ryan,* 711 F.3d 998, 1008 (9th Cir. 2013); see *Miller-El v. Cockrell,* 537 US 322, 346 (2003) (noting that the state court 'had before it, and apparently ignored,' testimony relevant to the correct inquiry).

Here, Judge Alonso—like all the preceding federal district and circuit judges before him—"has before [him], yet apparently ignores, evidence that is highly probative and central to [Gakuba's] claim." See *Milke*, 711 F.3d at 1008.

This deliberate ignorance of the facts has continually led now to an objectively unreasonable application of the law. Once again. 5th and 14th Amendments violations.

And, despite citing to the correct and controlling case law authorities, Judge Alonso's denial is wholly conclusory and contrary to those cited laws' mandates.

Mandates which were flagrantly and egregiously violated.

Violations which were no mere error, but calculated judicial overreach by irrationally biased and prejudiced state and federal trial and appeals court judges. 5th and 14th Amendments violations. Structural error.

Consequently, as a matter of law, having malfunctional preceding courts cite the correct laws, misstate the facts—when they're not deliberately ignoring them—to then deny justice in wholly conclusory legal conclusions which are contrary to the controlling laws' mandates', is truly "extraordinary."

B. Structural Error—Irrationally Biased and Prejudiced Federal Judges; Deliberate Ignorance of the Facts—Objectively Unreasonable, Contrary Applications of the Law

Were Judge Alonso, or any other federal judge, to continually deny Gakuba justice in objectively unreasonable assessments of facts and applications of laws—or contrarily so—then they should cite to other cases in the USDC-ND IL whereby a federal district judge presiding over extant pro se civil suits by a pro se wrongfully convicted person, had also ruled on that pro se person's habeas petition too? A "mixed" habeas petition at that.

Note: subsequent to Judge Alonso's denial, Rockford, IL Judge Kapala's successor (former Magistrate) Judge Johnston and semi-retired Judge Reinhard had both recused themselves from Gakuba's 2022 pro se civil suits and this Rule 60(b) motion when it was transferred from Chicago back to Rockford; hence, how it came before Judge Alonso for disposition.

FRE 201: see *Gakuba v. Maher,* 22-cv-50092 (USDC-ND IL) (ECF 22) (Judge Johnston's recusal)

FRE 201: see *Gakuba v. Neese,* 17-cv-50337 (USDC-ND IL) (ECF 129) (Judge Reinhard's recusal)

Consequently, Judge Alonso's denial's citation relies on dictum. See ECF 133 Page 2 of 3 Page ID #10311, ¶4.

Id. at Page ID #10311, ¶4: "Relief under Rule 60(b)(6) requires a showing of

> 'extraordinary circumstances' justifying the reopening of a final judgment and '[s]uch circumstances will rarely occur in the habeas context.'" *Arrieta v. Battaglia,* 461 F.3d 861, 865 (7th Cir. 2006).

It deliberately ignores the cited decisions' *gravitas.*

Gravitas cited by Gakuba in his Rule 60(b) motion. See ECF 107 Page 9 of 14 Page ID #3552, ¶¶60-61.

Id. at ¶¶60-61:

> ¶60. See also *Arrieta v. Battaglia,* 461 F.3d 861 (7th Cir. 2006) (*Rhines v. Weber* and *Gonzalez v. Crosby*). *Gakuba,* 20-1137 (USCA7) (ECF 9: memorandum of law, *Arrieta* cited).
>
> ¶61. *Arrieta* at 864: **Rule 60 is available to reopen previously dismissed habeas petitions per 28 USC §2254 provided relief sought does not attack resolution of claims on the merits.** *Gonzalez v. Crosby,* 125 S.Ct. 2641, 2649 (2005) ("Rule 60(b) has an unquestionably valid role to play in habeas cases.").

And be it Rule 60(b)(6) or, more generally, any of the other subsections of this controlling authority, Gakuba's pro se pleading is to be liberally construed.

Gakuba raised his 5th and 14th Amendments violations to be free from an irrationally biased and prejudiced federal district judge repeatedly. Rockford federal district judges.

First, in his "jurisdiction/venue" statement of the original petition. See supra ¶12.

Then, in his appeal's pleading: "Petition for Rehearing / Hearing En Banc for Certificate of Appealability." See *Gakuba v. Neese,* 18-3398 (USCA7) (ECF 31-1 Page 37 ((21-24) of 304)). See supra ¶13.

Now, undisputedly, the Rockford federal district judges implicitly concede their bias and prejudice (at a minimum per se conflict) pursuant to "local rules [which] direct that cases seeking habeas corpus relief should not be assigned to the same judge presiding over a civil rights case filed by the petitioner, and vice-versa. *See* N.D. Ill. Local Rule 40.3(b)(1)(C)-(D); *Glaus v. Anderson*, 408 F.3d 382, 386-89 (7th Cir. 2005) (explaining the difference between cases seeking habeas corpus relief and civil rights cases)."

III. Conclusion

In conclusion, all Gakuba's state and federal statutory and constitutional rights were violated throughout this malicious prosecution. Structural, plain, and clear errors. 28 USC §2254(d)(1)-(2).

Structural error by USDC-ND IL Judge Kapala when he wrongly and unlawfully decided Gakuba's habeas while he presided over Gakuba's extant pro se civil suits—in violation of local rules.

Judge Kapala was undisputedly biased and prejudiced as the plain record reveals he upheld another structural error: Gakuba's 6th Amendment violation to proceed pro se 3-6 "weeks before trial" as a "delay tactic"; a baseless allegation rebutted by the undisputed record that the only "delay" ever sought was the asst. public defender's day-of-trial continuance motion which was heard and denied. Thus, so too would have been pro se Gakuba's.[2]

[2] Note: Gakuba re-invoked pro se status after seeking the county public defender's office to aid in witness subpoena issuances; which they flatly refused. Worse still, at the 1-day jury trial for witness testimony, they called no defense witnesses of their own. 6th Amendment ineffective assistance of counsel violation.

The affirmance of these structural, plain, and clear errors by the USCA7 when, in identical habeas cases, they reversed—is no mere error, but, calculated judicial overreach by an irrationally biased and prejudiced federal circuit court.

As the 2020 elections in America revealed, false conclusions about election fraud, without any basis in fact, is flatly wrong.

See *Trump v. Sec'y Pennsylvania,* No. 20-3371 (3d Cir. Nov. 27, 2020)

Id. at *2: Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. **But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.**

See AP News, *"In blistering ruling, judge throws out Trump suit in Pa."* (visited 05/28/22 as with all cited sites in this pleading) https://apnews.com/article/judge-throws-out-trump-suit-pennsylvania-87eaf4df86d5f6ccc343c3385c9ba86c

This case illustrates when federal judges' rulings are say-so denials without "specific[s]"; and worse, contrary to the overwhelming undisputed facts plainly found in the voluminous records in this case.

Judge Alonso's denial fails to specify how Gakuba's flagrant and egregious due process rights' and equal protection rights' by irrationally biased and prejudiced preceding federal district and circuit judges who deliberately ignored the undisputed facts plainly contained in the record, does not constitute the very "extraordinary" circumstance that 5th and 14th Amendments' mandates to fair, impartial judges applying with equal protection the rights of Gakuba under numerous state and federal statutory and constitutional law? Is not "extraordinary"? Given that it is flagrant and egregious structural errors? Gakuba has diligently—and timely—petitioned and argued for 10+ years now?

WHEREFORE, Gakuba's right to be free from biased and prejudiced federal district and circuit judges who have recklessly disregarded all his rights—under Rule 60(b) the right to habeas due process on "mixed" habeas petitions by federal district Judge Kapala whose undisputed per se conflict violated local rules—mandates that this original, first-in-time pro se habeas petition denial be reversed; and the merits decided by an objectively reasonable federal district judge. Thus, far, denied to Gakuba. See accord *USA v. El-Bey,* 873 F.3d 1015 (7th Cir. 2017) (judge's bias is structural error for no matter the degree of guilt, due process dictates fairness).

The Rule 60(b)(6) motion should have been granted as a matter of law.

This petition for writ of certiorari should be granted.

Executed on: November 24, 2022

Respectfully Submitted,

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