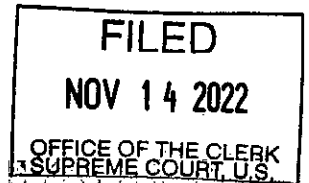


22-6213

No. \_\_\_\_\_

No. 22-5925



ORIGINAL

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**IN THE SUPREME COURT OF THE UNITED STATES**

In re: Mark Stinson,

Petitioner,

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**On Petition for an Extraordinary Writ of Mandamus  
to the United States Court of Appeals  
for the Sixth Circuit**

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**PETITION FOR EXTRAORDINARY  
WRIT OF MANDAMUS**

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## **QUESTIONS PRESENTED**

1. Did the U.S. Court of Appeals for the Sixth Circuit ("Sixth Circuit") err by denying Mark Stinson ("Mr. Stinson") due process proceeding in the Six Circuit Court of Appeals by not assigning a panel to his case and severely harming the interest of Mr. Stinson and justice?
2. Did the Sixth Circuit err by violating 6 Cir. 12(c)(3) the rights to counsel?

## **PARTIES TO THE PROCEEDING**

1. The Supreme Court of the United States.
2. The Sixth Circuit Executive Staff.
3. **Naya Bedini** DOJ-USAO *LEAD ATTORNEY*
4. **2255 AUSA**, U.S. ATTORNEY'S OFFICE – Memphis, TN

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 29.6, Mr. Stinson states that no parties are corporations.

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## **OPINIONS AND ORDERS ENTERED**

On October 21, 2022, this matter was appealed from the Western District Court of Tennessee and filed with the Six Circuit on 10/31/2022. At this point in time this case has **NOT** been assigned to a panel.

## **JURISDICTION**

The Sixth Circuit denied Mr. Stinson due process by not assigning a panel to this matter.

## **RELEVANT LEGAL PROVISIONS**

- I. **Due Process Clause of the Fourteenth Amendment:** “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 to any person within its jurisdiction the equal protection of the laws.
- II. **II. Due Process Clause of the Fifth Amendment:** “...nor be deprived of life, liberty, or property, without due process of law....”
- III. **III. Sixth Amendment to the Constitution:** “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor.
- IV. **V. Habeas Corpus and Section 2255 Proceedings, 6 Cir. I.O.P.22(c),** the clerk will appoint counsel if the applicant is indigent. The petitioner is indigent.

## **RULE 20.1 STATEMENT**

There exist truly exceptional circumstances that mandate the issuance of the writ sought by Mr. Stinson in this matter. As set forth in detail below, Mr. Stinson was denied assignment of panel in the Sixth Circuit. This is fundamentally wrong on two levels—first, it violates Mr. Stinson’s sacrosanct due process rights as guaranteed to him under the Fourteenth and Fifth Amendments to the Constitution, and second, even more importantly it violates his right to counsel as guaranteed under the Sixth Amendment to the Constitution.

This is, of course, highly improper, as it runs counter to the sole function of the court system, which is to provide a non-biased and fair resolution to everyone, regardless of political affiliation and ideological belief, based solely on the facts at issue and the relevant law. The result of this politicization is the those who happen to be conservatives are frequently discriminated against, that is “left out in the cold” by today’s frequently dysfunctional legal system.

Mandamus is extraordinary remedy, which is available only when 3 elements, are present; (1) clear right in plaintiff to relief sought; (2) plainly defined and peremptory duty on part of defendant to do act in question; and (3) no other available adequate remedy. Campbell v. Tennessee Valley Authority, 613 F. Supp. 611, 38 Empl. Prac. Dec. (CCH) ¶35765, 38 Fair Empl. Cas. (BNA) 779 (E.D.Tenn. 1985); NAACP v. Levi, 418 F. Supp. 1109 (D.D.C. 1976).

Lastly, Mr. Stinson is left without any adequate relief from any other court, as the Sixth Circuit has not assigned a panel, and **NOT** allowed him to choose his counsel, that its decision to delay or deny his appeal process. Thus, this Petition is Mr. Stinson’s only avenue for relief.

## STATEMENT OF THE CASE

I. Background Facts

Mr. Stinson has appealed the decision of the Western District Court of Tennessee denial of the 59(c) and 60(b)(1), (2), (3), (6), and has not allowed him to choose his attorney for representation on this matter.

II. Facts Pertaining to the Western District Court of Tennessee Disciplinary Proceeding.

The Petitioner has requested that Judge John T. Fowlkes, Jr. recuse himself, mostly, because the petitioner has a civil suit filed against Judge Fowlkes, Jr. (No. 2:22-CV-2694-SHM), and several §2255 motions have been filed to include this one none with success.

**REASONS FOR GRANTING THE WRIT**

**I. This Case Involves Mr. Stinson's Constitutional Due Process Rights**

The Sixth Circuit has within this fundamental right which is engrained in the Due Process Clause of the Fifth Amendments which state that no person shall be deprived of life, liberty, or property without due process of the law.

The Sixth Circuit, in denying Mr. Stinson his right to appeal before the Sixth Circuit, has clearly deprived Mr. Stinson of a fundamental liberty without due process. This is only amplified by the Sixth Circuit denying Mr. Stinson any right of appeal or review of the District Court's denial, thereby depriving him of any adequate remedy at law. To make matters worse,

at law. To make matters worse,

Pursuant to 28 U.S.C. §1361, action to compel an officer of the U.S. to perform his duty, which is a positive command and so plainly prescribed as to be free from doubt. The claim must be clear and certain and the duty of the officer ministerial.

Smith v. Grimm, 534 F.2d 1346 (9<sup>th</sup> Cir. 1976), app. after remand, 555 F.2d 234 (9<sup>th</sup> Cir. 1977); Tagupa v. East-West Center, Inc., 642 F.2d 1127 (9<sup>th</sup> Cir. 1980).

## **II. The Sixth Circuit's Decision Invokes the Constitutional Right to Counsel**

It is easy to see why the Sixth Circuit's decision is problematic. Mr. Stinson's right to counsel under **6 Cir. R. 12** Counsel's Representation in Criminal Cases should not be violated on this appeal. It is fundamentally ingrained in the Sixth Amendment to the Constitution that a criminal defendant is guaranteed the right to counsel of choice, including pro hac vice counsel. See Powell v. Ala., 287 U.S. 45, 53 (U.S. 1932) ("It is hardly necessary to say that the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice."). This fundamental principle is so strong that the California Supreme Court has recognized this right in civil cases.

"Ultimately, disqualification motions involve a conflict between the client's right to counsel of their choice...." City and County of San Francisco v. Cobra Solutions

Inc., 38 Cal. 4<sup>th</sup> 839, 846 (Cal. 2006); See also Khani v. Ford Motor Co., 215



Cal.App.4<sup>th</sup> 916, 920 (Cal. App. 2d Dist. 2013). Federal courts have also adopted this fundamental principle. “The substantial relationship test balances the new client’s right to counsel of choice and the former client’s right to confidentiality.” N.L.A. v. Cty. of L.A., 2016 U.S. Dist. LEXIS 134953, at \*6 (C.D. Cal. Sep. 29, 2016).

There is absolutely no prejudice that would result from the Court simply granting Mr. Stinson’s Writ.

However, “supervisory control of the District Courts \* \* \* is necessary to proper judicial administration” and the “All Writs Act confers on the Courts of Appeals the discretionary power to issue writs of mandamus \* \* La Buy v. Howes Leather Co., 1956, 352 U.S. 249, 259-260, 77 S.Ct. 309, 315, 1 L.Ed.2d 290, 299.

A reference to a Master, of course, is to be judged by F.R.Civ.P. 53 (b), 28 U.S.C.A., and the principles embodied in that declaration. “A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.” Mere error, however, in the application of these standards would not justify the intervention of mandamus. For the “All Writs Act is meant to be used only in the exceptional case where there is clear abuse of discretion or ‘usurpation of judicial power’” and “\* \* \* should be resorted to only in extreme cases” where the reference to a Master is “so palpably improper” that “the rules have been practically nullified.” La Buy v. Howes Leather Co., 1956, 352 U.S. 249, 256-258, 77 S.Ct. 309, 314, 1 L.Ed.2d 290, 297, 298.

In assaying an application for mandamus, we must first determine whether there was an error and if so, whether in context it had those qualities the law characterizes as an

abuse of discretion. The starting point is then the rule allowing reference in jury trials "only when the issues are complicated."


This is a clear showing of an abuse of discretion. See e. g., American Monorail Co. v. Parks-Cramer Co., 4 Cir., 1957, 245 F.2d 739; In re Turpentine & Rosin Factors, 5 Cir., 1956, 238 F.2d 458; Ex parte \*773Pharma-Craft Corp., 5 Cir., 3956, 236 F.2d 911; In re First National Bank of Montgomery, 5 Cir., 1956, 233 F.2d 876; Ex parte Chas. Pfizer & Co., 5 Cir., 1955, 225 F.2d 720.

. See Beacon Theatres, Inc. v. Westover, 1959, 359 U.S. 560, 79 S.Ct. 948, 3 L.Ed.2d 988.

### CONCLUSION

Based on the foregoing, the Court should grant Mr. Stinson's Petition for Extraordinary Writ of Mandamus, due to fundamental due process and equal protection constitutional rights, as well as the Sixth Amendment constitutional right to counsel for his case 6 Cir. R. 12(c)(3). As with the media and the body politic of this nation in today's world, the politicization of the Courts, including the Sixth Circuit, regrettably, is highly improper and dangerous. This flies in the face of the sole purpose of the legal system—to provide a non-biased and fair resolution to everyone, regardless of political affiliation or ideological belief, based solely on the facts at issue and the relevant law.

Respectfully Submitted,



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November 29, 2022,