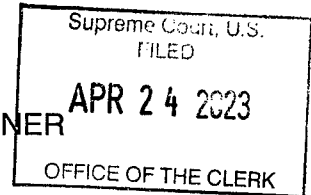


No. 22-7414

IN THE
SUPREME COURT OF THE UNITED STATES

John Henry Moore — PETITIONER
(Your Name)



United States Court^{vs.}
of Appeals for Fourth Cir. RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John Henry Moore Jr. #059480
(Your Name)

P.O. Box 34429
(Address)

Charlotte, N.C. 28234
(City, State, Zip Code)

704-333-8440
(Phone Number)

QUESTIONS PRESENTED

Whether the Fourth Circuit Court of Appeals erred when it denied my Pro Se Motion to Stay District Court Proceedings, Petition for Writ of Mandamus and Petition for Rehearing and Rehearing En Banc, directing a District Court Judge to Recuse himself from presiding over the proceedings, in my case, including pretrial, trial, appellate review, or other stages of litigation, where he has personal knowledge of disputed evidentiary facts concerning the proceeding, and where he was a advocate for the government who prosecuted a case against me in 1989.

LIST OF PARTIES

District Court Judge Hon. Robert J. Conrad, Jr. and United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix I to the petition and is repeated at, in re Moore, 955 F.3d 384 (4th Cir. 2020)

JURISDICTION

The opinion of the United States court of appeals appears at Appendix N to the petition and is reported at, *In re Moore*, 2022 U.S. App. LEXIS 34840 (4th Cir. 2022)

The opinion of the United States court of appeals appears at Appendix P to the petition and is reported at, *In re Moore*, 2023 U.S. App. LEXIS 1819 (4th Cir. 2023)

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on December 15, 2022. An order denying a petition for rehearing was entered January 24, 2023, and a copy of that order is attached as Appendix P to this petition. Jurisdiction is conferred by 28 U.S.C. 1254.

Table of Contents

QUESTION PRESENTED
..
..
..
LIST OF PARTIES AND RELATED CASES

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

OPINIONS BELOW

JURISDICTION

CONSTITUTIONAL AND STATUTORY PROVISIONS

INVOLVED

STATEMENT OF THE CASE

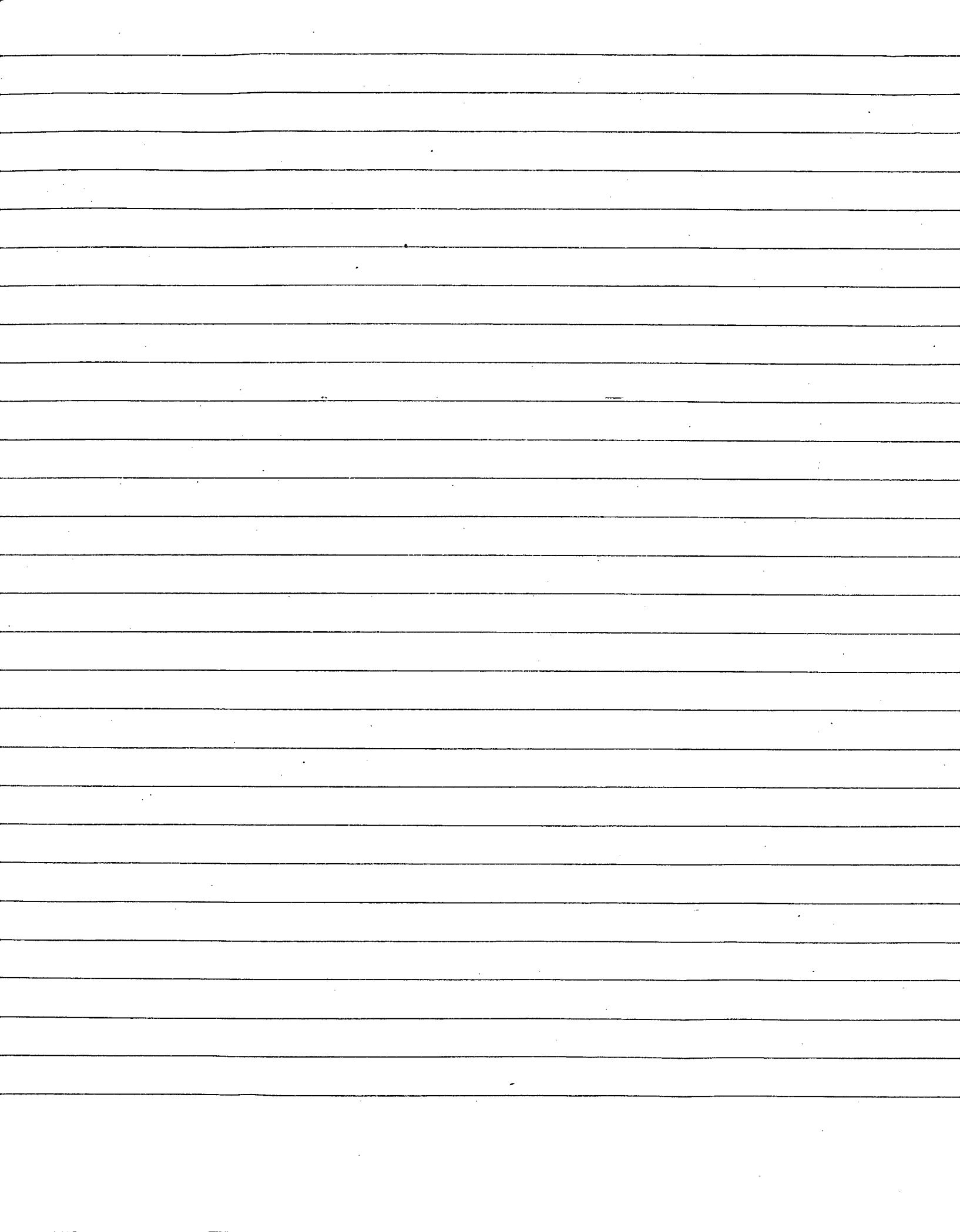
REASONS FOR GRANTING THE PETITION

789

CONCLUSION

9,10

11



INDEX TO APPENDICES

APPENDIX A	Indictment
APPENDIX B	Three strikes Notice
APPENDIX C	Docket of 1989 case
APPENDIX D	1st Recusal Motion thru Counsel
APPENDIX E	Transcript of Status Confer. Hearing
APPENDIX F	1st Emergency Motion to Stay
APPENDIX G	1st Petition For Writ of Mandamus
APPENDIX H	Motion to Stay Granted
APPENDIX I	4 th Cir CA denies petition
APPENDIX J	2nd Petition For Writ of Mandamus
APPENDIX K	Pretrial Conference Transcript
APPENDIX L	2nd Emergency Motion to Stay
APPENDIX M	2nd Petition For Writ of Mandamus

APPENDIX P

Order denying rehearing en banc

APPENDIX O

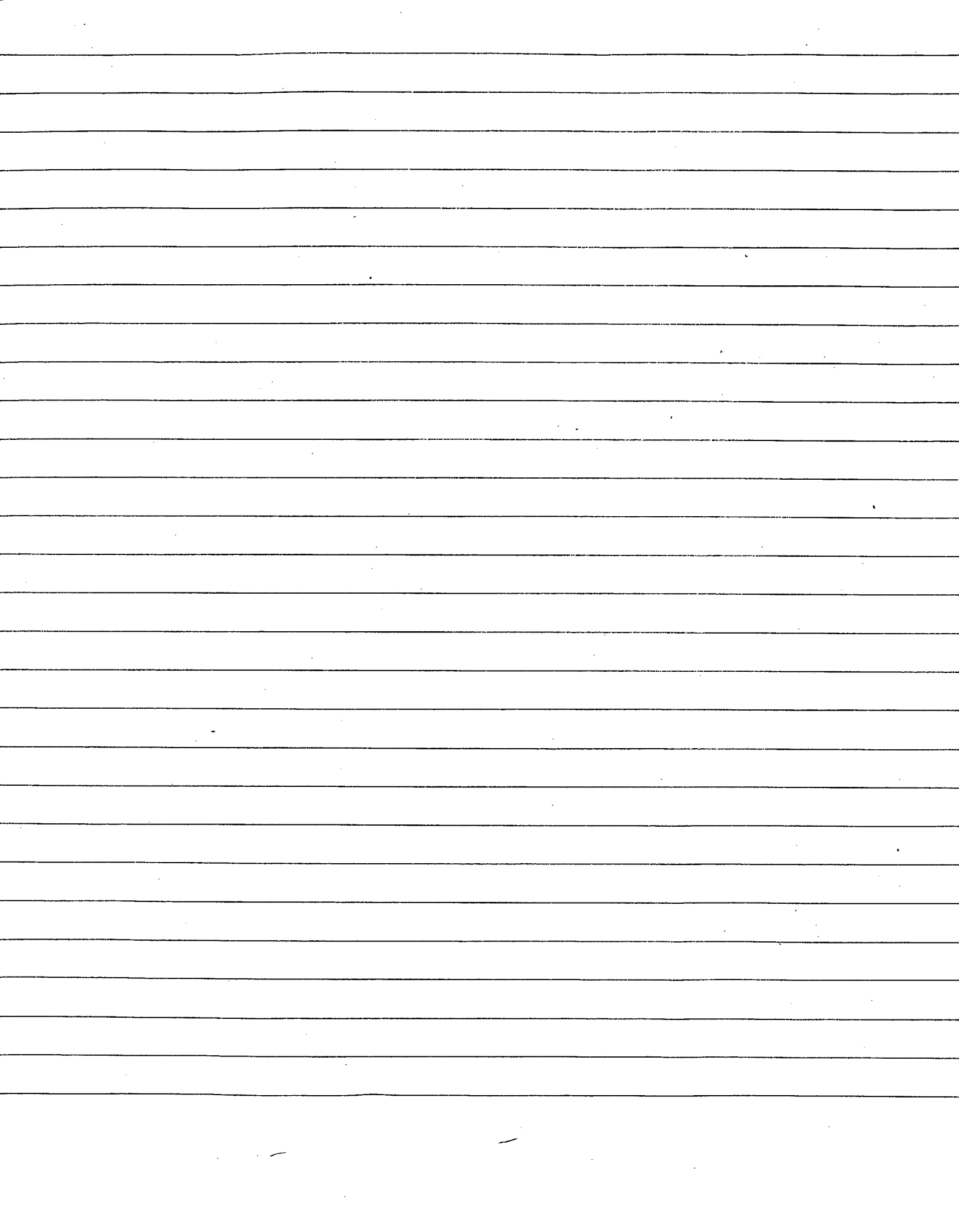
Petition for rehearing en banc

APPENDIX N

2nd Petition Denied

TABLE OF AUTHORITIES CITED

United States v. Moore 3:89-CR-91	
In re School Asbestos Litigation, 977 F.2d 794, 770 (3d Cir. 1992)	6, 8
In re Aetna Cas. and Sur. Co., 919 F.2d 1136, 1146 (6th Cir. 1990)	6
In re Bulger, 710 F.3d 42, 49 (1st Cir. 2013)	6
Nichols v. Alley, 71 F.3d 347, 350-52 (10th Cir. 2015)	6
Matter of Hatcher, 150 F.3d 631, 637-38 (7th Cir. 1998)	6
In re Al-Nashiri, 921 F.3d 224, 234-41 (D.C. Cir. 2019)	6
Williams v. Pennsylvania, 136 S.Ct 1899, 1905, 1907 (2016)	6, 7
United States v. Feldman, 983 F.2d 144 (9th Cir 1992)	7
Corbett v. Norton, 334 F.3d 1128, 1129 (D.C. Cir. 2003)	8
In re Beard, 811 F.2d 818, 827 (4th Cir 1987)	9
Cheney v. U.S. Dist. Court for Dist. of Columbia, 542 U.S. 367, 380 (2004).	9
In re Moore, 955 F.3d 384 (4th Cir. 2020)	ii
In re Moore, 2022 U.S. App. LEXIS 34840 (4th Cir. 2022)	iii
In re Moore, 2023 U.S. App. LEXIS 1819 4th Cir. 2023	iii



STATUTES AND RULES

Fifth Amendment

Due Process Clause

18 U.S.C. 1951

18 U.S.C. 924(c)(1)(A)(ii)

18 U.S.C. 922(g)

21 U.S.C. 851

18 U.S.C. 3559(c)(4)

18 U.S.C. 3559(c)(3)(A)

28 U.S.C. 455(b)(1)

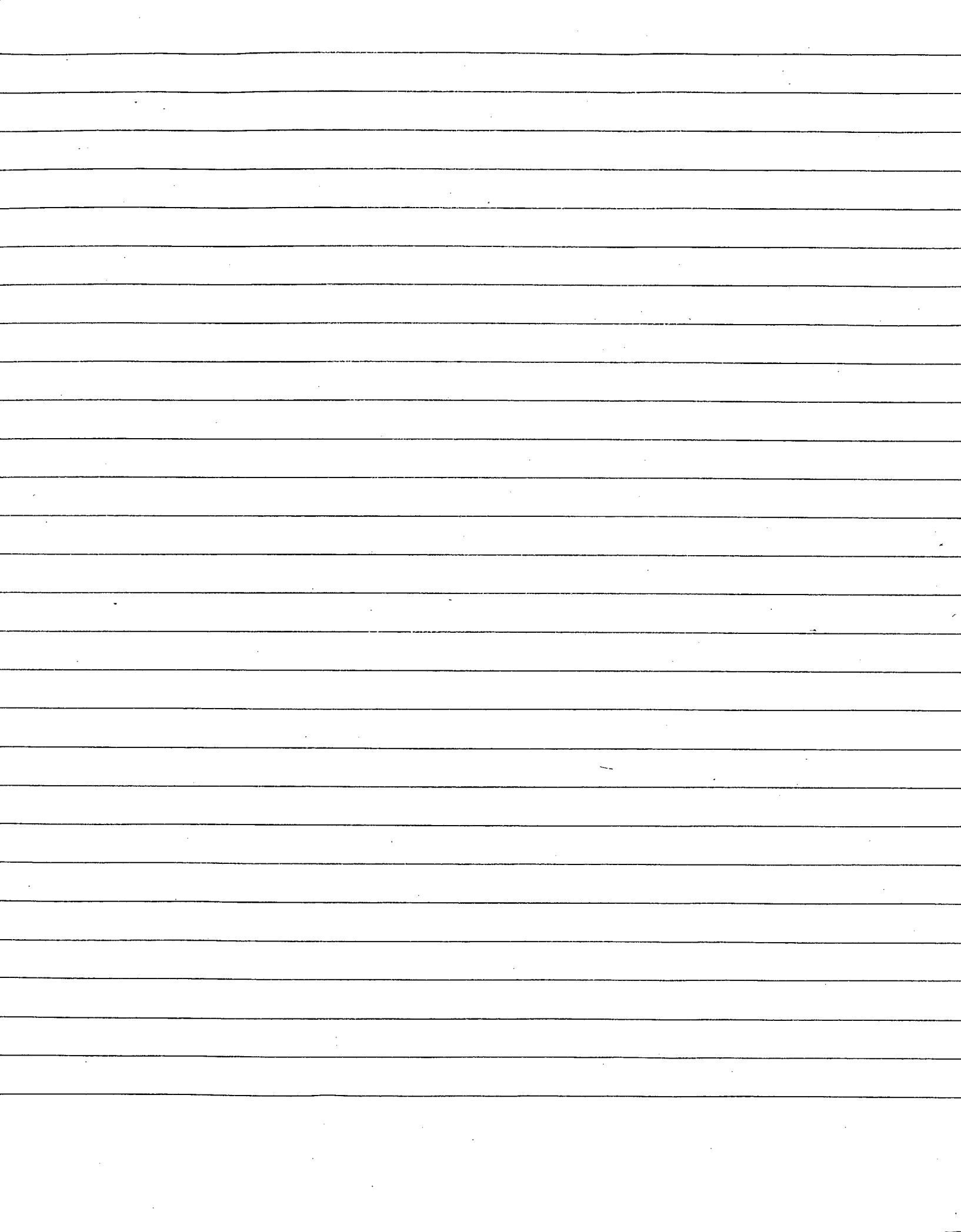
28 U.S.C. 455(b)(3)

28 U.S.C. 455(d)(1)

28 U.S.C. 455

28 U.S.C. 1651

28 U.S.C. 1254



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendments V to the United States Constitution, which provides and Due Process;

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; 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; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

The Petitioner myself allege that on March 20, 2019 I was arraigned on a four-count Bill of Indictment, charging me with two counts of Hobbs Act Robbery pursuant to 18 U.S.C. 1951 (Counts One and Three); one count of brandishing a firearm during a crime of violence pursuant to 18 U.S.C. 924(c)(1)(X)(A)(ii) (Count Two); and one count of possession of a firearm by a convicted felon pursuant to 18 U.S.C. 922(g) (Count Four). A copy is attached as Appendix A to this petition.

On July 30, 2019, the government filed an information pursuant to Title 21 U.S.C. 851 and 18 U.S.C. 3559 (c)(4) (the "Three-Strikes Notice") a copy of the document is attached as Appendix B to this petition. In that notice, the government cited to three predicate convictions which it claims subject me to a mandatory life sentence if convicted.

18 U.S.C. 3559(c)(3)(A) provides that robberies such as bank robbery cannot serve as qualifying predicate offenses if the defendant establishes that certain factual conditions were met, including that no firearm or other dangerous weapon or threat thereof was involved in the offense. Thus, should, be convicted of the current offense, the nature and circumstances of my prior offenses listed in the Three Strikes Notice will be highly relevant parts of the matter in controversy.

The first of the three predicates alleged in the Three Strikes Notice is a 1989 conviction for Bank Robbery occurring in this district, The Western District of North Carolina, Case No. 3:89-CR-91 (the "1989 case"). On September 24, 2019, the government alerted the undersigned and the Court that newly-pulled court documents indicate that the presiding judge in this case, the Hon. Robert J. Conrad, Jr., had

previously been Assistant United States Attorney who prosecuted me in the 3:89-CR-91 case. His Honor appeared and advocated in person on behalf of the government in the initial detention proceedings and at the plea and sentencing. A copy of the criminal docket in the 1989 case is attached as Appendix C to this petition.

Under 28 U.S.C. 455(b)(1) and (b)(3), a presiding judge is required to disqualify himself from hearing a matter where "he has ... personal knowledge of disputed evidentiary facts concerning the proceeding" or where "he has served in governmental employment and in such capacity participated as counsel ... concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy."

On September 26, 2019, through appointed counsel, a Motion for Recusal was filed. A copy of the motion is attached as Appendix D to this petition.

On September 30, 2019, during a Status Conference Hearing before the Hon. Robert J. Conrad, Jr., his Honor refused to recuse himself from my case. A copy of the transcript of Status Conference hearing is attached as Appendix E to this petition.

On October 3, 2019, a emergency motion to stay District Court proceedings was filed with the Fourth Circuit Court of Appeals due to the fact I was to start trial on October 7, 2019. A copy of the Motion to Stay is attached as Appendix F to this petition.

A day prior to the motion to stay was filed, a Petition for Writ of Mandamus was filed. A copy of the Petition is attached as Appendix G to this petition.

On October 4, 2019, the Motion to Stay was granted pending disposition for writ of Mandamus. A copy of the order is attached as Appendix H to this petition.

On April 9, 2020, the Appeals Court for the Fourth Circuit denied my petition. A copy of the opinion is attached as Appendix I to this petition.

On September 30, 2022, I again filed a Motion for Recusal, this time as Pro Se. The Court granted my request to proceed Pro Se on January 21, 2021. A copy of the Motion for Recusal is attached as Appendix J to this petition.

On October 13, 2022, at a Pretrial Conference hearing before the Hon. Robert J. Conrad, Jr. Judge

Conrad again refuse to recuse himself from the case. A copy of Pretrial Conference transcript is attached as Appendix K to this petition.

On October 14, 2022, I filed a Emergency motion to Stay District Court Proceeding to the Court of Appeals for the Fourth Circuit. A copy is attached as Appendix L to this petition.

Also On October 14, 2022, I filed the Second Petition for Writ of Mandamus to the Fourth Circuit Court of Appeals. A copy is attached as Appendix M to this Petition. Also the Courts unpublished opinion denying my Petition, decided December 15, 2022. A copy is attached as Appendix N to this petition.

On January 3, 2023, I filed a Petition for Rehearing En banc to the Court of Appeals for the Fourth Circuit. A copy is attached as Appendix O to this petition.

On January 3, 2023, I was denied my petition for rehearing and rehearing en banc. A copy of the Order is attached as Appendix P to this petition.

The United States Court of Appeals for the Fourth Circuit permitted Judge Conrad to continue presiding

Over my case on the grounds that, any "potential harm could arise only at sentencing, and then only if all the various contingencies materialize."

REASONS FOR GRANTING THE WRIT

A. Conflicts with Decisions of Other Courts

The holding of the Fourth Circuit Court of Appeals that *Mandamus* isn't necessary in my situation is directly contrary to the holding of other circuits. See *In re School Asbestos Litigation*, 977 F.2d 794, 770 (3d Cir. 1992) (granting petition because judge disqualified under 455); *In re Aetna Cas. and Sur. Co.*, 919 F.2d 1136, 1146 (6th Cir. 1990); *In re Bulger*, 710 F.3d 42, 49 (1st Cir. 2013) (same); *Nichols v. Alley*, 71 F.3d 347, 350-52 (10th Cir. 2015) (same); *Matter of Hatcher*, 150 F.3d 631, 637-38 (7th Cir. 1998) (same); *In re Al-Nashiri*, 921 F.3d 224, 234-41 (D.C. Cir. 2019) (granting petition because judge disqualified under 455's analogue in Military Commissions' Rules);

B. Importance of the Question Presented

This case presents a fundamental question of this Court's decision in *Williams v. Pennsylvania*, 136 S.Ct. 1899, 1905, 1907 (2016). A former prosecutor could not, in accordance

With the lower due process disqualification standard, pass judgment on a case he personally prosecuted. The issue's importance is enhanced by the fact that the appeals court in this case have seriously misinterpreted Williams. This Court held in Williams that "the due process guarantee that no man can be the judge of his own case" would have little substance if it did not disqualify a former prosecutor from sitting in judgment of a prosecution in which he or she had made a critical decision."

Also the common sense understanding of 28 U.S.C. 455(b)(1) and (b)(3), a presiding judge is required to disqualify himself from hearing a matter where "he has ... personal knowledge of disputed evidentiary facts concerning the proceeding" or where "he has served in governmental employment and in such capacity participated as counsel... concerning the proceedings or expressed an opinion concerning the merits of the particular case in controversy." 455(d)(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation. The Appeals Court has also

misinterpreted the 455 statute because the refusal statutes require complete recusal from a proceeding, making the judges partial recusal in my case improper. See. United States v. Feldman, 983 F.2d 1441 (9th Cir 1992)

Mandamus was the appropriate remedy in this case. See, e.g., *Corbett v. Norton*, 334 F.3d 1128, 1129 (D.C. Cir. 2003) (endorsing that the unanimous view of the circuits is a writ of Mandamus compelling refusal of a judicial officer will issue where the party seeking the writ demonstrates a clear and indisputable right to relief); *In re Sch. Asbestos Litig.*, 977 F.2d 764, 777-78 (3d Cir. 1992) (holding that interlocutory review of disqualification issues on petitions for mandamus is both necessary and appropriate to ensure that judges do not adjudicate cases that they have no statutory power to hear, and virtually every circuit has so held).

Thus the court of Appeals for the Fourth Circuit seriously misinterpreted Williams by failing to distinguish between a clearly disqualified judge and seriously misinterpreting 28 U.S.C. 455. The court should correct these misinterpretations and make it clear their holding in Williams, that a former prosecutor could not, in accordance with the lower due process disqualification standard, pass judgment on a case he supervised years earlier and make clear the correct interpretation of partial and complete recusal under 28 U.S.C. 455(b)(1) and (b)(3).

"A district judge's refusal to disqualify himself can be reviewed in the Fourth Circuit by way of a

petition for writ of mandamus." In re Beard, 811 F.2d 818, 827 (4th Cir. 1987). Jurisdiction to issue such a writ emanates from 28 U.S.C. 1651, which codifies the common-law writ of mandamus against a lower court. "Cheney v. U.S. Dist. Court for Dist. of Columbia, 542 U.S. 367, 380 (2004). Although traditionally used "in aid of appellate jurisdiction," courts have not confined themselves to an arbitrary and technical definition of jurisdiction; rather, "invocation of this extraordinary remedy" is justified when there is "a clear abuse of discretion." (internal quotations and citations omitted).

A writ is justified if three circumstances are met: (1) the petitioner must demonstrate "that his right to issuance of the writ is clear and indisputable;" (2) the party seeking issuance must have no other adequate means to attain the relief he desires; "and (3) "the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. Id. at 380-81.

CONCLUSION

For the foregoing reasons certiorari should be granted in this case.

Respectfully Submitted,
John Henry Moore Jr.
April 24, 2023

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 22-2081

In re: JOHN HENRY MOORE,

Petitioner.

On Petition for Writ of Mandamus. (3:19-cr-00086-RJC-DSC-1)

Submitted: December 12, 2022

Decided: December 15, 2022

Before KING, HARRIS, and RICHARDSON, Circuit Judges.

Petition denied by unpublished per curiam opinion.

John Henry Moore, Petitioner Pro Se. Anthony Joseph Enright, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Respondent.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

John Henry Moore petitions for a writ of mandamus seeking an order directing recusal of Judge Robert J. Conrad from presiding over Moore's criminal case. We conclude that Moore is not entitled to mandamus relief.

Mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380 (2004); *In re Murphy-Brown, LLC*, 907 F.3d 788, 795 (4th Cir. 2018). Further, mandamus relief is available only when the petitioner has a clear right to the relief sought and "has no other adequate means to attain the relief [he] desires." *Murphy-Brown*, 907 F.3d at 795 (alteration and internal quotation marks omitted).

Our review of the district court's docket reveals that on October 18, 2022, a jury returned a guilty verdict against Moore on all charged counts. Accordingly, to the extent Moore seeks recusal of Judge Conrad from Moore's criminal trial, we deny the mandamus petition as moot. To the extent Moore's petition seeks to have Judge Conrad recused from Moore's sentencing, Moore has not sought this particular relief from the district court. And he is effectively in the same procedural posture as he was when we considered his prior petition. In denying Moore's previous mandamus petition, we explained, any "potential harm could arise only at sentencing, and then only if *all* the various contingencies materialize." *In re Moore*, 955 F.3d 384, 390 (4th Cir. 2020) (emphasis added). At this time, he does not have a "clear and indisputable" right to the relief he seeks. *Id.* at 388-89. Accordingly, we deny the petition for writ of mandamus. We dispense with oral argument

because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

PETITION DENIED

