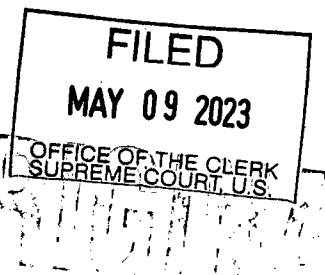


22-7591

No. _____

No. 23-1467



IN THE SUPREME COURT OF THE UNITED STATES

In re: Mark T. Stinson, Sr.,

Petitioner,

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

PETITION FOR EXTRAORDINARY
WRIT OF MANDAMUS

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QUESTION(S) PRESENTED

1. Did the U.S. District Court of the Eastern District of Arkansas Judge violate Fed. R. Civ. P. Rule 4(c)(3), and 28 U.S.C. §1915(d)?
2. Did the U.S. Court of Appeals for the Eighth Circuit violate 28 U.S.C. §1361, action to **compel** an officer of the U.S. to perform his duty?

PARTIES TO THE PROCEEDING

1. The Eighth Circuit Executive Staff.
2. Solicitor General of the United States, Department of Justice.

CORPORATE DISCLOSURE STATEMENT

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

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OPINIONS AND ORDERS ENTERED

On December 29, 2022, the U.S. District Court of Arkansas, Delta Division, Judge James M. Moody, Jr., DISMISSED this matter with prejudice as barred by *res judicata*. A timely appeal was filed on January 3, 2023, by the petitioner. This opinion is unpublished, and appears in Appendix B.

JURISDICTION

On April 6, 2023, the United States Court of Appeals dismissed this case and a timely rehearing en banc was filed and was dismissed on May 5, 2023. This opinion is unpublished and appears in Appendix A.

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

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. Due Process Clause of the Fifth Amendment: "...nor be deprived of life, liberty, or property, without due process of law..."

III. Federal Rules Civil Procedure; Rule 4: LR 4-1 Summons (*See Fed. R. Civ. P. 4(a) and (b)*)

All summonses, along with sufficient copies for service, will be prepared by the filing party and presented to the clerk for issuance. The clerk will issue summons electronically, except in cases where the filing **party is pro se**. The District Court is also in violation of Fed. R. Civ. P. Rule 4(c)(3), summons all parties to this complaint, by a United States marshal or deputy marshal or by a person specially appointed by the court. The **court must** so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. §1915.

RULE 20.1 STATEMENT

There exist truly exceptional circumstances that mandate the issuance of the writ sought by Mr. Stinson, Sr. in this matter. As set forth in detail below, Mr. Stinson, Sr. have been denied summons to all parties to this complaint, by the U.S. District Court of Arkansas and have been denied by the U.S. Court of Appeals for the Eighth Circuit's right to compel an U.S. officer to perform his duty under 28 U.S.C. §1361. 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 summon as a indigent petitioner as guaranteed under the Fifth 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).

This Court has used its power to ***issue writs of mandamus*** or prohibition to compel a District Judge to exercise a jurisdiction which the law has made it ***his duty to exercise***, Barber Asphalt Paving Co. v. Morris, 8 Cir., 132 F. 945, 956; Great Northern Railway Co. v. Hyde, 238 F.2d 852 (8th Cir. 1956), or to prevent a judge from exercising a power that he clearly ***does not have***.

Lastly, Mr. Stinson, Sr., is left without any adequate relief from any other court, as the Eighth Circuit has not compelled the U.S. District Court of Arkansas Judge James

M. Moody, Jr., to perform his duty as a U.S. Officer, that its decision to delay or deny this 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 Eastern District Court of Arkansas refusal to serve the complaint to all parties in violation of Fed. R. Civ. P. Rule 4(c)(3) and 28 U.S.C. §1915(d).

II. Facts Pertaining to the Eastern District Court of Arkansas Proceeding.

Specifically, ***Plaintiff moves pursuant*** to 28 U.S.C. §1915(d), the officers of the court shall issue and serve all process and perform all duties. Thomas v. Commissioner Social Security, 711 F. App'x 119 (2018). Feb. 9, 2018 • United States Court of Appeals for the Third Circuit• No. 17-3456. Thompson v. Maldonado, 309 F.3d 107 (2nd Cir. 2002)- No. 01-0150. (stating that the "Clerk of the District Court ... ordinarily provides this form to indigent plaintiffs upon the filing of a complaint. If properly filled out and returned, the form instructs the [Marshals Service] to serve process on the defendant."); see also Welch v. Folsom, 925 F.2d 666, 670 (3d Cir. 1991) (recognizing that ***plaintiffs proceeding in forma pauperis*** are entitled to rely upon service by the U.S. Marshal).

Informa pauperis plaintiffs **are entitled** to use the USMS to effect service. See Fed. R.Civ.P. 4(c)(2)(B)(i); Romandette v. Weetabix Co. Inc., 807 F.2d 309, 311 (2d Cir.1986).

REASONS FOR GRANTING THE WRIT

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

The Eighth 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. District Court, in denying Mr. Stinson his right to have that Court serve the summons on all parties to the compliant and perform his duty has clearly deprived Mr. Stinson of a fundamental liberty without due process. This is only amplified by the Eighth Circuit denying Mr. Stinson any right of the Appeals Court to review the District Court's refusal or denial, thereby depriving him of any adequate remedy 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* Cir. 1976), app. after remand, 555 F.2d 234 (9th Cir. 1977); Tagupa v. East-West Center, Inc.. 642 F.2d 1127 (9th Cir. 1980).

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

However, "supervisory control of the District Courts 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, 3144 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 matter didn't go to trial in violation of FRCP Rule 38.

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 *773 Pharma-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.

3. **Federal Rules of Civil Procedure** **TITLE I. SCOPE OF RULES; FORM OF ACTION**

These rules ***govern*** the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They ***should be construed***, administered, and employed by the court and the parties to secure the ***JUST, SPEEDY***, and inexpensive determination of every action and proceeding. Fed. R. Civ. P. 1.

The purpose of this revision, adding the words "and administered" to the second sentence, is to recognize the ***affirmative duty*** of the court to exercise the authority conferred by these rules to ensure that civil litigation is resolved not only ***fairly***, but also without undue cost or ***delay***. As officers of the court, attorneys share this responsibility with the ***judge*** to whom the case is assigned. Breezley v. Hamilton County, 674 F. App'x 502 (2017) Jan. 4, 2017 · United States Court of Appeals for the Sixth Circuit; Abel v. Harp, 122 F. App'x 248 (2005); Feb. 16, 2005 · United States Court of Appeals for the Sixth Circuit.

In reviewing a pro se complaint under '1915(e)(2)(B), ***the Court must give*** the complaint the benefit of a ***liberal construction***. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff unless

the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32 (1992).

4. AFFIDAVIT OF MARK T. STINSON, SR.

KNOW ALL MENS BY THESE PRESENTS:

That I Mark T. Stinson, Sr., the Plaintiff in this legal case Style Mark T. Stinson, Sr. v. John P. Yates, et al., 2:22-CV-00212-JM, Appeals No. 23-1467. Due Process Civil Suite.

1. That the Defendant **maliciously** violated the Plaintiff's First, Fifth, Sixth, Seventh, and Eighth Amendment Rights.
2. That the Plaintiff was placed in isolated confinement in Special Housing Unit (SHU) and then transferred to the **LOW** with a Greater Security Transfer with only **three (3)** points, inmates most have **twelve (12)** points to be transferred to the low, and was transferred without due process, without a prison disciplinary hearing or board, excessive administrative segregation and was prejudiced by the warden.
3. That this matter has **not** been served pursuant to Fed. R. Civ. P. Rule 4(c)(3) and 28 U.S.C. §1915(d) as required by the PLRA.
4. That the application to leave to proceed in forma pauperis was approved in District Court for the Western District of Tennessee on 10-28-2022 (ECF #5).
5. That the Plaintiff is requesting relief against the Defendant John P. Yates, Warden in the of amount one million dollars (\$1,000,000.00) immediately, against Blair Camp Unit Manager two hundred fifty thousand dollars (\$250,000.00) immediately, against B. Crawford Officer, BOP, two hundred fifty thousand dollars (\$250,000.00) immediately, against Randle, Lt. BOP, two hundred fifty thousand dollars (\$250,000.00) immediately, against Rendon Camp Counselor, two hundred fifty thousand dollars (\$250,000.00) immediately, for malicious embarrassment, mental anguish, stress, pain, suffering, increased imminent danger, **cruel and unusual punishment**, punishment disproportionate to the offense, fundamentally unfairness, **excessive administrative segregation**, and malicious loss of liberty.
6. That this statement is given in the interest of justice and made in good faith.

7. That this statement is not being present for any improper purpose, such as to harass or to cause ***unnecessary delay*** or needless increase in the cost of litigation.
8. That this statement is given pursuant to title 28 U.S.C. §1746.

Movant asks the Court, where appropriate, to apply the "***Rule of Lenity***" which requires all ambiguities to be settled in favor of the petitioner, UNITED STATES V. RAINS, 615 F.3d 589 (5th Cir. 2010). This Plaintiff urges this Court to adopt, approve and apply these standards to his pleading for it would be a miscarriage of justice to allow this illegal action to stand. Hall v. BELLMON, 935 F. 2d 1110 (10th Cir. 1991).

Because he is a *pro se* litigant, Stinson's complaint must be construed liberally. *See Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).

Pursuant to Fed. R. Civ. P. Rule 4(c)(3), the Plaintiff is requesting an ***expedited*** service of the Summons to all parties to this complaint, by a United States marshal or deputy marshal or by a person specially appointed by the court.

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 Fifth Amendment constitutional right pursuant to Fed. R. Civ. P. Rule 4(c)(3), 28 U.S.C. §1915(d), and 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 ***without delay***. As with the media and the body politic of this nation in today's world, the politicization of the Courts, including the Eighth 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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May 9, 2023,