

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Donald Lynn Martin -- Petitioner

vs.

Deborah S. Hunt, Clerk,
Sixth Circuit Court of Appeals
Cincinnati, Ohio
David J. Hale, Judge,
U.S. District Court
Western District Court
Louisville, Kentucky
James J. Vilt, Jr., Clerk
U.S. District Court
Western District, Louisville, Ky. -- Respondents

On Petition For Writ of Mandamus
To The Sixth Circuit Court of Appeals and
The United States District Court
For The Western District Of Kentucky
Louisville, Kentucky

PETITION FOR WRIT OF MANDAMUS

Donald Martin 19080-033
Federal Correctional Institution
P.O. Box 6001
Ashland, Kentucky 41105

JURISDICTION

Petitioner believes the Supreme Court has jurisdiction of this matter due to the fact that both the District Court for the Western District of Kentucky has failed to respond to the Petitioners filings pursuing appeals of his habeas corpus filing pursuant to 28 USC §2255, and the Sixth Circuit Court of Appeals has failed to rule on Petitioners motion to reconsider dismissal of his appeal for 'lack of prosecution'. These actions in addition to the various attempts by the Petitioner to pursue his legally guaranteed Rights under the Constitution leave no choice but to have the Supreme Court address these issues as the Court of last resort.

TABLE OF CONTENTS

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED.....	2, 4, 5
QUESTIONS PRESENTED FOR REVIEW.....	i
TABLE OF AUTHORITIES.....	ii
STATEMENT OF CASE.....	iii
REASONS FOR GRANTING THE WRIT.....	iv
CONCLUSION.....	v

EXHIBITS

EXHIBITS A THRU O.....	3, 4
Exhibits A thru O are copies of all motions and orders filed in the District Court for the Western District of Kentucky by the Petitioner and the court.	
EXHIBITS Q THRU Y-2.....	4
Exhibits Q thru Y-2 are copies of all motions and orders filed in the Sixth Circuit Court of Appeals by the Petitioner and the Court.	

QUESTIONS PRESENTED FOR REVIEW

1. Are inferior courts required to follow Circuit precedent?
Proposed Answer: YES
2. Are all executive and judicial Officers required to support the Constitution for the United States as pursuant to Oath?
Proposed Answer: YES
3. Are the first 10 (ten) Amendments to the Constitution guaranteed rights, protected by the Constitution?
Proposed Answer: YES
4. Does Amendment I (one) prevent Congress from making any law to hinder the right of the people to 'petition the Government for a redress of grievances'?
Proposed Answer: YES
5. Does the guarantee of "Due Process" in Amendment V include unhindered access to the courts?
Proposed Answer: YES
6. Do the enumerated powers include any provision which abrogates the "Bill of Rights"?
Proposed Answer: NO
7. Does 28 USC §951, require all clerks and deputies to perform all duties of office?
Proposed Answer: YES
8. Does 28 USC §453 require all justices and judges to do equal justice to all persons regardless of status or stature?
Proposed Answer: YES
9. If court officers, justices, judges, clerks and deputies fail to perform their duties, do they become personally liable for damages caused?
Proposed Answer: YES
10. Do officers of the court have a right to change or ignore any provision of the Constitution?
Proposed Answer: NO
11. Do officers of the court have an obligation to follow all prescribed guidelines, such as Federal Rule of Civil Procedure; Federal Rule of Criminal Procedure; Federal Rule of Evidence; Code of Federal Regulations, etc.?
Proposed Answer: YES

TABLE OF AUTHORITIES

U.S. CONSTITUTION

Article I, Sec. X.....	4
Article VI, cl. 2.....	4
Article VI. cl. 3.....	4
Amendment I.....	4
Amendment V.....	5

SUPREME COURT

RonRico Simmons vs. United States, No. 20-1704 211 L. Ed. 2d 274, 2021 US LEXIS 5505	5
Erickson v. Pardus, 551 U.S. 89, 127 S. Ct. 2197, 167 L. Ed. 2d 1081, (2007).....	5
Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595, 146 L. Ed. 2d 542, (2000).....	5

STATUTES

28 USC §1915(a)(1).....	2
28 USC §1951(b).....	2
28 USC §2241	2
28 USC §2244.....	2
28 USC §2254.....	1, 2
28 USC §2255.....	1, 2

CASES

Estremera v. United States, 724 F. 3d 773 (CA7 2013).....	6
Whalem/Hunt v. Early, 233 F. 3d 1146, 1148 (CA9 2000).....	6
Kencade v. Sparkman, 117 F. 3d 949, 951-52 (6th Cir. 1997).....	2

STATEMENT OF CASE

This is a simple case of actions and/or inactions taken by both the District Court in the Western District of Kentucky and the Circuit Court of Appeals for the Sixth Circuit. Petitioner has filed his 28 USC §2255 in the Western District of Kentucky, which has been denied. Petitioner appealed to the Sixth Circuit Court of Appeals. Petitioner has filed a 'Financial Affidavit In Forma Pauperis' in the District Court. The court has failed to respond to Petitioner's filing. Petitioner then filed a Affidavit for 'Writ of Error', and again the District Court has not responded. Petitioner has also filed requests for other documents held at the District Court with 'Motion to Compel', 'Writ of Mandamus' and 'Motion to Show Cause', which have been denied. Petitioner's appeal has been docketed at the Sixth Circuit Court of Appeals. The clerk of the Court of Appeals has informed Petitioner his case will be dismissed for 'want of prosecution' unless his petition 'In Forma Pauperis' is approved. The District Court continues to not rule on Petitioner's filings for pauper status. Petitioner, then filed a 'Writ of Mandamus' with the Sixth Circuit Court, and with it the same 'Financial Affidavit In Forma Pauperis', the Sixth Circuit Court replied, "The financial affidavitwill not be entertained". Petitioner's appeal of his 28 USC §2255 has been dismissed by the Circuit Court of Appeals.

Petitioner believes these actions and/or inactions are in violation of the Constitution, and also Circuit precedent as it relates to 'filing fees' associated with Habeas Corpus petitions. Petitioner also avers, these actions are in violation of Petitioner's guaranteed rights secured by the Bill of Rights of the Constitution.

Petitioner is looking to the Appellate authority of the Supreme Court for redress of these grievances.

REASON FOR GRANTING THE WRIT

Petitioner avers, since he has been unable to get either the District Court in the Western District of Kentucky or the Sixth Circuit Court of Appeals to respond to requests, the Petitioner requires the assistance of the Supreme Court in its supervisory authority to direct them to respond, and provide the requested information so that the Petitioner's due process can be achieved.

CONCLUSION

The law library at FCI Ashland uses Lexis/Nexis which includes Federal Habeas Corpus Practice and Procedure, 7th Edition, December 2021, by Randy Hertz Professor of Law, New York University School of Law and James S. Liebman, Simon F. Rifkind Professors of Law, Columbia University School of Law. The citation on 'Page 2' is an excerpt from their work. This reference and the remaining documents, and citations leads the Petitioner to believe both Courts and Officers of these courts are acting outside their authority in an attempt to harm the Petitioner, by denying him 'Due Process'. These attempts to delay and frustrate the Petitioner is beyond comprehension. It became apparant to the Petitioner the only course of action left was to seek relief from the Supreme Court.

PETITION
FOR MANDAMUS

Justice Brett M. Kavanaugh

COMES NOW, Donald Lynn Martin acting Pro Se and Sui Juris and shall hereinafter be referred to as the Petitioner.

The Petitioner is requesting a "Writ of Mandamus" be issued directing the Sixth Circuit Court of Appeals and the United States District Court in the Western District of Kentucky to:

- (1) require the District Court in Louisville to approve Petitioner's Affidavit for In Forma Pauperis status, or certify no fee is required;
- (2) to require the Clerk of the Court in the Western District of Kentucky to produce a copy of Petitioners Arrest Warrant and forward to Petitioner;
- (3) to require the Clerk of the Court in the Western District of Kentucky to produce the correct copy of Exhibit 5E from Petitioner's trial transcripts contained in Document No. 91.
- (4) to require the Clerk of the Court in the Western District of Kentucky to produce the bond(s) issued on Petitioner's case No. 3:17-cr-00141 including the CUSIP Numbers for each or a detailed explanation why no such bond or bonding does not exist.
- (5) to require the Clerk of the Sixth Circuit Court of Appeals to reinstate Petitioner's Appeal of 28 USC §2255 to the docket; and
- (6) to require the court(s) to proceed with Petitioner's 'Due Process'.

BACKGROUND

Petitioner is currently in custody at FCI Ashland, Federal Correctional Institution. Petitioner has filed a Notice of Appeal to the Sixth Circuit in regards to Petitioner's 28 USC §2255 and additional other motions with the District Court for the Western District of Kentucky located

in Louisville, Kentucky. Petitioner avers there are grievances regarding issues that are not being addressed by the Court(s). The following items require redress.

The Petitioner avers the court(s) are intentionally harming the Petitioner by their misapplication of Sixth Circuit precedent, and more importantly by ignoring the "requirements" of the Constitution of the United States. These violations are clearly "outside" their Oath of Office and must not be tolerated.

1. The District Court in Louisville, Kentucky refuses to respond to Petitioner's Affidavit of "In Forma Pauperis". See; (EXHIBIT B-1, B-2 & B-3)
2. The District Court in Louisville, Kentucky refuses to respond to Petitioner's "Writ of Error". See; (EXHIBIT H-1, H-2 & H-3).
3. The Sixth Circuit Court of Appeals has dismissed Petitioner's Appeal # 22-5584 for "want of prosecution". See; (EXHIBIT M & W-2).
4. The Sixth Circuit Court of Appeals refuses to "Entertain" Petitioner's "Affidavit of In Forma Pauperis" regarding fee for "Petition for Writ of Mandamus". See; (EXHIBITS Y-1 & Y-2).

Petitioner avers, in addition to deprivations of due process, the Court(s) are acting contrary to case law pursuant to the Prison Litigation Reform Act (PLRA).

"...which does not apply to habeas corpus petitions filed pursuant to either 28 USC §2241 or §2254 or the motions filed pursuant to 28 USC §2255; (Kincade v. Sparkman, 117 F. 3d 949, 951-52 (6th Cir. 1997)) ("filing fee provisions of the PLRA do not apply to actions brought pursuant to §2254 or §2255"; "[b]y exempting §2254 and §2255 from the [PLRA] provisions of §1915(b) and the three strikes provision of §1915(g) (as this provision has a comparable provision in 28 USC §2244(b)), we provide a prisoner the ability to seek §2254 and §2255 relief as a pauper under §1915(a)(1). However, a prisoner is not required to file a trust account statement because the information contained in the trust account is only necessary for the payment formula of §1915(b).")

There are a significant number of cases from different circuits that have come to the same conclusion, yet Petitioner finds that he is still faced with having to prove this position.

The Supreme Court has not yet ruled on this question regarding whether the PLRA's category of "prisoner(s) seeking to bring a civil action or appeal a judgment in a civil action or proceeding" includes habeas corpus petitioners, but all of the circuits that have addressed the issue have held that habeas corpus petitioners are not included.

Petitioner realizes the Affidavit used by the Petitioner to request status as a pauper is not the same as those issued by the court. Yet, it is even more perplexing that the Courts have even attempted to assess such a fee. The courts knowing that the PLRA does not apply to habeas petitions, which is Circuit precedent, simply seems like they are attempting to see how many will just pay the fee, taking advantage of prisoners less able to research the law. Is this just another example of "consent authority"?

The Petitioner includes for your review a complete listing of docket entries filed in each court and supporting documents to fully inform you of the attempts to pursue Petitioner's "Due Process".

**HISTORY OF FILINGS
IN THE WESTERN DISTRICT OF KENTUCKY**

07/11/22 (DN 241)	Notice of Appeal filed in Sixth Circuit
07/13/22 (DN 242)	Case No. 22-5584 assigned.
07/13/22 (DN 243)	Letter of June 7, 2022 docketed, requesting 2 (two) items; (1) Exhibit 5E of Document 91 and (2) Copy of Arrest Warrant. (EXHIBIT A)
07/22/22 (DN 244)	Affidavit of In Forma Pauperis (EXHIBIT B-1, B-2, B-3)
08/11/22 (DN 245)	Letter of 08/08/22 (EXHIBIT C)
08/24/22 (DN 246)	Letter to Sixth Circuit Clerk, Deborah Hunt (EXHIBIT D)
08/29/22 (DN 247)	Memorandum from Clerk of WDKY Court (EXHIBIT E)
09/06/22 (DN 249)	Motion to Compel (EXHIBIT F-1, F-2, F-3, F-4, F-5)
09/07/22 (DN 248)	Letter re: destruction of

Exhibits

09/09/22 (DN 250) Re: letter of 09/01/22 wrong Exhibit 5E and Arrest Warrant. (EXHIBIT G)

09/12/22 (DN 251) Affidavit of Fact - Writ of Error (EXHIBIT H-1, H-2, H-3)

10/03/22 (DN 252) Motion to Show Cause (EXHIBIT I-1, I-2, I-3, I-4)

10/21/22 (DN 253) Motion to Unseal Warrant (EXHIBIT J-1, J-2)

10/27/22 (DN 254) Order (EXHIBIT K-1, K-2, K-3)

11/15/22 (DN 255) Writ of Mandamus filed in Sixth Cir. cc: WDKY (EXHIBITS L-1 TO L-6)

11/06/22 (DN 256) Order Dismissing Case No. 22-5584 for want of Prosecution (EXHIBIT M)_

11/28/22 (DN 257) Government Response to Motion to Unseal (EXHIBIT N)

11/29/22 (DN 258) Order by WDKY to Unseal Warrant (EXHIBIT O)

HISTORY OF FILINGS IN THE SIXTH CIRCUIT

07/21/22 (DN 03) Letter from Donald Martin (EXHIBIT Q)

08/11/22 (DN 06) Letter from Donald Martin re: ifp in DISTRICT COURT (EXHIBIT R)

08/11/22 (DN 08) Ruling letter (EXHIBIT S)

08/11/22 (DN 09) Letter Sent to Donald Martin from Court (EXHIBIT T)

08/24/22 (DN 10) Letter from Donald Martin re;: ifp (EXHIBIT U)

09/14/22 (DN 11) Letter from Donald Martin re: ifp (EXHIBIT V)

09/14/22 (DN 12) Ruling letter (EXHIBITS W-1, W-2)

11/16/22 (DN 13) Order to dismiss

11/28/22 (DN 14) Motion to reconsider (EXHIBITS X-1 TO X-20)

CONSTITUTIONAL PROVISIONS

A. Article I, Sec. X. "...coin Money; emit Bills of Credit, make any Thing but gold and silver Coin a Tender in Payment of Debts;..."

B. Article VI, cl 2, "This Constitution and the Laws of the United states which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land..."

C. Article VI., cl 3, "The Senators and Representatives...and all executive and judicial Officers, both of the United States...shall be bound by Oath or Affirmation, to support this Constitution..."

D. Amendment 1; "Congress shall make no law respecting...the right of the people...to petition the government for a redress of grievances."

E. Amendment 5; No person shall...nor be deprived of life, liberty, or property, without due process of law..."

Petitioner avers and asserts none of the above indicate, nor authorize the Government to enact a law requiring the payment of a "fee" for access to the courts. Additionally, only gold or silver coin may only be used to discharge debt, and no Amendment I through XXVII, to the Constitution for the United States of America have changed the method of payment. Nor has an amendment pursuant to Article V been ratified. Petitioner further asserts that the Judges and courts would be in breach of their Oath of Office should they attempt to require payment for same. While the Petitioner is not a trained lawyer [h]e is not completely unfamiliar with with research techniques. The Petitioner is a retired CPA who practiced public accounting for over 20 years focusing primarily in the area of taxation. The law library where Petitioner is in custody is at best minimally adequate, but it is all we have to work with. I am asking this Court to allow Petitioner the latitude expressed in (RonRico Simmons vs. United States, No. 20-1704, 211 L. Ed. 2d 274, 2021 US LEXIS 5505) "As this Court has repeatedly stressed, "'a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers'" (Erickson v Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007)(per curiam)(summarily reversing where a pro se complaint was dismissed "on ground that petitioner's allegations of harm were too conclusory to put these matters in issue"). These liberal construction requirements for pro se litigants carry particular weight when courts consider habeas filings, given that "[t]he writ of habeas corpus plays a vital role in protecting constitutional rights." (Slack v. McDaniel, 529 U.S. 473, 483, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000)).

"A petitioner's failure to explain causation adequately may be proper cause for the court to provide clear guidance and an opportunity to remedy,

"A petitioner's failure to explain causation adequately may be proper cause for the court to provide clear guidance and an opportunity to remedy, or to hold an evidentiary hearing to determine the relevant facts, as other Circuits have required in similar circumstances. See, e.g. (Estremera v. United States), 724 F. 3d 773, 777 (CA7 2013), (Whalen/Hunt v. Early), 233 F. 3d 1146, 1148 (CA9 2000)(en banc). It is rarely a reason to find a pro se habeas petition time barred on the pleadings. I trust the courts of appeals will do so only where or liberal pleading standards warrant such a harsh result." The Petitioner hopes the Court concurs the Petitioner is due the same consideration in the present case at bar.

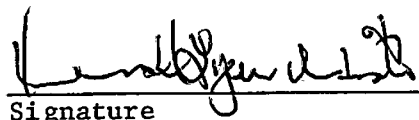
CONCLUSION

Petitioner prays for the Court to use it's authority of Supervisory Mandamus to direct the lower courts to comply with the requests presented by the Petitioner in items 1 through 6 as indicated on page 1.

VERIFICATION

The Petitioner declares under penalty of perjury and under the laws of the United States of America the foregoing statement(s) are true and correct.

Executed on Jan. 31, 2023 (date), in accordance with Title 28 USC §1746.



Signature
Donald Lynn Martin
Petitioner
All Rights Reserved
UCC 1-103 and UCC 1-308.

Case No. 22-5584

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

ORDER

DONALD LYNN MARTIN

Petitioner - Appellant

v.

UNITED STATES OF AMERICA

Respondent - Appellee


Appellant/Petitioner having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant/petitioner has failed to satisfy the following obligation(s):

The proper fee was not paid by **October 14, 2022**,

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

**ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT**

Deborah S. Hunt, Clerk



Issued: November 16, 2022

**Additional material
from this filing is
available in the
Clerk's Office.**