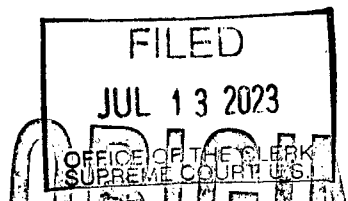
23-5128

No. _____

No. 23-5105




ORIGINAL

# IN THE SUPREME COURT OF THE UNITED STATES

In re: Mark T. Stinson, Sr.,

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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## QUESTION(S) PRESENTED

1. Did the United States Court of Appeals for the Sixth Circuit abuse its discretion by refusing to answer Stinson's § 2255 motion?
2. Did the United States District Court abuse its discretion by denying Stinson's Federal Rule of Civil Procedure 60(b) motion?

## PARTIES TO THE PROCEEDING

1. The Sixth Circuit Executive Staff.
2. Solicitor General of the United States, Department of Justice.
3. United States Attorney Office Western District of Tennessee.

## CORPORATE DISCLOSURE STATEMENT

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

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## STATUTES AND RULES

# PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

The Petitioner - Appellant below, respectfully applies, pursuant to Section 1651, Title 28, United States Code, and Rule 20.3 of the Supreme Court Rules, for a writ of mandamus and/or for a writ of prohibition, directed to a certain Panel of Judges of the United States Court of Appeals for the Sixth Circuit in Case No. 23-5105. In support of this application Petitioner shows as follows:

## OPINIONS AND ORDERS ENTERED

This is a 28 U.S.C. § 2255 case brought by *pro se* Petitioner – Appellant Mark Stinson. The district court dismissed his petition in 2021. (R. 7, Order.) In 2023, Stinson moved to reconsider the dismissal order. (R. 10, Mot. For Reconsideration.) The district court denied that motion on January 30, 2023, and Stinson filed a notice of appeal on February 6, 2023. (R. 11, Order Denying Mot. For Reconsideration; R. 12, Not. of Appeal.) This opinion is unpublished, and the petitioner has no copies of the order.

## JURISDICTION

On February 6, 2023, a timely appeal was filed. The Petitioner filed a timely Appellant's Brief. The Appeals Court informed the U.S.A. that their brief was due on April 27, 2023, and the U.S.A. filed a motion to extend time to file, and it was extended until May 11, 2023. The U.S.A submitted their brief on May 5, 2023. At this point the Appeals Court for the Sixth Circuit has not ***granted*** nor ***denied*** the brief, it has been

**over 60 days.** This opinion is unpublished, and appears in Appendix A.

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

## STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1651: (a)

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

## 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 60(b)**

Fed. R. Civ. P. 60(b). "Rule 60(b) does not allow a defeated litigant ~ second chance to convince the court to rule in his or her favor by presenting new explanations, legal theories, or proof. The grant of relief under Rule 60(b) is circumscribed by public policy favoring finality of judgments and termination of litigation." Tyler v. Anderson, 749 F.3d. 499, 509 (6th Cir. 2014) (internal quotation marks and citations omitted).

Rule 60(b)(1) is "intended to provide relief to a party in only two instances: (1) when the party has made an excusable litigation mistake or an attorney in the litigation has acted without authority; or (2) when the judge has made a substantive mistake of law or fact in the final judgment or order." Cacevic v. City of Hazel Park, 226 F.3d 483,490 (6th Cir. 2000) (citation omitted). Rule 60(b)(2) is for newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); Rule 60(b)(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; Henness v. Bagley, 766 F.3d 550 (6th Cir. 2014). Rule 60(b)(6) "is a catchall provision, which provides for relief from a final judgment for any reason justifying relief not captured in the other provisions of Rule 60(b)." "A movant seeking relief under Rule 60(b)(6) must show 'extraordinary circumstances' justifying the reopening of a final judgment." Abdur' Rahman v. Carpenter, 805 F.3d 710,713 (6th Cir. 2015) (quoting Gonzalez v. Crosby, 545 U.S. 524,535 (2005)). In light of petitioner claiming ineffective assistance of counsel the Movant was entitled to evidentiary hearing on dispute; Estes v. United States, (1989, CA8 ND) 883 F.2d 645.

Trial courts have "especially broad" discretion in considering motions made under Rule 60(b)(6). Tyler, 749 F.3d. at 509 (internal quotation omitted). The Court should grant relief under Rule 59(e), Rule 60(b)(1), 60(b)(2), 60(b)(3) and/or Rule 60(b)(6). In this Motion the Movant also has shown that this Court is in violation of Seventh Amendment Right to the Constitution [USCS Const. amend. 7] FRCP Rule 38. Bell v. Thompson, 545 U.S. 794 (2005); Ross v. Bernahard, 396 U.S. 531, 90 S.Ct. 733, 24 L.Ed.2d 729, 13 Fed. R. Serv. 2d (Callaghan) 1042, Fed. Sec. L. Rep. (CCH) 'f92566, Fed. Sec. L. Rep. (CCH)'f92566 (1970). The Movant is requesting an evidentiary hearing.

**Fraud and misrepresentation**

Fraud exception in which petitioner will be permitted to file Fed. R. Civ. P. 60 motion and have it treated by district court as motion under that rule instead of as non-authorized (by appellate court pursuant to 28 USCS § 2244(b)(3)(A)) application to file

second or successive petition, as it was outlined in Hazel-Atlas decision, requires deliberately planned and carefully executed scheme and conspiracy participated in by attorneys and judge in federal proceeding to defraud federal court with carefully constructed bogus evidence that not only was presented to that federal court, but which also affected federal court's decision. The Government illegally superseded the charges, and the court sealed the indictment. Gonzalez v. Sec'y for the Dep't of Corr., 366 F.3d 1253, 17 Fla. L. Weekly Fed. C 465 (11th Cir. 2004), cert. granted, in part, 543 U.S. 1086, 125 S. Ct. 961, 160 L. Ed. 2d 896 (2005), cert. denied, 543 U.S. 1091, 125 S.Ct. 965, 160 L. Ed. 2d 902 (2005), aff'd, 545 U.S. 524, 125 S. Ct. 2641, 162 L. Ed. 2d 480, 18 Fla. L. Weekly Fed. S 449 (2005); Ferrara v. United States, 384 (D. Mass. 2005); See Rubin v. Schottenstein, Zox & Dunn, 120 F.3d 603 (6th Cir. 1997).

## 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 a fair trial and relief under rule 60(b) motion, by the U.S. District Court of Tennessee and have been denied by the U.S. Court of Appeals for the Sixth Circuit's right for 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 a fair trial and a speedy decision of an evidentiary hearing 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, Sr., is left without any adequate relief from any other court, as the Sixth Circuit has not performed 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

### BACKGROUND AND PROCEDURAL HISTORY
### Criminal Case No. 2:16-cr-20247-01-JTF

On November 10, 2016, a federal grand jury in the Western District of Tennessee returned a thirteen-count indictment against Mark Stinson and Jayton Stinson, who were, at the time, husband and wife, charged with conspiracy to defraud the United States. (Criminal ("Cr.") ECF No. 3 (sealed).). On September 1, 2017, after Jayton Stinson had entered a guilty plea to Count 1, the grand jury returned a superseding indictment against Mark Stinson. (Cr. ECF No. 54 (sealed).). The superseding indictment charged Mark Stinson with two types of tax offenses, the first (Counts 1 through 11) arising from his operation of his wife's temporary staffing company and an

individual income tax return filed by Mark Stinson's son.

Petitioner's wife and co-conspirator Jayton Stinson pleaded guilty to one count of conspiracy to defraud the U.S. and was sentenced to 12 months in prison. She was made jointly and severally liable for the restitution, (R.107, Judgment, PageID 469-474).

The Petitioner was charged with thirteen counts related to tax fraud: one count of conspiracy to defraud the U.S., five counts of failing to pay over employment taxes, five counts of filing false tax returns, one count of theft of government funds, and one count of aggravated identify theft, (R.55, Indictment, PageID 115-126). The Petitioner was made jointly and severally liable for the restitution with the co-conspirator ($2,834,000.71). The Petitioner proceeded to trial and a jury found him guilty on all thirteen counts. On the Verdict form (Case 2:16-cr-20247-JTF Document 85 Filed 12/08/2017 Page 4 of 4 PageID 311), the Presiding Juror did ***NOT*** circle Guilty they circled Count 13, this was ***not*** presented previously with any motion and was overlooked by all three counsels.

After the trial the petitioner charges were illegally superseded and sealed, the imprisonment form was not signed.

The trial attorney Quinn was instructed to file an appeal by the Petitioner, and he refused to appeal the trial.

The Petitioner was not summoned to the grand jury hearing and was under an illegal R.I.C.O. The prosecutors made too many picks for jurors and gave two closing remarks and the defense made only one, the court allowed this to happen. The court violated the 6th Cir. R. P. 101(a), an email was given to the court, but it was ***NOT*** entered into the trial exhibits, the court misread the jury instructions, the prosecution's witnesses lied under oath with bogus evidence, government committed Brady violation, the indictment was bad, the government, court, and attorneys committed fraud and conspiracy.

## REASONS FOR GRANTING THE PETITION

Statement of Reasons

The Petitioner contends that his attorney during the trial was ineffective, and a conflict of interest arose. U.S. v. Del Muro, 87 F. 3d 1078 (9th Cir. 1996).

The Petitioner contends:

> "Petitioner Court Appointed Counsel was inexperienced in The Federal Tax case and didn't understand Income Tax Laws. He was unskilled in the trial he was in charge of United States of America v. Mark Stinson. He failed to use the subpoena power to bring witnesses or investigate the case in general."

Counsel Lack of Experience, in income tax laws and trials. Kemp v. Leggett, 635 F. 2d 453 (5th Cir. 1981). Right to present a defense. The right to offer testimony of witnesses and to compel their attendance is a Fundamental Element of Due Process. Washington v. St. of Texas, 388 U.S. 14.

The petitioner supplied his trial attorney with the names and address of several witnesses and asked him to issue subpoena for these witnesses but petitioner, court appointed counsel refused to issue subpoena for these witnesses. 1) Mr. Melvin Travis who would have given credible evidence in this case. 2) Mr. Cory Young who would have given credible information that would have resulted in the jury rendering a different verdict. 3) Mrs. Sheila Franks who would have given testimony that would have been credible and believable to the court and jury, however Quinn the trial attorney failed to first interview these witnesses, investigate the case, and issue the subpoena to these witnesses. Quinn refused to give the Petitioner copies of the indictment nor the conviction, after being asked to. Court appointed Stegall didn't give the defendant copies of the indictment nor the conviction and submitted a brief to the 6th Circuit Court that wasn't fully developed (18-5272), and he didn't prefect the appeal. Attorney Miller submitted a motion to the trial court without petitioner's knowledge nor approval ***(18-2807), a § 2241 motion***, he also sent an appeal to the 6th Circuit Court (21-5535) and didn't give the petitioner copies of what was filed he also did ***not*** perfect the appeal.

Due Process Clause forbids a State from convicting a person for a crime beyond a reasonable doubt. Bunkley v. Florida, 538 U.S. 835, 155 L .Ed .2d 1046, 123 S.Ct. 2020 (2003). This was a malicious prosecution and continues to be. The government committed a Constitutional Error of admitting evidence that is

totally ***without*** relevance; Nelson v. Brown, 673 F. Supp .2d 85 (2009).

The decisions establishing The Right to Counsel. Powell v. Alabama, 287 U.S. 45, 77 L .Ed 158, 53 S.Ct. 55 (1932). Mr. Sutherland: Justice, The Right to be heard would be, in many cases of little avail if it didn't comprehend the right to be heard by counsel. Even the most intelligent and educated laymen has small and sometimes no skill in the science of law. If charged with a crime, he is generally incapable of determining for himself whether the indictment is good or bad (this one ***is bad***). He is unfamiliar with the rule of evidence. Left without the aid of counsel, he may be put on trial ***without*** a proper charge and convicted upon incompetent or bogus and irrelevant evidence to the issue or otherwise ***inadmissible***. See Gonzalez v. Sec'y for the Dep't of Corr.

The laymen lack both the skill and the knowledge adequately to prepare his defense, even though he has a ***perfect*** one. He requires the guiding hand of counsel at every step in the proceeding against him. Without it, though he be ***not guilty***, he faces the danger of conviction because he does not know how to establish his innocence. Bill of Rights as source of Right to Counsel. Gideon v. Wainwright, 372 U.S. 339, 9 L. Ed . 2d 799 83 S.Ct. 192 (1963); Betts v. Brady, [316 U.S. 455, 62 S.Ct. 1252 86 L. Ed 1955].

Petitioner, timely made the Court aware of the ***conflict of interest*** between himself and his attorney Quinn, and moved to fire the attorney but the court denied allowing the petitioner to fire the attorney and petitioner moved a ***second time*** to fire the attorney again the Court refused to allow petitioner to terminate the service of counsel and forced petitioner to continue to trial with the same attorney; Alberni v. McDaniel, 458 F .3d 860 (9th Cir. 2006). When counsel objected to potentially conflicted representation, the trial court has an opportunity to eliminate the possibility of an impact on counsel's performance through seeking a waiver from the defendant, appointing separate counsel, or taking adequate "steps to ascertain whether the risk [is]too remote to warrant separate

counsel." Holloway, 435 U.S. at 484, 98 S.Ct. 1173. If the trial court ***fails*** to make such an inquiry into the potential conflict, ***REVERSAL IS AUTOMATIC***. Atley v. Ault, 21 Supp .2d 949 (S.D.Iowa 1998). When a defendant raises a seemingly substantial complaint before trial regarding the defense attorney's conflict of interest or divided loyalty, the ***Supreme Court*** has been ***absolutely clear*** that the court must make a thorough inquiry into the matter. Holloway v. Arkansas, 435 U.S. 475 98 S.Ct. 1173 (1978). That inquiry should be on the record and ***MUST*** be of the kind to ease the defendant's dissatisfaction, distraught or concerns. Smith, 923 F .2d at 1320. If the trial court fails to make a sufficient inquiry, prejudice is presumed and ***"REVERSAL IS AUTOMATIC."*** Holloway, 435 U.S. at 488.

Petitioner contends that his attorney actively represented conflicting interests, and an actual conflict of interest affected his attorney's performance. Cuyler v. Sullivan, Mannhait, 847 F .2d at 579. and U.S. v. Kliti, 156 F .3d 150 (2nd Cir. 1998).

Petitioner, contend that counsel's performance 1) Fell below an objective standard or reasonable competence and 2) That he was prejudiced by his counsel's deficient performance [....] petitioner show prejudice, that it was in fact reasonably probable that but for the misadvise and the incompetence of his trial counsel he ***wouldn't*** have been convicted. James v. Cain, 56 F .3d 662 (5th Cir. 1995). Petitioners believe he has been denied counsel during a critical stage of his trial. Fusi v. O'Brien, 621 F .3d (1st Cir. 2010).

***"Bad lawyering***, regardless of how bad" is insufficient. Scarp A, 38 F .3d at 13; Ellis v. United States, 313 F .3d 636, 643 (1st Cir. 2002); Strickland, 466 U.S. at 698, 104 S.Ct. at 2070 citing U.S. v. Chronic, 466 U.S. 648, 104 S.Ct. 2039 80 L .Ed .2d 657 (1984).

The Petitioner requests that this Court take Judicial Notice to his Military Record and his Military Medical Records. Counsel failure to argue the fact that petitioner, served in

The United States Army where he suffered [P.T.S.D.] Post-Traumatic Stress Disorder, and was awarded a National Defense Service Metal, Southwest Asia Service Metal with three Bronze Stars and an Overseas Service Ribbon.

Petitioner's counsel failed to argue and file a motion to the effect that he suffered P.T.S.D. and that he could not be charged with any form of conspiracy due to the symptoms and treatment he have undergone. It was a conflict of interest when counsel failed to argue PTSD defense on the conspiracy. [Competency Test]. Bouchillon v. Collins, 907 F .2d 589 (5th Cir. 1990). It is undisputed that Stinson suffers from PTSD. It is also clear from the Military Records and other reports that petitioner, suffered from this disorder both at the time of his offense and at the time of his trial. The counsel knew and still ***failed and refused*** to seek testimony or to argue for an evidentiary hearing, that in all probability, Stinson suffers from PTSD. What is more to the point is whether this disorder rendered Stinson, unable to understand the proceedings against him or to assist in his own defense.

In this case the counsel's lack of investigation after he had noticed of Petitioner's ***P.T.S.D.*** he did nothing to protect his mental status. Fell below reasonable professional standards. Thus, Stinson has met both prongs of the ***Strickland*** test and it is plain and clear that Stinson was ***denied*** effective assistance of counsel. Dusky v. United States, 362 U.S. 402, 4 L .Ed .2d 824, 80 S.Ct. 788 (1960); Becton v. Barnett, 920 F .2d 1190 (4th Cir. 1990).

Counsel ***should*** have petitioned the Court for an evidentiary hearing to determine if the petitioner was competent to stand trial. That petitioner was being seen by a psychiatrist who had diagnosed petitioner with PTSD. Few lawyers possess even a rudimentary understanding of Psychiatry. They therefore are wholly unqualified to judge the competency of their clients and must seek professional medical diagnoses. A defendant has a right to counsel at every critical stage of a criminal prosecution.

Estelle v. Smith, 451 U.S. 454, Barnett v. Hargett, 174 F.3d 1128 (10th Cir. 1999); Walker v. Atty General For The State of Okla., 167 F.3d 1339, 1345 (10th Cir. 1999). deal to substantiate his The counsel fails to make an argument about petitioner competency; U.S. v. Arenburg, 605 F.3d 164 (2nd Cir. 2010). The District Court erred by misapprehending its statutory obligation under title 18 U.S.C. § 424(a); Williams v. Calderon, 48 F. Supp. 2d 979 (Central District of California 1998). Id b. "unguided speculation. Washington v. S. Petitioner [Stinson] claims his Constitutional Rights were violated because he was tried while incompetent. [And That] his Due Process Rights were violated when his trial attorney failed to request a competency hearing and the trial court failed to sua sponte conduct a competency hearing. no representation at all. Given the totality of the

Petitioner [Stinson] is pursuing both a Procedural and a Substantive Incompetency Claim. A Procedural Incompetency Claim asserts that the trial court ***failed*** to conduct a competency hearing on its own initiative in violation of Pate v. Robinson, 383 U.S. 375, 86 S.Ct. 836 (1966) because, at the time of trial, there was sufficient evidence of petitioner's Government, she did admit, a one co- It must be noted that a Military incompetence to warrant a hearing. A Substantive Incompetency Claim asserts that petitioner's Due Process Rights ***were violated*** because he was tried while incompetent, regardless of whether the Court should have conducted a Pate hearing. Reynolds v. Cochran, 365 U.S. 533, 5 L.Ed.2d 754, 81 S.Ct. 723 (1961); In: Chandler v. Fretag, [348 U.S. 3]. The Court made it emphatically clear that a person proceeded against as a multiple offender has a Constitutional Right to The Assistance of Counsel." U.S. v. Garrett, 149 F.3d 1018 (9th Cir. 1998) [A]bused of its discretion by refusing to allow petitioner to fire his trial attorney who had a conflict of interest.

When counsel was advised of the [PTSD] Post-Traumatic Stress Disorder which the records disclosed Stinson to be incompetent. *Counsel failed* to make a reasonable Stinson suffer from during his tour of duty in the United States Army. Petitioner asserts investigation into petitioner's Mental condition. Wood v. Zahradnick, 578 F.2d at 682. there was no investigation, no interviewing of witnesses, no preparation of defense, no discovery, no visiting of the so call crime scene and no trial preparation. Additionally, the Amendment to the United States to a criminal, accuse of the right to have the assistance of counsel for His defense. U.S. Const. amend VI;

Strickland, 466 U.S. at 685.

("The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the Counsel Clause").

Although Quinn obtained funds to retain an expert, the expert was ***NOT*** paid, nor did he render an opinion. Defendant stated during trial that the signatures on the 941's forms were ***NOT*** signed by him. Thomas Vastrick, the expert, stated he never rendered an opinion in this case, and he had no other documents but the emails between Quinn and him. Quinn told the Court that he lied about the expert's answer, and neither the Court nor the prosecutors said or did anything. Quinn affidavit is illogical with respect to the expert in that he states he told Stinson, Vastrick did not support their contention, but Stinson wanted to use Vastrick's opinion which is against him is ridicule. By the way, an opinion Vastrick states he never made in his email to Counsel Larry Miller. Additionally, Quinn never retained a CPA, an accountant, a tax preparer, or a tax attorney, to testify regarding the responsibility of Stinson in the sole proprietorship ***owned*** by his wife or the corporations that were later incorporated. In fact, Quinn said the sole proprietorship was a co-ownership. There is ***no*** co-ownership in the tax code. The statutory responsibility for 941 tax payments is different for the kind of companies, especially a sole proprietorship. Sec. 6672(a) provides that any person required to collect, truthfully account for, and pay over any tax imposed by the Internal Revenue Code who willfully fails to do so, will "in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax.... not collected...and paid over."

The IRS and the Government broadly define a "responsible person." The key element in determining responsible person status is whether a "person has the statutorily imposed duty to make the tax payment." (O'Connor v. United States, 956 F .2d 48 (4th Cir. 1992)). For the purpose of Sec. 6672 a failure to remit trust taxes is willful if it is voluntary, conscious, and intentional, as opposed to an accidental act. Courts have held that willfulness is present if a taxpayer knew of the non-payment or recklessly disregarded whether the payments were being made.

This can be established by showing that the person responsible failed to assess and remedy the payroll tax deficiencies immediately upon learning of their existence. He directed the corporation to pay other creditors (thereby preferring other creditors over the IRS) or neglected his duty to use all current and future unencumbered funds available to the corporation to pay those back taxes (Erwin, No. 1:06cv59 (M.D.N.C. 2/5/2013)). The petitioner made payments to IRS for years and did not receive an offer in comprise. SEE generally 26 C.F.R. § 301.7122(a) and (g).

People v. Treadway, (2010) 182 Cal. App. 4th 562 106 Cal. Rptr .3d 99 (conviction ***Reversed*** because the prosecution interfered with the defendant's ability to call a witness by conditioning his co-defendant's pleas on a blanket restriction ***not to testify***, including for the defense, since this was "***Governmental Interference*** violation of a defendant's Compulsory-Process Right."); In re: Martin (1987) 744 F .2d 374, 391 ([a]defendant's right to present a defense, including, most importantly, the right to 'offer the testimony of witnesses and to compel their attendance, if necessary,' is at the very heart of our criminal justice system"). Prosecution misconduct of witnesses tampering. In the United States, the crime of ***witness tampering*** in federal cases is defined by statute at 18 U.S.C. § 1512, which defines it as "tampering with a witness, victim, or an informant." United States v. Serrano, 406 F .3d 1208, 1216 (10th Cir. 2005) (reviewing courts will examine the extent to which "the government actor actively discourage[d] a witness from testifying through threats of prosecution, intimidation, or coercive badgering."); United States v. Smith, 997 F .2d 674, 680 (10th Cir. 1993). (Prosecutors must not intimidate a witness who is willing to testify truthfully for the defense); United States v. Crawford, 707 F .2d 447 (10th Cir. 1983).

When Quinn stated he was calling Young to testify, Brooks, prosecutor, said you need to tell him he needs to be read his ***Miranda*** rights. Brooks Tran. 898-901 Dec. 7, 2017. In United States v. Straub, 538 F .3d 1147, 1156, 1162 (9th Cir. 2008) (finding prosecution's refusal to grant immunity to defense witness who could have contradicted prosecution's immunized witness was ***GROUNDS FOR REVERSAL).*** Prosecutors may also unreasonably deny immunity to defense witness, while granting it to prosecution witness. Williams v. Woodford, 384 F .3d 567, 600 (9th Cir. 2004) ("the prosecution's ***refusal*** to grant use immunity to a defense witness denies the defendant a fair trial only when (1) the witness's testimony would have been relevant and (2) the prosecution refused to grant the witness use immunity with the deliberate intention of ***distorting the fact-finding process.***"); United States v. Straub, 538 F .3d 1147, 1156, 1162 (9th Cir. 2008) (finding prosecution's refusal to grant immunity to defense witness who could have contradicted prosecution's immunized witness was ***Grounds For Reversal***). Scales was granted immunity, but Young was denied immunity which is ***Grounds For Reversal*** and a serious ***miscarriage of justice*** in the government's favor.

Moreover, in the State of Tennessee coercion of a witness is a crime in Tennessee and typically involves the use of threats, intimidation or some other form of force or pressure to compel a witness to testify falsely, withhold testimony or elude judicial process. The offense is classified as a ***Class D Felony***. Cory Young was going to testify that Stinson had nothing to do with the preparation of Scales income tax return. Quinn told Young his testimony was ***not needed***, so Young left the courthouse. Quinn did not subpoena Melvin Travis, an accountant who worked directly and exclusively with Stinson and knew Stinson well.

Travis had firsthand knowledge of Stinson's comprehension of the 941-tax problem for ***Stinson's wife*** sole proprietorship and his understanding of the withholding tax trust fund process. Travis knew Stinson was ignorant about the 941 tax matters at that point when he spoke with him.

Tamika Martin was an office employee who testified on December 6, 2017. Her testimony was as far as Jayton Stinson was concerned, she did more of a sales type role

trying to get clients. She testified I turned in my timecard information to her so she could process the pay through our software system. Martin Tran. 722-723, Dec. 6, 2017. Martin stated Mark Stinson's role was he just dealt more with the systems, if we had technical problems, like things like the bills, invoices, the W-2's I remember, things like that. He gave them the W-2's to mail. She testified that well he assisted with the payroll by giving out the W-2's. Quinn should have cross-examined Martin to get a complete understanding that Jayton Stinson processed the payroll exclusively. However, he never asked her about the processing of payroll which is totally unreasonable. Quinn's representation was ineffective assistance of counsel, and Stinson did ***NOT*** receive a fair trial. Based on the allegations, Stinson is entitled to an evidentiary hearing.

**b. SECTION § 2255:**

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court ***SHALL*** cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issue and make findings of facts and conclusions of law with respect thereto. 28 U.S.C. § 2255 (emphasis added). The court ruled that if petitioner "alleges facts that, if true, would entitle him to relief, then the district court ***should*** order an ***evidentiary hearing*** and rule on the merits of his claim." Holmes v. United States, 876 F .2d 1545, 1552 (11th Cir. 1989); United States v. Estrada, 849 F .2d 1304 (10th Cir. 1988).

The court notes the well-recognized principle that complaints drawn by pro se litigants are held to a less stringent standard than those drawn by legal counsel. Haines v. Kerner, 404 U.S. 519 92 S.Ct. 594, 30 L .Ed .2d 652 (1972); U.S. ex rel. Dattola v. Nat. Treasury Emp. Union, 86 F.R.D. 496 (W.D.Pa. 1980).

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 Petitioner urges the 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).

**d. Evidentiary Hearing**

The decision to grant a habeas petitioner's request for an evidentiary hearing is left to the sound discretion of the district court. "In deciding whether to grant an evidentiary hearing, a federal court ***must*** consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief." A hearing is unnecessary if the movant's allegations are contradicted by the record, are inherently incredible, or are conclusions rather than statements of fact.

The Sixth Circuit noted that § 2255 petitioners are entitled to a prompt hearing" and that while a full-blown evidentiary hearing" is not always required, where there is a factual dispute, the habeas court ***must hold an evidentiary hearing*** to determine the truth of the petitioner's claims." Because of the new evidence from IRS stating that the petitioner only owes $190,761 instead of the $2,834,000. that the government claims, the petitioner is requesting an ***expedited*** evidentiary hearing.

Additionally, the petitioner's burden 'for establishing an entitlement to an evidentiary hearing is relatively light.' Turner v. United States, 183 F.3d 474, 477 (6th Cir. 1999) (citing Paprockin v. Foltz, 869 F.2d 281, 287 (6th Cir. 1989)).

> 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 Buv v. Howes Leather Co., 1956, 352 U.S. 249, 259-260, 77 S.Ct. 309, 3i5 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.

## Statement of Relief Sought

The relief sought by Petitioner herein is as follows: Petitioner respectfully prays that a writ of mandamus and/or a writ prohibition be issued by this Court directed to the current merits Panel in Case No. 23-5105 with the following mandates and directions: 1. Instruct the Sixth Circuit Panel to perform their duty of relevant law, by the current merits; 2. Prohibit the Sixth Circuit from any ***further delays*** in this unjust matter.

## 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.

## *AFFIDAVIT OF MARK T. STINSON, SR.*

**KNOW ALL MENS BY THESE PRESENTS:**

That I Mark Stinson the Movant in this legal Case Style USA v. Mark Stinson, 2: 16-CR-20247-JTF, now Style Mark Stinson v. USA, 2-21-CV-02065-JTF. Appeals No. 23-5105. Habeas Corpus Case.

1. That the Defendants violated the Plaintiff's First, Fourth, Fifth, Sixth, Seventh, and Eighth Amendment Rights, conspiracy, fraud, and misrepresentation.
2. That the Prosecutors: (a) did ***NOT*** summons the petitioner to the grand jury hearing; (b) issued a bad indictment; (c) executed an illegal R.I.C.O.; (d) made too many picks for jurors; (e) witnesses lied under oath, with bogus evidence; (f) witness tampering and intimidation; (g) misconduct; (h) conspiracy; (i) fraud; (j) they heard the defense attorney tell the court that he was lying, and they said or did nothing; (k) superseded the indictment after trial; (l) gave testimony immunity to their witness but ***NOT*** the defense witness; (m) told defense attorney to mirandizes defense witness; (n) brady violation; (o) admitted evidence that was totally without relevance; (p) coerced witnesses to lie under oath; (q) made two closing remarks and only one for the defense; (r) interference of defendant's compulsory-process rights; and (s) miscarriage of justice.
3. That the Court: (a) misread the jury instruction; (b) was given an email during trial but the email was ***NOT*** entered into the trial exhibits; (c) conspiracy; (d)agreed to an illegal superseded indictment and sealed after trial; (e) abuse its statutory discretion; (f) failed to sua sponte a competency hearing; (g) prejudiced the petitioner; (h) violated the 6th Cir. P. R. 101(a); (i) did nothing when the trial attorney told him that he was lying about the expert answer; (j) allowed the prosecutors two closing remarks and only one for the defense; (k) allowed the prosecutors to many picks for jurors; (l) misapprehending it statutory obligation under title 18 U.S.C. §424(a); (m) failed to get an waiver from petitioner to satisfy his distraught and concerns; (n) denied the petitioner abrogated right to effectiveness of counsel, violated petitioner's due-process rights; (o) denied the petitioner a fair trial; and (p) denying access to exculpatory testimony.
4. That the Court Appointed Attorney Arthur E. Quinn (trail attorney): (a) was ineffective and a conflict of interest arose; (b) conspiracy; (c) fraud; (d) failed to argue PTSD at pre-trail; (e) failed to use subpoena power; (f) told the Court that he lied about the handwriting expert answer; (g) received funds to hire the

expert but did ***NOT*** hire him (theft of government funds); (h) continue to say to defendant they are going to bury you and there is nothing we can do about it; (i) failed to call the U.S. Veteran Affairs Doctor to give testimony at trial; (j) did ***NOT*** appeal the trial after he was instructed to by the petitioner several times; (k) failed to investigate, collect vital evidence, and interview vital witnesses; (l) knew government witnesses were lying under oath with bogus evidence and said nothing; (m) continue to hound defendant to accept a plea deal and avoid trial; (n) knew defendant was innocent and wanted to maintain his innocence's; (o) he got upset when defendant refuse to accept a plea and begin to badger the defendant; (p) drove the defendant out of his mind with the harassment and pressure to take a plea deal; (q) did ***NOT*** asks certain question of government witnesses after defendant begged him to; (r) failed to address government interference of defendant's compulsory-process rights; (s) did ***NOT*** know tax laws; (t) submitted documents to Sixth Circuit Appeals without defendant knowledge or approval; (u) knew about the illegal superseded indictment and said nothing; (v) did ***NOT*** protect defendant's mental status; (w) prejudice the defendant; (x) breach of fiduciary duty; and (y) breach of contract.

5. That second Court Appointed Attorney Patrick E. Stegall, (a) filed documents to the Sixth Circuit Court of Appeals without defendant knowledge nor his approval; (b) did ***NOT*** give defendant copies of what was filed; (c) did ***NOT*** return any of the defendant's phone calls, emails nor letter for months when the defendant was incarcerated; (d) was ineffective and a conflict of interest arose; (e) conspiracy; (f) submitted a brief to 6th Cir. that was ***NOT*** fully developed; (g) also knew about the illegal superseded and sealed indictment; and (h) did ***NOT*** give the defendant a copy of the indictment nor the conviction; (i) fraud, (j) breach of fiduciary duty; and (k) due process violation.
6. That the paid Attorney Larry C. Miller, (a) submitted the §2255 motion but did ***NOT*** give defendant copies of the complete file; (b) was ineffective, and a conflict of interest arose; (c) conspiracy; (d) did ***NOT*** petition for an evidentiary hearing; (e) did ***NOT*** perfect the appeal before withdrawal; (f) did ***NOT*** give

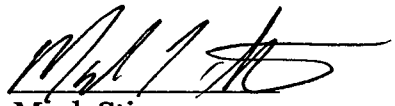
defendant copies of the indictment nor the conviction; (g) also knew about the illegal superseded and sealed indictment after trial, (h) fraud, (i) breach of fiduciary duty; (j) due process violation; and (k) breach of contract.

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 affidavit is made in the interest of justice and in good faith.

## CONCLUSION

For all the reasons stated above, Mr. Stinson's respectfully requests that this Court issue the Petition for Extraordinary Writ of Mandamus and/or prohibition for the remedies requested herein, due to fundamental due process and equal protection constitutional rights, as well as the Fifth Amendment constitutional right pursuant to 28 U.S.C. § 1361, ***without delay***. 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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**July 17, 2023**