23-5175

No. 23-____

ORIGINAL

IN THE

Supreme Court of the United States

GREGORY ALBERT DARST,

Petitioner

On Petition for Writ of Mandamus
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF MANDAMUS

In Propia Persona:
Gregory Albert Darst
c/o 11101 Allentown Rd.
Spencerville [45887]
Ohio State
(419) 277-7670

PARTIES TO THE PROCEEDING

Gregory A. Darst,

Petitioner *In Propria Persona*

Respondents

The Honorable Circuit Judges

The Hon. Charles R. WILSON,

The Hon. Barbara LAGOA, and

The Hon. R. Lanier ANDERSON III

Any other 11th Circuit Personnel involved in

Dismissing Appeal 22-10918

QUESTIONS PRESENTED FOR REVIEW

I. Did Clerk Smith or staff attorney dismiss appeal 22-10918 without involvement of judicial officers?

II. Did the Circuit / Clerk Smith impermissibly represent the Defendants in appeal 22-10918, (since no Defendant or counsel appeared)?

III. Did the Circuit / Clerk Smith's refusal to adjudicate the two core issues raised on appeal in 22-10918 justify invoking this Court's supervisory jurisdiction and issuance of mandamus?

1. Does judicial immunity apply to the act of a federal judge who fabricates the existence of "internal administrative procedures" to justify the administrative manipulation of her docket with another judge, when both attorneys know no such procedures exist?

2. After my civil suit against Ms. Scriven, et al (8:21-cv-2840-WFJ-JSS), was assigned to Mr. Jung's docket, should he have *sua sponte* recused in light of his extra-judicial agreement with her to administratively manipulate their dockets, to enable him to author the dismissal of my coram nobis motion?

TABLE OF CONTENTS

APPENDIX

JURISDICTION

- The Opinion denying appellate relief in the 11th Circuit in 22-10918 was issued on March 8, 2023. (See Appendix 2, Pg. b)

- The Opinion denying Rule 40 relief issued on May 19, 2023, (See Appendix 3, Pg. g)

This petition is filed timely, pursuant to Supreme Court Rule 13.1.

To protect its appellate jurisdiction over

1.) the administrative manipulation of dockets by two United States judges, and

2.) their subsequent concealment of that misconduct, and over

3.) the denial of appellate relief by Clerk Smith of the Eleventh Circuit while refusing to adjudicate any of the issues I raised on appeal, and over

4.) the Circuit's literal representation *of the Defendants*, who failed to appear,

the Supreme Court has jurisdiction under 28 U.S.C. §1651(a) to issue Writs of Mandamus.[1] The Court also has "supervisory authority"[2] to terminate the practice and policy of courts of appeal destroying the rights of disrespected, unrepresented litigants to access meaningful relief on appeal.[3]

---

[1] No United States judge was involved in appeal 22-10918, which was obviously dismissed by Mr. Smith or staff attorney, as proven by the inane arguments proffered as supposedly justifying relief. This outrageous practice of judicial officers failing to read or adjudicate any document filed by unrepresented litigants was long ago noted in the Eleventh Circuit by The Hon. Gerald Tjoflat, (Statement Before the Commission on Structural Alternatives for the Federal Courts of Appeals (Mar. 23, 1998) [hereinafter Tjoflat Statement]. His testimony was also cited by that Circuit in *Bolin v. Story*, 225 F. 3d 1234 - Court of Appeals, 11th Circuit 2000.

[2] In 1943, a case called *McNabb v. United States*, 318 U.S. 332 (1943) is widely identified as the first to assert the Supreme Court's supervisory power over lower court procedure, i.e., the Supreme Court asserted the power to supervise lower federal courts by devising procedures for them not otherwise required by the Constitution or a statute. *Castro v. United States* , 540 U.S. 375 (2003), is another, more recent example of a case in which the Supreme Court invoked its supervisory power to prescribe inferior court procedure.

Summary of Argument

My statutory right to access meaningful relief has been destroyed. In fifty-two (52) cases nationwide arising from the IRS' institutionalized falsification of records for use to enforce the income tax, [See Appendix 4, Pg. i, listing of cases], appellate clerks issue "orders" and "opinions" denying appellate relief without adjudicating any issue raised, most of which "orders" contain legalistic gibberish and literal nonsense. All were written without involvement if judicial officers.

In dismissing 11th Circuit Appeal 22-10918, over the names of Judges Wilson, Lagoa and Anderson, Mr. Smith issued an "Opinion" wherein the actual author claims "it is unclear" (thus he refused to adjudicate) whether 18 U.S.C. §1001 applies to the actions of judicial officers such as Defendant Mary Scriven, who falsify federal records. Moreover, the "Opinion's" author refused to adjudicate whether Judge Jung should have recused *sua sponte*, because, as the author claims, I supposedly failed to preserve the issue for appeal since I did not file a motion to recuse Jung during the 4 weeks before he sua sponte dismissed my civil case against Ms. Scriven. Further, the Eleventh Circuit appears to have impermissibly represented the Defendants, who never appeared, either in person or by counsel.

STATEMENT OF THE CASE

Long after serving a sentence for income-tax related crimes, (willful failure to file, etc.), I discovered that IRS sequentially, in invariable fashion, falsified each

---

[3] Unrepresented litigants are allowed to physically access appellate courts, file briefs, etc., but no issue raised is adjudicated. See listing of fifty-two (52) cases arising from the IRS' institutionalized record falsification program, (See Appendix 4, Pg. i)

procedures." [8:13-cr-181-MSS, Doc. 123, Emphasis added.] No such "internal administrative procedures" exist. [With all due respect to her honorable bench, no procedure of the Middle District of Florida justified Ms. Scriven's termination of my properly filed coram nobis motion, converting it into a §2255 petition and manipulating it onto the docket of a fellow judge.]

Ms. Scriven next agreed extrajudicially with Judge Jung to place the case she created on his docket.[6] Importantly, his jurisdictional claim over my Motion rested exclusively on her fabrication of the existence of "internal administrative procedures".

Mr. Jung was fully aware of Ms. Scriven cited non-existent procedures as justification for terminating my Coram Nobis Motion, and also my concern that she falsified the record to administratively manipulate the case to him.[7] In his "order" denying Coram Nobis Relief, Jung "threw her under the bus" blaming her alone for the manipulation:

> "Judge Scriven denied Mr. Darst's two motions", (to return his motion to the criminal case) and explained that... a coram nobis petition [sic] is docketed in a civil action pursuant to internal administrative procedures." [8:21-CV-1292-WFJ-JSS, Doc. 31, Pg. 2, 3rd ¶]

Mr. Jung was also aware that I was concerned about his collusion with Ms. Scriven:

> Darst "asserts that no internal administrative procedure exists to authorize the transfer" (actual conversion) "of his coram nobis petition [sic] to a new civil action and the order denying his coram nobis petition [sic] is void because the

---

[6] See Jung Order, Doc. 31, Pg. 3, ¶1: "Judge Scriven transferred the coram nobis action [sic] to the undersigned judge with his consent." No order from Jung exists showing his consent, hence it was manipulated to his docket by extra-judicial agreement, obviously including the Clerk of the Middle District of Florida.

[7] If the Judges wish to argue: "What difference does it make? All judges are presumed to rule equally and correctly", they should explain why Judge Scriven took such extraordinary steps to avoid adjudicating my Motion, why Judge Barber refused to adjudicate it, and why Judge Jung refused to address the impact of such docket manipulations on his jurisdiction.

ARGUMENT

Issue I. Did Clerk Smith dismiss appeal 22-10918 without involvement of judicial officers?

As shown below, (See Issue III., *infra*), to justify refusing to adjudicate each of the two issues I raised in appeal 22-10918, the author of the "Opinion" offers arguments no judicial officer would write. Thus the lawless pattern and practice of denying unrepresented litigants access to meaningful relief on appeal has continued and been confirmed in 22-10918.

Issue II. Did the Circuit / Clerk Smith impermissibly represent the Defendants in appeal 22-10918, since no Defendant or counsel appeared?

Since no Defendant appeared, nor did counsel, the record shows the Circuit *sua sponte* represented the Defendants while simultaneously acting in its role as impartial adjudicator. In no case in the appellate history of the United States have circuit judges simultaneously represented a litigant, while adjudicating their case.

III. Does the Circuit's refusal to adjudicate the two issues raised in appeal 22-10918 justify invoking this Court's supervisory jurisdiction and issuance of mandamus?

The author of the "Opinion" denying appellate relief in 22-10918 refused to adjudicate each of the two key issues I raised on appeal, on basis so specious no attorney could have proffered them, for fear of sanction and disbarment.

For the first of two examples, I asked the Circuit to determine whether judicial immunity applies to the acts of federal judges who fabricate, then enter into a federal record, their fabrication of the pretended existence of "internal administrative procedures" as supposedly justifying the administrative manipulation of dockets of

other judges, when no such procedures exist. To aid the Circuit, I suggested for its consideration binding authority of the Supreme Court, which precludes application of judicial immunity to acts Congress has proscribed as crimes:

> "[W]e have never held that the performance of the duties of judicial, legislative or executive officers, requires or contemplates the immunization of otherwise criminal deprivations of constitutional rights. Cf. *Ex parte Virginia*, 100 U.S. 339 (1880). On the contrary, the judicially fashioned doctrine of official immunity does not reach 'so far as to immunize criminal conduct proscribed by an Act of Congress'". *O'Shea v. Littleton*, 414 U.S. 488 (1974), citing *Gravel v. United States*, 408 U.S. 606, 627 (1972).[9]

I also suggested to the Circuit that since 18 U.S.C. §1001 proscribes as a crime the falsification of federal records, Ms. Scrivens entry into the federal record of 8:13-cr-000181 her fabrication (that "internal administrative procedures" justified her manipulation of dockets with Judge Jung), is a felony to which immunity does not attach.

But to obstruct adjudicating the question, the author of the "Opinion" denying appellate relief 22-10918, stated:

> "[I]t is unclear whether 18 U.S.C. §1001 applies to judges, given that parties in judicial proceedings are exempt from the penalties under that section." [See Opinion, Pg. 6, 2nd Full Sent.]

This is nonsense. Everyone who can read can see §1001 applies to anyone, other than litigants or counsel. And since it is the duty of appellate judges to resolve dispositive questions raised properly on appeal, I contend the refusal of the "Opinion's" author to adjudicate and resolve the question is irrefutable circumstantial evidence that no Circuit judge wrote the opinion.

---

[9] See 22-10819, Darst Brief on Appeal, pg. 14, last ¶.

The practice of Circuit courts allowing staff attorneys or even clerks to write opinions was long ago conceded by The Hon. Gerald Tjoflat, (See Statement Before the Commission on Structural Alternatives for the Federal Courts of Appeals (Mar. 23, 1998)), as cited by the Eleventh Circuit in *Bolin v. Story*, 225 F. 3d 1234 - Court of Appeals, 11th Circuit 2000.[10]

A second example proves that no judicial officer was involved in authoring the "Opinion". As noted above, Jung dismissed my civil case against Ms. Scriven within 1 month of seeing it on his docket, thus ensuring I had no time to serve it on any of the Defendants, or to see their responses.

But instead of adjudicating whether Mr. Jung had a duty to *sua sponte* recuse from 22-2840 in light of his then-secret docket manipulation with Ms. Scriven, the author claimed I had supposedly "forfeited the issue of Judge Jung's recusal on appeal" supposedly because I "did not move for Judge Jung's recusal" "during this district court proceedings".

No appellate judge, who can read a docket, after looking at the rocket rush in which Judge Jung dismissed my case against Ms. Scriven, 22-2480, within 4 weeks after I filed it, would pretend I had sufficient time to move for Jung's recusal, thus supposedly have forfeited the issue on appeal. Moreover, at that moment I time, I had no idea Mr. Jung and Ms. Scriven had colluded extra-judicially to manipulate my coram nobis motion off her docket onto his.

---

[10] In his Statement, Judge Tjoflat conceded that appellate judges never read filings of unrepresented litigants. And if judges don't read the filings, the absolute incontrovertible corollary is that someone else writes their opinions about such filings.

Summary of Argument

My statutory right to access meaningful relief has been destroyed. In 52 cases nationwide arising from the IRS' institutionalized falsification of records for use to enforce the income tax, appellate clerks issued "orders" and "opinions" denying appellate relief without adjudicating any issue raised. Many contain legalistic gibberish and literal nonsense; all are issued without involvement of judicial officers. In dismissing 11th Circuit Appeal 22-10918, over the names of Judges Wilson, Lagoa and Anderson, Mr. Smith issued an "Opinion" wherein the actual author claims he can't figure out, (thus refused to adjudicate) whether 18 U.S.C. §1001 applies to the actions of judicial officers such as Defendant Mary Scriven, who falsify federal records. Moreover, the "Opinion's" author refused to adjudicate whether Judge Jung should have recused *sua sponte*, by opining that I supposedly failed to preserve the issue for appeal since I did not file a motion to recuse Jung during the 4 weeks my civil case against Ms. Scriven was on Jung's docket, (which was dismissed before I even knew of his collusion with Ms. Scriven). Further, Mr. Smith's "Opinion" issued in favor of the Defendants, was argued by its author in his capacity as representative of the Defendants, who never appeared.

Such misconduct of involved Eleventh Circuit staff is an outrage.

Four Reasons for Granting Mandamus

a. Will aid the Court's appellate jurisdiction

I request herein that the Court order the Eleventh Circuit to adjudicate whether

1.) judicial immunity applies to the acts of federal judges who falsify the federal record of cases, and whether 2.) Judge Jung should have recused *sua sponte* when my case 21-2840, was first assigned to his docket, in light of his collaboration with the named Defendant (Scriven) to administratively manipulate my coram nobis motion from her docket to his, after she fabricated the existence of "internal administrative procedures" as justification for the manipulation.

Unless this Court grants the relief requested herein, thus compelling the Circuit to actually adjudicate those issues of national significance, they can never reach this Court.

b. Exceptional Circumstances

The pattern and practice of courts of appeal to refuse adjudicating every issue raised by unrepresented, disrespected appellants arising from the IRS record falsification program is a scandal of enormous significance, and certainly states "exceptional circumstances" justifying invocation of this Court's supervisory power. [See Appendix 4 for listing of fifty-two (52) cases where no issue raised on appeal was adjudicated.]

c. No other adequate means to attain the Relief sought

I have exhausted every lawful means that I know of to bring justice and closure to the manipulations of litigation involving me, including the administrative manipulation of dockets by Judges Scriven and Jung to avoid adjudicating the merits of my Coram Nobis Motion. No other means to secure relief remains.

d. My right to mandamus is clear and indisputable

All attorneys are aware that

> "It is a judge's duty to decide all cases within [her] jurisdiction that are brought before [her], including controversial cases that arouse the most intense feelings in the litigants." *Pierson v. Ray*, 386 U.S. 547, 554.

All attorneys involved in my coram nobis motion and subsequent appeals are also aware that Ms. Scriven fabricated the existence of "internal administrative procedures" to manipulate my coram nobis motion off her docket and onto Mr. Jung's, so that he could dismiss it. Even he knows Ms. Scriven had a duty to decide the merits of my Coram Nobis Motion, that she did not, and that he colluded with her to defraud me. But by so doing, attorneys Scriven and Jung deprived him of jurisdiction over my Motion.

I have an inarguable statutory right to access meaningful appellate relief, and a due process right to have the issues I properly raised on appeal 22-10918 be adjudicated. Those rights are clear and indisputable, and the relief I seek herein fitting and simple to issue.

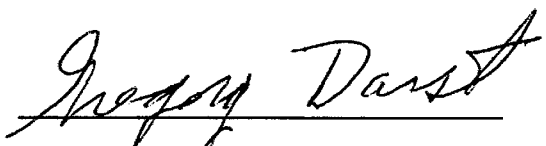
Relief Requested

Pursuant to this Court's supervisory authority and power to grant extraordinary writs, and in light of the highly exceptional circumstances that the Eleventh Circuit has once again destroyed the statutory right of yet another unrepresented litigant to access meaningful appellate relief, (no issue I raised on appeal was adjudicated by the recent "Opinion" denying relief in 22-10918), I request the Court simply order the Eleventh Circuit to

1. Determine whether judicial immunity attaches to the acts of federal judges who falsify the federal record of cases, since such act is expressly proscribed by the act of Congress codified at 18 U.S.C. §1001, and

2. Determine whether Judge Jung should have *sua sponte* recused from my civil case (21-cv-2840) against Defendant Scriven when it was first placed on his docket, since he was involved with her in the administrative manipulation of my coram nobis motion off her docket and onto his, pursuant to their citation to "internal administrative procedures", which never existed.

Respectfully,



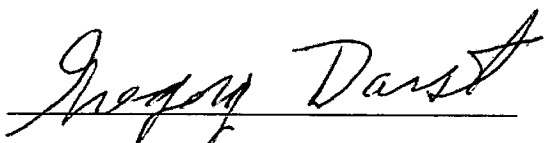
Gregory Albert Darst
c/o 11101 Allentown Rd.
Spencerville [45887] Ohio

Declaration

Comes now Gregory Darst, declaring under penalty of perjury, pursuant to 28 U.S.C. §1746 and/or any similar Florida law, that the document to which this Declaration is attached is neither frivolous nor interposed for an improper purpose, such as to harass or to cause unnecessary delay. Further, the facts stated in the foregoing **PETITION FOR A WRIT OF MANDAMUS** are material, I have personal knowledge thereof and am qualified to testify concerning the accuracy thereof, and do declare that ALL facts stated above are absolutely true and correct to the very best of my knowledge and belief, So HELP ME GOD.

Executed on July 17, 2023

By:



Gregory Darst