No: 24-5641

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE NAWAZ AHMED – PETITIONER

v.

TIM SHOOP,WARDEN, RESPONDENT

PETITION FOR WRIT OF PROHIBITION AND OR MANDAMUS

EXTRAORDINARY WRIT TO THE

COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPLICATION FOR EXTRAORDINARY WRIT

NAWAZ AHMED,

A404511, RCI.

Prisoner, Pro Se, Petitioner,

Ross Correctional Institute,

P.O.Box 7010,

Chillicothe, OHIO 45601-7010

(CAPITAL HABEAS. CASE) QUESTIONS PRESENTED FOR REVIEW

QUESTION(a) Is Writ of Prohibition available to **prohibit the**. Court of Appeals l**acking Appellate Jurisdiction** to **exceed its jurisdiction** to proceed in appeal case 21-3542 by COA on some claim when district court Orders (Ecf.156,194) **lack finality** due to failure to adjudicate Nineteen claims in First Petition (Doc.35) and fifty claims in state-court record judiciable under Fed. R. Civ. P. 15(b)(2) as cited in (Ecf 177 filed 12/22/20),PageID#11012-110113) at para 3 and 30 and explicitly listed again in ECF.Doc.196. filed on June 03,2021 titled, "Amended Notice of Appeal and Motion Seeking Remand due to lack of Finality" filed in First Appeal case 20-4153, wrongly dismissed by court, must be **reinstated,** and mischiefs of misconstruction be prevented by writ of prohibition due to Lack of Jurisdiction per, Collins v. Miller, 252 U.S. 364, 365, 370 (1920); Porter v. Zook, 803 F.3d 694, 695, 697, 699 (4th Cir. 2015) and FHCPP, § 35.1. Final orders.,n.13.

QUESTION (b) Did Court of appeals erroneously deny Petitioner's **Unopposed** Fed. R. App. P. 42(b(2) Motions for Voluntary Dismissal of unauthorized-Second appeal case 21-3542 that Court of Appeals must Reinstate appeal case 21-4153 (Ecf.164,196)filed on June 03,2021 titled, "Amended Notice of Appeal and Motion Seeking Remand due to lack of Finality" to adjudicate all claims before single appeal from final Orders.

QUESTION (c) Is Writ of Prohibition to enforce Petitioner-Appellant's exclusive right "**NOT TO TAKE the Second, Duplicate APPEAL"** in case 21-3542, from non-final Orders, (Ecf.156,194), may not *be over-ridden by counsels and Appeal Court* by Court's erroneous dismissing First appeal case 20-4153 (Ecf.164,196) filed on June 03,2021 titled, "Amended

Notice of Appeal and Motion Seeking Remand due to lack of Finality to adjudicate all habeas claims in Petition(Ecf.35) and in state court record judiciable under Fed. R. Civ. P. 15(b)(2) when "**unopposed** Fed. R. App. P. 42(b(2) Motions for Voluntary dismissal of unauthorized, duplicate case 21-3542" was sought but erroneously denied, in lack of jurisdiction, to avoid Remand back to district court whose **Opinion(Ecf.156,194)** failed to specifically rule upon all claims in Petition (DOC.35),Traverse(Doc.71), R&R (Doc.88), Timely Objected in (DOC.105,supplementary Objections Doc.#147 and190).

QUESTION(d) Can Court of Appeals avoid duty to determine first the "lack of **finality of appealed** judgment" (Ecf.156,194), explicitly listed in ECF.Doc.196. filed on June 03,2021 titled, "Amended Notice of Appeal and Motion Seeking Remand due to lack of Finality", raised in (Ecf 177 filed 12/22/20),PageID#11012-110113) at para 3 and 30; With Unadjudicated nineteen habeas claims in Petition(Doc.35) and fifty claims in state court record, judiciable under Fed. R. Civ. P. 15(b)(2) and counsels by misconduct not raising Lack of finality, by disloyalty, abandonment, hostile intentional deficient pleadings, irreconcilable conflict, disregarding the Petitioner's decision to **not to take an appeal and not to seek COA** (violating **agency**) counsels filing second, duplicate appeal, not authorized by Petitioner, counsels Not seeking Remand back to district court to adjudicate all claims for finality.

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page.

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

[ ] Clerk of Sixth Cir. Court of Appeals.

RELATED DECISIONS

(a) OHIO STATE COURTS.

1. In re Conservatorship of Ahmed, CASE NOS. 01 BA 13, 01 BA 48, 2003-Ohio-3272 (Ohio Ct. App., Belmont County: Conservatorship established over personal untainted funds of Nawaz Ahmed, to pay for retained trial counsels and appeal counsels. No funds were allowed by probate judge/court and conservator, to pay the retained counsels in case 99-CR-192 by patently and unambiguous lack of jurisdiction-unconstitutional sua sponte orders of trial judge, served upon probate court and conservator and filed in trial case.). Judgment Entered, June 16, 2003)

2. State v. Ahmed, No. 2001-0871, 103 Ohio St. 3d 27 (OH Supreme Court: Direct Appeal), Judgment Entered on August 25,2004.

3. State v. Ahmed, No. 2001-0871, 103 Ohio St. 3d 1496, 2004-Ohio-5605, 816 N.E.2d 1081(OH Supreme Court). Reconsideration denied;

Judgment Entered on Oct. 27, 2004.

4. Ahmed v. Ohio, No. 04-8302. 544 U.S. 952, 125 S. Ct. 1703, 161 L. Ed. 2d 531, **2005 U.S. LEXIS 2845**, Supreme Court of The United States; Petition for writ of certiorari to the Supreme Court of Ohio denied.

Judgment Entered on March 28, 2005,

5. Hampton v. Ahmed, 7th Dist. No. 02BE66, 2005 Ohio 1766, Ohio Ct. App., Belmont County, Court of Common Pleas of Belmont County, Ohio. Case No. 99 CV 457 voluntarily dismissed.

Judgement Entered April 11,2005.

5.1. Hampton v. Ahmed, 7th Dist. No. 02 BE 66, 2005 Ohio 1115 (Ohio Ct. App., Belmont County: affirmed the trial court's judgment. Civil Appeal from the Court of Common Pleas of Belmont County, Ohio. Case No. 99 CV 457, dismissal of case on September 25, 2002 but not the prejudgment attachment of untainted funds of Nawaz Ahmed for payment to selected, retained trial counsels in Trial case 99-CR-192 and its appeal.

Judgment Entered on March 07,2005.)

6. State v. Ahmed, No.05-BE-15, 2006-Ohio-7069, 2006 Ohio App. LEXIS 7000 (Ohio Ct. App., Belmont County: PCR appeal denied).

Judgment Entered on Dec. 28, 2006.

7. State v. Ahmed, No.2007-0216, 113 Ohio St. 3d 1513, 2007-Ohio-2208, 866 N.E.2d 512(OH Supreme Court: Discretionary PCR appeal not allowed.

Judgment Entered on May 16,2007

8. State v. Nawaz Ahmed, 2024-Ohio-904, Ohio Ct. App., Belmont County, SMI PCR-denial, reversed.

Judgment Entered on March 11,2024).

(b) FEDERAL COURTS.

9. **Ahmed v. Houk**, 2008 U.S. Dist. LEXIS 109687,US District Court Southern District of Ohio; Additional counsel denied.

Order entered on Apr. 16, 2008)

10. Ahmed v. Houk, No.2:07-cv-658,2011 U.S. Dist. LEXIS 101065, U.S.District Court for the Southern District of Ohio. (Magistrate R&R denying Discovery).

Decision entered September 08,2011.

11. Ahmed v. Houk, No.2:07-cv-658, 2011 U.S. Dist. LEXIS 156682, U.S.District Court for the Southern District of Ohio Magistrate Report denying discovery)

Order filed on October 05,2011)

12. Nawaz Ahmed v. Houk, No.2:07-cv-658, 2014 U.S. Dist. LEXIS 207136, U.S.District Court for the Southern District of Ohio. Affidavit of Disqualification of district judge stricken of record without ruling.)

Judgment Entered , February 19,2015).

13. Ahmed v. Houk, No.2:07-cv-658,2014 U.S. Dist. LEXIS 81971, U.S.District Court for the Southern District of Ohio.: Magistrate Judge R&R(Doc.88) Recommended Denial of Petition(Doc.35) and COA.).

Judgment Entered , June 16, 2014).

14. Ahmed v. Houk, No. 2:07-CV-658, 2014 U.S. Dist. LEXIS 81971, 2014 WL 2709765, .at *102; U.S.District Court for the Southern District of Ohio; (finding claim "barred from consideration in post-conviction by the doctrine of *res judicata*" when the information supporting the claim "was available for inclusion in the trial record" and the claim therefore "could have been brought at trial or on direct appeal").

Judgment Entered , June 16, 2014)

15. . Ahmed v. Houk, No.2:07-cv-658, 2018 U.S. Dist. LEXIS 242775, 2018 WL 11297612, U.S.District Court for the Southern District of Ohio. Attorney David Graef Withdrew for retirement, and Attorney Addel S. Shank appointed co-counsel.

Order Entered on Feb. 15, 2018)

16. Ahmed v. Houk, No.2:07-cv-658, 2020 U.S. Dist. LEXIS 172728, 2020 WL 5629622, U.S.District Court for the Southern District of Ohio,). R&R Adopted by, Objection overruled by, Writ of habeas corpus dismissed, Certificate of appealability denied.

Judgment Entered on Sept. 21, 2020.

17. Ahmed v. Houk, No.2:07-cv-658, 2021 U.S. Dist. LEXIS 87986, 2021 WL 1827121, U.S.District Court for the Southern District of Ohio). Rule 59(e) Motion Denied;

Judgment Entered, May 7, 2021.

18. Nawaz Ahmed v. Shoop, 20-4153/21-3542, 2024 U.S. App. LEXIS 5231,Court of Appeals for the sixth circuit. (First Appeal case 20-4153 erroneously dismissed. Fed. R. App. P.

42(b(2) Motions for Voluntary dismissal of unauthorized, duplicate case 21-3542" was sought but erroneously denied, in lack of jurisdiction).

Judgment entered, Mar. 4, 2024.

19. . Nawaz Ahmed v. Shoop, No. 20-4153/21-3542,2024 U.S.App. LEXIS 9334, ,Court of Appeals for the sixth Circuit). **Rehearing denied by, En banc**

Judgment Entered, Apr. 17, 2024.

20. Ahmed v. Ohio, No.04-892, 544 U.S. 952(2005), Supreme Court of the United states, (Direct Appeal case filed by counsel). Petition for writ of certiorari to the Supreme Court of Ohio denied.

Judgment Entered on March 28,2005.

21. Ahmed v. Shoop, No. 22-7574, 144 S. Ct. 131(October 02,2023), Supreme Court of the United States, Petition for writ of certiorari to the United States Court of Appeals for the Sixth Circuit denied.

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TABLE OF AUTHORITIES CITED

CASES: PAGE NUMBER

STATUTE AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF PROHIBITION AND OR MANDAMUS

Petitioner respectfully prays that a writ of ~~certiorari~~ original prohibition and or Mandamus issue to review the judgment below.

OPINIONS BELOW

[√] **For cases from federal courts:**

The Opinion of the United States Court of Appeals for the Sixth Circuit appears at Appendix "A" and "B" to the Petition and is submitted and filed in case 24A35 by clerk.

[√] **reported** at

Appendix "A", Nawaz Ahmed v. Shoop, 2024 U.S.App. LEXIS 9334 (6th Cir., Apr. 17, 2024)

Appendix "B", Nawaz Ahmed v. Shoop, 2024 U.S. App. LEXIS 5231 (6th Cir., Mar. 4, 2024)

The Opinion of the United States District court appears at Appendix "C" and "D" and "E" to the Petition and ~~is~~ are filed in Appeal case 20-4153 and are:

reported at

Appendix "C, Ahmed v. Houk, 2021 U.S. Dist. LEXIS 87986, (S.D. Ohio, May 7, 2021)

Appendix "D", Ahmed v. Houk, 2020 U.S. Dist. LEXIS 172728, (S.D. Ohio, Sept. 21, 2020)

Appendix "E", Ahmed v. Houk, 2014 U.S. Dist. LEXIS 81971 (S.D. Ohio, June 16, 2014)

JURISDICTION

[√] For cases from federal Courts:

The date on which the United States Court of Appeals dismissed my capital habeas appeal case 20-4153,

was: March 04,2024 and a copy of the Order of dismissal of my capital habeas appeal case is attached at APPENDIX "B".

[√] A timely Petition for rehearing was denied by the United States Court of Appeals for the Sixth Cir. on the following date: April 17,2024..... and a copy of the Order denying rehearing appears at Appendix "A"

[√] An **extension of time** to file the Petition for Writ of Certiorari was granted to and including **September 14,2024** on **July 15,2024** In Application NO: 24A35. But 9/14/24 being Saturday so filing by Prisoner using Prison Mail Box Rule is 9/16/24 to hand over to RCI Mail Staff for Mailing by USPS to the clerk of Supreme Court.

[√] The jurisdiction of this Court is invoked under 28 USCS 1254(1) and

[√] The jurisdiction of this Court in aid of appeal is also invoked under, 28 U.S.C.S. § 1651(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

USCS Const. Amend. 14, § 1
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.

28 USCS § 1291, Final decisions of district courts
The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, ...except where a direct review may be had in the Supreme Court.

28 U.S.C.S. § 1651(a) Writs
(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.

28 U.S.C.S. § 636(b)(1) :Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate [magistrate judge] to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's [magistrate judge's] order is clearly erroneous or contrary to law.
(B) a judge may also designate a magistrate [magistrate judge] to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial [post-trial] relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.
(C) the magistrate [magistrate judge] shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.
Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [magistrate judge]. The judge may also receive further evidence or recommit the matter to the magistrate [magistrate judge] with instructions.

STATEMENT OF THE CASE

(Following facts are from case 2:07-cv-658 and 20-4153 and 21-3542 and 22-3309 member cases)

1. PRO SE APPEAL ALLOWED: Court of Appeal appointed Petitioner Nawaz Ahmed to take the appeal pro se in first appeal case 20- 4153 under *Martinez*, 528 U.S. at 163 or with the Counsel of Record Attorney Keith A. Yeazel, but he did not filed his appearance. Warden received the Notice of appointment of Ahmed pro se from senior case manager PJE but did not Object. See case docket case 20-4153. And Also see

Nawaz Ahmed v. Shoop, 2024 U.S. App. LEXIS 5231 (6th Cir., Mar. 4, 2024):
Counsel: [*1] NAWAZ AHMED, Petitioner - Appellant (20-4153), Pro se, Chillicothe, OH.

So Petitioner pro se filed the Notice of Appeal (Ecf.164) and Amended Notice of Appeal (Ecf.196 timely using App.R.4(c) prison mailbox rule.See (ECF.Doc.196. filed on June 03,2021 titled, "Amended Notice of Appeal and Motion Seeking Remand due to lack of Finality"), as allowed by Sixth Cir. Court of Appeals, in 22 other appeal cases, most recent United States v. Adams, 2024 U.S. App. LEXIS 21696 (6th Cir. August 26, 2024)(citing*United States v. Montgomery*, 592 F. App'x 411, 415 (6th Cir. 2014) (citing *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 163, 120 S. Ct. 684, 145 L. Ed. 2d 597 (2000)).

1.1. DISCRETIONARY HYBRID REPRESENTATION ALSO ALLOWED IN 6th Cir.
:
Sixth Cir. also allow hybrid representation on Appeal citing *Miller v. United States*, 561 F. App'x 485, 489 (6th Cir. 2014) cited in fifteen cases and more.

2. MAGISTRATE R&R BASED ON MISSING RECORDS DO NOT MEET REVIEW REQUIRED BY 28 U.S.C.S. § 636(b)(1) AND VIOLATED Townsend v. Sain, 372 U.S. 293, 316,318 (1963)

2.1. . Warden's counsel Seth Patrick Kestner (terminated on 01/28/2025) was fired from job for creating these flaws in state court records, not including crucial entries, orders, petitions, applications, pleadings and stripping off beginning and end pages of first set [# 01-14] and second set[#15-19] of pro se Claims and also removing beginning and last pages of third set of pro se PCR claims #20-48 to make them undistinguished. R&R rather than blaming the

Warden's counsel that why ROW do not mention any pro se PCR grounds separately or by number but simply acknowledged that "Ahmed filed many ground/claims pro se". Magistrate judge ignored those flaws in record, without ordering that new and complete digital records be filed before stating R&R. R&R based upon incomplete paper records violated due process of defendant. Conner v. Wingo, 409 F.2d 21 (6th Cir. 1969)citing Townsend v. Sain, 372 U.S. 293, 316,318 (1963).Page 318, 83 S. Ct. at page 760. Jenkins v. Kropp, 424 F.2d 665,666(6th Cir.1970).

'"a defendant in a criminal case has a right under the Fourteenth Amendment to be tried pursuant to substantive and procedural due process requirements. Rogers v. Richmond, 365 U.S. 534, 544-545, 81 S. Ct. 735, 5 L. Ed. 2d 760 (1961). The Supreme Court has instructed in Townsend v. Sain, 372 U.S. 293, 316, 318(1963), that a federal district court in the course of its conduct of a petition for habeas corpus **must scrutinize the state court record** to see if the totality of the circumstances contained in the record establishes error of constitutional dimension.

2.2.. The district judge has the power to compel the production of the complete state-court record. Conner v. Wingo, 409 F.2d 21 (6th Cir. 1969). Magistrate judge started review of some of these pro se PCR claims not in Petition(Doc.35) but abandoned review, noting incomplete paper records filed by Attorney General/Warden counsel.

2.3.. The magistrate judge Merz in R&R(Doc.88) Ahmed v. Houk, 2014 U.S. Dist. LEXIS 81971 (S.D. Ohio, June 16, 2014) reviewed only 27 claims in Petition(Doc.35) but not others under Fed. R. Civ. P. 15(b)(2) as court was also requested in Traverse(doc.71) to review all other claims in state court record, not included in Petition, under Fed. R. Civ. P. 15(b)(2) as argued at (Ecf 177 filed 12/22/2020),PageID#11012-110113) at para 3 and 30. Ahmed v. Houk, 2020 U.S. Dist. LEXIS 172728, (S.D. Ohio, Sept. 21, 2020).Traverse (Doc.71) and ("objections(Doc.105, and 150) had already cited these claims and Traverse (Traverse, Doc. No. 71 at PageID 1661-65.) had asked the magistrate judge to review them, under Fed. R. Civ. P. 15(b)(2), was known to Warden and ROW (Doc.61)and Response to Traverse and Response to Objections and ROW had raised the false procedural defaults against these claims, as was done by R&R (Doc.88) id at

p.33, "**constitute implied consent**". *See* *In re Clark*, 5 Cal. 4th 750, 21 Cal. Rptr. 2d 509, 855 P.2d 729, 760 (Cal. 1993) ("Absent justification for the failure to present all known claims in a single, timely petition for writ of habeas corpus, successive and/or untimely petitions will be summarily denied.");

2.4. The judgment/Order (Ecf.Doc.156) was already Open under Rule 59 (e) proceeding. District court abused its discretion by not adjudicating these claims in state court record. *see* 28 U.S.C. § 2242 (amendments in habeas actions are governed by the rules of civil procedure). "A district court abuses its discretion where it makes an error of law or renders a "manifestly unreasonable" ruling". .

3. The claims judiciable under Fed. R. Civ. P. 15(b)(2) number 48+13+10+17= 88 or more.

Boyd v. Sec'y, 2024 U.S. App. LEXIS 21882(Eleventh Cir. 2024), id at p.7 -8 stated:.
"a district court's judgment in a civil case cannot be appealed unless it is "final" in the sense that it "ends [*8] the litigation on the merits" and "resolves the entire case," leaving "nothing for the court to do but execute the judgment." *Catlin v. United States*, 324 U.S. 229, 233, 65 S. Ct. 631, 89 L. Ed. 911 (1945); *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 38, 140 S. Ct. 582, 205 L. Ed. 2d 419 (2020); *see* 28 U.S.C. § 1291. This "long-established rule against piecemeal appeals in federal cases" applies equally in habeas corpus proceedings: a federal habeas judgment is appealable only if it is "final not only as to all the parties, but as to the whole subject-matter and as to all the causes of action involved." *Andrews v. United States*, 373 U.S. 334, 340, 83 S. Ct. 1236, 10 L. Ed. 2d 383 (1963) (quoting *Collins v. Miller*, 252 U.S. 364, 370, 40 S. Ct. 347, 64 L. Ed. 616 (1920)); *see* 28 U.S.C. § 2253.

4.. ERRONEOUS APPLICATION OF NON-EXISTING OHIO PROCEDURAL RULE OF HYBRID REPRESENTATION IN PCR CIVIL STATUTORY PROCEEDING:

4.1. See R&R at page 33 Ahmed v. Houk, 2014 U.S. Dist. LEXIS 81971 (S.D. Ohio, June 16, 2014) R&R stated under subheading:

6. Ahmed's Argument that he Preserved his Claim by Raising it in Pro Se Post-

Conviction Petitions.

" he preserved this specific claim for habeas review. (Traverse, Doc. No. 71 at PageID 1661-65.) The Court observes that the documents to which Ahmed directs its attention appear to be **incomplete, [*33] as both terminate mid-sentence** (Appendix, Vol 7 at 310-16; Vol. 8 **at 6-9**). The first of those documents was filed on October 3, 2002, ***id.***, and a docket entry on that date indicates that the ***pro se*** **petition submitted by Ahmed** would be lodged in the official file but that **the court would not act upon it** because Ahmed was represented by counsel and because the matter was before the Ohio Supreme Court. (Appendix, Vol. 8 **at 1**.) The second of the ***pro se*** post-conviction petitions was filed on October 11, 2002.

4.2. TRIAL JUDGE WAS MISTAKEN AND R&R ignored Zuern v. Tate, 938 F. Supp. 468, 471 (S.D. Ohio, 1996) by R&Rat page 33.

The Petitioner Ahmed's "unique circumstances" fits within that limited category of an exceptional case in which exorbitant application of a generally sound rule renders the state ground inadequate to stop consideration of a federal question." Lee v. Kemna, 534 U.S. 362,376 citing Davis v. Wechsler, 263 U.S. 22, 24(1923) (Holmes, J.) ("Whatever **springes the State may set for those who are endeavoring to assert rights that the State confers**, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.").

See **para 7** below with case citations:

4.3. Trial Judge and Magistrate Judge failed to understand that PCR is a civil statutory

R.C.2953.21 proceeding and inmates do not have right to public defender, under

R.C.120.16(A)(1) and (D) for initial filing of the PCR Petition and ground for relief. See

State v. Thomas,1988 Ohio App. LEXIS 3040 (7th Dist. Ohio Ct. App., Belmont County, July. 28, 1988) id at 2-3, "(counsel for postconviction proceedings is not a matter of right in Ohio, neither constitutional, nor statutory."). based on paragraph 3 Syllabus of *State v. Barnes* (1982), 7 Ohio App. 3d 83.86)("# 3. Appointment of counsel is not required for the initial burden of preparing and presenting petitions of indigents for post-conviction relief.)

Inmates must file the grounds under R.C. 2953.21 for relief pro se as required by OH Supreme Court in *State v. Crowder* (1991), 60 Ohio St.3d 151, 152-153 and *Crowder*, paragraph one of the syllabus; Wherefore, trial judge was not applying any existing "state procedural requirement" for PCR civil proceeding but acting against the procedural requirement setforth by OH Supreme Court at *Crowder*, paragraph one of the syllabus; .

4.4. See also Zuern v. Tate, 938 F. Supp. 468, 471 (S.D. Ohio, 1996))(magistrate Judge Merz found)(" under the R.C.2953.21(I), now (J) and R.C.120.16(A)(1),(D), **a prisoner might well**

have to prepare his or her own § 2953.21 petition and grounds for relief, then hope for public defender thereafter.

Also Klayman v. Luck, 2008 Ohio 5876, 2008 Ohio App. LEXIS 4944 (Ohio Ct. App., Cuyahoga County, Nov. 13, 2008) (8th Dist. November 13, 2008) (id at " [*P19]," OH Supreme court has **never ruled that in Civil PCR statutory proceeding under R.C.2953.21.** It would contradict *Crowder*, paragraph one of the syllabus.

4.5. Trial judge was mistaken by wrongly thinking that PCR civil statutory proceeding was a Sixth Amendmen constitutional trial proceeding. Trial judge applied the "inadequate" procedural state rule while also trial judge was acting contrary to *Crowder*, paragraph one of the syllabus. Petitioner filed pro se grounds **in justified reliance upon** prior binding decision of OH Supreme Court in *Crowder*, paragraph one of the syllabus.
issued before October 3, 2002, and *the defendant* ***could not be "deemed to have been apprised of trial judge "novel ruling" as to its existence." Id., at 357 U.S. 449, 457.*** " State highest court have the final say on the meaning of state law. *See Estelle v. McGuire*, 502 U.S. 62, 67-68, 112 S. Ct. 475, 116 L. Ed. 2d 385 (1991);

The rationale is one of fairness: "Novelty in procedural requirements cannot be permitted to thwart review in [federal court] applied for by those who, **in justified reliance upon prior decisions,** seek vindication in state courts of their federal constitutional rights." *Id.* at *Ford v. Georgia*, 498 U.S. 411, 423 (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 457-58(1958)).

4.6. Moreover Trial judge procedural ruling on October 3, 2002 was in violation of Harris, 489 U.S. at 260 (without an independent and adequate state ground for denying relief) and in violation of *Ford v. Georgia*, 498 U.S. 411, 423-24(1991):

"Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, **in justified reliance upon prior decisions**, seek vindication in state courts of their federal constitutional rights." *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 457-458(1958). In the *NAACP* case, we declined to apply a state procedural rule, even though the rule appeared "in retrospect to form part of a consistent pattern of procedures," because *the defendant in that* ***case could not be "deemed to have been apprised of its existence." Id., at 457."***

4.7.. (as per *Crowder,* paragraph one of the syllabus; "there is no rule against filing PCR grounds pro se even public defender has submitted his,her own grounds..". ." *Walker v. Martin*, **562 U.S. 307** , 131 S.Ct. 1120, 1128, (2011), *citing Beard v. Kindler*, 558 U.S. 53, 130 S.Ct. 612, 618, 175 L. Ed. 2d 417 (2009). Court's repeated recognition that federal courts must carefully examine state procedural requirements to ensure that they do not operate to discriminate against claims of federal rights. See, *e.g.*, *Brown* v. *Western R. Co. of Ala.*, 338 U.S. 294, 298-299, 70 S. Ct. 105, 94 L. Ed. 100.

5. NO PROCEDURAL DEFAULT AGAINST THESE PRO SE GROUNDS #20-48:

The pro se Postconviction Ground #20-48 are neither responded to by prosecutor by answer or motion, nor Ruled Upon by any OH Court, and nor **by the district court**, even when asked in Traverse (Doc.71, PageID# 1664) and Objections(105 PageId#9590) and Corrected Objection (150, PageID#,10441-10443). Pro se PCR grds #20-48 are in record at **(Ecf. Doc.45)** in digital form. R&R(88,174),Opinion(156,194) **utterly failed to review them** under Civ.R.15(b)(2).

6. See, Ahmed v. Houk, 2014 U.S. Dist. LEXIS 81971 (S.D. Ohio, June 16, 2014) id at p.33:

"Court observes that the documents to which Ahmed directs its attention appear to be incomplete, [*33] as both **terminate** mid-sentence (Appendix, Vol 7 at 310-16; Vol. 8 at 6-9)." filed on October 3, 2002 and October 11, 2002. [But third set of PCR Grounds #20-48 filed 01/30/2003 were excluded by prosecutor from paper records, the magistrate judge was given by warden's counsel.]. Ahmed's file-stamped copy was scanned and filed as digital record at ECF.Doc.45) as agreed expansion of record". Neither trial judge nor seventh district appeal court, nor to OH Supreme court review them, thus "inadvertently overlooked"due to Clerk's error failing to protect the record as its custodian.
" If a state appeals court has not ruled on the merits of a constitutional claim, a federal district court must conduct de novo review over the claim. ***Johnson v. Williams*, 568 U.S. 289, 303**, 133 S. Ct. 1088, 185 L. Ed. 2d 105 (2013).

7. Under **Crowder** In Civil PCR Proceeding, No Hybrid Representation Rule EXITS.

State v. Crowder (1991), 60 Ohio St.3d 151, 152-153," Prisoners do not have a right to appointed public defender for filing PCR claims pro se. *Crowder*, paragraph one of the syllabus; See also Zuern v. Tate, 938 F. Supp. 468, 471 (S.D. Ohio, 1996))(magistrate Judge Merz found)(" under the R.C.2953.21(I), now (J) and R.C.120.16(A)(1),(D), a prisoner might well have to prepare his or her own § 2953.21 petition and grounds for relief, then hope for public defender thereafter... See *State v. Barnes*, 7 Ohio App. 3d 83, 454 N.E.2d 572, id at para # 3 of syllabus (Ohio App. 1982). Public Defender...**if does serve**, it does not do so by virtue of "entry of an order by a court of record,"[*State v. Crowder* (1991), 60 Ohio St.3d 151, 152-153; *Crowder*, paragraph one of the syllabus, but by discretion of public defender. R.C.120.16(D)];.

8.. Government caused the "Hybrid Default" if it exists on October 03,2020 and October 11,2020 Ahmed had asked the OH Public Defender counsels to withdraw from his post-conviction case 99-CR-192 and they filed "Motion to Withdraw" because Ahmed had the due process "right not to be subjected to "hybrid representation." By the "discretionary representation" of the Public

Defender under R.C.120.16(A)(1),(D). Prosecutor in violation of R..C.120.16(A)(1),(D) ."opposed the OPD Motion to Withdraw" and trial court never ruled upon their Motion to Withdraw, thus impliedly denied it by cancelling the R.C.2953.21(I)(1)(2) Hearing, after the hearing was scheduled. See case docket.

9. "Hybrid Default" discretionary Rule in Ohio Postconviction Civil Proceeding, if exists is not "Firmly established and regularly followed" thus is "not an adequate and independent" procedural discretionary Rule", not followed in over 150 cases, including 21 Postconviction appeal cases, listed at **ECF.Doc.132-5 PageId310220-10227).** .

In these cases Ohio appeal courts reviewed the pro se briefs, despite appeal counsel filed briefs. Wherefore, in Ohio the "hybrid representation on statutory appeal or statutory PCR collateral proceedings" is neither firmly established nor regularly followed" thus, it cannot constitute an adequate and independent state ground foreclosing review of Ahmed's federal constitutional claim at the time it was applied to Ahmed on October 03,20002 and October 11,2002..

Cf. *Kindler*, 558 U.S., at 60-61. *Lee* v. *Kemna*, 534 U.S. 362, 376(2002).citing

Davis v. Wechsler, 263 U.S. 22, 24(1923)

" There are, however, "exceptional cases in which exorbitant application of a generally sound rule renders the **state ground inadequate** to stop consideration of a federal question." *Lee v. Kemna*, 534 U.S. 362, 376, 122 S. Ct. 877, 151 L. Ed. 2d 820 (2002). A state ground is "adequate" only if the state court acts in a consistent and principled way. "A basis of decision applied infrequently, unexpectedly, or freakishly may be inadequate, for the lack of notice and consistency may show that the state is discriminating against the federal rights asserted." *Prihoda v. McCaughtry*, 910 F.2d 1379, 1383 (7th Cir. 1990).

"A state ground may be found inadequate when a court has exercised its discretion in a **surprising or unfair manner**". Walker v. Martin, 562 U.S. 307(2011).

7..2. Also Klayman v. Luck, 2008 Ohio 5876, 2008 Ohio App. LEXIS 4944 (Ohio Ct. App., Cuyahoga County, Nov. 13, 2008) (8th Dist. November 13, 2008) (id at " [*P19] This issue of **hybrid representation** has been addressed by the Ohio Supreme Court in the context of

criminal cases, **but not specifically in civil cases.");** State v. Milanovich, 42 Ohio St. 2d 46(1975)(Under R. C. 2953.21, an action for postconviction relief is a civil proceeding.).

7.3. No Ohio case state that a defendant cannot file the PCR grounds pro se bur requires it.. US Supreme Court has never ruled upon"hybrid representation" in any holding but have left to discretion of federal and state courts for statutory appeal proceedings in Martinez v. Court of Appeal of Cal., 528 U.S. 152, 163,165 .

7.4. State v. Ahmed, 2006-Ohio-7069, 2006 Ohio App. LEXIS 7000 (Ohio Ct. App., Belmont County, Dec. 28, 2006) [*P89],Id at P.28. cited some of the same 6th amendment trial cases, ***inapplicable*** *to filing pro se* PCR Grounds in *collateral statutory PCR proceeding,* required by statutes and law at *Crowder,* paragraph one of the syllabus.

7.5. R&R(88,174) and (Opinion(156,194) failed to follow the "Ohio law" stated by their District Court. See Shedwick v. Warden, North Corr. Inst., 2015 U.S. Dist. LEXIS 135540 (S.D. Ohio, Oct. 5, 2015) *Id at* 35-36. (it is not this Court's function, in the context of a habeas corpus proceeding, **to interpret state law**. "If the relevant state law is established by a decision of "the **State's highest court**,"[*Crowder,* paragraph one of the syllabus] that decision **is "binding on** the federal courts."; Wainwright v. Goode, 464 U. S. 78, 84(1983) (*per curiam*); see *Mullaney* v. *Wilbur*, 421 U. S. 684, 691(1975).

7.6. Magistrate Judge at page 34 Ahmed v. Houk, 2014 U.S. Dist. LEXIS 81971 (S.D. Ohio, June 16, 2014) id at p.34 of R&R, state," Default is determined by looking at the rule *as of the date it was applied to the petitioner's case* by the state court. *Ford v. Georgia*, 498 U.S. 411, 423-24, 111 S. Ct. 850, 112 L. Ed. 2d 935 (1991), but R&R ignore the, "Novelty in procedural requirements cannot be permitted to thwart review in this Court applied **for by those who, in justified reliance upon prior decisions,** seek vindication in state courts of their federal constitutional rights";. In *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 457-458(1958),"we declined to apply a state procedural rule, ...because the defendant in that case could not be "deemed to have been apprised of its existence." *Id.*, at 457.";

7.7. R&R(88,174),Opinion(156,104) incorrectly cite postfacto-later cases, after the Ahmed's trial and appeal and post-conviction proceedings. OH Trial 6th Amendment Cases are cited blindly, to illogically assert "hybrid representation" in statutory appeal and statutory postconviction proceeding. See (State v. Thompson (1987),33 Ohio St.3d 1, 6-7 **(Per Curium),** cited by warden, point to 6th amendment trial case below and has " no relevant Syllabus"; How could dicta at p.6-7 apply to statutory appeal and statutory PCR proceedings, warden and district court failed to explain? See LGR Realty, Inc. v. Frank & London Ins. Agency, 152 Ohio St. 3d 517,522(2018)(The pronouncement of law in a per curiam opinion must be read in light of the facts of that case).

7.8. All these *6th Amend*-Ohio appeal postfacto cases are ***intertwined*** with federal cases; thus state trial court failed to invoke proper (**non-existing** in PCR statutory civil proceeding)," *discretionary state procedural rule*"--- An independent rule is one that is not "interwoven with federal law." Park, 202 F.3d 1146 at 1152 (quoting Michigan v. Long, 463 U.S. 1032, 1040-41;

and was *not an "independent, adequate procedural rule*" wrongly applied on **10/20/2002 or 03/08/2005,** to deny habeas corpus relief, per Pro se PCR Grounds #1-14 and #15-19 and #20-48 grounds. Magistrate Judge rather than applying the *Crowder*, paragraph one of the syllabus. See Mills v. Anderson, 961 F. Supp. 198,201(SD,Oh(Feb.12,197). See Shedwick v. Warden, North Corr. Inst., 2015 U.S. Dist. LEXIS 135540 (S.D. Ohio, Oct. 05, 2015) Citing (State v. Crowder, 60 Ohio St. 3d 151, 152-153, 573 N.E.2d 652, 654 (1991). Magistrate Judge and district court failed to state and apply the correct federal law existing on August, 2004 statutory Appeal or 10/02/2002 PCR or 03/08/2005 PCR Trial or 12/28/2006 PCR Appeal.or 05/16/2007.;

8. SUPPLEMENTAL OBJECTION (DOC174) NOT THE CORRECTED OBJECTIONS (Doc.150) WAS GRANTED BY district Judge Order (Ecf.140) because "Civ.R.15(d) and Do not Authorise"Corrected Objections".NOR any Caselaw from the Sixth Circuit:

It is not clear what transpired at purported "status conference" noticed on 04/02/2019,but held on 05/22/2019,turned into"evidence hearing" as proceedings were neither recorded despite court reporter Lahana DuFour was in attendance (nor Petitioner Ahmed notices nor allowed to attend via CCI digital Link with Courts.. See, *Thomas v. Arn*, 474 U.S. 140, 151(1985). The district court should adopt the magistrate judge's findings and rulings *to* which *no specific objection is filed*. *Id.* at 151. Objections (Doc.105) include specific Objections to all 27 claims in Petition and cite other claims in state court records, judiciable under Civ.R.15(b)(2). The advisory committee notes to FED. R. CIV. P. 72(b)(2) suggest that the Court still must "satisfy itself that there is no clear error on the face of the record in order to accept the commendation. *Redmon v. Noel*, No. 1:21-cv-445, 2021 U.S. Dist. LEXIS 196849, 2021 WL 4771259, at *1 (S.D. Ohio Oct. 13, 2021) (collecting cases).

9. But district judge Michael H. Watson in Ahmed v. Houk, 2020 U.S. Dist. LEXIS 172728, (S.D. Ohio, Sept. 21, 2020),id at page 13, "III. Petitioner's Claims": failed to follow the Thomas v. Arn, 474 U.S. 140, at 151.District judge also did not review the magistrate Judge R&R, portions to which district judge wrongly presumed "NO Objections were filed" for "clear error of law". District judge without any mention of timely filed specific Objections(Doc.105), only

review Eight Claims. When, Neither 28 U.S.C. § 636(b)(1)(A) & (B) nor § 636(b)(1)(C) nor Fed. R. Civ. P. 72(b), nor Habeas Corpus Rule 1(d), and 11 and 12 ; nor any S.D.OH local Rule, nor any caselaw from Sixth Cir., nor Civil Rule 15 allow filing of "Corrected Objections" to magistrate's R&R. See28 U.S.C. § 2243 . The change of title to "Corrected Objection" was "contrary to law." and contrary to district judge Order (Ecf.140) which allowed filing of "Supplemental Objections" to already filed specific Objections(Doc.105).

10. The Issue of "Not all Objected claims in petition not reviewed by district judge and not all claims in state court record reviewed by magistrate and district judge was known to magistrate judge and to district judge as per :

Ahmed v. Houk, 2021 U.S. Dist. LEXIS 131669(S.D.OH, July 15,2021) magistrate Judge stated:(The filing of a notice of appeal does not bind an unwilling litigant to proceed with the appeal. Petitioner is free to request the Sixth Circuit to dismiss the appeal and/or to request **a remand for consideration of *issues he apparently believes this Court must address before entering final order".***

11. See Ahmed v. Houk, 2021 U.S. Dist. LEXIS 87986, (S.D. Ohio, May 7, 2021), reviewed only Eight Claims, included in the Supplemental Objections(Doc.147, whose title changed to Corrected Objection(Doc.150), without any reason and contrary to district judge Order (Ecf.Doc.140), authorizing Supplemented Objections. District court not reviewing the Objections(Doc.105) failed to render the final Orders (Ecf.Doc.156,194) and by not reviewing the remaining claims under Fed. R. Civ. P. 15(b)(2).

12.. District court erroneously dismissing the first habeas petition (Doc.35) having 27 claims but only reviewing Eight claims in Petition and not adjudicating the remaining claims under Civ.R.15(b)(2) as listed below::

(a) Nineteen claims in Petition(Doc.35) Ahmed v. Houk, 2014 U.S. Dist. LEXIS 81971 (S.D. Ohio, June 16, 2014) and

(b) 17 PCR claims filed by OPD counsels in first PCR Petition filed in case 99-CR-192 and

(c) 13 (Thirteen) Prepositions of law presented in second corrected Application to reopen appeal. Denied by State v. Ahmed, 118 Ohio St. 3d 1406, 2008-Ohio-2340, 886 N.E.2d 870

(May 21, 2008). Warden failed to include the OH Supreme Court Order in paper records, when Order is published.

(d) one subclaim "Denial of counsel of choice on direct appeal", presented part of First Habeas claim in Petition(Doc.35) but not ruled upon by the district court in its opinion (Doc.156)..

(e) Ten claims presented but denied by OH Supreme Court filed in pro se Motion for Reconsideration and responded by State of Ohio. State's motion to strike was not granted. See State v. Ahmed, 103 Ohio St. 3d 1496, 2004-Ohio-5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2588 (Oct. 27, 2004)(Motion for Reconsideration denied),without ruling upon indivisual claims.

13. CLAIMS IN PROSE MOTION FOR RECONSIDERATION DENIED BY PUBLICHED OPINION. State v. Ahmed, 103 Ohio St. 3d 1496, 2004-Ohio-5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2588 (Oct. 27, 2004)(Motion for Reconsideration denied),without ruling upon indivisual claims.

13.1. where there is a reasoned state judgment State v. Ahmed, 103 Ohio St. 3d 27,30(August25,2004) (id at [**P27], [**P28], [**P29], [**P30]) denying a claim followed by a later **summary denial** of the same claim, in **State v. Ahmed, 103 Ohio St. 3d 1496, 2004-Ohio-5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2588 (Oct. 27, 2004)** the **summary denial** rests on the same grounds as explained in the earlier judgment. *Ylst v. Nunnemaker*, 501 U.S. 797, 803-04, 111 S. Ct. 2590, 115 L. Ed. 2d 706 (1991);

State v. Ahmed, 103 Ohio St. 3d 1496, 2004-Ohio-5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2588 (Oct. 27, 2004)summary denial of multiple claims presented in pro se Motion for Reconsideration,were denied by "unreasonable application of clearly established federal law or make an unreasonable determination of facts. 28 U.S.C. § 2254(d)(1)-(2)" in denying representation by Attorney Joseph Carpino as retained counsel of choice, saying he as privately retained counsel was not certified to represent Ahmed as retained counsel. When certification only apply to appointed counsels per Sup.R.20 and current Appt.Coun.Rules.

13.2. Hittson v. GDCP Warden, 759 F.3d 1210,1231-1232(11th Cir.,2014) there is no AEDPA requirement that a state court explain its reasons for rejecting a claim; "Section 2254(d) applies even where there has been a summary denial." Cullen v. Pinholster, U.S. , 131 S. Ct. 1388, 1402, 179 L. Ed. 2d 557 (2011). "When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication [**49] or state-law procedural principles to the contrary." Richter, U.S. at , 131 S. Ct. at 784-85. Our task in these situations is to review the record before the Georgia Supreme Court to "determine what arguments or theories supported or, as here, could have supported, the state court's

decision." Id. at , 131 S. Ct. at 786. Hittson may only obtain federal habeas relief "by showing there was no reasonable basis for the state court to deny relief." Id. at , 131 S. Ct. at 784.

13.3. See also Ahmed v. Houk, 2014 U.S. Dist. LEXIS 81971 (S.D. Ohio, June 16, 2014)id at page 22, ("there exists no explicit enforcement of the Ohio Supreme Court rule specifically prohibiting the raising of new claims of error in motions for Reconsideration in direct appeals in death penalty cases"); See holding in *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 163,165(2000))(Given the Court's conclusion that the Sixth Amendment does not apply to appellate proceedings. any individual right to self-representation on appeal based on autonomy principles must be grounded in the Due Process Clause,... the Court's narrow holding does not preclude the States from recognizing a constitutional right to appellate self-representation under [****5] their own constitutions...We already leave to the appellate courts' discretion, keeping "the best interests of both the [***608] prisoner and the government in mind...Courts, of course, may still exercise their discretion to allow a lay person to proceed *pro se.* ...[*164]...Meanwhile the rules governing appeals in California, and presumably those in other States as well [OH S.Ct. Prac. R. 18.02. Motion for reconsideration] , seem to protect the ability of indigent litigants to make *pro se* filings...question is readily answered by the fact that there is no constitutional right to appeal. See *McKane* v. *Durston*, 153 U.S. 684, 687-688, 38 L. Ed. 867, 14 S. Ct. 913 (1894). State v. Kinney, 163 Ohio St. 3d 537(2020).

13.4. OH SUPREME COURT ALLOWED PRO SE MOTION FOR RECONSIDERATION BY DISCRETION under its rules of practice and discretion under *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 163,165(2000)) Holding. There is no prohibition against including New claims in pro se Motion for reconsideration, as defendant-Appellant is always represented by counsels on appeal.
See, Ahmed v. Houk, 2014 U.S. Dist. LEXIS 81971 (S.D. Ohio, June 16, 2014)id at page 22, ("there exists no explicit enforcement of the Ohio Supreme Court rule specifically prohibiting the raising of new claims of error in motions for Reconsideration in direct appeals in death penalty cases"); See,

(a) State v. D'Ambrosio, 74 Ohio St.3d 1409(October 4,1995, denied) Justice Wright and Justice Pfeifer,jj.dissent.
(b) State v. Gross,97 Ohio St.3d 1486(December 18,2002, denied). Resnick and Lundberg Stratton, JJ., dissent in part.
(c) State v. Howard, 153 Ohio St. 3d 1430(June 27,2018) (On **pro se motion for reconsideration**. Motion denied.).
(d) State v. Ahmed, 103 Ohio St. 3d 1496, 2004-Ohio-5605, 816 N.E.2d 1081, 2004 Ohio LEXIS 2588 (Oct. 27, 2004)
(e) State v. Franklin, 101 Ohio St. 3d 1462(feb.25,2004)(pro se motion for reconsideration..... and related motions were not timely filed under S. Ct. Prac.R. XI(2), IT IS ORDERED by the court, sua sponte, that the motions be, and hereby are, stricken.);

14. LIST of Pro Se PCR Claims/Grounds Filed as Amendment to PCR Pettion in civil postconviction proceeding: As allowd by *Crowder*, paragraph one of the syllabus;

The listed below was filed not by ROW but pro se at (Ecf.162,PageID#10751, 10758):

Petitioner filed his pro se PCR grounds in **three sets.** (Traverse (Doc.71,PageID #1661) and

Corrected Objection(Doc.150,PageID# 10441-10442), and R&R (Doc.88, PageID# 2141-2142).

ROW dishonestly did not list any PCR ground.

(a) P.C. Petition; Doc.90-8,Part 1 filed on October 3,2002 contain claims# 1 to 14 (Pro Se P.C. petition, PageID# 5165) and
(b) P.C. Petition; Doc.90-9,Part 2 filed on October 11,2002 contain claims # 15 to 19 (Pro Se P.C. petition, PageID# 5351), and
(c) P.C. Petition, **Part 3** at(ECF.Doc.45) was filed on February 20,2003, see(Ecf.Doc. Doc.45-1,45-2,45-3, 45-4, 45-5) contain claims # 20 to 48.

14.1. LIST OF PRO SE POSTCONVICTION CLAIMS

1. Denial of Use of own untainted funds and Plan and Present own defense:
   Pro se Claim# 6,8,10,23,29,37,38,40.
2. Denial of Selected counsel by use of own funds: Pro Se Claim# 6,8,10, 23, 29, 37,38,40
3. Denial of Due process,fair proceedings/Trial by collusion among Prosecutor,Three Juges and Public Defenders,appointed counsels,conservator,Sheriff, Jail Adm.:
   Pro Se Claim# 23
4. Denial of Speedy Trial: (6th Amend. R.C.2945.72,IAD & . Sup. R. 8(B)].
   Pro se Claim# 15,19,29,37,38.
5. Biased and Prejudiced Trial Judge: ProSeClaims# 8,11,19,20,21,23,24,27,28,40,41,42
6. Ineffective Assistance of counsels Pro Se Claim# 4,9,10,11,12,13,14, 16, 17, 18,2 0, 21,22,24,25,26,,27,30,31,32,33,39,43,44
7. Denial of Evidence and Alibi Testimony by Children: Pro Se Claim # 5.
8. Prosecutor Misconduct: Pro se Claims # 1,2,12,21,22,24,30,31,40,41.
9. Denial of Public Trial: Pro se Claim: 29
10. Denial of Right to be present in all proceedings: Pro se Claim# 36
11. Denial of fair Trial: Pro se Claim# 7,9,24,29,30
12. Denial of Due Process,Fair Trial by false testimony: Pro se Claim# 16,17,18,21,22,24
13. Venire and Jury Not Representative of Community: Pro Se Claim # 26,44
14. Denial of Fair Trial by False Testimony of Yokey: Pro se Claim # 32

15. Denial of fair Trial by false testimony of Tahira Khan: Pro se Claim# 33
16. False Testimony by Grace Hoffman: Pro se Claims # 3,39.
17. Denial of Selected Counsel on Direct Appeal: Pro Se Claim # 6,8,28,37,38.
18. Denial of Selected Counsel for Postconviction: Pro se Claim# 6,8,37,38.
19. Illegal Arrest and seizure. Pro se Claim # 4,20.
20. Denial of Discovery, Witness and Testimony: Pro se Claim # 27,32.
21. Innocence Claim: Pro se Claim# 9
22. Denial of 14, 4th, 6th amendment rights to **use own untainted funds** and to pay retain counsel of choice
23. Fair Proceeding,
24. illegally establishing Conservatorship (R.C.2111.021) outside the county of residence when Ahmed had no funds in Belmont County and illegal interference with conservatorship by Trial Judge: Pro se claim# 40
25. Denial of Fair Trial by failure to prove sanity,insanity Pro se Claim# 34
26. Denial of VCCR Rights to selected Counsel: Prose Claim# 10,13,25
27. Denial of Continuance of Trial: Prose Claim#19
28. Ineffective Appeal Counsel: Pro Se Claim# 27

The magistrate judge R&R (Doc.88) by ignoring his finding in ~~ignored~~ Zuern v. Tate, 938 F. Supp. 468, 471 (S.D. Ohio, 1996) erroneously finds that all prose claims are defaulted under hybrid representation default, when PCR is a "Civil Proceeding and OH Supreme Court required petitioners to prepare and file their claims pro se, because there is no statutory right to counsel in initial preparation of PCR grounds and their filing under R.C.120.16(A)(1),(D). See (State v. Crowder, 60 Ohio St. 3d 151, 152-153(1991) id at *Crowder*, paragraph one of the syllabus.

When, however, "evidence [**5] leads very clearly to the conclusion that a federal claim was inadvertently overlooked in state court," a petitioner can overcome that presumption and secure "an unencumbered opportunity to" have a federal court review his claim de novo. *Id.* at 303

15. Given the Court's conclusion in Martinez, supra that the Sixth Amendment does not apply to appellate proceedings. Appeal rights are not given in OH Constitution but by statutes. No statute prohibits hybrid representation. See State v. Hackett, 2020-Ohio-6699, 2020 Ohio LEXIS 2801 (Ohio, Dec. 17, 2020) **Concur by:** FISCHER; STEWART, id at [*P34] , . [*P43] , [*P48] descanting justices stated that, Article I, Section 10 of OH Const., "As a matter

of grammar and basic reading comprehension, Ohio Const. provides a **constitutional right to hybrid representation**—that is, the right to represent oneself with the assistance of counsel, with the two sharing responsibilities in preparing and conducting trial and [appeal]. In **Thompson** and reaffirmed **in Martin** the court did not look to the plain language of the **Ohio Constitution** to support that conclusion." [*P48] ;

See also **State v. Parker, 166 Ohio St. 3d 1484(2022): FISCHER, J.,** concurring.

16. Warden's counsel even when told, dishonestly refuse to fulfil his duty to inform the court of appeals that judgment appealed is not final judgment, and apply the correct applicable law of Lack of finality of habeas corpus judgment/Orders, stated in Collins v. Miller, 252 U.S. 364, 365, 370 (1920); Porter v. Zook, 803 F.3d 694, 695, 697, 699 (4th Cir. 2015) and FHCPP, § 35.1. Final orders at n.13: ," Another simple case is presented by orders denying some of the claims in the petition but not ruling on the remaining claims. Even if such a ruling is styled as a denial of a writ of habeas corpus, it is neither a final judgment nor appealable."; See also

Smith v. Smith, 2023 U.S. App. LEXIS 33278(6th Cir.,December 14,2023), id at p.4-5 (...*a* **decision disposing of fewer than all claims is not immediately [*5] appealable**. *Adler v. Elk Glenn, LLC*, 758 F.3d 737, 739 (6th Cir. 2014) (per curiam). This rule applies in habeas cases. *See id.*, Porter v. Zook, 803 F.3d 694, 696-97 (4**th Cir. 2015**); *Prellwitz v. Sisto*, 657 F.3d 1035, 1037-38 (9th Cir. 2011);

17.. AHMED RAISED THE LACK OF FINAL ORDERS DUE TO LACK OF ADJUDICATION OF ALL CLAIMS (Ecf 177 filed 12/22/20, para 3 and 30) and again in (ECF.Doc.196, filed on June 03,2021) DURING DISTRICT COURT AND APPEAL COURT PROCEEDINGS: See.

Ahmed v. Houk, 2021 U.S. Dist. LEXIS 131669 (S.D. Ohio, July 15, 2021) magistrate Judge stated:(The filing of a notice of appeal does not bind an unwilling litigant to proceed with the appeal. Petitioner is free to request the Sixth Circuit to dismiss the appeal and/or to request a remand for consideration of ***issues he apparently believes this Court must address before entering final judgment).***". *(Emphasis added).*

4

REASONS FOR GRANTING THE PETITION

1. Petitioner Ahmed was appointed by the Court of Appeals to take the appeal pro se.See case docket 20-4153 or with Counsel of Record Attorney Keith A. Yeazel. He did not file his appearance. So petitioner continued the appeal pro se, filing the Notice of appeal (Doc.164) and Amended Notice of Appeal (Doc.196) pro se. See Nawaz Ahmed v. Shoop, 2024 U.S. App. LEXIS 5231 (6th Cir., Mar. 4, 2024): Counsel: [*1] NAWAZ AHMED, Petitioner - Appellant (20-4153), Pro se, Chillicothe, OH.

Pro se Appeals are allowed by sixth circuit court of appeals in 22 other cases. See United States v. Adams, 2024 U.S. App. LEXIS 21696(6th Cir. August 26,2024) citing(*United States v. Montgomery*, 592 F. App'x 411, 415 (6th Cir. 2014) (citing Martinez v. Court of Appeal of Cal., 528 U.S. 152, 163, 120 S. Ct. 684, 145 L. Ed. 2d 597 (2000)).

2. As shown in STATEMENT OF THE CASE ABOVE. District court did not adjudicate all claims in Petition(Doc.35) and all claims in state court record, judiciable under Civ.R,15(b)(2). Which rendered the purported "final Order"(Ecf.Doc.156,194) of the district court as "non-final Orders". Issue was presented to Court o Appeals by filing the "Amended Notice of Appeal (Ecf doc.196) filed on June 03,2021 and Motion to Remand for lack of finality" filed in case 20-4153. Federal courts "have an independent obligation to determine whether subject-matter jurisdiction exists." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235, 163 L. Ed. 2d 1097 (2006). Court of appeals have failed to discharge its "independent obligation" by not reviewing the (Doc.196 filed on June 03,2021) but resorted to dismiss the First appeal case 20-4153, in which it was filed on utterly erroneous basis that case20-4153 is duplicate, when its filing date (Ecf.Doc.164) and (Ecf.196) filed june 03,2021) is before the second, unauthorized appeal case filed in case 21-3542. It is dishonest to think that Appellant had already filed the timely appeal docketed in first

appeal case 20-4153 and filed Amended Notice of Appeal", and would also ask the counsels to file a second appeal case 21-3542 because it is Appellant who pays for all costs of appeals in all cases, not the counsels.

3. Petitioner invoke the 28 USCS § 1254(1) jurisdiction and the extraordinary jurisdiction in aid of appeal under 28 U.S.C. § 1651(a), because the Court of Appeals lacks Appellate Jurisdiction under 28 U. S. C. § 1291and 28 U.S.C. §§ 2253(c)(1)(A), (AEDPA), has **exceeded its jurisdiction** to proceed in appeal case 21-3542 by COA on some claim because district court Orders (Ecf.156,194) **lack finality** due to district court failure to adjudicate all claims in First Petition (Doc.35) and all claims in state-court record judiciable under Fed. R. Civ. P. 15(b)(2) as cited in (Ecf 177 filed 12/22/20),PageID#11012-110113) at para 3 and 30 and explicitly, unambiguously listed again in (Ecf.Doc.196. filed on June 03,2021 titled, "Amended Notice of Appeal and Motion Seeking Remand due to lack of Finality" filed in first Jurisdictionally Sound Appeal case 20-4153.

4. The court of appeals, to avoid a remand back to district court, despite magistrate judge willingness to review and district court to adjudicate all claims not ruled upon before, and magistrate judge advising Petitioner to seek a remand back from the court of appeals, in cited R&R below, the court of appeals panel, erroneously dismissed the first jurisdictionally sound Appeal case 20-4153, strangely calling it Duplicate, when its date of filing (Ecf.164,196) on June 03,2021 and its assigned number show that it is the First Appeal case 20-4153 and not the second, unauthorized appeal case 21-3542, which court of appeal strangely called First appeal case. . Court appointed Ahmed to take the appeal pro se under Martinez, supra at 163. So Ahmed has the authority file the Petitioner's Unopposed Fed. R. App. P. 42(b(2) Motions for Voluntary

Dismissal of unauthorized-Second appeal case 21-3542. Ahmed did file "Motion to dismiss appeal case 21-3542 in many pro se Motions filed in First appeal case 20-4153 and in case 21-3542 , invoking every provisions for voluntary dismissal of appeal case 21-3542.

5. Appellant filed many Motions to Dismiss the case 21-3542 but were not granted. Including Fed. R. App. P. 42(a) Motion of Dismissal filed in the district court. Appellant's **unopposed** Fed. R. App. P. 42(b) Motion to voluntarily dismiss the appeal"means consent of the parties to pay their own costs because Warden did not oppose the Motion. **"Unopposed** Fed. R. App. P. 42(b(2) Motion to voluntarily dismiss the appeal" [case 21-3542] are routinely granted by all courts of appeals..
See Simmon-Román v. Cruz-Burgos, 2024 U.S. App. LEXIS 18595(First Cir., 2024).;
See Kharis v. Sessions, 2019 U.S. App. LEXIS 4541(Ninth Cir.2019).

6. The Warden has not Objected to "referral back to district court" as asked by (ECF Doc.196). Magistrate Judge and district judge have not claimed that they have adjudicated all claims because they only ruled upon Eight Claims, three of them were not even federal constitutional claims. Neither the purported habeas counsels have claimed that district court has ruled upon all claims in Petition(Doc.35) and all claims in state court records, judiciable under Fed. R. Civ. P. 15(b)(2). See district court stated:

Ahmed v. Houk, 2021 U.S. Dist. LEXIS 131669(S.D.OH, July 15,2021)id at p.2, magistrate Judge stated:(The filing of a notice of appeal does not bind an unwilling litigant to proceed with the appeal. **Petitioner is free to request the Sixth Circuit** to dismiss the appeal and/or **to request a remand for consideration of *issues he apparently believes this Court must address before entering final order".***

7. Under Federal Rule of Civil Procedure 54(b), An order dismissing some, but not all, claims raised in a petition for habeas corpus, **. . . does not end the action as to any of the claims,** is an interlocutory order. See Fults v. Upton, No. 3:09-CV-86-TWT, 2011 U.S. Dist.

LEXIS 11151, 2011 WL 530384, at *2 (N.D. Ga. Feb. 4, 2011) One example is that Claim of denial of counsel of choice for direct appeal representation by Ohio Supreme Court is pleaded as **subclaim,** part of First Habeas Claim. But district court has failed to rule upon this sub-claim presented in habeas petition(Doc.35), Traverse(Doc.71), Objections(Ecf.105, Supplemental (Doc.,147) and Corrected Objections(Doc.150).

8. A court's decision is considered "final" only if that decision "disposes entirely of a separable claim." (quoting In re Se. Banking Corp., 69 F.3d 1539, 1547 (11th Cir. 1995). Also district court has not ruled upon **nineteen** claims in Petition(Doc.35) argued in Traverse(Doc.71) authorized by 28 USCS 2243 **and reviewed in R&R(88)** and timely Objected in Objections(105).

9. Magistrate judge Merz cancelled the first scheduling Order filed by Magistrate Judge King, which required the Attorney General to file the full, complete, state court records before or with the ROW. Warden filed the Civ.R.12(B)(6) to assert defenses against procedural defaults. Petitioner Objected that Rule 12(b)(6) is not an appropriate motion in habeas corpus proceedings. See, Browder v. Director, Dep't of Corrections, 434 U.S. 257, 98 S. Ct. 556.Magistrate judge insisted otherwise but denied the warden's Rule 12(b)(6) Motion. But did another procedural flaw of requiring the Warden to assert all procedural defaults in the ROW and magistrate judge will decide them as part of R&R, putting petitioner at great procedural disadvantage because he had to argue all claims with uncertainty of ruling on procedural defaults, which should be decided first. See, 28 USCS 2243& 2248,"Traversed". The procedural issue should be decided first so as to avoid unnecessary constitutional rulings. *Slack*, 529 U.S. at 485, citing *Ashwander v. TVA*, 297 U.S. 288, 347, 56 S. Ct. 466, 80 L. Ed. 688 (1936) (Brandeis, J., concurring).

10. See Talamini v. Allstate Ins. Co., 470 U.S. 1067, 1069 n.5, 105 S. Ct. 1824, 85 L. Ed. 2d 125 (1985) ("'The line between deciding one of several claims and deciding only part of a single claim is sometimes very obscure.'") (quoting 10 C. Wright, A. Miller & M. Kane, Fed. Prac. & Proc. § 2657, pp. [*21] 60-61 (1983. But in capital habeas case, it renders the entire judgment(Ecf,156,194) non-final, non-appealable. Collins v. Miller, 252 U.S. 364, 365, 370 (1920); Porter v. Zook, 803 F.3d 694, 695, 697, 699 (4th Cir. 2015) and FHCPP, **§ 35.1. Final orders.** n.13. Smith v. Smith, 2023 U.S. App. LEXIS 33278, 2023 WL 8806148 (6th Cir. Ohio, Dec. 14, 2023) id at P. 4. a decision disposing of fewer than all claims is not immediately [*5] appealable. *Adler v. Elk Glenn, LLC*, 758 F.3d 737, 739 (6th Cir. 2014) (per curiam). This rule applies in habeas cases. *See id., Porter v. Zook*, 803 F.3d 694, 696-97 (4th Cir. 2015); *Prellwitz v. Sisto*, 657 F.3d 1035, 1037-38 (9th Cir. 2011). Courts have recalled the mandate when it is discovered during the course of an active appeal that jurisdiction is absent. *See Snow v. United States*, 118 U.S. 346, 354, 6 S. Ct. 1059, 30 L. Ed. 207 (1886)

11. Sixth Circuit panel and En banc court decisions are contrary to **well-established law that courts of appeal will entertain appeals only from final judgment,** applicable to habeas corpus proceedings in, Andrews v. United States, 373 U.S. 334, 340(1963) citing Collins v. Miller, 252 U.S. 364, 365, 370 (1920); Porter v. Zook, 803 F.3d 694, 695, 697, 699 (4th Cir. 2015) and FHCPP, **§ 35.1. Final orders.** n.13 ("Another simple case is presented by **orders denying some of the claims in the petition** but not ruling on the remaining claims. Even if such a ruling is styled as a denial of a writ of habeas corpus, **it is neither a final judgment nor appealable**.);

12.. . The Sixth Cir. Also allows pro se briefs, while represented by counsels. See Braden v. United States, 817 F.3d 926,929,930(6th Cir.,March 10,2016)("citing *Miller v. United States*, 561 F. App'x 485, 489 (6th Cir. 2014) (quoting *United States v. Dinitz*, 538 F.2d 1214, 1219 (5th Cir. 1976)); .See also Johnson v. Patton, 580 Fed. Appx. 646,n.8(10th Cir. 2014)("However, defendant did have (28 USCS § 1654) federal statutory right to proceed *pro se in habeas corpus action.*");

13.. The pro se Appeal case 20-4153 asked for remand of case due to district court failing to rule upon all claims. Panel refused to address the issue of recusal for bias against Petitioner-Petitioner invoked **28 U.S.C.S.§ 455(a) arguments** in the Petition for panel rehearing and en banc hearing. Because panel avoided the issue of "lack of finality" by wrongly dismissing the appeal case 20-4153. "Writ of Certiorari or writ of prohibition and or mandamus may issue to prevent the usurpation of jurisdiction in "exceptional circumstances" of great urgency."

13.. By erroneous dismissal of first appeal case 20-4153 the Sixth Circuit Court of Appeals decision has denied the pro se appellant-Petitioner his right to review in Supreme Court after district court adjudicate all exhausted habeas claims and renders a final appealable judgment, reviewable in the Circuit Court of Appeals and by Supreme Court. *Ex parte Hawk*, 321 U.S. 114, 116-117, 88 L. Ed. 572, 64 S. Ct. 448 (1944) *(per curiam)*, 28 U.S.C. § 2254.

14. This is a case in which "exceptional circumstances of peculiar urgency exist". One such circumstance is Appeal Court lacks jurisdiction to proceed in habeas corpus appeal from non-final orders of district court (Ecf.156,194). *Mitchell v. Maurer*, 293 U.S. 237, 244, 79 L. Ed. 338, 55 S. Ct. 162 (1934) ("An appellate federal court must satisfy itself not only of its own jurisdiction, but also of that of the lower courts in a cause under review."); Collins v. Miller, 252 U.S. 364, 365, 370 (1920); Porter v. Zook, 803 F.3d 694, 695, 697, 699 (4th Cir. 2015) and FHCPP, **7th Edition, § 35.1. Final orders,** n.13.(orders denying some of the claims in the petition

but not ruling on the remaining claims. Even if such a ruling is styled as a denial of a writ of habeas corpus, it is neither a final judgment nor appealable.);

15. The Court of Appeals continuing proceedings in the unauthorized, second, duplicate appeal case 21-3542 are not only unauthorized for want of jurisdiction, in violation of the Constitution of the United States; and that Petitioner is without remedy, except by the writ of Certiorari or Prohibition and or Mandamus from the Supreme Court of the United States.

16. The **exceptional circumstances** stated above warrant the exercise of the Court's discretionary powers to **restrain** the Sixth Circuit, as adequate relief cannot be obtained in any other form or from any other court. Wherefore, **mischiefs of misconstruction** be prevented by writ of writ of Certiorari or by writ of Prohibition" to restore the First Jurisdictionally Sound Appeal case 20-4153 to sole active appeal case and petitioner-Appellant request for **expressly electing to withdraw the second, unauthorized appeal case 21-3543** by dismissing the case 21-3543 per **Unopposed** Motion for Voluntary Dismissal under Fed. R. App. P. 42(b)(2) and Cir. R. 45(a)(8).

17. The OBJECTIONS (Doc.105, Supplemented by Objections (Doc.147) OR Corrected OBJECTIONS (Doc.150) DO NOT SUPERSEED BUT SUPPLIMENT the initial OBJECTIONS (Doc.105), Required *de novo* Review of entire R&R(88) of all 27 claims in Petition(Doc.35) and under 28 U. S. C. § 636(b)(1)(C) and Civ.Rule 72 (b)(2),(3) and Thomas v. Arn, 474 U.S. 140,157,(1985)(merit exception to Objections). There is no caselaw from the Supreme court or sixth circuit and any other circuit courts ,requiring Corrected Objections" be filed with the permission from the district court. See, (Ecf.140, filed 05/24/2019).

Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews any portion of the R. & R. that is the subject of a objection , *de novo* basis and any non-objected-to portion under a "clearly erroneous" standard. United States v. Raddatz, 447 U.S. 667, 680 (1980). Absent objection, a district judge has broad discretion to accept, reject or modify a magistrate judge's proposed findings and recommendations.

18. In violations of 28 USCS § 753(b)," the duty to produce verbatim transcripts affords no discretion in carrying out this duty to reporters, who are to record, as accurately as possible, what transpires in court", No transcript of the "status conference" turned into "evidentiary hearing" held on 05/22/2019, exists nor is filed in record and hearing was not recorded, despite the fact that court reporter Lahana Dufour "Minute Entry" for proceedings held before judge Watson was present and Petitioner was neither notified of the hearing nor made to attend remotely via the CCI Video –Link with the court.

19. See Hudson v. Saffle, 2001 U.S. Dist. LEXIS 28470(WD of OK, July 20,2021)," Hudson was advised of his right to object to the Report and Recommendation and on May 14, 2001, he filed his Response and Objection. On May 24, 2001, Hudson moved to supplement his Objections. (1) GRANTS Hudson's Motion to Supplement Objection to Report and Recommendation filed on May 24, 2001), proved that "Supplemental Objections in habeas corpus case are not inconsistent under). Fed. Rule Civ. Proc. 15(d) and 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72. See generally Mayle v. Felix, 545 U.S. 644(2005).

See *Harris v. Nelson*, 394 U.S. 286, 293-294, 89 S. Ct. 1082, 22 L. Ed. 2d 281, and n. 4 (1969), the Federal Rules of Civil Procedure [on supplemental Objectionsbut not on Corrected Objections] apply in habeas proceedings only "to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in civil actions." Fed. Rule Civ. Proc. 81 (a) (4)(A); see Fed. Rule Civ. Proc. 1. See 28 U.S.C. § 636(b)(1) ; 28 U.S.C. § 636 (b)(1)(B)**(C)**.; Rule 8(b).

Fed. Rule Civ. Proc. 81(a)(2) (The civil rules "are applicable to proceedings for . . . habeas corpus."). Habeas Corpus Rule 11 permits application of the Federal Rules of Civil Procedure in habeas cases "to the extent [the civil rules] are not inconsistent with any statutory provisions or [the *habeas] rules*." Mayle v. Felix, 545 U.S. 644(2005).

There is no provision for filing Amendment or Correction or Supplementation of initial Objections required by 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72 . Only Specific Objections to a report and recommendations are required. See, Fed. Rule Civ. Proc. 15(c)(2)"pleading," defined by federal habeas statute " § 2243;. Fed. R. Civ. P. 7(a) or. Fed.R.Civ.P. 15(a)(1) and Fed. Rule Civ. Proc. 15(d)

19.1. But liberal amendment policy is clearly inconsistent with 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72, initial 14 days period to file Specific Objection and seek extensions of time by motions. Fed.R.Civ.P. 15(d), relates to "Amended and Supplemental Pleadings not Objections," Shine-Johnson v. Warden, 2021 U.S. Dist. LEXIS 119389(SD,OH , Jan. 25,2021) id at P. [*3].See also Cultrona v. Warden, Corr. Reception Ctr., 2023 U.S. Dist. LEXIS 239985(SD,OH, February 27, 2023).(If a litigant needed to make a **correction** to a set of **Objections,** he could file **Corrected Objection**s within the time allowed by the rule or seek leave to file out of rule in the case of a true correction.).

(("supplemental pleading") and (" adds to") and (" not supersede"))

19.2. St. Michael Balzarini v. Diaz, 2021 U.S. Dist. LEXIS 266773(CD of CA, May 10,2021)(" See United States ex rel. Wulff v. CMA, Inc., 890 F.2d 1070, 1073 (9th Cir. 1989) (treating pleading labeled "amended pleading" as a supplemental pleading). "The erroneous characterization of [a] corrected pleading as an 'amended complaint' rather than as a 'supplemental pleading' is immaterial." Id.);

19.3. CORRECTED OBJECTIONS ARE NOT MENTIONED IN ANY VALID CASELAW: "Indeed, an **amended** pleading supersedes an earlier pleading, whereas a **supplemental pleading adds to**—but does not supersede—an earlier pleading. Puget Sound Power & Light Co. v. City of Seattle, 5 F.2d 393, 393 (9th Cir. 1925) (supplemental pleading, unlike amended pleading, does not supersede original pleading).
See Puget Sound Power & Light Co. v. City of Seattle, 5 F.2d 393, 396 (9th Cir. 1925) ("The **amended** complaint supersedes the original complaint for all purposes. But this is not true of a **supplemental** pleading."); *Reese v. Brazelton*, No. CV 12-03417-AG (VBK), 2014 U.S. Dist. LEXIS 141170, at *2 n.1 (C.D. Cal. July 23, 2014) ("[T]he Court notes that an amended pleading supersedes an earlier pleading, whereas a **supplemental** pleading merely **adds to, but** does not supersede, an earlier pleading.").

Northeast Ohio Coalition for the Homeless v. Husted, 837 F.3d 612(6th Cir., September 13,2016)(Rule 15(d) aims "to give the court broad discretion in allowing a supplemental pleading." Fed. R. Civ. P. 15(d) advisory committee's note to 1963 amendment.).

A supplemental pleading may cure jurisdictional defects, Mathews v. Diaz, 426 U.S. 67, 75, 96 S. Ct. 1883, 48 L. Ed. 2d 478 (1976), and non-jurisdictional defects, T Mobile Ne. LLC v. City of Wilmington, Del., 913 F.3d 311, 324-26 (3d Cir. 2019),

20. Objections are not "pleadings". So the sixth cir.caselaw in *Alspaugh v. McConnell*, 643 F.3d 162, 166 (6th Cir. 2011) cited by Magistrate in R&R(Doc.74) for Rule 59(e) adjudication was "clearly erroneous" to exclude nineteen habeas claims from de novo review by the district judge and to exclude all claims which fell under Civ.R.15(b)(2).

21. **Braden,** do not apply to **Objections** as stated in *Braden v. United States*, 817 F.3d 926,930 (6th Cir. 2016)", "generally, amended **pleadings** supersede original pleadings." *Id.* at 930 (quoting *Hayward v. Cleveland Clinic Found.*, 759 F.3d 601, 617 (6th Cir. 2014) and *Alspaugh v. McConnell*, 643 F.3d 162, 166 (6th Cir. 2011). This court recognized an exception "to this rule where a party evinces an intent for the amended pleading to **supplement** rather than supersede the original pleading." "If, however, the party submitting the pleading clearly intended the latter pleading to **supplement,** rather than supersede the original pleading, **some or all of the original pleading can be incorporated in the amended pleading.**" *Clark v. Johnson*, 413 F. App'x 804, 811-12 (6th Cir. 2011);

22. The district court adjudicating only Eight claims (Ecf.Doc.156) and leaving out Nineteen claims was "clear erroneous" under cases cited above at para 20-21.

23. Petitioner is prejudiced by magistrate's and district court's capricious and arbitrary procedural due process, by ignoring the Original Objection(Doc.105) Objecting to all 27 claims in Petition(Doc.35) and construction of "Corrected Objection(Doc.150) objecting to only Eight Claims as Supplement to the initial Objections (Doc.105), The .Magistrate Judge complained about incomplete paper records of "state court records" filed by warden, in R&R but did not file a supplemented R&R even after ordering the respondent to file complete digital records.

24. Every reasonable jurists will disagree with Magistrate and district judge's erroneous presumption that Petitioner voluntarily abandoned the nineteen claims after Objecting all 27 claims in original Objections(Doc.105) and without filing an "amended Petition" to exclude those nineteen claims.

24.1. Time and again the Court has condemned procedures in capital cases that might be completely acceptable in an ordinary case. See, *e. g.*, *Bullington* v. *Missouri*, 451 U.S. 430 (1981); *Beck* v. *Alabama*, 447 U.S. 625 (1980); *Green* v. *Georgia*, 442 U.S. 95 (1979) *(per curiam); Lockett* v. *Ohio*, 438 U.S. 586 (1978); *Gardner* v. *Florida*, 430 U.S. 349 (1977); *Woodson* v. *North Carolina*, 428 U.S. 280 (1976). *Barefoot* v. *Estelle*, 463 U.S. 880, 913-914 (1983) (dissenting opinion). the principle that "'the fundamental respect for humanity underlying the Eighth Amendment;

24.2. However, Magistrate Judge in Rule 59(e) R&R (Doc.174 filed 12/14/20, at page 3 of 22, PageID# 10970 was CONFUSED on applicable Law to Objections(Doc.105,150). The R&R, wrongly stated that Petitioner has forfeited any Objections as to **other nineteen ground** for relief because of filing his "Corrected Objections"(Doc.150).citing Thomas v. Arn, 474 U.S. 140, 151-152, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985)(failure to object; waiver of the right to *de novo* review; waiver of the right to appeal the judgment). When petitioner was excluded from purported"status hearing" turned into "evidenciary hearing" and hearing was not recorded, despite the reporter was in attendance, violated due process and eual rights of petitioner Ahmed and severely prejudiced his right to writ of habeas corpus after adjudication of all exhausted claims in Petition and under Civ.R.15(b)(2).

25. Petitioner received ineffective representation from habeas counsels who have cut-off all communications with Petitioner since that "status hearing" in 2019 and have no contact with them at all. They have filed intentionally deficient pleadings and work actively to get my case

dismissed by the appeal cout with any remand to district court.Thus in "irreconcilable diffrences/conflicts". The panel is ignoring.

26. District court Order (Ecf.140) is not based upon the transcript of the hearing and allow the filing of ,"Corrected Objections" . It also did not warn that after the filing of "Corrected Objections", these corrected Objections for only Eight Claims, it will override, and substitute or supersede the already filed original Objections (Doc.105).

Neither the Thomas v. Arn, supra, nor the 28 U. S. C. § 636(b)(1)(C), nor the Civ.Rule 72 (b)(2),(3) say anything beyond the Original Objections(Doc.105) to R&R. Thomas v. Arn, 474 U.S. 140, 151-152 stated," if the Objections are not filed".

27. The magistrate judge cited *Alspaugh v. McConnell*, 643 F.3d 162, 166 (6th Cir. 2011) but its about Fed.R.Civ.P. 7 and discovery and summary judgment and Fed R. Civ. P. 56(f) motion,"pleading"not the "Objections" to R&R in habeas corpus. See,

Shine-Johnson v. Warden, 2021 U.S. Dist. LEXIS 119389(SD,OH , Jan. 25,2021) id at P. [*3], magistrate Judge Michael R. Merz wrote:

" For the usual civil case, pleadings are defined by **Fed.R.Civ.P. 7** as the complaint, answers, and a reply to a counterclaim. For habeas corpus cases, the pleadings are the petition, the answer, and the reply (sometimes referred to as a "traverse"). Similarly, Petitioner's reliance on **Fed.R.Civ.P. 15(a)(1)** is misplaced because it allows for amendment "as a matter of course" within twenty-one days of a service of a pleading, but Objections to a report and recommendations are **not a "pleading**."

Cultrona v. Warden, Corr. Reception Ctr., 2023 U.S. Dist. LEXIS 239985(SD,OH, February 27, 2023) /s/ *Michael R. Merz* (If a litigant needed **to make a correction to a set of objections**, he could file **corrected objections** within the time allowed by the rule or seek leave to file out of rule in the case of a true correction).

Mohlman v. Deutsche Bank Nat'l Trust Co., 2016 U.S. Dist. LEXIS 26872(ED of MI, March 03,2016),("Magistrate Judge's rulings and analysis utterly defeats the purpose of the requirement of specific objections — a requirement explicitly set forth both in Fed. R. Civ. P. 72(b)(2) and in Local Rule 72.1(d)(1) of this District, and reiterated at the conclusion of the Magistrate Judge's R & R in this case,)

The Southern District Court of Ohio do not have any "S.D. Ohio Civ. R. 72, so in Fed. R. Civ. P. 72(b)(2) governs the Objections. Although we may review Shophar's claims in the interests of justice, see *Thomas*, 474 U.S. at 155.

28. Lack of de novo review of nineteen claims n Petition(Doc.35) , timely Objected by Objections(Doc.105) did seriously impugn the fairness, integrity, or public reputation of judicial proceedings. See generally *Olano*, 507 U.S. at 736.

United States v. Walters, 638 F.2d 947 (6th Cir. 1981); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005); *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Even when timely objections are filed, appellate review of issues not raised in those objections is waived. *Willis v. Sullivan*, 931 F.2d 390, 401 (6th Cir. 1991).

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Cultrona v. Warden, Corr. Reception Ctr., 2023 U.S. Dist. LEXIS 239985(SD OH , Feb.07,2023).

29. The magistrate judge did not give the correct written Notice to file original Objections and none is found in the published R&R cited above. Neither the district Judge give any Notice about filing of purported "Corrected Objections" in his Order (Doc.140). When correct law is:

"R&R which was filed and served by mail on Petitioner December 2, 2022. **The combined effect of Fed.R.Civ.P. 6 and 72(b) made Cultrona's objections due December 19, 2022.** Moreover, Fed.R.Civ.P. 72 ...," If a litigant needed to make a correction to a set of objections, he could file **corrected objections** within the time allowed by the rule or seek leave to file out of rule in the case of a **true correction**. /s/ *Michael R. Merz.*

Tabi v. Stephenson, 2023 U.S. Dist. LEXIS 235970(CD of Cal., September 20,2023).id at n.4. On July 25, 2023, Plaintiff filed a Correction to the second set of Objections ("**Corrected Objections**"). A Court has discretion, but is not required to, consider arguments or evidence presented for the first time in objections to a report and recommendation. Akhtar v. Mesa, 698 F.3d 1202, 1208 (9th Cir. 2012); United States v. Howell, 231 F.3d 615, 621-22 (9th Cir. 2000), cert. denied, 534 U.S. 831 (2001). the Court exercises its discretion to consider new evidence and arguments submitted in the **Corrected Objections** and to issue an Amended Report and Recommendation. **Jones, 393 F.3d at 935**; see also Local Rule 72-3.5 ("If objections are timely filed, the Magistrate Judge may issue a revised or supplemental report or submit the matter to the District Judge on the basis of the original report.").

30. DECISIONS IN CONFLICT WITH SUPREME COURT AND OTHER CIRCUITS:

United States court of appeals decision in Nawaz Ahmed v. Shoop, 2024 U.S. App. LEXIS 5231 (6th Cir., Mar. 4, 2024) and En banc Nawaz Ahmed v. Shoop, 2024 U.S.App. LEXIS 9334 (6th Cir., Apr. 17, 2024) are **decision in conflict** with the decision of Supreme Court and decisions of other United States court of appeals on the same important matter;

(a) Conflict on Lack of Finality of District Court habeas corpus Orders(Ecf.156,194) and Court of Appeals decisions deny Appeal Jurisdiction under 28 U. S. C. § 1291and 28 U.S.C. §§ 2253(c)(1)(A) are in conflict with and Violate the "final order" required by:

Collins v. Miller, 252 U.S. 364, 365, 370 (1920); Porter v. Zook, 803 F.3d 694, 695, 697, 699 (4th Cir. 2015) and **§ 35.1. Final orders.**, n.13.

(b) See also conflict within the 6th Circuit panels: Smith v. Smith, 2023 U.S. App. LEXIS 33278(6th Cir.,December 14,2023)(In the absence of certification for an interlocutory appeal under Federal Rule of Civil Procedure 54(b) , ***a decision disposing of fewer than all claims is not immediately appealable***. *Adler v. Elk Glenn, LLC*, 758 F.3d 737, 739 (6th Cir. 2014) (per curiam). **This rule applies in habeas cases**. *See id.,* Porter v. Zook, 803 F.3d 694, 696-97 (**4th Cir. 2015)**; *Prellwitz v. Sisto*, 657 F.3d 1035, 1037-38 (9th Cir. 2011).); Here, the district court did not dispose of Ahmd's nineteen claims in petition for relief. Nor did the district court certify an interlocutory appeal under Rule 54(b). The district court's decision is therefore not immediately appealable. Smith v. Smith, 2023 U.S. App. LEXIS 33278(6th Cir.,December 14,2023)..

(c) CONFLICT WITH OTHER COURT OF APPEALS ON:

The *unopposed* Fed. R. App. P. 42(b)(2) Motions To Dismiss Case 21-3542, means "agreement of parties".See US Bank Trust N.A. v. Thomas, 2024 U.S. App. LEXIS 11343(First Cir., April 24,2024) ("Upon consideration of appellant's **unopposed motion**, it is hereby ordered that this appeal be voluntarily dismissed pursuant to Fed. R. App. P. 42(b)(2).").For same see also.

Bank of N.Y. Mellon v. Nev. Ass'n Servs., Inc., 2023 U.S. App. LEXIS 35695(9th Cir.,March 13,2023);and Medford v. McLaurin, 2018 U.S. App. LEXIS 26212(7th Cir. 23,2018); Salcido v. City of Las Vegas, 2023 U.S. App. LEXIS 35437(Tenth Cir. Sep.15,2023).

(d). CONFICT ON APPELANT'S EXCLUSIVE RIGHT TO DECIDE< "NOT TO TAKE AN APPEAL"CAN NOT BE OVERRULED BY COUNSELS OR DISTRICT COURT OR BY COURT OF APPEALS.

McCoy v. Louisiana,584 U.S. 414, at 422 "**forgo an appeal"** from non-final Orders. Panel erroneously made the Second, Duplicate, unauthorizedly, Appeal case 21-3542 filed by counsels, as only appeal case, disallowing Appellant's unopposed Fed. R. App. P. 42(b)(2) Motion To Dismiss Case 21-3542. The Appeal Panel violating Appellant Ahmed's "ultimate decision" to "Not to take an appeal" from the non-final judgment(Ecf.156,196) but seek a Remand to district court to rule upon all available habeas claims, cannot be overruled by counsels' by "**professionally unreasonable** choices" and without consent of Appellant or by the court of appeals. See, Garza v. Idaho, 586 U.S. 232, 241(2019)(citing McCoy v. Louisiana,584 U.S. 414 at 422 and **Barnes, at 751** (And in any event, the bare [****13] decision whether to appeal is ultimately the defendant's, ***not counsel's, to make***. See (" Notable decisions reserved for the client include "... **forgo an appeal.**"). In other words, filing a notice of appeal is, generally speaking, a simple, nonsubstantive act that is within the defendant's prerogative."

31. SIXTH CIR. ALLOWS Pro Se APPEALS WITHOUT OR WITH COUNSEL:

Petitioner, was allowed filing pro se appeal (see, Case 20-4153 docket) and Nawaz Ahmed v. Shoop, 2024 U.S. App. LEXIS 5231(6th Cir. March 04,2023)(Counsel: [*1] NAWAZ AHMED, Petitioner - Appellant (20-4153), Pro se, Chillicothe, OH.) and as per *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 163(2000)).

The panels decision wrongly rely upon "Ahmed want the appeal counsel appointed", which constitute "hybrid representation". But Ahmed took the **28 U.S.C.S. § 2254** appeal pro se, filing the timely Notice of Appeal (Doc.164) and timely Amended Notice of Appeal(Doc.196) and

filing timely motions in first appeal case 20-4153, without any appeal counsel, as Ahmed was appointed to take the appeal pro se.

However, sixth circuit court of appeals allow hybrid representation in appeals. See Braden v. United States, 817 F.3d 926(6th Cir.,March 10,2016)("a court may consider a pro se petition even when a habeas petitioner is represented by counsel. *Miller v. United States*, 561 F. App'x 485, 489 (6th Cir. 2014) (exercising discretion to consider pro se arguments by a defendant with counsel where the issue presented appeared to have merit).

32. First Jurisdictionally Sound Appeal case 20-4153 was the only valid appeal case because Court of Appeals panel and en Banc court of the Sixth Circuit has disregarded Collins v. Miller, 252 U.S. 364, 365, 370 (1920); Porter v. Zook, 803 F.3d 694, 695, 697, 699 (4th Cir. 2015) and FHCPP, § 35.1. Final orders, n.13(Orders denying some of the claims in the petition but not ruling on the remaining claims. Even if such a ruling is styled as a denial of a writ of habeas corpus, it is neither a final judgment nor appealable.)

33. Court of Appeals ***lacked Jurisdiction*** over the case 21-3542 because district court orders (157,194) lack finality. Court has ***exceeded its jurisdiction*** by proceeding on some claim for COA via "Unauthorized by Appellant-Petitioner, the Second appeal case 21-3542, as obvious from its higher assigned number and 06/15/2021date of filing (on case docket 21-3542),and by wrongly denying ("**Unopposed Fed. R. App. P. 42(b(2) Motions** for Voluntary Dismissal of unauthorized-Second appeal case 21-3542 with forged IFP Affidavit, is contrary to Appellant Ahmed's **exclusive Autonomy under**(McCoy v. Louisiana,584 U.S. 414, at 422("**forgo an appeal"** case 21-3542). And by appeal case 20-4153 seek a Remand back to district court **from non-final Orders** (Ecf.156,194) **per** *Jones* v. *Barnes*, 463 U. S. 745, 751 and Garza v. Idaho

(2019), 586 U.S. 232,240("the accused has the ultimate authority" to decide whether to "take an appeal,"---- filing a notice of appeal is, generally speaking, a simple, nonsubstantive act that is **within the defendant's prerogative,** not the counsels.).

34. (a). District court Orders (157, 194) are not final appealable Orders from which COA can be applied and issued under 28 U. S. C. § 1291and 28 U.S.C. § 2253(c)(1)(A) because

(b). District court failed to rule upon all habeas claims in Petition(Doc.35) and

(c). District court also failed to adjudicate all habeas claims in state courts Record, judiciable or justiciable claims under Fed. R. Civ. P. 15(b)(2),

(d). Petitioner sought adjudication of all claims cited at (c) above under Fed. R. Civ. P. 15(b)(2) at (Ecf 177 filed 12/22/20),PageID#11012-110113) at para 3 and 30.

(e) Petitioner explicitly and unambiguously listed all unadjudicated claims again in ECF.Doc.196. filed on June 03,2021 titled, "Amended Notice of Appeal and Motion Seeking Remand due to lack of Finality" filed in first Jurisdictionally Sound Appeal case 20-4153.

(f) The Three Judges Appeal Panel wrongly dismissed the First Jurisdictionally Sound Appeal case 20-4153 by neglect, avoid, to eliminate the "Motion Seeking Remand due to lack of Finality" to adjudicate all unadjudicated habeas claims. See, ECF.196, filed per App.R.4(a) on June 03,2021.

35. See, case docket First Appeal case 20-4153 and Letter from Senior Case manager appointing Petitioner-Appellant Nawaz Ahmed to take the appeal pro se and or with Counsel of Record Attorney Keith A. Yeazel. He did not file appearance in appeal case 20-4153. See for

same Nawaz Ahmed v. Shoop, 2024 U.S. App. LEXIS 5231 (6th Cir., Mar. 4, 2024) and En banc Nawaz Ahmed v. Shoop, 2024 U.S. App. LEXIS 9334 (6th Cir., Apr. 17, 2024).

COUNSEL: Nawaz Ahmed pro se.

35.1. Petitioner was allowed to proceed pro se on Appeal by Sixth Circuit under *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 163 (2000)) and with counsel of Record Mr. Keith A. Yeazel per *Miller v. United States*, 561 F. App'x 485, 489 (6th Cir. 2014) (exercising discretion to consider pro se arguments by a defendant with counsel where the issue presented appeared to have merit).

36. Petitioner has very good reason to not seek COA for appeal from non-final Orders (Ecf.156,194) but seek a Remand back to district court to rule upon all available habeas claims, because (a) second habeas Petitions are not allowed and (b) only single habeas appeal is allowed. See, Andrews v. United States, 373 U.S. 334,340(1963). See, *e. g.*, *Collins* v. *Miller*, 252 U.S. 364,370. the rule as to finality "requires that the judgment to be appealable should be **final** not only as to all the parties, but as to the whole subject-matter and as to all the causes of action involved." 252 U.S., at 370.. Louisiana Navigation Co. v. Oyster Commission, 226 U.S. 99, 101, **33 S.Ct. 78, 57 L.Ed. 138;** But as the judgment of the court below on its face is not a final one, it follows that a motion to dismiss must prevail. Haseltine v. Bank, 183 U.S. 130; Schlosser v. Hemphill, 198 U.S. 173;

37. Petitioner-Appellant Ahmed filed on June 03,2021 pro se , "Amended Notice of Appeal and Motion Seeking Remand due to lack of Finality";

Pro se appeals are allowed in 6th Circuit. See *United States v. Montgomery*, 592 F. App'x 411, 415 (6th Cir. 2014) (citing *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152, 163, 120 S. Ct. 684, 145 L. Ed. 2d 597 (2000)).And United States v. Jackson, 2024 U.S. App. LEXIS 11452(6th

Cir. May 09,2024). *See* Martinez, 528 U.S. at 163. *See hybrid representation on appeal is also allowed under* Miller v. United States, 561 F. App'x 485, 489 (6th Cir. 2014) (exercising discretion to consider pro se arguments by a defendant with counsel where the issue presented appeared to have merit).

38. The First appeal case 20-4153 is erroneously dismissed by the three judge Appeal Panel by Nawaz Ahmed v. Shoop, 2024 U.S. App. LEXIS 5231 (6th Cir., Mar. 4, 2024) and

Nawaz Ahmed v. Shoop, 2024 U.S.App. LEXIS 9334 (6th Cir., Apr. 17, 2024).

39. COURT OF APPEALS FAILED TO RULE UPON ITS OWN LACK OF JURISDICTION:

Mitchell v. Maurer, 293 U.S. 237, 244, 79 L. Ed. 338, 55 S. Ct. 162 (1934) ("An appellate federal court must satisfy itself not only of its own jurisdiction, but also of that of the lower courts in a cause under review."); Moreover, for appellate jurisdiction to exist, it must be conferred [**7] by statute. Carroll v. United States, 354 U.S. 394, 399, 1 L. Ed. 2d 1442, 77 S. Ct. 1332 (1957) ("It is axiomatic, as a matter of history as well as doctrine, that the existence of appellate jurisdiction in a specific federal court over a given type of case is dependent upon authority expressly conferred by statute."); United States v. Yeager, 303 F.3d 661,665(6th Cir.,2002)(" 28 U.S.C. § 1291 cloaks appellate courts with appellate jurisdiction over "final decisions of the district courts of the United States." 28 U.S.C. § 1291.). *See Amazon, Inc. v. Dirt Camp, Inc.*, 273 F.3d 1271, 1275 (10th Cir. 2001) ("'The critical determination [as to whether an order is final] is whether plaintiff has been effectively excluded from federal court under the present circumstances.'"

39.1. See, *e.g.*, Andrews v. United States, 373 U.S. 334, 340 (1963) ("standard of finality to which the Court has adhered [in permitting appeals] in habeas corpus proceedings [is] no less exacting" than in other cases); Collins v. Miller, 252 U.S. 364, 370 (1920) (There the Court said that the rule as to finality "requires that the judgment to be appealable **should be final not only**

as to all the parties, but as to the whole subject-matter and as to all the causes of action involved." 252 U.S., at 370.).

39.2. See, (Randy Hertz & James S. Liebman, Federal Habeas Corpus Practice and Procedure, 7th Edition, § 35.1. Final orders, n.13," Another simple case is presented by orders denying some of the claims in the petition but not ruling on the remaining claims. Even if such a ruling is styled as a denial of a writ of habeas corpus, it is neither a final judgment nor appealable.[13.] *See, e.g.*, Collins v. Miller, 252 U.S. 364, 365, 370 (1920); Porter v. Zook, 803 F.3d 694, 695, 697, 699 (4th Cir. 2015) (appeal of denial of habeas corpus petition is dismissed because district court failed to resolve claim and accordingly "its decision was not a final order over which we have jurisdiction":

39.3. "The fundamental question whether the judgment appealed from [*366] is a final one within the meaning of the rule has suggested itself to the court; and it must be answered although it was not raised by either party. *Defiance Water Co.* v. *Defiance*, 191 U.S. 184, 194. In order to answer the question it is necessary to describe the proceedings before the committing magistrate as well as [***617] those in the District Court on the petition for a writ of *habeas corpus.*"

See Prellwitz v. Sisto, 657 F.3d 1035, 1038 (9th Cir. 2011) (dismissing habeas appeal for lack of jurisdiction where district court failed to ***adjudicate all claims***); United States v. Blakely, 101 F. App'x 905, 905-06 (4th Cir. 2004) (unpublished) (same). And just as the label attached to a district court order does not end our inquiry into finality, the issuance of a certificate of appealability cannot by itself establish that the **district court actually has resolved every claim** between the parties. In short, even if a district court believes **it has disposed of an entire case,** we lack appellate jurisdiction where the court in fact has failed to enter judgment on all claims. Witherspoon, 111 F.3d at 402; Hardwick, 404 F. App'x at 767-68.

Porter v. Zook, 803 F.3d 694,696-697(4th Cir.2015). That is what has happened here. Because the district court did not rule on Porter's claim of actual juror bias, we must dismiss this appeal for want of jurisdiction.

"The COA litigation based upon presumptively non-final orders, cannot cure the lack of finality as district court failed to rule upon all claims in Petition and those under FRACP 15(b)(2)." See para 30 (ECF.177). Porter v. Zook, 803 F.3d 696,696-697(4th Cir. 2015).

40. The Petitioner-Appellant had sought vacating of district court judgement(Doc.156,196) , requesting that court of Appeals vacate the district court non-final Judgments (Ecf.156,190) so that district court has full habeas jurisdiction to rule upon all claims. **Because district Court lacks jurisdiction to modify a judgment which has been appealed unless that judgment is first vacated.** See Prellwitz v. Sisto, 657 F.3d 1035, 1038 (9th Cir. 2011) (dismissing habeas appeal for lack of jurisdiction where district court failed to adjudicate all claims);

CONCLUSION

See cases cited at Last Para of IFP Motion as court of ultimate Review.

Supreme Court of the United States has jurisdiction over habeas corpus petitions and habeas corpus cases as those case ultimately reach the Supreme Court for final review of habeas corpus grant or denial of the writ. Supreme Court also has jurisdiction in aid of appeal under 28 USCS 1254(1) and 28 U.S.C.S. § 1651(a),because court of appeal has dismissed the first appeal case 20-4153, denying Remand of appeal case back to district court for adjudication of all claims not adjudicated by the district court. Supreme court also has jurisdiction to review the denial of Fed. R. App. P. 42(b(2) Motion to voluntarily dismiss the appeal" [case 21-3542].. Supreme court also has jurisdiction to review why counsels and court of appeals failed to honor Petitioner Ahmed exclusive, autonomous decision to not to take the appeal, but seek remand of case back, so that he can take single appeal after adjudication of all claims by district court.

The Petition for a writ of Certiorari and or original writ in prohibition and nor mandamus should be granted.

Respectfully Submitted,

(NAWAZ AHMED)

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