

24-6001

ORIGINAL

SUPREME COURT OF THE UNITED STATES

KEITH B. HUNTER

VS.

UNITED STATES OF AMERICA

**PETITION FOR
FILED**

SEP 16 2024

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SUPREME COURT, U.S.**

RESPONDENT

**ON PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

- I. Whether the Sixth Circuit Court of Appeals erred by expanding the type of bank account that constitutes a client escrow/trust account contrary to state statute and or the rules of the Kentucky Supreme Court in violation of Petitioner's Fifth Amendment Rights.
- II. Whether there is a statutory violation and/or Sixth Amendment violation when, after withdraw by a Criminal Justice Act appointed counsel, during a defendant's first appeal, a Circuit Court refuses to appoint new counsel in disregard to a request for the same.

PARTIES TO THE PROCEEDING

The Petitioner, Keith B. Hunter, is a citizen of the United States of America. The Respondent is the Government of the United States of America.

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REPORTS AND OPINIONS BELOW

1. No. 22-5992 *United States v. Keith B. Hunter*, Sixth Circuit Court of Appeals, Order, March 8, 2024 affirming the Judgment entered against the Petitioner on October 20, 2022 by the District Court of the Western District of Kentucky. Appendix C
2. No. 22-5992 *United States v. Keith B. Hunter*, Sixth Circuit Court of Appeals, Report Appointing Counsel to Defendant February 3, 2023. Appendix E
3. No. 22-5992 *United States v. Keith B. Hunter*, Sixth Circuit Court of Appeals, Order, entered May 9, 2024, denying appointment of counsel to Petitioner. Appendix B
4. No. 22-5992 *United States v. Keith B. Hunter*, Sixth Circuit Court of Appeals, Order, entered June 18, 2024 denying Petitioner a hearing en banc. Appendix A
5. No. 22-5992 *United States v. Keith B. Hunter*, Sixth Circuit Court of Appeals, Response, received June 27, 2024. Appendix F
6. No. 3:20-CR-86-BJB *United States v. Keith B. Hunter*, Opinion, October 20, 2022.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Article III, Section II of the Constitution of the United States of America as this case involves a federal question regarding the Fifth and Sixth Amendments. Jurisdiction is proper as this Petition is brought as a result of an Order entered on March 8, 2024 by the Sixth Circuit Court of Appeals affirming the Judgment entered against the Petitioner on October 20, 2022 by the District Court of the Western District of Kentucky. Also, from an Order, entered by the Sixth Circuit Court of Appeals

on May 9, 2024 denying appointment of counsel to Petitioner. Similarly, from an Order, entered June 18, 2024 denying Petitioner a hearing en banc. Finally, jurisdiction is proper as the government of the United States of America is a party to this matter.

Constitutional Provisions

United States Constitution, Fifth Amendment	11, 17
United States Constitution, Sixth Amendment	11, 17, 21, 23

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26 U.S.C. §7201	3
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STATEMENT OF THE CASE

Petitioner, Keith B. Hunter, is a licensed attorney in the Commonwealth of Kentucky from 1987 to the present. His practice was primarily civil trial cases with a focus on civil rights litigation. From 2000 until 2013 Petitioner was Of Counsel with a law firm based in Louisville, Kentucky. In 2008, after decades of an intense law practice,

Petitioner was diagnosed with a life threatening heart condition, which severely affected his ability to earn a living.

Petitioner owed past due federal taxes, which, his longstanding accountant attempted to address with the Internal Revenue Service (Hereinafter “IRS”) on several occasions. The local IRS service refused to meet with Petitioner’s accountant even after they were directed to do so by their regional office in Washington D.C. In 2021, the Petitioner was charged with one count of evasion of payment of tax in violation of 26 U.S.C. §7201 for the calendar years 2000, 2001, 2003, 2006, 2008 and 2011. On or about September 22, 2021 the government filed a superseding indictment alleging, among other things, that Petitioner concealed assets, “by storing personal income in a client escrow account.” See Appendix D.

The government alleged that Hunter engaged in five affirmative acts in an effort to evade payment of taxes. Three of the five affirmative acts were dismissed the first day of trial as they were beyond the statute of limitations. The alleged affirmative acts of concealing funds in a client escrow account and recycling of cashier’s checks remained. The trial in this matter started June 13, 2022 and ended on June 17, 2022.

At trial, the government only offered evidence and testimony regarding Petitioner's business checking account, PNC account #0147, "Keith B. Hunter, PSC Escrow Account." (Hereinafter "PNC 0147"). The government argued that this account was a client escrow account used to hold client funds and that Petitioner was comingling his personal funds with client money to evade the payment of taxes. This simply was not true as PNC 0147 was simply a business escrow account and only held Petitioner's funds. This distinction is critical to the type of proof that should have been offered at trial and the factual basis underlying the indictment. The Petitioner knew the difference as well did the government as they were informed by the Kentucky Bar Association (Hereinafter "KBA") of the requirements to maintain a client escrow account by lawyers practicing in the Commonwealth of Kentucky.

In April 2022 the government issued a subpoena to the KBA requesting anything and everything related to any Interest on Lawyers Trust Account (Hereinafter "IOLTA Account") associated with Petitioner. On or about May 26, 2022, two weeks before trial, the KBA provided the government with the subpoenaed information. Much to the government's surprise, Petitioner did not have an IOLTA account or any other client trust account. Even with this knowledge, the government

repeatedly offered evidence and testimony claiming that Petitioner's account was a client escrow account. The government did so because they were unable to seek a superseding indictment charging Petitioner with concealing funds in business escrow account, not a client escrow account. There was no way of knowing if a grand jury would return an indictment for this type of account because the government could not make the same argument of comingling funds with client money. The government produced several witnesses who repeatedly told the jury that comingling funds was illegal which indicated that Petitioner was engaging in illegal activity to hide funds. This seriously affected the fairness of the trial.

There was insufficient time for the government to seek a new indictment after discovering that Petitioner did not maintain an IOLTA account. Just as important, the grand jury, which issued the indictment, was no longer available. Instead, the government deceived the trial jury and court by offering unsupported evidence and testimony that Petitioner's account was a client escrow account and consequently they could not levy the account because it also had client money. In so doing, the government repeatedly described Petitioner's account as an account for client's funds. This was not true either as the government is able to

seize escrow accounts when attorneys comingled funds with client money. See *United States v. Threadgill* 572 Fed. Appx. 372 6th Cir. 2024) at 382.

Petitioner advised the government of the existence of this account on or about 2012 as part of the civil inquiry from the IRS, nine years before the indictment was issued in this matter. This account was not hidden from the government. No testimony was ever offered that any client funds were deposited in this account or that it was used for client purposes. Nor was there any evidence offered that the account met the criteria of the KBA and authorizing bank, which is required by law.

The jury began its deliberations on June 17, 2022. After less than an hour the jury tendered one question for the Court. It asked whether a client escrow account is the same as a business escrow account. Clearly the jury was seeking guidance, as it was aware that the indictment alleged Petitioner concealed funds in a client escrow account, not a business escrow account. This obviously made a difference to the jury, as well it should as the factual underpinning of the validity of the indictment was at issue. All the evidence government produced at trial came from Petitioner's business escrow account, which was disclosed to the government years before any criminal investigation. The District Court

refused to answer the jury's question. In so doing, it indicated that this was a question of fact for the jury and informed the jury that it must make its decision based upon the jury instructions. The trial ended in a guilty verdict against Petitioner on June 17, 2022.

Petitioner filed a timely Motion to Set Aside the Verdict and for Judgment of Acquittal on or about July 15, 2022. On or about October 17, 2022 the District Court heard oral argument on the motion. The primary issue was the defective indictment as it was obvious that Petitioner's PNC account was not a client escrow account. The District Court opined that PNC 0147 was not client escrow account and that there was a variance. The District Court believed that because Petitioner was provided this information in the bill of particulars that this was sufficient notice. A bill of particulars cannot save an invalid indictment. *Russell v. United States*, 369 U.S.749 (1962) at 770.

The government repeatedly represented to the jury that PNC 0147 was a client escrow account and that Petitioner comingled his money with client funds. The government offered extensive testimony regarding client trust accounts that was false, irrelevant, confusing to the jury and highly prejudicial. More importantly the government failed to introduce any evidence regarding a client escrow account as defined by the KBA. The evidence at trial was not only insufficient, more specifically it completely failed to support the facts as alleged in the indictment.

A timely appeal was filed in this matter. On appeal, before the Sixth Circuit, the Petitioner requested appointment of counsel to represent him. Upon application and qualification, counsel was appointed through the Criminal Justice Act. Petitioner's counsel filed his appellate brief with the Sixth Circuit on or about May, 2023. The government filed its brief and reply briefs were filed as necessary.

On or about March 8, 2024 the Sixth Circuit entered an Order affirming the jury verdict below. See Appendix C. In so doing, the Court found that Petitioner opened an account labeled "PNC #0147 Keith B. Hunter, Attorney at Law, Escrow Account." Petitioner never had an account by that name. Nothing in the record indicates that this account existed. The Sixth Circuit correctly held that there are two types of "client escrow accounts" available to lawyers in the Commonwealth of Kentucky. Both accounts are governed by rules of the Kentucky Supreme Court and are the only accounts permitted by law to maintain client funds. The government's failed attempt to support its claim that Petitioner had an IOLTA account through the subpoenaed KBA information was telling. The government was unable to provide any evidence or testimony that Petitioner's account fell into either category of approved client trust funds. Yet, the Sixth Circuit

found that Petitioner's account was a client escrow account. This finding is unsupported in the record and contrary to the requirements set forth in the Rules of the Supreme Court of Kentucky.

Petitioner did not receive notice of the Sixth Circuit's decision because of confusion in his residence. Petitioner was in the custody of the BOP and residing at a halfway house in Louisville, Kentucky. Petitioner was informed of the decision after he contacted his counsel three weeks after the Order was entered. At this time, Petitioner's counsel informed him that he reviewed the Order and wanted to withdraw from the case. Petitioner agreed and requested that he advise the Sixth Circuit of his decision to withdraw and of Petitioner's request for an extension of time to file a Petition for Hearing En Banc and for appointment of new counsel. The motion to withdraw and for additional time was filed within the required time. Inexplicably, the request for appointment of new counsel was not filed. The motion for additional time was granted. Shortly thereafter Petitioner, pro se, filed a motion for additional time and appointment of counsel. This was denied which then required Petitioner to prepare and file his Petition for Hearing En Banc pro se. See Appendix B. On or about June 16, 2024 the Sixth Circuit entered an order denying Petitioner's En Banc request. Petitioner was not afforded the benefit of counsel through the appellate process.

REASONS FOR GRANTING THE PETITION

With this decision, the Sixth Circuit expanded the scope of what constitutes a client trust account well beyond the statutory parameters and rules set by the Commonwealth of Kentucky, its Supreme Court and the other forty-nine states and their supreme courts. A business escrow account is not a client trust account governed by the rules of the supreme court of that jurisdiction. This ruling has significance to all practicing lawyers who maintain these accounts, bar associations and clients. In its opinion, the Sixth Circuit identified and relied upon a bank account that did not exist. Respectfully, the Sixth Circuit erred and did not seek determine what evidence the government offered to support its position. None existed.

The Sixth Circuit sustained a guilty verdict based upon the alleged affirmative act of concealing personal funds in a client escrow account. The material facts in the indictment clearly stated that the account used was a client escrow account. The government knew that the account failed to meet the basic requirements to qualify as any authorized client escrow/trust account. The bank account evidence offered at trial was identified as a client escrow account but was actually a business escrow account. The indictment was defective. The District Court found that there was a variance but the bill of particulars sufficiently put the Petitioner on notice that the account in

question was PNC 0147. The Sixth Circuit found that there was not a variance as Petitioner's account was actually a client escrow account even though the government failed to introduce any evidence or testimony that the account met the statutory requirements of the Kentucky Supreme Court.

The Sixth Circuit's ruling raises issues as to the ability of every states IOLTA program to determine what constitutes a client trust account. The within decision raises issues as to whether *Ex Parte Bain*, 121 U.S. 1 (1887) and its progeny are still good law as related to the Fifth Amendment guarantees of due process notice, fairness of the proceedings and the ability to defend clear and concise facts presented by indictment through the grand jury process. Finally, the within case presents serious questions as to whether a defendant's Sixth Amendment right to counsel and or a violation of the Criminal Justice Act if a defendant is not provided counsel through the completion of defendant's appeal. Accordingly, Petitioner believes *certiorari* should be granted.

I. PETITIONER DID NOT HAVE A CLIENT TRUST ACCOUNT

Attorney trust accounts are tightly regulated under State Bar Association rules to ensure the ethical handling of client funds. See *What is an Attorney Trust Account*, DR Bank Website 2024. Every state in the United States has an IOLTA/ attorney trust account program. See *American Bar*

Association, Directory of IOLTA Programs Website 2024. Each state in the United States has its own specific regulations, but common principles include the obligation to keep client funds separate from the funds of the law firm or attorney. This separation is crucial to avoid any misuse of funds and to maintain clear financial boundaries. *Id. What is an Attorney Trust Account, DR Bank Website 2024.* The trust account rules also mandate detailed record-keeping and regular reporting to ensure transparency and accountability. Attorneys must provide accurate accounting to clients, detailing how their funds are being held and disbursed. Additionally, lawyers are required to undergo periodic audits by the state bar to verify compliance with trust account regulations. *Id.*

Here, the account in question is PNC 0147 Keith B. Hunter PSC, Escrow Account. Again, this is an escrow account for the PSC not clients and could be used for various reasons including setting aside funds for the payment of bills. Petitioner's appellate counsel argued that an IOLTA account was the only type of client escrow account available to lawyers in the Commonwealth of Kentucky. In its Opinion, the Sixth Circuit stated, "Hunter insists that under Kentucky Law 'the sole vehicle for attorneys to hold client funds is an IOLTA account.'" *Id.* at pg. 4. The Sixth Circuit disagreed and found that IOLTA accounts are one type of account pursuant to Ky. Sup Ct. R. 3.830. The Sixth Circuit then correctly pointed out that to Ky. Sup Ct. R. 3.130(1.15)(a) also

permits lawyers to hold client funds. These are the only two means in the Commonwealth of Kentucky by which lawyers can hold client funds in trust pursuant to the rules of the Kentucky Supreme Court.

The aforementioned client trust accounts are often confused or discussed interchangeably. See *Client Trust Account Basics, A Handbook for Kentucky Lawyers, 3rd Edition Kentucky Bar Association Website 2024* at pg. 7. There are only two types of trust accounts, a dedicated client trust account, which holds client funds for a single client and a pooled client trust account, which holds client funds for multiple clients. The pooled trust account is also known as an IOLTA account. See Ky. Sup Ct. R. 3.830.

The Government subpoenaed all of Hunter's IOLTA documents from the Kentucky Bar Association prior to the trial of this matter. The government also subpoenaed John D. Meyers, President of the KBA to testify at the trial. The Government received the IOLTA information on or about May 26, 2022, approximately two weeks before trial. This information unequivocally indicated that Hunter did not have an IOLTA account. The government failed to produce the subpoenaed information at trial so the jury was never informed of this information. The Sixth Circuit's decision confirmed that Hunter's account was not an IOLTA account. In other words, it was not a pooled client trust account, approved by PNC bank and the KBA. Nor was it an interest bearing account or an account where notice was given to the KBA if there was

a negative balance. Finally, Petitioner's account was not labeled IOLTA Attorney Trust Account, Kentucky Bar Association. Contrary to the government's false statements at trial, Hunter could not simply call this account whatever he wanted. See TR Keith B. Hunter, June 17, 2022, cross-examination. As of 2010, all IOLTA and single trust accounts were required to have the specific aforementioned information identifying the account. See Kentucky Bar Association IOLTA Fund Enrollment Form Website 2024.

The issue here is whether the Sixth Circuit committed error in ruling that Petitioner's business escrow account was a non-IOLTA trust account established for a single client. In its opinion, the Sixth Circuit never specifically stated what type of client trust account they believed Petitioner established with PNC 0147. Having ruled out IOLTA, it could only fall under the single account established pursuant to Ky. Sup. Ct. R. 3.130(1.15). Respectfully, the Sixth Circuit is wrong. Just as with an IOLTA account, this category of trust accounts is required to be approved by the KBA, must be interest bearing and must provide the KBA of notice in the event of an overdraft. See *Client Trust Account Basics, A Handbook for Kentucky Lawyers, 3rd Edition Kentucky Bar Association Website 2024* at pg. 7. The lawyer must file an application with the bank and the KBA when opening one of these accounts. Also, the account has to be opened with the agreement of the designated beneficiary, his or her social security number or the entities EIN number. Otherwise, lawyers cannot open

one of these accounts. The testimony in the record revealed that the signature card for PNC 0147 was for Keith B. Hunter and had his PSC's number. See TR Testimony of James Taylor, Exhibit 19h, June 14, 2022 Page 108 of 215. This was not a client trust account. Finally, the account must be labeled with the firm name, client's name and Kentucky Bar Association Trust Account prominently displayed on each account and check.

None of the aforementioned required things occurred in the situation herein. Petitioner alone is the signatory on the account as was his PSC's account. PNC 0147 was merely a general escrow account for his practice, which is perfectly legal and acceptable. In fact, Petitioner closed his client escrow account the same day he opened the business escrow account because it was no longer needed and did not comply with the new KBA rules. See *Reply Brief, Motion for New Trial*, June 23, 2024. Petitioner's account was not an IOLTA account, trust account or client escrow account of any kind. As a matter of law, Hunter's account does not meet the criteria to be a pooled or single client trust account. The government believed Petitioner's account was an IOLTA account and discovered late in the process that no such account existed. They were stuck with this error and intentionally mischaracterized this account because their case depended on the false theory that Petitioner was comingling his personal funds with client funds and hiding the same in a client escrow account.

The government offered testimony from attorney Janice Theriot, who worked in the same firm with Petitioner for several years. She testified attorney escrow accounts are for holding client money. See TR Testimony of Janice Theriot, June 16, 2022, direct exam. She further testified that it was illegal for lawyers to commingle their funds with client funds. IRS agent James Taylor also testified that Petitioner's account was client escrow account whose purpose is to hold client funds. See TR Testimony of James Taylor, June 16, 2022, Vol. 4. Pg. 104-5. The government witness who offered testimony regarding the bank checks also testified that escrow accounts are for client money. The most important factor in all of this discussion regarding PNC 0147 is the fact that the government never offered any evidence, documentary or otherwise to support their claim that PNC 0147 was a client escrow account established pursuant to Ky. Sup Ct. R. 3.130. The government failed to produce a signature card with the client's signature, a Client Trust Fund application form from PNC Bank or any documentation from the KBA that it approved an account as a client escrow account. Just because the government describes the PNC 0147 as a client escrow account does not make it such. There is a complete absence of evidence to support the Sixth Circuit finding of a client escrow account.

At trial, the government failed to produce any evidence that PNC 0147 was a dedicated trust account for a single client approved by PNC Bank and the

KBA. None existed. The District Court Judge instructed the jury that they had two main duties. The first is “to decide what the facts are.” TR Vol. 5 pg. 26 June 17, 2022. The second duty was to apply the law to those facts that you found and decide whether the government has proved the defendant guilty beyond a reasonable doubt. The only evidence the jury heard regarding Petitioner’s escrow account was PNC 0147, which was a general escrow account.

The purpose served by a grand jury indictment in the administration of federal criminal law must begin with the Fifth and Sixth Amendments to the Constitution. The Fifth Amendment provides in pertinent part as follows:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger. *Russell v. United States*, 369 U.S. 749 (1962) at 760.

Pursuant to Rule 7(c) of the Federal Rules of Criminal Procedure require the following for a issuance of a legitimate indictment: “[A]n indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged.... *Id.* Here, the indictment is very specific. It states in pertinent part as follows:

KEITH B. HUNTER, did willfully attempt to evade and defeat the payment of a large part of the federal income tax, penalties, and interest due and owing... by concealing his assets; by storing personal income in a client escrow account;

In an indictment, all the material facts and circumstances embraced in the offense must be stated, and that if is omitted they cannot be supplied by intendment or implication. *Pettibone v. United States*, 148 U.S. 197 (1893). It has also been held that the requirement that every ingredient of the offense charged must be clearly and accurately alleged in the indictment. In so doing, this allows the court to decide whether the facts alleged are sufficient in law to withstand a motion to dismiss the indictment or to support a conviction in the event that one should be had. *United States v. Lamont*, 18 F.R.D. 27 (S.D.N.Y. 1955) at pg. 31. The indictment also informs the trial judge what the case involves, so that, as he presides and is called upon to make rulings of all sorts, he may be able to do so intelligently.

Here, the indictment was precise, unequivocal and required that the government produce facts supporting the allegations against Hunter. Those facts, as a matter of law, require that the government introduce documentary and or testamentary evidence that PNC 0147 was a client escrow account. Secondly, it is required that the government offer testamentary or documentary evidence that Hunter attempted to conceal money in a client escrow account. There is a complete absence of both. Petitioner did not have a client escrow

account so it was impossible for the government to prove that he concealed money in the same.

In *Ex Parte Bain*, 121U.S. 1 (1887) this Court held that no person should be called to answer for any capital or otherwise infamous crime except upon an indictment or presentment of a grand jury in the full sense of its necessity and of its value. We are of the opinion that an indictment found by a grand jury was indispensable to the power of the court to try the petitioner for the crime with which he was charged Id. at. Pgs. 12-13. The *Bain* case, which is still good law, stands for the rule that a court cannot permit a defendant to be tried on charges that are not made in the indictment against him. It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried, as it would be to convict him upon a charge that was never made. *DeJonge v. Oregon* 299 U.S. (1937).

As previously indicated, the Petitioner was charged with concealing personal funds in a client escrow account not his business escrow account. In *Stirone v. United States*, 361 U.S. 212 (1960) this Court held that the admission of evidence of a charge not made in the indictment might have been the basis upon which the trial jury convicted petitioner. If so, he was convicted on a charge the grand jury never made against him. Here, as in *Stirone*, the trial court did not make a formal amendment of the indictment by changing the

language adding general escrow account. The jury instructions were consistent with the terms of the indictment. However, the affect of what the court did by allowing the false testimony and evidence had the same affect as changing the indictment. The District Court impermissibly expanded the grounds upon which Petitioner could be convicted by permitting false evidence and testimony of PNC 0147 as a client escrow account.

In *Thompson v. City of Louisville* 362 U.S. (1960) this court indicated that the ultimate question presented was whether the charges against petitioner were so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause. Decision of this question turns not on the sufficiency of the evidence, but on whether this conviction rests upon any evidence at all. Arguably, a similar question is presented here as discussed above. The indictment required proof that PNC 0147 was a client escrow account.

The government never attempted to prove that PNC '0147 was a dedicated client trust account. No evidence was introduced that this account remotely met the criteria to qualify as this single client trust. It was not a single client trust account or any type of client trust account. No evidence was introduced showing an agreement between Hunter and a client. Nor were any documents from PNC Bank and the KBA offered with a client's social security

number or EIN. There was not a mechanism in place whereby PNC would notify the KBA of any overdrafts on this account, which would trigger an inquiry from the KBA. It was the government's burden to prove that Petitioner had a client escrow account as alleged in the indictment. Failing to introduce evidence of a client escrow account is fatal to the government's case.

II. PETITIONER WAS DENIED RIGHT TO COUNSEL

The Sixth Amendment of the Constitution of the United States provides as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." *Sixth Amendment, U.S. Constitution*

In the within matter, counsel was appointed to represent Petitioner before the Sixth Circuit Court of Appeals. See Appointment letter February 3, 2023, United States Court of Appeals, Sixth Circuit. The appointment was made through the Criminal Justice Act, 18 U.S. Code § 3006A. Counsel for Petitioner filed an a brief seeking reversal of the conviction primarily on grounds that Petitioner did not have a client escrow account. On or about March 8, 2024 the Sixth Circuit entered an order affirming the conviction. Shortly thereafter, Petitioner's counsel informed him that he intended to

withdraw from the case. Petitioner requested that he advise the Sixth Circuit that he wanted to seek reconsideration of their decision and that he wanted new counsel. The purpose was to address the errors in the Sixth Circuit's Opinion including the finding that PNC 0147 was a client escrow account. Petitioner wanted to move forward by filing a Petition for Hearing En Banc. Counsel for Petitioner withdrew but failed to advise the Sixth Circuit that Petitioner wanted new counsel. Having discovered this oversight, Petitioner filed a motion for extension of time to file a Petition for Hearing En Banc and for appointment of new counsel. On or about May 18, 2024 Petitioner received an order denying the relief sought. Petitioner was still in custody at a Louisville, Kentucky halfway house but was granted home confinement on May 28, 2024. Petitioner, pro se, prepared and filed his Petition for Hearing En Banc. It was denied June 16, 2024. Petitioner was denied counsel in violation of the Criminal Justice Act and the Sixth Amendment of the Constitution of the United States.

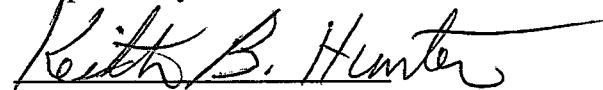
The assistance of counsel is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. . . The Sixth Amendment stands as a constant admonition that, if the constitutional safeguards it provides be lost, justice will not still be done. *Johnson v. Zerbst*, 304 U.S. 458 (1938). See also *Gideon v. Wainwright*, 372 U.S. 335 (1963). The right to the aid of counsel is of this fundamental." *Powell*

v. Alabama 287 U.S. 45 (1932). A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the U.S. magistrate judge or the court through appeal, including ancillary matters appropriate to the proceedings. 18 U.S.C. § 3006A(c). See also, Appendix F. Petitioner was denied counsel in violation of the Criminal Justice Act and Sixth Amendment of the Constitution of the United States.

CONCLUSION

For the foregoing reasons, the Court should grant this petition.

Respectfully Submitted,



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