24-6580

Case Number To Be Determined

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Darrell Smith,
Petitioner,

v.

United States of America,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Submitted By:

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Question(s) Presented

1. Should not a Judge have recused himself, reference 28 U.S.C. §455(b)(2), from prosecutions and sentencing of the Petitioner, and his Companies, when, five year prior to prosecution, in 2011/2012, his actions, as an attorney, created or helped to create, the very financial problems for which the Petitioner was eventually charged for allegedly committing in 2011/2012?

2. Should not the Eighth Circuit Court of Appeals have allowed Smith's recusal argument to be heard, issuing a Certificate of Appealability when they were supplied with undeniable proof that the Judge which sentenced the Petitioner, created, or helped create, the very financial problems for which the Petitioner was eventually charged for allegedly committing in 2011/2012, a C.O.A. being issued in accordance with Hohn v. U.S. 524 U.S. 236, 141 L.Ed. 2d 242, 118 S.Ct. 1969, Case 96-8986 (1998)?

Parties to the Proceedings

Petitioner is Darrell D. Smith, an incarcerated inmate housed at the Federal Prison Camp, Duluth, Minnesota.

Respondent is the United States of America, represented by Asst. U.S. Attorney Timothy Vavricek.

Related Proceedings

The initial criminal proceeding against Darrell Smith was brought against Smith in U.S. v. Smith, Case No. 17-CR-2030, (N.D. of Iowa, 2018) to wire fraud in violation of 18 U.S.C. §1343 (Count 1) and aggravated identity theft in violation of 18 U.S.C. §1028A(a)(1) (Count 2). The Judge that "heard" the case was Linda R. Reade.

Smith challenged his guilt in the above crime via a filed §2255, which was "picked-up" by Judge Leonard Strand in 2022, and assigned Smith v. U.S., Case No. 20-CV-2105, (N.D. of Iowa, 2024). However, instead of Judge Reade "hearing" the §2255 Judge Leonard Strand "picked-up" the §2255 ruling against Smith in Document 63 on July 22, 2024. Judge Strand refused to issue Smith a Certificate of Appealability.

Although Smith's assigned attorney, Mark Meyer, "quit" as Smith's assigned counsel in the above §2255 matter, he still filed a request to the Eighth Circuit that Smith be given a "Certificate of Appealability" based on arguments which Meyer "decided" for Smith, ignorning Smith's request that Meyer argue recusal of Judge Strand. The Eighth Circuit assigned case 24-3040. Given that Meyer had "quit" Smith, Smith submitted his own appeal to the Eighth Circuit. The Eighth Circuit

refused to even read Smith's appeal, despite Smith not being represented by counsel at the Appellate level. Smith then requested an En Banc hearing, and the Eighth Circuit **refused to grant Smith the right to be heard En Banc reference the recusal argument** and issue a C.O.A., despite the fact that Smith's constitutional rights for a an "impartial hearing" were violated due to Judge Strand's former involvement with the Comapnies as "attorney Strand," in 2011/2012.

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Introduction to the Arguments

Judge Leonard Strand, acting as "attorney Leonard Strand," in 2011 and 2012, representing his then client Alliant Energy ("Interstate Power and Light"), working for Simmons Perrine Moyer Bergman, PLC, **created the financial problems that** (1) lead to the financial failure of the Companies, (2) receivership control of the Companies, (3) and (3) the indictment of Smith on two criminal charges, i.e., failure to hand-over past-due payroll tax dollars for Permeate Refining, LLC and wire fraud[1] - with the government claiming Smith made "unauthorized investments" of $2,405,409 (out of $48 million invested) for ten Claimants. By 2016 "attorney Leonard Strand" **became Judge Strand** and Judge over Smith and the Companies - **over the same financial mess that he** and his firm helped create in 2011 and 2012. The "unpaid payroll taxes" for Permeate in 2011/2012, according to the government, was $307,895. "Attorney Strand," using a court order, in 2012, debited Permeate's account $362,289.06 violating an agreement[2] Permeate had with attorney Strand's client that the $362,289.06 would be "forgiven," in exchange for Permeate dropping their $2 million civil claim against Alliant Energy for underpayment of biomass-to-electricity production (under-payment of kilowatts produced)[3]. The debit of Permeate's account **created the tax payment problem** and a dominoe effect of financial problems for Permeate which eventually led to Permeate's financial failure and the indictment of Smith. When Smith discovered that "attorney Strand" and "Judge Strand" were "one-and-the-same" person **after Smith** was sentenced in the payroll tax case (U.S. v. Smith, 16-CR-2002 (N.D. of Iowa, 2016), in 2018, Smith filed a §2255 in 16-CR-2002, being assigned Smith v. U.S., Case 18-CV-2083 (N.D. of Iowa, 2019), asking Judge Strand to recuse himself. As explained herein, Judge Strand **refused to recuse himself in violation of 28 USC §455(b)(2), which reads:**

1. Payroll tax case - U.S. v. Smith, Case 16-CR-2002 (N.D. of Iowa, 2016), Wire fraud case - U.S. v. Smith, Case 17-CR-2030 (N.D. of Iowa, 2018).
2. The agreement was verbal and recorded.
3. See Exhibit 6 which alligns the taxes due with Alliant debit amounts.

> "(a) Any justice, judge or magistrate judge...shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned...(2) Where in **private practice he served as a lawyer in the matter in controversy**, or a lawyer with whom he previously practiced law served during **such association as a lawyer concerning the matter**, or judge or such lawyer has been a material witness concerning it..."

If Smith were released from prison today, he would file a lawsuit against Alliant Energy and former "attorney Strand," now "Judge Strand" would be called as a witness as it was then attorney Strand's actions which helped create, or did create, the financial problems for Smith and the Companies, the financial results of which the government later used against Smith to indict Smith.

After filing the §2255 in the tax case,[4] Judge Strand denied Smith's §2255 on the basis of "timliness," claiming that attorney Bishop failed to adequately argue the recusal issue - blaming Bishop's failure directly on Smith, even though Smith, through email to his attorney, telephone calls, and motions to the court, tried to alert the court that Bishop was not arguing recusal as Smith had requested that he do. Judge Strand denied Smith's pro se motion regarding recusal ruling that Smith was "represented by counsel," and counsel was obligated to file the recusal and counter claims against the government, **not Smith.**

Since that time, in every case, and in every potential filing opportunity Smith has argued recusal - and in this case as well. The Eighth Circuit denied Smith the right to file a second or successive §2255 in the tax case arguing recusal, and they denied Smith's §2255 in the wire fraud case (Smith v. U.S., Case 20-CV-2105 (N.D. of Iowa, 2024), **refusing to allow Smith to (a) file his own recusal argument and (b) refusing to allow Smith to file En Banc arguing recusal in direct violation of** Hohn v. U.S. 524 U.S. 236, 141 L.Ed 2d 242, 118

4. Smith v. U.S., Case 18-CV-2083 (N.D. of Iowa. 2019).

S.Ct. 1969, Case 96-8986 (1998), which allows for the issuance of a C.O.A. **where an obvious constitutional violation of law has occurred.** If recusal of a Judge, acting as a former attorney which created the financial problems for the Petitioner and Companies over which he became judge, is not an "obvious constitutional violation" of the plain reading of §455(b)(2), then nothing is a constitutional violation.

Smith seeks redress from the Court in the form of (1) recusal of Judge Strand from Smith's cases[5] ((a) U.S. v. Smith, Case 16-CR-2002 (N.D. of Iowa, 2016), (b) Smith v. U.S., Case 18-CV-2083 (N.D. of Iowa, 2019), (c) Smith v. U.S., Case 20-CV-2105 (N.D. of Iowa, 2024), (d) U.S. v. Energae LP and I-Lenders, LLC, Case 20-CR-2007 (N.D. of Iowa, 2022), and (e) current Supreme Court case, request for Certiorari, Case 24-6244, challenging the Eighth Circuit's denial of Smith's challenge to the conviction of U.S. v. Energae LP and I-Lenders, LLC 20-CR-2007 (N.D. of Iowa, 2022)), (2) issuance of a Certificate of Appealability to challenge the constitutional violations as Smith noted in his §2255 filing, delivered to the Eighth Circuit, which they refused to hear, (3) an order that the government release recorded jail-house tapes between Smith and attorney Mike Battle, proving Mike Battle lied to Smith over those tapes and lied in his affidavit, and (4) that the government release the subpoenaed data proving that Smith's ten so-called "Claimants" received back over $2,880,274 in cash long before Smith was indicted (not counting the $5,296,692 in stock and tax benfits that Claimants also requested and received from 2009 through 2014 investment years, or a total return of $8,176,966 on a false claim of $2,405,409 in "unauthorized investments").

5. That is, the court cases directed handled by Judge Strand, as listed.

Opinions Below

Smith is a federal inmate with limited access to published court opinions. Smith has no knowledge of whether the Court decisions made in these case(s) are published or unpublished.

Jurisdictional Statement

The jurisdiction of the District Court of Northern Iowa is based on 18 USC §3621. The Court's jurisdiction is based on 28 USC §1291 which provides jurisdiction over a final judgment from the United States Appellate Court. Final judgment was entered January 16, 2025 when the Eighth Circuit refused to allow Smith's recusal argument to be heard En Banc. The Eighth Circuit disallowed all of Smith's arguments, giving no reason whatsoever.

Reasons For Granting Writ of Certiorari

If the Court does not grant Certiorari in this case then:

1. **All Judges Are Free To Abuse Discretion:** Lack of hearing this case will set a precedent, at least in the 8th Circuit, that any Judge, any court, can wantonly abuse 28 USC §455(b)(2), acting as attorneys creating financial problems for Companies, then applying for "Judgeship" and "gloss over" their formerly created problems, appointing themselves as Judge over the very problems they helped create as an attorney;
2. **Direct Violation of §455(b)(2) Bears No Legal Consequence:** Lack of hearing this case will set a precedent that Courts do not have to heed the very clear langauge of §455(b)(2) in that Judges, acting formerly as attorneys, can invent any reason to deny recusal despite clear evidence to the contrary - §455(b)(2) will be of no effect, no value, and open for all forms of indirect and direct abuse;
3. **U.S. Attorneys Arguing Against Recusal Are Not Held to Excellence:** Lack of hearing this case will result in exactly what happened here - U.S. attorneys can invent any argument, regardless of its merits, (in this case using the unjustified excuse of "timeliness of filing"), to carelessly argue that recusal should be denied, regardless of obvious bias. In this case, the U.S. Attorney did not deny that recusal had no merit - he simply wrongly argued that Smith's attorney did not file request for recusal soon enough;
4. **Supreme Court Rule of Law is Openly Disregarded:** Refusing obvious recusal sends a clear message to other courts that previous Supreme Court rulings are like a "candy store" - some can be followed at will, while others, if desired by the court, can be disregarded. Such is the case here, wherein multiple Supreme Court rulings were

disregarded or overlooked (for example, the court allowed the U.S. government to violate Luis v. U.S. 578 136 S.Ct 1083 194 L.Ed. 2d 256 (2016) (1) stripping Petitioner of all his untainted assets designated to pay attorney fees, (2) inventing lies[6] that Petitioner was trying to hide Smith's untainted $120,000 IRA asset to avoid restitution when the government had subpoenaed data proving **no restitution was due**, and (3) because the Judge refused to recuse himself, all manner of constitutional violations then are "open game" (see **III. Constitutional Violations When Recusal Goes Unchecked**).

6. Release of written transcripts of recorded jailhouse telephone calls between Smith and his brother would prove this lie, as Smith requested be done in his §2255 filing in Smith v. U.S. Case 20-CV-2105 (IA. 2024)

Statement of the Case

Smith gives the history of filing for recusal under the section **"II. Timeliness of Filing For Recusal."** He will not repeat that history here. Be that as it may, the Court should know that Smith was not negligent in timely filing for recusal. The government never argued that Smith's recusal argument lacked merit - they based their responses to Smith's recusal requests on timeliness. and cites Eighth Circuit Court case law which they claim supports their contention that regardless of whether a constitutional violation occurred or not, if the Petitioner does not timely file for the violation, at the soonest possible time following the Petitioner's knowledge of the violation, then the Court has the authority to disclaim the filing no matter the gravity of the violation. Smith would have the Court know the following:

1. **Smith Did File Recusal At the Earliest Possible Time:** Smith learned that "attorney Leonard Strand" and "Judge Strand" were one and the same person in August 2018, the proof being pages 1 through 4 of of Exhibit 1, wherein Smith is writing to attorney Brown seeking advise regarding filing on the "conflict-of-interest" - that is, that "attorney Strand," acting for his client Alliant Energy, in 2011/2012 created the very problems for which Smith was later indicted, and then became Smith's judge - Judge Leonard Strand. Smith followed Brown's adivce and filed a §2255 in the tax case, U.S. v. Smith, Case 16-CR-2002 (N.D. of Iowa, 2016) seeking recusal of Judge Strand, giving the court proof of "attorney Strand's" former involvement and causal actions against Permeate, then becoming Permeate's judge in 2016. Judge Strand denied Smith's §2255 filing based on "timliness," (after appointing attorney Bishop), but **did not** rule on the merits of Smith's recusal proof.
2. **Smith's Attorneys Refused To Argue Recusal As Smith Requested:** In all

of Smith's pro se filings, including BOP Administrative Remedies seeking justice, Smith argued recusal. But, as soon as Judge Strand assigned Smith an attorney, and Smith requested that recusal be the main argument, the attorneys - attorney Brown (direct appeal of U.S. v. Smith, Case 17-CR-2030, 8th Cir. Appellate No. 18-3222, (8th Cir., 2019)), attorney Bishop (§2255 claim challenging guilt in U.S. v. Smith, Case 16-CR-2002 (N.D. of Iowa, 2016), §2255 case Smith v. U.S., Case 18-CV-2083 (N.D. of Iowa, 2019)), and attorney Meyer (§2255 claim challenging guilt in U.S. v. Smith, Case 17-CR-2030 (N.D. of Iowa), §2255 case Smith v. U.S., Case 20-CV-2105, (N.D. of Iowa, 2024)), **all refused to argue recusal at Smith's request.** Thus, when Judge Strand rules in 18-CV-2083 that "Smith failed to argue recusal," and then denied Smith a C.O.A., Judge Strand's ruling is not accurate - attorney Bishop refused to argue recusal, **despite multiple emails to Bishop, from prison, demanding that Bishop do so.** As Exhibit 7 shows, Smith also requested that attorney Meyer argue recusal in Smith v. U.S., Case 20-CV-2105 (N.D. of Iowa, 2024), and Meyer refused writing, instead, via email, "Judge Strand is a fair judge" (Exhibit 7, page 10 of 10);

3. **Smith's Pro Se Arguments in 20-CR-2007 Argues Recusal:** In the case U.S. v. Energae, LP and I-Lenders LLC Case 20-CR-2007 (N.D. of Iowa 2022) Smith argues recusal in three separate documents 80, 120 and 133, giving Judge Strand proof of his former involvement in document 133. the same documents listed here as Exhibit 1. In Document 84 as explained further along. Judge Strand denied recusal.

Thus. Smith was not lacking in filing and requesting recusal. contrary to what the government claims. And, now for the 8th Circuit to deny Smith

the right to argue recusal - refusing to even hear the case wherin a provable. direct constitutional violation occurred. refusing to issue a C.O.A. in violation of Hohn v. U.S. 524 U.S. 236, 141 L.Ed 2d 242, 118 S.Ct. 1969. Case 96-8986 (1998), **is wrong. Consistent** denials to hear recusal arguments based on the merits appears to be an act of collusion among judges to (1) protect the one judge, Leonard Strand, that common sense teaches is in the wrong, and (2) let Smith's convictions stand, despite lacking evidence of guilt.

ARGUMENTS

I. Recusal of Judge Leonard Strand

Question: Should not a Judge have recused himself, reference §455(b)(2), from the prosecutions and sentencings of the Petitioner, and his Companies, when in 2011/2012, his actions, as an attorney, created or helped create, the very financial problems for which the Petitioner was eventually charged for allegedly committing in 2011/2012?

A. History of Judge Strand's Former Involvement With Smith and the Companies as "attorney Strand" Prior to Becoming Smith's Judge.

In 2011/2012 Permeate Refining, LLC, an ethanol production Company entered into a management/purchase agreement with BFC Electric, LLC. BFC Electric converted biomass into electricity, and sold that electricity in a sole-source sale agreement to Alliant Energy.[8] In 1997 Alliant Energy, with partners Jeff Carter and Warren Dunham, spent over $20 million building BFC, then sold their 50% interest to Carter/Dunham in 2006. All electrical sales agreements for Alliant were handled by Interstate Power and Light ("IPL") a wholly owned subsidiary of Alliant, being represented by attorney Leonard Strand who was employed by Simmons Perrine Moyer Bergman PLC. In 2010 Alliant claimed they overpaid BFC $362.289.06 and requested that BFC return the money. BFC counter-sued Alliant for $2 million for "cheating" on electric conversions. Both cases went to court with Alliant's case as Alliant Energy v. BFC Electric Case LA-CV-772268 (Linn County, Iowa, 2010). Permeate had a separate rail-delivery contract with BFC Electric wherein all of Permeate's rail-based sugar waste was received via BFC's rails in Cedar Rapids, Iowa. BFC was mismanaging this rail agreement, and Permeate suggested that BFC allow Permeate to manage BFC and the rail site. A "due dilligence" discovery was conducted by Permeate Refining prior to entering into a management/purchase agreement with BFC.

During this "due dilligence" phase Permeate learned that (a)

8. Iowa State law gave Alliant a monopoly on all produced electricity in Cedar Rapids, IA - Permeate had no choice but to sell to Alliant.

Alliant Energy claimed BFC owed them $362,289.06 in energy payments made in excess of BFC produciton for production year 2009 and (b) BFC Electric claimed that Alliant Energy was "cheating BFC" on its electric-production "box," or formula - reporting less electricity than what was actually produced, claiming Alliant (IPL) owed BFC about $2 million in back-payments. Permeate told BFC that this "contract dispute" had to be resolved prior to Permeate engaging BFC in a management/purchase agreement. As a result, BFC set-up a meeting between Alliant Energy and Permeate in order to determine if the contract disputes could be resolved.

In September 2011, Smith, Permeate's main investor, and three Permeate managers, met with Alliant Energy at Alliant Energy's building in Cedar Rapids, Iowa, with Alliant Energy being represented by about ten of their employees present, the two main Managers present being (a) Steve Shupp and (b) Jeanine Peticoff. "Attorney Leonard Strand" was introduced at the meeting as being present "via telephone conferencing" listening in on the meeting. Smith recorded the meeting for validating what was said and the minutes of the meeting for Permeate's sake. At this meeting Steve Shupp clearly stated that (a) the debt they claimed BFC owed them, $362,289.06, **would be forgiven** if (b) BFC also dropped their $2 million claim against Alliant Energy. Shupp's exact words were (via tape) "we will let bygones be bygones" when questioned specifically about the $362,289.06 debt. Without clearance on this debt, Permeate could not engage in a management/owernship arrangement with BFC because a "sole-source" contract meant that Alliant could capture BFC's electric production revenue at any time they wanted, for any reason. This debt issue had to be cleared. Alliant agreed to "approve" the management/purchase arrangement between BFC/Permeate, and Permeate agreed

to drop their $2 million cross-claim against Alliant Energy. Address change documents were exchanged with **Alliant** advising **Permeate that all future communication between BFC and Alliant was to come to Permeate, not to BFC** which had a "management and mail address" separate from the BFC plant operation itself. BFC's current owner, Jeff Carter, signed communication approval, and Smith emailed this communication change to Steve Shupp, copies of the email which Smith still retains. Alliant agreed to prepare legal paperwork in preparation of debt cancellation. Alliant's financial claim against BFC was recorded at Linn County as Alliant Energy v. BFC Electrict, LLC Case No. LA-CV-772268 (Dist. of Linn County, Iowa, Sept. 2010).

But, instead of canceling the debt against BFC, Alliant's attorney, Leonard Strand worked secretly, behind the scenes with the Court to (a) keep Permeate in the dark[9] regarding filings and (b) have the Court issue a summary judgment against BFC in favor of Alliant Energy. Thus, out-of-ignorance and fully trusting Alliant Energy would abide by their word, Permeate management signed a management/purchase agreement with BFC November 2011. But, behind the scenes, as proven in Exhibit1 attorney Strand requested that Linn County award Alliant summary judgment of the $362,289.06 owed, sending **all legal paperwork to BFC's old address - not to Permeate's address as Alliant management agreed to do in writing, which Smith retains in email form.** Thus, while Permeate kept their word and cancelled the $2 million claim against Alliant, Alliant **did not keep their word.**

In March 2011, attorney Strand received a "summary judgment" in favor of Alliant Energy, of which Permeate was ignorant, having received no communication to this effect. Upon receiving "summary judgment,"

9. Smith's interpretation of events from looking at all communication records. some of which Smith is not allowed to print, being in in prison ("printing discovery" at Duluth is against prison policy).

attorney Strand then sent the Court order to Permeate's bank Wells Fargo, and requested an **immediate debit of Permeate's account for $362,289.06 - nearly the exact amount that Permeate owed in back-due payroll taxes for 2011/2012.** Attorney Strand **did not send** debit requests to BFC's bank account wherein the electricity-production payments were automatically deposited each month by Alliant - no, he sent it to Permeate's account. Attorney Strand cannot claim "ignorance" (then or now) that he was **unaware** of Permeate's (a) taking over BFC or (b) the address change since Exhibit 1, pages 12 and 13 of 22, reports Permeate's dealings with BFC.

Exhibit 1 goes through the "email exchange" between Smith and Alliant's J. Penticoff, when, in March 2012, Smith learned of Alliant's $362,289.06 debit of Permeate's account." Smith was Permeate's largest investor, and thus it's main financial advisor, but, Smith held no management position at Permeate. Smith contacted Alliant Energy protesting the debit of Permeate's account and **Alliant's failure to honor their word that they would cancel the debt.** Exhibit 1 proves the following events:

1. **Contact Permeate Via Their Address Not BFC's Address:** BFC's attorney, Barnhill, is advising attorney Strand and the Court, that **all communication between Alliant and BFC should go through Permeate,** given that **Permeate was BFC's new "management/owner"** (Exhibit 1, page 12 of 22). Attorney Barnhill is seeking to withdraw from the legal matter with **Barnhill provably lying to the Court, in this withdrawal notice,** claiming:

   > "This lawsuit [Alliant lawsuit] was disclosed and **Permeate has been been timely notified of the status of each phase of this lawsuit but has declined to act..."**

   This is an outright lie - **all the Court communication and notices were being mailed to BFC's management address in Ankeny, Iowa, not Hopkinton, Iowa, Permeate's address.** Attorney Strand **had received**

communication from Alliant, his client, **that all communication between Alliant and BFC had to go through Permeate** - this was in the written agreement between Alliant Energy and Permeate Refining as given to Alliant manger Shupp, being requested by Shupp. Thus, **it was purposed by Alliant's legal counsel to send all communication, not to Permeate, but to BFC's old address to which Permeate had no connection;**

2. **Permeate Was Not Contacted By The Court or BFC:** Because Permeate was not made aware of this "behind-the-scenes" mail exchange between BFC and Alliant, Permeate did not show-up in Court to defend itself and prove to the Court it had not received **any communication regarding this lawsuit.** You can see this in the email exchange between Smith and Penticoff, wherein Smith is telling Penticoff (Exhibit 1, page 5 of 22):

> "...we have a power purchase agreement in place - but this means nothing **in the face of a swept account WHEN JUDGMENTS CAN BE ENTERED WITHOUT REVIEW**...The Court date was in April...but, your legal department had the management structure change in **their possession** (you asked us for it on their behalf via email and it was emailed. **I WOULD HAVE THOUGHT THEY [THE COURT - IPL] WOULD HAVE TRIED TO CONTACT US.** It all seems much, much "too well planned" [in other words, this **was purposed deceit on behalf of IPL and its representative counsel** given that Barnhill was clear in her "withdrawal notice" telling the Court that Permeate now controlled BFC - and, yet no mail was being sent to Permeate!];

3. **Alliant Energy Debited Permeate's Account for $362,289.06 NOT BFC'S ACCOUNT:** On Exhibit 1, page 6 of 22, Smith is advising Penticoff that it was **Permeate's account that was debited for $362,289.06 not BFC's:**

> "In addition, it was **Permeate's account that was swept, not BFC's account...**"

Jeanine Penticoff replied to this email (Exhibit 1, page 5 of 22):

> "Our counsel [Leonard Strand] **has also contacted yours** [attorney Ray Stefani] **that if Permeate can supply documentation from the bank that BFC is not on the acount [Permeate's Account]**, we would **revise our collection efforts...**"

Despite their "supposed collection revision," **Alliant never returned**

the money swept from Permeate's account;

4. **Contact Between Alliant's Counsel (Strand) and Permeate's Counsel Stefani:** J. Penticoff states that Alliant's counsel - Leonard Strand contacted Permeate's counsel (previous quote) to settle **any future debit issue.** Contact between Strand and Stefani **did occur,** according to what Stefani told Smith. However, Stefani never advised Smith nor Permeate that "imporper service" was a reason to throw out a summary judgment - which may prove collusion between both attorneys against Smith and Permeate;[10]

5. **Debit Amount of $362,289.06 Matches Permeate's Taxes Due for 2011/2012 of $307,895:** Exhibit 5 shows what the government claimed that Permeate owed back-due payroll taxes for 2011/2012 of $307.895. They placed this blame on Smith reference U.S. v. Smith, Case 16-CR-2002 (N.D. of Iowa, 2016), even though Smith was a Permeate investor in 2011/2012, not a Permeate manager. **But it was because of this debit amount and subsequent fraud by BFC/Alliant against Permeate that resulted in Permeate's (a) shutdown, (b) tax problems and (c) failure to continue to receive processing waste through BFC;**

6. **Had Alliant Energy Been Honest Regarding Debt Cancellation Intent,Permeate Would Not Have Purchased BFC:** Because Alliant Energy was deceitful in their debt intentions regarding BFC, Permeate financially failed, causing "cascading" financial failures for Permeate in 2011-2013:

   a. **BFC's Undisclosed Debt:** Permeate agreed to purchase BFC because Alliant assured Permeate the $362,289.06 debt would be canceled. Per due dilligence, BFC was required to disclose all their debt - they did not. Carter failed to disclose nearly $2 million in debt he was hiding. Because of this undisclosed debt, Permeate lost $7 million trying to fix undisclosed BFC problems. The $7 million loss **was tied to Alliant's decit regarding their debt intentions;**

10. There is proof that Stefani, working with Randy Less, was defrauding Smith and investors in legal fees - which makes any assumption possible.

b. **Alliant's Capture of BFC's Revenue:** Alliant debited Permeate's account in March 2012, taking everything that was in the account, causing multiple down-line payment problems and bounced checks. One of the "bounced checks" was a feedstock payment to Cargill. Because Cargill's check bounced, Cargill placed additional payment constraints on Permeate which Permeate could not make. Cargill stopped delivering sugar-waste feedstock to Permeate as a result, until the "payment-in-full matter" was corrected (Permeate had a "letter of credit" with Cargill prior to the BFC matter, and following the bounced check the "letter of credit" was removed). Because Permeate could not receive sugar-waste feedstock from its main supplier, Cargill, Permeate had to stop producing ethanol. Without ethanol, Permeate had no revenue and could not (a) pay its immediate suppliers, (b) pay the payroll taxes past due, and (c) meet property tax payments that were due, stopping production. Permeate's production crew was let go, and Permeate ceased production. All these "events" were cascading problems as a result of Alliant's failure to be honest with Permeate regarding its debt collection intent.

The direct involvement by former attorney Strand, now "Judge Strand," is even worse than what Smith relates here - more detailed, and more unjust. If the Court reviews the documentation supplied as Exhibit 1, Smith prays the Court conclude that Judge Strand should have recused himself from Smith's cases when Smith requested that he recuse himself, with Judge Strand ruling, and refusing to do so (U.S. v. Energae LP & I-Lenders, LLC, case 20-CR-2007 (N.D. of Iowa, Sept. 2022), Document number 84 - Judge Strand's refusal to recuse himself).

B. Case Law In Support of Recusal

In Ripp v. Baker, Warden 173 S.Ct. 905 197 L.Ed. 2d LEXIS 1571 Case No. 16-6316 (2017), the Court ruled that the **"very appearance... of potential"** bias should be enough to warrant recusal by a federal judge in causal criminal proceeding. In Smith's case, "attorney Strand" was **directly involved** with Permeate Refining prior to becoming "Judge Strand," and it can be shown that "attorney Strand's" financial actions toward Permeate (whether acting in full-knowledge, or limited knowledge as to the down-line financial impact his "debt collection service" for Alliant would have on Permeate's financial demise) **caused if not helped cause Permeate's financial failure and the non-payment of payroll taxes.** Permeate was shut-down as a result of Alliant's deceit. It took Smith and other investors from 2013 to 2016 to fully recover from the financial mess left to them as a result of the BFC/Alliant deceit. In 2016 Smith, and other Permeate investors, invested enough money to (a) buy-out Randy Less' 51% majority interest in Permeate, (b) pay all past-due taxes, and (c) restart Permeate as a viable ethanol production facility. However, on January 29, 2016, one week after Smith and other investors had bought-out Permeate, **while Smith was traveling on his way to the IRS office in Des Moines, Iowa to pay Permeate's back-due payroll taxes** (having a written agreement with the IRS to do so), the federal government arrested Smith, charging Smith with failure to pay Permeate's back-due payroll tax dollars. This action led to a receivership control of Permeate - which the federal government encouraged the State government to engage in (behind the scenes) and the waste of millions of dollars of capital raised to restart Permeate - most of which went, instead into the pockets of attorneys and Joan Priestley and her com-patriots - the main false witnesses the government used against Smith.

The bottom line is that with Ripp v. Baker (id), there **was no direct connection between** the Judge's actions and Baker's sentencing - yet, the Court still ruled in Baker's favor, ruling the Nevada judge should have recused himself.

In Williams v. Pennsylvania, 579 U.S. 1 136 S.Ct. 1899 195 L.Ed. 2d LEXIS 3774, No. 15-1540 (2016), the Court ruled that **regardless of the passage of time, recusal was still in order** if the "appearance of" direct or indirect involvement with the inmate (Williams) could be deemed to distort the Court's ruling. In Williams' case, he was prosecuted by U.S. attorney Castille. Twenty-five years later, when Williams' case finally came before the Pennsylvania Supreme Court, U.S. attorney Castille had become "Chief Judge Castille" of the Pennsylvania Supreme Court. Judge Castille refused to recuse himself when hearing Williams' case. The U.S. Supreme Court remanded the case asking that Judge Castille step aside from hearing Williams' claims of improper sentencing. Likewise, Smith has filed **MULTIPLE MOTIONS** since 2018 asking that Judge Strand recuse himself, **all of which Judge Strand** has denied, or Smith's attorneys refused to properly argue, or in this latest case, wherein the Eighth Circuit **refused to even read Smith's recusal claims**, denying appeal on Smith's §2255 (case 20-CV-2105) in the wire fraud case, U.S. v. Smith, Case No. 17-CR-2030 (N.D. of Iowa, 2018), the §2255 denial being decided by Judge Strand - the same Judge that ruled against Smith in the §2255 in the tax case, U.S. v. Smith, Case No. 16-CR-2002, (N.D. of Iowa, 2016), the §2255 case number being Smith v. U.S., Case No. 18-CV-2083, (N.D. of Iowa, 2019), denying Smith's §2255, and the recusal Smith requested, denying Smith a C.O.A. in that case as well.

In Arnold Hohn v. U.S. 524 US 236, 141 L Ed 2d 242, 118 S.Ct.

No. 96-3986 (March 1998) the Supreme Court held that a denial of certificate of appealability could be considered by the Supreme Court if:

> "...an applicant made a substantial showing of the denial of a constitutional right..."

The 6th Amendment of the constitution guarantees that in all criminal prosecutions the accused has a right to an "impartial jury," which includes an impartial judge, as the Court has ruled in previous cases. Smith offers the Court Exhibit 1 as proof of Judge Strand's former direct involvement with Permeate Refining. Smith has requested that the prison allow Smith printing access to additional documents in discovery, which the prison has denied. However, if Smith had been been given access to such documents, he could supply the Court with additional proofs. Because Smith's constitutional rights have been violated due to being sentenced by a conflicted Judge, Smith requests a trial by a jury of his peers - a "do-over." In this case, if granted, Smith will claim innocence, and request a reissuance of a §2255 in the wire fraud case (17-CR-2030).

In Cheney, Vice President v. U.S. District Court for the Dist. of Columbia 541 US 913 158 L.Ed 2d 225, 124 S.Ct. 1391, No. 03-475 (Mar. 2004), Judge Scalia quoted Microsoft Corp v. U.S. 530 US 1301 1302, 147 L.Ed 2d 1048, 121 S.Ct. 25 (2000) ruling:

> "The decision whether a judge's impartiality can "reasonably be questioned" is to be made in light of the **facts as they existed**, and **not as they were surmised or reported...**"

It is unheard of that a Judge which creates the financial problems for a company, as a private attorney, and then becomes judge over the same financial problems created, should have **any basis for refusing to recuse himself.**

In Liljeberg v. Health Services, 486 U.S. 847 860 108 S.Ct. 2194 100 L.Ed. 2d 884 (1988) the Court ruled that section §455(a) contains an objective standard for judicial disqualification:

> "...It provides that whenever an average member of the public might reasonably question a judge's ability to be impartial, that judge must disqualify himself or herself...although the standard tests for a reasonable person, not a reasonable judge would perceive to be not impartial, the judge has the discretion to make the determination of what a reasonable person would believe [quoting Judge Webber, Smulls v. Al Leubbers, 2004 US Dist LEXIS 33436, Case 4:02CV0618 ERW (E. Dist. of Missouri, East. Div., June 2004]"

28 USC §455(b)(2) is clear when a Judge, acting formerly as an attorney was involved in the matters effecting a Petitioner of a Company, then that Judge has a **legal responsibility to recuse himself**, as is demonstrated in the next cited case.

In John Ferris, et.al., v. Wynn Resorts Limited, et.al., 2022 US. Dist. LEXIS 19640, Case No. 2:18-cv-00479-APG-ELJ (D. of Nevada, Oct. 27, 2022). Judge Youchah **did recuse herself** from the case given that she "briefly served" (id, LEXIS *6) in a legal capacity for Wynn Resorts Limited. But, unlike Smith's case, **there was no direct connection between Judge Youchah's actions as an attorney for Wynn Resorts**, and the case that was before her for decision making. There is no greater or clearer example of recusal than Smith's case wherein the Judge, acting as a former attorney created, or helped create, the **very financial problems with which Smith was charged four years later--when Strand became "Judge" over the Companies.** Judge Youchah also considered the "timeliness" of the filing for opposing counsel's request for recusal - filed nearly one year after Judge Youchah had already issued multiple court orders against Ferris and in favor of Wynn Resorts. She noted that Ferris' counsel claimed they had "discovered her former connection with Wynn Resorts" by chance based on a newspaper article that was discovered online. Judge Youchah stated that all judges "develop a list" of former business clients

they once served in order to avoid conflict. She stated that "Wynn Resorts" was on her "conflict list" for two years, and the current case came well after the "two year period." Likewise, Smith did not discover Judge Strand and "attorney Strand" were one and the same until August 2018 and Smith immediately filed a request for recusal with a §2255 filing - a filing Judge Strand eventually denied - not because of Smith's lack of filing - but potentially due to collusion between attorney Bishop and Judge Strand. Regarding timeliness, Judge Youchah ruled:

> "There is no "per se rule...regarding the time frame" within which a motion to recuse should or must be filed. Preston v. U.S. 923 F. 2d 731, 733 (9th Cir. 1991)..."

But, then goes on to cite certain time constraints which recusal can be "weaponized." **None of her timeliness exclusions apply to Smith** - Smith **timely filed at every available opportunity as discussed later.**

II. Timeliness of Filing for Recusal

Question: Should not the Eighth Circuit Court of Appeals allowed Smith's recusal argument to be heard, and issued a Certificate of Appealability when they were supplied with undeniable proof that the Judge which sentenced the Petitioner created, or helped create, the very financial problems for which the Petitioner was eventually charged (acting formerly as "attorney Strand") in 2011/2012, in accordance with Hohn v. U.S, 524 U.S. 141 L.Ed. 2d 242, 118 S.Ct. 1969, Case 96-89-86 (1988)?

In Hohn (id) the Court ruled that a C.O.A. should be issued:

> "...if an applicant has made a substantial showing of the denial of a constitutional right..."

The Eighth Circuit (a) refused to even **hear the merits of** Smith's recusal argument in light of Hohn, (b) did not even "read" Smith's argument even though attorney Meyer had "quit" Smith (c) Smith advised the court that Meyer refused to argue what Smith requested,[11] (d) the Eighth Circuit did not consider Smith's constitutional claim for recusal, denying a C.O.A. The Eighth Circuit "must have" bought the government's argument regarding "timeliness of recusal,"[12] but, based on Ferris (id) this is not supported.

11. In Hurlow v. U.S. 726 F.3d 958, 2013 U.S. LEXIS 16574, No 12-1374, (7th Cir., 2013), the Court ruled that failure to follow Petitioner's requests to **argue constitutional violation claims, MERITS REMAND.**
12. In Smith v. U.S. Case 24-3223 (8th Cir. 2024), Document 5463703, the government claimed Smith's recusal request was "untimely" (page 8).

There was no "timeliness delay" in Smith filing MULTIPLE REQUESTS that Judge Strand should recuse himself as the following "recusal" filing "historical record" should reveal to the Court. It is not even clear to Smith that the Eighth Circuit's "additional timeliness bar" is even constitutional since the Court ruled in Williams v. Pennsylvania. 579 U.S. 1 136 S.Ct. 1899 195 L.Ed 2d LEXIS 3774. No. 15-1540 (2016) that "timeliness of filing" should not be a factor given the 25-year gap between Castille's prosecution of Williams and Castille's judgment of Williams before the Pennsylvania Supreme Court. It seems to Petitioner. that a violation of §455(b)(2) is a violation for all time. regardless of when the Petitioner filed because the Petitioner is additionally limited by the Court in (a) the temerity of the attorney appointed by the Court for the Petitioner and (b) the lack of "pro-se" legal knowledge of a Petitioner seeking a fair and unbiased judgment. The government argued that Fletcher v. Conoco Pipeline, 232 F.3d 661, 664 (8th Cir., 2003)(quoting Holloway v. U.S. 960 F.2d 1348. 1355 (8th Cir. 1992) applied to Smith in which the court ruled:

> "Timeliness requires a party to raise a claim 'at the earliest possible moment after obtaining knowledge of facts demonstrating for such a claim.'" (quoting Apple v. Jewish Hosp. & Med. Ctr., 829 F.2d 326. 333 (2d Cir. 1987). The Court finds that although Petitioner may have waited for a long period of time before filing his motion. because of the gravity of the matter at hand. the Court will make no determination as to the reasonableness of Petitioner's delay and will consider the merits of Petitioner's motion."

A. Case History of Filing for Recusal

Through silence the Eighth Circuit refused to consider the following:

a. **Recusal Request In Filing §2255 in 16-CR-2002. Filed Oct. 2018:**

When Smith was preparing for sentencing in the wire fraud case, he requested his attorney Brown send him information from Smith's Hard Drive proving theft and mismanagement by other company managers. Brown sent Smith documentation regarding the failed BFC purchase

agreement with BFC, attorney Brown sent the documents Smith presents as Exhibit 1. In reviewing the documents Smith noticed that the attorney "Leonard Strand" signing the documents on behalf of Alliant Energy debiting Permeate's account was the same signature as "Judge Leonard Strand." Smith then realized that it was "attorney Leonard Strand" that had acted wrongly toward Permeate regarding the BFC transaction and this same "attorney Leonard Strand," had become Smith's judge "Leonard Strand" in the tax case 16-CR-2002. Smith then mailed the letter to attorney Brown, included as Exhibit 1, pages 1 through 4 of 22. In this letter to Brown dated "8/4/2018." Smith stated the following to Brown:

> "Please review the enclosed lawsuit from Alliant energy against BFC Electric, a wholly owned subsidary of Permeate Refining. The attorney representing Alliant Energy is **Leonard T. Strand** - the same Judge who sentenced me in the tax case. **This is a "conflict of interest:"**
> 1. Strand was fully aware that Permeate purchased BFC, given that Barnhill filed a motion to withdraw citing Permeate as the new purchasing agent for BFC;
> 2. But. instead of sending the judgment paperwork to Permeate's address - it all went to BFC's old address;
> 3. We. Permeate. met with Alliant Energy in November 2011 [the two meetings actually occurred in September and October 2011] Those present for Permeate were myself. Randy Less & Jerry Krause [also a fourth person who Smith will call as a witness later. Ken Boyle]. Those present for Alliant Energy's staff were 15 members of Alliant's staff, including Shupp, and Penticoff, both high level managers of Alliant Energy...
> 6. At the meeting with Alliant Energy, both Shupp and Penticoff stated they would "drop the lawsuit and work with Permeate going forward"...
> 9. The bottom line is that:
>   a. Strand knew Permeate purchased BFC with Barnhill filing to withdraw
>   b. Strand sentenced me to 13 months for tax evasion (payroll taxes) **even though it was clearly before him that both Permeate and BFC were involved in the tax matter (PSI) [PSI in the tax case, 16-CR-2002]...**
>
> Additionally, Vavricek was (must have been) fully aware that Strand represented Alliant Energy legal matters in 2012.During the proffer session between Lahammer and I in September 2017, I brought up the fact that Alliant Energy had **cheated** BFC with their filing, and Vavricek said he "really didn't want to hear about that," and changed the subject...please advise what heeds to be done..."[14]

14. In the Ferris case (id), Judge Youchah developed a list of Companies she could not represent as Judge - Wynn Resorts was on that list. **Likewise, Judge Strand should have had "Alliant Energy" on his list!**

From this letter to attorney Brown, you can surmise that Smith's retelling of events has not changed from that day of reporting on August 4, 2018 until today. Except that Smith failed to mention one fact in that letter - **Jeanine Penticoff introduced "their attorney" of record, Leonard Strand, being on the telephone in a "listen mode."** Thus, not only was "attorney Strand," who became "Judge Strand" (1) aware that Alliant said they would forgive the $362,289.06 debt, but, he was also aware that (2) Permeate was purchasing BFC, and (3) Alliant Energy stated, at the meeting, that **all future communication between Alliant, BFC, and Permeate would go to Permeate's address.** However, instead of sending "all future communication to Permeate," attorney Strand did not alert the Court of the address change for sending legal notices to Permeate. Instead, attorney Strand filed (1) "summary judgment" against BFC, (2) won it, (3) sent all communica-on the summary judgment to BFC's old address which Permeate did not receive. (4) went about debting Permeate's account for $362.289.06. not BFC's account. and then (5) contacted Permeate's attorney, Stefani. to arrange for "future debits" that only included BFC's account. not Permeate's. since "BFC's name" was not listed on Permeate's account. Attorney Brown advised that Smith file a §2255 in 16-CR-2002, seeking recusal of Judge Strand. In October 2018. Smith sent a handwritten §2255 form (supplied to him by Brown) to the Court requesting recusal of Judge Strand. In this notice. Smith supplied the Court with the documentation included in Exhibit 1. Judge Strand appointed attorney John Bishop to represent Smith, ordering Bishop to argue "timliness of the §2255 filing" and any "conflict of interest" arguments. Bishop advised Smith he would argue "timeliness" since §2255(h) allowed for "new information" to support a §2255 claim filed in excess of 12

months. Bishop stated that requesting "recusal" at this stage would not be necessary because (1) Smith had adequately argued recusal in his filing, (2) Judge Strand was "a fair judge," and (3) Judge Strand would approve the §2255 on the timeliness issue alone. Smith demanded that Bishop request recusal anyway - via TruLinks prison emails on several ocassions. Bishop stopped communicating with Smith and **refused to file a response to the government's filing protesting Smith's recusal and timeliness filing.**[15] Smith then filed his own pro se motion advising the Court that (1) Bishop had not communicated with Smith in several months, (2) Bishop had advised Smith not to file any further recusal claim given that Judge Strand was "a fair judge," and (3) the government's claims regarding Smith's recusal arguments lacking merit were frivilous. Judge Strand then ordered that Smith's pro se filing be disregarded given that "Smith was represented by counsel." but. he nonetheless, allowed the government to file **more spurious claims**[16] to Smith's pro se filing, allowing their filing to stand. Judge Strand then ruled **against Smith's §2255 filing.** ruling that the "new information" regarding "conflict of interest" did not qualify. ruling (Document 10, Smith v. U.S., Case 18-CV-2083 (N.D. of Iowa, 2019):

> "Smith failed to file a motion to recuse despite my instructions to file any appropriate motion considering the conflict-of interest issue..."

This ruling had no merit since (1) Smith was represented by counsel and counsel did not file it's own motion. (2) Smith filed his own recusal argument initially and supplemented that by informing the Court that Bishop was not responding to Smith's requests which the Court rejected. Judge Strand **tnen denied Smith the right to appeal his ruling.** and, again attorney Bishop did not inform Smith that he could file for a "Certificate of Appealability" before the Eighth

15. Document 8, Smith v. U.S., Case 18-CV-2105 (N.D. of IA, 2019).
16. Document 6 & 9, Smith v. U.S. Case 18-CV-2105 (N.D. of IA, 2019).

Circuit. If the Court were to order copies of all Smith's emails to Bishop. sent from BOP Trulinks. you will see that Smith is continually asking that Bishop argue recusal and Bishop does not respond.

b. **Direct Appeal. U.S. v. Smith. Case 18-3222 (8th Cir. 2019), Appealing U.S. v. Smith. Case 17-CR-2030 (N.D. Of Iowa. 2018) - Wire Fraud:**

As the Court can see from Exhibit 1, page 1 of 22. attorney Brown (after years of requests) is sending, again. the documentation Smith mailed to Brown on August 4. 2018, with Brown sending that information again on March 25. 2022. Smith sent the recusal documents to Brown on August 4. 2018. The Direct Appeal of the Wire Fraud case was **specific about** what was promised Smith - concurrent sentencing for both the wire and tax cases (16-CR-2002, and 17-CR-2030) promised Smith by the government through Smith's attorneys L. Anderson. being communicated to Smith over recorded jailhouse telephones by attorney Mike Battle between September 2016 and November 2016 (the recorded phone records being held by the government, which they refuse to release).[17] Brown's arguments before the 8th Circuit, however. had (1) nothing to do with what Smith asked that he argue. namely that Judge Strand was conflicted and (b) attorney Battle lied to Smith over recorded jailhouse telephones regarding concurrent v. consecutive sentences. after not receiving the $200.000 in extra payment he was demanding from Smith. Instead Brown argued case law which had nothing to do with Smith's situation. The 8th Circuit denied Smith's Direct Appeal issuing a ruling which was inconsistent with the facts in Smith's case. Regardless, the Court can see from Exhibit 1 that attorney Brown **had the recusal information and attorney Brown was obligated to argue what Smith requested** per U.S. v. Max Allen Ellison, 798, F.2d 1102. LEXIS 28836, No. 85-1930, (7th Cir. 1986 wherein the Court ruled:

17. See Exhibit 5, reconstructed conversations between Smith and attorneys Battle and Lahammer.

"attorney must provide **unwavering loyalties to their clients...**"

The Court went on to explain that "unwavering loyalties" meant that attorneys were obligated to argue the questions of law and constitutional violations that their clients requested that they argue. In Max Ellison's case, the attorney **refused to argue** what Ellison requested, and what Ellison requested had merit, and thus, the Court remanded the case for a resentencing. Smith asked Brown (1) to argue recusal, (2) he held the evidence for it, (3) it was related to the consecutive/concurrent sentencing argument that Brown did make, and (4) Brown advised Smith, over recorded prison telephones, that it was useless for Smith to request Certiorari, being futile, and this argument became part of Smith's §2241 filed in Smith v. Eischen, Case 23-CV-0357 (D. of Minn. 2023) arguing recusal;

c. **BOP Administrative Requests Filed 2019 to 2022:** Smith filed two separate BOP Administrative Requests requesting that (1) Judge Strand should have recused himself, (2) the BOP should have counted the jail time for the tax sentence with the wire fraud case given a conflict in Judge Reade's oral and written orders at sentencing, wherein "oral orders" have precedence over written orders,[18] (3) attorney Battle lied to Smith over recorded jailhouse telephone calls regarding consecutive versus concurrent sentencing, and (4) Eighth Circuit case law in Marsanico and Gullickson supported counting of both sentences together. The BOP denied Smith's jailtime counting requests which led to Smith filed a §2241 when he was shipped to Duluth Federal Prison in October 2021. Smith filed §2241 Smith v. Eischen, Case 23-CV-0357 (D. of Minn., 2024) seeking recusal and jail time counting;

18. At sentencing Judge Reade ruled orally, that it would be up to the BOP to count all prior jail time, but, then ruling in writing, later, the tax and wire cases were to run "consecutive," both being contradictory.

d. **§2241. Smith v. Eischen. Warden. Case No. 23-CV-0357 (D. of Minn.. 2024):**

Smith's BOP remedies took from 2019 through 2022 to be denied and "converted" to a §2241 filing. In Smith's §2241 filing before the Minnesota court Smith made four arguments (as stated): (1) recusal of Judge Strand (2) the BOP should have counted both the tax and wire fraud sentences together given conflicting orders from Judge Reade at sentencing. (3) attorney Battle lied to Smith over recorded jailhouse telephone calls resulting in the sentences running consecutive versus concurrent as promised by the government **in writing to attorney L. Anderson and Mike Battle.** and reported to Smith over recorded jailhouse telephone calls. and (4) that Brown's argument before the Eighth Circuit was tainted by a Brady Violation with the withholding information from the Eighth Circuit in U.S. v. Smith. Case 18-3222 (8th Cir.. 2019). with the Court ruling that there was "no indictment nexus between the tax and wire fraud crimes" when Smith supplied the Eighth Circuit with proof that both the tax and wire fraud crimes **were on a single indictment sheet.** Minnesota Judge Tunheim ruled that Smith's arguments were not §2241 material. i.e.. that the Minnesota Court lacked jurisdiction over the claims. and that Smith should file a second or successive §2255 in case 16-CR-2002. Smith did as Judge Tunheim suggested, requesting the Eighth Circuit grant Smith a second or successive §2255;

e. **Second or Successive §2255. Smith v. U.S.. Case 24-3223. Case 24-3221. (8th Cir. 2024). Second §2255 for U.S. v. Smith. Case 16-CR-2002 (N.D. of Iowa. 2016):**

Smith requested the Eighth Circuit issue Smith a second or successive §2255 claiming innocence in the tax case. quoting §2255(h). "new information" that was received by Smith in 2022 proving innocence.

Smith also argued the four arguments mentioned in point 4 above. **the main argument being recusal of Judge Strand.** While the government was allowed to make multiple submissions. the Court denied Smith's submissions responding to the wrong arguments the government was making (which **had nothing to do with addressing recusal or innocence).** The Eighth Circuit made a "coding error" associating this second or successive §2255 with the ongoing §2255 that Smith had filed in 2020 to overturn the wire fraud case (being assigned Smith v. U.S.. Case 20-CV-2105 (N.D. of Iowa. 2024). challenging Smith's wire fraud conviction of 17-CR-2030). registered before the Eighth Circuit as Smith v. U.S.. Case 24-3040 (8th Cir.. 2024) - **the subject of this case).** The Eighth Circuit **refused to even read Smith's successive §2255 arguments. refused to allow an En Banc hearing. and refused Certiorari.** Smith pointed out to the Court their coding error. and now the Court. according to their Clerk ("Beth" who works for Clerk Marureen Gornick) is "relooking at the case to correct the coding errors;" thus, this recusal argument remains "open" for now for this "coding mistake;"

f. **§2255 Filed in Smith v. U.S., Case 20-CV-2105 (N.D. of Iowa, 2024) claiming innocence in wire fraud case U.S. v. Smith, Case 17-CR-2030, (N.D. of Iowa, 2018):**

Smith did not claim recusal of Judge Strand in his original §2255 because Judge Reade decided this case. However, in 2022, Judge Strand "stepped in" to take-over the §2255 argument in place of Reade. Smith requested that his assigned attorney, Meyer, **argue recusal of of Strand** (See Exhibit 7, email exchange between Meyer and Smith) **but attorney Meyer refused,** doing the same as did attorney Bishop, claiming "Judge Strand is a fair judge" (Exhibit 7, page 10 of 10). Judge Strand denied Smith's §2255 claiming Smith was "merely

speculating" on constitutional claims. Judge Strand also denied Smith a "Certificate of Appealability." Attorney Meyer quit Smith, and Smith prepared an appeal for Certificate of Appealability, mailing it to attorney Meyer and the Court. But, Meyer advised Smith that he had already filed a request for "C.O.A." and Smith should file "his own supplement." Smith called the Eighth Circuit speaking with "Beth" to determine if he could do this. Beth said Smith could. Smith filed his argument **requesting recusal of Judge Strand**, and filed 62 other pages proving innocence - all the claims that attorney Meyer refused to argue and that Strand ruled was "procedurally barred" without giving a reason for such "procedural barring." The Eighth Circuit (1) denied Meyer's request for C.O.A., **and (2) refused to EVEN READ SMITH'S ARGUMENTS REQUESTING RECUSAL.** Smith then filed "En Banc," shortening his request for recusal to 3900 words, as required, but, the Eighth Circuit **then denied Smith the right to be heard "En Banc."** Smith then filed this request to the Supreme Court requesting recusal;

g. **U.S. v. Energae LP & I-Lenders. LLC. Case 20-CR-2007 (N.D. of Iowa. 2022). which is Currently Being Challenged With the Supreme Court Court in case 24-6244--. Requesting Recusal:**

The government wrongly charged the Companies with "wire fraud" using Smith's financial activities as the basis for the "fraud." Smith was not assigned an attorney, but, under threat of increased prison time, was coerced into signing a plea agreement on behalf of the Companies agreeding to turn over remaining Company assets to meet the remaining $1,056,909 "resitution" the government claimed was owed Claimants relative to Smith's $2,405,409 in so-called "un-authorized investments," despite the facts Claimants received back $8,176,966 in restitution of which $2,880,274 was cash. In documents 80, 120 and 133, Smith requested that Judge Strand recuse himself

from this case. In document 83, the government argued against recusal claiming Smith's request for recusal was "untimely" (as noted earlier). Judge Strand agreed with the government and added:

> "I find that my prior representation, approximately ten years ago **involved none of the parties in this case..."** (document 84)

Yet, in the PSIs in all three cases, including 16-CR-2002 and 17-CR-2030, and this case 20-CR-2007, the following was noted:

1. **Energae Owns 49% of Permeate:** The government claimed that Energae and I-Lenders owned 49% of Permeate Refining - the Company to which the government associated "blame" relative to Smith's non-payment of payroll taxes. That is, because **Smith was never on Permeate's management team, or even part of its ownership structure,** they had to "invent" an alterate "run-around" Permeate with Smith's investment involvement with Energae and I-Lenders;
2. **Evidence Government Used Against Smith Included BFC References:** The "discovery" that the government used against Smith and the Companies consisted of 400 pages written by Joan Priestley, a former Company manager who was actively stealing Company assets with Dennis Roland, and had served as the "receiver secretary." In Priestley's false claims, she had **multiple references to "Permeate owning BFC," "Permeate buying BFC."** Had the Court chosen to read her discovery, they would have discovered the connection between BFC and Permeate;
3. **Document 133 Had Evidence of Permeate/BFC Ties:** Document 133 presented Judge Strand with the same proof presented here as Exhibit 1 - showing (1) "attorney Strand" debited Permeate's account for the $362,289.06 (Exhibit 1, pages 6 and 17 of 28), **not BFC's account.** Thus it is impossible for a "normal person" to miss the Permeate/BFC conncection let alone a sitting Judge.

B. Last Word Regarding Timeliness of Recusal Filing

Judge Strand's former actions as "attorney Strand" is undeniable and unavoidable. The fact that Smith can prove that he demanded the attorneys appointed to him, Bishop and Meyer (see Exhibit 7) argue recusal, and they refused, should not be "held against Smith," as Judge Strand holds this against Smith in his first filed §2255 action, filed October 2018, seeking recusal, in document 1, denying Smith's §2255 in the tax case. In both §2255 cases, 18-CV-2083 (tax case) and 20-CV-2105 (wire fraud case) Smith attempted to file his own pro se motions to correct the filing deficiences that his assigned attorneys were making, **including refusing to argue reucusal**, and in each instance, Judge Strand denied Smith the right to file given Smith was "represented by counsel."

III. Constitutional Violations When Recusal Goes Unchecked

Smith believes that when Judges are not held to a standard of bias, they can then **deny petitioners arguable constitutional violations as desmonstrated below:**

A. Constitutional Violations Regarding the Tax Case (16-CR-2002):

a. **Smith Not on Permeate's Bank Accounts:** Smith was (a) not in a position of authority at Permeate, nor on their bank accounts, to force Permeate's CFO to pay back-due payroll taxes in 2011/2012. Smith was also not on Permeate's payroll, not its CEO or CFO, nor a member of Permeate's non-existent "Board of Directors." Yet, the governement held Smith responsible for Permeate's tax problems;

b. **Responsible Permeate Managers Were Stealing Investment Money:** The Company managers the government used as "witnesses"against Smith were **provably stealing money from the Companies when taxes were due and and payable "poisoning" the tree.**[19] Smith gave the Court proof of this theft, and it was ignored by the Court;

19. U.S. v. Shelton, 997 F.3d 749 U.S. LEXIS 14340, No. 13-3388, (7th Cir., May 2021)

c. **Taxes Went Unpaid Before Smith Became A Company Investor:** When Smith financially helped Energae to purchase a 49% land-interest in Permeate in September 2009, Randy Less, the 51% owner, was already behind on payroll taxes and did not disclose this to to Energae - a breach of fiduciary trust. The government was fully aware : and put this in Smith's PSI (Exhibit 8);

d. **Smith Was Coerced Into Signing a Tax Plea Agreement:** In Smith's second or successive §2255, Smith supplied the government proof that Smith was (1) coerced into signing a plea agreement, (2) Smith's assigned attorney, Battle, lied to Smith, and (3) Smith was not given evidence of Grand Jury testimony until August 2022, proving Smith's innocence[20] ;

e. **Tax Plea Agreement Contained Provalbe Lies:** In the second or successive §2255, Smith proved that the tax plea agreement was fraudulent - lies - and the government knew it - based on Grand Jury testimony by Randy Less not given Smith until August 2022;

f. **Judge Strand, As "Attorney Strand" Caused Permeate's Failure:** As argued previously, if attorney Strand, and his client Alliant, had been honest regarding their true intentions of not forgiving Permeate's debt, Permeate would have never agreed to purchase BFC. If Permeate doesn't purchase BFC, Permeate doesn't financially fail, Permeate's payroll taxes are timely paid, and Permeate continues in operation;

B. Constitutional Violations Regarding Wire Fraud Case (17-CR-2030):

a. **No Investor (Claimant) Lost Money, and Without Losses, No Intent to Defraud is Provable:**

The government claimed that Smith made $2,405,409 "unauthorized investments" for 10 Claimants in Permeate/Energae of which $1,056,909 remained payable as restitution. However, Claimants provabley recieved back $8,176,966 in total returns of which

20. As argued with proofs in Smith v. Eischen Case 23-CV-0357 (D. of Minnesota 2024).

$2,880,270 was in cash, the rest in credits/stock--tripled investment. From 2009 through 2015, the Claimants signed legal agreements with Smith, and Smith's attorney representatives, vowing they would not bring any federal or state claim against Smith for receipt of the cash.[21] There was no loss, in fact, the Claimants, either under their direction, the direction of the main Claimant, Joan Priestley, or under direction from the government, **lied under oath about what they invested and what they got back**, violating the Court's ruling in Robers v. U.S. 5723 U.S. 639 135 S.Ct. 1854, LEXIS 3111, No. 12 9012 (2014) wherein the Court ruled that a "proper accounting" of claimed investments and returns must be conducted. There **was no proper accounting done in Smith's case** - just claimed investments on written pieces of paper, and proven lies under oath. The bottom line is that there were no losses, and the government committed a "Brady violation"[22] by failing to give to the Court subpoenaed information proving no losses occured;

b. **Poisoned Tree:** The "claimed unauthorized investments" only became "unauthorized" after the Claimants were contacted by Joan Priestley and instructed to make false claims against Smith. Priestley, acting as the "secretary for the receiver" sent over 14 letters to Claimants advising Claimants Smith was stealing money from them, abusing Company assets, and enriching himself. None of this was true. In private conversations with Claimants, Priestley advised Claimants to file a federal claim against Smith. The State of Iowa recognized that Priestley was lying and put a **restraining order against her** (Exhibit 2). Yet, after this restraining order, the federal government used the very lies she told the State of Iowa, and investors, about Smith, as "evidence" that Smith committed wire fraud with the "intent" to defraud. Additionally, Priestley, along with Dennis Roland, another Company manager, stole $720,000

21. See Exhibit 3 as to what Claimants signed to receive cash payments.
22. Government received subpoened proof of cash payments, did not present it.

from the Companies - money intended to pay back-due federal payroll taxes when Smith was "finally" in control of the Companies in 2013 through 2016;

c. **Corrupt Plea Agreement:** Smith gave the Courts proof that the plea agreement he signed was "corrupted" relative to the Claimant Lee Laaveg. The money that Laaveg claimed Smith "stole from him" was money **deposited into Laaveg's own account** - yet they charged Smith with a crime. Lee Laaveg provably lied under oath, and Smith supplied the Court with proof of this "corrupt" plea agreement. The "factual basis" upon which the plea agreement was based was false. The Court refused to consider this proof;

d. **Brady Violations:** The prosecutor "admitted" (through omission) that he committed Brady violations in (a) failing to deliver to the Court subpoenaed data showing that Claimants were owed no money, (b) withheld information from the Eighth Circuit reference appeal U.S. v. Smith, Case No. 18-3222 (Eighth Cir., 2019) causing Smith's sentence to be wrongly extended by 31 months. The Eighth Circuit recieved this proof, yet chose to ignore it;

e. **Obstruction of Justice:** The Court refused to release a full written record of the phone calls that occurred between Smith and his brother David. Instead, they wrongly pieced together bits and pieces of conversation to cause the Court to draw wrong conclusions. There were over six hours of recorded phone calls - with Judge Reade ruling she "listened to the calls," but, in actuality, what she "listened to" were the bits and pieces of the calls put together for her by the prosecution. Additionally, at sentencing, the proposed "obstructing Claimant," Christine Kuznicki, was not brought to sentencing for cross examination to determine her "state of mind"[12] as was ruled was **required** in U.S. v. Wells, 38 F.4th 1246

12. "State of Mind" defined as "knowingly pressured," when, in fact, **not one time did Smith, or his brother David, tell Kuznicki to drop a claim.**

LEXIS 18501, 118 Fed. R. Evid. Serv. (Callaghan) 1605 No. 20-1228 (10th Cir., 2022). Additionally, Kuznicki was in contact with Joan Priestley as to what to claim and not claim reference Smith "defrauding her," when, in fact, she lost no money and lied multiple times under oath. Over recorded jailhouse telephone calls she stated she **was not a Claimant** - yet was "converted" to be Claimant prior to Smith's sentencing;

f. **Identity Theft:** Smith was licensed to invest money for Claimants and investors without prior signature authorization given his (a) Investment Advisor license and (b) approved signatures from the investors prior to investing. Smith did not need to "steal anyone's identity" prior to its use, given his investment licenses, in clear violation of Dubin v. U.S., 599 U.S. S.Ct. 110 (2023). The Court ruled that "Dubin" was a specialized case not applicable to Smith - yet, Dubin **profited from his misuse of medicare recipient I.D.s, SMITH MADE NO MONEY ON ANY INVESTMENT - NO COMMISSION** - only the Cliamants made money - tripling their investment over a six year investment period. The Eighth Circuit denied Smith the right to even present this argument;

g. **Claimants Lied Under Oath:** In addition to the fact that only five Claimants actually signed claim forms (provably lying on them), the Court denied Smith the right to present evidence of lies by Claimants under oath, ruling that "Smith did not cite case law" to back-up his claim. It is common sense that if a Claimant lies under oath about (a) what they inevsted, (b) what they got back from that investment, (c) what they signed when approving that investment, and (d) did not sign a federal claim form, that the government should be forbade from "inventing Claimants" for the purpose of elongating Smith's sentence (10 Cliamants or more - an

additional "18 months" in prison - thus they "sought" to get the Claimant number above 10 given that there were 350 investors in Energae - the greater the number of Claimants the greater the "appearance of fraud"). The "proof for a Claim" came from the office of Probation, placed within the P.S.I. However, even in Iowa, in Kerns v. Ault, Warden, LEXIS 27059, Civ. No. 01-CV-10656 (S.D. of Iowa, 2005), the Court ruled that if a "PSI contains material error" it is grounds for a valid §2255 claim, quoting Franks v. Delaware, 438 U.S. 154, 171 98 S.Ct. 2674 57 L.Ed. 2d 667 (1978). Per the Court's order, allegations of Cliamant lies in the PSI **must be accompanied by proof.** Smith gave the proof, yet the Court refused to even look at the proof, let alone rule relative to its material worth. The Supreme Court ruled in Franks (id) that lower Courts must not practice **"reckless disregard for the truth."** There was reckless disregard for the truth **for every claimed Claimant** in Smith's case;

11. **Violation of Luis v. U.S.:** The government knew full well that Claimants were owed no further money, having tripled their investment, yet they took Smith's only remaining asset - his $120,000 IRA, money intended to pay his attorneys. The government listened to Smith's calls with his attorney, knew that Smith was transfering the funds to his attorney for payment of legal bills, and stepped in to seize these untainted assets for restitution not owed (Luis v. U.S. 578 136 S.Ct. 1083, 194 L.Ed 256 (2016)). The government invented a story that Smith was sending the money to his brother David to "hide the money," when, in fact, David Smith **was handling the payment of all Smith's legal bills given that the government had wrongfully incarcerated Smith under false pre-trial vioaltion claims** (sponsored by Joan Priestley);

C. Constitutional Violations Regarding §2255 in Wire Case (20-CV-2105)

a. **Missing Affidavit:** In the filed §2255, wire fraud case, Smith v. U.S. Case 20-CV-2105 (N.D. of Iowa, 2024), Judge Strand ordered that attorney Mike Battle **complete an affidavit** reference Smith's claim that (1) Battle had lied to Smith over recorded jailhouse telephone calls[23] resulting in (2) ineffective assistance of counsel. Yet, Mike Battle was **NOT** Smith's hired attorney - Leasa Anderson was Smith's hired attorney (see Exhibit 4, attorney hiring contract, Battle's name is not mentioned, only Anderson's name). Yet, **the court ordered no affidavit taken from Leasa Anderson.** Had an affidavit been taken from Leasa Anderson, Smith is certain that Anderson would not have lied in writing, as did Battle. And, instead of being truthful, Battle told one lie after another, as the recorded jailhouse calls would reveal if released by the government as Smith requested be done in §2255 arguments in Smith v. U.S. Case 20-CV-2105 (N.D. of Iowa, 2024). Judge Strand **quoted Battle's provable lies** as a basis for denying Smith's §2255. ruling on page 8 of document 63, that Smith calling Battle a liar was "merely speculating." **Had Judge Strand followed material witness and proper discovery protocol**, he would have (1) ordered the release of the recorded jailhouse tapes between Smith and Battle and (b) ordered that Smith's real attorney, Anderson, supply an affidavit. As it stands, Smith can now file a civil lawsuit against Battle, and call Judge Strand and Smith's prosecutor as material witnesses. Because of Battle's lies, Smith should have been issued a C.O.A. on this point alone, given what Judge C. Rendlen III claimed regarding attorney obligations in Evette Reed, debtor, et.al. v. U.S. Bankruptcy Court, 2016 Bankr. LEXIS 4780, Case Nos. 14-44818-705, Case No. 14-44909-705, et.al. (E. Dist. of Missouri, (2016), ruling:

"...An attorney is not obligated merely to **NOT** outright lie to the

23. See Exhibit 5, copy of redacted conversations Smith had with attorney Battle over recorded jailhouse telephones, which Judge Strand refused to release. The jail informed Smith, the govt. was holding the tapes.

> Court; he owes the Court a duty of candor. Candor is not the state of **simply not lying**; candor is the quality of being open and honest in expression. An attorney **cannot excuse his lack of candor by pointing to that he did not technically lie. The obligation of an attorney to be candid with the Court is a particularly important one..."**

Not only did Battle lie in his affidavit to the Court, but he lied to the Court over recorded jailhouse telephone calls. Judge Strand also lacked candor, when in Document 84, he declined recusal saying his prior association "**involved none of the Companies in this case**" when (1) Permeate, BFC, Energae, LP and I-Lenders, LLC are all over written Company names all over the PSIs in Smith's cases, (2) Exhibit 1. is clear that Judge Strand, acting as "attorney Strand" was given evidence in the Alliant v. BFC matter (id) that Permeate had purchased BFC (attorney Barnhill's request to withdraw), and (3) and the government has never argued that Smith's recusal argument lacked merit - they argued "timliness" of the filing.

The bottom line is that failure to recuse results in a myriad of constitutional violations, just a few of which are cited above. Smith can supply the Court with written evidence to support every claim cited above.

IV. Conclusion

Smith would request that the Supreme Court (1) grant a Writ of Certiorari to hear this case, (2) issue a recusal notice for Judge Strand, (3) grant Smith a C.O.A. for the §2255 filed in U.S. v. Smith, Case 17-CR-2030 (N.D. of Iowa, 2018) consistent with Hohn (id), (4) allow the release of recorded jailhouse telephone calls proving Mike Battle lied to Smith over recorded jailhouse telephone calls, and (5) order the government to release subpoenaed data proving that Smith's so-called "victims" received back in cash, well in excess of their false claims of unauthorized investments.

Signed this 30th Day of January Year 2025

Signed By _____

Darrell Smith #16355-029
Federal Prison Camp
PO Box 1000
Duluth, MN 55814

I Darrell Smith Darrell Smith, under penalty of perjury do foreswear that all statements in this document are true and accurate to the best of my knowledge.