

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_ TERM

LEWIS COX,  
PETITIONER,

V.

STATE OF MISSOURI,  
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO  
UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

PROPRIA PERSONA:

LEWIS COX # 62530  
JEFFERSON CITY CORR. CENTER  
8200 NO MORE VICTIMS ROAD  
JEFFERSON CITY, MO 65101

QUESTIONS PRESENTEDS FOR REVIEW

I. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND UNITED STATES DISTRICT COURT FOR THE WD OF MISSOURI CLEARLY ERROR WHEN THOSE COURTS FAILED ON ALL TFOURS TO ENFORCE 28 USC 1447(c), THEREBY DEPRIVING THE STATE COURT OF JURISDICTION UNTIL SUCH PROVISION IS MADE WHOLE AGAIN BY CERTIFYING THE REMAND ORDER TO THE STATE COURT CLERK, AS AN ALTERNATE PETITIONER HAS BEEN DENIED DUE PROTESS AND EQUAL PROTECTION OF THE LAW IN VIOLATION OF FIRST, FIFTH, MFOURTEENTH AMENDMENTS TO THE US CONSTITUTION?

LIST OF PARTIES

PETITIONER:

LEWIS COX 62530  
JEFFERSON CITY CORRECTIONAL CENTER  
8200 NO MORE VICTIMS ROAD  
JEFFERSON CITY, MO 65101

RESPONDENT:

STATE OF MISSOURI BY:  
PROSECUTOR BUCHANAN COUNTY  
COURTHOUSE  
411 JULES ST.  
ST. JOSEPH, MO 64501

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## UNITED STATES CONSTITUTION:

|                                                 |   |
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NO. \_\_\_\_\_

IN THE  
UNITED STATES SUPREME COURT  
OPINIONS BELOW

Opinion of the United States Court of Appeals for the 8th Circuit denying rehearing, rehearing en banc issued Oct. 24, 2017 (Appx.A). The judgment of the United States Court of Appeals for the 8th Circuit denying the appeal Sept. 20, 2017 (Appx.B).

The opinions of the United States District Court WD of Missouri denying appeal, refusing to vacate, and modifications amending the original remand order to include certified remand order to the Circuit Court of Buchanan County, Missouri (Appx. C, D, E).

JURISDICTIONAL STATEMENT

The decision of the 8th Circuit Court of Appeals denying rehearing, rehearing en banc issued Oct. 24, 2017 is final (Appx. A).

The United States Supreme Court has jurisdiction pursuant to 28 USC 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1ST AMENDMENT US CONSTITUTION:

"TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES."

5TH AMENDMENT US CONSTITUTION:

"... NOR BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW ...."

14TH AMENDMENT US CONSTITUTION:

"... NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAW."

28 USC 1447(c):

"... SHALL ...."

## STATEMENT OF THE CASE

Petitioner applied to remove his state RSMo 547.035 into the federal court. The district court denied removal and remanded case. On motion to modify that same judge amended his order to include "certified remand order." The clerk failed to execute the amended order, telling the court the clerk made a phone call and the circuit court received the remand. There was nothing but the clerks statement (Appx. A-F).

The petitioner filed to enforce the amended order. The judge acting on hearsay from his clerk, denied the motions for the enforcement, so an appeal was taken (Appx.B-F). The 8th Circuit issued no order to show cause of responsive return (Appx.A, B).

The state court docket sheets show no certified remand order was received as mandated by 28 USC 1447(c). A review of the state docket sheets reveal the state court received the order denying removal. But it has never received any certified remand order as mandated by 28 USC 1447(c).

The 8th Circuit failed to check out the hearsay statements of the clerk, so did the district court (Appx. A-F).

As it stands no certified remand order was ever received by state court. 1]

1] This court is invited to go on line and check the docket sheets of Buchanan County Circuit Court State of Missouri v. LEWIS S. COX, #14BU-CR02408-01 CIRCUIT COURT OF BUCHANAN COUNTY, MISSOURI. Those docket sheets (Appx. F), shows the original remand case was received or notice it was being filed Dec. 9, 2017. The remand was received May 3, 2017. However, the certified remand order that was issued May 15, 2017 (Appx. E) was never received (Appx. F), notwithstanding the clerk misled the district court it had been sent (Appx.C)(Aug. 30, 2017). The original order denying removal (Appx. D), did not cite and did not mention "certified remand" at all (Appx. D).

At no time was the May 15, 2017 certified remand order (Appx.E) executed (Appx. F).

The clerk gave the district court inaccurate information making the judge believe it was executed (Appx. C).

With out exception, the certified remand order correction until May 15, 2017, and as such the state court judgment issued May 12, 2017 denying DNA petition (Appx. F) is void as the certified remand order was not issued until May 15, 2017 (Appx. E), three days after the state court dismissed the RSMo 547.035 State DNA motion.



## REASONS FOR GRANTING THE WRIT

I. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND UNITED STATES DISTRICT COURT FOR THE WD OF MISSOURI CLEARLY ERROR WHEN THOSE COURTS FAILED ON ALL FOURS TO ENFORCE 28 USC 1447(c), THEREBY DEPRIVING THE STATE COURT OF JURISDICTION UNTIL SUCH PROVISIONS IS MADE WHOLE AGAIN BY CERTIFYING THE REMAND ORDER TO THE STATE COURT CLERK, AS AN ALTERNATE PETITIONER HAS BEEN DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW IN VIOLATION OF FIRST, FIFTH, FOURTEENTH AMENDMENTS TO THE US CONSTITUTION?

It is undisputed that petitioner filed a removal into the federal court WDMo from the Circuit Court Buchanan County, Missouri (Appx. A-F). That is not in dispute.

What is in dispute is that while the district court originally denial removal, remanded case, no certified remand order as is now mandated by 28 USC 1447(c) was issued. While the district court seen its error, it corrected it by amended judgment ordering a certified remand order be sent to state court clerk (Appx. E, D). When the judge learned by petitioner no certified remand order was sent or received, the district court believed a clerk based on hearsay it had been received. However, the state court docket sheets show the amended judgment and certified remand order was never received. Both the district court relying on the hearsay and 8th Circuit denied the appeal (Appx. A-F).

The United States Supreme Court has reversed Missouri Courts for not waiting until case is properly remanded in removal cases. Hickman v. Missouri, 52 SW 351 (Mo), reversed, 22 S Ct. 18.

Since the United States Supreme Court reversed Hickman, supra, Missouri Courts have held fast that its courts shall not and will not act in such cases until a certified remand is issue to the state court clerk, received. State ex rel. Nixon v. Moore, 2003 Mo.Lexis 670 (Mo.App.WDO; State ex rel. Nixon v. Moore, 108 SW3d 813 (Mo.App.WD); State ex rel. Nixon v. Moore, 159 SW3d 488 (Mo.App.WD); Turner v. Healthcare Services Group, Inc., 156 SW3d 431 [3] (Mo.App.ED).

Federal courts have held that until a certified remand order issues, notwithstanding case has been remanded, the state court lacks jurisdiction. Johnson v. Delta Hous. Div. 2006 US Dist. Lexis 92255 (DC Miss).

Even the 8th Circuit follows this Rule of Law. Ward v. Resolution Trust Corp., 972 F2d 196 (CA8). Thus, the 8th Circuit did not follow its own precedent. id.

In the Moore cases, long after remanded from Federal Court to Cole County Circuit Court, WD amended the remand order to include certified remand order 28 USC 1447(c). See Case-Net: State ex rel Nixon v. Moore, 2:01-CV-04242 (WDMo) and State ex rel. Nixon v. Moore, 01CV325454 Cir. Court Cole County, Missouri. Case Net will verify this. The refusal of the district court and the 8th Circuit to come in compliance with 28 USC 1447(c) is such a serious error that it violates the 1st, 5th, 14th Amendments to the United States Constitution, as well as 28 USCA 1447(c). This case must be heard because the errors were manifest injustice, plain error, constitutional rights. As it stands, who is right Moore I, II, III, supra; Turner, supra, Hickman, supra. The action slaps Hickman, and Ward, supra, in the face. 28 USC1651(a) mandates

that this violation of 28 USC 1447(c) be corrected. The state court has no jurisdiction until that certified remand order issues. Johnson, supra. Technically, Missouri will never have jurisdiction until 28 USC 1447(c); Johnson, supra are made whole again. Under 28 USC 1447(d), review is prohibited, but not when no certified remand order was not executed. Johnson, Ward, Hickman, Moore I, II, III, supra.

Johnson v. Delta Hous. Div. 2006 US Dist. Lexis 92255 (DC Miss), makes it clear, that the original remand issued by the district court herein (Appx. D), was not a certified remand order, and thus the district court still had jurisdiction until the certified remand order was issued id. In Cox case, the district court in the remand failed to order certified remand order issue to the Circuit Court (Appx. D). However, the district learned of the error and corrected it by issuing a certified remand order on May 15, 2017 (Appx. E). Thus, the district court reclaimed jurisdiction on May 15, 2017 (Appx. E). However, there is a problem, the clerk failed to execute the certified remand order issued May 15, 2017 (Appx.F)(State Docket Sheets)(Shows that the May 15, 2017 order certified was not received by the respondent state court (Appx. E). The original remand order was not a certified remand order (Appx.CC). Missouri holds, Moore I, II, III, supra, and Turner, supra, followed by Ward, supra, state court does not reclaim jurisdiction until a certified remand order is received by the state court. id. Johnson, supra, rejects the notion that a simple remand order is adequate to reinstate state jurisdiction. id. Thus jurisdiction was not vested in the state court herein, when the certified remand order issued May 15, 2017 (Appx. E), but it was not executed (Appx. F0.

CONCLUSION

WHEREFORE, PETITIONER SO HUMBLY PRAYS THAT THIS COURT REVIEW THIS PETITION AND REMAND CASE TO THE 8TH CIRCUIT FOR COMPLIANCE WITH 28 USC 1447(c). SUCH OTHER RELIEF LAW AND EQUITY ALLOWS.

RESPECTFULLY SUBMITTED,

*Lewis Cox*  
\_\_\_\_\_  
LEWIS COX

#62530  
JEFFERSON CITY CORR. CENTER  
8200 NO MORE VICTIMS ROAD  
JEFFERSON CITY, MO 65101

PROOF OF SERVICE

I, LEWIS COX, certifies pursuant to the Rules of the United States Supreme Court a true copy of APPLICATION TO PROCEED IN FORMA PAUPERIS AND CERTIORARI PETITION WAS MAILED POSTAGE PREPAID. THIS \_\_\_\_\_ DAY OF NOVEMBER, 2017 TO:

PROSECUTORS OFFICE  
CIRCUIT COURT OF BUCCHANAN COUNTY  
211 JULES AVE.  
ST. JOSEPH, MO 64501

ZIP CODE: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

*Lewis Cox*  
\_\_\_\_\_  
LEWIS COX