2/27/26

No. 25-1043

In The
Supreme Court of the United States

In re MICHAEL E. TINDALL
Plaintiff-Petitioner

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

PETITION FOR A WRIT OF MANDAMUS

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QUESTION PRESENTED

Whether a Writ of Mandamus should issue to the United States Court of Appeals for the Sixth Circuit where an appellate panel:

1. Introduced a **newly discovered, previously undisclosed** extra-judicial designation (**'Sr.'**), for Appellant, into the judicial record **after** August 29, 2025, the date of original panel assignment—a designation absent from the entire underlying record and all party briefing, that could only have resulted from undisclosed ex parte communication(s);

2. Refused to apply the **mandatory presumption of prejudice** required by Sixth Circuit and Supreme Court precedent (*Standard All. Ind. Inc. v. Black Clawson Co.*; *Price Bros. Co. v. Philadelphia Gear Corp.*; *Liljebersg v. Health Serv. Acq. Corp.*) upon the discovery of this undisclosed *ex parte* communication(s) requiring mandatory vacatur and re-assignment to a new untainted panel; and

3. Issued an intentionally false and logically impossible **"boilerplate"** denial of mandatory vacatur, claiming the issue was **"considered"**

during the principal appeal, despite the fact that the *ex parte* contact(s) was undisclosed and only discovered and raised by Appellant **after** the close of briefing and issuance of Judgment.

RULE 14.1(b) AND 29.6 STATEMENTS

The parties in the court of appeals were Petitioner Michael E. Tindall, Appellant below; and Respondent Samuel D. Sweet, Bankruptcy Trustee, Appellee below. In accordance with this Court's Rule 20.3(a), the following members of the Sixth Circuit Court of Appeals Panel that denied re-hearing are listed:

Senior Judge Helene N. White

Circuit Judge Eric Earl Murphy

Senior Judge Jane Branstetter Stranch

None of the parties are corporate entities.

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PETITION FOR A WRIT OF MANDAMUS

Michael E. Tindall ("Petitioner") respectfully petitions for a Writ of Mandamus to the United States Court of Appeals for the Sixth Circuit, ordering that Court to re-schedule and re-hear Case/Appeal No. 24-1945, by a new Panel, due to undisclosed ex-parte communication(s) with the original Panel.

Specifically, Petitioner requests that this Court issue a Writ of Mandamus directed to the United States Court of Appeals for the Sixth Circuit, commanding that court to:

1. **Vacate** its Judgment and Opinion dated November 4, 2025, and its Order denying rehearing dated December 9, 2025, as having been rendered in violation of the Fifth Amendment's Due Process Clause and the "**presumption of prejudice**" mandate established by *Standard All. Ind. Inc. v. Black Clawson Co.* and *Price Bros. Co. v. Philadelphia Gear Corp.*;

2. **Recall the Mandate** issued on December 17, 2025 in Case No. 24-1945, to prevent the execution of a Judgment predicated upon extra-judicial *ex parte* communications;

3. **Reassign** the appeal to a newly constituted panel of judges, none of whom served on the panel assigned to the case on August 29, 2025, nor were privy to the *ex parte* communications resulting in the nomenclature shift; and

4. **Order** the new panel to de novo adjudicate the appeal based strictly and exclusively upon the record as it existed prior to August 29, 2025, without regard to any extra-judicial information obtained by the predecessor panel.

Petitioner further prays for such other and further relief as this Court may deem just and proper to restore the integrity of the appellate process and the appearance of judicial neutrality. Such relief is necessary not only to protect the Petitioner's right to Due Process but to preserve the public's confidence in the federal judiciary as a neutral arbiter that decides cases solely upon the record presented by the parties. As it stands, the current Judgment/Mandate rests upon a foundation of undisclosed ex parte information, a structural defect curable only by a fresh review.

OPINIONS BELOW

The Sixth Circuit Panel's original opinion, DE 18-2, File 25a0520n.06, dated November 4, 2025, is unpublished and is NOT included in the attached Appendix, as that Opinion is structurally defective and void. No review of it is sought. However, the cover letter enclosing the Opinion, APPENDIX B-1b, PP 12-13, and the JUDGMENT, APPENDIX B-1c, Vol. I PP 14-15, are included in the Appendix as **both reflect the altered designation for Appellant as "Sr.".**

JURISDICTION

The decision of the Sixth Circuit Court of Appeals denying re-hearing in this matter, despite absolute proof of unauthorized and undisclosed ex-parte communication with the Panel contrary to clearly established authorities of this Court and the Sixth Circuit declaring such ex-parte communications "**presumptively prejudicial**", and, requiring vacator and re-hearing by a new "clean" Panel, was entered on December 9, 2025. (APPENDIX A, Vol. I, PP. 1-2). The Panel decision denying re-hearing was a knowing and intentional refusal to address a structural defect in the appellate process that insulated the Panel's misconduct from review within the Circuit. The supervisory jurisdiction of this Court is invoked under 28 U.S.C.

§1651(a).

Jurisdiction is further predicated upon **Supreme Court Rule 20.1**, which authorizes the issuance of extraordinary writs upon a showing that:

1. The writ will be in aid of the Court's appellate jurisdiction;

2. Exceptional circumstances warrant the exercise of the Court's discretionary powers; and

3. Adequate relief cannot be obtained in any other form or from any other court.

A Writ of Mandamus is a matter of discretion sparingly exercised; not a substitute for the process of seeking review through a petition for a writ of certiorari. Review by writ of certiorari is not sought or requested, as the decision/opinion of the original Panel is structurally defective and void.

STATUTES, AND REGULATIONS INVOLVED

The All Writs Act, 28 USC 1651(a) provides:

> "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

Cannon 3(a)(4) of the Code of Conduct for United States Judges states, in pertinent part:

> **"Canon 3 A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE FAIRLY, IMPARTIALLY AND DILIGENTLY**
>
> (a)(4) ... a judge should not initiate, permit, or consider ex parte communications <u>or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers.</u> If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, <u>the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested.</u>

Title 28 of the Federal Regulations governing judicial administration states:

> **"28 CFR § 76.15 - Ex parte communications.**
>
> § 76.15 Ex parte communications.
>
> **(a)** Generally. **<u>The Judge shall not consult with any</u>** <u>party</u>**<u>, attorney or person</u> (except persons in the office of**

> **the Judge) on any legal or factual issue unless upon notice and opportunity for all parties to participate. No party or attorney representing a party shall communicate in any instance with the Judge on any matter at issue in a case, unless notice and opportunity has been afforded for the other party to participate.** This provision does not prohibit a party or attorney from inquiring about the status of a case or asking questions concerning administrative functions or procedures."

STATEMENT OF THE CASE

This appeal was filed in the Sixth Circuit Court of Appeals on October 25, 2024, following more than twelve (12) years of various bankruptcy and district court proceedings and appeals. The appeal presented at least twelve (12) discreet substantive legal issues for consideration, at least two (2) of which involved the Bankruptcy Court entering orders/Judgment, without subject matter jurisdiction, AFTER withdrawal of the reference by the District Court.

The appeal was processed in the usual manner. All briefs and correspondence to/from/with the Court, from Appellant and Appellee, and, the docket of the Court referred to Appellant as MICHAEL E. TINDALL, his proper name. The appeal was assigned to the Sixth Circuit Panel, on

the briefs, on August 29, 2025. APPENDIX B-1a, Vol. I, PP 10-11. After August 29, 2025, references to Appellant were changed from MICHAEL E. TINDALL to **MICHAEL E. TINDALL SR**. in Court correspondence, APPENDIX B-1b, Vol I, PP 12-13; the Sixth Circuit Court Judgment, APPENDIX B-1c, Vol I, PP 14-15; and, the general docket case heading APPENDIX B-1d, Vol I, PP 16 -18. This change/alteration of reference to Appellant as **"Sr."** has never been used by Appellant; did not result from briefs, correspondence or input from the parties; and, whatever ex parte communication with the Court or Panel that produced it was not disclosed. APPENDIX B, Vol I, PP 3-9.

On November 7, 2025, Appellant filed his FRAP 40 Motion for **VACATOR OF OPINION AND JUDGMENT DATED NOVEMBER 4, 2025 DUE TO UNAUTHORIZED IMPROPER EX PARTE COMMUNICATIONS AND FOR PANEL REHEARING BY NEWLY ASSIGNED PANEL OR, IN THE ALTERNATIVE FOR REHEARING EN BANC BY THE ENTIRE COURT**. APPENDIX C, Vol I, PP 19-35, together with supporting Affidavit, APPENDIX B, Vol I, PP 3-9 and exhibits APPENDIX B-1a-d, APPENDIX B, Vol I, PP 10-18. That motion was DENIED by the Panel, on

December 9, 2025, by an undated order, APPENDIX A, Vol I, P 1-2, falsely asserting that the newly discovered misconduct [undisclosed ex parte communication(s)] was addressed in and previously adjudicated by the briefs and the original panel decision. The undated Panel Order stated:

> "The court received a petition for rehearing end banc. **The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case.**"

The Panel Order was knowingly and intentionally false. The Sixth Circuit Panel ceased to act as an "Article III Court" the moment it incorporated extra-record facts from ex parte communication(s) with an undisclosed source. APPENDIX B, Vol I, PP 3-9. This structural error deprived the Sixth Circuit Panel of jurisdiction to issue a valid Judgment.

DUE PROCESS RIGHT TO FAIR AND IMPARTIAL DECISION MAKER(S)

The right to a fair, unbiased judge/panel is clearly established. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009) ("**It is axiomatic that a fair tribunal is a basic requirement of due process.**'" (quoting *In re*

Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955) (alteration in original)). **'[T]he Due Process Clause clearly requires a fair trial in a fair tribunal, before a judge with no actual bias against the defendant or interest in the outcome of his particular case."** *Bracy v. Gramley,* 520 U.S. 899, 904-05, 117 S.Ct. 1793, 138 L.Ed.2d 97 *(1997)* (internal quotation marks and citations omitted). Judicial bias, which "is a deep-seated favoritism or antagonism that makes fair judgment impossible," is "constitutionally unacceptable." *Coley v. Bagley,* 706 F.3d 741, 750 (6th Cir. *2013)* (citing *Mayberry v. Pennsylvania,* 400 U.S. 455, 465-66, 91 S.Ct. 499, 27 L.Ed.2d 532 (19*71)*; *Withrow v. Larkin,* 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975*)*). Because a finding of judicial bias is a structural defect that affects the entire proceeding, it is not subject to a harmless-error analysis. *Cf. Arizona v. Fulminante,* 499 U.S. 279, 309, 111 S.Ct. 1246, 113 L.Ed.2d 302 (19*91)*; *Railey v. Webb,* 540 F.3d 393, 399 (6th Cir. 200*8)*; *Liljeberg v. Health Services Acquisition Corp.,* 486 US 847, 865, 867-70, 108 S.Ct. 2194, 100 L.Ed. 2d 855 (1988) **(failure to disclose ex parte information concerning a party required vacating judgment to maintain public**

confidence in judicial impartiality).

I. UNDISCLOSED EX PARTE COMMUNICATION(S) ARE PRESUMPTIVELY PROHIBITED AND REQUIRE RE-ASSIGNMENT TO A NEW PANEL

Ex parte communication is any oral or written contact with a decision maker(s) concerning a pending or impending matter that occurs **outside the record and without notice to, or participation by, the opposing party**. It has long been settled that mandamus is available to compel a trial judge to exercise his discretion when it is his duty to do so. *Hudson v. Parker*, 156 U.S. 277, 288, 15 S.Ct. 450, 454, 39 L.Ed. 424 (1895); *Liljeberg, supra 865, 867-70; In re Bergeron,* 636 F.3d 882 (7th Cir 2011); *In re Oscar ROLDAN-ZAPATA*, 872 F.2d 18 (2nd Cir 1989); *Rosen v. Sugarman*, 357 F.2d 794, 797 (2d Cir.1966). As this Court stated in *Hudson*:

> "The discretion of a judge, indeed, in a matter entrusted by law to his judicial determination, cannot be controlled by writ of mandamus. But **if he declines to exercise** his discretion, or to act at all, when it is his duty to do so, a writ of mandamus may be issued to compel him to act." At 288

And, again, in *Liljeberg:*

> "We must continuously bear in mind that "to perform its high function in the best way `justice must satisfy the appearance of

> justice... The very purpose of (Section) 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible. " at 863
>
> **********
>
> "These facts create precisely the kind of appearance of impropriety that (Section) 455(a) was intended to prevent.... It is therefore appropriate to vacate the judgment unless it can be said that respondent did not make a timely request for relief, or that it would otherwise be unfair to deprive the prevailing party of its judgment" at 867

The Sixth Circuit Panel below not only refused to exercise its discretion, it attempted to affirmatively conceal the ex parte communication(s) by stating they were considered, before discovery, in the context of the original appeal. It went so far as to ignore both the authority of this Court and its own authority holding ex parte communication is presumptively prohibited. *Carroll v. President and Comm'rs of Princess Anne*, 393 US 175, 89 S. Ct. 347, 21 L. Ed.2d 325 (1968); *Liljeberg, supra; Williams v. Pennsyvania*, 579 US 1, 136 S.Ct. 1899, 195 L.Ed.2d 132 (2016); *Jackson v. Cool*, 111 F.4th 689 (6th Cir 2024); *Stryker Employment Co. v. Abbas*, 60 F.4th 372 (6th Cir. 2023); *United States v. Barnwell*, 477 F.3d 844 (6th Cir. 2007); *Standard All. Ind. Inc. v. Black Clawson Co.*, 587 F.2d 813 (6th Cir 1978); *Price Bros. Co. v. Philadelphia Gear Corp.*, 629 F.2d

444 (6th Cir 1980).

As explained in Appellant's Affidavit, APPENDIX B, Vol I, PP 3-9, ex parte communication(s) unquestionably occurred in the Sixth Circuit appeal between August 29, 2025 and November 4, 2025. As a result, the docket, the Judgment and the communication(s) from the Sixth Circuit were changed to reflect information that was not provided by Appellant; was not provided by Appellee; and, is not in the public domain. APPENDIX B, Vol I, P 4-5, Nos. 2C, 3. No notice of this ex parte contact(s) was given to the parties and no opportunity to respond was afforded. It is, therefore, impossible to know who made the ex parte contact(s), exactly when they occurred, whether the ex parte contact(s) were directed to one or more panel member(s) – or- to staff [although contacts with staff are imputed to panel judges], and, whether the contacts included more information than merely the homographic described. What is certain is that the **"new information"** appeared on and after November 4, 2025, and, did not come from one or more of the parties.

Cannon 3(a)(4) of the Code Of Conduct for United States Judges states, in pertinent part:

"Canon 3 A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE FAIRLY, IMPARTIALLY AND DILIGENTLY

(a)(4) ... **a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested.**

Title 28 of the Federal Regulations governing judicial administration states:

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(a) Generally. **The** Judge **shall not consult with any** party, **attorney or person (except persons in the office of the Judge) on any legal or factual issue unless upon notice and opportunity for all parties to participate. No** party **or attorney representing a** party **shall communicate in any instance with the** Judge **on any matter at issue in a case, unless notice and opportunity has been afforded for the other** party **to participate.** This provision does not prohibit a party or attorney

> from inquiring about the status of a case or asking questions concerning administrative functions or procedures."

In *Stryker Employment Co. v. Abbas*, 60 F.4th 372 (6th Cir. 2023), the Sixth Circuit expressly held that ex parte communications risk undermining litigation fairness and justify **proactive judicial intervention**. Even the appearance of such impropriety can erode public confidence in the judiciary. Mandatory vacatur and reassignment to a new appellate Panel were required. *Jackson v. Cool*, 111 F. 4th 689, 697-8 (6th Cir. 2024). In *United States v. Barnwell*, 477 F.3d 844, 853 (6th Cir. 2007) the Sixth Circuit stated:

> ("**The value of a judicial proceeding ... is substantially diluted where the process is ex parte ... The district court's approach in this particular proceeding stifles the people's belief in our independent and impartial judiciary.... such conferences involve a breach of legal and judicial ethics. Regardless of the propriety of the court's motives in such a case, the practice should be discouraged, since it undermines confidence in the impartiality of the court.**").

Johnson v. Morales, 946 F. 3d 911, 918 (6th Cir 2020) **(Federal due process "guarantees `an absence of actual bias on the part of a judge."**citing *Williams v. Pennsylvania,* 579 U.S. 1, 136 S. Ct.

1899, 1905, 195 L.Ed.2d 132 (2016) (quoting *In re Murchison,* 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed. 942 (1955)); *Withrow v. Larkin,* 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975) (**A biased decision-maker is constitutionally unacceptable**.); Judicial bias is a structural defect both when actual, and, when merely unconstitutionally probable, *Arizona v. Fulminante,* 499 U.S. 279, 309-10, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991). Where either type of judicial bias is proven, *Strickland* prejudice need not be proven. *Strickland v. Washington,* 466 U.S. 668, 691-96, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

In *Williams v. Pennsylvania,* 579 U.S. 1, 8 (2016) this Court found "**an impermissible risk of actual bias** [occurred] when a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case." *Williams, 579 U.S. at 8*. The justice's participation in the adjudication of the defendant's habeas challenge to his death sentence violated due process. *Id.* at 14.

In *Standard All. Ind. Inc. v. Black Clawson Co.,* 587 F.2d 813, 828-29 (6th Cir 1978), *cert den*, 441 US 923, 99 S.Ct. 2032, 66 L.Ed. 2d 396 (1979), the "**the length and nature**" of the ex parte contacts

was also unknown, although the fact that the ex parte contact(s) occurred was, as here, obvious. Like this case, no notice to the parties or opportunity to respond was given. The Sixth Circuit found a presumption of prejudice that could not be rebutted. Again, in *Price Bros. Co. v. Philadelphia Gear Corp.*, 629 F.2d 444 (6th Cir. 1980), the Sixth Circuit found ex parte contacts violating Cannon 3(a)(4) of the Code of Conduct for United States Judges was so "**inimical to the fair and impartial administration of justice**" that the presumption of prejudice arising therefrom was conclusive and required automatic reversal. *Price* at 446-47.

REASONS FOR GRANTING THE PETITION

This Petition presents a rare and documented instance of an appellate panel operating outside the adversarial record, followed by a refusal to apply the mandatory "**presumption of prejudice**" required by the precedent of both this Court and the Sixth Circuit. The Sixth Circuit has historically maintained that when a judicial officer is exposed to *ex parte* contacts, it "strikes at the heart of the adversary system."

The Sixth Circuit has long held that *ex parte* communications are not merely "procedural hiccups"

but are "inimical to the fair and impartial administration of justice." *Standard All. Ind. Inc. v. Black Clawson Co.*, 587 F.2d 813 (6th Cir. 1978). When the panel introduced the new **'Sr."**designation to describe Appellant, on November 4, 2025, a designation absent from the entire appellate record—it triggered a presumption of prejudice that the court was then legally obligated to address.

The Sixth Circuit has not only violated the constitutional guarantee of a neutral arbiter but has fundamentally ignored its own binding precedent. In the Sixth Circuit, undisclosed *ex parte* communications are presumptively prejudicial. By issuing a boilerplate denial that refused to even acknowledge—let alone rebut—the presumption created by the belated **'Sr.'** designation, the Panel effectively declared itself exempt from the law of the Circuit and the constitutional mandates set by this Court.

I. PETITIONER'S RIGHT TO ISSUANCE OF A WRIT IS CLEAR AND INDISPUTABLE.

The record in this case remained "clean" for over two years. Not once did any party or lower court utilize the designation **'Sr."**for the Appellant. However, immediately upon the case being assigned

to a specific merits panel on August 29, 2025, the Sixth Circuit's internal and external nomenclature shifted. This **'Sr."**designation appeared in the JUDGMENT, all subsequent [post November 4, 2025] correspondence, and, the revised docket heading of the case. It is the unmistakable "fingerprint" of a communication or investigation that occurred outside the presence of the parties and outside the bounds of the record.

A litigant's constitutional right to Due Process is the most basic and fundamental constitutional standard. Due Process simply cannot exist absent a fair and impartial decision maker. A judicial officer(s) gathering or injecting evidence or information outside the adversarial process is "**destructive of the appearance of impartiality**." *Price Bros.* The **'Sr."**suffix was an extra-judicial fact. The Panel could only have obtained it from an ex parte source. Once revealed, via the motion for vacatur, *Black Clawson* and *Price Bros.* required the Panel to treat it as presumptively prejudicial.

The Panel's December 9 Order—claiming the issue was "considered" in the principal appeal—is a legal nullity. It is impossible to have "considered" an *ex parte* contact before it was even discovered. By

refusing to rebut the presumption of prejudice, the panel committed a "**clear abuse of discretion**" and a "**usurpation of power**" remediable by Mandamus.

II. A WRIT OF MANDAMUS IS WARRANTED AND APPROPRIATE IN THIS CASE.

Under long-standing decisions of this Court, and established Sixth Circuit authority, *ex parte* communications are not mere errors; they are presumptively prejudicial and "**inimical to the fair and impartial administration of justice**." They clearly violate the constitutional guarantee of Due Process and the right to a fair and impartial decision maker. Thus, disclosure of every ex parte contact is required; and, where undisclosed, prejudice is presumed and re-hearing by an untainted panel is required. Otherwise, the appearance of impartiality is destroyed.

The Panel below did not just err; it abdicated its ministerial duty to preserve even the appearance of impartiality, and, Petitioner's Due Process right to a fair hearing. When presented with evidence of taint, in a motion for vacatur, the Panel issued a boilerplate, logically impossible, denial claiming the issue was "considered" in the principal appeal. The *ex*

parte contact(s) were not—and could not have been—briefed or "considered" before discovery - post-decision.

The Writ requested aids this Court's ultimate appellate jurisdiction over the United States Court of Appeals for the Sixth Circuit. Without the intervention of this Court, via Mandamus, the Sixth Circuit's structural violation of the Due Process Clause—predicated on *ex parte* communications—will remain unreviewable and final, effectively insulating a tainted judgment from further appellate scrutiny.

III. NO OTHER ADEQUATE MEANS EXIST TO OBTAIN RELIEF AND EXCEPTIONAL CIRCUMSTANCES WARRANT EXERCISE OF THIS COURT'S DISCRETION AND SUPERVISORY AUTHORITY.

Petitioner has exhausted all available remedies in the lower court(s). On December 9, 2025, the Sixth Circuit denied both the Petition for Panel Rehearing and the Petition for Rehearing En Banc. With the issuance of the Mandate, there are no further avenues for relief within the Sixth Circuit. A Petition for Writ of Certiorari to this Court is an inadequate remedy here because the error is structural rather than substantive; the injury is the corruption of the tribunal itself, requiring an

immediate order to vacate; and, the original Panel decision is void.

The Sixth Circuit's issuance of the Mandate on December 17, 2025, has exhausted all standard avenues for relief. Because the panel refused to follow the "structural error" mandates of *Williams v. Pennsylvania*, 579 U.S. 1, and *United States v. Barnwell*, 477 F.3d 844, the resulting judgment is a nullity.

Mandamus is the only remaining vehicle to compel the Sixth Circuit to perform its non-discretionary duty: to vacate a tainted judgment and order the appeal to be re-heard by a newly assigned, unbiased panel that will [presumably] re-decide the merits based solely on the record. Anything less permits a "Due Process cul-de-sac" where a court may rely on secret information with total impunity. Such a "**usurpation of power**" by an inferior court constitutes the very essence of the "**exceptional circumstances**" this Court requires for Mandamus. *Cheney v. U.S. Dist. Court for Dist. of Columbia*, 542 U.S. 367 (2004).

Exceptional circumstances exist where, as here, a federal appellate panel:

- Departs from the "accepted and usual course of judicial proceedings" by introducing extra-judicial facts into the record; and
- Refuses to apply the presumption of prejudice mandated by its own binding precedent; and,
- Knowingly and intentionally refuses to address an unquestionable structural defect in the appellate process.

CONCLUSION:

There can be no dispute that the information regarding Appellant was conveyed to the original Sixth Circuit Panel ex parte. As in *Standard* and *Price*, a presumption of prejudice arose that could not be rebutted. That presumption is conclusive and required the Opinion and Judgment of November 4, 2025 be vacated and the appeal be re-assigned to a new panel for re-decision to maintain public confidence in judicial impartiality. *Liljebarg*, supra, at 867-70.

Respectfully submitted,

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Dated: February 20, 2026