No. 16 - ___

OCTOBER TERM 2016

In The

Supreme Court of the United States

IN RE: CARY MICHAEL LAMBRIX,

Petitioner

PETITION FOR A WRIT OF HABEAS CORPUS

CAPITAL CASE

CARY MICHAEL LAMBRIX
PETITIONER
FLORIDA DOC# 482053
FLORIDA STATE PRISON
P.O BOX 800 (G-DORM)
RAIFORD, FL 32083

PRO SE

CAPITAL CASE

QUESTIONS PRESENTED

Petitioner, a death-sentenced prisoner under an active death warrant, where the execution has been temporarily stayed, presents exceptional circumstances necessitating this Court's extraordinary intervention, absent which Petitioner will be put to death as a result of being arbitrarily and unfairly deprived of the recognized statutorily created right to appointment of collateral counsel as set forth in 18 U.S.C. § 3599 and *Harbison v. Bell*, 129 S. Ct 1481 (2009) and corresponding deprivation of a fair and impartial judicial review in violation of *Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016).

THE QUESTIONS PRESENTED ARE AS FOLLOWS

Question One: Are death sentenced prisoners in Florida effectively deprived of the statutorily mandated right to collateral counsel under 18 U.S.C. § 3599 and *Harbison v. Bell* when the federal courts are routinely appointing state funded agencies that under state law are categorically prohibited from providing the full measure of collateral representation that both Congress and this Court clearly intended to be available?

Question Two: Does the unequivocal declaration by a panel of the Circuit Court of Appeals that a death sentenced prisoner has no further avenue of appeals, coupled with the same panel's unreasonable refusal to allow subsequently submitted pleadings to be heard, amount to a constitutionally intolerable pre-disposition indicative of pervasive bias requiring the disqualification of that panel and reassignment to another panel?

PARTIES TO THE PROCEEDINGS BELOW

This petition stems from the failure by the District Court to appoint counsel in conjunction with the denial of a Rule 60(b) motion below, and the failure to date of the District Court or the Court of Appeals to require the appointment of qualified counsel under 18 U.S.C. §3599 or to grant a COA on related issues raised in a Rule 60(b) motion in which petitioner, Cary Michael Lambrix, was the movant.

Petitioner is a prisoner under sentence of death and in the custody of Julie Jones, Secretary of the Florida Department of Corrections. The State of Florida was the opposing party in this case.

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PETITION FOR WRIT OF HABEAS CORPUS

In accordance with and under authority of 28 U.S.C. §2241(a-b); 28 U.S.C. §2242; and 18 U.S.C. §3599, Petitioner Cary Michael Lambrix respectfully requests that this Court order the Court of Appeals to replace the existing panel and to transfer this capital case to the district court for the appointment of counsel under 18 U.S.C. §3599, and to order a full and fair evidentiary hearing and determination of entitlement to equitable relief by exercise of original habeas corpus.

OPINION BELOW

The order of the District Court, Southern District of Florida, denying relief and appointment of qualified counsel pursuant to 18 U.S.C. §3599 was rendered on December 22, 2015 and is attached as Appendix D.

The instant Petition for Writ of Habeas Corpus is timely submitted.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§2241; 2254 (a); 1651 (a), and Article III of the United States Constitution. *See also Felker v. Turpin*, 518 U.S. 651 (1996) (recognizing that the AEDPA did not divest this Court of its original habeas jurisdiction); *In re Davis*, 130 S. Ct. 1 (2009) (recognizing that a capital case presenting a claim of actual innocence "is sufficiently 'exceptional' to warrant utilization of this Court's. . .original habeas jurisdiction").

STATEMENT OF THE FACTS AND CASE

A. INTRODUCTION

On November 30, 2015, the Governor of Florida signed a death warrant upon the Petitioner, Cary Michael Lambrix, scheduling Petitioner's execution for February 11, 2016. On February 2, 2016, following oral argument on matters before the Florida Supreme Court, the Florida Supreme Court issued a temporary stay of execution allowing for further review of Petitioner's case in light of this Court's opinion in *Hurst v. Florida*, 136 S. Ct. 616 (2016) (holding that the Florida requirement that a judge and not the jury determined eligibility for the imposition of the death penalty was a violation of the Sixth Amendment), A central subject of that review is whether *Hurst* is retroactively applicable to the cases of prisoners who were sentenced under the unconstitutional statute, including pre-*Ring v. Arizona* cases like Petitioners. 536 U.S. 584 (2002)

The Florida Supreme Court could issue an opinion at any time. Under Florida law, if the Florida Supreme Court denies the retroactive application of *Hurst v. Florida* in Petitioner's case, the temporary stay of execution will be lifted and the Governor of Florida will be mandated by existing statutory law to reschedule Petitioner's execution within 10 days for a future date. *See* Fla. Stat. Ann. § 922.06 (West).

Petitioner has diligently moved the federal courts for the appointment of collateral counsel under 18 U.S.C. § 3599, only to be repeatedly denied. *See*, *e.g.*, *In re Lambrix*, 624 F.3d 1355 (11th Cir. 2010), cert denied, *In re Lambrix*, 131 S. Ct.

1355 (2010) (*pro se* pleading requesting appointment of counsel under § 3599 for the purpose of pursuing Application for Leave to File Successive Habeas); *Lambrix v. Sec'y, DOC*, 756 F.3d 1246 (11th Cir. 2014), cert. denied, 134 S. Ct. 64 (2014) (requesting appointment of counsel under § 3599 to pursue equitable relief under *Martinez v. Ryan*), and to date the federal courts have consistently refused to appoint collateral counsel as statutorily mandated under 18 U.S.C. §3599.

Instead, as has become a consistently followed policy and practice in Florida capital cases, the federal courts have appointed a Florida state agency, the Capital Collateral Regional Counsel, to provide representation in the federal courts for indigent capital inmates. The state agency counsel appointed for federal purposes is deficient because CCRC counsel is statutorily prohibited by Florida law from providing the full measure of federal collateral representation that both Congress and this Court have unequivocally recognized as necessary.

As the facts of Petitioner's case reflect, for 25 years the prosecutor in this capital case deliberately concealed material evidence including the existence of numerous hairs found on the alleged murder weapon that the State of Florida has subsequently conceded are "probably" are those of key State witness Frances Smith. Petitioner moved for DNA testing of this evidence under Fla. R. Crim. P. 3.853, only to be denied based on a materiality finding without being given any meaningful opportunity for evidentiary development to establish the materiality of the previously undisclosed evidence. *Lambrix v. State*, 124 So. 3d 890 (Fla. 2013).counsel under 18 U.S.C. § 3599 so that he could pursue a civil action in

federal court under 42 U.S.C. § 1983; *See Skinner v. Switzer*, 131 S. Ct. 1289 (2011) (recognizing that capital petitioner can challenge the state process for DNA testing under § 1983) and *District Attorney's Office v. Osbourne*, 557 U.S. 52 (2009) (leaving open the question of whether DNA testing in capital cases is mandatory). To date, the federal courts have simply refused to appoint counsel under § 3599 to represent Petitioner in such a civil action.

Petitioner now faces he probability of imminent execution for a crime that he is actually innocent of, but has been and continues to be arbitrarily and unfairly denied the ability to compel DNA testing of available evidence that will establish Petitioner's innocence by the unreasonable refusal to appoint collateral counsel under § 3599 that can assist Petitioner in pursuing a civil remedy under *Skinner v. Switzer* and *District Attorney's Office v. Osbourne*.

B. SUMMARY OF THE CASE

As with any capital case dating back to 1982, Petitioner's case has a convoluted and long procedural history before both the state and federal courts. What cannot be denied is that from the time of arrest, Petitioner – a legally recognized disabled veteran – has consistently maintained his innocence in this wholly circumstantial case of first degree murder without eyewitnesses, physical or forensic evidence of guilt or any confessions.

In fact, in arguing its specious theory of alleged premeditated murder, Respondents have consistently conceded that their entire case rested upon the testimony of their sole key witness, Frances Smith, In the Respondent's own words,

"Clearly, the State's case was built on Frances Smith – the entire case, premeditation and everything is proved in her testimony and there has never been any question of that." Statement by Assistant Attorney General Carol Dittmar in Florida state circuit court on October 6, 2000.

The procedural history of this tortured review before both the state and federal courts was recorded in detail in *Lambrix v. State*, 124 So. 3d 890 (Fla. 2013) and *Lambrix v. Sec'y, DOC*, 756 F.3d 1246 (11th Cir. 2014). Petitioner will rely on the case history set forth therein, and focus only on the facts of the case relevant and material to this instant petition.

At trial Petitioner's defense was based specifically upon the argument that key witness Frances Smith was not credible – that she only came forward with her self-serving account that Petitioner told her that he killed both Edward Moore, *aka* Lawrence Lamberson and Aleisha Bryant by premeditated design after she was arrested on "unrelated charges" while driving and in the exclusive possession of victim Moore's vehicle. In her account Ms. Smith conceded that she did not actually witness the Petitioner commit either alleged murder, in fact Ms. Smith testified at trial that when she last saw the Petitioner in the company of Moore and Bryant, all three of them were "laughing, teasing and playing around."

After a first trial ended in a mistrial when the jury was unable to reach a verdict, Petitioner refused a plea offer by the State to non-capital second-degree murder, and a second trial was held. During the second trial, Petitioner's counsel was prohibited from eliciting on cross examination the fact that key witness Smith

had provided law enforcement numerous other stories that directly conflicted with her trial testimony. *See Lambrix v. State*, 494 So. 2d 1193 (Fla. 1986). Petitioner was also prohibited from testifying in his own defense. *Lambrix v. Singletary*, 72 F.3d 1500, 1508 (11th Cir. 1996). Petitioner was convicted on both counts of capital, premeditated murder (not felony murder), and was subsequently sentenced to death by the trial court following a non-unanimous jury recommendation of death on both counts, by a vote of eight (8) to four (4) in the Moore case and ten (10) to two (2) in the Bryant case.

Thereafter, this Petitioner exhausted initial collateral review in the state and federal courts. *See Lambrix v. State*, 534 So. 2d 1151 (Fla. 1988) (direct appeal); *Lambrix v. State*, 698 So. 2d 247 (Fla. 1988) (initial postconviction appeal); *Lambrix v. Singletary*, 72 F.3d 1500 (11th Cir. 1996) (upholding denial of federal habeas corpus petition); *Lambrix v. Singletary*, 520 U.S. 518 (1997) (after grant of certiorari, relief denied by 5 to 4 vote). Only in 1998 did a wealth of newly discovered evidence become available supporting Petitioner's consistently pled claim that Frances Smith had worked with the State to deliberately fabricate the theory of premeditated murder that resulted in the two death sentences.

Deborah Hanzel, was the primary corroborative state witness supporting Frances Smith's account at trial, testifying that Petitioner also told her that he had killed Moore. In 1998 she provided an affidavit to Petitioner's counsel and subsequently testified under oath that her trial testimony was untrue. Her affidavit and testimony indicated that she had been influenced by Ms. Smith and the state

attorney investigator to provide false testimony to insure that Lambrix was convicted and not in a position to put her life and the lives of her children in jeopardy.

During the limited state court evidentiary hearing on Hanzel's claim of coercion to provide false testimony about Lambrix's statements to her, Frances Smith testified. During her deposition and subsequent testimony, Ms. Smith admitted under oath to a previously undisclosed relationship "of a sexual nature" with the lead state attorney investigator Bob Daniels prior to the trial in the Lambrix case. Daniels denied the allegation under oath.

In a bizarre and self-contradictory outcome determinative order by the state circuit court, the postconviction testimony of key trial witness Frances Smith was found to be not credible as to the claim of a sexual relationship with the state attorney investigator, and relief was denied. That finding was affirmed on appeal to the Florida Supreme Court, which held that "appellate courts do not re-weigh the evidence or second guess the circuit court's finding as to the credibility of witnesses." *Lambrix v. State*, 39 So. 3d 260, 268 (Fla. 2010).

C. FACTS RELEVANT TO THE INSTANT PETITION

As this 1998–2010 state postconviction pleading was pending before the Florida Supreme Court, Petitioner's counsel learned in 2009 that an independent researcher who was investigating the Petitioner's case had obtained numerous documents from the Florida Department of Law Enforcement (FDLE) crime lab

related to the Lambrix case that had been previously undisclosed to Petitioner's counsel at trial or in postconviction.

Upon review of the documents counsel believed them to be collectively relevant to issues in the case. Prior to trial and throughout the postconviction process, counsel had requested disclosure of any and all physical or forensic evidence and documentation of same. Counsel was told that no forensic evidence, apart from the tire iron introduced by the state at trial as the alleged murder weapon, had been recovered or tested. At trial the lead prosecutor, Randall McGruther, advised the court and the jury that no forensic evidence was recovered, and that any such evidence would have been washed away by the creek waters from whence the tire iron was recovered. The documents obtained by researcher Michael Hickey and provided to Petitioner's counsel provided that the assertions at trial were false.

The FDLE lab records revealed for the first time that when the FDLE crime lab examined and tested the alleged murder weapon, a common tire iron, and a t–shirt that was wrapped around it with a piece of wire when it was recovered by a police diver from Bee Branch Creek, they discovered numerous hairs and subsequently performed a comparative analysis of the found hairs. The result of the analysis was that the found hairs failed to "match" either of the victims or Mr. Lambrix.

Additionally, in 1983 the FDLE crime lab found that the t-shirt found with the tire iron was a size small. The significance of this discovery relates to the fact

that at the time of the alleged offenses, Mr. Lambrix was a muscular, 5'10" male and Frances Smith was a 5'2" female. In short, a small t-shirt would not have fit Petitioner but would have fit Ms. Smith.

The previously undisclosed FDLE crime lab notes and records also reveal that the crime lab contacted prosecutor McGruther and informed him of the discoveries that were made. The notes themselves indicate that the prosecutor asked that all testing be ended and that the evidence be returned to his office, which was done. Subsequently, despite on-going discovery requests by trial and postconviction counsel, the state failed to disclose either the FDLE crime lab documents in which this information was contained or the information. There was no acknowledgement of this information from the time of trial until 2009, some twenty-five years.

Petitioner's state appointed counsel timely filed a successive state postconviction motion arguing that the deliberate concealment of this material evidence violated *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972) (hereinafter *Brady/Giglio*) and requested both full DNA testing of the previously undisclosed evidence and a full and fair evidentiary hearing to establish the materiality of this previously undisclosed evidence.

Incredibly – after 25 years of denying the existence of this evidence – in their response the State of Florida conceded that this evidence was never disclosed – and that the found hairs "probably" did belong to Frances Smith – but disingenuously argued that there was no *Brady/Giglio* violation because Smith had been present at

the crime scene so it was not surprising that her hair would have been found on the alleged murder weapon. Therefore, the State argued that this undisclosed evidence would not have materially assisted in the defense and the nondisclosure did not violate *Brady/Giglio*.

Petitioner's counsel argued in response that the State of Florida's claim of non-materiality was absurd – that this was not simply about the presence of Frances Smith's hair on the alleged murder weapon, but also about the absence any other evidence tying Mr. Lambrix to the tire iron, including the absence of the hair of the victims and Mr. Lambrix, and the size of the t–shirt used to wrap the tire iron, too small to belong to Petitioner, and never addressed by the state.

Petitioner's counsel also argued that without the grant of a full and fair evidentiary hearing it would be impossible to properly address the materiality of the previously undisclosed evidence.[1]

The trial court summarily denied relief, simultaneously denying DNA testing, by adopting all but verbatim the State of Florida's absurd defense, further denying any evidentiary process to address the obvious factual disputes as to the materiality of the undisclosed evidence. Petitioner's counsel timely appealed both

[1] As this Court has instructed in *Kyles v. Whitley*, 514 U.S. 419, 442-47 (1992), see also *Smith v. Cain*, 132 S. Ct. 627,630 (2012), in determining materiality of the suppressed evidence, courts must consider how the defense's knowledge of the withheld evidence would have impacted not just the evidence at trial, but also the strategies, tactics, and defense that the defense could have developed and presented to the jury at trial. *See also Guzman v. Sec'y, DOC*, 663 F.3d 1336, 1348 (11th Cir. 2011), *quoting*, *Giglio v. United States*, 405 U.S. at 154, "when the reliability of a given witness may well be determinative of guilt or innocence, non-disclosure of evidence effecting credibility is presumed prejudicial."

the denial of the substantive *Brady/Giglio* claims, and the summary denial of DNA testing, to the Florida Supreme Court, which affirmed the lower court's order. *Lambrix v. State*, 124 So. 3d 890 (Fla. 2013).

Petitioner's state-assigned counsel then initiated an Application for Leave to File Second or Successive Federal Habeas pursuant to 28 U.S.C. § 2244(b)(2), in the Eleventh Circuit Court of Appeals, arguing that this previously undisclosed evidence establishes substantial *Brady/Giglio* violations which if fully and fairly heard will establish that Petitioner is actually innocent and that the Florida courts disposition of these substantive *Brady/Giglio* claims was objectively unreasonable. [2]

Refusing to address counsel's § 2244 Application on the merits, the Eleventh Circuit summarily denied the counseled § 2244 Application, finding that the "law of the case doctrine" precluded review because the Petitioner had previously filed a *pro se* § 2244(b) Application, requesting the appointment of counsel under § 3599 that was denied. *In re Lambrix*, 776 F.3d 789 (11th Cir. 2015). Petitioner's counsel then filed an original jurisdiction habeas corpus petition in this Court, pursuant to *In re Davis*, 130 S. Ct. 1 (2009), arguing that absent this Curt's intervention, Petitioner would be executed by the State of Florida for crimes that the readily available evidence shows that the Petitioner is actually innocent of. Neither the state nor the federal courts have ever allowed this evidence to be heard in a full and fair hearing. On November 30, 2015 this Court summarily denied review of the original habeas

[2] *See Guzman v. Sec'y, DOC*, 663 F.3d 1336, 1339 (11th Cir. 2011) ("The Florida Supreme Court's materiality determination was more than just incorrect – it was an objectively unreasonable application of clearly established Supreme Court precedents"); *Smith v. Sec'y, DOC*, 572 F.3d 1327 (11th Cir 2007) (accord).

petition, Case. No. 15-6163. *Lambrix v. Jones*, 136 S. Ct. 537 (2015). Within hours the Governor of Florida signed a death warrant, and the Petitioner's execution was scheduled for February 11, 2016.

On October 22, 2015, before this Court ruled on the petition for certiorari and prior to the issuance of the death warrant, Petitioner's state agency counsel submitted a comprehensive Motion to Set Aside Judgement pursuant to Fed. R. Civ. P. Rule 60(b) and *Gonzalez v. Crosby*, 545 U.S. 524 (2005). The motion argued that Petitioner was entitled to relief under *Martinez v. Ryan*, 132 S. Ct. 1306 (2012) and *Trevino v. Thaler*, 133 S. Ct. 1911 (2013), based upon the ineffective assistance of initial-review postconviction counsel that previously resulted in substantive *Strickland v. Washington*, 466 U.S. 668 (1984) claims being procedurally defaulted from federal habeas review under *Coleman v. Thompson*, 501 U.S. 722 (1991). If fully and fairly heard, these claims will establish that Petitioner has been wrongfully convicted and condemned to death for a crime that he is actually innocent of, due to the failure of trial counsel to subject the State's wholly circumstantial case to a true and meaningful adversarial testing.

On October 22, 2015, state assigned counsel had also filed a standard motion for appointment in the district court which Petitioner specifically opposed in a *pro se* filing on November 3, 2015.: (Appendix A, *Petitioner's Motion for Nunc Pro Tunc Appointment of Counsel Pursuant to the Criminal Justice Act*); (Appendix B, *Petitioner's Objection to Motion for Nunc Pro Tunc Appointment and Motion for Appointment of Conflict Free Collateral Counsel*). The *pro se* motion argued that

the District Court could not appoint or otherwise allow state assigned counsel (State funded agency Capital Collateral Regional Counsel South, hereafter CCRC) to proceed because CCRC was statutorily prohibited under the Florida Statutes, § 27.701-711, from representing death sentenced prisoners in any form of civil action, other than lethal injection challenges. *See Darling v. State*, 45 So. 3d 444 (Fla. 2010). Thus, CCRC was prohibited from challenging Florida's arbitrary and fundamentally unfair process relevant to DNA testing as anticipated under *Skinner v. Switzer*, 131 S. Ct. 1289 (2011) and *District Attorney's Office v. Osbourne*, 557 U.S. 52 (2009).

As reflected in the *pro se* objection to the appointment of CCRC South, Petitioner argued that both Congress and this Court have mandated that counsel appointed pursuant to 18 U.S.C. § 3599(e) "shall represent the defendant throughout every subsequent stage of available judicial proceedings …and all available postconviction process," "unless replaced by similarly qualified counsel." If a state agency counsel is statutorily prohibited from providing the full measure of collateral representation required under 18 U.S.C. § 3599(e), then such counsel cannot possibly be qualified for appointment under § 3599(e).

On December 22, 2015, former federal counsel for Petitioner, Matthew C. Lawry, of the federally funded Federal Community Defender Office for the Eastern District of Pennsylvania, Philadelphia, PA, filed a motion requesting appointment to the federal proceedings "[i]n order to provide Mr. Lambrix with the full range of services contemplated by 18 U.S.C. § 3599(e)." (See Appendix C, *Petitioner's Motion*

for Appointment of Federal Community Defender Office As Counsel At No Cost To The Court, at 3.). The motion also noted that in circumstances where Petitioner was now under an active death warrant and Mr. Lawry was familiar with the case as prior counsel, the District Court should appoint Mr. Lawry and his office as Federal § 3599 counsel.

Also on December 22, 2016 the District Court denied as moot the motion for appointment filed by Federal Community Defender Office for the Eastern District of Pennsylvania and Petitioner's *pro se* objection to the appointment of CCRC counsel, and appointed CCRC South *nunc pro tunc*. (Appendix D). Simultaneously, the District Court summarily denied Petitioner's pending Rule 60(b) motion that had argued entitlement to equitable relief under *Martinez v. Ryan*, finding that Rule 60(b) does not apply to habeas proceedings under *Arthur v. Thomas*, 739 F.3d 611 (11th Cir. 2014) and its progeny. On January 28, 2016 the District Court also denied a formal COA application that had been filed on January 21, 2016. [3]

[3] On June 6, 2016 this Court granted certiorari to review the existing conflict amongst the Circuit Courts of Appeals as to the availability of Rule 60(b) to raise claims under *Martinez v. Ryan*. *See Buck v. Stephens*, Case No. 15-8049, (Question presented excerpt from cert grant: "[D]id the United States Court of Appeals for the Fifth Circuit impose an improper and unduly burdensome Certificate of Appealability (COA) standard that contravenes this Court's precedent and deepens two circuit court splits when it denied Mr. Buck a COA on his motion to reopen the judgment and obtain merits review on his claim that trial counsel was constitutionally ineffective…"); *See also Johnson v. Carpenter*, Case No. 15-1193, *cert pending*, case distributed four times, (Issues (1) Whether a court must categorically deny a Federal Rule of Civil Procedure 60(b)(6) motion premised on the change in decisional law produced by *Martinez v. Ryan*; and (2) whether the Sixth Circuit's decision to deny even a certificate of appealability in this case should be summarily reversed").

Petitioner's state agency counsel timely filed a proper notice of appeal on January 21, 2016. Appendix E. The case was docketed in the Eleventh Circuit as *Lambrix v. Secretary, Florida DOC*, Case No. 16-10251-P, and state agency counsel submitted an Application for Certificate of Appealability on February 1, 2016, an Amended Application for COA on April 11, 2016 and a second Amended Application for COA on August 15, 2015. Although Petitioner remains under an active, temporarily stayed, death warrant under Florida law, for over six months the Eleventh Circuit has taken no action on the respective COA Applications, and Petitioner continues to be denied the timely appointment of substitute collateral counsel that is statutorily qualified under § 3599(e).

This original jurisdiction extraordinary petition for habeas corpus now follows.

REASONS FOR GRANTING THE WRIT

Petitioner remains under an active death warrant and the threat of an imminent execution – but both the District Court and the Eleventh Circuit are refusing to appoint qualified collateral counsel as is required under 18 U.S.C. § 3599. These indisputable facts establish the extraordinary circumstances to warrant this Court's intervention and support equitable relief. No person should be facing relatively imminent execution without the appointment of collateral counsel that both Congress and this Court have unequivocally held is statutorily mandated.

Petitioner's instant case is not unique in that the federal courts in Florida have routinely been assigning state agency counsel to represent death sentenced

petitioners in federal habeas proceedings even though under Florida law, Florida Statutes § 27.701-711, this state agency counsel is prohibited from providing the full measure of possible collateral representation as set forth in 18 U.S.C. §3599, and is therefore statutorily unqualified.[4]

Absent this Court's intervention, Petitioner will be effectively denied any meaningful opportunity to pursue avenues of collateral relief that are potentially available to him under *Skinner v. Switzer* and *District Attorney's Office v. Osbourne* because he is a death-sentenced prisoner with Florida state agency counsel restricted by state statutes from pursuit of his interest.[5] This arbitrary and fundamentally unfair deprivation of statutorily qualified collateral counsel in a capital case is constitutionally intolerable under the Fifth, Eighth, and Fourteenth Amendments. *See, e.g. Hall v. Florida*, 134 S. Ct. 1086, 2001 (2014) ("the death penalty is the gravest sentence our society may impose. Persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution"). This is especially true given this Court's consistent

[4] "(11) An attorney appointed under s. 27.710 to represent a capital defendant may not represent the capital defendant during a retrial, a resentencing proceeding, a proceeding commenced under chapter 940, a proceeding challenging a conviction or sentence other than the conviction and sentence of death for which the appointment was made, or any civil litigation other than habeas corpus proceedings." Fla. Stat. Ann. § 27.711 (West)(emphasis added)

[5] In at least two cases known to Petitioner, Southern District of Florida judges have appointed replacement CJA counsel for federal habeas purposes in cases in which CCRC South handled the state postconviction proceedings, after *pro se* motions were filed in District Court by the defendants based on alleged *Martinez v. Ryan* issues. The Judge in the Siebert case is Judge Zloch, who denied Petitioner's Rule 60(b) motion *See Ronald Knight v. Sec'y, Florida DOC*, Case No. 9:14-mc-80800-DTKH; *Michael D. Siebert v. Sec'y, Florida DOC*, Case No. 11-22386-CIV-ZLOCH. (Appendix F & Appendix G, Orders in the two cases).

recognition of the qualitative difference of death, and the obligation to ensure that fundamental fairness in capital cases is zealously guarded. *See, e.g., California v. Ramos*, 463 U.S. 992, 998-99 (1983) ("the qualitative difference of death from all other punishments requires a correspondingly greater degree of scrutiny").

This Court's power to grant an extraordinary writ is very broad, but reserved for exceptional cases in which "appeal is clearly an inadequate remedy." *Ex parte Fahey*, 332 U.S. 258, 260 (1947). Given the continued refusal by the Eleventh Circuit to address the imperative issue of providing the Petitioner with statutorily qualified counsel so that Petitioner can pursue the civil relief entitled under *Skinner v. Switzer*, any appeal that might be available only on the very eve of a rescheduled execution would clearly be such an inadequate remedy.

Rule 20 of this Court's Rules requires that a petitioner seeking an extraordinary remedy before this Court must demonstrate that: (1) adequate relief cannot be obtained in any other form or in any other court; (2) exceptional circumstances warrant the exercise of this power; and (3) the issuance of the writ will aid in this Court's appellate jurisdiction.

Petitioner will address each of these elements;

A. REASONS FOR NOT MAKING APPLICATION FOR WRIT OF HABEAS CORPUS TO THE DISTRICT COURT IN WHICH APPLICANT IS HELD:

As required by Rule 20.4 and 28 U.S.C. § 2241 and § 2242; *See Felker v. Turpin*, 518 U.S. at 665. Mr. Lambrix states that this original petition for writ of habeas corpus is not submitted to the District Court, as the District Court in this case has already unequivocally denied the equitable remedy sought herein; to wit;

the request for appointment of collateral counsel statutorily qualified and capable of pursuing the full measure of collateral relief intended under 18 U.S.C. § 3599.

As to the Question Two presented herein, the District Court has no legal authority or jurisdiction to address whether the Eleventh Circuit panel governing this capital case has demonstrated pervasive bias requiring disqualification and assignment to an unbiased panel. And given that the Chief Judge of the Eleventh Circuit is a member of the panel, it appears unlikely that he will disqualify himself.

B. ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR COURT

What is very clear is that absent this Court's intervention, the Eleventh Circuit will not take any action in this capital case until Petitioner is once again facing imminent execution. As provided below in Question Two, in *Lambrix v. Sec'y, DOC*, 756 F.3d 1246, 1263 (11th Cir. 2014), the panel presiding over Petitioner's case has already unequivocally concluded – without any conceivable knowledge of future developments, like *Hurst v. Florida*, in this capital case – that Petitioner "has no viable federal remedies left for overturning his convictions or death sentences."

This constitutionally intolerable pre-disposition has subsequently manifested itself in what amounts to a denial of meaningful access to the Courts, as state agency counsel properly filed a Notice of Appeal on January 21, 2016, more than six months ago, to appeal the Order of the District Court denying the appointment of counsel qualified under 18 U.S.C. § 3599, and multiple Applications for Certificate

of Appealability as to other issues. *See Lambrix v. Sec'y, DOC*, Eleventh Cir. Case No. 16-10251. To date, the Eleventh Circuit has not taken any action.

Even under normal circumstances inaction by a panel in failing to allow a capital case to timely proceed would be improper, but in circumstances where, at all relevant times, Petitioner has been under an active death warrant since November 30, 2015, such inaction is unfair and prejudicial.

Adequate relief to compel the timely appointment of statutorily qualified collateral counsel consistent with 18 U.S.C. § 3599 and *Harbison v. Bell*, 556 U.S. 180 (2009), and to ensure that Petitioner's fundamental constitutional right to have the case heard by a fair and objective tribunal free from undue bias or predisposition is protected, can only be provided through this action and only this Court has constitutional authority to provide the equity relief sought herein.

C. EXCEPTIONAL CIRCUMSTANCES WARRANT THE EXERCISE OF THIS POWER

Exceptional circumstances are established by the fact that petitioner is currently under an active, though protracted and temporarily stayed, death warrant, that will be re-scheduled by the Governor of Florida within ten days of the lifting of the Florida Supreme Court's stay. In these circumstances, the deliberate inaction by the Eleventh Circuit where no briefing schedule has been set on the mandatory appeal on the appointment of counsel issue and no action has been taking on the COA request on other issues, Petitioner has been effectively denied both the timely appointment of statutorily mandated collateral counsel and the ability to pursue collateral relief under *Skinner v. Switzer*.

A death sentenced petitioner facing the probability of imminent execution should not be deprived of the ability to pursue the full measure of judicial review that both Congress and this Court have intended to be available. CCRC cannot do this. This is most especially true in this capital case in which the deprivation of timely appointment of statutorily qualified collateral counsel under § 3599 effectively eliminates Petitioner's ability to pursue relief consistent with *Skinner v. Switzer* that if successful, will establish Petitioner's actual innocence in this capital case.[6]

D. THE ISSUANCE OF THE WRIT WILL AID IN THIS COURT'S JURISDICTION

As this Court has consistently held, "death is different;" and this Court has a constitutional obligation to ensure that this ultimate penalty is administered in a fair, consistent, and reliable manner.

This case exposes an insidious process in which not only this petitioner but a large number of Florida's death sentenced prisoners, are consistently being deprived of the measure of collateral representation that both Congress and this Court intended to be available under 18 U.S.C. § 3599. Petitioner's instant capital case is indicative of this fundamentally unfair practice in which rather than appointing collateral counsel under 18 U.S.C, § 3599, the federal courts in Florida routinely

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[6] "The capital collateral regional counsel shall represent each person convicted and sentenced to death in this state for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court."
Fla. Stat. Ann. § 27.702 (West)

appoint the Florida state-funded counsel, knowing that such state agency counsel is statutorily prohibited from providing the full measure of collateral representation required under § 3599(e). This effectively deprives such death sentenced petitioners of any meaningful opportunity to pursue civil remedies challenging an unconstitutional state process as is cognizable under *Skinner v. Switzer* and *Harbison v. Bell*.

The intent and purpose of this Court's jurisdiction is to ensure that the lower courts comply with constitutional mandates and that the integrity of the Courts is preserved. Issuance of the Writ will substantially aid in this Court's appellate jurisdiction by bringing to an end a fundamentally unfair practice that unconstitutionally deprives Florida death-sentenced petitioners of Due Process and Equal Protection, and renders the imposition of this ultimate penalty of death constitutionally unreliable.

QUESTION ONE

ARE DEATH SENTENCED PRISONERS IN FLORIDA EFFECTIVELY DEPRIVED OF THE STATUTORILY MANDATED RIGHT TO COUNSEL UNDER 18 U.S.C. §3599 AND *HARBISON V. BELL* WHEN THE FEDERAL COURTS ARE ROUTINELY APPOINTING STATE FUNDED AGENCIES THAT UNDER STATE LAW ARE CATEGORICALLY PROHIBITED FROM PROVIDING THE FULL MEASURE OF COLLATERAL REPRESENTATION THAT BOTH CONGRESS AND THIS COURT CLEARLY INTENDED TO BE AVAILABLE?

There is nothing vague or ambiguous about Congress's intent that indigent death-sentenced defendants be provided statutorily qualified collateral counsel in all Federal proceedings. Specifically, 18 U.S.C. § 3599 "provides for the appointment

of counsel for two classes of indigents, described, respectfully, in subsections (a)(1) and (a)(2)." *Harbison v. Bell*, 556 U.S. 180, 182 (2009). Subsection (a)(1) describes the availability of appointed counsel for federal capital defendants. 18 U.S.C. §3599(a)(1). *See Harbison*, 556 U.S. at 184-85. Subsection (a)(2) describes state and federal postconviction litigants, and provides:

> In any postconviction proceeding under section 2254 or 2255 of Title 28, United States Code, seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys and the furnishings of such other services in accordance with subsection (b) through (f).

18 U.S.C. §3599(a)(2). Subsections (b) through (f) discuss counsel's necessary qualifications. 18 U.S.C. §3599 (b)-(d); *see Harbison*, 566 U.S. at 185. Subsection (e) then describes counsel's responsibilities, stating:

> Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney shall represent the defendant throughout every subsequent stage of available judicial proceedings, including pretrial proceedings, trial, sentencing, motions for new trial, appeals, applications for writ of certiorari to the Supreme Court of the United States, and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures, and shall also represent the defendant in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant.

18 U.S.C. §3599(e)(*emphasis added*). Thus, under what this Court has described as a "straightforward reading" of 18 U.S.C.§ 3599, "subsection (a)(2) triggers the appointment of counsel for habeas petitioners, and subsection (e) governs the scope of appointed counsel's duties." *Harbison*, 556 U.S. at 185. Once federally funded counsel is appointed to represent a state prisoner, counsel "shall represent the

defendant throughout every subsequent stage of available judicial proceedings, including, all available postconviction process together with applications for stays of execution and other appropriate motions and procedures." 18 U.S.C. §3599(e); *Harbison*, 556 U.S. at 185-86.

Fairly construed, the statute obligates duly appointed counsel to represent a defendant in "every subsequent stage of available judicial proceedings…and other appropriate motions and procedures" which encompass the pursuit of civil litigation seeking to challenge the constitutional adequacy of a state process under 42 U.S.C. §1983, *See, e.g., Hill v. McDonough*, 547 U.S. 573 (2006)(granting a stay of execution to allow capital defendant to pursue Section 1983 action challenging Florida's lethal injection process); *Skinner v. Switzer*, 131 S. Ct. 1289 (2011) (staying execution to allow capital defendant to pursue Section 1983 challenging Texas state process for DNA testing); see also *District Attorney's Office v. Osbourne*, 557 U.S. 52 (2009) (reserving question of whether DNA testing is constitutionally required in capital cases.

In Petitioner's case the state courts denied DNA testing of evidence based on an objectively unreasonable finding that the evidence was not material, without having provided Petitioner any opportunity to establish materiality. *Lambrix v. State*, 124 So. 3d 890 (Fla. 2013). Under the circumstances of this capital case Petitioner is entitled to the appointment of collateral counsel under 18 U.S.C. § 3599. Counsel is required to bring federal civil actions concerning both the arbitrary and inconsistent actions of the Florida courts in failing to grant DNA testing in the

instant case or to consistently grant DNA testing in capital cases, and to litigate the unresolved substantive question of whether DNA testing is mandatory, or constitutionally required in the context of actual innocence. CCRC cannot pursue action in federal court under *Skinner v. Switzer* and *District Attorney's Office v. Osbourne*. *See State v. Kilgore*, 976 So. 2d 1066 (2007).

Petitioner's problem is that in his case, as well as in the vast majority of other Florida capital cases proceeding in the federal courts, the District Court has appointed and is appointing the Florida state agency counsel known as "Capital Collateral Regional Counsel" rather than independent CJA counsel, even though this state agency counsel is categorically prohibited by state law from representing death sentenced Florida prisoners in such civil actions. *See Darling v. State*, 45 So. 3d 444 (Fla. 2010) (finding that under Florida Statutes Chapter 27.7010711, state agency counsel is prohibited from representing death sentenced prisoners in civil litigation).[7]

This fundamentally unfair practice of appointing state agency counsel to represent death sentenced prisoners in federal court effectively deprives Florida death sentenced prisoners of the full measure of collateral representation that both Congress and this Court intended to be available, violating the Due process and Equal Protection rights of both the Petitioner and similarly situated death sentenced Florida inmates. Further, the practice of appointing state agency

[7] This prohibition also extends to the non-CCRC lawyers appointed from a list of "registry" attorneys in Florida who contract with the State of Florida to do conflict cases that the CCRC offices cannot handle, unless the registry lawyers are willing to do the prohibited work "pro bono public."

collateral counsel in federal proceedings renders the process constitutionally unreliable and violates the Eighth Amendment's prohibition against the infliction of cruel and unusual punishment where it deprives Petitioner and those similarly situated with a fair and meaningful opportunity to establish innocence through DNA testing and to challenge the denial of DNA testing of evidence creating a constitutionally intolerable risk that innocent prisoners will be executed by the State of Florida.

Petitioner is statutorily entitled to the appointment of collateral counsel that is capable of representing Petitioner across the full spectrum of available judicial proceedings as intended under 18 U.S.C. §3599. The routine federal court appointment of state agency counsel that is by definition statutorily prohibited from the pursuit of civil relief under 42 U.S.C. §1983, effectively deprives Petitioner of the measure of collateral representation otherwise available to him under 18 U.S.C. §3599.

What is especially troubling in the instant case is that counsel employed by an existing capital habeas unit in Pennsylvania, fully able to represent Petitioner in all federal litigation, filed a motion for appointment in this case, advising the District Court of willingness to represent the Petitioner. See Appendix C. *Petitioner's Motion for Appointment of Federal Community Defender Office As Counsel At No Cost To The Court*. However, the District Court denied that motion for appointment, and on the same day, denied the pending Rule 60(b) motion, and, over the *pro se* objection by Petitioner, granted the pending motion for appointment

as counsel *nunc pro tunc* that had been filed months before along with the Rule 60(b) motion by the state agency (CCRC South). See Appendix B and Appendix D.

Collateral counsel that is statutorily prohibited from representing Petitioner in all available judicial proceedings, including § 1983 civil action under *Skinner v. Switzer* challenging the constitutionality of Florida's DNA testing statute, rule and process, is self-evidently not statutorily qualified for appointment per the terms of 18 U.S.C. §3599. If such counsel cannot, for any reason, provide the full measure of collateral representation Congress intended to be provided under §3599, then such counsel should not be appointed under §3599.

With the Petitioner now under an active death warrant with an execution that has been temporarily stayed while the Florida Supreme Court considers the impact of *Hurst v. Florida*, it is even more imperative that Petitioner be appointed collateral counsel that is able to represent the entire scope of his interests, including pursuing civil action through §1983, consistent with *Skinner v. Switzer*, in federal court without any further delay. This Court must exercise its original jurisdiction to provide equitable relief under the instant extraordinary circumstances and order the lower federal courts to immediately and without any further delay, to appoint substitute federal counsel capable of providing the full measure of representation intended to be available under 18 U.S.C. §3599.

QUESTION TWO

DOES A CIRCUIT COURT OF APPEALS PANEL'S PRIOR UNEQUIVOCAL DECLARATION THAT A DEATH SENTENCED PRISONER HAS NO FURTHER AVENUE OF APPEALS AVAILABLE, COUPLED WITH THE SAME PANEL'S UNREASONABLE REFUSAL TO ALLOW SUBSEQUENTLY SUBMITTED PLEADINGS TO BE TIMELY HEARD, AMOUNT TO A CONSTITUTIONALLY INTOLERABLE PREDISPOSITION INDICATIVE OF PERVASIVE BIAS THAT REQUIRES DISQUALIFICATION OF THAT PANEL AND REASSIGNMENT TO ANOTHER PANEL?

In March 2013 Petitioner initiated a *pro se* pleading in the District Court requesting the appointment of collateral counsel pursuant to 18 U.S.C. §3599 for the purpose of pursuing equitable relief under the then recently decided *Martinez v. Ryan* case.[8] The District Court summarily denied appointment of collateral counsel and simultaneously *sua sponte* re construed this *pro se* pleading as an unauthorized successive habeas petition, and then denied issuance of a COA. Subsequently, the Eleventh Circuit also denied a COA on the question of whether a *pro se* pleading seeking to invoke entitlement to equitable relief under *Martinez v. Ryan* constituted a "second or successive habeas," but entered an Order recognizing that the denial of counsel claim was automatically appealable, and allowed full briefing on that limited issue.

The Eleventh Circuit affirmed the lower court's implicit denial of the appointment of counsel pursuant to 18 U.S.C. § 3599, finding that under their own precedent, petitioner could not seek relief under *Martinez v. Ryan*. *Lambrix v. Sec'y, DOC*, 756 F.3d 1246, 1263 (11th Cir. 2014). In the concluding paragraph of that

[8] 132 S. Ct. 1306 (2012).

opinion, the panel unequivocally stated "the litigation has gone on for too long. He has no viable federal remedies left for overturning his convictions or death sentences".[9] Petitioner sought certiorari before this Court through state agency counsel, which was denied. *Lambrix v. Crews*, 135 S. Ct. 64 (Mem) (2014).

State agency counsel thereafter initiated an Application for Leave to File Second/Successive Habeas based on an argument that newly discovered evidence established that petitioner was actually innocent, The same Eleventh Circuit panel denied this counseled §2244(b) Application upon an objectively unreasonable finding that the "law of the case doctrine" barred any grant of leave to file a second or successive habeas. *In re Lambrix*, 776 F.3d 789 (11th Cir. 2015).

Petitioner's state agency counsel then submitted a Petition for Writ of Habeas Corpus to this Court, arguing that absent this Court's extraordinary jurisdiction, Petitioner would be put to death for a crime that readily available evidence can establish Petitioner is actually innocent of, and of which both the State and Federal Courts have refused to allow a fair and meaningful opportunity to

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[9] "The *Martinez* rule did not change the law in any way related to Lambrix's case. Lambrix's proposed claims are wholly futile for reasons unrelated to the merits of any substantive ineffective-assistance-of-trial-counsel claim. Therefore, we affirm the denial of Lambrix's request for the appointment of federal counsel to pursue his *Martinez*-based claims.
For the past thirty years, Lambrix has challenged the judgment of his convictions and two sentences of death entered against him by a Florida court in 1984. The litigation has gone on for too long. He has no viable federal remedies left for overturning his convictions or death sentences."

Lambrix v. Sec'y, DOC, 756 F.3d at 1263 (*emphasis added*).

present and be heard upon this evidence collectively establishing Petitioner's innocence. *See In re Davis*, 130 S. Ct. 1 (2009) ("the substantial risk of putting an innocent man to death clearly provides an adequate justification for holding an evidentiary hearing").

This original habeas petition was docketed before this court as *In re Lambrix*, USSC Case No. 15-6163. On November 30, 2015 this court summarily denied this habeas petition without opinion. *In re Lambrix*, 136 S. Ct. 541 (Mem) (2015). About two hours, or less, after the summary denial by this Court, Florida Governor Rick Scott signed a death warrant upon petitioner, scheduling Petitioner's execution for February 11, 2016 at Florida State Prison.

On December 22, 2015 – with Petitioner facing imminent execution – the District Court denied Petitioner's comprehensive Rule 60(b) motion.[10] The motion had sought to invoke entitlement to equitable relief under *Martinez v. Ryan*, 132 S. Ct. 1206 (2012). The District Court's order found that under Eleventh Circuit precedent, Rule 60(b) motions were unavailable as an avenue to entitlement to relief under *Martinez*. At the same time the District Court denied the appointment of collateral counsel under 18 U.S.C. §3599, and denied the issuance of a certificate of appealability. Petitioner's state agency CCRC counsel timely filed a Notice of Appeal on the issue pertaining to the denial of the appointment of collateral counsel, and also submitted an Application for Certificate of Appealability on the

[10] The Rule 60(b) motion was filed by state agency CCRC counsel in the District Court on October 22, 2015, prior to the death warrant.

denial of the Rule 60(b) motion.[11] The case was docketed in the Eleventh Circuit as *Lambrix v. Sec'y, Florida DOC*, Case No. 16-10251-P. To date the Eleventh Circuit has taken no action, with the effective result that this capital case – still under an active death warrant – has not been allowed to proceed. The Eleventh Circuit has not issued a briefing scheduled on the automatically appealable issue of the denial of appointment of §3599 counsel, and has not addressed the timely submitted Application for COA or amendments thereto as of the date of the instant pleading to this Court.

One of the most basic and fundamental constitutional tenets of our judicial process is the zealously guarded right to be heard by a fair and impartial tribunal free of undue bias or predisposition. *See e.g. In re Murchison*, 349 U.S. 133, 136-39 (1955) (due process violated because presiding judge could not free himself from personal knowledge of case); *see also Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016).

As this Court recognized in *Liteky v. United States*, 510 U.S. 540, 555 (1994), "deep-seated favoritism or antagonism that would render fair judgement impossible" would be sufficient to constitute impermissible bias requiring disqualification. As this Court instructed, "an extrajudicial source is not a prerequisite to a finding of personal bias, which includes all dispositions that are "somehow wrongful or inappropriate." *Id.* at 550. The currently assigned Eleventh Circuit panel's conclusion that Petitioner's capital case has dragged on for far too

[11] The Motion for COA has been twice amended, most recently on August 15, 2016.

long and that the Petitioner has no further avenues of appeal available amounts to a biased predisposition. *See Lambrix v. Sec'y, DOC*, 756 F.3d 1246 (11th Cir. 2014). When coupled with the same panel's unreasonable refusal to allow subsequent pleadings associated with the instant appeal to go forward, even in circumstances when Petitioner is under an active, through temporarily stayed, death warrant – there exists that measure of "deep seated favoritism or antagonism that would render fair judgement impossible." *Liteky*, 510 U.S. at 555.

Given the constitutional mandate of heightened scrutiny in capital cases and the imperative of protecting Petitioner's fundamental constitutional right to a fair and impartial review of collateral pleadings, this Court should exercise its original jurisdiction as properly invoked herein to order the disqualification of the currently assigned Eleventh Circuit panel (Edward Carnes, Hull, and Tjoflat), and instruct that Petitioner's case be reassigned to a new panel of judges free from the burden of predisposition or undue bias.

CONCLUSION

Petitioner is under an active death warrant with the scheduled execution currently temporarily stayed by the Florida Supreme Court. The facts show that Petitioner has been and continues to be, arbitrarily and unfairly denied the collateral representation that both Congress and this Court intended to be available. Specifically, the District Court improperly assigned state agency counsel to represent Petitioner in Federal Court, even though such state agency counsel is categorically prohibited by the Florida Statutes and caselaw from representing the

Petitioner in civil actions, including §1983 actions challenging the constitutionality of Florida's DNA testing process pursuant to *Skinner v. Switzer*, 131 S. Ct. 1289 (2011).

Further, the facts show that the current Eleventh Circuit panel assigned to Petitioner's case has expressed a predisposition indicative of deep seated antagonism that serves to deprive Petitioner of the fundamental right to have his case heard before a fair and impartial tribunal.

Petitioner has established the extraordinary circumstances necessary to warrant invoking this Court's original habeas jurisdiction. Petitioner prays this Court will grant the remedies sought herein.

RESPECTFULLY SUBMITTED,

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AUGUST 17, 2016*

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