23-1315 ORIGINAL

IN THE

Supreme Court of the United States

MAXWELL JONES,

Petitioner,

v.

UNITED STATES,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF FEDERAL CLAIMS

PETITION FOR WRIT OF CERTIORARI

MAXWELL JONES
Petitioner, Pro Se
24331 S. Newcastle Bay Trail
Spring, TX 77389
(717) 601-9743
maxwell1m18@yahoo.com

116793

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

This is a Military Corrections of records 10 U.S.C. § 1552, and Military Pay and entitlement case 37 U.S. Code § 204. In this case, the petitioner believes a precedent is being set, since there has been no case of this magnitude before the court; there are numerous cases with similar claims, but none that have exceeded, and most have been dismissed for being untimely.

The petitioner was framed by his commanding general and discharged from the Army erroneously. Petitioner followed the Army's grievance procedures strictly, but they were ignored, so he filed a lawsuit for wrongful discharge. Upon clearing Petitioner's record by the Army Board for Correction of Military Records, the Army Human Resource Command published the orders that would have restored his status. As Petitioner refused to drop the case before being made whole, an Army litigation attorney and a government attorney forged a ABCMR recommendation to appear to be a Secretary of the Army directive. Petitioners filed several motions under rule 60 and rule 60(d)(3) the Court ignored the evidence and motions. Assisting the government became a priority for the Court. Due to the forged document, the government won an unjust victory in the case.

This Petition requests review, based on the United States Court of Federal Claims dismissal for "lack of subject matter jurisdiction", the Army/Army Board for Correction of Military Records final action/decision of "partial relief", compared to the government's recommendation of full relief, both versions are in conflicting conflict and have caused extreme harm to Petitioner's career and monies owed to Petitioner. Also,

a review of the United States Court of Federal Claims dismissal for "[r]elief from judgement will not be granted if substantial rights of the party have not been harmed by the judgement." Both court orders were obtained through fraud. Answers to the following three questions are crucial.

I. Whether, in a military pay and records correction case, when the Secretary of the Army publishes a final decision by directive following their investigation, and the US Army Human Resources Command publishes the official payment orders, is it possible for an unauthorized person or department within the Defense Finance and Accounting Services (DFAS) to refuse them, and deny pay? Is that action reviewable under the "arbitrary and capricious" APA standard?

II. Are there any limitations on a Federal Judge's precedence in cases of conflict of interest? Does absolute immunity apply when a judge acts criminally under the color of law and without jurisdiction? Are administrative actions taken to influence cases in favor of the government included in this definition?

III. In the process of recusal under 28 U.S.C. §455(a) would it be reasonable to question a federal judge's impartiality? When he not only allows an unauthorized attorney to forge an official document but fabricates court orders based on the forge document in relation to the proceeding pending before him.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), Petitioner states that the parties include:

1. Maxwell Jones, Plaintiff and Petitioner.

2. United States, Defendant and Respondent.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii).

- Jones, Maxwell, SSN AR20200005522, USARMY/ Army Board for Correction of Military Records (ABCMR). Award of Partial Relief

- Jones v. USA, No. 1:21-CV-00801, United States Court of Federal Claims (USCFC). Review and suit dismissed for lack of subject matter jurisdiction. Judgement entered February 24, 2022.

- Jones v. USA United States Court of Federal Claims (USCFC). Review and suit dismissed for rights have not been harmed. Judgement entered May 1, 2023.

- Maxwell Jones v. United States, No. 2023-1862, United States Court of Appeals for the Federal Circuit (CAFC). Appeal Affirmed, December 06, 2023

- Maxwell Jones v. United States, No. 2023-1862, United States Court of Appeals for the Federal Circuit (CAFC). Petition for rehearing and rehearing en banc. Petition denied, January 22, 2024

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PETITION FOR WRIT OF CERTIORARI

This case poses three questions that go to the very heart of the integrity and impartiality of our justice system. Petitioner, Maxwell Jones is a Master Sergeant in the US Army, with 23 years of honorable service, who was targeted, and erroneously discharged, later the erroneous discharge was revoked in its entirety. After the Secretary of the Army published their final decision. The Army Human Resources Command provided the financial relief and ordered petitioners DD214 be destroyed by burning or shredding, Petitioner was serving on an indefinite contract before the erroneous action took place. Petitioner pray petition is accepted; therefore, the following controversy could be rectified.

Following the Army Board for Corrections of Military Records (ABCMR) analysis of the petitioner's erroneous discharge. Petitioner filed a timely petition to the Department of the Army Suitability Evaluation Board, the ABCMR concluded that petitioner's discharge was unlawful and preventable. See According to the ABCMR, the evidence was beyond a preponderance of evidence, but the DASEB erred in denying petitioner's request. Considering this, the ABCMR recommended HRC revisit its decision. See; *Federal Court of Appeal for the Federal Circuit ECF N. 09, APPX No.02.* The ABCMR recommended that HRC provide petitioner with the opportunity to have the Quality Management (QMP) Board reconsider its decision. The Army Human Resource Command agreed to ABCMR's recommendation. In addition to revocation of petitioner's erroneous discharge, HRC also ordered the destruction of petitioner's DD214 destroyed by burning or shredding. *See; Federal Court of*

Appeal for the Federal Circuit APPX ECF No. 09, APPX No.05. Additionally, the HRC ordered petitioner to be added to active duty as a result of the erroneous discharge date. *See; Federal Court of Appeal for the Federal Circuit ECF No. 09APPX No.06.* Judge Loren A. Smith and the government's attorney Ms. Ebonie I. Branch cooperated extensively until the Fort Greg Adams (formally Fort Lee,) Army Military Pay Office devised a scandal to avoid them making payment, resulting in a continuous string of shocking abuse. The government's attorney Ms. Ebonie I. Branch and Army Litigation Attorney Mr. Christopher Cox (1) produced a plainly fraudulent ABCMR recommendation contrary to the original version published by the Secretary of the Army. See; Federal Court of Claims ECF No. 20, (2) Judge Loren A. Smith misleadingly fabricated a court order that coincided with the fraudulent document to assist the government in an unjust victory to dismiss the matter without making payment of petitioner back pay and allowances; (3) the government attorney, then falsely assigned blame to petitioner by placing negative information of sexual harassment documents within petitioner Human Resources file; (4) Judge Smith intentionally ignored factual documents issued by the Army that contradicted the DOJ's attorney theory; (5) Judge Smith permitted an unauthorized person from the Defense Finance and Accounting Services to intervene seventeen months after the ABCMR and HRC published their decision and place false claims on petitioner salary; (6) Judge Smith then permitted DFAS to initiate several erroneous debts, offsetting petitioner's salary as an intimidation tactic. (7) Judge Smith refused to apply the APA standard, instead allowed these actions, ignoring any response of petitioner (9) Judge Smith ignored all legal precedent and-

disregarded the rights of petitioner, acting with bias and prejudice towards petitioner.

Considering the totality of the fraudulent activity, petitioner moved to set aside the respondent's version of the ABCMR document under Rule 60(d)(3), alleging fraud on the court. Petitioners *USCFC, ECF 35* argued that the respondent committed fraud in the court by presenting misleading fraudulent evidence. Petitioner argued that the corrupted ABCMR document was not based on facts but on egregious action and false testimony. Petitioner asserted that the respondent intentionally defrauded the court. Petitioners sought to have the original case reinstated due to fraud. Judge Smith initially placed the matter on stay, then ignored the motion and dismissed the matter in favor of the government, alleging Plaintiff never pleaded Fraud on the Court. "Given the breadth and seriousness of the misconduct allegations leveled against the government's attorney, Judge Smith never considered recusing himself to avoid partiality and bias. Judge Smith should have recused himself from the case to ensure that his decisions were not influenced by any personal bias or conflict of interest. This would have allowed the court to proceed with its proceedings and make a decision that was fair and just. Nonetheless, Judge Smith continued to issue false court orders alleging the partitioner never addressed any fraud or misconduct. With no admission of responsibility or wrongdoing, the case was dismissed and awarded an unjust and fraudulent victory to the government.

On Appeal the US Court of Appeals for the Federal Circuit declined to consider whether the totality of the evidence amounted to fraud. Nor did the Appeal Court

determine, by Judge Smith fabricating Court orders, Judge smith purposefully awarded the government an unjust victory by abusing his authority and or discretion. According to the Appeals Court, "We cannot say that the Court abused its discretion." Omitting partitioner's entire brief, the Appeal's Court didn't even review the fraudulent behavior decision, which contradicts this Court's leading fraud-on-the-court case, Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944). The Appeals court ignoring the fact that Judge Smith refused to apply the APA arbitrary capricious standard, and mindfully allowed and unauthorize person from DFAS to place claims on over $100,000 of petitioner's salary, instead Judge Smith relied on a paper, seventeen months after the resolution was rendered, from Ms. Rebecca English falsely claiming petitioner was reinstated by the ABCMR despite, having the orders from the Army verifying, petitioner discharge orders were revoked, not reinstated, petitioner's DD214 destroyed. Instead Judge Smith allowed the respondent to litigate the forged ABCMR memorandum. To a fraudulent victory.

The reason petitioners were wrongfully discharged was the result of his own commanding general's fabrication of an entire issue. In addition, he was involved in extremist ideology, and even displayed a Nazi Flag in the lobby of the 80th Training Command School. Brigadier Stephen Iacovelli managed to have the petitioner discharged with no supporting documents, only an erroneous reprimand alleging sexual harassment. If the US Supreme Court decides to review this case, it will become crystal clear why the Army Human Resources Command revoked the egregious discharge (1) Brigadier General Iacovelli, relied on forged and falsified Army sworn statements, BG

Iacovelli had no counseling's, allegations and absolutely no documentation such as a notice of separation or any such information that could have possibly accused petitioner of any Army violations. Since BG Iacovelli did not exercise General Court Marshall Jurisdiction over petitioner, he was not authorized to permanently file the reprimand within petitioner's Official Permanent File (OMPF). Every petition filed by petitioner, including to the DASEB and ABCMR, were immediately denied. The egregious reprimand that petitioner received was simply permed in his file and he was erroneously discharged. A FOIA request was filed by petitioner in October 2023 seeking all information containing the signatures of the petitioners pertaining to the egregious discharge. As of today, April 14th 2024, petitioner has not received any information. There are many questions raised in this case that pertain to the heart of fair and impartial justice, whether they are old or upcoming. As a judge of the US Court of Federal Claims, Judge Loren A. Smith was appointed in 1985. It is astonishing that he would fail to recognize a forged version rather than the authentic one from the Secretary of the Army. It is a miscarriage of justice if, after the ABCMR and HRC publish their final determination in the matter, the government's attorney undermines the judicial process by interfering, then the court continues misconduct with a blatant disregard for the APA standard, by permitting an unauthorized DFAS employee to illegally claim over $100,000 from the petitioner's salary! This is unacceptable and the government should immediately act to rectify the situation. The court should also be held responsible for its actions and accountable for any damage caused by its unlawful decision. Finally, the government should ensure that the APA standard is followed in all cases. If the US Court of Federal Claims and the US Court of Appeals for

the Federal Circuit had given the matter a meaningful look, these deficiencies would have been noted. This is because it's all on the docket, unfortunately. As a result of the Appeals Court not reviewing the matter seriously but responding in a manner inconsistent with this Court's precedents, public confidence was undermined. This lack of review is exactly what has weakened the public's trust in the justice system. As a result, it is important to take these cases seriously and ensure fair outcomes. Certiorari is imperative.

The Appeals Court's decision in this case conflicts with the precedent set by the U.S. Supreme Court in "United States v. Johnson 481 U.S. 681 (1987)", which held that the military justice system must be fair, impartial, and independent to uphold public trust in the military. The Appeals Court decision also fails to uphold its own definition of abuse of discretion pertaining to violations of the APA standard. Axiom Resource v. U.S., 564 F.3d 1374 (Fed Cir. 2009) APA review is generally available after final agency action. 5 U.S.C. § 704; 5 U.S.C. § 706(1) (allowing interlocutory appeals when agency action was unlawfully withheld or unreasonably delayed); Lujan v. National Wildlife Federation, 497 U.S. 871, 882, 890 (1990). In this case, the Defense Finance and Accounting Service used a forged ABCMR recommendation issued by the respondent to claim jurisdiction over the petitioner's $100,000.

OPINIONS BELOW

Appendix A – ABCMR Partial Relief

Appendix B – USCFC Dismissal

Appendix C – USCFC Dismissal

Appendix D – US Court of Appeals for the Federal Circuit- Affirmed

Appendix E – US Court of Appeals for the Federal Circuit denied Hearing, Rehearing en banc

Appendix F – USCFC rejection of Petitioner Motion to Vacate Judgements for Fraud On the Court.

JURISDICTION

The United States Court of Appeals for the Federal Circuit issued its opinion affirming the decision of the United States Court of Federal Claims on December 06, 2023, after denying the Petitioner's Petition for Rehearing and Rehearing En Banc on January 22, 2024, the jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1254(1). For this Petition for Writ of Certiorari is timely.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

"Due Process" is guaranteed by Amendments Five and Fourteen, as well as a chance to be heard when the government makes a decision that denies these rights. According to Supreme Court Rule 10, the Court has "discretion" to hear or deny any case that is filed for a writ of certiorari. I pray that there are compelling reasons to grant the request presented in the questions.

STATEMENT OF THE CASE

A. Background

In January 2021, petitioner filed a lawsuit against the government in the Court of Federal Claims. It was alleged in the complaint that Petitioner had been wrongfully discharged from the Army. A general officer reprimand ("GOMOR") incorrectly included in petitioner's official personnel record resulted in this outcome. Appellant requested relief in the form of, (1) the judgement be entered against defendant to the maximum amount allowed by law, (2) that Petitioner's military records be corrected to remove the reprimand from my record, and correct all other records accordingly, (3) that the defendant restores all benefits of an Active-Duty Soldier until Petitioner is properly discharged, (4) that all travel fees be reimbursed according to Military Law to include dislocation allowance, and quarantine per-diem (5) that legal fees and costs expended in pursuit of the complaint be reimbursed (6) earned leave be reimbursed (7) granted all other relief the Court deemed proper. In June 2021, the Court of Federal Claims stayed appellant's case, and remanded the matter to the ABCMR, at supposably, the urging of the government, but no motion was ever filed for the remand. The respondent falsely alleged, petitioner's ABCMR original petition from October 2019, which had already been denied by the ABCMR in April 2020, remained under review.

In July 2021, the ABCMR, pursuant to the trial court remand, exonerated appellant, then granted appellant partial relief by removing the GOMOR from appellant's official personnel record, along with a recommendation

for HRC to reboard appellant's records for QMP, to determine if appellant should have been discharged due to the improper GOMOR alone. See; USCFC, ECF No. 15. In August 2021 HRC revoked appellant's discharge orders, revoked appellant's transition orders, and ordered appellant's DD214 be destroyed by burning or shredding. As a result, it was processed incorrectly. In addition, HRC published an Active Duty 440 order that returned appellant to service on August 1, 2020. Sometime in January 2022, approximately five months after the Army provided all relief, the (Government Counsel) Ms. Ebonie I. Branch In addition to, Army Litigation Attorney Mr. Christopher Cox were permitted by the trial court, to introduce a forged document alleging at the request of an unknown individual from HRC. The ABCMR board met again and changed the outcome from partial to full relief. Since the petitioner was already on active duty and had already PCS'ed to Fort Bliss, Texas from San Antonio, Texas, this would have been impossible. Due to the petitioner's already being on active duty, the board could not have met again to grant full relief, the respondent was unmindful of this, therefore thought she could evade justice. The date petitioner was issued Army orders versus the forged document of respondent, September 15, 2021, is easily verifiable. Judge Smith ignored the Army Orders for the same reason.

As a matter of fact, ABCMR's original relief and the government submission are identical. December 2022, seventeen months after the Army confirmed the relief, but not making payment under the official orders. The trial court then allowed Ms. Rebecca English, an unauthorized employee of the Defense Finance and Accounting Service (DFAS) to present an erroneous paper alleging they

had jurisdiction to sever appellant's relief, pursuant to the forged paper submitted by government counsel. The trial court then allowed the government to litigate both papers in the destruction of appellant's HR Records and Salary. Moreover, the Trial Court allows the respondent to supplement the record with a declaration from an Army paralegal. According to the paralegal, the respondent's forged document is duplicitous, and the petitioner's erroneous discharge was revoked-, as stated by the petitioner. When Judge Smith interprets the paralegal's words to assist the government, he erroneously credits the paralegal's statement to his decision to destroy petitioner's official military file. Therefore, Pursuant to the Scope of Judicial Review under the Administrative Procedures Act (APA), 5 U.S. Code § 706. it was appropriate for the petitioner to file an appeal. Therefore, petitioner petitioned the US Court of Appeals for the Federal Circuit on May 2, 2023. The circuit court failed to consider the relevant facts.

The Supreme Court stated in Camp v. Pitts, 411 U.S. 138, 142, 93 S. Ct. 1241, 36 L.Ed.2d 106 (1973). that "judicial review should focus on the already existing administrative record, not some new record made in the reviewing court." "Based on the record presented by the agency, the reviewing court applies the appropriate APA standard of review, 5 U.S.C. 706." Fla. Power & Light Co. v. Lorion, 470 U.S. 729, 743-44, *1380 105 S. Ct. 1598, 84 L.Ed.2d 643 (1985) (emphasis added). The purpose of limiting review to the record before the agency is to guard against courts using new evidence to "convert the `arbitrary and capricious' standard into effectively de novo review." Murakami v. United States, 46 Fed. Cl. 731, 735 (2000), 398 F.3d 1342 (Fed. Cir. 2005). Thus, supplementation of the record should be limited to cases

in which "the omission of extra-record evidence precludes effective judicial review." Here The Court of Federal Claims received all the official documents from the Army that the erroneous discharge was revoked in its entirety, but still relied upon a clearly forged paper from the government's attorney and an untimely paper from an unauthorized person of DFAS to base the decision.

1. Fraud on The Court

In accordance with 10 U.S.C. 1552(a)(4)(A), the ABCMR's determination is final and conclusive on all officers of the United States, except for those procured by fraud. HRC was recommended to reconsider reboarding plaintiff egregious discharge after partial relief was provided by the Secretary of the Army. Since the discharge was egregious with cruel malice, HRC decided to revoke it in its entirety, including burning or shredding the plaintiff's DD214. There can be no legal discharge without a DD214, and defendant's claims of reinstatement without discharge documents are indisputable unreachable without a DD214. Ms. Ebonie I. Branch, government attorney and officer of the court, presented to the court a forged copy of the Army board for correction of Military Records recommendation. This egregious act by the respondent would change the entire outcome of the relief provided to plaintiff by HRC. To ensure the court ruled in the government's favor, Ms. Branch testified that the forged document was authentic. A court order was issued on February 16, 2022, recording Ms. Branch's testimony. See USCFC (ECF No. 21) According to the court order, Ms. Branch was also required to file a proposed order in support of her official statement. In her capacity as a court officer, Ms. Branch was responsible for telling the

truth, but instead, she wrote the proposed order knowing the document was forged. See Superior Seafoods v. Tyson Foods, Inc., 620 F.3d 873 (8th Cir. 2010) holding its "fraud on the court when "[t]he courts entered its consent judgment based on the written document provided by the parties after extensive negotiation" and explaining that "the court was not required to look behind or interpret that written document." DFAS would later join forces with the government's attorney. Because DFAS is an expert on ABCMR directives, they knew the law well enough to allege that the forged ABCMR recommendation was an Army Secretary directive. In accordance with 32 C.F.R. 581.3(7) and 10 U.S. Code § 1552 empowers DFAS to calculate a reinstated servicemember's salary offset by their civilian salary at the directive of the Secretary of the Army. Army Military Pay Offices handle revoked discharges, not the Defense Finance and Accounting Service. DFAS handles all ABCMR reinstatement, and their General Counsel, Mr. Dwight Creasy, knew he was dealing with a forged recommendation rather than an official directive. In fact, the government's attorney publishes a letter signed by Ms. Rebecca English of DFAS detailing the erroneous actions of DFAS. Ms. Audrey Davis, the senior director of DFAS, had her attorney, Mr. Dwight Creasy, send petitioner an email informing him that her decision was final, and she would be represented by Ms. Branch, she also sent a DFAS attorney to the December status conference who also blatantly lied and testified DFAS had a Secretary of the Army directive, The respondent forged document is not a directive but a forged clone version of the corrections boards recommendation. See, Cleveland Demolition Co. v. Azcon Scrap Corp., 827 F.2d 984 (4th Cir. 1987) Noting that a verdict "may be set aside for fraud on the court if an attorney and a witness conspire to present perjured

testimony. "Also see Bulloch v. United States, 763 F.2d 1115 (10th Cir. 1985) Shows the district court's order reversing a judgment entered in the United States' favor due to a fraud perpetrated by the United States. Also see; Davenport Recycling Associates v. C.I.R., 220 F.3d 1255 (11th Cir. 2000) An examination of elements of fraud on the court in civil litigation and the reasoning that fraud on the court "vitiates the court's ability to reach an impartial disposition of the case" as it involves "an unconscionable plan or scheme aimed at improperly influencing the court's decision". See Fox ex rel. Fox v. Elk Run Coal Co., 739 F.3d 131 (4th Cir. 2014) holding that fraud on the court requires "intentional plot to deceive the judiciary." Demjanjuk v. Petrovsky, 10 F.3d 338 (6th Cir. 1993) concluding that intentional fraud by an officer of the court amounts to fraud on the court. Members of a uniformed service on active duty are entitled to the basic pay of the pay grade to which they are assigned or distributed under the Military Pay Act. 37 U.S.C. § 204(a). Plaintiff's discharge order was revoked by HRC, and plaintiff was on active duty stationed in San Antonio, TX with the rank of master sergeant. Consequently, since petitioner serves under an indefinite contract, he is entitled to active duty pay until he is regularly retired. See; Womer v. United States, (1949) 84 F. Supp. 651 (Fed. Cl. 1949)

2. Illegal Exaction.

In accordance with Army Regulation 600-4, the HRC Commanding General may remit or cancel any government debt due to an injustice or hardship. Since HRC revoked plaintiff discharge orders, the government waived its right to collect, because the severance pay was contents of the revoked action. A rescinded order still

has funds left. The contents of an order are completely revoked when it is revoked. Revoked orders cannot be enforced. See; AR 600-8-105. Plaintiff's severance pay was also illegally severed by the defendant in addition to his active-duty salary. DFAS then illegally severed over $6000.00, alleging petitioner had a government debt associated with the same revoked action. Even though the government waived its right to collect. By law, severance pay cannot be deducted from salaries. Severance pay can only be deducted from future retirement payments. See; McCord v. United States 943 F.3d 1354 (Fed. Cir. 2019) 10 U.S.C. § 1203. Holding Severance pay must be recouped from military retirement pay unless the government waives its right to recoupment. It was the government's attorney who forged documents that caused these illegal actions. Although DFAS was not authorized to calculate plaintiff's salary, DFAS admitted plaintiff was due $92,556.00 in salary. Because plaintiff's orders stated plaintiff was stationed in San Antonio, TX, the basic allowance for housing should have been calculated based on that geographic location. Again, DFAS erred in their calculations, Plaintiff's salary alone exceeded $100,000.00 with interest. 37 U.S.C. 204(a) guarantees the salary of a service member. According to 37 USC 1005, arrears cannot exceed two months. See; Aerolinas Argentinas v. United States, 77 F.3d 1564, 1572-73 (Fed. Cir. 1996) (citing Eastport, 178 Ct. Cl 605). Explaining illegal exaction by government officials when based on an asserted statutory power. Also see Norman, 429 F.3d at 1095 (quoting Cyprus Amax Coal Co. v. United States, 205 F.3d 1369, 1373 (Fed. Cir. 2000)).

Holding exaction itself provides, either expressly or by 'necessary implication,' that 'the remedy for its violation entails a return of money unlawfully exacted.

3. US Court Of Federal Claims Proceedings, and Judicial Errors

The Government's attorney, (Ms. Branch) litigating a Forged document the respondent, on February 22, 2022, filed a Motion to dismiss Rule 12(b)(1) Judge Smith then dismissed the matter on February 24, 2022, two days later, preventing petitioner from responding to the respondent's motion, stating, "neither party continues to have a legally cognizable interest in the outcome of this litigation." Judge Smith states "Later in a revised decision, the ABCMR vindicated plaintiff as he provided evidence that clearly exonerates him that were a clear injustice."

Based on this statement alone, it can be concluded that Judge Smith was fully aware that the respondent was litigating the forged recommendation. To give the impression that Petitioner filed for additional relief and the ABCMR granted full relief, he concocted the court order to make the redundant forged memorandum appear authentic. The respondent told the appeal court it was an unknown person from HRC who requested additional relief, as Petitioner stated previously. The ABCMR deleted the erroneous reprimand, and HRC revoked the entire egregious action, ordering the Military Finance Office to reinstate petitioner to active duty as of the erroneous discharge date of August 1, 2020. DFAS had no legal basis for getting involved since the action had been revoked, not reinstated. The Army Finance Office was instructed to correct the records to reflect the revocation of the action. In addition, it was required to update petitioners' pay and benefits accordingly. They were also required to provide petitioners with back pay and other monetary benefits that was earned. Instead, they convinced DFAS to get involved.

On May 1, 2023, Judge Smith published information stating petitioner had received back pay. Judge Smith uses an erroneous rule of law to justify, quoting Dynacs Eng'g Co v. United States, 48 Fed. CI. 240,241-42 (2000) [r]elief from judgement will not be granted if the substantial rights of the party have not been harmed by the judgement." Being that Judge Smith did not apply the APA standard, as any other government agency is subject to, DFAS fraudulently escaped with over $100,000 of Partitioner's salary. APA arbitrary capricious standard was not applied by the trial court, so Judge Smith crafted the court order to justify the government's forged document. Procedural errors are generally considered harmless if they do not significantly affect the outcome of the case. Wagner v. U.S., 365 F.3d at 1361; see also Christian v. United States, 337 F.3d at 1338, 1342 (Fed. Cir. 2003). However, some procedural errors cannot be excused as "harmless" because misconduct makes it impossible for a reviewing body to estimate their misconduct impact. Rogers v. United States, 124 Fed. Cl. 757, 767 (2016) (citing Wagner v. U.S., 365 F.3d at 1362). It is such an error to violate a regulation that ensures a service member's right to statutory pay.

Judge Smith cite DODFMR Volume 7A ch 1, 316 affording DFAS the authority to sever plaintiff's salary. This is an erroneous rule of regulation. As stated previously and petitioner reiterate. DFAS would be able to claim jurisdiction if the ABCMR had directed a reinstatement, but as the petitioner was awarded partial relief, and the respondent's forged recommendation did not give DFAS any legal authority to alter the ABCMR's original directive.

Whether Ms. Branch was unmindful or not Judge Smith ensured it was her that would be held with perjury, because she verified the forged document, and Judge Smith immediately published a court order saying so. MS. Branch continued to litigate the forged document after she realized it was forged, in which she should have known the Army would not support her when she's caught red handed. This is the reason Judge Smith allowed the fraud to overwhelm this case.

The respondent worked extensively to corrupt petitioner's Official Personnel File (OMPF) and allow DFAS to escape with over $100,000 of petitioner's salary. A PCS order was issued stating that the erroneous discharge was revoked, and the Army published financial codes for the payment to be made. The Army removed Ms. Branch forged document from petitioner's OMPF, and published another PCS order stating that the erroneous discharge was revoked. These official documents were not even acknowledged by the trial court or the appeals court. To make a reasonable decision, the [trial] judge must consider a variety of factors. "Abuse occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them." Independent Oil and Chemical Workers of Quincy, Inc. v. Procter & Gamble Mfg. Co., 864 F.2d 927, 929 (1st Cir. 1988); Aoude v. Mobil Oil Corp., 892 F.2d 1115, 15 Fed. R. Serv. Fraud on the court can take many forms because corrupt intent knows no stylistic boundaries.

4. US Court Of Appeals for the Federal Circuit Judicial Error.

The Appeals Court failed to analyze the evidence. They ensured they did not offer any opinion about Judge Smith's actions. Despite admitting her misconduct, the respondent asserted in her brief that Judge Smith permitted her to perform reckless in court. Rather than relying on all the evidence on the docket to make his decision, Judge Smith relied on untimely information provided by the respondent after the fact. Judge Smith issued court orders fraudulently, which is clear evidence. The ABCMR made their decision based on the facts, they knew petitioner was framed, an stated so in their decision. The US Court of Appeal labels petitioner's appeal as a conspiracy theory. The Army removed Ms. Branch Forged Document and deleted the restricted record. The Army published another PCS order reiterating the action was revoked and the Army also published financial codes for the payments to be made. As a response to the ABCMR decision dated 23 July 2021, the Army published this language in the PCS order. The respondent forged a document was dated 15 September 2021. When the Army itself refuses to support a Department of Justice attorney who for no legitimate reason litigates a forged government document to destroy an American Soldier's personnel file. In addition, it assists DFAS in a reckless scandal involving the illegal collection of well over $100,000 of a Soldier's salary. That is no conspiracy on behalf of the petitioners. The trial court understood the forged recommendation was not accompanied by the Secretary of the Army Directive.

REASONS FOR GRANTING CERTIORARI

This was an easy case for the Court to decide. After remand, ABCMR published partial relief, which simply means they removed the frame up GOMOR and did not direct reinstatement. HRC revoked the egregious discharge. Following the revocation, HRC forwarded the official orders to make the payment. Judge Smith produced the court order that justified their actions when the respondent presented the forged ABCMR, DFAS joined forces with the respondent, and the respondent made a presentation of the forged ABCMR recommendation. In Judge Smith's February 24, Court Order he states, "Later in a revised decision, the ABCMR vindicated plaintiff as he provided evidence that clearly exonerated him or shows that there was a clear injustice." Defendant's forged document can be accessed through this statement alone. DA form 149 is required by 10 USC 1552, and certainly the court would have one on file if Petitioner requested additional relief, as stated in the ABCMR July 23, 2021, decision, the corrections board state; "The Board agreed that the applicant counsel demonstrated by a preponderance of evidence that a procedural error occurred that was prejudicial to the applicant, and his counsel demonstrated that the contents of the GOMOR are substantially incorrect that would support removal. Based on the facts and circumstances within the record the board determined there is sufficient evidence to grant partial relief." Therefore, petitioner had no reason to request for any additional relief, because petitioner was already serving on Active duty long before the respondent started litigating her forge document, in fact petitioner had already PCS from San Antonio, TX to Ft. Bliss TX before she filed her motion to dismiss.

The fraudulent investigation Brigadier General Stephen Iacovelli alleged he used as a basis for his actions was saved as the ABCMR published the absolute minimum verbiage to prevent BG Iacovelli, and those who assisted him, from receiving severe punishment. It was the respondent who selected the nastiest language from BG Iacovelli's GOMOR and placed it in the petitioner's restricted personnel file. While the Army removed the file, several years passed, causing petitioner to miss selection for the US Sergeant's Major Academy. The forged document had to be placed in petitioner's file, according to Judge Smith. Since Judge Smith alleged, petitioner had not alleged fraud, and the Appeals Court Affirmed, an additional motion to vacate for fraud on the court was filed by petitioner on March 20, 2024. After failing to place the motion on the docket, Judge Smith rejected it on April 09, 2024. With his reasoning being "There are no provisions in the rules, and the mandate issued by the CAFC on 1/29/2024, he changed the title to "Motion to Vacate Judgements", leaving out "fraud on the court."

The US Court of Appeals for the Federal Circuit, Affirmed this court May 1, decision. Consequently, the court did not preserve any of these issues within their mandate. The Appeals court resolution was "we cannot say that the court abused its discretion by denying Rule 60(b) relief." Despite the mandate rule's "mandatory "nature, some issues are not covered. The court can revisit issues decided on appeal or covered by a mandate due to fraud on the court. When subsequent factual discoveries or changes to the law occur, the mandate may not preclude district court reconsideration. Invention Submission Corp. v. Dudas, 413 F.3d 411, 414-15 (4th Cir. 2005) (finding reconsideration of an appellate determination appropriate

if there is a dramatic change in law, significant new evidence, or blatant error that would result in serious injustice); EEOC v. Sears, Roebuck & Co., 417 F.3d 789, 796 (7th Cir. 2005) (finding reconsideration of an appellate determination appropriate where there has been an intervening change in law). Mandate rules are not rigid. United States v. Bell, 988 F.2d 247, 251 (1st Cir. 1993). According to the latest developments, government misconduct has gone even deeper than this matter. There is no principle of law or logic that prohibits a Rule 60 motion. Hazel- Atlas was concluded by this Court. As exemplified by the decision here that allows individuals to act recklessly in fraud, confusion has crept into lower-court cases in the ensuing decades. It undermines public confidence in the judicial system and is contrary to precedent and common sense. This has resulted in a need for clarity in the courts about what constitutes fraud. It is important to ensure that fraud is clearly defined and that individuals are not able to take advantage of loopholes in the system. This is essential for upholding the integrity of the legal system. Herring v. United States, 424 F.3d 384, 390 (3d Cir. 2005) (defining fraud on the court as "(1) an intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) that in fact deceives the court," and the underlying fraud must be "'egregious conduct'"); Aoude v. Mobil Oil Corp., 892 F.2d 1115, 1118 (1st Cir. 1989) Some circuits suggest fraud on the court. Typically involving after- discovery fraud, this case involved a tirade of fraud. Hazel-Atlas, 322 U.S. at 250, where the before-discovered Both fraud and fraud discovered afterwards constitute fraud on the court. See Great Coastal Exp., Inc. v. Int'l Bhd. Teamster, 675 F.2d 1349, 1357 (4th Cir. 1982)

The judicial disqualification statute provides that "any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. §455(a). Congress adopted this standard in 1974 "to clarify and broaden the grounds for judicial disqualification and to conform with the recently adopted Code of Judicial Conduct, Canon 3C." Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 858 n.7 (1988); see also Code of Conduct for United States Judges, Canon 3C (1) (2014) ("A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned."). As this Court has explained, "the very purpose of §455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." Liljeberg, 486 U.S. at 865 Accordingly, it does not matter whether a judge has actual prejudice or bias against a party. Rather, the question is whether "the public might reasonably believe" the judge was partial or biased. In conducting that inquiry, "all the circumstances" must be considered. Sao Paulo State Federative Republic of Braz. v. Am. Tobacco Co., 535 U.S. 229, 232 (2002).

CONCLUSION

Petitioner, prays for a resolution.

MAXWELL JONES
Petitioner, Pro Se
24331 S. Newcastle Bay Trail
Spring, TX 77389
(717) 601-9743
maxwell1m18@yahoo.com

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