

No. 24 - 5198

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SUPREME COURT, U.S.

**IN THE
SUPREME COURT OF UNITED STATES**

IN RE: Mawule Tepe

Petitioner,

On Petition for Writ of Mandamus
To The United States Court Of Appeals for the Sixth Circuit,
and to the United States District Court for Eastern District of Tennessee

PETITION FOR WRIT OF MANDAMUS

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1 Does U.S. Magistrate Rebecca Rutherford have the authority (i) to transfer the case *sua sponte* to EDTN (ii) without the court seal, (ii) before the process service upon Defendants IRS and United States is completed and (iii) without giving the opportunity to Parties involved to be heard in violation of the due process under the Fifth Amendment?

2 Can the United States Court of Appeals for the Sixth Circuit (or SCCA), the U.S. District court for the Eastern District of Tennessee (or EDTN) and their respective judges involved in the case *Tepe v. Corker et al.*, no. 3:23-cv-00423-RJC-DCK preside over a case they have a conflict of interest in the outcome of, and can they be a Judge at their own trial in violation of the due process under the 5th Amendment?

3 Can EDTN deprive Plaintiff (Petitioner) (or Tepe) of his Sixth Amendment Rights of accessing the court, to challenge and to confront the opposing Parties through unconstitutional restriction and sanction despite the fact that Plaintiff did not give up on his Sixth Amendment Rights?

4 Can SCCA dismiss an appeal without calendaring the case for a briefing and without holding a hearing to permit the Appellant to be heard in violation of the due process clause under the Fifth Amendment, for retaliatory purpose?

PARTIES TO THE PROCEEDING

1. Petitioner Mawule Tepe

The Petitioner Mawule Tepe (“Tepe”) is a Self-Represented Litigant Pro Se whose 2022 Income Tax Refund was unconstitutionally and arbitrarily seized by Internal Revenue Service (or IRS). He is Plaintiff in the lower courts. As Plaintiff filed a lawsuit against IRS and United States before the U.S. District Court for the Northern District of Texas at Dallas (or NDTX), the case was unconstitutionally transferred to EDTN where Petitioner cannot litigate his case since he was unconstitutionally restricted for retaliatory purposes.

2. The respondents in this Petition are SCCA, EDTN, Honorable Appellate Judge Ronald Lee Gilman, in his SCCA Judge and personal positions, Honorable U.S. Magistrate Judge Christopher H Steger, in his EDTN Magistrate Judge and personal positions, Honorable U.S. District Judge Clifton L. Corker, in his EDTN District Judge and personal positions.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, Tepe states that he is not a corporation.

TABLE OF CONTENTS

Question Presented	1
Parties to the Proceedings	2
Corporate Disclosure	2
Table of Content.....	3
Table of Authorities	4 – 5
Opinions Below	5
Jurisdiction and Relevant Constitutional and Statutory Provisions.....	5
Judicial Notice to the Court	6 – 7
Relevant Legal Provisions.....	7
Rule 20.1 Statement	7 - 9
Statement of Facts and Procedural Background	9 - 10
Standard Review.....	10 - 11
Reason for Granting the Writ & Petition for Declaratory Statement	11 - 24
- This Case involves Tepe’s Constitutional Due Process Rights	
- Nature of the Relief Being Sought	
Conclusion	24 - 25
Appendix Index:	
Case Transfer Order issued by by NDTX	APENDIX A
Process Service upon Defendants IRS and United States	APENDIX B
Order and Judgment issued by SCCA	APENDIX C
Sanction and Restriction Order issued by EDTN	APENDIX D

TABLE OF AUTHORITIES

CASES

Cheney v. United States Dist. Court, 542 U.S. 367, 380 (2004).

Roche v. Evaporated Milk Ass'n, 319 U.S. 21, 26 (1943)

Coffin U. United States, 156 U.S. 432 (1895).

Schutter v. Herskowitz, Civil Action No. 06-1846 (RMC), 2007 WL 1954416, at *6 n.3 (D.D.C. July 5, 2007).

Omni Capital Int'l v. Rudolph Wolff & Co., Ltd., 484 U.S. 97, 104 (1987)

[*Aetna*] *Insurance Company vs. Hallock* 73 U.S. 556 (1869)

In re Murchison, 349 U.S. 133, 136 (955).

Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 821-22 (1986)

Marshall v. Jerrico, Inc., 446 U.S. 238, 242 (1980);

Withrow v. Larkin, 421 U.S. 35, 46-47 (1975);

Ward v. Viii. of Monroeville, 409 U.S. 57, 61-62 (1972);

Tumey v. Ohio, 273 U.S. 510, 523 (927);

See *Schutter v. Herskowitz*, Civil Action No. 06-1846 (RMC), 2007 WL 1954416, at *6 n.3 (D.D.C. July 5, 2007).

Pennoyer v. Neff, 95 U.S. 714, 732-733 (1878).”

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)

Illinois vs. Allen Court: U.S. Date published: Mar 31, 1970, 397 U.S. 337 (1970), 90 S. Ct. 1057,

Ryland vs. Shapiro, 708 F.2D 967, (5TH Circuit, 1985).

Huffman v State, 813 So. 2d 10.

Allstate Ins. Co. v Kaklamanos, 843 So. 2d 885

Statutes

28 U.S. Code § 1651(a)

United States Supreme Court Rules

Rule 20.1

U.S. Const. Amend. V

U.S. Const. Amend. VI

Barron's Legal Dictionary, 5th Edition, Page 357

OPINIONS BELOW

SCCA has its Deputy Clerk Kelly L. Stephen dismissed the appeal for retaliatory purpose since Tepe filed a lawsuit against it, and SCCA failed to schedule and to calendar the appeal for a briefing and a hearing in violation of the due process clause under the Fifth Amendment. The right to be heard is guaranteed under the Fifth Amendment but SCCA failed to take it into consideration.

**JURISDICTION AND RELEVANT
CONSTITUTIONAL AND STATUTORY
PROVISIONS**

The All Writs Act, 28 U.S. Code § 1651(a), provides: "The Supreme Court and all courts established by the act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

Pursuant to Supreme Court Rule 20, Supreme Court's inherent power, 28 U.S. Code § 1651, Petitioner, Mawule Tepe, respectfully files this petition: (i) to compel EDTN and SCCA not to exercise jurisdiction over the case, (ii) to recuse Honorable U.S. District Judge Clifton L Corker and Honorable U.S. Magistrate Judge Christopher H Steger, (iii) to request the disqualification of EDTN and SCCA for lack jurisdiction; and (iv) to vacate the case's transfer proceeding as well as sanctions and restriction order issued by EDTN as void and null.

JUDICIAL NOTICE TO THE COURT

Petitioner Mawule Tepe asks the Court to take judicial notice of the fact that he is without counsel, is not schooled in the law and legal procedures, and is not licensed to practice law. Therefore his pleadings must be read and construed liberally. See *Haines v. Kerner*, 404 US at 520 (1980); *Birl v. Estelle*, 660 F.2d 592 (1981).

In a recent cases, the U.S. Supreme Court has issued a ruling and granted a consideration of Pro Se Litigant filing who has filed 150 pages handwritten documents. In the ruling, the court said:

“ ... We now consider whether respondent's complaint states a cognizable 1983 claim. The 150 pages handwritten document is to be liberally construed. As the Court unanimously held a pro se complaint, "however in-artfully pleaded," must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Id.*, at 520 521...”

Citing *Haines v. Keaner, et al.* 404 U.S. 519,92 s. Ct. 594,30 L. Ed. 2d 652. See also *Estelle, Corrections Director, et al. v. Gamble* 29 U.S. 97, 97 S. Ct. 285, 50 L. Ed. 2d 251.

Furthermore, Petitioner Mawule Tepe believes that this court has a responsibility and duty to protect his constitutional and statutory rights. See *United States v. Lee*, 106 US 196,220 [1882]. Before taking office, Federal Judges always take oath to support and to defend the U.S. Constitution, and to carry out the duty of court lawfully and properly, and to respect the constitutional rights of U.S. citizen. "It is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon." (*Boyd v. United States*, 116 U.S.616, 635). Federal Judges have the responsibility to respect and protect persons from violations of federal constitutional rights "See. *Goss v. State of Illinois*. 312 F. 2d 257 - Court of

Appeals. 7th Circuit 1963. Seeing that Petitioner's fundamental Rights are violated, the Supreme Court has duty, right and authority to protect and to restore Petitioner in his constitutional rights.

RELEVANT LEGAL PROVISIONS

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. The Due Process Clause of the U.S. Const. Amend. V: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.. "

II. The U.S. Const. amend. VI: The Sixth Amendment to the U.S. Constitution guarantees the right to obtain evidences, to confront and to challenge the opposing parties, and to equal access to the court.

RULE 20.1 STATEMENT

There is an exceptional circumstance that mandates the issuance of the writ sought as Petitioner Tepe in this specific matter. As detail below, Tepe as Petitioner Pro Se has been deprived of his due process rights and denied access to the court by EDTN, and SCCA failed to remediate the action for retaliatory purpose.

The case was originally filed before the United States District Court for the Northern District of Texas at Dallas ¹ (or NDTX) and was unconstitutionally transferred to EDTN², by the

 1 See Case *Tepe v. IRS et al.*, case no. 3:23-cv-02568-K-BT

2 See Case *Tepe v. IRS et al.*, case no. 1:23-cv-00286-DCLC-CHS

Magistrate Judge who not only lacked authority to transfer or to dismiss pursuant to 28 U.S.C. § 636(b)(1)(A) and 28 U.S. Code § 1404, but also because the process services were not completed.

Besides this, before transferring the case to EDTN, NDTX is aware that Tepe cannot litigate his case at EDTN since he is under unconstitutional sanctions and restriction at EDTN, but NDTX transferred the case anyway in violation of Tepe' Sixth Amendment right. As presented, the case's transfer infringed upon Tepe's fundamental rights under the Fifth and Sixth Amendment.

To seek justice, Tepe appealed the case's transfer before Fifth Circuit Court of Appeal (or FCCA) that unconstitutionally failed to redress the issue claiming it lacked jurisdiction, then Tepe filed an appeal before SCCA to have the case's transfer order reversed. However, SCCA dismissed the appeal without scheduling a briefing or calendaring the case for a hearing for retaliatory purpose in violation of the due process.

As presented, the procurement of subject matter jurisdiction of NDTX, EDTN, FCCA and SCCA has infringed upon Tepe's constitutional rights under the Fifth and Sixth Amendment, and there is no option left to Tepe than seeking a redress before the U.S. Supreme Court. Therefore, Tepe pray the U.S. Supreme Court:

- (1) to vacate the unconstitutional case's transfer order, and to ask NDTX to retain jurisdiction or to mandate FCCA or SCCA to vacate this latest order;
- (2) to vacate the unconstitutional sanction and restriction order that is pending against Tepe before EDTN, or to mandate SCCA & EDTN to vacate this latest order;
- (3) to mandate the recusal of Honorable U.S. District Judge Clifton L Corker and Honorable U.S. Magistrate Judge Christopher H Steger of EDTN who are unconstitutionally hindering the progress of Tepe's cases because not only they have a

case pending against them and they cannot be a judge at their own trial, but also because they infringed upon Tepe's Fifth and Sixth Amendment rights,

**STATEMENT OF PERTINENT FACTS,
PROCEDURAL BACKGROUND**

On November 20, 2023 Tepe filed a complaint against Defendants Internal Revenue Service and United States, and Summons were issued the same day and the process service was unfolding, and both Defendants were not even served with a copy of the complaint and the summons when, on November 29, 2023, Honorable U.S. Magistrate Judge Rebecca Rutherford unlawfully issued an order transferring the case to the Southern Division Eastern District of Tennessee without giving the opportunity to Tepe to clarify the ground upon which he filed the case before NDTX.

When transferring the case, Honorable U.S. Magistrate Judge Rebecca Rutherford highlighted the fact that Tepe is under restriction at EDTN but still transferred the case knowing Tepe will not be able to litigate his case at EDTN due to the unconstitutional restriction. She stated:

Indeed, Tepe is very familiar with the Eastern District of Tennessee, as he has been enjoined from filing any new lawsuit in that district without first seeking and obtaining that court's permission. See Order at 6, Doc. 74 in Case No. 1:22-cv-275 (E.D. Tenn.) (finding Tepe demonstrated a "pattern of repetitive and vexatious litigation" and "nothing less than an injunction will likely be adequate to prevent future frivolous and vexatious filings in this Court.").

Since Honorable U.S. Magistrate Judge Rebecca Rutherford has a substantial knowledge that Tepe is under unconstitutional sanctions but she still carried out her action, she violated Tepe's Sixth Amendment by not allowing him to litigate his case at NDTX. She also failed to give an opportunity to Tepe to have a say before the case's transfer.

Tepe's right to be heard before the case's transfer implementation is absolute under the 5th Amendment. However, Honorable U.S. Magistrate Judge Rebecca Rutherford disregarded it and infringed upon it and deprived Tepe of his due process rights. Therefore, for the precedent reasons, Tepe respectfully requests an order vacating the case transfer, and a mandate to EDTN to transfer the case back to NDTX.

Upon the transfer of the case, on December 12, 2023, Tepe filed an appeal and demanded the FCCA to vacate the order on constitutional bases. However, FCCA dismissed Tepe's appeal, then Tepe filed an appeal before SCCA that dismissed the appeal on April 24, 2024 without calendaring the case for a hearing in violation of Tepe's due process rights. The appeal was dismissed by the Deputy Clerk Kelly L. Stephen (not a Judge) in violation of the due process. See *Tepe v. IRS et al.*, case no: 24-5261, Document: 7-8 Filed on 04/24/2024. (APENDIX C)

STANDARD OF REVIEW

The Supreme Court has the power to "issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law." See 28 U.S. Code § 1651(a). To obtain a writ of mandamus, the applicant must demonstrate that he has "no other adequate means to attain the relief he desires." See: *Cheney v. United States Dist. Court*, 542 U.S. 367, 380 (2004).

The applicant must then demonstrate that the applicant's right to the writ is "clear and indisputable." Finally, the applicant must demonstrate that the writ is otherwise appropriate under the circumstances. A writ is appropriate in matters where the applicant can demonstrate a "judicial usurpation of power" or a clear abuse of discretion. See also *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943) ("The traditional use of the writ in aid of appellate jurisdiction both at common

law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.").

REASONS FOR GRANTING THE WRIT

This Case Involves Tepe's Constitutional Due Process Rights under the Fifth Amendment and Tepe's rights to access the court under the Sixth Amendment to freely litigate his case.

This case flies in the face of one of the basic tenets of the American legal system - that persons are entitled to a due process. This is well settled by the Supreme Court as early as 1895. See: *Coffin U. United States*, 156 U.S. 432 (1895). This fundamental right is engrained in the Due Process Clause of the Fifth Amendment, which state that no person shall be deprived of life, liberty, or property without due process of the law.

As presented below, the procurement of personal and subject matter jurisdiction of NDTX has infringed upon the 5th and 6th amendment rights of Tepe, and for retaliatory purpose, SCCA failed to remediate the issue.

1. Honorable U.S. Magistrate Rebecca Rutherford of NDTX lacks the authority (i) to transfer the case sua sponte to EDTN before the process service upon Defendants IRS and United States is completed (ii) without giving the opportunity to Parties involved the case to be heard in violation of the due process under the Fifth Amendment, and (iii) without the court seal. (See a copy of Transfer's Order in APENDIX A).

In the case *Scott v. N.C. Dep't of Revenue*, Civil Action No. 3:13-CV-00294-MOC-DSC dated 2014-03-25, the court states that ...[...] A court cannot exercise personal jurisdiction over a defendant until he has been served with a summons. *Omni Capital Int'l v. Rudolph Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987). Actual notice of a lawsuit is insufficient to confer jurisdiction over

the person of a defendant, and improper service of process, even if it results in notice, is not sufficient to confer personal jurisdiction. *Bowman v. Weeks Marine, Inc.*, 936 F.Supp. 329, 336-37 (D.S.C. 1996) (citing *Mid-Continent Wood Prods., Inc. v. Harris*, 936 F.2d 297 (7th Cir.1991)), abrogated on other grounds by, *Murphy Bros., Inc. v. Michetti Pipestringing, Inc.*, 526 U.S. 344 (1999))...[...].

As presented in APENDIX A, Honorable U.S. Magistrate Rebecca Rutherford issued the case transfer order on November 29, 2023, and as presented in APENDIX B, Defendant IRS was served on December 6, 2023 and Defendant United States was served on November 29, 2023. This shows that the process service was not completed before the case was transferred to EDTN. Thus, the procurement Personal Jurisdiction of NDTX has infringed upon Due Process right of Plaintiff/Petitioner (Tepe). The due process required Parties to be served before the court exercises its personal jurisdiction; however NDTX failed to follow the due process clause. Therefore, the case's transfer order is void and null and should be reversed.

In *Tingler v. Marshall*, 716 F.2d 1109 (6th Cir. 1983), the Sixth Circuit Court of Appeals held that a district court could not *sua sponte* dismiss a (“a paid”) complaint on the merits before it is served on the defendants and without prior notice to the plaintiff. Instead, the Sixth Circuit Court of Appeals required that: “a district court faced with a complaint which it believes may be subject to dismissal must: (1) allow service of the complaint upon defendants; (2) **notify all parties of its intent to dismiss the complaint**; (3) **give the plaintiff a chance to either amend his complaint or respond to the reasons stated by the district court in its notice of intended *sua sponte* dismissal**; (4) give the defendant a chance to respond or file an answer or motions; and (5) if the complaint is dismissed, state its reasons for dismissal.” See 716 F.2d at 1112.

As presented, before dismissing, or disposing or transferring a case, it is required that the process service must be completed first, and Parties being given an opportunity to respond. However, in this case, despite a clear evidence on the docket that the process service was not completed, and the opposing Parties have not been served in order for them to respond, and Plaintiff is not given a chance to express himself on the venue, Hon. U.S. Magistrate Judge Rebecca Rutherford transferred the case in absence of Personal Jurisdiction. As presented, the procurement of personal jurisdiction of NDTX infringed upon the due process rights of Tepe (Plaintiff/Appellant/Petitioner). Therefore, Tepe respectfully requests the reversal of this latest order due to lack of personal jurisdiction, inconsistency with the procedural due process under the Fifth Amendment, and abuse of discretion and power.

Furthermore, under 28 U.S.C. § 636(b)(1)(A) Hon. U.S. Magistrate Judge Rebecca Rutherford lacks authority to dismiss or to transfer the case.

According to 28 U.S.C. § 636(b)(1)(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

As presented, a court may transfer a case *sua sponte*. However, the transfer have to be done by the presiding U.S. District Judge. Under the 28 U.S.C. § 636(b)(1)(A), a magistrate judge lacks authority or subject matter jurisdiction to dismiss, or to dispose or to transfer a case (especially when there is a lack of Parties' mutual consent to proceed before a magistrate judge). Thus, the NDTX's Transfer order (APPENDIX A) is inconsistent with the procedural due process under the

Fifth Amendment since there is no evidence on the docket to show that Parties have mutually consented to proceed before the magistrate judge.

Therefore, the subject matter jurisdiction of NDTX was never properly invoked as the presiding Magistrate Judge lacks power to transfer the case, and there is no evidence on the docket to show that Parties have mutually consented to proceed before the magistrate judge. Thus, the case's transfer order is void and null.

In addition, under 28 U.S.C. § 1404(a) Hon. U.S. Magistrate Judge Rebecca Rutherford lacks authority to dismiss or to transfer the case. According to 28 U.S. Code § 1404(a), the court may raise the possibility of transfer for improper venue sua sponte. See *Schutter v. Herskowitz*, Civil Action No. 06-1846 (RMC), 2007 WL 1954416, at *6 n.3 (D.D.C. July 5, 2007). However, the requirement for the court is to seek more clarification from Tepe before taking such decision since there is no briefing or hearing held at the time of the case's transfer. The sole reliance on the complaint is erroneous. Tepe filed his complaint before NDTX to challenge IRS' action on constitutional bases. As presented, in her ruling (APPENDIX A), Honorable U.S. Magistrate Judge Rebecca Rutherford erred in relying on a presume State of Tennessee laws Torts Claims. However, it is appears that Tepe's claims are mainly brought under the Fourth, Fifth and the Ninth Amendment, and Defendant United States is held vicariously liable for the unconstitutional actions of IRS since it failed to issue a reasonable notice to Tepe before **seizing** Tepe's 2022 Income Tax Refund. Therefore, as presented, the procurement of subject matter jurisdiction of NDTX has infringed upon the due process rights of Tepe under the 5th Amendment; thus, Tepe prays the U.S. Supreme court to reverse the order to permit NDTX to retain jurisdiction.

Moreover, the NDTX' seal is missing on the order as required under 28 U.S.C. § 1691 which states: 'All writs and process issuing from a court of the United States shall be under the seal of the court and signed by the clerk thereof.', and **In the case [Aetna] Insurance Company vs. Hallock 73 U.S. 556 (1869), the U.S. Supreme ruled that it is void, if the seal is defined in the statutes and it is required on certain processes and not used, then those processes are void for not getting substantial due process.** As presented in APENDIX A, the NDTX case transfer order does not have the NDTX' Seal. Therefore, Tepe is deprived of his substantial due process rights since the process' requirement has not been followed by NDTX upon the issuance of the case transfer order. Therefore, Tepe respectfully requests the U.S. Supreme Court to vacate NDTX's Transfer Order, to allow the case to be tried before NDTX.

As presented above, since the procurement of personal and subject matter jurisdiction of NDTX has infringed upon the fundamental rights of Tepe under the 5th & 6th Amendment, the case transfer proceeding is void and null. It is well settled that **“A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. Pennoyer v. Neff, 95 U.S. 714, 732-733 (1878).”** See also *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

2 The United States Court of Appeals for the Sixth Circuit (or SCCA), the U.S. District court for the Eastern District of Tennessee (or EDTN) and their respective judges involved in the case *Tepe v. Corker et al.*, no. 3:23-cv-00423-RJC-DCK cannot preside over Tepe's cases as they have a conflict of interest in the outcome of, and they cannot be a Judge at their own trial in violation of the due process under the 5th Amendment.

Tepe has filed a lawsuit against 42 Defendants including EDTN, SCCA, Honorable 6th Circuit Appellate Judge Ronald Lee Gilman, Honorable U.S. District Judge Clifton L. Corker of EDTN, and Honorable U.S. Magistrate Judge Christopher H Steger of EDTN. See case Mawule

Tepe v. Clifton L. Corker et al., case no. 3:23-cv-00423-RJC-DCK. Tepe sued them because, EDTN, SCCA and their respective judges conspired and/or aided and abetted the implementation of policies, (*that make legal and valid any orders and judgments issued by these latest courts without Judges' signature*), which override and take precedent over 28 U.S.C. § 1691 which is the supreme law of the land according to the U.S. Constitution (Article VI, Clause 2. According to 28 U.S.C. § 1691 all orders/judgements must be signed by a judge or it lacks validity. For example, as presented, in APENDIX C, the order and judgment is issued and signed by the deputy clerk Kelly L. Stephen (who is not a judge.), and this latest order/judgment issued by SCCA is deemed valid under the unconstitutional implemented policies. Tepe has some cases dismissed in the past that triggered him to sue these latest courts to seek a redress, and they are upset for being sued.

For retaliatory purpose, as the case *Mawule Tepe v. IRS et al.*, is transferred to EDTN, (docketed as case *Mawule Tepe v. IRS et al.*, no. 1:23-cv-00286-DCLC-CHS), Honorable U.S. District Judge Clifton L. Corker, and Honorable U.S. Magistrate Judge Christopher H Steger were assigned to preside over the case. And when the appeal is filed, as presented in APENDIX C, Honorable 6th Circuit Appellate Judge Ronald Lee Gilman is one of the three Judges who presided over USCA case *Mawule Tepe v. IRS et al.*, case no. 24-5261 (that was dismissed without being scheduled for a briefing or hearing for retaliatory purpose). As presented these latest Judges have a conflict of interest in the outcome of the case and they should have recused themselves but they have failed to do so.

According to the U.S. Supreme Court, "No man can be a judge at his own trial". "A fair trial in a fair tribunal is a basic requirement of due process as -- No Person can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome."³--. An impartial district court is necessary to ensure due process⁴. As the Supreme Court itself has noted,

"even if there is no showing of actual bias in the tribunal, due process is denied by circumstances that create the likelihood or the appearance of bias."⁵

As presented above, since Honorable U.S. District Judge Clifton L. Corker, Honorable U.S. Magistrate Judge Christopher H Steger, and Honorable 6th Circuit Appellate Judge Ronald Lee Gilman have a case pending against them, they should have recused themselves, but they respectively have failed to do so. As presented, despite the fact that Honorable U.S. District Judge Clifton L. Corker, and Honorable U.S. Magistrate Judge Christopher H Steger have a case pending against them, they refused to recuse themselves, and presided over the case *Mawule Tepe v. IRS et al.*, case no. 1:23-cv-00286-DCLC-CHS at EDTN. And Honorable 6th Circuit Appellate Judge Ronald Lee Gilman presided over the appeal *Mawule Tepe v. IRS et al.*, case no 24-5261. Besides this, Honorable U.S. District Judge Clifton L. Corker unlawfully stayed the case *Tepe v. IRS et al.*, case no. 1:23-cv-00286-DCLC-CHS and prevented Tepe from litigating the case for retaliatory purpose. He has implemented sanction on Tepe in violation of the 5th and 6th Amendment.

The failure of 6th Circuit Appellate Judge Ronald Lee Gilman, Honorable U.S. District Judge Clifton L. Corker, and Honorable U.S. Magistrate Judge Christopher H Steger to recuse themselves is inconsistent with the due process and their impartiality is questionable since they

 3 *In re Murchison*, 349 U.S. 133, 136 (955).

4 *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 821-22 (1986) (indicating that an impartial tribunal is required for due process); see also *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980); *Withrow v. Larkin*, 421 U.S. 35, 46-47 (1975); *Ward v. VIII. of Monroeville*, 409 U.S. 57, 61-62 (1972); *Tumey v. Ohio*, 273 U.S. 510, 523 (927); Martin H. Redish & Lawrence C. Marshall, *Adjudicatory Independence and the Values of Procedural Due Process*, 95 YALE L.J. 455, 476 (1986).

5 *Peters v. Kiff*, 407 U.S. 493, 502 (972); see also *Mayberry v. Pennsylvania*, 400 U.S. 455, 469 (1971) (Harlan, J., concurring) ("[T]he appearance of evenhanded justice... is at the core of due process."); *Offut v. United States*, 348 U.S. ii, 14 (1954) ("[J]ustice must satisfy the appearance of justice.").

have a conflict of interest in the outcome of the case. Thus, they lack subject matter jurisdiction to preside over these latest respective cases they are assigned to.

According to the U.S. Supreme Court Code of Conduct for Justice, Canon 3, a justice should perform the duties of office fairly, impartially, and diligently, and a Justice should not retaliate against those who report misconduct. However, EDTN, SCCA, 6th Circuit Appellate Judge Ronald Lee Gilman, Honorable U.S. District Judge Clifton L. Corker, and Honorable U.S. Magistrate Judge Christopher H Steger have failed to comply with this latest rule. Besides this, their action is in contradiction with the U.S. Supreme court ruling in “*In re Murchison*, 349 U.S. 133, 136 (955) which makes it clear that no man can be a judge at his own trial.

Therefore, Tepe prays the U.S. Supreme Court to reverse the case’s transfer order as well as the order issued by SCCA and EDTN case’s proceeding since the procurement of subject matter jurisdiction of EDTN, SCCA, 6th Circuit Appellate Judge Ronald Lee Gilman, Honorable U.S. District Judge Clifton L. Corker, and Honorable U.S. Magistrate Judge Christopher H Steger has infringed upon the Fundamental rights of Tepe under the 5th Amendment and the 6th Amendment since he is denied access to the court at EDTN. These latest courts and judges are impartial and they have failed to carry out their respective duty owned to Tepe.

3 EDTN deprives Tepe of his Sixth Amendment Rights of accessing the court, to challenge and to confront the opposing Parties through unconstitutional restriction and sanction despite the fact that Tepe did not give up on his Sixth Amendment Rights.

Tepe pray the U.S. Supreme Court to reverse the unconstitutional sanctions and restriction implemented by EDTN against him as it appears in APENDIX D. The U.S. Supreme Court makes it clear that regardless how “unruly a Party is”, his right to access to the court cannot be denied. *In Illinois vs. Allen Court*: U.S. Date published: Mar 31, 1970, 397 U.S. 337 (1970), 90 S. Ct. 1057,

the U.S. Supreme Court makes it clear that: Plaintiff's Sixth Amendment right to attend his own trial was so "absolute" that, regardless of how unruly his conduct, he could never be held to have lost that right so long as he insisted on it."

In above captioned cases, Petitioner Mawule Tepe was not even unruly; he was respectful and courteous, abiding by all rules and laws, but he was unjustly and unlawfully denied access to the court. The right of access to the Courts is basic to our system of government, and it is well established that it is one of the fundamental rights protected by the constitution. Citing: *Ryland vs. Shapiro*, 708 F.2D 967, (5TH Circuit, 1985). As presented, Tepe never waives his rights under the Sixth Amendments. Thus, the EDTN cannot restrict Tepe's access to the court and SCCA should not have failed to carry out its duty owed to Tepe by vacating this latest restriction. Therefore, the order of sanction and the order and judgment issued by SCCA must be reversed, and vacated as void and null for having infringed upon Tepe's 6th Amendment rights. Tepe respectfully requests the U.S. Supreme Court to reverse the unconstitutional sanctions and restriction implemented by EDTN against him as it appears in APENDIX D.

4 SCCA dismissed an appeal without calendaring the case for a briefing and without holding a hearing to permit the Appellant to be heard in violation of the due process clause under the Fifth Amendment, for retaliatory purpose.

According to the due process clause, upon the filing of the appeal USCA case *Mawule Tepe v. IRS et al.*, case no. 24-5261, SCCA should have scheduled and calendared the case for a briefing and a hearing. However, for retaliatory purpose, the Deputy Clerk of SCCA Kelly L. Stephen (not a judge) was mandated to dismiss the appeal without giving the opportunity to Tepe to express himself. See APENDIX C (order and judgment issued in the case *Mawule Tepe v. IRS et al.*, case no. 24-5261 on April 24, 2024.).

SCCA failed to carry out its ministerial and administrative duty owed to Tepe for retaliatory purpose because Tepe filed a lawsuit against it. See case *Tepe v. Corker et al.*, case no. 3:23-cv-00423-RJC-DCK. According to the U.S. Supreme Court Code of Conduct for Justice, Canon 3, a justice should perform the duties of office fairly, impartially, and diligently, and a Justice should not retaliate against those who report misconduct. However, SCCA, and Honorable 6th Circuit Appellate Judge Ronald Lee Gilman, failed to comply with this latest rule, and retaliated against Tepe, and they have deprived Tepe of his due process rights under the Fifth Amendment.

Therefore, Tepe prays the U.S. Supreme Court to issue a writ of mandamus to vacate and to redress SCCA's action.

ANALYSIS

As presented above, NDTX's procurement of personal and subject matter jurisdiction has infringed upon Tepe's due process rights under the Fifth Amendment which makes the case's transfer proceeding void and null. Tepe has requested NDTX as well as Fifth Circuit Court of Appeals to vacate the case transfer order but they failed to fulfill their ministerial duty.

As the case is transferred to EDTN, since Tepe cannot litigate the case as he is under an unconstitutional restriction in violation of his Sixth Amendment, he filed an appeal before SCCA that dismissed the appeal without calendaring the appeal for a briefing and a hearing for retaliatory purpose.

Ministerial Duty

A ministerial act is defined as one that is both required and nondiscretionary (Barron's Legal Dictionary, 5th Edition, Page 357):

“An act performed according to explicit directions (often embodied in a statute) by a subordinate official, allowing no judgment or discretion on the part of that official. See mandamus.”

Factual Application

Federal courts are established to hear cases involving the constitutionality of a law, cases involving the laws and treaties of the U.S. ambassadors and public ministers, disputes between two or more states, admiralty law, also known as maritime law, and bankruptcy cases.

Federal Courts are courts of limited jurisdiction which have the authority to hear cases that fall both within the scope defined in Article III Section 2 of the U.S. Constitution and Congressional statutes (See 28 U.S.C. §1251, §1253, §1331, §1332). Collectively, these give Federal Courts jurisdiction over cases and controversies: (i) Involving a federal question, (ii) When sitting in diversity, or (iii) Between two states.

Tepe’s case involved claims under the 4th, 5th, and 9th amendment, but neither of NDTX. FCCA, EDTN and SCCA wants to fulfill their respective ministerial duty owed to Tepe. SCCA is the court that is supposed to take a remedial action in order to redress the issue, but it dismissed the appeal without scheduling a briefing or a hearing for retaliatory purpose.

NATURE OF RELIEF BEING SOUGHT

On account of The Agency’s (SCCA) dereliction of duty, Tepe respectfully asks this Honorable Court to issue a Writ of Mandamus to the SCCA and EDTN to have them do their Job.

ARGUMENT

Tepe argues that this Court should issue a Writ of Mandamus because The Agency SCCA has failed to complete a mandatory act.

The U.S.' Supreme Court established the standard for reviewing such a writ in *Huffman v State*, 813 So. 2d 10. It stated the following:

“In order to be entitled to a writ of mandamus the petitioner must have a clear legal right to the requested relief, the respondent must have an indisputable legal duty to perform the requested action, and the petitioner must have no other adequate remedy available.”

In other words, a 3-part test for permitting a writ of mandamus must be performed (as outlined here):

- i) Petitioner must have a clear legal right to the requested relief;
- ii) The Agency must have an indisputable duty to perform the requested action; and
- iii) There must be an absence of any other adequate remedy.

This Petition satisfies all three items, as follows.

i) Clear Legal Right

Tepe has a clear legal right to the requested relief.

a. Requested Relief: the reversal and/or the vacatur of the case transfer order, as well as the sanction and restriction implemented by EDTN against Tepe, and the recusal of 6th Circuit Appellate Judge Ronald Lee Gilman, Honorable U.S. District Judge Clifton L. Corker, and Honorable U.S. Magistrate Judge Christopher H Steger.

b. Controlling Law: the U.S. Supreme has the authority to issue a writ of mandamus under 28 U.S.C. § 1651(a).

In *Allstate Ins. Co. v Kaklamanos*, 843 So. 2d 885, the Supreme Court held that a statute grants someone a clear legal right:

“...’clearly established law’ can derive from a variety of legal sources, including recent controlling case law, rules of court, statutes, and constitutional law.”

Thus, 28 U.S.C. § 1651(a).provided Tepe with a clearly established right to a final order from The Agency SCCA.

ii) Indisputable Duty to Perform

The Agency SCCA has an indisputable duty to do Its Job.

This petition detailed as much in the reason to issue the writ and in analysis section. (see page ¶11-24).

As an added point, the ruling in *Migliore v City of Lauderhill*, 415 So. 2d 62, the court held that ministerial/indisputable duties are ripe for mandamus action:

“It has long been established that mandamus lies to compel the performance of a specific imperative ministerial duty.”

In the instant case, the “specific imperative ministerial duty” is the reversal and/or the vacatur of NDTX’s case transfer order, as well as the sanction and restriction implemented by EDTN against Tepe, and the recusal of 6th Circuit Appellate Judge Ronald Lee Gilman, Honorable U.S. District Judge Clifton L. Corker, and Honorable U.S. Magistrate Judge Christopher H Steger.

Thus, the law dictates that SCCA has an ‘indisputable duty’ to do Its Job.

iii) Proper Remedy

Although 28 U.S.C. § 1651(a).places a ministerial duty on SCCA to comply, it does not create an opening for Tepe to compel that agency into action.

When contrasted with other statutes that do provide such an avenue (eg, F.R.C.P. Rule 33 and 34 and 37 “civil action is filed... to compel production records...”; and 5 U.S.C. § 552 “action

is filed to enforce the provisions of this chapter”) it can be ascertained that no such pathway exists here. Thus, Tepe cannot file suit or take any other action to compel SCCA or EDTN to complete their ministerial duty. His only remedy is this mandamus petition.

Exemplary Case

With all three prongs of the standard-for-review satisfied, Petitioner contends that this petition presents a textbook case for mandamus action.

Another case that can illustrate this is *Hatten v State*, 561 2d 562. Similar to the instant case, the petitioner in *Hatten* requested mandamus relief due to a state agency’s dereliction (emphasis added):

“[the state agency agrees] that *Hatten's* rights are being violated by the inability of the [agency] to prepare and timely file a brief in this case.”

Likewise, Tepe’s rights are also being violated because of SCCA’s failure to calendar the appeal for a briefing and to hear it and to redress the unconstitutional, and unlawful case transfer and the restriction that is pending against Tepe at EDTN, and the issue related to non-recusal of 6th Circuit Appellate Judge Ronald Lee Gilman, Honorable U.S. District Judge Clifton L. Corker, and Honorable U.S. Magistrate Judge Christopher H Steger from Tepe’s cases.

CONCLUSION

WHEREFORE, Tepe respectfully asks the U.S. Supreme Court to issue a Writ of Mandamus commanding SCCA to do Its Job owed to Tepe by (i) Vacating the case transfer order to allow NDTX to obtain jurisdiction and to try the case, (ii) vacating the sanction and restriction implemented by EDTN against Tepe, (ii) Recusing 6th Circuit Appellate Judge Ronald Lee

Gilman, Honorable U.S. District Judge Clifton L. Corker, and Honorable U.S. Magistrate Judge Christopher H Steger from Tepe's cases.

CERTIFICATE OF SERVICE

Petitioner Mawule Tepe hereby certifies that a copy of the foregoing Petition is served upon Sixth Circuit Court of Appeals, U.S. District Court for Eastern District of Tennessee and the Counsel of the Respondents Ms. Rachel Ida Wollitzer, Esq. via USPS Certified Mail/Express Mail Services.

Dated: July 15, 2024

Respectfully submitted,



Mawule Tepe

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