UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Steven Alan Magritz,
Petitioner

v.

Case No. 18-C-0455

JON E. LITSCHER,
Respondent

PETITIONER'S BRIEF IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

Steven Alan Magritz, Petitioner, not *pro se*, not represented, in want of counsel, presents himself and submits this brief in opposition to Respondent's attorneys' motion to dismiss Petitioner's habeas corpus petition.

ISSUES PRESENTED

Can a man who has been systematically subjected to abuse of legal process, an unfair trial, and outcome determinative bias presided over by a "State"[i] judge who not only lacked the "appearance of impartiality" but openly displayed her animosity and prejudgment bias while executing *her own personal vendetta*; who has diligently and unceasingly sought protection of federally secured rights from day one in the "State" appellate courts; and who has been impeded, blocked, hindered, obstructed, stonewalled, deceitfully prevented and denied remedy by "State" actors attempting to deceive or coerce him into returning to the prejudicial sentencing court, be denied habeas corpus remedy by the federal courts or general government?

STATEMENT OF THE CASE

In September 2015 I was arrested without a warrant, held incommunicado in solitary confinement in the county jail for five months based upon a known false "Criminal Complaint", denied assistance of counsel, and persecuted under the guise of a prosecution and under the "name" of an artificial entity created by the prosecution to pretend jurisdiction. The trial "judge" was Sandy A. Williams, against whom I had previously filed criminal complaints, sued in federal court for breach of fiduciary duty and misprision of felony, refused for fraud her dolus in a prior case, and had since 2013 been featured as a corrupt attorney / judge / public officer on the https://www.ozaukeemob.org website. Sandy A. Williams knowingly, purposely, intentionally, with malice aforethought infringed upon and denied my constitutionally secured rights, retaliated against me - a victim/witness of crime, and denied me a fair trial, all as "payback" for exposing her as a corrupt public officer. Williams' actual bias or prejudgment was evidenced by: I was threatened, gagged, not provided notice of hearings, denied assistance of counsel, had exculpatory and exonerating affidavits twice removed from the court file from behind the clerk's locked doors, prohibited from speaking or testifying about events to which the prosecutor had "opened the door" in his Criminal Complaint and were the foundational premise of the "prosecution", prohibited from introducing evidence, had my subpoenas quashed of identical or similar witnesses of those of the prosecutor, subjected to suborned testimony known by Williams to be false, subjected to Williams' own fraud upon the court, my witness was ordered off the

witness stand after about only three questions, testimony and exhibits were withheld from the jury, Williams coached a hostile witness from the bench, and the "State's" expert witness, an attorney, testified there was no injury or damage caused by me, etc. At the sentencing hearing on February 11, 2016, Williams displayed her bias and personal vendetta verbally and facially when commenting on being featured on OzaukeeMob.org as corrupt and regarding my 2011 refusal for fraud of her earlier dolus and malversation. Dkt. 1-3.

Incorporated herein by reference is my **"Affidavit Of Bias"**, with exhibits, in support of this brief in opposition to Respondent's attorneys' motion to dismiss.

The attorneys for the Respondent made numerous *false representations of relevant or material facts* to this honorable Court in their "Brief In Support Of Motion To Dismiss", Dkt. 7, which I charge are contrary to professional ethics, contrary to FRCP 11(b)(1), (2), and (3), and contrary to numerous federal court cases. Some of those facts are set forth in my **"MANDATORY JUDICIAL NOTICE - FRE 201(c)(2)"** of adjudicative facts with Exhibits A - J, which I have subscribed pursuant to 28 U.S.C. § 1746(1), and incorporate herein by reference.

ARGUMENT

I invoke the protections of my *inherent* rights recognized in the **Treaty** known as **International Covenant on Civil and Political Rights** ratified by the United States June 8, 1992, invoking specifically covenants 2, 3, and 5, and call upon this Court to enforce the obligation of the United States to provide me *civilian* due process of law and other fundamental *inherent* rights as opposed to *military due*

process and/or impaired by statutes, regulations, etc., that would aim at the destruction or limitations of said rights.

The writ of habeas corpus is secured to the people of Wisconsin by Article I, Section 8 of the state Constitution. The Legislature may reasonably regulate *procedure* in respect to habeas corpus, but cannot restrict the common-law use of the remedy; that is preserved by the Constitution. *Servonitz v. State*, 133 Wis. 231, 113 N.W. 277 (1907). "Once the time for direct appeal has passed, a defendant in a criminal case may collaterally attack his conviction pursuant to a Wis. Stat. § 974.06 motion, *or via a petition for writ of habeas corpus*." *State ex rel. Coleman v. McCaughtry*, 714 N.W.2d 900, ¶ 16 (2006) (citations omitted). In *State v. Johnson* the court says: "Notwithstanding the statute's purpose being to *supplant*[1] habeas corpus, the statute contemplates that in certain circumstances, a prisoner's remedy may lie in an application for habeas corpus and not in a motion for post-conviction relief under the statute. Section 974.06(8), Stats., provides:

> An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, *unless it also appears that the remedy by motion is inadequate or ineffective* to test the legality of his detention." *State v. Johnson*, 101 Wis.2d 698, 701, 305 N.W.2d 188 (1981). (emphasis added)

This statute, 974.06 of the public corporation named "State of Wisconsin" which would be unconstitutional on its face and which denies state habeas corpus to one who is denied "relief" by motion to the *sentencing* court, averts unconstitutionality

[1] *Dispossess and take the place of, esp. by underhand means*. The Oxford Dictionary, 1996.

by specifically recognizing situations in which "*the remedy by motion is inadequate or ineffective to test the legality of his detention.*" Further, "The statute provides no relief to a prisoner attacking, for example, sufficiency of the evidence, jury instructions, error in admission of evidence or other procedural errors", *Peterson v. State*, 195 N.W.2d 837, 845 (1972), "errors" which I attacked.

In *State ex rel. Haas v. McReynolds*, 643 N.W.2d 771 (2002), the case which the Court of Appeals repeatedly improperly, deceitfully, and fallaciously misapplied, by obvious intentional omission that which the Wisconsin Supreme Court had stated in no uncertain terms as evidenced in my refusals for fraud, Dkt. 1-2:14,15 and Dkt. 1-2:26, and which case DOJ attorneys Schimel and O'Brien repeatedly implicate in their *false* mantra "*wrong vehicle*" and "*wrong court*" but strangely, conveniently, and suspiciously fail to mention by name, likely because they knew the citations were false, *supra*, the Wisconsin Supreme Court says:

> ¶ 11 "The writ of habeas corpus has its origins in the common law, and its availability is guaranteed by the U.S. Constitution, the Wisconsin Constitution, and by state and federal statute. ... Habeas corpus is essentially an equitable remedy, which is available to a petitioner when there is a pressing need for relief *or where the process or judgment by which a petitioner is held is void.*" (cites omitted)
> ¶ 12 Finally, a party seeking the writ must show that there was *no other adequate remedy available* in the law. (cites omitted) (emphasis added)

In the *Haas* case, the Wisconsin Supreme Court used the word "adequate" eleven (11) times, to wit:

> "otherwise adequate remedy; an adequate alternative remedy; an adequate alternative remedy; no other adequate remedy; an adequate, alternative remedy; other adequate remedies; an otherwise adequate remedy; an otherwise adequate remedy; an otherwise adequate and

available remedy; other adequate remedies; and, an adequate, alternative remedy."

Clearly the Supreme Court was referring to the last phrase of Wis. Stat. § 974.06(8), to wit: "unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention." Notwithstanding the unambiguous, clear, certain language of the Supreme Court, the Court of Appeals repeatedly flouted the law and falsely opined: "A party cannot have habeas relief if the party did not pursue an alternative remedy. *State ex rel Haas v. McReynolds*, 2002 WI 43, ¶¶14-15, 252 Wis. 2d 133, 643 N.W.2d 771." Dkt. 1-2:7. This *obvious intentional omission* of the operative word "adequate" found in both the statute and the Wisconsin Supreme Court *Haas* decision has been dishonestly used by the DOJ attorneys by way of their false mantra, "wrong vehicle and wrong court".

This false, deceptive, intentionally misleading, dishonest representation of what the statute says and the Wisconsin Supreme Court clearly and unequivocally stated is the sole foundational premise of the entire argument, "wrong vehicle and wrong court" submitted to this honorable Court, Dkt. 7, by Department of Justice (sic) attorneys Brad D. Schimel and Daniel J. O'Brien.

All of the other many false representations to this Court by said attorneys pale in significance to this major false foundational assertion. As I clearly evidenced in my application and the documents filed therewith, i.e., Dkt. 1, Dkt. 1-1, Dkt. 1-2, Dkt. 1-3, and Dkt. 1-4, the trial and sentencing "judge", Sandy A. Williams, not only lacked the "appearance of impartiality", but was in fact

embroiled, biased, and openly executed her personal vendetta and displayed her outcome determinative bias from the inception of my persecution through the day of sentencing. The bias manifested by Williams combined with the bias and prosecutorial "misconduct" of district attorney Adam Y. Gerol, formerly Williams' assistant, who had his own axe to grind, makes it painfully obvious to any public officer who displays a modicum of honesty, integrity, and good faith required of public officers that there is not only zero percent probability of there being "adequate" remedy by filing a motion with the sentencing court, but the probability against obtaining remedy is virtually one hundred percent (100%). Filing a motion for remedy with the sentencing court would offer neither an adequate nor effective remedy, but would compound the illegality.

The Wisconsin Court of Appeals condoning, or, turning a blind eye to the appearance of bias, not to mention the actual egregious repetitive bias or prejudgment displayed by Sandy A. Williams, is in direct opposition to both federal and state statutes, clearly established United States Supreme Court rulings, and American Bar Association (ABA) rules. ABA Rule 2.11: Disqualification:

> (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding. ... (6) The judge: (b) served in governmental employment, and ... has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

Wis. Stat. § 757.19 Disqualification of judge (federal equivalent, 28 U.S.C. § 455):

> **(2)** Any judge shall disqualify himself or herself from any civil or criminal action or proceeding when one of the following situations occurs: (f) When a

> judge has a significant financial or *personal interest* in the outcome of the matter. (g) When a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner. (4) Any disqualification under sub. (2) in a civil or criminal action or proceeding must occur, unless waived under sub. (3), when the factors creating such disqualification first become known to the judge.

"Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v. United States*, 510 U.S. 540, 564 (1994). "[J]ustice must satisfy the appearance of justice. *Offutt v. United States*, 348 U.S. 11,14 (1954). Williams clearly lacks integrity and judicial temperament.

In *Franklin v. McCaughtry*, 398 F.3d 955, 959 (7th Cir. 2005), the court says: "An application for a writ of habeas corpus by a state court prisoner must be granted if the state court adjudication resulted in a decision that was "contrary to ... clearly established Federal law," 28 U.S.C. § 2254(d)(1), or that was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," § 2254(d)(2). The Due Process Clause guarantees litigants an impartial judge, reflecting the principle that "no man is permitted to try cases where he has an interest in the outcome." *In re Murchison,* 349 U.S. 133, 136 (1955). Where the judge has a direct, personal, substantial, or pecuniary interest, due process is violated. *Bracy v. Gramley*, 520 U.S. 899, 905 (1997);" (other cites omitted). "[T]he Supreme Court has decided that both actual bias and the appearance of bias violate due process principles. See Bracy, 520 U.S. at 905." *Id.*

at 961. "[W]here there is a structural error, such as judicial bias, harmless error analysis is irrelevant. See *Edwards v. Balisok*, 520 U.S. 641, 647 (1997)." *Id.*

A biased tribunal, and the lack of counsel, both of which were present in the persecution against me conducted by Sandy A. Williams, are "structural errors", which are so fundamental that the courts consider them *per se* prejudicial. They are "defect[s] affecting the framework within which the trial proceeds, rather than simply . . . error[s] in the trial process itself. These defects "infect the entire trial process" because they "depriv[e] defendants of `basic protections' without which `a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence'" and thereby "render a trial fundamentally unfair." *Neder v. United States*, 527 U.S. 1, 8-9 (1999); *State v. Gudgeon*, 720 N.W.2d 114 ¶¶ 9-10 (2006). See my "Affidavit of Bias", *supra*, and Williams' repeated refusals to recuse herself.

The "gatekeeper" attorneys at the clerk's office for the Supreme Court / Court of Appeals and the appellate court judges, all highly trained in the law and without excuse, blocked, delayed, hindered, impeded, obstructed, thwarted, stonewalled, prevented and denied me remedy from the "structural errors" of the lower court from August 2, 2016 through February 26, 2018, which was thirty (30) days after all of the Wisconsin Supreme Court Justices were noticed of the denial of my constitutionally secured Writ of Error and defiance of the Constitution by the "gatekeeper" attorneys. The Justices chose, as evidenced by their deafening silence,

to ratify the unlawful conversion of my Writ of Error into a petition for review by their subordinate attorneys and thus deny me remedy. Dkt. 1-1, and, Ex. I-MJN.

28 U.S.C. § 2254: governs remedies in Federal courts for persons in custody pursuant to a judgment of a State court. In pertinent part the Code reads:

> (b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—
> (A) the applicant has exhausted the remedies available in the courts of the State; **or**
> (B) (i) there is an absence of available State corrective process; **or**
> (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

Regarding the exhaustion doctrine, "state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999). "A habeas petitioner who has concededly exhausted his state remedies must also have properly done so by giving the State a fair 'opportunity to pass upon [his claims].'" *Darr* v. *Burford,* 339 U. S. 200, 204 (1950). Id., at 854. As set forth in my "Mandatory Judicial Notice" and "petition", Dkt. 1, Dkt. 1-1, Dkt. 1-2, Dkt. 1-3, and Dkt. 1-4, I invoked "one complete round" and properly gave the Court of Appeals and Supreme Court "fair opportunity" to rule on my claims. Nevertheless, the courts chose to flout the law and intentionally ignore the unambiguous, clear, certain, purposeful language both in Wis. Stat. § 974.06(8) and the Supreme Court *Haas* case, *supra*, and chose to attempt to deceive/coerce me into returning to the sentencing court where the outcome would have been predetermined just as the outcome of the "trial" was predetermined to

effectuate *a* personal vendetta. Notwithstanding the fact that the State had a "fair opportunity to pass on my claims", it is obvious, by the action of the "State" choosing NOT to rule on my claims, that "circumstances exist that render such process ineffective to protect the rights of the applicant", 28 U.S.C § 2254(b)(1)(B).

28 U.S.C. § 2244 – Finality of determination, reads in pertinent part:

> (d) (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a Statecourt. The limitation period shall run from the latest of—
> (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

Respondent's DOJ attorneys have asserted and would have this honorable Court believe that my "failure" to return to the sentencing court whereat the "judge" egregiously exhibited prejudgment bias and outcome determinative bias as part and parcel of the effectuation of her personal vendetta against me constituted a "procedural default". This is not only false and absurd, but illustrates and exemplifies the length, breadth, and depth to which attorneys employed by the public corporation named "State of Wisconsin" will obtain to "protect" a wayward member of their fraternity and defy the federal and state constitutions and shred the rule of law. My years-long unlawful denial of remedy in the "State" appellate venue by blocking, stalling, stonewalling, silent treatment, deceit, and official interference by officers of the court which prevented me from obtaining remedy pursuant to the clear, written, unambiguous and unequivocal terms used in the statute, § 974.06(8), and the *Haas* case, *supra*, is now exacerbated by numerous false representations to this Court in an attempt to deny me remedy in the "federal"

venue. The actions of the "gatekeeper" attorneys acting behind the scenes in the office of the Clerk of Supreme Court / Court of Appeals, *supra* and as set forth in my Mandatory Judicial Notice, the deceitful and obstructive "rulings" by the Court of Appeals, now supplemented by the numerous false representations to this Court by DOJ attorneys, evidence that "the impediment to filing an application created by State action in violation of the Constitution or laws of the United States" is ongoing to this present day. The impediment has NOT been removed. This honorable Court must not countenance such denial of justice or misconduct, let alone reward it.

Procedural Default. To support a defense of procedural default, the state procedural rule must not violate due process or result in a waiver of a fundamental right, and, must serve a state interest and not merely frustrate asserted federal rights, *James v. Kentucky*, 466 U.S. 341, 348-49 (1984). "Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Id.* at 349, citing *Davis v. Wechsler.*

Federal courts presume the absence of an independent and adequate state ground for a state court decision when the decision "fairly appears to rest primarily on federal law, or to be interwoven with the federal law." *Harris v. Reed*, 489 U.S. 255, 274 (1989). "As our decisions in *Fay v. Noia*, 372 U.S. 391, 426-435 (1963) and *Wainwright* v. *Sykes,* 433 U. S. 72, 82-84 (1977), make clear, an adequate and independent state ground for decision does not dispossess the federal courts of jurisdiction on collateral review. More significantly, in considering petitions for

relief under 28 U. S. C. § 2254, the federal courts ... perform the core function of vindicating federally protected rights." *Harris*, 489 U.S. at 267. ALL of my grounds for remedy clearly stated federal law and constitutionally secured rights. Notwithstanding the absence of procedural default in this case, both of the exceptions to the procedural default rule exist which would excuse such "default", had it existed, which it did not: "cause and prejudice", and, "miscarriage of justice".

Cause and prejudice. ***Cause*** is something *external* to the petitioner, such as the deliberate, intentional suppression and concealment of exculpatory or impeachment evidence by the biased, embroiled, and vengeful "judge" Sandy A. Williams and the prosecutor Adam Y. Gerol. *Brady v. Maryland*, 373 U.S. 83, 86-88 (1983); *Strickler v. Greene,* 527 U.S. 263, 280-82 (1999). Dkt. 1:9; Dkt. 1:16; Dkt. 1:18; Dkt. 1-3:16-17; Dkt. 1-4:57-58. Such evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Strickler,* 527 U.S. 263 at 280. My petitioning for redress of grievances, my criminal complaints against Williams, and my suing her in federal court for misprision of felony, ALL which I was prevented from introducing or testifying about by Williams threatening and gagging me, are clearly "material". Dkt. 1:6; Dkt. 1:9-10; Dkt. 1-3:15-17. ***Cause*** is also evidenced by Williams openly, blatantly, defiantly and purposely, on the record, denying me assistance of counsel, euphemistically termed "ineffective assistance of counsel" by the courts. *Coleman v. Thompson*, 501 U.S. 722, 753-54 (1991). *Murray v. Carrier*, 477 U.S. 478, 488 (1986). Dkt. 1:11; Dkt. 1-3:24-25; Dkt. 1-4:49-56.

"Because the right to counsel is so fundamental to a fair trial, the Constitution cannot tolerate trials in which counsel, though present in name, is unable to assist the defendant to obtain a fair decision on the merits." *Evitts v. Lucey*, 469 U.S. 387, 395 (1985). "The denial of the assistance of counsel will preclude the imposition of a jail sentence." *Argersinger v. Hamlin*, 407 U.S. 25, 38 (1972). **Prejudice**. Regarding prejudice, the "structural errors" of outcome determinative bias and denial of assistance of counsel, *supra*, are *per se* prejudicial. The "structural errors" infected the entire "trial" with error of constitutional dimensions which worked to my actual disadvantage. "Judge" Williams withholding from the jury that I was pursuing redress of grievances as a secured First Amendment right, that I had filed criminal complaints against her for misprision of felony, that I had sued her in federal court for her malversation, and that she was executing a personal vendetta for, among other reasons, being featured as a corrupt public officer on the website www.OzaukeeMob.org, had a "substantial and injurious effect or influence in determining the jury's verdict." *Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993).

Miscarriage of justice exception to procedural default: "Schlup makes plain that the habeas court must consider "all the evidence," old and new, incriminating and exculpatory, without regard to [admissibility at trial]. Based on this total record, the court must make a probabilistic determination about what reasonable, properly instructed jurors would do." *House v. Bell*, 547 U.S. 518, 538 (2006), citing, discussing and applying *Schlup v. Delo*, 513 U.S. 298 (1995). Thus, for example, my act of petitioning for redress of grievances secured by the First Amendment and

converted into a crime by the trial court, which I was gagged and prevented from testifying about, must be considered by the habeas court as new evidence. Dkt. 1:6-7, Dkt. 1-3:8-12. It is unlawful to convert a secured right into a crime: *Smith v. Arkansas State Highway Employees*, 441 U.S. 443, 464 (1979); *DeJonge v. Oregon*, 299 U.S.353, 364 (1937). Also to be considered is: 1) failure to give fair notice of conduct that is forbidden or required, Dkt. 1-3:4, Dkt. 1-3:13-14, *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239; *Grayned v. City of Rockford*, 408 U.S. 104 (1972); *Lanzetta v. State of New Jersey*, 306 U.S. 451 (1939; *United States v. Williams*, 553 U.S. 285 (2008); 2) theft, concealment, and suppression of exculpatory or impeachment documents, Dkt. 1-3:15-17, *Brady v. Maryland*, 373 U.S. 83, (1983), *Banks v. Dretke*, 540 U.S. 668 (2004); 3) fraud upon the court by an officer of the court, Dkt. 1-3:22-26, *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), and, 4) much, much, more.

CONCLUSION

This Court must issue the Writ of Habeas Corpus Ad Subjiciendum.

I, Steven Alan Magritz, a "layman" and without law school training, declare to the best of my knowledge and belief that this brief is in compliance with F.R.C.P. Rule 11, and in particular, Rule 11(b), Representations to the Court.
Executed on this July 4, 2018.

Steven Alan Magritz

[i] e.g., 52 U.S.C. § 20502(4)

United States District Court
Eastern District of Wisconsin

Certificate of Service

Re: Steven Alan Magritz v. JON E. LITSCHER
Case No. 18-cv-455-LA

I certify the following is being served by United States mail, postage prepaid, on Daniel J. O'Brien, State of Wisconsin, Department of Justice, P.O. Box 7857, Madison, WI 53707:

"PETITIONER'S BRIEF IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS", (15 pages), and,

"MANDATORY JUDICIAL NOTICE – FRE 201(c)2) With Exhibits A through J (22 pages)", (total 37 pages), and,

"AFFIDAVIT OF BIAS: IN SUPPORT OF PETITIONER'S BRIEF IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS", (8 pages plus 17 pages of exhibits)

Dated this July 12, 2018 A.D.

Steven Alan Magritz

Steven Alan Magitz

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