IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

IN RE MICHAEL A. MAGGIO

Petitioner,

vs.

UNITED STATES

Respondent

No. 4:15CR001 BSM

PETITION FOR A WRIT OF HABEAS CORPUS

To the Honorable Judge of the United States District Court for the Eastern District of Arkansas.

Petitioner, *per se* and in *propria persona*, under the authority of 28 USCA § 2255 and Fed. R. Civ. Pro., 81(a)(2), respectfully states as follows:

1. Petitioner is Michael A. Maggio ("Maggio") is imprisoned and restrained of liberty at Inez, Kentucky.

2. Petitioner is unlawfully imprisoned, restrained of liberty, and in the custody of respondent F. Garza, Acting Warden, in violation of the Constitution or laws of the United States.

3. Respondent has custody of Petitioner by virtue of the judgment and sentence of the United States District Court for the Eastern District of Arkansas in *United States of America v. Michael A. Maggio*, No. 4:15CR00001-1. Petitioner was found guilty of Theft or Embezzlement of Federal Program Funds, 18 USC § 666, and punishment was set at 10 years (120 months) imprisonment. Judgment was entered on the

28th day of March, 2016. Copies of the Judgment and Sentence are attached to this Petition as Exhibit "A."

4. Petitioner appealed to the United States Court of Appeals for the Eighth Circuit which affirmed the Judgment on the 3rd day of July, 2017. A copy of the Opinion and Mandate is attached as Exhibit "B."

5. Petitioner filed a Petition for a Writ of Certiorari to the United States Supreme Court on the 12th day of October, 2017. The Petition was denied on the 17th day of November, 2017, and is attached as Exhibit "C."

6. Petitioner has exhausted all available remedies, and is therefore entitled to seek Habeas Corpus relief in this Court.

7. Petitioner is unlawfully imprisoned and restrained of his liberty and in the unlawful custody of F. Garza, Acting Warden, in that Petitioner's Fifth Amendment right to Due Process of Law was violated when he was charged with a federal statutory offense, in the absence of any federal interest under the Spending Clause, United States Constitution, Art. 1 § 8, as shall be set forth below. Petitioner is imprisoned in violation of the Sixth Amendment right to the effective assistance of counsel, where counsel failed to research facts and law, misled Petitioner with respect to facts, and coerced an unknowing and involuntary plea of guilty, all as recited below.

A. PARTIES AND JURISDICTION

8. Michael A. Maggio ("Maggio") is a citizen of Arkansas and of the United States, imprisoned in the federal penitentiary in Inez, Kentucky.

9. Maggio is held under a sentence of 120 months imposed by the United States District Court for the Eastern District of Arkansas, Little Rock Division, under the

style "*United States of America v. Michael A. Maggio*, No. 4:15CR00001-1," and pursuant to an Information filed in that case on the 9th day of January, 2015 (Exhibit "D").

10. Maggio was sentenced to this term of imprisonment by the Honorable Brian Miller, on the 28th day of March, 2016, upon a plea of "guilty" to a violation of 18 U.S.C. § 666. A copy of the Judgment and Commitment are attached as Exhibit "A."

11. The Judgment and Sentence was appealed to the United States Court of Appeals for the Eighth Circuit, and the Judgment was Affirmed on the 3rd day of July, 2017. A copy of the Mandate and Opinion of the Court of Appeals is attached as Exhibit "B."

12. Maggio filed a Petition in the Supreme Court of the United States for a Writ of Certiorari to the United States Court of Appeals on the 12th day of October, 2017. The Petition was denied on the 17th day of November, 2017. A copy of the Order denying the Petition is attached as Exhibit "C."

13. This action is brought under the provision of 28 U.S.C. § 2255, within the time allowed by law, on the ground that the Judgment and Sentence imposed on Maggio violated rights granted to him under the Fifth, Sixth, and Tenth Amendments to the United States Constitution.

14. Specifically, in violation of the Fifth Amendment to the United States Constitution, and the Due Process Clause thereof, Maggio was held to answer an Information (Exhibit "D") that charged him with conduct that the United States lacked jurisdiction to regulate or police. He was held to answer an Information that failed to assert the existence of a criminal offense.

15. The Judgment and Sentence was entered in violation of Maggio's Sixth Amendment rights to the effective assistance of counsel.

16. The Judgment and Sentence, imposed for conduct that the State of Arkansas has exclusive jurisdiction to regulate, violated Maggio's rights under the Tenth Amendment to the United States Constitution.

17. At all times recited in the Information (Exhibit "D"), Maggio was an elected Circuit Court Judge, sitting in the State of Arkansas, and subject to its laws. The Judgment and Sentence imposed on Maggio imprisons him for conduct of which he is legally and factually innocent: 18 U.S.C. § 666 requires a showing that Maggio's constitutional office in Arkansas had been supported in some fashion with "federal program funds" at the time he acted (July 11, 2013), as stated in the Information (Exhibit "D"). His office was entirely unconnected with any federal program funds.

18. Maggio was never indicted. Instead, with no deliberation, and under pressure from his counsel, Lauren Hamilton, alleged herein to have been inadequate in every critical particular, he was rushed to judgment by use of an Information, haste being necessary inasmuch as Hamilton deceitfully advised him that two other individuals referred-to in the Information were themselves pushing to plead Guilty in order to testify that he had committed a crime, in order to obtain more lenient treatment for themselves. She also alleged that the Government would initiate a prosecution against his wife, unless he pleaded guilty himself.

19. The Information to which Maggio pled guilty, because his counsel gave him grossly negligent and incorrect legal advice, was itself a defective legal instrument. The Information did not charge that either Maggio personally or even that his

constitutional *office* within the State of Arkansas had received, handled, or was in any way supported by "federal program funds," only that "the State of Arkansas" was. No government or agency other than the State of Arkansas was described as having received such funds. A grant to "the State" broadly, and not to Maggio or his discrete office, constitutes insufficient nexus to support federal jurisdiction over any of Maggio's activities in that office.

B. INTRODUCTION

20. 18 U.S.C. § 666 was passed to protect "the integrity of the vast sums of money distributed through federal programs." *Sabri v. United States*, 541 U.S. 600 (2004). As stated, no such funds supported the operations or activities of Maggio or his office.

21. Maggio's plea of Guilty was neither knowing nor voluntary, as required by law.

22. Maggio's counsel advised him - - in a grossly negligent fashion - - that the federal government has the right to prosecute any employee or officer of the State of Arkansas for "taking a bribe" because the federal government appropriates in any given year more than $10,000.00 to "the State of Arkansas."

23. If Maggio had known that it was critical to show that the office he occupied, *the Second Division* in the Twentieth Judicial District of the State of Arkansas, received federal funding, he would have known such an allegation to be untrue, and would have not pleaded Guilty to an Information that made that allegation.

24. It is uncertain that Maggio's counsel ever read the statute, and it appears she simply took the Assistant United States Attorney's (AUSA) word for its jurisdictional

reach, as it would pertain to the essential and foundational element of jurisdiction. If Lauren Hamilton failed to undertake independent investigation, then she was not acting as Maggio's advocate, but simply as a extension of the United States Attorney's office.

25. The statute ambiguously suggests that *any* State official who takes a bribe can be federally prosecuted, but that is an absurd position to take because statutes "must be read consistent with the principles of federalism." *Bond v. United States*, 134 S.Ct. 2077 (2014). The Supreme Court will avoid reading a statute to dramatically intrude upon traditional state criminal jurisdiction in the absence of a clear indication that a specific statute does so. *Id.,* at 2088.

26. The federal government has no inherent police power. The police power in the federal system belongs to the States. *United States v. Lopez*, 514 U.S. 549, 567 (1995). For two centuries it has been "clear" that lacking a police power "Congress cannot punish felonies generally." *Cohens v. Virginia*, 19 U.S. (6 Wheat) 264 (1821). *A criminal act* committed wholly in a State "*cannot be made* an offense against the United States, unless it have *some relation* to the execution of a power by Congress." *United States v. Fox*, 95 U.S. 670 (1878) (emphasis added).

27. "It goes without saying," as *Bond, supra*, at 2088, would put it, that States have primary authority to define criminal conduct, *particularly* when the same is alleged to have been practiced by one of the State's officers. Only a compelling nexus between the State officer's alleged act, and the exercise of Congressional power, can justify a federal prosecutor's assertion of power to prosecute State officers for "bribery," and to do so by using a lesser standard of culpability than the State itself would employ, if it were to proceed against the officer. An earlier decision in *Bond*, found at 564 U.S. 211 (2011),

held that individuals may "assert injury from governmental action taken in excess of the authority that federalism defines." The Tenth Amendment embodies and reaffirms a notion that the federal government's criminal jurisdiction, is, *and must be*, bounded.

28. As stated, 18 U.S.C. § 666 is not model of clarity, and as it pertains to a State official who "accepts" a "bribe," it commences, saying:

"Whoever, if the circumstance described in subsection (b) of this section exists" – So saying, it then details the criminal acts proscribed, leaving it to "subsection (b)" to detail "the circumstance" that will make such a described criminal act one of *federal* concern.

Subsection (b), in turn, says:

> "The circumstance referred to in subsection (a) of this section is that the *organization*, *government*, or *agency* receives, in any one year period, benefits in excess of $10,000.00, under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of federal assistance." (emphasis added).

29. At the time § 666 was enacted (1984), every "State" received hundreds of millions, even billions of dollars in federal funds, and those appropriations have only grown over time. Congress would be exposing *every* "State" employee to federal prosecution for taking a bribe, even if that employee or even "the building he worked in" had no connection at all with federal moneys. Yet, the *purpose* of the statute was not to cast a wide net to police State government behavior generally: if that was Congress's purpose, the statute would be unconstitutional without more. The purpose of the statute was to protect the integrity of federal funds.

30. Federal program funds in the comparatively trivial amount of "$10,000.00" may find their way past a State's general treasury, which over the course of

a year will handle billions of federal dollars. Such a general State treasury will receive funds greater than that from its own local tax receipts. All such funds will come to rest, either at "organizations" (like a homeless shelter or a community college), or "governments" (like the City of West Fork, Arkansas), or "agencies" (like the "State Department of Motor Vehicles"). Once Federal funds arrive at a location where they can "function" for federal purposes, by purchasing services or subsidizing the activities of persons employed by the recipient, then the recipient "organizations, governments, and agencies" will at that point be touched by § 666's policing power. Organizations, governments, and agencies untouched by federal moneys remain under the exclusive jurisdiction of the States.

31. This is exactly the sense of the statutes that the Departments of Justice itself takes when it advises U.S. Attorney's:

> *ISSUE 3: A third issue is the very broad language of the statute [18 U.S.C. § 666]. It seemingly permits the prosecution of* any *state agent, regardless of whether his or her specific agency received the necessary Federal assistance, as long as the state received the required Federal assistance. This broad reading, while statutorily permissible, would Federalize many state offenses in which the Federal interest is slight or nonexistent. A narrower reading, consistent with the stated congressional intent, requires that the agent must have illegally obtained cash or property from the agency that received the necessary Federal assistance.* This narrower reading is strongly suggested in order to ensure that significant Federal interests are protected *and the clear intent of Congress is followed.*" (emphasis added).

32. In *Sabri v. United States*, 541 U.S. 600 (2004), and in *Salinas v. United States*, 522 U.S. 52 (1997), the Supreme Court declared that 18 U.S.C. § 666 reached defendants who administered a federal program (*Salinas*: housing federal prisoners), even though no federal moneys were disbursed in the transaction with respect to which an illicit payment was made to a state official. In *Sabri*, the Court held that § 666 governed a

transaction that involved no 'federal program," even in the absence of any "federal moneys" being handled, where the *office* of the payee state official was supported by federal funds (in that case, tens of millions of dollars).

33. In *Salinas*, the federal government paid a local sheriff to house federal pre-trial detainees, in return for payments to his office. "Pre-trial detention in local jails" was "a federal program." The sheriff took bribes to allow a federal prisoner "conjugal visits." The bribes were not paid with federal money; no federal money was spent in arranging the visits. Section 666 applied because the Sheriff's office was supported by federal money ($10,000.00-plus), and the integrity of the federal detention program was affected.

34. In *Sabri*, a developer bribed a Minneapolis official to obtain a variance. The local land use regulations were not a federal program, and the federal government had no interest in them. But, the government disbursed tens of millions of dollars to the Commission whose officer was bribed, and so to the extent he could exercise control over how the federal funds appropriated to his Commission ***might*** be spent, a law that policed his conduct was necessary to protect the integrity of those funds in general, even though they were not involved in the instance cited as criminal. These cases, *Sabri* and *Salinas*, each require a nexus: a bribe must be taken in consideration of the workings of a federal program, *or* the office in which the defendant works must receive and disburse federal moneys.

35. The Supreme Court has never ruled that a local office, funded by purely local funds, considering a purely local matter, must be policed by the federal government

under the entirely unremarkable circumstance that "the State" receives $10,000.00 in federal funds.

36. A second difficulty with applying the statute to Maggio is that § 666 imposes on those state officials covered by the Act (Maggio was not) a standard of conduct different from that imposed by a cognate federal statute regulating federal offices and agents, 18 U.S.C. § 201. The statute of conviction in this case (§ 666) permits the Federal Government to prove a case of "Bribery" against a state officer on a lesser showing of *mens rea* than is required of federal officers under the federal statute. The statute applied to Maggio, 18 U.S.C. § 666, imprisons state officers covered by it (Maggio was not) if they accept anything of value with a general "intent to be influenced" in a decision they may make; in contrast, 18 U.S.C. § 201(b)(2), applicable to federal employees, requires a showing that the agent accepted a thing of value explicitly *in return for a favorable decision.*

37. The distinction is important, particularly as applied to Maggio in this case. The Information alleged that he had accepted *a campaign contribution* with the intent of being influenced in a decision he would make. *Prima facie*, this raises grave First Amendment questions. In fact, the United State Department of Justice itself states:

> "Campaign contributions represent a necessary feature of the American political process. They ordinarily inure to the benefit of a campaign committee rather than directly to the benefit of a public officer, and they are almost always given and received with a generalized expectation of carrying favor with the candidate benefitting therefrom." Department of Justice, *United States Attorney's Manual*, § 2046

38. Maggio's counsel gave him the grossly negligent advice that his (indirect) receipt of campaign contributions *violated federal law* because the "contributions" (actually, funds placed in 8 separate political Action Committees) had been made four

months before the Arkansas "Code of Judicial Ethics" would allow. Inasmuch as "early campaign activity" had occurred, his counsel advised him that the receipt of such contributions were "corrupt" for purposes of 18 U.S.C. § 666, which penalizes defendants who "corruptly" accept "anything of value" with the intent of "being influenced." Maggio's premature fund-raising, she declared, violated his "duty to the public" under Arkansas law. He was told, in consequence, that there was no need to prove that a judicial decision he made to grant a remittitur in a civil case was made *in return for* (quid pro quo) a "thing of value," so long as it had been "corruptly" accepted, the same being the case inasmuch as the donation trespassed the Ethics Code for candidates for judicial office.

39. Maggio's plea of guilty to the elements of the crime, as recited in the Information, was the product of grossly ineffective assistance of counsel. He assented factually to the United States District Court for the Eastern District of Arkansas that the funds were solicited against the "Rules of Ethics." The "corruption" to which he assented was not corruption in his *intent*, but only in *the timing* of his indirect "acceptance" of campaign contributions. Yet, his duty to wait until November 21, 2013, to indirectly accept a contribution was not a "duty to the public." Research would have shown that Arkansas has consistently held that "Rules of Ethics" do not describe or prescribe "duties to the public." *Orsini v. Larry Moyer Trucking, Inc.*, 310 Ark. 179, 833 S.W.2d 366 (1992). A violation of a law is not "negligence," but only "evidence of negligence." *A violation of an ethical rule may not even be shown or considered as evidence of negligence, because the duty prescribed is not one owed to the public*, but only a "guideline" for conduct. Receipt of a contribution is not "corrupt" because premature.

That is fundamental. A receipt of funds long after November 21, 2013, would be "corrupt" if a judicial decision was made *in return for that contribution*. That did not occur.

40. The "transaction" described in the Information (Exhibit "D") is one of "bribery" involving three persons: a "nursing home owner" (identified as "Individual #1"), a "lobbyist/political operative" (identified as "Individual #2"), and Maggio. Only Maggio has been charged and convicted of this offense. The alleged "bribe" was a "contribution" to PAC's organized to support Maggio's planned campaign for higher office, allegedly in order to "influence" a decision Maggio made on a motion for a new trial filed by the operating company that leased "Individual #1's" facility. The remittitur decision was (i) *entirely correct* on the law, and (ii) Maggio's duty to make, once he was presented with the motion.

41. Maggio was continuously pressured by his grossly negligent counsel to plead guilty as quickly as he could because, she alleged, lawyers for "Individual #1" and "Individual #2" were making "twenty calls a day" to the United States Attorney's office, trying to get a more lenient sentence by testifying in some fashion *against him* for "extortion." Further, she told him the United States would prosecute his wife if he did not plead guilty. This explains why Maggio, who only learned of federal interest in his case in September 2015, pleaded Guilty on January 19, 2016. He did so under the strenuous urgings of his grossly negligent lawyer, because she said it was essential to "get in ahead" of Individual #1 and Individual #2, and saves his wife.

42. Maggio's lawyer, Lauren Hamilton, lied to him. Counsel for Individual #1 and Individual #2 were *not* calling the U.S. Attorney to make a deal, and had no interest

in doing so. They have never been charged, and the statute of limitations now bars their prosecution.

43. Maggio's lawyer did nothing to serve Maggio's interest, and in fact was nothing more than an extension of the U.S. Attorney's office.

44. Maggio learned after entering the plea of Guilty, that a lawyer for "Individual #2" *had in fact repeatedly been calling Maggio's own counsel.* That lawyer, a former U.S. Attorney, himself, was doing so to explain the *jurisdictional* problems with applying 18 U.S.C. § 666 to Maggio's office, but Lauren Hamilton would not return that lawyer's calls!

45. When Maggio attempted to withdraw his plea of Guilty, the sitting judge opined initially that Maggio had "gotten cold feet," an opinion which the U.S. Attorney enthusiastically seconded.

46. The District Judge declined to allow Maggio to withdraw his plea. Then, instead of sentencing Maggio within the Guidelines (18 months), the trial judge sentenced him to the maximum sentence allowed by law, 120 months, because the sentencing judge esteemed that a corrupt jurist was a greater threat to the public than a drug dealer.

C. FACTS

47. On July 10, 2013, Maggio was sitting as a Circuit Judge for the State of Arkansas, within its Twentieth Judicial District.

48. On that day, Maggio entered an order that would deny a prayed-for "new trial" to the "operating company" of a skilled nursing facility located in Greenbrier, Faulkner County, State of Arkansas, if the Plaintiff in that case would accept a remittitur.

A jury had awarded the Estate of a deceased resident of the nursing home $5.2 million in damages for "pain and suffering" experienced over a period of several days, shortly after the resident was released to the facility by an area hospital. The judge's order overruled the Motion for a New Trial, conditional on the Plaintiff's permitting a reduced Judgment of $1.0 million to be entered.

49. The jury had found that the "operating company" of the facility had not caused the resident's death.

50. The *physical* assets of the nursing home were owned by a corporation ("the Landlord") in which "Individual #1" is a shareholder. That corporation and also its shareholder ("Individual #1") had previously been dismissed from the litigation for lack of any responsibility with respect to the injury that the resident had endured. No one suggests that the decision to dismiss the Landlord was influenced by anything improper, or that owners of buildings in Arkansas owe general medical care duties to facility residents like the deceased plaintiff. The decision to dismiss the Landlord and "Individual #1" had been made long before "Individual #1" made any "contribution" towards Maggio's "campaign."

51. The jury found that the operating company that provided care to the residents in the nursing home was liable for pain she'd suffered. The operating company's assets were not physical, but incorporeal, like cash on hand (petty cash), bank deposits, and accounts receivables. Receivables were in most instances "bespoke" to pay employees, utilities, etc. As a result, both on the date of the verdict and on the date of the judgment (and on all days before, between, and after), any assets of the responsible party (the operating company) would never have exceeded $100,000.00. The $5.2 million

verdict, if "affirmed," was not collectible. Neither was the remitted judgment of $1,000,000.00. The plaintiff allowed judgment to enter as remitted, and did not appeal.

52. The operating company had maintained in force a liability policy sufficient to cover injuries to residents in *most* instances, but in common with liability policies issued to many skilled nursing facilities, it was a "wasting policy," and any indemnity amount owed under the Declaration Page of policy ($1 million) would be reduced by any moneys that had to be spent by the defending insurer on lawyers, expert witnesses, expenses, etc., to defend a claim. The operating company's policy had almost entirely "wasted" in this fashion because Plaintiff (a) had taken the case the year previously (2012) all through pre-trial and up to the very day of trial, before (b) non-suiting. Plaintiff then (c) quickly re-filed the entire case, and the case had to be prepared for trial a second time. In consequence, defense expenditures were nearly doubled, and the indemnity was, thereby, practically exhausted.

53. These background facts were not investigated by Maggio's counsel (and were not fully known even to Maggio himself), but could have been easily discovered if Maggio's counsel had returned phone calls made to her by counsel for "Individual #1" and/or "Individual #2."

54. "Nursing home litigation" in Arkansas has produced a sizeable number of "big verdicts," which drive up costs for insurance and for operations, even if the judgments that are obtained prove to be "uncollectible." The nursing home industry has been a principal driver for "tort reform" in Arkansas. The appellate courts in Arkansas have consistently found "tort reform" statutes unconstitutional. Individuals like "Individual #1," who have supported "tort reform" statutes have an interest in electing a

judiciary that will grant more deference to Arkansas's General Assembly, and such individuals tend to promote judicial candidates who are more deferential to the legislature, and express a greater resolve to interpret the constitution strictly. Such a view, for example, approves legislative limits on "punitive damages." Decisions to "punish" conduct are decisions ordinarily within legislative purview; yet, the Arkansas Supreme Court has decided that it is unconstitutional for the legislature to limit "punishment" because the State's Constitution declares that every citizen has a right to a *remedy* for injuries. Punitive damages, however, are by definition, not "remedial," but punitive. Strict construction of the constitutional language is all that is required to allow the people, voting through their representatives, to order economic relations.

55. The situation in Arkansas has attracted so much public interest that in November 2018, an Initiated Act is being proposed to its people amending the 1874 Constitution to permit greater legislative control over non-economic damages.

56. Maggio had attracted "Individual #1's" favorable not in 2013, but between 2010 and 2012, during the first (non-suited) claim, as it was processed in Maggio's Circuit Court. Maggio's rulings, while not uniformly favorable to "Individual #1," offered the perception that if Maggio continued to sit in that position, or to run for appellate office, he would apply "strict construction" principles.

57. The Constitution of the State of Arkansas, Amendment 80, Section 6, has created the office of Circuit Judge, and the office is by that token "a constitutional office" of the State. Constitutional officers serving localities are paid by the Arkansas General Assembly, entirely from General Fund revenues of the State of Arkansas, those being accumulated from sales and income taxes, licenses, fees, and other such sources, but do

not include any money appropriated from the federal government, or from non-governmental organizations.

58. If a federal grant or appropriation, for the benefit of any subordinate state agency is made, then, taking into consideration the conditions and requirements of the grant, an entirely separate fund or account, or accounts will be created for the purposes of handling and disbursing such funds. No such account was created for Maggio's office. Maggio's office received no funds. Maggio's office was funded by appropriations from the State's General Fund, and from county revenues.

59. Maggio was elected by voters to sit in the Second Division of the Twentieth Judicial District. Ark. Code Ann. § 16-13-2801. That District serves the territory within Faulkner, Van Buren, and Searcy Counties, in the State of Arkansas, and decides cases arising or filed therein. The Circuit Judge sitting in the Second Division of the Twentieth Judicial District is a constitutional office separate from that of the Circuit Judge sitting in the First Division of the Twentieth Judicial District, or the Circuit Judge sitting in the Third Division, or the Fourth Division, or any other Circuit Court position anywhere in the State.

60. Circuit Court Divisions maintain separate dockets and employ distinct persons to serve as docket coordinator, court reporter, and other personnel. Each Division has its own budget. Each Division draws a different "jury pool." Persons who have been appointed to serve as "Division" judges within a District are forbidden by Arkansas Const. Amendment 29, Section 2, from standing for election to that particular Division, but may offer himself or herself as a candidate for any another Circuit Court Division in the State (assuming qualifying residence). *Brewer v. Fergus*, 348 Ark. 577, 79 S.W.3d

831 (2002). As the Arkansas Supreme Court noted, "the office of division judge within a circuit is an elected officer, not an office assigned once a person is elected as a circuit judge of the circuit."

61. Maggio, then, at all relevant times, was a stand-alone constitutional officer of the State of Arkansas.

62. "The Twentieth District" is a "geographical description" of a part of the State of Arkansas, not a(n) organization, government, or agency of the State. The "Twentieth District" decides no cases, and executes no transactions. It has no legislature, no budget, no executives. It is simply a legislatively-designated "part of Arkansas," and from time-to-time, such a "District" can be reconfigured into one county, or two counties, or (as now) three different counties, even four or more counties, depending on changing demographics and caseloads.

63. At the relevant time according to the Information (Exhibit "D"), Maggio was sitting as Circuit Judge overseeing the case of *Rosey Perkins, et al. v. Greenbrier Care Center, et al.*, 23 CV-12-125. In that case, a nursing home resident in Faulkner County, Arkansas, died after receiving treatment for a stroke, and shortly after discharge from a nearby hospital. The jury decided the facility did not cause her death, but because of pain she endured during her ten-day stay there, awarded her estate $5.2 million in compensatory damages. The facility operator filed a timely motion for a new trial or a remittitur. Maggio denied the motion for a new trial, conditional on the Plaintiff's accepting a remittitur reducing the judgment award to $1 million. The Plaintiff accepted the remitted judgment, and did not appeal.

64. Maggio was prosecuted under 18 U.S.C. § 666, which prohibits Bribery by employees of agencies receiving federal funds. The Bribery alleged was "Individual #1's" political support and contributions towards Maggio's plan to run for higher office, a seat on the Arkansas Court of Appeals.

65. On May 15, 2013, the jury entered a verdict against the "Greenbrier Care Center" and a written judgment was filed a bit later. On June 6, 2013, the defendant nursing home filed its Motion for New Trial or in the alternative for remittitur. On June 27, 2013, Maggio announced his candidacy for election to the Arkansas Court of Appeals. For 2-3 weeks before that day, Maggio had been in discussions with "Individual #2" about support for his planned race. Individual #2 advised that Individual #1, along with other nursing home figures, would likely contribute. On June 29, 2013, Individual #2 advised Maggio that the first $50,000.00 was on the way, and shortly afterwards, Individual #1 funded PAC's to the extent of $3,000.00 a piece. The day before the remittur decision, Individual #2 texted that "win, lose, or draw," Maggio had Individual #1's support.

66. The sequence of donations was alleged in the Information to be improper because the Arkansas Code of Judicial Ethics prohibits solicitation for judicial races more than 180 days before a judicial election. The election for which Maggio announced his candidacy was to be held May 20, 2014, and thus contributions to a judicial campaign (these were to PAC's) could not be made before November 21, 2013. Prior to the election, state election and judicial conduct and ethics investigations were launched, and Maggio withdrew his candidacy and resigned his office, amid significant publicity.

67. Around October 2014, when a search warrant of his residence was conducted by the Federal Bureau of Investigations, Maggio learned he was a target of a federal grand jury investigation with reference to being *bribed* by "Individual #1" to render the decision that he had made. The Firm of Hilburn, Calhoon, Harper, Pruniski, & Calhoun promised Maggio the full resources of the firm to fight the federal criminal charges, and assigned associate Lauren Hamilton to do so. Ms. Hamilton had never handled a federal criminal case. She is primarily a divorce lawyer.

68. Lauren Hamilton utterly failed to investigate any facts or the governing law in the case. Even so, she immediately advised Maggio that all the United States Government needed to prove was that it had appropriated more than $10,000.00 *to the State of Arkansas*, and that since he was an "employee of the State," the jurisdictional pre-requisite was entirely established. She persuaded Maggio to plead to an Information that would be filed on the following representations:

(a) jurisdiction was established by the fact that federal appropriations to the State of Arkansas, *simpliciter*, exceeded $10,000.00;

(b) his actions in receiving a premature donation was "corrupt" if it violated judicial ethics, and he had admitted violating that regulation in resigning his office;

(c) there was no need for the Government to allege or prove a *quid pro quo*, only that he accepted a donation "corruptly"; and

(d) he must act quickly because lawyers for "Individual #1" and the alleged go-between, "Individual #2" were making numerous phone calls to the FBI and U.S. Attorney's Office to "make a deal" to testify against him,

and that action by him had to be taken very quickly or he would be sentenced to a lengthy term. Further, his wife cold be prosecuted because she had allegedly handled moneys of his campaign.

69. All of this advice was wrong, the product of gross negligence, but expressed in urgent authoritative, even emphatic terms. The giving of such erroneous advice, coupled with the fraudulent statement that Individual #1 and Individual #2 were trying to beat Maggio to the U.S. Attorney's office made his plea of Guilty an unknowing and an involuntary one, and constitutes the ineffective assistance of counsel. His plea of guilt to a non-crime is a direct result of this ineffective assistance.

D. THE INFORMATION TO WHICH MICHAEL A. MAGGION PLEADED GUILTY DEFECTIVELY ASSERTS JURISIDICTION OVER HIM AND HIS ACTIVITIES

70. In all the official proceedings in the United States District Court for the Eastern District of Arkansas, leading to Maggio's conviction and sentence, one observes a consistently odd choice of words by the AUSA, which constantly recurs both in the Information that the AUSA filed, and also in oral statements made to the trial judge. In alleging essential "jurisdictional circumstances," the AUSA alleged that the federal government appropriated "$10,000.00 or more" each year to an entity the Information describes as "State of Arkansas, Twentieth District." However, when the Prosecutor alleged that Maggio *acted* improperly, the Government declared that Maggio acted as an agent of the "State of Arkansas, Twentieth District, *Second Division.*" This odd, consistent choice of differing terminology is revealing because, in fact, *no* federal moneys were appropriated to the separate constitutional office or agency Maggio actually occupied, *viz.* "*the Second Division* of the Circuit Court for the Twentieth Judicial

District in the State of Arkansas." Further, no money can be appropriated, either by the State or by the federal government, to anything called the "Twentieth Judicial District" because "the Twentieth Judicial District" *is not a jural entity*. It is merely a geographic expression for an arrangement of counties. The "District" has no office, no employees, no agents, no local legislature, no local executive, no revenue, no taxing power, no police power.

71. The Information to which Maggio pleaded guilty, on the grossly negligent advice of his counsel said:

- JURISIDICTIONAL CIRCUMSTANCES

> "in the calendar year 2013 and 2014, the *State of Arkansas, Twentieth District* received in excess of $10,000.00 from the United States Government under federal programs involving grants, subsidies, loans, guarantees, insurance, and other forms of assistance."

and then

- TRANSACTIONAL CIRCUMSTANCES

> "Michael A. Maggio, defendant herein, an elected circuit judge, for the *State of Arkansas, Twentieth Judicial District, Second Division, a part of the judicial branch of the government for the State of Arkansas*, ... did receive... campaign contributions... for Maggio and his campaign intending to be influenced and rewarded in connection with a... transaction of the *State of Arkansas, Twentieth Judicial District, Second Division*, that involved $5,000.00 or more.

72. In reciting the "factual showing" in open court the U.S. Attorney (reading not from the Information, but from a separate document), continued the remarkable distinction first drawn up in the Information, above, saying:

> "In 2013 and 2014, the defendant Michael A. Maggio was an elected circuit judge from the State of Arkansas, Twentieth Judicial District, *Second Division*...," and
>
> "Maggio further stipulates that the United States would show that in calendar years 2013 and 2014, the State of Arkansas, *Twentieth Judicial District*, received

over $10,000.00, in federal funding." (Change of Plea Hearing, pp. 17, 22) (emphasis added).

73. The odd dichotomy is explainable because *the separate elected constitutional office* Maggio actually occupied (the Second Division) received *no federal moneys*. Maggio did not raise any issue about this at his Change of Plea Hearing in January 2015 because his attorneys advised him that all the Government needed to prove was that *the State of Arkansas* as an entity received at least $10,000.00.

74. If the Government had alleged in its Information that Maggio's *own* office received money; if the Government had alleged that "In calendar years 2013 and 2014, *the Second Division* of the Twentieth Judicial District in the State of Arkansas had received... $10,000.00...," Maggio would have *known* not to plead guilty to *that*.

75. The odd dichotomy in language and usage between the "jurisdictional allegations" ("State of Arkansas, Twentieth District") and the "transactional allegations" (State of Arkansas, Twentieth District, Second Division) became explicable when Maggio tried to withdraw his guilty plea: at that point, the U.S. Attorney admitted that the source and uses of the alleged $10,000.00-plus were not detailed in the Information because "*they are unrelated to anything Maggio did*" (Withdraw Plea Hearing, p. 7).

76. A person like Maggio, occupying a state office, without federal support, has the right to be judged under the terms of state laws by state juries and judges, not under looser federal standards, before remote federal courts. The cognate State statute criminalizing bribery requires a *quid pro quo* showing, Ark. Code Ann. § 5-52-101. That statute, in its Commentary, says, furthermore, "it is unclear that a contribution to a political organization (PAC) instead of the candidate himself" *would even be covered as a bribe*.

77. The application of a federal statute to a discrete state office that handles or is otherwise supported by no federal appropriation(s) is problematic enough, without two further considerations in the matter of the application of the statute to Maggio raises additional Due Process and Equal Protection concerns.

78. Before Congress enacted 18 U.S.C. § 666, attaching Bribery with respect to state officials connected to federal program moneys, Congress had previously outlawed bribery with respect to federal officials. 18 U.S.C. § 201(b)(2) provides as follows:

> (b) whoever –
>
> (2) being a public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, accepts, or agrees to accept anything of value personally or for any other person or entity, *in return for*:
>
> (A) being influenced in the performance of any official act
>
> …
>
> shall be fined under this title…" (emphasis added).

A prosecution under 18 U.S.C. § 201(b)(2) requires an "explicit *quid pro quo*."

79. The statute, 18 U.S.C. § 666, and Information in this case does not use the words "in return for," but penalizes a state actor for the lesser offense of *accepting* anything of value "with the intent of being influenced."

80. The differing treatment offends Equal Protection, because it exposes a state official to criminal liability on a lesser showing that a similarly-situated federal official.

81. The application of 18 U.S.C § 666 to candidates for state offices who "accept" a campaign donation "with the intent of being influenced by it" also raises grave First Amendment questions. The Department of Justice, *supra*, at Paragraph 26, urges caution in treating *bona fide* political contributions as "things of value" for purposes of Bribery.

E. SUCH ADMISSIONS AS MAGGIO DID MAKE IN HIS CHANGE OF PLEA HEARING WOULD NOT HAVE BEEN MADE AT ALL IF HE HAD BEEN PROPERLY COUNSELED. MORE CRITICALLY, THEY WERE AT BEST EQUIVOCAL WITH RESPECT TO ACTUAL CRIMINAL CONDUCT.

82. Maggio did not admit in the Change of Plea hearing that the office he held was supported or funded in any way by federal moneys.

83. The Information to which Maggio pleaded guilty state that "the State of Arkansas, Twentieth Judicial District" has received more than $10,000.00.

84. As Maggio had been advised that only "the State of Arkansas" need to be shown to have received more than $10,000.00 (and Arkansas had *like every other State* received *billions*), the addition of the words "Twentieth Judicial District" is surplusage. But even as surplusage, the words are untrue because no moneys, state *or* federal, were ever appropriated to an entity named "The Twentieth Judicial District," because *that is not a jural entity*, but a mere geographical description. Arkansas is free to create geographical "districts," and to specify that each "district" be served by a "State Police Troop." The "district" so drawn is neither an "organization," a "government," nor an "agency." The "agency" within the so-drawn district is "the Arkansas State Police."

85. Furthermore, nowhere in the Change of Plea hearing does the U.S. Attorney, in reciting the factual basis for the plea, recite or allege that the Second

Division in the Twentieth Judicial, or indeed that *any* division of the Twentieth Judicial District was supported by "federal program moneys."

86. Maggio pleaded guilty to a defective Information allegation as a result of the grossly negligent advice of counsel. His plea was facilitated by the deceptively-worded Information, words that never alleged that "*the Second Division* of The Twentieth District in the State of Arkansas" received any money; only that the "State of Arkansas, Twentieth District" did.

87. Maggio also pleaded guilty to having "corruptly" accepted a thing of value, as a result of the grossly negligent advice of his counsel, who advised him that all the United States had to prove was that he had violated the Arkansas Code of Judicial Ethics when his campaign accepted a thing of value (campaign assistance), before the November 21, 2013 start-up period.

88. As communicated to Maggio by his counsel, the United States would prove that he violated a "duty to the public" by not conforming to the "Code of Judicial Conduct" that advises that candidates for judicial office cannot accept campaign assistance until 6 months before the election. Maggio's grossly negligent lawyer advised him that the *timing* of his receipt of support from "Individual #1" made his act a "corrupt" one, and furthermore, that the U.S. Government did not need to prove a "*quid pro quo*," simply a decision after the "corrupt" receipt of support.

89. Yet, Arkansas does not regard violation of "ethical rules" to be violations of "duties to the public." *See*, *Orsini v. Larry Moyer Trucking, Inc.*, *supra.*

90. The Information (Exhibit "D") says nothing about "Ethical Rules," only that Maggio "corruptly" acted "with the intent to be influenced." But, in the U.S.

Attorney's recitation of the "factual support" for the Information at Maggio's "Change of Plea" hearing on January 19, 2016, the AUSA expounded at length (2/3's of a page) on the fact that (a) the Arkansas Code of Judicial Conduct prohibited candidates from soliciting or accepting contributions more than 180 days before the election, (b) that judicial candidates could not accept contributions until November 21, 2013, (c) that judicial candidates could not personally solicit contributions but could do so through a committee, and (d) that judicial candidates should not know who was supporting them (Change of Plea Hearing, p. 20). This otherwise-irrelevant commentary was designed to reinforce Maggio's assent to the contention that his act had been a "corrupt" one for purposes of the federal law; otherwise its appearance in the transcript would be completely unaccountable.

91. Finally, as stated, Maggio was pressured to plead Guilty *and quickly,* on the fraudulent advice of his counsel that "Individual #1" and "Individual #2" were "burning the telephone wires" to the FBI and the U.S. Attorney's office trying to "cut a deal" to "testify against him" and "send him down the river for 30 years."

92. Had Maggio been properly advised, he would not have pleaded Guilty to the Information. He would have demanded his right to be prosecuted, if at all, by the State, in Faulkner County, Arkansas, under more stringent standards of proof requiring an explicit *quid pro quo*, not simply for "intending to be influenced by contributions made too early."

F. THE MAXIMUM SENTENCE WAS INFLUENCED BY THE PLEA OF GUILT, AND BY MAGGIO'S ENTIRELY PROPER EFFORTS TO WITHDRAW HIS PLEA.

93. Maggio's attorney pressured him into pleading Guilty. She had conducted no discovery. She had performed no investigation, legal or factual.

94. Maggio's case was continued on motion *by the United States Government* for more than a year after his plea was received.

95. Maggio learned that no one representing "Individual #1" and "Individual #2" had been calling the U.S. Attorney trying to make a deal. He learned this after he pleaded guilty.

96. Maggio formed the belief that he had been misadvised, and sought independent counsel to withdraw his plea.

97. His new counsel filed a Motion to Withdraw his Guilty plea, and the sentencing judge formed the initial opinion that Maggio had simply developed "cold feet."

98. Because Maggio filed the Motion, the District Court that ultimately sentenced Maggio could not view him as a person who had "Accepted Responsibility" for violating the laws of the United States. Instead, Maggio stood in the sentencing court as one who had "Evaded Responsibility."

99. The trial court stated that it had on occasion been obliged to sentence drug defendants to long terms. That is true. But those defendants were likely to have been represented by counsel that performed some minimal investigation, and who in some fashion actually advocated *for* them. Having observed that drug defendants endure long imprisonments, the court stated that corrupt judges like Maggio were far more dangerous to the public than drug dealers.

100. It is the Congress that passes one law, 18 U.S.C. § 666, for *all* government agents - - administrators, judges, legislators, clerks. In doing so, the Congress has not authorized or suggested that judicial officers be treated more harshly than policemen. Furthermore, with respect to laws that Congress passed, the U.S. Sentencing Commission has created "Guidelines," and none of these operate invidiously with respect to judges.

101. The attempt to withdraw a plea made as a result of grossly ineffective counsel placed Maggio in the worst possible light for sentencing. A plea of Guilty ordinarily is itself an Acceptance of Responsibility that waives Indictment and Trial, and is entitled to consideration. No consideration was given. The only "aggravating" circumstances in this case were Maggio's judicial office (which should not aggravate his sentence), and his attempt to withdraw his plea.

102. The decision Maggio made as judge to remit a $5.2 million damage award was entirely proper. He would have been remiss *not* to order a new trial. He personally received no money, only PAC's organized to support his campaign did. The "victim" of Maggio's ruling suffered no damage. The victim never filed for a new trial or reinstatement of the Judgment, alleging that the New Trial/Remittitur Order was entered in violation of the Estate's rights. The $1.0 million remittitur award significantly exceeds the limits ($750,000.00) for non-economic damages that voters in Arkansas have subscribed petitions to amend the State's 1874 Constitution in the ballot box. Mitigating circumstances *abound*. Where drug dealers cause addiction that would never have occurred, and in fact increase their profits by maintaining their customers in bondage, real harm exists. To say that the people of Arkansas are more greatly harmed by a judge who enters an entirely proper order simply because he took donations to his campaign

earlier than an aspirational Code of Ethics would suggest, as opposed to the injuries they sustain when a profiter hooks teenagers on meth and heroin, expresses a bias intensified by the spectacle of Maggio attempting to withdraw his plea. That spectacle was placed before the sentencing judge because Lauren Hamilton gave Maggio grossly negligent and erroneous advice.

103. Petitioner has not previously applied for a Writ of Habeas Corpus in this Court or any other court.

WHEREFORE, Petitioner requests this Court:

1. Issue a Writ of Habeas Corpus Ad Subjiciendum, commanding Respondent to place the body of the Petitioner before this Court, at a time and place specified by Court, so this Court may inquire into the lawfulness of Respondent's custody of Petitioner.

2. Discharge the Petitioner form Respondent's custody; and

3. Grant Petitioner such other and further relief to which he may be entitled to receive in this proceeding.

Respectfully Submitted,

MICHAEL A. MAGGIO, Petitioner *Per Se*
In Propria Persona

Michael A. Maggio
28940-009
USP Big Sandy- Camp
PC Box 2068
Ines, KY 41224

STATE OF Kentucky
COUNTY OF Martin

VERIFICATION

The undersigned, Michael A. Maggio, states on oath states that the matters herein contained are true and correct to the best of his knowledge, information and belief.

MICHAEL A. MAGGIO, Petitioner

Subscribed and sworn to before me this 22 day of October, 2018.

NOTARY PUBLIC

My Commission Expires:

08-22-2020

AO 245B (Rev. 10/15) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Eastern District of Arkansas

UNITED STATES OF AMERICA
v.
MICHAEL A. MAGGIO

JUDGMENT IN A CRIMINAL CASE

Case Number: 4:15CR00001-01 BSM

USM Number: 28940-009

James Earl Hensley, Jr.
Defendant's Attorney

THE DEFENDANT:

☑ pleaded guilty to count(s) 1 of the Information

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 666(a)(1)(B)	Bribery Concerning Programs Receiving Federal Funds, Class C Felony	7/31/2014	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

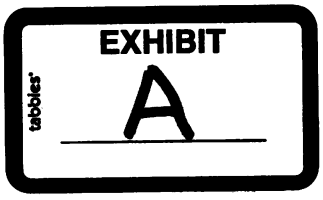
It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

3/24/2016
Date of Imposition of Judgment

Signature of Judge

BRIAN S. MILLER, UNITED STATES DISTRICT JUDGE
Name and Title of Judge

3-28-16
Date



AO 245B (Rev. 10/15) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: MICHAEL A. MAGGIO
CASE NUMBER: 4:15CR00001-01 BSM

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

ONE HUNDRED TWENTY (120) MONTHS

☑ The court makes the following recommendations to the Bureau of Prisons:

Maggio shall serve his term of imprisonment at FCI Texarkana, Texas

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☑ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☑ before 2 p.m. on 5/23/2016.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. 10/15) Judgment in a Criminal Case
Sheet 3 — Supervised Release

DEFENDANT: MICHAEL A. MAGGIO
CASE NUMBER: 4:15CR00001-01 BSM

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

TWO (2) YEARS

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*

☑ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*

☑ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*

☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*

☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: MICHAEL A. MAGGIO
CASE NUMBER: 4:15CR00001-01 BSM

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$ 0.00	$ 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ 0.00	$ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MICHAEL A. MAGGIO
CASE NUMBER: 4:15CR00001-01 BSM

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 100.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

United States Court of Appeals
For the Eighth Circuit

No. 16-1795

United States of America

Plaintiff - Appellee

v.

Michael A. Maggio

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Arkansas - Little Rock

Submitted: March 8, 2017
Filed: July 3, 2017

Before RILEY,[1] Chief Judge, GRUENDER, Circuit Judge, and GRITZNER,[2] District Judge.

RILEY, Chief Judge.

[1]The Honorable William Jay Riley stepped down as Chief Judge of the United States Court of Appeals for the Eighth Circuit at the close of business on March 10, 2017. He has been succeeded by the Honorable Lavenski R. Smith.

[2]The Honorable James E. Gritzner, United States District Judge for the Southern District of Iowa, sitting by designation.

In this case, we affirm the bribery conviction and ten-year prison sentence the district court[3] ordered for a former state-court judge who admitted trading a remittitur in a case for a campaign contribution and then had second thoughts about his guilty plea.

I. BACKGROUND

In late spring 2013, Michael Maggio was a circuit (trial) judge in Arkansas, starting to campaign for a seat on the Arkansas Court of Appeals. Through a lobbyist, Maggio solicited "'nursing home folks'"—stockholders, not residents—for financial support. Meanwhile, Maggio was presiding over a case in which the jury had just returned a $5.2 million verdict against a nursing-home company. On the day Maggio heard argument on the company's motion to remit the judgment, the owner of the company wrote checks totaling $24,000 to support Maggio's campaign. Maggio, who had been told by the lobbyist that the company's owner would give money if Maggio ruled in his company's favor, accepted the contributions and, in exchange, reduced the award to $1 million.

Based on these admitted facts, Maggio pled guilty to violating 18 U.S.C. § 666, which says:

> (a) Whoever, if the circumstance described in subsection (b) of this section exists—
>
> > (1) being an agent of an organization, or of a State, local, or Indian tribal government, or any agency thereof—
> >
> > > (A) [illegally takes $5,000 or more worth of official property]; or

---

[3]The Honorable Brian S. Miller, Chief Judge, United States District Court for the Eastern District of Arkansas.

> (B) corruptly solicits or demands for the benefit of any person, or accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business, transaction, or series of transactions of such organization, government, or agency involving any thing of value of $5,000 or more; or
>
> (2) [gives, offers, or agrees to give a bribe];
>
> shall be fined under this title, imprisoned not more than 10 years, or both.
>
> (b) The circumstance referred to in subsection (a) of this section is that the organization, government, or agency receives, in any one year period, benefits in excess of $10,000 under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of Federal assistance.

In other words (and as relevant), an agent of a federally funded state government or agency cannot accept anything of value "intending to be influenced or rewarded in connection with" official business. Id.

To satisfy the statute's technical requirements, Maggio stipulated that (1) "[d]uring his tenure as a circuit judge, [he] was an agent of the State of Arkansas and the Twentieth Judicial District"; and (2) "the State of Arkansas, Twentieth Judicial District, received over $10,000 in federal funding" in the relevant years. Maggio also "waive[d] the right to appeal the conviction and sentence,"[4] while

[4]Because Maggio explicitly waived the right to appeal, we need not address what effect his guilty plea standing alone might have had on his ability to appeal. Cf. Class v. United States, 137 S. Ct. 1065 (2017) (mem.) (granting certiorari in a case presenting the question: "Whether a guilty plea inherently waives a defendant's right to challenge the constitutionality of his statute of conviction?").

"reserv[ing] the right to appeal the sentence if the sentence imposed is above the Guideline range that is established at sentencing." See United States v. Andis, 333 F.3d 886, 889 (8th Cir. 2003) (en banc) ("As a general rule, a defendant is allowed to waive appellate rights.").

While waiting to be sentenced, Maggio stopped cooperating with the government. The government then revoked its favorable stipulations regarding sentencing, and Maggio's Presentence Investigation Report was revised accordingly. Shortly thereafter, Maggio moved to withdraw his guilty plea. See Fed. R. Crim. P. 11(d)(2)(B). The district court denied Maggio's motion.

At sentencing, the district court calculated the recommended sentencing range under the advisory United States Sentencing Guidelines (Guidelines or U.S.S.G.) to be 51 to 63 months. Maggio argued for probation. The government, after unsuccessfully contesting the Guidelines determination,[5] asked for a sentence at the high end of the range. The district court varied upward to 120 months, the statutory maximum, see 18 U.S.C. § 666(a), emphasizing that "a dirty judge is by far more harmful to society than any dope dealer."[6]

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[5]The government cited Guidelines § 2C1.1(b)(2) and the accompanying commentary to argue it was a mistake to base Maggio's offense level on the value of the campaign contributions he received, rather than the much larger amount by which he reduced the judgment. We do not address this issue—which the government has preserved as a fallback argument on appeal—because we conclude the sentence was reasonable on its own terms.

[6]Harsh words and lengthy sentence notwithstanding, the district court allowed Maggio sixty days to get his affairs in order, and then granted Maggio's motion for release pending this appeal. The district court also had allowed Maggio to remain free for the fourteen months between his guilty plea and sentencing. As the government makes a point of informing us, Maggio has not yet served any time for his misdeeds. That will soon change. Until then, we decline the implicit invitation to revoke Maggio's bond or otherwise impose a harsher disposition than the district

Maggio now argues his conviction is illegal and his sentence unreasonable. We have appellate jurisdiction under 28 U.S.C. § 1291.

II. DISCUSSION

We review legal issues, including the application of Maggio's appeal waiver and the interpretation of § 666, de novo. See, e.g., United States v. Seay, 620 F.3d 919, 923 (8th Cir. 2010). The district court's refusal to let Maggio withdraw his plea is reviewed for abuse of discretion. See, e.g., United States v. Heid, 651 F.3d 850, 854 (8th Cir. 2011). So are the decision to vary upward and the reasonableness of the sentence. See, e.g., United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc).

A. Conviction

Maggio's primary contention on appeal is that there was no factual basis for his guilty plea, and the district court should have let him withdraw it. See Heid, 651 F.3d at 856. One of the facts Maggio claims was missing is what he calls a "nexus" between the bribe he took and the federal funding received by the judicial district where he sat. Nothing in the text of § 666 requires such a link between the bribe and federal money, yet Maggio insists we must read one in, otherwise the statute would exceed Congress's power under the Constitution. The government picks out this portion of Maggio's argument, which it characterizes as an "attempt[] to raise an 'as applied' challenge to § 666 by squeezing it through the door of his challenge to the factual basis of his plea," and asserts it is barred by Maggio's appeal waiver.

Maggio's response is not to dispute the applicability of the waiver but to claim it is irrelevant, because his theory implicates the district court's subject-matter

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court ordered, given that the government could have appealed the point but did not. See 18 U.S.C. §§ 3145(c), 3731; cf. Greenlaw v. United States, 554 U.S. 237, 240 (2008) ("[A]bsent a Government appeal or cross-appeal, the sentence . . . should not have been increased.").

jurisdiction and "lack of federal jurisdiction cannot be waived," Mitchell v. Maurer, 293 U.S. 237, 244 (1934). Our case law is clear, "[a]s-applied challenges to the constitutionality of a statute . . . are not jurisdictional." Seay, 620 F.3d at 922 n.3. We find no support for Maggio's suggestion his particular as-applied challenge is somehow outside that rule "because it deals, not with a mere defense, but with proof of federal nexus and the 'necessary and proper' clause and the ability to prosecute at all." The controlling precedent, United States v. Seay, also involved a defendant who argued a federal criminal law could not be applied to him constitutionally, and we held his challenge was "foreclosed by his guilty plea."[7] Id.

At oral argument, we asked why the government did not invoke the appeal waiver against the rest of Maggio's argument, namely his claims about the deficient factual basis for his plea. The government assured us that it did. There is nothing to that effect in the government's brief, however—the discussion of waiver is clearly confined to the as-applied constitutional challenge. Given that it is the government's burden to prove an appeal waiver applicable and enforceable, see, e.g., United States v. Gray, 528 F.3d 1099, 1102 (8th Cir. 2008), we hesitate to dismiss Maggio's other arguments on the basis of his appeal waiver absent any real argument that the requirements for doing so are satisfied. That is particularly so in light of the wording of Maggio's waiver being at least slightly less clear with respect to factual-basis challenges than others we have seen. Cf., e.g., id. at 1100 (waiver expressly covered "'any issues relating to the negotiation, taking or acceptance of the guilty plea or the factual basis for the plea'" (emphasis omitted)).

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[7]Maggio's cursory reference to the rule that we will not enforce appeal waivers if doing so would work a miscarriage of justice, see Andis, 333 F.3d at 891, is no help either. Maggio simply declares the exception should apply "[i]f the court finds merit in any of [his] arguments," but that cannot be right—enforcing waivers to bar only meritless appeals would render the rule superfluous.

Leaving aside the waiver, Maggio's arguments that there was no factual basis for finding him guilty are all easily resolved. The (again, nonjurisdictional) nexus theory is squarely foreclosed by United States v. Hines, in which we held "the plain language of [§ 666] does not require, as an element to be proved beyond a reasonable doubt, a nexus between the activity that constitutes a violation and federal funds."[8] United States v. Hines, 541 F.3d 833, 835-36 (8th Cir. 2008) (affirming the conviction of a deputy sheriff who took cash payoffs for enforcing eviction orders and seizing property, and who argued his conduct had nothing to do with the federal funding the sheriff's office received); see also Sabri v. United States, 541 U.S. 600, 605 (2004). The claim that Maggio was not an agent of the state government is belied by his stipulation that he "was an agent of the State of Arkansas and the Twentieth Judicial District." See United States v. Brown, 331 F.3d 591, 595 (8th Cir. 2003) (making clear that the factual basis for a guilty plea can be established through facts recounted and stipulated in the plea agreement). Maggio's claim that there was no basis for finding any quid pro quo ignores his express admission of "accept[ing] . . . financial support . . . *intending to be influenced and induced* to remit the judgment" (emphasis added). See id.

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[8]Contrary to Maggio's suggestion, the Supreme Court's recent decision in McDonnell v. United States, 579 U.S. ___, 136 S. Ct. 2355 (2016), did not undermine Hines, such that we could choose not to follow it here, see, e.g., United States v. Williams, 537 F.3d 969, 975 (8th Cir. 2008). McDonnell was about what conduct rises to the level of an "official act" within the scope of a different bribery statute. See McDonnell, 579 U.S. at ___, 136 S. Ct. at 2371-72 (interpreting 18 U.S.C. § 201(a)(3)). McDonnell had nothing to do with § 666 or what sort of federal connection is necessary to give Congress authority over state-level corruption. True, the Court expressed concerns that if the statutory language were read too broadly, "public officials could be subject to prosecution, without fair notice, for the most prosaic interactions," id. at ___, 136 S. Ct. at 2372-73, and Maggio likewise warns that upholding his conviction would result in "overcriminalization and free ranging prosecution" under § 666. But the logical parallel between those issues is far too abstract to establish that our specific holding in Hines is in doubt after McDonnell.

Also mistaken is Maggio's reliance on United States v. Whitfield, a Fifth Circuit decision vacating § 666 convictions for two Mississippi judges on the grounds that the bribes they took were not "'in connection with any business, transaction, or series of transactions' of [an] agency receiving federal funds." United States v. Whitfield, 590 F.3d 325, 335-36, 345-46 (5th Cir. 2009) (quoting 18 U.S.C. § 666(a)(1)(B)). The theory of Whitfield was, the only such agency that might have been implicated was the Mississippi Administrative Office of the Courts. See id. at 344. Because the business of that office—"'the efficient administration of the nonjudicial business of the courts'"—"had nothing to do with" the judges' corrupt acts—rulings in cases they presided over—§ 666 did not apply. Id. at 344-46 (quoting Miss. Code Ann. § 9-21-1). Here, by contrast, the relevant federally funded agency was "the State of Arkansas, Twentieth Judicial District, Second Division," the judicial body on which Maggio sat. See 18 U.S.C. § 666(d)(2) (defining "government agency" to include "a subdivision of the . . . judicial . . . branch of government"). We have no doubt that when a judge issues an order remitting a judgment in a case before him, he is acting in connection with the business of his court.

Finally, Maggio's undeveloped suggestion that he did nothing wrong because "the remittitur was legally required" reflects a fundamental misunderstanding of his crime. Simply put, Maggio admitted he took money intending it to color his judgment in a case. That was illegal, whether or not a judge who was not corrupt might have ruled the same way. See id. § 666(a)(1)(B) (prohibiting "corruptly . . . accept[ing]" something of value "intending to be influenced or rewarded in connection with" official business).

B. Sentence

Maggio argues his sentence is unreasonable because the district court based the upward variance on the fact Maggio was a judge, even though the Guidelines already accounted for Maggio's position by increasing his offense level by four levels for being "an elected public official" or "public official in a high-level decision-making

or sensitive position," U.S.S.G. § 2C1.1(b)(3).[9] Maggio cites decisions in which we have "cautioned district courts that 'substantial variances based upon factors already taken into account in a defendant's guidelines sentencing range seriously undermine sentencing uniformity.'" United States v. Solis-Bermudez, 501 F.3d 882, 885 (8th Cir. 2007) (quoting United States v. Morales-Uribe, 470 F.3d 1282, 1286 (8th Cir. 2006)). The government counters with case law making clear that "factors that have already been taken into account in calculating the advisory Guidelines range can nevertheless form the basis of a variance," so long as the sentence ultimately imposed is reasonable. United States v. David, 682 F.3d 1074, 1077 (8th Cir. 2012).

This is not the case to address any tension in our precedent on this point, because Maggio's premise that the variance reflected double-counting (improper or not) is mistaken. The thrust of the district court's explanation of the variance was not just that Maggio was a significant public official who took a bribe in connection with some undefined official business, which is all the Guidelines provision accounted for, but specifically that he was *a judge* who took a bribe *to decide a case a particular way*. Thus:

> I put drug dealers in prison for five, ten, 15, 20 years for standing on the street corner selling crack cocaine or being involved in a conspiracy where they are talking on the phone about crack.
>
> And I asked myself this morning on my way over here from Helena driving over, What is worse: A dope dealer on the phone talking about a dope deal, or a dirty judge? There's no question. In society, a dirty judge is by far more harmful to society than any dope dealer. Now,

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[9]In his reply brief, Maggio supplements this theory with references to the purposes of sentencing and comparisons to other bribery cases involving lawyers and government officials. We generally do not consider arguments omitted from a party's initial brief, see, e.g., United States v. Morris, 723 F.3d 934, 942 (8th Cir. 2013), and in any event, the additions are mainly rhetorical and do not change our conclusion.

> you say dope dealers kill people and they do all of that, but a judge is the system.

In the district court's view, the fact Maggio acted corruptly while performing his core duty as a judge presiding over a case—a context in which, even more than other high-level and elected officials, he assumed a mantle of impartiality and sat as a personification of "the system"—set his crime apart and made it significantly worse than the usual one to which the Guidelines provision applied. We see no abuse of discretion in that determination, particularly given the deference we afford the district court regarding sentencing. See, e.g., Feemster, 572 F.3d at 464.

III. CONCLUSION

Maggio waived at least part of his appeal, his nexus theory is meritless, and the district court was within its discretion to hold him to his guilty plea and sentence him to ten years in prison. We affirm.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 16-1795

United States of America

Appellee

v.

Michael A. Maggio

Appellant

Appeal from U.S. District Court for the Eastern District of Arkansas - Little Rock
(4:15-cr-00001-BSM-1)

MANDATE

In accordance with the opinion and judgment of 07/03/2017, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

July 25, 2017

Clerk, U.S. Court of Appeals, Eighth Circuit

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

January 8, 2018

Mr. John Wesley Hall
1202 Main St.
Suite 210
Little Rock, AR 72202

Re: Michael A. Maggio
v. United States
No. 17-6272

Dear Mr. Hall:

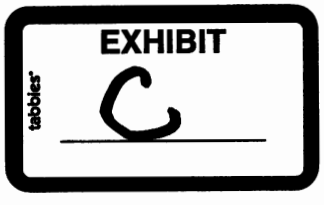
The Court today entered the following order in the above-entitled case:

The petition for rehearing is denied.

Sincerely,

Scott S. Harris

Scott S. Harris, Clerk



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

UNITED STATES OF AMERICA	)	
	)	No. 4:15CR00001-1 BSM
v.	)	
	)	18 U.S.C. § 666(a)(1)(B)
MICHAEL A. MAGGIO	)	

INFORMATION

THE UNITED STATES ATTORNEY CHARGES THAT, at all times material to this Information:

GENERAL ALLEGATIONS

1. Defendant MICHAEL A. MAGGIO was a circuit judge for the State of Arkansas, Twentieth Judicial District, Second Division. MAGGIO was appointed to this position in or about 2000, elected to this position in or about 2002, and re-elected to this position in or about 2008. MAGGIO held this position until on or about September 11, 2014. During his tenure as a circuit judge, MAGGIO was an agent of the State of Arkansas and the Twentieth Judicial District, and he presided over criminal, civil, domestic relations, and probate cases filed in Faulkner, Van Buren, and Searcy counties.

2. On or about June 27, 2013, MAGGIO announced his candidacy for the Arkansas Court of Appeals for the nonpartisan general election to be held on May 20, 2014. MAGGIO formally withdrew his candidacy on or about March 6, 2014.

3. Individual A was a stockholder in numerous nursing homes located in Arkansas. Individual A owned Company A, a nursing home located in Faulkner County.

4. Individual B was a lobbyist and political fundraiser. Individual B assisted MAGGIO's campaign to be elected to the Arkansas Court of Appeals.

COUNT ONE
Bribery Concerning Programs Receiving Federal Funds
(Violation of 18 U.S.C. § 666(a)(1)(B))

5. Paragraphs 1 through 5 are realleged and incorporated by reference as though fully set forth herein.

6. In each of the calendar years 2013 and 2014, the State of Arkansas, Twentieth Judicial District received in excess of $10,000 from the United States government under Federal programs involving grants, subsidies, loans, guarantees, insurance, and other forms of assistance.

7. From in or about February 2013 and continuing until in or about mid-2014, in the Eastern District of Arkansas and elsewhere,

MICHAEL A. MAGGIO,

defendant herein, an elected circuit judge for the State of Arkansas, Twentieth Judicial District, Second Division—a part of the judicial branch of government for the State of Arkansas—did knowingly and corruptly solicit and demand for his own benefit and the benefit of others, and accept and agree to accept, a thing of value from Individual A—that is, campaign contributions—provided through an intermediary, that is, Individual B, for MAGGIO and his campaign intending to be influenced and rewarded in connection with a business, transaction, and series of transactions of the State of Arkansas, Twentieth Judicial District, Second Division, that involved $5,000 or more.

All in violation of Title 18, United States Code, Section 666(a)(1)(B).

Respectfully Submitted,

PATRICK HARRIS
ATTORNEY FOR THE UNITED STATES,
ACTING UNDER AUTHORITY CONFERRED BY
TITLE 18, UNITED STATES CODE, SECTION 515

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