

No. 18-5621

In The Supreme Court of the United States

BISMARCK KWAKU TORKORNOO,

Petitioner,

v.

HELWIG ESQ., ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the
Fourth Circuit Court

SUPPLEMENTAL BRIEF FOR A WRIT OF CERTIORARI

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MAY 2018

Pro se

i

QUESTIONS PRESENTED

1. Whether petitioner's admissible evidence proofing fraud, collusion, deception and conflict of interest of state court's proceedings preconceived arbitrary, calculated to oppress and repress his rights without due process of law should trigger exceptions to res judicata, estoppel or Rooker-Feldman doctrines in his federal civil suit.
2. Does fraud vitiates every judicial proceedings, if so, did the Fourth Circuit Court's decision affirming the district court's reasons based on preclusion, deprives petitioner of his due process and equal protection rights before the law in light of the numerous admissible evidences on file in support of his independent claim that proofs the state court's proceedings tainted with frauds, collusions, deceptions and conflict of interest constituting inadequate judicial proceedings in preventing him from making his civil case in full?
3. Whether a litigant who had no benefit of a full and fair trial in a state court, and his rights measured by laws made to affect him individually (to break his family and deprive him of his financial interests), not by general provisions of law applicable to all those in like condition deprives him of his rights to freedom, liberty, and property without due process of law is entitled to a supplementary remedy in federal court.
4. Whether the Fourth Circuit Court's affirming district court's new reasons based on res judicata or estoppel without relying on any documentary proof on file showing adequacy of state court's proceedings prejudiced the petitioner in light of numerous admissible evidences on file in support of his independent claims against respondents' frauds, collusions, and conflict of interests violates the Fourteenth Amendment.

PARTIES TO THE PROCEEDINGS

The petitioner is Bismark Kwaku Torkornoo, the plaintiff, respondents are Nina Helwig Esq., Ms. Jacqueline Ngole Esq., Mr. John Monahan Esq. and Mary Torkornoo.

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW.....	i
PARTIES TO THE PROCEEDINGS.....	ii
TABLE OF AUTHORITIES.....	iii
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	2
JURISDICTION.....	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	4
STATEMENT.....	5
REASONS FOR GRANTING THE PETITION.....	12
THE QUESTIONS PRESENTED ARE OF EXCEPTIONAL IMPORTANCE.....	14
CONCLUSION.....	15

APPENDIX A

INDEX

U.S Court of Appeals (4 Cir 2018) Unpublished Opinion.....	1a
U.S Court of Appeals (4 Cir 2018) Judgment.....	3a
U.S District Court (2017) Opinion.....	6a
U.S Court of Appeals (4 Cir 2016) Unpublished Opinion.....	13a
U.S District Court (2016) Opinion.....	16a

Court of Special Appeals Judgement (2014).....	21a
Court of Special Appeals Order (2014).....	22a
Court of Special Appeals Order (2014).....	24a
Court of Special Appeals Judgement (2013).....	25a
Court of Special Appeals Judgement (2013).....	28a
Court of Special Appeals Judgement (2014).....	29a
Court of Special Appeals Judgement (2013).....	30a
Montgomery County Circuit Court Order (2013).....	31a
Montgomery County Circuit Court Order (2013).....	32a
Montgomery County Circuit Court Order (2013).....	34a
Circuit Court Scheduling Order (2013).....	38a
Montgomery County Circuit Court Order (2013).....	43a
Montgomery County Circuit Court Order (2013).....	44a
Montgomery County Circuit Court Order (2013).....	45a
Circuit Court Scheduling Order (2013).....	46a
Circuit Court Scheduling	

Order (2013).....	50a
Circuit Court Scheduling	
Order (2013).....	51a
Montgomery County Circuit Court	
Order (2013).....	52a
Montgomery County Circuit Court	
Order (2013).....	54a
Montgomery County Circuit Court	
Order (2013).....	55a
Montgomery County Circuit Court	
Order (2013).....	56a
Montgomery County Circuit Court	
Order Appointing Monahan as Trustee (2012).....	57a
Appellant's Motion for Extension of Time and Motion to Supplement the Record (Court of Special Appeals 2014).....	59a
Plaintiff's Motion for Continuance.....	72a
Plaintiff's Evidence in Support of Motion For Continuance.....	75a
Circuit Court Scheduling	
Order (2013).....	78a
Montgomery County Circuit Court	
Order (2013).....	80a
Plaintiff Motion for Contempt.....	81a
Montgomery County Circuit Court Order Dismissing Plaintiff Request for Enforcement (2012).....	86a
Email Correspondence Regarding Therapy Scheduling Issues.....	87a

Therapist Intake and Observations.....	96a
Montgomery County Circuit Court Order Dismissing Plaintiff's Motion for Contempt Without Scheduling Hearing or Trial (2015).....	100a
Mortgage Payoff Balance from Nationstar.....	102a
Email Correspondence/Evidence Regarding Heating and Air Condition Repairs (2011).....	105a
Monahan's (Trustee) Accounting After Sale Contract.....	112a
Monahan's (Trustee) Report of Sale Affidavit and Motion.....	115a
Monahan's (Trustee) Opposition to Plaintiff's Motion for Second Appraisal and Other Relief	121a
ORIGINAL CUSTODY ORDERS (2009).....	125a
Montgomery County Circuit Court Order Appointing Helwig as Best Interest Attorney (2012).....	128a
Modified Custody Order (2012).....	132a
Modified Custody Order (2010).....	137a
Divorce Judgment (2009).....	140a
Helwig's Request to Enforce Judgment.....	143a
Court Appointed Evaluator's Report (2009).....	146a

Modified Custody Order (2012).....	155a
Montgomery County Circuit Court Order Denying Plaintiff's Motion to Enforce Judgment (2013).....	160a
Pertinent Authorities.....	161a

APPENDIX B

INDEX

U.S District Court's Exhibits 16-21 (excerpts).....	1b
U.S District Court's Exhibit 5 (excerpts).....	2b
U.S District Court's Exhibit 6 (excerpts).....	7b
U.S District Court's Exhibit 10 (excerpts).....	9b
U.S District Court's Exhibit 11 (excerpts).....	11b
U.S District Court's Exhibit 23 (excerpts).....	15b
U.S District Court's Exhibit 26 (excerpts).....	20b
U.S District Court's Exhibit 30 (excerpts).....	23b
U.S District Court's Exhibit 32 (excerpts).....	26b
U.S District Court's Exhibit 42 (excerpts).....	30b

U.S District Court's
Exhibit 25 (excerpts).....34b

APPENDIX C

INDEX

EXCERPTS From U.S District Court's
Exhibits 16-21 (Protective Orders
Petitions Denials).....1c

U.S District Court's Exhibit 27.....4c

U.S District Court's
Exhibit 36.....5c

U.S District Court's
Exhibit 35.....6c

U.S District Court's
Exhibit 45 [Office of Child
Support Audit].....7c

Montgomery County Circuit Court
Memorandum.....11c

Montgomery County Circuit Court
Hearing Date.....13c

Montgomery County Circuit Court
SHOW CAUSE -CONTEMPT
SCHEDULING ORDER.....14c

Montgomery County Circuit Court
SCHEDULING ORDER.....16c

Montgomery County Circuit Court
Notice of Hearing Date.....18c

Montgomery County Circuit Court
Motion for Hearing Moot.....20c

Montgomery County Circuit Court

Removal of Hearing Date [Motion for Contempt, Motion for Custody Modification, Motion to Enforce].....	21c
Excerpts from Transcript Montgomery County Circuit Court ROKSHAN JAHAN v. AHMAD TAHIR [Protective Order Extension Trial] Dated 3/16/2018.....	22c
Excerpts from Transcript Montgomery County Circuit Court Bismark Kwaku Torkornoo v. Mary Torkornoo [Dispositive Motion Hearing] Dated 3/16/2018.....	27c
911 Report (4/19/2012).....	34c
911 Report in 2008	35c
911 Report in 2005	36c
Contempt Evidence.....	37c
911 Report on 12/11/2011.....	39c
OPERATIVE FACTS	41c
The Requirements of Due Process.....	79c

CASES

United States Supreme Court Cases

<i>Anderson v. Liberty Lobby, Inc.,</i> 477 U.S. 242, 248 (1986).....	13, 14
--	--------

<i>Carey v. Piphus,</i> 435 U.S. 247, 259 (1978).....	15
--	----

<i>In re Davidovich,</i>	
--------------------------	--

901 F.2d 1533, 1536 (10th Cir. 1990)	
<i>Carey v. Piphus</i> , 435 U.S. 247, 259 (1978).....	14
<i>Goldberg v. Kelly</i> , 397 U.S. 254, 271 (1970).....	13
<i>Monroe v. Pape</i> , 365 U. S. 183, 365 U.S. at 365 U. S. 173-174.....	14

Federal Appeals Court Cases

<i>Thana v. Bd. Of License Commissioners for Charles City</i> , 827 F.3d 314, 320 (4th Cir. 2016).....	6
---	---

OTHER CITATIONS

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. V	<i>passim</i>
U.S. Const. amend. XIV, § 1.....	<i>passim</i>

STATUTES

Fed. R. Civ P. Rule 201(b)	7
FRCP Rule 401.....	7, 13

PETITION FOR A WRIT OF CERTIORARI

Petitioner is Bismark Kwaku Torkornoo, a *pro se* with civil lawsuit from Maryland respectfully petitions this Honorable Court for a Writ of Certiorari to review the judgments of the Fourth Circuit Court denying him appeal based on the decision by United States District Court in Maryland.

OPINIONS BELOW

Unpublished opinion and judgment issued by the United States Fourth Circuit Court (Appendix A pages 1a-4a) affirming the United States District Court's decision, (Appendix A pages 6a-12a). The Fourth Circuit Court's previous unpublished opinion and judgment (Appendix A pages 13a-15a) directly conflict with the Fourth Circuit Court's recent decision because it flipped without valid reason in light of its previous decision [Appendix A pages 1a-4a] that vacated the United States District Court's erroneous decision (Appendix A pages 16a-20a) before the law. There is no written opinion by both Montgomery County Circuit Court and the Court of Special Appeals regarding disposition of petitioner's civil case on the merit (Appendix A page 31a). Other relevant documentary evidences are made available at Appendixes A, B and C.

JURISDICTION

The Fourth Circuit Court issued its decision on May 16, 2018, affirming District Court's Judgment dated October 27, 2017 dismissing petitioner's civil lawsuit, Appendix A pages 1a-2a.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const, amend. V

provides:

"due process" to apply the Bill of Rights to the states

"due process of law"

"the promise of legality and fair procedure"

U.S. Const., amend. XIV

Equal Protection Clause

provides:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

Due Process Clause

provides:

[N]or shall any State deprive any person of life,
liberty, or property, without due process of law....

STATEMNT

1. The Supplemental Brief herein re-establishes the lack of merits and lack of judicial independence exhibited by Judge Cynthia Callahan and Master Clark Wisor at petitioner's expense solely to benefit respondents' [Ms. Nina Helwig Esq., Ms. Jacqueline Ngole Esq., Mr. John Monahan Esq. and Ms. Mary Torkornoo] interests according to "The Operatives Facts showing at Appendix C pages 41c-78c".

2. The operative show that Judge Callahan and Master Wisor's gave respondents preferential treatments and incentivized respondents to infringe petitioner's rights. Respondents include three officers of the court namely Ms. Nina Helwig Esq., Ms. Jacqueline Ngole Esq. and Mr. John Monahan Esq., acted in concert with Ms. Torkornoo incentivized by Master Wisor and Judge Callahan against petitioner's interests.

3. The acts at Incident #1, Incident #2 and Incident #3 [Appendix C pages 41c-78c] primarily reflects petitioner's complaint. The acts are actionable and require accountability but Incident #4 obstructed justice. As a result of that obstruction, the state court's failure to correct itself, evidenced by Incident #4 and Incident #5 plaintiff filed this federal civil lawsuit to hold respondents accountable as matter of law actionable under Count I (Interference of Parental Rights), Count II (Fraudulent Misrepresentation) and Count III (Unjust Enrichment) pursuant to supplemental remedy available for state court litigants who were not given full and fair opportunity to litigate their cases due to fraud on the court, deception, collusion, and conflict of interest in light of their inalienable right protected under the Fifth Amendment and the Fourteenth Amendment of United States Constitution in light of Appendix A (pages 16a-20a):

"if a plaintiff in federal court does not seek review of the state court judgment itself but instead presents an independent claim"¹ that is related to a matter decided by a state court. *Id.* at 320 (internal quotation marks and emphasis omitted). *See Appendix A (page 14a).*

4. The 4th Cir and the district court applying erroneous standard apparently undermine the Constitution, this Court's (Supreme Court) Practice, Procedural Doctrines, and Substantive Law Doctrines. The compelling interest of this petition should not only rest on the evidence alone, but also focus on the new process and models exhibited by the 4th Cir to embrace both the district court and state court discretionary abuse upon indifferent treatment inflicted on petitioner according to the operative facts established in Appendix C pages 42c through 78c.

5. Paragraph 3 of the Brief filed on 11/5/2018, petitioner states:

"The operative facts of the family law case are incorporated in the Supplemental Brief that follows this brief. However, the relevant subject matter here, reflects disposition of the state court's civil case no. 378782V (Appendix 31a-33a) by both the Montgomery County Circuit Court, Maryland and Court of Special Appeals (Appendix 31a-33a) proceedings were preconceived arbitrary calculated to oppress and repress his rights without due process of law is unconstitutional and should trigger exceptions to res judicata, estoppel or Rooker-Feldman doctrines in petitioner's

¹ *Thana v. Bd. Of License Commissioners for Charles City*, 827 F.3d 314, 320 (4th Cir. 2016).

federal civil suit based on the facts, numerous documentary evidences produced and rule of law (Appendix B, Appendix 21a-160a and Supplemental Brief)."

6. Here, the Supplemental Brief incorporates evidence material to this petition and available on the federal dockets except Incident #6, which is now added to re-establish the pattern of unfair practices of the state court targeting petitioner's interests.

ISSUE 1

7. Appendixes A, B and C are consistent with FRCP Rule 401, Rule 613 and Rule 201(b). Rule 201(b) provides that an adjudicative fact must either be (1) generally known within the trial court's territorial jurisdiction, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.

8. However, the district court reason to subject petitioner's federal action to res judicata or estoppel in favor of respondents undermined material facts captioned above in support of the federal complaint on district court's docket violate rules evidence. The 4th Cir failed to recognize the district court's arbitrary decision, which is based on mere inferences to the state court's order granting seven motions without relying on any tangible material substance such as the court's written opinion or adjudicated facts, deeply prejudiced and deprived him of his rights and his legal options under supplementary federal remedy erroneously as follows:

"The State Case, however, was dismissed after consideration of "the entire record" and after Judge Callahan granted seven Motions to Dismiss. These Motions' collectively asserted grounds including a lack of a legal or factual basis for Mr. Torkornoo's claims and a failure to state a claim upon which relief can be granted. In particular, Monahan's Motion to Dismiss...basis operates as a final judgment on the merits for res judicata purposes. (see Appendix A (page 12a)).

9. Any written should reflect adjudicative facts of the decision-making process consistent with the constitutional mandate of the state court. However, in petitioner's case the state court judge deliberately and arbitrary dismiss the civil action without merit. The 4th Cir reliance upon the district court's premise that the state case adjudicated on the merit without any written opinion therein violate the Constitution. However, the operative facts established in Appendix C pages 42c through 78c shows a pattern of lack judicial independence and partiality by the Judge Callahan and Master Wisor without question.

10. According the complaint and petitioner's brief in the federal court system, he established with factual evidence that the state civil case was originally assigned to Judge Sharon Burrell Appendix A (pages 45a-49a) before Judge Callahan was ordered to replace her [Appendix A page 44a] without any good cause. That raised the suspicion of Judge Callahan's conflict of interest at akin with the appearance of similar court order at Appendix A (page 43a) upon her own personal handwritten request to team up with Master Wisor according Appendix C page 4c. The result of their team work became obvious at Appendix C pages 42c through 78c, which reflect judicial proceedings infested in them all acts, and tricks forbidden by the due process requirements recognized by this Honorable Court showing at Appendix C pages 79 and beyond.

11. The standing order, Appendix A (page 44a), however allowed Judge Callahan skewed the outcome of the of the proceedings by re-issuing new scheduling orders calculated to deny petitioner inadequate judicial proceedings to benefit respondents' interests at petitioner's defeat.

12. The first scheduling ordered by Judge Callahan reflects Appendix A (page 35a-41a) with specific orders and "Order for Mandatory Settlement/Pretrial" date set for 05/09/2014 at 1:30 pm. similar with the basic tenet of the Fourteenth Amendment according to Appendix A (page 38a-41a) ordered on 24th September 2013. Based on Judge Callahan's new scheduling order, petitioner scheduled his elective surgery for 10/18/2013 knowing his surgery will not interfere with any court proceeding thereof after Judge Callahan replaced the original scheduling order Appendix A (page 35a-37a). Accordingly, discovering deadline was set for completing by 3/31/2014 while dispositive motions deadline was 4/18/2014.

13. On 10/18/2013, petitioner underwent general anesthesia to remove his entire thyroid. On October 30, 2013 or thereafter, Judge Callahan requested one her clerks to contact him to schedule a hearing on respondents' dispositive motions. After the caller was made aware of petitioner's health condition, a scheduling hearing notice was mailed to all parties on 11/12/2013 Appendix A (78a-79a) prematurely fixing 11/27/2013 for dispositive motions to undercut discovering deadline. As result, on 11/15/2013, petitioner filed motion for continuance to postpone that hearing support with medical report in good faith (Appendix A pages 72a-74a). On 11/22/2013, Judge Callahan denied petitioner's motion for continuance without any valid reason.

14. Factually, the first scheduling order by Judge Callahan, expressively requires respondents' written motion filed in advance of deadlines or hearing dates sought to be modified, providing good cause to justify any modification thereof pursuant to Appendix A pages 35a-37a as matter of procedural law. But here, none of these written motions were on docket before Judge Callahan sent out notification another scheduling order [Appendix A 78a-79a] intended to skew the outcome of the proceeding in respondents favor at petitioner's defeat without authority.

15. According to "Order for Mandatory Settlement/Pretrial", 19 specific orders [Appendix A pages 39a-41a] intended to protect the interests of all the parties were in full force before Judge Callahan disturbed it—by rescheduling dispositive hearing prematurely to undercut petitioner's rights without any good reason. Here, the judge schedule dispositive motions hearing soon after petitioner sent his discovery evidence to all respondents pending their respective responses. Respondents did not dispute these substantive evidences which include transcripts and material evidence listed in Appendixes B and C and many more.

16. Subsequently, the substantive due process and procedural due process as requirement for any court of law showing at Appendix C pages 79 and beyond were not complied by the Judge Callahan as to premature disposition of the state civil case no. 378782-V, invalidate the district court's assessment such as: *"The State Case, however, was dismissed after consideration of 'the entire record' and after Judge Callahan granted seven Motions to Dismiss...."* The state court failed to comply with procedural due process guidelines as matter of law, and that deeply prejudiced petitioner in light of undisputed issues in the federal complaint which came to light at dispositive motion hearing on 11/27/2013 before Judge Callahan.

17. At that time, discovery was not due and dispositive motions requested were premature in light of undisputed issues that came up at the dispositive hearing when respondents [Ms. Helwig, Ms. Ngole and Ms. Torkornoo] failed to dispute issues presented by petitioner at Appendix B page 38b (Excepts from Transcript dated 11/27/2013 page 41

lines 4-25) regarding Ms. Torkornoo, Ms. Ngole and Helwig's deliberate acts showing at Appendix B pages 15b-29b.

18. Mr. Monahan also failed to dispute issues presented by petitioner at Appendix B page 38 [Except from Transcript dated 11/27/2013 pages 40 lines 17-25] regarding Monahan claim that the heating and air condition was replaced in the amount of \$5,000 in light petitioner's claim of incompetent appraiser with factual evidence reflecting repairs of everything in amount of \$470 [Appendix B page 30b-33b] see judgment at Appendix A page 54a. The same facts and evidences were collaborated by petitioner in his district court's complaint and his 4th Circuit Court's Brief.

19. The 4th Cir and the district courts findings and decisions [Appendix A pages 1a-4a, 6a-12a] failed to recognize fraud, collusion, deception and conflict of interest exhibited by respondents incentivized by Judge Callahan and Master Wisor according to Appendix C pages 42c through 58c. These facts were established in support petitioner's independent claim here regarding the lack of due process and equal protection purposely targeting petitioner's interests by the state court at respondents' advantage *supra* ¶¶ 10-21.

ISSUE 2

20. Here, 4th Cir failed to recognize the district court's arbitrary decision, which is based on mere inferences to Maryland's Court of Appeals and Court of Special Appeals decisions are without any tangible material substance, undermines petitioner's constitutional rights and his legal options under supplementary federal remedy by the erroneous standard as follows:

"Mr. Torkornoo appealed this decision, but the Court of Special Appeals of Maryland dismissed the appeal on June 9, 2014 after Mr. Torkornoo failed to meet the briefing schedule. Mr. Torkornoo filed a petition for a writ of certiorari with the Court of Appeals of Maryland, but that petition was denied."

[Appendix A page 7a].

21. As the facts reflects, on February 7, 2014, petitioner file a timely motion requesting for extension of time to file brief and also to adopt supporting from his other briefs and documentary evidences (record extracts) already presented to that court regarding the family law case according to Appendix A pages 64a-71a to enable him meet the briefing schedule deadline on May 5, 2014 due to financial difficulties.

22. After 77 days of waiting, the Court of Special Appeals failed to make any ruling on his motion [Appendix A pages 64a-71a]. Petitioner then filed another timely motion for extension and motion to supplement the records with documentary evidence and transcripts on April 25, 2014 according to Appendix A pages 59a-63a before the briefing schedule expired on May 5, 2014.

23. Petitioner will submit that on June 27, 2014 the same Court of Special Appeals granted Mr. Monahan's motion for extension [Appendix A page 29a] in another case which petitioner filed involving the sale of the former joint marital real property by the same Chief Judge within the same period petitioner's appeal was dismissed after denying his motion to supplement the record and extension of time. It will be recalled that on December 13, 2013, the Court of Special Appeals previously granted Mr. Monahan's motion for extension [Appendix A page 30a] by the same Chief Judge. On July 13, 2013, the Court of Special Appeals granted petitioner's motion to supplement the records with evidence and transcripts.

24. The focus should be on the procedural due process which was misplaced when it came to petitioner's civil case against respondents. The documentary evidence (record extracts) were suppressed.

REASONS FOR GRANTING THE PETITION

25. Undisputedly 50 years ago, the 4th Cir recognized what takes to triggers the "exceptions" to res judicata, doctrine in Restatement (Second) of Judgments § 26(1)(d) as fraud, deception, accident, or mistake in light of *Resolute Insurance Co. v. North Carolina*, 18.397 F.2d 586 (4th Cir. 1968).²

26. Petitioner's case is no exception considering the factual evidence and operative facts shown in Appendixes A, B and C. What happened at Incident #1, Incident #2, Incident #3, Incident #4, Incident #5, and Incident #6 are compelling and relevant to unearth judicial partiality not cognizable of any court of law including this Honorable Court, which not averted threatens public interest and the Constitution in light of 28 U.S.C. § 4551 and *Marshall v. Jerrico Inc.*, 446 US 238, 242, 100 S.Ct. 1610, 64 L. Ed. 2d 182 (1980):

"The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law."

27. The 4th Cir decision [Appendix 1a-4a] which is based on the district court's reasons [Appendix 6a-12a] without relying on any fact such as opinion from the state court or Maryland Court of Special Appeals before subjecting the federal civil suit to preclusion violate the Fourteenth Amendment in light of *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) under which this Court held that:

"[T]he decision maker's conclusion ... must rest solely on the legal rules and evidence adduced at the hearing... To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on ... though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law."

28. The admissible evidences undermined by district court are same admissible evidences avoided by both Judge Callahan and the Court of Special Appeals. A material fact is one which might affect the outcome of the case under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). If evidence is in the form of witness testimony, the party that introduces the evidence must lay the groundwork for the witness's credibility and knowledge³. In this case, the groundwork is incorporated in the Second Amended Complaint on the district court's docket incorporated in petitioner's brief on the 4th Cir docket. FRCP Rule 401. Test for Relevant Evidence⁴

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Rule 613. Witness

² See Appendix C pages 42c through 78c.

³ Richard Glover, *Murphy on Evidence* (2015), p. 29.

⁴ See Appendix C pages 42c through 78c.

(a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

THE QUESTIONS PRESENTED ARE OF SIGNIFICANT IMPORTANCE.

29. Almost 32 years ago, citing *Monroe v. Pape*, 365 U. S. 183, this Honorable Court recognized extent and intent of the federal courts' limited jurisdiction granted by Congress as: "*The federal remedy is supplementary to the state remedy...*" Also see *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). However, the 4th Cir and the district decisions lacked this fairness in light of *Monroe v. Pape*, 365 U. S. 183 and Article VI (2), the Fifth Amendment and the Fourteenth Amendment of the United States Constitution⁵—by ignoring palpable numerous evidences regarding discretionary abuses and fraud by Judge Callahan and Master Wisor's in the form of preferential treatments given to respondents purposely to deprive petitioner of his rights freedom, liberty, happiness property without any accountability.

30. The petition warrants a review in light of *In re Davidovich*, 901 F.2d 1533, 1536 (10th Cir. 1990): "*finding of fact is clearly erroneous if it is without factual support in the record or if, after a review of all the evidence, we are left with the definite and firm conviction that a mistake has been made.*"⁶ The lower courts' decisions clearly failed to justify any risk of procedural errors petitioner's independent claims may have presented before dismissing his federal civil action now under review in this Court citing *Carey v. Piphus*, 435 U.S. 247, 259 (1978): "[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property."

31. This Court's review is warranted to prevent the serious threat to the Constitution as a hope of "freedom, liberty, happiness and property" now tested by the unprecedeted decisions by 4th Cir and the district court, and to avoid casting doubt on the settled expectations of precepts and authorities throughout the United States.

CONCLUSION

The petition for a writ of certiorari should be granted for the above captioned reasons or, in Alternative Relief should be Granted as just and proper.

Respectfully submitted,

s/ Bismark Kwaku Torkornoo

November 5, 2018

Petitioner
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⁵ This Constitution, and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land; and the judges in every state shall be bound....

⁶ See Appendix C pages 42c through 78c.

**Additional material
from this filing is
available in the
Clerk's Office.**