ORIGINAL

18-8823



# In the Supreme Court of the United States

No.

OMER AL OBAIDY

PETITIONER

v.

KIRSTIJEN NIELSON, SECRETARY OF HOMELAND SECURITY DEPART, et al

DEFENDANT

*ON PETITION FOR WRITE OF CIRTIORARY TO*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE EIGHTH CIRCUIT*

**PETITION FOR WRIT OF CERTIORARI**

OMER AL OBAIDY
*Flat 39*
*4, Great Western Street*
*Aylesbury*
*Buckinghamshire*
*HP20 2PL*
*United Kingdom*
*Tel: +447934847108*
*+441296296720*
*E-mail: oa68123@gmail.com*
*Unpresented, Pro Se*

Questions presented

Petitioner national citizen of Italy admitted and paroled to the United States on VWP on Sept 5th ,2002 after an absents of 19 months of prior residency of fourteen years under F-1 nonimmigrant visa for purpose for negotiating then purchasing Janitorial franchise in Kansas City Area. On April 11, 2003 at 7:30 AM petitioner attended FBI-KCMO interview made by prior arrangement through phone conversation with FBI-KCMO agent [signed his name in (Guest Book)] for normal questioning and background check to fulfill "Reasonable Suspicion" while the U.S. Troops in process of liberation of Iraq. The Routine background Check was made to all Arabs and other nationals of Muslims majorities including and not limited to U.S. nationals of Arab or Muslims background either who have been neutralized U.S. Citizens or born U.S. Citizens up to second generation in fear of any sabotage attempt or retaliation against the U.S. Followed by tragedy of Sept 11. After interview done which lasted to 20 Minutes the FBI-KCMO agent released petitioner to ICE-KCMO while in Federal Office of the FBI-KCMO in charges of overstaying his VWP (discovered after fifteen years since removal that overstayed time was 150 days not enough to impose Voluntary Departure and three- years band of reentry). Petitioner approached by two officers identified themselves as ICE-KCMO officer handcuff petitioner to proceed on removal process where ended on May 1, 2003 by removing petitioner to county of both citizenship and birth.

Almost fifteen years after the tragic incidence of removal petitioner and based solely upon his due-diligence discovered of records obtained from ICE, USCIS-FOIA, the FBI-UCN 958484AC9 including Booking record of Shawnee County Jail that removal imposed against petitioner made as Criminal Alien regardless of his clear record of any criminal nor misdemeanor act which has been made by falsification of record by fraud and forgery to all legal forms found on petitioner file including issuance of UCN which issued only to most dangers criminal individual made by the FBI-KCMO and fraudulently concealed all evidence related to removal of petitioner.

The questions presented,1) dose petitioner who have lived in the U.S. for period of 14 years with proof of education and clear record of any criminal or misdemeanor charges do possess due rights process according to the United Sates Constitution where he has been absent 19 months of the U.S. then for period of fifteen years due to removal band? Or not?

2) In absent of elements of Arrest which depends on Probable- Causes and Exigent Circumstances and after petitioner made the interview with the FBI-KCMO is that violate his rights under the **Fourth Amendment** which prohibit "Unreasonable Search and Seizure" without clear warrant of Arrest nor reading rights to state where dose the charges rest? In absent of probable causes and exigent circumstance where arrest discovered to be based upon fraudulently issued UCN as criminal individual not related to VWP overstaying was it attempted Kidnaping? as elements of Decoy, Inveigle, and unlawful Seizure was very obvious? then transfer pass the interstate to Shawnee County Jail- Topeka, KS from the FBI office in Missouri as stated under **18 U.S.C. 1201(a), (b)** was it kidnapping?

3) While in ICE-KCMO office and signing form G-28 with immigration attorney to serve petitioner he didn't show up with petitioner. During that time petitioner under fear and as shock forced to sign forms without present of his attorney, discovered some fifteen years after the incidence of removal it was forms signed by petitioner indicting himself as criminal alien is that will be violation of the **Fifth Amendment** providing to the state via **Fourteenth Amendment** "Prohibiting self-incrimination of crime " without proven first by Juries in court of law?

4) The absent of an attorney signed form G-28 while petitioner detained under ICE-KCMO custody violating petitioner rights under the **Sixth Amendment** of "right of a counsel"? Since he didn't assist petitioner of forms, he signed rendered removal as criminal alien. discover after fifteen years that from G-28 of counsel representation signed on April 11, 2003 was expired form on 09/26/00.

5) By imposing false arrest fallowed by imprisonment as criminal alien made by ICE-KCMO in collaboration with the FBI-KCMO without informing the Local and state law enforcement to make the arrest under from I-247 (notice of action) is that violation to the state of Missouri people rights under the **Tenth Amendment** as the governor or the chief executive officer of the state must be informed of any crimes committed in the state under "aggravated Felony" as stated clearly under **8 U.S.C. 1226(d)(3)** ?.

6) Removal of petitioner as criminal alien, loses of two active companies, going through psychological devastation started then and continue to the present day, loosing all his rights under the constitution dehumanized with plan to element petitioner life while in detention under ICE-KCMO. Evidence suggested that on letter faxed by the officer in charge in Shawnee County Jail sent this fax with his signature to ICE-KCMO, we cannot understand if there was plan about to be executed harming to death petitioner who was in custody of ICE-KCMO or it was standard procedures applied to all inmates admitted to Shawnee County? petitioner been removed under one crime only is the petitioner Race and national origin in process same as the Holocaust targeting Jewish people based upon Race, National Origin, and Religion belief where the same elements used to remove petitioner of the United Sates. Is this practice of removing petitioner from the United States violates the **Eights Amendment** which "Prohibit Cruel and Unusual Punishment"?

7) To remove petitioner from the United States as criminal alien an indictment must be initiated by court of jurisdiction after which petitioner must confronted of a crime and found guilty. if any crime committed must have right of fair defense to debate and argue with. if no trail initiated to identify criminal act is that violating the **First Amendment** of the Constitution of "Freedom of Speech"?

8) If Departure Verification stated on form I-296 has not mentioned time, place and location of departure since the two copies contradicts in Departure Verification from the United Sates is that mean that removal period of 90 days effectively continues even after removal fifteen years a go? Since Stop-Time rule has not ended nor triggered as removal made was fabricated by fraud and forgery in legal document and fraudulently issued and concealed the FBI-UCN which issued to Criminal Individual wanted for serious crime and issued regardless of Petitioner Clear non-criminal record to proceed removal as criminal alien nor proven under INA rules that there was overstay reach to removable offence? What determine the END of Stop-Time Rule? Is it the finality of where dose the removal or charges rest as stated under **8 U.S.C. 1231(a)(1)(B)(i) or (iii)** or other issues? Both forms signed by petitioner and authenticate by the officer in charge of removal as the first one mentioned time, place and location while the other one doesn't mention any is this contradiction create time ambiguity?

9) under articles 4,5,6 and 16 of the United Nations prohibits derating and dehumanized treatment

on the second interview dated on Sept 3rd ,2013 with the U.S. Consular officer at the U.S. Consular section-Kyiv petitioner been dehumanized insulted, mistreated by the Consular officer when accused petitioner of attempted legal entry to obtain illegal employment without any tangible evidence suggesting such a claim .is this considered to be violation of diplomacy protocol by offering insulting degrading and dehumanized and insulting applicant country only for information specially that he came of suggestion of the Italian embassy-Kyiv. Is this example of dehumanized treatment prohibited by the international community? On the third interview application of admission to the U.S. has been placed under "Administrative Processing" of which currently pending. Petitioner after discovery made regarding removal contacted the Consular Section-Kyiv to provide evidence as stated under 221(g) the Consular Section-Kyiv refused to except any evidence as suggested by law violating its refusal procedures. Is the action of the of the U.S. Consular Section- Kyiv dehumanizing insulting petitioner it violet Article 5,6 and 7 of the international law which prohibit mistreatment and dehumanizing?

LIST OF PARTIES

1. *Petitioner Omer Al Obaidy* national citizen of Italy, Born in Perugia Italy on July 27, 1968. He filed case of illegal, Unconstitutional removal, illegal transfer using elements like Kidnap from the FBI filed office to ICE Custody. Removal based upon Fraud and forgery in government forms committed by the FBI and ICE-KCMO rented to false arrest and imprisonment as criminal alien without judicial review. All information obtained from Government files of ICE-FOIA, NRC, FBI Universal Control Number and Fraudulently Canceled Booking report of Shawnee County-Topeka, KS and Discovery Rule based on Due Diligence on removal case dated on May 1, 2003.
2. *Defendant Kirstjen Nielson is sued in his office as secretary of department of Homeland security (DHS).* As secretary of DHS, Mrs. Nielson is responsible for administration and enforcement of the Immigration laws in the United States. Her jurisdiction involves overall operation of Immigration and Customs Enforcement including operations. therefore, she reserves the authority of investigation of former removal based upon fraud and forgery committed by ICE.
3. *Defendant Mike Pompeo is sued in his office as secretary of department of state.* As a secretary DOS, Mr. Pompeo in his office capacity is responsible for administration and enforcement of the immigration laws abroad his jurisdiction concerning immigrant and nonimmigrant visa of the U.S. Embassy and Consular Section-Kyiv including operations therefore he has the authority to investigate former removal and monitor the process of issuing nonimmigrant visa in the consular section-Kyiv including performance and operations of Mr. Carl Risch Assistance Secretary of state for consular affairs
4. *Defendant Jeff Sessions is sued in his office capacity as the United States Attorney General* as responsible of overall operations and administration of the Department of Justice as stated under 28 U.S.C. 503, including Federal Bureau of Investigation which responsible of implementing federal laws and regulations including security policies and immigration laws as U.S. Attorney General
5. *Defendant Thomas D. Homan as Director of the Immigration and Customs Enforcement* (ICE) within the Homeland Security Department. As Director of ICE, Mr. Homan is responsible of overall administration of ICE under the Immigration laws of the United States. Including controlling the Deputy Director office operations

6. *Defendant Peter T. Edge HSI Executive Associate Director and Senior Official preforming the Duties of Deputy Director of the Immigration and Customs Enforcement.* As Deputy Director, the responsibility of enforce removal operations of Aliens according to Immigration Neutralization Act INA, as well monitoring and controlling all field offices including Kansas City, MO ICE Filed Office and implementing immigrations laws of the United States.
7. *Defendant Carl Risch Assistant Secretary of State for Consular Affairs.* Mr. Risch has the authority in his office capacity to monitor performance and operations of nonimmigrant visa divisions in the U.S. Consular Sections including Kyiv consular section. Implementing immigration laws and regulations concerning immigrant and nonimmigrant visa issuance including operation of non-immigrant visa division and performance of the consular officers.
8. *Defendant Christopher Wray Director of the Federal Bureau of Investigation* responsible in his capacity in his office of Applying overall operations of the Bureau including applying federal laws and regulations, security polices and immigration laws and monitoring all field offices operations and performance within the Unites States and abroad.
9. *Defendant Darrin E. Jones Special Agent in Charge of the Federal Bureau of Investigation-Kansas City, MO Division.* Mr. Jones responsible in his capacity of overall operation of the FBI-KCMO division, additionally has the authority to investigate the illegal transfer which take shape and elements of Kidnap happened in the Field Office, and fraudulently issued the UCN 958484AC9 without judicial review and attempted to change the Apprehension date from 04/11/2003 to 04/10/2003 to conceal evidence of false and unconstitutional removal
10. *Defendant United States Federal Court of Appeal Circuit Eight.* The court in its compacity responsible of administrating and reviewing removal cases under immigration laws under 8 U.S.C. 1252. The court deny the matter without publishing any opinion of denial nor examine the case while was under motion of its own as stated under Fed. R. Eveid 706(a) by investigating and examine the authentication appeared on evidence enclosed as stated under Fed. R. Evied 901 and 902.Additionally, the court cannot remain silent upon Constitutional violations and rehearing denial must be published.

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## BRIEF FOR WRIT OF CERTIORARI

### OPINION BELOW

The opinion of the United States court of appeal at Appendix 1 to the petition and is reported at case No. 18-2381 there are no opinion published and case been denied as (Sue Sponte). The opinion/ order of the United States district court appears at Appendix 2 to the petition and is reported at 4:18-cv-00404-ODS.

### JURISDICTION

The date on which the United States Court of Appeals decided my case was August 14, 2018. A timely petition for rehearing was denied by the United Sates Court of Appeals on the flowing date October 05, 2018, and a copy of the order denying rehearing appears at Appendix 3. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### STATEMENT

As stated deliberately by ICE-KCMO that plaintiff proceed removal in violation of VWP. This is not true statement for the following reasons:

1. Per Ground of Inadmissibility **212(a)(9)(B)(i)(I)** and under **8 U.S.C. 1182(a)(9)(B)(i)(I)** alien will be subject to removal if exceed 180 to 364 days (Less than a year) where alien will be subject to Voluntary departure and three years band of reentry
2. Overstayed time was 150 days less 180 days where cannot be count as removal offence
3. Removal made as Criminal Alien without showing Any evidence supporting this claim which has been made by fraud and forgery in government forms.
4. As stated under **8 CFR 217.4(a)(1)** aliens from designated countries as stated under **8 CFR 217.2(a)** must execute a waiver for there right to grant an admission to the United Sates, aliens who do not execute their right weaver will be subject to removal promptly. As stated under **8 CFR 217(b)(1)** alien may execute waiver upon there admission to the United Stats by signing form I-

94W Arrival-Departure record. Alien who are departed they are not eligible for any review before an immigration judge, only aliens who seek asylum may be excluded and proceed under form I-863. Petitioner argue that even if he sign a waiver of rights form I-94W it doesn't waive his rights since he possess due right process giving his lengthy time of legal residency under F-1 visa of fourteen years prior of last entry and proof of education from accredited Colleges in the United States

The plaintiff purpose of last visit on VWP after temporary absent of nineteen months was for purpose of establishing business which is permissible activities under VWP as sated under **8 U.S.C. 1101(a)(15)(E)(ii)** *[ An alien entitled to enter the United States under pursuance of a treaty of commerce and navigation between the United States and a foreign state of which he is national, and the spouse and children of any such alien if accompanying or following to join him. (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital].*

Due to investing capital in the newly established franchise as investment become "Irrevocably committed". Thus, necessary supervision fallow which is permissible by law **8 CFR 214.2(e)(17)** As a step to applying for E-2 visa.

Plaintiff prior of entry do understand that there are 90 days only which cannot be extendable, exchangeable and non-transferable. Additionally, plaintiff do understand that upon arrival as matter of procedures for purpose of admission alien must sign a waiver of due right process.

On court decision stated on *Boyo v. Napolitano, 593 F.3d 495 (7th Cir. Jan 28, 2010) (en banc)* [waiver of due process must be done both knowingly and voluntarily] *see also Bradley v. Attorney General, 603 F.3d 235 (2010)* quoting Boyo. Plaintiff admit that he "Knowingly and Voluntarily" sign form I-94W for purpose of entry and business negotiation which converted to actual contractual agreement under laws and regulations of the United States where plaintiff shall not abundant according to the mentioned above statue to manage and supervise the two business establishment and enhance his tide to the community as the contract been signed on Oct 23, 2002 within the 90 days VWP , but how plaintiff rights can be waived where there are fourteen years of legal Residency under F-1 visa of which temporary absent cannot waive previous rights [Any noncitizen within the united states also has constitutional right to traditional standard of fairness, regardless of whether they entered the country lawfully or unlawfully]. *See Shaughnessy v. United States ex. rel. Mezei, 345 U.S. 206(1953)*. see also *London v. Plasencia, 459 U.S. 21 (1982).* [Although an alien seeking admission to the united states has no constitutional rights, once an alien begins to develop the ties to the United Sates that go with permanent residence, her constitutional status changes]. Plaintiff argue that he has proof education in addition and clear record which gave him more rights under the constitution.

However, the standard of "knowingly and voluntarily" may be applicable to defendant the FBI-KCMO and ICE-KCMO, knowingly understand that plaintiff possess no danger to U.S. security where his record been checked prior of the interview ranging of name check, criminal check, NCIC and Interstate Index (III) which revealed no record. therefore, the FBI-KCMO and ICE-KCMO knowingly orchestrate removal based upon fraud and forgery and voluntarily done this act or malice, intend and knowledge see Rule 9(b). however as the facts reviled the truth of removal that cannot be made from legal perspective plaintiff can be released immediately after the FBI-KCMO interview "Voluntarily" as exercise of discretion and (we won't be going this far to make a lawsuit that involved the Government of the U.S.as removal will never done in a first place) since the overstayed period didn't exceed 180 days to render even 'voluntary departure'.

Giving the special circumstances where plaintiff has an active investment where he cannot abandon and prior lengthy residency a petition under (Humanitarian Petrol) form I-131 can be done to exit the country and back to submit process of E-2 visa without need to go to any U.S. Embassy for visa entry.

(in deportation proceedings, the government must prove a noncitizen's by clear, convincing, and unequivocal evidence) *see Woodby v. INS, 385 U.S. 276 (1966)*. the FBI-KCMO nor ICE-KCMO have NO clear evidence to proof beyond reasonable doubt to initiate removal process against plaintiff.

Stating the fact that there is a doubt in removal process occurred fifteen years ago where 1) plaintiff has not proven to be in violation of VWP as the overstay didn't exceed 150 days which cannot be removal offence and 2) he is citizen national of Italy of Iraqi origin which cannot be removed based on his national origin. *see Fong Haw Tan v. Phelan, 333 U.S. 6 (1948)* [ Matter of Doubt should be resolved in favor of the alien in deportation processing. Deportation statue must be narrowly constructed in favor of noncitizens].

According to policy memorandum 2013 made by USCIS [ This policy memorandum (PM) provides guidance on the adjudication of form I-485, Application to register to adjust status, filed by immediate relatives of U.S. citizens who were last admitted under Visa waiver Program (VWP)]. This is a very good step to recognize family tides concerning both VWP users and the U.S. citizen. However, the memo fails to mention VWP Aliens who had prior residency under non-immigrant visa and may use VWP in the future if the purpose of non-immigrant visa no longer valid.

An alien who wish to visit the United States may apply for B- visa entry from U.S. Consular section in a country of citizen or country of residency as sated under **8 U.S.C. 1182(a)(7)(i)(II); 22 CFR 41.12,41.12; see 8 U.S.C. 1101(a)(15)(B)** (nonimmigrant visa visitor definition for business or pleasure). Aliens who are citizens of country permitted to use VWP without referring to any U.S. Consular section. Aliens who are permitted to use VWP can as well apply for B-Visa in consular section of county of citizen or residence giving the fact that designated countries recognized under VWP can seek admission to the you as matter of privilege.

Due to this factor Consular officers will be suspicious of the purpose of substituting VWP privilege with nonimmigrant visa and can be understood regardless of "strong tides" presented to officer as an attempt to seek immigration benefit, since the VWP is unextendible, unexchangeable nor transferable type of visa and no adjustment of statues can be granted that go to permanent residency or transferred to other type of visa, only exception can be made under extreme spouse or child based upon USCIS Memo 2013 .Therefore, petitioner request for visa entry on B-visa category will be reviewed under **8 U.S.C. 1201(a)(B); 22 CFR 41.101, 41.101** the consular officer may denied visa application see **8 U.S.C. 1201(g)** and /or place visa under Administrative Processing on 221(g).

Petitioner want to draw the justice attention that the privilege of going toward permanent residency was available during his lengthy period of fourteen years under F-1 which can be done under adjust of statues under H1 visa or other legal adjustment approved by the INA laws and regulations petitioner didn't pursuit this privilege based upon three factors 1) petitioner he is Italian national which permit him to have the same privilege as U.S. citizen giving freedom of mobility 2) there are substitute for permanent residency which can be found under E-2 visa which Government of Italy is part of countries included within this this type of visa see **8 U.S.C. 1101(a)(15)(E)(ii)** (definition of nonimmigrant who seek investment within the U.S.)

As stated under **8 CFR 1208.2(c)(1)(iv)** (Alien who admitted under the VWP and overstays his 90-days visa authorization is not entitled to removal proceeding under 8 U.S.C. 1229a)
It is known according to the law and regulation govern VWP, aliens who violate terms of stay either by overstaying the legally duration allowed by law of 90-days or who have committed criminal act render removal while in temporary visit they possess no due right process and consequently cannot have their case discussed before an immigration Judge and proceed non-hearing removal and/or after finishing there sentence in U.S. imprisonment or initiating bond for any criminal act committed within the state where the criminal act stated under power of Form I-247 (detainee notice of action).

The main purpose for aliens who used the VWP is they execute a waive of their rights Voluntarily to grant an admission to the United States, failure not to do so will be removed promptly. Petitioner did execute form I-94W for admission however, the execution of waiver of rights for purpose of admission under VWP cannot take rights of petitioner of fourteen years living legally in the United States under F-1 visa and temporary absent of 19 months then seek entry under VWP cannot take previous lengthy residency of petitioner history in the Unites states and due right process my exist regardless of temporary absent.

Thus, petitioner argue that false unconstitutional removal has deprived his rights under the constitution where petitioner has lengthy residency, clear record and prove of education. Therefore, prompt removal as stated under 8 CFR 1208.2(c)(1)(iv) is legally not applicable, and exercise of Prosecutorial Discretion is mandatory practice by ICE-KCMO of which petitioner didn't provide, the exercise of prosecutorial discretion by DHS has been approved by both federal courts and the immigration court system. *See Reno v. American- Arab Anti- Discrimination comm.,525 U.S. 471, 489- 92 (1999)* (finding that the INS retains inherent prosecutorial discretion as to whether to bring removal proceedings). *Matter of Yauri, 25 I &N Dec.103, 110 (BIA 2009)* (noting that DHS has prosecutorial discretion over deferred action and citing cases).

Evaluating all factors and facts associated with petitioner removal that need to be considered by the court. i) petitioner clear record of any criminal nor misdemeanors act during his lengthy legal residency under F-1 visa of fourteen years. ii) Alien A-File No. A97319371 add zero to make search since number issues 15 years ago to A097319371 has not been found under Detainee Locater System nor any other system which made the alien A-File No. illegally issued to render false removal based upon retaliation targeting petitioner race and national origin as Iraqi during the liberation of Iraq in April 9, 2003. iii) deliberately, attentionally and knowingly the FBI and ICE-KCMO initiate removal as criminal alien against petitioner without conclusion of the law by fraudulently issued Universal Control Number 958484AC9 issued only to wanted criminal individuals by the FBI then issued form I-200 (Warrant of Arrest of an Aline) which will be issued after determination of the criminal act under court of jurisdiction and where an alien will be indicted by juries to show this criminal act. ICE-KCMO failed to show burden of proof that removal intended was proceeding removal as criminal alien, in order to do that the agency must show with evidence that Criminal violations rendered to Mandatory Detention imposed upon alien under two conditions if alien committed offence covered under **8 U.S.C. 1187(a)(2)** or deportable offence covered in section **8 U.S.C. 1227(a)(2)(A)(ii), (A), (iii),(B), (C) or (D) or deportable under 8 U.S.C. 1227(a)(2)(i)** which involved moral attribute, aggravated felony, position of Drug, fire arms...EXT. None of these categories or offences ever committed by petitioner or applicable to petitioner removal due to his clear record. therefore, elements of deliberate and attentional harm have been orchestrated by both the FBI and ICE-KCMO.

Additionally, **237 (a)(1)(B)** the ground of deportability petitioner was found under as in violation of the law or any other law in the U.S. it doesn't state any violations has been committed by

petitioner whether there are criminal or security issue involved as petitioner argued that he possesses clear record and lengthy residency in the U.S. petitioner agreed there are an overstay of 150 days of which by itself cannot be removable office since it doesn't exceed 180 days to render removal, iv) Shawnee County Jail Booking report where petitioner held under removal proceedings suggest that ICE and the FBI-KCMO deliberately falsify all information of petitioner three facts has been shown, changing the apprehension date from 04/11/2003 to 04/10/2003 by penetrating jail software system, impose false accusations without tangible evidence, and issued a bond of $9,999,999 which illegally issued and cannot be issued to VWP as they proceed non-hearing removal.

In an official e mail received by the director of Shawnee County Jail indicating that the booking file NOT found under storage facilities area and described as (Unusual Possibility). This act indicated that ICE-KCMO nor the FBI-KCMO has NO tangible evidence in support of removal of petitioner as Criminal Alien additionally there are an attempt to hide the facility where petitioner been held under the custody of ICE-KCMO which can be analyzed based on two facts 1) there was a plant to harm petitioner physically to death *See Lin Le Qu v. Cent. Falls Det. Facility Corp., No. 09-53 S, 2010 WL 2380793, at*1(D.R.I. June 14, 2010.* 2) ICE-KCMO didn't initiate form I-216 (Transferred Alien) as it appeared non-signed nor authorized to record violations committed if any and transfer of an alien to ICE-KCMO custody rendered to removal, Shawnee County Jail software has been penetrated to change apprehension date from 04/11/2003 the actual date petitioner taken to custody to 04/10/2003 if there are non-recorded date of arrest therefore there are no criminal act nor any other can be traced, hide all elements of location by not initiating any mandatory forms like I-385 or G 391 and finally, the location of the facility has been found on fax letter made from Shawnee County to ICE-KCMO the copy of the fax found in FOIA-ICE and USCIS the cover letter on ICE report and the subject matter found in USCIS record. the content of the fax suggested that the office who sent this fax try to take an indirect authority of ICE-KCMO to execute a plan which can be understood as physically harm petitioner while in custody of ICE otherwise no other explanation can be provided giving the nature of the fax subject matter. Both the FBI and ICE-KCMO know and understand the process and procedures including the consequences if the case will be widely open thus, the only thing they wasn't on their plan is the Prompt response of the Italian Embassy to intervene in the matter as fast as they can.

To prove further to the court that this plan was to be done the FBI and ICE-KCMO know that the Freedom of Information can be obtained and accordingly the missing elements can be found regardless of the fact they fraudulently concealed important documents like the Booking report and the FBI- UCN 958484AC9 (ONLY if petitioner alive to obtain such information by his request and signature under form G 639 and apply for the FBI-FOIA) not to mention the transfer methods from the FBI-KCMO to ICE-KCMO take elements of kidnaping as stated under **18 U.S.C. 1201(a)** where excluding elements of force and substitute elements of inveigle and decoy, transfer has been made pass the interstate as stated under **18 U.S.C. 1201(b),** the conclusion of kidnaping has been found and understood since the elements of warrantless arrest its not found to render temporary booking under the custody of ICE-KCMO. Petitioner want to add that he is not been presented by an attorney when signed under duress and fear all forms appeared on file will discuss below the legal presentation by attorney Jeffery Bell.

ICE and the FBI-KCMO understand that the only way to open this case in public is when petitioner is alive. ICE-KCMO not aware of the prompt reply of the Italian government to have petitioner out of ICE-KCMO custody. The elements used to made removal cannot be traced to the FBI and ICE since all tangible elements are not found ranging of arrest to take to custody, and eliminating petitioner life while at Shawnee County can be traced to violation in jail and /or crime of retaliation by the inmate of U.S. invasion to Iraq or other factor can be as race and national origin of petitioner

as Arab or Muslim specially that the Booking report mentioned wrongfully that the booking made as security grounds.

All the mentioned above has been discussed in grater depth in the argument when file the case first to Western Missouri District. After evaluating all facts and factors associated with the illegal removal which indicate by prof of evidence that all alien record has been falsified and show by evidence that both the FBI UCN 958484AC9 and Shawnee County booking report has been Fraudulently Canceled by ICE and the FBI-KCMO.

**Mandel Review**

The supreme court addressed the issue whether visa Denial contradict with constitutional rights has been discussed in case of *Kleindienst v. Mandel, 408 U.S. 743 (1972)* the case was denied visa entry to the U.S to Belgian Journalist and Marxian theoretician. Attorney General has the right to visa denial under 212(a)(28) (D) and (G)(v) of the INA 1952.

The rights of the consular officer to accept or deny visa entry to an individual is not subject to judicial review under the INA. However, the challenge when United States sponsor of foreign individual claim that the State Department denial of visa of noncitizen will violate the citizen's their First Amendments constitutional rights to (hear, Speak and debate with).

The case creates an exceptional condition, is to challenge Consular non-reviewability in case of denial of the noncitizen visa will impact constitutional fundamental rights of the U.S. Citizen. requiring that the State Department provide (*Facially legitimate and bona fide*) which established what know as (Mandel Review).

Applicant will be excluded from Mandel if proven with no reasonable doubt link to any security grounds prevent him/ her of any relief under Mandel where applicant found to be inadmissible on ground 1182(a)(3)(B) *See Kerry v. Din 576 U.S. __ (2015).*

It's been clear that applicant who has lengthy stay in the United States of 14 years who have not been found in violations of any laws while residence in the U.S. this has been proven in official record where there are neither criminal nor security grounds cause removal. in addition, the NCIC didn't show any violations committed by applicant. However, it will be proven in sections below by evidence that only Race and National Origin was the main cause of removal.

The (Mandel Review) on judicial system continued to impact decision made on targeting certain stipulated countries of restriction of immigration with the regard to executive order. In February 9, 2017 under *Washington and Minnesota v. Donald J. Trump, 847 F.3d 1151 (9th Cir 2017)* (*when the executive exercises immigration authority on the bases of a facially legitimate and bona fide reason, the courts will [not] look behind the exercise of that discretion*).

Petitioner argue that he do possess constitutional rights giving his lengthy residency in the United States of fourteen years therefore, admission on VWP and executing a waiver its cannot take previous rights as result the court must considered the following issues
1) removal was in valuation of petitioner constitutional rights under the First, Fourth, Fifth, Eighth Fourteenth amendments whether in pending visa Administrative Processing or removal processing which violate the immigration authority.

2) violating the rights of Citizen and residency of state of Missouri under the tenth amendment as removal proceed as criminal alien without stating the criminal act committed if any in the state of Missouri where petitioner found which violate the people rights including petitioner which has committed by ICE and the FBI-KCMO.

As stated on page 16 of ICE-FOIA report classified petitioner as (Flight-Risk) without any tangible evidence supporting this claim which violate the 1984 Bail Reform Act all the federal court to detain an arrestee prior to trail if the government could prove that the individual was potentially dangerous to other people in the community.

accordingly, neither the FBI nor ICE-KCMO would be able to bring forward to justice such potential evidence that petitioner impose any danger due to his clear record. if proven to the federal court that petitioner impose significant danger to community then the act will be constitutional as the government interest in protecting the community outweighs individual liberty, pre- trail detention can be "a potential solution to a pressing social problem". *see United State v. Salerno, 481 US 739 (1987).*

since the case didn't reach to any federal court to determine the causes of action as removal been proven it was in violation of the law where Fight-Risk issued fraudulently against 1984 Bail Reform Act where imposing amount of $9,999,999 By ICE it can reach to level of crime by the officers who did this act. As petitioner has no criminal record nor committed any criminal act render to removal nor impose any danger to community.

Violating VWP by alien who overstayed the 90 days period no relief will be granted and removed promptly if found by authority with band range from 3 to 10 years depending on days overstayed. All circuit courts in the United States agreed upon this conclusion, however, petitioner case is totally different than usual standard VWP violators under "unique Circumstances" found where petitioner regardless of execution of waiver to waive his rights it has been found and understood that petitioner do possess Due Rights process under the U.S. Constitution giving his lengthy legal residency of fourteen years where temporary absent then seeking admission after 19 months under VWP it doesn't waive his rights of previous residency. Therefore, petitioner is eligible for review under 8 U.S.C. 1229a, 1229b, 1229c. 8 U.S.C. 1254 and under judicial review of order of removal 8 U.S.C. 1252 unlike all VWP who are exempt from review under these statues.

Alien do possess right on removal proceedings where an alien can be represented at on expense to the Government by a counsel who authorized to practice in such proceeding, Alien shall have reasonable opportunity to examine evidence presented on alien own's behalf cross-examine witness and record presented by the government, these rights shall NOT be entitled if proven by convincing evidence that these information contain national security information and a complete

**Deprived Right of an Attorney**

In a decision of The United States Supreme Court holding (The Sixth Amendment right to counsel is a fundamental right applied to the states via the fourteenth Amendment to the United States Constitution's Due Process Clause and requires that indigent criminal defendants be provided counsel at trial. Supreme Court of Florida revised). *See Gideon v. Wainwright, 372 U.S. 335 (1963). See also Powell v. Alabama, 287 U.S. 45 (1932).* Supreme court decision on *Padilla v. Kentucky, 556 U.S. 356 (2010)* [ The lawyer for an alien, charged with a crime, has a constitutional obligation to tell the client if a guilty plea carries a risk that he will be deported]. The Federal

Immigration Law do provide right of an attorney and specified that will not be under the government expanse.

Petitioner has been depraved his right of an attorney while was under detention and forced to sign documents and forms not related to removal of VWP see NRC report page 6. Document of order removal stated that Petitioner at the time found overstaying his visa under VWP. Order of removal for deportation signed by Robert M. Smith interim District Director which clear "I have determined that you are deportable from the United Sates of the following Grounds : Section **237(a)(1)(B)** of the immigration and nationality Act (Act), as amended, in that after admission as nonimmigrant under **section 101(a)(15)** of the act you have remained in the United States for longer time the permitted". The service did admit the fact that the matter of arrest was only for overstaying VWP (proven by evidence that petitioner exceed only 150 days which cannot rendered removal since it not exceed 180-364 days to become removal offence with voluntary departure and 3 years band) there are no mention to any criminal act committed by petitioner.

While petitioner under the service custody force to sign Documents not aware of or what the purpose of its functionality "without present of his attorney" where petitioner sign and agree of attorney representation on form G-28 on 04/11/2003 at 11:04 shown at the top of the page. These forms signed by petitioner while in custody cannot be issued to VWP who overstayed the period assigned by immigration of 90 days for purpose to proceed removal as alien under "administrative Removal".

Form I-826 (Notice of Rights and Request for Disposition) this form cannot be issued to VWP overstay their visa as they proceed non-hearing removal. The service issue this form for a purpose to proceed removal as criminal alien and record that petitioner been taken to custody on the 04/10/2003 time and date are falsified, and no option has been selected additionally the form suggested to have an attorney before alien make any selection.

Form I-286(Notice of Custody Determination) this form issued to Criminal Aliens under section 236 and signed by petitioner on 04/11/2003 without understanding the nature of the Form. The form illegal and unconstitutional since it violates the Fifth Amendment provided to the state via fourteenth amendment as "the fifth amendment prohibit self-incrimination without the conclusion of the juries and court of jurisdiction". Additionally, no bond can be offered to VWP who found either overstaying their period where sanction of reentry imposed upon number of days violated 3-10 years. Thus, the service did issue illegally this form to record fraudulently that petitioner removed based upon criminal act.

form I-200 (Warrant of Arrest of Alien) has been initiated because of form I-286 where petitioner proceed as Criminal Alien without clear evidence beyond reasonable doubt that there was criminal act committed and rendered to removal. additionally, form I-200 cannot be issued without court determination and proof of conviction supported by electronic filling admitting that the service has received such report from a court of jurisdiction where alien has been indicted as charged. While investigating the removal issue and find the facility where petitioner been held under ICE-KCMO Custody and requesting the Booking report by the Director of the facility it appeared that amount of $9,999,999 imposed by the service as which mentioned on concealed Shawnee County -Topeka booking record since it is illegally done. imposing bond came as response of issuing form I-286. Therefore, the amount mentioned on Booking report was deliberate and cannot be confused as computer error where 9,999,999 is same as zero. The booking record mentioned no bond imposed and entered amount of $00 see page 2. While amount of $9,999,999 mentioned twice on page 7, 8 of the record. therefore, assumption of 9,999,999 as same as Zero is wrong.

Since the matter based upon VWP cannot served form I-862 (Notice to Appear) to review the possibilities to continue residence regardless of criminal conviction before an (IJ) which cannot be issued to VWP and most likely if criminal act determined alien under VWP will be removed either after indictment or after completing his imprisonment terms. the service will be determined according to proof of conviction under which category of crime found under inadmissibility or deportability as stated on **8 CFR 217.4(a), (b)** and covered on section 212 and consequently alien removed without hearing before (IJ) due to alien type of visa under VWP only if proven if alien could suffer torture if sent to country of citizen or residence.

This is tangible proof that Attorney Jeffery Bell didn't attended with petitioner to provide an assistance based upon signing form G-28 for legal representation no attorney allows to have his client increment himself nor allow to sign any documents without his full supervision as part of Attorney Client privilege. the elements of representing alien under custody proceeding removal as the service claim it was as criminal alien under section INA 236 which cannot be made due to luck of evidence and proof of conviction which cannot be if petitioner had proper attorney representation to explain the risk of deportation of the following 1) where the law is unambiguous, attorney must advice there client (Criminal or not) that deportation result to conviction if found and proved by law there are 2)the immigration consequences of conviction are unclear or uncertain, attorney must advice that deportation may result 3) attorney must give their clients some advice about deportation, counsel cannot remain silent about immigration consequences. Unfortunately and tragically, counsel remain silent without provide any assistance nor investigate the matter of removal if truly rest upon criminal charges or overstaying on VWP., one of the tasks that should have been performed by counsel assigned the case is explaining the charges under which ground of deportability and removability 1182(a) and 1227(a) removal based see **8 U.S.C. 1229a(a)(2)**.

Therefore, petitioner deprived his rights under the "Sixth Amendment" that guarantee the right of an attorney of one's choosing. No evidence suggesting that petitioner have or will ever committed any criminal act rendered removal due to his clear record. however, if petitioner sign forms are not aware of and found while there are proof or representation the counsel assigned the case might order of dismissal of charges if service cannot proof conviction against petitioner

Moreover, Attorney Jeffery Bell who provide form G-28 for attorney representation provide expired form dated on 09/24/00 while signed by petitioner on 04/11/2003. The other elements found on the same form is the spelling of petitioner name which has been changed form what appeared on the passport as (Omer Al Obaidy) and so dose in other forms to (Omar Alobaidy). The same spelling of the name appeared on form I-296 as Omar Alobaidy not as Omer Al Obaidy which trigger suspicion if the Attorney Jeffery Bell involved somehow with petitioner removal or it is just a coincidence? However, there are two copies of form I-296 found in file one with photo, signature and right index of petitioner under (Verification of Removal) while the other carry signature and right index of petitioner without photo and not completing the form of date ,port of departure, means of departure and signature of verifying officer there are two reasons involved in this matter 1) if Verification of removal not entered correctly and contradict between the copy found in record since the removal is not administratively final it doesn't show under which ground it rest and 2) applying this matter as safety net if matter will be widely opened so it will have issue of jurisdiction as the immigration court cannot reopen issue of VWP removal while the Federal court cannot as well open the matter since it doesn't show where dose the charges of removal rest and the matter of removal it will be more or less like a ping-pong game between two courts and to hide name of officers who commit act of forgery. However, this matter finds its way within the court of appeal jurisdiction since it inherits the exclusive jurisdiction of the case on assumption that there is

falsification of official record as stated under **31 CFR 0.208(b)** shows (including all copies of the foregoing by whatever means)

The alien copy of I-296 kept with petitioner since tragic removal show that verification of removal not completed it show only signature photo and right index while verification of removal information has not been completed departure date, port of departure, manor of departure, signature of verifying officer and title of the officer what appeared is the signature of the officer taking the fingerprint.

**Want to draw the court attention the matter is not based upon assumption of removal of alien overstaying his VWP nor it is based upon Criminal Act never committed by petitioner due to his clear record. the case rest upon the fact that removal made by fraud and forgery and falsifying record made by the FBI and ICE-KCMO targeting petitioner race and national origin as Iraqi, this is the core subject matter of review.**

In proceeding removal, it is the alien responsibilities has the burden of establishing whither alien who is applicant of admission is clearly and beyond doubt entitled to be admitted and not inadmissible under section 1182 of this title or by clear and convincing evidence, that the alien is lawfully present in the united states pursuant to a prior admission. See **8 U.S.C. 1229a(c)(2)(A), (B)** Petitioner emphasize that he is has no ground of inadmissibility found under section 1182, however ICE-KCMO deliberately and knowingly mentioned on form I-265 that petitioner has prior VWP overstay this is incorrect. The fact is petitioner was forced to stay 16 days extra time then depart on Jan/23/ 2000 due to holiday seasons and no availabilities of flights. However, it is the duty of the officer USCPB to refuse admission of last entry on Sept/05/2002 if found with evidence beyond reasonable doubt that petitioner overstayed the time required. Additionally, petitioner was legally present in the United States under F-1 visa as student from 1987-2000 and who never committed criminal act nor misdemeanor with proof of education from two colleges in the United States prior to his last entry under VWP on Sept,5 2002.

In proceeding with criminal alien, the government must show the burden of proof in criminal convection as stated under **8 U.S.C. 1229a(c)(3)(B).** official record of convection or judgment, official record of plea, verdict and sentence, docket entry, official minuets of record proceeding or transcript of court hearing in which court take notice of the existence of convection, court record show that convection was entered or by (State by a state official associated with the state's repository of criminal justice record), any documents issued by the court indicate existence of convection, any document or record attesting to the convection that maintained by an official of a state or Federal panel institution, which is the basis of that institution's authority to assume custody of the individual named in record.

Petitioner argue that the government agencies responsible of proceeding petitioner as criminal alien fail to demonstrate under the law shown above to produce certified copy of such an official documents or record. Therefore, petitioner concluded that there are no criminal charges nor convection ever made and proceeding petitioner as criminal alien made by means of false accusations and obvious fraud and forgery in government records.

Stated under **8 U.S.C. 1229a(c)(3)(C)(i), (ii).** In criminal charges brought against alien required submitting of an official record by electronic means initiative from state where the criminal act situated or court official to prove the evidence of criminal conviction and sent to the service (The FBI, ICE-KCMO). In proceeding further with electronic records, the state will inter all information with in repository criminal justice record of criminal conviction which certified by a state official.

The service (ICE and the FBI-KCMO) certified in writing by the service official as having been received electronically from state's record repository of the court's record repository.

Discussing the elements of recording criminal conviction made the service (ICE-KCMO and the FBI) must show with proof of evidence beyond reasonable doubt that the criminal conviction has been made by petitioner rendered removal as criminal alien by electronic means with proof in writing that they receive such record electronically from the state's official where the criminal act situated. Two facts must be noted 1) there are no criminal act committed by petitioner since there are no record of criminal conviction filed by the state's official nor show any judgment entry by court of jurisdiction and juries' determination. The main purpose of the act of the service the FBI and ICE-KCMO is to include petitioner with in (Secure Community) program tracking down Criminal aliens knowingly and deliberately, regardless of petitioner clear record targeting his race and national origin as Iraqi although he is Italian Citizen born in Italy with limited links to Iraq. The act of the service deemed to be racial and extremely prejudice. Additionally, the service violates all laws and regulations set forward in 8 U.S. Codes and violate all laws under INA including violating the constitution rights. This act has been done in retaliation of U.S. invasion to Iraq of which petitioner not citizen of this country and recorded in ICE-FOIA report as the reason of the FBI-KCMO interview was (Iraq Initiatives). 2) as claimed wrongfully, fraudulently and knowingly that petitioner removed after found committing criminal act with violating VWP it is wrongfully made claim which violate the right of the people of the State of Missouri. Since the state authority has the right as standard procedures to send electronic records of criminal aliens to the service (ICE and the FBI-KCMO) while the service must notify in writing that the criminal conviction made by the alien has be recognized and registered after judgment of the court in the state where the criminal act situated to record officially the criminal act. The service (ICE-KCMO, FBI-KCMO) didn't follow the procedures as the removal elements have been fabricated to initiate unconstitutional removal due to clear non-criminal record of petitioner.

Thus, the FBI and ICE-KCMO must provide tangible evidence of a criminal act committed by petitioner submitted evidence they did receive such notice electronically form a state court where the criminal act committed by petitioner which summarize the nature of the crime and the entry of a court judgment including the nature of conviction. Giving the fact that neither ICE nor the FBI-KCMO can provide such information since the removal has been fabricated under both removals as criminal alien and violating VWP of which both cannot be legally proven.

Accordingly, as stated on removal proceeding as Criminal alien situated in state of Missouri where last known address then it is the matter of the people and residence of the state of Missouri rights under the Tenth Amendment of the United State Constitution to be informed of any criminal act committed within the state. ICE-KCMO and the FBI initiated unconstitutional removal of which violate removal procedures unless if they can prove with tangible evidence that criminal act made by petitioner has been committed and recorded including violating the VWP as removal suggested. Therefore, neglecting an issue of fraudulently made removal and approved by evidence beyond reasonable doubt it violates the rights of people of Missouri including the minorities who happens to be the residence of the state secured to them under the Constitution.

The service deliberately included petitioner under this section of band based upon criminal act never committed nor proved by neutral decision maker which make it as attempt fraud and forgery and impose detention without tangible evidence required by the service to render removal as criminal alien. *See Matter of Pichardo, 21 I&N. 330 (BIA 1996) (en banc) ("*in fact, this conviction may support a finding of deportability ... but only if there are record contains clear, unequivocal proof).

Stated under **8 U.S.C. 1229a(4)(A).** in stablishing relief or protection of removal has the burden to establish that the alien satisfy the applicable eligibility requirement and relief granted in exercise of discretion that the alien merit a favorable exercise of discretion. Petitioner argue that he satisfies eligibility requirement stating his know clear history of 14 years living in the United States without any prove that petitioner has intended to violate his terms of residency under F-1 Visa nor used his lengthy terms to apply for any immigration benefits or known to commit any criminal nor misdemeanor act.

Petitioner know and understand regardless of his nationality as Italian born in Italy without any prior convictions either the Government Agency ICE, the FBI find it unacceptable to grant any immigration benefits due to race, national origin and color which traced to middle east. Both courts of District of Western Missouri which is entered legally wrongful decision. The Circuit Eight find it hard to grant any decisions favorable or unfavorable and deny both request of appeal and rehearing without publishing opinion regardless of the merits of the case and proof that petitioner never committed any Criminal act nor found in violation of VWP rendered to unconstitutional deportation. Petitioner do possess Due right under the U.S. Constitution due to prior admission under F-1 visa including 14 years of legal residence and proof of education from the U.S. accredited colleges.

according to **8 U.S.C. 1229a(4)(A)(ii)** the eligibility for petitioner to grand (Exercise of Discretion) giving the merits and individual characters of petitioner will fit the legal description of (Favorable Exercise of Discretion) it will remain to the court of jurisdiction to determine this matter if the case was taken to review some 15 years a go to survive dismissal and removal, but I don't see that can happens due to petitioner race and national origin and even after 15 years since removal and request of (Favorable Exercise of Discretion) regardless of tangible evidence that petitioner was innocent of committing any criminal act rendered removal provided to both Western District of Missouri then the Eight Circuit, the case didn't get proper review which can be understood as race and national origin of petitioner issue which has become standard legal practice by U.S. Court system. Thus, there are limited possibility to grant an opinion by Eight circuit and motion to recall a mandate will be denied without opinion (favorable or unfavorable).

As stated under **8 U.S.C. 1229a(e)(1).** Under "exceptional Circumstances" refers as battery or extreme cruelty of an alien as child, parents of an alien, illness, death of spouse...EXT. however less Compelling circumstances beyond control of an alien. Petitioner strongly disagree regarding this explanation to refresh the court memory the fundamental elements of the lawsuit against defendant is Violating the constitution of the United States by the FBI and ICE-KCMO to proceed removal of petitioner as criminal alien without proof of conviction. Ignoring his rights under the constitution of the United States where he has lengthy 14 years residency under F-1 visa secured to him under the constitution prior to last entry under VWP. The agency committed act of fraud, forgery and fraudulently concealed evidence and plan to harm physically petitioner while in Custody of ICE-KCMO the only time saved petitioner life is the prompt reply by the Italian Embassy. The questioned asked as the case widely open to discussion and opinion dose violating the constitution and use excessive power to remove a person and attempted to harm him physically can or cannot considered exceptional circumstances? Or violating the human rights treads including the international law can or cannot be exceptional circumstance? Or removing petitioner from the United States based upon his race, national origin and religion believe regardless of his clear record education, nor have any opinion might be harmful to public and community safety can or cannot be exceptional circumstances? The fact the case based around exceptional circumstances.

Under **8 U.S.C. 1229a(e)(2).** In removing any alien of the United States, the ground of inadmissibility and deportability must be clearly stated. I the case presented the causes of deportation was under violation of VWP which didn't exceed 180-364 days to render removal under inadmissibility ground 212(a)(9)(B)(i)(I). as claimed wrongfully that deportability was as Criminal Alien which must be stated under deportability grounds 8 U.S.C. 1227(a)(2)(A)(ii), (A), (iii),(B), (C) or (D) or deportable under 8 U.S.C. 1227(a)(2)(i) where must be supported by proof of convection and electronic means of report then proof in written that service agency have received such report with conclusion of the court of which is not happens. Therefore, the FBI and ICE-KCMO luck the evidence to prove that petitioner is deportable as charged as stated under **8 CFR 1240.8(a)** *[ A respondent charge with deportability shall be found removable if service proves by clear and convincing evidence that the respondent is deportable as charged].* Thus, removal cannot be considered as legal and request the court of cancelation of all removal and consider financial compensation for pain and suffering caused.

The cancelation of removal and adjustment of status to permanent residency will available to alien who is inadmissible or deportable by the Attorney General if found that alien been physically present in the United States not less then 10 years, has been in moral character during such period, has not been convicted of an offence under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title. See **8 U.S.C. 1229b(b)(1).**

All the above-mentioned factors found on petitioner history as facts. However, petitioner want to draw the attention of the court of the main purpose of this pending claim 1) Abuse of constitutional rights where rights of petitioner has been drained regardless of 14 years legal residence prior of admission on VWP. 2) removal based as criminal alien without proof of convections to include petitioner within (Secure Community) program targeting Criminal Aliens. 3) Deprived his rights of legal immigration counsel and sign forms petitioner unaware of without present of his attorney while under detention caused by arrest trauma and fear, provide form G-28 signed by both petitioner and Attorney assigned the case on 04/11/2003 to discover some 15 years since removal form G-28 was expired on 09/26/00 as stated on the lower right corner which made it legally insignificant. 4) violation of human rights and international law treaties the United States Government signed including international law which band (Arbitrary Detention). 5) Attempted to physically harm petitioner while in detention under ICE-KCMO custody as the factors show.

All facts approved by tangible evidence. Therefore, petitioner request of cancelation of removal and provide financial compensation of pain and suffering caused by such removal unless defendant provide evidence beyond reasonable doubt that removal was legally issued. As stated, and explained the reason of this lawsuit NOT to have permanent residency nor seek admission after removal it is matter of petitioner rights that has been abused of all levels which cause damages and violation of human rights.

**8 U.S.C. 1252**

Petitioner argue that his case not exempt of judicial review of order of removal under 8 U.S.C. 1252. Judicial review found to be established in regard of matter of removal as claimed under VWP and Section INA 236 coded under 8 U.S.C. 1226 which both the service didn't have the burden of proof. Alien who included under 8 U.S.C. 1225(b)(1) pursuant removal without hearing are exempt of judicial review of which petitioner not included, Since petitioner has previous residency of fourteen years prior of last entry on VWP where temporary absent cannot take due right process . See **8 U.S.C. 1252(a)(1).**

Stated under **8 U.S.C. 1252(a)(2)(D)** petitioner argue that service must provide tangible evidence concerning criminal act has been committed by petitioner and covered under 1182(a)(2) or 1227(a)(2)(A)(iii), (B), (C), or (D) or any offence covered in 1227(a)(2)(A)(ii) or covered under 1227(a)(2)(A)(i). the service demonstrate failure to (Proof of Convection) See **8 U.S.C. 1229a(c)(3)(B)** where the criminal incidence must be recorded as stated under subparagraph (i-vii). Additionally, to record criminal act committed by an alien "the service has the burden of establish by clear and convincing evidence that, in case of an alien who has been admitted to the Unites States the alien deportable. No decision on deportability shall be valid unless is based upon reasonable, substantial, and productive evidence". See **8 U.S.C. 1229a(c)(3)(A).** The service must show evidence of criminal act registered under (Electronic Record) where certified by a state official associate with repository of criminal justice record and certified in writing by the service as having been received electronically from the state's record repository of the court record repository. See **8 U.S.C. 1229a(c)(3)(C)(i), (ii).** According to what have been received of the state's court the service will determine under which category of deportable crime the offence will be registered in 1227(a) that render removal.

The FBI-KCMO have fraudulently and deliberately issued Universal Control No. 958484AC9 which issued to criminal individual to premeditated removal against petitioner in collaboration with ICE-KCMO bypassing the state authority of which they have right to issue warrantless arrest under power of I-247. The form has been issued since there are no probable cause nor exigent circumstances recorded the local or state authority cannot issue form I-247 since it made under the discretion of the local authority to render to booking of 48 hours only. Thus, the FBI and ICE-KCMO has violated the right of the people of the state of Missouri under the Tenth Amendment where the state must be informed of any criminal act committed by Criminal Aliens of which they didn't.

**Unrecorded Alien A- File No.**

The petitioner A- file has NOT been found under Detainee Locater System nor has been registered under any other system "The hardcopy paper A- file which contain the official record material about each individual for whom DHS has created a record under the immigration and nationality act such as. Neutralizing certificate; various documents and attachments (e.g., birth and marriage certificates) applications and benefits under the immigration and nationality laws; report of arrest and investigations; statements other reports of proceedings before or filings made with U.S. immigration courts and any administrative or federal district court or court of appeal; correspondence, and memoranda". *See Id. At 34236*

Therefore, ICE-KCMO must provide the hardcopy paper A-file to determine if removal has been recorded according standard procedures or if the A-file exist, on the other side the FBI-KCMO who initiate UCN No. 958484AC9 exist with rap-sheet indicating that petitioner has been issued this file based upon criminal act or previous acts render to the issue of UCN. On the other side petitioner has been removed after found violating VWP which proved that it was 150 days not enough to be considered removable offence which must exceed 180 to 364 days and deportable under 237(a)(1)(B) was wrongful assumption.

Thus, Petitioner request defendant to bring qualified expert to witness the criminal act has been committed if any by petitioner and rendered to removal as criminal alien as stated under **Fed. R. Evidence 702.** the service must proof that there was motion for judgment of acquittal under **Fed. R. Crim. P 29** to introduce removal order which must comply with Rule 29(a), (b) or (c) if the service cannot bring forward none of then the government "fail to introduce a removal order"

Therefore, and according to reasons stated above it has been cleared to the Court that there is constitutional claim arise stating the fact that petitioner do possessed constitutional rights upon his claim giving his lengthy residency of 14 years under F-1 prior of last entry under VWP where temporary absent cannot take prior due rights process. Thus, petitioner argue that his rights under the 1st, 4th, 5th, 6th, 8th, and 14th amendments has been violated. Additionally, there are question of which law removal has rest is it criminal under 1227(a) which has not been stated or inadmissible due to overstay 150 days under 212(a)(9)(B)(i)(II). As result the matter found to be under appropriate court of appeal in accordance with **8 U.S.C. 1252(a)(2)(D)**

The eight circuit shall be the sole and exclusive means of review of any cause or claim under the United Nation convention Against torture and other forms of cruel, inhuman or degrading treatment or punishment. Petitioner has been dehumanized when taken to custody of ICE-KCMO in methods like kidnaping, removed as criminal alien without showing technically where dose the criminal act rest on giving petitioner race and national origin, plan to physically harm petitioner while in custody as factors of this plan was obvious and approved based upon ICE and USCIS-FOIA reports and Shawnee County Jail Canceled Report. violating the 4th amendment when officers of ICE-KCMO attempted entry to Petitioner apartment without search warrant and ask to get few changes and documents found on exhibit of USCIS-FOIA report. Impose $9,999,999 as immigration bond which violate the 8th amendment. force to sign forms petitioner not aware of without present of his attorney which found latter time that form G-28 expired on 09/26/00 and signed on 04/11/2003 where attorney Jeffery wasn't present. Some 11 years since removal petitioner received degrading insulting treatment from the Consular Officers in U.S. Consular Section-Kyiv where accused without tangible evidence that petitioner seek legal entry to preform illegal employment and deliberately insult my country when pushed my passport front of me. The third interview was mainly violating the refusal procedures by and imposed Administrative Processing pending to the current time. See **8 U.S.C. 1252 (a)(4).**

Additionally, the court of appeal inherit exclusive means of judicial review of an order of removal entered or issued under any provision of this chapter. See **8 U.S.C. 1252 (a)(5).** Therefore, petitioner concluded that jurisdiction is proper under the Eight Circuit for review.

Stated under **8 U.S.C. 1252(b)(3)(A)** the final order of removal under section 1229a of this title was entered and served to the Attorney general and the employee of the service in charge of the service district. The final order was based upon false attempt to remove petitioner as criminal alien found and proved by the falsifying all legal forms in record found under ICE and USCIS-FOIA. Thus, the Attorney General office has not been informed nor show under which criminal category the offence rest.

Stay of removal was an available option if petitioner was to offer voluntary departure with grace period of 120 days as stated under 1229a. however, it was the FBI and ICE-KCMO who deliberately impose illegal accusation of criminal act to include petitioner under (Secure Community) program targeting his race and national origin, stay of removal wont be valid if there is pending decision of the court. It is an evidence there are no criminal act been committed therefore no court was pending as result petitioner will be eligible for review to stay removal. See **8 U.S.C. 1252 (b)(3)(B)**

Petitioner case valid for review under scope and standard of review as stated on **8 U.S.C. 1252(b)(4)** A. the court of appeals shall decide on the administrative record on which the order of removal based. As stated on argument that the A-file hard copy is not registered within the system unless the court order the non-electronic filing to base it determination upon which removal based,

however, petitioner supplied the court with filing found on ICE, USCIS-FOIA, the FBI-UCN and Shawnee County Jail Booking report which indicated upon the facts reviled that removal as criminal alien it has been fabricated by fraud and forgery . Court of Circuit Eight can exercise its authority to compel defendant to provide the nonelectronic record including requesting Forensic biometric test to determine if fingerprints of petitioner match the one found on file. B. The administrative findings are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary. All the fact of removal has been presented and facts reviled it was unconstitutional where petitioner depraved his rights has been abused and denied regardless of 14 years of legal residency, removal cannot be honored as legal since it based upon false elements of removal based upon criminal act without any proof of convictions, falsifying all legal forms to impose arbitrary detention and depraved petitioner, right of legal counsel while signing forms unaware of and without present of his attorney

Additionally the U.S. Consular section -Kyiv impose illegal Administrative Processing of which cannot be done giving prior lengthy legal residency including degrading insulting unhuman treatment petitioner approached with for only obtain information from the Consular officer in 2nd interview. C. a decision that an alien is not eligible for admission to the United States is conclusive unless manifestly contrary to the law. petitioner has nothing more to bring to justice that removal was contrary to law ranging from removal as criminal alien without proof, denying constitutional rights, A-file No has not been initiated and falsely and deliberately initiate FBI-UCN which cannot be legal nor constitutional.

The proper court of has the authority and jurisdiction review all facts and question of the law including constitutionality and rights in removal of an aliens under the constitution of the United Sates. See **8 U.S.C. 1252(b)(9)**. petitioner has nothing more to prove to the court that removal occurred 15 years ago was contrary against the law and found to be violating process of removal and all codes stated under INA, CFR and 8 U.S.C. concerning removability of an alien and violation of the constitution under the 1st,4th,5th,6th,8th and 14th amendments of the constitution rights that petitioner secured under as well violating the 10th amendment of the people and the state of Missouri all of that has been proven on previous arguments sent to Missouri District court and the Eight Circuit.

Stated on **8 U.S.C. 1252(d)(1)** the court will review final order of removal if the alien has exhausted all administrative remedies available to alien as of right. Western Missouri District judgment indicated on page 4 that plaintiff" has provide no facts that he exhausted his remedies by pursuing relief in an immigration court or review by Bored of Immigration Appeal" the judgment is incorrect for two reasons,(i) Immigration Court including the immigration Judge(IJ) has no jurisdiction in reviewing VWP as stated under **8 CFR 217.4(b)(1), (2)** that VWP who overstayed over 90 days shall proceed non-hearing removal, additionally the court mentioned this matter can be reviewed under Bored of immigration Appeal any appeal filed with BIA must relay upon previous Judgment made on Immigration Court if removal made under VWP then it exempt of any judicial immigration review, Thus, the matter cannot be reviewed under BIA.(ii) petitioner A-file No. which initiated to an alien contains all biographical and immigration information has not been registered which cause the case if applied to Immigration Court, BIA or Executive immigration office will be suspended due to absent of information that must be on record. absence of the A-file it indicates that removal has not been registered thus, removal is void and issued illegally.

Western district of Missouri didn't discus the main elements of the claim which is 1) removal made as criminal alien without proof of conviction to include petitioner under (Secure Community)

program targeting his race and national origin. 2) falsifying all legal documents and forms found on ICE, USCIS-FOIA report. 3) initiate FBI-UCN fraudulently issued only to Criminal individuals. 4) violating petitioner Due rights process under the U.S. constitution. 5) attempted Kidnaping in federal government office based on illegal transfer to ICE-KCMO in the FBI-KCMO office. 5) impose illegal bond of $9,999,999 by ICE. 6) penetrating Jail Software System to change apprehension date as plan to physically harm me maybe to death. 7) impose illegal accusation without legal proof and 8) deprave petitioner right of a counsel where sign forms unaware of Note: form G-28 signed between petitioner and attorney Jeffery Bell who didn't show at the time been held under custody the form was expired on 09/26/00 and signed on 04/11/2003 which made it insignificant legally there are an obvious violation to Attorney-Client privilege and breach of fiduciary duties this matter found recently. Therefore, judgment was inadequate and doesn't rise to the standard of justice that the U.S. Court system known about.

Stated under **8 U.S.C. 1252(f)(2)** no court shall (enjoin) the removal of any alien pursuant (to a final order) under this section (Unless) the alien shows by clear and convincing evidence that the entry or execution of such order is (Prohibited as matter of law).

interpreting word "enjoin" To order or compel to stop or prohibit commencement of an activity; of a judge: to grant a court order directing a party to cease a particular activity. The act of the court to order or compel to stop is based upon evidence which must be supportive Clear and convincing where the Burden of proof relay upon petitioner shoulder to do so. Meanwhile the court has the right to order or compel, stop or prohibit the activities if found that the evidence not enough.

Removal of petitioner of the United States based upon two fraudulently made factors
i) Reentry after removal which is subject to review under 8 U.S.C. 1326 as suggested under from I-296 (Notice to Alien Ordered Removed/ departure Verification)
ii) removal based upon criminal Act covered under section 236 and coded under 8 U.S.C. 1226 as suggested under from I-200 (Warrant of Arrest of an Alien).

ICE- KCMO indicated there are previous overstay under VWP which not true statement. Stated under USCIS-FOIA page 35 petitioner granted an admission after been paroled before USCBP for period of 90 days starting from Oct 10, 2000 to Jan 9, 2001. Departed on Jan 23, 2001, stated on the right side of the page as (Confirmed Overstayed) additionally the page stated Alien name, passport No, country of citizenship, place of birth, address, carrier and flight Number as well appeared on the right corner the date and time where petitioner information been checked.

Petitioner argue there are no confirmed overstaying recorder as he successfully departed the U.S. border under satisfactory departure stated under **8 CFR 217.3(a).** the district director having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant period of satisfactory departure of 30 days. The address shown it was petitioner residency prior of entry on VWP dated on Oct 10, 2000 as he was student under F-1 nonimmigrant visa. therefore, it was the exercise of discretion made as district Director didn't arrive to last known address of petitioner. Due to holiday season there are no flight available to depart of the United Sates on time which causes delay not within portioner control and cannot be classified under (exaptational circumstance) but less compelling situation not under alien control see 8 U.S.C. 1229a(e)(1). Therefore, if as stated by ICE-KCMO as stated was an attempt of reentry then it must been done on last entry on Sept 5, 2002 the fact is the officer in charge on USCPB has the full authority to deny admission based upon violating VWP terms and condition no expedited removal can be made for VWP as stated under section **INA 235.3(b)(10).**

However, during the time petitioner was in the United States the liberation of U.S. troops was in session as result all law enforcement agencies including federal wear vigilant in case of any act of sabotage that might happens there are NO exclusions been made which include all Arab-American community who neutralized or born as U.S. citizen. Thus, the FBI and ICE-KCMO are correct in this perspective to scan all people for security purposes under "Reasonable Suspicion" which is less then Probable Cause (Police may stop a person if they have a reasonable suspicion that the person has committed or is about to commit a crime, and may frisk the suspect for weapons if they have reasonable suspicion that the suspect is armed and dangerous, without violating the Fourth Amendment prohibition on unreasonable searches and seizures. Supreme Court of Ohio affirmed) *see Terry v. Ohio, 392 U.S. 1 (1968).*

Petitioner who show his good faith and full cooperation attended voluntarily the FBI interview for the fact that he had no prior convictions clear record and lengthy residency, proof of education and investment that he will be safe in federal building and according to previous phone call that the interview will be lasted only for 20 minutes which it came as strict violation to his Due right process. The FBI and ICE-KCMO a day before the interview seams to came to conclusion according to record provided see USCIS-FOIA page 33 to 43 that petitioner has no conviction and clear record however due to the facts that petitioner is of an Arab Iraqi origin they do have the right under Reasonable suspicion which must be brief unless found probable cause at the time of the interview render to arrest and removal which they didn't prove.

The other aspect is the illegal transfer which take form of kidnaping with absent of arrest elements set forward by law. UCN report suggested that file been Initiated on the 04/10/2003 a day before the interview on premeditated plan to arrest plan to harm while in detention facility then remove petitioner which made the arrest more of retaliation?

## ARGUMENT

Plaintiff offered rehearing based upon **Fed. R. App. Prod 40(a)(1)** (A-D) as the United States Government, Agency and Employee the defendant as stated under subparagraph A-D.

As stated on **Fed. R. App. Prod 40(a)(2)** [ The petition must state with (Particularity) each point or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted].

Decision made upon plaintiff case No. 18-00404-CV-W-ODS the judgment came of refusal under Forma Pauperis as stated under 28 U.S.C 1915(e)(2)(B) the court review based upon facts under the statue above as to insure it's not- frivolous or malicious, fails to state claim upon which relief can be granted, or seek monetary relief against a defendant who is immune from such relief. As standard of review the District court used Rule 8, Fed. R. Civ. P 8(a)(1)-(3), 8(d) Fed. R. Civ. P Rule 9(b)

**Review under 28 U.S.C. 1915(e)(2)(B)**

The court order made its review based upon the subparagraph B which stated the following action of appeal

*(i) frivolous or malicious*:

there is no evidence suggested the lawsuit has no value. As stated on the argument supported by evidence brought forward and approved under **Fed. R. Civ. P. 44(a)(1)** of which is admissible and is kept within the United States. All information regarding plaintiff record provided from official government agencies of the Freedom of Information Act (FOIA) from the files USCIS-FOIA, ICE-FOIA, the FBI- Universal Control Number 958484AC9 and the Booking report of Shawnee County Jail where plaintiff been held for removal. The information concerning forms date, time of apprehension, nature of each form issued all have been analyzed according to laws and statues under 8 USC and INA without any attempt to impose any harm on the defendant. Therefore, claim the fact that there are Frivolous or malicious factors are not clear statement

*(ii) fails to state a claim on which relief maybe granted:*

plaintiff argue there are sufficient fact been presented which indicate there are violation of law had occurred. Proceeding removal as Criminal Alien regardless of clear record, falsifying all legal forms to impose illegal removal, concealed evidence of issuance illegally and unlawfully issued Universal Control Number 958484AC9 by the FBI-KCMO which issued to criminal individual without showing any tangible evidence of any criminal act, impose $9,999,999 as Immigration Bond by ICE-KCMO on Canceled Shawnee Booking report, Changing apprehension date from 04/11/2003 to 04/10/2003 by penetrating Jail Software System of Shawnee County jail .

Falsifying form I-203 on booking report by claiming that plaintiff held in Juvenile detention facilities of Shawnee County at age of 34, and A-File No. A 97319371 has been checked under Detainee Locater System which appeared on ICE official website, since the number contained 8 digits then zero must be added as A 097319371 to find any person deported of the U.S. the system indicates that this number it doesn't exist. Plaintiff shared this information with Executive office of Immigration Review Kansas City Branch where the Klerk has tried the number twice by adding zero to show if the number existed within the Immigration system. Plaintiff confirm with the Clerk that the removal was on Visa Waiver Program the clerk officer replied any alien subject to removal under any circumstances must be issued this number. Therefore, plaintiff concluded if no Number exist then the removal is Void by law.

To defeat motion to dismiss (a plaintiff must plead enough facts to state a claim to relief that is plausible on its face) *see Bell Atlantic Corp v. Twombly, 550 U.S. 544, 570 (2007), see Reliable Consultant Inc v. Erale, 517 F.3d 738, 742 (5th, Cir. 2008). See also Guidry v. American Pub. Life Inc Co., F.3d 177, 180 (5th Cir. 2007)*

According to the argument set forward plaintiff argued that all facts presented according to the law without any attention to harm the defendant. The harm been done by the defendant was attentional of which has been approved by facts and plausible on its face.

The elements discussed and proven by law and based upon Prima Facie evidence that plaintiff suffer substantial damages since May 1, 2003 to the present day ranging from denial his rights under the constitution to violating removal process to false arrest and imprisonment.

The district court has dismissed the subject matter as failure to state the claim regardless of massive evidence and excessive research and time plaintiff did ranging from investigation to research. The judgment of district court didn't examine properly the facts which has been included in the claim to give final judgment promptly with short notice. *See Conley v. Gibson, 355 U.S. 41, 45-46 (1957)* ([A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief)

The evidence attached to the argument based upon the fact that plaintiff been harmed by the defendant act. As stated under Fed. R. Evidence **401(a)** [ Evidence is relevant to make facts more or less probable then it would be without the evidence].

Therefore, there are no probable requirement. Thus, possibility do exist according to evidence that defendant acted unlawfully as possibility proven that laws and regulations concerning removal of an alien has been violated including plaintiff constitutional rights. (The plausibility standard is not akin to a "probability requirement" but it asks for more than sheer possibility that defendant has acted unlawfully). *See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal citation omitted)*

Plaintiff argue an important fact beyond then simply sets of evidence and unlawful act of the defendant. The facts remain that the case presented before court of appeal is concentrating upon the core foundation of America and Americanisms principals where the nation has based upon equality to all people regardless of belief, national origin, race and equal opportunities. these are the elements the foundation where America based upon, neglecting these principles coded on the United States Constitution which mean denials to the power of the Constitution and American principles which must be protected at all times. (while a compliant need not contain detailed factual allegations, it must set forth "more than label and conclusions, and formulaic recitation of elements of a cause of action will not do".) *see Twombly, 550 U.S. at 555 (citation omitted)*

Nothing in the argument presented in the complaint filed with the Court less then factual allegation proven by law and the United States constitution and the rights of plaintiff are raised beyond speculative level where elements of harm are obvious. [the [f]ctual allegations of a [complaint] must be enough to raise a right to relief above speculative level... on the assumption that all allegations in the compliant are true (even if doubtful in fact).] *see Id. (quotation marks, citations and foot note omitted).*

***(III) seek monetary relief against a defendant who is immune from such relief:***

To state a civil right, claim under 42 U.S.C. 1983, a plaintiff must allege that (1) he or she was deprived of a right, privilege, or immunity secured by the federal constitution or laws of the United States, and (2) the deprivation has caused by person acting under color of law. *See Flagg Bros. v. Brooks, 436 U.S. 149, 155-57(1978). See also Harris v. Circleville, 583 F.3d 356, 364 (6th Cir. 2009)*

As stated on argument in details there are violation to constitutional rights and immunity provided to plaintiff under the 4th, 5th ,14th Amendment of the constitution. Removal made as Criminal Alien without conclusion of the law or judicial review stating the violation committed and came regardless of plaintiff clear record.

As stated before that removal made by falsifying all legal documents, impose false imprisonment and arrest, illegal transfer to ICE-KCMO custody all of these elements explained in detail in the argument with proof of evidence that the officers who acted under color of law has committed this act deliberately without respect to plaintiff rights.

It is known and understood that government are protected and immune of any wrongdoing or damages. However, the Federal agency to determine conclusion of removal against plaintiff, proven beyond reasonable doubt has been made by fraud and forgery to impose (Mandatory Detention). The federal agents committed this act within scope of employment.

As stated on **28 U.S.C 1346(b)** [ for injury or loss of property, or personal injury or death caused by the negligence or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the United States, if a privet person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.]

**Review based upon Fed. R. Civ. P 8 & 9**

Under **Fed. R. Civ. P 8(a)(1)-(3)** (each allegation must be simple, concise and direct). Complying with Plaintiff offered rehearing based upon **Fed. R. App. Prod 40(a)(1) (A-D)** as the United States Government, Agency and Employee the defendant as stated under subparagraph A-D. As stated on **Fed. R. App. Prod 40(a)(2)** [ The petition must state with (Particularity) each point or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted].

- *Falsifying all immigration forms as it appeared on FOIA report from USCIS and ICE.*
  (see argument to show all forms has been falsified by evidence)
- *Illegal issue of Universal control number 958484AC9 by the FBI-KCOM produced only to Criminal Individuals regardless of plaintiff clear non-criminal record.*
  No burden of proof shown that plaintiff ever committed criminal act to legally issue UCN. Form I-247 cannot be issued since there are no probable causes found. *See Galarza v. Szalczyk, 745 F.3d, 634 (2014); see also. Morales v. Chadbourne, 996 F. Supp-2d, 19 (2014). And see Miranda-Olivares v. Clackamas County, 3:12-cv-12317-st (2014).and Jimenez v. Napolitano et al, 1:2011-cv-05452, 144 (N.D.III,2014)*
- Illegal transfer of information and/or individual to ICE custody by the FBI in similar methods of kidnaping where elements of Arrest doesn't apply giving plaintiff clear record (Criminal, Immigration and security violation) doesn't exist nor proven by tangible evidence.
- Using element Decoy vagile as stated under stated under **18 U.S.C 1201(a)** *[ Whenever unlawful seizer, confines, inveigle, decoy, kidnaps, abducts or carried a way and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof]*. Using elements like kidnaping to impose unlawful arrest and imprisonment.
- stated on **18 U.S.C. 1201(b)** if failure to release the victim with in twenty-four hours as been taken by kidnaping as stated on subsection (a)(1). And transported in interstate or foreign. The transport made pass the interstate to Kansas where ICE hide all elements of transport and assume incidence of removal never exist.
- False Arrest and imprisonment as a Criminal Alien under Section 236, Coded under 8 U.S.C. 1226 regardless of plaintiff clear and non-Criminal Record.
- *Falsifying Shawnee Country Jail Booking report and fraudulently concealed information of detention*. Ranging from [Deliberately and knowingly changing apprehension date by penetrating Jail Software System from 04/11/2003 to 04/10/2003 see form I-203, impose illegal immigration

Bond ICE $9,999,999 NO immigration Bond issued if proven VWP Violation which has not proven and impose illegal Charges without legal Proof (Civil & Criminal Penalties Exist for Misuse & Unlawful Dissemination)].

- Removal based upon discrimination on race and national origin as an Iraqi in retaliation of Iraq invasion/ liberation. (including discriminatory Comment targeting race and national origin as main cause of removal page 7 and 26 ICE-FOIA)
- *Abuse and violating Removal procedures under the laws and regulations of the United States.* See 8 U.S.C 1231, 8 U.S.C. 1226, 8 U.S.C. 1225
- *Abuse and violating Privacy Act of 1974*
  as stated under **5 U.S.C. 552a.** It is a United states federal law, establishes a code of fair information practice that govern the collection, maintenance, use, and dissemination of personally identifiable information about individuals that is maintained in system of records by federal agencies.

All information collect was false ranging from proceeding as criminal alien to band of 10 years. Falsifying information on NCIC, CIS, DACA, IDENT and the FBI- UCN all of information has been entered in the system was falsified which show there are Computer Fraud been committed Knowingly by the FBI and ICE-KCMO which violating the plaintiff constitutional rights. Additionally, there an attempt to fraudulently concealed information of the plaintiff related removal and NOT recording the alien A-File Number with the system of records.

- *Abuse of Prosecutorial Discretion.* [ not a law rather than exercises of ICE power by reviewing alien case. As proven it is Low-Priority since there are no criminal nor false immigration statement or violation recorder. Previous legal lengthy residence proof of education from the U.S., see Morton and Meissner Memo].
- *Abuse Scope of Employment of the Immigration Officers under 8 CFR 287.8 and 287.9*
- *Violation of Scope of Employment and violating refusal procedures of the State Department by the Consular Section U.S. Embassy-Kyiv.* [ the consular section-Kyiv found in violation of refusal procedures under **22 CFR 41.121(b)(1), (2) and (c)** consular offer didn't suggest any legal Mechanism nor request additional information before the final decision to place plaintiff application under Administrative Processing. Plaintiff question if Administrative processing was legally made as it violates his Due right process as he possesses right over his application due to his previous lengthy residency in the United State. Under Foreign Affaire Manual **9 FAM 40.6 N4.1(a)** applicant may overcome refusal under 221(g) by providing additional evidence in support of his/her application which is requested by plaintiff and has been denied. Under second interview plaintiff has been insulted, dehumanized and offered degrading treatment by the officer when denied his visa under 214(b) after claiming that plaintiff willing to legally obtain visa for purpose of illegal employment, there are no support to this claim. Plaintiff request to reexamine the conduct of the two officers by the State Department
- *Abuse and violate plaintiff Rights under the United States Constitution.* [ the First Amendment has been abused as it prohibited discrimination based on religion and give the right of speech where plaintiff has been deprived to have fair trial before illegal removal. Fourth Amendment prohibit unlawful search and seizure alien has been taken to ICE-KCMO custody while in the FBI-KCMO filed office without imposing any charges and transfer illegally in a method like Kidnaping and attempted entry of ICE officers to his apartment without search warrant, impose false imprisonment and arrest. Fifth amendment prohibit charges of felonies without jury's plaintiff has been removed as criminal without jury's determination, 5th amendment prohibit any individual to testify against himself, plaintiff sign forms I-200 under duress to testify against himself of crime never committed. Eighth amendment prohibit cruel and unusual punishment as plaintiff been removed as criminal without court review nor suggested that he ever committed any criminal act the 8th amendment prohibit excessive bail; plaintiff bond was nearly ten million dollars without stating any reason. Tenth amendment issue of UCN by the FBI-KCMO to bypass local and state authorities to record

and/ or presume falsely that plaintiff committed criminal act without informing state authorities of such crime committed is violation of people and residence of the state of Missouri rights under tenth amendment. Fourteenth amendment give an equal protection to all residences legal or illegal citizen or not due to their lengthy residency of which has been abused. Including due right process, procedure right process and losing two form of business without compensation by law and deprave of liberty without due process of the law as
removal made without legal review before a court.

The ability to file a "short and plain statement of the claim" mitigate the impact that the choice to proceed pro se has no litigants access to discovery by reducing the number technicalities and requirements the satisfaction of which demanded legal experience. Accordingly, pro se complaine[s]. however, inartfully pleaded, [are] to less stringent standards then formal pleadings drafted by lawyers. *See Estelle v. Gamble, 429 U.S. 97 106 (1976) (quoting Haines v. Kerner, 404 U.S. 519, 520-21 (1972) (per Curiam)).*

To fulfil plausibility Claimants are required to show "Plausible entitlement to relief" by offering enough facts to raise a right to relief above speculative level. *See Erickson v. Pardus, 551 U.S. 89, 93 (2007) (per curiam)* [ Federal Rule of Civil Procedure 8(a)(2) require only "a short and plain statement of the claim showing that the pleader is entitled for relief". Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests']. To establish pleading standard under plausibility must be clear [ A claim has facial plausibility when the pleaded is libel for misconduct alleged. (Id. 556)].and [A complain must allege "enough facts to state a claim to relief that is plausible on its face. (Id. 570)]

Prior to the judgment plaintiff didn't have enough knowledge of how dose rules of pleading can be done. Since the lawsuit under liberal construction on pro se then the court will exercise discretion in this matter to view the set of facts that included in the argument which they didn't.

**Fed. R. Civ. P 8(d)** to state a claim for relief a claim must be Plausible on its face. Plausibility has been explained above. The claim states all facts, truth and credibility of information provided from reliable government source proven by evidence to make it worth review and nothing more can be add nor approved. As research to the case suggested there are more than these violations, ICE and the FBI-KCMO has violate plaintiff Human Rights under the international law by Fraud, forgery, Computer Fraud, attempted accusations of criminal act never committed, assume judicial review and judgment without a court, and violet the United States constitution. All these factual elements mentioned are proven by law. The court cannot dismiss a case under no set of fact in plaintiff claim [the [f]ctual allegations of [a complain] must be enough to raise a right to relief above the speculative level... on the assumption that all allegations in the complaint are true (even if doubtful in facts)]. *see Id (quotation marks, citations, footnote omitted)*

The court has not reviewed elements of facts on the Complaint or analyzed if the facts included are doubtful or based upon tangible elements to raise a right to relief above the speculative level.

**Fed. R. Civ. P 9(b)** [ Fraud of mistake, condition of mind. In alleging fraud or mistake, a part must state with particularity the circumstances constitute fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.]

The matter has been stated under particularity and proven by evidence of the Government record. Stated on NRC report pages 33-43 the result of background check came clear ranging from Name Check, criminal check, number of previous entries to the U.S.

The background check started as shown on pages 32- 43 on 04/10/2003 at 17:45:05 end at 17:58:11 which allow only two minutes before the working hours. As stated on page 43 there are no identifiable record found on NCIC or Interstate Identification Index (III).

The illegal act of the FBI and ICE-KCMO can be summarized below.

(1) to issue Universal Control Number- UCN 958484AC9 which issued to criminal individual by the FBI regardless of plaintiff clear non-criminal record. the FBI and ICE-KCMO must go through checking process mentioned above of criminal and name check ... Ext necessary to issue UCN which became valid after 17:58:11. Shawnee Booking Report show that plaintiff was on Shawnee Facilities on 04/10/2003 at 18:10. As they claim is not correct as shown timing and date to issue the UCN effectively came after 17:58:11 which allow only 12 minutes to have an alien transferred from Kansas City, MO within period of 12 minutes only and 80 Miles to Shawnee – Topeka, KS. its not only non- logical claim but as well it violates law of physics which cannot be suspended in favor of ICE and the FBI-KCMO. Fortunately form I-203 was included with Shawnee Booking report even though the form should be included within ICE-FOIA report however, form I-203 show the date where plaintiff been admitted on 04/11/2003 regardless of many non-truthful statements this simple form includes. Shawnee Concealed booking report show by evidence beyond reasonable doubt that jail Software System has been penetrated which indicate there are Computer Fraud has been committed to change the apprehension date.

(2) in absent of Probable- Cause led to arrest of any individual found in violation of law, the FBI issued UCN to bypass local and state authorities where only 48 hours arrest under power of from I-247 (Detainee- Notice of Action) will be granted. Since booking of an alien or an individual found in violations of law came under full discretion of local and state authorities where probable cause must be sufficient enough to rendered arrest of which wasn't Available at the time, then the FBI in collaboration with ICE-KCMO fraudulently issued the UCN to impose false arrest and imprisonment.

(3) to ensure that plaintiff will not be released under removal process, ICE-KCMO must show Causes. As stated on concealed Shawnee County jail- Topeka, KS booking report the charges are (Civil & Criminal Penalties Exist for Misuse & Unlawful Dissemination). The charges mentioned on Shawnee booking report it doesn't rely on any factual allegation, as charges must be supported by statement of perjury state with particularity who, what, when, and where of which has not been stated or maintained the officer in charge of the investigation. The charges are deliberately made as security grounds of which any information cannot be released to state for local authorities to release plaintiff under ICE custody to proceed removal without giving any information to Shawnee County Jail regarding booking an alien under deportation. Additionally, it was ICE and the FBI-KCMO to impose either criminal or security charges of which they cannot approve of plaintiff record nor reviewed by court to record longer band of reentry or life band.

(4) All legal documents issued by both the FBI and ICE-KCMO are falsified by fraud and forgery as it contains false elements.

There is violation of law has been committed by the defendant ranging from false statements, falsifying all legal forms of removal, fraudulently concealed evidence, penetrating jail software

system to change booking date from 04/11/2003 to 04/10/2003 which can be considered as Computer Fraud, fraudulently issue UCN regardless of clear record to proceed removal as criminal alien without conclusion in court of jurisdiction. Simply removal made by fraud and forgery which supported by evidence in documents of credible sources.

Therefore, as stated on Fed. R. Civ. P. 9(b) state with particularity the circumstances constitute fraud or mistake. Malice, intend, knowledge and other conditions of a person mind may be alleged generally.

***Malice***: As stated on page 26 ICE-FOIA report *(subject was encountered after interviewing with the FBI Kansas City, MO. Subject was targeted to be interviewed under the Iraq initiative. Taken into custody on 04/10/2003).*

As mentioned on this committed there are an act of retaliation made by the employee of ICE and the FBI- KCMO and who are acting under color of law.

Page 19 ICE-FOIA report NAILS Lookout Comments Inquiry *(subj Apprehended by[..] Parent are Citizen/National of Iraq. Subj Italian by Birth. Parents living in Dubai, UAE, Subj Visa Waiver Violator. Subj Pend FBI Interview.)*

Statement above show that ICE-KCMO willing to demonstrate illegally of strong tides to Iraq as they claim plaintiff is Italian by birth of Iraqi parents. There is no link can be made between plaintiff nationality and parents' citizenship as Iraqi since they are not living in the U.S. to be in concern of ICE-KCMO.

Additionally, proceed removal against plaintiff as criminal alien for purpose to include him under (Secure Community) program targeting Criminal alien. it has been proven that plaintiff possess clear record as they knowingly know that prior of plaintiff planed interview with the FBI-KCMO for purpose to harm the plaintiff giving his race, national origin and religion believe

This act came as act of retaliation against of the U.S. invasion/Liberation of Iraq of which is prohibited under NO-FEAR act which indicate there is act of Malice

***Intend:*** the FBI and ICE-KCMO intend to harm deliberately targeting plaintiff for an interview as Iraqi nation of which he is not and proceed removal as criminal alien where his record show NO criminal offences ever committed.

***Knowledge***: defendant has prior knowledge of plaintiff clear record which is shown on NRC report. As stated on pages 33 to 43 started on 04/10/2003 at 17: 45:05 to 17:58: 11 on 04/10/2003 plaintiff record has been checked ranging of name check, entries made to the U.S. Criminal Check, NCIC and Interstate Identification Index (III) all came clear there are no indication show any wrong doing neither criminal nor immigration violations. It had been proven of official record that plaintiff clear record. therefore, the FBI and ICE-KCMO officers regardless of clear record of plaintiff attempted to harm prior of the FBI-KCMO interview where his record shows no violations nor imposing any danger to public security.

Plaintiff argue that there are elements of cause of action are visible as following:

- The material represented by the FBI-KCMO and ICE-KCMO was false, plaintiff removed of the U.S. as Criminal Alien without showing any evidence beyond reasonable doubt in proper court of jurisdiction that plaintiff committed any criminal act rendered removal nor show by solid evidence that plaintiff was violating VWP rules and regulation.

- Representation made as the defendant know with previous evidence and knowledge that it was false. To prove this statement defendant did investigate plaintiff background check as shown in NRC report pages 33-43 that plaintiff information ranging of criminal check, NCIC, Interstates index and number of entries to the United States. All came clear as no criminal nor immigration violation has been found. Yet plaintiff has been removed as criminal alien regardless of clear background check which has been made a day before the actual FBI-KCMO interview on 04/11/2003.
- The plaintiff was damaged and suffered injury ranging of prompt removal which has caused plaintiff loss of two form of active business establishments and loss of reputation and tides to the community giving his lengthy residency in the U.S. prior of last entry made on Sept 5th, 2002 Because of the false act of defendant representation.
- Fales or offensive statement, either verbal or written, about the plaintiff was made by defendant. Stated on ICE-FOIA page 26 that plaintiff been encountered for an interview by the FBI-KCMO for (Iraq Initiative) the comment didn't state if plaintiff found in violation of VWP which the causes of removal. plaintiff will demonstrate to the court there wasn't any violation to VWP render removal. On page 7 of the same report stating that plaintiff parents are Iraqi, and plaintiff is (Italian by Birth) without stating plaintiff nationality as Italian as his documents show. Thus, and based upon conclusion of the employee of the agency ICE-KCMO that plaintiff targeted for removal based upon his race and national origin. There is no assumption made by the plaintiff of racial discrimination as it is fact written by the agency itself.
- The defendant the FBI-KCMO and ICE-KCMO acted negligently or with malice in making such statement. The agency neglects that plaintiff has lengthy previous residency prior of last entry on VWP as Italian National and focus upon race and national origin as they stated on legal official document.

Giving the factors and elements of causes of action it has been proven that plaintiff been harmed by the act of the FBI-KCMO and ICE-KCMO due to retaliation of U.S. invasion to Iraq. Therefore, the statement of the court order above it doesn't rely on facts that plaintiff fail to state clime under Rule 8 or 9 which has been mentioned indirectly in the argument.

**Fed. R. Civ. P. 9(c)** [ in pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity].

Nothing the plaintiff willing to proof with evidence beyond reasonable doubt that removal violating his constitutional rights supported by documents analyzed and supported by evidence that this matter has been performed by the FBI and ICE-KCMO. Freedom of Information Act record show that removal has not been proper, the A-File No. A097319371 has not been recorded under immigration court which is a standard practice to record the A-File of an alien who was subject of removal under any circumstances or type of visa entry, concealed evidence provided by Shawnee County Jail and unlawful issuance of UCN 958484AC9 by the FBI-KCMO.

To fulfill the burden of proof that removal done almost 15 years on May 1st, 2003 was standard procedures. Defendant must show proof supported by evidence with particularity that removal was lawfully made.

**Fed. R. Civ. P. 9(d)** [ in Pleading an official document or official act, it suffices to allege that the document was legally issued, or the act legally done].

The burden of proving removal made against plaintiff relay on Defendant shoulder where must prove to the court of law the legality of such removal based on two facts (1) the documents issued on NRC2015043635 and 2015-ICFO-89619 including Shawnee County Jail Booking report an UCN 958484AC9 was legally issued and (2) the act of removal was legally done and comply with Rules and Regulation where plaintiff has received all his due right process.

Plaintiff argue that all evidence provided to court was of official sources analyzed according to Inspector Filed Manual, 8 U.S.C. and the United States Constitution was violating plaintiff due rights process and inspector filed manual where removal was made unlawfully. Defendant who argue this matter must provide the court documents proving that removal met standard procedures.

**Fed. R. Civ. P. 9(f)** [ An allegation of time or place is material when testifying the sufficiency of a pleading].

There are three places where the incidence of removal made, the time which as well include the date stated from April 10, 2003 (Before the FBI-KCMO interview) to release to ICE-KCMO custody on April 11, 2003 to proceed removal. Plaintiff transferred to Shawnee County Jail from April 11, 2003 to May 1, 2003 when Plaintiff officially left U.S.

Plaintiff mentioned in argument how, the FBI-KCMO and ICE-KCMO. What, targeted under (Iraq Initiative) without stating if its policy, strategy nor there are facts that plaintiff is citizen of Iraq. When, after interviewing with the FBI-KCMO on April 11, 2003. Where, the filed office of the FBI-KCMO, ICE-KCMO, Shawnee County Jail Topeka KS and Platte County Jail MO. *See in re Graphics Processing Unites Antitrust Litig., 527 F. Supp. 2d 1011, 1023-24 (N.D Cal. 2007); see also Gregory, 494 F.3d at 710* (stating that "[g]reat precision is not required of the pleading" but upholding a complain as sufficient because "[t]he complaint states how, when, and where [the plaintiffs] discriminated against).

**Fed. R. Civ. P 9(g)** [ if items of special damage is claimed. It must be specially stated].

Prompt removal and incarceration made against plaintiff has caused financial damages ranging from loss of two active companies, tides to the community, false arrest and imprisonment, proceed removal as criminal Alien without conclusion of the law, psychological and emotional devastation which is impacted plaintiff to the present day, dehumanizing based upon race and national origin.

Additionally, during the long procedures to find the truth of removal plaintiff been subject of embezzlement amount of $84,900 and use plaintiff Social Security and driver licenses No. to issue credit cards using plaintiff name by his Uncle who is U.S. neutralized citizen and who served time in Federal imprisonment. Case has been reported and dismissed without prejudice since plaintiff as victim cannot attended the court and request for video conference has been denied.

Losing almost $5,000 retainer to Allen H. Bell & Associates for an attorney who didn't do any efforts to solve the case and who has been disciplined twice by the state of Missouri of professional misconducts.

All the above mentioned are under category of special damages where court must consider. The booking report mentioned that Immigration bond reach $9,999,999 where VWP are exempt of bond

by law. The amount cannot be mistaken as computer error because it has been motioned twice in the concealed booking report and bond as well mentioned once as $00 which show by evidence that this amount entered by ICE-KCMO allegedly. Thus, ICE-KCMO must show in evidence that this amount was standard procedures, or this amount will be subject to compensation of damages done and continue to the present time along with other amount mentioned on the argument from the FBI and ICE. Therefore, due to the substantial damages done plaintiff stand with the amount written on argument as reasonable damages of pain and suffering.

Plaintiff argue that his life wellbeing was under constant danger while in custody of ICE-KCMO. The fact that form I-216 has not been authenticated nor A- File Number indicate there are no trace of location registered nor arrest of removal recorded in official forms as explained on argument.

Even though false removal has been discovered almost 15 years since it happened by due diligence and discovery Rule. Plaintiff emphasize that Human Rights cannot be subject to statute of limitation therefore due right process along with constitutional rights may exist, the facts suggest there are substantial losses constitutional rights has been made, including placing life of plaintiff under danger. Thus, the amount of damages mentioned has been carefully drafted based upon the discovery rule and elements discovered of false removal.

**Statute of limitation under Discovery Rule**

**28 U.S. Code 2462** section was under review by the supreme court review to determine if civil lawsuit can be brought forward pass the statue -of -limitation for civil fine or penalties regarding the discovery Rule. The court observe the following:

The supreme court under Chief Justice John Roberts focus on plain language of 28 U.S.C 2462. (*an action ...for the enforcement of any civil fine, penalty, or forfeiture ... shall not be entertained unless the commenced within five years from the date the claim first accrued*).

The conclusion of the court was (*that the plain meaning of the provision is that the five-years statute of limitations begins to run when a defendant's allegedly fraudulent conduct occurs.*)
In addition, the Supreme court of the U.S observed Two facts regarding the discovery Rule the

FIRST (*The court observed that the discovery rule was crafted to preserve the claims of the individuals who often have no idea they have been injured. Although most injuries are apparent, deceptive injuries caused by fraud often leaves victims unaware of the harm.*)

SECOND, (*Accordingly, the Court held that the discovery rule did not apply to Government penalty action governed by 28 U.S.C 2462. The Court left open the possibility that the statute of limitation under 28 U.S.C 2462 could be tolled if the alleged conduct was fraudulently concealed.*)
See *Gabelli et al v. Security and Exchange Commission, 568 U.S. (2013).*

Even though the court final decision was the discovery rule cannot apply over the five -years in accordance with 28 U.S.C 2462. The statute of limitation for government enforcement action seeking civil penalties starts when conducts occur not when discovered. however, there are exaptational conditions where applied to my case with the U.S. Government Agencies as stated above.

The alleged volition done by the Government agency the FBI and ICE-KCMO was based upon fraud, forgery, False accusations without tangible evidence of criminal act, illegal transfer and

fraudulently concealed evidence shown on Shawnee Booking report and the Universal Control Number issued by the FBI. The discovery Rule suggest that using and abusing the power invested of the law was imposed to reflect harm against an innocent person and hide all evidence to location, methods of transporting which suggested using elements of kidnap of which cannot be under statute of limitation.

Since most elements of removal was made by fraud, I wasn't aware of the harm done against me all the years followed by removal. I was thinking it was natural process where violation of visa happens followed by removal, but I didn't expect there was false accusations of criminal act never committed nor proved by the agencies. In addition, the lawyers I haired at the time proceeding removal didn't give me any explanations regarding the false removal not tell I have made the discovery myself based upon due diligent, investigation and excessive research for the past 18 months to arrive to this rather shocking result.

evaluating record provided form government sources which are FBI-UCN 958484AC9, Shawnee County Booking report, ICE and USCIS-FOIA report according to Federal Rules of Evidence to determine if information found on record are Genuine to reflect the character of petitioner or evidence provided are supportive to remove petitioner as criminal alien found overstaying his VWP.

**18 U.S.C. 3501**

Analyzing the accusations made and found concealed on Shawnee Booking report based upon **18 U.S.C. 3501(a)** confession must be made voluntarily. Prior to receive such confession as evidence must be approved by Juries and presented by a judge to them to be admitted as evidence in court of law. In accusations made and written on Booking report there are no confession made by petitioner in support of criminal accusations. thus, its not valid since it was concealed, and petitioner didn't know about it not tell he made investigation of removal with Shawnee County of which they send it via e mail on Aug 2016.

In **18 U.S.C. 3501(b)** the judge in criminal trial shall take in consideration the issue of voluntariness all circumstances as following 1) the time elapsing between arrest and confessions made by defendant. 2) whether defendant know the nature of the offence and charges of which he was suspected at the time making confessions. 3) whether or not defendant asked to make a statement and this statement could be used a against him. 4) whether or not defendant advised of a Counsel prior of questioning. 5) whether or not defendant was without an assistant of a counsel when questioning or giving such confession.

Petitioner argue there are none of these steps been taken to record voluntary confession, however, at the time where petitioner Arrested/kidnaped while in the FBI-KCMO office he is not been advised his rights nor where the charges rest upon if any. additionally, petitioner signed forms unaware of where his counsel whom he hired and signed form G-28 with didn't attend or was there to advise petitioner the consequences of signing the forms. One of the forms signed was I-286 which indicate that petitioner witness against himself to proceed as criminal alien under section 236 and without present of his attorney who didn't show up. Petitioner didn't ask to give any voluntary statements and charges are hidden within the Booking report. *See Dickerson v. United States, 530 U.S. 428 (2000)* [ Holding The mandate of Miranda v. Arizona that a criminal suspect be advised of certain constitutional rights governs the admissibility at trial of the suspect's statements, not the requirement of 18 U.S.C. § 3501 that such statements simply be voluntarily given.]. the case overrode Miranda Warning to state the right of an attorney and right to remain silent since ONLY if Voluntary confession made by the suspect. Miranda warning will be valid if

NO confession made of which has not been provided to petitioner when arrested in the Federal Office of the FBI-KCMO after the interview on 04/11/2003 (Note: petitioner sign the Guest Book with his name time and date when enter the FBI-KCMO head office). Thus, petitioner rights have been violated under the Fifth Amendment rights against self-incrimination. See *Miranda v. Arizona, 384 U.S. 436 (1966)*

If proven to the court that suspect did provide voluntary confession with present of his attorney and without any duress or enforcement to make such confession, then it would be valid under the court of jurisdiction. The fact is petitioner forced to sign forms are not aware of and without present of his attorney who didn't show up while petitioner signed all forms which discovered some fifteen years after removal it was forms concerning removal of Criminal Aliens where petitioner do possess clear record and never ben prosecuted under any criminal nor misdemeanor charges during his fourteen years legal residency in the U.S. therefore, based upon facts provided with evidence to the court petitioner has testify against himself of criminal act never occur which violate the Fifth Amendment of United States Constitution provided to the state Via Fourteenth Amendment. Additionally, the attorney whose name mentioned and signed on the expired from at the time petitioner signed legal presentation with him of which he never show up to Gide petitioner based upon Attorney Clients privilege he has been found violating his fiduciary duties and the Sixth Amendment of the Constitution of petitioner right of a counsel.

**18 U.S.C. 3501(c)** in criminal procedures where and oral or written statement given by defendant while person under arrest or other detention by law enforcement officer shall be brought without delay to Magistrate Judge. In criminal procedures where individual provide his confessions voluntarily as stated under (b) shall be brought immediately to magistrate judge following his arrest or other detention within six-hours. The time limitation cannot be extended beyond six-hours, unless proven or found by Magistrate Judge to be reasonable considering the means of transportation or distance to be traveled to the nearest available judge or other officer.

To proof further to the court that the charges found on concealed Shawnee County Jail booking report was fabricated and it doesn't have any link to the truth. if this matter happens to rely upon facts that petitioner committed act of unlawful dissemination as called then petitioner should be brought without delay to nearest available magistrate judge or officer after oral or written confession. The fact is petitioner was under ICE-KCMO custody for nearly 19 days without any sign to bring petitioner for further investigation within six-hours to court and proof of voluntary confessions of the charges found on Booking report. Thus, petitioner has been framed by charges invented by ICE-KCMO and orchestrated by the FBI-KCMO by fraudulently issued the UCN 958484AC9 which produced only to criminal individuals. Thus, based upon facts presented the charges stated on Shawnee Booking report are falsely made in consideration of three elements 1) there are no written nor oral recorded confession made by petitioner stating that he committed Civil and Criminal act of unlawful dissemination.2) there must be no delay occur until the suspect is arrested and detained for federal-crime. The six-hours only begin to expire from the point of a suspect's federal arrest and charged. In order to have the charges mentioned on Booking report valid must be presented before a federal judge within six-hours of petitioner arrest (based upon written or oral confession). The fact is petitioner held under custody of ICE-KCMO for period from April 11, 2003 to May 1, 2003 of 19 days prior has no bearing on his federal statue under the statue, since petitioner was detained on ICE-KCMO custody on as claimed to be Immigration violation only during that time. *See United States v. Alvarez-Sanchez 511 US, 350 (1994)*
3) if elements of criminal act visible and can be prosecuted based on evidence to proof of conviction in court of jurisdiction, then what the reasons to have the Booking report of Shawnee county concealed.

Under the Arrest process and procedures officer of law must provide suitable evidence based upon Probable Cause and exigent Circumstances. Either based upon previous information where suspect committed, or about to commit criminal act of which the FBI-KCMO and ICE-KCMO has provide such information based on USCIS-FOIA pages 33-43 and made on 04/10/2003 a day before the interview where petitioner information has been checked and approved by a judge that there are no identifiable record found under NCIC nor Interstate Index (III).

The probable cause and exigent circumstance MUST be recorded at the time of the interview with the FBI-KCMO of which has not been shown as the interview was mainly conducted under Reasonable Suspicion where petitioner has fulfilled this matter and show by evidence that he has nothing to hide. The matter of arrest trigger two approved issues 1) there are false arrest and imprisonment as stated under **42 U.S.C. 1983.** 2) using elements of Decoy and inveigle by the FBI-KCMO without stating officially prior of the interview in written by the officer of law in charge of the interview the nature of the interview made by the FBI-KCMO agent on official FBI head letter signed written and bind sent to last known address of petitioner, and if possible to have an attorney present at the time of the interview. Thus, there are KIDNAPING has been done within the Federal Office of the FBI-KCMO and illegal transfer made pass the interstate to Shawnee County- Topeka, KS from the head office of the FBI and ICE-KCMO see **18 U.S.C. 1201(a), (b).** finally, this will explain the reason to change apprehension date from 04/11/2003 the actual date where petitioner taken to custody of ICE-KCMO to 04/10/2003. If there are no actual date to record a criminal act, then the crime it doesn't exist. Therefore, to prove that petitioner was in custody of ICE-KCMO the officer provide form I-826 which cannot be provided to VWP since they proceed removal without review before an immigration judge, it was only initiated to carry my signature with falsified date on 04/10/2003 and time of 4:10 PM. However, this matter has been proven by Shawnee County Booking report on form I-203 (Order to Detained or release Alien) that the booking was on 04/11/2003. Form I-203 must be kept on ICE-FOIA report which has not been done to hide the Detention Facility and show as well that the booking date was on 04/10/2003 at 18:10 by penetrating Jail Software System. The timing cannot be correct if petitioner information came clear from the Judge on 04/10/2003 at 17:58:11 to initiate the FBI-UCN 958484AC9 which will give only 12 minutes to transfer petitioner from Kansas City, MO to Topeka, KS. sadly, and tragically that respected agency like the Federal Bureau of Investigation-FBI who are committed to fight crime of this type only to be involved in crime Kidnaping and falsifying information by Fraud and forgery with Immigration and Customs Enforcement-ICE

[the court must accept well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff] *see Great Plains Trust Co. v. Morgan Stanly Dean Witter,313 F.3d 305, 312 (5th Cir, 2002).* The court cannot dismiss a case under no set of fact in plaintiff claim *see Id (quotation marks, citations, footnote omitted)* (the [f]ctual allegations of [a complain] must be enough to raise a right to relief above the speculative level... on the assumption that all allegations in the complaint are true (even if doubtful in facts)).

The circuit Eight as well must look at The Enumerated powers (also called Expressed powers, Explicit powers or Delegated powers) of the United States Congress are listed in Article I, Section 8 of the United States Constitution. Congress may exercise the powers that the Constitution grants it, subject to the individual rights listed in the (Bill of Rights). Moreover, the Constitution expresses various other limitations on Congress, such as the one expressed by the **Tenth Amendment**: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Enumerated power is the backbone of (Mandel Review) of which petitioner entitled of to review his case under Mandel. Sine Circuit Eight has the authority and exclusivity to initiate an investigation of the unconstitutional removal by producing an opinion, judgment or order of denial. Tragically the Circuit Eight didn't do so and found to be forfeiting the right of the people under the Tenth Amendment of which the case of petitioner has classified under Class Action under Federal Rule 23 and the rights of the people to be informed upon any criminal act committed within the state where the Circuit has an exclusivity upon. Petitioner has been removed as Criminal Alien regardless of the fact he didn't commit any criminal act on his lengthy legal residency of fourteen years under nonimmigrant F-1 visa prior to last entry to the United Sates under VWP. Thus, it is the right of the people to know the reason surrounding removability as criminal alien and without informing the state officials or the state executive officer upon the criminal act if any see 8 U.S.C. 1226 has been done or not by investigating and examining all record of petitioner which the circuit didn't do.

The Bill of Right provide the individual rights as stated above petitioner who had fourteen years legal residency cannot easily removed of his history where he had an education established two forms of business and had no prior convections his rights has been dramatically violated where had been subject to Unlawful Search and Seizure which violated his rights under the Forth amendment, been force to sign forms incriminating himself without present of his attorney which violate the Fifth Amendment provided to the state via Fourteenth amendment which prohibit self-incrimination and not have his attorney percent during the removal proceedings which violate his rights of an attorney under the sixth amendment. Petitioner was subject to Cruel and unusual punishment by providing unlawful band and punished for crime never committed additionally the strict violation to all International laws and human rights laws which prohibit arbitrary detention which has been made targeting petitioner race and national origin. **Therefore, the Circuit Eight cannot remain silent upon constitutional violations and MUST published its Denial of which they didn't do. As result of the mentioned above reasons petitioner will include Circuit Eight as Defendant on supreme court of the United States.**

**Stop-Time Rule**

Removal of petitioner on May 1, 2003 has triggered many factors and issues surrounding the removal process and procedures and the way petitioner has been removed. The removal procedures among other factors has to considered "date", "Time "and "Place" where alien has been removed after found in violation of his visa status or after convicted in court of jurisdiction in criminal act rendered removal.

there are two unlawful facts render petitioner removal of the United States. 1) overstayed time found on documents indicated after petitioner been admitted and paroled on Sept 5th, 2002 where he granted 90 days period ended on Dec 4, 2002 using VWP after absent of 19 months and prior residency of 14 years under F-1 nonimmigrant visa. Petitioner apprehended on April 11, 2002 and eventually proceed removal on May 1, 2003 which shown that overstayed time was 150 Days. Stated under **212(a)(9)(B)(i)(II)** any alien who been unlawfully present for period more the 180 to 364 days (less than a year) will be subject to "Voluntary Departure" and Three-Years band of reentry. the days overstayed is not legally suitable for Voluntary Departure to impose a band of 10 years unless there are criminal act rendered removal. 2) petitioner targeted for removal as Criminal Alien regardless of his clear record without showing proof of conviction. See **8 U.S.C. 1229a(c)(3)(B)(i) to (vii)** and proof of Electronic record of crime committed by Alien during his temporary visit as stated under **8 U.S.C. 1229a(c)(3)(C)(i), (ii)** there are no proof at all or whatsoever been shown on petitioner record and all documents ranging of issuing fraudulently the

FBI-UCN 958484AC9 to falsifying all documents on ICE and USCIS-FOIA including fraudulently concealed evidence of Booking report at Shawnee County Jail to hide (Place) of detention.

Evaluating these two facts according to **8 U.S.C. 1231(a)(1)(B)(i)** as stated the beginning of the period of removal latest of the following, the date the order of removal becomes administratively final. The finality of removal will be determined by an immigration judge on a hearing to determine either relief of deportation of alien based upon the grounds has been found under. Under VWP aliens are exempt of review before an immigration court and may remove promptly as stated under **8 CFR 217.4(b)(1), (2)** and explained above in more details. Thus, the assumption of Western Missouri District that court finds (plaintiff's proposed complaint fails to state a claim upon which relief can be granted, Additionally, the court finds Plaintiff's proposed compliant fails to establish this court jurisdiction the court finds Plaintiff's proposed complaint fails to established this court jurisdiction to hear this matter). The Court didn't take in consideration the merit of the case that state the claim of wrongful unconstitutional removal, that both the FBI and ICE-KCMO had committed act of forgery and falsifying all legal forms to impose illegal false arrest and imprisonment as stated under **42 U.S.C. 1983** and attempted kidnaping and transfer pass the interstate as stated under **18 U.S.C. 1201(a), (b)** explained in details above . The Court didn't investigate the matter and according to the result of the investigation judgment can be made as stated under Federal Rules of Evidence.

Additionally, Western Missouri District stated (the Court questions whether jurisdiction is proper, Judicial review of orders of removal are governed by 8 U.S.C. 1252. Plaintiff has provide no facts indicating he exhausted his remedies by pursuing relief in an immigration court or review by Board of Immigration Appeals, and has not administrate this court jurisdiction to review a deportation order that is more than fifteen years old).

Petitioner disagree of this matter all evidence has been provided in support of the claim. The Immigration Court nor BIA has jurisdiction upon this matter since it is VWP which cannot be reviewed by any immigration court, BIA or Office of Immigration executive review. Additionally, the A-File number has not been registered nor found as called the hard paper which the immigration or BIA will suspend the case as no A-File ever exist nor registered, this information provided to petitioner through phone conversation and checking the number to reach this result with Office of Immigration Executive Review- KCMO. However, finality can be determined based upon completing (Administrative Process) of removal order as Criminal Alien to find out if there are any conviction has been filed.

The service must comply with the rules and regulations as stated under **8 U.S.C. 1101(a)(47)(A)** that officer in charge has the authority it issues "order of deportation" means the order of the special inquiry officer to whom the attorney general has delegated his responsibilities for determining whether an alien is deportable or ordering deportation.

Since removal has made by documents fraud to remove petitioner knowingly and deliberately by issuing the FBI-UCN 958484AC9, falsifying all immigration forms appeared on ICE and USCIS-FOIA and concealed Shawnee County Booking report all are evidence suggesting there are fraud and forgery in official documents to render removal of petitioner as criminal alien.

Additionally, and according to 8 U.S.C. 1101(a)(47)(A) it must show if the officer authority on category of position he held to sign forms as stated under 8 CFR 287.5 see Appendix A. USCIS-FOIA page 6 show form (Order of Removal for Deportation) show that Petitioner has been removed under 237(a)(1)(B) and under 8 U.S.C. 1101(a) (15). Form I-200 which issued to criminal alien

carry the same signature of the officer who signed (order of removal for deportation) according to his position and authority he cannot sign both forms which contradict with purpose of deportation where the first one show it is under 237(a)(1)(B) issued to aliens who overstayed there visa while the other form issued to criminal alien under section 236. The other aspect the service didn't mentioned under which subparagraph of **8 U.S.C. 1101(a)(15)(A) to (V)** petitioner has been found.

According to facts presented there are tangible evidence of falsifying official record as stated under **31 CFR 0.208(a)** which has been made by an employee of the service and the FBI-KCMO to falsify data in federal government without proper authority. Term "documents" explained under **31 CFR 0.208(b)** written, printed, typed, storage medium... Ext.

Accordingly, petitioner emphases that term "Falsely Make" means to prepare or provide a application or document, with knowledge or in reckless disregard the fact that the application or documents contain a false, fictious, or fraudulent statement or material representation, or has no basis in a law or fact, or otherwise fails to state a fact which is material to the purpose of which it was submitted as stated under **8 U.S.C. 1324c(f).** thus, the case will be reviewable under this statute to determine the finality of removal.

Under **8 U.S.C. 1324c(d)(1)(A), (B) and (C)** an investigation has to be conducted by immigration officer and Administrative Judge to examine the evidence and administrative judge may compel by subpoena the attendance of a witnesses and production of evidence at the designated place or hearing and the immigration officer ask for attendance of witnesses prior of hearing. To fulfill "the date the order of removal become administratively final" as the service claimed along with the FBI-KCMO that petitioner removal based upon "aggravated Felony" as suggested by Form I-213(Record of Deportable/ inadmissible Alien) which appeared to be unauthenticated. Regardless of this fact it will be considered an evidence since it complies with **Fed. R. Civ. P 44(a)(1)(A)** or show that form mentioned above attested by the officer in charge which bear the seal of the agency and signed by either officer in charge or a judge see **F.R.C.P 44(a)(1)(B)(ii)** which has not been made. The Form as well carried fingerprints suspected to be NOT belong to petitioner.

Under **IIRIRA 1996** section 236 Subsection (a) of section 130002 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322), as amended by section 432 of Public Law 104-132, is amended to read as follows:

The commissioner of ICE former INS under authority of **section 242(a)(3)(A)** of INA act provide identification system of Criminal Alien used to assist Federal, state and local law enforcement locating criminal alien who maybe subject to removal of aggravated felony under section 275 of the act and whose unlawfully present in the U.S. the system include providing for recording fingerprints record of an alien who have been previously arrested and removed into appropriate automated fingerprint systems. Thus, the service has to provide evidence that the fingerprints found on form I-213 match the petitioner with proof of evidence suggesting that he committed criminal act.

As stated under **8 U.S.C. 1101(a)(48)(A)(i) and (ii)** the meaning of conviction is former judgment of guilty has been withheld where a Judge found an alien guilty or judge order form of punishment, penalty or restrain on the alien liberty to be imposed. Under **8 U.S.C 1101(a)(48)(B)**
There must be reference of imprisonment or sentence including the incarceration or confinement order by court of jurisdiction. Therefore, due to these factors the service and the FBI-KCMO has to conduct an investigation to determine the facts of removal as criminal alien as petitioner prove he has clear record.

Petitioner emphasize considering evidence discovered suggesting that removal was falsified, and removal made deliberately targeting petitioner race and national origin by fraud and forgery committed by ICE and the FBI- KCMO. Thus, based upon evidence discover by petitioner due diligent, the evidence suggested that all are genuine as it was provided by local record. it has been proven as well that petitioner signed forms without present of his attorney which indicated that he was witnessing against himself of crime never committed which violate the Fifth amendment and the Sixth amendment. see **8 CFR 238.1(2)(ii)**.
Documents fraud can be challenged in a court of law under **8 U.S.C. 1324c(d)(2)(A), (B), (C)** under supervision of the Attorney General which must be made within 30-days, hearing will be conducting under Administrative Judge where the alleged violations occurred, the administrative judge upon reviewing the evidence will determine the courses of action. Additionally, Judicial review of documents fraud will be done within 45 days under court of appeal of appropriate circuit. See **8 U.S.C. 1324c(d)(5)**

Since removal happens some 15 years a go and discovered that I was made by fraud and forgery of legal documents rendered removal as criminal alien regardless of clear record. the elements of removal made by discovery rule of. The supreme court made two exceptional assumption of 28 U.S.C. 2462 that where the fraudulent conducts occur from the date has been done and not when alleged conducts been discovered. The exception is if made by fraud where victim unaware of the harm not tell been discovered and when elements alleged conducts are fraudulently concealed the statute of limitation of five years under 28 U.S.C. 2462 it would be left to the court to tool the five years limitation See *Gabelli et al v. Security and Exchange Commission, 568 U.S. (2013).*

It is permissible to challenge removal based upon facts discovered even after 15 years of the tragic incidence based upon facts found and analyzed from local public source of records. *See Blandino-Medina v. Holder, 712 F.3d 1338, 1342 (9th Cir. 2015)* [ An Individual who has already been removed can satisfy the case-or controversy requirement by rising a direct challenge to the removal order.] same found on *United States v. Charleswell, 456 F.3d 347, 351 (3d Cir. 2006); Kamagate v. Ashcroft, 385 F.3d 144, 150 (2d Cir. 2004).*

To raise challenge to unconstitutional removal happened some 15 years ago the challenge found upon analyzing ICE, USCIS, FBI-UCN 958484AC9 and Shawnee County Jail Booking record where the following must be considered for review. 1) as per **8 U.S.C. 1231(a)(1)(B)(i)** the beginning period of removal stated when removal period started when "the date the order of removal becomes administratively Final" and "if the alien is detained of confined, the date the alien is released from detention or confinement". See **8 U.S.C. 1231(a)(1)(B)(iii).**
2)To conduct Judicial Review based upon previous removal the Finality of removal must be administratively concluded, in case of petitioner case it has NOT been concluded since it doesn't show be evidence whether removal made based upon overstaying the period allowed by immigration on VWP of which didn't exceed 150 days to be removal offence stated under **212(a)(9)(B)(I)(ii)** where it will be removable offence ONLY when exceed 180 to 364 Days, or shown as stated on form I-296 ( Notice to Alien Ordered removal/ Departure Verification) there are two copies of the same form has been located on ICE-FOIA contradicts on Departure verification with petitioner name spilled different then what appeared on his passport , the first from the DV been submitted which carries the photo, signature, right index of petitioner with departure date, port of departure and manor of departure and signature and titled of the officer assigned petitioner removal. the second copy found under DV include petitioner signature and right index where petitioner Photo missing including departure date, manor of departure, signature and title of officer. **This contradiction found on the two copies of same form I-296 trigger another issue of when the removal period began of which is the date and time alien released from the**

**detention or confinement has not been registered officially nor show by tangible legal evidence that petitioner released from detention or confinement to impose and recorded (Departure Verification)**. Even though petitioner who left the United States from port of Chicago on May 1, 2003 some fifteen years ago and currently live in United Kingdom. the removal period as identified on **8 U.S.C. 1231(a)(1)(A)** which gives an authority to Attorney General to remove an alien within 90 days. If DV contradicts in information determining removability of petitioner from the United States where he released from detention or confinement as stated under 8 U.S.C. 1231(a)(1)(B)(iii) it means that removal period of 90 days exist and continue to the present day and /or the 90 days has been suspended since petitioner may remain in detention or fails or refuse to make timely departure as stated under **8 U.S.C. 1231(a)(C)** stating the fact that there are two copies of the same form has been found on local record which it doesn't show with certainty and legally whether petitioner removed, currently under confinement or simply not found. since both copies appeared on record and both carries petitioner signature and right index, so it will be testimonial which will trigger a question which one is correct the first copy or the second copy?
3) ICE-FOIA record page 27 added unauthenticated form I-213 ( Record of Deportable/inadmissible alien) this form cannot be added unless form I-851(Notice of intend) which indicated that alien committed act stated as "Aggravated Felony" under immigration definition **8 U.S.C. 1101(a)(43)** of which there are no indication nor evidence ICE and the FBI-KCMO can prove by clear and unequivocal evidence that petitioner committed Criminal Act classified as Aggravated Felony. To record legally aggravated felony must define "Conviction" under **8 U.S.C. 1101(a)(48)(A)** as formal judgment of guilt of the alien entered by court fallowed by two facts 1) judge or jury found alien guilty OR the alien plead Guilty. See **8 U.S.C. 1101(a)(48)(A)(i)** and where judge order punishment, penalty, or restraint of liberty. see **8 U.S.C. 1101(a)(48)(A)(ii).** 2) term "order of Deportation" as defined on **8 U.S.C. 1101(a)(47)(A)** will be part of the administrative officer who has an authority invested on him by the U.S. Attorney general to determine whether alien deportable or ordering deportation based upon court order as stated above.

The fact is none of the above found to be applicable to petitioner due to his clear record and previous legal residency of fourteen years under F-1 visa prior of last entry on VWP. Other reasons found on removal as criminal alien is to deprave alien rights of legal review of removal order since it cannot have any jurisdiction to be found in any court as it doesn't show where dose finality of removal rest is it overstay the VWP which didn't exceed 180 days or is it removal on aggravated felony where the assigned attorney whose name shown on form G-28 Page 5, USCIS-FOIA didn't show up with his client . NO tangible evidence produced beyond reasonable doubt in court of law indicting petitioner of criminal act under **237(a)(2)(A)(iii)** as stated on **8 CFR 238(b)(1)(iv)**

Based upon facts produced and supported by evidence suggested that petitioner possess clear record of any criminal violation rendered removal. according to **Illegal Immigration Reform and Immigration Responsibilities Act of 1996** discussed among many issues where Alien have the right of removal cancelation when the factors are available for court to consider. To qualify of removal under **INA 240A(b)** where IIRIRA has emphasized nonpermanent residence they have not less then 10 years of continues residency, be a person of moral character, not has been convicted of certain numerated crimes alien might be eligible for removal cancelation.

To understand whether petitioner who have been removed from the United States in violation of VWP of which according to evidence provided it doesn't trigger the "Stop-Time Rule" where the following facts must be considered. 1) there is no indication based upon facts of the law show with tangible evidence that petitioner who have been removed based upon overstaying his visa in period exceeding 180 days to be considered as confirmed removal. 2) Removal made based upon "aggravated Felony" where petitioner proceed removal as Criminal Alien without any fact

suggesting that there are any criminal act ever committed with absence of fundamental elements of proof of conviction and electronic record ...EXT see 8 U.S.C. 1229a(c)(3)(B); 8 U.S.C. 1229a(c)(3)(C). portioner who have lived constant residency under nonimmigrant visa F-1 and Earn his education from Accredited U.S. college since 1987 to 2001 he had never committed any criminal nor misdemeanor act rendered removal nor known to show sympathy during the war or impose any security concerns under any circumstances.

The Service Immigration and Custom Enforcement and Federal Bureau of Investigation- KCMO who both collaborate to issue removal as Criminal alien against petitioner regardless of his clear record based upon the FBI-UCN, impose removal as Criminal committed criminal act classified as Aggravated Felony without conclusion of the law targeting petitioner race and national origin. the matter found legally reviewable under **8 U.S.C. 1324c(f)** as it shows by evidence there are an attempted Fraud and forgery "Falsely Made" by both agencies without conclusion of the law.

Thus, since the matter of removal occurred some fifteen years ago it doesn't trigger the Stop-Time Rule since it doesn't state if removal administratively final, so it can be available for judicial review where 150 days overstaying it doesn't reach over 180 days to be removable offence and removal made as crime committed and classified as "aggravated Felony" which must show and described under **8 U.S.C. 1101(a)(43)** which must be accompanied by proof of conviction and many other form has to be found on ICE and USCIS-FOIA official record and not to be found on petitioner record which show he has clear record. see **8 U.S.C. 1231(a)(1)(B)(i)**

The other factor needs to be considered is the as per ICE-FOIA pages 1 and 2 on form I-296 (Notice to Alien Ordered Removal/ Departure Verification). The form consists of two parts the name of the alien including under which category of law found to be removal under with four options to fallow showing the band and the reason found describing this band under the conclusion of the law. Additionally, described to alien how to seek permission of entry to the U.S. with warning as stated under **8 U.S.C. 1326** if found entered or attempted illegal entry while band active.

The second part is "Verification of Removal" which consists of Departure Date, Port of Departure, means of departure, signature of verifying officer, and title of officer including alien photo, signature and right index all information verified by the officer in charge of removal.

The verification of removal contradicts between the copies of two forms found in file where the first one show that verification of removal has been completed according to laws and procedures as shown on page 1. The second copy of I-296 show that verification of removal has not been completed with missing photo and where signature and right index of petitioner appeared to be present see page 2 ICE-FOIA report. The fundamental reason to crate two copies of the same form I-296 and NOT having the VR uncompleted it means that the 90 days removal active and continued to the present day even after fifteen years since removal done.

As stated under **8 U.S.C. 1231(a)(1)(B)(iii)** "if alien detained or confined, the date the alien is released from detention or confinement" since there are no conviction terms ever found on petitioner record where he never served any terms nor found to be committing any criminal act rendered removal as no evidence suggesting that therefore the Stop-Time Rule has not been triggered and continue regardless of the fact that petitioner has been removed effectively from the United States on May 1, 2003 and witnessed by two officers of the service fifteen years ago. The other reason to create time ambiguity so the case will remain without jurisdiction even if all facts found regarding fraud and forgery committed by the agencies the FBI and ICE-KCMO.

In Supreme Court Decision in *Pereira v. Sessions, No. 17-459, --S.Ct-2018 WL 3058276 (U.S. June 21, 2018).* Under the Stop- Time Rule the period of continues presents is deemed to end when alien served notice to appear specifying among other things [t]he time and place at which the removal proceeding will be held **8 U.S.C. 1229(a)(1)(G)(i).** Additionally, the court held A punitive notice to appear that fails to designate the specific time and place of the noncitizen's removal proceedings is not notice to appear under 1229(a) and dose not trigger the stop-time rule.

Form I-296 found on petitioner ICE-FOIA file of which indicating that he has been removed as criminal alien without specifying the criminal act and which category shall be classified. the verification of removal it doesn't state that petitioner has technically left the country. Additionally, petitioner emphasize there are no indication suggesting issuance of form I-296 must be done to VWP. The form will be issued under two circumstance 1) when denial of relief made before an immigration Judge stated under **INA 240.35(b)** and 2) furnished when alien be subject to expedited removal along with form I-296 another forms I-860. VWP cannot be issued under both circumstances notice to appear before an immigration judge nor can be issued expedited removal as stated under **INA 235.3(b) (10).**

Regardless of the fact whether form I-296 can or cannot be issued to VWP violator the fact remain that all information found on the form are fabricated and cannot legally initiate removal against petitioner. However, it is testimonial under the court since it has not been issued according to clear process and procedures suggested by Filed Inspector Manual. Circuit Nine have discus this issue on *United Sates v. Lopez F.3d (9th Cir. April 2014) (No.12-50464).* the decision model consists of four facts.1) not prepared for litigation. 2) ministerial purposes. 3) Reliability. 4) Necessity. As result to the facts found where petitioner removed by Fraud and Forgery committed by both ICE and the FBI-KCMO therefore, form I-296 is exceptional to the Rule Against Hearsay 803 as stated above.

As result Verification of Removal which came as result of removal statues and purpose stated on the first part of the form I-296. Thus, form I-296 has the same legal purpose on Notice to Appear form I-862 as stated on **8 U.S.C. 1229(a)(1)(A), (B), (C) and (D)** nature of proceeding against alien, the legal authority under which proceeding conducted, the act or conduct to be violation of law, the charges against alien. Petitioner has not been informed in written of any violations might result to removal not tell has been found by due diligence that it doesn't exist, and the matter has been fabricated to impose removal.

To trigger stop-time rule there must be three factors present "time", "date" and "Location" which must be mentioned on Departure Verification as it appear two forms found which made the three factors not clear to trigger stop-time rule additionally, the first part of the form it doesn't state the reason of removal or under which section of 236 found. The service didn't state the causes of removal since it has made by fraud and forgery and using the facts that VWP who subject to removal cannot have their case presented before an immigration judge.

However, the VWP must be informed if not in written then verbally by the officer in charge of removal upon removal or to an attorney where must be present at the time petitioner been held in custody of ICE-KCMO which will be in the same nature of as it appeared on 8 U.S.C. 1229(a)(1). Petitioner emphasized that he has not been informed neither by the service nor by his attorney of the nature of proceedings as stated under **8 U.S.C. 1229(b)(2)** where an appearance of an attorney during the proceeding and under any circumstances must be present with his clients of which he signed G-28 from to provide legal assistance during the process of removal. petitioner argue even if Notice of Appear from I-862 cannot be issued given the type of Visa.

Petitioner must be informed of the nature of proceedings. Thus, since form I-862 cannot legally initiated then from I-296 will be the substitute since it consist of the same information form I-862 consist of which the result of removal based upon any violation stated on the first part of the from then the Verification of Removal which include "time", "Date", and "Location" where alien witnessed by two officer that he exit the country. Thus, having two copies of the same from appeared on ICE-FOIA report where VR has NOT been initiated nor shown it was entered legally and incorrectly. Additionally, the causes of removal fabricated by fraud and forgery ranging of changing the apprehension date, impose nearly ten million Dollars as bond, falsifying petitioner fingerprints, and removed as criminal alien under "aggravated Felony" by attempted kidnaping and illegal transfer from the FBI-KCMO office to the custody of ICE-KCMO. To state that alien been placed under removal proceedings which explained according to the law as stated on INA 240A(d)(1) [ a noncitizen stops accruing continues presence upon being served with a Notice to Appear, or INA initiating removal proceedings]. Evaluating the plan text appeared on the statute it shows consequences of two facts to fallow. 1) if alien fail to present to his court the removal will be effective, and alien will be removed immediately by the judge. 2) for alien who proceed under non-hearing removal they must be informed about "order of deportation" by the administrative officer to whom Attorney General has delegate the responsibility determining whether alien deportable, [Concluding] that alien is deportable or ordering deportation. See **8 U.S.C. 1101(a)(47)(A).**

removal initiating based upon three facts alien didn't appear on his/her court, alien who didn't have any form of relief before an immigration judge, or criminal alien who been incarcerated for crime committed or alien removed as without hearing due to the nature of his visa all of them must be removed under from I-296 where "Verification of Removal" which must consists of "Time", "Date" and "Location" and witnessed by two officers of the service to (Conclude) that alien has been left the United States of the port means of transportation and time and date that alien no longer exist in the U.S. according to **8 U.S.C. 1231(a)(1)(B)(i), (ii) and (iii)** thus, having to copies of the same form where VR has not been initiating it means that removal has not been CONCLUDED or never exist or the "Time Period" of 90 days exist even after 15 years where petitioner has been removed. To trigger the effectively the Time-Stop rule has to comply with 8 U.S.C. 1229(a)(1)(A-D) defining information on NTA which must specify place and time of hearing trigger the Time-stop Rule of 8 U.S.C. 1229b(b)(1) which has been decided in Pereira v. session, however what need to be added that Time-Stop Rule will be ended when detention and removal of aliens ordered removed under removal period stated under **8 U.S.C. 1231(a)(1)(A)** only the least one of the following happened under beginning of period **8 U.S.C. 1231(a)(1)(B)(i), (ii), (iii)** which has to be included on Verification of departure of which has not clearly entered on petitioner case. Thus, the period does exist even after 15 years since removal because it has not been determined nor concluded.

**Reasons for Granting the Write**

As stated on argument the purpose of the write to restore petitioner rights under the United Sates Constitution, international law and human rights laws which prohibit any act dehumanized any person based upon Race and national origin.

Petitioner emphases that the there are NO personal attempt to gain any immigration privilege to the United States nor seek legal entry or whatsoever or to use the matter for damages as stated amount of $13,999,999 as a lottery ticket, rather it is matter of rights which need to be considered as this matter will affect the average U.S. citizen. Thus, it is matter of the U.S. NATIONAL SECURITY. I am full of hope only that this matter will be investigated and discussed within the United States court system including the United States supreme court then going to international court or

international human rights court. The case centralizing around the constitutional violation committed by the federal employee of the FBI and ICE-KCMO which happens to be in VWP concerning the last entry dated on Sept 5th ,2002. The FBI and ICE-KCMO denied petitioner rights under the constitution, petitioner due possess rights where temporary absent of 19 months cannot dismiss previous 14 years residency under F-1 visa with clear record nor can be denied some fifteen years after removal. thus, the matter has not proven to be VWP legally nor indicating there was "Aggravated Felony" committed by petitioner to rendered removal

The matter of removal cannot be valid since has been done by falsification of record then remove petitioner as Criminal Alien without conclusion of the law which violate **NO-FEAR act** which prohibit unlawfully made conducts of officers based upon retaliation as will there are violation of **Privacy Act of 1974** which prohibit disseminating of any wrongful information without conclusion of the law. Additionally, there is strict violation to **Illegal Immigration Reform and Immigration Responsibility Act 1996** which stated clearly if there are residency continues seven years residency with proven clear non- criminal record Alien may be eligible for relief exchange or adjust status where petitioner eligible to have fair review as he had no criminal record proof of U.S. education and investment. The purpose of removing petitioner as Criminal Alien under non-proven "aggravated Felony" was to imposed life band of the United Sates. The United States Supreme Court under two separate cases Curtailed the government's ability to hold aliens in "removal proceedings" indefinitely. *See Zadvydas v. David 533 U.S. 678 (2001)* the same issue has been addressed on *Jennings v. Rodriguez 583 U.S. (2018)*

Since the purpose of the United Sates Supreme court to serve, explain the wording of the constitution to provide better America. I don't see how or why such important issue will be discussed abroad? I think the U.S. constitution which came as saving to all humanity deserve to be protected by The People of the Unites States because the constitution starts with (We The People of The United States). the constitutional violations were so catastrophic as I researched it was violated the 1st, 4th, 5th, 6th, 8th, 10th, and 14th amendments and over 50 federal violations to remove one person who is admitted as Italian targeting his race and national origin by fraud and forgery this is the sad part and it will be more sad if the U.S. Supreme court decalin review on this constitutional subject matter.

As I mentioned above the case discussing an important element by rising question of how dose this case of VWP going to affect the average U.S. national who can be patriot law obedient citizen? The process used to remove petitioner was by issuing fraudulently the FBI-UCN which issued to any individual who has criminal record or wanted for crime violations within the United Sates which can be any individual whom targeted by security agency for any reasons can be his name or national origin, faith, occupation or opinion... Ext and without any prior reasons can be issued UCN and targeted as criminal without neutral trial to determine the criminal act this individual committed. Therefore, the security devices it will be arbitrary like that of the third world country to be feared of rather than protect the constitutional right of the citizen and secure them in their home, street and place of work. this action would defeat the purpose where those young citizens of the U.S. want to the Middle East distributing the American Principals and many LOST THIRE LIFE doing so. This is the reason the VWP it is MATTER OF THE U.S. NATIONAL SECURITY.

The petition for write of certiorari should be granted

Respectfully Submitted

/s/ Omer Al Obaidy

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