

18-980

No.

In The Supreme Court of the United States

BISMARCK KWAKU TORKORNOO,

Petitioner,

Supreme Court, U.S.
FILED

NOV 25 2018

OFFICE OF THE CLERK

v.

STATE OF MARYLAND,

Respondent.

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

BRIEF FOR A WRIT OF CERTIORARI

BISMARCK KWAKU TORKORNOO

3213 Duke Street #235
Alexandria, VA 22314
biztork@msn.com
(240) 552-4756

AUGUST 2019

Pro se

QUESTIONS PRESENTED

1. Whether the District Court's decisions based Upon Estoppel to Dismiss Petitioner's civil lawsuit against the State of Maryland violate the Constitution.
2. Whether the Fourth Circuit Court and District Court's Reliance Upon Estoppel to Dismiss Petitioner's Federal lawsuit against the State of Maryland in light of his request for Injunctive Relief and Relief for Declaratory Judgment violate the Fourteenth Amendment.
3. Whether petitioner's admissible evidence proofing fraud, collusion, deception and conflict of interest in light of prolong State court's proceedings tainted with preconceived outcomes which selectively targeted petitioner's interests repeatedly by design to deny him substantive justice conspicuously and arbitrary oppress and repress his rights without due process of law vitiates res judicata, estoppel or Rooker-Feldman doctrines.
4. Does fraud vitiates every judicial proceedings, if so, did the Fourth Circuit Court's decision affirming the district court's reasons based on preclusion, deprives petitioner of his due process and equal protection rights before the law in light of the numerous admissible evidences on [Federal Courts'] file in support of his independent claim which proof the state court's proceedings reflects a pattern tainted with frauds, collusions, deceptions, conflict of interest and discrimination?

PARTIES TO THE PROCEEDINGS

The petitioner is Bismark Kwaku Torkornoo, the plaintiff, respondent is the State of Maryland.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW.....	i
PARTIES TO THE PROCEEDINGS.....	iii
TABLE OF AUTHORITIES.....	iv
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	2
JURISDICTION.....	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	4
STATEMENT.....	5
REASONS FOR GRANTING THE PETITION.....	12
I. THE FOURTH CIRCUIT COURT'S DECISION IS DIRECTLY CONTRARY TO NUMEROUS DECISIONS OF THIS COURT.....	16
II. THE QUESTIONS PRESENTED ARE OF EXCEPTIONAL IMPORTANCE.....	21
CONCLUSION.....	23

APPENDIX**INDEX**

U.S Court of Appeals (4 Cir 2018) Case No. 18-1643 Unpublished Opinion.....	App.1
U.S Court of Appeals (4 Cir 2018) Case No. 18-1643 Notice of Judgment.....	App.3
U.S District Court (2018) Case No. GJH 17-2830 Memorandum Opinion.....	App.4
U.S District Court (2017) Case No. GJH 17-2830 Order/Judgment.....	App.9
U.S Court of Appeals (4 Cir 2018) Case No. 17-2319 Unpublished Opinion	App.10
U.S Court of Appeals (4 Cir 2018) Case No. 17-2319 Notice of Judgment.....	App.12
U.S District Court (2016) Case No. TDC-15-2652 Memorandum Order	App.14
U.S Court of Appeals (4 Cir 2016) Case No. 16-1650 Unpublished Opinion.....	App.21
U.S Court of Appeals (4 Cir 2016) Case No. 16-1650 Notice of Judgment	App.23
U.S District Court (2016) Case No. TDC-15-2652 Memorandum Order	App.24
Montgomery County Circuit Scheduling Order	

Hearing Transcript (2013).....	App.30
Montgomery County Circuit Court Scheduling Order (2013).....	App.40
Montgomery County Circuit Court Settlement/PRETRIAL Scheduling Order (2013).....	App.44
Montgomery County Circuit Court Plaintiff's Motion for Continuance (2013).....	App.49
Montgomery County Circuit Court Order Denying Plaintiff's Motion for Continuance (2013).....	App.55
Montgomery County Circuit Notice of Hearing (2013).....	App.56
Montgomery County Circuit Scheduling Order (2013).....	App.58
Montgomery County Circuit Court Order Dismissing Civil Lawsuit (2013).....	App.62
Montgomery County Circuit Court Order Assigning the Civil Case to Judge Cynthia Callahan (2013).....	App.63
Montgomery County Circuit Court Order Assigning the Family Law case to Judge Cynthia Callahan (2012).....	App.64
U.S. Dist Ct. Case No: GJH 17-2830 Plaintiff's Complaint Against Maryland State.....	App.65
The Due Process Requirements.....	App.142

CASES

United States Supreme Court Cases

<i>Adickes v. S. H. Kress & Co.,</i> 398 U.S. 144, 157 n.16 (1970).....	17
<i>Allen v. McCurry,</i> 449 U.S. 90, 96 (1980).....	15
<i>Allen v. McCurry,</i> 449 U.S. 101).....	18
<i>BROWN v. BOARD OF EDUCATION (1955)</i> 347 U.S. 483, 497.....	19
<i>In re Johnson,</i> 236 B.R. 510, 518 (D.C. Cir. 1999).....	13
<i>Bullock v. United States,</i> 763 F.2d 1115, 1121 (10th Cir. 1985).....	18
<i>Carey v. Piphus,</i> 435 U.S. 247, 259 (1978).....	21
<i>Hafner v. Melo,</i> 502 U.S. 21, 31 (1991) (Section 1983).....	16
<i>Goldberg v. Kelly,</i> 397 U.S. 254, 271 (1970).....	6
<i>Hagar v. Reclamation Dist.,</i> 111 U.S. 701, 708 (1884).....	15
<i>Marchant v. Pennsylvania R.R.,</i> 153 U.S. 380, 386 (1894)	15
<i>Marshall v. Jerrico Inc.,</i> 446 US 238, 242, 100 S.Ct. 1610, 64 L. Ed. 2d 182 (1980).....	13
<i>In re Microsoft Corp. Antitrust Litig.,</i> 355 F. 3d 322, 326 (4th Cir. 2004).....	12, 14
<i>Patterson v. McLean Credit Union,</i> 491 U.S. 164, 182 n. 4 (1989) (Section 1981).....	16
<i>Smith, 461 U.S.</i>	

<i>at 49, 103 S.Ct. 1625).....</i>	23
<i>Smith v. Wade,</i> <i>461 U.S. 30, 49 (1983).....</i>	23
<i>In re Sun Valley Foods Co.,</i> <i>801 F.2d at 189.....</i>	13, 14
<i>Quilloin v. Walcott,</i> <i>434 US 246 (1978)</i>	21
<i>Red C Oil Mfg. Co. v. Bd. of Agric. of N.C.,</i> <i>222 U.S. 380, 393 (1912).....</i>	17
<i>Sinochem Int'l Co. v. Malaysia</i> <i>Int'l Shipping Corp.,</i> <i>549 U.S. 422, 430-31 (2007).....</i>	17
<i>Steel Co. v. Citizens for</i> <i>Better Environment,</i> <i>523 U.S. 83 (1998).....</i>	17
<i>Troxel v. Granville,</i> <i>530 U.S. 57, 65-66 (2000).....</i>	21
<i>Washington v. Glucksberg,</i> <i>521 U.S. 702, 720-21(1997).....</i>	21
<i>Witters v. Wash. Dep't of Servs.</i> <i>for the Blind,</i> <i>474 U.S. 481, 486 n.3 (1986).....</i>	16
<u>Federal Appeals Court Cases</u>	
<i>Dang v. Cross,</i> <i>422 F.3d 800, 804, 811</i> <i>(9th Cir. 2005)</i>	23
<i>Fullerton Aircraft Sales &</i> <i>Rentals v. Beach Aircraft Corp.</i> <i>842 F.2d 717, 720 (4th Cir. 1988).....</i>	15
<i>In re Sun Valley Foods Co.,</i> <i>801 F.2d at 189).....</i>	13, 14
<i>320 (4th Cir. 2016).....</i>	16, 34
<i>Morgan v. Woessner,</i>	

997 F.2d 1244, 1255 (9th Cir.1993).....16

Torkornoo v. Callahan, et al.,
[No. PJM-15-2445, 2015 U.S. Dist].....13, 17

States Cases

Cosby v. Dep't of Human Res.
42 A.3d 596, 602 (Md. 2012)14

Murray Int'l Freight Corp. v. Graham,
555 A.2d 502, 504 (Md. 1989).....14

OTHER CITATIONS

CONSTITUTIONAL PROVISIONS

U.S. Const., amend. V*passim*
U.S. Const. amend. XIV, § 1 *passim*

STATUTES

Fed. R. Civ P. Rule 201.....8,15

FRCP Rule 401.....7

FRCP Rule 6137

MD Declaratory Art. 19.....16

MD Declaratory Art. 20.....12

Restatement (Second)
Judgments § 26(1)(d).....17

Civil Rights Acts,
42 U.S.C. § § 1981 and 1983.....16, 22

28 U.S. Code § 1651
ALL WIRT ACT.....17

PETITION FOR A WRIT OF CERTIORARI

The petitioner is Bismark Kwaku Torkornoo, the plaintiff, and respondent is the State of Maryland, petitioning the Fourth Circuit Court decision dated August 27, 2018.

OPINIONS BELOW

Unpublished opinion and judgment issued by the United States Fourth Circuit Court [App. 1-3] affirming the United States District Court's decision, App. 4-8.

)

JURISDICTION

The Fourth Circuit Court issued its decision on August 27, 2018, affirming District Court's Judgment dated May 11, 2018 dismissing petitioner's civil lawsuit without due process of law.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. V

provides:

“due process” to apply the Bill of Rights to the states

“due process of law”

“the promise of legality and fair procedure”

U.S. Const., amend. XIV

Equal Protection Clause

provides:

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

Due Process Clause

provides:

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

STATEMENT

1. The United States Court of Appeals, the Fourth Circuit (4th Cir) has reached the unprecedented legal decision denying petitioner's appeal before the law. This holding if not corrected, would cast doubt on the settled expectations and numerous precepts that "**We the People of United States**" in the Preamble of the **Constitution represents**. The Constitution is under siege.

2. The case, *Torkornoo vs. Maryland* arose out from the Montgomery County Circuit Court in the State of Maryland regarding family law case no. 71419. Two (2) State judicial officials, acting under color of state laws deliberately and *repeatedly* to deprive petitioner his civil right to equal justice, and continued without any good cause. The state judicial system deprived petitioner right to his children and property to undermine his freedom, liberty, and happiness.

3. The state judicial officials are Magistrate (Master) Clark Wisor and Judge Cynthia Callahan. As a result of the continued violation of petitioner's rights, he filed a lawsuit against the State of Maryland because Magistrate (Master) Clark Wisor and Judge Cynthia Callahan who are state actors, were still acting under the color of state laws after the previous lawsuit directly against them were dismissed by the federal court for lack of jurisdiction.

4. The district court's opinion does not reflect the facts of the case brought against the State of Maryland as result of the state actors, Judge Callahan and Magistrate Wisor acting under color of state laws, infringed legal injuries, and untold hardship upon petitioner. The acts has discriminatory impact. The expectation of the state court should be free from prejudice and discriminatory practices. However, the district court's findings and reasons below, App. 4-8 if not corrected would create of barrier to equal justice and deny essential right otherwise would benefit the petitioner in light of the Complaint. ECF No. 7. *See* App. 66-141 below. The lower courts' holdings, App. 1-8 are not conforming and conflict with the Court [Supreme Court] precepts in light of the actionable elements of 64-page Complaint [App. 66-141] never tired in an open court in light of *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) "...*an impartial decision maker is an essential right in civil proceedings as well.*" The lower courts' decisions, App. 1-8 below denied petitioner this "essential right".

5. State of Maryland is the respondent and the only defendant named in the complaint, no other person is named as party to this action. *See* the Complaint App. 66-141 or the public record of the district court's docket ECF no. 7. Therefore, any other persons named in the district court's findings and renaming of the title of the case as "*Torkornoo v. Maryland, et al.*" is wrong and misconstrued. The lawsuit was filed under ***Torkornoo vs. Maryland*** not ***Torkornoo vs. Maryland, et al.*** contrary to suggestion made by the district court's memorandum opinion below. App. 4. Factually on record, Attorney General Frosh and Treasurer Kopp of State of Maryland are named as representatives of the State of Maryland, not personally liable. There is nowhere in his complaint or injunctive relief petitioner refers Frosh or Kopp as party to this action. *See* Complaint App. 66-141 or the district court's docket ECF no. 7.

6. Here, there is no evidence to suggest that petitioner is suing Attorney General Frosh and Treasurer Kopp of State of Maryland. The source of this idea that petitioner is suing Attorney General Frosh and Treasurer Kopp of State of Maryland was misconstrued by the district court itself upon issuing summons on 10/4/2017 at ECF no. 5 entered 10/5/2017 to the extent that, it expanded the summons to include U.S. Attorney and U.S.

Attorney General at ECF nos. 5-6 contrary to the Bill of Complaint. App. 66-141. Petitioner followed the district court orders to serve all the names listed therein with the believe that the court took judicial notice of the material facts support with numerous documentary evidences in light of statutory violation of evade court orders at Exhibits 7 and 14 in direct violations of 18 U.S. Code § 1512 (b) [Tampering with Evidence], and 18 U.S. Code § 1509 [Obstruction of Court Orders] in light of actionable elements under Count I (Fraud on the Court), Count II (Discrimination), and Count III (Negligence), Count IV (Abuse of Process) established according to the Bill of Complaint. App. 66-141.

7. Petitioner spent money to serve a copy each of the 1000 pages of the documentary evidence and the Complaint on each official including the Governor of the State of Maryland and both Judge Callahan and Magistrate Wisor according to the order following the summons. Though order did not state these officials were named as parties in the Complaint, petitioner complied with the court order, ECF nos. 4-6. Therefore, the district court and respondent suggesting that petitioner lawsuit is frivolous based on these misconstrued allegations to dismiss the Complaint, absolutely threatened his Bill of Rights and Maryland Declaratory Act, Art 19, 20, 24 based on the facts established herein.

8. The numerous documentary evidence filed along with the Bill of Complaint were obscured from the public eye, it was scanned. *See* ECF no. 1-5 and 6. The companion Amended Affidavit affirmed and detailed the contents of these supporting evidences marked as Appendixes A, B, C as well as Exhibits 1-59, 61-65, 69-74. The documentary evidences, which include state court's transcripts (depositions, offensive statements and actions with discriminatory impact by Judge Callahan and Magistrate Wisor) showing a pattern of disturbing facts offensive to the Constitution and petitioner's essential right, are admissible pursuant to FCRP Rules 201, 401, 613. These facts were excluded from the district court findings when it was made available. Instead, the district court deliberately dwelled and relied on jurisdictional issues disputed by previous rulings, which were not on the merits:

Nevertheless, the Court notes that Mr. Torkornoo has filed four cases arising out of the same set of facts that have been dismissed for lack of jurisdiction. *Also see* App. 16¹.

9. Rule 201 allows the district court to take judicial notice of the adjudicative facts to allow petitioner to be heard. However, to the district court's own opinion it clearly admitted that petitioner was never given the opportunity to be heard in direct contrast to the court own rules. **FRCP Rule 201 Judicial Notice of Adjudicative Facts** provides that:

(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

¹ ... No. PJM-15-0839, slip op. at 2 (D. Md. Mar. 31, 2015) (ECF No.3). On March 31, 2015, the Court (Messitte, J.) dismissed the case without prejudice, finding that the Court lacked subject matter jurisdiction to decide what was, in effect, an appeal of a state court decision. *Id.* at 4-5.

(c) Taking Notice. The court:

- (1)** may take judicial notice on its own; or
- (2)** must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) Timing. The court may take judicial notice at any stage of the proceeding.

(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

(f) Instructing the Jury. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

10. According to petitioner motion for injunctive relief with companion Exhibits, ECF nos. 23-25, petitioner was in Judge Callahan's courtroom for status hearing on 3/16/2018 regarding contempt he filed against Ms. Torkornoo (his ex-wife) for her absolute refusal to comply with court order to allow him see his only remaining child². See Incident #6 App. 116-120.

11. At that hearing according the affidavit on file, Judge Callahan asked petitioner and Ms. Torkornoo to come back at approximately at 12 pm by which time she would be able to finish with other cases. Petitioner came back to the courtroom a little earlier and was able to witness the domestic trial between Mr. Tahir and his ex-wife regarding restraining order extension. At that trial, petitioner noticed disparity between the treatment Judge Callahan given to Mr. Tahir and the one given to the petitioner. Mr. Tahir's who restraining order was based on actual evidence, was granted access to see his child by Judge Callahan. See *Torkornoo v. Helwig Esq., et al.* (U.S. Supreme Court Case no. 18-5621) Appendix C pages 75c-77c.

12. When it was time for Judge Callahan to hear petitioner's contempt case, the same day, the judge granted Ms. Torkornoo's motion to dismiss without merit when the evidence were available before. The judge dismissed the contempt against her without any trial and without writing any order according to Docket Entry #652-659 of the family law case referenced by the district court <http://casesearch.courts.state.md.us/casesearch> (*Torkornoo v. Torkornoo* Case No. 71419FL).

13. On the contrary, petitioner was restrained based on no evidence. Both Judge Callahan and Magistrate Wisor dwelled on Best Interest Attorney evidence which directly conflict with prior Court Evaluation Report of the same domestic issues, which Ms. Torkornoo with counsel present stipulated that petitioner was not a danger.

14. Till date petitioner is not of any danger to his children and Ms. Torkornoo but Judge Callahan refused to hold Ms. Torkornoo accountable to modify the custody order she and

² The children are three, of which two are now adults without any fatherly bond between them and petitioner due to Ms. Torkornoo's unjust interferences allowed by Judge Callahan and Magistrate Wisor in light of violation of direct of violations of 18 U.S. Code § 1512 (b) [Tampering with Evidence], and 18 U.S. Code § 1509 [Obstruction of Court Orders] under the color of state laws. See App. 66-141 ¶¶ 39-93.

Wisor ordered after rescinding Judge Quirk's purge provision order and Judge Rubin order. See Incident #1 App. 39-93. The denial of substantive justice continued through Incidents #2 through Incident #6 when petitioner filed the lawsuit against the State of Maryland for violating his Bill of Rights. The State of Maryland is beneficiary of federal funds and is prohibited from any discriminatory practices.

15. Had petitioner not filed this civil case against the State of Maryland in federal court, the state court would not have scheduled for any hearing for the contempt against Ms. Torkornoo. The action was filed with the district court on 9/22/2017 while this motion to hold Ms. Torkornoo in contempt pending without any attempt by the state court to schedule a conference. According to DE #615-627, the motions were filed on 5/8/2017.

16. Here, there is clear discrepancy regarding the timeline of the petitioner's cases filed in district court dismissed for lack of jurisdiction as referenced in the district court's opinion in 2015 against Callahan and Wisor had the same operative facts. Judge Callahan and Magistrate Wisor maybe subjected to immunity however, they were assigned to petitioner's family law case and civil law case by the State of Maryland Judicial Branch Government's local representative in the Montgomery County Circuit Court according to documentary evidence at App. 63, 64 below. Because the state court continued to create a barrier against petitioner's right to equal justice in light of Count I (Fraud on the Court), Count II (Discrimination), and Count III (Negligence), Count IV (Abuse of Process) established according to the Bill of Complaint, petitioner civil action is cognizable. App. 66-141. According to the Complaint the state given petitioner's adversaries preferential treatments on numerous occasions while threatening and embarrassing in the courtroom deputies for no just cause, App. 108, 125.

17. The Bill of Complaint and Injunctive Relief are within jurisdiction of the district court. Petitioner complied with the Maryland Tort Claims Act in light of Appendix C. ECF No. 1 at 5-6, which was not scanned, but was scanned by the Fourth Circuit Court upon filing of the appeal which was quickly dismissed within 4 days of its filing. Petitioner put the State Treasurer on notice but declined to settle the case out of court.

18. For the facts established above, there is no justifiable reason to deny petitioner's writ of certiorari in light of the ongoing discriminatory practices against petitioner by the State of Maryland's Judicial Branch of Government in court of law. The legal analysis by the district court is clearly not based on any material substance that, the State of Maryland cannot be sued because the claims brought against defendant were properly litigated and the operative facts or transactions are the same as the one brought against Judge Callahan and Magistrate Wisor. Even if the transactions are similar, the State of Maryland the only defendant here not Judge Callahan or Magistrate Wisor or any other else as matter of fact.

19. Factually, the district court's opinion has no merit based the facts from public records, both the state court open source and federal court: (1) the issue or fact sought to be precluded are **not exactly** identical to one previously litigated in light of timelines and ongoing discrimination practices; (2) the issue or fact has **not** been actually determined in the prior proceeding on the merits because those decisions were determined as lack of jurisdiction; (3) determination of the issue or fact was **not** a critical and necessary part of the decision in the prior proceeding because they were not merit based; (4) the prior judgment is final and valid because they were not based on the issues; and (5) the party against whom estoppel is asserted was never given any full and fair opportunity to litigate

the issue or fact in any forum previously. *In re Microsoft Corp. Antitrust Litig.*, 355 F. 3d 322, 326 (4th Cir. 2004).

REASONS FOR GRANTING THE PETITION

20. Art. 20 of Maryland Declaration of Rights which declares "*That the trial of facts, where they arise, is one of the greatest securities of the lives, liberties and estate of the People.*" The duty of a judge must be utterly transparent. This wisdom of transparency is the guiding principle of both previous and current Justices of this Honorable Court believed to protect and defend the Constitution in a civil society was echoed during *Chief Justice John Roberts (Chief Justice of the Supreme)* confirmation process before becoming the Chief Justice of this Court [Supreme Court] as follows:

"Judges are like umpires. Umpires don't make the rule; they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules. But it is a limited role. Nobody ever went a ball game to see the umpire.

21. The state court oppressive act against petitioner has discriminatory impact ignored by the Fourth Circuit Court in light of district court's erroneous standard in disregarding rule of law, and undermining "the neutrality requirement" recognized by this Court under *Marshall v. Jerrico Inc.*, 446 US 238, 242, 100 S.Ct. 1610, 64 L. Ed. 2d 182 (1980):

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

22. The District of Colombia Circuit clearly recognized that, "*That party must show that the court's holding was clearly erroneous as to its assessment of the facts or erroneous in its interpretation of the law, and not simply that another conclusion could have been reached.*" (*In re Johnson*, 236 B.R. 510, 518 (D.C. Cir. 1999)) *supra* ¶¶ 1-19.

23. The "*erroneous in its interpretation of*" collateral estoppel by the district court decision affirmed by the Fourth Circuit Court, App. 1-8 deprive petitioner an essential right to equal justice under the law. The error if not corrected timely, would defy the Constitution and bridged the public trust in the judicial machinery in light of the numerous documentary evidence on public record which are direct conflict with the lower courts' erroneous decisions relied upon by the district court as at present. *Also see In re Sun Valley Foods Co.*, 801 F.2d at 189:

"Plaintiff is correct that some jurisdictions hold that a state court judgment 'procured through fraud, deception, accident, or mistake does not bear the same preclusive effect as an untainted judgment, [but] the exception is triggered only where such conduct 'deceived the Court into a wrong decree."

24. The doctrine of collateral estoppel provides that, "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties whether on the same or different claim." *Cosby v. Dep't of Human Res.* 42 A.3d 596, 602 (Md. 2012) (quoting *Murray Int'l Freight Corp. v. Graham*, 555 A.2d 502, 504 (Md. 1989)). Here, there is no evidence to conclude that the Bill of Complaint (App. 66-141) named Judge Cynthia Callahan and Magistrate Clark Wisor as parties. The issues or facts were not determined on the merit in any court of law based on the district court's own opinion as follows:

"Nevertheless, the Court notes that Mr. Torkornoo has filed four cases arising out of the same set of facts that have been dismissed for lack of jurisdiction."

25. As set forth above, petitioner Complaint and Injunctive Relief should not be subjected to collateral estoppel preclusion. For collateral estoppel to apply, the proponent must establish that: (1) the issue or fact sought to be precluded is identical to one previously litigated; (2) the issue or fact has been actually determined in the prior proceeding; (3) determination of the issue or fact was a critical and necessary part of the decision in the prior proceeding; (4) the prior judgment is final and valid; and (5) the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue or fact in the previous forum. *In re Microsoft Corp. Antitrust Litig.*, 355 F. 3d 322, 326 (4th Cir. 2004).

26. Once a court did not decide an issue of law or fact necessary to its judgment, that decision cannot be binding upon a party to it if the party was not given a “full and fair opportunity to litigate that issue in the earlier case”, collateral estoppel does not apply under *Allen v. McCurry*, 449 U.S. 90, 94-95 (1980) (citations omitted); *Fullerton Aircraft Sales & Rentals v. Beach Aircraft Corp.* 842 F.2d 717, 720 (4th Cir. 1988).

27. The district court asserted that it has no basis to find that exception provision under Restatement (Second) Judgments § 26(1)(d) will apply to petitioner’s civil action because the previous judgments are consistent fair and equitable implementation of a statutory or constitutional scheme, or it is the sense of the scheme. There is no proof to support this assertion in light of its own opinion reflecting facts adduced from the records appearing that petitioner issues were not tried because it lacked jurisdiction.

28. The Fourth Circuit Court and the district court actions bridged petitioner’s Fourteenth Amendment’s rights to deprive him equity under FRCP Rule 201, which petitioner to be heard in light of discriminatory³ practices against him by the state court *supra* ¶¶ 11, 16, App. 66-141. See *Marchant v. Pennsylvania R.R.*, 153 U.S. 380, 386 (1894) and *Hagar v. Reclamation Dist.*, 111 U.S. 701, 708 (1884):

“Thus, where a litigant had the benefit of a full and fair trial in the state courts, and his rights are measured, not by laws made to affect him individually, but by general provisions of law applicable to all those in like condition, he is not deprived of property without due process of law, even if he can be regarded as deprived of his property by an adverse result.”

29. The State of Maryland was put on notice of this action according to Appendix C of the Complaint. The State of Maryland is a recipient of federal funds as result, waives its Eleventh Amendment immunity. State law gives the petitioner the legal grounds to be heard. If the state is wrong under the law, petitioner should be compensated under pursuant to Art. 19 of Declaration of Rights as follows:

That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

30. Emotional distress damages are recoverable under the post-Civil War Civil Rights Acts, 42 U.S.C. §§ 1981 and 1983. *Patterson v. McLean Credit Union*, 491 U.S. 164, 182 n. 4 (1989) (Section 1981); *Hafer v. Melo*, 502 U.S. 21, 31 (1991) (Section 1983). As to § 1983 claims, “[i]t is well-established that a ‘jury may award punitive damages . . . either when a defendant’s conduct was driven by evil motive or intent, or when it involved a reckless or

³ the treatment of a person or particular group of people differently, in a way that is worse than the way people are usually treated. *Cambridge English Dictionary definition*.

callous indifference to the constitutional rights of others.” *Morgan v. Woessner*, 997 F.2d 1244, 1255 (9th Cir.1993).

I. THE FOURTH CIRCUIT COURT’S DECISION IS DIRECTLY CONTRARY TO NUMEROUS DECISIONS OF THIS COURT

31. This Court has reiterated this principle on many occasions. For example, this Court has held that it could not consider an argument that “*appears to rest in large part on facts not part of the record before us*,” reasoning that “*this Court must affirm or reverse upon the case as it appears in the record*.” *Witters v. Wash. Dep’t of Servs. for the Blind*, 474 U.S. 481, 486 n.3 (1986). Similarly, a written statement that was “*not in the record of the proceedings below*” and “*not . . . considered by the trial court*” cannot be “*properly considered by [the Supreme Court] during the disposition of the case*.” *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 n.16 (1970).

32. Undeniably, 100 years ago, this Court stated the principle concisely: the Court is “not at liberty to travel outside the record.” *Red C Oil Mfg. Co. v. Bd. of Agric. of N.C.*, 222 U.S. 380, 393 (1912). The District Court’s recent decision based on previous judgement under *Torkornoo v. Callahan, et al.*, [No. PJM-15-2445, 2015 U.S. Dist] if it was of the assumption that that decision was merit based, it directly contradict the Supreme Court precepts under *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 430-31 (2007) and *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83 (1998) which clarifies that a federal court generally may not rule on the merits of a case without first determining that it has jurisdiction over the category of claim in suit (subject-matter jurisdiction) and the parties (personal jurisdiction). *See id.* at 93-102. ‘*Without jurisdiction the court cannot proceed at all in any cause*; it may not assume jurisdiction for the purpose of deciding the merits of the case.

33. Here, the district court admits that, all the cases it adjudged prior, in reference to the petitioner were jurisdictionally based, not on the issue or facts or merit but continued misconstrue with assumption that collateral estoppel applies to this state case. Factually and technically, it never took jurisdiction of any case petitioner filed. Instead of exercising its mandate under 28 U.S. Code § 1651 - ALL WIRT ACT⁴ enacted by Congress for all federal courts and recognized by this Court’s to mitigate issues arising from the state court. See *Allen v. McCurry* 449 U.S. 101 “*where state substantive law was facially unconstitutional, where state procedural law was, inadequate to allow full litigation of a constitutional claim, and where state procedural law, though adequate in theory, was inadequate in practice.*” 365 U.S. at 365 U.S. 173-174.

34. “In short, the federal courts could step in where the state courts were unable or unwilling to protect federal rights. *Id.* at 365 U. S. 176.” In petitioner’s case the district court appears to never attempt to step in. Instead, it discredits petitioner and threatened him with court cost for any future filings even though the State court exceed its authority to continue the oppressive acts including discrimination and fraud on the court against his interests

and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

citing *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985)⁵. This holding contradicts the first section of the Fourteenth Amendment (which is the one relied on),

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

35. The record reflects that Maryland State Judge Cynthia Callahan and Magistrate Clark Wisor involved themselves discriminating against petitioner to distract substantive due process in the Montgomery County Court on substantial issues at his defeat. In the event, petitioner's material evidence disappears in their findings as fraudulent evidence are legitimized as material evidence to procure judgments without due process by both Judge Callahan and Magistrate Wisor. The took a simple case and made it complicated one. As it stands, now petitioner is unable to get access to his only as Ms. Torkornoo deliberate will not comply with orders of the court with Judge Callahan and Master Wisor in charge assigned by the state court, App. 63, 64.

36. However, for the district court to assume that the state court is doing everything to solve petitioner's family law case and issues without any proof as to how it was being done in accordance with the statutory or constitutional scheme, is unreasonable and unfair to petitioner to undermine the discrimination against petitioner. *See BROWN v. BOARD OF EDUCATION* (1955) under which the Court recognized that:

1. Racial discrimination in public education is unconstitutional, 347 U.S. 483, 497, and all provisions of federal, state or local law requiring or permitting such discrimination must yield to this principle. P. 298.

2. The judgments below (except that in the Delaware case) are reversed and the cases are remanded to the District Courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit the parties to these cases to public schools on a racially nondiscriminatory basis with all deliberate speed. P. 301.

(a) School authorities have the primary responsibility for elucidating, assessing and solving the varied local school problems which may require solution in fully implementing the governing constitutional principles. P. 299.

(b) Courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. P. 299.

(c) Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. P. 299.

(d) In fashioning and effectuating the decrees, the courts will be guided by equitable principles - characterized by a practical flexibility in shaping remedies and a facility for adjusting and reconciling public and private needs. P. 300. [349 U.S. 294, 295]

(e) At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. P. 300.

⁵ "Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where the court or a member is corrupted or influenced or influence is attempted or where the judge has not performed his judicial function --- thus where the impartial functions of the court have been directly corrupted."

(f) Courts of equity may properly take into account the public interest in the elimination in a systematic and effective manner of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles enunciated in 347 U.S. 483, 497; but the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them. P. 300.

(g) While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with the ruling of this Court. P. 300.

(h) Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. P. 300.

(i) The burden rests on the defendants to establish that additional time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. P. 300.

(j) The courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. Pp. 300-301.

(k) The courts will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially nondiscriminatory school system. P. 301.

(l) During the period of transition, the courts will retain jurisdiction of these cases. P. 301.

37. Apparently, the State of Maryland has deprived petitioner of his visitation rights for years now of which he unable get any opportunity to unite with his children since 2012 by removing legitimate orders based on fabrications according to App. 66-141 (ECF no. 7) at ¶¶ 39-93. That holding contradicts precepts under *Washington v. Glucksberg*, 521 U.S. 702, 720-21(1997), "upper-tier parents have a fundamental right to the care, custody, and control of their children under the Fourteenth Amendment." *Troxel v. Granville*, 530 U.S. 57, 65-66 (2000); and *Quilloin v. Walcott*, 434 US 246 (1978).

II. THE QUESTIONS PRESENTED ARE OF EXCEPTIONAL IMPORTANCE

38. The Fourth Circuit Court and the district court decisions [Appendices 1-8] clearly failed to justify with factual substance on the existence or any risk of procedural errors petitioner's independent claims may have violated procedure law or deprive defendant essential right to warrant collateral estoppel doctrine as matter of law. *See Carey v. Piphus*, 435 U.S. 247, 259 (1978): "[p]rocedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property."

39. Inferences made from opinions solely based on lack of jurisdiction adjudication is not enough to dismiss petitioner's lawsuit without litigating the issue on the merit, deeply violate petitioner's fundamental rights.

40. Numerous Federal Court of Appeals have issued reported decisions adhering to this Court's precedents protecting the well-established principles regarding equity

Jurisprudence and discrimination *supra* ¶¶ 11, 12, 16, 34-36 in conformity with Rule of law including the Equal Protection Clause, the Due Process Clause, Fifth Amendment, and Civil Rights Acts of United States Constitution.

41. However, the Fourth Circuit Court committed an extreme breach of the rule by setting aside admissible documentary material regarding the oppressive acts against petitioner—by selectively, arbitrary, “cherry picking” extrajudicial facts in defendant’s interest, notwithstanding Due Process Requirements App. 142-147.

42. The irreparable harm caused to petitioner include and not limited to emotional distress, pain and suffering, mental anguish, sleeplessness, elevated blood pressure, and financial loss. As result of lack of sleeplessness, plaintiff’s overweight is responsible high cholesterol and diabetes type2. The high blood pressure has a negative impact on plaintiff’s kidneys according to his medical report.

43. Petitioner is currently taking five (5) medications to control his blood pressure, cholesterol and diabetes type2. Exhibit 78 is showing the prescribed medications. For above reasons, compensatory damages and punitive damages are redeemable under the constitutional authorities set forth above in light of the State of Maryland’s undisputable “prohibitory acts”, “oppressive acts” and the continuous “reckless disregard” to rule of law selectively against petitioner’s interest.

44. In *Dang v. Cross*⁶, the Ninth Circuit recognized, the *Dang* court held it was reversible error to decline to instruct that “oppressive acts” were an alternative basis for punitive damages in a § 1983 case. 422 F.3d 800, 807 (9th Cir.2005) (citing *Smith v. Wade*, 461 U.S. 30, 49 (1983))

“statement of the law of punitive damages is incomplete, however. The standard for punitive damages under §1983 mirrors the standard for punitive damages under common law tort cases. . . . [M]alicious, wanton, or oppressive acts or omissions are within the boundaries of traditional tort standards for assessing punitive damages and foster ‘deterrence and punishment over and above that provided by compensatory awards.’ . . . Such acts are therefore all proper predicates for punitive damages under § 1983.” (See *Smith*, 461 U.S. at 49, 103 S.Ct. 1625).

45. The Court should not be dismissive of the federal courts overreached *supra* ¶¶ 1-44 which in undermining petitioner’s constitutional rights deprived by the state court.

CONCLUSION

For the above reasons, the petition should be granted, the lower court’s judgment be vacated and remanded to Fourth Circuit for reconsideration.

Respectfully submitted,

s/ Bismark Kwaku Torkoroo

January 25, 2019

Petitioner

3213 Duke St. #235

Alexandria, VA 22314

⁶ *Dang v. Cross*, 422 F.3d 800, 804, 811 (9th Cir. 2005)