

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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BARRY J. SMITH, SR.,

*Petitioner,*

v.

UNITED STATES OF AMERICA, ET AL.,

*Respondents.*

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**On Petition For A Writ Of Certiorari  
To The Seventh Circuit Court Of Appeals**

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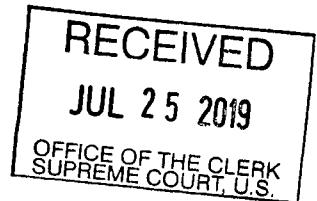
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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Amendment XIII [1865] Section I. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. 2. Congress shall have power to enforce this article by appropriate legislation.

Does *duly convicted* include *duly sentenced*, and did petitioner's Thirteenth Amendment enslavement end when he discharged from his Thirteenth Amendment sentence?

2. In the *Dred Scott* case, the United States Supreme Court held that descendants of Africans who were imported into this country, and sold as slaves, were not included nor intended to be included under the word "Citizens" in the Constitution, whether emancipated or not, and remained without rights or privileges except such as those which the government might grant them. *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393, 15 L.Ed. 691 (1857). Quoting *Black's Law Dictionary*, Sixth Edition, page 343.

Does the *Dred Scott* case apply to petitioner, who is a descendant of American slaves, after he has earned his emancipation from Thirteenth Amendment slavery by completely serving and discharging from his duly pronounced Thirteenth Amendment judicial criminal sentence?

**QUESTIONS PRESENTED – Continued**

3. Based upon the Court's answers to the above two questions, does petitioner's complaint state a claim upon which relief may be granted?

### **PARTIES TO THE PROCEEDING**

Petitioner, Barry J. Smith Sr., was the plaintiff in the district court proceedings and appellant in the court of appeals proceedings. Respondents United States of America, and the State of Wisconsin were the defendants in the district court proceedings and appellees in the court of appeals proceedings.

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## APPENDIX

Order, United States Court of Appeals for the Seventh Circuit (January 17, 2019) .....	App. 1
Decision and Order on Motions, United States District Court, Eastern District of Wisconsin (June 26, 2018) .....	App. 3
Decision and Order on Motions to Dismiss, United States District Court, Eastern District of Wisconsin (January 29, 2018).....	App. 8
Order Denying Rehearing, United States Court of Appeals for the Seventh Circuit (March 11, 2019) .....	App. 15
Civil Rights Complaint, United States District Court, Eastern District of Wisconsin.....	App. 16

**ORDERS BELOW**

Trial court's decision and order dated January 29, 2018.

Trial court's decision and order dated June 26, 2018.

Appeals court order dated January 17, 2019.

Appeals court order dated March 11, 2019.

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**STATEMENT OF JURISDICTION**

On March 11, 2019 the Seventh Circuit court of Appeals denied petitioner's petition for rehearing and rehearing en banc filed on February 22, 2019. Copy of order attached as exhibit C. This Court has jurisdiction pursuant to Title 28 U.S.C. Section 1254(1).

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**CONSTITUTIONAL PROVISIONS INVOLVED**

The Fifth Amendment provides, in relevant part: " . . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . . ."

The Thirteenth Amendment provides: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly

convicted, shall exist within the United States, or any place subject to their jurisdiction.

The Fourteenth Amendment provides: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

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#### **STATEMENT OF THE CASE**

October 17, 2017 petitioner filed his civil rights complaint in the United States District Court for the Eastern District of Wisconsin. Complaint attached as App. 16. In his complaint, petitioner stated that certain of his citizenship rights were taken as punishment for crimes of which he was convicted and sentenced according to the Thirteenth Amendment to the United States Constitution; that he was completely discharged from his judicially imposed Thirteenth Amendment sentence to slavery, and that he is entitled to full benefit of United States of America Constitution guaranteed rights of citizenship. On January 29, 2018 the trial court granted defendants' motions to dismiss based upon their allegation that petitioner failed to state a claim upon which relief may be granted. Trial

court's decision and order on motions to dismiss is attached as App. 8.

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### **REASON FOR GRANTING THE PETITION**

The three questions presented herein have never been presented to this Court. Your answers to these three questions shall determine whether descendants of American slaves, as an ethnic group, can expect the fundamental fairness promised by the due process of law clauses in the Fifth and Fourteenth Amendments of the United States Constitution.

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### **CONCLUSION**

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated: June 2, 2019.

Respectfully submitted,

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App. 1

**United States Court of Appeals  
For the Seventh Circuit  
Chicago, Illinois 60604**

Submitted December 21, 2018  
Decided January 17, 2019

[SEAL]

*Before*

**William J. Bauer, Circuit Judge  
Michael S. Kanne, Circuit Judge**

BARRY J. SMITH, SR., Plaintiff-Appellant, No. 18-2408 v. UNITED STATES OF AMERICA, et al., Defendants-Appellees. ] Appeal from the United States District Court for the Eastern District of Wisconsin. ] No. 2:17-cv-01419-DEJ ] David E. Jones, ] Magistrate Judge.

ORDER

The scope of our jurisdiction is limited to a review of the district court's order of June 26, 2018. That order denied Smith's motions to amend the complaint, for relief from the judgment, and to extend the time to appeal – the latter two motions having been filed on April 5, 2018, well after entry of judgment on January 30, 2018. The appeal – which was filed on June 28, 2018 – is now fully briefed, and ready for decision.

We have carefully reviewed Smith's briefs – which do not challenge the denial of the motion to extend time to appeal – and those of appellees. Based on this