No. 19-1277

IN THE

Supreme Court of the United States

DAVID THORPE,

Petitioner,

DEXTER DUMAS, an individual, GEORGE JENKINS, an individual, LAUREN BOONE, an individual, JEFFREY S. CONNELLY, an individual, FANI WILLIS, an individual, and URAL GLANVILLE, an individual,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE 11th CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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January 14, 2020

Questions Presented

A – Willis

Burns v. Reed. 500 U.S 478 (1991) Supreme Court states "prosecutors have only qualified immunity for investigative acts. *Buckly v. Fitzsimmons*, 509 U.S. 259 (1993) when a prosecutor is alleged to have fabricated evidence, the prosecutor is engaged in an investigative task not a prosecutorial task. *Kalina v. Fletcher*, 522 U.S. 118 (1997) filling out and submitting the certificate or affidavit. This is investigative in nature and therefore, is protected by only qualified immunity. *Imbler v. Pactmen* 424 U.S. 409 (1976) the Supreme Court articulated distinction between absolute immunity for prosecutorial acts and qualified immunity for investigative or administrative acts ...

Question 1. Whether a supervising Deputy District Attorney who assigned three (4) District Attorneys over a two-year period to a case that lacked probable cause (per discovery) to prosecute was entitled to absolute immunity under 42 U.S.C § 1983?

Question 2. Whether the lower courts biasly abused their discretion by intentionally mischaracterizing the duties of a supervising Deputy District Attorney?

Question 3. Whether the 11th Circuit Court of Appeals Court with disturbing ease exploited their discretion by failing to mention the true context of the Petitioners statements. Said statement being "knew of exculpatory evidence and failed to act" by

continuing a prosecution for 26 months. Willis "knew" was not supported by the Constitution or the Bar Associations Rules of Conduct and Ethics or acknowledge Willis was an administer/supervisor never the prosecuting attorney.

Question 4. Whether the lower courts abused their discretion by biasly revisiting a judgment of another court and applied it to this unique case?

B (1)- Respondents, Boone, Connelly, Dumas, Jenkins

German AFA and Trust Co. v. Rigsby (7th Cir. 2015.) Seventh circuit relied on the rule that "a defendant will waive objection to the absence of personal jurisdiction by giving the plaintiff a "reasonable expectation" that she "will defend the suit on the merits." 2015 WL 5579751, at *2. *Lewkowicz v. Williams, 630 F. 3d,* defendant nevertheless waived its personal jurisdiction defense by failing to press it and, instead, substantially litigating on the merits. *Gerber v. Riordan 649 F. 3d 514, 518 (6th Cir. 2011).* defendants participated in litigating on the merits before renewing their motion, which included their counsel making a general appearance, the defendants waived their personal jurisdiction defense. *Hamilton v. Atlas 197 F. 3d, 58, 60 (2d Cir. 1999).* A "delay in challenging personal jurisdiction by motion to dismiss may result in waiver, even where ... the defense was asserted in a timely answer." Cont'l Bank, N.A. v. Meyer. 10 F.3d 1293, 1297 (7th Cir. 1993) Nonetheless, some courts have held that a defendant

can waive the defense of lack of personal jurisdiction by its later conduct in the litigation.

Question 1. Whether the rulings by the 7th, 6th, and 2nd Circuits should serve as an established guideline for Respondents who have received a reasonably calculated notification to defend a suit and make general appearances and litigate. Nonetheless attempt to under mind said notice by hiding behind a rule that is secondary to the concept it is predicated on (which is notification and an opportunity to respond)?

Question 2. Whether the lower courts abused their discretion by purposely not taking into consideration that the Respondent's motions (District court documents 9.13.16. and 22) substantially litigated every defense from expiration of the statute of limitations. to sovereignty. and immunities?

Question 3. Whether the lower courts abused their discretion by not considering the Petitioners amended complaints first page statement "Plaintiff seeks to amend the original complaint to assist and clarify statements and claims" as a reasonable expectation that Respondents would defend the lawsuit?

B (2)- Respondents, Boone, Connelly, Dumas, Jenkins

Petitioner states "there is a conflict between Federal Rule 4 and Federal Rule 5."

Federal Rule 5 (a) Service: when required.

(1) In General. Unless these rules provide otherwise. each of the following papers must be served on every party:

(B) a pleading filed after the original complaint. unless the court

orders otherwise under Rule 5(c) because there are numerous defendants.

Federal Rule 5 (b) Service: How Made.

(1) Serving an Attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

Question 1. Whether service of the amended complaint to the attorney on record per Federal Rule 5 (b) (1) satisfied the constitution's 14th amendment requirements for due process pertaining to notice?

Question 2. Whether the lower courts biasly exploited their discretion by not acknowledging or expressing any opinion on Federal Rule 5 despite all Respondents obtaining counsel. making general appearances. and litigating. Which prompted Petitioner to amend his complaint. (timely) Given rise to the denial of all Respondents motions to dismiss by the judge who ordered the amended complaint "the new" superseding the original complaint?

Question 3. Whether the Northern District abused discretion by electing not to consider this rule nor acknowledge proper notice was indeed given to the Respondents through and by their council?

Question 4. Whether the Appellate Courts abused its discretion by further ignoring the Petitioners assertions of service to the attorney on record was indeed adequate notice for this circumstance?

C – Respondent Glanville

Rankin v. Howard, 633 F. 2d 844 (1980). *Zeller v. Rankin*, 101 S. Ct. 2020. 451 U.S. 939, 681 L. Ed 2d 326. When a judge knows that he lacks jurisdiction or acts in the face of clearly valid statutes expressly depriving him of jurisdiction. judicial immunity is lost. *Stump v. Sparkman, id.*, 435 U.S. 349. Some Defendants urge that any act "of a judicial nature" entitles the Judge to absolute judicial immunity. But in a jurisdictional vacuum, (that is, absence of all jurisdiction) the second prong necessary to absolute judicial immunity is missing. *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359. 188 Cal..Rptr. 880: 657 P.2d 372. "Bad faith" is equivalent to actual malice and encompasses the intentional commission of acts which the judge knew or reasonably should have known were beyond his lawful power.

Question 1. Whether a judge denying a citizen a hearing **(not to be misinterpreted as simply denying a motion)** constitute a normal judicial function?

Question 2. Whether a judge is constitutionally bound to hear a motion or in the alternative reset or reschedule the hearing?

Question 3. Whether the lower courts mischaracterize the Petitioners statements and revisited case law that were not in line with the complaint?

Question 4. Whether the lower courts addressed the specific statements of the violation that Respondent Glanville refused to hear the filed motion request (not to be confused with being denied) based solely on looking at the Petitioner?

Question 5. Whether the Northern District Court abused their discretion by electing not to base their decision on a court transcript of the stated (not alleged) violation per the Petitioners exhibit?

Question 6. Whether the 11th Circuit Court of Appeals courts blatantly exploited their discretion by ruling that Glanville had judicial immunity because denying a motion is a normal judicial function. Despite the fact that Petitioner asserted and provided a transcript that Glanville refused to hear any argument for said motion which is not a normal judicial function?

D – All Respondents

Scheuer v. Rhodes (1974). The U.S. Supreme Court stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution. he comes into conflict with the superior authority of the Constitution, and he is in the case stripped of his official or representative character and is subjected in his person to be the consequences of his individual conduct. The State has no power to import

to him any immunity from responsibility to the supreme authority of the United States."

Question 1. Whether the lower courts abused their discretion by not considering the Petitioners content and certainly not applying anything less stringent?

Question 2. Whether the lower courts provided this citizen the victim of six government officials any real consideration at all because there are no written or recorded documents to support such an upright effort?

Question 3. Whether the lower courts only considered the cases that benefited the Respondents (government officials) in spite of the facts there were several other cases including Supreme Court cases in Petitioners multiple pleading?

Question 4. Whether the Federal Courts have the authority to determine and provide a written acknowledgement of an attorney or judges misconduct when he/she violates a citizens Constitutional Rights?

E – All U.S. Citizens

Question 1. Whether citizens are entitled to have the government "judges" (local, state, and federal) observe or offer fair procedures, whether or not those procedures have been provided for in the law on the basis of which it is acting?

Question 2. Whether citizens should expect judges (local, state, and federal) to exhibit behavior that

ensures the greatest possible public confidence, free from subjective or prejudicial views and doctrines?

Question 3. Whether citizens can expect judges (local, state, and federal) to be held at a higher standard and conduct themselves with the dignity accorded their esteemed position free from any preferential treatments?

Question 4. Whether citizens should expect prosecutors (all levels) to acknowledge all the relevant facts of a case including those favorable to an accused and present those facts in a fair, ethical, and clear manner free from any blind quest of a stellar conviction rate?

Question 5. Whether a citizen should expect law enforcement (any level) to protect and serve free from subjective profiling and any form of red lining?

Question 6. Whether an innocent citizen violated by the United States government (intentionally) via its officials has any recourse or guarantee that the wrongdoer will be punished, and the culprit subjected to at least restitution?

Question 7. Whether any government official's oath or pledge of service is indeed constitutionally binding?

Parties to the Proceedings Below

All parties appear in the caption of the case on the cover page.

Corporate Disclosure Statement

There are no corporations involved in this proceeding.

Table of Contents

Table of Authorities

Cases

Statutes

Other Authorities

Rules

Opinions Below

- The opinion of the United States court of appeals for the Eleventh Circuit appears at Appendix A to the petition and is unpublished.
- The opinion of the United States district court appears at Appendix B to the petition and is unpublished.
- The opinion of the United States court of appeals for the Eleventh Circuit Rehearing appears at Appendix C to the petition and is unpublished.
- The First Amended Complaint of the United States District Court Northern District of Georgia appears at Appendix D to the petition and is unpublished.
- The Motion for Entry of Default of the United States District Court Northern District of Georgia appears at Appendix E to the petition and is unpublished.

Jurisdiction

The date on which the United States Court of Appeals for the Eleventh Circuit decided my case was September 17, 2019. A timely petition for rehearing was denied by the United States Court of Appeals on the following date October 28, 2019. and a copy of the order denying rehearing appears at Appendix C. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

Constitutional & Statutory Provision Involved

Petitioner states all six Respondents violated rights promised him under the United States Constitution. Respondents Willis. Jenkins. Connelly. Dumas. Glanville, and Boone violated the Fourth Amendment which provides "The right of the people to be secure in their person... against unreasonable search and seizures shall not be violated" and the Fourteenth Amendment prohibits "the states from depriving any person or life. liberty. or property without due process of law." Respondent Glanville violated the Eight Amendment which provides that "Excessive bail shall not be required ...

This action was brought pursuant to 42 U.S.C.§ 1983 which states:

> Every person who. under color of any statute. ordinance. regulation. custom. or usage. of any State... subjects. or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights. privileges. or immunities secured by the Constitution and laws. shall be liable to the party injured in an action at law.

Statement of the Case

Factual background:

Petitioner an innocent citizen at all relevant times was arrested for a capital felony that never occurred

in August of 2014. Respondent Dumas a detective with the Atlanta Police Department obtained an arrest warrant by providing a falsified application. Subsequently, because of the armed robbery charge the Petitioner was denied a hearing and bond 2 days after Petitioners arrest. Petitioner was put into population at the Fulton County Jail with the absence of due process. Fulton County District Attorney's offices successfully indicted the case 5 (business) days after the Petitioners first appearance. Said indictment was achieved with a police narrative of the alleged incident only. No evidence, no witness! Dumas also withheld the alleged victim's original handwritten complaint from the state unbeknownst at this time to anyone. Petitioner was detained without true due process for approximately 20 days and granted a release with the condition that Petitioner wear an ankle monitor and pay for the monitoring and report to weekly supervision at Petitioners expense. During Petitioners work hours and not go within 200 feet of Petitioners residential property.

In September of 2014 Fulton County District Attorney's Office and Respondent Willis a supervising District Attorney with said office and Respondent Jenkins, an Assistant District Attorney came into possession of discovery (Jenkins requested) that clearly detailed there was no probable cause to continue with the prosecution, but continued to deprive Petitioner of his freedom and property willingly, wrongfully, and unconstitutionally. In October of 2014, Petitioner and his father Willie Thorpe mailed (certified) and contacted Respondent Dumas's supervisor at the Atlanta Police Department Zone 3 providing the same evidence to prove the event

narrated in their record could not have occurred. To no avail. nothing was done not even internally. Subsequently and disgracefully over the next 586 days. Respondent Willis would assign two more District Attorney's to this unwinnable case. Respondents Boone and Connelly who continue to deprive Petitioner of his freedom and property, but please add happiness and sound mind.

During said period. even the judge Respondent Glanville refused to hear not to be confused with denied (events detailed on court transcript) a motion to remove the Petitioners monitor which at that point Petitioner has been shackled for approximately 9 months. Thus, making the Petitioners bail condition unfair and excessive continuing to deprive Petitioner of freedom and loss of property. (14th Amendment and 8th Amendment)

Petitioner paid three defense lawyers who literally allowed this injustice to occur. All of which tried to convince an innocent man to take a plea never truly advocating or furthering the Petitioners defense. Twenty-seven months from the beginning of this unlawful ordeal and twenty-six months after the state was aware of the truth a fourth Assistant District Attorney assigned dropped all charges. Cowardly despite having accused Petitioner in open court, Petitioner was notified of the dismissal by email on October 19, 2016.

After the ordeal Petitioner filed grievances with the Georgia Bar Association on all District Attorney's to no avail. The General Council was not going to act on any misconduct claims without a judge's order or transcript to the fact. It was the General Counsel that virtually referred Petitioner to the courts.

In August of 2018. Petitioner filed a complaint with the Norther District. in which was contested by all Respondents. It was after the Respondents responded that the Petitioner filed Petitioners amended complaint.

Petitioner states "Judge Tottenberg issued an unopposed denial of every Defendant's Motion for Dismissal and ordered that the Plaintiff's Amended Complaint dated September 19. 2018 superseded the original complaint." Petitioner per Federal Rule 5 (b) (1) mailed all pleadings after the original to the Attorney's on record." Respondents Boone, Connelly, and Jenkins **did not** respond timely to the original or Amended Complaint. Prompting the Petitioner to file for default judgment See Appendix E. against Boone. Connelly and Jenkins. said request was ignored. Soon after the Northern District entered an order for dismissal for the Petitioners amended complaint. See Appendix B. Petitioner soon after filed an appeal with the 11th Circuit Court of Appeals.

Procedural background

1) Petitioner sued Respondents under 42 U.S.C. § 1983 stating violations of his 4th Amendment. 8th Amendment. 14th Amendment, false imprisonment and malicious prosecution.
2) All the Respondents moved for dismissal. All stated insufficient service but all litigated .... Other defenses.
3) The Northern District granted all Respondents their dismissals on November 8, 2018 citing

absolute immunity for Glanville and Willis. Respondents Boone, Connelly, Dumas and Jenkins for insufficient service.

4) (a) Petitioner requested what was viewed by the court as a reconsideration on December 11, 2018.

   (b) The District Court denied the reconsideration.

5) Petitioner filed an appeal on January 8, 2019.

   (a) September 17, 2019. 11th Circuit Court of Appeals affirmed the District Courts ruling virtually all Petitioner's assertions ignored or boldly mischaracterized.

   (b) Petitioner filed for rehearing asserting that Petitioners briefs have been misquoted as if there is no record of Petitioners statement. **(this is not justice)** (example) see Appendix A page 4. Firstly, the 11th Circuit Court of Appeals states "Petitioner stated that he served Boone, Connelly, Dumas and Jenkins properly". Petitioner now states: "Petitioner made no such statement." Petitioners emphasis on proper service dealt specifically with Federal Rule 5 (b) (1) and its relationship to the service of the amended complaint. Which Petitioner stated, "he mailed to the attorneys on record which would suffice Federal Rule 5 (b) (1)." Next, the 11th Circuit Court of Appeals states "Petitioner argues that those Respondents waived proper service process by not addressing personal

jurisdiction in their first answer to Petitioners second Amended Complaint." Petitioner states "I said no such thing! As a matter of factual record. there is no second Amended Complaint only a first. Furthermore. in legality fairness and speaking factually Boone. Connelly. and Jenkins could not have raised any valid issues because their filings were untimely.

(c) Allow Petitioner to continue with the 11th Circuit Court of Appeals subjectivity which undermines the true spirit of justice. See Appendix A page 5. the 11th Circuit Court of Appeals attempts to address a disagreement of whom the mail was sent to, just to say it makes no difference but according to Federal Rule 5 it does. Petitioner states "I included proof of whom the mail was sent to – per the 11th Circuit Court of Appeals request (Docket # and receipts.) So. after dismissing the importance of whom the certified mail was sent to. The 11th Circuit Court of Appeals continues to travel the beaten down path of the Federal Rule 4. Why would this 11th Circuit Court of Appeals fail to address Federal Rule 5 and why or why not it does or does not apply to my contention? Granted my skills in this field are super limited. but the rule itself is fairly straight forward. Petitioner really does not know if this is a gray area. Let's say it is. then why would any justice seeking

official of the court grant the (wrongdoing) Respondents the benefit of the doubt in opposed to the upright intentions of the (victim) Petitioner. In regard to the issue of the service, the 11th Circuit Court of Appeals elected to continue the Federal Rule 4 argument, in fact see Appendix A page 5 of their decision they listed five different cases that all stated that certified mail does not satisfy Federal Rule 4. Clearly, Petitioner is not arguing Federal Rule 4, it is clear that in this case Federal Rule 5 supersedes Federal Rule 4 just like the first Amended Complaint supersedes the original Complaint.

(d) Pertaining to the First Amended Complaint the 11th Circuit Court of Appeals made an error by stating "All four of them (Respondents) argued that service was insufficient". Petitioner states: "The truth is Connelly, Boone, and Jenkins, could not have challenged the insufficiency of service because they failed to respond to the First Amended Complaint timely.

(e) The 11th Circuit Court of Appeals continuing to mischaracterize the Petitioners statements boldly with a disturbing confidence asserted case law that pertains to prosecuting attorneys. (see Appendix A page 7 (a)) Petitioner clearly stated "Respondent Willis was the supervising attorney performing an administrative duty. Respondent Willis

never actively prosecuted the Petitioner. Respondent Willis herself never prepared for trial in the Petitioners case. What Respondent Willis did was "assign" attorneys to a case Respondent knew lacked probable cause to continue to prosecute. As a supervisor it is Respondent Willis's duty to uphold the bar rules and the constitutional guidelines and ensure Respondent Willis's subordinates follow the same. It is not Respondent Willis's administrative nor supervisory duties to allow any act to the contrary. Petitioner states this would be the precise reason why when the case could be reset no more. It was Willis that advised the fourth attorney to dismiss all charges and expunge them in October of 2016. Petitioner is asking why could this action not have been taken in place of depriving an innocent citizen his freedom and property for over 580 days and his sound mind for over two years? The state received the exculpatory evidence in September of 2014.

(f) Continuing the 11th Circuit Court of Appeals yet again completely mischaracterized the Petitioners statements. The court states "Thorpe complained the judge wrongfully denied his request to modify the condition of his bond" See Appendix A page 8 (b) they stated their opinions this way because denying or granting motions is a quite

normal function for a judge and is actually protected by the immunity, but Petitioners assertions was that Respondent Glanville stated NO! To a "hearing then "I am not modifying that bond (based on simply looking at Petitioner.) We all know and fully understand that a judge is duty bound to hear a properly filed or stated request. No judge has the power to outright refuse a hearing. It will never be a judicial function to "deny" or "refuse" a hearing nonetheless a proper rescheduling would suffice!!! Furthermore, Thorpe attached the actual transcript of the stated event as an exhibit on his complaint.

(g) The lower courts also never addressed the specific connotation of Petitioner asking for relief as this court deems fair. When pertaining to his reasonable request for a validation and written acknowledgement of all proven violations and misconducts. Only the 11th Circuit Court of Appeals opted to ignore the content of the requests but quickly addressed the term declaratory relief in relation to said request.

(h) Lastly and certainly not the least, both courts absolutely displayed an obvious partiality toward the Respondents positions and filings. Never giving the Petitioners layman's content any authority or consideration opting to ignore every request by the Petitioner at

the district level and molding and shaping Petitioner statements during the appeals process. Yes! Discretion was abused. Any justice seeking person would infer this upon viewing the filings in this case.

(i) October 28. 2019 Petition for Rehearing was denied.

Having lost an additional $3,100 on top of bond, ankle monitor and reporting fees, cost of three attorney's, loss of wages, and medical bills. (emotional distress for my family and myself) All because a police officer, four prosecutors, and a judge elected not to honor their oath of offices and act outside the constitution's guideline. I am currently submitting my Writ to the highest court in the country and to date **no apologies** (not even anonymous) and **no official has received so much as a slap on the wrist**. Petitioner states "it feels like the government has told Petitioner well at least we did not kill you or jail you for three decades. Consider yourself lucky.... boy."

Reasons to Grant the Petition

In one word. "**FAIRNESS**" but unfortunately it will never be that simple. If one was to truly embrace justice (natural or procedural), he/she would discern where there is a crime (or

wrongdoing) there must be punishment! There is no other way to balance the concept. No rationale that places one citizen exempt over another – Not, age, race. gender. faith (or lack of), sexual orientation. political views. and certainly not employment should be granted ANY free passes to violate any other person's rights intentionally and not be subject to precisely the **same** punishment. To perpetuate any such concepts or impunities in this country with its history is actually too fitting (disturbingly). These things are contrary to the promise of establishing a more perfect union while establishing Justice!

What this case has become is unfair. Where there is the absence of fairness there can be no justice. This case presents questions of whether the Northern District and the 11th Circuit Court of Appeals granted and affirmed dismissals for six government officials unjustly? Petitioner sued under U.S.C. 42 § 1983 for violation of constitutional rights. Whether said courts held two of the higher ranking officials (Glanville and Willis) immune from the suit and not liable for damages by abusing their discretion and manipulating the officials applicability for the immunity and granting the remaining four (Boone. Connelly. Dumas and Jenkins) dismissals citing improper service and referencing Rule 4 .While ignoring key factors that clearly waved that defense. Such as all Respondents litigating beyond just improper service. Both courts also elected not to recognize the proper service procedure that was fulfilled by the introduction of the amended complaint under Federal Rule 5.

The Respondents violations that came to be. not because of good faith or human error. but

disturbingly, willfully, and intentionally to the detriment of an innocent citizen. Despite a well-documented and exhibits filled complaint, followed up with filings asserting pertinent case references both courts would simply ignore and revisit judgments of immunities not in line with the issues presented and implement rulings based on a rule that was superseded by another. Both courts again, simply ignored the rule that should have taken precedent.

The 11th Circuit Court of Appeals essentially mirrored the Northern Districts approach to Petitioners filings. Petitioner was not afforded any consideration for content. Petitioner states, both courts saw 42 U.S.C. § 1983, a judge, and prosecutors as Defendants and literally went straight into some type of a shield mode. Both courts only asserted rules and cases that on the surface benefited the government officials. Neither court gave any of the Petitioners valid assertions and case references the opportunity to be fairly judged by a jury of peers based on the facts. The process of discovery would surely have brought about more clarity. This is not justice!! Petitioners complaint asked that misconduct be documented, not one Defendant denied their violations, disturbingly they only said, "we can violate your rights" and both courts appeared to take pleasure in affirming the Defendants pride. This is contrary to the constitutional guidelines. Furthermore, the Petitioner could not find any support of the common law immunity for civil damages in the U.S. Constitution.

. Petitioner is now pleading to Justice Breyer, Justice Thomas, Justice Roberts, Justice Ginsburg, Justice Alito, Justice Gorsuch, Justice Sotomayor ,

Justice Kagan, Justice Kavanaugh, and staff "must it always take decades, even centuries for questionable common laws and doctrines to be remedied/ameliorated? Therefore, it is the supreme authority of this court, that is required to establish and balance the scales of justice.

Conclusion

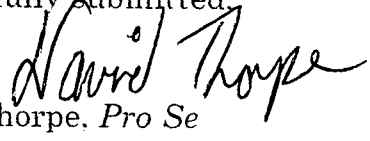
Will what the colonies have become ever live up to its promises at inception. Why have our trusted officials continued to forsake us, is not the government:

- Of the people?
- By the people?
- For the people?

My God America, look at the first three words of our Constitution **"We the people"**, not we the government!

Therefore, based upon the foregoing, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,



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