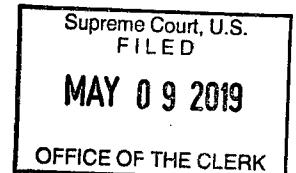


19-5240  
No. \_\_\_\_\_

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



James Butler

— PETITIONER Pro Se

(Your Name)

VS.

USA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

US Court of Appeals Sixth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Butler

(Your Name)

4269 W M-80

(Address)

Kincheloe, MI 49784

(City, State, Zip Code)

(Phone Number)

## QUESTION(S) PRESENTED

1. Did the district court abuse its discretion when it filed suit in equity under civil law docket.
2. Did the district court abuse its discretion by dismissing suit in equity pleading government misconduct, obstruction of justice during grand jury proceedings in violation of Federal Rules of Criminal Procedure, Rule 6(e), and fraud on the court.
3. Did the district court abuse its discretion by dismissing suit in equity pleading government misconduct being the direct cause for fraud on the State court resulting in Petitioner's State imprisonment.
4. Did the district court abuse its discretion by dismissing suit in equity pleading privations of the Civil Rights Act of 1866, 42 U.S.C. § 1981, 28 U.S.C. § 1443(1).
5. Did the district court abuse its discretion by dismissing Suit in Equity pleading actual innocence. Judicial notice.
6. Did the Court of Appeals erroneously denied Writs of Mandamus in contravention of Supreme Court precedent In re Hohorst, 150 U.S. 653, in equity.

## LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 14, 2019.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1). **and**  
**under Article III Sec. 2 cl. 2 appellate jurisdiction**

For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

## STATEMENT OF THE CASE

The Petitioner is a pro se prisoner litigant, who on August 2, 2018, submitted to the District Court for the Eastern District of Michigan, and made service on the United States attorney for the Eastern District of Michigan by U.S. Mail; a petition titled James Butler v USA, Independent Suit in Equity from the cause of USA v Milton Jones et al. James Butler, 87-cr-80648 pursuant to the Federal Rules of Civil Procedure Rule 60(d)(1), 60(d)(3). Appx. D, further referenced James Butler 1988.

The cause of James Butler v USA is an independent ancillary proceeding in Equity premised on new facts of government misconduct of obstruction of justice and fraud on the district court that occurred during the criminal grand jury proceedings of the former James Butler 1988.

The Suit in Equity presents five (5) issues for equitable relief premised on the government's misconduct of obstruction and fraud on the court. The Petitioner had sought equitable relief in the form of an injunction to vacate a state criminal judgement that was procured as a result of the government's criminal misconduct and fraud committed against the Federal Criminal Judicial System.

The Petitioner believes that the issues presented below for review will demonstrate that the district court abused its discretion and abdicated in its duty when it dismissed the Petitioner's Suit in Equity.

The Petitioner further believes, that the Court of Appeals erroneously denied his Petition for Writ of Mandamus in contravention of the Supreme Court's precedence in Equity.

### ISSUE I

The Petitioner after discovered fraud in the criminal action of Butler 1988, filed an Independent Suit in Equity, James Butler v USA, Hazel-Atlas v Hartford-Empire, 322 US 238, premised on the same jurisdiction as the former

Butler 1988, Pacific R. Co. v Missouri R. Co., 111 US 505 Appx. D at pg. 1. The district court filed the Suit in Equity under the law docket of stale case James Earl Butler v USA, 02-cv-74566, where many years prior the Petitioner had sought a Privacy Act order for disclosure of grand jury materials. Appx. B. The district court dismissed the Suit in Equity stating: "Butler's Independent Suit was filed in his 2002 case." Appx. B at pg. 3.

The Constitution itself has made it essential that great care should be taken to keep separate and distinct remedies at law and in equity. Fenn v Holmes, 21 How 484. However, procedural distinctions between legal and equitable forms of action has been abolished, but equitable doctrines not having been abrogated, if subject matter of civil action is such as would have been cognizable in equity under old practice, and therefore governed by equitable principles, such principles are yet equally applicable.

The district court abused its discretion as a matter of law. Phillipines v Pimental, 553 US 851. When it made the error of assigning and dismissing the Suit in Equity, which is clearly an ancillary proceeding of the criminal cause Butler 1988, Pacific R. Co., supra, premised on discovered fraud. Hazel-Atlas, supra, to the law file of the stale cause James Earl Butler 2002.

## ISSUE II

The Petitioner plead in Equity that the government attorneys' perpetrated criminal misconduct of obstruction, Appx. D at pg. 15, that subverted the grand jury process by disclosing grand jury information to the State pertaining to him without judicial authority of the court in violation of the Federal Rules of Criminal Procedure, Rule 6(e). Thereby, committing a fraud on the court. Hazel-Atlas, 332 US at 239.

The district court abused its discretion as a matter of law, Phillipines

v Pimental, supra, when it dismissed the Suit in Equity which is premised on government misconduct that obstructed the administration of justice, Hazel-Atlas, supra. By stating: "To the extent Butler is seeking relief from his federal criminal case, because Butler was acquitted, there is "no judgment" in his federal criminal case upon which he could seek relief," Appx. B at pg. 3. Furthermore, the district court abdicated in its duty that demanded under settled principles, rules, and decisions in equity that the judge act on his duty to investigate whether such fraud occurred. Hazel-Atlas, 322 US at 249-250.

### ISSUE III

The Petitioner plead in Equity that government and state actors worked in concert to execute an elaborate scheme under color of law to deprive him of liberty under Michigan's jurisdiction by committing fraud on the State court. Hazel-Atlas, supra, prior to the federal grand jury returning an indictment. Appx. D, pgs. 15-18. And, that the government's misconduct is the direct cause, "causa sine qua non", for his state imprisonment. Appx. D, at pg. 17. The Petitioner plead that the State action "would not" have occurred "but for" the government's misconduct of fraudulently manufacturing a witness and providing him to the State to present false testimony. Marshall v Holmes, 141 US 589.

The district court abused its discretion as a matter of law when it dismissed the Suit in Equity by stating, "Butler is seeking to vacate a State judgment. The proper vehicle to challenge a State conviction is a habeas petition under 28 U.S.C. § 2254 not a Rule 60(d) Motion." Appx. B at pg. 3. The Suit in Equity is premised on Fraudulent government misconduct being directly attributable to the fraudulently procured State judgment.

Marshall v Holmes, 141 US at 596.

Again, the district court abdicated in its duty that demanded an investigation upon the allegations and conclusive evidence submitted of fraud committed by the government that is so shocking and outrageous that it offends fundamental fairness and the universal sense of justice, where enforcement of the judgment is manifestly unconscionable. Pickford v Talbott, 255 US 651, 657. Appx. D at pg. 18.

#### ISSUE IV

The Petitioner plead in equity violation of the Civil Rights Act of 1866 now 42 U.S.C. § 1981. The Petitioner averred that he had been deprived of Section 1 guarantees to the full and equal benefit of all laws in proceedings for security of person when the government's fraudulent misconduct obstructed the grand jury process depriving him of due process and being the direct cause of his State imprisonment that "would not" have occurred "but for" the government's misconduct. Marshall v Holmes, 141 US 596. Also, the Act of 1866 Section 3 now 28 U.S.C. § 1443 (1) provides for the removal of State cases claiming privations of § 1981.

The district court abused its discretion as a matter of law when it dismissed the Suit in Equity for the reasons stated in its order. Appx. B, pg. 3. Because the equal rights privations complained of is premised on government action and was removable under the Act of Congress, then by filing the petition for Removal, Appx. D, pgs. 27-29, the suit was so removed as to be docketed in the district court, Marshall v Holmes, 141 US at 595.

The district court judge abdicated in his duty that demanded under settled principles, rules, and decisions in equity that the judge act to investigate the allegations and conclusive evidence submitted of the government's fraud that offends fundamental fairness and the universal sense

of justice, where enforcement of the judgment is manifestly unconscionable.

Pickford v Talbott, 255 US at 657.

#### ISSUE V

The Petitioner plead in equity actual innocence rooted in the Supremacy Clause of Article VI cl 2, asking the Court to take judicial notice of the James Butler 1988 judgment of not guilty for the Boyce murder as being supreme federal authority against the State Boyce murder conviction. Because the State judgment was procured by and through illegality and fraud committed by government and state actors which prevented him from interposing a meritorious defense at law of which to avail himself in the court of law. Marine Ins Co. v Hodgson, 7 Cranch 332.

The district court abused its discretion as a matter of law when it dismissed the Suit in Equity for the reasons stated in its order. Appx. B, pg. 3. The Petitioner plead actual innocence rooted in the Supremacy Clause to be evidenced and verified by the court through judicial notice. Appx D, pgs. 29-31, as being supreme federal authority for the equitable relief sought. The district court judge abdicated in his duty that demanded under settled principles, rules, and decisions in equity that the judge act to investigate the allegations and conclusive evidence submitted of the government's misconduct that offends fundamental fairness and the universal sense of justice, where enforcement of the State judgment is manifestly unconscionable. Pickford v Talbott, 225 US at 657 supra.

#### ISSUE VI

The Petitioner filed a petition for Writ of Mandamus in the Sixth Circuit Court of Appeals, Appx. C. The Petition under sub-titles why the writ should issue/clear and indisputable, Appx. C, pgs. 7-10, explained that the suit in equity was properly filed within the requisites to invoke the district

court's jurisdiction, Gaines v Fuentes, 92 US 10, and when the requisite jurisdiction exists a bill at equity will lie to deprive the parties of the benefit of a decree or judgment obtained by fraud. Arrowsmith v Gleason, 129 US 86. The Petitioner demonstrated that the district court abused its discretion and the judge abdicated in his duty to act when he dismissed the suit in equity. La Buy v Howes Leather Co., 352 US 249. And, that the Petitioner had no adequate alternative means of which to compel the district court judge to do his duty of proceeding to judgment. The Court of Appeals ruling denying Writ of Mandamus did not address the Petitioner's claims that the district court abused its discretion and the judge abdicated in his duty. To the contrary, the court stated: "Butler's remedy was to appeal the August 2018 dismissal, and the burden of showing that the remedy afforded is inadequate or ineffective rests with Butler." Appx. A, pg. 1.

The Court of Appeals erroneously denied the Writ of Mandamus in contravention of the Supreme Court precedent in equity, In re Hohorst, 150 US 653, in which it was declared: "where the circuit court dismissed a suit against a corporation upon service of process on it, on the ground of want of jurisdiction in that court, the order of dismissal not being reviewable on appeal at that stage of the case, mandamus lies to compel the circuit court to take jurisdiction of the suit against the corporation," 150 US at 664.

#### CONCLUSION

The Petitioner believes that his Suit in Equity premised on government obstruction and fraud committed against the federal criminal judicial system. Appx. D, which was filed with supporting proofs in the district court, met the requisites for the district court to take jurisdiction. And, when the district court dismissed the suit upon service of process for want

of jurisdiction, the order of dismissal was not reviewable on appeal at that stage of the proceedings as declared by this Court in In re Hohorst, supra.

The Petitioner's only recourse to compel the district court to take jurisdiction was to seek an order of mandamus from the court of appeals, which he properly pursued.

Therefore, from the Court sitting in Chancery the Petitioner prays for an order reversing the court of appeals February 14, 2019 order, and directing the court of appeals to order the district court to take jurisdiction of James Butler v USA Suit in Equity, and proceed to judgment. And, what other relief the Court deems appropriate.

## REASONS FOR GRANTING THE PETITION

The reasons for granting the writ is rooted in the centuries old maxim, "Equity shall suffer no wrong without remedy." In every instance in which this Court has expounded the phrase proceedings in equity with reference to the exercise of the judicial powers of the courts of the United States, they will be found to have interpreted "in equity" as meaning the administration of equity laws as defined and enforced by the Court of Chancery in England, *Fenn v Holme* 21 How 484, which is the foundation of this Court's original jurisdiction that imposes duty to adjudicate to such rules and principles as governed English Court of Chancery down to time of Constitution, *Pennsylvania v Wheeling & Belmont Bridge Co.* 18 How 460. The Chancery jurisdiction conferred on the federal courts of the United States is the same in all States of the Union, and the rule of decision is the same and is uniform throughout the different States, *Hudson v Woods* 119 F 204 (6 Cir. 1903).

The Petitioner presented the district court with a bill in equity premised on fraudulent criminal misconduct perpetrated by government actors against the federal criminal judicial system, and which is the direct cause for the fraudulently procured state judgment he seeks to have set aside.

The district court judge in contravention of the uniform rules and decisions in equity dismissed the suit without an investigation to make a merits determination on the fraudulent inequities complained of. The district court judge abdicated in his duty to adjudicate to the established equity rules and principles which are the foundation and that governs the decrees and judgments from this Supreme Court, and that continue to serve as centuries old guides to be followed by the lower courts in their administration and application of Equity law within the Nation.

In furtherance of the reasons for granting the writ, it is necessary for the Supreme Court to address the court of appeals abdication of its supervisory responsibility and control over the district court for the proper administration and functioning of the federal system, Ua Bu 352 US at 259, 260, relating to the administration of equity doctrines, rules, and decisions being uniformly maintained.

The court of appeals abdicated in its responsibilities and duties when it failed to adhere and conform to its own uniform precedence in equity Hudson v Woods ante, that the Petitioner presented as uniform equitable authority for issuance of mandamus to compel the district to take jurisdiction.

Also, it is necessary for the Supreme Court to address the court of appeals because it is of great moment and interest to the National public's security and confidence in the judicial branch's ability to inquire into and correct mistakes, injustice, and wrong in both judicial and executive action when it invades private rights, Johnson v Towsley 13 wall 72.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,



J. Butler

Date: June 20, 2019