19-6286

No. _____

IN THE

Supreme Court of the United States

October Term, 2019

ORIGINAL

VARA P. BIRAPAKA, Individually

Petitioner,

v.

UNITED STATES OF AMERICA *(*SEE LIST OF PARTIES INCLUDED)*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

Vara Birapaka
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Farmington MN 55024
507-358-8721

QUESTIONS PRESENTED

1) Whether a federal court adjudicating a motion under Federal Rule of Civil Procedure 60 may simply write off Petitioner's motion without any analysis of the FRCP 60 elements as applied to the facts of the procedural record up to that point. Failure to address the legal and factual points in any way questions whether there might be at least a prima facie element of fraud in the court proceeding and show probable cause that the lower courts have failed to address the law professionally and impartially.

2) Whether the lower courts' label of "implausibility" ignores precedents in other circuits where no plausibility issues stood in the way of litigants on similar facts, thus creating a conflict between courts that needs resolution by a grant of Certiorari.

3) Whether the lower courts erred by not addressing Petitioner's claims of deprivation of civil, human, constitutional rights and liberties, due process of law, and unlawful enhanced interrogations, without a hearing.

PARTIES

All parties appear in the caption of the case on the cover page (*List).

See Appendix E for List.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Vara P. Birapaka respectfully prays that a writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Eighth Circuit dated February 28, 2019 is reproduced as Appendix A1 and decision dated May 16, 2019, is reproduced as Appendix A2. The decision of the United States District Court for the Minnesota, dated April 18, 2018, reproduced as Appendix B1. The decision of the United States District Court for the Minnesota dated May 9, 2018, reproduced as Appendix B2.

JURISDICTION

Personal Jurisdiction

Mr. Vara Birapaka's petition for rehearing to the Eighth Circuit Court was denied and judgment was entered on 16th May, 2019. Mr. Birapaka invokes this court's Jurisdiction under 28 U.S. Code §1254(1), and 28 U. S. C. §1257 Certiorari having timely filed this petition for a writ of Certiorari within ninety days of the Eighth Circuit Court judgment.

Subject Matter Jurisdiction

An individual's rights are found to have been violated if a human subject researcher, investigative, law enforcement officer, governmental or contract entity discloses the subject's private information beyond that is allowed in 18

U.S.C. §2517. The Petitioner's private information is disclosed beyond what is allowed in violation of 18 U.S.C. §2517, as the government was disclosing the Petitioner's private information to their partners, friends, allies, public on a daily basis around the clock for the purpose of religious, economic and political gain, "Third Party Punishment" (TPP) and harassment against the Petitioner, which has no legitimate investigative purpose.

U.S. Code Title 18, Section 2712: A totally new section was appended to Title 18, Chapter 121 of the US Code: Section 2712, "Civil actions against the United States". It allows people to take action against the US Government if they feel that they had their rights violated, as defined in chapter 121, chapter 119 or sections l06(a), 305(a), or 405(a) of FISA.

18 U.S.C. Section 2261A- This law states that stalking across two states is a violation of federal law. Defendants continue to daily threaten, harass, stalk and attempt murder Petitioner in Minnesota, Wisconsin and everywhere he traveled, worked and lived can recover damages as defined in 18 U.S.C. §2520(G).

Individuals who were subjected to harsh interrogations on behalf of the United States may have grounds to challenge their treatment in U.S. courts. Under the Alien Tort Statute (28 U.S.C. §1350).

STATUTES INVOLVED

RELEVANT FEDERAL RULES: FRCP 60(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C.,§1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audit aquerela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Constitution, First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments. Due Process Clause of Article VI of the Constitution.

Secondary Authorities:

1. Thomas Paine on Bill of Rights, 1777

2. Stuart P. Green, Lying, Misleading, and Falsely Denying: How Moral Concepts Inform the Law of Perjury, Fraud, and False Statements, 53 HASTINGSL.J. 157

STATEMENT OF THE CASE

A. BACKGROUND

The Defendants forcefully implanted the Petitioner without his knowledge or consent with over 11 experimental Nano Technology RFID (Radio Frequency Identification Device) devices which form Wireless Sensor Body Area Network (BAN), around him and can resonate with electromagnetic frequencies also known to be used in Biomedical, remote human telemetry "Remote Neural Monitoring" (RNM) systems and applications. The US Patent NO.20130194092 A1, Unlocking a Body Area Network assigned to the Defendant Qualcomm, Inc. The Defendants' offending frequencies can lock on to Petitioner's body via these RFID devices, brain signature. The Defendants' for nine years have been utilizing Petitioner and putting him through their vicious "investigative" procedures, clinical trials, "search and seizure" and counter-intelligence tactics for data collection "Personal Intellectual Property" as defined in 32 CFR 37.1310 around the clock.

Petitioner, acting pro se, provided strong evidence and has stated sufficient plausible claims for the matter go to trial. On April 18, 2018, District Court denied the Petitioner's complaint (see Appendix F for Procedural History). Petitioner has filed on May 7, 2018, a motion to "reconsideration and reopen"

the case, he submitted over 100 pages of additional evidence, investigative and scientific reports. Subsequently just after one day, on May 9, 2018, the District Court denied his complaint this time "with prejudice" stating that he has not established "compelling circumstances" and his claims are not "cognizable in this court or in any court", without making an effort to examine, analyze, research and understand the material nor perceiving gravity of critical situation the Defendants' "investigative" procedures and RFID device implants pose to the nearly disabled Petitioner. Petitioner presented factual basis for claims in his complaint. Petitioner's factual basis are demonstratively, historically and scientifically sound.

Petitioner's evidence presented to the court include SCADA(Supervisory Control And Data Acquisition) investigator body scanning report (see Appendix I), SCADA Frequency allocation report (see Appendix J),Advanced Resonance Analysis Patch test report (see Appendix K), FCC investigator reports (see Appendix L), Frequency and Innovative Waveguide Technology report (see Appendix M), RFID Biomedical implant removal surgery report (see Appendix N), RFID implant forensic investigator reports (see Appendix O) primary care doctor's consultation about harassment report (see Appendix P), medical doctor's radiation skin effects report (see Appendix Q), entities linked to Petitioner's BAN report (see Appendix R) and other relevant documents.

The District Court however fixated on the idea of "plausibility," arbitrarily rejected that it could not be plausible that Petitioner was stricken by RFID

Biomedical device which was surgically removed by a board certified surgeon. Furthermore, District Court derided the Petitioner's historical claims and daily life threatening experiences as a "non-consensual" subject of Defendant's pernicious "investigative" methods of "intervention and interaction", "identifiable private information", "manipulations of subject or the subject's environment" and counter-intelligence tactics, disclosure of his private information and "search and seizure" as documented in Defendants' own directives, rules and manuals as "bizarre conspiracy theory." The District Court unexplainedly concluded that Petitioner's claims are not plausible, which contradicts Defendants' own directives, science, expert investigators and the Petitioner's historical experiences.

Accordingly, Petitioner has taken his appeal "up the ladder" to try to achieve emancipation, justice and vindication from what has occurred and happened to him at the District Court where he has never received a real chance to have a hearing.

Petitioner filed a Brief in the 8th Circuit Court of Appeals in August, 2018, seeking the appellate court to review his case from a more unprejudiced perspective and reverse the judgment of the District Court in light of significant medical evidence, good faith effort and owing to continued physical, psychological and livelihood consequences to the orphaned Petitioner. And at the very least, he asked that he should be allowed to amend the complaint and proceed with the case.

The Panel concluded that the Petitioner's appeal and request for reconsideration is essentially a Rule 60 Motion. However, the panel makes absolutely no analysis of Rule 60 standards and instead purports to cite analogous cases, such as Nelson v. Am. Home Assurance Co., 702 F. 3d 1038 (8th Cir. 2012). Clearly the Panel jumped to an arbitrary ruling that not only fails to consider the factual basis of Petitioner's case but omits analysis of the rules of civil and appellate procedure. For these omissions, the proper standard of review is "abuse of discretion", TCF National Bank v. Bernanke, 643 F.3d 1158, 1162 (8th Cir. 2011) (quotation omitted) see also Taylor Corp v, Four Seasons Greetings, LLC, 403 F.3d 958, 967 (8th Cir, 2005); Planned Parenthood Minn , N.D, S.D V. Rounds, 530 F.3d 724, 733 (8th Cir 2008). "An abuse of discretion may occur when the district court rests its decision on clearly erroneous factual findings or erroneous legal conclusions". TCF National Bank, 643 F.3d at 1162.

In the instant case, the appeals court ignored Petitioner's material facts and imputed its own assessment of the facts. The Appellate panel's eager adoption to support the District Court judgment and disregard of Petitioner's material facts is consistent with Defendants' concealment and facilitation of abuse, in order to continue to utilize Petitioner for human subject experimentation meant for greed, profit, to further evil, to silence him, cause him further harm, death by thousand paper cuts, to covertly

jeopardize his heath and not to facilitate Petitioner's return to his previous normal life.

B. THE COMPLAINT

See Appendix G

ARGUMENTS

Excerpts from DOD 5240.01-R, mentioned in the Petitioner's complaint:

> C13.2.1. Experimentation in this context means any research or testing activity involving human subjects that may expose such subjects to the possibility of permanent or temporary injury (including physical or psychological damage and damage to the reputation of such persons) beyond the risks of injury to which such subjects are ordinarily exposed in their daily lives.

Excerpts from 45 CFR 46, mentioned in Petitioner's complaint:

> an investigator (whether professional or student) conducting research obtains (1) Data through intervention or interaction with the individual, or (2) Identifiable private information. Intervention includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for re-search purposes.

Relevant Evidence

> Federal Rule 401 states that "'[r]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

This definition requires the District Court to undertake two different explorations. This definition includes two main components. First, the evidence must be material, i.e., that the proposition for which the evidence is offered must be of consequence to the determination of the case. Second, the evidence must be probative, i.e., it must make the existence of the fact more probable or less probable than it would be without the evidence. Tennison v.

State, 969 S.W.2d 578. The District Court must engage in an analysis to ascertain whether the proffered items of evidence alter the probability of the identified consequential or material facts. This examination, in which the court considers and evaluates evidentiary hypotheses in order to determine whether the proffered evidence could affect the trier's evaluation of the probability of a consequential fact is central to the law of evidence.

The Petitioner Presented the almost all the reports from medical Doctors, Surgeon, Industrial Toxicologist, H-SCADA Investigators and other relevant documents to the District Court on May 7, 2018. However just after one day, on May 9, 2018, the District Court dismissed the complaint with "prejudice".

The Petitioner presented enough relevant evidence that would, seriously weighed, present a factual question for a jury or judge for a hearing. The fact that the Petitioner presented the evidence which may appear unusual to some does not mean that it is not true and plausible in this particular case. In mathematical terms, it is extremely improbable that someone would win the lottery. But, the reality is that people win the lottery. Thus, if I were to pick someone at random, it is extremely "implausible" that that person has won the lottery. However, if someone is claiming that he has won the lottery, the only way to disprove the claim is to examine the evidence. And, in reality, when people claim to have the won the lottery, their claim generally holds true because people understand that the evidence will be examined. The Petitioner presented in the below table, just three correlating facts out of countless

alleged facts from both the Complaint and the material evidence presented to the lower courts.

Excerpts from the Petitioner's complaint to the District Court in September, 2017:	Excerpts from the Investigator's documents presented to the lower courts:
The Plaintiff has been surreptitiously implanted with war technologies, including nano-hooks, nano-claws, nano-tubes, nano-antenna, nano-particles, and a semi-circular disk in his right eye..	Specimen: Mar 3, 2015 4,NanoClaws/Hooks 4, antibiotic metabolite of Chaetomium spp 3, InsectStingToxins 2 Specimen:09/6,2015NanoClaws/Hooks4- Dr. Staninger
The Plaintiff is implanted with nano technologies, nanohooks/claws/tubes/antenna/waveguides and a semi circular disk in his right eye...medical and other professionals can access Plaintiff's body online at any time they wish.	I affirmatively state that I removed 1 foreign devices from Mr.Birapak's body and have retained said devices for inspectio at my facility---- From RFID Biomedical Implant Removal Surgery Affidavit -Dr. Susan Kolb
He seeks his right to due process, right not be subjected to the cruel, unusual, inhumane or degrading treatment, punishment or experimentation, coercion, intimidation, violence, enticement, violation of civil, human and constitutional rights and liberties.	For several months. He has been the object of interest to his neighbors. who have been throwing things at his dwelling, on his deck, at his vehicles. They have been following him when driving. He has been collecting data on this activity. This activity has been causing him a great deal of stress. some anxiety--Dr.Benson MD Primary Care

The District Court's error consist of failing to understand how proffered items of evidence presented by the Petitioner make a matter properly provable in the case more or less probable. In determining relevancy, generally the

courts look at the purpose for offering the evidence and whether there is a direct or logical connection between the offered evidence and the proposition to be proved. If there is a reasonable logical nexus, the evidence passes the relevancy test. Fletcher v. State, 852 S.W.2d 271, 271-77 (Tex.App.--Dallas 1993, pet. ref'd). In reviewing a trial court's determination that evidence is relevant, the ruling will be upheld absent an abuse of discretion. Montgomery v. State, 810 S.W.2d 372, 390-91 (Tex.Crim.App.1990) (op.on reh'g). An appellate court should hold that a trial court has abused its discretion only in those instances where the court can say with confidence that by no reasonable perception of common experience could the trial court have concluded that the contested evidence had a tendency to make the existence of a fact or consequence more or less probable than it would have been without the evidence. Id. Relevance is not an inherent characteristic of any item of evidence but exists as a relation between an item of evidence and a matter properly provable in the case. Montgomery, 810 S.W.2d at 375. Moreover, the evidence need not by itself prove or disprove a particular fact to be relevant; it is sufficient if the evidence provides a small nudge toward proving or disproving some fact of consequence. Id.at 376.

Although a court has discretion to exclude evidence pursuant to Rule 403 when the probative value of the proffered evidence is substantially outweighed by the factors specified in the rule, the trial court will seriously mis-estimate probative value if it fails to understand the issue to which the proof is directed.

Consequently, its wide discretion under Rule 403, or other rules, is unlikely to cure an error of exclusion based on a misperception of the material issues in controversy. The District Court ignored the relevant material facts presented with the motion of request "reconsider and reopen" the case on May 7, 2018. Petitioner presented over 100 pages of corroborative evidence. However just after one day, on May 9, 2018 the District Court denied his petition without any analysis and examination, and mocked the life threatening situations imposed on Petitioner by the Defendants' "investigative" procedures as "bizarre conspiracy theory". The courts showed true disregard for established rights of Petitioner by summarily dismissing claims as "bizarre" and "implausible" without detailing why the material evidence failed to prove the Petitioner's case. "Bizarre" and "implausible" are judgment on the scarcity of facts not on the truth.

In Laney v. Celotex Corp. for instance, an action seeking damages for injuries sustained from alleged asbestos exposure, the trial court refused to allow the Defendant to introduce evidence that plaintiff had been exposed to asbestos manufactured by others than the lone Defendant. The trial court concluded that the evidence would be confusing and misleading under Rule 403 because "Defendant could not disprove Plaintiff's case by showing that there were other causes unless Defendant had testimony that they were the sole cause." The appellate court found that the trial judge had misconstrued the governing state law which held defendant liable only if his negligence was

a substantial factor in producing the injury, an analysis that "cannot be made in a vacuum". The exclusion of evidence relating to the fiber content of the other products to which plaintiff had been exposed prevented the jury from being able to ascertain which, if any, were the substantial factors. Thus, although the appellate court stated that it was reversing for an abuse of discretion in applying Rule 403, the reversal was, in fact, really attributable to the trial court's misunderstanding of state substantive law.

1) The district court erred in dismissal for lack of plausibility

Petitioner in his complaint mentioned from Defendants' own directives, Dept. Of Defense (DOD) 5240.01-R, rules and "Joint Targeting" manuals about the campaigns of human subject research, targeting and intelligence collection involving Petitioner.

> This "plausibility" standard is not akin to a 'probability requirement', but it asks for more than a sheer possibility that a defendant has acted unlawfully. Id. Anderson News LLC v, Media Inc.

Petitioner explained the rule 45 CFR Part 46, DOD 5240.01-R-Procedure 13, by which Defendants, agencies, researchers, businesses and electronic systems can work together to gather information and obtain data "biological-neuron cognitive metadata" about the Petitioner via their "investigative" procedures and methods.

> Rule 8: "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Petitioner can prove no set of facts in support of his claim which would entitle him to relief." 355 U.S., at 45-46 Bell Atlantic Corp v. Twombly.

The Petitioner quoted the Defendants' directive 5240.01-R section C5.5.1 regarding the interaction with human subjects using EM signals in their research. Petitioner mentioned in his complaint that NASA's research in BAN and Medical monitoring (see Appendix W). Petitioner also presented the implant removal surgery affidavit relating to the RFID implant surgically removed from his body and numerous relevant reports.

> "sufficient factual matter, accepted as true, to 'state' a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

Petitioner explained in his complaint multiple and various ways he suffered harm and how that harm was perpetuated, his historical experiences of daily hardship due to "adverse events happening in the context of research" (45 CFR Part 46) as a result of subject of their "investigative" procedures including counter-intelligence tactics, harassment, EM assaults and "search and seizure" ("trap and capture") by the Defendants, where all his actions, thoughts and feelings, ability solve, think and survive against their barbaric systematic repeated "investigative" procedures, "enhanced interrogations" constitute cruel and unusual punishment, in violation of Eighth Amendment

Excerpts from the Defendants' HUMINT manual:

> .administering drugs to facilitate interrogation. Designing psychological strategies for interrogators. to withstand torture.

Petitioner explained their medical procedures of targeting, "hyper individualized control and manipulation"of his bodily functions, administering electro-pharmaceuticals (drugs) sending electrical pulses into his body systematically, repeatedly causing physical and psychological pain and

suffering as mentioned in 18 U.S. Code §2340(1) in violation of Article 7 of the 1998 Rome Statute of the ICC, UNGA resolution, resulting in neural toxicity, CTE symptoms, skin discoloration (see Appendix Q), injuries also shown to Lt. Dwuane Pike and Off. Mark Ryan on 6/72019, which continue to prevent him from being healthy, working and living freely. Furthermore, the "investigative" procedures related to the Defendant FBI's COINTELPRO tactics mentioned in their letters reveal "nefarious jobs", organized crime tactics (see Appendix T) like surveillance, slander in the community, burglaries, vandalism, sabotage including vehicles and electronic devices all of which the Petitioner continue to be a victim of and which have been reported to the Police. Petitioner has 8 years of video and documented proof of harassment. The DOD directive, 3000.03E April 25, 2013 USD (AT&L), Subject: DOD Executive Agent for Non-Lethal Weapons (NLW) and NLW Policy, mentions where targets, vehicles or any electronic equipment can be penetrated and disabled.

The Petitioner mentioned in his complaint regarding the Government Defendants FBI, DHS, CIA issue National Security Letters (NSL),FISA with little to no oversight, and previous court rulings has found provisions of NSL statute to be unconstitutional. The Defendants were supposed to use these experimental RFID devices for lawful scientific research to cure diseases and advancement of science, medicine and to the progress of humanity. Instead, the psychopathic, rogue factions of the Defendants driven by greed, power and control in blatant disregard for Petitioner's health, rights, life and law abused

their power by "watch listing" the Petitioner for secret projects, "unacknowledged", military/Intelligence experimentation projects and other sadistic and brutal targeting AI programs for commercial, economic, political, religious and financial gain. The Defendants recruited "community" policing, Infraguard, corporate workers, students, contract surveillance & Third Party Punisher (TPP) services, snipers, mercenaries, criminals and whoever looking to make quick cash. The Defendant Department of Home Land Security (DHS) is the impetus that provides data mining and collection (herein see the accidental release FOIA material to the Journalist Curtis Waltman, on their technologies in, Appendix U) on individuals and makes that data/consumer information available to contractors, LEA, community policing groups, city workers, EMT, illegals who engage in stalking thefts, threats, assaults and harassment of the Petitioner as mentioned in his complaint to the District Court meet the criteria as described in 18 USC§1961 -Definitions,. The Defendants' disclosure and release of Petitioner's private information beyond that is allowed to contractors, city and state workers, resulted in assaults, stalking, as Defined in 18 U.S.C §2261A-Stalking in violation of 18 U.S. Code §2511. Furthermore, Defendants incited mob violence, engaged the community groups, landlords, neighbors as the Petitioner attempted to live, work and commute anywhere in city and state lines resulting in physical assaults with "dangerous weapons" NLW, thefts, sabotages causing bodily harm to the Petitioner as defined in 18 U.S.C C §1959 –Violent crimes in aid of

racketeering activity, 18 U.S. Code §249, 18 U.S.C.§§2516-18-Disclosure of information obtained through authorized wiretapping,18 U.S.C.§2261A, in violation of 18 U.S.C §1963 and assault while in religious place 18 U.S.C §247.

The Defendants authorized, supervised, concealed, participated in, and or conspired to around the clock "matrix association" searches of the Petitioner "search and seizure" via his RFID devices, for data collection, and human research of the Petitioner's without his "Informed Consent". Defendants continue to violate the rights of Petitioner and his family and associates to be free from unreasonable searches and seizures under the Fourth Amendment. The Defendants have violated Petitioner's reasonable expectation of privacy and denied Petitioner's right to be free from unreasonable searches and seizures as guaranteed by the Fourth Amendment, including but not limited to obtaining per se unreasonable warrants. Defendants have further violated Petitioner's rights by failing to apply to a court for and for a court to issue, a warrant prior to any search and seizure as guaranteed by the Fourth Amendment. Defendants will continue to engage in this type violations of Petitioner's Constitutional rights, and are thereby harming Petitioner's health, liberty, property and future. Petitioner has no adequate remedy at law for Defendants continuing unlawful conduct. The Defendants will continue to violate Petitioner's basic rights unless enjoined and restrained by a court of law. Defendants' warrant-less search and seizure of the Petitioner's body gives

rise to a claim under Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics. 403 U.S. 388 (1971).

Excerpts from PSYOP PROGRAM APPROVAL Under Secretary of Defense for Policy USD[P] MEDICAL COMPANY INTERROGATIONS:

> Sometimes it may be advantageous to conduct interrogations at the medical company.

Defendants' contractors, health care providers, hospitals, doctors, psychologists, and labs who contract with the government agencies are not entitled to qualified immunity. (See, McDuffie v. Hooper, 982 F.Supp. 817 (M.D. Ala. 1997); Hartman v. Correctional Medical Services, Inc., 960 F.Supp 1577, 1582 (M.D. Fla. 1996); Smith v. United States, 850 F.Supp 984, 986 (M.D. Fla. 1994).

Defendants also conspired and concealed the "investigative" methods, procedures, and tactics which have caused irreparable harm to Petitioner (and they continue to go unabated).

For example, the Defendants funded, authorized, concealed and conspired to implant the Petitioner with over 11 military grade RFID Biomedical devices violating the principles "Informed Consent", due process and his constitutional rights, contradicting Defendants' own directives, Nuremberg code, and the international law. Petitioner is entitled to vindication through a declaration that the Defendants' human subject research, "investigative" procedures, surveillance, and data collection and disclosure of private information, violated Petitioner's constitutional rights and were contrary to Defendants' regulations

and principles of international law. See, e.g., Bilbrey, 738 F.2d at 1471. Such a declaration also will further educate the public about these invisible crimes and the principles of "Informed Consent", resulting in a significant step along the road of protecting the human race and their constitutional rights. See id.; Zolin, 812 F.2d at 1113; ICR, 758 F. Supp. at 1356. Petitioner's also are entitled to declaratory and injunctive relief to remedy ongoing harm stemming from the Defendants' "investigative" methods, procedures, disclosure of his private information, acts and failures to act, as in some case the Defendants' order that law enforcement to "stand down" in helping and preventing the assaults or other heinous crimes against the Petitioner in violation of 18 U.S. Code §1510 and 18 U.S. Code §1511. The Court should issue a declaration that Petitioner is no longer are bound by the improper "secrecy oaths," so that Petitioner can seek and receive appropriate medical care, treatment, counseling, and removal of the devices for the torment he has endured. See, e.g., NW Envtl. Defense Ctr. v. Gordon, 849 F.2d 1241, 1245 (9th Cir. 1988) ("where the violation complained may have caused continuing harm and where the court can still act to remedy such harm by limiting its future adverse effects" a claim is not moot).

Petitioner asserts that this Court has the power to adjudicate Petitioner's claims for declaratory relief, and that the Court could do so if it wanted despite a potential opposition by the Defendants. Petitioner invites the Court to decline to exercise its jurisdiction over those claims. A court must not consider

declaratory relief only from a Defendant's point of view, but also must consider the harm to Petitioner's, their right to vindication, and the public interest. (See, e.g., Zolin, 812 F.2d at 1112-13; Bilbrey, 738 F.2d at 1471). Although a district court "is authorized, in the sound exercise of its discretion" to decline jurisdiction over a declaratory judgment action, "a district court should not refuse to adjudicate a declaratory judgment claim when other federal claims are joined in the action." Google, Inc. v. Affinity Engines, Inc., No. C. 05-0598, 2005 WL 2007888, at *6 (N.D. Cal. Aug. 12, 2005) (citing Govt Employees Ins. Co. v. Dizol, 133 F.3d 1220, 1225 (9th Cir. 1998) (en banc)); Co-Investor, AG v. Fonjax, Inc., No. C O8-01812, 2008 WL 4344581, at *3 (N.D. Cal. Sept. 22, 2008); Behrens v. Donnelly IV, 236 F.R.D. 509, 516 (D. Haw. 2006). Therefore, the Court "should not refuse to adjudicate" Petitioner's claims for declaratory relief.

Of course the Defendants would divert attention from the facts by labeling Petitioner delusional or mentally ill, so the lower courts called Petitioner's claims "rampant paranoia". But Petitioner's complaint in this matter is based upon evidence that he has been the target of extrajudicial, unconstitutional punishment and his experiences of being subjected to invasive technologies. Petitioner addressed these matters in a context specific manner and drawn reasonable inference from the expert analysis of these issues and the physical evidence of the RFID Biomedical device surgically removed from Petitioner's body by Dr.Susan Kolb MD. The implant forensics (see Appendix O) of this

RFID Biomedical device was performed by Dr. Staningers and Applied Consumer Services, an Industrial Toxicologist. Petitioner doesn't believe it is fair to simply label what has happened to him as "utterly without merit" or "patently merit-less," since these are matters that he has really gone through due to the invasive RFID Devices that have been implanted in him. Petitioner's medical doctors and expert investigators did not just make up reports and of whole cloth, so to speak. Moreover, the experts who have examined these activities are not just "unreliable" as name-called by some Defendants.

> Asking for plausible grounds does not impose a probability requirement at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. The need at the pleading stage for allegations plausibly suggesting (not merely consistent with) agreement reflects Rule 8(a) (2)'s threshold requirements that the plain statement possess enough heft to "sho[w] that the pleader is entitled to relief. Bell Atlantic Corp v. Twombly.

The Defendants authorized, funded and utilized the Petitioner for human subject research by covertly implanting him with military grade nano technology material and rattle snake venom uncovered by bio-resonance patch test conducted on his body twice by the Industrial Toxicologist. The results showed the presence of nano material, toxins used in RFID devices. The Defendants' offending frequencies which were traced to the Defendant US Army, locked on to the Petitioner's body, were detected as result of scanning conducted on his body by an H-SCADA investigator Ms. Melinda. The

investigator also uncovered higher levels of EMF radiation values, spider vein lies, infrared disk in the eye and other military grade nano technology material. The Defendants implanted the Petitioner with over 11 RFID Biomedical devices, one of which was surgically removed from the posterior right ear by a surgeon Dr. Susan Kolb, on March 31, 2017. The foreign body/RFID implant forensics performed by Applied Consumer Services FL and Dr. Staninger who analyses the device to be an implantable Biomedical (RFID) device. Petitioner's expert investigators have uncovered the existence of obvious surveillance "Remote Neural Monitoring" RFID devices which have been implanted into the posterior ear, skull, brain and other parts of the body (see Appendix I). The investigative evidence gathered suggests that the injury caused by the RFID devices is extremely effective and efficient the way these devices were implanted in a "matrix scaffolding" fashion in Petitioners body (see appendix M). Petitioner mentioned that the Defendants authorized, funded and implanted the Petitioner with subcutaneous devices, chemical, biological and radiological substances as defined in Minn. Stat. Section 146B.01-Definition Subd-27, without the Petitioner's "informed consent" in order to experiment, degrade and destroy his life in direct violation of Minn. Stat. Sec. 146B.07 Subd. 3.

2. The district court erred by dismissing Petitioner's case improperly with prejudice

Initially, Petitioner's case was dismissed because of excusable non-compliance with summons deadlines due to the federal courts self-help

material for pro se litigants being confusing. When this was discovered, Petitioner immediately corrected the problem with services associated with this dismissal. Since then however, the courts continued to inexplicably put up barriers to Petitioner bringing his legitimate issue to trial. Simple error in process does not warrant dismissal of his case with prejudice. Without a chance to proceed, the following invasions and tampering cannot adequately be addressed or defended against.

A)A bio resonance patch test by Dr. Staninger in March and September 2015, excerpts:

> the presence of liquid crystals is a term used in the delivery systems of nano material that may be used as time release or other type of delivery systems for medications" (see Appendix K)

> "We are unable to accept the theory that the district court should have dismissed or did dismiss the complaint merely as a technical matter of pleading. In appraising the sufficiency of the complaint, we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief". Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957). "We think that in this case quite enough was alleged to give defendant fair notice of the basis of Plaintiff claim". Ballou v. General Electric Company, 393 F.2d 398 (1stCir.1968).

B) H SCADA investigator, MS. Melinda's Report dated August 30, 2015, excerpts below:

> Using Method Standard Seven, the spectrum analyzer detected a signal ambient to Birapaka at 2413.071Mllz at 11:11AM CST. This signal was not present prior to his arrival, nor after his departure from the assessment location.(see

> Appendix I). The specific frequency 2413.071 at 2.86 GHZ is of particular interest due to biological data asset collection. (see Appendix J)

The district court erred in failing to give prior notice to the parties before converting Menzies' motion to dismiss into a motion for summary judgment. Menzies grounded her motion to dismiss, inter alia, on the defense of failure to state a claim upon which relief can be granted. Fed.R.Civ.P. 12(b)(6). On a 12(b)(6) motion, if "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Fed.R.Civ.P. 12(b) (emphasis added). Rule 56 requires that the parties be given at least ten days' notice of conversion of a Rule 12(b)(6) motion so that they may present relevant materials Beacon Enterprises, Inc. v. Menzies ,715 F.2d 757, 767 (2d Cir. 1983).

C) Dr. Staninger's Frequency Innovative Waveguide Technology report dated March 13, 2016, excerpts below:

> The specific waveguide technology is also used in space medicine, therefore may have an application for Earth to Space and Space to Earth transmissions using RF signals. In summation. Mr. Vara Birapaka is exposed to nanotechnology that is used for specific functions and applications. Due to the waveguide locations within his muscular system the technology is used to receive and send signals. (see Appendix M).

> Although a trial court may dismiss a charging instrument to remedy a constitutional violation, such a dismissal is a "drastic measure only to be used in the most extraordinary

circumstances." See Mungia, 119 S.W. 3D at 817 State v. Mason.

The Petitioner in his complaint stated that the investigators traced the offending RF signals which continuously locked onto Petitioner's body to the Defendant US Army, via his RFID Biomedical devices.

Excerpts from PSYOP PROGRAM APPROVAL, USD[P], below

> Normally, interrogation elements coordinate with PSYOP elements to obtain information concerning the motivational factors and cultural value systems of the Individual to be interrogated... The interrogator must always be in control of the interrogation, the interrogator can gain insight into the prisoner's actual state of mind

Whether these RFID devices meant for human subject research or for surveillance, deployed in "operational" use, the 24/7 barbaric "investigative" methods and procedures of Defendants' "triggering" ("trap and capture") and harmfully interacting with these RFID devices, resulting in grave bodily injuries to the Petitioner in violation of 8 U.S. Code §242-Deprivation of rights under color of law. This has been documented and reported to the Gov. Mark Dayton, Attorney General Swanson, police department of City of Bloomington, City of Eagan and City of Farmington, These non-consensual RFID devices in Petitioners body receiving electrical pulsations causing bodily harm, meet the criteria as a weapon as defined in, Minnesota 609.712 Real and simulated weapon of mass destruction, 18 U.S. Code §2332h, as a radiological weapon capable of causing "serious bodily harm", as described in 18 U.S.C. §178(3), 18 U.S. Code §1959. Operational use would also be regarded as cruel and unusual

treatment in violation of 18 U.S. Code §1951, U.S.C. 18, §2340A (a) as defined in 18 U.S.C. §2340(1) and 18 U.S.C. §2340(2). Alternatively, if construed as surveillance or medical research, Defendants' actions would amount to war crime if he is being targeted as an enemy agent thus violating Common Article 3 violation pursuant to 18 U.S.C. §2441. This prolonged and indefinite form of imprisonment, detention and or improper designation of Petitioner for over nine years meets the criteria as defined 18 U.S. Code §1203, Nuremberg Code, Constitution, UNIVERSAL DECLARATION OF HUMAN RIGHTS and International law.

Habeas Corpus, as codified in 28 U.S.C. 28 Chapter 153, 18 USC §2241(a), 18 USC §2241(b), requires that an individual must be in "the custody of the defendants" to challenge his or her detention, and makes no clear provision allowing those who are deemed to be "otherwise under the control of." The ability of the Defendants, US government to classify anyone as a detainee who is "otherwise under the control of" creates an entire class of detainee who has no access to Habeas Corpus as codified in 28 U.S.C. §2241. The Defendants non-consensual implantation of Petitioner with over 11 RFID devices, their RF signals locking on to his body around the clock, and their unconstitutional "investigative" methods "enhanced interrogations", "search and seizure" which have been ongoing for over nine years to date qualify as a detainment or confinement within the meaning of U.S.C. 28, Part VI, Chapter 153, §2241 and are in violation of the Petitioner's Constitutional rights. The Due Process

Clause of Article VI of the Constitution requires that some form of judicial avenue remain available for Petitioner's to challenge the lawfulness of his detention, designation or status. In this instance, Petitioner alleges that the Government Defendants have improperly designated him in order to establish a legal framework necessary to avoid the criminal and civil implications of their unlawful targeting and human subject research activities, and Constitutional violations. The government Defendants knew Petitioner would have denied the request to be used as subject for human experimentation which continue to cause heath degradation, hardship, isolation, loss of income contrary to regulations and principles of United Nations Convention against Torture, Nuremberg Code and International law.

3. Concluding Petitioner's case without a hearing of facts and ignoring his motion for "set aside the judgment and reopen the case for a new trial" presents a compelling reason to overturn the trial court's judgment.

On May 7, the Petitioner presented the court with additional over 100 pages of investigators reports, project manuals (Body Area Network -NASA) etc. Petitioner mentioned the Defendants' technologies, their "investigative" procedures which were causing him life threatening situations, due to harmful and unlawful interaction with his RFID devices , "search and seizure", EM assaults. Resulting in Petitioner's higher doses of exposure to ionizing or non-ionizing radiation, chemicals, nano material which could lead to his disability, premature or sudden death.

[(d) Result of Presenting Matters outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion. FRCP Rule 12 (b) Amended or Additional Findings. On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under . FRCP Rule 52] Rule 59

(1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows: (A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or (B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2)Further Action After a Nonjury Trial. After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment FRCP Rule 59]

Once again, as a Pro Se litigant, Petitioner did his best to use the self-help material provided by the District Court administrator. Petitioner put forth best effort to follow all the rules and procedures. Yet the trial court scorned the Petitioner for not heeding some obscure points of timing of service of process, insensitive to problems that he encountered (see Appendix H) as well as, daily life threatening situations he faced owing to Defendants "investigative" procedures and counter-intelligence tactics against him. That alone is abuse of discretion in that it was used as a basis for "dismissal with prejudice". Defendants, like the District Court, repeatedly stated Petitioner's claims as "bizarre" as a reason for this case not being reconsidered or moving forward.

Petitioner believes that he can infer from that they do not, in some philosophical sense, place any value on examining his experiences and claims in court. That may be because they are outside the "walls of ghetto" and may not see some emergency involved, but Petitioner does. Petitioner is compelled by nothing more than pursuit of freedom and justice.

It is not fair nor appropriate to say that the indifference of Defendants and the lower courts should just leave Petitioner hanging with no access to the court. Accordingly, Petitioner respectfully ask the this court to review his case from a more dignified and humane perspective the judgment of the lower courts in light of significant evidence and Petitioner's good faith effort to place his own situation and circumstances before this court

4. The Appellate Panel Made Errors of the Law

The Panel made errors of law with respect to the District Court's failure to follow established procedural rules. These rules are not hollow platitudes. They are the law of the land. The Panel failed to properly acknowledge key evidence offered by the party opposing judgment (Vara Birapaka), thus "reflect[ing] a clear misapprehension of procedural standards in light of [Supreme Court] precedents" (See Tolan v. Cotton, 572 U.S. 650, 660 (2014). No lower court may deviate from or nullify the directions to the courts by the decisions of the U. S. Supreme Court and the Federal Rules of Civil Procedure. The Panel has done so by its casual disregard of the complete factual record,

tantamount to granting summary judgment to Defendants without a fair hearing.

1) The Panel could affirm the District Court's entry of judgment only if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FRCP 56(a); Celotex Corp. v. Catrett, 477 U.S. 317, 322(1986) (quoting former FRCP 56(c)). These are issue of fact.

2) The Panel was required to accept Vara Birapaka's version of disputed facts as true, and view the evidence and all reasonable inferences that may be drawn from the evidence in a light most favorable to Vara Birapaka. Anderson v. Liberty bobby Inc., 477 U.S. 4242, 250, 255 (1986).

3) The Panel was not permitted to weigh the evidence or resolve disputed issues in favor of the party moving for judgment. Id. at 249 Tolan 572 U.S. At 657.

The 8th Circuit Court and the District Court did not just call balls and strikes, but each stepped onto the playing field and each court batted down Petitioner's proffered facts and inferences. Each court selected the Defendants as the winner and the Petitioner as the loser of the "contest", while he's being selectively implanted with over 11 RFID devices, experimented and tortured in an electronically isolated prison camp. Regrettably, the Panel's Opinion exemplifies the non-level playing field for Petitioner and the extreme burdens which Petitioner must face in merely attempting to get a hearing.

5. The Appellate Panel Made Errors of Fact

The Panel also made demonstrable errors of fact which perverted the proper review of the District Court's entry of judgment. The Panel selectively left out factual record and consistent accepted facts. (See, Berrey, R. Nelson and L. Nielsen, Rights On Trial: How Workplace Discrimination Law Perpetuates Inequality (2017)) with the Panel's conclusion and disregarded facts inconsistent with the Panel's conclusion. The Panel, like the District Court failed to construe any of the disputed facts in favor of Petitioner or construe any reasonable inferences from the material facts in his favor.

REASONS FOR GRANTING THE WRIT

The writ of Certiorari should be granted because, in similar case of *Richard Cain v. Samsung Clinic et. al*, case number 1402957 (see Appendix C), filed in the Federal Court in California the judge granted Mr. Cain a hearing. *Richard Cain v. DOD* (herein for elements of the Cain's case, see Appendix D).

Petitioner finds precedent in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*. 403 U.S. 388 (1971), set a precedent which now holds agents of the government accountable for unwarranted searches and seizures and the subsequent disclosure of his private information to the public. In this case conspiracy to implant the Petitioner with over 11 RFID devices and subject him to barbaric non- consensual human research for greed, profit are in direct violation of the Petitioner's Constitutional rights. This Court

must set a new precedent and now hold the Defendants irresponsible for violating their oaths as agents of the government, law enforcement, physicians, psychologists, researchers, students and medical facilities as their actions and inaction have viciously crossed all bounds of decency. The arrogant Defendants in this case seem to think that the life of the Petitioner doesn't matter which has led to his years of investigation and ultimately leading to this action. The Defendants committed fraud upon the lower courts by submitting "Affidavit" illegally obtained via "search and seizure" of Petitioner's body via RFID devices illegally implanted in his body, for judgment in their favor in order to continue experimentation and eventually murder him as they continue to degrade the life of nearly disabled Petitioner in violation of 18 U.S.C §2515, 18 USC§1117 . The Petitioner would have been murdered by the Defendants like they tried on Jan 3 , 2014 in front of Byerlys had he not done his investigation and the truth would have never known.

In *Wyatt v. Cole* and *Richardson v. McKnight*, the Court held that private individual Defendants did not enjoy the qualified immunity which might be available to government Defendants. In this case none of the Defendants are eligible for qualified immunity. Any private entity or person who acts under color of law may be a Defendant. Defendants' medical facilities, physicians, surgeons, and defense Attorneys engaged in a conspiracy to violate the Petitioner's civil rights under 42, U.S.C. §1983, 42 U.S.C. §1985, and 42 U.S.C §1986 by conspiring to conceal evidence and obstruct justice.

I. The District Court's Decision Conflicts with Rule 60 and Prior Decisions of this Court and Other Courts

The Court of Appeal's decision in this case makes pleading and proof of criminal perjury the sine qua non of an independent action under Rule 60 of the Federal Rules of Civil Procedure:

To allege that false statements were made in these documents is to allege perjury. In such a case, proof of perjury, though not sufficient to prove fraud upon the court, becomes a necessary element which must be met before going on to meet the additional rigors of proving fraud upon the court.

On this basis, the Court of Appeals flipped the rules that generally govern motions to dismiss; the Defendants' "Affidavit" appeal obtained via "search and seizure" of Petitioner, is entirely outside the context in which they were presented and because those affidavits were arguably susceptible to a 'literal, truthful interpretation", Petitioner could make a claim of perjury and hence, claim for fraud upon the court in this context. For example, in June 2016, an Eagan Police Officer knocked on Petitioner's apartment door just after the midnight. When Petitioner opened the door, the officer was reaching for his gun, asking for "Cassandra." Clearly, the officer was misled by his information, as Petitioner had to tell him that he is the only one living there.

The court's decision conflicts with the plain language of Rule 60. It is also at odds with the standards for Rule 60(b) independent actions established by other federal appeals courts. Rule 60(b), as amended in

1946, abolished almost all common law avenues for post-judgment relief in the district courts. Beggerly, 524 U.S. at 45. The amended rule, however, specifically preserved "the power of the court to entertain an independent action ... to set aside a judgment for fraud upon the court".

Rule 60(b) (6) "grants federal courts broad authority to relieve a party from a final judgment upon such terms as are just". *Salazar ex rel Salazar v. District of Columbia*, 633 F.3d 1110, 1116 (D.C. Cir. 2011) (quoting *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863 (1988)). To obtain relief under this provision, a party must file its motion within a "reasonable time" and demonstrate "extraordinary circumstances justifying the reopening of a final judgment." Id. (quoting *Gonzalez v. Crosby*, 545 U.S. 524, 534 (2005)).

II. The actions of the District Court in Summarily dismissing Petitioner's action misconstrues and omits material facts.

The District Court expressly and affirmatively made misleading and fallacious statements in their order on 4/18/18, stating:

> Many of Petitioner's claims represent the type of 'bizarre conspiracy theories,' 'frivolous,' and 'essentially fictitious' claims that are patently insubstantial and present no federal question suitable for decision. Because none of Birapaka's claims are cognizable in federal court, or indeed in any court, this case must be dismissed.

Fraud, is the intentional misstatement or omission of a material fact made with knowledge of its falsity or in reckless disregard for whether it is true or false. E.g., SEC v. Infinity Group Co.,212 F.3d 180, 191-92 (3d Cir.2000), cert. denied, 532 U.S. 905 (2001) (actionable securities fraud consists of knowing or

reckless misstatements or omissions); McLean v. Alexander, 599 F.2d 1190, 1197 & n.12 (3d Cir. 1979) (same, collecting cases). Fraud is both a criminal and civil law concept. Unlike perjury, fraud does not depend upon an affirmative false statement; it may rest upon an omission to state a material fact that the actor is under a duty to disclose or that is necessary to make the facts stated not misleading. Bronston,409 U.S. at 358 n.4 (criminal fraud, unlike perjury, "goes 'rather far in punishing intentional creation of false impressions by a selection of literally true representations, because the actor himself generally selects and arranges the representations'") (citation omitted); Kline v. First Western Gov't Sec., 24 F.3d 480, 491 (3d Cir. 1994); SEC v. Coffey, 493 F.2d 1304, 1314 (6th Cir. 1974). Fraud also does not require that the actor know his statements and omissions to be false; the actor may answer for fraud if he acts in reckless disregard for whether his statements and omissions are true or not. Infinity Group Co.,212 F.3d at 191-92; First Commodity Corp. v. Commodity Futures Trading Comm.,676 F.2d 1, 6-7(1st Cir. 1982).

Interfering with the administration of justice here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud alleged that Hartford-Empire had procured the judgment by a fraud upon the court.

The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. Id. At 246.

Petitioner duly pleads that lower courts abused the administration of the federal courts denying the petition. When these officials' affidavits are read in the context of the underlying litigation, it is plain that they intended to lead the trial court and later the Court of Appeals and this Court to believe that the documents in question contained secret information regarding the Petitioner's metadata "cognitive model" that was obtained via "search and seizure" of non-consensually RFID implanted Petitioner by the same Defendants. Moreover, the record establishes beyond question that this is precisely how they were understood by the trial court, the Court of Appeals. And, it is because they were so understood that the government secured the Court abroad privilege for "state secrets" that led to the denial of judgments. Reynolds, 345 U.S. At 10.

The "affidavit" documents contain nothing secret about the Petitioner's personal or private life, mission. Rather it is the Defendants who are guilty when they used the "Affidavit" to murder him on Jan 3, 2014 which was reported to the Eagan Police. On this score, which is the score that matters, the affiants perpetrated fraud. That their affidavits might be read literally to claim a privilege for other information about the Petitioner, as the Court of Appeals suggests, might help the affiants avoid a perjury prosecution. But it does not render their affidavits any less false, misleading and fraudulent, for

the affidavits were intended to deceive – and did deceive –the courts on key facts that drove this Court's decision. See Hazel-Atlas,322 U.S. at 247 (misrepresentation of key fact of authorship upon which court relied constituted fraud upon the court, even if other facts presented were truthful); Lucia v. Prospect St. High Income Portfolio, Inc.36 F.3d 170,175 (1st Cir. 1994) (literally accurate statements may, in context and manner of presentation, be misleading and fraudulent under securities laws); McMahan v. Wherehouse Entertainment, Inc.,900 F.2d 576, 579 (2d Cir. 1990) (same); SEC v. First American Bank & Trust Co., 481 F.2d 673, 678-79 (8th Cir. 1973).

The Court should issue a writ of Certiorari to at least review the administration of justice below in an effort to set the standards right.

III. This Court Should Provide Petitioner's a Remedy for the lower courts errors and apparently deliberate obfuscation and misstatement of the record.

The Petitioner therefore believed this Court was the appropriate forum in which to seek redress in the first instance. Subsequent proceedings have confirmed that Petitioner is correct. The lower courts have simply not done their job. Their extraordinary neglect of analysis has unfairly bared the Petitioner from a fair hearing of his case. It appears instead that the 8th Circuit court engaged its own BEHIND THE SCENE "independent" factual judgments based on out of context affidavit material "cognitive model" obtained via "search and seizure" of Petitioner and made demonstrably erroneous findings to which Petitioner's had no opportunity

to respond. Defendants have further violated Petitioner's rights by failing to apply to a court for and for a court to issue, a warrant prior to any search and seizure as guaranteed by the Fourth Amendment, are now engaging in and will continue to engage in the above-described violations of Petitioner's constitutional rights, and are thereby irreparably harming Petitioner. Petitioner has no adequate remedy at law for Defendants' continuing unlawful conduct, obtain data about Petitioner's activity, location, and even biological data, and this occurs while Petitioner is in his home, his bedroom, and has even occurred while Petitioner was attempted to assert a Physician-patient privilege and Attorney-client privileges. Defendants will continue to violate Petitioner's civil rights unless enjoined and restrained by this Court.

The District Court dismissed the case with prejudice on a theory the government itself had never advanced. The Court of Appeals put a "cliff-face" before Petitioner. The lower courts have no sufficient stake in this case. This Court does. It is this Court's processes that were subverted. The Court should issue a writ of Certiorari to assure that Petitioner has a remedy for the fraud upon this Court the government perpetrated.

CONCLUSION

Clearly a federal court adjudicating a motion under Federal Rule of Civil Procedure 60 has simply written off Petitioner's motion without any analysis of the FRCP 60 elements as applied to the facts of the procedural record up to

that point. This failure to address the legal and factual points questions whether there might be at least a prima facie probable cause that the lower courts have failed to address the law professionally and impartially. Moreover, the lower courts' label of "implausibility" ignores precedents in other circuits where no plausibility issues stood in the way of litigants on similar facts, thus creating a conflict between courts that needs resolution by a grant of Certiorari (see e.g the case of Richard Cain -Appendix C).

Finally, lower courts erred by not addressing Petitioner's claims of deprivation of civil. Human, constitutional right and liberties, due process of law, and unlawful enhanced interrogations, without a hearing.

The lower courts disregarded the material facts. And without any examination, research or analysis, used Petitioner's investigative material which contain an in depth knowledge about Defendants' experimentation, covert technologies and technological enslavement of Petitioner in violation of Slave Trade Act of 1794. And other unwitting for profit to diminish the impact of the real facts, denied his claims under the guise of "implausibility", constitute fraud and obstruction of justice. The district court erred by dismissing Petitioner's case with prejudice. For example, the lower court, with at least some rudimentary analysis, may find a gap or deficiency in Petitioner's case, but that is not a legitimate reason to "throw the baby out with the bath water," so to speak. Here, the lower courts did no analysis and arbitrarily,

with prejudice, barred Petitioner's return to court on salient issues to pursue justice and freedom.

Defendants' human research subject programs are typically secretive, and in many cases, information about them is withheld from the public. Petitioner as a result of the Defendants' barbaric covert "Investigative" methods and technologies faced with imminent daily life threatening situations and is injured, has done extensive research to investigate the Defendants' manuals, guides which contain evidence of abuse of power, procedures and methods that contain grotesque violations under the color of law, of constitution, bill of rights and laws of the land. The Defendants authorized, funded, conspired and implanted the orphaned Petitioner with over 11 RFID devices, deprived him of rights and utilized him for human subject research by merely using their directives, letters and "secret proceedings" and continue to enslave, torture and violate Petitioner's fundamental basic human, civil, constitutional rights and liberties, nearly disabled him and denied his freedoms. Certiorari is therefore warranted in this case to curtail further irreparable harm to the Petitioner's health, life and liberty and to prevent the Defendants' implementation of "final solution" on him as a result of allowing the lower courts' decision to go unreviewed.

Dated: October 14, 2019

Respectfully submitted,

Vara Birapaka
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APPENDICIES

APPENDICES

1) Appendix A

Appendix A1*: The decision of the United States Court of Appeals for the Eighth Circuit dated Feb 28 2019*

Appendix A2: *The decision of the United States Court of Appeals for the Eighth Circuit decision dated May 16 2019*

2) Appendix B

Appendix B1: *The decision of the United States District Court for the Minnesota, dated April 18, 2018*

Appendix B2: *The decision of the United States District Court for the Minnesota dated May 9, 2018*

3) Appendix C

Richard Cain v Samsung

4) Appendix D

ELEMENTS FROM RICHARD CAIN CASE

Appendix E

List of Parties

6) Appendix F

Procedural History

7) Appendix G

Complaint

8) Appendix H

Affidavit of Attempted Service

9) Appendix I

HSCADA Assessment Protocols Report -Columbia Investigations

10) Appendix J

SCADA Frequency Allocation Investigation Report

11) Appendix K

Advance Resonance Analysis Report

12) Appendix L

Appendix L1: *FCC Universal Licensing Search Report – Dr. Staninger*

Appendix L2: *Vara Birapaka-FCC Single Signal 2413.071 Received Nov.17,2015*

Appendix L3: *Vara Birapaka-FCC 2542.624 MHz Received Nov.21,2015*

Appendix L4: *Vara Birapaka-FCC 2543.165 MHz Received Nov.21,2015*

Appendix L5: *Vara Birapaka-FCC 2545.926 MHz Received Nov.21,2015*

Appendix L6: *Vara Birapaka-FCC 2550.079 MHz Received Nov.21,2015*

Appendix L7: *Vara Birapaka-FCC 2557.837 MHz Received Nov.17,2015*

Appendix L8: *Vara Birapaka-FCC Correlation Search Received Nov.25,2015*

11) Appendix M

Frequency and Innovative Waveguide Technology Report

12) Appendix N

RFID Biomedical Implant Removal Surgery Affidavit -Dr. Susan Kolb

13) Appendix O

Appendix O1*:RFID Biomedical Implant Image- Applied Consumer Services*

Appendix O2*: EDS-SEM Microscopy Analysis Report*

Appendix O3: *Raman Micro FTIR Microscopy Specimen (RFID) Analysis Report*

16) Appendix P

Consultation regarding Harassment - Dr. Scott Benson

17) Appendix Q

Health Effects on Petitioner's body -Dr. Courtney White

18) Appendix R

Entities Linked to Petitioner's BAN Systems Report

19) Appendix S

Bruce Email

20) Appendix T

Excerpts from the FBI Directors Letter

21) Appendix U

DHS FOIA Request document.

22) Appendix V

INVESTIGATIVE" PROCEDURES, METHODS AND COUNTER-INTEL TACTICS, CRIMES PERPETRATED AGAINST PETITIONER

23) Appendix W

NASA's Body Area Network- Remote Health Care Technology

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