

No. 19-7709

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

In re, JOHN A. TOTTH — PETITIONER
(Your Name)

VS.

PETER ANTONACCI, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

11th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

John A. Totth, DC#: B12440
(Your Name)

8100 County Road 64 East
Avon Park Correctional Inst.
(Address)

Avon Park, Florida 33825-6801
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Issue #1: Whether the violation of any State or Federal Constitution, Statute, Treaty, Right, or Privilege by any and all State and/or Federal Agents, Actors, and individuals, both known and will become known in the Petitioner's criminal case; constitutes a violation of clearly established law, warranting the Petitioner entitlement to redress under 42 U.S.C. § 1983?

Issue #2: Whether the Petitioner's Fourth Amendment, Due Process and Equal Protection of the Law Claims make moot the Heck v. Humphrey, 572 U.S. 477 (1994) analysis, according to Zimmerman v. Burch, 494 U.S. 113 (1990), Haring v. Prosser, 462 U.S. 306 (1983), 18 U.S.C. §§ 242, 1505, and 1512, despite the Petitioner's criminal case currently under Habeas review by this Court?

Issue #3: Whether the U.S. District Court and the 11th Circuit Court of Appeals denials of Petitioner's 42 U.S.C. § 1983 Complaint according to Fed. R. Civ. P. 8(a)(2) and 10(b) as a non-complaint "Shotgun Pleading", violative of Fed. R. Civ. P. 8(d)(e), 42 U.S.C. § 1986, Fed. R. Civ. P. 20(a)(2)(A)(B) and rulings of other Circuits?

Issue #4: Whether the rulings in Ashcroft v. Iqbal, 556 U.S. 662 (2009), Bell Atlantic v. Twombly, 550 U.S. 554 (2007), and Mitchell v. Forsyth, 472 U.S. 511 (1985), give cause for amending Fed. R. Civ. P. 8(a)(2), to give greater latitude in a 42 U.S.C. § 1983 action to pro se litigants, as to adequately demonstrating plausibility, purposefulness, conspiracy, liability, and loss of immunity from State and Federal official actions that violate the civil and constitutional rights of U.S. Citizens?

Continued Next Page

QUESTION~~5~~ PRESENTED (CONT'D)

Issue #5: Whether the Umbrellas of Absolute and Qualified Immunity of State and Federal Court officials, Agents and Actors are foreclosed; Deliberate Indifference while acting under color of law 18 U.S.C. 242 to a U.S. Citizen's Civil and Constitutional Rights in the Petitioner's case, being clearly enforceable under 42 U.S.C. § 1985 and § 1986, necessitating redress under 42 U.S.C. § 1983?

Issue #6: Whether the U.S. District Court and the 11th Circuit Court of Appeals erred by not reviewing the merits of Petitioner's Fourth Amendment and Fourteenth Amendment Due Process and Equal Protection of the Law violation claims; violative of Fed. R. Civ. P. Rule 3; 1937 Committee Notes, Note #4; thereby endangering Petitioner's avoidance of the statute of limitations to commence an action?

LIST OF PARTIES

[X] 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:

Antonacci, Peter; in both his official and individual capacity;

Atkoviste, Laimonda Klavren; in both her official and individual capacity;

Bain, Mary E.; in both her official and individual capacity;

Cunningham, Paul; in both his official and individual capacity;

Fucci, T.; in both his official and individual capacity;

Johnson, Anthony; in both his official and individual capacity;

Landers, Kelly V.; in both his official and individual capacity;

Matthews, Paul L.; in both his official and individual capacity;

Rapp, Stephen A.; in both his official and individual capacity;

Turpin, Matthew S.; in both his official and individual capacity;

And all others, both known and unknown, and who will become known as a result of these proceedings; in both their official and individual capacities.

RELATED CASES

Toth v. Fla. Dept. of Corr., No. 19-7043, U.S. Supreme Court.
Currently under preliminary review.

John Toth v. Peter Antonacci, et al., No. 19-10564-EE, 11th
Circuit Court of Appeals. Judgment entered November 18, 2019.

John Toth v. Peter Antonacci, et al., No. 9:18-cv-81260-WPD,
U.S. District Court Southern District of Florida. Judgment
rendered November 29, 2018.

Toth v. Fla. Dept. of Corr., No. 18-11087-DB, 11th Circuit Court
of Appeals. Judgment entered August 14, 2019.

Toth v. Jones, No. 9:18-cv-80067-WPD, U.S. District Court
Southern District of Florida. Judgment entered February
14, 2018.

Toth v. State, No. 4D17-1788, 4th District Court of Appeal,
Florida. Judgment entered September 25, 2017.

Toth v. State, No. 2012-CF-D11260-AMB, 15th Judicial Circuit
Court in and for Palm Beach County, Florida. Judgment
entered July 18, 2017.

TABLE OF CONTENTS

OPINIONS BELOW

1

JURISDICTION

2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3-5

STATEMENT OF THE CASE

6-35

REASONS FOR GRANTING WRIT

36-37

CONCLUSION

38

INDEX TO APPENDICES

<u>Appendix-A</u>	<u>App. Pg. No.</u>
Amended U.S. District Court Order	1-5
<u>Appendix-B</u>	6-7
11 th Circuit Denial of Rehearing	
<u>Appendix-C</u>	8-16
11 th Circuit Denial Opinion	
<u>Appendix-D</u>	17-21
U.S. District Court Final Order	
<u>Appendix-E</u>	22-47
U.S. District Court Magistrate's Report	
<u>Appendix-F</u>	48-70
Constitutional Provisions, Statutes and Treaties	
<u>Appendix-G</u>	71-72
State Response to Habeas Corpus; p. 24, lines 10-12	
<u>Appendix-H</u>	73-79
Sample Summons; Motion For Order of Service of Summons; Motion For Extension of Time to File Summons.	
<u>Appendix-I</u>	80-84
Habeas Corpus Certificate of Interested Persons and Corporate Disclosure Statement	

Continued Next Page

INDEX TO APPENDICES (cont'd)

	<u>App. Pg. No.</u>
<u>Appendix-J</u> Sgt. Cunningham's Report	85-88
<u>Appendix-K</u> Deputy Torpin's Report	89-91
<u>Appendix-L</u> Ms. Fowler's Deposition; p. 6, lines 18-25	92-93
<u>Appendix-M</u> State's Witness List	94-95
<u>Appendix-N</u> Palm Beach County Sheriff CSI-Report	96-100
<u>Appendix-O</u> Florida Fire Marshal Report and Shipping Labels	101-105
<u>Appendix-P</u> 15 th Judicial Circuit Court Docket History Report	106-116
<u>Appendix-Q</u> Florida Department of Law Enforcement Letter	117-118
<u>Appendix-R</u> Returned Notice of Plaintiff's Motion For Appointment of Counsel to Investigator Matthews, Noting the Deputy No Longer Employed by Sheriff's Office	119-123

Continued Next Page

INDEX TO APPENDICES (cont'd)

App Pg. No.

Appendix-S

124-128

Notification of Depositions

Appendix-T

129-130

Fax Coversheet of Police Reports from State
Attorney's Office to Defense Counsel

Appendix-U

131-132

Notification to Sgt. Johnson of Deposition

Appendix-V

133-134

Original Complaint Certificate of Service

TABLE OF AUTHORITIES

	<u>PAGE NO.</u>
<u>Adler v. American Standard Corp.</u> , 538 F. Supp. 572 (D. Md. 1982)	12
<u>Ashcroft v. Iqbal</u> , 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)	13
<u>Associated Gen. Contractors of Cal., Inc. v. Carpenters</u> , 459 U.S. 519, 103 S. Ct. 897, 74 L. Ed. 2d 723 (1983)	12
<u>Beck v. Ohio</u> , 379 U.S. 89, 85 S. Ct. 223 (1964)	15
<u>Bell Atlantic v. Twombly</u> , 550 U.S. 554, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)	13
<u>Boyd v. United States</u> , 116 U.S. 616, 6 S. Ct. 524, 29 L. Ed. 746 (1921)	26
<u>Brown v. Illinois</u> , 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975)	15
<u>Bumper v. North Carolina</u> , 391 U.S. 543, 88 S. Ct. 1788, 20 L. Ed. 2d 797 (1968)	14
<u>Coolidge v. New Hampshire</u> , 403 U.S. 443, 91 S. Ct. 2022 (1971)	25
<u>Cym v. Lumbermans Mut. Casualty Co.</u> , 26 F. Supp. 715 (D. D.C. 1939)	12
<u>Haring v. Prosser</u> , 462 U.S. 306, 103 S. Ct. 2368, 76 L. Ed. 2d 595 (1983)	13
<u>Harlow v. Fitzgerald</u> , 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982)	13
<u>Heck v. Humphrey</u> , 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994)	12
<u>Huber v. Pachtman</u> , 424 U.S. 409, 96 S. Ct. 984, 48 L. Ed. 2d 128 (1976)	26, 28
<u>McFarlane v. Givasso</u> , 696 F.2d 217 (2d Cir. 1982)	12

Continued Next Page

<u>Mitchell v. Forsyth</u> , 472 U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985)	30
<u>Myers v. United States</u> , 636 F.2d 166 (6 th Cir. 1981)	12
<u>Ortega v. Brock</u> , 501 F.Supp. 2d 1337 (M.D. Ala. 2007)	12
<u>Pierson v. Ray</u> , 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 208 (1967)	29, 31
<u>Robertson v. Sichel</u> , 127 U.S. 507, 8 S.Ct. 1286, 32 L.Ed. 203 (1888)	30
<u>Spinelli v. United States</u> , 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969)	15
<u>Stump v. Sparkman</u> , 435 U.S. 349, 98 S.Ct. 2862, 56 L.Ed.2d 795 (1978)	29
<u>United States v. Classic</u> , 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368 (1961)	37
<u>Walter Reade's Theatres, Inc. v. Loews, Inc.</u> , 20 F.R.D. 579, 1957 Trader Cas. (CCH) P68776 (D. N.Y. 1975)	12
<u>Wood v. Strickland</u> , 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975)	13, 30
<u>Williams v. Taylor</u> , 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000)	34
<u>Zimmerman v. Borch</u> , 494 U.S. 113, 110 S.Ct. 975, 108 L.Ed.2d 100 (1990)	12, 29

PUBLICATIONS

<u>ABA Standard For Criminal Justice, Prosecution and Defense</u> Function 3-3.11(a) (3d ed. 1993)	28
Fuller, <u>The Morality of Law</u> 84 (1964)	30
Schneider, J.W.; Conrad, P.; <u>Deviance and Medicalization:</u> <u>From Badness to Sickness</u> (1980)	9
Skinner, B.F.; <u>Science and Human Behavior</u> (1953)	9

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 ABC to the petition and is Totth v. Antonacci, No. 19-10564

☒ reported at 2019 WL 492661, at *3 (11th Cir. Oct. 7, 2019); 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 D to the petition and is

☒ reported at Totth v. Rapp, 2019 U.S. Dist. LEXIS 202783 (S.D. FL Nov. 29, 2018); 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 October 7, 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: November 18, 2019, and a copy of the order denying rehearing appears at Appendix B.

☐ 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).

☐ 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 PROVISIONS, STATUTES, AND TREATIES

United States Constitution

Fourth Amendment; Search and Seizure	passim
Fifth Amendment; Self-Incrimination	18, 22, 31
Sixth Amendment; To Be Informed, Witnesses, Counsel	passim
Eighth Amendment; Cruel and Unusual Punishment	31
Fourteenth Amendment; Due Process, Equal Protection of the Law	passim
Article VI, § 2; Supremacy Clause	38

Title 42

42 U.S.C. § 1983; Civil Action For Deprivation of Rights	passim
42 U.S.C. § 1985; Conspiracy to Interfere with Civil Rights	passim
42 U.S.C. § 1986; Action For Neglect to Prevent Conspiracy	passim

Federal Rules of Civil Procedure

Rule 3; Commencing an Action	6
Rule 4; Summons	6
Rule 8 (b)(2); Claims For Relief, Concise Statement	10, 36
Rule 8 (d); Pleading to be Concise and Direct; Alt. Statements; Inconsistency	11, 12
Rule 8 (e); Construing Pleadings	11, 12
Rule 10 (b); Form of Pleadings	12
Rule 12 (a)(1)(A)(i)(ii); Defenses and Objections	7
Rule 20 (a)(2)(A)(B); Permissive Joinder of Parties	11
Rule 26; Duty to Disclose	7
Rule 56; Summary Judgment	7

Federal Rules of Criminal Procedure

18 U.S.C. § 241; Conspiracy Against Rights	6, 18, 35
18 U.S.C. § 242; Deprivation of Rights Under Color of Law	passim
18 U.S.C. § 1505; Obstruction of Proceedings	passim

18 U.S.C. § 1512; Tampering With a Witness, Victim, or an Informant Pg. No.
PASSIM

Title 28

28 U.S.C. § 1343; Civil Rights and Elective Franchise 10

Florida Constitution

Article-I, § 2; Basic Rights 25
 Article-I, § 9; Due Process, Self-Incrimination PASSIM
 Article-I, § 12; Search and Seizure 18, 31
 Article-I, § 16(a); To be Informed, Witnesses, Counsel PASSIM
 Article-I, § 17; Excessive Punishments 31

Florida Statutes

§ 83B.022(1)(a)(b)(c); Misconduct of Officials 18, 22, 28
 § 839.13(1); Falsifying Records 18, 22, 28
 § 918.13; Tampering With or Fabricating Physical Evidence 18, 22, 28

Florida Rules of Criminal Procedure

Rule 3.220(h)(1); Depositions; Generally 27, 33
 Rule 3.220(h)(5); Depositions of Law Enforcement Officers 18, 35
 Rule 3.220(i); Investigations Not to Be Impeded 27
 Rule 3.220(j); Contravening Duty to Disclose 27

Rules of Judicial Conduct

Canon-3; A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently 29
 Canon-3 B(5); Perform Judicial Duties Without Bias or Prejudice 29
 Canon-3 B(7); Every Person Has the Right to be Heard by Law 29
 Canon-3 D(2); Disciplinary Responsibilities 30

Rules Regulating The Florida Bar

34	Rule 3-4.1; Notice and Knowledge of Rules
34	Rule 3-4.2; Violation of Rules of Professional Conduct
34	Rule 3-4.7; Violation of Oath
26, 27	Rule 4-3.8; Special Responsibilities of a Prosecutor
34	Rule 4-8.3; Reporting Professional Misconduct
34	Rule 4-8.4; Misconduct

International Covenant on Civil and Political Rights

13	Article-9(1); Right to Liberty and Security of Person
9	Article-9(5); Unlawful Arrest or Detention
32	Article-14(3)(b); Right to Counsel and Reparation of Defence
32	Article-14(3)(e); Right to Confront Witnesses on Behalf or Against
9	Article-26; All Persons Equal Before the Law

Universal Declaration of Human Rights

29	Article-7; Equal Protection of the Law Without Discrimination
32	Article-11(1); Presumed Innocent Until Proven Guilty

American Declaration of the Rights and Duties of Man

8	Article-XVII; Right to Enjoy the Basic Civil Rights
8	Article-XVIII; Lawful Protection from Judicial Acts of Authority
25	Article-XXVI; Innocent Until Proven Guilty; No Excessive Punishment
8	Article-XXVIII; Rights for All Secured by the Advancement of Democracy

STATEMENT OF THE CASE

- 1) The Petitioner was arrested on 10-18-2012 and charged with Arson, Burglary and Preventing the Extinguishment of Fire.
- 2) On November 27, 2013, more than a year later, the Petitioner entered into a negotiated plea agreement unknowingly and unintelligently. Mr. Toth was oblivious to the Constitutional and Civil Rights violations committed by State of Florida Agents and Actors to secure the Petitioner's conviction. It was known, though, by the ten(10) Defendants, et al. (See: Appendix-G; Attorney General Response to Habeas Brief, pp. 71-72, lines 10-12).
- 3) Redress under 42 U.S.C. § 1983 is now sought, founded on the Petitioner discovering the wrongs committed by Florida State Agents and Actors acting under color of law in violation of 18 U.S.C. § 241, § 242, § 1505, § 1512; being violations of Due Process and the Equal Protection of the Law at every stage of his criminal case proceedings.
- 4) In order to preserve the § 1983 Claims within the Statute of Limitations, the Petitioner filed the Complaint on September 13, 2018 in the U.S. District Court, Southern District of Florida. Mr. Toth, to be in compliance with Federal Rules of Civil Procedure, Rule 3 (Item #4, 1937 Committee Notes), served the § 1983 Complaint upon all ten(10) Defendants, et al. (Appendix-V: Original Complaint Certificate of Service, pp 133-134).
- 5) Mr. Toth filed Summons for each Defendant in the U.S. District Court for certification, stamp, and service by the U.S. Marshals and or Mail service by Petitioner. (Appendix-H: Sample Summons, Motion

For Order to Serve Summons, Motion for Extension of Time to
File Summons, pp. 73-79) (Fed. R. Civ. P. Rule 4)

6) The Petitioner subsequently Motioned the Court for Discovery
(Federal Rules of Civil Procedure 26) for the Defendants, et al.
to give answer according to Federal Rules of Civil Procedure
Rule 12(a)(1)(A), and/or the Court to issue summary judgment
for the Plaintiff or Defendants, et al. (Federal Rules of Civil
Procedure Rule 56).

7) The U.S. District Court then promptly notified the Petitioner
to no longer serve the Defendants, et al. with a copy of any
subsequent filings until the Court gave the Petitioner
permission to do so.

8) The Petitioner was additionally denied appointment of
counsel, which was served on the Defendants, et al. (See:
Appelkir-R; Returned Motion for Appointment of Counsel served
on Investigator (Defendant) Matthews, pp. 119-123).

9) Mr. Torres Habeas Corpus that is currently before this Court
(Case No. 19-7043) identifies ten (10) "known" Defendants, et al.
of the State of Florida Judicial and Criminal Justice Systems.
Two or more of the Defendants, et al., have joined together
or in combination, one with another under color of law,
to deprive the Petitioner of his Constitutional and Civil
Rights, 18 U.S.C. §§ 241-242.

10) 42 U.S.C. § 1985 was construed as a deterrent to such acts
by both State and Federal Officials, whereas: "If two or
more persons in any State or Territory conspire, or go in
7

disguise on the highway or on the premises of another for the purpose of depriving, either directly or indirectly (emphasis added), any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; ... the party so injured or deprived may have an action for the recovery of damages, ~~caused~~ occasioned by such injury or deprivation, against any one or more of the conspirators."

11) 42 U.S.C. § 1986, additionally states: "Every person who having knowledge that any wrongs conspired to be done and mentioned in 42 U.S.C. § 1985 ... having power to prevent or aid in preventing the commission of the same ... shall be liable to the party all damages caused by such wrongful act... and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action." (See: Appendix-I; Habeas Corpus Certificate of Interested Persons and Corporate Disclosure Statement, pp. 80-84). (Emphasis added).

12) According to the American Declaration of the Rights and Duties of Man, Article XVII, every person has the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights. Article XVIII, every person may resort to the courts to ensure respect for his legal rights, whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental / constitutional rights.

- 13) Article - 9(s) of the International Covenant on Civil and Political Rights declares, that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. Article - 26, stating all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.
- 14) In support of preserving the sanctity of our Federal Constitution, Article - ~~XXVIII~~ of the American Declaration of the Rights and Duties of Man, states; "The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy."
- 15) The Petitioner's cause before this court and criminal case has revealed a startling and disconcerting anti-democracy and self-serving pro-socialistic trend within the Florida Judicial and Criminal Justice Systems that is contrary to our national governing principles.
- 16) Psychologist, B.F. Skinner, identified Florida's degenerate behavioral trend in 1953. The Florida Judicial and Criminal Justice Systems have acted negatively outside the limits of their integrity of professions under the theory of "Operant Conditioning." Operant Conditioning is based on the premise that behavior which is reinforced tends to be repeated, whereas behavior that is not reinforced tends to be eliminated. (Skinner, B.F., Science and Human Behavior (1953); Schneider, J.W., Conrad, P.; Deviance and Medicalization: From Badness to Sickness (1980)).

- 17) Wherefore, the U.S. District Court and the 11th Circuit Court of Appeals have regarded the Petitioner's multi-claims of the 42 U.S.C. § 1983 as a "Shotgun Pleading." It has been because of the above growing Florida Legal Community sub-standard behavioural trend by its Agents and Actors that has, in turn, created the overtaken State "Cash-Cow" of the Florida Department of Corrections.
- 18) Florida has forced the Federal Government into the recent intervention for the State having to institute the current Prison Reform Bills being deliberated in the Florida Legislature. The recent implanting of former federal employees Mark S. Tuck (Secretary, Dept. of Corrections) and Florida Governor Desantis, are tasked to restructure the corrupt and renounced State of Florida Legal System.
- 19) Federal Rules of Civil Procedure 8(a)(2), requires concise, but specific plausibility and purposefulness of injury, with redress in the U.S. District Court according to 28 U.S.C. § 1343. The claims within the Petitioner's 42 U.S.C. § 1983 Complaint can be divided as: (A) Acts by Police Officers; (B) Acts by CSI Technicians; (C) Acts by Fire Investigators; (D) Acts by State Prosecutors; (E) Acts by a State Circuit Court Judge; (F) Acts by a Defense Attorney; as perpetrated by each individually, or one in combination with another, under color of law 18 U.S.C. § 242, of their offices and authorities. This culminated in the Petitioner entering into a guilty plea unknowingly and unintelligently.
- 20) Once the Constitutional and Civil Rights violations were conceived by Palm Beach County, Florida, Sheriff Deputies,

every official involved with the case perpetuated the injury inflicted upon the Petitioner for not reporting the violations. No State or Federal Court or Judge, did anything to prevent the injurious acts of their predecessors, and ~~Fellow Law Colleagues~~, involved in the Petitioner's criminal case.

- 21) The unbridled lawlessness of the State of Florida has been at the expense of the compromised tenets and values of both State and Federal Constitutions, Human Civil Rights, and the lives and families of Florida inmates. State officials have preyed mercilessly upon the ignorance of U.S. Citizens to fully comprehend what their rights, entitlements, privileges, and immunities are under State and Federal Constitutions, Laws, and court procedures.
- 22) It is the blatant and intentional Deliberate Indifference to a U.S. Citizen's rights, with purposeful, intellectual formulation and corroboration by these Agents and Actors that brings the Petitioner before this Court.
- 23) As complex as the Petitioner's claims appear, Mr. Toth has attempted to present them in the 42 U.S.C. § 1983 Complaint according to Fed. R. Civ. P. 8(d)(e), 20(a)(2)(A)(B), and 42 U.S.C. § 1986, by showing the connectivity between the Defendants et al. through the chronological event progression of the criminal case.
- 24) The Petitioner, within the Motion For Rehearing in the 11th Circuit Court of Appeals, provided argument and citations to decisions of other Circuits that demonstrated the allowance of pleadings similar to the Petitioner's exercising the

latitude and language of Fed. R. Civ. P. 8(d)(e) and 10(b).

- 25) See: Alderman v. American Standard Corp., 538 F. Supp. 572 (D. Md. 1982); Cum v. Lumbermans Mut. Casualty Co., 26 F. Supp. 715 (D. D. C. 1939); McFarlane v. Grosse, 696 F. 2d 217 (2d Cir. 1982); Myers v. United States, 636 F. 2d 166 (6th Cir. 1981); Ortega v. Brock, 501 F. Supp. 2d 1337 (M.D. Ala. 2007); Walter Reade's Theatres, Inc. v. Loews, Inc., 20 F.R.D. 579, 1957 Trader Cas. (CCH) P68776 (D. N.Y. 1975).
- 26) "A district court must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed." Associated Gen. Contractors of Cal., Inc. v. Carpenters, 459 U.S. 519, 528, n.17, 103 S.Ct. 897, 74 L.Ed. 2d 723 (1983).
- 27) The Petitioner's focus is not only on the fact of proving how his criminal case must be reversed, that is before this Court currently in case no. 19-7043. The Petitioner is targeting the Due Process and Equal Protection of the Law violations according to Zimmerman v. Borch, 494 U.S. 113, 110 S.Ct. 975, 108 L.Ed. 2d 100 (1990). The two (2) lower federal court denials are based upon the Heck v. Humphrey, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed. 2d 383 (1994) analysis, and fails to acknowledge the Petitioner's rights to address Procedural Due Process claims in a 42 U.S.C. § 1983 Complaint. (Zimmerman v. Borch, 494 U.S. 113 at 124-127).
- 28) In the Petitioner shifting attention to the Due Process and Equal Protection of the Law litigation regarding the criminal case, the resulting affect and legal stance, directs the court to focus onto further argument and claims regarding the Petitioner's entitlement of addressing

Injury to the Fourth Amendment Search and Seizure Claim. (Article-9(i); International Covenant on Civil and Political Rights).

- 29) In Harvey v. Prosser, 462 U.S. 306, 319-323, 103 S. Ct. 368, 76 L. Ed. 2d 595 (1983), not only can a Fourth Amendment violation be addressed in a §1983 complaint if the Petitioner never litigated the claim in the trial court upon accepting a plea, a conviction cannot stand if a Fourth Amendment injury violation is cognizable on the premise that factual guilt is not validly established. (Harvey v. Prosser, 462 U.S. 306 at 321).
- 30) To further establish the assessment parameters this Court utilizes to determine if the actions of State Agents and Actors were in fact injurious, we reference the "Bright-Line-Rule" found in Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L. Ed. 2d 396 (1982). It is the "Test" by which the Court determines an official's "deliberate disregard for the clearly established law."
- 31) Additional reference is taken from Wood v. Strickland, 420 U.S. 308, 322, 95 S. Ct. 992, 43 L. Ed. 2d 214 (1975). Here, the Court has established the "objective" (presumptive knowledge of basic constitutional rights), and "subjective" (permissible intentions) elements on the determination of whether Qualified Immunity applies to an official's actions.
- 32) The foundational rulings of Bell Atlantic v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007), and Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2008), define the Court's stringent guidelines for establishing plausibility,

purposefulness, conspiracy, liability, and loss of immunity through an official demonstrating Deliberate Indifference to a U.S. Citizen's Civil and Constitutional Rights.

- 32) Individual assessments of each Defendant, et al. Agent and/or Deton is required to determine if they performed their official duties discriminately through personal choice or corroborated protocol and procedure of their respective Agencies, Departments, and/or Offices involved, will become apparent.
- 33) The Petitioner within this Petition For Writ of Certiorari will attempt to reveal the specificity and plausibility merits that the lower federal courts refrained from addressing.
- 34) Mr. Toth implores of this Court it's indulgence, as notably documented in Bumper v. North Carolina, 391 U.S. 543, 550, n. #16, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968), by Justice Stewart: "... But it is not the function of this Court to determine innocence or guilt, much less apply our own subjective notions of justice. Our duty is to uphold the Constitution of the United States..."

Part-A: Acts By Police Officers

- 35) In order to allege conspiracy under 42 U.S.C. § 1985, the Petitioner must demonstrate through factual proof, that the Defendants, et al. had indeed established, and acted, in agreement, and not act independently or under the supervision of an Agency or Office (i.e., Palm Beach County, Florida, Sheriff's Office Procedure and Protocol).

- 36) Petitioner relies on the legal principles related to Fourth Amendment illegal search and seizure within Brown v. Illinois, 422 U.S. 590, 603-605, 95 S.Ct. 2254, 45 L. Ed. 2d 416 (1975); Spivey v. United States, 393 U.S. 410, 412-419, 99 S.Ct. 584, 21 L. Ed. 2d 637 (1969); and, Beck v. Ohio, 379 U.S. 89, 91-97, 109-112, 85 S.Ct. 223 (1964); to establish Palm Beach County, Florida, Sheriff's Deputies, acted with intentional and purposeful disregard for clearly established laws, and a U.S. Citizen's Constitutional and Civil Rights.
- 37) See also: U.S. Supreme Court Case No.: 19-7043; 11th Circuit Case No.: 18-11087-DD; and, U.S. District Court Case No.: 9:18-cv-80067-WPD.
- 38) Sheriff Deputies, and Defendants, Cunningham, Turpin, Johnson, Matthews, and at least four (4) additional unidentified deputies, circumvent legal Due Process of a Search or Arrest Warrant; conspiring and corroborating with deliberate intent, to cause injury, by illegally seizing/detaining the Petitioner on October 18, 2012 at 3:00 a.m. (0300 Hours). Deputies were led to believe Mr. Torn had committed a crime by a Hearsay Declarant who was not an eye-witness to the crime. (See: Appendix-K; Officer Turpin's Report; pp. 89-91).
- 39) It is obvious that an objective Magistrate refused to issue a warrant for either Search or Arrest, without proof of Probable Cause.
- 40) Sheriff Deputies were aware, and advised, that they could not seize/detain the Petitioner without "good faith", without exigent circumstances, or without the reliable, sworn,

and provable information from the Hearsay Declarant.

- 41) To further solidify Petitioner's claim, Defendant Cunningham purposefully manipulated the case chronological events within his police report to mislead the reader that he spoke to the victim prior to seizing/detaining the Petitioner. Defendant Cunningham did this to justify and cover-up the multi-officer corroborated unconstitutional and unsanctioned Sheriff Deputies' actions.
- 42) The victim (Peggy Fowler), admits in her deposition, that Police spoke to her cousin (Mary Freery) who was Ms. Fowler's emergency contact. (Appendix-L; Ms. Fowler's Deposition, p. 93, lines 18-25)
- 43) Ms. Fowler never spoke to Police prior to the Sheriff Deputies illegally seizing Mr. Toth. Defendant Cunningham spoke to the victim, Ms. Fowler, after he returned back to work later that same day. (Appendix-J; Cunningham's Report, p. 87, line 16, - 1745 Hours (5:45pm)). The illegal seizure of Mr. Toth by the Defendant Deputies, was conducted fourteen hours (14) earlier in the same day at 3 a.m. (0300 Hours).
- 44) What is even more compelling, is why the Deputies, and the Prosecutor, intentionally and purposefully, conceal the identity of the critical Hearsay Declarant (Witness). This key witness is not on the State's Witness List, but is revealed inadvertently by the victim (Ms. Fowler) in her deposition. (See: Appendix-M; State Witness List, p. 95).
- 45) See also: Part-D; Acts By Prosecutors. The Prosecutor

Makes an agreement with Defendant Defense Attorney, Kelly V. Landers, Esq., to fax the Police Reports that reveal the unconstitutional acts by Police and prejudicial hearsay reference, the day after the victim's deposition (Ms. Facker). See; Part F, this Petition; Acts By Defense Attorney.

46) Preliminary indication of a connective conspiracy and corroboration between Sheriff Deputies, Prosecutor, and Defense Attorney, now becomes evident.

47) It is the intentional and perpetrated knowledge and awareness of the Sheriff Fourth Amendment violation and the purposeful concealment of a prejudicial witness (Hearsay Declarant); for the sole purpose of unconstitutionally manipulating the Petitioner to accept a guilty plea both unknowingly and unintelligently.

48) Further injury is inflicted by Defendant Sheriff Deputies when they additionally coerce an un-Mirandized self-incriminating statement from Mr. Toth. The Deputies, then, promptly proceed to obtain an unlawful and coached confession that indicates a repetition of the previous dialogue Mr. Toth had with the Deputies when they arrived at his home. See: Case No. 9:18-cv-80067-WPB; Appendix-A: Exhibit E; Toth Confession Transcripts.

49) The transcripts reveal the actual time Miranda Warnings were given, making the Attenuation doctrine unapplicable. The Petitioner's confession is a by-product of a Fifth Amendment violation by Defendant Deputies, as there was no significant lapse in time between police arrival at 3:11 hours

(3:11a.m.) (Appendix-K: Deputy Turpin's Report, pp 89-91), and the actual recorded confession at 3:29 a.m. (0329 Hours) in the Confession Transcripts with Miranda Warnings.

50) The Defendant Deputies present the unlawfully obtained confession to a Prosecutor and Magistrate for the issuance of an Arrest Warrant based on Probable Cause. Obviously, both Prosecutor and Magistrate were not concerned of how the Deputies obtained the Probable Cause.

51) During pre-trial proceedings Defendant Deputy Johnson failed to appear for deposition. Defendant Johnson, the primary interrogating officer noted in the Confession transcripts, refuses two (2) times to appear for scheduled depositions despite being notified by the Defense. See: Appendix-U, Notification of Sgt. Johnson Deposition, p. 132)

52) These injurious acts by Sheriff's Deputies, both individually and in combination, one with another, are clear and intentionally conspired injury violations of:

- Amendments to the U.S. Constitution; 4, 5, 6, and 14;
- Florida Constitution; Article I, §§ 9, 12, and 16;
- Florida Rules of Criminal Procedure 3.220 (W)(5); Depositions of Law Enforcement Officers;
- Florida Statutes; § 838.022 (Misconduct); § 839.13 (Falsifying Documents); § 918.13(1) (Tampering with or Fabricating Physical Evidence); and,
- 18 U.S.C. §§ 242, 2505, and 1572.

(See: Appendix-F; Constitutional Provisions, Statutes, and Treaties, pp. 48-70).

Part B: Acts By CSI Technicians (Appendix-N, pp. 96-100)

- 53) We move on to observe the commonplace actions in violation of 42 U.S.C. § 1985 within the Palm Beach County, Florida, Agencies. Specifically in this section, the Palm Beach County Sheriff's Office - CSI Unit (PBSO-CSI)
- 54) Defendant Matthews is once again present in this, the forensic investigative aspect of the Petitioner's criminal case. It becomes evident that Defendant Matthews does not solely possess the B.F. Skinner Behavioral Theory of "Operant Conditioning." Here, we take notice of Defendant(s) CSI Technician(s) Bain and Oetinger.
- 55) First, though, on page 97, the Petitioner's Public Records Request (dated June 2015) states that the CSI Report, or attached documentation records, were never placed in the Court, Defense Attorney, or Prosecutors case files, or reciprocated as Discovery. (See: Appendix-P, 15th Judicial Circuit Court Docket History Report, pp. 106-116). The U.S. District Court stated this does not constitute a Brady Violation.
- 56) Within the CSI Report (pp. 99-100) there appears a defined Chain of Command and Chain of Custody regarding the collecting, documenting, testing and storage of crime scene evidence. This denotes communication, agreement, and corroboration between Defendants Matthews, Bain and Oetinger.
- 57) On page 100, line 10, indicates the testing and report to have been completed within 24 hours of the crime. There

is no plausible excuse for the CSI Report to not be placed in the hands of the defense for two and one-half (2½) years.

58) In the CSI Report, p. 99, line 17, Defendant Mary Bain states that Deputy Oettinger is acting under Bain's supervision. On page 100, lines 17-18, Defendant Bain states that she and Oettinger are subject to the supervision, and in agreement to, a direct verbal order from Defendant Matthews. Defendant Bain signs her name to the CSI Report (Rules of Evidence §90.902(2); Self-Authenticating Evidence), sealing the corroboration between the three Defendants.

59) The next obvious indication of evidence tampering is revealed in the CSI Evidence Custodian's Response letter on page 98. Considering the number of specific items collected and tested from the crime scene (p. 100, lines 10-17), there is not even a list of items that were to be held in storage until the Petitioner exhausted the post-conviction appeal process. (Florida Statutes §119.07(1)(a); "All public records should be kept in the building in which they are ordinarily used.")

60) Even if the Records Custodian of the physical and forensic evidence no longer had possession of the evidence, the Custodian has the duty to inform the Petitioner where the evidence is located in response to the Petitioner's Request (p. 98). (Florida Statute §119.07(1)(c) "...good faith response... whether such record exists, and, if so, the location at which the record can be accessed."). Because of the CSI Report being fraudulently concealed, the Petitioner filed motions for Due Process costs of an Investigator, and was denied.

61) Under Florida's Evidence Code, Florida Statute § 90.501; Privileges Recognized Only As Provided; "Except as otherwise provided in this chapter, any other statute, or the Constitution of the United States or of the State of Florida, no person in a legal proceeding has a privilege to: (3) Refuse to produce any object or writing; and, (4) Prevent another from being a witness, from disclosing any matter, or from producing any object or writing." (Emphasis added)

62) Florida Statute § 119.021: Custodial Requirements; Maintenance, Preservation and Retention of Public Records; (b) Each agency shall comply with the rules establishing retention schedules and disposal processes for public records which are adopted by the records and information management program of the division.

63) According to Florida's Public Records Law AGO 1994-75, 1994 Fla. AG, LEXIS 95, and Florida Statute § 257.36; Records and Information Management; the Division of Library and Information Services of the Department of State, shall; (1)(e) Establish safeguards against unauthorized or unlawful removal or loss of records; and, (1)(k) Establish and maintain a program in cooperation with each agency for the selection and preservation of records considered essential to the operation of government and to the protection of the rights and privileges of citizens. (Emphasis added)

64) Additional ~~PBSO~~-CSI discrepancies and evidence spoliation include: CSI Technicians not testing a red gas can found at the crime scene (p. 100, lines 17-18; i.e. arson case); Petitioner's clothing that was confiscated by Deputies are not processed

(Appendix-K; Deputy Turpin's Report, p. 90, lines 18-19); the blue lighter (p. 100, line 14) is not the green lighter the Petitioner stated having in the confession transcripts (Case No. 9:18-cv-80067-WPB; Habeas Corpus; Appendix-A; Exhibit-E; Total Confession Transcripts); two (2) of the Evidence Packets of tested evidence and placed in storage are missing (p. 100, lines 16-17); and, a list of the compilation of collected physical and forensic evidence obtained by Sheriff's Deputies, is missing, including all the physical evidence listed in the CST Report (p. 100, lines 10-17) (Emphasis added).

65) Appendix-Q; Response From Florida Department of Law Enforcement, Regarding Case Evidence; indicates that no evidence was sent to them for testing and on storage. Appendix-R; Returned Notice of Plaintiff's Motion For Appointment of Counsel to defendant Matthews, ~~indicates~~ pp. 119-123, indicates that Defendant Matthews is no longer employed by PBSO, possibly due to additional misconduct.

66) The violations under 42 U.S.C. § 1985 and § 1986 by Defendants Matthews, Bain and Oetinger include:

- Amendments to the United States Constitution; 6 and 14;
- Florida Constitution: Article-I; §§ 9, 16(a);
- 18 U.S.C. §§ 242, 1505, 1512(c);
- Florida Statutes: § 838.022; § 839.13(1); § 918.13(1).

(See: Appendix-F; Constitutional Provisions, Statutes, and Treaties, pp. 48-70)

Part-C: Acts of A Fire Investigator (Appendix-O, pp. 101-105)

- 67) In this section, we continue to see the corroding threads of 42 U.S.C. § 1985 and § 1986, amongst Palm Beach County, Florida, Agencies and Officials.
- 68) The Agents of Palm Beach County Fire Rescue (PBCFR), violate clearly established law, Agency Procedure, Protocol and Rules of Discovery, by intentionally breaching the Constitutional and Civil Right and privileges of the Petitioner; Fraudulently concealing the Florida Fire Marshal Report (Appendix-O, pp. 101-105).
- 69) Once again, we see the emergence of Defendant Matthews and his interaction with, yet, another State Agency, and the PBCFR's lack of professional integrity. The Petitioner, not trusting the Sheriff Office to provide records, contacted the State Fire Marshal at the same time as PBSO-CSI (custodian. (Note the date that the Fire Marshal responded: Appendix-O, p. 102).
- 70) T. Fucci, having received the Fire Marshal Report (Appendix-O, p. 105), acts independently, -or- by PBCFR Procedure and Protocol, -or- by influence of Defendant Matthews, -or- under the direction of Assistant State Attorney, Defendant Athawiste; to withhold the exculpatory information from the Court and defense. T. Fucci's actions will incorporate the collaboration of at least one other person.
- 71) Florida Evidence Code, Florida Statute § 90.501; Privileges Only As Provided; expounds in part, "no person in a legal proceeding has a privilege to: (2) Refuse to disclose any matter; (3) Refuse to produce any object or writing; and, (4) Prevent another from being a witness, from disclosing any matter, or from

producing any object or writing." (Emphasis added)

- 72) Note, that in the Fire Marshal Report (pp. 102-103) that there is a clear chain of command as to officials following the provisions of the Florida Public Records Law. Florida Statute § 257.36(1)(K), "...records considered essential..." to the protection of the rights and privileges of citizens."
- 73) It is also at this point that we observe that one (1) of the evidence packets that Defendant Matthews designated purposely for testing (Appendix-N, PBSO-CSI Report, p. 100, lines 16-17) does not match the packets tested in the Fire Marshal Report (Appendix O, p. 103).
- 74) The Fire Marshal Report with the exculpatory evidence, never appears in the Carr, Prosecutor, or Defense Attorney files, (Appendix-P: 15th Judicial Circuit Court Docket History Report, pp. 106-116).
- 75) Florida Statute § 19.07, Inspection and Copying of Records; (1)(i), "Absence of a civil action does not... exonerate the custodian of public records from any unauthorized or unlawful disposition of such records."
- 76) As such, in referencing the Petitioner's Records Request regarding the five forensics (Appendix-N: PBSO-CSI Report, p. 97) we observe a clear intent by Palm Beach County, Florida, State Agencies of the PBSO-CSI and PBCFR to intentionally conceal exculpatory evidence under 42 U.S.C. § 1985, with fellow State Agent corroboration under 42 U.S.C. § 1986.
- 77) These claims against Fire Investigators are violations of:
- Amendments to the United States Constitution, 6 and 14;

- Florida Constitution; Article-I, §§ 9, 16(a);
- Florida Statutes; §§ 838.022, 839.13(1), 918.13(1);
- 18 U.S.C. §§ 242, 1505, 1512(c).

(See: Appendix-K; Constitutional Provisions, Statutes and Treaties)

Part - D: Acts By Prosecutors

- 78) Article-I, § 2; Basic Rights, of the Florida Constitution, states in part, "All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty..." (Emphasis added)
- 79) Article ~~XVII~~ of the American Declaration of the Rights and Duties of Man, states that everyone has the right to due process of law.
- 80) Whereas, Defendants Antonacci and Athouriste of the State Attorney's Office prosecuting the Petitioner's case, join in combination, under color of law, to deprive the rights and entitlements of the Petitioner,
- 81) Defendant Antonacci, in giving initial legal advisement to the Sheriff's Deputies (Part-A of this Petition) was to remain impartial in seeking a search and an arrest warrant on the basis of a lawful way. Coolidge v. New Hampshire, 403 U.S. 443, 450-451, 91 S.Ct. 2022 (1971).
- 82) When police later returned with an unlawfully obtained confession, contrary to the Attenuation Doctrine, Defendant Antonacci still had the duty to investigate the methods Deputies employed to procure the evidence.

- 83) Florida Rules of Professional Conduct; 4-3.8, Special Duties of the Prosecutor, the prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause. (Emphasis added).
- 84) "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure." Boyd v. United States, 116 U.S. 616, 635, 6 S.Ct. 524, 535, 29 L.Ed 746 (1921).
- 85) This was perpetuated by Defendant Athanastis, who prosecuted the Petitioner's case when Defendant Antonacci left the State Attorney's Office. Here, we see both 42 U.S.C. § 1986 and Boyd, supra, as Athanastis had an opportunity to weigh the costs to personal and professional career integrity. Defendant Athanastis chose to violate the Petitioner's Constitutional and Civil Rights.
- 86) During the Petitioner's search for evidence during post-conviction relief proceedings, Mr. Toth discovered the CSI and Fire Marshal Reports that should have been made available through the State Attorney's Office. These reports, discovered in 2015, were available in December of 2012, eleven (11) months prior to Petitioner unknowingly and unintelligently entering a guilty plea. Imbler v. Pachtman, 424 U.S. 409, 441, 96 S.Ct. 984, 48 L.Ed. 2d 128 (1976) (Unconstitutional suppression of evidence).
- 87) The Petitioner also learned at that time that Defendant Defense Attorney, Kelly V. Landers, Esq., received Police Officer and Fire Department Reports (not Fire Marshal or CSI Reports), the day after four (4) key depositions were conducted, including

the victim. (Compare: Appendix-S; Notification of Depositions, pp. 124-128; to, Appendix-T; Fax Coversheet of Police Reports, pp. 129-130).

- 88) Defendants Attorneys and Defense Attorney Landers agreed on the date of depositions and transmission of Police Reports. Not only did there have to be knowledge of the discrepancy of Defendant Deputy Cunningham not speaking to the victim before ~~illegally~~ seizing the Petitioner, there had to be knowledge that the Hearsay Declarant was the victim's cousin, Mary Fieny, who was an emergency contact for Ms. Fowler (victim).
- 89) The strategic formulation of the police reports and concealed identity of the Hearsay Declarant was to use Florida Rules of Criminal Procedure 3.220(4)(i) as an excuse if Mr. Toth discovered the concealed matters.
- 90) Fla. R. Crim. P. 3.220(4)(i) does not allow persons to be deposed twice, unless agreed upon by the parties or for good cause. Both Defendants Attorneys and Landers relied on the Petitioner's ignorance of law to manipulate Mr. Toth's conviction.
- 91) The purposefulness ~~to~~ withhold these reports also violates Fla. R. Crim. P. 3.220(i) and (j), where investigations are not to be impeded and reciprocal discovery to be continuous. The reports, when viewing the dates of print-out, were prepared months prior to their being reciprocated to the defense.
- 92) Rules of Professional Conduct 4-3.8; Special Duties of the Prosecutor, the prosecutor in a criminal case shall:

(c) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, discloses to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor. Tubler v. Pachman, 429 U.S. at 427, *supra*; ABA Standard for Criminal Justice, Prosecution and Defense Function, 3-3.11(c) (3d ed. 1993)

93) The Petitioner has, therefore, attempted to demonstrate to this Court, that both Defendant Prosecutors, Antonacci and Athouriste, acted intentionally with pre-conceived purpose under color of law 18 U.S.C. §242, §1505, §1512; to conspire with others, both known and unknown, under Titles 42 U.S.C. §1985 and §1986, with Deliberate Indifference and plausibility, to deprive the Petitioner, John A. Toth, of his Civil and Constitutional Due Process and Equal Protection of the Law Rights under Amendments to the United States Constitution, 6 and 14. Tubler v. Pachman, 424 U.S. at 427-429, *supra* (Civil Liability is the only way to insure that prosecutors are mindful of the constitutional rights of persons accused of crime).

94) Additional violations include:

- Florida Constitution: Article-I; §§ 9, 16;
- Florida Statutes: §§ 838.022; 839.13(1); 918.13(1)(d)(b)

(see: Appendix-F; Constitutional Provisions, Statutes and Treaties).

Part-E: Acts of a Presiding Judge

- 95) The Universal Declaration of Human Rights, Article -11(1), states that, Mr. Toth, the Petitioner, was to be presumed innocent until proven guilty in a public trial at which he has had all guarantees necessary for his defense (Emphasis added). Article-7, emphasizes that everyone is entitled to equal protection of the law.
- 96) In the Petitioner addressing Defendant, and Circuit Court Judge, Stephen Rapp, Zimmerman v. Burch, 494 U.S. 113 at 124-126, *supra*, states, what is unconstitutional is the deprivation of such rights, interests and entitlements of a U.S. Citizen, such as Mr. Toth, without due process of law.
- 97) Considering the Qualified Immunity Defendant Rapp enjoys related to his office and "Judicial Acts" (Stump v. Sparkman, 435 U.S. 349, 365-370, 98 S.Ct. 2862, 56 L.Ed. 2d 795 (1978)), it is very hard to believe that a Judge of Defendant Rapp's caliber, to ~~staple~~ and essentially "rubber stamp" the Petitioner's case, and not be aware of what facts transpired for the case to arrive before him, to receive his objective judgment on the pronouncement of a guilty plea based upon a plea bargain. This, especially after what the Assistant Attorney General (AAG) Paul Patti III, revealed in his response ~~to the~~ Petitioner's 11th Circuit Court of Appeals Habeas Corpus Brief (See: Appendix-G; pp. 71-72, States' Response, lines 10-12).
- 98) Rules of Judicial Conduct, Canon 3B(5) and (7), are specific in that it is within the judge's duties to protect the accused's constitutional and civil rights and the right to appeal constitutional violations, (Pierson v. Ray, 386 U.S. 547, 566-567, 87 S.Ct. 1213, 18 L.Ed. 2d 288 (1967)), and to report the misconduct

of lawyers, per Canon 3D(2).

- 99) Let us also keep in mind that Defendant Kapp, while he is conducting Court, has staff attorneys reviewing and making recommendations regarding the bulk of the Judge's caseload. Though the judge makes the final decision in any case and as to how he, his courtroom, and those who appear before him, conduct themselves, the judge shall not rely on his staff to totally dictate his decisions and awareness of cases. (Wood v. Strickland, 420 U.S. 308, 321-323, 43 L. Ed. 2d 214, 224-226, 95 S.Ct. 992 (1975); Robertson v. Sichel, 127 U.S. 507, 515-516, 8 S.Ct. 1286, 32 L. Ed. 203 (1888)).
- 100) Defendant Kapp's ignorance of the constitutional violations in the Petitioner's case would imply the judge being either a co-conspirator, or disabled to conduct his office. Fuller, The Morality of Law 84 (1964), makes clear that the difference between Defendant Kapp's "Legislating" and "Interpreting" of clearly established law require that knowledge of the facts, despite the Petitioner having been led to plead guilty, should not diminish the facts of a deprived constitutional or civil right.
- 101) See also, Mitchell v. Forsyth, 472 U.S. 511, 105 S.Ct. 2806, 86 L. Ed. 2d 411 (1985), as to determine what laws and case facts were clearly established in relation to the Defendant Judge's knowledge of the Petitioner's case. (see: Appendix - G: State's Response to Habeas Corpus, pp. 71-72, lines 10-12)
- 102) Therefore, as in Pierson v. Ray, 386 U.S. 547 at 559-561, supra, "Every person" within the interpreting of 42 U.S.C. § 1983,

§1985, and §1986, means just that. This includes its application to Defendant, and Judge, Rapp, who had to be cognizant of the unlawful official conduct (i.e., Sheriffs, Prosecutors), and on that of his staff. Otherwise, the Defendant Judge would have been disabled from holding the office of a Florida Circuit Court Judge. (Emphasis added)

103) The Defendant Judge's moving forward with the plea colloquy, waiver of Petitioner's rights, and pronouncement of guilty plea, was no less than inflicting cruel and unusual punishment upon the Petitioner. In the Petitioner's case, this incorporated and made inclusive, the total rights violations of the case under the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution. (See also; Florida Constitution; Article I; § 9, § 12, § 16(a), § 17).

104) "Thus, a judge who sustains a conviction on what he forthrightly considers adequate evidence should not be subjected to liability when an appellate court decides that the evidence was not adequate. Nor should a judge who allows a conviction under what is later held an unconstitutional statute. But it is far different from saying that a judge will be immune from the consequences of any of his judicial actions and that he shall not be liable for the knowing and intentional deprivation of a person's civil rights." Pierson v. Ray, 386 U.S. 547, at 566, supra.

105) Additionally, Rules of Judicial Conduct, Canon 3B(2), states in part that a judge has the duty to report an attorney's misconduct. According to the State Attorney General's Response (Appendix-6, pp 71-72), five years after Petitioner's conviction, Defendant Rapp has no excuse for not knowing of the violations of rights

In the Petitioner's case. As the Petitioner stated in the original 42 U.S.C. § 1983 Complaint, liability rests upon "all those known and unknown, and whom shall become known as a result of these proceedings", includes: Defendant Kapp, his staff, and other Agents and Actors of the 15th Judicial Circuit Court, State Attorney's Office, Palm Beach County Sheriff's, and Palm Beach County Fire Rescue.

Part - F: Acts By Defense Attorney

- 106) The International Covenant on Civil and Political Rights, Article-14(3) provides all persons, (b) to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
- 107) Article-11(1), of the Universal Declaration on Human Rights, states, everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has had all the guarantees necessary for his defense.
- 108) The U.S. District Court Magistrate, P.A. White, in the Report and Recommendation (Case No. 9:18-cv-81260-WPB; DOC#36, pp 16-17) proclaims that an attorney can be held civilly liable; if the Petitioner can demonstrate that the attorney had an agreement with the State Attorney/Agent/Actor to violate the Petitioner's Due Process and Equal Protections of the Law Rights.
- 109) Article-14(3)(e) of the International Covenant on Civil and Political Rights, states in part, that the Petitioner has the right to examine, or have examined, witnesses against him

and to obtain the attendance and examination of witnesses on his behalf.

- 110) Defendants, Defense Attorney Landers and Prosecutor Athaveste, agree ahead of time as to their notification of "who" and "what" witnesses to depose, and the date on which they will co-conduct the interviews. (see: Appendix-S; Notification of Depositions to be Taken, pp. 124-128).
- 111) The Petitioner begs this Court's indulgence to note the date(s) that the Police Reports were printed by Defendant Matthews. (Appendix-J; Cunningham's Report, pp. 85-88); (Appendix-K; Deputy Turpin's Report, pp. 92-93);
- 112) Also, note the return date on the Fire Marshal Report Shipping Label, p. 105 (Appendix-O, pp. 101-105); and, the date-stamp on the PBSO-CST Report does not match the dialogue of Defendant Bain in the Sheriff Deputy's Report (Appendix-N, pp. 96-100).
- 113) These reports, and exculpatory evidence were available SIX(6) months prior to the scheduling and conducting of depositions.
- 114) Defendant Landers, allegedly being one of the top Defense Attorneys in Palm Beach County, Florida, reveals three possible scenarios; (A) Defendant Landers viewed the reports ahead of time; (B) Defendant Prosecutor Athaveste exercises her prowess as a prosecutor and demonstrates that Defendant Landers is inept as a Defense Attorney by faxing the reports the day after the depositions are conducted; or, (C) both Defendants Landers and Athaveste know that, according to Fla. R. Crim. P. 3.220(b)(1), Discovery/Depositions, that a second,

repeat, subsequent depositions on the same individuals/witnesses, unless for good cause or upon agreement by the parties; they can conceal their and Sheriff's improprieties.

- 115) The Defendants, knowing the Petitioner would not be aware of this fact of Discovery Rules, were given a realistic excuse if the Petitioner discovered their trickery to corral Mr. Toth toward entering a plea unknowingly and unintelligently.
- 116) According to Williams v. Taylor, 529 U.S. 362, 404-406, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000), Defendant Landers' involvement in the Petitioner's case, which is contrary to clearly established law, comprises of an agreement made with Defendant Prosecutor Athouriste; under 42 U.S.C. § 1985 and 18 U.S.C. §§ 242, 1505, and 1512.
- 117) Subsequently, this includes 42 U.S.C. § 1986, for knowingly participating to violate his clients civil and constitutional rights; refusing to prevent wrong-doings, according to the ABA and Florida Bar Rules of Professional Conduct 4-8.3 (Reporting misconduct); 4-8.4 (misconduct); and Rules of Conduct 3-4.1, 3-4.2, and 3-4.7.
- 118) Further corroboration between Defendants Landers and Athouriste in concealing exculpatory evidence, is revealed. Defendant Johnson, the primary interrogating officer at the Petitioner's illegal seizure, fails to appear two (2) times for scheduled depositions (Appendix-U: Notification of Sgt. Johnson Deposition, pp. 131-132).
- 119) Defendant Landers' lack of diligence to pursue this key witness reeks of corroboration, and agreement, with

the Defendant State Attorney, Attorney. It also reinforces the Petitioner's claims of ineffective assistance of counsel, as well as Due Process and Equal Protection of the Law violations under the Amendments to the U.S. Constitution, 6 and 14.

120) First, Florida Rules of Criminal Procedure 3.220, Discovery, and (4)(5) Depositions of Law Enforcement Officers, states that an officer does not have to be subpoenaed to be deposed, and can be held in contempt of court for refusing.

121) Florida Statutes §90.501; Privileges Recognized Only As Provided; "no person in a legal proceeding has a privilege to: (1) Refuse to be a witness; and (2) Refuse to disclose any matter; and (4) Prevent another from being a witness, from disclosing any matter, or from producing any object or writing.

122) Sgt. Johnson, the only Sheriff Deputy Defendant Landers chooses to depose, knows the identity of the Hearsay Declarant (Mary Friery, victim's cousin). Defendant Johnson also corroborated under 18 U.S.C. §§241-242 with Defendants Cunningham, Turpin and Matthews to act under 42 U.S.C. §1985, to seize the Petitioner.

123) Note: At the time of Defendant Johnson's scheduled deposition, Defendant Landers has had possession of the Police Reports and knows the truths of, and the direction (plea deal), that he has agreed to steer the Petitioner's case toward with the State.

124) Therefore, the Petitioner believes to have adequately demonstrated that his Defense Counsel, Defendant Landers, with plausible intent and purpose, acted under 42 U.S.C. §1985 and §1986, to deprive his clients rights to Due Process and Equal Protections of the Law.

REASONS FOR GRANTING THE PETITION

Petitioner has been unable to enforce any rights granted to him by the Constitution in any State or Federal Court. Every Agent and or Actor at every stage of the Petitioner's criminal proceedings have violated his Due Process and Equal Protections of the Law, although the Supremacy Clause, Article VI, §2, of the Federal Constitution makes enforceable the Constitution, Laws and Treaties made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

The Petitioner brings Complaint upon the Defendants, et al., where the abuses of Due Process, Equal Protection of the Law, office, profession, and discretion by Agents and Actors of such a state as Florida, where the specific titles, rights, and privileges set up or claimed under the constitution, statutes, or treaties under the Authority of the United States are trampled by those acting under color of law.

This growing trend, as dictated by B.F. Skinner's "Operant Conditioning", breeds the lawlessness and blatant abuse of authority by governing officials across the country. The complexities and intellectual forethought of these acts can no longer be contained within the confines of Federal Rules of Civil Procedure 8(a)(2), with "a short and plain statement of the claim showing that the pleader is entitled to relief."

The State of Florida Judicial and Criminal Justice Systems are rampant with the unbridled abuse of authority. Its notoriety has only become visible by the Federal Government recently forcing Prison Reform upon the State of Florida by implanting former Federal Employees as State Governor and Secretary of Department of Corrections. "[M]isuse of power,

possessed by virtue of State Law and made possible only because the wrongdoer is clothed with the authority of State law."

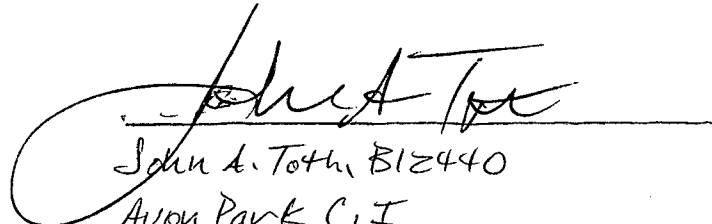
United States v. Classic, 313 U.S. 299, 326, 61 S.Ct. 1031, 85 L. Ed 1368 (1961)

The Petitioner does not deny State Agents and Actors from enjoying Absolute or Qualified Immunity in the officiating of their duties. When, though, the common corroding threads of plausible facts indicate evidence of conspiracy and that abuse of discretion exists that corrupts the fundamental and foundational premises of our justice system, Absolute and Qualified Immunity become a free pass for authorities to act without Respect, Honesty and benevolence to our Constitutional Principles and Integrity.

When the Defendants, et al., civilly and constitutionally deprived the Petitioner according to 42 U.S.C. § 1985 of his liberty interests as secured to him by the Constitution, laws and or treaties of the United States, specifically, (a) the right to be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights; (b) wherein every person may resort to the courts to ensure respect for his legal rights, whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights; (c) that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation; and (d) all persons are equal before the law and are entitled without any discrimination to the equal protections of the law; they essentially made moot and of no effect the United States Constitution, Laws and or Treaties under its Authority.

CONCLUSION

Therefore, Petitioner, John A. Toth, looks now to this United States Supreme Court for the issuance of such a Writ of Certiorari in this case, bringing to bear the full import of the Federal Constitution to rest upon the State of Florida and on its Agents and Actors, providing that relief warranted and any other relief required by law, or which the Court finds appropriate, on this 11th day of February, 2020,



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