19-7849

ORIGINAL

No._____

IN THE
SUPREME COURT OF THE UNITED STATES

SIVA BLACK, Petitioner,	)	
v.	)	Petition for Certiorari
EDWARD DOLAN, Respondent.	)	

WRIT OF CERTIORARI

TO THE FIRST CIRCUIT COURT,
COURT OF APPEALS DENYING HABEAS CORPUS

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QUESTION PRESENTED

What is Arbitrary power—*restricted by the Fourteenth Amendment Due process clause*—if it isn't the state's unestablished parens patriae power, used to claim abstract exigencies warrant perpetual pretrial custody; which then is sheltered by AEDPA.

LIST OF PARTIES

The prisoner: Siva Black, pro se

State-respondent: Commissioner of Probation Department, Massachusetts: Edward Dolan

Represented by Attorney General, Maura T. Healy

Assistant Attorney General, Maria Granik (BBO No. 688422)

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Siva Black v. Edward Dolan

DISTRICT COURT: Civil Action No.1:18-10135-WGY
COURT OF APPEAL: Docket No. 18-2039

SUPREME COURT PRECEDENT

OTHER DECISIONS

UNITED STATES CONSTITUTION

FEDERAL LAWS

STATE LAWS

The above-state laws are below federal minimums, and are reproduced at the Appendix. The Constitutional provisions have also been reproduced in pertinent part. Pp.43-50, infra.

Pursuant to Rule 29.4 (a): Mr. Black states: 28 U.S.C. §2403(a) may apply, because petitioner intends to file a *Motion to strike AEDPA,* if the certiorari petition is taken up. AEDPA exceeds Congress' §5 power to enforce the 14th Amendment in the states. *City of Boerne v. Flores*, 521 U.S. 507 (1997).‡ It also violates the First Amendment right to petition redress. Solicitor General has been served a copy of this petition and Appendix. The issue was not raised below—but AEDPA, in effect, abridged review of the habeas, and subsequent Appellate claim that Due process rights were violated in the state court. (1st Cir. District of Massachusetts)

‡ Petitioner served a *Motion to Strike AEDPA*, with the initial certiorari petition—but which was to be filed separately, pursuant to Rules 12.4, and 12.6. However, the Clerk returned all materials for technical changes to be made. *Inter alia, Perfect* and *Velo* bindings were initially provided by petitioner—pursuant to Rule 33.1. The Clerk also stated, the motion could not be served until certiorari was granted. Meaning, petitioner intends to file the motion, if certiorari is taken. Accord *U.S. v. X-Citement Video*, 513 U.S. 64, 82 (1994)(Doctrine of scrivener's error) ("genuinely intended but inadequately expressed ..."). In this case, the motion falls outside of the body of the petition—on purpose, so to provide this Court with unilateral discretion to strikie AEDPA, or deny consideration.

I. CERTIORARI IS APPROPRIATE

The prisoner seeks *first Review* of the case's facts and chain of custody during pretrial, as they relate and pertain to his hybrid-Speedy trial claim.

II. JURISDICTION

December 6, 2019, the First Circuit Court of Appeal, issued a decision denying Appeal from habeas corpus. APX.1-2. The prisoner hereby invokes the Court's certiorari, pursuant to federal habeas corpus, and 28 U.S.C. §1257.

III. FLOOR OF RIGHTS

U.S. Const. Amend. I; U.S. Const. Amend. VI; U.S. Const. Amend. XIV, §§ 1 and 5; *Klopfer v. North Carolina*, 386 U.S. 213 (1967); *Reynolds v. U.S.*, 98 U.S. 145 (1879); *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993); *Estelle v. Smith*, 451 U.S. 454 (1981); *Addington v. Texas*, 441 U.S. 418 (1979). An Appendix attached, containing the above-federal provisions is provided.

IV. STATEMENT OF FACT AND LAW

A. WRIT OF CERTIORARI TO COURT OF APPEAL

The First Circuit denied petitioner's habeas Appeal, duly certified; but its reasoning lacked internal substance. APX.1-2. First, the First Circuit claimed that dual custodies (civil and criminal) create a bar to habeas. But the disposition is fatally undermined by the identical context in *Riggins v. Nevada*, 504 U.S. 127 (1992). Further, *both* custodies turn on identical facts, because Speedy trial deprivation must be justified by an established chain of custody—which spans the whole duration between arrest to conviction. In this case, the state drove the prisoner into a second custody, in order to evade trial; and now is trying to argue a non-existent custody-based, technical bar to any court's Appellate review of petitioner's whole hybrid-claim.[1] Second, First Circuit claimed the petition had "two full reviews" in state court. But it's

[1] Accord *Smith v. U.S.*, 360 US 1, 9 (1959)("substantial [rights] ...cannot be eradicated under the guise of technical departures").

not true. In a 2011 Interlocutory Appeal, the SJC plainly stated petitioner's challenges brought by habeas, could not be appealed in the state court.[2] Subsequently, the MAC claimed, in 2016, with the full record before it, the SJC's decision from Interlocutory Appeal (2011)—which denied review of the First Amendment claim for the defense's failure to present the full record to the SJC in 2011—was "the law of the case" and rejected post-conviction review of the First Amendment issues, post-conviction.[3] But not based on procedural bar. BDR.16-17. The MAC decided one issue—speedy trial—out of three constitutional rights implicated in the hybrid claim. Thus, the MAC's Appellate review, whether constitutional rights were violated, is not met by pro forma *Barker* analysis; that directly turned on review for abuse of discretion.[4] Third, petitioner's hybrid

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[2] See *Black v. Comm.*, 459 Mass. 1003 (2011)(SJC directed petitioner to *Spero v. Comm.*, 424 Mass. 1017, 1018 (2005)(which states M.G.L. c.123, §17, is the sole remedy for a competency or civil confinement dispute: namely, to prove innocence; or obtain a new competency determination).

[3] Note also, Mr. Black filed for DAR. with the prescribed full record, but the SJC denied Review, without hearing. BDR.48, 409-433.

[4] See *Bose Corp v. Consumers Union*, 466 U.S. 485 (1984)(Appeals court has "independent obligation" to provide strict scrutiny for First

claim cannot be dissected. The First Circuit, at respondent's direction, dismantled Mr. Black's hybrid-claim and then decided individual issues, to preclude relief. But under the *Smith* rule, followed here, Mr. Black is required to present a hybrid claim, as he did in the state courts. Fourth, Mr. Black's second petition is not barred on habeas. The first petition court, expressly dismissed petitioner's claim as moot, "without prejudice", in 2013. APX.4-6. That initial petition was filed from indefinite civil custody, and was mooted upon that custody ending. The return to criminal custody, ripened the speedy trial claim, based on the same evidence; but wasn't available in the first custody. Apropos, since there are two custodies, it follows a new petition could be taken from the second custody "without prejudice". Especially since the first petition was not adjudicated. Fifth, the state decision to deny speedy trial relied on one-sided general propositions, expressly rejected by *Barker*,

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Amendment issue raised). Cf. *General Electric Co. v. Joiner*, 522 U.S. 136, 143 (1997)("deference ...is the *hallmark* of abuse-of discretion ...").

and deferred to first level ad hoc discretion of state actors, not proved to the necessary degree. But constitutional rights are Not subject to the opinions of government witnesses. The case *Klopfer v. North Carolina* is more apt than *Barker*, because the state refused, at every stage, to proceed to trial; and postponed the case indefinitely; over Mr. Black's objection.[5] *Klopfer*, 386 U.S. 213, 213. Sixth, the whole hybrid claim raised below, hasn't been adjudicated. Respondent advocates Mr. Black is required to file a 1983 lawsuit in order to obtain first-hand Appellate review of the case's facts as they pertain to his speedy trial claim.[6] But cf. *Preiser v. Rodriguez*, 411 U.S. 475, 488-99 (1973) (habeas corpus is the sole federal remedy for [state] prisoners).

As well, Respondent propounded, by way of First Circuit decisions: that "First ... Amendment [rights] are not cognizable on

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[5] See BDR.37-41, and BDR.382-408. But note, a true reading of *Barker* will provide the same result—the defendant was required to bring himself to trial. 407 U.S. 514, 527 (1972).

[6] APX.171-74. Respondent's claim derives from the District Court's first petition mootness dicta, removed from that custody context, at APX.174.

habeas review." APX.309. But on the contrary, "the power of the state as parens patriae [is] not unlimited." *In re Gault*, 387 U.S. 1, 30 (1970). *Turner Broadcasting v. FCC*, 512 U.S. 622 (1994).

B. BACKGROUND OF HYBRID-RIGHT

Two decades ago, in 1999, the U.S. government intercepted two discreet shipments of Ayahuasca—a Schedule I hallucinogen—heading toward two different churches, each in a different state, but which shipments were intercepted at once, at the same border checkpoint. That seizure led to both of the church recipients filing lawsuits against the U.S. government. Both churches prevailed, and now operate lawfully, above board: (1) *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006)(per curiam)(UDV); and (2) *Church of the Holy Light of the Queen v. Mukasey*, 615 F. Supp. 2d. 1210 (2009)(Santo Daime). However, the religious groups prevailed under RFRA, giving rise to the idea the states could independently reject, or provide, rights respecting Ayahuasca, sans constitutional Amendment.

C. CUSTODY + PROCEDURE BELOW

May 28, 2009: date of Incident. Mr. Black is under arrest at the scene. Are between 50-60 witnesses. A man is bleeding out on the linoleum floor.[7] Mr. Black observes a security guard (Bailey) leave the atrium and return; cutting through people and bending at the waist, touching floor in spots. The knife is under the table, to Mr. Black's left, out of reach. At once Mr. Black sees Bailey, bending in, reaching toward the knife, and he shouts to alert the room of witnesses. Bailey then yells at everyone, including in front of the Police officer, to get out. Page 53-54, infra.

See Defense Motion for DNA buccal swab of Richard Bailey, filed March 25, 2010. BDR.200-03. Mr. Black described: Bailey had tampered with the scene. And in the 2013 trial, petitioner was acquitted of that indictment. However, January 15,

[7] Mr. Black claimed to have been attacked. BDR.800, 803, etc. The state's "victim", Jose Deleon: 47-time convicted felon; 6-time (convicted) armed assailant; rapist. BDR.130-42. Had class-B paraphernalia on him, at the scene. He was the principal witness at trial—out of 3 (two with obscured views); and was separately on trial for possession of a loaded firearm. With more than 30 charges for violence and class B school zone, nearly all dismissed, he appears to be a government's snitch.

2010, the ADA filed her own motion for DNA of Mr. Black and Deleon, only. Even though Bailey and the same ADA obtained an indictment from the claim that Bailey was the final person injured with the knife. Page, 53-54, infra. Signifying, the ADA knowingly obtained a perjury indictment; *after* the state learned of Mr. Black's religion; *and* never procured hospital records of either victim.[8]

New day, 8:00 am, Boston Municipal court. Criminal arraignment, May 29, 2009. The government hauled Mr. Black in. He is indigent; represented by a duty attorney "for bail only." Thus, he is under-represented.[9] The court ordered Mr. Black to be interviewed by Dr. Miner—requested especially—pursuant to M.G.L. c.123, §15a, based on "statements made to the ADA", but, weirdly, not by Mr. Black who is silent and had not spoken to the

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[8] Mr. Black filed three motions for the hospital records. See BDR.204-14. Mr. Black also sought the records post-conviction, BDR.335-37.

[9] Principe, was not certified to represent cases in Superior Court, and was removed before the hearing ended. Page 51-52, infra, BDR.655.

ADA. BDR.651. During interview, Mr. Black was questioned: if he had ever hallucinated. Mr. Black told the truth: that his religion was "Ayahuasca", and "Santo Daime"—that he had thus hallucinated. [Mr. Black is not required to lie.] As well, Mr. Black denied he was mentally ill. Repeatedly.[10]

Same day, at the return, state invoked M.G.L. c.123 §15b, for prison custody, with no burden of persuasion on the state—for fact of the prisoner's "religious beliefs." [sic] BDR.4. The state offered no second symptom.[11] Also stated, the "beliefs" were tied to Ayahuasca and Santo Daime "rituals" in 2005. The state did not diagnose Mr. Black,[12] rather, rolled the entire psychotic spectrum

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[10] See BDR.3-4 (denied history of illness, treatment, commitment). But see Dr. Miner, BDR.4 (incarcerated Mr. Black on suspicion—"I do not know for sure ..."—but labelled *the beliefs* "distinctly paranoid.")

[11] Dr. Miner described to the court, Black was otherwise: able to "answer the factual questions ... well," "articulate," "reasonable," "above average intelligent," "no sign of formal thought disorder or disorganization,"[this is the legal definition of major mental illness, see 104 CMR 27.05]; "abl[e] to assist counsel," and no history of commitment, treatment, illness, or suicide. BDR.3-4.

[12] See Dr. Miner's report, "I cannot determine with any reliability..." BDR.4.

out for themselves to survey, which then became Mr. Black's obligation to disprove—pursuant to M.G.L. c.123 §15d—before the defense could regain his liberty; *and* then proceed to trial. Thus, the same-day Court order, BDR.5 classified Mr. Black as mentally ill and incompetent. See Dr. Miner's report: five or more times he targeted Mr. Black's "religious beliefs" as the one "symptom"; he stated "would be prudent to" probe ("have that evaluated") at the state hospital:

> I am concerned, that despite his ability to discuss his legal situation with counsel in a factually accurate way, the rational prong of the competency standard may be adversely affected by his delusional religious beliefs.
>
> *And:* young man whose religious ideation may go far beyond the range usually considered to be normal religious belief.
>
> *And:* hallucinations of the God Shiva.
>
> *And:* issues having to do with his worship and religious practice around the God Shiva.
>
> *And:* insight and judgment appear compromised by ... religious ideation.

And: set of beliefs seems to be central to his way of understanding his world.

And: he denied using other street drugs ...[13]

And: right after, he said, he was picked up by this cult... Santo Daime ...he began hallucinating...

And: cannot determine with any reliability ... or, Hallucinogen-induced psychotic disorder.

But Religious beliefs are No Man's Land. U.S. Const. Amend. I, and XIV. Not subject to *any* balancing test. *Smith*, 494 U.S. 872, 877-79, and cases cited. For full text, see BDR.1-5, 646-57.

But before the Court system advances at direction of state respondent—STOP. See: Incompetency and mental illness depose criminal responsibility, *here* from the basis of Mr. Black's "religious belief[s alone.]" *Reynolds*, 98 U.S. 145, 166. Respondent claims that: this "is the law". BDR.16. But enabling the state to preclude criminal responsibility from religious beliefs alone, "would permit every citizen to become a law unto himself." *Ibid*. And is forbidden.

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[13] Indicating a preoccupation with "Ayahuasca".

But what genuinely occurred here: Dr. Miner provided *the state* a *path* other than a public trial.[14] That the court allowed. This is the case's root hearing, root of the four-year delay and root of the MAC decision. The MAC completely deferred to state procedures, while simultaneously refused to consider Dr. Miner's role, opinion, or court order on Appeal. BDR.16-17.

The state immediately filed for indefinite confinement—its first petition/ of three—and manifested the case's four-year delay—during which time the prisoner was *Never* medicated and objected at every step. APX.108-111, nn.135, 137. *Every* indefinite confinement petition was based on Dr. Miner's report, directly and indirectly.[15] Dr. Holtzen of the receiving prison hospital, identified

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[14] Cf. *Duncan v. Louisiana*, 391 U.S. 145, 156-57 (1968)(the framers knew first hand of unchecked power; and judges too responsive to voices of higher authority"); *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) (must be able to confront the charges).

[15] See BDR.1-5 (Dr. Miner's first report); BDR. 741-45 (Dr. Miner again, found Mr. Black fit to stand trial, but held, he required commitment for his "belief systems", January 15, 2010); and BDR.115 (Dr. Miner, with no interview, based on his report "a year ago," held, Mr. Black required medication, and involuntary commitment); which reports were then quoted by Dr. Myers at BDR.142-43, 146, 153-54, to remove the case to

six times, Mr. Black was committed for his "religious beliefs," BDR.99¶1, 101¶2, 108¶¶2-3, 110¶¶2-3. He sought to Rule out, Hallucinogen-induced psychotic disorder, but named "Ayahuasca ... in 2005" the only hallucinogen. BDR.102, 111. One year later, he claimed his chief diagnosis to have been: "Psychotic Disorder, NOS," signifying: the state's *second* spectrum Rule Out diagnosis—not disease— from the basis of inadequate symptoms, within the course of one month in state custody.

Mr. Black sought a trial, but the state refused him: APX.110-11, n.37 (record of Mr. Black pressing his case); APX.108-10, n.35 (record Mr. Black denying that he is mentally ill) BDR.215-317 (Mr. Black's three speedy trial motions); and BDR.62-71 (docket of more than one hundred motions filed).

The case is summarized as follows: the same ADA who knowingly obtained a perjury indictment, then attempted to force

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indefinite confinement, stating, Mr. Black would likely never regain competency.

an NGI. But once the state lost control of the defense,[16] it launched a campaign to find Mr. Black incompetent, whereby it evaded the criminal trial from a single finding of incompetency, made to a preponderance, made by the prosecutor herself.

The framework of the state decision, BDR.6-21, is based on a network of federally-deficient preponderance-based civil custody and competency laws that work a combined deprivation, of liberty and vested rights.[17] The policies were challenged in two Appeals with reasoned decisions, Interlocutory and MAC, post-conviction,

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[16] The ADA operated vicariously through a string of counsels, as she did with the Court, (Cratsley, BDR.707-08). See BDR.107 ("believes appointed attorney ...abandoned [him.]"); BDR.701 (next lawyer)("I will be at odds with client in terms of [defenses]."); BDR.677 (ADA: "we thought it would be best here, in front of you"); BDR.761-62 (9 months into arrest) ("It is not my wish to build my case around Dr. Krell's opinion ...wish to build my case around evidence, that has yet to be...").

[17] M.G.L. c.123 §15b (permits civil confinement with no burden on the state, at all); c.123 §15d (permits the state movant to prove incompetency by preponderance); c.123 §16a (provides, a finding of incompetency is attended by civil confinement); c.123 §16b and c (provides, indefinite confinement is qualified by an initial preponderance finding, of incompetency—by the state); c.123 §8 (empowers the state to make treatment decisions by proxy, based on preponderance); Rule 36 (B)(2)(A)(all time that a defendant's competency is unresolved, including by bald accusation, charged against the accused).

BDR.382 (passim), 442, 551, 564; and exhaustively, but the dual issues of (i) state laws and (ii) Religion clause violations, were acutely never addressed. The case is decided on the premise, the ADA has unfettered discretion to challenge competency, without any threat of reciprocity.

The state's first indefinite confinement petition, June 15, 2009, was never adjudicated. BDR.157. July 14, 2009 Mr. Black was removed from the prison hospital, to county, to await Superior arraignment. There is no record he was released. BDR.699-700. The state operated in the black, in and out of the state hospital.

At Superior arraignment, the prosecutor met the court ex parte (Cratsley, J.), to saddle petitioner with the prior petitions and diagnoses. BDR.677-78, 683. During arraignment, the newly biased court then began to force an NGI. And Mr. Black attempted to remove counsel, but the court refused to enable any choice of counsel/ or defense. BDR.694-95. At the next two hearing, respectively, the court barred petitioner from attending, whereby

the court: (i) recruited defense counsel to force the NGI, but after Mr. Black had fired counsel independently.[18] (ii) coordinated with counsel to allocate a double-billing, $5000, for a "privileged" report by Dr. Nestor—after Dr. Nestor had evaluated Mr. Black, but before he drafted his opinion.[19] (iii) openly mused whether to call Dr. Miner, in order to force Mr. Black back into the state hospital—though, before defendant was observed, by either the court or doctor.[20] (iv) *relayed,* that the government wanted Mr. Black civilly confined; the court speaking on its behalf. BDR.707-08.

On October 23, 2009, the court rotated (Ball, J.), and Mr. Black advised the court he had "fired [his attorney,] five to seven weeks ago." BDR.713. Cf. BDR.707-08, 711. The court replaced counsel. Then, January 15, 2010, new court (Lauriat, J.) Mr. Black

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[18] BDR.698-03, 707-08, 711, 713.

[19] BDR.193-95, 698.

[20] BDR.707. And cf. Cratsley's 2010 decision re: competency, holding that Mr. Black has "paranoia" and "delusions" for speaking against Dr. Miner. BDR.38-39.

moved to be pro se. Specifically, counsel—who it later became known was a childhood friend of Bailey[21]—had failed to initiate an investigation—by the eighth month of the case. BDR.732-34. Mr. Black also spoke re: tampering by Bailey, wherefore the ADA and counsel jointly erupted: claiming Mr. Black was incompetent. BDR.734, 735-37. The court went from talking about a colloquy to calling Dr. Miner. The ADA then pulled out terminated defense counsel's rogue NGI report, by Dr. Nestor, which nobody had but her, and presented it as the state's own evidence—beginning, and thereafter.[22] But on March 4, 2010, Lauriat, J., decided Mr. Black was competent and could proceed—while the ADA objected. BDR.774-75. At the next hearing, April 9, 2010, new court (Ball, J.) the ADA lied, Lauriat had not decided competency; and requested involuntary commitment. BDR.814-18. The court

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[21] See BDR.757-59.

[22] See BDR.736-37 (Court: "I don't think it's been published because I don't have it."; BDR.814-15 (ADA: "...given to me by Arnie Stewart"); BDR.891-92 (used to find incompetency); BDR.1067 (struck).

rebuked her. But note, the MAC ultimately decided the ADA was correct; intimidated it was the court, not the ADA, who abused its discretion. BDR.13 n.7. On June 11, 2010, the court required Mr. Black to return to the state hospital for an opinion on "competency to proceed pro se".[23] But not before the court had Dr. Miner write a report, without interview, in which he documented symptoms. BDR.115, 146. During the 20-day admission, based on series of interviews by Dr. Saleh, Dr. Holtzen (the original evaluator) recanted his prior diagnoses of major mental illness. BDR.124-26. But at the return, new court (Cratsley, J.), the ADA complained the *state* report was unreliable, and sought to remount the investigation, lying, again, that no court had determined competency. BDR.854. The court permitted her, and on August 12, 2010, the state presented its prior reports, and called a witness, Dr. Eudy, *and* with Dr. Nestor's report, all over objection, found Mr. Black incompetent, by a preponderance of the evidence.

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[23] BDR.832-34, 837 (specifically not competency to stand trial).

BDR.886, 891-92. See M.G.L. c.123 §15d. Mr. Black was then committed for 239 consecutive days (Cratsley, J.), under that order.[24] BDR.37. Mr. Black appealed the order/ and finding, to the SJC. *Black v. Comm.*, 459 Mass. 1003 (2011). But the court indicated, competency findings could not be appealed. *Ibid.* The court's logic is flawed. Inter alia, it is not Mr. Black's "duty" to present the court with evidence against himself, so it can investigate its own claim the state has no overriding burden to put the defendant to trial, while it simultaneously operated from standards below the federal minimum. *Ibid.*

Mr. Black filed his first habeas petition, days before the indefinite confinement proceeding, dated April 21, 2011 (Hely, J.); twenty-three months into arrest. Habeas No. 1:11-cv-10751-MLW. BDR.82. At the indefinite confinement hearing, the court refused

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[24] This violated the central tenet of *Addington*, 441 U.S. 418 (1979); and divests the state of any right to custody between September 1, 2010 and February 1, 2012—511 days; because the state's indefinite confinement proceedings are initially *qualified by* a preponderance finding. M.G.L. c.123, §§16(b) and (c). Which effectively deprived the accused of a trial, for a state-driven preponderance test.

the prisoner to engage the court, by either voice or document.[25] BDR.1052, 1056. And then, (i) found incompetency, by roll-over determination;[26] (ii) permitted the state to use a Non-interviewing clinician, Dr. Myers, to qualify every indefinite confinement prong with her opinion, independent of every interviewing clinician's diagnosis (cf. BDR.154, with BDR.155);[27] (iii) permitted the state to re-indorse Dr. Miner's initial evaluation. BDR.1047, 1056. To boot, Dr. Myers claimed, based on and quoting Dr. Miner's report, that Mr. Black "ha[d] become" mentally ill at the exact time he first used Ayahuasca, 2005.[28] Note, the government's experts, brought in to replace Dr. Holtzen in 2010—Drs. Eudy and Myers—both

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[25] This violated the central tenet of *Ford v. Wainwright*, 477 U.S. 399 (1986) (fundamental that accused have opportunity to engage the court).

[26] Although Dr. Myers testified, she did not interview the accused, and relied exclusively on past evidence; 8 months or older. BDR.1064-65.

[27] Cf. *Estelle v. Smith*, 451 US 454 (1981)(prohibits state to arrive at penalty from silence in court-ordered psych. Eval.); *Lester v. Chater*, 81 F.3d 821, 831 (1995)(opinion testimony worth less than a scintilla).

[28] See BDR.154, given in connection with BDR.141,142-43.

honed claims on two specific "symptoms": (i) Mr. Black's view of the evidence proved he could not choose his own defense;[29] (ii) Mr. Black's belief that Dr. Miner had violated the First Amendment, was a delusion. BDR.131, 134, 138, 152-53, 909-11.

It is also essential for record: following the ten-minute interview by Dr. Eudy, July 22, 2010, Mr. Black shut off from and ceased all communications with state experts, and was never medicated.[30] Effectively choosing the integrity of his religious beliefs over liberty—from inside indefinite custody. BDR.44. And cf. Dr. Eudy's *claim*, re: Mr. Black's ability to converse with her, with the same-day court transcript. BDR.131-35, and BDR.868-84.

Mr. Black secured release from the state hospital, without a doctor or medication, and brought himself to trial, February 2,

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[29] BDR.132-34 (Dr. Eudy); BDR.152-53 (Dr. Myers, quoting Dr. Eudy). Cf. *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 593 (1993) ("scientific explanation must be capable of empirical test."); *Coffin v. U.S.* 156 U.S. 432, 453 (1895)(presumption of innocence: fundamental).

[30] Among other reasons, see *Rogers v. Comm'r*, 390 Mass. 489 (1983)(at end, footnotes)(provides explicit rules for surrogate decision making). See Court Order at BDR.44.

2012. BDR.1103-174. But the state refused to proceed, stated it would never concede competency; / lied Mr. Black had been found incompetent; and welcomed a new determination.[31] BDR.1211 (Indicating obstruction of justice). Mr. Black is also entitled to 6 months court congestion, he objected to, from May 2012 to trial.[32]

The total unjustified delay is +40 months/ 1385 days (45 ½ months). The hybrid-claim at bar HAS NO PRECEDENT. But has been presented at every level.[33] Pro se pleadings are treated differently than expert; *Haines v. Kerner*, 404 U.S. 519, 519-21 (1972); and habeas corpus is available. See *Reed v. Ross*, 468 U.S. 1, 2 (1984)(for novel violations, counsel held to factual standard).

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[31] A few things had happened, different from the pre-indefinite custody: (i) Cratsley had retired; (ii) Dr. Nestor's report was struck, BDR.1067; and (iii) Mr. Black was able to hunt down the tiny note in the Brockton court docket to disprove the ADA's lie. BDR. 45.

[32] See BDR.260-61; and BDR.1230 ("We object to that, we demand an immediate trial.") and BDR.1241 (same).

[33] BDR.228-317 (pro se, pretrial); BDR.409-33 (DAR); BDR.434-92MAC). See also *Black v. Comm.*, 459 Mass. 1003 (pro se Interlocutory Appeal); and APX.385-406 (correcting Respondent's claim: it wasn't presented).

V. REASON TO GRANT CERTIORARI

It is not a criminal defendant's burden to field an endless stream of accusations he cannot stand trial, before he may recover liberty. U.S. Const. Amend. IV. He has no burden at all.[34]

The state Appeals court reasoning, which upheld the four-year delay on consideration of prejudice alone, and deference for first level decisions, is inapposite the speedy trial right, and cannot satisfy Article III.[35] The core speedy trial function is to preclude an abstract right to custody; not prevent prejudice. *Klopfer*, 386 U.S. 213 (1967). The right of a speedy trial, in and by itself, is rudiment justice.[36] Apropos, a "full and fair trial", as explicitly defined by the U.S. Constitution, is not even possible, in the courts of last resort.

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[34] *Mullaney v. Wilbur*, 421 U.S. 684 (1975). *Lochner v. N.Y.*, 198 U.S. 45, 56 (1905)(Fourteenth Amendment would have no effect if states merely had to invoke pretext of health and safety); *Chambers*, 410 U.S. 284, 294 (1973)(the guaranty of Due process, is the platform to answer charges).

[35] The *Barker* court rejected pro forma analysis. 407 U.S. 514, 522, 529.

[36] *Culombe v. Connecticut*, 367 US 568, 587 n.26 (1961)(No undue delay, most prevalent American provision); *Klopfer*, 386 U.S. 213, 226 ("one of the most basic rights...")

A fortiori, after the accused has brought himself to trial. *Barker v. Wingo*, 407 U.S. 514, 527 (1972).

Prejudice *may* serve, but the speedy trial right is defined by the unusual facts each case presents, not one-sided general propositions that extend unlimited margins to government obstruction of justice. *Id.*, at 529-30. Apropos, if the state cannot be disappointed by its own due process violations, except when the delay has created prejudice, there is No law.

In post-conviction review for speedy trial deprivation—a right deemed "fundamental", *Klopfer*, 386 U.S. 213, at 223—the right to post-conviction custody, must be made to turn on more than the blessing of a state actor at the first level. The state must adhere due process, at every interval between arrest, and jury conviction.[37] And this is only satisfied by the prosecution diligently seeking a trial. Not whether the court was within its bounds to take government testimony, seeking to veto the trial. Apropos,

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[37] *Loud Hawk v. U.S.*, 472 U.S. 302, 312 (1986)("core concern").

over the defense's objection. See *Everson v. Bd. of Educ.*, 330 U.S. 1, 28 (1947)("The great purposes of the Constitution do not depend on the approval or convenience of those they restrain.").

Thus, the whole case is decided by Mr. Black's attempts to gather evidence and go to trial; beginning the first day,[38] but the government driving the court into a frenzy, by lodging unestablished *accusations* of incompetency. And seeking to indefinitely confine the prisoner under lower burdens of proof afforded by state policies, without ever convicting him—after the state destroyed evidence.[39] Page 54, infra.

The government has never been required to prove anything as to its mental health claims—to any degree. Under the state's preponderance-based competency laws, the government expert

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[38] See BDR.3 (Dr. Miner: "He said, 'I know my rights to ...freedom from attack.").

[39] Note, the state used a presumption of guilt in 2011, to justify the dangerousness prong of indefinite confinement. BDR.155 ("defendant is accused of an extremely violent assault..."). The state attempted the same thing in 2009. See BDR.111 ("given the serious nature...").

credentials are enough, to tip the court against the accused, every time; wherefore it became Mr. Black's "duty", under M.G.L. c.123, §15d, to unravel everything the government would say—or had ever said—in order for him to proceed to trial.[40] But even from the start, the government raised dragnet claims that could not be disqualified—and multiple times, requested outright probes.[41] Further, even after the first government expert recanted, the state simply brought in more personnel, to force the same position under new interpretations of the root claim, by Dr. Miner.

Apropos, re: both the initial court of May 29, 2009, and the MAC on direct Appeal—the state's reliance on expert credentials, belies an official purpose to disapprove of Mr. Black's religion. Since the state didn't present—and then did not review—evidence.

But it's unequivocal in Supreme Court jurisprudence, that fundamental rights—couched under any label—cannot be struck

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[40] Note, how many times the ADA invoked the prior reports. BDR.677-78, 736, 774-75 (ADA arguing with court); 854 ...

[41] BDR.4¶2 (Dr. Miner); BDR.124 (Dr. Holtzen explaining original Eval.).

by government, from "preponderance of the evidence." *Santosky v. Kramer*, 455 U.S. 745, 756 (1982)(collecting parens patriae cases); *Schneiderman v. U.S.*, 320 U.S. 118, 120, 124 (1943).

Further, not even a judge—or by extension, the Appeals court—has power to strike fundamental rights from bases which do not establish to the necessary degree, the state's claim.[42] Apropos, the MAC review for Abuse of discretion—to qualify the government striking fundamental rights—is unconstitutional. A determination whether the constitution has been violated, never turns on the judgment of a state actor, yet this is the sole consideration to establish the MAC decision.[43] The Bill of Rights is not subject to majorities, or any individual's authority.[44] Further,

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[42] *Rochin v. California*, 342 U.S. 165, 170 (1952)("vague contours of the due process clause do not leave judges at large...").

[43] Cf. *Barker*, 407 U.S. 514, 514 (only holding)(conduct of *both* parties must be weighed); *Doggett v.U.S.*, 505 U.S. 647, 657 (1997).

[44] *Klopfer*, 386 U.S. 213, 223 (1967); *W.Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943); *Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 136 (1951)("This ...is ...a government of laws ...not of men.").

inasmuch as "preponderance" is a voting tool,[45] but is all that Massachusetts requires of *the state* to strike liberty and the fundamental right of a trial, and thus is all the prosecutor ever proved here, once in the entire four-year delay, it follows the state in this case never established their right to pretrial custody to the required degree.[46] Ergo, inasmuch as the last deciding court rendered a decision that utterly hinged on the government's claims—that petitioner was not competent, as dictated by their witnesses—the case must be dismissed.[47] Because contrary to the state decision, the speedy trial clause is designed to foreclose abstract custody, which turns on government discretion. As a

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[45] See Santosky, 455 U.S. 745, at 764 (preponderance is unacceptable; it's determined by weight alone).

[46] See *Price v. Vincent*, 538 U.S. 634, 640 (2003)("contrary to" prong satisfied by state law that violates federal precedent, as basis for final decision); quoting *Williams v. Taylor*, 529 U.S. 362, 405 (2003). And see BDR.1059-60 (Plouffe identified the state's burden is preponderance).

[47] See MAC, BDR.11 ("delay was necessary to protect ...rights and for the defendant's benefit.") Cf. BDR.909-11 (Mr. Black cross-examined Dr. Eudy, whether she advocated following Dr. Miner, to violate the "First Amendment": she answered: "Yes, because...").

matter of fact, the speedy trial clause becomes increasingly void, for imputed deference. Nor is there a hole in the law, the government is breaking the law.[48] The law doesn't permit the state to operate without any threat of reciprocity for actions below; based on "'civil labels and good intentions'".[49] *Barker*, 407 U.S. 514, 531; *Dickey v. Florida*, 398 U.S. 30, 46 (1970); *Loud Hawk*, 474 U.S. 302, 315. Meaning, in relation to the facts of this case, the state's duty of diligence is not eclipsed by the prosecutor intentionally driving the accused into an external custody to divest the court of jurisdiction over him.[50] As if the government's burden—to convict the prisoner or set him free—can be exchanged for a standard of

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[48] See, e.g., *Addington*, 441 U.S. 418, 425, 431-32 ("civil confinement for any purpose ... conclu[sively]" requires proof, above "preponderance"). But Mr. Black was civilly confined for a total of 587 days/ 1385 days on pretrial, from one finding of preponderance. See M.G.L. c.123 §§15d, 16a, 16b. See also *Turner*, 512 U.S. 622, 641 (parens patriae intervention, on public debate requires strict scrutiny; it poses extreme dangers of abuse).

[49] Quoting *Santosky*, 455 U.S. 745, 756, quoting *Addington*, 441 U.S. 418, 427; and see *In re Winship*, 397 U.S. 358, 365-66 (1970) (Supreme Court expressly rejected preponderance custody, based on "good intentions").

[50] Consider *Doggett*, 505 U.S. 647 (1992). The state has a duty to bring an accused in from an external custody; so the opposite is also true.

proof that permits a government actor's opinion to depose a trial—at the state's election. Or that the state can "indefinitely postpon[e] prosecution ... over [the defendant's] objection." Cf. *Klopfer*, 386 U.S. 213, 213. It does Not logically follow, from the decision, *Dusky v. U.S.*, that the state is free to invoke the weakest, most exposed category at law, *Dusky*, to traipse over every other constitutional provision, heedlessly. Parens patriae burdens invalidate that approach. See, e.g., *Murel v. Baltimore Sup. Ct.*, 407 U.S. 355, 358-65 (1972). Further, the state's approach to *Dusky*, encroaches the sine qua non of the U.S. Constitution. To wit, *Dusky*, as with any government action, has limits. See *Loan Ass'n v. Topeka*, 20 Wall. (U.S.) 655 (1874): the fundamental theory of our government, is that no government has unlimited power. But what is unlimited power, if it isn't an arm of the court, whose express function is to strike fundamental rights *and liberty*, based on ad hoc opinions, that need not be narrowly tailored; nor qualified by interview; nor impress the court to any degree; have

no gatekeeping limit; and cannot be appealed.

As well, the delay in the case, expressly turned on a 'proceeding by presumption' ethic.[51] Meaning, at the outset, Mr. Black had his liberty stripped, without due process, substantive or procedural; wherefore it became his burden to recover his liberty, before he could advance to *the trial phase* of incarceration. And with no burden on the state. See BDR.854—

> ADA: Under the mental health statute there has to be ...an agreement between the parties on competency ...once an individual is committed to [the state hospital] for an evaluation.

Signifying, the state not only never qualified taking civil custody of the prisoner, but then it claimed the defense's rights for itself, in direct connection to that custody, upheld by the MAC.

Then there's the issue of the never-ending series of gates Mr. Black had to pass between. The defense secured release from

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[51] See generally *Morrison v. California*, 291 U.S. 82 (1934)(arbitrary presumption that removes prosecutor's burden to prove a crime); *Tot v. U.S.*, 319 U.S. 463, 467, 469 at n.12 (1943); *Western A.R. v. Henderson*, 279 U.S. 639, 642 (1929).

civil custody in 2009, but the criminal court wouldn't allow him to proceed. Then the court found Mr. Black competent, but the ADAs lied in subsequent courts, to revive doubt. Then Mr. Black obtained a *state* report, that concluded he was not mentally ill. But the ADA claimed it was unreliable. Wherefore the state threw its full weight behind a non-interviewing expert who recommended life custody; based on unsubstantiated opinion. Then Mr. Black secured his release from that custody, wherefore the prosecutor told the court the state would *never* advocate for a trial. Which is the explicit basis of the MAC decision: The state is under no obligation to provide one. Same with the SJC decision, *Black*, 459 Mass. 1003, 1003 (which placed all the burden on the accused).

As well, the government witnesses all had agendas that far exceeded their observation. Drs. Miner and Holtzen in 2009 sought open-ended probes. Dr. Holtzen's chief diagnosis, Psychotic Disorder NOS, is a spectrum Rule Out, invoked when there are

not enough symptoms—which deprived the accused of Notice.[52] Dr. Miner likewise invoked the whole psychotic spectrum, from one symptom indisputably protected by the First Amendment: "religious beliefs", an absolute right.[53] And Dr. Myers violated *Estelle,* which provides the states may not invoke competency to achieve sweeping agendas; or penalize a defendant's silence .[54] 451 US 454, 465. *Estelle* invalidates the MAC decision in toto.

State respondent asserted on habeas, that its actions are authorized by *Cooper v. Oklahoma*. APX.316. The defense violates Article III. Reasonable jurist does not license the state to write radical policies into Supreme Court precedent that never even addressed the same subject respondent claims latitude to

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[52] See DSM-IV, TR, p.311 (Defining Psychotic Disorder NOS). But Cases *Foucha v. Louisiana*, 504 U.S. 71 (1992); and *Addington*, forbid the state to civilly confine prisoners, while the government builds a case of indefinite confinement around them.

[53] Note as well, Nothing in Dr. Miner's whole psychotic spectrum Rule out, matches either the state law or DSM-IV criteria. BDR.172¶2, 178¶4, 189¶2. Indicating fraud.

[54] As well, Dr. Miner in his June 11, 2010 report, documented symptoms (as quoted by Dr. Myers at BDR.146, 153-54), without interview.

misinterpret. See *Cooper* (per curiam), the Court identified with precision, the very division of rights and government burdens respondent seeks to re-depict. 517 U.S. 348, 368¶3. *Further*, the *Cooper* Court explicitly operated under the tenet of Due process, that Article III Courts have power to abolish offensive state practices, re competency. *Cooper*, 517 U.S. 348, 349.

Regarding the First Amendment component of the hybrid claim on Appeal, Dr. Miner's report was never facially considered, but is the bones of the MAC decision. The MAC deferred to state investigations as the only consideration—even during the 15 months that preceded the preponderance finding—not providing one day to the accused in which he hadn't established Sixth Amendment rights. Further, the MAC hunted out a quote by Dr. Myers, to justify not engaging the claim. See BDR.18: MAC: "Dr. Miner's report ... 'had very little to do with Mr. Black's religion.'" Dr. Myers, BDR.1068-69.

Notwithtanding, there isn't any possibility, the defense will

trade even "very little" of his "religious beliefs," for a jury trial, or liberty—he doesn't have to.[55] The state doesn't have the option to debate free exercise rights—rather than provide a trial. Inasmuch as a defendant's silence is protected in a psych Eval., surely his religion and beliefs are not less valuable; or protected.

The state did not possess any interest to probe Mr. Black's "religious beliefs" in its prison, May 29, 2009.[56] Accord *Hernandez v. Comm'r*, 490 U.S. 680, 699 (1989)("It is not within the judicial ken to question ...validity of [beliefs.]"); *Foucha*, 504 U.S. 71 (1992) (state has *no* interest to civilly confine prisoners without a mental illness).[57] Thus, the Supreme Court in *Addington*, 441 U.S. 418 (1979), decided "civil confinement for any purpose" *will never*

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[55] *McDaniel v. Paty*, 435 U.S. 618, 619 (1978)(Last religious test struck down); *Torcaso v. Watkins*, 367 U.S. 488 (1961)(No test oaths); *Wolff v. McDonnell*, 418 U.S. 539, 555-56 (1974)("There is no iron curtain ... between the Constitution and ... prisoners ...").

[56] See *Everson*, 330 U.S. 1, 11 n.9 (scholarship re Madison's intent by the Free exercise clause); *Adams v. McCann*, 317 U.S. 269, 280 (1943) ("[cannot] imprison a man in his privileges and call it the Constitution.").

[57] See BDR.4 (Dr. Miner: "I cannot determine with any reliability ...").

comport with due process via preponderance. Yet the state, by virtue of M.G.L. c.123, §15b, didn't even establish its case to a preponderance, before civilly confining Mr. Black, at the first hearing. It subsequently *maintained* custody of the prisoner, for four years, under a showing of preponderance, made 15 months later. Dr. Miner's probe directly violated the Establishment clause, which forfeits *any* asserted interest the state claims to have in curing Mr. Black of religion. The state action targeted "particular beliefs", by ad hoc enforcement of government opinions. Dr. Miner turned the prosecution, into a "persecut[ion.]" *Dickey*, 398 U.S. 30, 43. And expressly "classifi[ed]" Mr. Black, from the basis of religion, *McDaniel v. Paty*, 435 U.S. 618, 638-39; placing him "under the onus of civil [and] criminal disabilit[ies,]" in violation of federal law. *McGowan v. Maryland*, 366 U.S. 420, 521 (1961). Specifically, the state prevented Mr. Black from access to any opportunity to answer charges, while it kept him incarcerated. Neither did the state possess an interest in doping the accused,

May 29, 2009. Accord *Palko v. Connecticut*, 302 U.S. 319, 327 (1937)("freedom of [thought]... is the matrix, the indispensable condition" of truth and justice). And *Robinson v. California*, 370 U.S. 660 (1962)(*held,* state law confining prisoners for past drug use in other states, until they exhibit reform: cruel and unusual punishment). I.e., the First Amendment doesn't care about the state's motives. "Nor ...do[they] matter ...if the law ...singles out religious practice for special burdens." *Lukumi*, 508 U.S., 520, 558-59. Thus, religious beliefs cannot serve to find a mental illness.[58] See, e.g., *Thomas v. Rev. Bd. of Ind. Emp., Sec. Div.*, 450 U.S. 707, 714 (1981)(abhorrent beliefs deemed gibberish, are fully protected). And *Smith*, 494 U.S. 872, 877-79 (absolute, inside Schedule I hallucinogens). The right can't even be waived. *Walz v. Tax Comm'r of NYC*, 397 U.S. 664, 720 (1970)("It is unalienable").

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[58] *Smith*, 494 U.S. 872, 877 ("may not ... impose special disabilities"); *McDaniel v. Paty*, 435 U.S. 618, 641 (1978)("cannot promote 'safe thinking'"); *Faretta v. California*, 422 U.S. 806, 834 (1975) (rights don't turn on law of averages); *Zorach v. Clauson*, 343 U.S. 306, 314 (1952) (may not prefer unbelievers); *Abington Township v. Schempp*, 374 U.S. 203, 287 (1963)(may not "water[ ] down"; since it creates state religion).

"[T]here are [portals] of ... the First Amendment," especially in the realm of ad hoc decisions/ and opinion, that are "beyond the power of the state to control".[59] *Lukumi*, 508 U.S. 520, 564. "[A]bsolute" freedom to believe among them. *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940). Because the government cannot get behind a claim intended to deprive the key liberty. To find any other result, is to find Respondent has arbitrary power: specifically, the Court will not permit him to be bested, though he undertakes frauds on the court, *And* is outmaneuvered: May 29, 2009. To the extent: the prisoner cannot even defend his accusations.

Mr. Black has an established right to exercise *his* religion. *O Centro Espirita*, 546 U.S. 418 (2006).

What is the state's excuse? The state did not possess a mote of interest to take custody of Mr. Black for his "religious beliefs"—a fortiori at the first hearing. The court order dated May 29, 2009,

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[59] See specifically, *Lukumi*, 508 U.S. 520, 540 ("[laws] enacted because of not merely in spite of ... [religious belief or] practice"); *Gillete v. U.S.*, 401 U.S. 437, 450 (1971)(same).

therefore, and subsequent jury conviction, violated double jeopardy. *Bell v. Wolfish*, 441 U.S. 520, 539 (1979). Which in turn violated due process. Which in turn invalidates the speedy trial deprivation.[60] To the same degree. See *U.S. v. Virginia*, 518 U.S. 515, 517 (1996)(*held* at 3(a))("remed[y]... must closely fit the constitutional violation; ...position they would have occupied in the absence of discrimination."). But given Dr. Miner only identified one symptom, there is no other conclusion to draw.

Wherefore, pursuant to *Lukumi's* con-currents, namely, "targeting religious beliefs is never permi[tted]," it follows, a speedy trial delay interposed to that specified end, could "never" be justified. Not by *Barker*, or any balance of purported government concerns. Since religious beliefs are never subject to balancing tests. *Reynolds*, *Cantwell*, *Sherbert*, *Smith*, *Lukumi*. Therefore, the MAC decision, by any standard, is without authority to deny

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[60] See *Dickey*, 398 U.S. 30, 38-39 ("should be judged by the principles of ...the Due process clause... , not by incorporating [*Barker*] ...into the Fourteenth Amendment").

Mr. Black the right of speedy trial. Which only remedy is dismissal. *Strunk v. U.S.*, 412 U.S. 434, 439-40 (1973). Ergo, habeas relief is required, since the First Amendment is not a dead letter; and fundamental rights cannot be struck by opinion.

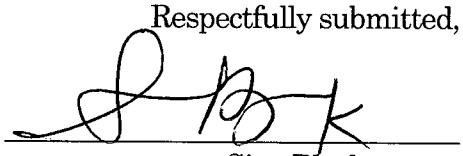
The First Amendment is the right to shape our own minds. And to not have the government turn a criminal process into a spectacle of individual religions. Videlicet, in an adversarial trial, *privilege* is a two-lane highway. Thus, respondent's primary objective to jerry-rig the trial, is exposed, by his cavalier First Amendment violations at the root hearing, in open court.

Re AEDPA: Mr. Black, invokes the *Smith Rule*, and the Fourteenth Amendment, §§1, 5, to strike AEDPA. AEDPA is not the least restrictive means to enforce the Due process clause. The Court should find claims and applications for psychiatric care—made by respondent in relation to "Santo Daime"—only targeted religious beliefs. Hence, the courts below exceeded their authority, and federal relief should issue. *Ex parte Wilson*, 114 U.S. 417, 426.

VI. CONCLUSION

Mr. Black requests the verdicts to be struck.

Respectfully submitted,



Siva Black, pro se

Date: 1 February, 2020