

19-928  
No. \_\_\_\_\_

FILED  
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SUPREME COURT, U.S.

In The  
**Supreme Court of the United States**

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KENNETH F. JOHNSON, JR.,

*Petitioner,*

v.

SADIE DARNELL, et al.,

*Respondents.*

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**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Eleventh Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

1. Review whether my Fourth Amendment right to be free from unreasonable searches and seizures was violated after I was falsely arrested, falsely imprisoned, without probable cause and deprived 120 days of my liberty without due process of law that my Fourteenth Amendment guarantees; so as to allows my false arrest, false imprisonment, and malicious prosecution claims under 42 U.S.C. § 1983 to be proper based upon the Fourth Amendment, Fourteenth Amendment and Favorable Termination in the criminal proceeding unsupported by a probable cause.

I petitioner followed the Federal Rules of Civil Procedure (Rule 8) (a)(2), to state a claim for relief, and my Second Amended Civil Right Complaint under 42 U.S.C. § 1983 was granted by lower court for stating plausible enough claims to meet the general rule for relief upon my supported favorable termination and the Fourth Amendment and Fourteenth Amendment claims.

2. Review whether my favorable termination in the criminal proceeding after I was falsely arrested and imprisoned and deprived 120 days unsupported by a probable cause, allows my Fourth Amendment, and Fourteenth Amendment claims under 42 U.S.C. § 1983 to be proper, and also allow my Second Amended Complaint to be plausible enough to survive a motion to dismiss.

## **PARTIES TO THE PROCEEDING**

Petitioner, who is the appellant below, is Kenneth F. Johnson, Jr.

Respondents, who are the appellees below, are Sadie Darnell, Victor Pino Diaz, Daniel Orlando Cruz, Alachua County (Government Entity), and Mathew Joseph Carson (Respondent Counsel).

## **RELATED CASES**

Kenneth F. Johnson, Jr. v. Sadie Darnell, et al., Case No. 1:17-cv-87-MW-GRJ, United States District Court for the Northern District of Florida, Gainesville, Division, Dated 8/2/2018

Kenneth F. Johnson, Jr. v. Sadie Darnell, et al., Case No. 18-13594-DD, First District Court of Appeals for the Eleventh Circuit, Dated 8/21/2019

## TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED .....	i
PARTIES TO THE PROCEEDING.....	ii
RELATED CASES.....	ii
TABLE OF CONTENTS .....	iii
TABLE OF AUTHORITIES .....	v
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW .....	1
STATEMENT OF JURISDICTION .....	1
CONSTITUTIONAL AND STATUTORY PROVI- SIONS INVOLVED .....	2
STATEMENT REGARDING ORAL ARGUMENT ...	3
STATEMENT OF THE CASE .....	4
This Is A Case Of Wrongful Identity.....	4
Factual Background.....	7
ARGUMENT.....	9
FACTUAL BACKGROUND .....	11
Factual Statement .....	13
CONCLUSION .....	15

## APPENDIX

United States Court of Appeals for the Eleventh Circuit, Opinion, Filed August 21, 2019 .....	App. 1
--	--------

**TABLE OF CONTENTS – Continued**

	Page
United States District Court for the Northern District of Florida, Order Accepting Report and Recommendation, Filed August 2, 2018.....	App. 7
United States District Court for the Northern District of Florida, Report and Recommenda- tion, Filed July 13, 2018.....	App. 9

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Ashcroft v. Iqbal</i> , 566 U.S. 662 (2009) .....	9, 10, 11, 17
<i>Ass'n of Cleveland Fire Fighter v. City of Cleveland, Ohio</i> , 502 F.3d 545 (6th Cir. 2007) .....	11
<i>Bell Atlantic v. Twombly</i> , 550 U.S. 544 (2007)....	10, 11, 17
<i>Conley v. Gibson</i> , 355 U.S. 41 (1957).....	6, 10, 14, 17
<i>Dioguardi v. Durning</i> , 139 F.2d 744 (2d Cir. 1944).....	6
<i>Flanory v. Bonn</i> , 604 F.3d 249 (6th Cir. 2010) .....	10
<i>Fritz v. Charter Twp. of Comstock</i> , 592 F.3d 718 (6th Cir. 2010).....	11
<i>Golden v. City of Columbus</i> , 404 F.3d 950 (6th Cir. 2005) .....	10
<i>Haines v. Kerner, et al.</i> , 925 S.Ct. 594, 404 U.S. 519 (1972) .....	6
<i>Heck v. Humphrey</i> , 512 U.S. 477 (1994) .....	3
<i>Johnson v. City of Shelby</i> , 135 S.Ct. 346 (2014).....	15
<i>Manuel v. City of Joliet</i> , 137 S.Ct. 911 (2017).....	7
<i>Monroe v. Pape</i> , 365 U.S. 167 (1961).....	13
<i>Newsome v. McCabe</i> , 256 F.3d 747 (2001).....	7
<i>Pearson v. Callahan</i> , 555 U.S. 223 (2009) .....	3
<i>Posr v. Doherty</i> , 944 F.2d 91 (2d Cir. 1991).....	13
<i>Scheuer v. Rhodes</i> , 416 U.S. 232 (1974).....	16
<i>Wallace v. Kato</i> , 549 U.S. 384 (2007) .....	7

## TABLE OF AUTHORITIES – Continued

	Page
CONSTITUTIONAL PROVISIONS	
U.S. Const. Amend. I .....	7
U.S. Const. Amend. IV .....	<i>passim</i>
U.S. Const. Amend. V .....	8, 12, 13
U.S. Const. Amend. XIV .....	<i>passim</i>
STATUTES	
42 U.S.C. § 1983 .....	<i>passim</i>
Florida Statute Flee/elude 316.1935 .....	8
RULES	
Fed. R. Civ. P. 8(a)(2) .....	3, 4, 6, 9, 14

**PETITION FOR A WRIT OF CERTIORARI**

Petitioner Kenneth Fernandez Johnson, Jr., respectfully petitions for writ of certiorari to review the reversed judgment of my Second Amended Complaint that was granted by the District Court. Then later unfairly with prejudice heightened pleading standard's, and holding me pro se pleader to a much greater stringent standard like I am a lawyer upon the respondents' lawyer motion to dismiss on the grounds of not stating a claim for relief accordingly to his standards.

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**OPINIONS BELOW**

The opinion of the United States Court of Appeals is submitted with petition.

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**STATEMENT OF JURISDICTION**

This is an appeal from the final judgment of the District Court who has Jurisdiction pursuant to 42 U.S.C. § 1983.

I, plaintiff, have brought a Civil Rights claim against Defendant Sheriff, and Defendant Deputies for the deprivation of my liberty without due process and challenged the Federal Statute, the District Court's final order in dismissing all claims in the same case that all claims were previously granted. By the District Court. The final judgment was entered on 8/28/18. I filed a motion to appeal for the Appeal from the United States

District 8/22/2018. The United States District Court  
Affirmed 8/21/19.

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### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

Section 1983 of Title 42 of the U.S. Code provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia, subjects, any citizen of the United States or other person within the Jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress \* \* \*

The Fourth Amendment provides:

The Right of the People to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures and shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath of affirmation, and particularly describing the place to be searched, and, the persons or things to be seized.

Qualified immunity protects “all but the plainly incompetent and those who knowingly violate the law.” And a Section 1983 suit for unlawful arrest cannot survive unless the underlying criminal violation had a

favorable outcome. *Heck v. Humphrey*, 512 U.S. 477, 489 (1994), *Pearson v. Callahan*, 555 U.S. 223 (2009).

For these reasons and those that follow, the court should grant the petition and reverse the judgment by lower court.

Favorable Termination Rule: Oct. 24, 2016 in *Heck v. Humphrey*, 512 U.S. 477 (1994), the Supreme Court ruled that a prisoner could not bring a suit for damages for an unconstitutional conviction or imprisonment, unless and until the underlying conviction has been reversed or invalidated.

Federal Rules of Civil Procedure (Rule 8) the general rule pleading for claiming for relief.

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#### **STATEMENT REGARDING ORAL ARGUMENT**

Plaintiff-Appellant Kenneth F. Johnson, Jr., requests an oral argument regarding the District Court Err in the Ruling to Dismissed My Second Amended Complaint that Was Previously granted by the same District Court.

This case involves a law abiding citizen of the United States who was deprived of his liberty without due process of law by government officials who was acting under color of law with the scope of their employment when they caused, influenced, and/or participated in the deprivation of my liberty.

Since I presented a certified Case Action Report from the State Attorney Office to the District Court that proves that I did not commit the crime(s) alleged and I also submitted the proof to court the individual who committed the crime that was alleged.

Oral argument will aid the Court by allowing the parties to explore the issues presented in this appeal and respond to any inquiries raised.

My Second Amendment Complaint that granted are plausible to claim a relief and meets the Federal Rules of Civil Procedure (Rule 8(a)(2)), to state a claim for relief.

My Second Amended Complaint Under 42 U.S.C. § 1983 was granted by the lower court based upon the Federal Rules of Civil Procedure (Rule 8) the general rule pleading for claiming for relief.

I submitted several supporting documents and one photo with my Second Amended complaint as evidence to support my claims for relief and prove to the court beyond doubt that all my factual allegations are true upon the grounds that I am entitled to a relief.

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#### **STATEMENT OF THE CASE**

#### **This Is A Case Of Wrongful Identity**

\* I the petitioner received a favorable termination in my proceeding.

State Attorney made it clear in the Case Action Report: That I the Petitioner "Did not commit the Crime(s) Alleged" (Which mean everything fabricated statement and testimony that the respondent deputies said about me in their police report, and sworn complaint is false beyond doubt.)

\* I also submitted the photo of the driver who was identified by several witnesses as committing the crime during the criminal proceeding. For the record the identified driver looks nothing like me. (He was much taller, heavier, full of grey hair).

Because the respondent's deputies' hunch of an inadmissible invalid 13 yrs. old driver license that they claimed was found in car, and they chose not gathering more supporting information and evidence before they wrongfully identified me as committing a crime.

The respondent deputies neglect cause my Fourth Amendment right to be free from unreasonable searches and seizures to be violated after I was falsely arrested, falsely imprisoned, maliciously prosecuted without probable cause and deprived 120 days of my liberty without due process of law that my Fourteenth Amendment guarantees; so as to allows my false arrest, false imprisonment, and malicious prosecution claims Under 42 U.S.C. § 1983 to be proper based upon the Fourth Amendment, Fourteenth Amendment and Favorable Termination in the criminal proceeding unsupported by a probable cause

The lower courts unfairly with prejudice, heighted pleading standard's, and holding pro se pleader to a

much greater stringent standard like I am a lawyer upon the respondents' lawyer motion to dismiss my complaint on the grounds of not stating a claim for relief to his standards and not rule 8.

The lower court errs in dismissing my granted Second Amended Complaint under such standards, and deny me the relief that I am entitled to base upon amendments, Federal Rules of Civil Procedure (Rule 8) statutes, factual allegations, authorities' cases, evidence, and facts regarding my complaint, that I described more fully above and below would be contradicting, conflicting, unfair, unconstitutional and violation of my civil rights.

Conley's statement construing Rule 8: "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." 355 U.S. at 45-46.

I am asking the Supreme Court to correct the lower court err in dismissing my 2nd amended complaint by a heightened pleading standard, by holding my pro se 2nd Amended granted Complaint and all my allegations described more fully above and below in my complaint back to a less stringent standard construing Rule 8, by doing so the judgment regarding my complaint will be reversed back, and remanded. See *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Dioguardi v. Durning*, 139 F.2d 744 (2d Cir. 1944); *Haines v. Kerner, et al.*, 925 S.Ct. 594, 404 U.S. 519.

### **Factual Background**

I, petitioner Kenneth F. Johnson, was falsely accused, falsely identified, wrongfully arrested, unlawfully arrested, and unlawfully prosecuted for a crime that I did not commit without due process of law.

The Defendant deputies individually, jointly and in conclusion with each other had written a false Deputy Report and Sworn Complaint accusing and falsely identifying me for Fleeing/Eluding while acting under the color of law within the scope of their employment that participated, caused, and/ or influenced my picture and name to be posted on Sunday Edition of Alachua County Most Wanted for a crime that I did not commit on 7/31/2016, which was defamation of my character and violation of my 1st Amendment rights of the U.S. Constitution. The Defendants claimed to find and used a fabricated inadmissible 13 yrs. Old driver license in the car, without gathering additional supported evidence, or fingerprints in the abandoned vehicle to support their hunch before writing sworn complaint, and false fabricated testimony to the judge to obtain a warrant to be issued for my arrest. The fabricated evidence was only evidence the judge relied on before a warrant was issued for my arrest resulting in my pretrial detention. See *Manuel v. City of Joliet*, 137 S.Ct. 911, 915 (2017); see also *Wallace v. Kato*, 549 U.S. 384 (2007); *Newsome v. McCabe*, 256 F.3d 747 (2001)

8/1/2018, I emotionally turned myself in to the Alachua County Jail. The total of 120 days of my liberty was deprived without due process of law, which is

a violation of my 4th, 5th and 14th Amendments Rights of the U.S. Constitution.

The Flee/Elude Charge (316.1935) that defendants wrongfully accusing me committing in their report don't meet the arresting elements and guide lines of the 2016 Florida Statute to make arrest any citizen. This relevant fact makes the deprivation of my liberty unlawful and unconstitutional and violation of my Fourth and Fourteenth Amendment.

The Defendant Deputies stated several times in report they were on foot patrol and not a duly authorized law enforcement patrol vehicle, with agency insignia and other jurisdictional markings prominently displayed on the vehicle that's required to meet the Flee/Elude Charge elements. The relevant facts make the deprivation of my liberty without due process unlawful and violation of my 4th and 14th Amendment of the U.S. Constitution.

On 11/18/2016, the State Attorney determined that I did not commit the crime(s) alleged. I also received a certified copy of the Case Action Report dismissing all charges (Favorable Termination). The Defendant Deputies misconduct that I described more fully above are the reason that I am suffering mentally, physically, financially, emotionally and spiritually. I lost employment, force to homeless, behind in child support, businesses, not for profit destroyed, lost grant opportunities, partnership, friendships, denied employment and etc. The Defendant Deputies are both liable for all of my claims in my complaint and

Defendant Sheriff are liable for the *Monell* Claim and all needs to be held accountable for the relief that I am entitled to.

I filed a civil rights complaint under 42 U.S.C. § 1983 against the Defendant Deputies and sheriff upon the Fourth Amendment and my Second Amended Complaint was granted by the lower court.

The 42 U.S.C. § 1983, say that I am entitled to a relief for the deprivation of my liberty without due process of law if the government official is acting under the color of law within the scope of their employment when I suffered as I described more fully above.

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## ARGUMENT

I filed my Seconded Amended complaint with plausible claims upon the Fourth Amendment for relief by following the Federal Rules of Civil Procedure (Rule 8) the general rule pleading for claiming for relief.

My Second Amended complaint exceeded the short and plain statement showing that I am entitled to relief just as Rule 8. Pleading standard prescribed in Rule 8(a) does not require a plaintiff to set forth “detail factual allegations”, my complaint described more fully above also exceeded “more than an unadorned, the defendant-unlawfully-harmed-accusation.” See *Ashcroft v. Iqbal*, 566 U.S. 662, 678 (2009). Rule 8(a)(2) only requires me the plaintiff “to give the defendant fair notice of what the claim is and the grounds upon which

it rests.” See *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

Rule 8(a)(2) “requires a ‘showing,’ ‘rather than blanket assertion.’” Of entitlement to relief. Id. at 555 & n.3. “A motion to dismiss for failure to state a claim is a test of the plaintiff’s cause of action as stated in the complaint, not a challenge to the plaintiff’s factual allegations.” *Flanory v. Bonn*, 604 F.3d 249, 252 (6th Cir. 2010) (quoting *Golden v. City of Columbus*, 404 F.3d 950, 958-59 (6th Cir. 2005) (internal quotation marks omitted)).

“[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss.” *Iqbal*, 556 U.S. at 679. “A claim has facial plausibility when plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. at 678 (citing *Twombly*, 550 U.S. at 556). The reviewing court must determine not whether the plaintiff will ultimately prevail, but whether the facts permit the court to infer “more than the mere possibility of misconduct,” which is “a context-specific task that requires the reviewing court to draw on judicial experience and common sense.” Id. at 679; *Twombly*, 550 U.S. at 570 (holding that a complaint is subject to dismissal where plaintiffs failed to “nudg[e] their claims across the line from conceivable to plausible”). Although a court must take all factual allegation in the complaint as true when addressing a motion to dismiss,” [t]hread bare recitals of the elements of a cause of action, supported by mere

conclusory statements, do not suffice,” and a plaintiff’s legal conclusion couched as factual allegations need not be accepted as true. *Iqbal*, 556 U.S. at 678; see *Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010). Therefore, to survive motion to dismiss, a plaintiff’s “[f]actual allegations in the complaint are true.” See *Ass’n of Cleveland Fire Fighter v. City of Cleveland, Ohio*, 502 F.3d 545, 548 (6th Cir. 2007) (alteration in original) (quoting *Twombly*, 550 U.S. at 555) (internal quotation marks omitted).

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## FACTUAL BACKGROUND

My Second Amended Complaint that was granted with my favorable termination informed and showed to the court that the Defendant Deputies who are government official were acting under the Color of Law within the scope of their employment when they a written a false Deputy Report falsely accusing and wrongfully identified me of committing an alleged crime that I did not commit that influence and caused the total of 120 days of my liberty to be deprived without due process and the defamation of my character when I was posted on Alachua County Most Wanted.

The Defendant Deputies denied me of the due process of law which violates my Fourteenth Amendment while they were acting under the color of law within the scope of their employment that cause and influenced the defamation of my character and deprivation

of 120 days of my liberty which violates my Fourth and Fourteenth Amendments.

My legal proceeding wasn't fair. The Procedural Due Process – my proceeding – wasn't in accordance with the rules of law that cause my liberty to be deprived. I was never contacted for questioning of the alleged crime, nor shown a supported cause or fabricated evidence. I never had any personal contact with the defendant's deputies during or after the alleged crime happen but yet my liberty was deprived without due process and no probable cause.

The legal proceeding was not fair and I was deprived of my liberty that my 4th, 5th, and 14th Amendment guaranteed to protect me from. The Defendants failed to provide adequate procedures of the due process before they influence and cause the deprivation of my liberty by submitting fabricated inadmissible evidence, and fabricated testimony falsely accusing and wrongfully identifying me of a crime that I did not commit to the.

The Defendants denied me of due process of law that cause and influence the deprivation of my liberty which violates my 4th, 5th, and 14th Amendment of the U.S. Constitution that cause me to suffer mentally, physically, financially, emotionally and spiritually. They are liable and needs to be held accountable for the relief that I entitled to under 42 U.S.C. § 1983 Statute in which my Second Amended Complaint was Granted under that Statute.

**Factual Statement**

42 U.S.C. § 1983 provides:

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

The Defendants Deputies cause and influence the deprivation of my liberty described more fully above while they were acting under the color of law within the scope of their employment which violated my 4th, 5th, and 14th constitutional rights of the U.S. Constitution. They are liable for the relief that I am entitled to. See *Monroe v. Pape*, 365 U.S. 167 (1961); *Posr v. Doherty*, 944 F.2d 91 (2d Cir. 1991) and the Defendant Sheriff failure to institute and identification procedure in place that would of disclose the error and prevented me being victimize from the deputies' misconduct caused the deprivation of my liberty without due process of law.

I'm asking the court also to review focus and consider my prolonged detention cause by failure to institute adequate identification procedures, the constitutional provision violated by the Defendant Sheriff actions is presumably the Fourteenth Amendment protection deprivation of liberty without due process of law. I filed an internal investigation complaint at the

Alachua County Sheriff office. The Defendant Sheriff failure respond, and failed to adopt the necessary policies, procedures, supervision and training that prevent, reduce, and/or eliminate the risk of such “mistaken identity” arrests.

Every statement regarding me in that Deputy Report is false with any possibilities of being true. I presented witnesses and evidence to the State Attorney on my behalf to prove my innocence and that I did not commit the crime. The defendant deputy used inadmissible evidence to cause and influenced the deprivation of my liberty without due process of law.

a. My complaint met the Fed. R. Civ. 8(a) pleading requirements of a short and plain statements of my plausible claim showing that I am entitled to relief. My case should have been decided on merits rather than approaching my pleading as a game of skill in which one misstep or misunderstanding as an inexperience Pro Se Filer may be decisive to the outcome of my complaint and plausible claims. Being dismissed. See *Conley v. Gibson*, 355 U.S. 41, 47-48 (1957) my claims in my complaint are plausible. The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. “Instead, a complaint is sufficient if it “give[s] the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would be entitle him to relief.” 355 U.S. at 45-46.

I submitted a certified document to support and prove that all my factual allegation in my complaint is true and all of my claims are plausible and can be proven to be true upon the Fourth and Fourteenth Amendment and survive a motion to be dismiss.

b. The District Court err in dismissing my Second Amended Complaint.

My complaint made out a *prima facie* case by showing, first intent to confine, second acts resulting in confinement, and third consciousness of the victim of confinement that resulted in harm. My 4th and 14th Amendment rights were violated and the all of the defendants described more fully above is liable for the relief that I am entitled to.

c. The Court err in dismissing my Second Amended Complaint

The Federal of Civil Procedure do not require a statement of the legal theory supporting the claim. See *Johnson v. City of Shelby*, 135 S.Ct. 346 (2014).

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## CONCLUSION

I, Kenneth Johnson, who is a law abiding citizen, chaplain, community leader, father who suffered when I was deprived the total of 120 days of my liberty in jail without supported probable cause nor due process of law that violated my Fourth and Fourteenth Amendment rights of the United States Constitution.

I suffered from the defamation of my character and lost everything that I worked blood, sweat, and tears for, when I was post on the local edition for Alachua County Most Wanted that I more fully above for a crime that I did not commit. The Defendant Deputies written false report wrongfully and falsely accusing and identifying me of the alleged crime while they acting under the Color of Law within the scope of their employment are what cause and influenced the deprivation of my liberty and defamation of character that cause me to suffer mentally, physically, financially, emotionally, and spiritually in my mind, body, soul and spirit in the past, present, and future.

The Respondents that I described in more fully above and in my 2nd Amended Complaint that was granted by the District Court are liable and responsible for the relief that I am entitled to for the violation of my 4th and 14th Amendments of the U.S. Constitution.

The Factual allegation of a complaint are assumed true and construed in favor of the plaintiff, even if it strikes a savvt judge that actual proof of those facts is improbable and “that a recovery is very remote and unlikely.” *Id.* at 556 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

The factual allegation is true and all of my claims are plausible and I proved all of my claims to be true. I plaintiff gave the Respondent fair notice and short and plain statement of my claims are upon which grounds rest on. Rule 8 “a complaint should not be

dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would be entitle him to relief." See *Conley v. Gibson*, 355 U.S. at 45-46. *Swanson v. Citibank.*" See *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)

Note to Supreme Court: I did not waive my rights to oppose, make any argument or objections to the magistrate judges and recommendation, my brief on appeal by choice. I was hit by a car on 10/13/2017 while riding my bike that injured my knee and cause a severe spine injury. The pain pills and injuries interfered with my comprehension and focus on my case while I recovery. Please do not be prejudice towards me for failing to respond to lower courts but examine the factual allegation that my Second Amended Complaint was granted upon described more fully above.

For the foregoing reasons described more fully above regarding my Second Amended Complaint, I am asking this U.S. Supreme Court to grant my Writ of Certiorari, please protect me as Pro Se reverse the decision of the lower courts and allow me to remand for further proceedings.

Respectfully submitted,

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